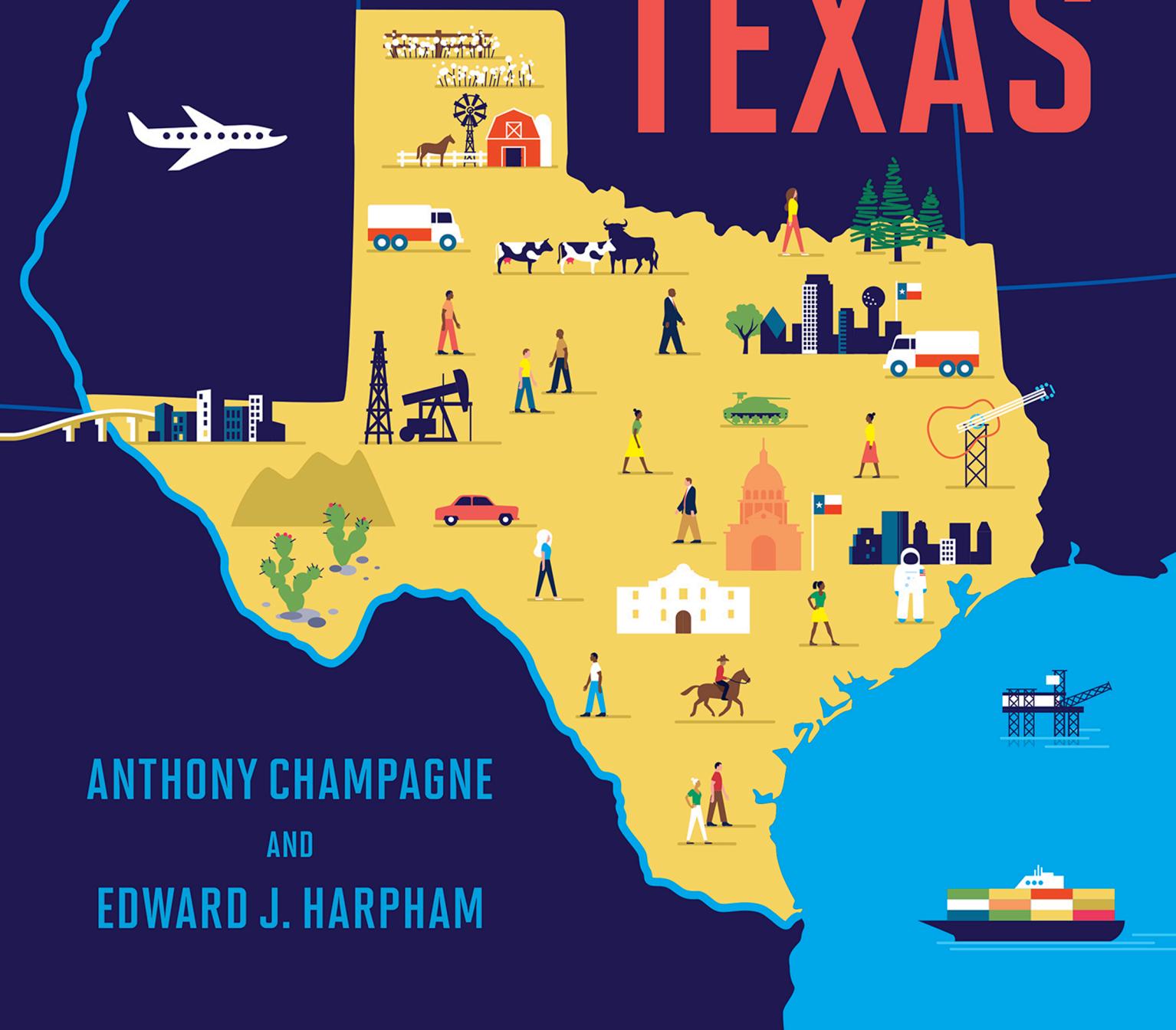


SECOND EDITION

# GOVERNING TEXAS



ANTHONY CHAMPAGNE  
AND  
EDWARD J. HARPHAM

SECOND EDITION

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# Governing Texas



SECOND EDITION

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# Governing Texas

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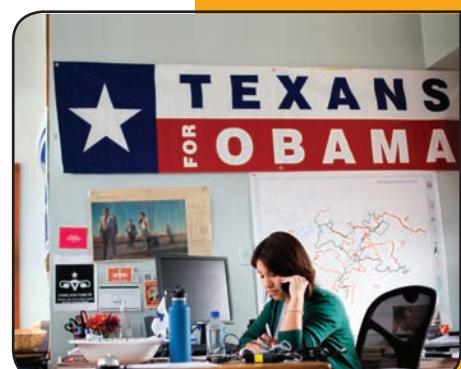
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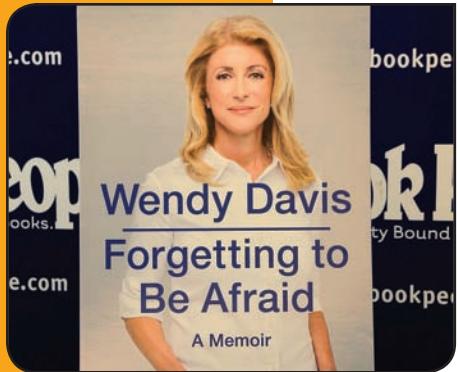
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# preface

Our goal in this text is to offer readers a broad understanding of the factors that are reshaping political processes and institutions in the Lone Star State in the first two decades of the twenty-first century. We are particularly concerned with explaining how the principles underlying constitutional government in Texas are being reworked in the face of new political, economic, and demographic changes. By supplementing our institutional analysis with concrete examples from everyday political life in Texas, we hope to show the reader that politics and government in Texas are not only important to their lives but endlessly fascinating as well.

## Features of the Second Edition

Another, related goal of the book is to provide students with extensive pedagogical support throughout each chapter. In every chapter, several features engage students' interest and help them master the learning objectives for the topic.

- **Chapter Goals** appear at the start of the chapter and then recur at the start of the relevant sections throughout the chapter to create a more focused, active reading experience.
- **Extensive end-of-chapter review sections organized around Chapter Goals** include section outlines, practice quiz questions, key terms, and Recommended Websites, as well as information about related online resources. Students have everything they need to master the material in each section of the chapter.
- **“Who Are Texans?” infographics** engage visually oriented students with a “statistical snapshot” of the state related to each chapter’s topic. These features help students grasp the political implications of demographic, political, economic, and regional diversity in Texas. Related exercises in the online coursepacks and slides in the instructor PowerPoints make it easy for instructors to bring these graphics into their online or face-to-face classrooms.
- **NEW “Texas and the Nation” infographics** enable students to compare Texas’s government and politics to other states’. Critical thinking questions accompany each “Texas and the Nation” graphic and encourage students to engage deeply with the graphics and draw their own conclusions. Related

exercises in the online coursepacks and slides in the PowerPoints make it easy for instructors to bring these graphics into their online or face-to-face classrooms.

- “**You Decide**” boxes in every chapter address controversial issues in Texas politics that students care about. These boxes encourage students to think beyond their knee-jerk reactions and consider all sides of the debate.
- “**What Government Does and Why It Matters**” chapter introductions draw students into the chapter by showing them why they should care about the chapter’s topic.

## Revisions to the Second Edition

In the second edition of *Governing Texas*, we have tried to provide students with the most up-to-date account of Texas government and politics. Every chapter was scrutinized with help from dozens of outside reviewers, and we have tried to provide the most current examples and data throughout the text. Highlights of the new edition include:

- Updated material on the 2013 legislative session and the 2014 elections throughout, including new data from the Legislative Budgeting Board
- A new graphic feature—“Texas and the Nation”—in each chapter, enabling students to look at Texas from a broader national perspective
- Updated data in the “Who Are Texans?” graphics throughout
- An expanded discussion of the Texas constitutional founding in Chapter 2
- A new appendix, featuring a group of primary source readings that complement the text, including the Texas Declaration of Independence and the Texas Ordinance of Secession
- A completely revised chapter on “Texas in the Federal System” (Chapter 3), now placed after the chapter on the Texas Constitution
- Updated chapter on interest groups, which now offers discussions of collective action and interest group capture
- Heavily revised chapter on local government, which has been moved up in the text to appear after chapters about the other institutions established by the constitution and now includes an extended discussion of the politics surrounding the provision and funding of public pensions
- New discussions of efficiency and rationality in the policy-making process in Chapter 12 on public policy

We believe that these changes will assist professors in teaching students the nuts and bolts of Texas government and politics, as well as the broad themes and issues that will shape the Lone Star State in the coming decades.

## Resources for Assessment and a Dynamic Classroom Experience

The media package for *Governing Texas*, Second Edition, offers all of the tools needed for effective assessment, targeted self-study, and dynamic classroom presentations—either online or face-to-face. Features include the following.

## Norton Coursepacks: Our content, your course

Rachel Bzostek, *University of Texas, Tyler*

Jeremy Duff, *Midwestern State University*

Alexander Hogan, *Lone Star College, CyFair*

Sharon Navarro, *University of Texas, San Antonio*

Easily add high-quality Norton digital media to your online, hybrid, or lecture course—all at no cost. Norton Coursepacks work with and leverage your existing Learning Management System, so there's no new system to learn, and access is free and easy. Comprehensive Coursepacks are ready to use, right from the start, but are easy to customize, using the system you already know and understand. Norton Coursepacks include exclusive multimedia content and assessment tools that are not found anywhere else, such as test banks and quizzes, interactive learning tools, and exercises covering chapter objectives and tagged to State Learning Outcomes. Every chapter includes:

- Video exercises from *The Texas Tribune* and ABC News to help students retain and apply information through current events
- NEW “Who Are Texans?” and “Texas and the Nation” animated infographics to guide students through interpreting data
- Simulations to get students thinking about how Texas government really works
- NEW “You Decide” exercises to help students engage varying views on contemporary issues
- NEW “By the Numbers” exercises to help students practice quantitative skills by exploring key datographics from the text



## Norton Ebook: Same great book, a fraction of the price

Norton ebooks allow students to access the entire book and much more; they can search, highlight, and take notes with ease, as well as collaborate and share their notes with teachers and classmates. The *Governing Texas*, Second Edition, ebook can be viewed on any device—laptop, tablet, phone, even a public computer—and will stay synced between devices.

## Lecture PowerPoints

Ronald Vardy, *Wharton County Junior College*

The second edition of *Governing Texas* offers fully customizable lecture slides with clicker questions, teaching ideas, and discussion questions in the instructor-only notes field. “Who Are Texans?” and “Texas and the Nation” slides feature popular infographics and pop quiz questions for the optimal lecture experience.

## Art Slides

Photographs and drawn figures from the book are available for classroom use.

## Instructor’s Manual

Jeremy Duff, *Midwestern State University*

The Instructor’s Manual includes chapter outlines, class activities, and group discussion questions. Each chapter also offers suggested video clips with links and discussion questions.

## Test Bank

Sharon Navarro, *University of Texas, San Antonio*

The revised test bank assesses chapter learning goals and Texas Student Learning Outcomes, applies Bloom's Taxonomy across these goals and outcomes, and improves the overall quality and accuracy of our assessment through extensive peer review.

## About the Authors

Over the past 25 years, we have worked together on a number of books that have studied various aspects of government and political life in Texas. We come to the study of Texas politics and government from two very different backgrounds.

Anthony Champagne was born in Louisiana as the French surname suggests. His mother's family, however, were pioneer farmers and ranchers in Hopkins County, Texas. It was growing up with Louisiana and Texas connections that gave him a life-long interest in politics. When he moved to the University of Texas at Dallas in 1979, he immediately visited the Sam Rayburn Library in Bonham. Sam Rayburn was one of the Texas's most influential political figures. He was elected to the U.S. House of Representatives in 1912 and served until his death in 1961. During that time, he was chairman of one of the most influential committees of the House, was Majority Leader, Speaker, and Minority Leader of the House. He is responsible for much of the major legislation in the New Deal and for his key role in the politics of the Truman, Eisenhower, and early Kennedy Administrations. A chance meeting at the Sam Rayburn Library with H. G. Dulaney, Sam Rayburn's secretary for 10 years, led to the opportunity to do over 130 oral histories with persons associated with Sam Rayburn. As a result, Champagne was completely hooked on studying Texas politics. He was particularly interested in the transformation of the state from an overwhelmingly Democratic state to a Republican bulwark. And, he was interested in how Texas changed from being a key partner with the national government in the cooperative federalism of the New Deal period to a state whose leaders are frequent critics of national power today. Political change in the state from the Sam Rayburn era to today is a key research focus of his.

Edward Harpham, in contrast, was born in Montreal to second generation Canadian parents who immigrated to the United States soon after his birth. His family's migration over the last 100 years from Sheffield to Toronto (1919) to Delaware (1952) to Texas (1978) and the industries that employed the family (auto service industry, chemical industry, and academia) mirror the demographic changes that have reshaped much of the population movement in the United States and Texas throughout the twentieth century. Trained as a political theorist with a deep interest in political economy, Harpham's move to Texas sparked an interest in how economic changes in the late twentieth century were changing the contours of the state's traditional political life in new and unexpected ways. At the heart of his work lies an abiding interest on the role that ideas play in shaping the growth and development of political institutions and public policies in the modern information age.

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SECOND EDITION

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# Governing Texas

In some ways state-level politics in Texas resembles national politics, but in other ways Texas's political culture is quite distinctive.



# The Political Culture, People, and Economy of Texas

**WHY TEXAS'S POLITICAL CULTURE MATTERS** In his *Travels with Charley*, John Steinbeck once described Texas as “a state of mind . . . a mystique closely approximating a religion.” Americans passionately loved or hated Texas. Steinbeck believed that Texas, despite its vast space, its varying topography, its many cultures and ways of life, had a cohesiveness that may be stronger than any other part of America. He writes, “Rich, poor, Panhandle, Gulf, city, country, Texas is the obsession, the proper study and the passionate possession of all Texans.”

Certain myths define the obsession that is Texas—and Texans—in the popular imagination. The cowboy who challenges both Native American and Mexican rule, the rancher and farmer who cherish their economic independence, the wildcatter who is willing to risk everything for one more roll of the dice, and the independent entrepreneur who fears the needless intrusion of government into his life—such are the myths about Texans.

These myths extend far into the popular imagination when we think about various politicians who have led the state since its founding: the visionary Stephen F. Austin locked in a Mexican jail after presenting Texas grievances to the authorities, the military hero Sam Houston who wins the Battle of San Jacinto but is thrown out of office because of his rejection of secession, the irrepressible Ma and Pa Ferguson who both served as governors, and the larger-than-life Lyndon Baines Johnson who began his career as a schoolteacher in Cotulla, Texas, and completed it as a champion of civil rights and the poor.

The reality of Texas today, its people and its leaders, is much more complicated than the Texas of popular myths. Texas is not only the second-largest state in the Union, comprising more than 261,000

square miles; it is also the second most populous. Texas has a population of more than 26 million people, and that population is rapidly growing and becoming more and more diverse. Whites constitute a little more than 45 percent of the population, while Latinos constitute more than 38 percent. Just fewer than 12 percent of the population are African American, and roughly 4 percent are Asian. Eighty-five percent of Texans live in urban areas, with many involved in an economy driven by high-tech industry and globalization. More than a quarter of the population has a bachelor's degree. On the whole, Texans are young, with 26.8 percent under the age of 18 and 10.9 percent over the age of 65.

Texas politics today is a political community that is dominated by the Republican Party. The Democratic Party of Vice President John Nance Garner (1868–1967), Speaker of the House Sam Rayburn (1882–1961), President Lyndon Johnson (1908–1973), and Lieutenant Governor Bob Bullock (1929–1999) no longer controls the key political offices in the state. Since the mid-1990s, Texas politics and government have been largely controlled by an establishment within the Republican Party led by such individuals as President George W. Bush (b. 1946), Governor Rick Perry (b. 1950), Lieutenant Governor David Dewhurst (b. 1945), and Texas Speaker of the House Joe Straus (b. 1959). In recent years, however, this establishment has been challenged from within the party. An increasingly aggressive group of dissidents tied into the Tea Party movement have advanced hyperconservative political positions on a variety of social and economic issues, including abortion, birth control, same-sex marriage, immigration, and taxes. Led by politicians like Senator Ted Cruz (b. 1970), Lieutenant Governor Dan Patrick (b. 1956), and Attorney General Ken Paxton (b. 1962), Tea Party supporters have pushed Texas Republicans further to the right by melding a cultural conservatism on issues like abortion and gay rights to an anti-Washington rhetoric that calls for lower taxes, less government spending and regulation, and a balanced budget.

The Democratic Party, too, has moved in new directions, spurred on by new and younger leaders. Gubernatorial candidate Wendy Davis (b. 1963) gave her party a shot in the arm when she filibustered against antiabortion laws at the end of the 2013 legislative session. Likewise, the twin brothers Julian and Joaquin Castro (b. 1974) represent something new to the party and the state. Educated at Stanford and Harvard Law School, the former has served two terms as the mayor of San Antonio before moving on to a cabinet position in the Obama administration. The latter, meanwhile, has entered the U.S. House of Representatives.

Undoubtedly, Tea Party Republicans like Ted Cruz and up-and-coming Democrats like Wendy Davis and the Castro brothers will give rise to new myths about the people and politicians found in Texas. We should be careful before we fully accept any of these myths. As in the past, the reality of Texas—its people and its politics—is much more complex than the myths we spin about it. Conservative Republicans may control today's political agenda, but their long-term dominance in politics and government is not certain. Increasing racial and ethnic diversity points to a new Texas, one that looks sharply different from the one in the history books and one that appears to favor Democrats (the party preferred today by most Latinos, African Americans, and recent immigrants). The future of the state and its people will be determined in large part by the struggle between an assertive Republican majority and a resurgent Democratic minority as both

try to address the various political, economic, and demographic challenges facing the state. Moving our understanding of governance and politics beyond the myths about Texas is the goal of this chapter and the book.

## chaptergoals

- **Describe the defining characteristics of political culture in Texas (pp. 5–7)**
- **Explain how Texas's geography has influenced its political culture (pp. 7–9)**
- **Trace the evolution of Texas's economy (pp. 10–19)**
- **Explain how the population of Texas has changed over time (pp. 19–26)**
- **Describe Texas's shift from a rural society to an urban one (pp. 26–32)**

## ● Texas Political Culture

### Describe the defining characteristics of political culture in Texas

Studies of Texas politics often begin with a discussion of Texas's **political culture**. Though the concept is somewhat open ended, states do often exhibit a distinctive culture that is the "product of their entire history." Presumably the political culture of a state has

an effect on how people participate in politics and how individuals and institutions interact.<sup>1</sup> Political scientist Daniel Elazar has created a classification scheme for state political cultures that is used widely. He uses the concepts of moralistic, individualistic, and traditionalistic to describe such cultures. These three state political cultures are contemporary manifestations of the ethnic, socioreligious, and socio-economic differences that existed among America's original thirteen colonies.<sup>2</sup>

According to Elazar, **moralistic political cultures** were rooted in New England, where Puritans and other religious groups sought to create the Good Society. In such a culture, politics is the concern of everyone, and government is expected to take action to promote the public good and advance the public welfare. Citizen participation in politics is viewed as positive; people are encouraged to pursue the public good in civic activities.

**Individualistic political cultures**, on the other hand, originated in the middle states, where Americans sought material wealth and personal freedom through commercial activities. A state with an individualistic political culture generally places a low value on citizen participation in politics. Politics is a matter for professionals rather than for citizens, and the role of government is strictly limited. Government's role is to ensure stability so that individuals can pursue their own interests.

**Traditionalistic political culture** developed initially in the South, reflecting the values of the slave plantation economy (pre-1865) and its successor, the Jim Crow era (1876–1965). Rooted in preindustrial values that emphasize social hierarchy

**political culture** broadly shared values, beliefs, and attitudes about how the government should function and politics should operate; American political culture emphasizes the values of liberty, equality, and democracy

**moralistic political culture** the belief that government should be active in promoting the public good and that citizens should participate in politics and civic activities to ensure that good

**individualistic political culture** the belief that government should limit its role to providing order in society, so that citizens can pursue their economic self-interests

**traditionalistic political culture** the belief that government should be dominated by political elites and guided by tradition

**elite** a small group of people that dominates the political process



*The Lone Star is the symbol of Texas and reflects its individualistic political culture.*

### for critical analysis

How would one describe Texas political culture? What patterns of Texas politics reflect its political culture?

and close interpersonal, often familial, relations among people, traditional culture is concerned with the preservation of tradition and the existing social order. In such states, public participation is limited and government is run by an established **elite**. Public policies disproportionately benefit the interests of those elites.

States can, of course, have cultures that combine these concepts. One book classified Colorado, for example, as having a “moralistic” political culture. California was classified as having a “moralistic individualistic” political culture and New York an “individualistic moralistic” culture. New Jersey was classified as “individualistic” and Georgia “traditionalistic.” Florida and Kentucky were seen as “traditionalistic individualistic.” Often Texas is categorized as having a “traditionalistic individualistic” political culture.<sup>3</sup> Taxes are kept low, and social services are minimized. Political elites, such as business leaders, have a major voice in how the state is run. In spite of the difficulty in measuring the concept of political culture in any empirical way, it is a concept widely regarded as useful in explaining fundamental beliefs about the state and the role of state government.

Yet, the political culture of a state can change over time. Texas is undergoing dramatic changes, including some change in its political culture. It is also difficult to classify the political culture of a state as large and as diverse as Texas in any one category. In fact, Texas has many different political cultures or subcultures within its borders.<sup>4</sup>

Three long-lasting patterns in Texas politics seem to indicate a “traditionalistic individualistic” state political culture. Indeed, political elites interested in limited government with low taxes and few social services dominate Texas politics today. It is also the case that at least some of these characteristics of state politics are undergoing rapid change. We examine these elements of Texas political culture below.

## The One-Party State

For over 100 years, Texas was dominated by the Democratic Party. Winning the Democratic Party primary was tantamount to winning the general election. As we will see in later chapters, this pattern no longer holds. During the 1990s substantial competition emerged between the parties for control of the state legislature. Following redistricting in 2002 the Republicans secured a 7-vote majority in the state Senate and a 24-vote majority in the state House. Between 2002 and 2014 all major statewide elected offices were controlled by Republicans. The question today is not whether the political culture of Texas will continue to be defined by a powerful Democratic Party, but how that culture will be redefined by two forces: a powerful Republican Party in most suburban and rural areas and a resurgent Democratic Party in Texas’s most urban counties.

## Provincialism

**provincialism** a narrow, limited, and self-interested view of the world often associated with rural values and notions of limited government

A second pattern that once defined Texas political culture is **provincialism**, a narrow view of the world that is often associated with rural values and notions of limited government. The result often was an intolerance of diversity and a notion of the public interest that dismissed social services and expenditures for education. Some of the more popular politicians in Texas have stressed *corporatism*—a hickish rural rejection of modern urban lifestyles—intolerance, and a narrow worldview rather than policies that might offer advantages to the state as it competes with other

states and with other nations. Like the one-party Democratic state, Texas provincialism has faded as a defining feature of the political culture. The growing influence of minorities, women, and gays in state politics, increasing urbanization, and Texas's relevance in the global economy have all undercut Texas's provincialism.

## Business Dominance

A third, continuing pattern that has helped define Texas's political culture is its longtime dominance by business. Labor unions are rare in Texas except in the oil-refinery areas around Beaumont–Port Arthur. Other groups that might offer an alternative to a business perspective, such as consumer interests, are poorly organized and poorly funded. Business groups are major players in Texas politics, in terms of campaign contributions, organized interest groups, and lobbyists.

This chapter will investigate the economic, social, and demographic changes that transformed Texas's political culture during the twentieth century. These changes shook Texas government and politics in the 1990s and have continued to shape them in the second decade of the twenty-first century.

## ● The Land

**Explain how Texas's geography has influenced its political culture**

Much of Texas's history and political life has been shaped by the relationship forged between its people and the land. Texas is the second-largest state in size, next to Alaska. To understand the dynamics of political life and governance in Texas demands an appreciation of the vast spaces and topography that define the state.

Perhaps the most distinctive characteristic of Texas's geography is its size. The longest straight-line distance across the state from north to south is 801 miles; the longest east–west distance is 773 miles. To put this into perspective, the east–west distance from New York City to Chicago is 821 miles, cutting across five different states. The north–south distance between New York City and Charleston, South Carolina, is 763 miles, cutting across six different states.

Distances alone do not tell the whole story of the diverse geography found in Texas. There are four distinct physical regions in Texas: the Gulf Coastal Plains, the Interior Lowlands, the Great Plains, and the Basin and Range Province (Figure 1.1).<sup>5</sup> The distinctive features of these regions have shaped politics in Texas in a number of important ways.

### The Gulf Coastal Plains

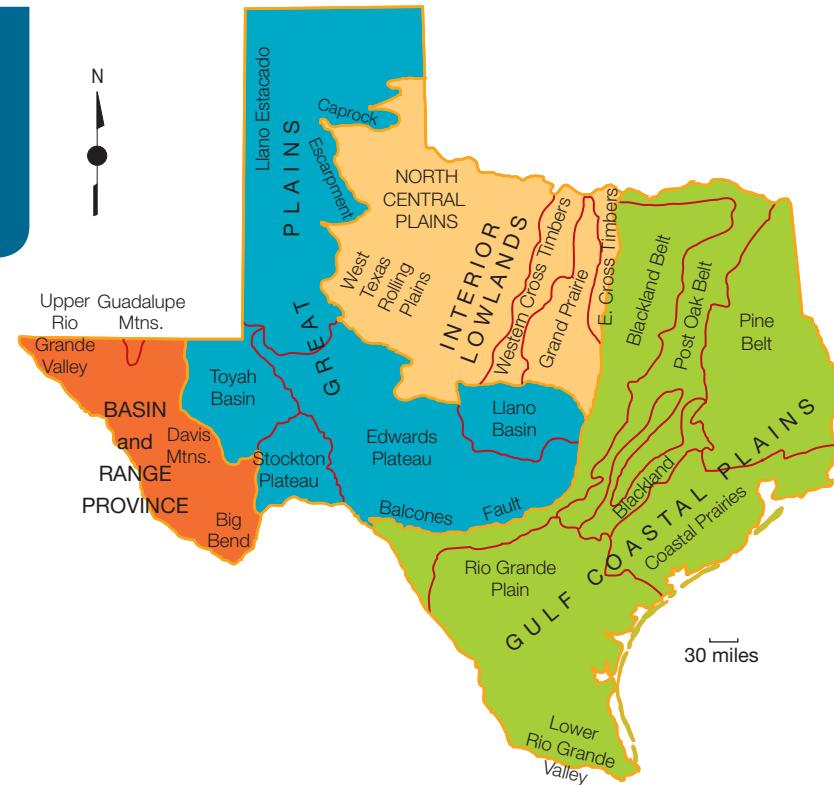
The Gulf Coastal Plains extend from the Louisiana border and the Gulf of Mexico, along the Rio Grande up to Del Rio, and northward to the line of the Balcones Fault and Escarpment. As one moves westward, the climate becomes increasingly arid. Forests become less frequent as post oak trees dominate the landscape until they too are replaced by the prairies and brushlands of central Texas.



*Ties between business and political leaders in Texas have always been strong. Here, then governor Rick Perry appears with Ralph Babb, the chief executive of Comerica Bank, to announce that Comerica would move its corporate headquarters to Dallas.*

**FIGURE 1.1**  
**The Physical Regions of Texas**

SOURCE: Dallas Morning News, *Texas Almanac 2000–2001* (Dallas: Dallas Morning News, 1999), p. 55.



The eastern portion of the Gulf Coastal Plains—so-called east Texas—is characterized by hilly surfaces covered by forests of pine and hardwoods. Almost all of Texas's timber production takes place here. It is also the home of some of Texas's most famous oilfields. To the west is the Blackland Belt. A rolling prairie soil made the Blackland Belt a prime farming area during the late nineteenth and early twentieth centuries. It was a major center of cotton production in Texas. Today it is the most densely populated area of the state and has a diversified manufacturing base.

The Coastal Prairies around Houston and Beaumont were the center for the post–World War II industrial boom, particularly in the petrochemical industry. Winter-vegetable and fruit production plays a major role in the Lower Rio Grande Valley, while livestock is important in the Rio Grande Plain, an area that receives less than 24 inches of rainfall on average every year and during the summer months experiences rapid evaporation.

Texas's political life grew out of the Gulf Coastal Plains. The land grants made available to Americans willing to come to Texas in the first half of the nineteenth century were located here. This region was the foundation of plantation life during the antebellum period when slavery flourished in the state. The Dallas–Fort Worth area is located in the northwestern part of this region, once a bastion of a small Republican Party. A union movement grew out of the industrialized areas along the coast, providing support to a liberal wing of the Democratic Party. For the most part, though, the Gulf Coastal Plains were dominated by rural conservative values, be they located in the Democratic Party (from 1876 to the early 1990s) or in the

Republican Party (from the 1990s to today). Urbanization and suburbanization in Houston and Dallas–Fort Worth have added new dimensions to the political life of this region. Urban areas have become increasingly Democratic, while suburban areas have become more Republican.

## The Interior Lowlands

The Interior Lowlands are an extension of the interior lowlands that run down from Canada. They are bordered by the Balcones Escarpment on the east and south and the Caprock Escarpment on the west. Beginning to the west of Fort Worth, the eastern edge of the Interior Lowlands has predominantly an agricultural economy and a rural population. The western portion, meanwhile, rises from 750 to 2,000 feet in elevation. The West Texas Rolling Plains contain much level, cultivable land and are home to a large cattle-raising industry. Many of the state's largest ranches are located here. The region is dominated by conservative politics and the Republican Party.

## The Great Plains

Pushing down into northwest Texas from the Rocky Mountains to the Balcones Fault, the Great Plains define the terrain in much of western Texas, rising from 2,700 feet in the east to more than 4,000 feet along the New Mexico border. The major city on the northern plains is Amarillo. Ranching and petroleum production dominate the economy. The southern plains economy centers on agriculture and cotton production, with Lubbock as the major city. Large-scale irrigation from underwater reservoirs, particularly the Ogallala Aquifer, has played a major role in the economic development of this region. A major concern of policy makers is that pumping out of the aquifer exceeds replenishment, raising questions of the viability of basing future growth on the irrigation practices of the past. We will return to a discussion of the problem of aquifer depletion in the public policy chapter (see Chapter 12).

As in East Texas, conservative political values have a home in the Interior Lowlands and the Great Plains. While representatives from this area have played a major role in the political life of the state over the last 100 years, their power has been ebbing in the face of the population pressures of Texas's expanding urban areas elsewhere.

### for critical analysis

How has the diverse geography of Texas affected its development?

## The Basin and Range Province

The fourth geographic region in Texas is the Basin and Range Province. Here one finds Texas's mountains in the Guadalupe Range along the border with New Mexico, which includes Guadalupe Peak (8,749 feet) and El Capitan (8,085 feet). To the southeast is Big Bend country, so named because the Rio Grande River surrounds it on three sides as the river makes its southward swing. Rainfall and population are sparse in this region.

The area running from the Basin and Range Province to the Lower Rio Grande has always had a distinctive political culture, heavily dominated by the fact that Texas and Mexico have been joined at the hip economically and demographically. In the late twentieth and early twenty-first centuries, the Border region, including El Paso, McAllen, and Brownsville, has remained a Democratic Party bastion.

## ● Economic Change in Texas

**Trace the evolution of Texas's economy**

The famous twentieth-century economist Joseph Schumpeter characterized the capitalist economic system as being a process of “creative destruction.”<sup>6</sup> By this he meant that capitalism was an economic system that

underwent periodic waves of transformation fueled by technological innovations in production and distribution. These waves of technological transformation were put into place by entrepreneurs who had visions of new ways to produce and distribute goods and services and who were willing to act on those visions. The capitalist process of creative destruction not only creates a new economic and social world; it destroys old ones. The world of railroads, steam, and steel transformed American economic and social life by nationalizing the market and making new opportunities available to businesses and individuals during the late nineteenth century. It also destroyed the local markets that had defined rural American communities since the Founding. The technological innovation tied to gasoline combustion engines, electricity, and radio restructured the American economy again in the 1920s, leaving in its wake a society and an economy that would never be the same.

Schumpeter’s theory of creative destruction provides a useful way to think about the economic changes that have shaped and reshaped the Texas economy. Three great waves of technological change have helped define and redefine the Texas political economy over the last 150 years. The first centered on the production of cotton and cattle and their distribution by an extensive railroad system. The second grew out of the oil industry. The third and most recent is tied to the development of the high-tech digital economy.

### Cotton

Cotton is one of the oldest crops grown in Texas.<sup>7</sup> Missions in San Antonio in the eighteenth century are reported to have produced several thousand pounds of cotton annually, which were spun and woven by local artisans. Serious cultivation of cotton began in 1821 with the arrival of white Americans. Political independence, statehood, and the ongoing removal of the Native American “threat” in the years before the Civil War promoted the development of the cotton industry. By the mid-nineteenth century, cotton production in Texas soared, placing Texas eighth among the top cotton-producing states in the Union. Although production fell in the years following the Civil War, by 1869 it had begun to pick up again. By 1880, Texas led all states in the production of cotton in most years.

A number of technological breakthroughs further stimulated the cotton industry in Texas. First, in the 1870s barbed wire was introduced, enabling farmers to cordon off their lands and protect their cash crop from grazing cattle. Second, the building of railroads brought Texas farmers into a national market. Finally, a newly designed plow made it easier to dig up the prairie soil and significantly increase farm productivity.

Throughout the 1870s immigrants from the Deep South and Europe flooded the prairies of Texas to farm cotton. Most of these newly arrived Texans became tenant farmers or sharecroppers. Tenants lived on farms owned by landowners, providing their own animals, tools, and seed. They generally received two-thirds of the final value of the cotton grown on the farm, while the landlords received the other third. Another form of tenant farming is sharecropping. Sharecroppers furnished

only their labor but received only one-half of the value of the final product. Almost half of the state farmers were tenants by the turn of the century.<sup>8</sup>

Two important consequences resulted from the tenant and sharecropping system. First, it condemned many rural Texans to lives of social and economic dependency. The notorious “crop-lien” system was developed to extend credit to farmers in exchange for liens on their crops. The result often was to trap farmers in a debt cycle from which they could not escape. Second, the tenant and sharecropping system helped fuel radical political discontent in rural areas, sparking both the Grange and Populist movements. These movements played a major role in defining the style of Texas politics throughout much of the late nineteenth and early twentieth centuries.

Cotton production cycled up and down as farmers experienced a series of crises and opportunities during the late nineteenth and early twentieth centuries, ranging from destructive boll weevils to an increased demand brought on by World War I to a collapse in prices following the war. The general decline of the cotton culture continued after World War II. The 1930 Census reported that 61 percent of all farmers in Texas were tenant farmers. One-third of these farmers were sharecroppers. These numbers fell throughout the Great Depression and beyond. By 1987 only 12 percent of all farmers were tenants.<sup>9</sup>

## Cattle

The history of ranching and the cattle industry parallels that of cotton in many ways.<sup>10</sup> The origins of ranching and the cattle industry extend back to the late seventeenth century, when the Spanish brought livestock to the region to feed their missionaries, soldiers, and civilians. Ranching offered immigrants an attractive alternative to farming during the periods of Mexican and Republic of Texas rule. In the 1830s traffic in cattle was limited to local areas. This began to change as cattle drives and railroads began opening up new markets in the east.

Following the Civil War, the cattle industry took off, expanding throughout the state. As with cotton, the invention of barbed wire helped close off the lands used for grazing. By the end of the nineteenth century, ranch lands had been transformed from open range to fenced pasturing. As a result, conflicts over land often broke out between large and small ranchers, as well as between ranchers and farmers. As cattle raising became a more specialized and efficient business, periodic conflicts broke out between employers and employees. Throughout the twentieth century, ranching remained a cyclical industry, struggling when national and international prices collapsed and thriving during upturns in the economy.

Ranching and cotton production remain important industries in the state, although increasingly dominated by big agribusiness companies. Texas normally leads the nation in livestock production. Similarly, it normally leads all other states in cotton production. Over 28 percent of the total cotton production in the United States came from Texas. In 2013 the annual cotton crop was 4.1 million bales, down from a peak in 2005 of 8.4 million bales. Production has fluctuated in recent years because of the severe drought that has plagued parts of the state.<sup>11</sup>

Neither cotton production nor ranching drives the Texas political economy as in the past. The number of people making a living from agriculture has dropped significantly over the last 50 years as agribusiness has pushed out the family farm



*During the late nineteenth century, in most years Texas produced more cotton than any other state. But although one-quarter of the cotton produced in the United States still comes from Texas, the importance of the cotton industry to the state's economy has declined since the 1920s. This photo shows land and machinery used to farm cotton.*

Cattle ranching is another of Texas's dominant industries. The most famous ranch in Texas is the King Ranch, shown here in 1950. Currently covering almost 1,300 square miles, it is larger than the state of Rhode Island.



and ranch. In 1940, 23 percent of the population worked on farms and ranches. Another 17 percent were suppliers to farms and ranches or helped assemble, process, or distribute agricultural products. Currently, less than 2 percent of the population lives on farms and ranches, with an additional 15 percent of the population providing support, processing, or distribution services to agriculture in Texas.<sup>12</sup>

A new set of technological breakthroughs challenged the nineteenth-century dominance of cotton and cattle in the early twentieth century. These breakthroughs focused not on what grew on the land, but on what lay beneath it.

## Oil

Oil was first sighted in the mid-seventeenth century by Spanish explorers.<sup>13</sup> There was no market or demand for the product, and nothing was done to develop this natural resource. Over a century later, encouraged by a growing demand for petroleum products following the Civil War, a scattering of entrepreneurs dug wells, although they were not commercially viable. The first economically significant oil discovery in Texas was in 1894 in Navarro County near Corsicana. By 1898 the state's first oil refinery was operating at the site. Oil production had become economically viable.

What catapulted Texas into the era of oil and gas was the discovery at Spindletop on January 10, 1901. Located three miles south of Beaumont along the Gulf Coast, the Spindletop discovery produced Texas's first oil boom. The success of Spindletop encouraged large numbers of speculators and entrepreneurs to try their luck in the new business. Within three years, three major oilfields had been discovered within 150 miles of Spindletop.

Oil fever spread throughout Texas over the next decade. In north central Texas, major discoveries took place at Brownwood, Petrolia, and Wichita Falls. In the teens major discoveries were made in Wichita County, Limestone County near Mexia, and once again in Navarro County. In 1921 oil was found in the Panhandle, and by the end of the decade major oilfields were being developed all across the state. The biggest oilfield in the state was found in October 1930 in east Texas. As journalist Mary G. Ramos notes, "By the time the East Texas field was developed, Texas's economy was powered not by agriculture, but by petroleum."<sup>14</sup>

The oil and gas industry transformed the social and economic fabric of Texas in a number of important ways. By providing cheap oil and gas, the industry made pos-

sible a new industrial revolution in twentieth-century America that was fueled by hydrocarbons. Cheap oil provided a new fuel for transportation and manufacturing. Railroads and steamships were able to convert from coal to oil. Manufacturing plants and farms were able to operate more efficiently with a new, cheap source of energy, encouraging individuals to migrate to cities away from farms. Automobile production was encouraged, as was the building of roads. The Interstate Highway System that was built during the 1950s and 1960s changed fundamentally the transportation patterns that shaped the movements of people and goods in Texas. The triangle formed by I-35 from San Antonio to Dallas–Fort Worth, I-45 from Dallas–Fort Worth to Houston, and I-10 from Houston to San Antonio became the heartland of the Texas economy and the location of an increasing percentage of the state's population.

The oil and gas industry also sparked a rapid industrialization of the Gulf Coast region. Among the companies developing the Gulf Coast oilfields were Gulf Oil, Sun Oil, Magnolia Petroleum, the Texas Company (then Texaco, now ChevronTexaco), and Humble Oil (which later became Esso, then Exxon, and finally ExxonMobil). The refineries, pipelines, and export facilities laid the foundations for the large-scale industrialization that would take place along the Gulf Coast in the Houston–Beaumont–Port Arthur region. By 1929 in Harris County, for example, 27 percent of all manufacturing employees worked in refineries. By 1940 the capacity of all the refineries had increased fourfold.<sup>15</sup> The petrochemical industry continued to flourish throughout the 1960s, when demand for its products grew at the rate of 10 percent a year.

One important effect of the oil and gas boom in Texas was the development of a new rhythm to economic life in the state. There had been a natural pace to the economy when it was tied to the production of cotton and cattle. Prices of products could rise and fall, bringing prosperity or gloom to local economies. But there was a bond between the land and the people and the communities that formed around them. Oil and gas, on the other hand, introduced a boom-and-bust mentality that carried over into the communities that sprang up around oil and gas discoveries. Rural areas were often unprepared for the population explosion that followed the discovery of oil or gas. Housing was often inadequate or non-existent. Schools quickly became overcrowded. General living conditions were poor as people sought to “make it big.” The irony of the oil and gas business was that a major discovery that brought large amounts of new oil and gas to market could lead to a sudden collapse in prices. Prosperous economic times could quickly turn into local depressions. And when particular fields were tapped out, boom towns could quickly become ghost towns.

The oil and gas industry also transformed government and the role that it played in the economy. Following the Civil War, a series of attempts to regulate the railroads had largely failed. In 1890, after considerable controversy fueled by Populist anti-railroad sentiment, a constitutional amendment was passed to create an agency to regulate the railroads, the Texas Railroad Commission. This regulatory agency's powers were extended in 1917 to regulate energy. The Railroad Commission was empowered to see that petroleum pipelines were “common carriers” (that they transported all producers' oil and gas) and to promote well-spacing rules. In an attempt to bring stability to fluctuations in world oil prices brought on by the glut of oil on world markets in the 1930s and to conserve wasteful oil production, the commission won the authority to prorate oil and determine how much every oil well in Texas might produce. Through the late 1960s the Texas Railroad Commission was one of the most important regulatory bodies in the nation. It was also one of the few democratically elected regulatory agencies.

## for critical analysis

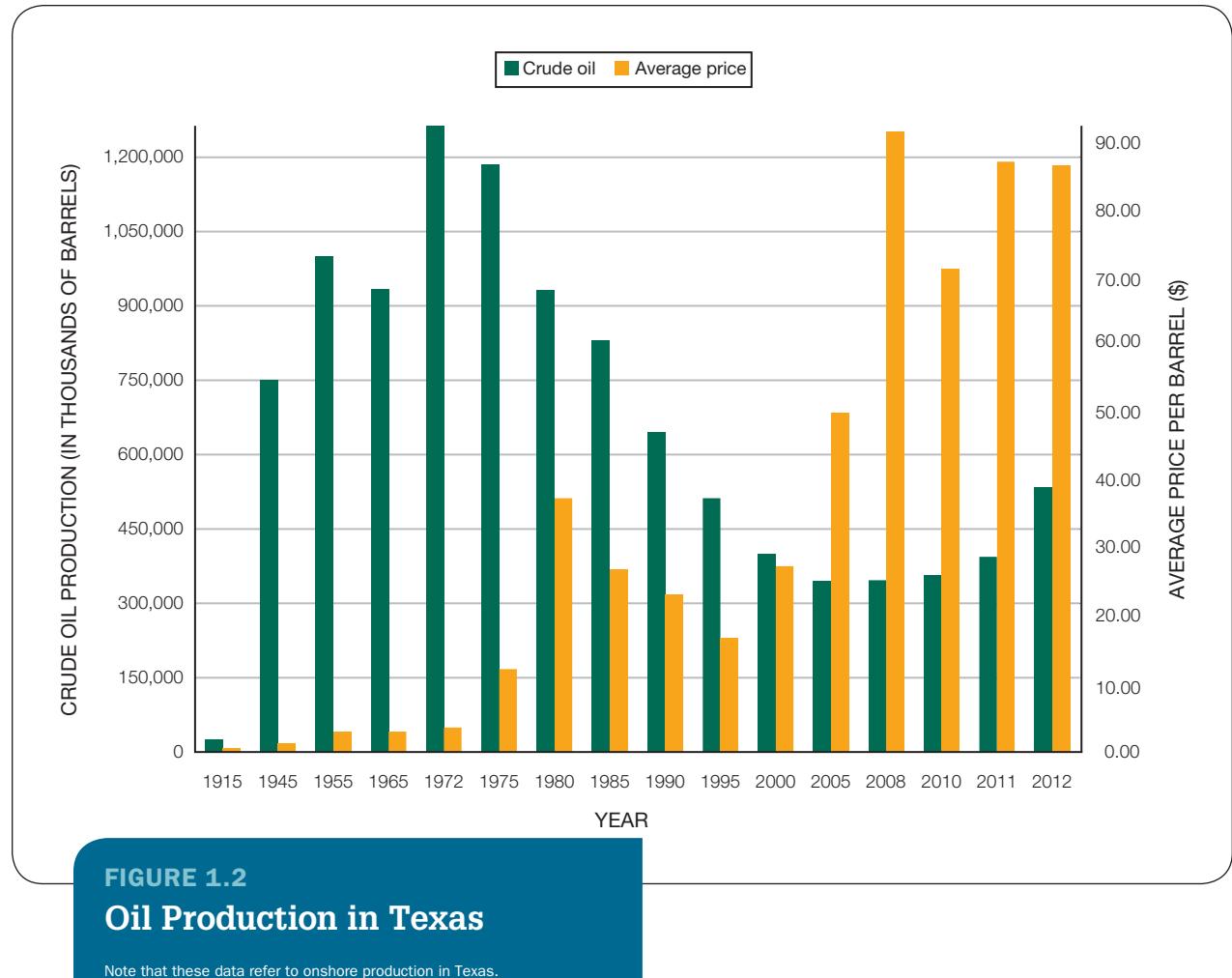
During the 1980s the price of oil fell from almost \$35 a barrel to \$10 a barrel, seriously harming Texas's economy. To what extent has the economy of Texas changed so that devastation in one industry will not have the effect that the failure of the oil industry did in the 1980s?

Helping to expand the power of state government in the economy through the Railroad Commission was only one effect of the oil and gas industry in Texas. It also had an important fiscal effect on state government. Beginning in 1905 the state collected oil production taxes. These rose from \$101,403 in 1906 to over \$1 million in 1919 and almost \$6 million in 1929. For the 2014–15 biennium, it was estimated that oil production taxes, or severance taxes, would contribute \$6.5 billion to the state budget, up from \$5.09 billion in 2012–13, an increase of 27.6 percent. Natural gas production taxes added another \$2.99 billion to the state budget, down 1.2 percent in 2012–13.<sup>16</sup> These numbers represented a sharp turnaround from the previous two decades, when oil and natural gas revenues had sharply fallen. As we will see in Chapter 11 on public finance in Texas, oil and natural gas production has returned to play an increasingly important role in the state's finances through the severance tax.

Much like the state coffers, higher education in Texas has benefited from the oil and gas industry. What many thought was worthless land at the time had been set aside by the state constitution of 1876 and the state legislature in 1883 to support higher education (the Permanent University Fund). As luck would have it, oil was discovered in the West Texas Permian Basin in 1923 on university land. Soon 17 wells were producing oil on that land, sparking a building boom at the University of Texas. In 1931 the income of the Permanent University Fund was split between the University of Texas at Austin and Texas A&M University, with the former receiving two-thirds and the latter one-third. In 1984 the income was opened up to all University of Texas and Texas A&M schools. Along with the royalties from other natural resources on university land, oil and gas royalties created one of the largest university endowments in the world. Today, the Permanent University Fund holds title to 2.1 million acres located in 24 counties, primarily in west Texas. In December 2012 the market value of the Permanent University Fund was calculated to be \$15.881 billion.<sup>17</sup>

The oil and gas industry had one other effect on life in Texas that is worth noting. Fortunes were made in the industry, and those fortunes paved the way for an expansion of private philanthropy that would have a major influence in shaping Texas's culture. Among the most famous examples of this private philanthropy were the Meadows Foundations, established in 1948 to promote programs in health, education, visual arts, social services, and historical preservation. The Sid W. Richardson Foundation was founded in 1947 and supported health and education programs, as well as the development of the arts in Fort Worth. The Bass Performance Hall, which opened in May 1998, was funded by the Bass brothers, grand-nephews of the independent oilman Sid Richardson.

One can trace the rise and decline and rise again of the oil and gas industry in Texas through production figures (see Figure 1.2). Oil production in Texas seemed to peak in 1972, and there were decades of decline in the state's production. New technologies such as horizontal drilling and fracking have led to a new boom era of oil and gas production in Texas beginning in 2008 and carrying through until today. In September 2013, 2.7 million barrels of oil per day were pumped in Texas—the highest monthly record since September 1981, when such records first began to be kept. That was a 30 percent increase in production over the previous September's figures. More than one million barrels of that daily production came from the Permian Basin region in west Texas. This oilfield may be the second largest in the world. The result of this new oil boom is that oil (and gas) is emerging again as a mainstay of the Texas economy, although it is an economy that is far more diversified than in an earlier era. With the new Texas oil boom will come greater resources for the



**FIGURE 1.2**  
**Oil Production in Texas**

Note that these data refer to onshore production in Texas.

SOURCE: Texas Railroad Commission and "Historical Crude Oil Prices," InflationData.com.

Texas budget. Additionally, with the boom will come new demands for vast water supplies—an essential component of the new drilling technology—and new concerns over the effects that those new technologies will have on the environment.<sup>18</sup>

New industries and technologies have come to assume significant roles in plotting the state's economic future. Among the most important of these was the burgeoning high-tech industry.

## High-Tech Industries

The movement out of the era of oil and gas and into that of high tech was not an easy one. World oil prices rose in 1981 to almost \$35 per barrel. At the time, oil-related businesses accounted for 26 percent of the gross state product. From 1971 to 1981 the average rate of economic growth was 4.4 percent. Fueled by a booming oil-based economy and a rapidly increasing population, real estate prices shot up in urban areas such as Houston and Dallas. Projections were made that as oil

*In the 1990s, Texas emerged as a leader in high-tech industries. Here, a Texas Instruments employee oversees the production of silicon wafers in the company's Dallas semiconductor plant.*



prices rose, perhaps to \$70 or \$80 per barrel on the world market, future prosperity was inevitable. Indeed, there was some talk that Texas's oil-driven economy had become recession-proof. Such talk proved to be premature, to say the least.

World oil prices began to collapse in 1982, bottoming out on March 31, 1986, at \$10 per barrel. Other sectors of the economy began to suffer as the price of oil fell. Real estate deals fell through, and construction projects slowed and then shut down. Speculators defaulted on their loans, and banks began to fail. Throughout the 1980s, 370 banks went under in Texas. At the same time, the state went through two major recessions, one in 1982 and another in 1986–87. The average annual economic growth slowed to 1.7 percent, the worst since World War II.

Texas emerged from the economic malaise of the 1980s with a transformed state economy. Though remaining an important sector in the economy, the oil and gas business was no longer the primary driving force. By 1992 production of oil had fallen to 642 million barrels worth \$11.8 billion. Production continued to fall until 2000 to just under 349 million barrels worth a little over \$10 billion. Over 146,000 jobs had been lost in the oil industry throughout the 1980s. By the early 1990s oil accounted for only about 12 percent of the gross state product.

In contrast to the 1980s, the 1990s were a period of rapid growth. In the 1990s, unlike in early periods of speculative booms such as the 1970s, the economy's growth was grounded in a rapidly diversifying economy. At the heart of this boom was a fast-growing manufacturing sector tied to high tech. In the 1990s, Texas went from seventh in the nation in total manufacturing employment to second. By 2013, 15 percent of the state's gross domestic product came from manufacturing. Eight percent of the workforce was employed in manufacturing.<sup>19</sup>

Two metropolitan areas stand out as national centers for the rapidly evolving high-tech industry. The Austin–San Marcos metropolitan area is the home of the computer giant Dell and has become a production center for computer chips, personal computers, and related computer hardware with such companies as Flextronics, Apple, Oracle, and IBM. Seven of the area's largest employers are part of the computer or semiconductor industry. The Dallas metropolitan area, particularly north of the city, is the home of a number of important electronic and electronic-equipment companies, including Texas Instruments. Houston has become known worldwide for its medical center and expanding research facilities in the medical field. A 2014 study released by the TechAmerica Foundation found that Texas was the leading tech export state with \$45.1 billion in exports in 2012, up 7.3 percent from 2011. Approximately 331,000 jobs in Texas were supported by these tech exports.<sup>20</sup>

## NAFTA

Texas's place in national and international markets has been shaped by its central location, its border with Mexico, and its sophisticated transportation infrastructure. There are 306,404 miles of highways in Texas (the most in the nation) along with 45 railroads operating on 10,405 rail miles (the most in the nation) (see Figure 1.3). There are 12 deep-water ports in Texas, including the Port of Houston, which was ranked second nationally for total trade and thirteenth globally for total cargo volume. The Dallas–Fort Worth International Airport and George Bush Intercontinental Airport in Houston ranked high on the list of the world's busiest airports and were major hubs for both national and international travel. Over 6.5 million trucks, 47.8 million personal vehicles, and 22.9 million people crossed the Texas-Mexico border in 2013.<sup>21</sup>

One defining feature of the Texas economy in the 1990s and 2000s was the **North American Free Trade Agreement (NAFTA)**. Signed on December 17, 1992, by Prime Minister Brian Mulroney of Canada, President Carlos Salinas de Gortari of Mexico, and President George H. W. Bush of the United States, NAFTA sought to create a free-trade zone—an area free of customs duties—in North America that was the largest of its kind in the world. Considerable controversy surrounded the passage of NAFTA, with many groups arguing that free trade would hurt U.S. workers and companies because of the cheap labor available in Mexico. An important milestone in the agreement was reached on October 19, 2001, when Mexican trucks were finally allowed to cross over into the United States with goods for U.S. markets.

**North American Free Trade Agreement (NAFTA)** trade treaty among the United States, Canada, and Mexico to lower and eliminate tariffs among the three countries



**FIGURE 1.3**  
**The Interstate Highway System in Texas**



*The signing of NAFTA in 1992 created a free-trade zone in North America. Although many Texas workers were adversely affected by the availability of cheaper labor in Mexico, NAFTA appears to have had a beneficial effect on the state's economy as a whole. Here, President George H. W. Bush stands between President Carlos Salinas de Gortari of Mexico and Prime Minister Brian Mulroney of Canada at the signing ceremony.*

Despite NAFTA provisions, Mexican trucks had been banned in the United States for almost 20 years because of strong labor union opposition and concerns over safety.

Today NAFTA links approximately 450 million consumers in the United States, Canada, and Mexico with a combined gross domestic product of \$19.6 trillion. According to a recent Standard and Poor's study, Mexico has benefited the most from the agreement. But Texas has benefited enormously as well. NAFTA was not the only cause to the diversification of the Texas economy since the 1980s, but it has accelerated that diversification. Along the border, NAFTA has clearly had an impact in stimulating trade and transport across the state and stimulating the production of jobs.

For example, Laredo, Texas—the port of entry for 40 percent of U.S.–Mexico truck transport trade—has seen its labor force increase 48 percent between 1994 and 2014, far above the 35 percent state average. International toll bridges alone accounted for 23 percent of Laredo's general fund revenue in 2012.<sup>22</sup>

After more than 20 years, it appears that the trade agreement has had both negative and positive impacts on Texas. A 2011 study by the Economic Policy Institute calculated that almost 683,000 jobs had been lost in the United States because of NAFTA. The study estimated that three-fifths of these jobs were in the manufacturing sector. Over 55,000 of these displaced jobs came from Texas.<sup>23</sup> U.S. workers generally lost their jobs because of the stiffer competition from low-wage businesses in Mexico or because plants had been relocated to Mexico. (Under federal law such workers are entitled to additional unemployment compensation.)

Although there were some losers in the movement toward free trade with Mexico and Canada, there were also big winners. The following statistics from 2013 put the importance of Texas's international trade, particularly with Mexico and Canada, into perspective:<sup>24</sup>

- Texas exports totaled \$279.7 billion, up from \$207 billion in 2012. Texas exports were 17.7 percent of all U.S. exports.
- The North American market (Mexico and Canada) was the destination for 45.4 percent of these exports.
- Mexico was the top importer of Texas exports at almost \$101 billion in 2013, up from \$72.7 billion in 2012.
- Canada's imports from Texas totaled \$25.9 billion in 2013, up from \$18.8 billion in 2010.

For the past 20 years, the information age and the global economy have transformed the Texas economic landscape. It is impossible to say exactly how these forces will continue to change Texas over the next 20 years, or which companies will become the ChevronTexacos or ExxonMobils of the information age. We can say, however, that it will be an economy as different from that of the oil and gas era as the oil and gas era was from the era of cotton and cattle.

## Texas in the Great Recession

In December 2007 the nation entered what some have called “the Great Recession,” a time of chronic economic problems that drew analogies to the Great Depression of the 1930s. A speculative bubble in the housing market fueled by cheap credit and poor business practices culminated in a credit crisis that brought some

of America's largest banks and investment houses to their knees. Only the massive intrusion of the Federal Reserve System into credit markets in the fall of 2008 prevented the banking system from melting down. The Federal Reserve reported that between November 2007 and March 2009, 86 percent of American industries cut back production. The GNP dropped 1.7 percent and household net worth fell \$11 trillion or 18 percent during the recession.<sup>25</sup>

Texas was one of the last states to enter the Great Recession and was one of the first to exit. Prior to the recession, Texas employment had peaked at 10.6 million in August 2008. From late 2008 through 2009, 427,600 jobs were lost in Texas to the Great Recession. By November 2011 employment had recovered to prerecession levels. By April 2014 another 829,000 jobs had been added to the Texas economy. The story at the national level was not so rosy. By the summer of 2014 jobs numbers were only beginning to approach pre-Great Recession levels. Meanwhile the unemployment rate in Texas rose to 8.2 percent and hovered there throughout most of 2010. Unemployment rates began falling in early 2011 and continued to fall for the next two years, dropping from 6.4 percent in March 2013 to 5.2 percent in April 2014.<sup>26</sup>

Many Texas politicians sought to take credit for Texas's performance during and after the Great Recession. Comparisons were made with big-government, high-tax states like California that suffered severely. Low taxes and low services, pro-business and free market government, an entrepreneurial spirit—all were given credit for the "Texas economic miracle."<sup>27</sup> But the factors that may have helped Texas get by relatively unscathed were likely more straightforward. The housing market declined much less severely in Texas than in the rest of the nation. Most of Texas did not experience the surge in real estate values found in other states like California, Nevada, Florida, and Arizona. While foreclosure rates throughout the country increased sixfold between 2005 and 2009, in Texas they rose only marginally. Texas's banking industry also appeared to have weathered the storm better than its counterparts in other states. Article 16 of the Texas Constitution, as amended in 1997, forbids consumers from using home-equity loans for credit that exceeds 80 percent of the mortgage, and this probably provided a cushion against the credit crunch. Two of the most important factors that may have helped Texas escape the worst of the Great Recession were discussed above: an increasingly diversified economy lubricated by international trade and a resurgent oil and gas industry.<sup>28</sup>



*Texas was not hit as hard as other states by the recession that started in 2007 and deepened in 2008. However, some Texans—including these Tea Party protesters—were alarmed by the massive spending involved in the national government's stimulus efforts.*

## ● The People of Texas

**Explain how the population of Texas has changed over time**

The population in Texas has grown rapidly in the last 165 years. In 1850 the population stood at a little more than 210,000 people, more than one-quarter of whom were African American slaves. Texas in 1850 also was an overwhelmingly rural state. Only 4 percent of the population lived in urban areas. By 1900 the population had increased to more than 3 million people, with 83 percent continuing to live in rural areas. The 1980s began as boom years for population growth, with increases running

cent of the population lived in urban areas. By 1900 the population had increased to more than 3 million people, with 83 percent continuing to live in rural areas. The 1980s began as boom years for population growth, with increases running

**TABLE 1.1****The Changing Face of Texas, 1850–2012**

	1850	1900	1950	1990	2012
Population	213,000	3,050,000	7,710,000	17,000,000	26,059,203
White	72%	80%	87%	61%	44.5%
African American	28%	20%	13%	12%	12.3%
Latino	NA*	NA	NA	25%	38.2%
Asian	NA	NA	NA	NA	4.2%

\*NA= not available. Note that percentages do not add to 100 percent because of rounding.

SOURCES: *Statistical Abstract of the United States: 1994* (Washington, DC: U.S. Department of Commerce, Bureau of the Census, 1994); see also *Texas Almanac 2014–2015* (Denton: Texas State Historical Association, 2014), 15; 2010 U.S. Census. Other editions of the *Texas Almanac* also consulted. These are available online.

between 2.9 percent and 1.6 percent per year from 1980 through 1986. With the collapse of oil prices, however, population growth slowed significantly between 1987 and 1989 to less than 1 percent.<sup>29</sup>

With a recovering economy, population growth surged in the 1990s (see Table 1.1). In 1990, 17 million people resided in the state. By 2012 the number of people was estimated to be over 26 million. Almost 45 percent of the population were non-Hispanic white in 2012, down from 61 percent in 1990. A little over 11 percent were African American. Over 38 percent were Hispanic, up from 25 percent in 1990.

Three factors account for the population growth in Texas: natural increase as a result of the difference between births and deaths; international immigration, particularly from Mexico; and domestic immigration from other states. The makeup of the growth in population shifted in significant ways over the course of the decade. In 1991 almost two-thirds of population growth was accounted for by natural increases. A little more than 20 percent was a result of international immigration, while less than 14 percent resulted from domestic immigration. By 2013 natural increases accounted for only 54 percent of population growth, while international immigration accounted for about 16.8 percent and domestic immigration for about 29.7 percent.<sup>30</sup> In the early decades of the twenty-first century, Texas was being redefined not by native-born Texans but by individuals coming to Texas to share in and contribute to the state's diversified economy.

## Whites

For most of the nineteenth and twentieth centuries, the dominant ethnic group was non-Hispanic whites. Whites in Texas comprise a wide range of European ethnic groups, including English, Germans, Scots, Irish, Czechs, and European Jews. The first wave of whites came to Texas before the break with Mexico. Encouraged by **impresarios** such as Moses Austin and his son Stephen F. Austin, who were authorized by the Spanish and later the Mexican leaders to bring people to Texas, these newcomers sought inexpensive land. But they brought along a new set of individualistic attitudes and values about democratic government that paved the way for the Texas Revolution. Following the revolution, a new surge of white im-

**Impresario** an individual who promotes, organizes, or helps to finance a particular endeavor



Prior to statehood, many of Texas's whites were European immigrants. For instance, in 1844 close to 5,000 Germans arrived and soon thereafter established the towns of New Braunfels and Fredericksburg. This painting from the 1850s shows a German American family from Fredericksburg "going visiting."

migrants came from the Deep South. Like their predecessors, they sought cheap land. But they brought with them new cultural baggage: slavery. By the time of the American Civil War, this group had come to dominate the political culture of the state. Although most Texas farmers did not own slaves themselves, the vast majority supported the institution as well as secession from the Union.

Defeat in the Civil War shattered the dominance of the traditional white power structure in the state. By the end of Reconstruction, however, it had reasserted itself, establishing the three patterns that defined Texas politics for the next hundred years: the one-party Democratic state, provincialism, and business dominance. Whites continued to dominate and define Texas's political culture throughout much of the twentieth century, but by the end of that century much had changed. As a percentage of the population, white population peaked at 74 percent in 1950. This percentage began to fall, reaching 44.5 percent in 2014, and will likely continue to fall (see Figure 1.4).

Numbers alone do not tell the whole story. Whites living in Texas at the end of the twentieth century were not cut from the same cloth as those who had preceded them. A new wave of white immigration into Texas over the past 40 years has redefined the political culture of white Texans. No longer can one assume that a white Texan lives on a farm, holds culturally conservative values, and is firmly tied to the Democratic Party. On the contrary, he or she may be an urbanite or suburbanite who wasn't born in Texas and who votes Republican.

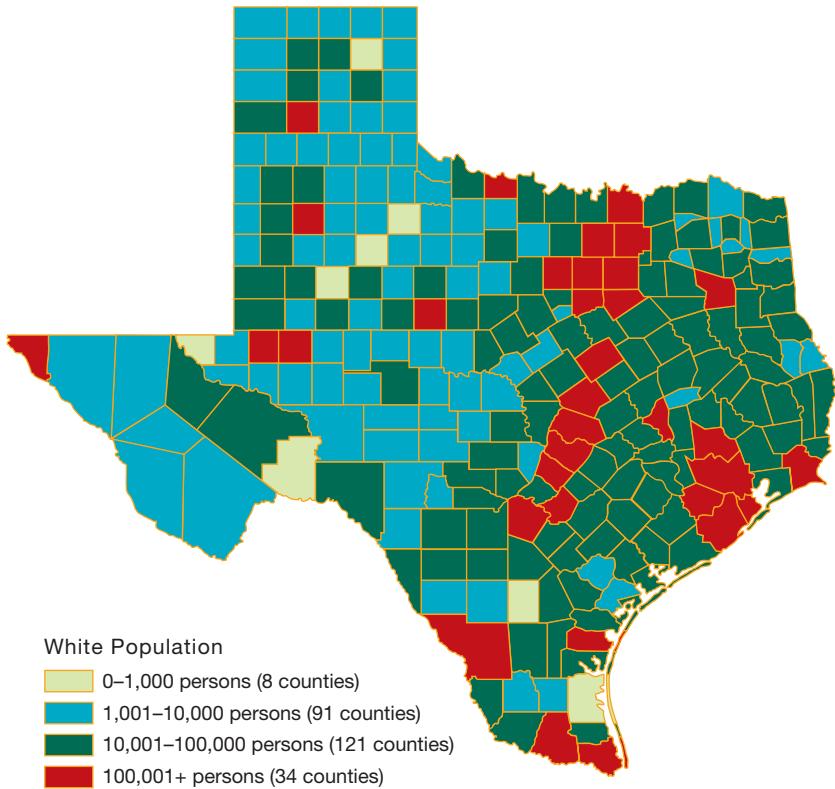
## Latinos

The use of the terms *Hispanic* and *Latino* can be confusing. The terms are often used interchangeably to refer to people of Spanish descent or people from Latin America. We will use the term Latino except when referring to statistical databases such as the U.S. Census that use the term *Hispanic*.

Most Latinos in Texas are people of Mexican descent.<sup>31</sup> Prior to independence from Spain, this included people born of Iberian (Spanish) parents as well as mestizos (people of mixed Spanish and Native American ancestry). In the early nineteenth century, approximately 5,000 people of Mexican descent were living in Texas. Although this number fluctuated considerably over the years, by 1850 it was estimated that 14,000 Texans were of Mexican origin. Texas became for many a refuge from the political and economic instability that troubled Mexico from the late 1850s to the 1920s. Despite periodic attempts to curtail the growth of the Mexican American population in Texas, it grew from an estimated 700,000 in 1930 to 1,400,000 in 1960. The 2000 census counted 5.1 million Mexican Americans

**FIGURE 1.4**  
**White Population  
in Texas Counties,  
2010**

SOURCE: Data are drawn from the 2010 Census, Texas State Data Center, [www.texastribune.org/library/data/census-2010/](http://www.texastribune.org/library/data/census-2010/) (accessed 6/16/14).



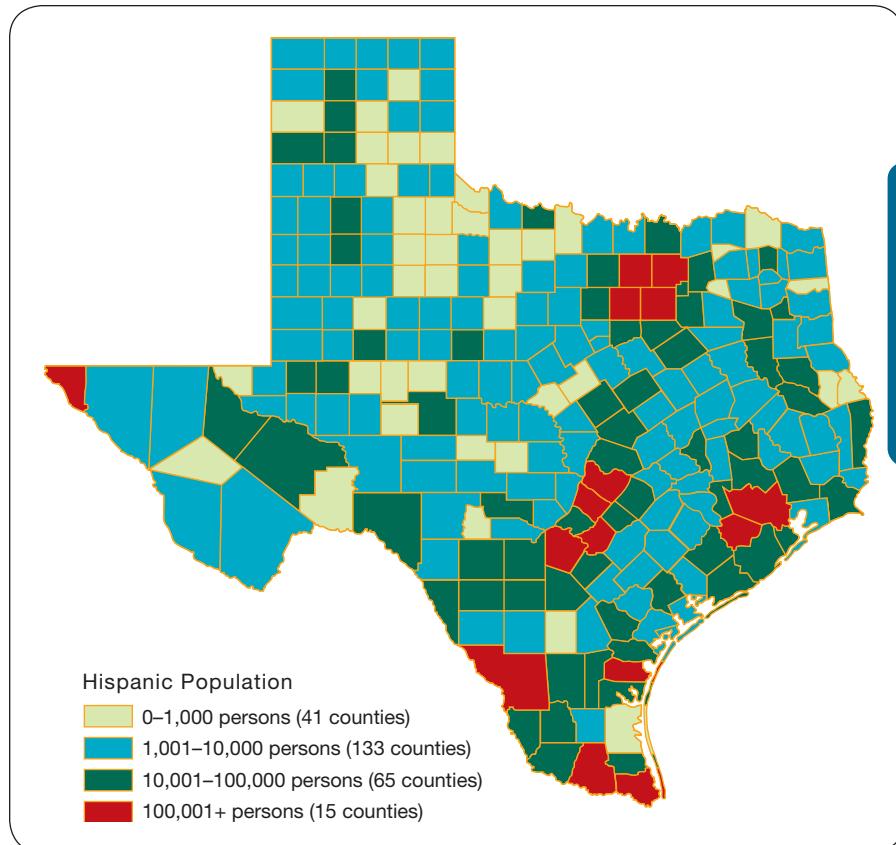
living in Texas. In 2013 there were 9.97 million Latinos residing in Texas. Texas Latinos constituted almost 19 percent of all Latinos in the United States.<sup>32</sup>

Until 1900, Latinos were concentrated in south Texas, constituting a majority along the border with Mexico and in certain border counties of west Texas. During the first few decades of the twentieth century, Latinos migrated to northwest Texas and the Panhandle to work as laborers in the newly emergent cotton economy. Labor segregation limited the opportunities available to many Latinos before World War II. After World War II, however, many Latinos left agricultural work and took jobs in the rapidly growing urban areas of Texas. By the end of the century, Latinos constituted majorities in the cities of San Antonio and El Paso and sizable minorities in Houston, Dallas, Austin, and Fort Worth (see Figure 1.5).

The political status of Latinos in Texas has changed considerably over the past hundred years. In the nineteenth century, numerous obstacles limited their participation in the political life of the state. Voting, particularly among the lower economic classes, was discouraged or tightly controlled. The white-only primary and the **poll tax** actively discouraged voting by Latinos. Only after World War II were Latino politicians able to escape some of the strictures that had been imposed on them by the dominant Anglo political culture of the time. A more tolerant atmosphere in the growing urban areas enabled Latino politicians to assume positions of importance in the local political community. In 1956, Henry B. Gonzalez became the first Mexican American to be elected to the Texas Senate in modern times. In the mid-1960s a political movement emerged in the La Raza Unida Party, which sought to confront many of the discriminatory practices that isolated Texas Latinos.



*Most Latinos in Texas are Mexican American. During the first half of the twentieth century, Mexicans immigrated to Texas to work in the emerging cotton industry. This 1939 photo shows cotton pickers laboring in the sun over rows of white cotton.*



**FIGURE 1.5**  
**Hispanic Population in Texas Counties, 2010**

SOURCE: Data are drawn from the 2010 Census, Texas State Data Center, [www.texastribune.org/library/data/census-2010/](http://www.texastribune.org/library/data/census-2010/) (accessed 6/16/14).

from the political and economic mainstream. By the 1980s, Latino political leaders were playing a growing role in state politics, and Latino voters were courted heavily by both political parties. The number of Latinos elected to public office rose from 1,466 in 1986 to 2,521 in 2011. In 2013 the National Association of Latino Elected and Appointed Officials reported that 1 Latino served in the U.S. Senate from Texas, 6 Latinos represented Texas in the U.S. House of Representatives, 7 Latinos were in the Texas State Senate, and 40 Latinos were elected to the state legislature. In addition, the association reported that 2,477 Latinos served as local officials in Texas.<sup>33</sup>

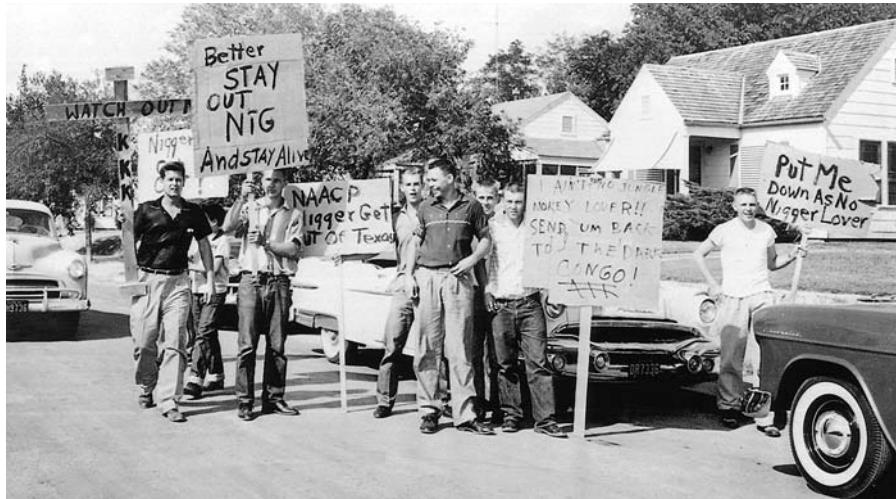
**poll tax** a state-imposed tax on voters as a prerequisite for voting; poll taxes were rendered unconstitutional in national elections by the Twenty-Fourth Amendment, and in state elections by the Supreme Court in 1966.

## African Americans

People of African descent were among the earliest explorers of Texas.<sup>34</sup> Most African Americans, however, entered Texas as slaves. Anglo Americans from the upper and lower South brought slaves with them to Texas. At first, antislavery attitudes among Spanish and Mexican authorities kept the slave population down. However, independence from Mexico lifted the restrictions on slavery, creating an incentive for southerners to expand the system of slavery westward. The number of slaves in Texas rose from 5,000 in 1830 to 11,000 in 1840 to 58,000 in 1850. By the Civil War, over 182,000 slaves lived in Texas, approximately one-third of the state's entire population.

Emancipation for African Americans living in Texas came on June 19, 1865. Emancipation, however, did not bring anything approaching equality. Between

*As in most former slave states, there was initial resistance to the civil rights movement in Texas. These signs appeared in Fort Worth's Riverside section in September 1956 during a protest over a black family's moving into a previously all-white block of homes.*

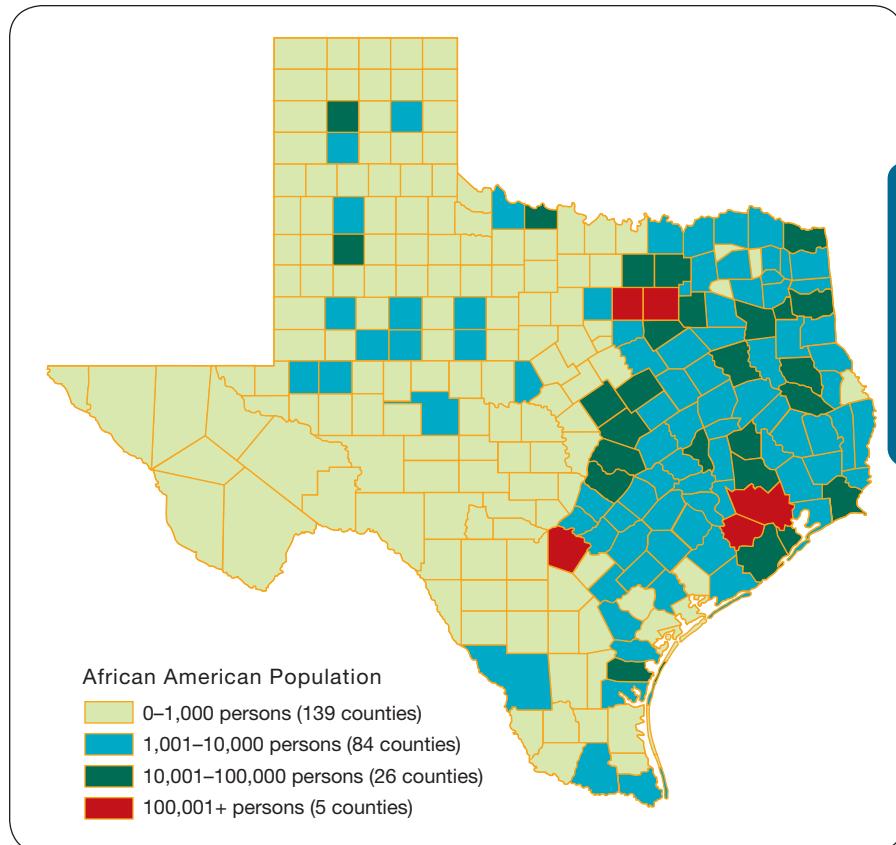


1865 and 1868 a series of Black Codes were passed by the state legislature and various cities that sought to restrict the rights of former slaves. Military occupation and congressional reconstruction opened up new opportunities for former slaves, who supported the radical wing of the Republican Party. Ten African American delegates helped write the Texas Constitution of 1869. Forty-three served as members of the state legislature between 1868 and 1900. The end of Reconstruction and the return to power of the Democratic Party in the mid-1870s reversed much of the progress made by former slaves in the state. In 1900 over 100,000 African Americans voted in Texas elections. By 1903 the number had fallen to under 5,000, largely because of the imposition of the poll tax in 1902 and the passage of an early version of the white-primary law in 1903. In 1923 the legislature explicitly banned blacks from voting in the Democratic primary. Segregation of the races became a guiding principle of public policy, backed by the police power of the state and reinforced by lynching and race riots against African Americans. For all intents and purposes, African Americans had become second-class citizens, disenfranchised by the political system and marginalized by the political culture.

Federal court cases in the 1940s and 1950s offered some hope of relief to African Americans living in Texas. The Supreme Court decision in *Smith v. Allwright* (1944) outlawed the white primary. *Sweatt v. Painter* (1950) guaranteed African Americans admission to Texas's graduate and professional schools. Finally, *Brown v. Board of Education* (1954) outlawed the segregation of public schools.

Political progress was much slower. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 helped to open up the political system in Texas to African Americans. In 1966 a small number of African American candidates actually began to win political office in the state. In 1972, Barbara Jordan became the first African American woman to be elected to the U.S. House of Representatives from Texas.

Today the African American population is concentrated in east Texas, where the southern plantation and sharecropping systems were dominant during the nineteenth century. Large numbers of African Americans had also migrated to form sizable minorities in the urban and suburban areas of Houston and Dallas (see Figure 1.6). African American political leaders have come to play major roles in these areas as members of Congress, the state legislature, and city councils. African Americans were also elected mayors of Houston and Dallas in the late 1990s. The



**FIGURE 1.6**  
**African American Population in Texas Counties, 2010**

SOURCE: Data are drawn from the 2010 Census, Texas State Data Center, [www.texastribune.org/library/data/census-2010/](http://www.texastribune.org/library/data/census-2010/) (accessed 6/16/14).

political influence of African Americans in Texas has not been extended to west Texas, where few African Americans live.

## Asians

Although considerably smaller than other groups, the Asian population has grown in Texas in recent years. Asians include individuals from a variety of countries, but particularly India, Vietnam, China, Pakistan, Korea, and Japan. In 2012 the U.S. Census Bureau estimated that approximately 1 million Asians resided in Texas, or about 4.2 percent of the state's population.<sup>35</sup> Asians tend to be concentrated in certain urban areas, particularly in West Houston and Fort Bend County, the western and northern suburbs of Dallas, Arlington, and Travis County. Sizable pockets of Asians are also found scattered along the Gulf Coast.<sup>36</sup>

## Age

When compared with the rest of the nation, the population of Texas is relatively young. In 2012, 26.8 percent of the population were estimated to be under 18 years old, compared with 23.5 percent nationally. In addition, only 10.9 percent of the population in Texas were 65 years of age or older, compared with 13.7 percent nationally.<sup>37</sup> Having a relatively young population compared with those of other states presents Texas with a variety of problems and opportunities, as we shall see in later chapters.

## for critical analysis

How did the population of Texas change during the 1990s? What is its racial and ethnic composition? How do these changes complicate the idea of the “typical” Texan?

**TABLE 1.2**

### Per Capita Income in Texas and the United States, 1990–2011 (in Nominal Nonadjusted Dollars)

	1990	1995	2006	2011
United States	\$19,477	\$23,076	\$36,276	\$41,560
Texas	\$17,421	\$21,033	\$34,257	\$40,147

SOURCE: U.S. Department of Commerce, Bureau of Economic Analysis.

### Poverty and Wealth

Younger populations tend to be poorer, as income and poverty statistics bear out. As noted above, the 1990s were a period of rapid economic growth in Texas. Despite this growth, however, Texas continued to lag behind the nation as a whole (see Table 1.2). Per capita income in Texas, however, rose from \$17,421 in 1990 to \$40,147 in 2011. Per capita income in Texas metropolitan areas was considerably higher (\$41,035) when compared with Texas rural areas (\$33,621). Interestingly, Sutton County, a lightly populated rural county in southwest Texas, had the highest per capita income of \$79,103. This seeming anomaly is explained by the fact that it is rich in oil and natural gas. Starr County, in the southeast corner of the state along the Rio Grande, had the lowest at \$19,235. Texas ranked 25th among the states in per capita income, up from 32nd in 1990.

The percentage of the population in Texas living below the poverty level—a level established by the federal government—fell from 15.7 percent to 14.9 percent between 1990 and 2004, rose to 16.9 percent in 2006, and rose to 17.9 percent in 2012. During the same period, the national poverty rate fell from 13.5 percent to 11.7 percent, rose to 13.3 percent in 2006, and rose to 15.9 percent in 2012.<sup>38</sup>

### ● Urbanization

**urbanization** the process by which people move from rural areas to cities

**Describe Texas's shift from a rural society to an urban one**

**Urbanization** is the process by which people move from rural to urban areas. Suburbanization is the process by which people move out of central city areas to surrounding suburban areas. Much of Texas's history is linked to ongoing urbanization. By the first

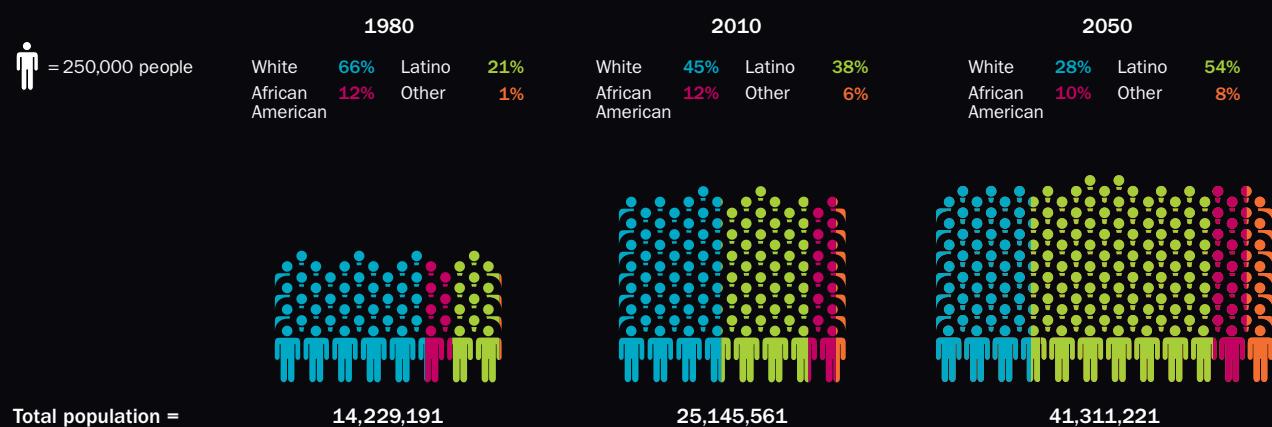
decade of the twenty-first century, this process was largely complete, as 85 percent of the population now reside in urban areas (see Table 1.3). Suburbanization, however, continues as city populations spill over into surrounding suburban areas.<sup>39</sup>

Most Texas cities are the result of American settlement and culture.<sup>40</sup> The Spanish influence on urban life in Texas grew out of efforts to extend territorial control northward out of Mexico through a series of presidios (garrisons), missions (churches), and pueblos (towns). The physical organization and planning of the towns reflected this imperial mission. For example, the largest Spanish settlement was San Antonio. It was initially established as a supply depot to missions in east Texas. Later it expanded

# How Is the Texas Population Changing?

The face of Texas is changing rapidly and will continue to change well into the future. The figures below show projections of how the Texas population will change over the next 40 years. The state's population will continue to grow quickly, especially as the number of Hispanic Texans increases. Further, most of the population growth in the state will happen in metropolitan areas—Dallas–Fort Worth, Houston, San Antonio, and Austin.

## Race and Total Population



## Geography

(projected population growth from the year 2010, by metropolitan area)

Area	2010	2020	2050
San Antonio	2,142,508	2,481,286 +16%	3,445,603 +61%
El Paso	804,123	929,478 +16%	1,301,438 +62%
Dallas–Fort Worth	6,426,214	7,445,492 +16%	11,147,784 +73%
Houston	5,920,416	6,934,564 +17%	10,273,617 +74%
Brownsville	406,220	478,974 +18%	729,461 +80%
Austin	1,716,289	2,090,278 +22%	3,338,673 +95%
McAllen	774,769	953,069 +23%	1,589,783 +105%

SOURCES: Texas State Data Center, <http://txsdc.utsa.edu/>;  
Office of State Demographer, <http://osd.state.tx.us/> (accessed 5/14/14).

### for critical analysis

1. How do you think the increase in the Latino population will change the nature of Texas politics? Will it change the issues that the state government focuses on? Will it have an impact on what party wins elections in Texas?
2. Texas is traditionally associated with images of farming, ranching, and other elements of rural life. How do you think the growth of the urban population will change the image of Texas?

**TABLE 1.3****Urbanization in Texas, 1850–2010**

	1850	1900	1950	2010
Urban	4%	17%	63%	85%
Rural	96%	83%	37%	15%
SOURCES: <i>Statistical Abstracts of the United States: 1994</i> (Washington, DC: U.S. Department of Commerce, Bureau of the Census, 1994); Dallas Morning News, <i>Texas Almanac 2001–2002</i> (Dallas: Dallas Morning News, 2001); U.S. Department of Agriculture, Economic Research Service. U.S. Census Bureau, "Texas: 2010, Population and Housing Unit Counts, 2010 Census of Population and Housing" (September 2012), p. 16.				

as missions were established to convert local Native Americans to Christianity and farms were cultivated to feed the local population. By the early nineteenth century, San Antonio's population had reached 2,500. Other smaller settlements were located in east Texas, along the border with French and, later, American territory.

White American influence began with the arrival of Moses Austin in 1820 in San Antonio. Soon his son Stephen F. Austin followed. The Spanish offered the Austins and other impresarios grants of land to encourage the inflow of Americans into underpopulated regions of Texas. Small towns emerged as administrative units for impresario grants. There was considerably more freedom and dynamism in American urban areas than in Spanish ones. Americans brought with them a host of new interests and ideas that would transform urban life in Texas, including a new language, slavery, Protestantism, and a commitment to free enterprise and democracy. The courthouse became a central feature of many American towns, often located in the center of the town surrounded by shops.

Urbanization has transformed Texas political life. From Reconstruction through the first 50 years of the twentieth century, Texas's political life grew out of its rural-based economy based on cotton, cattle, oil, and natural gas. Today, urbanization and accompanying suburbanization are the forces driving politics in the state.

The expansion of Texas's urban life initially began along the Gulf Coast and gradually expanded west, particularly along rivers. New technologies transformed the urban landscape of Texas. Dredging technologies helped to stimulate the growth of port cities such as Houston, Galveston, Corpus Christi, and Brownsville. Railroad construction in the second half of the nineteenth century opened up new lands to urban development. In 1880 there were only 11 towns of 4,000 or more people in all of Texas. Following the rapid expansion of the railroads in the 1880s and 1890s, the number rose to 36. By 1910, when the railroad network of 13,110 miles was completed, Texas had 49 towns with a population of 4,000 or more. By 1920, 5 cities—Dallas, El Paso, Fort Worth, Houston, and San Antonio—had populations of more than 50,000. Later technological breakthroughs in transportation, such as cars and air travel, would reinforce the population grid laid out by the railroads.

### The Urban Political Economy

Understanding the complexity of the government and politics in Texas today demands having some sense of how Texas's three major metropolitan areas compare with each other (see Tables 1.4 and 1.5).

# Immigration in Texas

**Immigration has long** been an important part of Texas culture. Texas's southern border with Mexico is 1,254 miles long—longer than the border of any of the other states that share a border with Mexico. Prior to 1836 most of Texas was part of Mexico and many people living in the state were of Mexican descent. Even today, many Mexican Americans in the state can trace their lineage back to the time when Mexico controlled Texas. After the terrorist attacks of September 11, the U.S.–Mexico border tightened considerably. Traditionally, residents in border areas could cross the border easily. With increasing border and security concerns, border crossings become more difficult. One of Texas's ongoing debates is over the most effective ways to ensure border security and respect the diversity of the state's history.

In the 2014 campaign for lieutenant governor, Houston state senator Dan Patrick campaigned against the incumbent David Dewhurst by running on a platform of stopping the “illegal invasion” of immigrants into Texas. Patrick emphasized that the federal government was not enforcing border security by allowing so many immigrants into Texas. He further claimed that lack of border security has brought third world diseases into the state. In his campaign he promised to spend more state money on border security since, Patrick claimed, the federal government was not doing its job. Though Lieutenant Governor Dewhurst increased funds for border security, he could not overcome the strong Tea Party influence in the Republican primary and was trounced by Patrick in a runoff on May 27, 2014 by a nearly 2-to-1 margin.

Patrick also gained headlines by debating then San Antonio mayor Julian Castro about immigration reform. Castro accused Patrick of dog whistle politics, that is, appealing to exclusionist and racist rhetoric in order to win the election. Castro argued that there is no “invasion” of immigrants. He said that illegal immigration has

dropped from its peak levels and undocumented immigrants are essential to the state's economy. Castro argued that those in the country illegally, especially those in college or serving in the military, should be allowed a path to citizenship. Patrick disagreed, claiming that those in the country illegally should go to the “back of the line” and wait their turns. He also suggested that granting citizenship to illegal immigrants would only encourage more illegal immigration. Patrick opposed “amnesty,” the notion of allowing illegal immigrants the opportunity to eventually become U.S. citizens. More illegal immigration, according to Patrick, will strain the state budget on education and health care. Patrick also opposed in-state tuition for undocumented immigrants. He claimed that citizens should be given the priority and illegal immigrants should not have this benefit.

The debate in Texas mirrors the national debate regarding how best to deal with immigration. There are approximately 11 million undocumented or “illegal” immigrants in the United States, and about 2 million of those immigrants are in Texas, mostly of Latino descent and mostly from Mexico. In recent years, the number of undocumented people from Central American countries other than Mexico has grown considerably. In 2014 there was a disturbing development: a significant



*The Paso del Norte Bridge between El Paso and Ciudad Juarez is the busiest cross-border footpath between the United States and Mexico.*

increase in illegal immigration by children entering the United States without parents.

Some claim Patrick's views will turn off the growing Latino population because the harsh anti-immigrant rhetoric is perceived as anti-Latino. On the other hand, Patrick claimed that he supports legal immigration and just wants to stop illegal immigration. Castro and others have argued that the United States is a nation of immigrants and there must be a comprehensive way to reform the problem. They say that businesses in Texas greatly benefit from the hard work of undocumented immigrants and as long as jobs are available, immigrants will find a way to make it to the United States despite expensive border security efforts. Patrick countered that the border must be secured first before any discussion of how to deal with those in the country illegally takes place. What should Texas do about immigration?

## critical thinking questions

1. Do you agree with Dan Patrick or Julian Castro? Should illegal immigrants be given a pathway to citizenship or be sent back to their country of origin?
2. Is compromise possible on immigration? Are the only two options deportations and amnesty?

**TABLE 1.4**

## Populations of the Largest Cities in Texas, 2012

Houston (Harris County)	2,160,821
San Antonio (Bexar County)	1,382,951
Dallas (Dallas County)	1,241,162
Austin (Travis County)	842,592
Fort Worth (Tarrant County)	777,992
El Paso (El Paso County)	672,538

SOURCE: 2012 Estimates from U.S. Census Bureau.

**Houston** Houston, located in Harris County, is the largest city in Texas and the fourth-largest city in the United States—with a population of 2.1 million—behind New York, Los Angeles, and Chicago. Its consolidated metropolitan area encompasses eight counties, with an estimated population of 6.1 million in 2011. Houston grew by 7.5 percent during the first decade of the twenty-first century.

The city originated in 1836 out of the entrepreneurial dreams of two brothers, Augustus Chapman Allen and John Kirby Allen, who sought to create a “great interior commercial emporium of Texas.”<sup>41</sup> The town was named after Sam Houston, the leader of Texas’s army during its war of independence from Mexico. Early settlers came from the South, bringing with them the institution of slavery. As a consequence, segregation was built into the social structure from the outset. For the first half of the twentieth century, African Americans were either denied or given limited access to a variety of public services such as parks, schools, buses, restrooms, and restaurants.

Although not enforced legally, residential segregation divided the city into a number of distinct racially divided neighborhoods for much of the twentieth century.

In the late nineteenth century, Houston’s economic well-being depended on cotton and commerce. Railroads played an integral role in placing Houston at the hub of the Texas economy. The opening of the Houston Ship Channel further enhanced Houston’s place in the state economy by helping to turn it into the second or third (depending on whose ranking is used) deep-water port in the United States. But it was oil that fundamentally transformed the Houston area in the twentieth century. Oil refineries opened along the ship channel and a petrochemical industry emerged, making Houston one of the leading energy centers in the world. Today Houston continues to rank first in the nation in the manufacture of petroleum equipment.

By 1930, Houston had become the largest city in Texas, with a population of around 292,000 people. The population continued to expand throughout the 1940s, 1950s, and 1960s, assisted by a liberal annexation policy that enabled the city to incorporate into itself many of the outlying suburban areas. Although the oil bust in the mid-1980s slowed the city’s growth, that growth continued in the early twenty-first century, extending into suburban areas such as Clear Lake City and other urban areas such as Galveston.

**Dallas–Fort Worth** The Metroplex is an economic region encompassing the cities of Dallas and Fort Worth, as well as a number of other suburban cities, including Arlington (population 375,600), Mesquite (139,629), Garland (233,564), Richardson (103,297), Irving (225,427), Plano (272,068), McKinney (143,223), Carrollton (125,409), Grand Prairie (181,824), Frisco (128,176), and Denton (121,123).<sup>42</sup> The major counties in the area are Dallas, Tarrant, and Collin. The Metroplex is joined together by a number of interlocking highways running north-south and east-west, and a major international airport that is strategically located in the national air system.

Dallas was founded as a trading post in 1841, near where two roads were to be built by the Republic.<sup>43</sup> By the 1850s it had become a retail center servicing the rural areas. By 1870 the population had reached 3,000 people. The coming of the Houston and Texas Central Railroad in 1871 and the Texas and Pacific Railroad in 1873 made Dallas the first rail crossroads in Texas and transformed forever its place in the state’s economy. Markets now beckoned east and north, encouraging

**TABLE 1.5****Race and Ethnic Breakdown of Texas and Its Largest Counties, 2012**

	WHITE (%)	BLACK (%)	ASIAN (%)	MULTIPLE RACE (%)	HISPANIC (%)	TOTAL
Texas	44.5%*	12.3%	4.2%	1.7%	38.2%	26,060,796
Harris	32.2	19.5	6.6	1.6	41.5	4,253,963
Dallas	32.2	22.9	5.5	31.7	38.9	2,453,907
Tarrant	50.7	15.6	5.0	2.2	27.4	1,881,445
Bexar	29.8	8.1	2.7	2.1	59.1	1,785,787
Travis	50.1	9.0	6.1	2.3	33.8	1,096,246
Collin	61.8	9.2	12.0	2.4	15.0	834,674
El Paso	13.7	3.9	1.2	1.3	81.2	828,600

\*Columns may not add to 100 percent as a result of multiple counting. These are estimates projected from the 2010 Census.  
SOURCE: 2010 U.S. Census.

entrepreneurs and merchants to set up shop. Cotton became a major cash crop, and the population expanded over threefold to more than 10,000 people in 1880. By the turn of the twentieth century, the city had grown to more than 42,000 people.

As with Houston, the oil economy changed the direction and scope of the city's economic life. With the discovery of oil in east Texas in 1930, Dallas became a major center for petroleum financing. By the end of World War II, the economy had diversified, making Dallas a minor manufacturing center in the nation. In the 1950s and 1960s technology companies such as Ling-Temco-Vought (LTV) and Texas Instruments were added to the industrial mix, transforming Dallas into the third-largest technology center in the nation. The high-tech boom of the 1990s was built from the corporate infrastructure laid down in the 1950s and 1960s. Dallas grew from 844,401 people in 1970 to 904,078 in 1980 to 1,241,162 in 2012.

Although they are locked together in important ways economically, Dallas and Fort Worth are as different as night and day. Whereas Dallas looks to the East and embodies a more corporate white-collar business culture, Fort Worth looks to the West. It is where the West begins in Texas.

Fort Worth originated as an army post in 1849.<sup>44</sup> By 1853 the post had been abandoned as new forts were located to the west. Although settlers took the fort over, population growth was slow through the early 1870s. The spark that enabled the town to begin to prosper was the rise of the cattle industry. Fort Worth was a convenient place for cowboys to rest on their cattle drives to Kansas. Cattle buyers established headquarters in the city. Gradually other businesses grew up around these key businesses. Transportation and communication links improved with the establishment of stage lines to the west and railroad lines to the north and east.

By 1900, Fort Worth was served by eight different railroad companies, many of them transporting cattle and cattle-related products to national markets. The two world wars encouraged further economic development in Fort Worth. Over 100,000 troops were trained at Camp Bowie during World War I. World War II brought an important air force base and, along with it, the aviation industry. The Consolidated Vultee Aircraft Corporation, which was later bought by General Dynamics,



In some areas of Texas, Asian immigrants are a growing force. The signs behind Charles Park, president of the Asian District Development Association of Dallas, at the Asiana Plaza in Dallas attest to the changing demographic landscape of Texas.

### for critical analysis

Based on the population growth, urbanization, and economic change of the last two decades, what do the next two decades hold for Texas? Which areas will grow in population, and will government be ready for that growth? What can or should government do to maintain and strengthen the economy of Texas?

became the largest manufacturing concern in the city. Between 1900 and 1950 the population grew from 26,668 to 277,047. In 2012, Fort Worth's population was 777,992. The overall metropolitan area of Dallas–Fort Worth included 6.7 million people in 2011.

**San Antonio** San Antonio is located in Bexar County, the fourth-largest county in Texas today. San Antonio grew out of the Spanish presidio San Antonio de Bexar, which was founded in 1718.<sup>45</sup> In 1773 it became the capital of Spanish Texas, with a population of around 2,100 people. Because of the threats posed by Native Americans and Mexicans after the Texas Revolution, the population declined to about 800 people by 1846. On Texas's entry into the Union, however, the population took off, reaching 3,488 in 1850 and 8,235 in 1860. By the Civil War, San Antonio was the largest city in Texas.

Following the Civil War, San Antonio grew rapidly, stimulated by the building of the San Antonio Railroad in 1877. By 1880 the population had grown to more than 20,000 people, mostly Anglo Americans from southern states. The population continued to grow through the first two decades of the twentieth century, reaching 161,000 by 1920. Mexican immigration increased significantly following the Mexican Revolution of 1910 and the building of a city infrastructure that provided paved roads, utilities, water, telephones, and hospitals. By midcentury San Antonio had become a unique blend of Latino, German, and southern Anglo American cultures. Population growth slowed down in the 1930s but picked up again during World War II, reaching over 408,000 in 1950. Major military bases came to dot the landscape around San Antonio. By 1960 the population topped 587,000 people.

Today, San Antonio is Texas's second-largest city. The population of the city was estimated to be 1,382,951 in 2012, and the San Antonio metropolitan area as a whole had a population of 2,234,003, making it the thirty-first-largest metropolitan area in the country. San Antonio's population has become increasingly Hispanic. Approximately 63.2 percent of the people are Hispanic, 29 percent are Anglo American, and 6 percent are African American.<sup>46</sup>

Unlike Houston or Dallas, San Antonio lacks high-paying manufacturing jobs, and average metropolitan income is lower than in Houston and Dallas. The economy rests on four legs: national military bases, educational institutions, tourism, and a large medical research complex.

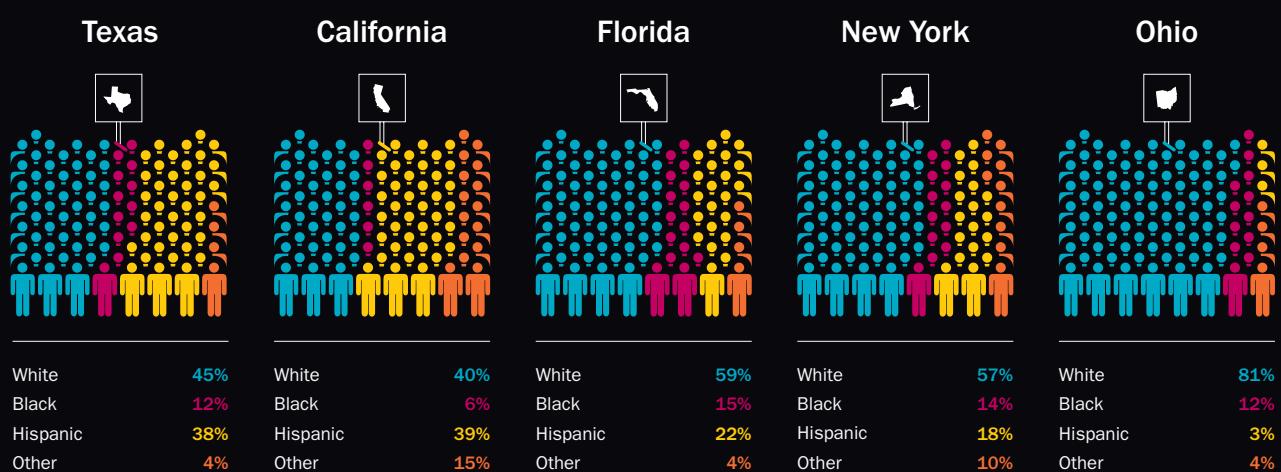
## Thinking Critically about Texas's Political Culture

In this chapter, we have studied the political culture of Texas and seen how the state has been transformed by economic and demographic shifts over the past hundred years. Three great technological revolutions have reshaped the economic life of the state. The first—based on the production of agricultural products such as cotton and cattle and on the newly built railroad system—defined economic life in the latter decades of the nineteenth and early twentieth centuries. The second—based on the production of oil and the industries that oil made possible—dominated the economy well into the second half of the twentieth century. The third—the era of high tech—has transformed the state by diversifying its economy and tying it closely to the growing international economy. Accompanying and fueling these economic revolutions have been ongoing demographic changes, which have redefined who the “typical”

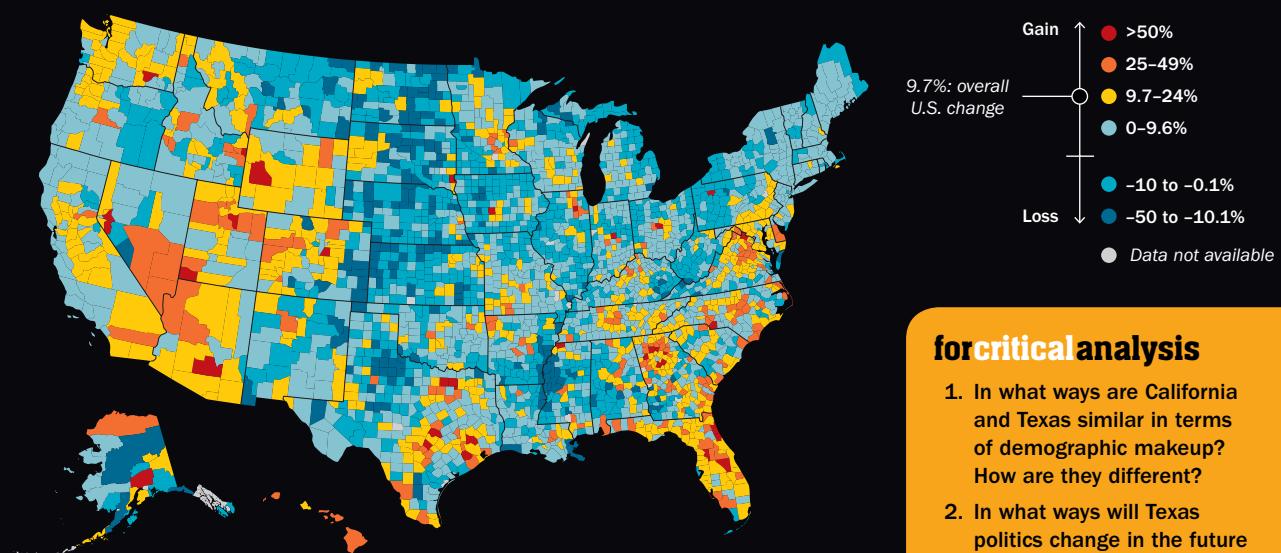
# How Does Texas's Population Compare to Other Major States?

Texas is more diverse than many states in the country, which has important implications for the future of the state's politics. Also, the Texas population has increased dramatically, while some states are not growing as fast. In fact many states in the Midwest such as Ohio and Pennsylvania have seen population declines in recent years.

## Racial Diversity



## Percentage Change in Population by County, 2000–10



SOURCE: U.S. Census Current Population Survey, [www.census.gov](http://www.census.gov) (accessed 5/14/14).

### for critical analysis

- In what ways are California and Texas similar in terms of demographic makeup? How are they different?
- In what ways will Texas politics change in the future based on its racial and ethnic makeup?



As immigration has changed the demographic profile of Texas, it has also given rise to numerous political debates. Here, protesters for immigration reform rally in San Antonio outside a hotel where U.S. Speaker of the House John Boehner held a fundraiser.

Texan is and where this person lives. No longer can it be said that a “typical” Texan is simply an extension of white American culture rooted in southern tradition. No longer does this person reside in a small town, living life close to the land much as his or her ancestors did. Like the economy, the people of Texas have been diversified. Increasing numbers of Latinos from Mexico and whites from other parts of the United States have created a new melting pot of cultures and concerns throughout the state. These cultures have come together in the big metropolitan areas across Texas.

As we have seen in this chapter, the majority of Texans today continue to view government and politics in Texas through the lens of a political culture dominated by both traditionalistic and individualistic values. There is a tendency in the political culture to defer to leaders in positions of authority. But this deferential politics is checked by a healthy suspicion of giving too much power to those in authority. As a result, in Texas, government is often perceived as something that gets in the way of our individual liberty rather than something through which we accomplish collective objectives.

Two notions of equality also play important roles in the political culture of Texas. First, there is the idea of equality of opportunity. This aspect of equality is deeply rooted in Texas’s traditional individualistic political culture. The job of government is to treat individuals fairly and to ensure them a fair chance to make it on their own through their own skills and initiative. Few Texans believe that it is the task of state government to redistribute resources from the rich to the poor, ensuring some equality of result.

In addition to equality of opportunity, political equality has been an issue in Texas politics, with the growing importance of African American and Latino minorities in the state. Debates over the meaning of equal participation and representation at all levels of state government have reshaped the broad contours of political life in Texas and given rise to one of the bitterest and most controversial issues to face the state legislature in recent decades: congressional and legislative redistricting.

The ideals of democratic self-government are enshrined in various constitutions under which Texas has operated since the days of the Republic. The people are formally given a number of important roles to play in the political process, including choosing the members of all three branches of government and approving constitutional amendments. As we will see, however, the actual operations of state government and politics tend to work in seemingly undemocratic ways. Arcane rules in the legislative and executive branches allow power to concentrate in the hands of a few individuals. Elections of judges politicize their selection in a way unimaginable in national politics. Well-funded special-interest groups have been able to exert their influence on elections in Texas and to penetrate the legislative process. The rise to power of the Republican Party in the state may be best understood as the triumph of a new set of interests that have successfully displaced those attached to the traditional Democratic Party.

Texans in general and Texas political leaders in particular may be committed to the idea of democracy. The Texas Constitution may enshrine the values of democratic self-government. As we will see, however, the actual operations of Texas politics and government raise serious questions about what kind of democracy the state really is. The tension between the ideal and reality of democracy in Texas may come to play an important role in restructuring the political system as it responds to ongoing economic and demographic change in the state.

## for critical analysis

In Texas political culture, governmental power is often seen as a threat to individual liberty. However, Texans also tend to value equality of opportunity and political equality for all citizens. To what extent should the Texas state government use its power to ensure equality?

## Texas Political Culture

### Describe the defining characteristics of political culture in Texas (pp. 5–7)

Texas political culture can best be characterized as individualistic and traditional. Texans have great pride in their state and have adopted a famous phrase, “Don’t mess with Texas,” for those external forces wishing to change the state’s way of doing things. Texas is a low-tax state with distrust for large government programs. Business plays a major role in defining the political culture of the state.

### Key Terms

political culture (p. 5)

moralistic political culture (p. 5)

individualistic political culture (p. 5)

traditionalistic political culture (p. 5)

elite (p. 6)

provincialism (p. 6)

### Practice Quiz

1. In terms of area, how does Texas rank among the 50 states?
  - a) first
  - b) second
  - c) third
  - d) fifth
  - e) seventh
2. Provincialism refers to
  - a) a narrow view of the world.
  - b) a progressive view of the value of diversity.
  - c) a pro-business political culture.
  - d) an urban society.
  - e) a group of counties.

## The Land

### Explain how Texas's geography has influenced its political culture (pages 7–9)

Because of Texas's immense size, the state's topography is diverse, with east Texas's flat lands, west Texas's arid climate, and central Texas's hill country all representing diverse ecosystems and land patterns.

### Practice Quiz

3. Which of Texas's physical regions is characterized by the presence of many of the state's largest ranches?
  - a) Gulf Coastal Plains
  - b) Great Plains

- c) Interior Lowlands
  - d) Basin and Range Province
  - e) Rio Grande Valley
4. Which of Texas's physical regions is found in the western-most part of Texas?
  - a) Gulf Coastal Plains
  - b) Great Plains
  - c) Interior Lowlands
  - d) Basin and Range Province
  - e) Pine Belt

# Economic Change in Texas

## Trace the evolution of Texas's economy (pp. 10–19)

The Texas economy has undergone a series of technological transformations over the past 100 years. Once the Texas economy was grounded in cotton and ranching. Oil production came to play an important role in the twentieth century. Today, high technology and international trade play important roles in the state's economy. Texas appears to have weathered the Great Recession better than most other states.

### Key Term

North American Free Trade Agreement (NAFTA) (p. 17)

### Practice Quiz

5. Creative destruction
  - a) destroys both old and new economies.
  - b) creates new economies and destroys old ones.
  - c) maintains old economies and creates new ones.
  - d) creates and maintains old and new economies.
  - e) does not affect economies.
6. Which industry controlled the politics and economy of Texas for most of the twentieth century?
  - a) cotton
  - b) cattle
  - c) railroad
  - d) oil
  - e) technology
7. Which of the following statements is true?
  - a) Oil production in Texas is smaller today than it was 10 years ago.

- b) Oil production no longer plays an important role in the state's economy.

- c) Oil has been almost totally drained from Texas oil fields.

- d) The Dallas–Fort Worth region has become a major producer of oil in the early twenty-first century.

- e) Fracking and horizontal drilling have reinvigorated Texas's oil industry.

8. Unlike earlier eras, the Texas economy of the twenty-first century features

- a) computers, electronics, and other high-tech products.

- b) transportation, oil and natural gas, and banking.

- c) insurance, construction, and banking.

- d) ranching, oil, and tourism.

- e) education, the military, and agriculture.

9. NAFTA refers to

- a) an oil company.

- b) an independent regulatory commission.

- c) an interstate road network.

- d) an interest group.

- e) an international trade agreement.

10. What is meant by the “Great Recession”?

- a) the post–Vietnam War era in the mid-1970s when housing prices rose

- b) the period of high inflation during the early 1980s

- c) a time of chronic economic problems beginning in late 2007 that drew analogies to the Great Depression of the 1930s

- d) the time when Democrats lost control of the Texas House for the first time since Reconstruction

- e) a period of high unemployment in the early 1990s

# The People of Texas

## Explain how the population of Texas has changed over time (pp. 19–26)

Texas demography has changed over the last century. Once dominated by whites, Texas now has a large Latino population that, when coupled with the African American population and other minorities, now makes Texas a majority-minority state. Despite considerable overall wealth in Texas, Texans tend to be younger and poorer than the average American.

### Key Terms

impresario (p. 20)

poll tax (p. 22)

### Practice Quiz

11. Which of the following accounts for most of Texas's population growth?

- a) immigration

- b) natural increases as a result of the difference between births and deaths

- c) domestic immigration

- d) NAFTA

- e) movement from rural to urban areas

- 12.** Which of the following is not true?
- a) Latinos are increasing as a percentage of the population in Dallas.
  - b) More African Americans live in east Texas than west Texas.
  - c) San Antonio has a larger white population than Latino.
  - d) Houston's largest minority population is Latino.
  - e) The Latino population in Texas has grown rapidly in recent decades.

## Urbanization

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### Describe Texas's shift from a rural society to an urban one (pp. 26–32)

Initially a rural state, Texas has urbanized, with Houston, San Antonio, and Dallas–Fort Worth representing the largest metropolitan areas in the state. This process of urbanization has changed the state's economy from an agricultural powerhouse to a high-tech and innovative economy.

#### Key Term

urbanization (p. 26)

#### Practice Quiz

- 13.** *Urbanization* refers to a process in which
- a) people move from rural to urban areas.
  - b) people from the north and west move to Texas.

- c) people move out of urban centers to the suburbs.
- d) people move out of urban centers to rural areas.
- e) minorities assume political control of a city.

- 14.** The three major metropolitan areas in Texas are
- a) Houston, Dallas–Fort Worth, and San Antonio.
  - b) Houston, Dallas–Fort Worth, and El Paso.
  - c) El Paso, Houston, and Austin.
  - d) San Antonio, El Paso, and Brownsville–Harlingen–McAllen.
  - e) San Antonio, El Paso, and Houston.

## Recommended Websites

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#### Business QuickFacts

<http://quickfacts.census.gov/qfd/states/48000.html>

#### Federal Reserve Bank of Texas

<http://dallasfed.org/index.cfm>

#### Handbook of Texas

[www.tshaonline.org/handbook/online/](http://www.tshaonline.org/handbook/online/)

#### Office of the Governor, Economic Development and Tourism,

#### Business and Industry Data Center

[www.governor.state.tx.us/ecodev/divisions/bidc/](http://www.governor.state.tx.us/ecodev/divisions/bidc/)

#### Texas Almanac

[www.texasalmanac.com](http://www.texasalmanac.com)

#### Texas State Data Center and Office of the State

#### Demographer

[www.txsdcc.utsa.edu](http://www.txsdcc.utsa.edu)

**Amendments to the Texas Constitution** originate in the House of Representatives and then go to voters for approval. Here, Texas Speaker of the House Joe Straus strikes the gavel as the Texas House votes to pass a proposed constitutional amendment that would boost spending for roads and bridges.



# The Texas Constitution

**WHY THE TEXAS CONSTITUTION MATTERS** The Texas Constitution is the legal framework within which government works in Texas just as the U.S. Constitution is the legal framework for our national institutions. Perhaps even more than the U.S. Constitution, the Texas Constitution has an immediate and enormous impact on the everyday lives of Texans. There are rights guaranteed to Texans in Article 1 of the Texas Constitution that go far beyond those of the U.S. Constitution, addressing issues related to Texans' private lives. For example, Article 1, Section 7, stipulates that no money will be appropriated or drawn from the treasury that benefits a sect, religious society, or religious seminary. Section 7 clearly lists the conditions that must be met by the state if it wants to take, damage, or destroy the private property of individuals. Section 30 provides a detailed list of the rights that the victims of crime have, including the right to be treated with dignity and privacy in the criminal process and a right to confer with representatives of the prosecutor's office. Section 31 narrowly defines a marriage as consisting "only of the union of one man and one woman." Section 33 guarantees Texans a right to access and use public beaches. One could argue that each of these cases is more a matter of policy preference than constitutional right. By placing these in the Bill of Rights of the Texas Constitution, particular policy positions take on a protected status. It is more difficult to change a right enshrined in the Texas Constitution than it is to change a policy backed by statutory law.

Given the length and detail of the Texas Constitution, the amendment process assumes a central role in the political process. Every few years, the Texas Legislature presents to the voters a list of proposed amendments to the state constitution. There are some important differences between the amending process for the Texas Constitution and the U.S. Constitution. For example, voter approval is necessary for the amendments to the Texas Constitution to take effect. Moreover, since 1789 there have been only 27 amendments to the U.S. Constitution but 483 amendments to the Texas Constitution as of 2013. In 2009, 10 amendments were proposed by the state legislature and approved by voters. In 2011, 10 amendments were proposed and passed. In 2013, 9 amendments were proposed and passed.

Occasionally amendments deal with overall structural issues of government. In 1979, for example, an amendment passed giving the governor limited authority to remove appointed statewide officials. In 1995 a constitutional amendment passed that abolished the office of the state treasurer, placing its duties in the Texas Comptroller's Office. In such cases, amendments to the Texas Constitution function like those to the U.S. Constitution. At other times, though, the amendments to the Texas Constitution are a far cry

from those of the U.S. Constitution. There are many more amendments to the Texas Constitution that have dealt with technical problems in the constitution, reflecting efforts to clean up specific language in the state constitution that was now out of date. In 2007 an amendment passed that eliminated the county Office of the Inspector of Hides and Animals.<sup>1</sup> The office had been effectively vacated with the passage of a new Agricultural Code that eliminated the office in law.<sup>2</sup> But the constitution needed to be brought up to date with the law. In 2013, Proposition 2 eliminated language relating to a State Medical and Education Board and a State Medical Education Fund, neither of which were operational.

Other amendments to the Texas Constitution grapple with pressing policy matters. Interestingly, the electorate is asked to give its approval of certain policy initiatives directly through the amendment process, something that is inconceivable at the national level. In 2009 amendments were passed protecting private property from certain private property takings by the state through eminent domain, establishing a National Research University Fund, and allowing members of emergency service districts to serve for four years. In 2011 amendments were passed allowing the Texas Water Development Board to issue bonds so that loans could be given to local governments for water projects and granting the City of El Paso more borrowing authority. Among the amendments passed in 2013, Amendment 6 provided for the creation of two funds to help finance important water projects in the future. Without the passage of these amendments by the electorate, effective public policy in a variety of areas central to the future of Texas would have ground to a halt. Far more than the U.S. Constitution, the Texas Constitution is involved with the nuts and bolts of public policy and must be taken into account frequently by Texas legislators seeking to address problems in new and innovative ways.

Much criticism has been lodged against the Texas Constitution as being a cumbersome document that fails to meet the needs of a modern dynamic state. Yet efforts to introduce a fundamental reform of the constitutional system of government in Texas have floundered, leaving politicians the unenviable task of bringing the constitution up to date in a piecemeal manner. The Texas Constitution remains a document much disparaged and not well understood by the population as a whole.

## chapter goals

- Identify the main functions of state constitutions (pp. 41–42)
- Describe the six Texas constitutions that preceded the current constitution (pp. 43–53)
- Explain the circumstances that led to the Texas Constitution that is still in use today (pp. 54–55)
- Analyze the major provisions of the Texas Constitution today (pp. 55–62)
- Describe modern efforts to change the Texas Constitution (pp. 63–73)

# The Role of a State Constitution

## Identify the main functions of state constitutions

State **constitutions** perform a number of important functions. They legitimate state political institutions by clearly explaining the source of their power and authority. State constitutions also delegate power, explaining which powers are granted to particular institutions and individuals and how those powers are to be used.

**constitution** the legal structure of a government, which establishes its power and authority as well as the limits on that power

They prevent the concentration of political power by providing political mechanisms that check and balance the powers of one political institution or individual officeholder against another. Finally, they define the limits of political power. Through declarations of rights, state constitutions explicitly forbid the intrusion of certain kinds of governmental activities into the lives of individuals.

The idea of constitutional government in Texas since its first constitution has been heavily indebted to the larger American experience. Five ideas unite the U.S. and Texas constitutional experiences. First, political power in both the United States and Texas is ultimately derived from the people. The Preamble to the U.S. Constitution begins with the clear assertion that it is "We the People of the United States" that ordains and establishes the Constitution. Echoing these sentiments, the Preamble to the Texas Constitution proclaims that "the People of the State of Texas, do ordain and establish this Constitution." In both documents, political power is something that is artificially created through the constitution by a conscious act of the people.

Second, the U.S. and Texas constitutions feature **separation of powers**. The legislative, executive, and judicial branches of government have their own unique powers derived from the people. Each branch has its corresponding duties and obligations.

**separation of powers** the division of governmental power among several institutions that must cooperate in decision making

Third, the U.S. and Texas constitutions structure political power in such a way that the power of one branch is checked and balanced by the power of the other two branches. The idea of **checks and balances** reflects a common concern among the framers of the U.S. Constitution and the authors of Texas's various constitutions that the intent of writing a constitution was not just to establish effective governing institutions. Its purpose was also to create political institutions that would not tyrannize the very people who established them. In this theory of checks and balances, both the U.S. and Texas constitutions embody the ideas articulated by James Madison in *The Federalist Papers*, nos. 10, 47, and 51. There Madison argued that one of the most effective ways of preventing **tyranny** (the concentration of power in one branch) was to pit the self-interest of officeholders in one branch against the self-interest of officeholders in the other branches. Good intentions alone would not guarantee liberty in either the United States or Texas. Rather, constitutional means combined with self-interest would ensure that officeholders had an interest in preserving a balance among the different branches of government.

**checks and balances** the constitutional idea that overlapping power is given to different branches of government to limit the concentration of power in any one branch

The concern for preventing the emergence of tyranny is also found in a fourth idea that underlies the U.S. and Texas constitutions: the idea of individual rights. Government is explicitly forbidden to violate a number of particular rights that the people possess. Some rights, such as freedom of speech, freedom of assembly, and freedom of religion, are guaranteed by both the U.S. Constitution and the Texas Constitution. Interesting, the Texas Constitution also guarantees other rights not found in the U.S. Constitution, such as certain victims' rights and the right to

**tyranny** according to James Madison, the concentration of power in any one branch of government

**federalism** a system of government in which power is divided, by a constitution, between a central government and regional governments

**supremacy clause** Article VI of the U.S. Constitution, which states that the Constitution and laws passed by the national government and all treaties are the supreme law of the land and superior to all laws adopted by any state or any subdivision

**necessary and proper clause** Article I, Section 8, of the U.S. Constitution; it provides Congress with the authority to make all laws “necessary and proper” to carry out its powers

have an “efficient system of public free schools.” In this the Texas Constitution can be seen as guaranteeing a broader set of rights than the U.S. Constitution.

The final idea embodied in both the U.S. and Texas constitutions is that of **federalism**. Federalism is the division of government into a central government and a series of regional governments (see Chapter 3). Both kinds of government exercise direct authority over individual citizens of the United States and of each particular state. Article IV, Section 4, of the U.S. Constitution guarantees that every state in the Union will have a “Republican Form of Government.” Curiously, no attempt is made to explain what exactly a “Republican Form of Government” entails. The Tenth Amendment to the U.S. Constitution also recognizes the importance of the idea of federalism to the American political system. It reads, “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.” According to the U.S. Constitution, enormous reservoirs of political power are thus derived from the people who reside in the states themselves.

However, some important differences distinguish the constitutional experience of Texas from that of the United States. Most important is the subordinate role that Texas has in the federal system. Article VI of the U.S. Constitution contains the **supremacy clause**, declaring the Constitution and the laws of the United States to be “the supreme Law of the Land.” The supremacy clause requires all judges in every state to be bound by the U.S. Constitution, notwithstanding the laws or constitution of their particular state. In matters of disagreement, the U.S. Constitution thus takes precedence over the Texas Constitution. One of the major issues of the Civil War was how the federal system was to be understood. Was the United States a confederation of autonomous sovereign states that were ultimately independent political entities capable of secession (much like the current European Union)? Was the United States a perpetual union of states that were ultimately in a subordinate relationship to the central government? The results of the war and the ratification of the Fourteenth Amendment in 1868 ultimately resolved this question in terms of the latter. The idea that the United States was a perpetual union composed of subordinate states would have profound implications for constitutional government in Texas throughout the late nineteenth and twentieth centuries. The incorporation of the Bill of Rights through the Fourteenth Amendment, which made much of the Bill of Rights apply to the states, became a dominant theme of constitutional law in the twentieth century. The Fourteenth Amendment effectively placed restrictions on Texas government and public policy that went far beyond those laid out in Texas’s own constitution.

Another major difference between the U.S. and Texas constitutions lies in the **necessary and proper clause** of Article I, Section 8. Section 8 begins by listing in detail the specific powers granted to Congress by the Constitution. The Founders apparently wanted to limit the scope of national government activities. But Section 8 concludes by granting Congress the power necessary to accomplish its constitutional tasks. The net effect of this clause was to provide a constitutional basis for an enormous expansion of central government activities over the next 200-plus years.

Drafters of Texas’s various constitutions generally have been unwilling to grant such an enormous loophole in the exercise of governmental power. Although granting state government the power to accomplish certain tasks, Texas constitutions have generally denied officeholders broad grants of discretionary power to accomplish their goals.

# ● The First Texas Constitutions

**Describe the six Texas constitutions that preceded the current constitution**

Many myths surround the origins of Texas as a state. Some trumpet its unique origins as an independent republic that fought to attain its own independence from an oppressive regime much like the United States did. Others suggest that Texas has a certain privileged position as a state given the way

that it entered the Union or that it reserved for itself a right to break up into separate states or even to leave the Union. To separate the myth from the reality, it is necessary to understand the Founding of Texas out of its war of independence with Mexico and its subsequent constitutional development.

Texas has operated under seven constitutions, one when it was part of a state under the Mexican political regime prior to Independence, one as an independent republic, one as a member of the Confederacy, and four as a state in the United States. Each was shaped by historical developments of its time and, following the first constitution, attempted to address the shortcomings of each previous constitution. In this section, we look at the six Texas constitutions that preceded the current constitution.

## The Texas Founding

Political scientists refer to “the Founding” as that period in American history when the foundational principles of American political life were established, roughly the period of time from the Declaration of Independence in 1776 through the ratification of the Constitution (1790) and the Bill of Rights (1791). Texas has a founding period, but one that is much longer and more convoluted.

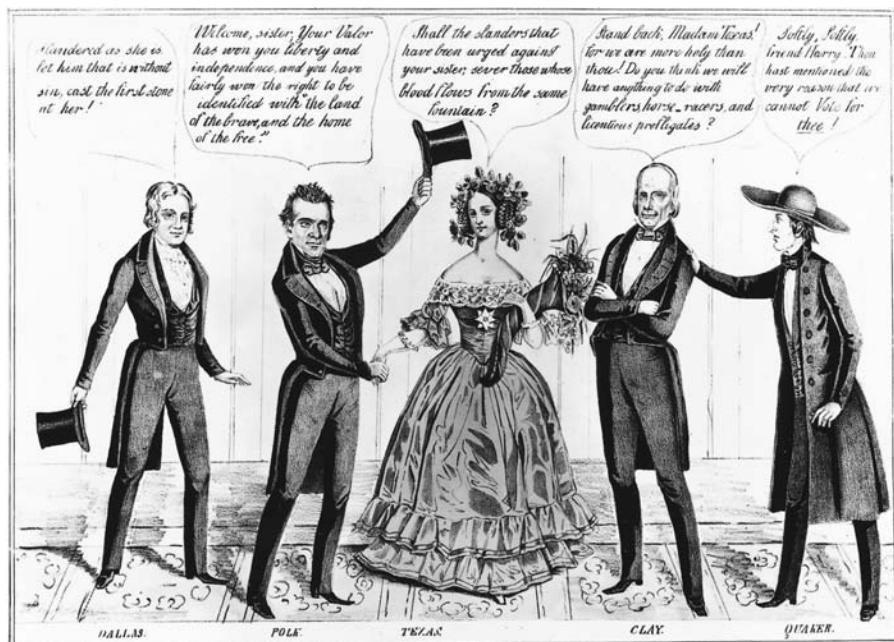
In the mid-eighteenth century, the American colonies had been part of a larger constitutional regime, the British Empire. Following the French and Indian War, the colonies found themselves under increasing centralized control from London, including the imposition of various unpopular taxes like the Stamp Tax. Resistance to this centralized control led to growing political tensions between Britain and the colonies, culminating in armed confrontations at Lexington and Concord. The Declaration of Independence, the Articles of Confederation, and the writing of new state constitutions along with the Treaty of Paris signaled the break with Britain and the emergence of the United States as a confederated republic, that is, a group of largely independent states joined together by a weak national organization. The inability of the Articles of Confederation to provide a strong and effective central government following the American Revolution gave rise to calls for the Constitutional Convention that met in Philadelphia in 1787 to draft the document that became the U.S. Constitution.

On the face of it, Texas’s road to independence appears to mirror that of the United States. Like the United States, Texas had a period of discontent with the governing regime that culminated in a Declaration of Independence. This document cataloged grievances against Mexico and announced the establishment of a new Republic of Texas. But whereas Britain was a stable and powerful empire in the mid-eighteenth century, Mexico was not. Mexico had only recently freed itself from Spain and was experiencing a lengthy period of domestic turmoil. In addition, while the American colonies had been effective self-governing entities before the

Declaration of Independence, Texas was not. The Texas Founding encompassed a number of phases of constitutional government. These phases stretched from 1836 when Texas declared itself an independent republic to 1876 when reconstruction after the Civil War came to an end and a new state constitution was put into place.

**The Constitution of Coahuila y Tejas, 1827** Despite the growing fears of American expansionism following the Louisiana Purchase, in 1803 Spanish Texas was still sparsely populated. In 1804 the population of Spanish Texas was estimated to be 3,605. In 1811, Juan Bautista de las Casas launched the first revolt against Spanish rule in San Antonio. The so-called Casas Revolt was successfully put down by the summer of 1811. The next year, a second challenge to Spanish rule took place along the border between Texas and the United States. After capturing Nacogdoches, La Bahia, and San Antonio, rebel forces under José Bernardo Gutiérrez de Lara issued a declaration of independence from New Spain and drafted a constitution. By 1813, however, this revolt had also been put down, and bloody reprisals had depopulated the state. Texas remained part of New Spain until the Mexican War of Independence.<sup>3</sup>

The Mexican War of Independence grew out of a series of revolts against Spanish rule during the Napoleonic Wars. Burdened by debts brought on by a crippling war with France, Spain sought to extract more wealth from its colonies. The forced abdication of Ferdinand VII in favor of Napoleon's brother Joseph in 1808 and an intensifying economic crisis in New Spain in 1809 and 1810 undermined the legitimacy of Spanish rule. Revolts broke out in Guanajuato and spread throughout Mexico and its Texas province. Although these rebellions were initially put down



This 1844 cartoon satirized congressional opposition to the annexation of Texas. Personified as a beautiful young woman, Texas is holding a cornucopia filled with flowers. Though James K. Polk, elected to the presidency in 1844, welcomes Texas, the Whig Party leader Senator Henry Clay, with arms folded, warns, "Stand back, Madam Texas! For we are more holy than thou! Do you think we will have anything to do with gamblers, horse-racers, and licentious profligates?"

by royalist forces loyal to Spain, by 1820 local revolts and guerrilla actions had helped to weaken continued royal rule from Spain. On August 24, 1821, Mexico was formally granted independence by Spain.

Because Texas was part of Mexico, the first federal constitution that it operated under was the Mexican Constitution. At the national level, there were two houses of Congress. The lower house was composed of deputies serving two-year terms. In the upper house, senators served four-year terms and were selected by state legislatures. The president and vice president were elected for four-year terms by the legislative bodies of the states. There was a supreme court, composed of 11 judges, and an attorney general. Although the Mexican Constitution mandated separate legislative, executive, and judicial branches, no attempt was made to define the scope of states' rights in the Mexican confederation. Local affairs remained independent of the central government. Although the Mexican Constitution embodied many of the ideas found in the U.S. Constitution, there was one important difference: Catholicism was established as the state religion and was supported financially by the state.<sup>4</sup>

Under the Mexican Constitution of 1824, the state of Coahuila and the sparsely populated province of Texas were combined into the state of Coahuila and Texas. Saltillo, Mexico, was the capital. More than two years were spent drafting a constitution for the new state. It was finally published on March 11, 1827.

The state was formally divided into three separate districts, with Texas composing the District of Bexar. Legislative power for the state was placed in a **unicameral** legislature composed of 12 deputies elected by the people. The people of the District of Bexar (Texas) elected 2 of these. Along with wide-ranging legislative powers, the legislature was also empowered to elect state officials when no majority emerged from the popular vote, to serve as a grand jury in political and military matters, and to regulate the army and militia. Executive power was vested in a governor and a vice governor, each elected by the people for a four-year term. Judicial power was placed in state courts. The Constitution of 1827 formally guaranteed citizens the right to liberty, security, property, and equality. Language in the Constitution of 1827 also supported efforts to curtail the spread of slavery, an institution of vital importance to planters who were immigrating from the American South. The legislature was ordered to promote education and freedom of the press. As in the Mexican federal constitution, Catholicism was the established state religion.<sup>5</sup>

**unicameral** comprising one body or house, as in a one-house legislature

## The Constitution of the Republic of Texas, 1836

Texas's break with Mexico was in large part a constitutional crisis that culminated in separation. Americans had come to Texas for a variety of reasons. Some, like Stephen F. Austin, had come to Texas in the service of the Mexican state as *empresarios*, individuals whose goal was to encourage immigration into Texas from America through the distribution of land made available by the Mexican government. They saw themselves as Mexican citizens working with the constitutional regime of 1827. There were other American immigrants who came to Texas as part of America's move westward. They were far less committed to integrating themselves into the Mexican political community. For these people, independence from Mexico either as an independent Republic or as part of the United States was the ultimate political objective.

Recognizing the dangers to Mexican authority by Americans coming into Texas, Mexican officials made various attempts to limit the influx of new American immigrants. These restrictions, along with other grievances, led to growing discontent among Texans over their place in the Mexican federal system. Ultimately,

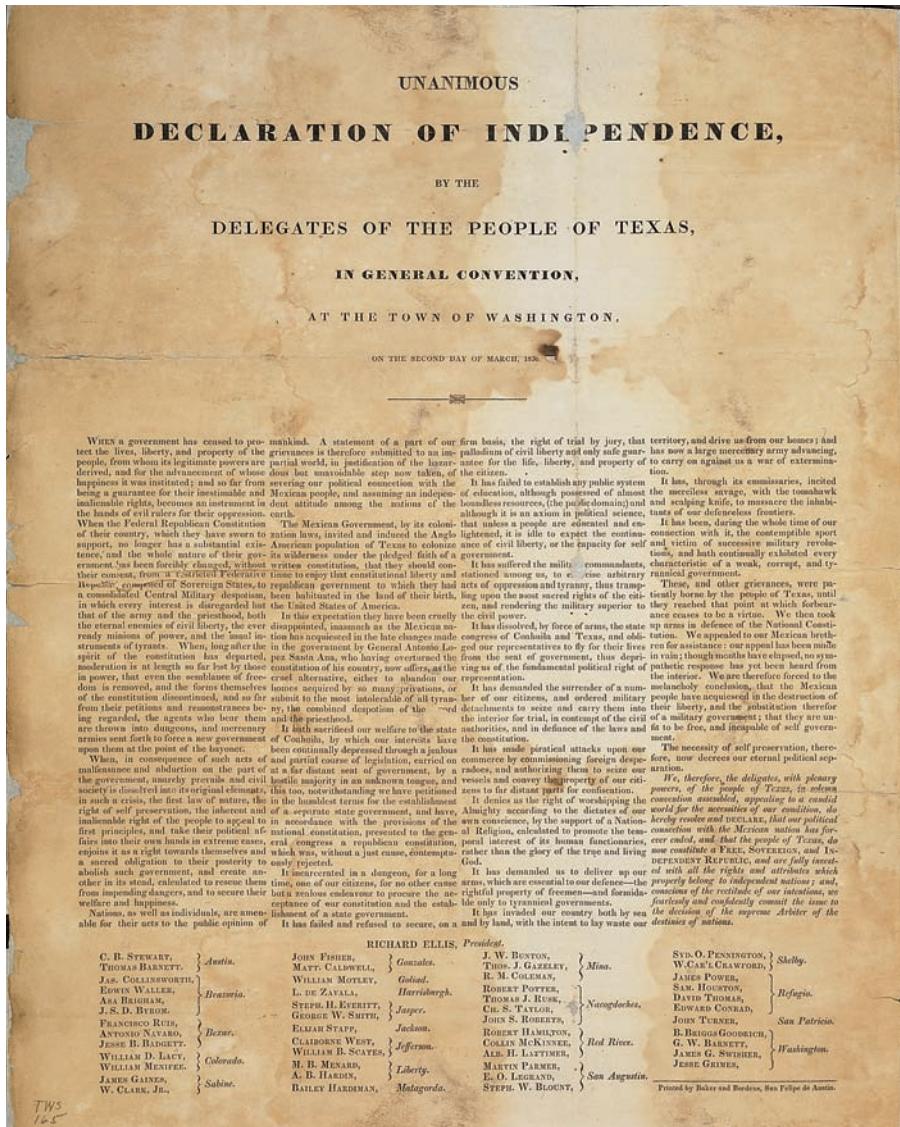
Texans called for political conventions in 1832 and 1833 to discuss new constitutional forms of government. Along with demands for a more liberal immigration policy for people from the United States and for the establishment of English- and Spanish-speaking primary schools, calls for separate statehood for Texas emerged from the conventions. The 1833 convention actually drafted a constitution for this newly proposed state modeled on the Massachusetts Constitution of 1780. Stephen F. Austin's attempt to bring the proposed constitution to the attention of the central government in Mexico City led to his imprisonment, which in turn pushed Texas closer to open rebellion against the central Mexican government.

On November 7, 1835, a declaration was adopted by a meeting of state political leaders at San Felipe, which stated the reasons Texans were beginning to take up arms against the Mexican government. The declaration proclaimed that Texas was rising up in defense of its rights and liberties as well as the republican principles articulated in the Mexican Constitution of 1824. It was one thing to call for a defense of republican principles under the Mexican Constitution of 1824; it was something else to call for separation from Mexico; and it was something else again to advocate separation from Mexico followed by union with the United States. In the end, the declaration was but a prelude to the formal Texas Declaration of Independence that emerged out of the Convention of 1836 held at Washington-on-the-Brazos.

Of the 59 delegates attending the Convention of 1836, only 10 had lived in Texas prior to 1830. Two had arrived as late as 1836. Thirty-nine of the delegates were from southern slave states, 6 were from the border state of Kentucky, 7 were from northern states, 3 were from Mexico (including 2 born in Texas), and 4 were from other English-speaking lands.<sup>6</sup> The final products of the convention—the Texas Declaration of Independence and the Constitution of 1836—reflected the interests and values of these participants.

In their own Declaration of Independence, delegates to the convention proclaimed that the federal constitutional regime they had been invited to live under by the rulers of Mexico had been replaced by a military tyranny that combined a “despotism of the sword and the priesthood.” Echoing the American Declaration of Independence, they presented a long list of grievances against the central government, including the failure to provide freedom of religion, a system of public education, and trial by jury.

**The Texas Declaration of Independence** Like the Founders during the American Revolution, leaders of the Texas Revolution felt they needed to justify their actions in print. Written by George C. Childress and adopted by the general convention at Washington-on-the-Brazos on March 2, 1836, the Texas Declaration of Independence stated why it was necessary to separate from Mexico and create an independent republic. Not surprisingly, the document draws heavily on the ideas of John Locke and Thomas Jefferson for inspiration. The description of the role of the government, “to protect the lives, liberty, and property of the people,” repeated verbatim Locke’s litany of the primary reasons for establishing government. Like Jefferson’s Declaration, Texas’s declaration catalogs a list of grievances against the Mexican regime. According to Texas’s declaration, the existing government had abdicated its duties to protect the governed and had broken the trustee relationship that binds a people to those in authority. By dissolving civil society into its original elements, the government had forced the people to assert their inalienable right of self-preservation and to take political affairs into their own hands again. The “melancholy conclusion” of Texas’s declaration echoed ideas that Locke and



The Texas Declaration of Independence was written by George C. Childress and adopted at the Convention of 1836. Childress modeled the document on the American Declaration of Independence (see Appendix).

Jefferson would have understood well: any government that stripped a people of their liberty was unacceptable to those raised on principles of self-government. Self-preservation demanded “eternal political separation” from the very state (Mexico) that had invited them to settle in Texas (see Figure 2.1).

After declaring Texas a separate republic independent from Mexico, the convention proceeded to draft and pass a new constitution reflecting these republican sentiments. Resembling the U.S. Constitution in being brief and flexible (fewer than 6,500 words), the 1836 Constitution established an elected chief executive with considerable powers, a **bicameral** legislature, and a four-tiered judicial system composed of justice, county, district, and supreme courts.<sup>7</sup> Power was divided among these three branches, and a system of checks and balances was put into place. Complicated procedures were included for amending the constitution, and a bill of rights was elaborated.

**bicameral** having a legislative assembly composed of two chambers or houses

## FIGURE 2.1 The Republic of Texas, 1836–45

This map shows the Republic of Texas with its large claimed territory. Texas's current boundaries were not established until it became a state.



A number of important provisions from Spanish-Mexican law were adapted for the Texas Republic in the constitution, including the idea of community property, homestead exemptions and protections, and debtor relief. The values of American democracy percolated through the document. White male suffrage was guaranteed. Ministers and priests were ineligible for public office. But one of the most important aspects of the Constitution of 1836, at least from the perspective of newly immigrated Americans from the South, may have been the defense of slavery as an institution.

The Constitution of Coahuila y Tejas of 1827 had challenged, albeit unsuccessfully, the existence of slavery as an institution. Although the 1836 Constitution of the Republic of Texas outlawed the importation of slaves from Africa, it guaranteed that slaveholders could keep their property and that new slaveholding immigrants could bring their slaves into Texas with them. The results of this constitutional protection were monumental. In 1836, Texas had a population of 38,470, including 5,000 slaves. By 1850 the slave population had grown to 58,161, over one-quarter of the state's population. By 1860 there were more than 182,566 slaves, accounting for more than 30 percent of the state's population.<sup>8</sup> To all intents and purposes, the Constitution of 1836 not only saved slavery as an institution in Texas but also provided the protections needed for slavery to flourish.

It was one thing to declare independence from Mexico, but quite another to win independence. Only after the Battle of San Jacinto, where on April 21 Sam Houston's force of 900 men overran the 1,300-man force of Santa Anna and captured Santa Anna himself, did Texas become an independent state.<sup>9</sup>

## The Texas State Constitution of 1845

The next phase of Texas's Founding took place from 1845 to 1861. Although the 1836 Constitution called for annexation by the United States, Texas remained an independent republic for nine years. There were concerns in the United States that if Texas were admitted to the Union, it would be as a slave state. Texas's admission to the Union could alter the delicate balance between slave and free states and further divide the nation over the sensitive subject of slavery. Additionally, it was feared that annexation by the United States would lead to war with Mexico. The defeated Mexican general and dictator Santa Anna had repudiated the Treaty of Velasco, which had ended the war between Texas and Mexico. Still claiming Texas as part of its own territory, Mexico undoubtedly would have gone to war to protect what it felt to be rightfully its own.

Hesitation over admitting Texas to the Union was overcome by the mid-1840s. On March 1, 1845, the U.S. Congress approved a resolution that brought Texas into the Union as a state. The annexation resolution had a number of interesting provisions. First, the Republic of Texas ceded to the United States all military armaments, bases, and facilities pertaining to public defense. Second, Texas retained a right to all "its vacant and unappropriated lands" as well as to its public debts. This was no small matter, because Texas claimed an enormous amount of land that extended far beyond its present state boundaries. The boundary issues were not resolved until Congress passed the Compromise of 1850 which, among other things, established Texas's boundaries in exchange for a payment from the federal government where some of the funds were used to pay Texas's debts. Finally, Texas was given permission to break up into four additional states when population proved adequate.



*The lowering of the Republic flag marked Texas's annexation to the Union on March 1, 1845. A state constitution was drafted shortly thereafter to reflect Texas's new role.*

On July 4, 1845, Anson Jones, fourth and final president of the Republic of Texas, called a convention in Austin to draft a state constitution. Drafters of the constitution relied heavily on the Constitution of 1836, although the final document ended up being almost twice as long. The familiar doctrines of separation of powers, checks and balances, and individual rights defined the basic design of government.

Under the Constitution of 1845, the legislature would be composed of two houses. The House of Representatives would have between 45 and 90 members, elected for two-year terms. Members were required to be at least 21 years of age. The Senate would be composed of between 19 and 33 members, elected for four-year terms. Half of the Senate would be elected every two years. As in the U.S. Constitution, revenue bills would originate in the House. Executive vetoes could be overturned by a two-thirds vote of each house. In a separate article on education, the legislature was ordered to establish a public school system and to set aside lands to support a Permanent School Fund. Another interesting power granted to the legislature was the power to select the treasurer and comptroller in a joint session.

This constitution provided for an elected governor and lieutenant governor. The governor's term was set at two years. He could serve only four years as governor in any six-year period. Among the executive powers granted to the governor were the powers to convene and adjourn the legislature, to veto legislation, to grant pardons and reprieves, and to command the state militia. The governor also had the power to appoint the attorney general, secretary of state, and district and supreme court judges, subject to the approval of the Senate.

The Constitution of 1845 established a judicial branch consisting of a supreme court composed of three judges, district courts, and lower courts deemed necessary by the legislature. Judges on the higher courts were to be appointed to six-year terms and could be removed from office subject to a two-thirds vote of both houses of the legislature.

Amending the Constitution of 1845 was difficult. After being proposed by a two-thirds vote of each house, amendments had to be approved by a majority of the voters. In the next legislature, another two-thirds vote of each house was necessary for ratification. Only one amendment was ever made to the Constitution of 1845. In 1850, an amendment was added to provide for the election of state officials who were originally appointed by the governor or by the legislature.<sup>10</sup>

This constitution retained some of the unusual provisions from the annexation resolution. Texas could divide itself into as many as five states and was responsible for paying its own foreign debt. It would retain title to its public lands, which could be sold to pay its debt. There was even a provision allowing Texas to fly its flag at the same height as the U.S. flag.

## **The Constitution of 1861: Texas Joins the Confederacy**

The issue of slavery had delayed Texas's admission into the United States for nine years, until 1845. Northerners rightly feared that admission of Texas into the Union would intensify southern efforts to extend the slave system westward and would destroy the tenuous balance of power between slave and free states that had been established under the Missouri Compromise. While slavery made it difficult for Texas to get into the Union in 1848, slavery drove Texas from the Union in 1861. By 1860 slavery had become a vital institution to the Texas economy. Con-



This image shows what the Texas State capitol looked like in the 1850s. It burned in 1881. Texas's first constitution after joining the Union as a state was ratified in 1845. It lasted until 1861 when Texas seceded from the Union along with other southern states.

centrated in east Texas and along the Gulf Coast, slaves had come to constitute 30 percent of the population. However, in large sections of the state, particularly in the north and west, the economy was based on ranching or corn and wheat production rather than cotton. There slavery was virtually nonexistent. The question of whether Texas should secede was a controversial one that divided the state along regional and ethnic as well as party lines.

Pressure to secede mounted following the presidential election of Abraham Lincoln in November 1860. A staunch Unionist, Governor Sam Houston refused to convene a special session of the legislature to discuss secession. Seeking to bypass Houston, a number of influential political leaders in the state, including the chief justice of the Texas Supreme Court, called for a special convention in January 1861 to consider secession. Giving in to the pressure, Houston called a special session of the legislature in the hopes of undercutting the upcoming secession convention. The legislature, however, had other ideas, validating the call for the convention and turning its chambers over to the convention.

Lawyers and slaveholders dominated the secession convention. Lawyers composed 40 percent of the delegates; slaveholders composed 70 percent. The Texas Ordinance of Secession, produced by the convention on February 2, 1861, reflected this proslavery membership. In striking language, it proclaimed that the northern states had broken faith with Texas, particularly regarding the institution of slavery. Northerners had violated the very laws and constitution of the federal Union by appealing to a "higher law" that trampled on the rights of Texans. In language that people living in the twenty-first century find hard to understand, the Ordinance of Secession proclaimed,

We hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that

**Confederacy** the Confederate States of America, those southern states that seceded from the United States in late 1860 and 1861 and argued that the power of the states was more important than the power of the central government

they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial and tolerable.<sup>11</sup>

Texas voters approved secession from the Union on February 23, 1861. The secession convention reconvened to enact a new constitution to guide the state as it entered the **Confederacy**. There were surprisingly few changes in the final document. This constitution was similar to the Constitution of 1845 except that references to the United States of America were replaced with references to the Confederate States of America. Public officials had to declare allegiance to the Confederacy, and slavery and states' rights were defended. A clause in the 1845 Constitution that provided for the possible emancipation of slaves was eliminated, and freeing slaves was declared illegal. But for the most part, the document accepted the existing constitutional framework. Controversial proposals, such as resuming the African slave trade, were rejected. The move out of the Union into the Confederacy may have been a radical one, but the new constitution was conservative insofar as it reaffirmed the existing constitutional order in the state.<sup>12</sup>

## The Constitution of 1866: Texas Rejoins the Union

Defeat in the Civil War led to the institution of another state constitution in 1866. The provisional governor, Andrew Jackson Hamilton, called a constitutional convention on November 15, 1865, a little over six months after the surrender of Lee's army in Virginia. Delegates were elected on January 8, 1866, and the convention was held February 7. Few former secessionists were excluded from voting, with the result that there were strong Unionist and secessionist factions at the convention.

A number of actions were taken to bring the state into compliance with President Andrew Johnson's policy of Reconstruction, including the rejection of the right to secession, a repudiation of the war debt incurred by the state, and an acceptance of the abolition of slavery. The convention granted freedmen fundamental rights to their persons and property and gave them the right to sue and be sued as well as the right to contract with others. However, there was little support for extending suffrage to blacks, and they were banned from holding public office. The convention also made a few changes to the existing constitutional system in Texas. These changes came to be known as the Constitution of 1866.

As in the two previous constitutions, the size of the House was set between 45 and 90, and that of the Senate between 19 and 33. Terms of office remained the same as under the 1845 and 1861 constitutions, although salaries were increased. Reapportionment was to be based on the number of white male citizens, who would be counted in a census every 10 years.

The governor's salary was also increased, and the term was extended to 4 years, with a limit of 8 years in any 12-year period. The governor was also granted, for the first time, a line-item veto on appropriations. The comptroller and the treasurer were to be elected by the voters for 4-year terms.

Under the new constitution, the state supreme court was expanded from three to five judges and terms were increased to 10 years. Their salaries also were increased. The chief justice was to be selected from the five judges on the supreme court. District court judges were to be elected for 8-year terms, and the attorney general for a 4-year term.

Voters ratified the Constitution of 1866 in June in a relatively close referendum, 28,119 to 23,400. The close vote was attributed to a widespread unhappiness with the increase in salaries of the various state officers.<sup>13</sup>

## The Reconstruction Constitution of 1869

In 1869, Texas wrote still another constitution to meet the requirements of the Congressional Reconstruction Acts of 1867. A vote calling for a constitutional convention was ordered by General Winfield Scott Hancock, the commander of the Texas and Louisiana military district, in early 1868. Against Democratic opposition, **Radical Republicans** easily won the vote for a convention by 44,689 to 11,440. Of the 90 delegates to the convention, only 6 had served in the previous constitutional convention. Ten were blacks. The vast majority represented the interests of various wings in the Republican Party. The convention was a rancorous affair as delegates argued over a wide range of issues, including railroad charters, lawlessness in the state, and whether laws passed during the war years were legal. In the final days of the convention, delegates finally got down to the constitutional matters and the problems of accepting the Thirteenth and Fourteenth Amendments. Although delegates never completed their task of reworking the Constitution of 1866, their efforts were published under orders by military officials, without being submitted to the voters, and became the Constitution of 1869.

A number of features of the Constitution of 1869 stand out.<sup>14</sup> The U.S. Constitution was declared to be the supreme law of the land. Slavery was forbidden, and blacks were given the right to vote. Fourteenth Amendment guarantees of equality before the law were recognized. Additionally, the constitution altered the relationship among the three branches of government.

The House of Representatives was set at 90 and the Senate at 30 members. Senatorial terms were extended to six years, with one-third of the seats to be elected every biennium. Legislative sessions were to be held annually.

The most critical changes were in the executive branch and the courts. The powers of the governor were vastly expanded. Among other things, the governor was given wide-ranging appointment powers that included the power to appoint judges. The state supreme court was reduced from five to three judges. The term of supreme court judges was also lowered to nine years, with one new judge to be appointed every three years. Salaries for state officials were increased.

A Republican affiliated with the Radical faction of the party and a former Union general, Edmund Davis, governed under this constitution. Davis had vast authority, since the constitution had centralized power in the executive while reducing local governmental control. Varying interpretations exist of the government provided by Davis, though the popular perception at the time was that Davis presided over a corrupt, extravagant administration that eventually turned to the state police and the militia to attempt to maintain its regime.

In 1872 the Democrats regained control of the state government, and in 1873 the Democrat Richard Coke was elected governor. Davis attempted to maintain control over the governor's office by having his handpicked supreme court invalidate Coke's election. Davis refused to give up his office and surrounded himself with state police in the capitol building. However, when Democrats slipped past guards and gathered upstairs in the capitol building to organize a government, Davis was unable to obtain federal troops to retain him in office. Democrats were able to form a government, and Davis left office.

**Radical Republicans** a bloc of Republicans in the U.S. Congress who pushed through the adoption of black suffrage as well as an extended period of military occupation of the South following the Civil War

# The Constitution of 1876

**Explain the circumstances  
that led to the Texas  
Constitution that is still in  
use today**

**Grange** a militant farmers' movement of the late nineteenth century that fought for improved conditions for farmers

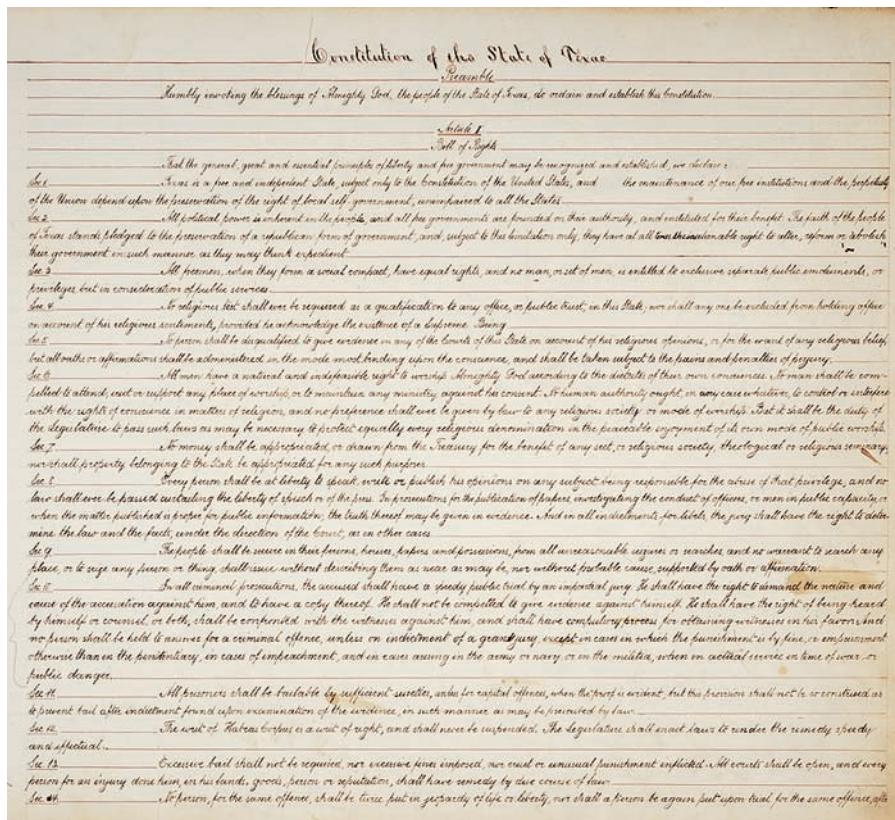
*The example of Edmund Davis's reign motivated the revision of executive branch power in the Constitution of 1876. The framers of that constitution sought popular control of state government in order to limit the appointment powers of the governor as provided by the Constitution of 1869.*

The final phase of Texas's Founding takes place with the passage of the Constitution of 1876. To prevent another government such as Davis's, efforts were made to write a new constitution. In 1874 a constitution was proposed and later rejected by a sitting legislature.<sup>15</sup> Finally, in 1875 a constitutional

convention was called. Three delegates were selected by popular vote from each of the 30 senatorial districts. The final composition of the convention included 75 white Democrats and 15 Republicans, 6 of whom were black. Not one of the elected delegates had participated in the constitutional convention of 1868–69. Forty of the delegates were farmers, and 40 were members of the **Grange**, a militant farming organization that had emerged to improve the plight of farmers.

The document that emerged from this convention, the Constitution of 1876, is still the basis for Texas government today. In an era of agriculture when prices and incomes were low and when little was demanded or expected from government, much in the 1876 Constitution made sense. However, one might question whether a constitution designed primarily by white males for whites in a rural agrarian society—and for the purpose of keeping the likes of Edmund Davis from ever controlling the state again—is the best foundation for government in the modern era.

The framers were committed to a constitution with four major themes. First, they wanted strong popular control of state government. Second, they believed



that a constitution should seriously limit the power of state government. Third, they sought economy in government. Fourth, the framers sought to promote agrarian interests, particularly those of small farmers, who formed the basis of support for the Grange movement.

Popular control of state government meant that the governor's vast appointment powers were limited by making judges and other public officials subject to election. But popular control of the government did not mean that all the electorate voted. When the framers of the 1876 Constitution thought of popular control of state government, they thought of control by white males.

In the effort to limit the powers of state government, the constitution placed great restrictions on the actions of government, restrictions that could be modified only through a complex constitutional amendment process. Executive authority was diffused among numerous officeholders, rather than concentrated in the hands of the governor. Although subsequently changed by constitutional amendment, an initial provision further limited gubernatorial power by setting a two-year term limit for the office. The legislature was part-time, ordinarily sitting for a proscribed time period every other year. This was in contrast to the 1869 Constitution, which provided that the legislature meet in annual sessions.

Economy in government was accomplished in several ways. The constitution restricted the extent of government debt and of government's power to tax. In addition, there were limits on the salaries of state officials, especially those of legislators. A major economic depression had begun in 1873, and many Texans were experiencing economic hardship. One way money was saved was by decentralizing public education. Schools were segregated, and compulsory education laws were eliminated. By having local control over education, white landowners could avoid paying taxes for the education of black students.

Texas at that time was an agricultural state. Wishing to protect agrarian interests, the framers wrote provisions protecting homesteads and restricting institutions that at that time were perceived to be harmful to farmers, such as banks and railroads. Greater responsibility was placed on local instead of state officials. There were also detailed regulations on railroad competition, freight and passenger rates, and railroad construction incentives.

Even in its earliest stages, the Texas Constitution of 1876 was a lengthy, rigid, and detailed document, and purposely so. Regulations curtailing government power were placed not in statutes where they could easily be reversed, but in the body of the constitution. The goal of this design was to ensure that the Radical Republicans and Edmund Davis would never again be able to reign and spend in Texas. They, of course, never did, although over the years the constitution became an increasingly unwieldy document.

### for critical analysis

Consider the characteristics of the constitutions adopted prior to 1876. What were the major provisions of each? Which were incorporated into the present Texas Constitution? Why does the state constitution place so many limits on state government? What changes could be made to the constitution to increase its effectiveness?

## ● The Constitution of Texas Today

Analyze the major provisions of the Texas Constitution today

The U.S. Constitution has two great virtues: brevity and flexibility. Neither of these virtues can be said to characterize the Texas Constitution. The U.S. Constitution is limited to 7 short articles and 27 amendments, and takes up only 8 pages of the *World Almanac*.

Much in the federal document is left unsaid, allowing lawmaking to be accomplished by statute. In contrast, in 2013 the Texas Constitution contained

**limited government** a principle of constitutional government; a government whose powers are defined and limited by a constitution

16 articles (Table 2.1; another article that concerned Spanish and Mexican land titles was deleted from the constitution in 1969). Seven hundred and sixty-five amendments have been proposed by the legislature. Four hundred and eighty-three were approved by the electorate, while 282 have been defeated. Curiously, three amendments were proposed by the legislature, but for obscure historical reasons never voted on by the electorate.<sup>16</sup> Many of the articles are lengthy, complex affairs, taking up over 67 pages of text in one edition of the *Texas Almanac*. But it is not just the length that differentiates the two constitutions. There is a difference in tone. The Texas Constitution reflects the writers' fears of what government could do if the principle of **limited government** was not clearly established.

In addition to its severe limits on executive power, the Texas Constitution also addresses a number of specific policy problems directly in the text, turning what might appear to be matters of public policy into issues of constitutional authority. By granting a variety of boards and districts a special place in the constitution, the framers set out additional checks and balances that make it difficult for governors to exercise power effectively. Quite unintentionally, the Texas Constitution became a place where special interests could seek to promote and protect their own agendas, even in the face of considerable political opposition.

The contrasts in character between the federal and Texas constitutions are a direct reflection of the differences in their framers' underlying goals. The U.S. Con-

**TABLE 2.1**

### The Texas Constitution: An Overview

Article 1: The Bill of Rights
Article 2: Separation of Powers in State Government
Article 3: The State Legislature
Article 4: The Plural Executive
Article 5: The Judicial Department
Article 6: Suffrage in Texas
Article 7: Public Education in Texas
Article 8: Taxation and State Revenues
Articles 9 and 11: Concerning Local Government, Including Counties and Municipal Corporations
Article 10: Empowering the State to Regulate Railroads and to Create the Texas Railroad Commission
Article 12: Empowering the State to Create General Laws for Corporations
Article 13: Concerning Spanish and Mexican Land Titles, Now Deleted from the Constitution
Article 14: Creates the General Land Office to Deal with Registering Land Titles
Article 15: Impeachment Provisions
Article 16: General Provisions Covering a Wide Range of Topics
Article 17: Amendment Procedures

stitution was written to overcome the liabilities of the Articles of Confederation and create a government that could act effectively in the public welfare in a variety of policy areas. The Texas Constitution was written to prevent the expansion of governmental authority and the return of a system of political power that was perceived as acting against the interests of the people.

## The Preamble

The preamble to the Texas Constitution is surprisingly short: "Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution." This brevity is more than made up for in what follows.

## Article 1: Bill of Rights

Article I of the U.S. Constitution establishes and delegates power to the legislative branch of government. One of the overriding concerns of the Founders was to create a legislature that could act effectively in public affairs. What came to be known as the Bill of Rights—the first 10 amendments to the Constitution—was added after the original Constitution was drafted and approved.

In contrast, the Texas Constitution puts its Bill of Rights up front as Article 1, well before any discussion of the legislature, the executive, or the courts. From the beginning, the purpose of the Texas Constitution was not simply to create a set of institutions that could wield political power. It was to limit the way political power is used and to prevent it from being abused.

The Texas Bill of Rights embodies certain ideas captured in the U.S. Bill of Rights. All "free men" are declared to have free and equal rights that cannot be denied or abridged because of sex, race, color, creed, or national origin. Freedom of religious worship is guaranteed, and there will be no religious test for office. Liberty of speech and liberty of the press are guaranteed. Individuals are protected from unreasonable search and seizure, from excessive bail, from bills of attainder and ex post facto laws, and from double jeopardy. Article 1 also guarantees an individual a right to trial by jury and the right to bear arms "in the lawful defense of himself or the State; but the Legislature shall have the power, by law, to regulate the wearing of arms, with a view to prevent crime" (Article 1, Section 23).

Article 1 also contains some ideas that move beyond those guaranteed by the first 10 amendments to the U.S. Constitution. The right to **republican government**, something clearly stated in the main body of the U.S. Constitution but not in the U.S. Bill of Rights, is powerfully articulated in the first two sections of Article 1. According to Article 1 of the Texas Constitution, all political power is inherent in the people, and the people of Texas have at all times the "inalienable right to alter, reform or abolish their government in such manner as they may think expedient" (Article 1, Section 2).

The differences between the Texas Bill of Rights and the U.S. Bill of Rights are not simply matters of where best to articulate a philosophy of republican government. They also involve very concrete matters of public policy. Section 26 in the Texas Bill of Rights, for example, forbids monopolies that are contrary to the public interest, and states that the law of primogeniture and entail (a law designed to keep large landed properties together by restricting inheritance to the firstborn) will never be in effect in the state. Although monopolies remain a public concern today, primogeniture and entail do not. Section 11 in the Texas Bill of Rights

**republican government** a representative democracy, a system of government in which power is derived from the people

grapples with the complicated issue of bail and under what specific circumstances an individual can be denied bail. Significantly, Section 11 has been the subject of three major constitutional revisions: in 1955, 1977, and 1993. Section 30, adopted in 1989, provides a long list of the “rights of crime victims,” including the right to be treated fairly and with dignity, the right to be protected from the accused, and the right to restitution. Although these are important matters of public policy for Texas today, they could hardly be considered proper material for the U.S. Constitution.

## Article 2: The Powers of Government

Like the U.S. Constitution, Article 2 divides the power of government in Texas into three distinct branches: the legislative, the executive, and the judicial. It also stipulates that no one in any one branch shall be attached to either of the other branches, except where explicitly permitted (as in the case of the lieutenant governor’s role in the Senate). The article—one short paragraph of text—assures that a version of the separation of powers doctrine found in the U.S. Constitution will be embodied in Texas institutions.

## Article 3: Legislative Department

Article 2 is one of the shortest articles in the Texas Constitution. Article 3 is the longest, comprising almost one-third of the text. Like Article I of the U.S. Constitution, Article 3 of the Texas Constitution vests legislative power in two houses: a Senate of 31 members and a House of Representatives of no more than 150 members. It stipulates the terms of office and qualifications. House members serve two-year terms, whereas senators serve four-year terms, half being elected every two years. House members must be citizens of the United States, must be at least 21 years of age, and must have resided in the state for two years and in their district for one year. Senators must be citizens of the United States, must be at least 26 years old, and must have resided in the state for five years and in their districts for one year. In addition, Article 3 provides for the selection of officers in both houses of the legislature, states when and for how long the legislature shall meet (Section 5), and explains how the legislative proceedings will be conducted (Sections 29–41) and how representative districts will be apportioned (Sections 25, 26, and 28).

Like Article 1, Texas’s Bill of Rights, Article 3 moves well beyond the U.S. Constitution, putting limits on what the legislature can do. For example, it puts limits on legislators’ salaries and makes it difficult to increase those salaries. Article 3 also creates a bipartisan Texas Ethics Commission whose job, among other things, is to recommend salary increases for members of the legislature and to set per diem rates for legislators and the lieutenant governor. Article 3, Section 49(a), also subjects the legislature to the actions of the comptroller of public accounts, whose duty is to prepare a report prior to the legislative session on the financial condition of the state treasury and to provide estimates of future expenditures by the state. This provision of the Texas Constitution effectively limits the state legislature to the financial calculations and endorsements of the comptroller, a check on the legislature all but unimaginable to the writers of the U.S. Constitution.

Putting constraints on certain legislative actions is only part of the story. The largest portion of Article 3 (Sections 47–64) is dedicated to addressing a variety of policy problems, including lotteries, emergency service districts, the problem

of debt creation, problems surrounding the Veterans' Land Board and the Texas Water Development Board, Texas park development, the creation of a state medical education board, and even the establishment of an economic development fund in support of the now defunct superconducting collider.

## Article 4: Executive Department

Article II of the U.S. Constitution concentrates executive power in the presidency. The desire was to create a more effective and more responsible executive than had been possible under the Articles of Confederation. The Texas Constitution lists a number of offices in the executive, legislative, and judicial branches which are specified in Table 2.2. Article 4 of the Texas Constitution states that the executive shall consist of six distinct offices: the governor, who serves as the chief executive; the lieutenant governor, who serves as the president of the Senate; the secretary of state, who keeps the official seals of the state; the comptroller of public accounts; the commissioner of the General Land Office; and the attorney general, who acts as the state's chief legal officer. With the exception of the secretary of state, who is appointed by the governor and approved by the Senate, all other offices are elected by qualified voters every four years. Besides creating a **plural executive**, Article 4 guarantees its members will have independent political bases in the electorate. This provides an additional check against any concentration of powers in the hands of any one person.

**plural executive** an executive branch in which power is fragmented because the election of statewide officeholders is independent of the election of the governor

## Article 5: Judicial Department

Article III of the U.S. Constitution succinctly provides for a Supreme Court and empowers Congress to create any necessary lower courts. Nothing could be further from the detailed discussion of the state courts found in Article 5 of the Texas Constitution. Besides creating one supreme court to hear civil cases and one court of criminal appeals to hear criminal cases, Article 5 provides for such lesser courts as courts of appeal, district courts, commissioner's courts, and justice of the peace courts, and empowers the legislature to establish other courts as deemed necessary. It also goes into such details as the retirement and compensation of judges, the jurisdictions of the various courts, and the duties of judges; it states what to do in the case of court vacancies, and includes a series of discussions on particular issues involving the lower courts.

An even greater difference between the federal Constitution and the Texas Constitution is the crucial role the latter gives to elections. Federal judges are appointed by the executive and approved by the Senate. In Texas, the people elect state judges. Nine supreme court and nine court of criminal appeals judges are elected at large in the state. Lower court positions are elected by voters in their relevant geographic locations. Much like the U.S. Constitution, the Texas Constitution seeks to create an independent judiciary that can check and balance the other two branches of government. But it seeks an additional check as well. It wants the people to watch over the courts.

## Article 6: Suffrage

Article 6 contains a short but detailed discussion about who may vote in Texas. It also empowers the legislature to enact laws regulating voter registration and the selection of electors for president and vice president.

**TABLE 2.2****Major Constitutional Officers in Texas**

<b>LEGISLATIVE (ARTICLE 3)</b>		
OFFICE/POSITION	ELECTED BY/APPOINTED BY	DUTIES
Speaker of the House	Elected by House members	Leads the House
President Pro Tempore of the Senate	Elected by a Senate member	Leads Senate in absence of the Lieutenant Governor
<b>EXECUTIVE (ARTICLE 4)</b>		
OFFICE/POSITION	ELECTED BY/APPOINTED BY	DUTIES
Governor	Elected by Texas voters for 4-year term	Chief executive of the state
Lieutenant Governor	Elected by Texas voters for 4-year term	Acts as Governor in absence of Governor and presides over Senate
Secretary of State	Appointed by the Governor by and with advice and consent of Senate	Chief election officer of Texas
Comptroller of Public Accounts	Elected by Texas voters	Chief steward of state finances
Commissioner of the General Land Office	Elected by Texas voters	Manages state assets, investments, and mineral rights from state lands and serves as chair for numerous state boards and commissions
Attorney General	Elected by Texas voters	Represents the state in cases where the state is a party
<b>JUDICIAL (ARTICLE 5)</b>		
OFFICE/POSITION	ELECTED BY/APPOINTED BY	DUTIES
Justice of Supreme Court	9 positions elected by Texas voters for 6-year terms	Decides on civil cases reaching Texas Supreme Court
Judge of Court of Criminal Appeals	9 positions elected by Texas voters for 6-year terms	Decides on criminal cases reaching Texas court of criminal appeals
Justice of the Court of Appeal	80 justices in 14 courts of appeal elected by Texas voters for 6-year terms from multimember districts	Decides on cases reaching Texas court of appeal
District Court Judge	456 District Court judges elected by Texas voters for 4-year terms from a mixture of multi- and single-member districts	Decides on cases in Texas district court
Other county-level court officials are also elected for 4-year terms on a county or precinct basis. Municipal court judges are usually appointed.		
<b>OTHER IMPORTANT OFFICES</b>		
OFFICE/POSITION	ELECTED BY/APPOINTED BY	DUTIES
Texas Railroad Commissioner (Article 13, Section 30)	3 officers elected by Texas voters for 6-year overlapping terms	Regulates the oil and gas industry, gas utilities, pipeline safety, and surface coal and uranium mining (no longer regulates railroads)
State Board of Education Member (Article 7)	15 members elected by Texas voters from single-member districts for 4-year terms	Makes statewide policies for public schools
Agricultural Commissioner (office established under Agricultural Code, not the Constitution)	Elected by Texas voters to a 4-year term	Regulates state agriculture and administers state agriculture policy

## **Article 7: Education**

The concerns found in the Texas Declaration of Independence over the need for public schools to promote a republican form of government are directly addressed in Article 7. Section 1 makes it a duty of the state legislature to support and maintain “an efficient system of public free schools.” The Texas Supreme Court’s interpretation of this provision as applying to school funding in the state has led to the current political battles over school finance. Sections 2–8 provide for their funding and the creation of a State Board of Education to oversee the operations of elementary and secondary education in the state. State universities are the subject of over half of Article 7, where detailed discussions of the funding and operations of particular state institutions are put directly into the text.

## **Article 8: Taxation and Revenue**

The complex issue of taxation is the subject of Article 8. Once again we find a highly detailed account of several important policy issues built directly into the text of the constitution. One of the most controversial sections of the Texas Constitution centers on the issue of the income tax. Section 1 enables the legislature to tax the income of individuals and businesses. This power, however, is subject to Section 24, which was passed by the 73rd Legislature in 1993. Section 24 requires that the registered voters in the state approve a personal income tax and that the proceeds from this tax be dedicated to education and tax relief. As with other portions of the constitution, the net effect of these provisions is to curtail severely what the state legislature can do and how it is to do it. If Section 24 of Article 8 is any indication, the public fear of unresponsive and potentially tyrannical government was as alive during the 1990s as it was in 1876.

## **Articles 9 and 11: Local Government**

These articles provide highly detailed discussions of the creation, organization, and operation of counties and municipal corporations.

## **Articles 10, 12, 13, and 14**

These heavily revised articles deal with a series of specific topics: the railroads (10), private corporations (12), Spanish and Mexican land titles (13), and public lands (14). Article 10 empowers the state to regulate railroads and to establish the Railroad Commission. Article 12 empowers the state to create general laws creating private corporations and protecting the public and individual stockholders. Article 13, now entirely deleted from the constitution, dealt with the nineteenth-century issue of Spanish and Mexican land titles. Article 14 created a General Land Office to deal with the registration of land titles.

## **Article 15: Impeachment**

**Impeachment** is, in the U.S. Constitution, one of the major checks Congress holds against both the executive and judicial branches of government. The House of Representatives holds the power to impeach an individual; the Senate is responsible for conducting trials. A two-thirds vote in the Senate following impeachment by the House leads to the removal of an individual from office.

**Impeachment** under the Texas Constitution, the formal charge by the House of Representatives that leads to trial in the Senate and possible removal of a state official

A similar process is provided for in Article 15 of the Texas Constitution. The House has the power to impeach. The Senate has the power to try the governor, lieutenant governor, attorney general, land-office commissioner, and comptroller, as well as judges of the supreme court, the courts of appeal, and district courts. Conviction requires a two-thirds vote of the senators present. In contrast to the U.S. Constitution, the Texas Constitution rules that all officers against whom articles of impeachment are proffered are suspended from their office. The governor is empowered to appoint a person to fill the vacancy until the decision on impeachment is reached.

Despite these similarities to the impeachment procedures in the U.S. Constitution, the Texas Constitution has its own caveats. Most notably, the Texas Constitution does not explicitly define impeachable offenses in terms of “Treason, Bribery, or other high Crimes and Misdemeanors,” as the U.S. Constitution does. The House and Senate (and the courts) decide what constitutes an impeachable offense.<sup>17</sup> In addition, the supreme court has original jurisdiction to hear and determine whether district court judges are competent to discharge their judicial duties. The governor may also remove judges of the supreme court, courts of appeal, and district courts when requested by the two-thirds vote of each legislature. Significantly, the reasons for removing a judge in this case need not rise to the level of an impeachable offense, but need only involve a “willful neglect of duty, incompetence, habitual drunkenness, oppression in office, or other reasonable cause” (Article 15, Section 8). The barriers to removing a judge by political means are thus, at least on paper, much lower in Texas than in national government.

In 1980, Section 9 was added to Article 15, providing a new way to remove officials appointed by the governor. With the advice and consent of two-thirds of the members of the Senate present, a governor may remove an appointed public official. If the legislature is not in session, the governor is empowered to call a special two-day session to consider the proposed removal.

## Article 16: General Provisions

Article 16 is one of the lengthiest in the Texas Constitution and has no parallel in the U.S. Constitution. It is literally a catchall article tackling a variety of issues ranging from official oaths of office to community property to banking corporations and stock laws to the election of the Texas Railroad Commission to the state retirement systems. Here, perhaps more than anywhere else, we see the complexity and confusion of the philosophy reflected in the Texas Constitution.

## Article 17: Amending the Constitution

Like the U.S. Constitution, the Texas Constitution explicitly delineates how it can be amended. Essentially, amendments undergo a four-stage process: First, the legislature must meet in either regular or special session and propose amendments. Second, these amendments must be approved by a two-thirds vote of all the members elected to each house. Third, a brief statement explaining the amendments must be published twice in each recognized newspaper in the state that meets the publication requirements for official state notices. Finally, the amendments must be approved by a majority of the state voters.

## Recent Attempts to Rewrite the Texas Constitution

**Describe modern efforts to change the Texas Constitution**

Given the difficulty of amending the state constitution, a surprising number of amendments have been proposed since 1876. A considerable number of these have been turned down in the popular vote. As Table 2.3 shows, demands for amending the Constitution have

intensified in recent years, as legislators have dealt with the problem of making changes in public policy while being constrained by an unwieldy constitutional document.

### Sharpstown and the Failed Constitutional Reforms of 1974

A drive to rewrite the Texas Constitution grew out of a major stock fraud that broke in the early 1970s, involving the Sharpstown State Bank and the National Bankers Life Insurance Corporation. Following the 1970 elections, which had been dominated, as generally was the case, by the conservative wing of the Democratic Party, a suit was filed in Dallas federal court. Attorneys for the Securities and Exchange Commission alleged that a number of influential Democrats, including Governor Preston Smith, the state Democratic chairman and state banking board member Elmer Baum, Speaker of the House Gus Mutscher, and others, had been

**TABLE 2.3**

### Amending the Texas Constitution

The Constitution of Texas has been amended 483 times since its inception in 1876.

YEARS	NUMBER PROPOSED	NUMBER ADOPTED
1876–1900	31	17
1901–20	56	21
1921–40	71	47
1941–60	78	59
1961–80	151	98
1981–2000	180	148
2001–10	79	77
2011	10	7
2013	9	9
2014	1	1
<b>Totals</b>	<b>666</b>	<b>484</b>

SOURCE: Texas Legislative Council and Texas Secretary of State.

The Sharpstown State Bank scandal led to a demand for a new constitution to replace the outmoded 1876 document. This cartoon, which shows Governor Dolph Briscoe regally proclaiming, "This baby has a wart . . . off with his head!" satirizes Briscoe's stance against the new constitution.



bribed. By the fall of 1971 Mutschler and two of his associates had been indicted. On March 15, 1972, they were convicted and sentenced to five years' probation.

The convictions fueled a firestorm in the state to "throw the rascals out." During the 1972 elections, "reform" candidates dominated the Democratic primary and the general election. The conservative rancher-banker Dolph Briscoe became governor, but only by a plurality, making him the first governor in the history of the state not to receive a majority of the popular vote. Other reform-minded candidates such as William P. Hobby, Jr., and John Hill were successful. Hobby won the lieutenant governor's race, while Hill became attorney general, defeating the three-term Democratic incumbent Crawford C. Martin. When the smoke cleared, half of the House seats were occupied by new members, and the Senate had witnessed a higher-than-normal rate of turnover. The elections had one other outcome: an amendment was passed empowering the legislature to sit as a constitutional convention whose task would be to rewrite the Constitution.<sup>18</sup>

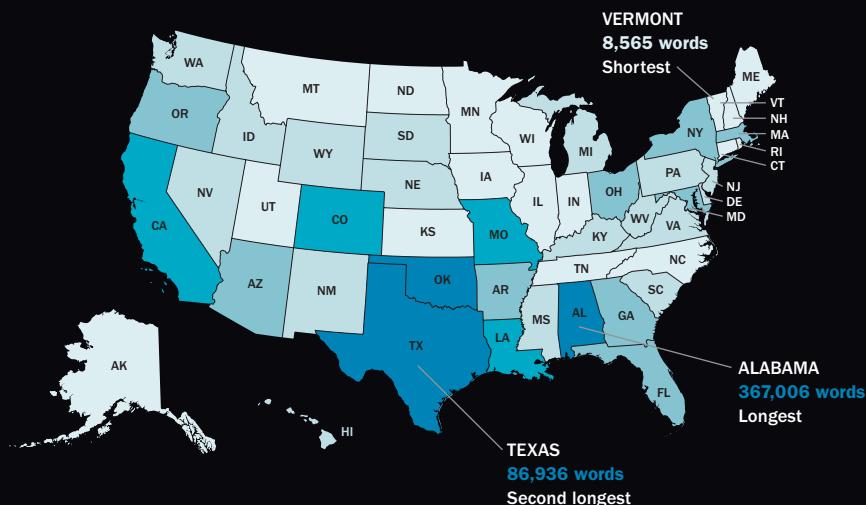
The constitutional convention met on January 8, 1974, in Austin. The idea was for the convention to draft a new constitution that would then be presented to state voters for ratification. Originally scheduled to last 90 days, the convention was extended to 150 days. Even so, it did not have enough time. Bitter politics, coupled with the intense demands of highly mobilized special interests, made it impossible to reach the necessary agreement. In the end, proponents of a new constitution failed to achieve a two-thirds majority by three votes (118 to 62, with 1 abstention).

The movement to rewrite the constitution did not die at the convention. During the next session of the legislature, eight constitutional amendments were passed that effectively would have rewritten the constitution through the normal

# Which State Has the Longest Constitution?

## State Constitution Length (estimated)

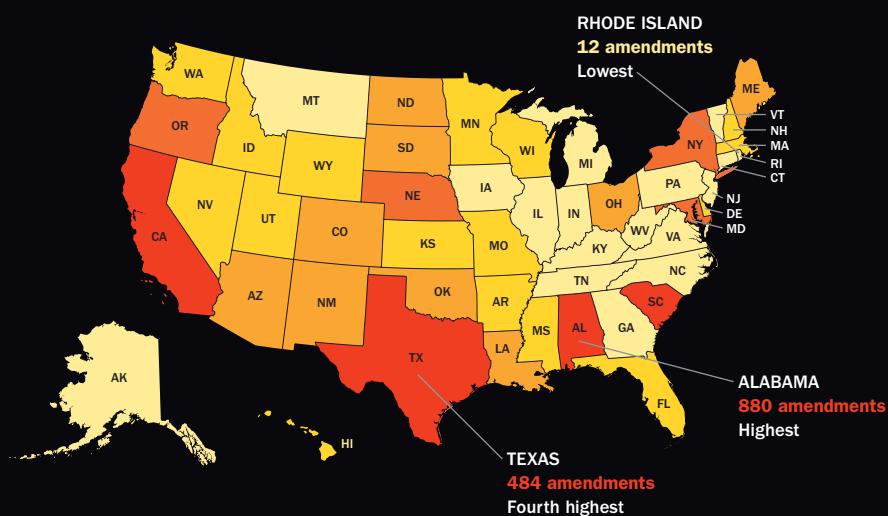
- < 19,999 words
- 20,000–39,999 words
- 40,000–59,999 words
- 60,000–79,999 words
- > 79,999 words



The Texas Constitution is the second-longest state constitution in the United States. The framers of the Texas Constitution gave the state government very specific powers so that the government could not use ambiguity to expand its powers. As a result, the Texas Constitution requires frequent amendments to address situations not covered specifically in the original constitution. The Texas Constitution has been amended 484 times as of 2014, fourth most of any state.

## Amendments Added to Constitution

- < 75 amendments
- 75–149 amendments
- 150–224 amendments
- 225–300 amendments
- > 300 amendments



## for critical analysis

1. How would such a long and detailed state constitution achieve the framers' goal of limiting the scope and power of government in Texas?
2. The U.S. Constitution is a much shorter document than the Texas Constitution and has only 27 amendments. Why would a shorter constitution lead to fewer amendments?

## for critical analysis

What was the rationale for attempting to rewrite the constitution in 1974 and 1999? What changes were proposed? Why did these attempts fail?

amendment process. Each proposal, however, was turned down by the electorate in a special election on November 4, 1975. The Constitution of 1876 remained alive, if not well.

### The 1999 Ratliff-Junell Proposal

For the first time since the unsuccessful effort to revise the constitution in the mid-1970s, state senator Bill Ratliff and state representative Rob Junell, both powerhouses in the state legislature, proposed a new constitution for Texas in 1999. Ratliff argued, “It’s time for Texas to have a constitution that’s appropriate for the twenty-first century.” They were concerned that the 1876 Constitution was too restrictive and cumbersome for modern government. It is lengthy, cluttered, and disorganized. The document had become so chaotic that in both 1999 and 2001, amendments were approved “to eliminate duplicative, executed, obsolete, archaic, and ineffective provisions” in the constitution.

Among the major Ratliff-Junell proposals was that the governor would be given the authority to appoint several state officeholders who are now elected. Additionally, the executive branch would be reorganized so that the governor would have an appointed cabinet of department heads, subject to senate confirmation, much as the U.S. president does. With that proposal, only the lieutenant governor, the attorney general, and the state comptroller would be elected.

The governor would also be given the power to appoint all appellate and district judges. Afterward, the judges would be subject to voter approval in retention elections—where they have no opponent on the ballot but where voters are asked if they wish to retain the appointed judge in office for a specified time period. Ratliff argued that the changes would make the governor more accountable for how state government works.

The legislature would remain part-time and would continue to meet in regular session every other year. It would also convene in a special 15-day “veto session,” in order to consider overriding any gubernatorial vetoes from previous sessions. State senators now serve four-year terms and state representatives two-year terms. Under the proposed constitution, these terms would be increased to six years for state senators and four years for state representatives. For the first time, there would also be term limits so that representatives’ service would be limited to eight regular sessions in the House or 16 years in office, and senators’ service could not exceed nine regular sessions in the Senate or 18 years in office.

Although county government would remain as it is today, local voters would be given the authority to abolish their own county’s obsolete offices without statewide approval through constitutional amendments.

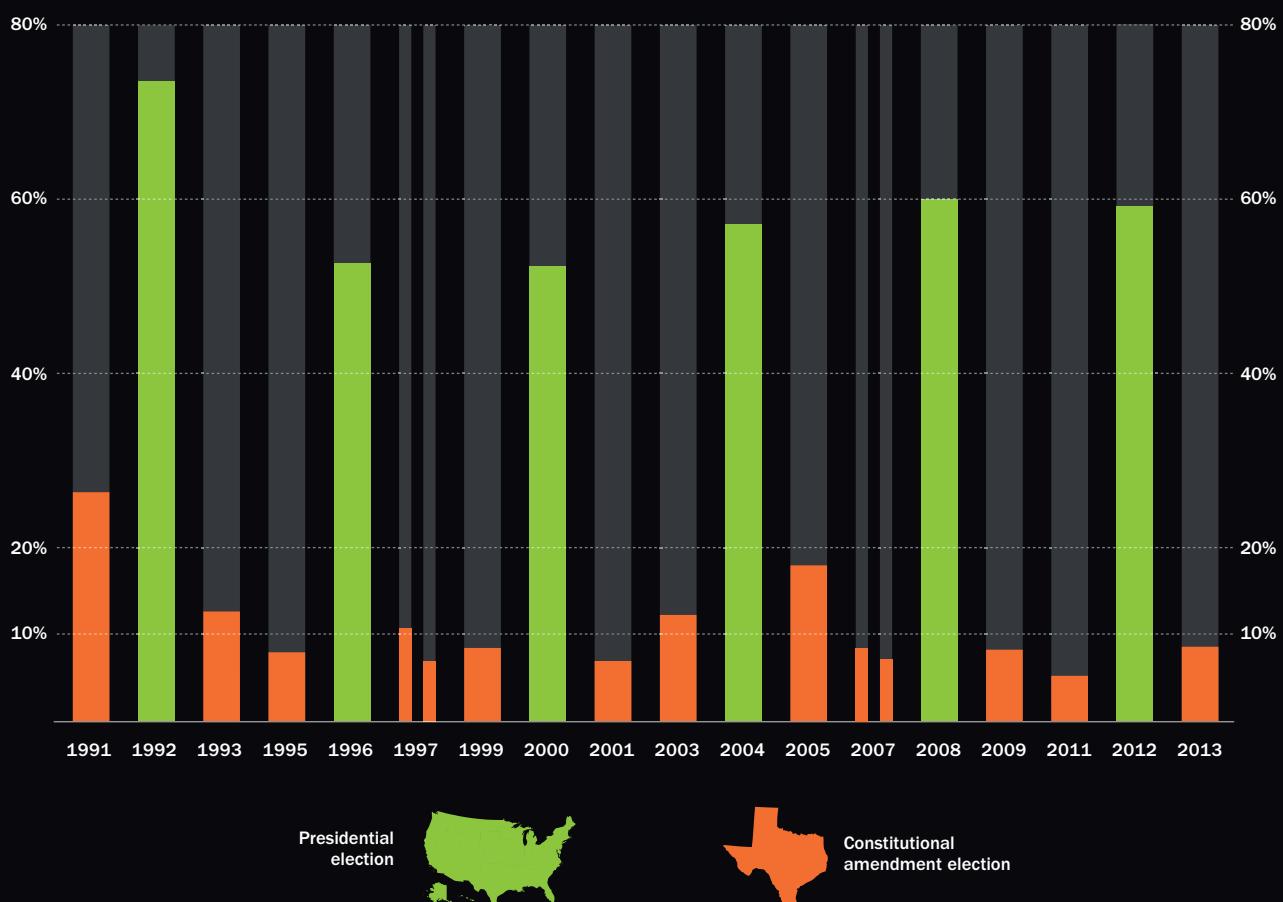
Even as it was proposed, its sponsors realized that the revamped constitution would be tough to pass. And they were right—it did not pass, but suffered the fate of earlier efforts to change the 1876 Constitution.

### Recent Amendments

In the 2013 constitutional amendment elections, voters were asked to consider nine proposed amendments. All nine of the amendments passed, although only approximately 8 percent of registered voters bothered to vote, up from 5.2 percent in the 2011 constitutional amendment elections. Despite the increase, one thing that is clear about elections that deal with constitutional amendments is that voting participation is invariably low. “Who Are Texans?” compares the percentage turnout of registered voters in November special elections on constitutional

# Who Votes in Texas Elections Amending the Constitution?

Voter Turnout in Texas Constitutional Amendment Elections Compared with Turnout for Presidential Elections\*



Since 1983, Texans have voted to amend the state's constitution dozens of times. Turnout in these elections is always low, even when well-publicized amendments are on the ballot. For example, in 2005, 17 percent of registered voters voted on Proposition 2, which banned same-sex marriage in the state.

\* 1997—elections in August and November; 2007—elections in May and November.

SOURCE: Texas Secretary of State, [www.sos.state.us/](http://www.sos.state.us/) (accessed 5/14/14).

## for critical analysis

1. Why is turnout relatively low for elections dealing with constitutional amendments?
2. How might results change for Constitutional amendment elections if they were held during presidential election years?

amendments with the percentage turnout in presidential elections (which tend to produce the highest turnout). There are two likely reasons for the low voter turnout in constitutional amendment elections: (1) Constitutional amendment elections are usually held in “off” years when there are no elections with candidates on the ballot. Because of this, the political parties take a less active role in getting out the vote, and there are no candidates to generate voter turnout. As a result, advertising campaigns to get out the vote are frequently limited only to the activities of interest groups that support or oppose the issues on the ballot. (2) Many of the amendments are relatively insignificant to most voters.

Most of the 2013 proposed constitutional amendments listed in Table 2.4 were uncontroversial. Such was not the case in 2011 when 3 of the 10 amendments presented to the voters were turned down. The controversial ones were those that the Tea Party and other antitax groups saw as increasing the financial burden on Texans. For example, Proposition 4 was defeated because it would have expanded the ability of counties to issue bonds to finance the development of unproductive areas where those bonds were to be repaid with property tax revenues. Critics of the proposal argued that it would clear the way for new toll roads. Proposition 7 was defeated because it would have given El Paso new borrowing authority. Proposition 8 passed the legislature with bipartisan support. It would have given property owners the opportunity to opt out of agricultural or wildlife conservation property tax exemptions in favor of water conservation property tax exemptions. The Tea Party successfully opposed the proposition on the grounds that it would shift the tax burden to others.<sup>19</sup> While the Tea Party and other antitax groups could not defeat all of the propositions they opposed, low voter turnout enabled them to



*Amendments to the state constitution affect many areas of Texans' lives. The amendments passed in 2011 included one intended to help address drought in Texas by making additional funds available to local governments for water projects.*

**TABLE 2.4****Passed Constitutional Amendments, 2013–14**

<b>2013</b>	
Proposition 1 (HJR 62)	The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed in action. (Passed 73.3%)
Proposition 2 (HJR 79)	The constitutional amendment eliminating an obsolete requirement for a State Medical Education Board and a State Medical Education Fund, neither of which is operational. (Passed 74.4%)
Proposition 3 (HJR 133)	The constitutional amendment to authorize a political subdivision of this state to extend the number of days that aircraft parts that are exempt from ad valorem taxation because of their location in this state for a temporary period may be located in this state for purposes of qualifying for the tax exemption. (Passed 84.6%)
Proposition 4 (HJR 24)	The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization. (Passed 57.7%)
Proposition 5 (SJR 18)	The constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend lender disclosures and other requirements in connection with a reverse mortgage loan. (Passed 84.7%)
Proposition 6 (SJR 1)	The constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan to ensure the availability of adequate water resources. (Passed 87.0%)
Proposition 7 (HJR 87)	The constitutional amendment authorizing a home-rule municipality to provide in its charter the procedure to fill a vacancy on its governing body for which the unexpired term is 12 months or less. (Passed 72.4%)
Proposition 8 (SJR 54)	The constitutional amendment repealing Article 9, Section 7, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County. (Passed 62.6%)
Proposition 9 (SJR 42)	The constitutional amendment relating to expanding the types of sanctions that may be assessed against a judge or justice following a formal proceeding instituted by the State Commission on Judicial Conduct. (Passed 85.1%)
<b>2014</b>	
Proposition 1 (SJR 1)	The constitutional amendment providing for the use and dedication of certain money transferred to the state highway fund to assist in the completion of transportation, construction, maintenance, and rehabilitation projects, not to include toll roads. (Passed 79.8%)

# Proposition 2 and Same-Sex Marriage

**In November 2005, Texans went** to the polls to vote on Proposition 2 to amend the Texas Constitution, a measure aimed at prohibiting same sex marriages in the state. Supporters of Proposition 2 wanted the ban on such marriages enshrined in the state constitution in order to prevent any future legislation. The measure passed with nearly 76 percent of Texans voting in support of the proposition.

In 2009 a same-sex couple living in Texas who were married in 2006 in Massachusetts, where such marriages are legal, filed for divorce. Because their marriage had not been recognized in Texas, their filing for divorce was problematic. The couple sued the state, claiming that Proposition 2 violated the full faith and credit clause of the U.S. Constitution, which stipulates that licenses issued by one state must be recognized in other states. They also claimed that it violated the equal protection clause, which gives all citizens the right to equal protection under the law. A federal district court judge in Dallas agreed with the plaintiffs. In 2010 the Fifth Circuit Court of Appeals overruled the district court after an appeal from the state of Texas, claiming that Texas had the right to pass Proposition 2 and that the equal protection clause was not violated.

The U.S. Supreme Court's ruling in 2013 striking down the Defense of Marriage Act has important implications for gay marriage in Texas, however. The federal government now recognizes gay marriages, so federal benefits are now accorded to same-sex couples regardless of where they reside. In the aftermath of the U.S. Supreme Court's DOMA decision, in 2014 a federal district court in San Antonio struck down Texas's ban on same-sex marriage. That decision is currently being appealed.

The issue of same-sex marriage illustrates the trade-offs between minority



rights and majority rule in a democracy. The majority of Texans had approved Proposition 2, denying marriage rights to same-sex couples but minorities retain certain rights under the U.S. Constitution. The equal protection clause was written in order to ensure that no class of citizens would be treated differently or in a second-class manner. The U.S. Supreme Court has developed suspect classifications such as race and ethnicity so that when laws single out a group of people, they must have a compelling justification. Compelling justification means that there must be an overwhelming reason for adopting

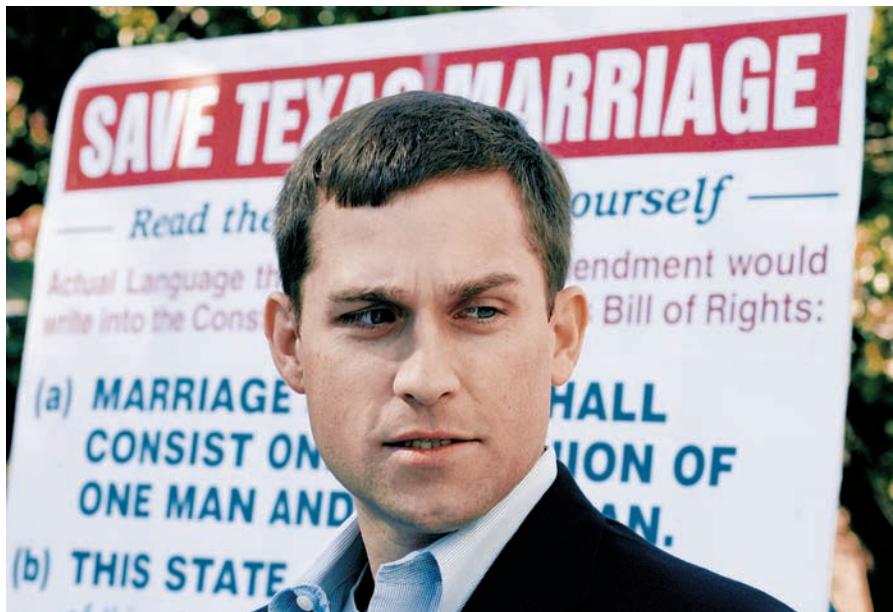
this classification. On the other hand, classifications based on sex must have a substantial justification to be upheld. This classification demands an exceedingly persuasive justification to be used. Other classifications generally must have a rational basis. A rational justification must have a reasonable justification for using it. (We discuss these standards of review in Chapter 3.) Which standard of equal protection review should be applied to Proposition 2? Would Proposition 2 be constitutional under any of these standards of equal protection review?

Proponents of Proposition 2 use the rational basis test, arguing that it does have a rational basis—the defense of the one-flesh union between one man and one woman, that cannot exist between two men or two women. They also believe that society is better when marriages unite one man and one woman to create families with children. Families, they argue, are the cornerstone of civilization and must be protected against the spread of alternative lifestyles.

Opponents argue that gay men and lesbians wishing to enter into marriage arrangements should be allowed to do so. They argue that they should be entitled to the same tax benefits, visitation rights, and societal respect for their mutual commitment. Society, they say, should encourage monogamy and the establishment of lifelong commitments. They claim that such laws as Proposition 2 are not rational and only reflect antigay sentiment.

## critical thinking questions

1. Is Proposition 2 a violation of the equal protection clause of the U.S. Constitution?
2. How do we balance the rights of minority groups, such as gays and lesbians, with the will of the majority?



In 2005 social conservatives urged Texans to vote in favor of Proposition 2, which defined marriage in Texas as the union of one man and one woman. This appeal to traditional values contributed to relatively high turnout, and Proposition 2 passed by more than a 3-to-1 margin.

exert a significant influence. Indeed, their defeat of three proposals broke the modern pattern in which amendments are routinely approved. For example, between 2001 and 2010, 77 of 79 proposed amendments were approved.

Most of the 2005 proposed constitutional amendments were, like the previously discussed propositions, of significance only to a narrow group of people. For example, one of the nine proposed amendments provided for clearing land titles in Upshur and Smith counties. Another authorized the legislature to provide for a six-year term for a board member of a regional mobility authority. Yet the turnout in this election was much higher than is typically seen in constitutional amendment elections. The reason was Proposition 2, which defined marriage in Texas as the union of one man and one woman. The proposition also prohibited the state or any political subdivision of the state from creating or recognizing any legal status identical to or similar to marriage. The proposition generated a strongly favorable vote—1,723,782 in favor versus 536,913 against. Unlike Proposition 12 in 2003, this was not an economic battle involving interests concerned with tort law; rather, this was an issue pitting social conservatives against those more sympathetic to gay rights. The strength of the social conservative vote in the state was, of course, remarkable, since the amendment carried by more than a 3-to-1 margin. Many churches and religious organizations strongly supported the proposed amendment. Their activities probably generated the relatively high voter turnout. The proposition was unusual in that people felt it was important to their lives because it affected their value systems. Although it is doubtful the amendment was necessary to support the traditional concept of marriage and although the ambiguity of the provision rejecting any legal status similar to marriage is disturbing, a significant part of the voting population apparently believed that it was important to vote their moral values, even if the proposal was largely symbolic.

Although most constitutional amendments are not of great importance, there are some notable exceptions. Table 2.5 identifies some of those amendments that,

**TABLE 2.5**

## Some Important Constitutional Amendments

In 1894, Texans strongly supported an amendment providing for the election of railroad commissioners. In later years, when Texas became a major oil producer, the railroad commission gained the authority to regulate oil production and became the most powerful elected regulatory agency in the country.
In 1902, Texans by a huge majority backed an amendment “requiring all persons subject to a poll tax to have paid a poll tax and to hold a receipt for same before they offer to vote at any election in this state, and fixing the time of payment of said tax.” The poll tax required a payment of money prior to voting. The effect was to reduce the size of the electorate, limiting the opportunity of those with lower incomes to vote.
In 1919, the same year the national prohibition amendment was ratified, Texas ratified a state prohibition amendment.
In 1935, Texans repealed statewide prohibition. In its place was a local option whereby local communities chose whether alcohol would be sold in those communities. This was two years after repeal of national prohibition.
In 1954, Texans passed an amendment requiring women to serve on juries. Previous to that, women were exempt on the grounds that they were needed at home as the center of home life.
In 1966, Texans repealed the poll tax as a voting requirement in the face of pressures from the U.S. Supreme Court and from a national constitutional amendment that eliminated the poll tax in national elections.
In 1972, Texans overwhelmingly passed a constitutional amendment “to provide that equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” This amendment was primarily seen as an equal rights amendment banning sex discrimination, since federal civil rights statutes largely dealt with discrimination on other grounds. It was the state version of a proposed sexual equal rights amendment that was never ratified and made part of the U.S. Constitution.
In 2003 a constitutional amendment promoting the tort reform agenda passed that placed limitations on lawsuits. In “civil lawsuits against doctors and health care providers, and other actions,” the legislature was authorized “to determine limitations on non-economic damages.”
In 2005 a constitutional amendment was passed “providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage.” The amendment was passed in response to the movement toward the recognition of civil unions and same-sex marriage in some states.
In 2009, Texans supported an amendment establishing “the national research university fund to enable emerging research universities in this state to achieve national prominence as major research universities.” The amendment was a recognition that the Texas economy would benefit by the development of nationally recognized research universities in the state.
In 2009, in reaction to a U.S. Supreme Court decision involving eminent domain—the taking of private property for public use—that was seen as unsympathetic to property rights, Texans passed an amendment “to prohibit the taking, damaging, or destroying of private property for public use unless the action is for the ownership, use, and enjoyment of the property by the State, a political subdivision of the State, the public at large, or entities granted the power of eminent domain under law or for the elimination of urban blight on a particular parcel of property, but not for certain economic development or enhancements of tax revenue purpose.”

like Proposition 12 in 2003 or Proposition 2 in 2005, have had great significance in the public policy of the state.

## Thinking Critically about the Texas Constitution

In this chapter, we explored the Texas Founding and the story of constitutional government in Texas. We analyzed the seven constitutions under which Texas has been governed and explained the similarities and differences between the U.S. Constitution and Texas's current constitution (the Constitution of 1876). We also discussed attempts over the past 30 years to replace this constitution with a new one. If there is one lesson to be learned from our study, it is that the Texas Constitution matters in our everyday lives as much as, if not more than, the U.S. Constitution. The ideas of liberty and equality are enshrined in the Texas Constitution as they are in the U.S. Constitution. In some ways, the Texas Constitution does a better job of protecting liberty and providing for equality than does the U.S. Constitution. Where the Texas Constitution most fundamentally differs from the U.S. Constitution is in its view of democracy. Although championing democratic forms of government, the writers of the Texas Constitution were even more suspicious of centralized institutions of power than were the Founders of the United States. The Texas Constitution places serious constraints on the Texas Legislature's ability to act as an independent body. It creates a weak plural executive, in which executive power is limited and decentralized. Finally, the Texas Constitution subjects the courts to periodic elections. In Texas, the institutions of democracy were never meant to be too far removed from the guiding hand of the people.

A number of additional themes were emphasized in this chapter. First, Texas's current constitution is far more complex than its predecessors or the U.S. Constitution. Matters that are considered public policy in most other states often must be addressed as constitutional issues in Texas. Second, the Texas Constitution is based on a general distrust of politicians and political power. It was originally written to prevent the expansion of political power that had taken place during Reconstruction and to make sure that political power could not be centralized in a way that might hurt the liberties and civil rights of the people. By limiting and decentralizing power, the Texas Constitution makes it hard to implement and successfully administer public policies. Third, the Texas Constitution has been a difficult document to replace. Although amended 483 times, it has not been replaced by a new constitution to date and will probably not be replaced in the future. One reason for this is that mobilizing support for a wholesale reworking of the constitution has proven to be difficult. Another is that the general distrust of government and political power that gave birth to the Constitution of 1876 continues to hold sway among the citizenry.

Many people see some desirable features in the Texas Constitution. Like many state constitutions, the Texas Constitution has a Bill of Rights. Nor are all the rights in the Texas Bill of Rights merely a duplication of those in the U.S. Constitution. To some extent, the Texas Bill of Rights provides more constitutional protections than does the U.S. Constitution. State constitutions may do this under the doctrine of independent state grounds. That is, although a state constitution may provide more rights than the U.S. Constitution, it may not take away rights granted by the U.S. Constitution. One may think of the U.S. Constitution as a baseline to which states

### **for critical analysis**

**How does the supremacy clause of the U.S. Constitution affect Texas government?**

can add but not subtract protections. One of the most interesting Texas rights is an amendment adopted in 1972. It states, “Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.” It is important to note that the amendment provides explicit protection from sex discrimination, something that is not mentioned in the U.S. Constitution. It is, in fact, a state version of the federal Equal Rights Amendment, which was almost ratified in the 1970s but which never quite received sufficient support from the states to become a part of the U.S. Constitution.

Still, in spite of its positive aspects, the Texas Constitution is a lengthy, confusing, and highly restrictive document. Yet efforts to drastically change the document seem doomed to failure. There is little public outcry over the large numbers of amendments on which voters regularly must cast ballots. Additionally, the Texas Constitution provides protections for the interests of key groups in Texas society, groups that are reluctant to give up those protections in exchange for a more flexible document.

## The Role of a State Constitution

### Identify the main functions of state constitutions (pp. 41–42)

The state constitution is the governing document of the state much in the same way the U.S. Constitution sets up the framework for the nation as a whole. Many of the ideas found in the U.S. Constitution are also found in Texas's constitutions, including republican government, separation of powers, checks and balances, and individual rights.

### Key Terms

- constitution (p. 41)
- separation of powers (p. 41)
- checks and balances (p. 41)
- tyranny (p. 41)
- federalism (p. 42)
- supremacy clause (p. 42)
- necessary and proper clause (p. 42)

### Practice Quiz

1. Which idea is contained in both the U.S. and Texas constitutions?
  - a) separation of powers
  - b) Keynesianism
  - c) laissez-faire economics

- d) *Rebus sic stantibus*
- e) none of the above

2. Which of the following is *not* an important function of a state constitution?
  - a) prevents the concentration of political power
  - b) delegates power to individuals and institutions
  - c) allows government to intrude in the lives of businesses and individuals
  - d) legitimizes political institutions
  - e) limits application of the U.S. Constitution
3. Which part of the U.S. Constitution reserves power to the states?
  - a) Article I
  - b) Article VI
  - c) First Amendment
  - d) Tenth Amendment
  - e) Nineteenth Amendment
4. Under the U.S. Constitution, the government of Texas is most limited by
  - a) Article IV of the U.S. Constitution.
  - b) the implied-powers clause and the Tenth Amendment of the U.S. Constitution.
  - c) the Fourteenth Amendment of the U.S. Constitution.
  - d) All matter equally.
  - e) None matter.

## The First Texas Constitutions

### Describe the six Texas constitutions that preceded the current constitution (pp. 43–53)

Texas has had seven constitutions reflecting the concerns of the historical periods in which they were written. The Civil War and Reconstruction played a major role in shaping Texans' attitudes toward the dangers of strong state government.

### Key Terms

- unicameral (p. 45)
- bicameral (p. 47)
- Confederacy (p. 52)
- Radical Republicans (p. 53)

### Practice Quiz

5. The Constitution of 1861
  - a) generally accepted the existing constitutional framework.
  - b) guided Texas's entry into the Confederate States of America.
  - c) supported slavery.
  - d) defended states' rights.
  - e) all of the above
6. A unique feature of the Constitution of 1869 was that
  - a) it explicitly rejected the power of the federal government in Texas.
  - b) fewer than 1 percent of voters opposed it.
  - c) it was less than four pages long.
  - d) it was never submitted to the voters.
  - e) it is considered the best of Texas's constitutions.

# The Constitution of 1876

## Explain the circumstances that led to the Texas Constitution that is still in use today (pp. 54–55)

The Constitution of 1876 sought to limit the powers that had been wielded under the previous constitution by Republican governor Edmund Davis. It remains, though much amended, the existing state constitution of Texas.

### Key Term

Grange (p. 54)

### Practice Quiz

7. A new Texas Constitution was written
  - a) when Reconstruction ended.
  - b) when the Compromise of 1850 was adopted.
  - c) at the start of World War I.
  - d) in 1999.
  - e) none of the above
8. The present Texas Constitution
  - a) is well organized and well written.
  - b) is considered to be one of the best of the 50 state constitutions.

- c) delegates a great deal of power to the governor.
- d) severely limits the power of the governor and other state officials.
- e) all of the above

9. The Constitution of 1876 was a reaction to the Reconstruction Constitution of 1869 because
  - a) the 1869 Constitution was too short.
  - b) the 1869 Constitution forbade slavery.
  - c) the 1869 Constitution increased state officials' salaries.
  - d) the 1869 Constitution was seen as giving the governor too much power.
  - e) none of the above
10. When the framers of the Constitution of 1876 wrote of "the people," they meant
  - a) all adult citizens of Texas.
  - b) all adult male citizens of Texas.
  - c) all adult white male citizens of Texas.
  - d) all citizens except carpetbaggers and scalawags.
  - e) none of the above

# The Constitution of Texas Today

## Analyze the major provisions of the Texas Constitution today (pp. 55–62)

Today's Texas Constitution is lengthy and includes over 400 amendments. It limits the power of state government and tries to prevent the concentration of power in the hands of one person.

### Key Terms

limited government (56)  
republican government (p. 57)  
plural executive (p. 59)  
impeachment (p. 61)

### Practice Quiz

11. Article 1 of the Texas Constitution
  - a) contains the Texas Bill of Rights.
  - b) renounces the use of the death penalty.

- c) rejects the U.S. Constitution's Bill of Rights.
  - d) recognizes the supremacy of the national government.
  - e) accepts the principle of rapprochement.
12. The Texas Bill of Rights
    - a) guarantees some rights not found in the U.S. Bill of Rights.
    - b) duplicates the U.S. Bill of Rights.
    - c) is unusual, since state constitutions generally do not have Bills of Rights.
    - d) guarantees gay marriage.
    - e) outlaws abortion.
  13. The Texas Constitution requires that Texas judges
    - a) be appointed by the governor.
    - b) be a member of the Republican Party.
    - c) be senior lawyers.
    - d) be elected by the people.
    - e) cannot receive campaign contributions.

# Recent Attempts to Rewrite the Texas Constitution

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## Describe modern efforts to change the Texas Constitution (pp. 63–73)

Recent attempts to rewrite the Texas constitution have been unsuccessful. Amendments continue to be the easiest way to modify the document.

### Practice Quiz

14. A new constitution for Texas
- a) is unlikely to be ratified before 2015.
  - b) is scheduled for a vote in 2014.
  - c) has a 50–50 chance of being ratified.

- d) has a very small chance of being written and ratified.
- e) none of the above

15. Voter turnout for constitutional amendment elections could be improved if
- a) they were held at the same time as presidential elections.
  - b) there were more voter awareness of the proposed amendments.
  - c) the amendments involved significant issues for voters.
  - d) all of the above
  - e) none of the above

## Recommended Websites

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Handbook of the State of Texas  
[www.tshaonline.org/handbook/online/](http://www.tshaonline.org/handbook/online/)

Texas Constitution  
[www.constitution.legis.state.tx.us/](http://www.constitution.legis.state.tx.us/)

Texas Constitutions 1824–76  
<http://tarlton.law.utexas.edu/constitutions/>

The assurance of voting rights has been a key debate for decades. It exemplifies the tensions between federal and state government. Here U.S. Attorney General Eric Holder speaks in Houston about his opposition to recent Texas voter identification laws and his support of the Voting Rights Act of 1965.



# Texas in the Federal System

**WHY FEDERALISM MATTERS** Ninety-year old Jim Wright decided that he would vote near his Fort Worth home in the November 2013 Constitutional Amendment election as he had voted in every election since 1944. He realized that the state of Texas required a valid photo identification or voter identification certificate in order to vote, so he took his driver's license and his faculty identification card from Texas Christian University where he had taught for many years and where he still had an office. However, Wright discovered he could not vote. His eyesight was poor, and so he had stopped driving a few years previously and had not renewed his driver's license when it expired in 2010. His TCU faculty identification card was not considered under Texas law to be valid photo identification. As a result, Wright was not allowed to vote. He then tried to get a voter identification card from the Department of Public Safety but was turned down there for lack of proper identification. Luckily for Wright, his secretary was able to dig through files and locate his birth certificate, and with that he was able to obtain a voter identification certificate in time to vote in the election.<sup>1</sup>

Interestingly, Wright was one of the best-known people in Fort Worth. He was its U.S. congressperson from 1955 to 1989 and was majority leader of the U.S. House of Representatives from 1977 to 1987. He was Speaker of the U.S. House of Representatives from 1987 to 1989. Earlier, he had fought in World War II in the Army Air Corps, where he earned the Distinguished Flying Cross. He had been elected to the Texas House of Representatives in 1946 and was the youngest mayor in Texas when he was elected mayor of Weatherford prior to being elected to Congress.<sup>2</sup>

Wright had been an opponent of the poll tax, which required voters to pay a tax in order to vote. He was an early advocate of the right to vote for 18-year-olds and was one of only 8 out of 22 Texas members of Congress who voted for the 1965 Voting Rights Act. The Voting Rights Act outlawed literacy and other similar devices that historically were used to disfranchise minorities. Section 5 of the act specifically prohibited covered jurisdictions from implementing changes affecting voting without first obtaining approval from the Department of Justice or from the U.S. District Court for the District of Columbia. A formula based on previous voting patterns was used to determine which jurisdictions had disenfranchised voters in the past and thus would have to have prior approval—known as preclearance—before changes in the voting laws would be allowed to go into effect. All this changed in 2013. In *Shelby County v. Holder*, the U.S. Supreme Court found the original coverage formula was outdated and was an intrusion on states' rights. Absent a new, updated coverage formula passed by Congress, states were now free

to pass laws affecting voting without Justice Department or U.S. District Court approval.

For Texas, *Shelby County v. Holder* meant that a recently passed voter identification law did not require federal approval. Republicans claimed the law was passed to reduce voter fraud. Democrats claimed that the law actually was designed not to reduce almost nonexistent voter fraud, but to disfranchise many minority voters who tend to vote Democratic. It is too early to assess the impact of the law at this point, although the voter identification law certainly raises important questions about state regulation of the franchise and it does raise an important issue of federalism. What is the role of the national government versus the states in the regulation of elections? To what extent should states regulate the franchise? What role should the national government have in protecting the franchise of people who, unlike Wright, have greater difficulty in providing proper identification to vote? This chapter will examine federalism in the United States. As with the voter identification law, we shall see that the issues relating to state versus national power are important, numerous, and complex.

## chaptergoals

- Understand federalism (pp. 80–86)
- Trace the major changes in national and state power over time (pp. 86–90)
- Describe the sources of national and state power as they relate to federalism today (pp. 90–100)

## ● Understanding Federalism

**federalism** a system of government in which power is divided between a central government and regional governments

### Understand federalism

**Federalism** is a system of government in which power is divided between a central government and regional governments. At its core is decentralization of government,

and in the United States, the balance in the powers of the states and national government has been the subject of intense political dispute since the American Revolution. States have always done much of the routine governance in the United States. State laws provide the regulations for birth, death, marriage, divorce, and most crime and punishment. Most commercial law is regulated by the states, and states manage education, prisons, highways, welfare, environmental issues, corporations, and professions. Many of the political conflicts in the nation have been fought over the proper roles of states versus the national government. These conflicts include disputes over the states' rights to leave the union, the power of government to regulate business, the implementation of political reforms, and responses to problems of race, poverty, and abortion.

Roughly 40 percent of the world's population lives in countries that are organized around a federal principle where there is a national government and regional governments, each of which has the authority to maintain order, make laws,



*In recent years, some Texans have called for a decentralized system of government. Some groups have looked back to the Republic of Texas as an ideal.*

spend money, and provide services. Federalist countries include the United States, Argentina, Australia, Austria, Belgium, Brazil, Canada, Ethiopia, Germany, India, Mexico, Nigeria, Spain, and Switzerland. The European Union may be developing into a federalist system as well. Federalism exists because it is a method for bringing together smaller units to achieve larger goals—primarily the fostering of commerce and improving military security. In India, Belgium, and Spain, for example, federalism has been used to hold together nations that have serious geographical, ethnic, or cultural divisions. In these countries, the regional governments represent ethnic or religious minorities and have unique powers of self-governance. This is different from the United States, where all states have equal legal standing and authority. In other federal systems, the national government consciously attempts to redistribute the country's wealth to the poorest regions, something not done in the United States. Additionally, federalism in the United States has proven enormously flexible in comparison with other federal nations. Federalism in America has adapted to vast changes in the geographic size of America, to large increases in its population, and to changes in the racial, religious, and ethnic background of its population. It has also adapted to vast economic changes in the nation.<sup>3</sup>

Immediately following the United States' independence from Britain, the Articles of Confederation gave states the primary role in governance, and the national government was small and had limited powers. The relative weakness of the national government meant that the states functioned as nearly independent entities rather than as one nation. In the mid-1780s, the diversity of the states and their self-serving policies appeared to be splitting the new nation apart. An economic decline in the 1780s worsened the divisions in the country. Daniel Shays led a rebellion of Massachusetts debtors who attacked towns and burned courthouses. The new nation seemed on the precipice of revolt. George Washington criticized the state governments for the new nation's problems, saying the states' pursuit of narrow self-interest was making "the situation of this great country weak, inefficient and disgraceful." However, it was hard for the national government under the Articles of Confederation to act. The Confederation Congress had limited powers

*Under the Articles of Confederation, the United States had a weak central government—states had more significant powers. This made it difficult for the United States to fund a strong military, as exemplified by terrible conditions for the troops at Valley Forge during the American revolution.*



and the rules allowed a few states—in some cases a single state—to block congressional action. It took 9 states (out of 13) to enact any defense or economic policy. The Congress could not tax; it had to request money from the state governments and it could not compel payment by the states. There was no executive or court system under the Confederation. The Confederation could not defend the nation because it could not pay for an army or a navy. By 1786 the Congress was broke because states were not paying their share of expenses for the national government. Even though a majority of the states supported the Congress's efforts to tax imports, individual states objected and killed these tax proposals. Moreover, the Articles of Confederation could not be easily amended since a unanimous vote of the states was required for amendment.<sup>4</sup> By 1786 it was becoming clear that something had to be done to increase the power of the national government. A meeting was held in Annapolis, Maryland, in 1786 that called for a convention of states to meet in Philadelphia the following year to "render the constitution of the Federal Government adequate to the exigencies of the Union." That led to the Constitutional Convention in 1787, where 55 delegates met and designed the new U.S. Constitution.<sup>5</sup>

**sovereign** possessing supreme political authority within a geographic area

Under the U.S. Constitution, a federal system was created in which the national government was **sovereign**, deriving its power directly from the American people. Individual states were also sovereign, deriving their power from the people in their state through their state constitutions.<sup>6</sup> The immediate effect of the Constitution was to increase national power and to delegate to the national government distinctive powers and responsibilities such as national defense and foreign policy. State governments also had separate powers and responsibilities, such as protecting public safety. Local governments were created by state governments, and their powers are granted (and can be revoked) by state governments. Rather than being a part of a federal system, local governments were the creations of states, and continue to be so today.

State interests were protected under the new Constitution in a variety of ways, and one of the most important was that each state would get equal representation in the Senate. At the time, state legislatures chose the U.S. senators from that state, and so the senators were agents of state interests in the national government. States also retained their power to tax and to maintain a militia, and they had commercial powers, for example, the power to regulate commerce within states. The national government also had taxing authority, military powers, and commercial authority such as the power to regulate commerce between states. And it had flexible powers that could be expanded in the future through Congress's constitutional power, "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States."<sup>7</sup>

In the debates over ratification of the Constitution, there was great concern that the national government had been made too powerful and that, if ratified, the Constitution would foster a centralized tyranny that would destroy the rights of the people and the states. In an effort to alleviate these concerns, the Bill of Rights was added to the Constitution in the form of the first ten amendments. The Tenth Amendment (see Table 3.1), commonly called the States' Rights Amendment, states, "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." Although James Madison personally did not believe that the Tenth Amendment was necessary, Madison urged that it be adopted. The problem with the amendment is that it does not delineate national and state powers, and rather than settle conflicts over federalism, the amendment has rather been a source of conflict over the meaning of federalism.<sup>8</sup>

## Federalism in Early America

Controversy over the exact nature of the federal system divided Americans in the late 1820s and '30s. During the Nullification Crisis in 1833, South Carolina tried to assert the right to veto (or nullify) national legislation passed by Congress. Spokesmen like John C. Calhoun argued that a strong national government was a threat to the sovereignty of states, and argued for a system along the lines of the original Articles of Confederation. President Andrew Jackson responded by threatening to use military force in support of federal law. South Carolina backed down.

Although the national government had imposed its will successfully during the Nullification Crisis, the question of the exact relationship between the central government and individual states was still open. In spite of the forces of decentralization, most notably coming from the South, the Supreme Court under Chief Justice John Marshall (1801–35)—a Federalist and an appointee of President John Adams—issued a number of important opinions that promoted national power at the expense of state power. In *McCulloch v. Maryland* (1819), for example, one issue was whether Congress had the power to incorporate the Second Bank of the United States. If Congress did have the power to incorporate the Bank, the second issue was whether Maryland could tax the Bank. Writing for a unanimous Court, Marshall noted that Article I, Section 8, of the Constitution enumerated the powers of Congress (see Table 3.2). Nowhere in Article I, Section 8, is specifically found the power to incorporate a bank. However, Article I, Section 8, also contains

**TABLE 3.1**

### The Tenth Amendment (commonly called the States' Rights Amendment)

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.

**TABLE 3.2****Article I, Section 8, Enumerated Powers of Congress**

Lay and collect taxes, duties, imposts and excises
Pay the debts
Provide for the common defense and general welfare of the United States
Borrow money
Regulate commerce with foreign nations, and among the several states, and with the Indian Tribes
Establish a uniform rule of naturalization
Establish uniform laws of bankruptcy
Coin money, regulate the value thereof, and of foreign coin
Fix the standard of weights and measures
Provide for the punishment of counterfeiting
Establish post offices and post roads
Provide for patents and copyrights
Constitute lower federal courts
Define and punish Piracy, felonies on the high seas, and offenses against the law of nations
Declare war
Grant Letters of Marque and Reprisal
Make rules concerning captures on land and water
Raise and support armies with an appropriation no more than two years
Provide and maintain a Navy
Make rules for land and naval forces
Provide for calling forth the militia to execute laws of the Union, suppress insurrections, and repel invasions
Provide for organizing, arming, disciplining, and training the militia and for governing them in the service of the United States with officers appointed by the states
Exclusive legislation over the District of Columbia
Make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

a provision that Congress has the power “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States.” A Bank of the United States could be a means to accomplish some of those enumerated powers, such as carrying out the power to borrow money. As a result, Congress did have the implied power to incorporate the bank, as the “necessary and proper” clause of Article I, Section 8, provided a source of implied powers for the national government. Marshall further noted in his opinion that unlike the Articles

of Confederation, there was no provision of the U.S. Constitution that excluded the recognition of implied powers. He even made the case that the Tenth Amendment recognized that Congress had implied powers because it said, "The powers not delegated to the United States" rather than "The powers not *expressly* delegated to the United States." Marshall also wrote that the states did not have the power to tax the Second Bank of the United States. For the states to have that taxing power, he argued, would transfer the supremacy of the national government to the states. It was a vastly important decision favoring national power at the expense of state powers.<sup>9</sup>

*Gibbons v. Ogden* (1824) was another major Marshall Court decision that expanded national power. The case dealt with a dispute over the operation of steamboats in New York waters. Robert Fulton and Robert Livingston obtained a monopoly from New York to operate steamboats in its waters, and they granted a license to Aaron Ogden to operate steamboats between New Jersey and New York. Thomas Gibbons obtained a license from the national government to operate steamboats between New Jersey and New York, and Ogden went to New York courts to get an injunction against Gibbons. Marshall wrote that one of the powers of Congress in Article I, Section 8, was the "power to regulate commerce with foreign nations, and among the several states."<sup>10</sup> Ogden argued that power was limited to the interchange of commodities and did not include navigation, but Marshall broadly defined commerce to include navigation and wrote that interstate commerce "cannot stop at the external boundary line of each state, but may be introduced into the interior." While the completely internal commerce of a state could be considered reserved to the states for regulation, if commerce was not completely internal to a state, it was interstate commerce and could be regulated by Congress, as the regulation of interstate commerce "does not stop at the jurisdictional lines of the several states."<sup>11</sup> This decision, providing a broad definition of interstate commerce, was to be the primary source of the most important regulatory power of Congress: the power to regulate interstate commerce.

Marshall was consistent in deciding cases to expand the power of the national government and weaken the power of states. However, Marshall was unwilling to make the Bill of Rights apply to the states as well as the national government. That would take the ratification of the Fourteenth Amendment in 1868. In Marshall's time, it was clear that the Bill of Rights was not a restriction on the powers of states; it was intended to limit the powers of the national government.

The Constitution was created out of a fear of disunity. Seventy-five years after the ratification of the Constitution, an observer of the American experiment with federalism would have concluded that it was a failure. America faced a massive rebellion and a war that was immensely bloody.<sup>12</sup> The Civil War was, in part, a struggle over the meaning of the federal system and the proper relationship between the national and the state governments. Southern states, including Texas, feared that a national government controlled by northern states would move to end slavery, an institution that they felt was essential to their social, political, and economic way of life. They saw the creation of the Confederacy as a movement back to the older confederation system embodied in the Articles of Confederation where the central government in Richmond was weak and the individual states were strong. This vision of a confederation effectively came to a close with General Lee's surrender at the Appomattox Court House.



*A major power of the national government is the power to regulate interstate commerce. *Gibbons v. Ogden* (1824) was a key case that expanded national power. It held that Congress had the power to regulate interstate commerce, like shipping between New York and New Jersey, pictured here.*



The United States and Texas flags that fly in front of many government buildings in Texas (including Dallas's city hall, pictured here) reflect the nature of federalism. Both the national government and the state government are sovereign. The third flag is the flag of the city of Dallas.

**Reconstruction** the period after the Civil War when much of the South was under military occupation

**dual federalism** the system of government that prevailed in the United States from 1789 to 1937, in which most fundamental governmental powers were strictly separated between the federal and state governments

In 1869 the Supreme Court in the case *Texas v. White* resolved the debate over whether states can secede from the Union. The case dealt with the legality of a bond sale sponsored by Texas that had occurred under the Confederate government of Texas. In rejecting the legality of the sale of bonds, Chief Justice Salmon Chase authored the opinion which said that the Constitution “in all its provisions, looks to an indestructible Union, composed of indestructible states.” Secession was void and Texas had remained a state during the Civil War. Texas had not had a lawful government during the Confederacy, and so the bond sale was void. Additionally, the Union had a right to provide Texas with a republican form of government. The national government could create a government in Texas after the war where no legitimate government existed because Article IV, Section 4, of the Constitution provided, “The United States shall guarantee to every State in this Union a Republican Form of Government.”<sup>13</sup>

## ● Dual Federalism

**Trace the major changes in national and state power over time**

Following the end of **Reconstruction** and into the early twentieth century, the Court further embraced **dual federalism**. The national government was relatively small in comparison to the states and states did most of the governing. The national government’s role

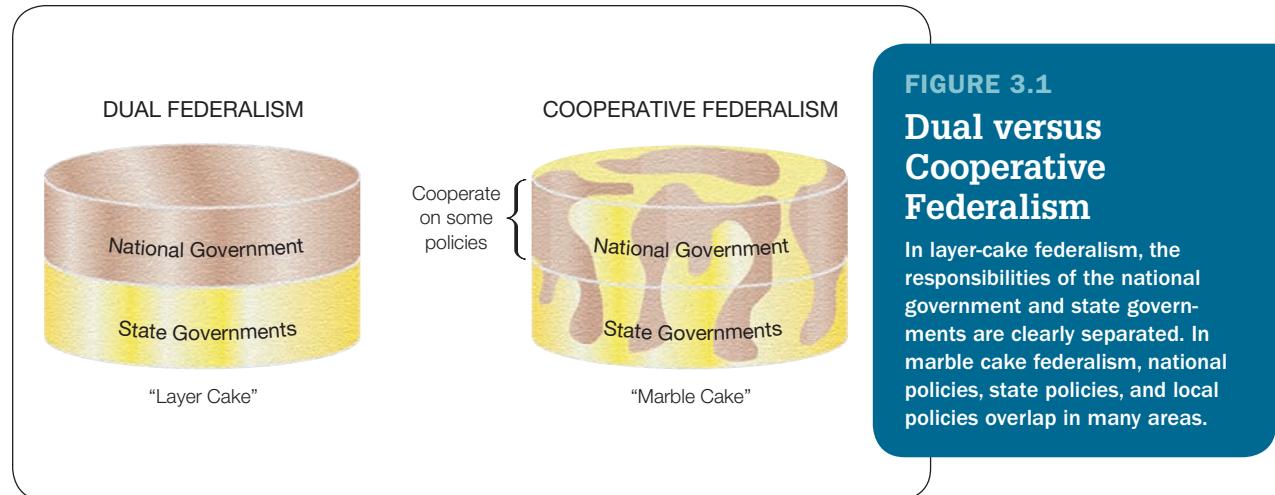
was more or less limited to providing for national defense and foreign policy and assisting in the development of commerce. Citizens’ daily lives were chiefly affected by their state governments, not the national government.

The classic statement of dual federalism is found in *The Collector v. Day* (1870), a U.S. Supreme Court case that challenged the authority of the federal government to tax the income of a state judge. The majority opinion stated,

The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former in its appropriate sphere is supreme, but the states within the limits of their powers not granted, or, in the language of the Tenth Amendment, “reserved,” are as independent of the general government as that government within its sphere is independent of the states.<sup>14</sup>

Using this dual federalism perspective, the Court ruled that state officers did not have to pay a federal income tax because such a tax would interfere with the autonomy of states.

Prior to the late 1930s the Supreme Court was using dual federalism to strike down regulation of the economy by the national government. Congress’s power to regulate interstate commerce was narrowly defined so that it could only ban the shipment of harmful goods in interstate commerce and could only regulate the distribution of goods in interstate commerce. This meant, for example, that Congress was powerless to forbid the distribution of the products of child labor in interstate commerce, and it could not regulate the aspects of the manufacture of goods such as monopolies on production of goods or working conditions in factories.



**FIGURE 3.1**  
**Dual versus  
Cooperative  
Federalism**

In layer-cake federalism, the responsibilities of the national government and state governments are clearly separated. In marble cake federalism, national policies, state policies, and local policies overlap in many areas.

This system of dual federalism was described by political scientist Morton Grodzins as **layer-cake federalism** (see Figure 3.1). Like the layers on a cake, the powers of the national government and state governments were largely separate and, one might add, the layer that was the national government's powers and responsibilities was smaller than was the layer that represented the powers and responsibilities of state governments.<sup>15</sup> Under layer-cake federalism, there were still clear limits to the sovereignty of states. States could not nullify national legislation, nor could they secede from the Union. But states had a major role to play in governance that was quite distinct from the role of the federal government.

## Marble-Cake Federalism

With the presidency of Franklin Roosevelt—when America faced the Great Depression and then World War II—the relationship between the national government and the states changed dramatically. Federalism changed to what has been called **marble-cake federalism**, where the boundaries between the national government and the states became blurred. The initial form of marble cake federalism was **cooperative federalism**, where national and state governments worked together to provide services—often with joint funding of programs or state administration of programs mostly funded by the national government. In fighting the Great Depression, Roosevelt pursued a variety of such programs. The Social Security Act of 1935, for instance, changed the existing federal system in a number of fundamental ways. First, it put into place a national insurance program for the elderly (now known as Social Security) where individuals in all states were assessed a payroll tax on their wages. Upon retirement, “participants” were to receive a pension check. Second, the act put into place a series of state-federal programs to address particular social problems, including unemployment insurance, aid to dependent children, aid to the blind and disabled, and aid to impoverished elderly people. The basic model for these programs was that the federal government would make money available to states that established their own programs in these areas, provided they met specific administrative guidelines. Although the federal dollars came with these strings attached, the programs were state run and could differ from state to state. This type of funding system was common in the early days of cooperative federalism. The grants using this model were called **categorical grants**.

**layer-cake federalism** a way of describing the system of dual federalism in which there is a division of responsibilities between the state and the national governments

**marble-cake federalism** a way of describing federalism where the boundaries between the national government and state government have become blurred

**cooperative federalism** a type of federalism existing since the New Deal era in which grants-in-aid have been used to encourage states and localities (without commanding them) to pursue nationally defined goals; also known as *intergovernmental cooperation*

**categorical grants**  
congressionally appropriated grants to states and localities on the condition that expenditures be limited to a problem or group specified by law



During the 1930s, Texans were affected by unemployment and drought that had led to massive poverty across the state. The federal government stepped in to help, employing people in public works projects. Here, people make copper utensils for a Texas Hospital.



*Wickard v. Filburn*, decided by the Supreme Court in 1942, is probably the most extreme example of how the New Deal led to a rejection of state power when it appeared to conflict with the power of the national government. Roscoe Filburn was a small farmer in Ohio who violated a national law, the Agricultural Adjustment Act of 1938, by growing an additional 239 bushels of wheat beyond the allowable limit. For this violation, he was subject to a fine of \$117.11. Filburn challenged the penalty by arguing that the federal law was unconstitutional because it was based on Congress's power to regulate interstate commerce. Filburn claimed that interstate commerce was not involved in his case because he was producing the wheat within his own state for his own use, not for interstate distribution. The Court, however, held that interstate commerce was involved: if Filburn had not grown the wheat himself, he would have had to purchase it, most likely through interstate commerce. And the cumulative effect of many farmers such as Filburn growing wheat beyond their allotment for their own use would have had a substantial influence on the price and market conditions for this commodity. The decision indicated that the power of Congress to regulate interstate commerce was remarkably broad, further eroding state autonomy in the federal system.<sup>16</sup>

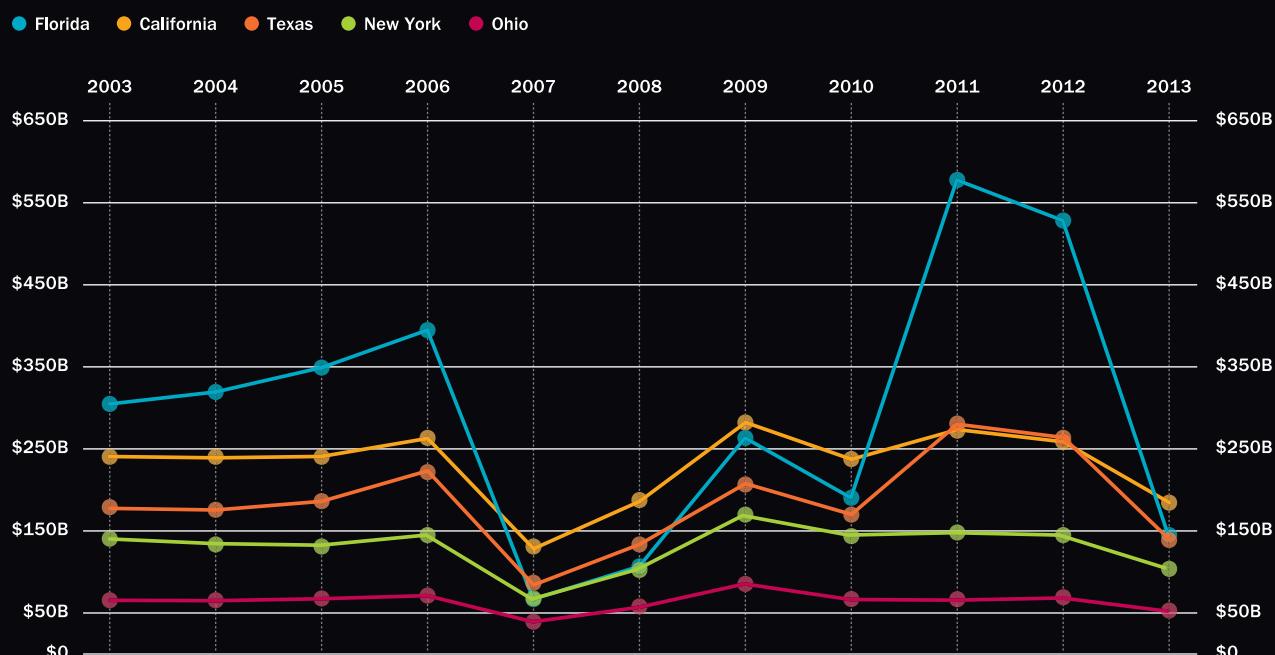
During the New Deal period, the idea was abandoned that the Tenth Amendment was a barrier to national power and that the national government could not involve itself in areas that were reserved only to the states. As *Wickard v. Filburn* (1942) suggested, the regulatory power of the national government under the interstate commerce clause was so broad that there seemed no boundaries on national power.

In the 1960s during President Lyndon B. Johnson's Great Society, new programs were added to the Social Security Act. Medicare was established to provide health insurance for the elderly, paid for through a payroll tax on current workers. Medicaid was added to provide health care funding for individuals enrolled in the state-federal Aid to Families with Dependent Children (AFDC) program. Medicaid's funding and administration were based on the same state-federal principles as AFDC and unemployment insurance: the federal government provided funding for approved state programs. Federalism continued to evolve with the passage of civil rights legislation in the 1950s and '60s, when the role of the national government was expanded to protect the rights of minorities. In the process, the national

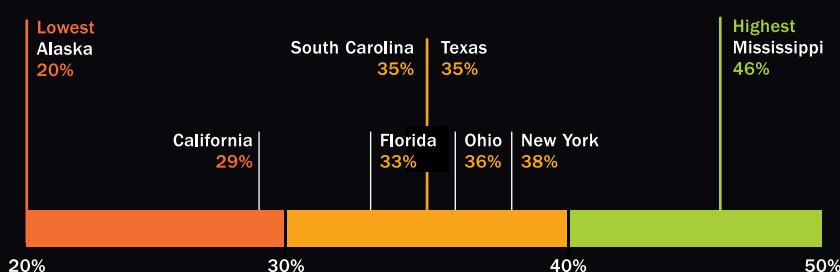
# Federal Funds to Texas versus Other States

Many factors affect how much federal funding a state receives. Federal money can go directly to individuals, such as Social Security or Medicare. Federal money can also go to the states which then decide how best to use the funds to benefit their constituents, such as for highway funding. In the graph below, we can compare how much federal money Texas and Texans receive compared to California, Florida, New York, and Ohio.

## Federal Funds Received by States, 2003–13



## Federal Aid as Percentage of State Revenue, 2012\*



\*Does not include programs like Social Security and Medicare that provide money directly to individuals in the states.

### for critical analysis

- What might explain why certain states receive more funding than others at different time periods?
- Why do you suppose Florida receives more federal funding than Texas when the population of Texas is much larger?

**New Federalism** the attempts by Presidents Nixon and Reagan to return power to the states through block grants

**block grants** federal grants that allow states considerable discretion on how funds are spent

**coercive federalism** federal policies that force states to change their policies to achieve national goals

**unfunded mandates** federal requirements that states or local governments pay the costs of federal policies

**preemption** where the national government imposes its priorities and prevents the state from acting in a particular field

government was often thrown into conflict with southern states such as Texas that persisted in trying to maintain a segregated society.

The broad interpretation of interstate commerce in cases such as *Wickard v. Filburn* (1942) became the foundation for much of the civil rights legislation passed during the Johnson administration.

President Richard M. Nixon briefly tried a somewhat different version of federalism that he called **New Federalism**. In an attempt to reduce federal control, Nixon introduced a funding mechanism called **block grants**, which allowed the states considerable leeway in spending their federal dollars. In the 1980s, President Ronald Reagan adopted Nixon's New Federalism as his own, and block grants became an important part of state-federal cooperation.

New Federalism's biggest success, however, was during President Bill Clinton's administration when, in 1996, major reforms were passed in welfare programs that gave the states a significant decision-making role. By the 1990s, liberals and conservatives were in agreement that welfare in America was broken. Replacing the state-federal system with a system of grants tied to federal regulations and guidelines lay at the heart of the Clinton welfare reforms, the most important since the New Deal.

## ● Coercive Federalism

**Describe the sources of national and state power as they relate to federalism today**

In recent years some national actions have been described as **coercive federalism**, where federal regulations are used to force states to change their policies to meet national goals. Until the 2012 Supreme Court decision involving the Affordable Care Act (commonly called Obamacare) struck down the

provision, states were threatened with the loss of all Medicaid funding if they did not expand their Medicaid coverage to comply with the legislation. Perhaps most disturbing for states are the federal “**unfunded mandates**,” which are the federal requirements that the state (or local) governments pay the costs of federal policies.<sup>17</sup> For example, the federal Americans with Disabilities Act requires that street curbs be accessible to wheelchairs, but the federal government does not pay for the curbs. That cost is passed on to state and local governments. Along with unfunded mandates, federal **preemption** is another aspect of coercive federalism. Preemption is where Congress passes laws and, through the Supremacy Clause of the Constitution in Article VI of the Constitution, which states, “This Constitution and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land,” Congress can pass laws that impose national priorities upon the states. The U.S. Conference of Mayors identified 10 federal mandates that cost cities about 11 percent of their budgets.<sup>18</sup> The National Association of Counties has identified 12 federal mandates that cost counties about 12 percent of their budgets.<sup>19</sup>

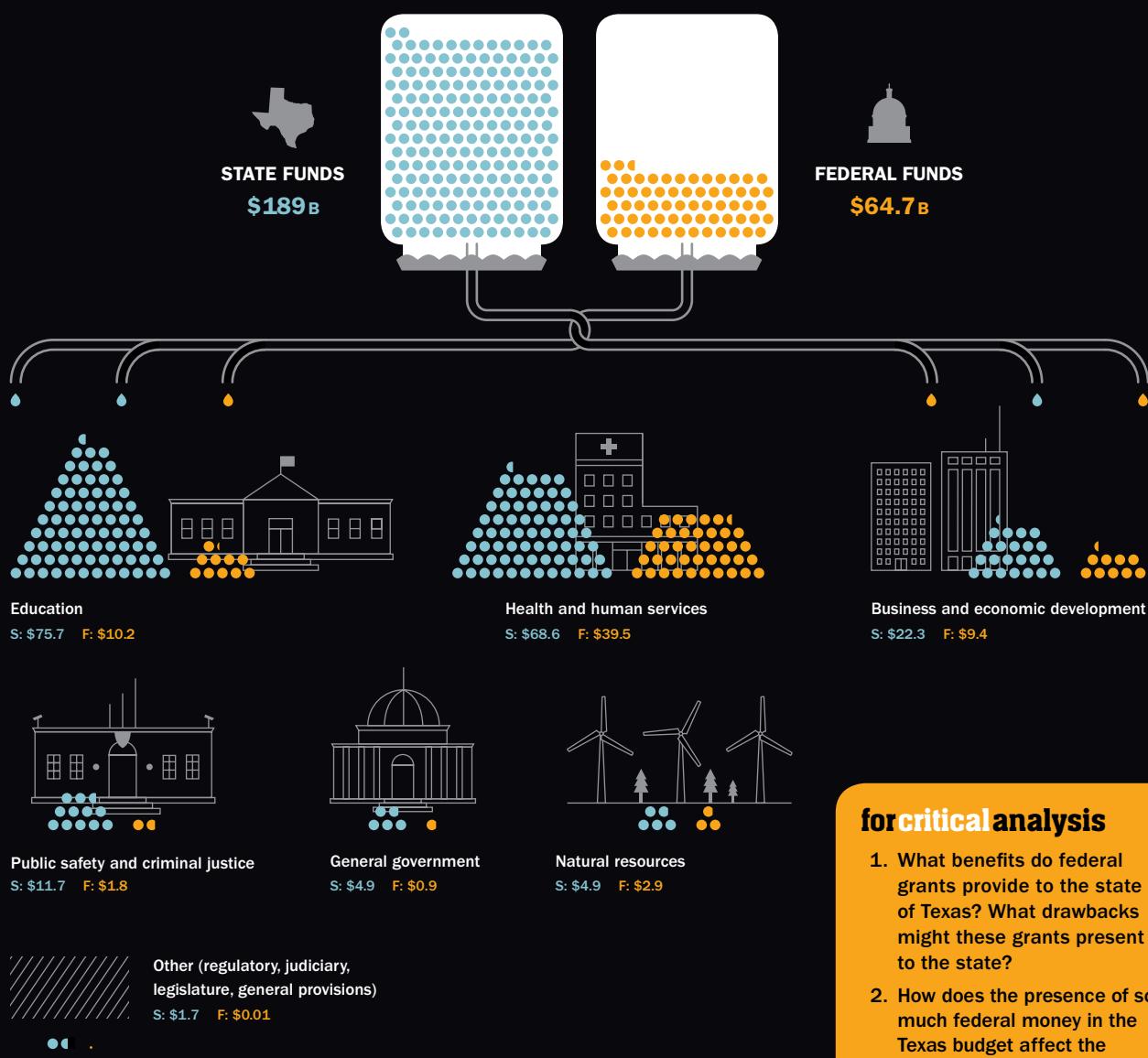
Preemption does not necessarily cost a state money as would unfunded mandates, though preemption will prevent the implementation of state laws. As an example, in *Arizona v. Inter Tribal Council of Arizona, Inc.* (2013), the Supreme Court rejected Arizona's requirement that voter registration officials reject any application for voter registration not accompanied by documentary evidence of citizenship. The Court held that the Arizona law was preempted by the National

# How Do Federal Funds Flow to Texas?

Federal grants provide states with money for programs that range from Medicaid and school lunches to tuberculosis control and immunization programs. As the chart below indicates, federal grants make up a majority of the money the state of Texas spends on health care and business and economic development, and a large share of the money spent on natural resources, education, and general government.

## 2012-13 Texas Budget

● = \$1 billion



### for critical analysis

1. What benefits do federal grants provide to the state of Texas? What drawbacks might these grants present to the state?
2. How does the presence of so much federal money in the Texas budget affect the relationship between the state and federal governments?

Voter Registration Act of 1993 that required states to accept and use a federal registration form that did not require documentation of citizenship, but rather required a statement from the applicant that the applicant is a citizen.<sup>20</sup>

Preemption of a state statute by a federal statute can be removed by passage of a federal law. As a result, within hours of the Supreme Court's decision in *Arizona v. Inter Tribal Council of Arizona, Inc.*, Senator Ted Cruz of Texas introduced an amendment—that was not passed by Congress—to the Senate's immigration bill that would permit states to require documentary evidence of citizenship.<sup>21</sup>

States have begun to fight back against modern federalism. State officials in Mississippi, Oregon, and Texas vowed to reject attempts by the federal government to impose new gun laws.<sup>22</sup> Numerous sheriffs from around the country claimed that if new federal gun laws were passed, they would not enforce them. Similarly, several state leaders have been highly critical of the Affordable Care Act and have refused to initiate the health insurance exchanges under the act. State leaders have also been critical of the federal government's efforts to enforce immigration laws. Attorney General Greg Abbott as of late April 2013 has sued the Obama administration 25 times. These included lawsuits against the Affordable Care Act, several suits against the Environmental Protection Agency, a lawsuit against the Federal Energy Regulatory Commission, and lawsuits regarding redistricting and voter identification related to preclearance under the Voting Rights Act.<sup>23</sup> Much of this litigation and criticism of the federal government reflects the rebellion against modern federalism. As Attorney General Greg Abbott put it in defending his office's lawsuits against the federal government, "when Texas challenges the federal government, it's about more than money. It's about principles—fundamental principles enshrined in the Constitution and recently reaffirmed by the U.S. Supreme Court when it said: 'The national government possesses only limited powers; the states and the people retain the remainder. The independent power of the states serves as a check on the power of the federal government.' Defending the constitutional principles that have made the United States truly exceptional: That's priceless."<sup>24</sup>

As coercive federalism became more common, concerns were expressed in the last few decades of the twentieth century, particularly among conservative Republicans, that the central state was becoming too strong in the federal system. Not surprisingly, the Supreme Court rethought its doctrines on federalism still again. The effort to rethink the federal system is evident in Supreme Court decisions beginning in the 1990s. Although not dramatic reinterpretations of constitutional law, the Court's rulings did begin to place limits on Congress's ability to legislate under the interstate commerce power, and it resurrected the Tenth Amendment as a protection for the rights of states.

The Court returned to the Tenth Amendment—the so-called states' rights amendment—some of the strength that it had lost during the New Deal era. *Printz v. United States* (1997) challenged a provision of the 1993 Brady Handgun Violence Prevention Act. The Brady act required the attorney general to establish by the end of November 1998 a national database for instant background checks on anyone buying a handgun. Until the database could be finalized, the act required local law enforcement officials to verify that no handguns were sold to unqualified persons. Sheriffs in Montana and Arizona claimed that this provision was unconstitutional on the grounds that the federal government did not have the authority to command state and local officials to administer a federal program. The Supreme Court agreed that the law infringed on the rights of states, writing, "The Federal



*Gun control is a key federalism issue. Here, protesters demonstrate in front of the Texas state Capitol in support of Second Amendment rights.*

Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”<sup>25</sup>

## **Major U.S. Constitutional and Statutory Restrictions on the States**

The Thirteenth, Fourteenth, and Fifteenth amendments to the Constitution were ratified in the aftermath of the Civil War. The Thirteenth Amendment, of course, banned slavery and was important after the Civil War in ending slavery as a basis of the Southern economy. It was the other Civil War Amendments, the Fourteenth and Fifteenth amendments, that even today have had a dramatic effect on the nature of federalism because the Fourteenth and Fifteenth amendments provide the basis for the major constitutional and statutory restrictions on the powers of states.

### **Incorporation of the Bill of Rights**

Even the great nationalist Chief Justice Marshall was unwilling to hold that rights in the Bill of Rights applied to the states. It was just too clear that the Bill of Rights intended to limit the powers of the national government and not state governments. The application of the Bill of Rights to the states potentially changed in 1868 with the ratification of the Fourteenth Amendment, which clearly applied to states.

Section 1 of the Fourteenth Amendment states, “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.” The Fourteenth Amendment was proposed by Congress in 1866 and ratified a little more than two years later when 28 of the then 37 states ratified it.

It was not until the 1890s that the Court used the Fourteenth Amendment to hold in two cases that state governments could not seize property for public use

**Sanford dictum** held in *Gitlow v. New York* that the First Amendment right of free speech was a fundamental right that applied to the states

**selective incorporation** rights in the Bill of Rights that the Court believes are fundamental and are held to apply to the states as well as the national government because they are part of the “liberty” protected from state action in the Fourteenth Amendment

Herman Sweatt (right) walks with a white student at the University of Texas. Sweatt refused to attend a separate, all-black law school.



without providing just compensation under the Fifth Amendment of the U.S. Constitution.<sup>26</sup> Then, in *Gitlow v. People of State of New York* (1925), Justice Edward Sanford noted in what has come to be called the **Sanford dictum** that “we may and do assume that freedom of speech and of the press are among the fundamental rights and liberties protected from impairment by the states.”<sup>27</sup> As the years passed, other rights in the Bill of Rights were held to be fundamental rights and therefore applicable to the states. With few exceptions, as the twentieth century progressed, justices adopted the theory of **selective incorporation**. That meant that the Court would select out some rights in the Bill of Rights as fundamental—so essential to the concept of ordered liberty—that those rights were incorporated (held to be part of) the “liberty” that was guaranteed in the language of the Fourteenth Amendment of the U.S. Constitution that stated that “nor shall any State deprive any person of life, *liberty* [emphasis added], or property, without due process of law.” More and more rights were selected by the Court to be fundamental rights that were held to apply to the states. Most recently, in 2010 the Court held that the Second Amendment right to “keep and bear arms” applied to the states.<sup>28</sup> There are now very few rights in the Bill of Rights that have not been held to be fundamental—and few would argue that those rights are of much value. For example, the right to indictment by a grand jury has not been held to apply to the states, nor has the right to a jury trial in civil cases of more than \$20. Nor has the Eighth Amendment provision against excessive fines and bail been held to apply to the state, or the provision in the Third Amendment that limits the quartering of soldiers in a person’s home. In the years since the process of selective incorporation of the rights in the Bill of Rights began, so many rights have been selected by the Court as fundamental that near-total incorporation of all the rights in the Bill of Rights has occurred and been made to apply to the states. The result is that the freedom of states to restrict persons in those matters protected by the Bill of Rights has virtually been eliminated. Incorporation of the Bill of Rights is one of those areas where the freedom of the states to act in ways different from the national government has been virtually eliminated.

## The Equal Protection Clause

With few exceptions, in the nineteenth century the equal protection clause offered little promise of being a U.S. Constitutional restriction on the states. It was not until well into the twentieth century that the equal protection clause became a useful legal instrument to combat racial discrimination by the states. In the 1930s the Court began to chip away at state laws promoting racial discrimination. In 1950 a Texas case heralded the end of segregated higher education. H. M. Sweatt was denied admission to the University of Texas Law School because he was black. He refused to attend a black law school that had been set up by Texas to provide what Texas claimed to be a separate but equal education for black Texans seeking a legal education. Texas claimed that having an all-white University of Texas Law School and a separate all-black law school provided separate but equal educations for black and white law students which complied with the interpretation of the equal protection clause by the Supreme Court in *Plessy v. Ferguson* (1896) when

# Voting and Redistricting in Texas

**In 1965, President Lyndon Johnson** made history by signing the Voting Rights Act into law. The purpose of the legislation was to eliminate racial discrimination in voting. A somewhat controversial element of the law was Section 5, which required states covered under that provision, including Texas, to have any changes to voting procedures approved by the Department of Justice or a federal court in the District of Columbia. The rationale behind what is termed “preclearance” was to ensure that the federal government would have oversight over voting laws in states that have had histories of excluding racial minorities from the political process.

The Voting Rights Act has been renewed periodically since 1965. During that time, the Department of Justice has challenged many states, including Texas, and required them to redraw legislative districts in order to comply with the Voting Rights Act. In recent years, there has been a backlash against the Voting Rights Act by many state governments, including Texas. In 2013, Attorney General Greg Abbott challenged the Department of Justice by claiming that preclearance was a violation of Texas state sovereignty. Abbott argued that the federal government singled out Texas for preclearance and that it is not fair to make some states, but not others, comply with the law. He argued that in 2013 there is no longer a question of voter discrimination in Texas and that all states should be treated equally. He also claimed that the Voting Rights Act exceeded the bounds of federal authority. He cited the Tenth Amendment to the U.S. Constitution, which reserves powers to the states that are not specifically enumerated to the federal government in the Constitution.

While the U.S. Supreme Court did not agree with Abbott's arguments in full, it did deliver a ruling striking down



portions of the Voting Rights Act that establish a formula used to determine which states are subject to Section 5 preclearance. By the Court's striking down the formula, preclearance has been suspended for now. It is uncertain today that Congress will pass a new and constitutional formula. Civil rights groups are alarmed that without the protection of preclearance, Texas and other states will design legislative districts that will dilute the influence of minority voters and prevent them from electing candidates of their choice.

Part of the conundrum is that in Texas, most minorities are members of the Democratic Party and during redistricting, parties attempt to maximize their influence in elections. Republi-

cans claim that they are not discriminating against minorities, but against Democrats, which is perfectly acceptable and legal. However, when most minorities are Democrats, how do we know the true source of the discrimination? The courts have been reluctant to give a definitive answer, but part of the challenge is distinguishing racial discrimination (which is illegal) from political discrimination (which is legal). If it turns out that Democratic minorities are packed into heavily concentrated districts, the influence of minorities in Texas politics may be diluted as a practical matter. However one feels about the politics, Texas's redrawing of the boundaries of these districts is now considered lawful.

## critical thinking questions

1. Does preclearance violate the Tenth Amendment and give the federal government too much power, or is it a necessary check on the states to make sure that minorities are not discriminated against?
2. Are there ways that Texas and the federal government can compromise on how best to ensure the rights of minorities in the electoral process?

**"separate but equal"** an interpretation of the equal protection clause of the Fourteenth Amendment that held that states could segregate races as long as equal facilities were provided; it was overturned in 1954

**strict scrutiny** the most rigorous equal protection standard. It requires that the government show a compelling state interest in order to successfully defend a law that makes certain classifications such as racial classifications. Additionally, that classification must be one that is narrowly tailored by the least drastic means possible to achieve the government's objective.

**rational basis test** presumes that the legal classification made by the government is constitutional; all the government must show is some rational justification for the law

it upheld state-required racially segregated train cars in Louisiana. Sweatt's argument was that the black law school was not equal to the University of Texas Law School but was inferior and, therefore, to require him to go to the black law school would deny him the equal protection of the laws. The Supreme Court agreed with Sweatt, pointing out that there were vast differences in the facilities as well as differences in the prestige of the schools, the reputation of the faculty, the experience of the administration, and the influence of the alumni. While the Court stopped just short of declaring the doctrine of "separate but equal" to be unconstitutional, after Sweatt, it was hard to see how the doctrine could survive.<sup>29</sup> The doctrine did not survive. In 1954, in *Brown v. Board of Education of Topeka*, the Supreme Court unanimously held that segregated public schools were inherently unequal.<sup>30</sup> The doctrine of "**separate but equal**" was dead, though there was opposition to the decision in many states including Texas that would delay for decades the end of legally created segregation in public schools.

Now when the courts are presented with an issue of racial discrimination under the equal protection clause, the courts will ask the question, "Is there a compelling governmental interest that would justify a classification based on race?" And if a compelling governmental interest does exist, can that governmental interest be achieved in a less drastic way than through a racial classification? The result of this modern-day application of equal protection to the states is that it is very difficult for a state to justify a law that classifies people based on race. This standard is commonly called **strict scrutiny**.

Any classification made by the law can be attacked on equal protection grounds. Because the equal protection clause is found in the Fourteenth Amendment, which was an amendment ratified after the Civil War to provide protection for former slaves, the equal protection clause offers the greatest protection against racial classifications. The Court has treated some other cases like racial cases; that is, the Court has used the strict scrutiny or the "compelling governmental interest" standard. However, those cases are few and far between and would generally involve a denial of a fundamental right such as the right to vote.

At one time, all classifications other than race and fundamental rights cases were judged under the equal protection clause by a very lenient standard, the **rational basis test**, in which the Court asked, "Is there a rational justification for the law?" There are almost always rational justifications for any law—administrative convenience or saving money can, for example, be rational justifications for laws. It takes an exceptionally foolish law to be determined irrational by the Court. Still, major provisions can be struck down as unconstitutional using the rational basis test. In November 2005, Texans approved a state constitutional amendment that defined marriage as being between one man and one woman. That provision was challenged in federal district court, and using the rational basis test, the judge found that the amendment was not connected to any legitimate governmental interest that justified a discriminatory law. In other words, the judge held there was no rational basis for a ban on same-sex marriage. That decision is now on appeal, but it does show that although it is much easier for plaintiffs to win a case with strict or intermediate scrutiny, even state constitutional amendments might be approved that are found to have no legitimate rational justification.<sup>31</sup>

In the 1970s there was a movement to use the equal protection clause to strike down statutes that discriminated on the basis of sex. In a 1976 case involving a classification based on sex, the Court ruled, "Classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives."<sup>32</sup> This higher standard for sex-based classifications—

often called the **intermediate standard of review** or the substantial governmental interest test made it much harder for states to pass constitutional laws based on sex.

At times the Court has used the intermediate standard of review for classifications made by the law that are not classifications based on sex. For example, in *Plyler v. Doe* (1982) Texas withheld from local school boards state funds for the education of children who were “not legally admitted into the United States.” Justice Brennan, writing for the Court, held, “If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here.”<sup>33</sup> That expansion of the “substantial governmental interest” test beyond gender classifications has, however, been far more random and unclear than the use of the test for gender classifications.

The equal protection clause has become one of the most powerful constitutional restrictions on states. All laws create classifications of people, and the clause provides certain standards depending on the classification made by the state that courts use to judge the legitimacy of the law. As a rough rule of thumb, a classification based on race or one affecting fundamental rights will be judged under strict scrutiny or the “compelling governmental interest” standard—a standard so demanding that the law will probably be unconstitutional. A classification based on gender will be judged by the “substantial governmental interest” standard or possibly the counterpart of this standard, the “exceedingly persuasive justification” standard that has sometimes been used by the Court to make the “substantial governmental interest test” an even more difficult barrier to governmental action. It is very likely that classifications judged under these standards will be unconstitutional as well. Other classifications—for example, classifications based on wealth—will be judged under the “rational basis” standard and, unless the classification made by the law is essentially so arbitrary that it is mindless, the law will be upheld under this standard since laws generally do have some sort of a rational justification.

**intermediate standard of review**  
primarily used for classifications in the law based on sex; for the law to be constitutional the government must show important governmental objectives and the law must be substantially related to achievement of those objectives

## State Regulation of Voting

The Voting Rights Act was passed under Congress’s authority under the Fifteenth Amendment to legislate to protect the right to vote where the nation or a state might deny or restrict that right on the basis of race or color. Section 4 of the act provides a coverage formula that defines the jurisdictions covered under the act, and Section 5 of the act requires that federal officials—initially the U.S. Department of Justice—approve or preclear any changes in voting in jurisdictions that are defined in the law. Those jurisdictions include Texas. Voting changes that must be precleared include such things as the establishment of voter identification laws, redistricting of political boundaries, and changes in the times or locations of polling places. Texas has been required to preclear since 1975 and, like other covered jurisdictions, state officials have chafed over the need to secure federal approval for the changes they wish to make in voting in the state. That is why an Alabama case decided by the U.S. Supreme Court in the summer of 2013 is so important to Texas and to federalism. The case, *Shelby County, Ala. v. Holder* (2013), involved a challenge to Congress’s decision to reauthorize the Voting Rights Act. Shelby County, Alabama, claimed that the act went beyond Congress’s power to pass the law under the authority of the Fifteenth Amendment and that the law placed “substantial federalism costs” on the covered jurisdictions, costs that were so great that the Tenth Amendment rights of the states were violated.

Shelby County as a political unit of the state of Alabama has been covered by the preclearance requirement since 1965. It viewed the act as outdated, taking the position,

Given the federalism costs Section 5 imposes, the provision can be justified only by contemporary evidence of the kind of “unremitting and ingenious defiance” that existed when the Voting Rights Act was originally passed in 1965. . . . Insisting that the legislative record lacks “evidence of a systematic campaign of voting discrimination and gamesmanship by the covered jurisdictions,” Shelby County contends that section 5’s remedy is unconstitutional because it is no longer congruent and proportional to the problem it seeks to cure.<sup>34</sup>

Texas filed an amicus curiae or friend of the court brief in the Supreme Court litigation. Such a brief is sometimes filed by states, groups, or individuals with a strong interest in the outcome of the case but who are not the parties to the litigation. Texas’s brief supported Shelby County’s claim that Section 5 of the Voting Rights Act went beyond Congress’s powers to pass laws under the Fifteenth Amendment and placed substantial enough costs on federalism that there was a violation of the Tenth Amendment. Texas’s brief noted that the act was based on voting conditions in Texas in 1975. Unlike 1975, however, Texas now has bilingual ballots, and in every federal election between 1996 and 2004, blacks in Texas registered and voted at higher rates than whites, while Latinos in Texas registered to vote at higher rates between 1980 and 2002 than Latinos in jurisdictions not covered by Section 5. The remainder of the Texas amicus brief is essentially an argument that substantial costs to federalism are created by the preclearance requirement, and the evidence used is that preclearance has prevented the implementation of Texas’s voter identification law where a voter must provide an identification—a Texas driver’s license, an election identification certificate, a personal identification card issued by the state, a U.S. military identification with a photo of the prospective voter, a U.S. citizenship certificate with a photo of the prospective voter, a U.S. passport, or a Texas concealed handgun license.<sup>35</sup> The Texas brief argued,

For nearly two years, the Civil Rights Division of the Department of Justice has used every weapon in its arsenal to thwart the implementation of a law that the Court has recognized as a legitimate and constitutional fraud-prevention measure. Because of section 5, the State of Texas still is unable to implement its voter-identification law—a law that Indiana and non-covered jurisdictions may enact and enforce without any interference from federal authorities.<sup>36</sup>

In late June 2013 the Court issued its blockbuster 5–4 decision striking down the formula for determining the states covered under the Section 5 preclearance requirement. Holding that the formula for determining coverage under the act was based on decades-old data, the Court held that Shelby County was correct in its position that the data used to determine if a jurisdiction was covered were too outdated to be valid. Congress could, of course, draft another formula to cover jurisdictions under the act, but that formula must be based on current voting conditions. The Court emphasized two important points about the federal system: (1) all states enjoy equal sovereignty, and (2) under the Tenth Amendment, states have broad power to regulate elections. Only exceptional conditions, such as the racial discrimination in voting at the time of the initial passage of the 1965 Voting Rights Act, justified intrusion on the powers and the equality of states. The Court’s

view was that the outdated data that determined which jurisdictions were covered under the act did not provide sufficient evidence of those exceptional conditions that justified current intrusion into state powers over voting and thus, absent a valid formula to determine which states must go through a preclearance procedure, no state had to undergo preclearance.<sup>37</sup> Given this decision, Texas no longer has to obtain preclearance to change aspects of its system of elections. However, the U.S. Justice Department can still sue under Section 2 of the Voting Rights Act to prohibit changes in elections that show racial discrimination. Currently the U.S. Justice Department is suing Texas under Section 2 to stop Texas's system of voter identification.

It is clear that the voter identification requirement has had some effect on some voters, such as women who have married or divorced and changed their names so that their identification does not match the voting lists or elderly persons such as former Speaker Jim Wright who no longer had a valid driver's license. However, political scientists have found that the effect of voter identification laws is not what one ordinarily suspects. As Professors Keith Bentle and Erin O'Brien have written,

The results of a wide range of studies indicate that most registered voters do possess the forms of identification required by voter ID laws. Consequently, such laws may do little to suppress routine voters, but may serve to reduce participation among the eligible unregistered population who are much more likely to lack basic forms of required identification. It has been suggested that "the real value of restrictive voter ID may be in what we might call 'surge protection' against the kind of mobilization of new, first-time voters who very likely handed Obama his election [in 2008]."<sup>38</sup>

## Flexibility for States under the Constitution: Independent State Grounds

Although there are restrictions on the states imposed by the Fourteenth Amendment and by statutes passed under the authority of the Fifteenth Amendment, states do have some leeway to expand rights of their citizens through a concept known as **independent state grounds**. State constitutions can provide greater constitutional guarantees to a state's citizens than the U.S. Constitution. Essentially, the rights guaranteed in the U.S. Constitution are a floor—the minimal rights that are provided—but the U.S. Constitution does not function as a ceiling on rights. State constitutions can provide additional constitutional protections. Independent state grounds are a characteristic of federalism in that states are free to add to the rights guaranteed at the national level. Some states, such as Massachusetts, have relied on their state constitutions to invalidate laws against same-sex marriage.<sup>39</sup> Under the U.S. Constitution, Texas's very inequitable property tax-based system for funding public education was held to be constitutional. The U.S. Supreme Court held that education was not a fundamental right and so Texas only needed a rational justification—that is, local control of schools—in order for the funding system to be upheld.<sup>40</sup> However, in *Edgewood v. Kirby* (1989), the Texas Supreme Court relied on the Texas Constitution to strike down the school funding system. The Court held, "Whether the legislature acts directly or enlists local government to help meet its obligation, the end product must still be what the [Texas] constitution commands—i.e., an efficient system of public free schools throughout the state."<sup>41</sup>

In the 1970s there was a major effort to gain ratification of an Equal Rights Amendment to the U.S. Constitution. If ratified, the key part of the amendment

**Independent state grounds** allow states, usually under the state constitution, to expand rights beyond those provided by the U.S. Constitution

would have stated, “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” Although that amendment to the U.S. Constitution was never ratified, in 1972 Texas adopted its version of the Equal Rights Amendment, which is Article 1, Section 3a, of the Texas Constitution: “Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.” U.S. Supreme Court decisions have provided major protection against sex discrimination under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution; however, it is the Texas Constitution, rather than the U.S. Constitution, that contains an explicit ban.

## Thinking Critically about Federalism

One of the most intriguing political questions is whether the new generation of leadership in Texas will be successful in creating a new relationship between the states and the national government. We have seen that federalism has significantly changed over time. Early in the country’s history, the country moved from a confederation to a view that a stronger national government and weaker states were needed. The nation then fought a bloody civil war in part over whether a strong national government or a confederation was the most desirable system of government. From that perspective the country moved to dual federalism. Then, in the late 1930s, the country moved toward cooperative or marble-cake federalism. In more recent years, coercive federalism has become increasingly common. There is no reason to believe that federalism will not continue to evolve and change. Leading Texans are now wishing to return greater power to the states. They argue the national government is too distant, controlling, expensive, and unresponsive. Perhaps they are in the vanguard of a new view of federalism. At this point it is unclear—maybe they are not in the vanguard, but fighting a rearguard action for a lost cause that was the long-ago demise of dual federalism. This remains to be seen, although the key question is whether the current relationship between the states and the national government is best for resolving important policy issues or whether returning greater power to the states is the more appropriate way to solve major policy problems.

## Understanding Federalism

### Understand federalism (pp. 80–86)

Along with many other countries, the American system of government has divided power between national and regional or state governments. That division of power has varied over time, and America's notion of federalism has evolved through a number of forms.

### Key Terms

federalism (p. 80)  
sovereign (p. 82)

### Practice Quiz

1. *Federalism* refers to
    - a) a system of government where cities are strong.
    - b) a system of government where executive power is grounded in a committee of governors.
    - c) a system of government where there is a national government as well as a number of regional governments.
    - d) a system of government dominated by business interests.
    - e) a system of government with strong parliaments.
  2. The Articles of Confederation
    - a) was a loose confederation of independent states that operated in the 1820s.
    - b) was never accepted by a majority of the states.
    - c) derived its power directly from the state governments.
    - d) replaced the U.S. Constitution of 1787.
    - e) outlawed effective state constitutions.
  3. The relationship between the states and the national government
    - a) has been a matter of continuing controversy throughout the nation's history.
4. The Supreme Court under John Marshall expanded national power partly through
    - a) rejecting the Articles of Confederation.
    - b) expanding the meaning of interstate commerce.
    - c) expanding Congress's war-making powers.
    - d) ignoring the Tenth Amendment.
    - e) increasing the powers of the president.
  5. Prior to the ratification of the Fourteenth Amendment, the Bill of Rights
    - a) applied only to states.
    - b) applied only to the national government.
    - c) applied to states and the national government.
    - d) was essential in protecting individual rights.
    - e) was applied only in extreme cases of rights violations.
  6. *McCulloch v. Maryland* (1819) was important
    - a) in establishing that the national government had implied powers.
    - b) in establishing that state governments had implied powers.
    - c) in showing that the state and national governments could cooperate.
    - d) in preventing national banks from operating.
    - e) in destroying corrupt state banking systems.

## Dual Federalism

### Trace the major changes in national and state power over time (pp. 86–90)

American federalism has gone through major changes over the history of the country. In the late nineteenth century there was a strict division between the powers of the state and the powers of the national government. That division was called dual federalism or layer-cake federalism. During

Franklin Roosevelt's New Deal, federalism was dramatically redefined and there was greater involvement of the national government in all areas of American life. Cooperative federalism or marble cake federalism became the new approach to state and national relationships. In recent times, many believe federalism has taken a new form and has become coercive, where the national government compels the state to act in ways that achieve national priorities.

## Key Terms

- Reconstruction (p. 86)
- dual federalism (p. 86)
- layer-cake federalism (p. 87)
- marble-cake federalism (p. 87)
- cooperative federalism (p. 87)
- categorical grants (p. 87)
- New Federalism (p. 90)
- block grants (p. 90)

## Practice Quiz

7. *Dual federalism*
- a) refers to a system of government where states do most of the governing.
  - b) existed in the United States following World War II.
  - c) rejected the idea that states were sovereign political entities.

- d) is the idea that there are two branches to the national legislature.
- e) drained all power from state governments.

8. Layer-cake federalism switched to marble-cake federalism
- a) after the Civil War.
  - b) during World War I.
  - c) during the New Deal.
  - d) after the fall of the Soviet Union.
  - e) because of President Ronald Reagan's efforts.
9. The use of categorical grants was a way of promoting
- a) cooperative federalism.
  - b) dual federalism.
  - c) coercive federalism.
  - d) bipartisan federalism.
  - e) civil rights.

# Coercive Federalism

## Describe the sources of national and state power as they relate to federalism today (pp. 90–100)

The incorporation of much of the Bill of Rights has limited the power of state governments by making them subject to restrictions under the U.S. Constitution. Additionally, the preemption doctrine has allowed the national government to prohibit state legislation in certain fields. An important constitutional provision that limits state action is the Fourteenth Amendment, particularly the equal protection clause of that amendment which prohibits discriminatory actions by state governments. Until recently, a number of jurisdictions—including Texas—were limited by the 1965 Voting Rights Act in the legislation they could pass involving the electoral process, although a recent U.S. Supreme Court decision has made it possible for Texas to pass controversial voter identification legislation. Finally, while state governments cannot reduce the rights guaranteed by the U.S. Constitution, they can expand those guarantees under the concept of independent state grounds.

## Key Terms

- coercive federalism (p. 90)
- unfunded mandates (p. 90)
- preemption (p. 90)
- Sanford dictum (p. 94)
- selective incorporation (p. 94)
- “separate but equal” (p. 96)
- strict scrutiny (p. 96)
- rational basis test (p. 96)
- intermediate standard of review (p. 97)
- independent state grounds (p. 99)

## Practice Quiz

10. Hostility to modern federalism is partly a result of
- a) dual federalism.
  - b) funded mandates.
  - c) unfunded mandates.
  - d) Tenth Amendment interpretations.
  - e) high taxes.
11. States must adhere to most of the provisions of the Bill of Rights because of a process known as
- a) inclusion of the Bill of Rights.
  - b) incorporation of the Bill of Rights.
  - c) expansion of the Bill of Rights.
  - d) ratification of the Bill of Rights.
  - e) the Sanford dictum.
12. The equal protection clause of the Fourteenth Amendment
- a) makes it difficult for states to discriminate against minorities.
  - b) is rarely used by federal courts.
  - c) ensures that states will continue to have a republican form of government.
  - d) mandates the right to vote for all adult citizens.
  - e) requires all states to have an equal number of senators.
13. The outcome of a court case involving the equal protection clause
- a) tends to be determined by the standard of review that is used.
  - b) depends on how unequal the law is.
  - c) depends on the skill of the lawyers.
  - d) can never be predicted.
  - e) is usually in favor of the state.

- 14.** Independent state grounds
- a) allow states to provide fewer state constitutional protections.
  - b) allow states to provide more state constitutional protections than the U.S. Constitution.
  - c) allow states to remain independent of the national government.
  - d) prevent the national government from overriding the Tenth Amendment rights of states.
  - e) limit the power of the national government to pass economic regulations.
- 15.** The national government can preempt state laws because
- a) the national government is weaker than any state.
- 16.** the Tenth Amendment to the Constitution specially allows state laws to be overridden by federal laws.
- b) the supremacy clause of the Constitution makes national laws supreme over state laws.
  - c) the Sanford dictum established preemption.
  - d) the main reason the Constitution was adopted was so that state laws could be preempted.
- 16.** The Voting Rights Act
- a) ensured the right to vote for women.
  - b) ensured the right to vote for 18-year-olds.
  - c) approved photo ID requirements for voters.
  - d) required that voters know how to read and write.
  - e) was the major law providing the right to vote for African Americans.

## Recommended Websites

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Federalism in Action  
[www.federalisminaction.com](http://www.federalisminaction.com)

Freedom Works  
[www.freedomworks.org](http://www.freedomworks.org)

Texas Conservative Coalition  
[www.txcc.org](http://www.txcc.org)

# TEXANS FOR OBAMA



Democrats dominated Texas politics for nearly a century, but today the Republican Party is dominant. Can Democrats turn Texas blue again? How do party politics affect Texans?

# Political Parties in Texas

**WHY POLITICAL PARTIES MATTER** When will Texas “turn blue”? That is, when will Texas turn Democratic enabling key statewide offices to be held, once again, by members of the Democratic Party? Political pundits across the nation and in Texas have been asking this largely because of two parallel developments: the ongoing dominance of the Republican Party in the state and the state’s growing minority population, which is increasingly Latino.

Following the Civil War until the election of Ronald Reagan in 1980 Texas was largely a one-party state. Conservative Democrats from rural areas dominated state politics in all branches of government. The first Republican senator from Texas since Reconstruction was John Tower, elected in an off-year election in 1961 to replace the newly elected vice president Lyndon Johnson. The first Republican governor since Reconstruction was William Clements, elected in 1978. Throughout the 1990s the state was transformed from a Democratic to a Republican bastion. With the retirement of Democratic lieutenant governor Bob Bullock at the beginning of 1999, Republicans took over complete control of all statewide offices. The control of the Texas House of Representatives shifted to the Republicans in 2002, paving the way for a redistricting fight and ultimately, in 2004, a Republican takeover of both branches of the state legislature. By 2004, Texas had become solidly Republican, a key player in the coalition of conservative interests that came to dominate the national Republican Party.

One might expect that a triumphant Republican Party might seek out new ways to appeal to the growing Latino population in the state and cement its hold over state politics by broadening its political base. After all, some conservative values—that is, opposition to abortion and to same-sex marriage—may appeal to some in the Latino community, particularly those with strong Catholic religious beliefs. Surprisingly, though, the 2014 Republican primary was filled with candidates staking out political positions that seemed against the interests of most Latino voters. For example, some of these very conservative candidates had strong anti-immigration messages and supported tighter restrictions on voting. At the very time that one might expect the Republican Party to moderate itself and adopt positions more in line with an emerging Latino electorate, the party was being driven to the right.

The election of Julian Castro as mayor of San Antonio along with the election of his twin Joaquin Castro to a congressional seat from San Antonio has led some to believe that a Democratic wind is in the air. Democrats have staked their hope in the large and growing Latino population, as most Latinos still identify with the Democratic Party. Nevertheless, there are undercurrents that raise questions about

the ability of Democrats to rise to power on a Latino tsunami. Later, we will explore the problem of low voting rates among Latinos in Texas elections. In this chapter, we note that some Latino elected officials and a substantial minority of the Latino population identify as Republican. Several Latinos have won statewide office as Republicans in recent years, including Victor Carrillo to the Railroad Commission and Eva Guzman to the Texas Supreme Court. Republican and Tea Party-leaning Ted Cruz, a Cuban American, was elected to the U.S. Senate in 2012. In contrast with African Americans, who have remained solidly Democratic as a group, Latinos are more willing to cross party lines and vote for Republicans. For example, Latino votes were a factor in Republican George W. Bush's victory in the governor's races of 1994 and 1998. Bush received nearly 40 percent of the Latino vote in 1998, and his success signaled the possibility that Latinos might be gradually shifting to the Republican Party. Although a large-scale shift of Latinos toward the Republicans has not yet come to pass, and some observers doubt that it is likely, the underlying reality remains that Republicans cannot ignore a group that makes up nearly 40 percent of the state's population if they expect to continue winning elections in twenty-first-century Texas.

Whether Texas continues to be a red (Republican) or a blue (Democratic) state, it is important to understand political parties and their structure because knowledge of the rules in government is essential to advancing public policy. Because parties play such a large role in government processes, we must know how parties are organized, how candidates are selected, and how partisanship influences public policy. This chapter will address the history of political parties in Texas, the current party system, and what the future holds for the party system in the state, including some answers to the much-talked-about question of "when Texas will turn blue."

## chapter goals

- **Describe the main functions of state party organizations (pp. 106–20)**
- **Trace the evolution of the party system in Texas (pp. 120–27)**
- **Analyze how ideological divisions and demographic change affect Texas political parties (pp. 127–32)**

## ● The Role of Political Parties in Texas Politics

**Describe the main functions of state party organizations**

Political parties can be looked at from a number of perspectives. In the narrowest sense, a political party refers to an organization of people established to win elections. This can include people holding or running for office who identify formally with the party. It can

also refer to the professionals and volunteers who actively work for the election of their party's candidates. In a broader sense, a political party can refer to those

people in the electorate who identify with a particular party and vote for that party's candidates on a regular basis.

Political parties help candidates win elections and assist voters in making their electoral choices. Perhaps the most important function of parties in Texas is that they provide a label under which candidates can run and with which voters can identify. Because Texas elects large numbers of officeholders, it is unlikely that voters will be familiar with the views or the qualifications of every candidate. However, Texas voters overwhelmingly identify with or lean toward either the Republican Party or the Democratic Party.<sup>1</sup> Those voters use the party affiliation of the candidates as a way to decide for whom to vote. Thus, for many voters, without other information, the party label becomes the standard they apply in casting a ballot for a candidate. Voters often use the party label as a cue to the ideology of candidates. A voter may assume that, for example, a Republican candidate is a "conservative" and may vote for or against that candidate because of the ideology that a party affiliation implies.<sup>2</sup>

Parties to some extent help in raising money for candidates' campaigns and in assisting candidates with legal requirements and training for a campaign. They sometimes recruit candidates for political races, although in Texas any candidate may run in a party primary, and, if victorious in the primary, will become the party nominee. Parties also assist in "getting out the vote" for candidates through phone banks, door-to-door contacts, and other efforts.

Once a candidate is elected to office, party affiliation helps in organizing the government. Governors will usually appoint people who are members of their own party. Increasingly, the Texas legislature is divided by party. Public officials may also feel a greater sense of loyalty and cooperation toward other public officials of their party. After all, they often campaign together and make appearances at the same political events, and their fortunes often rise and fall together based on the popularity of the party. In that sense, the banding together of officeholders with the same party affiliation provides voters an opportunity to hold the party accountable for its policies or its failures.

## Texas Parties in the National Context

States differ in terms of the strength of the political parties, and parties also tend to have less power at the state level than they do in the national government. For example, in neighboring Louisiana, the parties are relatively weak. In the Louisiana legislature, even though the majority party controls committee assignments, chairs of committees sometimes include a mix of Democrats and Republicans. This has historically also been true in Texas. The current speaker of the Texas House, Joe Straus from San Antonio, is considered a moderate Republican and owes his election to the speakership to many Democrats in the legislature who voted to elect him speaker. In recognition of their support, Straus made some Democrats committee chairs. This would never happen in the U.S. Congress, as parties are much more important in national politics. In Congress, the majority party gives leadership positions like committee chairs only to its own loyal party members.

Why might parties at the state level have less power? Tip O'Neill, the former Speaker of the U.S. House, used to say that "all politics is local," and this certainly rings true in Texas. Local issues are usually not ideological in nature. They often deal with who is most effective at creating jobs and keeping districts safe for residents. Voters in local races are therefore likely to be influenced by these concerns in

*One of the most important functions of political parties is to select candidates to run for office under the party label. The Republican Party of Texas officially announced its candidates for office at its 2014 convention in Fort Worth.*



**partisan polarization** the degree to which Republicans have become more conservative and Democrats have become more liberal

addition to hot-button issues such as abortion and same-sex marriage. This means that partisanship has been less important in running the everyday business of the state. To be sure, ideological issues might matter in certain state-level elections during some election years. **Partisan polarization**, which is the degree to which Republicans have become more conservative and Democrats have become more liberal, is beginning to become more pronounced in the Texas legislature. Partisan polarization in politics means that it is increasingly difficult for politicians to compromise on important policy issues. Compromise is often considered a sign of weakness and caving in to the other side.

Party politics in Texas is similar to party politics in some other southern states, but there are important differences. Other southern states have had historically larger African American populations than Texas. As we will discuss later, African Americans are generally loyal Democrats. They constitute nearly 30 percent of the population in Mississippi and Louisiana, for example. In Texas, African Americans are concentrated in east Texas and in the major urban areas, and represent only 12 percent of the state's population. Another major difference between Texas and some other southern states is Texas's large Hispanic population, which currently is estimated at 38 percent of the state's population. Like African Americans, Hispanics tend to be Democrats, but not to the same degree.

To a certain extent, Texas is similar to New Mexico, Arizona, and Colorado in terms of its large Hispanic population. In contrast with the Hispanic population in Arizona, however, Tejanos (Texans of Mexican descent) are more likely to have resided in the state for generations. In Arizona, the Sonora Desert region is the largest gateway for Mexican immigration, and new immigrants in Arizona exhibit political behavior that differs from that of their Tejano counterparts in many ways. For example, new immigrants are even more likely than Tejanos to identify as Democrats and to see the Democratic Party as more supportive of immigrant rights.

## Public Attitudes about Parties

Texans, like many Americans, are increasingly identifying as independent. However, in practice many self-identified independents lean toward either Democratic or Republican affiliation. What is the source of these political leanings? The process of **political socialization** occurs throughout our early years, when our parents, religious leaders, teachers, and others influence our partisan identifications. Although this can change over time for many people, we often retain the same political beliefs as those of our parents. We are also profoundly shaped by our surrounding environment. Texas has a long history of state pride, independence, and conservatism. People growing up in the state are accustomed to these values and thus incorporate them into their political ideologies and partisan preferences. Visitors to the state are often surprised about how much state pride exists. For example, the very notion of a state pledge of allegiance recited by many schoolchildren is a practice that surprises people from other states.

How does partisan affiliation affect Texas voters? According to a May 2012 *Texas Tribune* poll, 56 percent of respondents cited party affiliation as either very or somewhat important when deciding for whom to vote. Party identification acts as an important cue that signals candidates' political views. For the most part, when we see an "R" or a "D" next to a candidate's name, we make certain assumptions about the positions the candidate takes. Of course, other characteristics of candidates matter too; in the same poll, voters also cited the candidate's record, issue positions, and character as important considerations in their voting choices.<sup>3</sup>

In Texas, the Republican Party has complete control of state government, and voters continue to re-elect Republicans to all levels of government. This does not mean that there is no competition within the Republican Party, however. Republican primaries often pit conservatives against moderates. An example of this was the Republican gubernatorial primary between Governor Rick Perry and Senator Kay Bailey Hutchison in 2009. Perry positioned himself to the right of Hutchison even though she had compiled a conservative voting record in the U.S. Senate since her election in 1994.

At the conservative end of the spectrum, the Tea Party movement is particularly strong in Texas. In a February 2013 *Texas Tribune* poll, nearly 20 percent of respondents said that they would vote for a Tea Party candidate if the movement organized as a third party. When asked about the Tea Party's influence on the state Republican Party, respondents were split: 31 percent felt that the Tea Party had too much influence, 18 percent thought their degree of influence was about right, and 28 percent thought that they had too little influence.<sup>4</sup> According to a 2012 *Texas Tribune* poll, roughly 34 percent of voters in Texas would support a generic Democratic candidate, while 45 percent would support a generic Republican candidate.<sup>5</sup> This leaves a substantial remainder of "swing" voters who ultimately decide elections. Since their control of state government gives Republicans a built-in advantage, it is increasingly difficult for Democrats to win statewide.

**political socialization** the introduction of individuals into the political culture; learning the underlying beliefs and values on which the political system is based

## The Contemporary Republican Party in Texas

Texas Republicans are currently experiencing a major division within the party. Established pro-business Republicans have dominated state politics in recent years, but the Tea Party movement has begun to influence state legislative races as well as major statewide races.



*While running for lieutenant governor in 2014, Dan Patrick positioned himself as more conservative than his opponent, fellow Republican David Dewhurst. Here, Patrick is seen campaigning with Mike Huckabee, a conservative media personality and former Arkansas governor and presidential candidate.*

Consider the lieutenant governor's race in 2013. The Republican candidate, Lieutenant Governor David Dewhurst, had the endorsement of Governor Rick Perry and many of the state's political leaders. However, state senator Dan Patrick, a darling of the Tea Party movement, posed a significant challenge to Dewhurst especially in terms of grassroots support. Patrick was one of several Republicans who challenged Dewhurst because they sensed a weak candidate who lost the U.S. Senate primary in 2012 to now senator Ted Cruz. Patrick ran to the right of Dewhurst and all the other candidates, especially on his immigration positions. In a debate in early 2014, he called for an end to the "invasion" of illegal immigrants from the Southern border. In a low turnout primary in early March 2014, Patrick forced Dewhurst into a runoff by winning a plurality of 41 percent versus Dewhurst's 28 percent. In the runoff primary, Patrick overwhelmed Dewhurst, receiving 65 percent of the vote compared to 35 percent for Dewhurst. It was remarkable that an incumbent lieutenant governor would be defeated in his own party primary, but Patrick successfully positioned himself to the right of Dewhurst in an increasingly conservative party.

Patrick ran ads criticizing Dewhurst for being too moderate, a charge that is not particularly helpful in a Republican primary. Patrick took a page from Cruz's playbook by criticizing Dewhurst for being an insider and state government official with endorsements from the state's political establishment. Patrick went on to win the general election over Democrat Leticia Van de Putte, a Latina state senator from San Antonio, with 58 percent of the vote.

Texas Republicans currently hold all of the major statewide elected offices. The governor, lieutenant governor, comptroller, attorney general, members of the state

supreme court, and the railroad commissioners are all Republicans. Texas Democrats have attempted to recruit challengers for these offices but have come up short. As the lieutenant governor's race demonstrates, the major competition for important statewide offices occurs during the Republican primary, much in the same way the Democratic primary used to fulfill this role when Texas was a Democratic state.

The Republican Party in Texas has not always been so powerful. Prior to 1994, Democrats held many statewide offices in Texas. Ann Richards, the state's last Democratic governor, was a proud liberal, as was former U.S. senator Ralph Yarborough, who championed the Bilingual Education Act in 1968. However, few pundits seriously thought that the Democratic candidates for the U.S. Senate seat in 2012 had a realistic chance of winning the general election in November. This is a remarkable change from only 10 years prior, when Democrat Ron Kirk was seen by Democrats as a more formidable candidate for statewide office, even though on Election Day he lost to Senator John Cornyn by double digits.

## **The Contemporary Democratic Party in Texas**

Texas Democrats have been relegated to minority status in the state since the early 2000s. Democrats controlled the Texas House until 2002. Other southern states, such as Arkansas, still have Democratic legislatures and statewide elected officials; however, these officeholders are more conservative than the national Democratic Party. In West Virginia, for example, Democrats dominate state government, but in presidential elections, the state often votes Republican. Before 1994, Texas exhibited similar voting patterns, but now Republicans are elected to all statewide offices at the state and federal levels.

Most Texas Democrats today would be classified as liberal. The party's base is made up of African Americans, Latinos, and white liberals in urban areas. Most white liberals are located in Austin, Houston, Dallas, and San Antonio and have often moved to Texas from other parts of the country. This coalition, however, is currently not large enough to win many elections in statewide races. Most whites in the state have settled into the Republican Party, and because whites turn out to vote at much higher rates than Latinos, who are the fastest-growing minority group in the state, Republicans have won recent elections. Democrats hope to mobilize Latinos, who constitute nearly 40 percent of the state's population, to encourage them to vote. Sixty-nine percent of Texas Latinos are American citizens by birth, but a large proportion of these are under age 18 and cannot vote. Moreover, voter turnout rates among Texas Latinos are lower than the rates among their Anglo counterparts. It will require extensive efforts to register and bring Latino voters to the polls in force to change this.

No Democrat has won Texas in a presidential race since Jimmy Carter in 1976. In 2012, Republican presidential candidate Mitt Romney won 57 percent of the vote in Texas, while Barack Obama won just 41 percent. Democratic candidates also fared poorly in the U.S. Senate race to replace retiring senator Kay Bailey Hutchison; Ted Cruz, the Republican nominee, won the office easily.

This does not mean that Texas Democrats do not have influence in certain localities. In Travis County, the home of Austin, Democrats dominate city government. Other major cities, including Houston and San Antonio, have Democratic mayors and city councils. However, this influence does not extend to statewide elections.

*Democrats continually try to build their presence and power in Texas. Most Democrats in Congress from Texas are either Latino or African American. Here, former president Bill Clinton appears at a campaign event with fellow democrats state representative Pete Gallego (D-Alpine, left), former San Antonio mayor (now Secretary for Housing and Urban Development) Julian Castro, and U.S. congressman Joaquin Castro (far right), during a campaign rally in San Antonio.*



When Democrat Bill White, the former mayor of Houston, ran for governor in 2010, he lost to Rick Perry.

Seven of the nine Democrats representing Texas in the U.S. Congress are either Latino or African American. The first African American woman elected to Congress from Texas was Barbara Jordan, who played a major role in the investigation of Richard Nixon during the Watergate scandal. Her legacy remains strong among African Americans in Texas. Lloyd Doggett of Austin and Gene Green of Houston are the only two white Democrats representing Texas in Congress. This suggests that the majority of Texas Democrats are minorities, and, with the growth of the minority population in the state, the party makeup will become more minority and less white. This demographic change in Texas makes the state more similar to its southern neighbors. In the Deep South, the Democratic Party is mostly an African American party. This is not true in the Northeast, where more whites identify as Democrats than in the South.

## **Democratic and Republican Party Organization**

Although many Texans proclaim that they are “registered Republicans” or “registered Democrats,” Texas does not have a system of party registration. Registered voters may vote in either the Democratic or Republican primary. When they do vote in a primary, their voter registration card will be stamped “Democrat” or “Republican” to prevent them from voting in the other primary as well.

One of the most important functions of political parties is to select candidates to run for office under the party label. Today that is done through primary elections. If several candidates are running for the party nomination in a primary election, it may be that none receive a majority vote. In that case, the party will hold a runoff election to determine who will be nominated. Primaries were not always used to

# How Republican Is Texas?

The South has become a solidly Republican region, and Texas is no exception to this. Indeed, former president Clinton official Paul Begala, a native Texan, once called the state “South Carolina on steroids.” Since the 1960s, South Carolina has been a reliable Republican state in presidential elections. On the other hand, California has become a solidly Democratic state since the 1990s largely due to its growing Latino population and its relatively high population of white liberals. How does Texas compare to other key states on political partisanship?

## Percentage of Residents Who Identify as Republicans\*



\*Or who identify as independents but say they lean Republican

SOURCE: 2012 Gallup Organization.

### for critical analysis

1. How does Texas compare to other states in terms of partisanship?
2. How might demographic change, especially the growing Latino population, change Texas's political preferences?

**precinct** the most basic level of political organization at the local level

**precinct chair** the local party official, elected in the party's primary election, who heads the precinct convention and serves on the party's county executive committee

**county executive committee** the party group, made up of a party's county chair and precinct chairs, that is responsible for running a county's primary elections and planning county conventions

**county chair** the county party official who heads the county executive committee

**state executive committee** the committee responsible for governing a party's activities throughout the state

**state chair** and **vice chair** the top two state-level leaders in the party

select the party nominee. During the nineteenth century, candidates were nominated at party conventions, but early in the twentieth century the state moved to the primary as a way to select candidates.

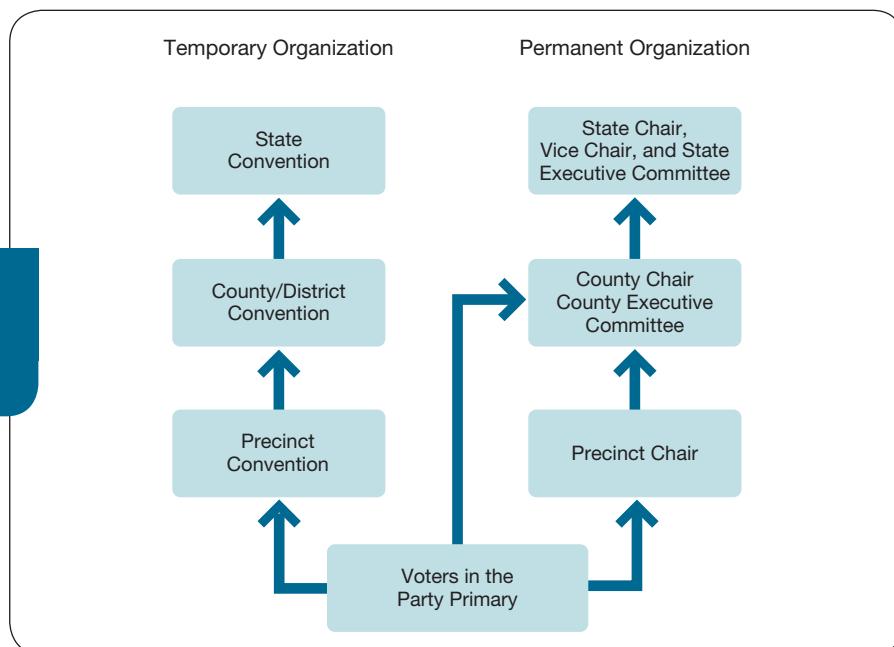
To understand how the parties are organized, think first in terms of the permanent organization of the party and then in terms of the temporary (campaign) organization (see Figure 4.1). In each election **precinct**, a **precinct chair** will be elected in the party primary. The precinct chair will head the precinct convention and will also serve on the party's **county executive committee**. In the primary, the **county chair** will also be elected. The county chair will head the county executive committee, which is composed of the chair and the precinct chairs. The main responsibility of the county executive committee is to run the county primary and plan the county conventions. There may be other district committees as well for political divisions that do not correspond to the county lines.

At the state level, there is a **state executive committee**, which includes a **state chair** and **vice chair**. These officers are selected every two years at the state party conventions. The state executive committee accepts filings by candidates for statewide office. It helps raise funds for the party, and it helps establish party policy. Both the Democratic and Republican parties also employ professional staff to run day-to-day operations and to assist with special problems that affect the party.

The temporary organization of the party includes the **precinct conventions**. The main role of the precinct conventions is to select delegates to the **county convention** and possibly to submit resolutions that may eventually become part of the party platform.

Delegates chosen by the precinct convention then go to the county conventions (or in urban areas, to district conventions). These conventions will elect delegates to the **state convention**. Both the Democratic and Republican parties hold state

**FIGURE 4.1**  
**Party Organization**  
**in Texas**





*Political parties in Texas are organized at the precinct level, the county level, and the state level. This photo shows the Fayette County Republican Headquarters in La Grange.*

conventions every other year. These conventions certify the nominees of the party for statewide office; adopt a platform; and elect a chair, a vice chair, and a state executive committee. In presidential election years, the state conventions select delegates for the national party conventions, elect delegates for the national party committee, and choose presidential electors, who, if the party's choice for president carries the state in the election, will formally cast the state's electoral votes for the president in the electoral college.

Conflict occurs not only between political parties but also within the parties. Battles for control of a state party have often been fought in Texas politics, where rival ideological and other interest groups have struggled to control precinct, county, and state conventions and to elect their candidates for precinct chair, county chair, and state executive committee. In the 1950s struggles for control of the Democratic Party between liberals and conservatives were fierce. There have also been calmer times in Texas politics, when involvement in the parties has been minimal and battles have been few. Sometimes, apathy has been so great that precinct conventions have been sparsely attended and offices such as precinct chair have gone unfilled.

### Third Parties in Texas

In Texas, as in many other states, the two parties in power have made it difficult for third parties to gain access to the ballot. In essence, both parties agree that a third competitor is not a net positive for either party. Third-party candidates rarely win elections in Texas. In general, third-party candidates are also seen as inevitable losers at the ballot box, and voters would prefer to "go with the winner."

**precinct convention** a meeting held by a political party to select delegates for the county convention and to submit resolutions to the party's state platform; precinct conventions are held on the day of the party's primary election and are open to anyone who voted in that election

**county convention** a meeting held by a political party following its precinct conventions, for the purpose of electing delegates to its state convention

**state convention** a party meeting held every two years for the purpose of nominating candidates for statewide office, adopting a platform, electing the party's leadership, and in presidential election years selecting delegates for the national convention and choosing presidential electors

**Dixiecrats** conservative

Democrats who abandoned the national Democratic Party in the 1948 presidential election

**La Raza Unida Party** political party formed in Texas in order to bring attention to the concerns of Mexican Americans

In Texas, third parties have emerged at certain points in history, mainly because of a particular issue. In the late nineteenth century, two farmers movements—the Grange and the Populist movements—provided alternatives to the two major political parties in various elections. In 1948 racial integration became an issue when the States' Rights Party, or **Dixiecrats**, rallied behind segregationist Strom Thurmond for president instead of Democratic Party candidate Harry Truman. Interestingly, while Thurmond carried some states, he did not carry Texas, which voted for Truman. Segregation became a third-party issue again in 1968 when Alabama governor George Wallace ran as a third-party candidate against the liberal Democratic candidate Hubert Humphrey. Echoing the success of Dixiecrat Thurmond, Wallace carried a number of southern states but failed to win Texas, which supported Humphrey. Much of Humphrey's support can be attributed to the lingering popularity of President Johnson in the state.

The civil rights movement in the 1960s planted the seeds for an independent Latino movement named **La Raza Unida**, meaning “united race.” Jose Angel Gutierrez led the party at its inception, which was concentrated in Zavala County. La Raza Unida developed into a third party in Texas and was able to win races in Crystal City and other small towns in south Texas. The party was able to do this by taking advantage of nonpartisan elections in many cities and towns. Even today, many cities, such as Austin, conduct nonpartisan elections. This does not mean that the candidates running for office do not belong to political parties. It just means that their party affiliation is not listed on the ballot. Reformers in many cities pushed for this so that voters would vote on the basis of candidate qualifications rather than by political party. La Raza Unida won many of these races in Zavala County and other surrounding counties, so that at one point, the party was able to take



*Independent candidates face considerable challenges in elections. Although the musician and writer Kinky Friedman's 2006 candidacy for governor attracted major media attention, Friedman received only 12.4 percent of the vote.*

# Third-Party Ballot Access in Texas

**In Texas, as in most other states,** all state legislators and members of the executive branch are members of one of the two major political parties: the Democratic Party or the Republican Party. As discussed in this chapter, the state parties hold primary elections in order to determine who their candidates will be for the general election. Voters are not necessarily limited to choosing between the two major parties. For example, third-party presidential candidate Gary Johnson, representing the Libertarian Party, appeared on the ballot in all 50 states in 2012. However, general election ballot access is difficult in Texas because of laws passed by the legislature. This results in many elections between candidates of the two major political parties.<sup>a</sup>

Texas requires parties that did not get 5 percent of the vote in a previous statewide race to collect a minimum number of signatures for their candidate to get on the ballot. This number must equal at least 1 percent of the total number of people who voted in the most recent gubernatorial election. Other states have similar requirements for ballot access. However, in Texas, parties that hope to qualify for inclusion on the ballot by petition are also required to notify the state that they intend to do so. This law, passed in 1993, is unique to Texas.

The intention form is usually due in January of election years.<sup>b</sup> Many third parties point out that this requirement discriminates against parties that are formed in the spring of election years, because by then it is too late to complete the form. If Texas had a law like this in 1912, Theodore Roosevelt could not have put his new Progressive (or "Bull Moose") Party on the ballot, because even the idea for the party did not occur to Roosevelt until he failed to get the Republican presidential nomination in June 1912.

Should Texas make it easier or more difficult for third parties to gain access to the ballot? Proponents of



*Texas, like most states, makes it challenging for minor party candidates like Gary Johnson to get on the ballot.*

the law argue that adding more uncertainty to the political process by allowing more names on the ballot only muddies the waters, as historical election returns indicate that one of the two major party candidates will most likely win. Adding third parties to ballots might thwart the will of the people by allowing a candidate to win without majority support. Some point to the presidential election of 2000, when Vice President Al Gore lost Florida's electoral votes and thus the election because of the presence of Green Party candidate Ralph Nader on the Florida ballot.

Opponents of the law argue that the two major political parties have

joined forces to eliminate competition.<sup>c</sup> This leads to strict ballot access laws, requiring stringent deadlines and, in some cases, unrealistic numbers of signatures of registered voters in a given area. Opponents also argue that in a democracy, access to the ballot should be open so that voters have a true say on Election Day. Limiting the ballot to only two parties severely restricts the will of the people.

<sup>a</sup> Ross Ramsey, "Smaller Parties Refuse to Be Counted Out," *New York Times*, April 6, 2012, p. A19.

<sup>b</sup> Texas Secretary of State, [www.sos.state.tx.us/elections/forms/181004.pdf](http://www.sos.state.tx.us/elections/forms/181004.pdf) (accessed 5/14).

<sup>c</sup> The Coalition for Free and Open Elections, <http://cofoe.org>; Ballot Access News, [www.ballot-access.org](http://www.ballot-access.org) (accessed 5/14).

## critical thinking questions

1. Should every party be allowed a spot on the ballot, regardless of its chances of winning votes? Why or why not?
2. What would be the ideal way to regulate ballot access? How should access to the ballot be determined?

control of some city councils, school boards, and even the top city job of mayor. By 1972 the party nearly cost Democrat Dolph Briscoe the governorship because of the candidacy of Ramsey Muñiz. While this movement ultimately faded away, as most third-party movements do, it marked the growing influence of Latinos in the state.

In recent years, the Libertarian Party in Texas has emerged as a third-party alternative to the two major political parties. While running candidates for a wide range of offices across the state, the Libertarian Party has not been successful at the polls and had little impact on Election Day. For the most part, it has been a party of protest where people dissatisfied with politics in the state can express their discontent at the polls. Libertarians believe in limited government and can be considered fiscal conservatives and social liberals. Former U.S. representative Ron Paul of Lake Jackson, nominally a Republican, ran for president in 1988 as a Libertarian, and his isolationist views on foreign policy in particular are quite distinct from those of other Republicans. Libertarians are particularly active in some of the major cities, including Austin. While they do not win very many elections, they can influence politics in other ways. For example, the major parties may adopt some of the positions promoted by Libertarians (or members of other minor parties) in order to win their support in runoff elections.

The most recent case involving a significant threat to the major-party candidates was the 2006 election for governor. Rick Perry was seen as a vulnerable incumbent, especially during a year that was not particularly favorable for Republicans. Democrat Chris Bell, a former Houston member of Congress, won the Democratic nomination, but two major independent candidates also ran for governor. They were former comptroller Carole Keeton Strayhorn from Austin and musician and humorist Kinky Friedman, whose catchy slogan was “Why the hell not?” When all the ballots were counted, Perry was re-elected governor with 39 percent of the vote. While it is not clear that a two-way race between Bell and Perry would have ensured a Bell victory, the candidacies of Strayhorn and Friedman damaged whatever mandate Perry could claim from a victory without a majority.

Why don’t people vote for third parties? In general elections, Texas employs what is known as a **“first past the post,” single-member district** electoral system. Under a first past the post system, only the candidate who wins the plurality of votes, that is, the most votes, is elected. According to **Duverger’s Law**, this type of voting system tends to favor a two-party system because a vote for a third-party candidate generally does not result in a win. Consider the 2006 governor’s race in which Perry won with less than an outright majority. Although Friedman and Strayhorn made a good showing for third-party candidates, they still only received 12.4 percent and 18.1 percent of the vote, respectively. Even if a runoff election had occurred, it would have been between the top two vote getters, Perry and Bell. This is not to say that a vote for a third-party candidate is “wasted,” because major-party candidates as well as the parties themselves can often be responsive to voters who might have voted for a third-party candidate. Winning candidates often run in future elections and would like to appeal to constituents who might not have supported them in the past.

In contrast, some other countries use a system of **proportional representation** that encourages third-party voting because even if a party wins only 10 percent of the vote in an election, it will still win 10 percent of the seats in the legislature or other

**“first past the post”** an election rule that states that the winner is the candidate who receives a plurality of the votes

**single-member district** an electorate that is allowed to elect only one representative for each district

**Duverger’s Law** the observation that in a single-member district system of electing representatives, a two-party system will emerge

**proportional representation** a multimember district system that allows each political party representation in proportion to its percentage of the total vote

representative body. Voters in these countries are therefore more likely to vote for third and minor parties, because they will almost certainly be able to elect at least one of these candidates.

Many American voters believe that their votes would be wasted if they voted for a third-party candidate. This expectation is rational, as the history of elections shows that a Republican or Democrat will almost always win. Most voters logically decide that it makes more sense to vote for the major-party candidate whose ideology is closest to their own.

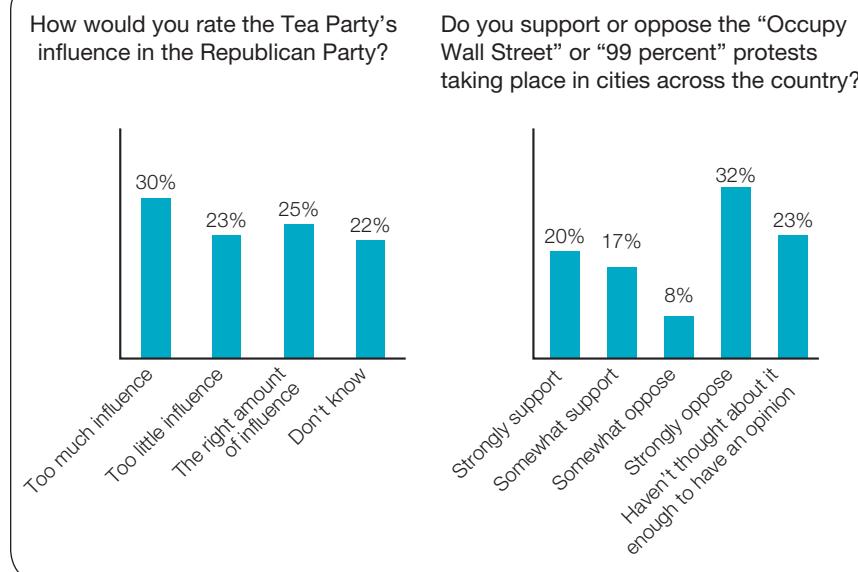
## The Occupy and Tea Party Movements in Texas

The recent **Occupy** and **Tea Party movements** have become prominent nationwide and in Texas. Occupy has held demonstrations in Austin and other major Texas cities, protesting the influence of big banks and Wall Street on American politics. Tea Party advocates, however, have had greater influence in Texas mainly because of their libertarian antitax message, which resonates with many Texans. The implications of these antitax policies in Texas means less funding for K–12 and higher education and fewer social services, such as children’s health care programs.

Tea Party organizers have not yet sought to run a third-party candidate in elections, however. Instead, they have tried to influence Republican primary elections (see Figure 4.2). They believe that they can have more influence in state politics if they become a force to be reckoned with within the Republican Party. Undoubtedly, this is a wise strategy given the history of defeat for third parties, not only in the state but nationwide. Tea Party groups have focused their efforts on key statewide races. They have campaigned against incumbents, such as Speaker Straus of San

**Occupy movement** political movement aimed at limiting the influence of Wall Street and big corporations in American politics; created following government bailouts in 2008

**Tea Party movement** created after Barack Obama’s election, a political movement that advocates lower government spending, lower taxes, and limited government



**FIGURE 4.2**  
**Tea Party and Occupy Wall Street Support in Texas**

SOURCE: Texas Politics Project at the University of Texas at Austin.



The Tea Party has had a strong influence on the Republican Party. Tea Party leader Konni Burton got the Republican nomination for Wendy Davis's state senate seat in Fort Worth.

Antonio, whom they deem to be too moderate. While the Tea Party has had some success in defeating incumbents and nominating preferred candidates, it remains to be seen whether the movement will be co-opted by the Republican Party or be an independent influence. Ted Cruz's victory in the U.S. Senate runoff in July 2012 seemed to suggest that the Tea Party movement has been co-opted by the Republican Party.

## ● Texas's History as a One-Party State

**Trace the evolution of the party system in Texas**

In order to understand the present partisan environment in Texas, let us look at the history of partisanship in Texas since the end of the Civil War. With the defeat of the Republican governor Edmund J. Davis in 1873,

Texas entered a period of Democratic dominance that would last for over a century. Often the Republican Party would not contest major state offices, and other parties, such as the Populist or People's Party, though having some influence for brief periods, did not have staying power. In general elections, it was a foregone conclusion that the Democratic nominee would win. If there was a meaningful election contest, it was in the Democratic Party primary.

Republicans tended to have a limited role in Texas politics. Most commonly, people remained Republicans in the hope of gaining political patronage (usually local postmaster or rural mail carrier positions) when Republican presidents were in office. Some Republicans were businesspeople unhappy with the liberal policies

of Democratic presidents such as Franklin Delano Roosevelt or Harry Truman. However, the Republican Party was not a threat to Democratic dominance in the state. Indeed, Republicans interested in patronage from the national government may have had an incentive to keep the Republican Party small, as the fewer the Republicans, the less the competition for patronage positions. When the father of the late senator Lloyd Bentsen first moved to the Rio Grande Valley, he visited with R. B. Creager, who was then state chairman of the Republican Party. Lloyd Bentsen, Sr., told Creager that he wanted to get involved in the Republican Party because his father had been a devoted Republican in South Dakota. Rather than welcoming Bentsen into the Republican Party, Creager told Bentsen, "You go back to Mission [Texas] and join the Democratic Party, because what's best for Texas is for every state in the union to have a two-party system and for Texas to be a one-party state. When you have a one-party state, your men stay in Congress longer and build up seniority."<sup>6</sup>

In 1952 and 1956, however, the Democratic governor Allan Shivers led a movement often known as the **Shivercrat movement**, which presaged a dramatic change in party alignments a quarter century later. Governor Shivers was a conservative Democrat and widely regarded as one of the most able Texas governors of the twentieth century. He supported the candidacy of the Republican Dwight Eisenhower for the presidency against the Democratic nominee, Adlai Stevenson. Stevenson opposed the Texas position on the Tidelands, offshore lands claimed by both Texas and the national government, which were believed to contain oil. Additionally, Stevenson was much more liberal than Shivers, and Eisenhower was a famous and popular hero of World War II. Governor Shivers not only supported Eisenhower for the presidency; he and all statewide officeholders except the agriculture commissioner, John White, ran on the ballot as Democrats *and* Republicans. It was an act of party disloyalty condemned by loyal Democrats such as Speaker of the U.S. House of Representatives Sam Rayburn, and it led to much tension in the Democratic Party between liberal and conservative Democrats as well as between party loyalists and the Shivercrats.

The Shivercrat movement sent a strong message that many conservative Democrats were philosophically opposed to the national Democratic Party and although they were unwilling to embrace the Republican Party fully, they found the Republican Party more compatible with their views. A pattern in voting known as **presidential Republicanism** was strengthening, whereby conservative Texas voters would vote Democratic for state offices but vote Republican for presidential candidates. With the Shivercrat movement, those conservatives were more numerous and more closely aligned with the Republican Party. To be sure, the fact that some Democratic voters supported the Republican candidate did not mean that the state would vote Republican during every presidential election. As the "Who Are Texans?" graphic shows, the fortunes of Republican presidential candidates fluctuated between 1944 and 2012. Nevertheless, presidential Republicanism would persist in Texas and other southern states until Republicans began to get elected in state and local races in the 1990s and beyond.

Still, in state elections, the Democratic Party was overwhelmingly the dominant party. There might be pockets of the state where Republicans showed strength. Traditionally, in the post-Civil War era, the "German counties" in the Texas Hill Country, which were settled by German immigrants, showed Republican leanings. Dallas County, whose voters were influenced by a powerful group of conservative businesspeople and a conservative newspaper, the *Dallas Morning News*, showed early Republican strength, electing a very conservative Republican congressperson

**Shivercrat movement** a movement led by the Texas governor Allan Shivers during the 1950s in which conservative Democrats in Texas supported Republican candidate Dwight Eisenhower for the presidency because many of those conservative Democrats believed that the national Democratic Party had become too liberal

**presidential Republicanism** a voting pattern in which conservatives vote Democratic for state offices but Republican for presidential candidates



Though Democrats dominated Texas politics for decades, presidential Republicanism grew when Democrats supported Republican presidential candidate Dwight Eisenhower, who ran for president in 1952 and 1956. Here, Eisenhower is seen campaigning in Lubbock.

in the 1950s. However, for the most part, the Democratic Party was so dominant in state elections that the Republican Party did not field opponents to the Democratic nominees.

During this era, the Democratic Party was an umbrella party that held a variety of groups and interests. Liberals and conservatives belonged to the party, as did members of labor unions, businesspeople, farmers, and city dwellers. Often liberals and conservatives within the party battled for control of the party and its offices. But when liberals and conservatives were not engaged in periodic intraparty battles, struggles that occurred with considerable regularity, what political organization existed tended to be based on personal ties and personal popularity of individual candidates.

Until about the 1940s, Texas politics was often chaotic and confused. By about the mid-1940s, however, a split between liberals and conservatives developed in the Democratic Party that focused on New Deal economic policies and civil rights measures. This liberal-conservative split became a characteristic division within the Democratic Party, and liberals and conservatives battled in the party primaries. Between the mid-1940s and the mid-1970s, the victor in these primary squabbles would then go on to win the general election. However, by the late 1970s the winner of the Democratic primary

had to face a significant conservative challenge from Republicans in the general election.<sup>7</sup>

### The Era of Conservative Democrats

After Reconstruction and through the mid-twentieth century, conservative Democrats were in control of state government. These Democratic officeholders were conservative on fiscal and racial issues and exerted a powerful influence in the region as well as in Congress. This may seem hard to fathom in today's political environment, where Democrats are seen as liberal and Republicans as conservative, but recall that the Republican Party was initially started in Illinois as an antislavery party. Conservative Democrats in the early to mid-twentieth century were not particularly favorable to policies that would make it easier for African Americans to vote or participate in civic life in an equal manner. Many southern Democrats were elected to Congress and gained seniority in the Democratic-controlled U.S. Congress. Northern Democrats, however, had always been more liberal than their southern counterparts and did not like the growing influence of the South on policy matters in Washington.

In the many contests between conservative Democrats and liberal Democrats within Texas when the Democratic Party was the only game in town, the conservatives usually won because of the sheer fact that there were more conservatives than liberals in the state. However, some liberals did emerge, such as U.S. senator Ralph Yarborough, and to some extent, President Lyndon B. Johnson. Even though the two men were political adversaries, they both held progressive views, unlike many of their white Texas counterparts. U.S. senator Lloyd Bentsen, who served the state during the 1980s, became the vice-presidential candidate for Michael Dukakis in 1988 but was unable to win the state for his running mate. Instead, Republican George H. W. Bush, who had moved to Texas from Connecticut, carried the state and the general election. The Reagan Revolution had reached Texas, and from that point on, the Democratic Party in the state shrank to become the minority party.

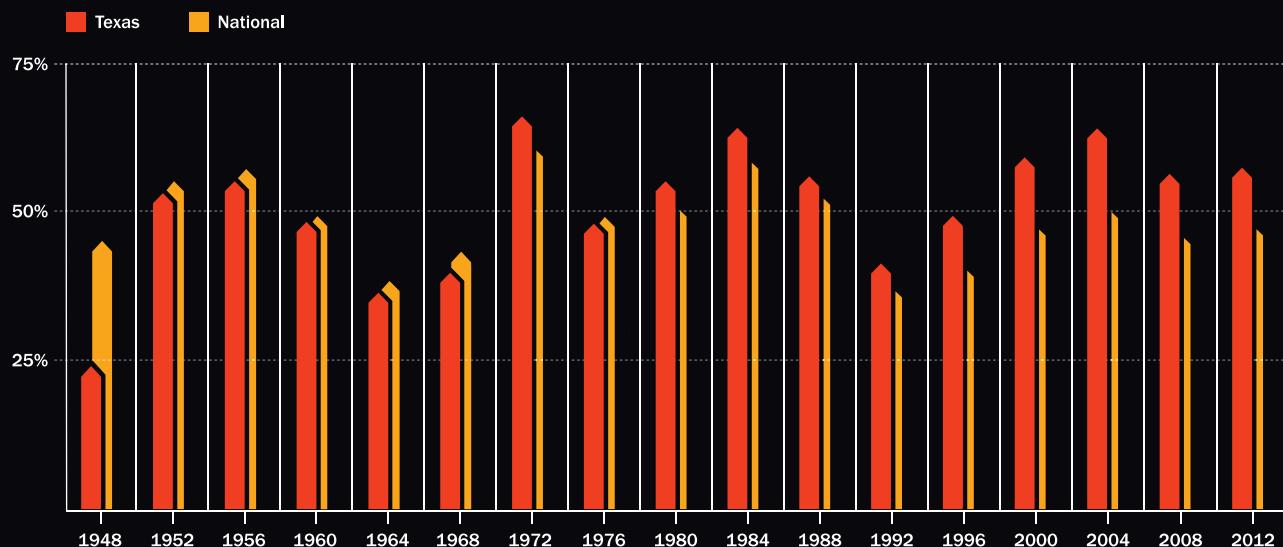
### for critical analysis

Consider how electoral decisions could be made if candidates were not identified by party membership. Would it be more or less difficult for individuals to discover the candidates' views on the issues? Would fund-raising be more or less difficult?

# When Did Texas Become Republican?

The Republican Party is the dominant party in Texas. However, this is a fairly recent development. Before the 1970s, Texans were less likely than the rest of the nation to support Republican presidential candidates. And it was only in the 1990s and the early 2000s that Republicans came to hold a majority of seats in the Texas delegation to the U.S. House and in the Texas legislature.

## Republican Share of the Presidential Vote



## Republican Share of Offices Held



SOURCES: First figure: 1948–2004 data from the CQ Elections and Voting Collection. 2008 data from the Associated Press. Second figure: 1974–2002 data from Republican Party of Texas. 2004–15 data calculated by author from election results archived at the Texas Secretary of State.

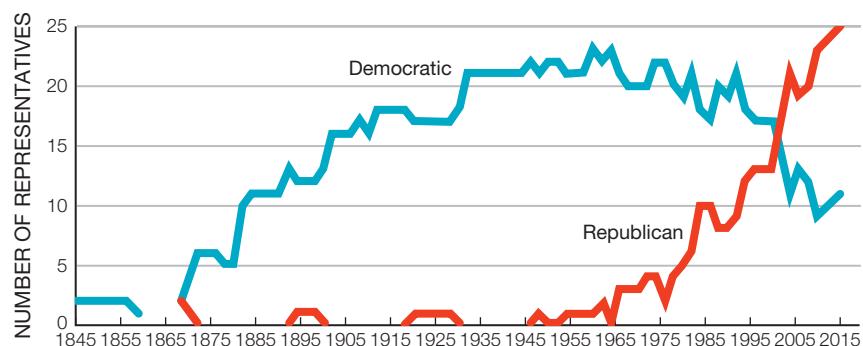
## for critical analysis

- Consider the timing of the shift toward the Republican Party in Texas. What factors contributed to this shift?
- The figures show that in the last few elections, the growth of the Texas Republican Party has leveled out somewhat. Do you think the growth of the Texas Republican Party has stalled, or will the party's strength continue to grow in Texas?

## The Growth of the Republican Party

One of the most important developments in Texas politics has been the growth of the Republican Party (see Figure 4.3). This growth can be seen along three interrelated dimensions: in terms of those who identify with the Republican Party, those who vote for Republican Party candidates in primaries and the general election, and those Republicans who have been elected to office. In the 1950s more than 60 percent of Texans identified with the Democratic Party and fewer than 10 percent identified themselves as Republicans. The remainder considered themselves independents. In the 1960s, Republican identification in Texas rose above 10 percent, Democratic identification remained above 60 percent, and identification as independents dropped slightly. The 1970s saw a decline in Democratic affiliation and an increase in Republican affiliation. Both patterns accelerated during the 1980s.<sup>8</sup> In 2008, Texans who identified themselves as Republicans saw a drop from 37 percent in 2004 to 33 percent, whereas Democratic Party affiliation remained steady at 30 percent.<sup>9</sup> A 2009 Gallup poll study identified Texas as being a competitive state with Republican leanings.<sup>10</sup> There is, however, clearly a difference between poll responses and election results where Texas has been and remains strongly Republican. Interestingly, when one considers competition between the two parties in terms of actual voters in the primaries or the general election, a different story emerges. Among actual voters in both primaries and general elections, Texas has become a strongly Republican state over the last decade. This conclusion is confirmed when one considers the number of Republican officeholders in the state.

In the first quarter of the twentieth century, the Republican Party was only a token party. In the state legislature, for example, Republicans never held more



**FIGURE 4.3**

### Party Composition of the Texas Delegation to the U.S. House of Representatives, 1845–2015

NOTE: Third-party data are not included.

SOURCE: Texas Politics Project at the University of Texas at Austin.

**TABLE 4.1****Growth of the Republican Party in Texas**

YEAR	U.S. SENATE	OTHER STATEWIDE	U.S. HOUSE	TEXAS SENATE	TEXAS HOUSE	COUNTY OFFICE	DISTRICT OFFICE	SCHOOL BOARD	TOTAL
1974	1	0	2	3	16	53	NA	NA	75+
1980	1	1	5	7	35	166	NA	NA	215+
1990	1	6	8	8	57	547	170	5	802
2000	2	27	13	16	72	1,233	336	10	1,709
2010	2	27	23	19	101	1,500	386	11	2,069
2012	2	27	24	19	95	NA	NA	NA	NA
2014	2	27	25	20	98	NA	NA	NA	NA

SOURCE: Republican Party of Texas.

than one seat in the Texas Senate and never more than two seats in the Texas House from 1903 to 1927. From 1927 to 1951 there were no Republicans in the Texas legislature, and then a lone Republican was elected from Dallas to serve only one term in the Texas House. It was another decade before Republicans were again elected to the legislature, when 2 served in the Texas House. Then in 1962, 6 Republicans were elected to the House from Dallas County and 1 from Midland County. By 1963 there were 10 Republicans in the Texas House and none in the Texas Senate.<sup>11</sup>

As Table 4.1 shows, as late as 1974 there were not many more than 75 Republican officeholders in the entire state of Texas. One of those officeholders was U.S. senator John Tower, and there were 2 Texas Republicans in the U.S. House of Representatives. No Republicans were elected to state office in statewide elections. There were only 3 Republicans in the Texas Senate and only 16 Republicans in the Texas House of Representatives. Ronald Reagan's election as president in 1980 marked a significant change in how Texans began to vote not only in presidential elections but also in state elections. The Reagan era ushered in a period when conservative Democrats began to switch to the Republican Party in record numbers. This switch became more evident at the end of the Reagan and Bush years when Texas became a Republican state not only in presidential races but also in state races. In 2014 both U.S. senators from Texas were Republican and 25 Texas members of the U.S. House of Representatives were Republican. A majority of the Texas Senate, 20 of the 31 members, and the Texas House of Representatives, 98 of the 150 members, was Republican.

It was a record of remarkable Republican growth and Democratic decline. By 1999 every statewide elected official was Republican. (This remained true in 2014 as well.) That included the governor, lieutenant governor, attorney general, comptroller, land commissioner, agriculture commissioner, all three members of the Texas Railroad Commission, and all nine members of both the Texas Supreme Court and the Texas Court of Criminal Appeals. Only 20 years earlier, William Clements was the first statewide official elected as a Republican since Reconstruction.

**Blue Dog Democrats** another name for conservative Democrats, mostly from the South

## The Disappearance of Conservative Democrats

Conservative Democrats, also known as **Blue Dog Democrats**, are becoming an endangered species in Texas and in the rest of the South. Such Democrats never left the party they grew up in, and they have become marginalized in the national party because of their social conservatism. Many of these Democrats are opposed to abortion and same sex marriage while supportive of gun rights. These positions put them at odds with the prevailing consensus in the Democratic Party. Some of the few conservative Democrats elected to Congress in recent years even refused to support Nancy Pelosi of San Francisco as their party leader because of their divergence from her more liberal views.

By 2012 all of the conservative Democrats elected to represent Texas in the U.S. Congress had retired, switched parties, or lost their elections. For example, former congressperson Chet Edwards was a conservative Democrat who represented Crawford, the home of former president George W. Bush. In the 2010 elections, Edwards lost his bid for re-election to Republican Bill Flores, a businessman. Congressperson Ralph Hall of Rockwall switched to the Republican Party in 2004 after spending many years as a conservative Democrat. He switched parties in order to have more influence in Congress's governing party, although just two years later, the Democrats retook control of the U.S. House. In 2014, Hall decided to run for re-election despite his 91-year-old age. Hall lost in a runoff with Tea Party-backed attorney John Ratcliffe. The seat is strongly Republican, and Ratcliffe was elected to the seat.

The biggest losses for conservative Democrats came following the 2003 redistricting cycle, spearheaded by Tom DeLay. As House majority leader, DeLay wanted to take advantage of the new Republican majority in the state legislature in order to redraw congressional districts, which he thought were too favorable

*Recent elections have continued the trend toward greater strength of Republicans in Texas. Even conservative Democrats—like Representative Congressman Chet Edwards from Waco, pictured here—have recently lost their seats in Congress.*



to Democrats. Although controversial, DeLay was able to succeed in organizing a dramatic redistricting session, which put many conservative Democrats from Texas at risk of losing their seats.

After this episode, two Texas Democrats, Representatives Charles Stenholm and Max Sandlin, lost their seats to Republicans. Another Democrat, Jim Turner, decided not to seek re-election in his newly configured district in east Texas. Redistricting has left liberal Lloyd Doggett of Austin as the only white Democrat representing a majority white congressional district in Texas. Gene Green of Houston represents a majority-minority district.

The pattern we observe in Congress is also present at the state legislative level. Of the 74 Democrats in the Texas House of Representatives, 12 are considered conservative in research conducted by Mark Jones of Rice University. This is relative to other Democrats, not Republicans. The most conservative Democrat in the Texas House is still more liberal than the most liberal Republican.<sup>12</sup> In the most recent legislative session, however, Allan Ritter of Nederland, who was one of the 12 conservative Democrats, switched to the Republican Party.

In today's political environment, the influence of conservative Democrats and liberal Republicans is very limited. At the national level and in Texas, conservatives are disproportionately members of the Republican Party and liberals are members of the Democratic Party. In many races, there are a shrinking number of truly independent voters who can swing elections. Often, both parties attempt to mobilize their own bases instead of trying to reach these swing voters.

## ● Issues in Texas Party Politics

**Analyze how ideological divisions and demographic change affect Texas political parties**

Both the Democrats and the Republicans have factions within the party, and these factions emphasize different issues. For example, the Democratic Party in Texas has a large Latino base, which is very interested in the issue of immigration. The Republican Party has a strong and growing Tea Party

contingent, which is making the party more antitax and fiscally conservative. In this section, we will examine some of these conflicts both between and within the major parties.

### Party Unity and Disunity

All groups have opposing factions within them, and political parties are no exception. When a party becomes dominant in a state, these factional battles become particularly important because the stakes are higher for the factions of the dominant party.

When the Democratic Party was the dominant party in Texas, factional battles were common between liberals and conservatives in the party. These conflicts in the Democratic Party were especially notable during the 1950s in the struggles between the pro-Eisenhower conservative Democrats, led by Allan Shivers, and the pro-Stevenson liberal and loyalist Democrats, led by Sam Rayburn, Lyndon Johnson, and Ralph Yarborough. Now that the Republican Party is the dominant party in Texas, major factional battles have occurred for control of that party. One

faction is the religious right. This group includes religious conservatives who are especially concerned with social issues such as abortion, prayer in public schools and at school events, the teaching of evolution in public schools, and the perceived decline in family values. The other major segment of the party is composed of economic conservatives. This group is primarily concerned with reduced government spending, lower taxes, and greater emphasis on free enterprise. At the end of the day, however, these factions often end up supporting their party candidate in the general election.

In the 2006 primary some Republicans, including two of the party's largest contributors in Texas, believed that some Republicans in the Texas House were too moderate and spent money to try to defeat them.<sup>13</sup> At least six Republican incumbents were aided by last-minute contributions from a political action committee that poured about \$300,000 into their campaigns to help protect them from Republican challengers. Nevertheless, two of the six incumbents were defeated and one was thrown into a runoff.<sup>14</sup> The 2014 primary battle between Lieutenant Governor David Dewhurst and Senator Dan Patrick suggests that the ideological tensions in the Republican Party continue between what is essentially a conservative faction and an even more conservative faction. The latter faction has been identified with the Tea Party movement. Tea Party favorite U.S. senator Ted Cruz now has protégés: Dan Patrick in the lieutenant governor's position and Ken Paxton as attorney general. A number of the newly elected members of the state legislature are also Tea Party favorites.

To maintain its political strength, the Republican Party has to keep these factional disputes within the party. When Senator Kay Bailey Hutchison challenged Governor Rick Perry in the primary, some of Perry's appointees endorsed Hutchison. Afterward, they were asked to step down from their appointive positions. These were seen as examples of the rift that emerged between two wings of the Republican Party. For years, the Democratic Party battles between its liberal and conservative wings were kept inside the party because there was no rival party to which one of the factions could go. Eventually the Republican Party emerged as a home where many conservative Democrats felt comfortable. Conceivably, the factional disputes in the Republican Party could lead one of the factions—the more moderate Republicans—to move to the Democratic Party.

### **Urban, Rural, and Suburban Influences on Partisanship**

As in the rest of the country, one of the major divides in political party affiliation is rural versus urban. Today's large suburban populations must be added to this equation. The growth of suburban enclaves around major cities such as the Dallas–Fort Worth metroplex, Houston, and San Antonio has profoundly changed politics. Prior to the growth of suburbia, people lived either in cities or in rural areas. Rural residents were often cattle ranchers or farmers. As cattle raising and farming became more mechanized and large companies displaced local farmers, it became less profitable to run family farms. Many rural residents relocated to urban areas to work in banks, oil companies, or other industries.

During the 1950s the federal government embarked on a major project to connect cities through an interstate highway system. One consequence of this system was that it made it easier for workers to travel to and from urban areas. For those who wanted to escape urban congestion, it became easier to move to the outskirts of the city and travel by car to their jobs. While mass transit facilitated suburban



State senator Leticia Van de Putte, of San Antonio, is one of a growing number of influential Hispanics in the Democratic Party in Texas. Here, she makes an announcement about helping indentured servants, who are brought over the border and then forced to work, often under harsh conditions, to pay off their "debt" to the traffickers who transported them.

commuting in other parts of the country, in Texas, taxpayers were unwilling to fund these infrastructure investments.

Texas's interstate highway system encouraged the process of "white flight," the mass exodus of more affluent whites from urban areas to suburban areas. This left urban areas with eroding tax bases and remaining poor minority populations, who did not have the luxury of purchasing automobiles to commute between city and suburb.

The political result of this changing demographic is that cities have become more Democratic, even in Texas, where the urban strongholds of Austin, Dallas, and Houston deliver the most Democratic votes in the state. Rural areas have remained solidly conservative and have become Republican in Texas, and suburban areas can best be described as hybrid areas with pockets of Republicans and Democrats depending on the specific area and local issues.

Another consequence is that voters tend to settle in places with like-minded people so that cities tend to attract more Democrats, and suburban and rural areas tend to attract more Republicans. This reinforces the political proclivities already established in such communities. A recent book, *Our Patchwork Nation*, by Dante Chinni and James Gimpel explores this phenomenon nationwide, arguing that different communities have distinct political characteristics.<sup>15</sup>

The tensions introduced by suburbanization are clearly seen in Dallas County over the last decade. As Dallas County has urbanized and the suburbs have extended to adjoining counties, Dallas County has been transformed into an urban, Democratic county. In the media coverage of the 2000 presidential election, one small judicial race in Dallas County was almost overlooked. Only one puzzled article on the race's results appeared in the *Dallas Morning News*.<sup>16</sup> A three-time

Republican judge, Bill Rhea, won re-election against a first-time Democratic candidate, Mary Ann Huey. That should have been no surprise. By the late 1980s the only Democrat who could win a judicial race in Dallas County was Ron Chapman, a Democratic judge who happened to share the name of the most popular disk jockey in the county.<sup>17</sup> In the early 1980s there had been a wholesale rush of incumbent Democratic judges to the Republican Party. Although varying explanations were given by the party switchers, perhaps the most honest and straightforward was by Judge Richard Mays: “My political philosophy about general things has nothing to do with me [*sic*] being a judge. . . . That’s not the reason I’m switching parties. The reason I’m switching is that to be a judge in Dallas County you need to be a Republican.” With Mays’s switch in August 1985, 32 of the 36 district judges in Dallas County were Republicans, though none were Republicans before 1978.<sup>18</sup> It would, of course, not take long until all judges in Dallas County were Republican.<sup>19</sup>

So what was remarkable about that one district court race between a Democratic challenger and a longtime Republican incumbent, other than the fact that a Democrat had the temerity to challenge an incumbent in a Republican bastion such as Dallas County? Out of 560,558 votes cast, only 4,150 votes separated the two candidates. In other words, a three-term Republican judge with no scandal or other controversy surrounding his name won with only 50.3 percent of the vote. It is no wonder that the judge commented, “I’m thrilled to be serving again and duly humbled by the vote count.”<sup>20</sup> Even more astounding, Judge Rhea’s Democratic opponent, Mary Ann Huey, had run with no money, no political experience, and no support from the legal community. She ran in the same year that George W. Bush was the presidential nominee, with no other Democratic judicial candidates on the ballot at the county level, and with little more than audacity on her side.

Judge Rhea’s humbling experience, of course, was not caused by his judicial performance but rather by demographic changes. The Republican base in Dallas County has moved to places such as Collin, Denton, and Rockwall counties. That suburban growth has changed those traditionally Democratic counties into Republican counties but has left the old Republican base—Dallas—with a larger African American and an even larger Latino population and has returned to the Democratic column that it left a little more than 20 years ago.

In the 2004 elections, George W. Bush carried Dallas County by fewer than 10,000 votes (50.72 percent), and Dallas County elected Democrats as sheriff and four countywide elected judges. The 2006 elections in Dallas County were truly a watershed in the county’s politics. A Democrat was elected county judge, a Democrat was elected district attorney, and all 42 Democrats who ran for Dallas County judgeships were elected. Democrats continued their sweep of countywide elections in 2008, 2010, and 2012.

In 2008, Harris County also dramatically shifted to the Democratic column, electing a large number of Democrats to county office. It seemed to be following in Dallas County’s footsteps. However, the 2010 elections moved Harris County back into the Republican column, and in 2012, Harris County was a virtual tie between Obama and Romney.

## African Americans in Texas Political Parties

In Texas, African Americans are a smaller percentage of the population than in neighboring Louisiana. Approximately 12 percent of the state population is African American, and most of that population is concentrated in east Texas as well

**TABLE 4.2**

## Turnout by Race: 2012 Presidential Year versus 2010 Statewide Election Year

	NUMBER OF ELIGIBLE VOTERS IN 2012 (IN MILLIONS)	TURNOUT OF ELIGIBLE VOTERS IN 2010 STATEWIDE ELECTION YEAR (%)	TURNOUT OF ELIGIBLE VOTERS IN 2012 PRESIDENTIAL YEAR (%)	DIFFERENCE BETWEEN 2012 AND 2010 (%)
White*	8.33	43.8%	60.9%	17.1%
African American	2.00	38.7	63.1	24.4
Asian	0.57	22.2	42.4	20.2
Hispanic	4.38	23.1	38.8	15.7
Total	15.4	36.4	53.8	17.4

\*White does not include whites who identify as Hispanic.

SOURCE: U.S. Census Bureau, [www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html](http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html) (accessed 5/19/14).

as in the major cities of Houston, Dallas, San Antonio, and Austin. Depending on the election, the vast majority of African Americans cast their votes for Democrats. This is not unusual, as African Americans in other parts of the country are similarly loyal to the Democratic Party.

The influence of African Americans in the Democratic Party in Texas is high not only because they tend to vote Democratic more than Republican but because they participate in elections more than other ethnic groups. During the 2010 statewide elections, 38.7 percent turned out to vote. During the presidential election of 2012, 63.1 percent turned out to vote. These percentages were far above the total proportion of registered voters who turned out in 2010 (36.4 percent) and in 2012 (53.8 percent). See Table 4.2.

This is not to say that all African Americans are Democrats. Former railroad commissioner Michael Williams became the first black Republican to be elected to the statewide post. The former Texas Supreme Court chief justice Wallace Jefferson is also an African American Republican and was elected by voters to his position. Other than Williams and Jefferson, only two other African Americans have been elected to statewide office in recent years.

African Americans have been elected mayors of important cities in Texas. Democrat Lee Brown became Houston's first African American mayor in 1997, and Democrat Ron Kirk became Dallas's first African American mayor in 1995. In 2002, Kirk ran for the U.S. Senate but lost to white Republican John Cornyn.

### Latinos and the Future of Party Politics in Texas

The 2002 elections raised serious questions about how soon the Latino vote would transform politics in Texas. In an attempt to break the lock that the Republicans had on statewide offices, the Democratic Party put forward a "Dream Team" with Tony Sanchez, a wealthy Latino businessman from Laredo who had been an appointee of Republican governor Rick Perry and had a record of not participating

## for critical analysis

What is the significance of Latino population growth to parties in Texas?

in many elections, running for governor alongside Ron Kirk running for the U.S. Senate and John Sharp (a former state comptroller and white conservative Democrat) running for lieutenant governor. The idea was to mobilize minority voters to vote for the Democratic ticket while holding traditional white voters. The strategy failed dismally as Sanchez lost to the Republican candidate Perry (40 percent to 58 percent), Kirk lost to the Republican Cornyn (43 percent to 55 percent), and Sharp lost to the Republican Dewhurst (46 percent to 52 percent). Especially disappointing because Sanchez was the first Latino major party nominee for governor, Latino voter turnout was only 32.8 percent. The Democratic “Dream Team” became a nightmare. Sanchez had money and spent it with abandon, but he was a poor campaigner who could not even mobilize the Latino vote.

Additionally, Democrats didn’t anticipate the grassroots get-out-the-vote effort put forth by the Republicans. Republican straight-ticket voting in key urban and suburban counties across the state appeared to have outdistanced Democratic straight-ticket voting. Further, it appeared that negative campaigning, particularly directed at Tony Sanchez, may have undercut support for the Democratic ticket among traditional white conservative voters.<sup>21</sup>

The 2010 election has been described as a Republican tsunami running throughout the nation. Texas experienced this wave in three important ways. First, four Democratic incumbent U.S. congresspeople were defeated. Second, Republicans maintained their monopoly over statewide elected offices. Third, Republicans gained 22 seats in the Texas House. A conservative majority reasserted itself in Texas politics. Since the 2010 elections, two Latino members of the state house have switched parties. Aaron Peña of Edinburg and Jose Lozano of Kingsville became Republicans, although redistricting led Peña to retire from politics in January 2013.

Despite the final results of the 2008 and 2010 elections, few commentators were willing to dismiss the growing importance of the Latino vote in the state. One indication of that importance is that in 2010 it was estimated that Hispanics constituted about 20 percent of the registered voters in Texas.<sup>22</sup>

However, Latinos have not fully realized their potential voting strength. Table 4.2 shows Latino voting population figures and turnout rates in comparison to other racial and ethnic groups in the state in 2012 (a presidential year) and 2010 (a statewide election year). This is an issue that we will explore in more depth in Chapter 5. For now, we should note that Latino voters have a significantly lower turnout rate than whites and African Americans in both presidential years and statewide election years. Moreover, there are a large number of Latinos living in Texas—perhaps around two million—who are not citizens, some of whom are documented residents and many others who are not, who are not eligible to vote.<sup>23</sup> Such facts will likely depress the electoral power of the Latino population in Texas political parties in the short and medium run. It should be remembered, however, that many of the children of these noncitizens will be Americans by being born in the United States and thus eligible to vote. Few would be surprised if a life spent living and being educated in the United States led to higher turnout rates among younger Latinos in the future. The full impact of the Latino demographic surge on political parties may not be felt until the next generation comes of age.<sup>24</sup>

## Thinking Critically about Parties in Texas

We often think of conflict in politics between the Democratic and Republican parties, especially in government. While this is certainly true, conflict can also occur within political parties among different factions. These factions usually compromise to support their candidates during the general election. Political parties therefore provide a structure through which candidates strive to win office. The two major parties in Texas are the Democratic and the Republican parties, although most of the elected officials in the state are Republican. In south Texas, however, Democrats control many cities, towns, and school boards because of the large Latino population, which is overwhelmingly Democratic.

One of the most striking developments in Texas politics over the past 20 to 25 years is that one-party Democratic dominance is gone from the Texas political scene. That decline in Democratic dominance corresponds to the rise of the Republican Party in Texas. In 2014 every statewide elected officeholder in Texas was a Republican.

Currently, the most dangerous conflict within the Republican Party is the split between social conservatives and economic conservatives who have a low-taxing, low-spending agenda. This split was strikingly revealed in the primary battle between Lieutenant Governor Dewhurst and Senator Patrick. Patrick's victory in the primary may signal the triumph of the social conservatives and their increasingly powerful role in the state's politics. However, Republicans are not necessarily secure as the dominant party. It is important that the Republican Party grow and expand its base of support. One of the Republican Party's great weaknesses is its lack of support among Latinos, the fastest-growing ethnic group in Texas. If the Republicans are to continue their remarkable successes in Texas politics, they will have to make greater inroads with Latino voters. Patrick's tone of describing illegal immigration as an "invasion" makes this all the more challenging.

Democrats still have a significant base of support in urban counties with large minority populations and with older Texans and with liberals. For Texas to be a competitive two-party state, the Democrats need to win some statewide elections. The party needs to regroup and redirect its appeal to Texans. Most important, if the Democratic Party is to do more than lose elections, it must do what parties have traditionally done in states that have political machines. That is, it must get out the vote. In part, the key to success in future Texas elections is a party's ability to mobilize the Latino vote in the state.

## The Role of Political Parties in Texas Politics

### Describe the main functions of state party organizations (pp. 106–20)

In Texas, political parties serve as brand labels for voters to determine whom to vote for in elections that have little or no publicity. Texas political parties also have conventions and committees that help their members organize and mobilize in elections.

### Key Terms

partisan polarization (p. 108)

political socialization (p. 109)

precinct (p. 114)

precinct chair (p. 114)

county executive committee (p. 114)

county chair (p. 114)

state executive committee (p. 114)

state chair and vice chair (p. 114)

precinct convention (p. 114)

county convention (p. 114)

state convention (p. 114)

Dixiecrats (p. 116)

La Raza Unida Party (p. 116)

“first past the post” (p. 118)

single-member district (p. 118)

Duverger’s Law (p. 118)

proportional representation (p. 118)

Occupy movement (p. 119)

Tea Party movement (p. 119)

### Practice Quiz

1. Providing a label that helps voters identify those seeking office is an important function of
  - a) the state.
  - b) political parties.
  - c) interest groups.
  - d) regional and subregional governments.
  - e) the president.

2. The process by which political parties become more distant from each other in terms of ideology is
  - a) partisan convergence.
  - b) partisan polarization.
  - c) partisan conventions.
  - d) partisan equilibrium.
  - e) partisan deliverance.
3. All of the following groups constitute the Democratic Party base in Texas except
  - a) business leaders.
  - b) Latinos.
  - c) African Americans.
  - d) white liberals.
  - e) urban residents.
4. Which minority group is the fastest growing in Texas?
  - a) African Americans
  - b) Latinos
  - c) Asian Americans
  - d) Native Americans
  - e) All are growing equally.
5. In the state of Texas, the highest level of temporary party organization is the
  - a) state convention.
  - b) state executive committee.
  - c) governor’s convention.
  - d) civil executive committee.
  - e) speaker’s committee.
6. Which of the following third parties and movements had the most success in winning elections in post-World War II Texas?
  - a) La Raza Unida Party
  - b) the Occupy movement
  - c) the Green Party
  - d) the Kinky Friedman movement
  - e) the Constitution Party

# Texas's History as a One-Party State

## Trace the evolution of the party system in Texas (pp. 120–27)

Texas has traditionally been a one-party state, meaning that one party has been in control of state politics for a long time. In the post–Civil War period, the Democrats held power in the state, but since 1994 the Republicans have won every statewide election and consequently dominate state politics.

### Key Terms

- Shivercrat movement (p. 121)
- presidential Republicanism (p. 121)
- Blue Dog Democrats (p. 126)

### Practice Quiz

7. The Shivercrat movement was
- a) a group of conservative Democrats in Texas who supported Eisenhower for president.
  - b) a group of liberal Democrats who supported equal rights for all Americans.
  - c) a group of conservative Republicans who rejected the Obama administration.
  - d) a group of liberal Republicans who rejected the Bush administration.
  - e) a group of Libertarians.

8. In Texas, the Republican Party became the dominant party in

- a) the 1950s.
- b) the 1960s.
- c) the 1970s.
- d) the 1980s.
- e) the 1990s.

9. Blue Dog Democrats were

- a) northeastern Democrats with conservative views.
- b) southern Democrats with liberal views.
- c) southern Democrats with conservative views.
- d) northern Democrats with liberal views.
- e) western Democrats with liberal views.

10. Presidential Republicanism refers to which of the following?

- a) Texans voting for Republican local candidates
- b) Texans voting for Republican presidents and Democrats for state offices
- c) Texans voting for Republican presidents and Republicans for state offices
- d) Texans voting for Democratic local candidates
- e) Texans voting for third-party candidates at all levels

# Issues in Texas Party Politics

## Analyze how ideological divisions and demographic change affect Texas political parties (pp. 127–32)

Texas is a diverse state with divisions between north and south and east and west. Latinos currently constitute nearly 40 percent of the state's population and currently favor the Democratic Party, although their registration and turnout rates are lower than those of the other major demographic groups.

### Practice Quiz

11. Which of the following is not true?
- a) Cities in Texas have become more Democratic.
  - b) Cities in Texas are dominated by third parties.

- c) Rural areas of Texas are solidly Republican.

- d) Texas suburbs contain pockets of both Democrats and Republicans.

- e) Democrats dominate elections in Dallas County.

12. African Americans in Texas

- a) tend to cast their votes for Democrats.
- b) are a large part of the Republican base.
- c) vote mainly for independent candidates.
- d) constitute less than 10 percent of the population.
- e) split their votes evenly between the Democratic and Republican parties.

# Recommended Websites

Libertarian Party of Texas  
[www.tx.lp.org](http://www.tx.lp.org)

Republican Party of Texas  
[www.texasgop.org](http://www.texasgop.org)

Texas Democrats  
[www.txdemocrats.org](http://www.txdemocrats.org)

Texas Tribune  
[www.texastribune.org](http://www.texastribune.org)

In 2014, Democratic state senator Wendy Davis ran for governor of Texas. Though her personal story attracted many supporters, Republicans raised questions about her biography. Davis faced an uphill battle winning in a strongly Republican state, and she lost badly to Republican attorney general Greg Abbott.

BOOK  
A Community Bound



# Wendy Davis

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# Forgetting to Be Afraid

A Memoir

# Elections in Texas

**WHY ELECTIONS MATTER** After his failed 2012 presidential run, Texas governor Rick Perry decided not to run for re-election in 2014. Perry's announcement paved the way for Attorney General Greg Abbott to seek the Republican nomination for governor. With Comptroller Susan Combs's retirement and Land Commissioner Jerry Patterson's run for attorney general, most of the statewide offices were open seats, creating a whirlwind of campaign activity. With only token opposition, Attorney General Abbott trounced his primary opponents in March 2014 and faced Democrat Wendy Davis in November 2014. Wendy Davis became a national figure when she filibustered a bill that would have tightened abortion access in Texas. Because Davis was a state senator from a moderate district in Fort Worth, state Democrats and many national Democrats saw in her an opportunity to "turn Texas blue" again.

But Davis had a monumental task before her, as no Democrat had been elected statewide in Texas since Bob Bullock had won the lieutenant governor's office in 1994. If elected, she would have become the second Democratic woman to be elected governor in Texas since World War II. (Ann Richards was Texas governor from 1991 to 1995, when she was defeated by George W. Bush.)

Davis's major challenge was to appeal to a broad segment of Texas's electorate. Some Latino leaders initially expressed concerns with her candidacy when she did not actively campaign in the Rio Grande Valley running up to the Democratic primaries. Her opponent in the primary, Reynaldo Madrigal, who did not campaign and had virtually no campaign funds, actually beat her in some south Texas counties. Some pundits argued that Davis's pro-choice notoriety may have hurt her among many religious, Catholic Latinos in the Rio Grande Valley. Whatever the case, Davis and the state Democratic Party had to attract a significant number of Latino votes in order to have a reasonable chance of winning statewide. Simply put, there were not enough white liberals in Texas for Democrats to win statewide elections.

Davis's campaign also featured a rocky start with allegations that she abandoned her children to move to Boston to attend law school. While she denies these claims, Davis has had to face charges that she put her career before her family when she decided to leave her husband and children behind in Fort Worth when she attended Harvard Law School. Defenders of Davis have noted that a male candidate would never face similar accusations and that sexism was at play in this charge. Davis was also accused of misleading voters by claiming she lived in a trailer for a longer period than she actually did and that

she did not acknowledge her second husband's contributions to her law school tuition. Whatever the true story was, the controversy made it more difficult for Davis to extend her appeal beyond liberal Democrats to a broader electorate including suburban Republican women voters. These voters had played a major role in Ann Richards's successful campaign for the governorship against Clayton Williams in 1988 and had to be won if Davis were to be elected.<sup>1</sup>

In order for a Democrat to win a statewide race in Texas, many pundits claim that the candidate must run a flawless campaign against a flawed Republican candidate. Davis did not accomplish this against Abbott and lost. Democrats had hope in the race for lieutenant governor, however, with state senator Leticia Van de Putte. Van de Putte was a San Antonio Democrat whose Latina background was seen as a strong asset in the race, and her personal story as a pharmacist-turned-politician might appeal to a broad segment of the state's population. She faced Dan Patrick, a bombastic Republican state senator who challenged the incumbent lieutenant governor David Dewhurst for not being conservative enough. His platform stressed stopping the "invasion" of illegal immigrants and toughening up border security. Van de Putte was overwhelmed by the number of Republican votes in Texas, and Patrick won the race comfortably.

Why should it matter who is elected governor and lieutenant governor? The governor of Texas has important national stature, as we recall from George W. Bush's successful transition to the presidency. The governor has the power to set the agenda, veto legislation, and influence public policy in the state. The lieutenant governor also is a powerful position in Texas. The powers of the lieutenant governor include setting the agenda, appointing committee chairs, and presiding over the state Senate. Some governors were also former lieutenant governors, such as Rick Perry. While these high-profile elections received more attention than usual from voters, the reality is that all elections matter for public policy in Texas. Elections to the city council, school board, and state legislature also make a huge difference in our lives. Education funding, health care policy, tax policy, and environmental policy are all affected by whom we elect to represent us, whether at the national or local level.

## chapter goals

- **Describe the types of elections held in Texas and how they work (pp. 139–41)**
- **Explain how the rules for voting affect turnout among different groups of Texans (pp. 142–59)**
- **Present the main features of election campaigns in Texas (pp. 160–66)**

# ● Features of Elections in Texas

**Describe the types of elections held in Texas and how they work**

Elections are the most important vehicles by which the people express themselves in the democratic process in Texas. At the national level, elections are limited to the selection of the president and vice president (via the Electoral College) and members of

Congress. In Texas, however, voters select candidates for various offices in all three statewide branches of government (the legislature, executive, and judiciary) and in numerous local elections. Texans also vote for changes to the state constitution, which can alter public policy in the state. In theory, such elections are meant to enable the people to exercise some direct control over each branch. In practice, however, one-party dominance and low levels of voter participation have often told a different story, leaving the government exposed to special interests and big money.

Elections are the mechanisms people use to select leaders, authorize actions by government, and borrow money on behalf of government. In Texas, there are a multitude of elections: primary elections, general elections, city elections, school board elections, special elections, elections for community college boards and the governing boards for many special districts, and bond elections for city, county, and state governments.

## Primary Elections

**Primary elections** are the first elections held in an electoral cycle. In Texas, they are generally held on the second Tuesday in March of even-numbered years. Primary elections determine the party's nominees for the general election. They are conducted by the political party and funded jointly by the party and the state. Essentially, parties collect filing fees from those seeking nomination and use these funds to pay for their share of holding the primary election.

The Democratic and Republican parties conduct primaries in all of Texas's 254 counties. Within each county, voters cast ballots in precincts. The number of voting precincts varies depending on the population of the county. Less-populated counties such as Loving and Kennedy have as few as 6 precincts, whereas Harris County contains more than 1,000 voting precincts.

Republicans seeking their party's nomination file papers and pay a filing fee to the Republican Party. Likewise, Democrats file papers and pay a filing fee to the Democratic Party. If several Republicans (or Democrats) seek the office of governor, they will campaign against each other and one will be chosen to run in the general election. Winning the primary election requires an absolute majority. The party's nominees must have more votes than all opponents combined. If no candidate receives an absolute majority, there is a **runoff primary** between the two candidates receiving the most votes. Voters who participate in the Republican Party primary cannot vote in a Democratic runoff; likewise, anyone who voted in the Democratic Party primary cannot vote in a Republican runoff. However, those who voted in neither the Democratic nor Republican primary can vote in either the Republican or Democratic runoff primary.

An **open primary** allows any registered voter to cast a ballot in either, but not both, primaries. There are no party restrictions. One can consider oneself a Republican and vote in the Democratic primary or can leave home intending to

**primary election** a ballot vote in which citizens select a party's nominee for the general election

**runoff primary** a second primary election held between the two candidates who received the most votes in the first primary election if no candidate in the first primary election had received a majority

**open primary** a primary election in which any registered voter can participate in the contest, regardless of party affiliation

**closed primary** a primary election in which only registered members of a particular political party can vote

vote in the Democratic primary, change one's mind, and vote in the Republican primary.

The Texas Constitution and election laws call the Texas system a **closed primary**, because one must declare one's party affiliation before voting, but in practice it is an open primary. Before receiving a primary ballot, the voter signs a roll sheet indicating eligibility to vote and pledging to support the party's candidates. By signing the roll sheet, the voter makes a declaration of party affiliation prior to voting. However, because the voter declares a party affiliation only a few moments prior to voting in the primary, the primary is closed only in the narrowest sense of the term. These declarations in no way bind a voter to support the party's candidates in future elections. Many other states have true closed primaries in that only registered party members can vote in these elections. Each state decides how it will run primary elections.

## General Election

**general election** the election in which voters cast ballots to select public officials

The **general election** is held the first Tuesday following the first Monday in November of even-numbered years. The Democratic Party's nominee runs against the nominee of the Republican Party. It is possible that independent and minor-party candidates will also appear on the general election ballot.

Major state officials (governor, lieutenant governor, comptroller of public accounts, attorney general, and so on) are elected in nonpresidential election years. This arrangement seeks to prevent popular presidential candidates from influencing the outcomes of Texas races. For example, it is possible that a popular Republican presidential candidate might draw more than the usual number of Republican votes, and an unusually large Republican presidential vote might swing the election for statewide candidates running under the Republican banner. Likewise, it prevents an uncommonly popular statewide candidate from influencing the presidential election. If statewide elections were held in presidential election years, a Democratic candidate for governor, for example, might influence Texas's presidential voting by increasing the number of votes for Democratic candidates in general.

General elections are held in November to select national and state officeholders. Members of city councils, school boards, and other local government entities are also selected by general elections; however, these elections usually take place outside the traditional early November time period. In many cases, this means very low voter turnout. For example, in the Austin municipal elections in May 2012, there was a record low turnout of only 10 percent of the city's registered voters. City leaders have proposed moving the election to November in the future to encourage a larger proportion of voters to participate. It is not clear whether even such a move will help. In Houston's mayoral race in November 2013, the turnout was only slightly higher at 13 percent of the city's registered voters.

**special election** an election that is not held on a regularly scheduled basis; in Texas, a special election is called to fill a vacancy in office, to give approval for the state government to borrow money, or to ratify amendments to the Texas Constitution

## Special Elections

In Texas, **special elections** are used to fill vacancies in office, to give approval to borrow money, or to ratify or reject amendments to the Texas Constitution. The dates for special elections are specified by the Texas legislature. If a Texas state senator resigns, for example, the governor will call a special election to fill the vacancy.

Texas laws require voter approval before any governmental agency in Texas can borrow money and assume long-term debt. If the local school district wants to borrow money to build a new high school and repair three elementary schools,

a special election must be held. During the election, voters decide whether they will allow the school board to borrow the money.

The legislature proposes amendments to the Texas Constitution, and the voters in a special election ratify them.

## Running as an Independent

It is unusual for a candidate to run for office in Texas as an independent. One reason is that there are substantial requirements for getting one's name on the ballot. Additionally, an independent candidate lacks the political support of party organizations and the advantage of having a party label on the ballot. As we saw in Chapter 4, however, in 2006, Texas had two independent candidates for governor: Kinky Friedman and former Austin mayor Carole Keeton Strayhorn, the state comptroller, who had been elected to that office as a Republican.

Both candidates were obviously hoping that an independent candidacy would attract the votes of Democrats who believed that a Democratic candidate for governor could not win in Texas. They also were hoping to get substantial votes from Republicans disaffected with the policies and performance of the Republican governor, Rick Perry. Strayhorn, in particular, seemed to have strong appeal to Democrats who usually contributed large sums to Democratic nominees. One study of Strayhorn's contributions from July through December of 2005, for example, found that 52 percent of her campaign funds were from people who had given exclusively or almost exclusively to Democrats over the previous five years.<sup>2</sup>

Each state decides its own requirements for getting on the ballot. Some states make it easier for independents to get on the ballot, but the process in Texas is relatively difficult. For Friedman and Strayhorn to get on the ballot, for example, they had to meet the following requirements:

1. The candidates must obtain signatures on a petition from registered voters. The signatures must equal 1 percent of the total votes in the last governor's race. This meant that Friedman and Strayhorn each had to obtain 45,540 signatures.
2. The signatures must come from registered voters who did not participate in any political party primary election.
3. Signature collection cannot begin until the day after the last primary election. In 2006 this was March 8.
4. Voters may sign only one candidate's petition. If they sign both, only the first signature provided will count.<sup>3</sup>

The two major political parties don't agree on much, but they do agree on keeping competitors out. Making it difficult for independents to get their names on the ballot helps ensure that the two major political parties will continue to dominate politics in the state well into the future. Elections may be open in Texas, but they work through the dominant political parties, helping to solidify their control over the political process and the major political offices in the state. The electoral performances of Friedman and Strayhorn also point to the difficulties of independent candidacy in that both of these candidates received only a small fraction of the overall vote.



*Some blame the relatively low voter turnout for Texas elections on the frequency of elections and the large number of candidates. Also, state officials are not elected in presidential election years, when voter participation tends to be highest.*

# ● Participation in Texas Elections

**Explain how the rules for voting affect turnout among different groups of Texans**

When we think of political participation, we often think of voting. This is the most basic and fundamental duty citizens have in democracy. Other forms of political participation include signing petitions, protesting, and writing letters to the newspaper and elected officials, some of which we will discuss in this chapter and others we will discuss in later chapters. Here, we begin by examining the history of voting in the state and the regulations and procedures surrounding voting rights. Issues include who can vote, how easy it is to register to vote, and why so few Texans vote.

## Earlier Restrictions on the Franchise

The franchise refers to the act of voting or the right to vote. For much of the period of one-party Democratic control that began in the late nineteenth century, there were restrictions on the franchise.

### Nineteenth Amendment

ratified in 1919, amendment guaranteeing women the right to vote

**suffrage** term referring to the right to vote

**Women** Women were allowed to vote in primaries and party conventions in Texas in 1918 and obtained the right to vote in all elections as a result of the **Nineteenth Amendment** to the U.S. Constitution in 1920. However, some of the most influential politicians in the state were opposed to the franchise for women. Joseph Weldon Bailey, for example, who had been Democratic leader in the U.S. House of Representatives and later the informal Democratic leader in the U.S. Senate, was an eloquent opponent of women's **suffrage**, arguing that women could not vote because they could not perform the three basic duties of citizenship: jury service, *posse comitatus* service (citizens who are deputized to deal with an emergency), and military service. He believed that women's morals dictated their beliefs and women would force their beliefs on men. The result, he felt, would be prohibition of alcohol.<sup>4</sup> Tinie Wells, the wife of Jim Wells, perhaps the most influential south Texas political leader of his day, was also an important and influential spokesperson for the anti-women's suffrage movement.<sup>5</sup> Governor "Farmer Jim" Ferguson was another opponent of women's suffrage, but when he was impeached, his successor, William P. Hobby, proved a key supporter of women's right to vote. It was Governor Hobby who called the legislature into special session in 1919 to consider the Nineteenth Amendment. Thus Texas became the ninth state and the first state in the South to ratify the women's suffrage amendment.<sup>6</sup>

**The Poll Tax** Minorities had an even tougher time gaining access to the ballot in Texas. In the early part of the twentieth century, powerful political bosses had economic power and personal influence over Latino voters. They used this power to support national politicians such as John Nance Garner. Garner represented a huge part of south Texas, which stretched from Laredo to Corpus Christi and then north almost to San Antonio. A lifelong Democrat, he began his service in the House of Representatives in 1903 and served until 1933. From 1931 to 1933, he was Speaker of the U.S. House of Representatives, and from 1933 to 1941, he was vice president of the United States. He is most famous for his quip that the vice presidency was not worth more than a bucket of warm spit. Garner was the

first Speaker from Texas and the first vice president from Texas. His south Texas political base was secured by votes that were controlled by the south Texas political bosses.<sup>7</sup>

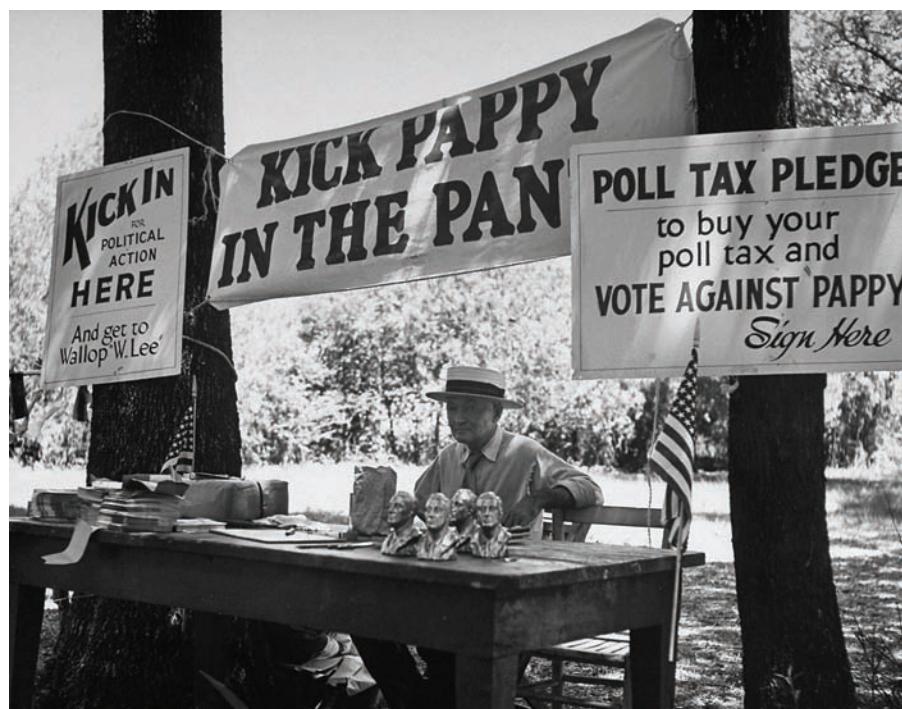
One restriction on voting that affected poor people in general during this era was the **poll tax**. Enacted in 1902, it required voters to pay a tax, presumably to cover the costs of elections by the end of January in an election that took place in early November. That tax was usually between \$1.50 and \$1.75. It was a small sum, but it had to be paid in advance of the election, and in the first third of the century, the tax could be one, two, or even more days' wages for a farm worker. Thus, it tended to disenfranchise poorer people.

The south Texas political bosses used the poll tax to great advantage. They would purchase large numbers of poll tax receipts and provide those receipts to their supporters, who often depended on the bosses for jobs and other economic, legal, and political assistance and who therefore would vote as the bosses wanted.

Although the poll tax was made illegal in federal elections in 1964 by the passage of the Twenty-Fourth Amendment to the U.S. Constitution, it remained legal in state elections in Texas until 1966, when it was held unconstitutional.<sup>8</sup> After the elimination of the poll tax, Texas continued to require **early registration** for voting—registration more than nine months before the general election. Early registration was required on a yearly basis. This requirement effectively prevented migrant workers from voting. These provisions lasted until 1971, when they were voided by

**poll tax** a state-imposed tax on voters as a prerequisite for voting; poll taxes were rendered unconstitutional in national elections by the Twenty-Fourth Amendment, and in state elections by the Supreme Court in 1966

**early registration** the requirement that a voter register long before the general election; in effect in Texas until 1971



*Participation in elections in Texas is low relative to that in other states. In the past, there were restrictions on the franchise. One such restriction that discouraged poor people from voting was the poll tax, which remained legal in Texas until 1966. Here, voters are asked to pay the poll tax and then vote against Pappy O'Daniel.*

**white primary** primary election in which only white voters are eligible to participate

the federal courts.<sup>9</sup> Texas even prohibited anyone who was not a property owner from voting in revenue bond and tax elections until the practice was stopped by federal courts in 1975.<sup>10</sup> Texas also required an unusually long period of residency. Until 1970 voters had to have lived in the state for at least one year and to have lived in the county for at least six months prior to voting. This was another restriction on the franchise that was struck down by the federal courts.<sup>11</sup>

**The White Primary** The most oppressive restriction on the franchise, however, was designed to minimize the political strength of African American voters. It was the **white primary**. This practice came under scrutiny by federal courts numerous times in the 21 years between 1923 and 1944; yet each time, the Texas legislature and state parties found a way to maintain the white primary and exclude black voters. In 1923 the Texas legislature flatly prohibited African Americans from voting in the Democratic primary. Since Texas was a one-party state at this time the effect, of course, was to prevent African Americans from participating in the only “real” election contests. Texas was able to do this because of a 1921 U.S. Supreme Court decision, *Newberry v. United States*, which dealt with a federal campaign-expenditures law. In interpreting the law, the Court stated that the primary election was “in no real sense part of the manner of holding the election.”<sup>12</sup> This cleared the way for southern states, including Texas, to discriminate against African Americans in the primaries.

In 1927, however, the Supreme Court struck down the Texas white primary law, claiming that the legal ban on black participation was a violation of the equal protection clause of the Constitution.<sup>13</sup> In response, the Texas legislature passed another law that authorized the political parties, through their state executive committees, to determine the qualifications for voting in the primaries. That law, of course, allowed the parties to create white primaries. The theory was that what a state could not do directly because of the Fourteenth Amendment, it could authorize political parties to do. However, in *Nixon v. Condon* (1932), the U.S. Supreme Court held that the state executive committees were acting as agents of the state and were discriminating in violation of the Fourteenth Amendment.<sup>14</sup> As a result, the Texas Democratic Party convention, acting on its own authority and without any state law, passed a resolution that confined party membership to white citizens. That case was also appealed to the U.S. Supreme Court, and in *Grovey v. Townsend* (1935), the Court held there was no violation of the Fourteenth Amendment. The Fourteenth Amendment requires “equal protection under the law” for individuals of all races. However, the Court said that this requirement applied only to “state action,” not action by private groups. Since there was no state law authorizing the white primary, the Court believed there was no “state action,” only discrimination by a private organization, the Democratic Party, which is not banned by the Fourteenth Amendment.<sup>15</sup> Thus, the Court upheld the white primary until 1944, when, in *Smith v. Allwright*, it decided that the operation of primary elections involved so much state action and so much public responsibility that the white primary did involve unconstitutional state action.<sup>16</sup>

**Jaybird Party** after the white primary was ruled unconstitutional, this offshoot Democratic party preselected candidates for the Democratic primary and prohibited African Americans from participating

Even with the *Smith* decision, at least one Texas county held unofficial primaries by the **Jaybird Party**. This was a Democratic political organization that excluded African Americans. The winners in the Jaybird primary then entered the regular Democratic Party primary, in which they were never defeated for county office and where they seldom had opposition. In *Terry v. Adams*, the U.S. Supreme Court finally ruled that the Jaybird primary was an integral, and the only effective, part of the elective process in the county. Thus, the Fifteenth Amendment (which deals

with the right to vote) was applicable, and the white “preprimary” primary of the Jaybird Party was ruled unconstitutional.<sup>17</sup>

What made the white primary restriction work for Democrats during this era was the fact that Texas was a one-party state, where elections were decided in the Democratic Party primary. If Texas had had a competitive two-party system during this era, the state might have had a more difficult time imposing and maintaining these restrictions on the franchise. In a competitive two-party system, to obtain and retain power, both parties would have to search for ways to build and increase their base of support in order to be the victorious party. In a one-party system, there is a greater incentive to restrict participation in the party in order to retain control over it. Losers in a battle for control of a one-party system essentially have no place to go. If they cannot maintain a place in the dominant party’s councils, then they have no other avenue for expressing their political views.

## Expanding the Franchise

At least since the 1940s there has been a gradual expansion of the franchise in Texas. Much of that expansion was brought about by litigation in the federal courts, often by African American and Latino civil rights organizations. For example, the National Association for the Advancement of Colored People (NAACP) filed lawsuits throughout the 1960s and '70s challenging laws that restricted or otherwise stunted African American political advancement. The Mexican American Legal Defense and Education Fund (MALDEF) has also been active in monitoring any changes in electoral laws and challenging them if they prevented Latino political advancement.

Federal laws also played an important role in the expansion of the franchise. The most important of these laws was the **Voting Rights Act of 1965**, which applied to Texas as a result of congressional amendments after 1975. The Voting Rights Act was a piece of legislation initially aimed at ensuring that African Americans were not discriminated against at the polls. The year prior to the passage of this bill, Congress had passed the Civil Rights Act, which was intended to ensure the equality of African Americans in terms of access to businesses, hotels, and other public facilities. President Lyndon B. Johnson signed both laws even though he knew it would damage his political popularity in the South.

The Voting Rights Act has without question had an important influence on elections in Texas. One provision of the law was to send federal examiners to southern states to register voters. In many southern states, blacks were systematically denied the ability to register to vote, much less attempt to vote. In Mississippi, only about 7 percent of blacks were registered to vote prior to 1965, but by 1967 more than 67 percent had been registered to vote. This demonstrates the success of the Voting Rights Act in its efforts to ensure equal access to the ballot.

Section 2 of the Voting Rights Act involves a nationwide prohibition against the abridgement of voting rights on the basis of race or ethnicity. Because this affects all states, some localities outside of the South have been sued in federal court alleging violations of voting rights on the basis of race or ethnicity.

The Voting Rights Act has been renewed several times since 1965, and new provisions have been added since then. For example, bilingual ballots are now required in certain areas where more than 5 percent of voters speak another language. This ensures that voters who cannot speak English are not disenfranchised. However, the Supreme Court ruled in 2013 in *Shelby County v. Holder* that a key section of the Voting Rights Act was unconstitutional, which affects a provision requiring

### **Voting Rights Act of 1965**

important legislation passed in order to ensure that African Americans would be guaranteed the right to vote. Renewed several times since 1965, the act also prevents the dilution of minority voting strength



*Supporters of the Voting Rights Act rally outside the U.S. Supreme Court. In 2013 the Court ruled that Section 5 of the Voting Rights Act—the “preclearance” provisions, which aimed to protect minority voters—was unconstitutional.*

Texas to have its new districts or other changes in electoral procedures approved by the U.S. Department of Justice or a District of Columbia federal court.

### Contracting the Franchise?

Highly partisan legislation passed in 2011 may make it more difficult for some people to vote. Over Democratic opposition, the Republican majority in the Texas legislature passed a voter identification law that requires a photo identification in order to vote. Republicans claimed that the photo identification requirement is necessary in order to prevent voter fraud. Democrats, in contrast, have argued that evidence of voter fraud is minimal and that the law will make it harder for low-income persons, students, and the elderly (all of whom typically support Democrats) to vote.<sup>18</sup> Forms of photo identification that are acceptable are a driver's license, an election identification certificate, a Department of Public Safety personal ID card, a U.S. military ID, a U.S. citizenship certificate, a U.S. passport, and a Department of Public Safety-issued concealed handgun license.<sup>19</sup> Photo ID cards issued by colleges and universities are not acceptable. As we noted at the beginning of Chapter 3, this law made it difficult for former Speaker of the House Jim Wright to vote in 2013. It remains to be seen if the Texas voter ID law will ultimately be upheld by the appellate courts. State political leaders, such as Governor Perry and Attorney General Abbott, have argued that Texas should not be singled out along with other southern states and subjected to the special scrutiny, and should be allowed to have a voter ID law without any approval process. The “You Decide” section takes a closer look at this issue.

# Voter Identification Laws

**In 2011 the Texas legislature** passed a law that requires all voters to produce photo identification when they present themselves to vote in an election. Prior to the law, Texans could present a voter registration certificate, which does not carry a photograph. Under the new law, not all forms of photo identification are considered valid for voting purposes. For example, state-issued concealed weapons permits are allowed, but student identification cards are not. A voter who shows up to the polls without appropriate photo identification may cast a provisional ballot, but must return to the registrar's office with photo identification within six days to make his or her vote count.

Supporters of the law argue that requiring photo identification is necessary to ensure the integrity of the election system and assure Texans that their elections are free from fraud. They claim that fraud is often undetected and difficult to prosecute, so the absence of high rates of voter fraud prosecution does not mean that it is a problem that should be ignored. Supporters believe that having the potential of penalties for breaking the law will deter any attempts to commit fraud. They point out that one needs to show photo identification to board airplanes, conduct official business, and perform transactions with banks and other organizations. They also point to public opinion polls showing that the majority of Texans support the simple proposition that you must show photo identification to prove who you are in order to vote.

Opponents of the law claim that the measure is not really about preserving the integrity of the electoral system, but it is meant to minimize Democratic turnout in order to help the state Republican Party keep its hold on power. Those who oppose the law claim that it puts an undue burden on populations who are less likely to possess photo identification (and who often vote for



Democrats), such as elderly, disabled, minority, and poor voters, by making them go through additional steps to vote. The law does provide for free photo identification, but in some rural areas, opponents argue, the nearest Department of Public Safety office is far away and not easily accessible. In addition, opponents suggest that the law is in essence a solution in search of a problem, pointing to studies that show there is no real problem concerning voter fraud in Texas.

The question remains whether voter identification laws are on balance positive or negative. There are legitimate arguments for and against the legislation, but one thing is clear: Republicans strongly support the measure and Democrats have attempted to stop the

measure. This fact alone suggests that Republicans believe they will electorally benefit from the law, while Democrats believe they will be harmed. In Wisconsin, a federal judge agreed with challengers to that state's voter ID law and declared it unconstitutional because of social science evidence suggesting that minorities were adversely affected by the new requirements. However, backers of the Texas law point to data showing that turnout in the November 2013 election was nearly double that of previous elections without the voter ID requirement, including in heavily Hispanic counties. This suggests, they argue, that the law did not adversely affect minority turnout. You decide. Should voter IDs be required for voting in Texas elections?

## criticalthinkingquestions

1. Do the arguments for the legislation outweigh the arguments against it?
2. Is there a way to compromise on this issue? If so, what would a compromise look like?

## Qualifications to Vote

Today, meeting the qualifications to register to vote in Texas is relatively easy. A voter must be

1. eighteen years of age
2. a U.S. citizen
3. a resident of Texas for 30 days
4. a resident of the county for 30 days

To be eligible to vote, one must be a registered voter for 30 days preceding the election and a resident of the voting precinct on the day of the election. Two groups of citizens cannot vote even if they meet all the preceding qualifications: felons who have not completed their sentences and those judged by a court to be mentally incompetent.

**motor voter law** a national act, passed in 1993, that requires states to allow people to register to vote when applying for a driver's license

According to the Texas secretary of state, 71.91 percent of the state's voting age-population (13.6 million citizens) was registered to vote in 2014.<sup>20</sup> The **motor voter law**,<sup>21</sup> which allows individuals to register to vote when applying for or renewing driver's licenses, is one factor in increased registration. Public schools distribute voter registration cards as students turn 18. Cooperative efforts between the secretary of state's office and corporations also increase the number of registered voters. Most colleges and universities also have registration drives to encourage young people to register to vote.

Following the November 2012 election, a Census Bureau survey found that registration rates varied across racial and ethnic lines. Latino eligible voters registered at a 54.5 percent rate, below that of blacks (73.2 percent) and whites (73.0 percent).<sup>22</sup>

## Low Voter Turnout

In most elections, fewer than 50 percent of U.S. citizens vote.<sup>23</sup> Even fewer Texans exercise their right to vote, especially young people. Texas ranks last in the nation in voter participation. Table 5.1 provides data on the abysmal turnout of registered voters in the various types of recent Texas elections. Considering the ease of registration and the ability to vote early, voter participation should be higher. Why do so few Texans vote?

A more detailed analysis reveals several factors that may contribute to low participation rates:

1. low levels of educational attainment
2. low per capita income
3. high rate of poverty
4. location in the South
5. young population
6. traditionalistic and individualistic political culture
7. candidate-centered elections and little party competition
8. lack of media attention to substantive political issues
9. large numbers of undocumented residents and felons

Education and income appear to be the two most important factors in determining whether someone votes, and this is often referred to as socioeconomic sta-

**TABLE 5.1****Turnout by Registered Voters in Texas Elections**

ELECTION	VOTING TURNOUT AS PERCENTAGE OF REGISTERED VOTERS
2001 special election (constitutional amendments)	6.9
2002 Democratic primary (gubernatorial)	8.4
2002 Republican primary (gubernatorial)	5.1
2002 general election (gubernatorial)	36.2
2003 special election (constitutional)	12.2
2004 Democratic primary (presidential)	6.8
2004 Republican primary (presidential)	5.6
2004 general election (presidential)	56.6
2005 special election (constitutional amendments)	18.0
2006 Democratic primary (gubernatorial)	4.0
2006 Republican primary (gubernatorial)	5.2
2006 general election (gubernatorial)	33.6
2007 November special election (constitutional amendments)	8.7
2008 general election (presidential)	59.5
2009 November special election (constitutional amendments)	8.2
2010 Democratic primary (gubernatorial)	5.2
2010 Republican primary (gubernatorial)	11.4
2010 general election (gubernatorial)	38.0
2011 November special election	5.0
2012 Republican primary (presidential)	11.3
2012 Democratic primary (presidential)	5.0
2013 November special elections (constitutional amendments)	8.6
2014 Democratic primary (gubernatorial)	4.1
2014 Republican primary (gubernatorial)	9.8
2014 general election (gubernatorial)	33.6

tus (SES). In Texas, low levels of education and high levels of poverty are both the strongest predictors of low voter participation. While college students and other young adults were mobilized by President Obama's election in 2008 and 2012, the fact remains that voter turnout among this demographic is low. In addition, the average age of Texans is less than the national average, and young people vote in smaller numbers; this may also contribute to Texas's low turnout rate.

*In 2014 only 33.6 percent of registered voters cast ballots in the Texas gubernatorial election.*



In the southern states that composed the Confederacy, individuals participate in smaller numbers than in other parts of the United States. Texas was part of the Confederacy, and its level of participation is consistent with lower levels of voting in the South. That said, Texas differs from most other southern states with its large Latino population, many of whom, perhaps up to 2.0 million, are not eligible to vote because either they are not registered or they are undocumented residents in the state. Moreover, the overwhelming majority of these Latinos are from Mexico and may not have been brought up in a political culture that encourages participation at the polls. As the children born and educated in America of these residents reach voting age, it is likely that registration rates and voting rates among Latinos will increase. For now, however, they remain lower than those for whites or blacks.

According to the political scientist Daniel Elazar, Texas's political culture is traditionalistic and individualistic (see Chapter 1).<sup>24</sup> Low levels of voting characterize these cultures. In a traditionalistic political culture, the political and economic elite discourage voting. People choose not to vote in individualistic cultures because of real or perceived corruption in government.

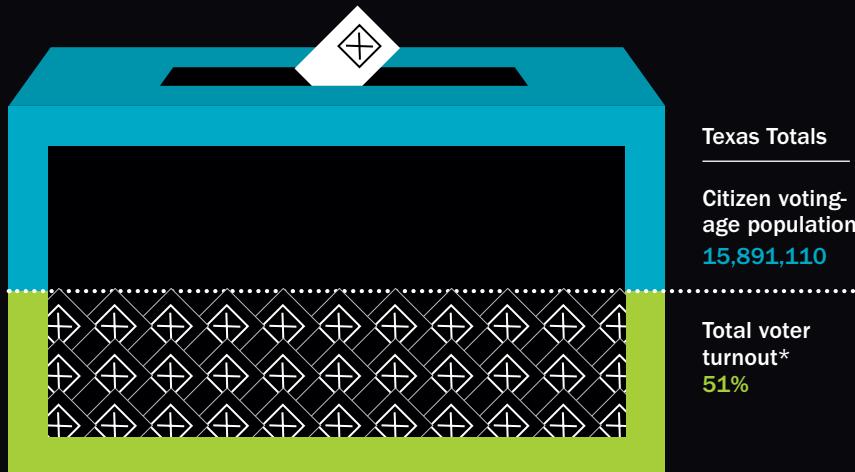
Interestingly, there are still other possible explanations for low voter participation in Texas. In keeping with the Texas tradition of decentralized government, there are so many elections in Texas and so many candidates for office that voters are simply overloaded with elections and candidates. Note that as shown in Table 5.1, voter participation was much higher in the general election than in the special constitutional election. If there were fewer elections, the ballot might be longer, but voter turnout would likely be higher, because more voters would be attracted to at least some races or issues on the ballot. Additionally, the practice of having elections in nonpresidential election years decreases voter turnout because the highest voter participation tends to occur for presidential elections. A third problem is that most elections in Texas involve very low-visibility offices. Voters likely know little about the candidates for these positions or the offices themselves, and such a lack of knowledge would naturally discourage voter participation. Efforts have been made in a number of states, most notably Washington, to increase voter knowledge by having the state provide biographical information about the candidates to voters, but Texas makes little effort to enhance voter knowledge of candidates. Independent groups such as the League of Women Voters often provide voter guides, but only readers of newspapers or those who actively seek these voter guides benefit from this information. Finally, some suggest that the new voter identification law will reduce voter turnout even more.

### for critical analysis

Voter participation in Texas is among the lowest in the nation. What accounts for the state's low levels of participation? What can be done to increase voter participation in the short term? In the long term?

# Who Votes in Texas?

## Voter Turnout by Race, 2012



 10% voter turnout

### White voter turnout



### Latino voter turnout



### African American voter turnout



### Asian voter turnout



\* Percentage of citizen voting-age population who voted in 2012

Source: Noncitizen data from U.S. Census Bureau, Current Population Survey.

Racial group data from American Community Survey, U.S. Census Bureau. Turnout data from U.S. Census Bureau.

Texas is now a majority-minority state. This means that the nonwhite population exceeds the Anglo population. However, this does not mean that the majority of the state's voters are nonwhite. It is still the case that the Latino population is underrepresented compared to their population on the state's voter rolls.

### for critical analysis

1. Which groups have the lowest percentage of eligible voters registered?
2. What can we conclude about the difference among racial/ethnic groups in regard to voter turnout in Texas?

**early voting** a procedure that allows voters to cast ballots during the two-week period before the regularly scheduled election date

## Early Voting

**Early voting** is a procedure that increases the polling period from 12 hours on Election Day to an additional two weeks prior to the election. The legislature has allowed early voting in an effort to increase participation. It is designed for those who have trouble getting to the polls between 7 AM and 7 PM on Election Day. For most elections, early voting commences on the 17th day before the elections and ends four days prior to Election Day.

Voting early is basically the same as voting on Election Day. An individual appears at one of the designated polling places, presents appropriate identification, and receives and casts a ballot. Early voting has at best only modestly increased voting participation.

Predictions that Democrats would benefit from early voting did not hold true after Texas moved strongly into the Republican column. Republican candidates for the highest office on the ballot get a much larger proportion of early votes than do the Democratic candidates. In 2004, for example, 63 percent of the early votes for president in Texas were cast for George W. Bush, compared with 37 percent of the early votes for John Kerry. In 7 of the 10 elections examined, however, Republicans got a slightly smaller proportion of overall votes (votes cast in early voting plus Election Day voting) than early votes. And in 6 of the 10 elections, Democrats got a slightly larger proportion of overall votes than early votes. This suggests that early voting has been a bit more beneficial to Republicans than to Democrats, although the advantage has been very slight (Table 5.2).

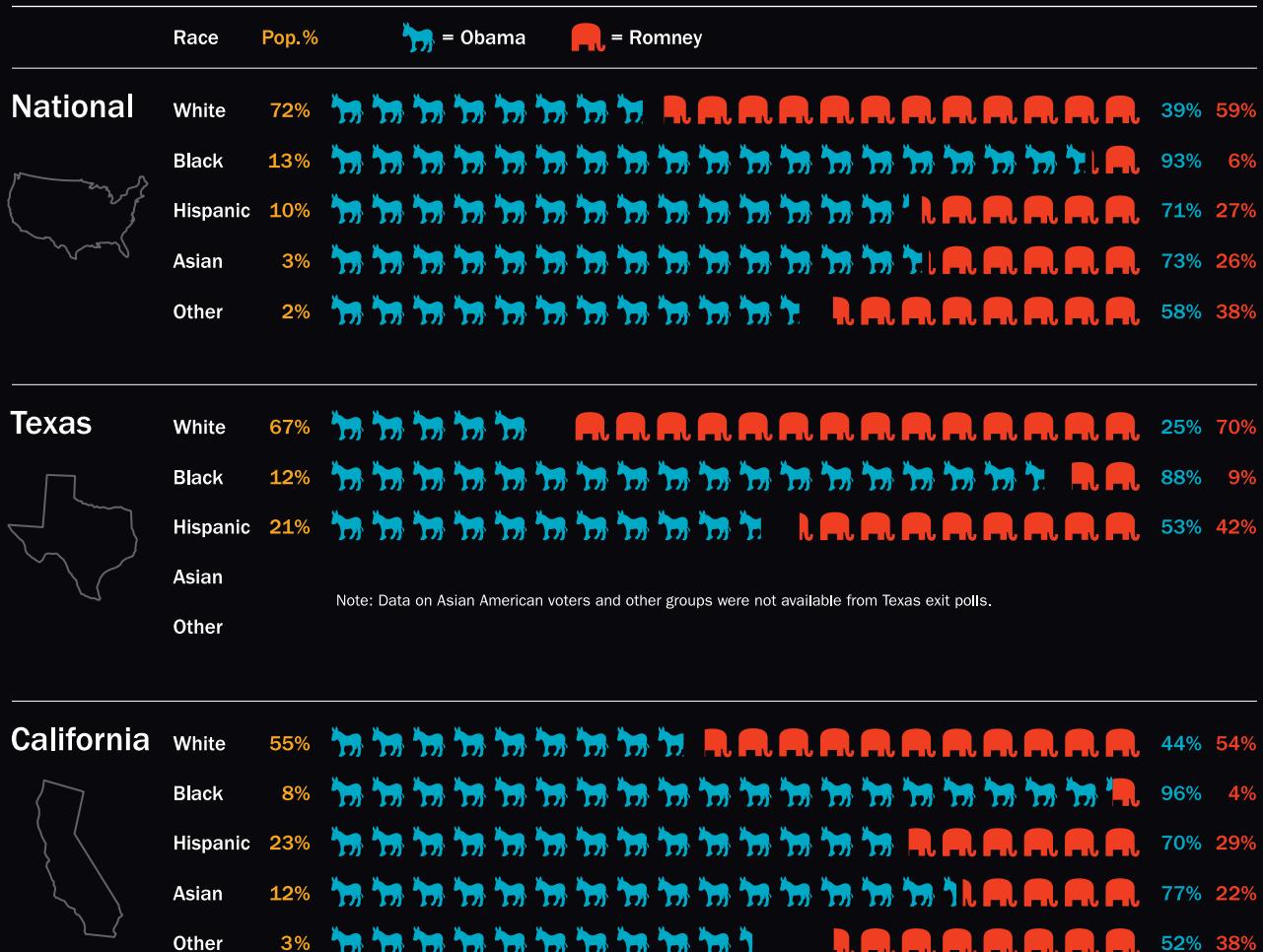
TABLE 5.2

### Early Voting and Overall Voting by Party in Texas

YEAR	OFFICE	EARLY/OVERALL VOTES FOR REPUBLICANS (PERCENTAGE OF TOTAL)	EARLY/OVERALL VOTES FOR DEMOCRATS (PERCENTAGE OF TOTAL)
1994	Senate	62/61%	37/38%
1996	President	52/49	45/44
1998	Governor	68/69	32/31
2000	President	63/59	35/38
2002	Senator	57/55	42/43
2004	President	63/61	37/38
2006	Senator	56/56	44/44
2008	President	54/55	45/44
2010	Governor	56/55	41/42
2012	President	59/57	40/41

SOURCE: Texas Secretary of State.

# How Did Texans Vote in 2012?



Voters in Texas are known for their conservatism and their support of the Republican Party. In 2012, while the country voted for Barack Obama over Mitt Romney by a 51–48 margin, Texas went for Romney 57–41.

In Texas, these exit polls show that Romney won in large part because he won an overwhelming share of white voters. Obama won among African American and Hispanic voters in Texas by similar numbers to what he won nationally. Romney won 70 percent of white votes in Texas, 11 points better than the 59 percent of white voters he won nationally. Compare this to California, a state with similar demographics to Texas: Romney won only 54 percent of California's white voters.

SOURCE: Texas data from the YouGov Texas poll, Oct. 31–Nov. 3, 2012. National and California data from the EMR Exit Polls, 2012. Downloaded from CNN.com (accessed 11/12/12).

## for critical analysis

1. Why do you think Romney appealed to white Texans more than he appealed to white voters in the rest of the country? How distinct does this make Texans?
2. As we've seen in earlier chapters, the Hispanic population of Texas is growing over time. How might this growth change the outcomes of future elections in Texas?

**TABLE 5.3**

### Percentage of Registered Voters and Voting-Age Population Voting in the Republican Primaries

YEAR	REGISTERED VOTERS	PERCENTAGE OF REGISTERED VOTERS VOTING IN REPUBLICAN PRIMARIES	PERCENTAGE OF VOTING-AGE POPULATION VOTING IN REPUBLICAN PRIMARIES
2014	13,601,324	9.98%	7.18%
2012	13,065,425	11.09	7.93
2010	13,023,358	11.40	8.00
2008	12,752,417	10.68	7.68
2006	12,722,671	5.15	3.94
2004	12,264,663	5.60	4.27
2002	12,218,164	5.09	4.01
2000	11,612,761	9.70	7.78
1998	11,159,845	5.35	4.24
1996	9,698,506	10.52	7.44
1994	9,041,906	6.16	4.26

### The Importance of the Republican Primary

Table 5.3 shows how important the Republican primary has become in statewide elections. That is because the winner of the Republican primary, in this era of Republican dominance in the state, will be the winner of a statewide election. For example, 11.09 percent of registered voters and only 7.93 percent of the voting-age population in Texas voted in the Republican primary in 2012, but the winner of that primary has since the 1990s become the victor in statewide elections. Of course, many of the Republican primaries for statewide offices are contested, and to be successful in winning office all that is needed is a majority of the vote in the primary. In the 2012 elections, theoretically a person could win statewide office with the votes of less than 5.546 percent of the registered voters in the state, assuming those voters cast ballots in the Republican primary.

### Racial and Ethnic Variations in Voting and Participation

While Texas is a state with a larger percentage of minorities than non-Hispanic whites, this does not mean that the majority of the state's voters are minorities. For example, in the November 2014 elections, Latinos comprised only about 17 percent of the Texas electorate.<sup>25</sup> As a result of a variety of factors, including the large undocumented population consisting of mostly Latinos from Mexico and Latin

America and the lower rate of voter turnout for Latino citizens, non-Hispanic whites wield considerable influence in the state electorate.

Because most African Americans and Latinos tend to vote for Democrats and non-Hispanic whites tend to vote for Republicans, the balance of power in most state elections currently tilts toward Republicans. Democrats hope that as more Latinos become citizens, they will register and turn out to vote, but these hopes have yet to fully materialize.

**Public Opinion Differences on Issues** Public opinion on issues varies according to race and ethnicity. In a book titled *Divided by Color*, Donald Kinder and Lynn Sanders show that the views of African Americans and whites are remarkably different on issues ranging from the death penalty to affirmative action.<sup>26</sup> For example, according to a November 2013 *Texas Tribune* survey, 76 percent of whites supported the death penalty, while 60 percent of African Americans supported the death penalty. Significantly more African Americans, however, believe that the death penalty is often implemented for innocent citizens. In the same survey, 31 percent of African Americans believed the death penalty was implemented for innocent citizens “a great deal of the time” compared with 9 percent of whites.<sup>27</sup> In most cases, African Americans are more liberal than whites on political issues.

One issue with remarkable convergence on public opinion between blacks and whites is same sex marriage. In Texas, according to a June 2013 *Texas Tribune* survey, 33 percent of African Americans, 38 percent of whites, and 45 percent of Latinos supported same sex marriage.<sup>28</sup> This is one reason why Texas is one of several states that were able to pass a state constitutional amendment defining marriage in the state as between one man and one woman. While the gulf in public opinion is more pronounced between African Americans and whites compared to Latinos and whites, even the latter two groups differ on attitudes about public policy, especially the role of government.

Consider the issue of immigration policy. Most Latinos surveyed in Texas support the DREAM Act, a policy that would allow undocumented students who serve in the military or graduate from college to become citizens. According to a February 2014 *Texas Tribune* poll, 54 percent of whites in Texas strongly oppose this policy, especially the version that allows college graduates to become citizens.<sup>29</sup> For conservatives, this amounts to an unacceptable form of amnesty for illegal immigrants. In contrast, a minority of Latinos (33 percent) strongly oppose the DREAM Act. Whites are also more likely than Latinos to support restrictive immigration policies, although African Americans are just as likely to support such immigration policies.

Regarding education policy, Latinos in Texas are more likely to support a greater role for government in public education. In general, Latinos view education as a more important policy issue than their white counterparts. This could be for several reasons. First, Latinos are generally poorer and less educated than the majority white population and correctly see educational attainment as a key to success. Second, many Latinos are immigrants who view education as the ticket to the American Dream. Finally, Latinos have the highest high school dropout rates, and this reality has important ramifications for social, political, and economic advancement.

One related issue area with a significant divide in opinion between whites and Latinos is bilingual education. Most Latinos in Texas support the use of bilingual education—instruction in English and Spanish until students can transition to

**reapportionment** process that takes place every 10 years to determine how many congressional seats each state will receive, depending on population shifts

**redistricting** the process of redrawing election districts and redistributing legislative representatives in the Texas House, Texas Senate, and U.S. House; this process usually happens every 10 years to reflect shifts in population or in response to legal challenges in existing districts

**preclearance** provision under Section 5 of the Voting Rights Act of 1965 requiring any changes to election procedures or district lines to be approved by the U.S. Department of Justice or the U.S. district court for the District of Columbia

full English instruction. On the other hand, most Anglos oppose this policy and support total immersion in English. A May 2010 *Texas Tribune* poll shows that 55 percent of white Texans strongly supported ending bilingual education, while only 22 percent of Latinos supported this position. Forty-four percent of Latinos strongly opposed ending bilingual education, while only 15 percent of whites strongly opposed ending bilingual education.<sup>30</sup> This policy, along with attitudes about an English Only law for Texas, is one of the most polarized by ethnicity in the state.

## Redistricting in Texas

Every 10 years, the U.S. Census is charged with counting how many people live in the United States. The process of **reapportionment** involves recalculating how many congressional districts each state will receive based on the state's population. For example, Texas gained four new congressional seats following the 2010 Census because of the explosive population growth of the state. Since the House of Representatives is capped at 435 members, other states had to lose some of their congressional seats. States such as New York lost congressional seats because their populations had increased more slowly during the previous 10 years. The state legislature is tasked with drawing new congressional districts every 10 years to comply with the new overall number of seats allowed.

In 2011 the Texas legislature drew new congressional districts (Figure 5.1A), a process called **redistricting**. This is a blatantly political procedure because the majority party uses it to retain power by creating as many friendly districts as it can. The Republicans in charge of the legislature attempted to draw as many Republican-voting districts as possible. If Democrats had been in control, they would have tried to maximize their number of seats as well. Because more than 67 percent of the population growth in Texas was a result of Latino immigration and birth rates among native-born Latinos and foreign-born Latinos, Latino leaders in the state wanted at least two of the new seats to be majority Latino. Most Latino-majority districts in the state tend not to elect Republicans, which put the Republican-led legislature in a bind.

Until a 2013 U.S. Supreme Court decision, the terms by which Texas must comply with the Voting Rights Act further complicated the situation. Section 5 of the act requires that any changes to election procedures, including the drawing of new district lines, must go through the process of **preclearance**. This means that the U.S. Department of Justice or a District of Columbia federal court must approve the new district lines in order to make sure that the voting rights of minorities are not diminished. Districts that have been created to help minorities win cannot be dismantled in order to benefit a particular political party. For the most part, it is the southern states of the old Confederacy that were subject to this provision. Texas Attorney General Greg Abbott argued that Section 5 of the act violated the Tenth Amendment to the U.S. Constitution because it singles out particular states for preclearance. The preclearance requirement is but one example of the conflict between Texas and the federal government on a number of issues (see Chapter 3). Governor Perry has frequently criticized the federal government for its regulations and mandates. Section 5 is no longer applicable to Texas because of the U.S. Supreme Court's decision in *Shelby County v. Holder*, in which the Court ruled that the formula used to determine which states are subject to preclearance

is unconstitutional. Congress must pass a new formula in order for Section 5 to become applicable once again. When asked whether they thought Texas should be subject to federal oversight of its elections, 41 percent of respondents said yes and 47 percent responded no in a *Texas Tribune* poll conducted in February 2013.<sup>31</sup>

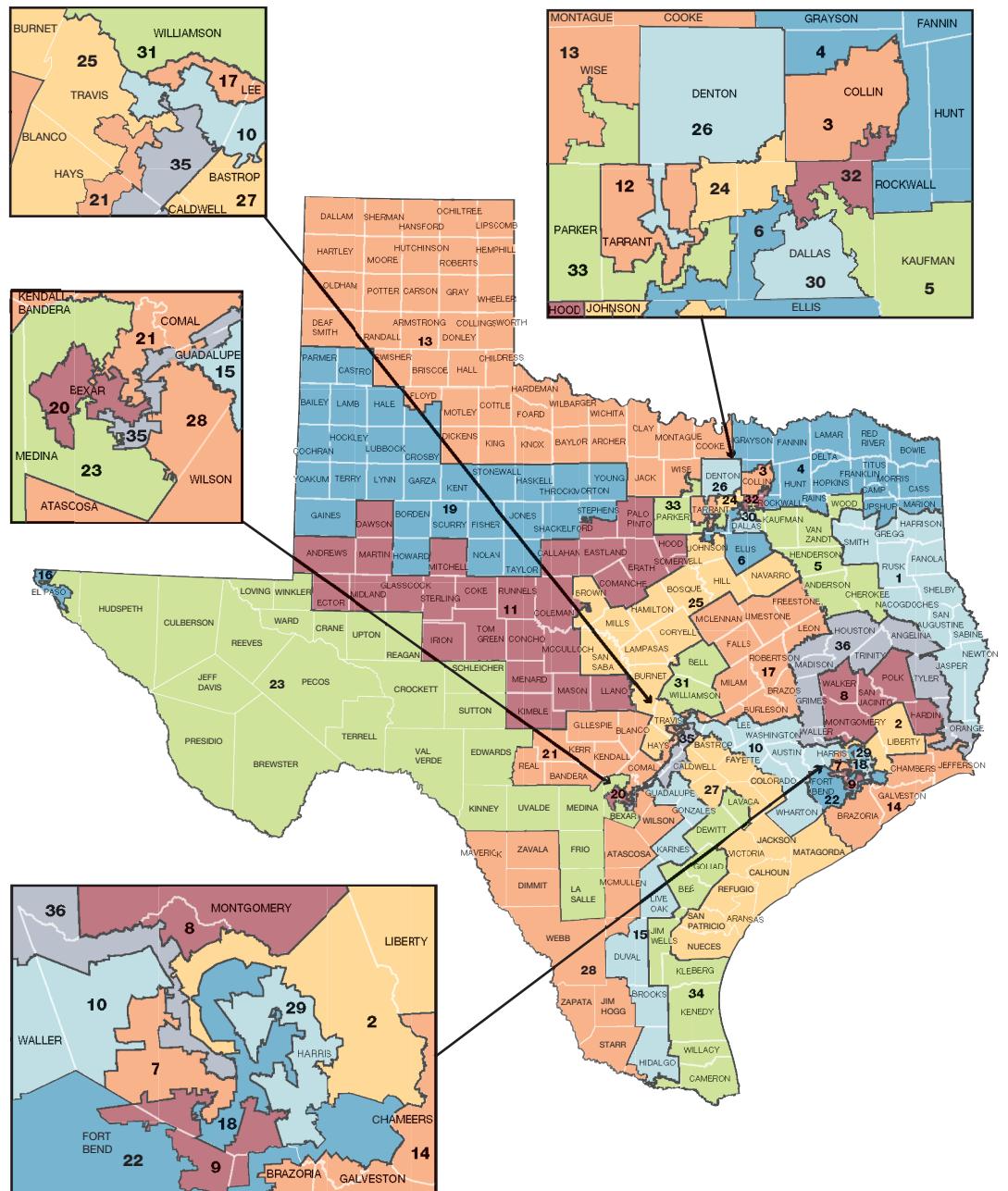
In the 2011 redistricting round, several lawsuits were filed by different parties challenging the districts created by the Texas legislature, and the federal court stepped in (Figure 5.1B). Ultimately, the legislature and the court created one new congressional district with a majority Latino population that stretched from Bexar County to Travis County along Interstate 35. The three other new districts were designed to elect Republicans. This was accomplished by splitting Travis County, the seat of Austin, into five congressional districts in order to dilute the Democratic vote. Since most Travis County voters are white Democrats, there are no protections under the law for diluting their vote. The U.S. representative for Austin, Democrat Lloyd Doggett, was forced to run in the new Latino majority district, since the other four districts were majority Republican. Because of the federal court's lengthy process, the Texas primary was pushed back to May 29, 2012, much later than the late March date originally scheduled.

One possible solution to reforming redistricting is to take the process away from the legislature. In Texas, the state legislature decides how the district lines will be drawn, and critics often say that this is the only time when politicians choose their voters and not the other way around. Some states, such as Arizona, have taken the responsibility away from the legislature and created an independent redistricting commission. Such a commission, supporters argue, would create fairer districts in Texas without the influence of politicians who have a vested interest in protecting their seats and political parties. According to a May 2011 *Texas Tribune* poll, 40 percent of respondents voiced support in principle for such a system, while 30 percent were opposed, and 30 percent were unsure of the plan.<sup>32</sup> Changing the system of redistricting will be challenging because legislators of both parties greatly benefit from the ability to influence how district lines are drawn.

## Contemporary Barriers to Voting

While the days of poll taxes are over, there are still barriers to voting in contemporary Texas. For example, in many cities, council members are elected at-large, meaning that there are no individual districts for the city. Consider a city that has 10 city council seats and is 20 percent African American, 25 percent Latino, and 55 percent white. In at-large races, the white majority could theoretically capture all of the city's 10 council seats. If the city had a single-member district system, there would be a distinct possibility that at least 4 of the seats would be held by minorities. Austin has an at-large system of electing city council members but is currently considering changing the system in order to provide for better geographic and racial representation.

Other tactics for preventing certain groups from voting include reducing the number of polling places in certain areas, the presence of broken voting machines, misleading information provided to voters, and voter intimidation. While such practices are becoming less frequent, there are still reports of them in every contested election.

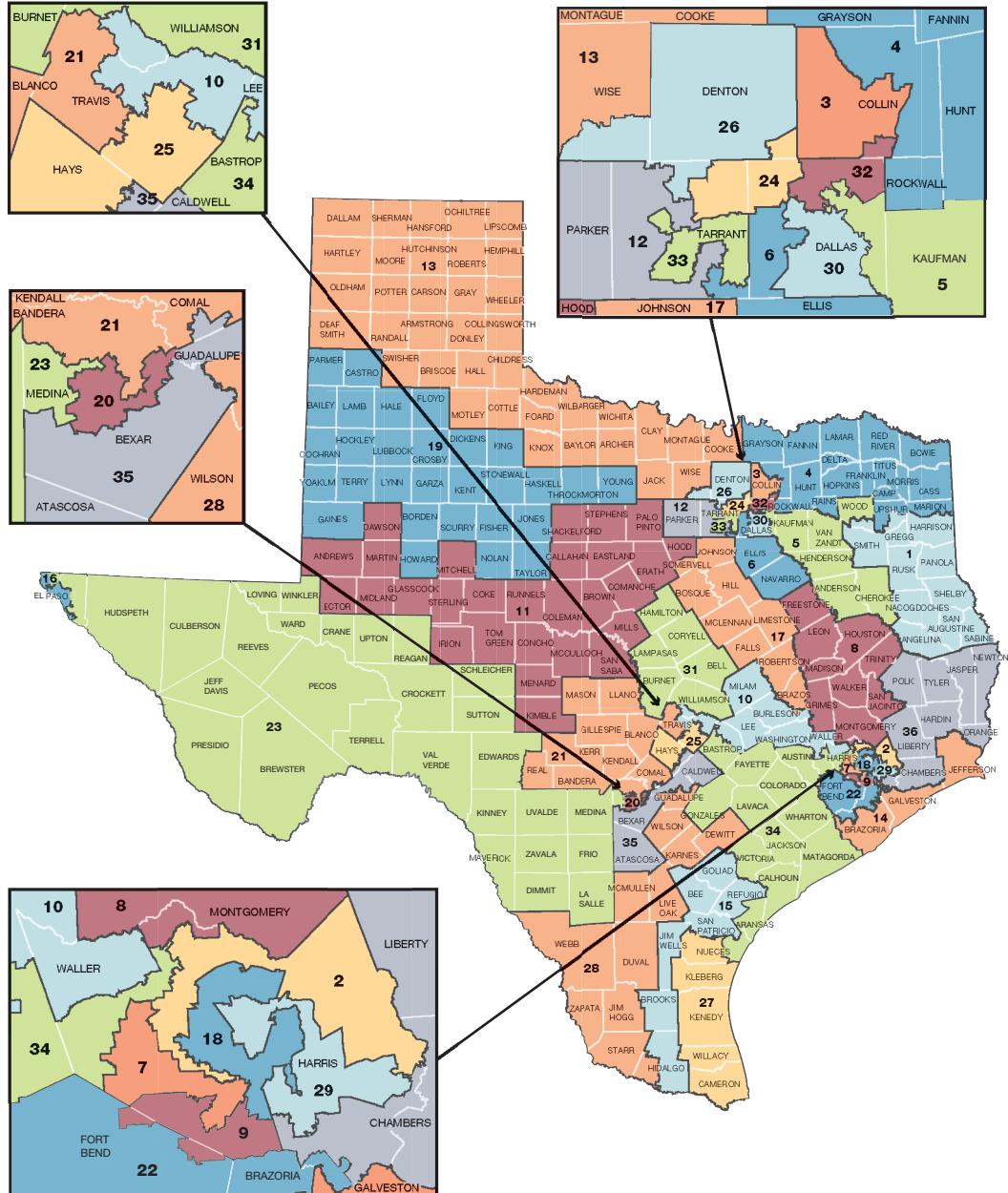


## **FIGURE 5.1A**

# **Texas U.S. Congressional District Maps: Legislature Plan**

The district map drawn by the Republican majority in the Texas legislature in 2011 was designed to help Republicans win as many U.S. House seats as possible. However, Latino leaders complained that the plan didn't create more Latino-majority districts.

SOURCE: Texas Legislative Council.



**FIGURE 5.1B**

## Texas U.S. Congressional District Maps: Court Plan

By comparing the court-approved plan above with the Republican legislature's plan at left, we can see district lines were changed to comply with the Voting Rights Act. Note significant differences in the urban areas as well as in East Texas.

SOURCE: Texas Legislative Council.

## Campaigns

**Present the main features of election campaigns in Texas**

Political campaigns are efforts of candidates to win support of the voters. The goal of the campaign is to attain sufficient support to win the primary election in March and the general election in November. Some campaigns last a year or more; however, the more accepted practice is to limit the campaign to a few months before the election.

In recent statewide elections, the distinguishing feature of the campaigns was the lack of emphasis on state issues, including the pressing issue of the state budget. Instead, Republicans ran against the national Democratic administration, whereas Democrats tried to distance themselves from President Obama and his policies.

Campaigns involve attempts to reach the voters through print and electronic media, the mail, door-to-door campaigning, speeches to large and small groups, coffee hours, and telephone solicitation. Costs are enormous. During the 2000s, candidates for statewide races spent as much as \$39 million. A new record up to that point for campaign spending was set in the 2002 gubernatorial race, when the Democrat Tony Sanchez and the Republican Rick Perry spent a total of \$88 million. In 2006 the amount raised in the gubernatorial race fell to \$53.4 million, 28.7 percent of which went to the two independent candidates, Carole Keeton Strayhorn and Kinky Friedman. In 2010 total campaign contributions by Democrats seeking the governorship came to nearly \$37 million and total contributions by Republicans came to nearly \$55 million—an amount far larger than the \$30 million raised by Republicans in 2006 because of the primary challenge to Rick Perry by Kay Bailey Hutchison. In late October 2014, Greg Abbott had spent \$46.8 million to Wendy Davis's \$36 million. For all statewide offices, Republican campaign contributions overwhelmed Democratic campaign contributions. Total contributions in state House and state Senate races were also far greater for Republicans than for Democrats. There is no question, then, that money is important

**TABLE 5.4**

### Amount Raised by All Candidates in Texas, 2012\*

OFFICE	DEMOCRAT (\$)	REPUBLICAN (\$)	THIRD-PARTY (\$)
Governor	\$36,994,646	\$54,682,462	\$0
Judicial	401,025	2,592,108	110
Other statewide	3,150,119	21,387,407	1,547
House	28,780,507	48,634,984	26,552
Senate	3,979,924	6,991,616	23,007

\*Listed by political party. Excludes contributions to candidates not up for election in 2010 and one candidate for state senate who withdrew.

SOURCE: Calculated from Institute on Money in State Politics.

**TABLE 5.5**

## Campaign Contributions in Statewide Executive Offices: Texas General Elections 2010

OFFICE	CANDIDATE	DOLLARS CONTRIBUTED	PERCENTAGE OF VOTE*
Governor	R. Perry (R) B. White (D)	\$39,328,540 26,291,535	54.97% 42.29
Lieutenant governor	D. Dewhurst (R) L. Chavez-Thompson	9,240,480 958,040	61.78 34.83
Agriculture commissioner	Todd Staples (R) Hank Gilbert (D)	1,742,941 336,363	60.82 35.79
Attorney general	Greg Abbott (R) Barbara Radnafsky (D)	5,828,370 1,135,031	64.05 33.66
Comptroller	Susan Combs (R) None	2,744,001	83.16
Land commissioner	Jerry Patterson (R) Hector Uribe (D)	864,688 102,487	61.66 35.28
Railroad commissioner	David Porter (R) Jeff Weems (D)	564,488 287,248	59.40 36.23

\*Numbers do not add to 100 percent because of the presence of third-party candidates.

SOURCE: Institute on Money in State Politics and Texas Secretary of State.

for candidate success in Texas. Candidates must continually raise money by hosting fundraisers with donors, making phone calls to potential donors, and setting up websites that make it easy for ordinary citizens to contribute (see Tables 5.4 and 5.5).

Candidates who run in Texas for federal office, such as the U.S. Congress, are subject to federal campaign finance laws, which are stricter than state laws and which impose limits for campaign contributions, although the federal laws have been greatly weakened by U.S. Supreme Court decisions that have held parts of the federal laws to restrict free speech. Candidates for state offices, however, are subject to state laws enacted in 1991 when the Texas Ethics Commission (TEC) was established. State candidates and lobbyists must file quarterly reports with the TEC, although with the exception of judicial campaigns there are no limits to campaign contributions for state races. The state imposes a moratorium on contributions to state legislators just prior to the beginning of a legislative session.

In some places in the United States, the parties have a major role in the running of political campaigns. That is not the case in Texas. Here the candidates have the major responsibility for campaign strategy, for running their campaigns, and for raising money. At times, party leaders will try to recruit individuals to run for office, especially if no candidates volunteer to seek an office or if the candidates appear to be weak ones. For the most part, the benefit of the party to a candidate in Texas is that the party provides the party label under which the candidate runs. That

“Democratic” or “Republican” label is, of course, important to candidates because many voters use the party label in casting their votes, especially for low-visibility races. The party also contains numerous activists whom the candidate can tap for campaign tasks such as manning phone banks, preparing mailings, and posting campaign ads. Additionally, the party does provide some support for the candidate, most commonly through campaigns to get out the vote for the party’s candidates. Campaigning in Texas, however, is generally left up to the candidate, and in that effort, the parties take a secondary role.

Name recognition is essential for candidates. Incumbents hold a distinct advantage in this regard. Officeholders have many ways to achieve name visibility. They can mail out news releases, send newsletters to their constituents, appear on radio talk shows, and give speeches to civic clubs. Newspaper coverage and local television news coverage of the politician can increase name recognition. Challengers have a more difficult time getting this crucial name visibility, although new media sources such as Facebook and Twitter accounts can help both incumbents and challengers gain name recognition, especially among young people.

The case of William R. Clements illustrates the importance of name recognition. In 1978, William R. Clements was a political unknown. He spent thousands of dollars of his own fortune to gain name recognition. He leased hundreds of billboards throughout the state. Each had a blue background with white letters proclaiming “CLEMMENTS.” In the print media, early ads bore the simple message, “ELECT CLEMENTS.” The unprecedented scale of this advertising effort made Clements’s name better known among the voters in Texas. This, in turn, stimulated interest in his campaign’s message. Clements won the race for governor, becoming the first Republican to hold that office in Texas since the end of Reconstruction.

Payments for media ads account for the greatest expense in most campaigns. In metropolitan areas, television, radio, and print advertising are very costly. Full-page ads in metropolitan newspapers can cost as much as \$40,000. Candidates for metropolitan districts in the Texas House of Representatives and Texas Senate need to reach only a small portion of the population, but they are forced to purchase ads in media sources that go to hundreds of thousands of people not represented. In rural areas, any individual ad is relatively inexpensive. However, candidates must advertise in dozens of small newspapers and radio stations, and the costs add up.

Even more important, the campaigns must be well designed. A slipup in a well-funded campaign can do great harm, as Greg Abbott discovered in his campaign for governor. While Abbott has made efforts to appeal to the Latino vote, his campaign received criticism when in February 2014 he referred to law enforcement tactics in the border region as resembling “third world country practices that erode the social fabric of our communities.” A journalist for the *Monitor*, a newspaper in the Rio Grande Valley, called on Abbott to apologize for his comments. Abbott refused to apologize, saying his comments were not directed at Latinos, but rather at the lack of border security in South Texas. Abbott sought to repair his relationship with Latino voters by emphasizing his Latina wife as the imminent first Latina first lady of Texas. While this slipup did not cost him the election (he received 44 percent of the Latino vote—a healthy number for a Republican candidate), it still raised larger questions about the state’s Republican Party and its relationship with the growing Latino vote.<sup>33</sup>

Some impressive but limited evidence indicates that television can be a very valuable tool for a Texas political candidate. On four occasions in the 1990s Republican Supreme Court candidates were challenged in the primary by candidates



*Candidates for statewide office in Texas routinely spend hundreds of thousands of dollars, if not millions, on their campaigns. Though much money goes to television advertising, candidates also spend time meeting voters one-on-one, as Republican candidate Ken Paxton does here at Joe Allen's Pit Bar-B-Que in Abilene.*

with little, if any, organized support and minimal funding. Yet the insurgent candidates all showed great strength in areas where the established candidates did not run television ads. Of course, there may be additional explanations for the strength of established candidates in areas where ads were shown. Perhaps the candidates worked harder in those areas or were better organized. And in some areas, candidates may have had stronger name recognition than their opponents.<sup>34</sup>

None of the insurgent candidates had the resources to run television ads; only the established candidates did, and only in some media markets. It was the support the established candidates received in the areas where they ran television ads that led to their victories. It is important to note that since the data all relate to the Republican primary, the effect of the political party label is controlled. If we compare the percentage difference in votes for established candidates in areas where television ads were run with votes in areas where no ads were run, the difference is remarkable: established candidates received between 12 percent and 18.5 percent more votes in media markets where they bought television time.<sup>35</sup>

Given the myriad factors that may explain electoral success, we should beware of imputing victory in these judicial races solely to television ads. On the other hand, the general pattern of high margins of victory in areas where television was used is so powerful that it cannot be ignored.

## Important Issues in Texas Campaigns

The open gubernatorial seat in 2014 pitted Greg Abbott against Wendy Davis. With the state's economic challenges of the mid-2000s largely in the rearview mirror, both candidates fought hard to distinguish themselves on issues. Davis had become prominent because of her filibuster of an antiabortion bill in 2011, but

she wanted to expand her policy portfolio beyond this one issue. Abbott had distinguished himself as attorney general of Texas by challenging the Obama administration on a host of policy issues, including the Affordable Care Act, the Voting Rights Act, and gun rights.

Education policy became an important issue in the 2014 elections when Greg Abbott proposed expanding programs for pre-kindergarten. Wendy Davis had already proposed a plan that would increase funding for this program, but Abbott criticized Davis's plan for not including measures to monitor whether the programs were working. Davis countered by accusing Abbott of hypocrisy by defending cuts to pre-Kindergarten programs in his capacity as the state's attorney general. The tenor of the education debate in 2014 is a far cry from the debates in 2010, when the debate revolved around mitigating drastic budget cuts to education in the face of a budget shortfall.

The gubernatorial campaign also highlighted issues that were not typical in previous races. Equal pay for equal work became a major issue in April 2014 when the *San Antonio Express News* revealed that female assistant attorneys general in Abbott's office were paid approximately \$6,000 less on average than their male counterparts. Abbott responded by asserting that the reason for the discrepancy was that the male employees were on average more experienced. Wendy Davis pressed Abbott on whether he would support her bill guaranteeing equal pay for equal work in Texas. Abbott claimed that he supported equal pay for equal work but not her bill because of his belief that a new law was not necessary. It did not help Abbott that his surrogates fumbled some of their explanations as to why Abbott opposed the legislation. For example, Abbott supporter and Red State Women PAC chair Cari Christman claimed women were "too busy" to think about equal pay for equal work and Texas GOP chair Beth Cubriel stated that the reason women are paid less than men is because men "are better negotiators."<sup>36</sup> These issues have no doubt become more prominent because of Wendy Davis's presence in the gubernatorial race as the first female Democratic Party candidate for governor since Ann Richards.

Gun rights has consistently been a salient issue in Texas, especially regarding recent debates about whether firearms should be allowed on college campuses. Texas also has a concealed carry law allowing licensed individuals to carry concealed firearms throughout the state with some exceptions such as bars. Even Democrats in Texas do not take positions at odds with the pro-gun sentiment in the state. Wendy Davis surprised many when she announced that she would back a bill allowing Texans to carry unconcealed pistols on their waists. Of course, Abbott also supports the legislation, but criticized Davis for her support of allowing private individuals and businesses to block individuals from carrying pistols on their property. He also accused Davis of wanting to enact more restrictions on gun owners and compared her to former New York City mayor Michael Bloomberg, a strong gun control advocate. The National Rifle Association, the nation's leading pro-gun lobbying group, gave Abbott an A and Davis a D on their gun control policies.

Immigration policy also became a very salient issue in all of the statewide races. Republican candidates for all major elective offices pledged to enact strict border security measures and spend state resources on keeping illegal immigrants out of the state. This emphasis on immigration is a marked change from the 1990s when then governor Bush appealed to the Latino vote in the state. For example, Re-



Immigration is a major issue in Texas elections. Democrats and Republicans have called for reform, but their approaches differ strongly.

publican candidate for Agriculture Commissioner Eric Opiela ran a television ad where he appeared on a farm next to a barbed wire fence announcing that illegal immigrants need to go to the back of the line and that there should be no amnesty for illegal immigrants. He lost the Republican primary with only 17 percent of the vote. More notorious, however, in his positions on immigration was lieutenant gubernatorial candidate Dan Patrick, who said in a debate that he wanted to stop the “invasion” of illegal immigrants to Texas. Patrick challenged Lieutenant Governor David Dewhurst from the right by arguing that Dewhurst was not sufficiently conservative on this issue. Land commissioner Jerry Patterson, another candidate for lieutenant governor, accused Patrick of hypocrisy by revealing that Patrick had knowingly hired an undocumented immigrant for his sports bar business back in the 1990s. Patrick denied that he knew the individual in question was in the country illegally, but it did not seem to hurt Patrick’s candidacy, as he came in first place in the Republican primary held in March 2014.

Tax policy also became a state issue, especially in the comptroller’s race between Sen. Glenn Hegar (R-Katy) and Mike Collier (D-Houston). Collier, a Certified Public Accountant, ran campaign ads claiming that Hegar wanted to abolish the state property tax and increase sales taxes. Since Texas does not have a state income tax, property taxes are somewhat higher than in other states. The state relies on property taxes to fund public education and sales taxes for other state spending. Sales taxes in Texas usually average 8.25 percent on most items, with the exception of medicine and groceries. Increasing sales taxes often disproportionately affects lower-income Texans since a higher percentage of their income is spent

on purchasing goods and services. Hegar ran a campaign touting his conservative credentials and his desire for lower taxes in general, and was ultimately elected comptroller of public accounts in the November election.

## Thinking Critically about Elections in Texas

Elections in Texas are essential to the state's functioning democracy. It is important to think critically about how elections are structured and who benefits from the types of districts that are created by the state legislature. Because of the single-member district system, third parties are disadvantaged in state politics, and this has important implications for how policy is made.

The state has a formal process for candidates who want to serve their fellow citizens in elective office. The candidate must first run in a party primary; then, if the candidate does not receive a majority of the votes, he or she must run in a runoff primary. Ideally, the battles of primaries and runoff primaries will be forgotten and the party will come together in support of the nominee in order to win the election. However, what often happens is that the primaries and runoffs create enormous conflicts and divisions within the party that are not healed. The opposition then exploits those party divisions so that their candidate can win the election.

Redistricting in Texas has been very controversial since the passage of the Voting Rights Act in 1965. Texas has traditionally been subject to additional constraints when it draws new district lines, and the federal courts have stepped in to make sure that the voting rights of African Americans and Latinos have not diminished. However, this is no longer the case. Until Congress acts to address the Supreme Court's ruling, Texas is no longer subject to preclearance of its legislative districts. Election results are greatly influenced by the kind of districts that are drawn, which is why it is so important to pay close attention to this process, which occurs by law at least every ten years. Districts do not just arise out of thin air; politicians create them to advance their own interests as well as their party's goals.

While Republicans have been winning statewide elections, the growing Latino population and increased diversification of the state may change this. Wendy Davis had hoped to capitalize on the changing demographics of the state in her bid for governor but could not overcome countervailing winds against her candidacy, including the state's entrenched conservatism and the national tilt in favor of Republicans. While not as strongly Democratic as African Americans, Latinos in Texas are more likely to identify as Democrats. As more Latinos register to vote and participate in state elections, Texas may once again become a competitive two-party state, but as the 2014 elections demonstrate, the Republicans currently dominate state politics.

Campaigns—especially statewide campaigns—are very expensive. For the most part, the candidates themselves must raise the money necessary to win an election. Gubernatorial campaigns can cost \$40 million or more. One effect of the high cost of campaigns in Texas is that candidates are often very wealthy individuals willing to use their own money in their campaigns. Wealthy individuals, however, will not always prevail at the ballot box. Consider former lieutenant governor David Dewhurst. His bruising loss to Senator Ted Cruz in the state Republican primary for a U.S. Senate seat in 2012 left him vulnerable in his bid for re-election. Insur-

gent senator Dan Patrick challenged Dewhurst from the right, forced him into a runoff, and defeated him in the primary. Dewhurst had invested millions of his own money in the Senate primary and his bid for re-election.

Although Texas once tried to narrow the franchise, primarily by limiting the right to vote through poll taxes and white primaries, in recent years it has tried to expand the franchise through the motor voter law and through early voting. Yet voter participation in Texas is the lowest in the nation. Overall, voter turnout in 2014 was only 33.4 percent of eligible voters, which was less than the turnout in 2010. That is probably because of the demographics of Texas voters and Texas's political culture, but it may also be a result of the scheduling of elections in Texas, the vast number of elections, and the large number of low-visibility candidates for office. Participation in elections is important because public policies are determined by who is elected to office. For example, policies related to funding for higher education that affect all college students in Texas are dependent on elected officials and the people they appoint. It also remains to be seen whether the state's new voter identification law will have an impact on voter turnout in the state.

# studyguide

## Features of Elections in Texas

### Describe the types of elections held in Texas and how they work (pp. 139–41)

Texas allows all registered voters the choice to vote in one party primary during an election season. Should a candidate not receive a majority of votes in a primary, a runoff is held to determine who the party nominee will be. The general election ultimately decides who is elected to office.

### Key Terms

primary election (p. 139)

runoff primary (p. 139)

open primary (p. 139)

closed primary (p. 140)

general election (p. 140)

special election (p. 140)

### Practice Quiz

1. In a primary election,
  - a) voters choose all local officials who will hold office in the following year.
  - b) voters select federal officials for office.
  - c) voters select their party's candidate for a general election.
  - d) voters choose third-party candidates.
  - e) voters cast ballots on proposed constitutional amendments.

2. Which of the following is *not* a type of election found in Texas?
  - a) general
  - b) primary
  - c) distinguished
  - d) special
  - e) runoff primary
3. Officially, Texas has a
  - a) joint primary.
  - b) extended primary.
  - c) open primary.
  - d) closed primary.
  - e) Jaybird primary.
4. The first Tuesday following the first Monday in November of even-numbered years is the day for which election?
  - a) primary election
  - b) runoff primary
  - c) runoff for the general election
  - d) secondary election
  - e) general election
5. When are gubernatorial elections held?
  - a) during presidential election years
  - b) during odd-numbered years
  - c) during even-numbered years that are not presidential election years
  - d) every year
  - e) every six months

## Participation in Texas Elections

### Explain how the rules for voting affect turnout among different groups of Texans (pp. 142–59)

Participation in Texas elections varies by election. Turnout is lowest in party primaries, followed by elections when a presidential candidate is not on the ballot. Latinos and those of lower socioeconomic status are also less likely to vote in state elections.

### Key Terms

Nineteenth Amendment (p. 142)

suffrage (p. 142)

- poll tax (p. 143)  
early registration (p. 143)  
white primary (p. 144)  
Jaybird Party (p. 144)  
Voting Rights Act of 1965 (p. 145)  
motor voter law (p. 148)  
early voting (p. 152)  
reapportionment (p. 156)  
redistricting (p. 156)  
preclearance (p. 156)

### Practice Quiz

6. Which of the following is true?
  - a) Poll taxes are legal.
  - b) Women acquired the right to vote in the original 1876 Texas Constitution.
  - c) The poll tax restricted the participation of poor people in the general election.
  - d) You do not have to be a resident of Texas to vote in Texas.
  - e) Latinos vote at higher rates than African Americans.
7. In which of the following elections is voter turnout the highest?
  - a) presidential elections
  - b) gubernatorial general elections
  - c) city elections
  - d) runoff elections
  - e) off-year congressional elections
8. The two most important factors in determining whether someone will vote are

- a) income and education.
- b) education and family history of voting.
- c) income and gender.
- d) party membership and gender.
- e) ethnicity and race.

9. Who has benefited the most from early voting?

- a) Republicans
- b) Democrats
- c) All parties have benefited equally.
- d) Independents
- e) Greens

10. The procedure by which certain states, such as Texas, are required to obtain approval every time they make changes to districts is called
  - a) redistricting.
  - b) reapportionment.
  - c) preclearance.
  - d) external validation.
  - e) judicial review.

## Campaigns

### Present the main features of election campaigns in Texas (pp. 160–66)

Because of Texas's size, statewide campaigns can be expensive. There are several major media markets, which makes television advertising very expensive. Grassroots efforts to mobilize voters are also costly because of the large territory. This means wealthy candidates are often on the ballot.

### Practice Quiz

11. One distinguishing feature of the 2014 campaign in Texas was
  - a) the increased presence of third-party candidates.
  - b) the lack of emphasis on education policy.
  - c) the candidates' focus on equal pay for equal work.
  - d) the unusually low levels of money spent on media ads.
  - e) the candidates' focus on welfare reforms.
12. Who is the first Republican to become Texas governor since Reconstruction?

- a) William Clements
- b) Rick Perry
- c) George W. Bush
- d) Ann Richards
- e) Kinky Friedman

13. The most costly item for most political campaigns is

- a) travel.
- b) security.
- c) fund-raising.
- d) media.
- e) food.

14. Prior to running for re-election as a lieutenant governor, David Dewhurst unsuccessfully ran for which office?
  - a) state Senate
  - b) U.S. Senate
  - c) U.S. House of Representatives
  - d) governor
  - e) attorney general

## Recommended Websites

Texas Secretary of State  
[www.sos.state.tx.us/](http://www.sos.state.tx.us/)

Texas Tribune  
[www.texastribune.org](http://www.texastribune.org)

Dineen Majcher (right) was frustrated with the emphasis her daughter's school placed on standardized testing. She took action by helping to create an interest group and challenging Texas's education policies.



# 6

# Interest Groups and Lobbying

**WHY INTEREST GROUPS MATTER** Dineen Majcher had had enough. A lawyer and mother of an incoming ninth grader in a prestigious Austin high school, she couldn't believe what she was hearing. Fifteen percent of her daughter's final grade in history would come from a new mandated statewide test, one that the teacher had never seen. This struck her as unfair and unreasonable. How could students prepare for such a test? Why 15 percent of the grade? She went first to the principal to protest, but to no avail. This was after all a mandated state test, part of a 30-year effort of the education reformers to bring testing and accountability to all elementary and secondary schools across the state. So Majcher raised the ante, getting the Austin School Board to request a waiver from the State Board of Education from the "15 percent rule." The request was denied. Raising the ante again, Majcher signed up to testify at legislative committee hearings that had been called for January 2012. During the hearings Majcher met others from across Texas who were also dissatisfied with the testing movement that had dominated educational policy for over 30 years. Together these individuals established an interest group called Texans Advocating for Meaningful Student Assessment, or TAMSA. The group became known in the legislature as "Mothers Against Drunk Testing."

The goals of TAMSA were clearly articulated on its website: "to improve public education in Texas through the use of meaningful and effective student assessments that allow for more productive classroom instruction and more efficient use of public funds." On their face, these goals might seem to be relatively uncontroversial. In fact, however, they were questioning the philosophy of educational reform that had dominated the state for almost three decades.

TAMSA enabled people to join together and seek policy change in a number of ways: first, by providing like-minded individuals an organizational structure for discussing problems and offering solutions; second, by providing a vehicle for working with other organizations like the Texas Association of School Administrators, who were also concerned with testing; third, by raising money to help pay for their efforts; and fourth, by educating the public and policy makers alike about the problems of testing across the elementary and secondary curriculum. TAMSA spearheaded the drive to change public policy regarding testing in the state. What had begun as a protest about unfair testing was morphing into an interest group with a clear political object.

Since the early 1980s, testing was seen to be one of the best ways to ensure accountability by identifying schools that worked and those that didn't. From 1984 to 2008, an ever-growing list of tests in a variety of subjects was created to promote accountability and reform. Under STAAR (State of Texas Assessment of Academic Readiness), students in grades 3 through 12 were subject to a list of tests, including 15 end-of-course tests that were to be included in students' final grades.

Over the years, support for reform through testing and accountability came from a variety of sources inside and outside the legislature. Leading legislators from both parties, leaders at the Texas Education Agency, and business leaders came to believe statewide testing was a key to higher performance. George W. Bush identified testing as a central part of his plan for educational reform in Texas in the '90s and placed testing at the heart of his "No Child Left Behind" initiatives when he was president in the early 2000s. Key business interests, including the Texas Association of Business, supported expanded testing, seeing the tests as a way to ratchet up the quality of poorly performing schools across the state. Not surprisingly, the businesses involved in creating the tests also came to support the tests. As the debates over reform were proceeding in the legislature, Pearson publishers had a five-year contract with the state that was estimated to be worth \$462 million. Testing itself had become big business with big interests worth protecting in the state legislature.

Given the interests supporting testing and decades-old accountability initiatives, few thought at the beginning of the 2013 legislative session that change was in the wind. But it was. New legislators open to new ideas about reform were chairing the educational committees in both the House and the Senate. Entrenched interests in educational reform had lost their ability to control the agenda. On a paltry budget of under \$100,000, drawing upon inexpensive social media and relying on the expertise of a few key members, TAMSA played a major role in getting the legislature to rethink what educational reform meant. In response to the efforts of TAMSA and other like-minded groups and individuals, the legislature dropped the number of end-of-year course exams from 15 to 5.

The story of Dineen Majcher and TAMSA highlights how interest groups matter in Texas politics. Interest groups provide support for existing policies in many areas of public policy, support legislators in their electoral campaigns, and help to articulate ideas from which policies can be crafted. Texas politics can be understood only with a clear understanding of the role that interest groups play in elections and in the legislative process.<sup>1</sup>

## chapter goals

- **Define interest groups, and describe the major ways they try to influence Texas government (pp. 173–83)**
- **Describe the role of PACs in Texas elections (pp. 183–91)**
- **Explain how ordinary individuals can influence Texas government (pp. 191–93)**

# Interest Groups in the Political Process

**Define interest groups, and describe the major ways they try to influence Texas government**

It is probably true that all of us have political interests, goals, or objectives that can be achieved with governmental intervention. Many of us, however, will never act to achieve those goals. A few of us may speak privately to a legislator or other official. Some of us will join with others to try to

convince the government to help us achieve our interests. When we do that, we have formed an **interest group**.

In Texas, as elsewhere, interest groups assume a variety of forms. There are a wide range of interests active in national, state, and local politics that form into interest groups, including those concerned with business, labor, agriculture, the professions such as law, medicine, and accounting, government affairs such as state employees, cities, and universities, and public interest advocates such as the Sierra Club. Interest groups can be set up to serve the interests of a small number of people concerned with one particular interest, such as getting a road built in a county. They can also be established to serve the interests of a group of people with broader interests, such as those interested in reforming the school system by promoting vouchers, charter schools, home schooling, or better testing. Some interests are established to represent the common interests of various business or labor groups in the state, such as those of the real estate industry or chemical workers unions. An interest group is a “peak association” when it is an interest group organized as an umbrella organization that seeks to coordinate the various activities of member groups in a number of targeted areas.

**Interest group** an organization established to influence the government's programs and policies

## Resources and Strategies of Interest Groups

Political scientists have identified various resources that interest groups are able to mobilize in politics. First, interest groups have members. Groups can become influential because of whom they represent. The Texas Medical Association and the Texas Bar Association are excellent examples of groups representing influential people across Texas. Some people clearly are more important than others. But numbers matter, too. Politicians who ignore the concerns of broad-based evangelical groups in discussions of abortion or marriage do so at their own peril. Second, and perhaps more important than the first, interest groups have the ability to raise money. Clearly, it is advantageous to have access to a few deep-pocketed individuals when trying to raise money in support of a particular cause. But in the age of the Internet, it is also useful for there to be large numbers of members who are willing to give, if only a little.

A third resource possessed by interest groups is information about their membership and about the problems that concern their membership. In recent years, interest groups have begun to mine large databases of people who might be interested in particular policies or issues. Such information can become a valuable resource for politicians seeking to raise money or to promote a particular policy objective. Interest groups also offer advice on the best ways to address the concerns of their membership. Interest groups clearly are motivated by their self-interest, and the positions they present to legislators reflect this interest. The first drafts of bills introduced into the House or Senate often come from interest groups seeking to promote their own particular perspective. A fourth resource, one closely related

to the third, is credibility. Providing information to a policy maker is important. But this must be good information if, over the longer run, an interest group or its representatives are to be taken seriously. Bad information about a problem or the concerns of a group's members can undercut an interest group's effectiveness quickly.

The resources that are available to interest groups are the foundation upon which various strategies are developed by interest groups to promote their concerns. Among the strategies that we will explore in this chapter are (1) explicit political strategies such as grassroots organizing, get-out-the-vote and electioneering campaigns, and campaign financing; (2) legislative strategies such as lobbying and testifying before legislative committees; (3) public awareness strategies such as drafting policy reports, writing editorials, and conducting educational campaigns in various public forums; and (4) supporting litigation that challenges existing policies in court. As we will see, the strategies that are adopted by various interest groups largely depend on the resources available to them at the time.

## Interest Groups and Democratic Politics

**free rider problem** the incentive to benefit from others' work without making a contribution, which leads individuals in a collective action situation to refuse to work together

The rights to associate with others and to petition government lie at the heart of the rights guaranteed by the U.S. and Texas constitutions. Having a common interest is one thing. Organizing that common interest into an effective group that can act to promote that interest is quite something else. In his seminal book *The Logic of Collective Action*, Mancur Olson analyzed a collective action problem that lies at the heart of interest-group politics: people have an interest in organizing into an interest group that effectively represents their interests in politics. But people also have an interest in getting someone else to pay for that group's organizational costs. This is the **free rider problem**. If everyone acts as a free rider, some organizations do not form to represent particular interests in politics. Ironically, the larger the common interest, the more difficult it may be to overcome the free rider problem and create effective interest groups. According to Olson's theory, a small group of insurance companies are more likely to form a powerful interest group to affect health care policy than the millions of poor people who lack quality health care. Similarly, business interests are more likely to form a common front in politics than consumers because it is easier for the business interests to overcome the costs of collective action, that is, the costs of acting together as an organized interest group.<sup>2</sup>

Interest groups engage in a number of activities to overcome the free rider problem. Sometimes, they offer people particular incentives to join a group. These selective benefits often cover a wide range of activities, from a subscription to a magazine, to access to special information on the Internet, to invitations to special conferences, to special discounts. For example, AAA (the American Automobile Association) organizes for road and vehicle safety and provides members with roadside assistance and travel discounts—strong incentives to join.

Interest groups also can provide people with symbolic benefits, such as listing individuals' names as sponsors of an organization or offering free buttons, hats, or T-shirts showing their support to the ongoing activities of the organization. The purpose of such activities is to strengthen the commitment an individual has to an interest group and to overcome the free rider problem.

One of the most important lessons to be drawn from the logic of collective action is that some interests do not get represented easily in the political process. Upper-class business interests are more likely to be represented than lower-class

minority interests. A second lesson is that it is very difficult, even rare, for interest groups to emerge that protect the broad interests of large numbers of people or any vaguely defined public interest. Significantly, when such groups do emerge, as with the Grange or Prohibition movement in the nineteenth and early twentieth centuries, they can come to wield considerable power. Nevertheless, in the push and pull of everyday politics in Texas, it is more likely for narrowly targeted interests to organize effectively in defense of their interests than it is for the public as a whole to organize. Even the above-mentioned “public interest groups” are not so much advancing the public good as a whole (whatever that may be) than advocating for the views that certain individuals have about the public good.

Olson’s theory provides an explanation of why it has often been claimed that business-oriented interest groups dominate the Texas legislature. Using campaign contributions, political pressure, and sometimes corruption, “the Lobby,” as pro-business groups were called, was once purported to run Texas government. Some of the most influential business leaders of the state belonged to the “8F Crowd.” At the Lamar Hotel in Houston, 8F was the number on a suite of rooms where George R. Brown held court. Brown was a founder of Brown and Root, one of the world’s largest construction firms and until April 2007 part of the even larger Halliburton Company. He met regularly with other fabulously wealthy Texans such as Jesse Jones of Texas Commerce Bank and Tenneco, Gus Wortham of American General Insurance, and James Elkins of the Vinson and Elkins law firm. These men socialized together and worked together to promote their political interests. For 40 years they were considered the king makers in Texas politics who determined much of the important policy of state government.<sup>3</sup>

The 8F Crowd was, of course, an interest group—an elite, wealthy, powerful, pro-business interest group. Although the 8F Crowd is long gone from the Texas political scene, much of what it did is still done in Texas politics by other interest groups, though no modern-day group is ascribed the influence that was allegedly held by the 8F Crowd.

Nevertheless, Texas is known as a state that has long had powerful interest groups. During the Texas Constitutional Convention of 1875, an interest group played an important role. That was the Grange, a powerful farmers’ organization, of which many of the constitution’s framers were members. As Chapter 2 indicated, the Constitution of 1876 reflected many of the values of Grange members. It was a document for rural Texas that was pro-small farmer and opposed to a powerful state government.

With the development of a strong oil and gas industry in Texas in the first half of the twentieth century, the oil industry began playing an important role in state politics. In one-party states, interest groups often become powerful political actors, perhaps because one-party states tend to have a small number of important sectors in their economies and limited economic development. However, Texas has in the past 20 years moved from a Democratic one-party system to a competitive two-party system to a Republican-dominated system. And with an expanding Latino vote, it may soon become a more competitive two-party system again. It also now has a strong and diversified economy. Yet interest groups maintain great influence.

*Lobbying, derided by some as ‘Austin’s oldest profession,’ is big business in Texas. When the legislature is in session, many lobbyists can be spotted around the capitol waiting to meet with legislators. When the legislature is not in session, lobbyists are often busy with campaign activities.*



## Interest Groups and Policy Makers

Interest groups want something from policy makers: they want policy that is beneficial for their groups. On the other hand, policy makers benefit from developing relationships with interest groups. From those groups, the policy maker gains information, since the interest groups can provide substantial expertise in areas that are their special concern. Additionally, interest groups can provide campaign funds to the policy maker. In a state as large as Texas, with numerous media markets and with some party competition, considerable campaign funds are necessary to run and win elections. An interest group can help raise money from its membership for a candidate sympathetic to the interest group's goals. Also, interest groups can supply votes to the policy maker. They can assist in mobilizing their own groups, and they can supply campaign workers to distribute campaign leaflets and to operate phone banks to get out the vote. Interest groups can also publicize issues through press conferences, press releases, publications, conferences, and hearings and even by filing lawsuits. Finally, interest groups can engage in research and education programs. It has become increasingly common for interest groups to engage in public education programs by running advertisements in the Texas media explaining why their particular approaches to a public policy problem would be more beneficial to Texans in general.

Unlike a private citizen interested in and involved in politics, larger or better-funded interest groups have the advantages of time, money, expertise, and continuity. Although concerned citizens do have an impact on public policy in Texas, organized and well-funded interest groups have an advantage in affecting the policy process. It is difficult for a concerned citizen from Houston to spend time in Austin developing relationships with policy makers and trying to convince those policy makers to support public policies that are compatible with the individual's goals. On the other hand, if that individual joins with like-minded people to create an organized interest group, the group may have a greater likelihood of achieving policy goals. It might be possible to fund an office in Austin with a staff that could monitor events in state government on a daily basis and develop relationships with key policy makers. Additionally, although some individuals in Texas do have the money to provide substantial campaign support to policy makers, even those individuals can get more "bang for the buck" if they join with others in **bundling** their funds into a larger contribution from the interest group. The creation of an organized interest group also allows for the development of a staff. The staff can gain in-depth knowledge of an area of policy far greater than could be gained by most individuals working alone. Also, an individual may be intensely concerned with an issue in one legislative session but may find it difficult to sustain that interest over a period of many legislative sessions. The larger, better-funded, more successful organized interest groups have continuity. They are in Austin developing relationships with policy makers and presenting the views of the organization day in and day out, year in and year out. The result is that legislators and other policy makers can develop long-standing relationships with the interest groups and the groups' representatives in Austin.

**bundling** the interest-group practice of combining campaign contributions from several sources into one larger contribution from the group, so as to increase the group's impact on the candidate

On September 15, 2010, Governor Perry received a briefing on tort reform at the Austin airport. He then flew to Houston and was taken to the Petroleum Club, where he dined with the political arm of an interest group, Texans for Lawsuit Reform. He was then driven to Mach Industrial Group in Houston, where he held a press conference to discuss their endorsement.<sup>4</sup> It was an important day

for Perry—though not surprising—because he had gotten the official support of a group described as “arguably the most powerful interest group in Texas politics, in large part because of the massive amounts of money it raises from the state’s business community.”<sup>5</sup> Texans for Lawsuit Reform helped reshape the Texas Supreme Court into a more pro-business court, and it has reshaped the legislature into a more pro-business body. With Texans for Lawsuit Reform on Perry’s side, he had an incredibly powerful and wealthy interest group backing him in the 2010 election. And Texans for Lawsuit Reform knew it could help re-elect a pro-business candidate to the governorship.

## Types of Interest Groups and Lobbyists

Interest groups strive to influence public opinion, to make their views known to policy makers, and to elect and support policy makers who are friendly to their points of view. To accomplish these goals, interest groups usually maintain **lobbyists** in Austin who try to gain access to policy makers and communicate their objectives to them. There are several different types of lobbyists. Some interest groups have full-time staffs in Austin whose members work as lobbyists. One form of interest group is, of course, a corporation, and companies often have government relations departments that lobby for the companies’ interests. Lobbyists may be employed by an interest group to deal with one issue, or they may be employed by an interest group on a regular basis. Some lobbyists represent only one client; others will represent large numbers of clients. All lobbyists, however, must be able to reach and communicate with policy makers. Corporate interest groups tend to use either government relations departments or law firms to represent their interests in Austin. Often industries have broad interests that need representation. For example, an insurance company may have one specific interest it wishes to have represented. However, the insurance industry as a whole also has a wide range of issues that need representation, and thus it will form an industrywide interest group.

Interest groups may also represent professional groups. One of the most influential professional groups in Austin is the Texas Medical Association, which represents the interests of doctors in state government. Other professional groups represent accountants, chiropractors, opticians, dentists, lawyers, and teachers.

That teachers are an important interest group suggests still another type of interest group—public-employee interest groups. Public school teachers may be the largest and most effective of these groups, but firefighters, police officers, and even justices of the peace and constables all are represented in Austin.

Some interest groups are formed with a single issue in mind. For example, an interest group may be concerned about the regulation of abortion or school vouchers or tort reform or the environment. Other interest groups are concerned with multiple issues that affect the groups. Public school teachers, for example, are concerned about job security, qualifications of teachers, health insurance, pensions, salaries, and other matters that affect the lives of their members.

Civil rights groups such as the National Association for the Advancement of Colored People, the League of United Latin American Citizens, and the Mexican American Legal Defense Fund are concerned about civil rights issues affecting the lives primarily of African Americans and Latinos. Interestingly, not only do these groups often try to influence public opinion and the legislature, but they have had notable success in representing their groups’ interests through litigation, especially in the federal courts.

**lobbyist** an individual employed by an interest group who tries to influence governmental decisions on behalf of that group

Other public interest groups try to promote consumer, environmental, and general public issues. Examples of these groups are Public Citizen, the Sierra Club, and Common Cause. Groups such as the Sierra Club work to promote environmental interests, whereas groups such as Public Citizen and Common Cause tend to have broader interests and work to promote more open government. These groups rarely have much funding, but they often can provide policy makers with information and expertise. In addition, they can mobilize their membership to support or oppose bills, and they can publicize matters that are important to their goals.

## Getting Access to Policy Makers

In order to communicate the goals of their interest groups to policy makers, lobbyists must first gain access to those policy makers. Gaining access to policy makers, of course, imposes on the time of legislators, so lobbyists will often spend significant sums entertaining them. That entertainment is one of the most criticized aspects of lobbying. But from the lobbyists' perspective, entertainment is an important tool for reaching policy makers and putting them in a congenial frame of mind. Entertainment by lobbyists can involve expensive dinners, golf, and other activities. For example, lobbyists for Texas Utilities (TXU) bought a \$300 saddle for one state representative and a \$200 bench for another. TXU lobbyists also treated a state senator to a trip to the Masters golf tournament and picked up the dinner tab as well. One House member received a gun as a gift, another received a jacket, and several got "deer-processing" costs paid for by these lobbyists.<sup>6</sup>

When Representative Lon Burnam proposed legislation to regulate consumer versions of "stun guns," the lobbyist for TASER International as a joke gave Burnam a gift of a pink "stun gun" valued at more than \$150. The "stun gun" was, of course, a minor expenditure.<sup>7</sup> Others are much more lavish. When Governor Perry wanted to go to the Rose Bowl game, the trucking lobby picked up the costs of a private jet for \$14,580. The former Texas Motor Transportation Association president who arranged the trip said, "Let's face it, if you have a way to help the sitting governor get somewhere he wants to be and to help our industry get where it needs to be, to me it becomes a no-brainer."<sup>8</sup> In the first two months of 2011, lobbyists spent more than \$1.2 million, with much of that money going toward events, goods, and gifts for lawmakers and others in state government.<sup>9</sup>

Texas lawmakers receive only \$600 per month plus \$150 a day when on legislative business, but lawmakers are permitted to use campaign contributions for expenses associated with holding office. This allows interest groups to fund significant lavish benefits for lawmakers. For example, about one-third of the spending of North Texas lawmakers—about \$3.4 million of roughly \$10 million in 2007–09—has gone to fund things other than campaign expenditures. Senator Florence Shapiro has used her contributions to fund a car lease for a Mercedes Benz and to pay for conference stays at the Ritz-Carlton in Palm Beach, the Venetian in Las Vegas, and the Hay-Adams in Washington, D.C. Thirty-six North Texas lawmakers spent nearly \$560,000 on travel and entertainment, \$470,000 on Austin living expenses, and \$290,000 on food.<sup>10</sup>

In May 2013 there were 1,663 registered lobbyists in Texas.<sup>11</sup> This is a decrease from the 1,836 registered lobbyists in 2011. An analysis that was done of the lobbying reports in 2013 found these lobbyists had 2,820 clients.<sup>12</sup> Because of the loose nature of the Texas reporting

*Some interest groups focus on a single issue, such as abortion. When Texas passed a law requiring women to undergo a sonogram 24 hours before having an abortion, antiabortion groups applauded the measure, but some women's groups protested against it.*





*Andrea McWilliams is one of Texas's highest-paid and most successful lobbyists.*

laws, it is unclear what these lobbyists were paid, but it was as much as \$328 million in 2013.<sup>13</sup> Twenty-five of them reported maximum lobbying incomes of at least \$1.5 million.<sup>14</sup>

Sometimes lobbyists have long-standing personal ties to policy makers, and those bonds can be invaluable to the lobbyists' clients. When lobbyist Andrea McWilliams celebrated her 40th birthday in California's wine country, six Texas lawmakers traveled to California for the party including the chair of the House Appropriations Committee and the chair of the Senate Public Education Committee. In McWilliams's case, the personal ties to these lawmakers were probably strengthened by the fact that she and her clients had contributed more than \$206,000 to the campaigns of the six lawmakers over the past several years.<sup>15</sup> McWilliams was the highest-paid lobbyist with the largest number of clients in the 2013 legislative session.<sup>16</sup>

Access to policy makers may also be gained by building support for an issue among their constituents. Constituents may be encouraged, for example, to write or call legislators about a bill and offer their opinions. Essentially, the interest group tries to mobilize interested voters to get involved in the political process on behalf of the group's goals.

**Lobbying and Government's "Revolving Door"** One important way of gaining access to those in government is to employ former officials as lobbyists. A lobbyist who is a former legislator often has friends in the legislature and can use that friendship to gain access. Additionally, a former legislator often is in an exceptionally good position to understand the personal relationships and informal power centers that must be contacted to accomplish a legislative objective. As a result, some of the best-paid lobbyists in Austin are former Texas state officials and often are former legislators.

In 2010, 65 registered lobbyists were former legislators. What they have in common is knowledge of "how to pass bills, to kill them, whom to talk to, which

clerks are friendly, whose birthdays are coming up—all inside stuff that makes the government machine whir.”<sup>17</sup> Other especially valuable lobbyists have been former committee clerks for major committees and chiefs of staff of members who were on major committees.<sup>18</sup> Ten recently retired lawmakers were lobbyists in the 2009 legislative session. The 10 had a total of 68 lobbying contracts allowing them to generate between \$2,025,000 and \$3,890,000 in fees. One gets a sense of the value of these ex-legislators-turned-lobbyists from the explanation Representative Jim Pitts gave for sponsoring an amendment that was pushed by an AT&T lobbyist and former legislator, Pat Heggerty. The amendment would have forced the state to pay for rerouting phone lines for road projects. Said Representative Pitts of the amendment, “I was just trying to help Pat out.”<sup>19</sup> The amendment later failed to pass. In 2013, 12 additional defeated or recently retired legislators became lobbyists. They reported up to \$2,130,000 in income from 49 clients.<sup>20</sup>

It is not only former legislators who can move on to successful lobbying careers. Forty Perry aides either have left the administration to become lobbyists or have joined the administration after having been lobbyists. Some have moved back and forth from administration to lobbying in a revolving door fashion. Five of Perry’s closest campaign aides have been lobbyists. Two of his ex-aides became lobbyists who headed pro-Perry PACs.<sup>21</sup>

One former-legislator-turned-lobbyist who reversed course and went back into the legislature is Todd Hunter. Hunter had served in the legislature from 1989 to 1997. An active lobbyist as late as 2007, he was elected to the Texas House in 2008.<sup>22</sup> Jerry Patterson, Texas land commissioner, was a state senator, became a lobbyist, and was able to move to his statewide office with little criticism of his role as a lobbyist. However, David Sibley, a state senator who became a lobbyist and then tried to regain his old position, caught tremendous political flak for this decision and, to a considerable degree, lost the Republican primary because of that career choice.<sup>23</sup> The issue of lobbying by former officials and their staffs is a significant one, as there is concern that policy decisions may be made with an eye toward future lucrative lobbying jobs.

Texas has only weak laws dealing with lobbying by former government officials. A former member of the governing body or a former executive head of a regulatory agency cannot lobby the agency for two years after leaving office. Senior employees or former officers of Texas regulatory agencies cannot ever lobby a governmental entity on matters they were involved in when employed by the government. However, there are no legal restrictions on lobbying by a former governor, former lieutenant governor, former legislator, or any former aides to these officials.<sup>24</sup>

**What Lobbyists Do with Access** Once lobbyists obtain access to policy makers, they provide information that may be useful. For example, they may explain how a bill benefits a legislator’s district, or how it benefits the state, or how it is perceived as being unfair. Since the staffs of Texas legislators are small, lobbyists perform useful functions by explaining what numerous bills are intended to do. They may even write bills to be introduced by friendly legislators or write amendments to bills. Almost certainly, if a bill affects the interests of a lobbyist’s client and reaches a point in the process where hearings are held on the bill, the lobbyist will arrange for testimony to be given at the hearing explaining the interest group’s viewpoint on the proposed legislation.

Lobbyists do not limit their activities to the legislative process, of course. Rules proposed by the bureaucracy or the courts can affect the interests of lobbyists’

# Is He a Lobbyist?

## Lobbyists are individuals hired

by interest groups to advocate on their behalf to state lawmakers. Organizations ranging from business groups to environmental groups to teachers' groups all employ lobbyists to advance their agendas. Not all groups technically lobby legislators. Some groups and lobbyists might occasionally interact with a legislator, but their primary goal is to advocate on behalf of their agenda in general terms.

Sometimes the actions of interest groups can blur the line between lobbying and general advocacy. This distinction is crucial because in Texas, as in many other states, laws require lobbyists to report their activities in the spirit of full disclosure so that the public can see how much money is being spent to influence legislators. Lobbyists must register with the Texas Ethics Commission (TEC), reveal their list of clients, and disclose how much they are compensated for their services. Consider the case of the interest group Empower Texans and its subsidiary known as Texans for Fiscal Responsibility. The organization is committed to promoting conservative ideals and increasing the number of conservative legislators in Texas. It has aligned with the Tea Party wing of the Republican Party in calling for reduced taxes and cuts to balance the state budget. Not surprisingly, Empower Texans and Texans for Fiscal Responsibility have refused to endorse some Republican incumbents in the state legislature, instead supporting challengers in the Republican primary who are more conservative.

In 2012 two Republicans who were not endorsed by Empower Texans and Texans for Fiscal Responsibility filed a complaint with the TEC, claiming that the head of these groups, Michael Quinn Sullivan, had lobbied during the most recent legislative session despite the fact that he was not registered. The two state representatives, Jim Keffer and Vicki Truitt, allege that Sullivan communicated with state representatives and their staff about their priorities for



**Michael Quinn Sullivan**

President, Texans for Fiscal Responsibility

the legislative session. In particular, they claim that the group opposed the re-election of Speaker Joe Straus within the Texas House in favor of a more conservative legislator, and they say that the group tried to influence representatives to oppose the use of the state's \$9.6 billion Rainy Day Fund to balance the state budget. The complaint alleges that Empower Texans's activities went beyond merely taking public positions on these issues and crossed into the territory of active lobbying.

Keffer and Truitt also allege that Texans for Fiscal Responsibility failed to file campaign finance disclosure forms for the last quarter of 2011, as required by state law. They insist that it is hard to believe that the organization did not make contributions to politicians during this period. Because Sullivan did not register, he did not reveal who was funding his organization.

On the other side of the issue, Sullivan claims that the two legislators were simply upset that they were not endorsed

by Texans for Fiscal Responsibility and did not receive campaign contributions. In particular, the organization endorsed Truitt's Republican opponent in the 2012 primary, and Sullivan actively campaigned against Truitt in the past. He argues that the timing of the complaint is suspect, coming soon before an election, and that discussions with legislators are not the primary purpose of the organization.

The TEC investigated the allegations and decided that there was insufficient evidence of lobbying. Nevertheless, they decided to pursue a hearing, which would have required Sullivan's organization to release the names of donors. In response, Sullivan sued the TEC in federal court, claiming that his organization's free speech rights were violated and that revealing donors would violate their privacy. In April 2014, however, the federal district court judge sent the case back to state court for possible adjudication. You decide. Did Sullivan and Empower Texans cross the line from advocacy to active lobbying?

## critical thinking questions

1. What exactly is a lobbyist? How is lobbying different from speaking out in public in support of or against a particular issue or candidate? Why do you think Texas disclosure laws are different for lobbyists than for general advocacy groups?
2. Based on the limited information above, is Michael Quinn Sullivan a lobbyist? Should he have registered with the state? Why or why not?

clients. Lobbyists will testify at hearings on rules and try to provide information to administrators in face-to-face meetings as well.

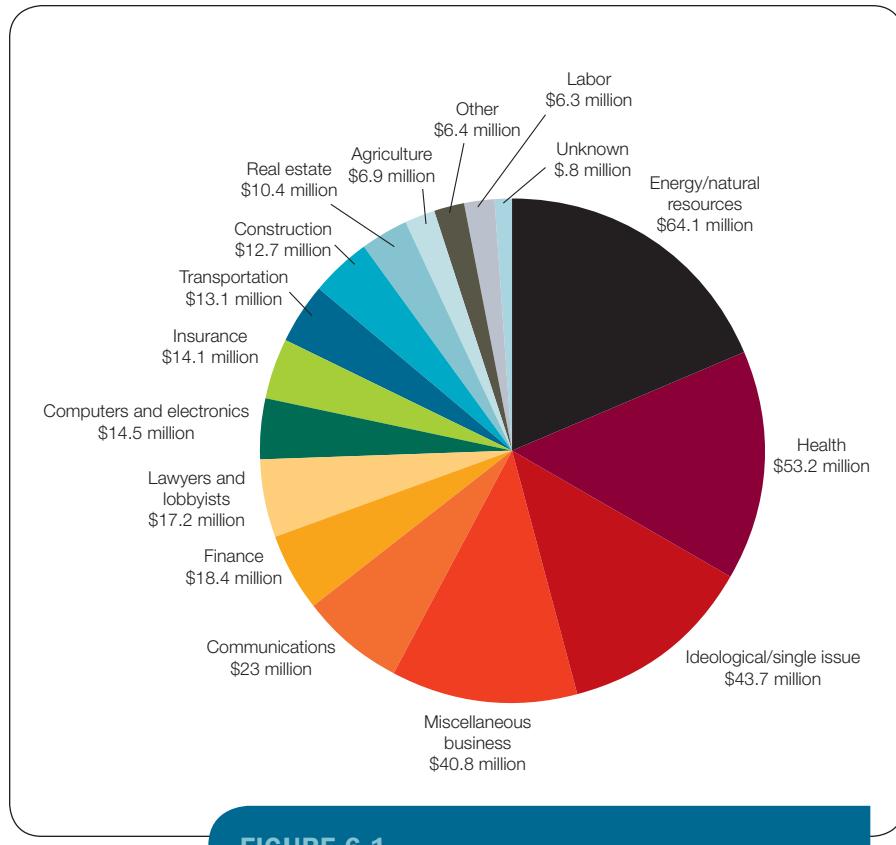
**Corruption** There is always a concern that lobbyists may corrupt policy makers by bribing them in order to accomplish the interest groups' policy objectives. Early in the twentieth century, Sam Rayburn, later a famed U.S. congressperson and Speaker of the House, served in the Texas House of Representatives for six years. At that time, he was especially concerned with corruption and refused to accept free meals and entertainment from lobbyists. He called some of his fellow legislators "steak men." By that he meant that the legislators would sell their votes on a bill for a steak dinner at the Driskill Hotel in Austin. "Steak men" (and women) may still exist in Texas politics, but for the most part, lobbyists provide information, campaign contributions, and political support (or opposition) rather than bribes.

Still, from time to time lobbying does stoop to very low levels. In 1989, "Bo" Pilgrim, a large poultry producer, distributed \$10,000 checks to state senators in the capitol while he was lobbying them on workers' compensation reform. Perhaps even more troubling, some senators accepted the checks until media attention forced them to reconsider. Yet this practice of offering \$10,000 while asking for a senator to vote on a specific bill was not illegal under state law. A year later, the Speaker of the Texas House of Representatives, "Gib" Lewis, got in trouble for his close relationship with a law firm that specialized in collecting delinquent taxes for local governments. In 1991, Speaker Lewis was indicted for receipt of an illegal gift from the law firm. Ultimately, Lewis plea-bargained and received a minor penalty. The result of these scandals, however, was legislation that created a state ethics commission. The legislation imposed additional lobbying reporting requirements and restrictions on speaking fees that interest groups paid legislators and pleasure trips that lobbyists provided. By no means was the law a major regulation of or restriction on lobbying practices, but it did put some limits on lobbying behavior.

## Who Represents Ordinary Texans?

Another problem with lobbying was well described by the director of a public-interest lobby, Craig McDonald: "Legislators are rubbing shoulders with . . . lobbyists, almost all of whom hustle for business interests. While corporate interests dominate our legislative process, there is virtually no counterbalancing lobby to represent ordinary Texans. Nowhere on the list of Texas's biggest lobby spenders will you find a single group dedicated to the interests of consumers, the environment or human services. No wonder these citizen interests repeatedly get steamrolled in Austin."<sup>25</sup>

Figure 6.1 classifies the interests represented by the registered lobbyists and estimates the value of those lobbying expenditures. The "Who Are Texans?" graphic looks at campaign contributions to Texas legislators. Although the categories in both are very broad, it is clear that business interests dominate in Texas government. Of course, many issues considered by Texas government may pit one business interest against another, and sometimes a business or professional organization may find itself aligned with consumer interests. For example, the Texas Trial Lawyers Association, an organization of plaintiffs' lawyers in Texas, frequently allies with consumer interests. Many of the clients of these lawyers are consumers who sue large businesses. The interests of these lawyers and their clients are especially close, since the lawyers are paid on a contingent fee basis, which means they don't receive payment unless their clients receive payment. It is also the case that lob-



**FIGURE 6.1**  
**Lobbying Expenditures, 2013**

NOTE: Expenditures are the maximum values on the broad range of amounts in the lobbying report forms. Amounts are only for direct lobbying of government officials and do not include money for grassroots lobbying or media campaigns. The amounts in the figure are rounded.

SOURCE: Texans for Public Justice, "Special Interests Paid Lobbyists Up to \$328 Million in 2013 Session," p. 1.

bying is not all there is to the representation of interests in Austin. Interest groups without money may still mobilize their members in order to accomplish their objectives, or they may influence public opinion.

Still, there is no question that money does help in politics. Figure 6.1 and the data in the "Who Are Texans?" graphic provide support for concern that in this battle of mostly business interests, there may not be an objective voice, or at least a voice for the public interest, that reaches the ears of legislators.

## ● Another Side to Lobbying

**Describe the role of PACs in Texas elections**

Lobbyists in Texas represent mostly business interests, and they are active in trying to gain access to government officials and inform them of the legislative desires of their

**political action committee (PAC)**

a private group that raises and distributes funds for use in election campaigns

**issue advocacy** independent spending by individuals or interest groups on a campaign issue but not directly tied to a particular candidate

clients. But interest groups are not simply information channels between business and government. They also promote the political interests of elected officials who support their viewpoints and oppose the interests of those who do not. One major way that interest groups engage in this activity is by making campaign contributions. Interest groups may encourage individual members to make contributions to candidates, or they may collect funds from their members, bundling those funds as a donation from the interest group. When this is done, the interest group creates a **political action committee (PAC)** to make the contribution.

There are numerous reasons for forming a PAC. A candidate is more likely to notice a substantial contribution from a PAC than many small contributions from individual members of an interest group. Additionally, the lobbyist who delivers a substantial PAC check to a candidate can more likely gain political access than can a lobbyist who simply asks interest-group members to mail individual checks. The PAC becomes a way for the interest group to send a message to the candidate that its members care strongly enough about their agenda that they are prepared to back those goals with money. In some cases, a PAC can even serve as an intermediary to provide money to candidates that the PAC's members might not want to support publicly.

PACs may give money directly to the candidate, or they may engage in **issue advocacy** that supports the candidate but is independent of the candidate's control. The candidate does not report these independent expenditures on contribution disclosure statements. PACs may also spend money to support an issue rather than a specific candidate or to support such activities as "get-out-the-vote" campaigns. In 2008 about 55 percent of the money given to Democratic and Republican legislative candidates was given by PACs. About 45 percent of the money was given by individuals. In 2010 about 67 percent of the money given to Democratic and Republican legislative candidates was PAC money. Interestingly, however, in 2010 individuals gave more than PACs to candidates for statewide nonjudicial offices.<sup>26</sup>

Campaign contributions can be, to a considerable degree, divided in terms of the economic interests represented by the contributors. The "Who Are Texans?" graphic in this chapter shows that the largest contributor was the finance, insurance, and real estate sector. This sector is a major part of the Texas economy and is subject to significant state regulation. That is also true of general business, energy and natural resources, construction, and health. In contrast to business, political parties, agriculture, and even candidates providing funds to their own campaigns, labor represents a small amount of campaign spending.

## Getting Out the Vote

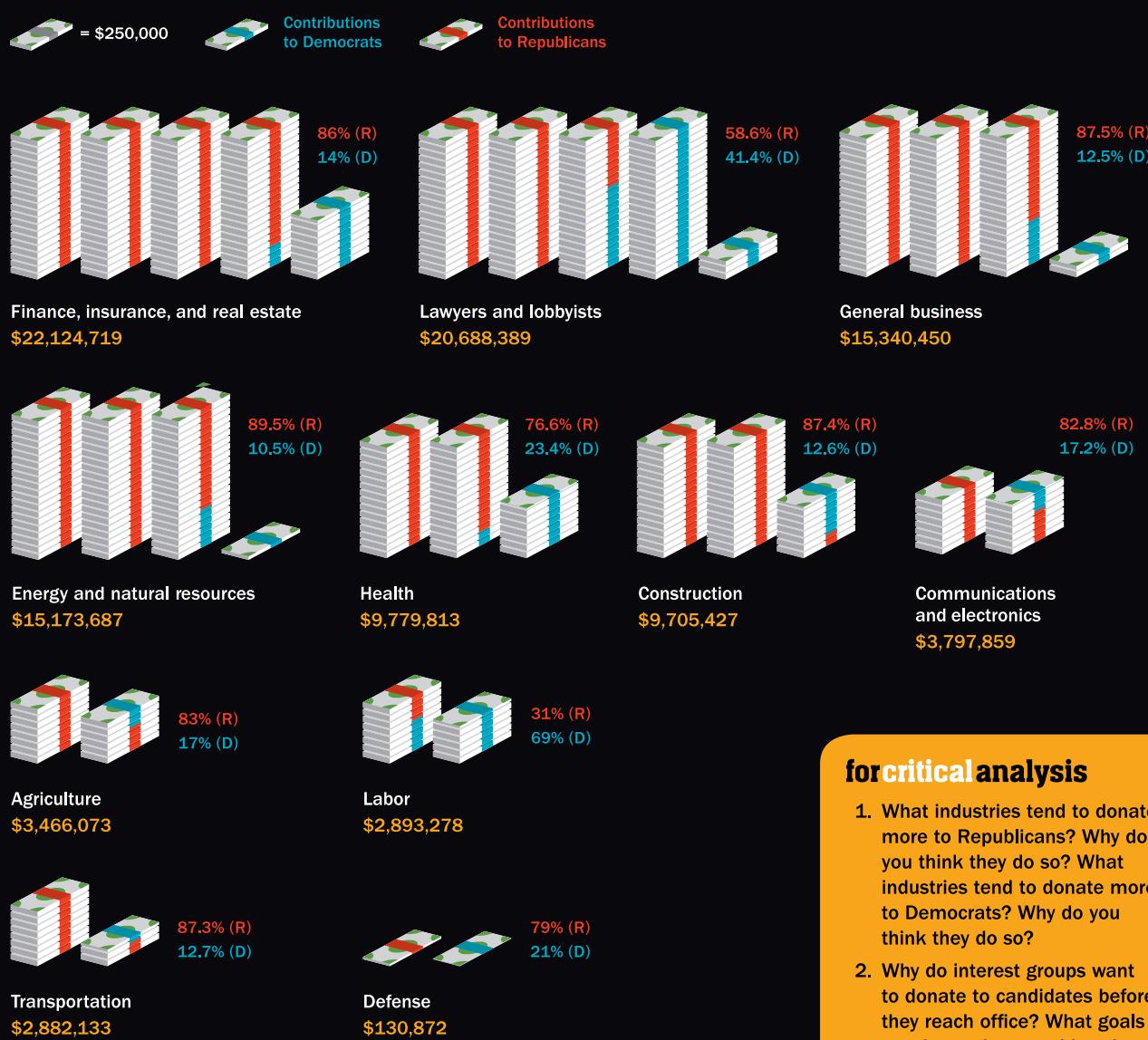
Getting out the vote on Election Day is an important and difficult task. Both the Republican and Democratic parties spend much time and money making sure that their voters get to the polls and vote for their candidates. In recent years, get-out-the-vote efforts by both parties have involved mining so-called big databases to identify people who are likely to vote for their candidates, calling them on the phone, and visiting them at home. Battleground Texas is the latest attempt by the Democratic Party to identify potential Democratic voters, to make them familiar with Democratic positions and candidates, and to get them to vote. Similar efforts have been made by the Republican Party in recent years, particularly those identifying with the Tea Party movement.

Get-out-the-vote initiatives also can be an important part of interest-group activity. The most successful get-out-the-vote campaign run by an interest group was

# Which Interest Groups Contribute the Most?

Interest groups try to achieve favorable policies not only by lobbying members of the Texas legislature directly but also by influencing who becomes members of the legislature in the first place by donating to the election campaigns of favored candidates. The chart below breaks down contributions from employees of different industries by party in 2012.

## Contributions to Texas Legislature Candidates in 2012



### for critical analysis

1. What industries tend to donate more to Republicans? Why do you think they do so? What industries tend to donate more to Democrats? Why do you think they do so?
2. Why do interest groups want to donate to candidates before they reach office? What goals are they trying to achieve in doing so?

that conducted by the Texas Medical Association in 1988, which sought to elect its slate of candidates to the Texas Supreme Court. Physicians were encouraged to give to TEXPAC, the medical association PAC. They were also encouraged to make individual contributions to certain candidates. Additionally, physicians were given slate cards with recommended candidates, literature endorsing candidates, and even expensively produced videotapes. They were asked not only to encourage families and friends to vote for the candidates endorsed by the medical association but also to encourage their patients to vote for them. The effort by the medical association was remarkable for its fund-raising success and for its reaching and mobilizing the grass roots.<sup>27</sup>

Most efforts by interest groups, however, are far less sophisticated. Generally, interest groups' PACs simply provide resources for the candidates to get out the vote. Unfortunately for the interest groups, sometimes they misjudge the political viability of the candidates they support. Backing an unsuccessful candidate results in a waste of the interest group's funds and the likely alienation of the winning candidate. In the 2010 primary campaign, Texans for Lawsuit Reform, the pro-business and pro-tort reform interest group that has had spectacular successes in forwarding its agenda over the past 15 years, suffered a remarkable failure. Although it had contributed \$602,290 to 28 candidates, 53 percent of this money was spent on 4 incumbent candidates who lost their primaries, and another 28 percent of their money was spent on 3 candidates—2 of them incumbents—who were forced into a runoff election. Obviously, Texans for Lawsuit Reform thought these candidates were important for achieving its agenda, but it is questionable how desirable it is for an interest group to pump huge amounts of money into the campaigns of incumbent candidates who do not have the political strength even to win in their own party primary elections. And the high degree of financial support for candidates can be hurtful to the candidate. In one of these races, the winning candidate's main issue was that the defeated incumbent had received money from an organization known for giving huge sums to Republican candidates. This, contended the winner, was proof that the incumbent Democrat was not a real Democrat but a Republican with a Democratic label.<sup>28</sup>

Nevertheless, Texans for Lawsuit Reform scored impressive victories in the 2010 general election. It gave more than \$550,000 to Republican Marva Beck to defeat Democratic representative Jim Dunnam and \$300,000 to Republican Larry Gonzales to defeat Democrat Diana Maldonado.<sup>29</sup>

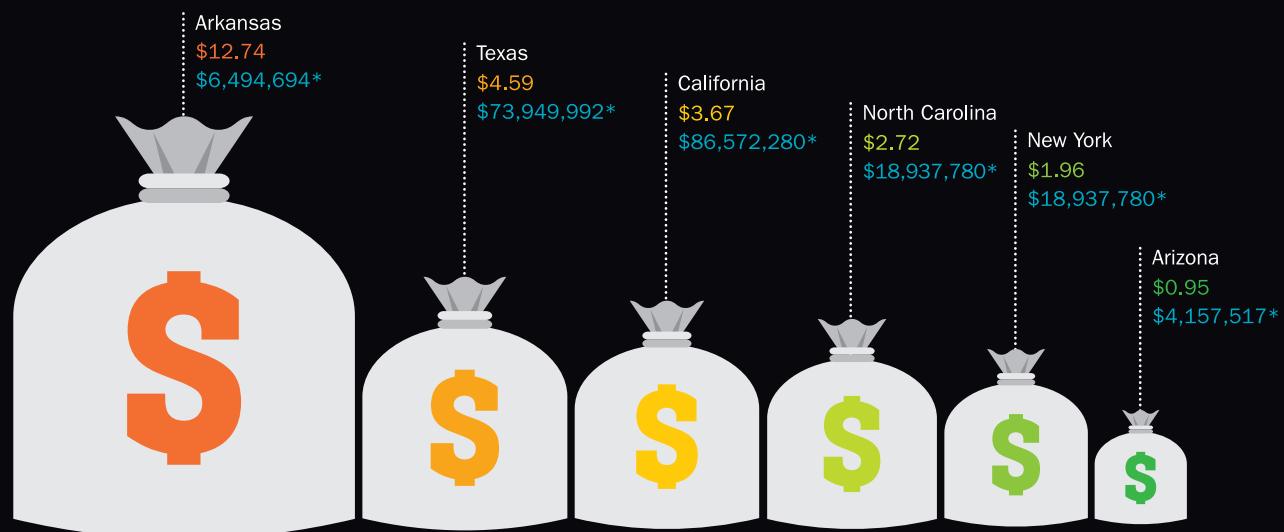
## Defeating Opponents

Generally, incumbents have a huge advantage over challengers in an election. Since they are officeholders, they usually have greater name recognition than challengers, and it is easy for incumbents to get publicity by holding town hall meetings, by announcing the relocation of new businesses to the district, or simply by attending community events. Additionally, they usually have an established network of supporters who helped them get into office at least once previously. There are two great exceptions to incumbency advantage: (1) scandal can destroy incumbency advantage, and (2) redistricting can ruin the political base of incumbents.

Except in cases of scandal or redistricting, however, it is far safer for interest groups to try to work with incumbents. Campaign money, for example, overwhelmingly goes to incumbents. In the 2012 campaign for the Texas House of Representatives incumbents raised 4.9 times the amount raised by challengers, and in the Texas Senate incumbents raised 10.7 times the amount raised by challengers

# Contributions to State Legislators: How Does Texas Compare?

Contributions to State House Candidates per Voting Eligible Person, 2012



Above \$7.00		\$3.00 to \$3.99		\$2.00 to \$2.99		\$1.00 to \$1.99		Under \$1.00	
Arkansas	\$12.74	Oklahoma	\$3.90	Delaware	\$2.94	New York	\$1.96	Arizona	\$0.95
Oregon	\$7.17	California	\$3.67	Connecticut	\$2.79	South Dakota	\$1.91	North Dakota	\$0.82
Wyoming	\$7.13	Missouri	\$3.67	North Carolina	\$2.72	South Carolina	\$1.85	Alabama	\$0.31
		Ohio	\$3.65	Kansas	\$2.71	Wisconsin	\$1.82	New Jersey	\$0.12
		Hawaii	\$3.56	Tennessee	\$2.60	Minnesota	\$1.70	New Hampshire	\$0.09
		West Virginia	\$3.50	Massachusetts	\$2.42	Colorado	\$1.66	Mississippi	\$0.003
		Pennsylvania	\$3.45	Michigan	\$2.41	Maine	\$1.54		
		New Mexico	\$3.38	Idaho	\$2.40	Maryland	\$1.43		
		Washington	\$3.27	Florida	\$2.26	Vermont	\$1.26		
		Indiana	\$3.23	Georgia	\$2.20				
		Rhode Island	\$3.02	Montana	\$2.06				
		Kentucky	\$3.00	Utah	\$2.03				

Texas has few regulations regarding how much money can be given to state legislators and candidates for the state legislature. Other states are far more restrictive in terms of how much money any one individual can give in any given year. The chart provides a state-by-state comparison of total number of dollars given to state legislature candidates in 2012.

\*Total amount given to candidates per state

Data not available for Louisiana, Nebraska, and Virginia.

SOURCE: Contribution data from 2012 Gallup Organization; voting eligible population data from United States Election Project, [www.elections.gmu.edu/turnout\\_2012G.html](http://www.elections.gmu.edu/turnout_2012G.html) (accessed 2/12/14).

## for critical analysis

- How does Texas compare to other states in terms of partisanship?
- How might demographic change, especially the growing Latino population, change Texas's political preferences?

**TABLE 6.1**

## Average Dollars Raised by Incumbents and Challengers for the Texas Legislature, 2012

OFFICE	INCUMBENTS (\$)	CHALLENGERS (\$)
House	\$388,719	\$79,258
Senate	1,113,440	103,823

SOURCE: National Institute on Money in State Politics.

(see Table 6.1). Incumbents win elections to an overwhelming degree.<sup>30</sup> Some of the campaign contributions to incumbent legislators are spectacularly large. Speaker Joe Strauss, for example, received \$6,551,013 in contributions—no doubt in recognition that as Speaker he was in a position to advance or hinder much legislation. Another influential legislator, Dan Branch, received \$2,594,365 in contributions. In the Texas Senate in 2012, incumbent Wendy Davis faced a tough Republican challenger but outraised the challenger with \$4,310,971 in contributions compared to her Republican opponent's \$3,340,325.<sup>31</sup>

Of course, sometimes an interest group does not want to help a candidate or even pressure a candidate; it wants to defeat that candidate. This can be a risky strategy because if the candidate wins, then the interest group will be faced with not only an unfriendly public official but also one displeased with the interest group for its opposition. When that happens, the interest group will often “get well” or “get on the late train.” This means that the interest group will make a substantial political contribution to the winning candidate whom it formerly opposed. Often, winning candidates have significant campaign debts after a grueling election battle, and they appreciate the late contributions of former enemies, which are offered as a way of making amends.

Although “late-train” contributions may improve the relationship between officials and interest groups, usually candidates reserve a special loyalty for those supporters who backed them early. Without support at the very beginning of a campaign, it is hard for a candidate to build an organization and get the support necessary to make a decent campaign start. That is why early supporters are so valuable. The best lobbyists start early in trying to develop relationships with candidates and with new legislators. One national PAC, EMILY’s List (EMILY stands for Early Money Is Like Yeast), is funded by women and provides early campaign contributions to female candidates. Legislators remember who was with them at the beginning of their political careers—and this can be immensely beneficial to the lobby that cultivated that early relationship.<sup>32</sup>

Sometimes PACs give to both candidates as a way to avoid alienating either one, though the possibility remains that such dual giving will wind up alienating both. At other times, interest groups simply don’t care if they alienate a candidate. The 2010 Democratic primary election between state representatives Tara Rios Ybarra and Jose Manuel Lozano highlighted the lines that can clearly separate interest groups during a campaign. Texans for Lawsuit Reform contributed \$256,610 to Ybarra, which was 56 percent of her campaign funds. Ybarra lost to Lozano, who was backed by trial lawyers who were not the least bit sympathetic to the goals of Texans for Lawsuit Reform.<sup>33</sup>

An extraordinary battle occurred in the 2012 Republican primary where Texans for Lawsuit Reform backed railroad commissioner Elizabeth Ames Jones in her challenge to Republican state senator Jeff Wentworth. Wentworth served nearly five years in the Texas House before being elected to the state senate in 1992. He appeared to be well established and unbeatable. An early poll showed him with a large lead. But although Wentworth supported 21 of 23 bills considered by Texans for Lawsuit Reform to be “major” legislation, he angered the interest group by criticizing a 2003 constitutional amendment that limited the amounts patients could receive in medical malpractice suits. He also voted against a bill that reduced the amount of money coastal homeowners could receive after hurricanes. While Wentworth was defeated, it was not by Jones, but by Donna Campbell, who had Tea Party backing. Nevertheless, Wentworth blamed his defeat on the “mammoth \$2 million-plus negative campaign launched against me by Texans for Lawsuit Reform.”<sup>34</sup> The defeat no doubt sent a message to Republican lawmakers that they had better not cross Texans for Lawsuit Reform.

When an interest group is convinced that it cannot work with a public official, the interest group may undertake an all-out effort to defeat that official. But spending money by no means guarantees success. Dr. James Leininger is one of the biggest contributors to Republican candidates. In the 2006 election cycle, he gave over \$5 million to Republican candidates in Texas, either through individual contributions or by giving to PACs that then made contributions. Leininger and some of the PACs he supports are strong supporters of school vouchers. Much of this money backed challengers to Republican incumbents who were unfavorable to vouchers. The effort was unsuccessful and the result, according to Texans for Public Justice, was a legislature “even less receptive to vouchers than its predecessor.”<sup>35</sup>

A U.S. Supreme Court decision in 2009, *Citizens United v. Federal Election Commission*, created the opportunity to create an organization that opposed powerful incumbents without having to disclose the donors. Few wealthy Texans proved willing to openly fund political attacks on Speaker Joe Strauss and his allies, but in the 2012 election cycle, Empower Texans moved several hundred thousand dollars through its nonprofit organization and thus avoided having to disclose its political contributors. Most of this money was spent on a number of House races with the

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*Empower Texans is a powerful political action committee that provides money to candidates, sometimes from undisclosed donors.*

**dark money** political money where the donors of the money do not have to be disclosed

**interest-group capture**

government agency that serves the objectives of the interests that the agency is supposed to regulate

biggest expenditures going to failed challenges to Speaker Strauss and to Representative Lance Gooden. The nonprofits spent about \$290,000 on mailers, about \$40,000 on Internet ads, and about \$18,000 on robo-calls. Another nonprofit that does not have to report donors is the Texas Organizing Project, which spent a bit more than \$234,000 mostly supporting Harris County sheriff Adrian Garcia and 14 other local candidates along with the Texas House campaign of Mary Ann Perez. These new funding structures where donors do not have to be reported are known as sources of **dark money**.<sup>36</sup>

## Interest-Group Capture

Interest groups can sometimes have such influence over an agency of government that it is said that the interest group has “captured” that agency—meaning that the agency primarily serves the objectives of the interest group. Interest groups can develop long-term relationships with the agencies that regulate the industries that they represent in a number of ways. For example, interest groups can donate money to the election or re-election of agency officials who must seek election to their office. Subject to certain ethics rules, industries can also hire former agency officials to work for them as lobbyists. The closer the connection between the agency and the industry, the more complete is the capture.

Such **interest-group capture** may have occurred with the Texas Railroad Commission. The Railroad Commission has the primary responsibility for regulating the oil and natural gas industry, pipelines, and coal and uranium surface-mining operations. The commission is run by three statewide elected officials who serve staggered six-year terms. Although one unsuccessful candidate for the commission included railroad safety in his campaign platform, the Railroad Commission’s name is long outdated and has nothing to do with railroads.<sup>37</sup>

In 2010, Public Citizen, a consumer advocacy group, published a highly critical report on the commission which pointed out that at the Railroad Commission, “political spending is out of control, well over half of campaign donations coming from the very industries the commission is supposed to regulate. Real or perceived, this creates a conflict of interest. Railroad commissioner is seen as a springboard to higher elected office in the state, giving influence-peddlers more incentive to curry favor and sitting commissioners to amass campaign war chests. . . . Campaign donations coming from regulated industries present a very real problem, inserting the probability that regulatory decisions are made in favor of large donors rather than the public’s interest.”<sup>38</sup>

The Public Citizen report pointed out that by 2010, 80 percent of donations to incumbent commissioners were from the industries they regulated, which was up from 45 percent of donations to incumbents in 2001, and there had been nearly a tenfold increase in donations. Additionally, the size of individual donations had increased—in 2000, 80 percent of donations were \$1,000 or more; in 2010, 92 percent of donations were \$1,000 or more.<sup>39</sup> In the 2012 election an incumbent, Barry Smitherman, received \$5,144,683 in campaign contributions, with the oil and gas industry being the largest group to make contributions. In a race for an open seat, Christi Craddick won with \$2,850,158 in contributions, again with the oil and gas industry being the largest business/industrial group to make contributions.<sup>40</sup> Of course, that so many contributions should be from the oil and gas industry should not be surprising, since the commission is the main regulatory agency for oil and gas and other industries do not have the concerns about the commission’s work that would cause those industries to make major contributions. And groups such



*The Texas Railroad Commission regulates Texas's oil and gas industries. Some say that this commission has been captured by those special interests, which sometimes advocates controversial procedures like fracking.*

as environmental groups do not have the resources to compete with the oil and gas industry in backing environmental candidates.

The staff of the Sunset Advisory Commission prepared a report in 2012 that attempted to deal with some of the concerns that the Texas Railroad Commission had been captured by the oil and gas industry. Among other things, the report recommended that the commission's name be changed to realistically reflect its contemporary duties: the Texas Energy Resources Commission. It also recommended that solicitation and receipt of campaign contributions by commissioners or candidates seeking the office be limited to the one- and one-half-year time frame around the election rather than having full-time fund-raising throughout the six-year term of office. It recommended that commissioners be banned from knowingly accepting contributions from those with contested cases before the commission, and it recommended that commissioners must resign their office if they become candidates for another elected office. There was also a recommendation that independent hearing examiners be used in contested cases involving oil and gas.<sup>41</sup>

House Speaker Pro Tem Dennis Bonnen was especially concerned that two sitting railroad commissioners had recently run for the U.S. Senate while retaining their offices and raising money from the oil and gas industry. While the efforts to reform the commission were publicly endorsed by the railroad commissioners, Bonnen claimed the commissioners were privately lobbying to weaken the proposals. The reform proposals failed in the 2013 legislature.<sup>42</sup>

## ● Individuals as Lobbyists

**Explain how ordinary individuals can influence Texas government**

Sometimes ordinary individuals can have a remarkable impact on public policy, although interest groups clearly have an advantage in influencing the legislative process. Nevertheless, a persistent individual with a

well-reasoned argument can make a difference. For example, Tyrus Burks lost his wife and two children in a late-night electrical fire in West Dallas. Burks did not awaken in time to save them because he is deaf and did not hear the audible smoke alarm. Texas's state property code required the installation of audible smoke alarms but not visual alarms. In 2009, Burks became an advocate for a bill that would require property managers to buy and install visual smoke alarms if hearing-impaired tenants requested them and to put the alarms in visible locations such as bedrooms. Supported by state senator Royce West, the Sephra Burks Law, named for Tyrus's wife, who was also deaf, went into effect at the start of 2010. Tyrus Burks was an active lobbyist for the bill and gave legislative testimony in support of it with the aid of a sign language interpreter.

Burks's efforts benefited from the support of the Texas Apartment Association, a major interest group representing apartment property interests, who backed the bill. Burks's story was tragic and his argument was compelling. It would have been difficult for opposition to emerge against such a proposal. Still, his efforts resulted in a major victory for the deaf, who are protected by such a law requiring visual smoke alarms in only three other states and the District of Columbia.<sup>43</sup> Burks's achievement demonstrates that individuals can, at least sometimes, be successful lobbyists.

The problem is that relatively few Texans are engaged in the neighborhood, in their community, or in politics, and so much lobbying is left to organized interest groups with professional lobbyists. Table 6.2 provides a number of measures of civic engagement, and all show Texas is considerably lower than the national average on these measures. Texas is near the bottom of the nation in terms of measures of social connectedness that would lead to civic involvement such as discussing politics with friends or family, group involvement, frequent communication with friends and family, and even trust in all or most of the people in the neighborhood. Nor in comparison with the rest of the nation are Texans involved in volunteer activity or charitable donations. Texans tend not to contact or visit their public of-

*Occasionally, ordinary individuals can have a direct influence on policy. Barbara Brown, of Plano, lobbied local government and the state legislature to get better bicycle safety laws and programs passed. Brown's son was killed in an accident while riding his bicycle.*



**TABLE 6.2****Measures of Texas Civic Health**

	PERCENTAGE OF TEXANS AGREEING (%)	NATIONAL AVERAGE (%)	RANKING OF TEXAS AMONG THE STATES
Contacted or visited public official	9%	12%	49
Discuss politics with friends or family a few times a week or more	26	29	44
Communicate with friends and family frequently	78	79	41
Trust all or most people in the neighborhood	50	57	47
Donate \$25 or more to charitable or religious organizations	47	52	43
Group involvement	38	39	37
Volunteer activity	25	27	42
Registered to vote	62	65	42
Voting	36	45	50

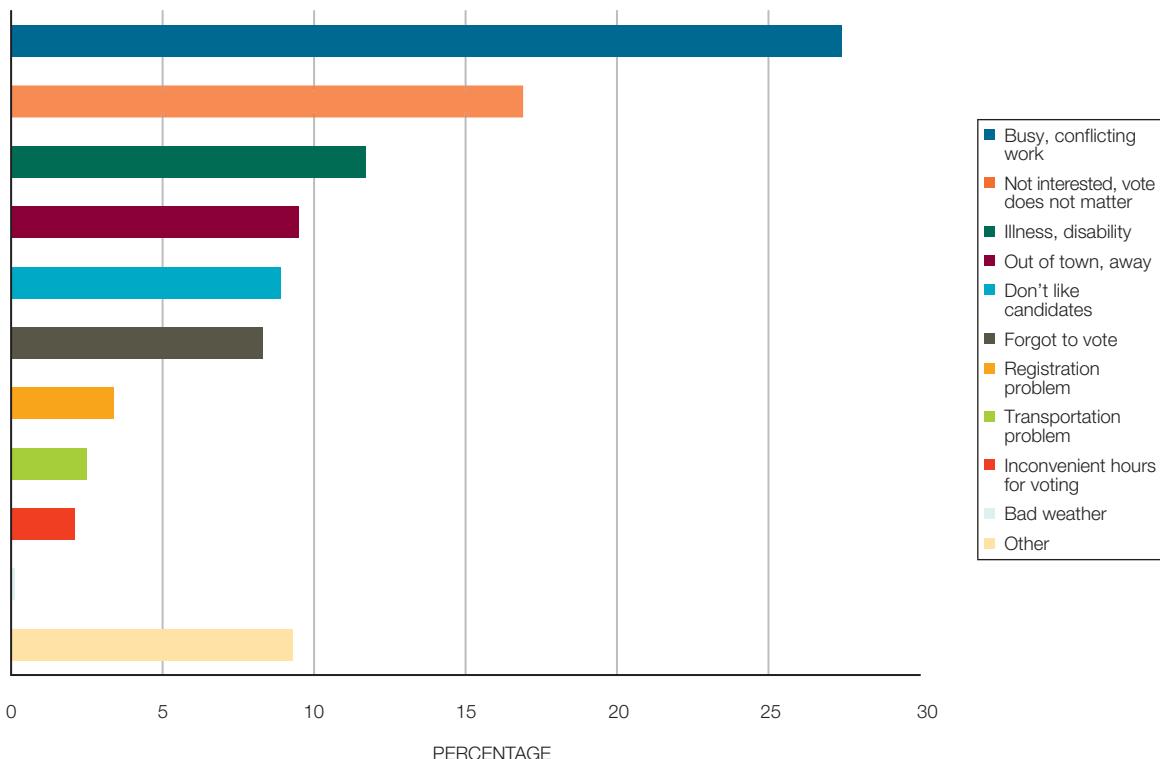
SOURCE: Regina Lawrence, Deborah Wise, and Emily Einsohn, Texas Civic Health Index (Austin: Annette Strauss Institute for Civic Life, 2013).

ficials, register to vote, or vote. With such low levels of civic engagement, individual effects on the Texas political process are likely to be low.<sup>44</sup>

Interestingly, while 52 percent of Texans in one survey claimed they were very interested in politics and public affairs and 37 percent said they were somewhat interested, Texas has the lowest proportion of actual voters of any state. Texans give all sorts of reasons for not voting, the most common reason being that Texans claim they are too busy or that work conflicts with voting and the next most common reason that they either are not interested or believe their vote does not matter.<sup>45</sup> Figure 6.2 provides the reasons given in 2012 when Texans were asked why they did not vote. Of course, Texas's low levels of voting participation—the lowest level in the country—means that organized interest groups fill the void in political activity and can wield vast influence in the state's political process.

## Thinking Critically about Interest Groups

Interest groups play an important role in Texas politics even though Texas is no longer a one-party state with limited economic development. Even with two major political parties and a diverse economy, Texas politics cannot be understood without also examining the role of interest groups. Interest groups in Texas have a notable pro-business flavor. Labor is weak in Texas, and its role in the political process is quite limited. Trial lawyers are an especially wealthy and important interest group that promotes liberal policies in Texas, but with the growth of the



**FIGURE 6.2**  
**Reasons Texans Give for Not Voting**

SOURCE: Data are reported in Regina Lawrence, Deborah Wise, and Emily Einsohn, *Texas Civic Health Index* (Austin: Annette Strauss Institute for Civic Life, 2013), p. 22.

Republican Party and tort reform interest groups, the influence of the trial lawyers has waned.

Though no single interest group or coalition of interest groups dominates Texas politics, by far most lobbyists represent business interests, and the bulk of PAC money comes from business interests. Often, of course, businesses are pitted against one another in the political process. Also, public interest, civil rights, consumer, and environmental groups may still be successful by mobilizing public opinion and influencing the media. However, there are only a few interest groups that offer alternatives to business perspectives on policy issues. Less frequently, ordinary individuals are able to influence public policy. Although they tend to be at a disadvantage in terms of money and other resources, dedicated individuals with a compelling argument sometimes succeed in lobbying for specific legislation. This is especially true when they are pursuing goals that do not put them in conflict with well-organized and well-funded interest groups.

## Interest Groups in the Political Process

**Define interest groups, and describe the major ways they try to influence Texas government (pp. 173–83)**

Interest groups in Texas are organizations of interested citizens who band together to influence public policy. Lobbyists are hired to cultivate relationships with legislators and convince them of their clients' interests. The goal of lobbyists is to gain access to policy makers to persuade them to support the positions of the interest group.

### Key Terms

interest group (p. 173)

free rider problem (p. 174)

bundling (p. 176)

lobbyist (p. 177)

### Practice Quiz

1. The “8F Crowd”
  - a) was a group of legislators who failed the eighth grade.
  - b) was a group of extremely wealthy Texans who met in Suite 8F of the Lamar Hotel in Houston and controlled Texas politics for 40 years.
  - c) were 25 legislators who boycotted the eighth session of the legislature in order to prevent the legislators from taking any action because it lacked a quorum.
  - d) was made up of eight lobbyists who were close friends of the governor.
  - e) were the eight most powerful officials in the state who met in Suite F of the Austin State Office Building.
2. Interest groups provide public officials with all the following except
  - a) information.
  - b) money.
  - c) media coverage.
  - d) votes.
  - e) committee assignments.
3. The goals of interest groups include all except
  - a) electing people to office in order to support the groups' goals.
  - b) influencing those who control government.
  - c) educating the public and members about issues of importance to the group.
  - d) providing campaign funds for favored candidates.
  - e) maintaining a heterogeneous membership.
4. Interest groups have an advantage over individuals in influencing policy because interest groups usually have
  - a) more time to influence officials.
  - b) greater expertise than individuals.
  - c) more money to influence elections.
  - d) more staff.
  - e) all of the above.
5. When interest groups combine small contributions from many sources to form one large contribution, it is called
  - a) bundling.
  - b) compacting.
  - c) cracking.
  - d) polling.
  - e) packing.
6. The most important thing interest groups need to be effective is
  - a) the support of a majority of Texans.
  - b) office space in Austin.
  - c) a variety of issues on which to lobby.
  - d) a large, paid staff.
  - e) access to politicians.
7. Trial lawyers are which type of interest group?
  - a) professional group
  - b) public employee group
  - c) single-issue group
  - d) consumer group
  - e) business group
8. Interest groups often hire former legislators as lobbyists to
  - a) gain greater access to current legislators.
  - b) benefit from the policy expertise of former legislators.
  - c) benefit from the personal “insider” knowledge of the former legislator.
  - d) all of the above.
  - e) none of the above.

# Another Side to Lobbying

## Describe the role of PACs in Texas elections (pp. 183–91)

Political action committees (PACs) are private groups that raise and distribute funds for election campaigns. Interest groups play a major role in getting out the vote. Interest-group money can play a major role in defeating as well as electing candidates.

### Key Terms

political action committee (PAC) (p. 184)  
issue advocacy (p. 184)  
dark money (p. 190)  
interest-group capture (p. 190)

### Practice Quiz

9. Lobbyists are
  - a) all corrupt.
  - b) all unethical.
  - c) important sources of information for legislators.
  - d) harmful to the democratic process.
  - e) never retired legislators.
10. In Texas, the most powerful interest groups represent which interests?
  - a) consumer
  - b) civil rights
  - c) business
  - d) owners of oil wells
  - e) public employee
11. PACs are used to
  - a) stir the public's interest in politics.
  - b) raise money from individuals, which is then bundled and given to candidates.
  - c) create media campaigns to influence the course of government.
  - d) create grassroots campaigns.
  - e) all of the above.

12. One of the most important grassroots tactics of interest groups is
  - a) to gain support from all the mayors of town in a district.
  - b) to get out the vote.
  - c) to form political alliances with executive and legislative leaders.
  - d) to lobby the judicial branch of national and state government.
  - e) to interpret the needs of their members.
13. Interest groups have a hard time defeating incumbent legislators unless
  - a) the legislator is involved in scandal.
  - b) the legislator has been redistricted.
  - c) the legislator's positions have generated overwhelming opposition in the district.
  - d) all of the above.
  - e) none of the above.
14. Dark money refers to
  - a) money that is illegally donated to politicians for their re-election.
  - b) money that cannot be used to pay typical campaign expenditures.
  - c) vouchers that candidates can use to fund their campaigns.
  - d) donated money that does not have to be reported by a campaign.
  - e) money that is printed on special dark green paper specifically formulated for campaigns.
15. Capture theory refers to the idea that
  - a) interest groups are controlled by politicians.
  - b) through long-term relationships, government interests come to serve the objectives of an interest group.
  - c) politicians work for the public good by controlling special interests.
  - d) labor unions are controlled by business.
  - e) business interests are captured by labor unions.

# Individuals as Lobbyists

## Explain how ordinary individuals can influence Texas government (pp. 191–93)

Citizens can lobby their legislators by calling, writing, or visiting their offices. Industries and well-financed interests can afford professional lobbyists to try to influence legislation, but legislators will listen to individual citizens, especially if they join together in large numbers.

### Practice Quiz

16. Individuals have the best chance to influence public policy when they
  - a) are not opposed by organized interest groups.
  - b) are polite.
  - c) entertain legislators.
  - d) vote.
  - e) live in Austin.

## **Recommended Websites**

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**Texans for Public Justice**  
[www.tpj.org](http://www.tpj.org)

**Texas Ethics Commission**  
[www.ethics.state.tx.us/](http://www.ethics.state.tx.us/)

**Texas Medical Association**  
[www.texmed.org](http://www.texmed.org)

**Texas Trial Lawyers Association**  
[www.tsla.com/TX/](http://www.tsla.com/TX/)

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**Texans for Lawsuit Reform**  
[www.tortreform.com/](http://www.tortreform.com/)

When passing (or blocking) legislation in Texas, the rules matter. In 2013 state senator Wendy Davis (D-Fort Worth) staged an over 10-hour filibuster that temporarily stopped a bill restricting abortions. Eventually, in another special legislative session, the bill finally passed.



# The Texas Legislature

**WHY THE TEXAS LEGISLATURE MATTERS** After the 83rd legislative session ended, Governor Rick Perry called a special 30-day session. The last item on the session's agenda was a bill to regulate abortion procedures, providers, and facilities: Senate Bill 5. The bill was complex, subjecting abortion providers in Texas to a number of new regulations. The most notable and significant change was a ban on the abortion of fetuses older than 20 weeks. Supporters of the bill argued that such abortions should be banned because there was evidence that fetuses of that gestational stage are capable of feeling pain. This restriction would not apply in cases in which the fetus was severely deformed or in which the life of the mother was in danger. However, in the latter scenario, the performing physician would be required to try to save the fetus's life. The bill also required abortion facilities to meet the same safety and quality standards as ambulatory surgical centers—clinics that specialize exclusively in outpatient surgical procedures. Opponents of the bill argued that this would force 37 of the state's 42 abortion clinics to either close or relocate.<sup>1</sup> A Senate amendment to the bill required that abortion-inducing drugs be prescribed only by physicians. Finally, all physicians who perform abortions had to have admitting privileges at a hospital less than 30 miles away from the abortion facility.

Filibusters in the Texas Senate are very different from those in the U.S. Senate. They are based on Senate Rules 4.01 and 4.03, which allow a senator to speak on a bill for as long as the senator desires without interruption. This privilege is subject to several limitations. The senator must remain standing at his or her desk for the entire time and cannot lean on anything, sit in a chair, or take any breaks. The speaker must also ensure all of his or her comments are germane to the bill. Senate rules enable other senators to call the speaker on a point of order if these rules are not followed. After a point of order is raised, the president of the Senate may sustain or overrule the point of order. This ruling can be challenged from the floor, resulting in a vote that either supports or rejects the ruling on the point of order. If the filibustering senator is successfully called on three points of order, a simple majority of the Senate may vote to prevent the senator from continuing with his or her remarks.<sup>2</sup> The overall effect of these rules is to make Texas senatorial filibusters “endurance contests” for individual senators.<sup>3</sup>

On Tuesday, June 25, 2013—the last day of the special legislative session—the main item on the agenda was Senate Bill 5. At 11:18 AM, Senator Wendy Davis of Fort Worth took the floor, intending to filibuster until the session ended at midnight. She held the floor until 10:07 PM.<sup>4</sup> She was called on three points of order. First, her remarks on Planned Parenthood's budget were deemed not to be

germane.<sup>5</sup> Second, having another senator help her with her back brace violated the spirit of the rule against leaning or sitting.<sup>6</sup> This particular point of order was decided by a 17-to-11 vote.<sup>7</sup> Third, her discussion of a Texas law requiring women to have a sonogram before receiving an abortion was not germane.<sup>8</sup> At this point, the Senate voted 19 to 10 to finally end the filibuster.<sup>9</sup>

After Davis was forced to surrender the floor, other Democratic senators began raising points of order and parliamentary inquiries in an attempt to run out the last two hours of the session. At 11:45 PM, Senator Leticia Van de Putte of San Antonio made a motion to adjourn that was not recognized by the presiding senator. Van de Putte followed up with a question: “At what point must a female senator raise her hand or her voice to be recognized over her male colleagues in the room?”<sup>10</sup> The Senate gallery, which was packed with opponents of the bill, erupted with applause and cheers. The noise drowned out the proceedings on the floor and prevented Republicans from calling a vote until 12:02 AM—after the special session had officially ended.<sup>11</sup> The bill received 18 yeas and 11 nays.<sup>12</sup> At first, it was announced that the bill had passed. The Senate went so far as to change the date of the final vote from June 26 to June 25 on its automated bill tracking website. At 3:00 AM, however, the lieutenant governor conceded that the vote had begun too late and that the bill had failed. Yet his closing comment—“See you soon”—reflected the near-certainty that the bill would pass in the next special session.<sup>13</sup>

Senate Bill 5 and Wendy Davis’s filibuster reveal a number of important points about Texas politics and the rules and strategies seen in the Texas legislature. Pro-life legislation is important to the Republican Party base (as pro-choice policies are important for the Democratic Party base), but such social legislation was not the mainstay of the legislative agenda in the regular legislative session. A hard push for such legislation in the regular session would have tied up other bills that had priority for the Republican majority. Instead, such controversial social legislation was saved for the special session after almost all of the legislative agenda had been handled in the regular session. There was an advantage in bringing up such legislation in a special session. For one thing, in a special session, the legislative agenda is not overwhelmed by bills. A special session is limited to the issues for which the special session is called. Additionally, it is easier for bills to pass in a special session where the regular session requirement of a two-thirds vote for Senate consideration of a bill does not apply. The disadvantage of such legislation being considered in a special session is that a session is limited to 30 days and a well-timed filibuster, such as used by Senator Wendy Davis, can block a bill where the vote comes near the end of the session. That use of the filibuster to block a bill, however, can be overcome if the governor immediately calls still another 30-day special session with the blocked bill as a key agenda item in the session.

The battle over the bill also shows the importance of symbolic politics. Politicians sometimes battle over issues important to key constituencies to build and maintain support from those constituencies but don’t expect to make lasting changes. That is, Senator Davis’s filibuster may well have stopped passage of

the bill in the special session, but it was clear that the bill would pass in the next special session immediately after the first. And, given federal court decisions on the issue of abortion, it is likely that parts of the abortion bill are unconstitutional. One thing became clear, however: social issues provoke intense partisan battles—the old friendly and congenial Texas legislature no longer exists. The new Texas legislature is increasingly moving in the bitter partisan direction of the U.S. Congress.

## chaptergoals

- **Describe the bicameral organization of the legislature and the rules for membership (pp. 201–4)**
- **Explain when the legislature meets (pp. 204–6)**
- **Outline the legislative and nonlegislative powers of the legislature (pp. 206–10)**
- **Trace the process through which law is made in Texas (pp. 210–17)**
- **Describe the roles of other state officials and interested parties in shaping legislation (pp. 217–19)**
- **Analyze how party leadership and partisanship affect power in the legislature (pp. 219–25)**
- **Explain the politics of redistricting (pp. 226–29)**

## ● Structure of the Texas Legislature

**Describe the bicameral organization of the legislature and the rules for membership**

The Texas state legislature is the most important representative institution in the state. Members share many of the duties and responsibilities that are taken up at the national level by members of the U.S. Congress. Like members of the U.S. Congress, the members of the Texas House and Senate are responsible for bringing the interests and concerns of their constituencies directly into the democratic political processes. But the important constitutional and institutional differences between the U.S. Congress and the Texas state legislature must be taken into account if we are to understand the role that the state legislature plays in democracy in Texas.

### Bicameralism

Like the U.S. Congress and all the states except Nebraska, Texas has a **bicameral** legislature, with two chambers: the Texas House of Representatives and the Texas

**bicameral** having a legislative assembly composed of two chambers or houses



*Before becoming law in Texas, a bill must pass in both houses of the legislature. In 2013 the legislature passed a law forbidding guns on college campuses unless specifically authorized by the campus.*

Senate. The Texas legislature's 150 House members and 31 senators meet in regular session for 140 days every odd-numbered year. Senators serve four-year terms, and House members serve for two years. Each represents a single-member district. Each member of the Texas House represents approximately 168,000 people. Each senator represents over 811,000 constituents. A state senator now represents more people than does a member of the U.S. House of Representatives. Elections are held in November of even-numbered years, and senators and House members take office in January of odd-numbered years.

Bicameralism creates interesting dynamics in a legislature. For one thing, it means that before a law is passed, it will be voted on by two deliberative bodies representing different constituencies. In 2009, for example, the Texas Senate passed legislation to allow college students and faculty with concealed handgun licenses to carry their firearms on campus. That legislation, however, was killed in the Texas House of Representatives.<sup>14</sup> In 2011 the Texas Senate again passed a bill with an amendment allowing guns on campus. In the Texas House, the bill had support from a majority of members. However, the bill failed in the House because of a successful parliamentary objection that the gun amendment was not germane to the bill it amended, which dealt with scholarships.<sup>15</sup> In 2013 the National Rifle Association-backed bill allowing guns on campus passed the House, but the bill died in the Texas Senate when it failed to get the two-thirds vote needed in the Senate for the bill to be brought to the floor for discussion and a vote.<sup>16</sup> If a bill cannot be killed in one house, it can be killed or modified in the other body.

One effect of bicameralism in Texas is that the author of a bill in one house that has been amended in the other body has the option of accepting or rejecting the amendment. If the author accepts the amendment, the bill moves forward; if the author rejects the amendment, the bill is killed.

Bicameralism allows a member of one legislative body to retaliate against a member of either body for not cooperating on desired legislation. A "local and consent" calendar in the House is usually reserved for uncontroversial bills or bills limited to a localized problem. In order for a bill to be passed from that calendar, it has to pass without the objection of any member of the House. That requirement provides a perfect opportunity for members to retaliate against other members for perceived slights.<sup>17</sup>

## Membership

The constitutional requirements for becoming a member of the Texas legislature are minimal. A senator must be a U.S. citizen, a qualified voter, and a resident of the state for at least five years and of the district for at least one year. Additionally, the senator must be at least 26 years of age. Members of the House must be at least 21, U.S. citizens, qualified voters, and residents of the state for two years and of the district for one year. These requirements are in keeping with the political philosophy of those who wrote the Constitution of 1876. They believed holding public office required little or no formal training and should be open to most citizens.

In Texas, the typical legislator is white, male, Protestant, college educated, and affluent and has a professional or business occupation. These characteristics do not mean that others cannot be elected to the state legislature, but they do indicate that individuals with most of these informal characteristics have a distinct advantage. Members of the legislature must have jobs that allow them the flexibility to campaign for office and to work in the legislature for 140 days every other year, as well as in special legislative sessions and meetings of committees when the legisla-

ture is not in session. Thus, about one-third of the members of the legislature are attorneys. The legal profession is one of the few careers that pays well and offers the flexibility a legislator needs. Lawyers who serve in the legislature may even gain increased legal business either from interests with legislative concerns or because of the enhanced visibility of a lawyer-legislator.<sup>18</sup>

Republicans control both houses of the Texas legislature. In the 2015 legislative session, there were 11 Democrats and 20 Republicans in the Texas Senate and there were 52 Democrats and 98 Republicans in the Texas House of Representatives.

Legislators in Texas cannot expect to live on their legislative salaries. In keeping with the Texas constitutional tradition of a low-cost, part-time legislature, Texas representatives receive a salary of only \$7,200 a year. Legislators also receive a payment of \$150 a day when the legislature is in session. When the legislature is not in session, legislators may claim up to 12 days per month of **per diem** pay if they are in Austin on official business, or 16 days if they are committee chairs. The legislators themselves determine what qualifies as official business. It is common to pay expenses from officeholder expense accounts and to pocket the per diem so that it becomes a salary supplement. Legislative retirement pensions are very generous. The pension is tied to district judges' salaries, which are \$125,000 a year. That salary is multiplied by the years of service of the legislator times 2.3 percent. A legislator who has served 10 years thus would qualify for a pension of \$28,750 per year. A legislator serving 20 years would qualify for a pension of \$57,500 per year. Lawmakers are eligible for pensions with at least 8 years of service. With 8 years of service, the lawmaker can start collecting a pension at age 60. With 10 years of service, a lawmaker can start collecting at age 50.<sup>19</sup>

Originally, per diem rates were set by the Texas Constitution, and a constitutional amendment was necessary to change this. In 1991, Texans adopted an amendment allowing the Texas Ethics Commission to propose changes in legislative salaries, which then require voter approval. To date, the commission has not recommended a salary increase. At the start of each regular session, the Ethics Commission sets the legislative per diem. In the 2011 session, with major belt-tightening throughout state government, the legislature asked the Texas Ethics Commission to reduce its scheduled per diem of \$168 a day to \$150.<sup>20</sup> One Texas legislator found a way to increase his income by billing both the state and his campaign funds for his travel expenses. Representative Joe Driver of Garland pled guilty to a third-degree felony for double billing thousands of dollars in expenses. His conviction raises questions about how closely legislators' expenses are monitored.<sup>21</sup> During one of the 2013 special legislative sessions which lasted 30 days, 147 Texas lawmakers collected their \$150 per diem for the entire time even though a number of them did not attend the session and even though the House and Senate actually met only a few days. Eight senators and 26 House members gave written notice that they did not wish to receive the per diem when they were not in Austin.<sup>22</sup>

"Who Are Texans: Who Are the Members of the Texas Legislature?" shows the proportions of minorities and women serving in the legislature. Although those numbers have increased over the years, they are not in proportion to their strength in the population of Texas. Civil rights laws have increased voting by minorities, and those laws provide protection for minority political districts, though the 2013 decision of the U.S. Supreme Court overturning

**per diem** daily payment to a public official engaged in state business

*Although the "typical" member of the Texas state legislature is white and male, women and minority groups have increased their representation in recent years. For example, state representative and entrepreneur Helen Giddings has become an influential member of the House Business and Industry and Appropriations committees.*



part of the Voting Rights Act may lead to reduced legal protection for minority districts. Thus, more minority officeholders have been elected and, as the Hispanic population in Texas increases, additional Latino legislators will be elected. Women have also had an increased role in politics, especially since the 1970s, and as a result, it is likely that additional women will be elected to legislative office.

## ● Sessions of the Legislature

### Explain when the legislature meets

**regular session** the 140-day period, occurring only in odd-numbered years, during which the Texas legislature meets to consider and pass bills

**biennial** occurring every two years

### for critical analysis

Texas is the second-largest state and the second most populous state. Can a legislature that meets only 140 days every other year meet Texas's needs? Will changes in the economy make a full-time legislature necessary? Why?

**special session** a legislative session called by the governor that addresses an agenda set by him or her and that lasts no longer than 30 days

Not all state legislatures meet for the same time periods. Some state legislatures meet every year like the U.S. Congress. Texas's legislature generally meets every other year unless the governor calls it to meet between regular sessions.

### Regular Sessions

The Texas Constitution specifies that **regular sessions** of the Texas legislature be held for 140 days in odd-numbered years. The **biennial** legislative sessions have their origin in the nineteenth-century idea that legislative service is a part-time job and a belief that short, biennial sessions would limit the power of the legislature. For a few years, legislators were encouraged to end their work early by being paid for only 120 days of service.

Thousands of bills and resolutions are introduced into the legislature during a regular session, and the 140-day limitation places a considerable restriction on the legislature's ability to deal with this workload. In the 2013 regular legislative session, for example, 5,868 bills were introduced and 1,437 passed. If resolutions are included as well as bills, 10,630 were introduced and 5,909 were passed. The governor vetoed 26 of the bills passed by the legislature.<sup>23</sup> Hundreds of bills pass in the last hours of a legislative session, most with little or no debate. More die in the end-of-session crush of business because there isn't time to consider them.

### Special Sessions

If the legislature does not complete its agenda before the end of the legislative session or if problems arise between regular sessions, the governor may call a **special session**. Special sessions last no more than 30 days, but there is no limit to the number of special sessions a governor can call, and the governor sets their agenda. Texas has averaged one special session a year since 1876, although years may go by with no special session, whereas in some years there may be three or four sessions.

The ability to call and set the agenda of a special session provides the governor with control over which issues are discussed and what bills are passed. In many instances, the governor, the Speaker of the Texas House, the lieutenant governor, and various committee chairs will meet to decide what will be done to solve the problem at hand. Once the leaders address the issue and develop solutions, the governor calls the special session.

Once the session begins, the governor can open it to different issues. At times, the governor bargains for a legislator's vote in return for adding to the special

# Who Are the Members of the Texas Legislature?

## Gender

	Texas Pop.	Texas House	Texas Senate
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- Female
- Male

Female	50%	21%	23%
Male	50%	79%	77%

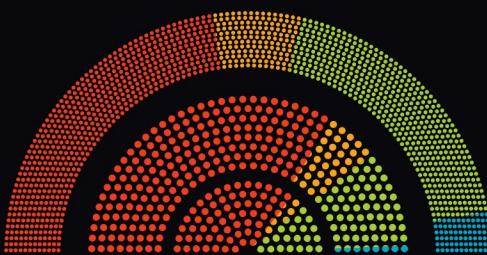


## Race

	Texas Pop.	Texas House	Texas Senate
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- White
- Black
- Hispanic
- Asian

White	45%	66%	70%
Black	12%	12%	7%
Hispanic	38%	21%	23%
Asian	4%	1%	0

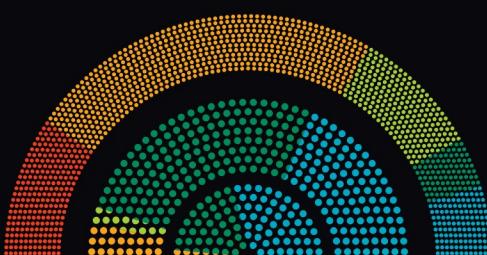


## Education

	Texas Pop.	Texas House	Texas Senate
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- < HS diploma
- High school grad.
- Associate's degree
- Bachelor's degree
- Graduate degree

< HS diploma	19%	0	0
High school grad.	48%	7%	3%
Associate's degree	17%	3%	0
Bachelor's degree	7%	53%	39%
Graduate degree	9%	37%	58%



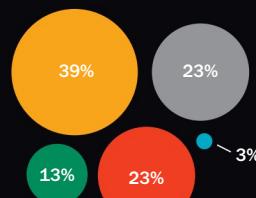
## Occupation

- Business
- Attorney
- Community service
- Health care
- Education
- Other

Texas House

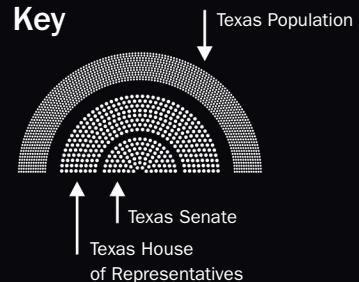


Texas Senate



SOURCES: For Texas House, numbers calculated by author based on data from the Directory of Elected Officials of the Texas Tribune: [www.texastribune.org/directory/](http://www.texastribune.org/directory/). State demographic data calculated from the US Census Bureau American Community Survey, [www.census.gov](http://www.census.gov) (accessed 5/14/14).

## Key



The Texas legislature is designed to be a representative body. How well does the legislature represent Texas? In many ways, the legislature does not look like Texas. The data to the left are for the Texas legislature in 2013–14. The state is evenly split between men and women, while the legislature is four-fifths male. While the state has no ethnic majority in its population, more than two-thirds of Texas legislators are white. Perhaps the biggest differences, though, relate to socioeconomic status. Over half of the members of the legislature hold graduate degrees, while only 9 percent of the population does.

## for critical analysis

- How much do you think the racial, gender, and socio-economic makeup of the Texas legislature matter to the type of laws that the legislature passes? If the legislature had more people of color, more women, or more middle-class members, would it pass different policies?
- Why do you think that members of the Texas legislature come from the more educated, higher socioeconomic groups? Does the structure of the Texas legislature encourage or discourage people from particular occupations to run?

session agenda an issue of importance to that legislator. In 2003, Governor Perry called three special sessions of the legislature to address congressional redistricting. In 2004 a fourth special session was called to address school finance. In 2005, in addition to the regular session, two special sessions addressed school finance. There was also a special session in 2006, 2009, and 2011. As discussed earlier, in 2013 two special sessions were called—the second because legislation that restricted abortion in Texas was not passed in the first largely because of Senator Wendy Davis's filibuster.

Between legislative sessions, members serve on interim committees that may require a few days of their time each month. Legislators are also frequently called on to present programs to schools, colleges, and civic clubs. They supervise the staff of their district offices and address the needs of their constituents. Special sessions, interim committee meetings, speeches, and constituent services require long hours with little remuneration. Many members devote more than 40 hours a week to legislative business in addition to maintaining their full-time jobs.

When Texas was a rural, predominantly agricultural state, biennial sessions worked well; however, Texas has moved beyond this description. In the twenty-first century, Texas is a modern state with more than 80 percent of its population living in metropolitan areas. Population growth continues at a rapid rate. The state's gross domestic product exceeds that of many nations. Part-time legislators serving biennial 140-day sessions may not work well anymore in allowing the state to respond quickly and effectively to problems that arise.

## ● Powers of the Legislature

**Outline the legislative and nonlegislative powers of the legislature**

The Texas legislature sets public policy by passing bills and resolutions, but it also supervises the state bureaucracy through the budgetary process and the Sunset Act, an act that provides for the review and, when deemed appropriate, the termination of state agencies.

This supervision is achieved using legislative and nonlegislative powers. Legislative powers consist of passing bills and resolutions. Nonlegislative powers are those functions falling outside the lawmaking function.

### Legislative Powers

**bill** a proposed law that has been sponsored by a member of the legislature and submitted to the clerk of the House or Senate

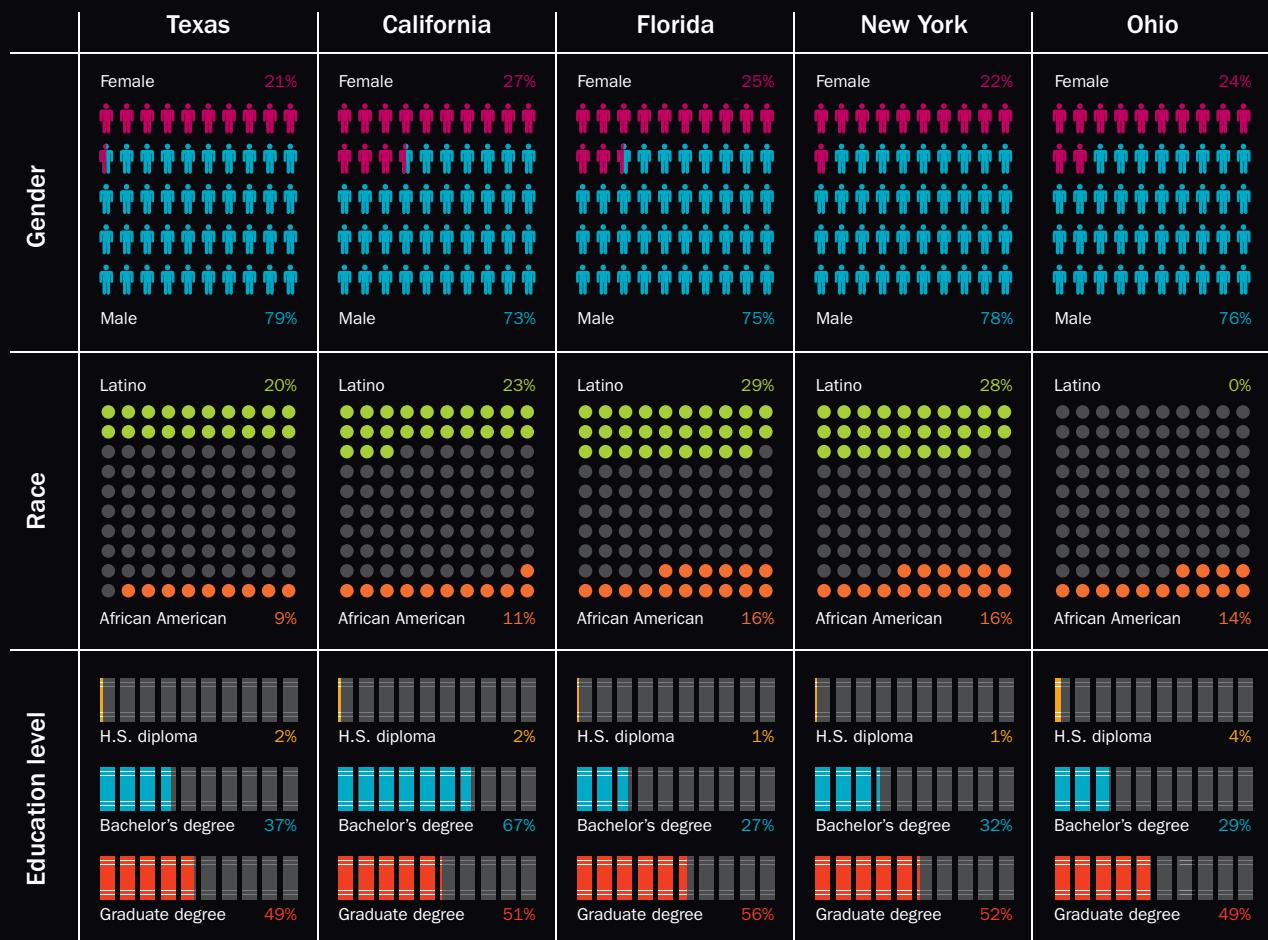
**local bill** a bill affecting only units of local government, such as a city, county, or special district

**special bill** a bill that gives an individual or corporation a special exemption from state law

**Bills** Revenue bills must begin in the House of Representatives. All other bills may start in either the House or the Senate. For decades, a **bill** would be introduced in either the House or the Senate and work its way through the legislative process in that chamber. A bill introduced in the Senate would be passed by the Senate prior to going to the House. Today, it is customary for a bill to be introduced in the House and the same bill, a companion bill, to be introduced in the Senate at the same time. This simultaneous consideration of bills saves time in the legislature.

There are three classifications of bills in the Texas legislature: (1) local bills, (2) special bills, and (3) general bills. **Local bills** affect only units of local government such as a city, a county, special districts, or more than one city in a county. A local bill, for example, might allow a county to create a sports authority or to establish a community college. **Special bills** give individuals or corporations an exemption

# Characteristics of Texas Legislators Compared to Other States



The Texas legislature is predominately white and male, even though the state population has become more diverse. Even though women are nearly half of the population, around the country, most legislatures are still predominantly male. The Latino and black populations in Texas combine to form nearly half of the state's residents, although this is not reflected in the legislature either. How does Texas compare to other states on the representation of women, minorities, and educational attainment?

SOURCE: National Conference of State Legislators, [www.ncsl.org/research/about-state-legislatures](http://www.ncsl.org/research/about-state-legislatures) (accessed 2/20/14).

## for critical analysis

- What can you conclude about the educational background of legislators from these states? Would you guess that their economic status is high or low?
- Which state is most like Texas in terms of its legislative makeup? Which is least like Texas? What might explain some of the similarities and differences?



# A Full-Time or Part-Time Legislature?

The Texas legislature is a part-time, citizen legislature. It meets only once every two years for 140 days. Members of the Texas House are elected for two-year terms and are paid \$7,200 per year. They receive a per diem allowance for expenses while they are in session. Members of the Texas Senate are elected for four-year terms and receive the same pay. Texas's legislators generally have other forms of employment, as not many people can live on \$7,200 per year. If problems demanding attention arise outside of the regular session, then the governor can call a special session to deal with a specific issue.

It is interesting to contrast the Texas legislature with a professional legislature, such as New York's. The New York legislature is considered professional because legislators are committed to being full-time representatives; they meet year-round, and members are paid \$79,500 per year. The U.S. Congress is more similar to the New York legislature and can be considered a professional legislature because members of Congress serve year-round.

As a candidate for president in 2011 and 2012, former governor Rick Perry campaigned on adapting the Texas model to the U.S. Congress. Perry argued that the Founders intended a "citizen" Congress similar to the one in Texas, with members serving for only a few terms and retaining their regular employment in the private sector. This vision also fits with the principle of limited government—the principle that Congress or the legislature really should have a small role and the more they are in session, the more temptations they have to engage in corrupt practices and to pass laws restricting liberties.

Opponents argue that the Texas model is not one that should be adopted for the U.S. Congress or other



legislatures. Legislators are not any less prone to corruption under the Texas model. Under either model, lobbyists attempt to influence policy makers, and the fact that legislators have private-sector jobs does not minimize this possibility. Meeting once every two years reduces the time to deliberate and make sensible policies. In Texas, critics argue that the legislative session is rushed, and legislators rely too heavily on staff who work year-round and are more familiar with the ins and outs of policy making. The rush of completing the legislation necessary to govern the state often leaves important issues unresolved, leading to the need for more special sessions. Members who are not independently wealthy are unable to legislate effectively because they cannot just leave their jobs for

140 days at a time every two years. All of these factors result in a less productive legislature.

Your vision of the proper role of government will likely affect where you come down on this issue. Liberals, who prefer an active government, would probably prefer a full-time legislature which actively addresses social problems. Conservatives, who are not supporters of government activity in the economy, are more likely to support a minimal role for legislators so that citizens are free to make their own choices without governmental interference.

Why should citizens care about this issue? The political process matters, and how legislative institutions are designed makes a difference in terms of policy outcomes.

## critical thinking questions

1. Are you more convinced by the arguments for a part-time legislature or a full-time legislature? What are the advantages and disadvantages of each approach?
2. What sorts of compromises are possible between Texas's 140-day session and a full-time approach?

from state law. A special bill could grant compensation to an individual wrongly convicted and sentenced to prison. **General bills** apply to all people and/or property in the state. General bills define criminal behavior; establish standards for divorce, child custody, or bankruptcy; and address other matters affecting people and property throughout the state. There is great variation among legislators in terms of the number of bills introduced. In the 2013 regular session of the legislature, for example, Senator John Carona introduced 132 bills, whereas Senator Sylvia Garcia introduced 8. Representative Linda Harper-Brown introduced 95 bills, and Representative Craig Goldman introduced 9.<sup>24</sup>

**general bill** a bill that applies to all people and/or property in the state

**Resolutions** There are three types of **resolutions** in the Texas legislature: (1) concurrent resolutions, (2) joint resolutions, and (3) simple resolutions. **Concurrent resolutions** must pass both the House and Senate, and they require the governor's signature. These resolutions involve issues of interest to both chambers. They may request information from a state agency or call on Congress for some action. Senate Concurrent Resolution 6 might, for example, call on Congress to propose an amendment requiring a balanced federal budget.

**resolution** an expression of opinion on an issue by a legislative body

**Joint resolutions** require passage in both the House and Senate but do not require the governor's signature. The most common use of joint resolutions is to propose amendments to the Texas Constitution or to ratify amendments to the U.S. Constitution. Resolutions that propose amendments to the Texas Constitution require a two-thirds vote of the membership of both houses of the state legislature. Ratification of amendments to the U.S. Constitution requires a majority vote in both the Texas House and Senate.

**concurrent resolution** a resolution of interest to both chambers of the legislature and which must pass both the House and Senate and generally be signed by the governor

**Simple resolutions** concern only the Texas House or the Senate, and they do not require the governor's signature. They are used to adopt rules, to request opinions from the attorney general, to appoint employees to office in the House or Senate, or to honor outstanding achievements by Texas residents. For example, Senate Resolution (SR) 27 could recognize the achievements of a Nobel Prize winner or the San Jacinto College baseball program for accomplishments in the National Junior College Athletic Association.

**joint resolution** a resolution, commonly a proposed amendment to the Texas Constitution or ratification of an amendment to the U.S. Constitution, that must pass both the House and Senate but which does not require the governor's signature

Resolutions of honor or recognition are acted on without debate and without requiring members to read the resolution. Such resolutions are mostly symbolic acts that are designed to promote goodwill with voters. However, at times these simple symbolic acts can go terribly wrong. A Fort Worth doctor was twice honored by the Texas House of Representatives as the "doctor of the day." It was then reported, to the embarrassment of the House and the legislators who introduced him to the House, that the doctor was a registered sex offender who had been convicted of having a sexual relationship with a 17-year-old female patient.<sup>25</sup>

**simple resolution** a resolution that concerns only the Texas House or Senate, such as the adoption of a rule or the appointment of an employee, and which does not require the governor's signature

## Nonlegislative Powers

Nonlegislative powers include the power to serve constituents, electoral powers, investigative powers, directive and supervisory powers, and judicial powers. The functions of these powers fall outside the scope of passing bills and resolutions; however, the passage of legislation may be necessary to exercise these powers.

**constituent** a person living in the district from which an official is elected

Legislators have the power to get things done for or in the name of **constituents**. Efforts on behalf of constituents may involve legislative activity, such as introducing a bill or voting on a resolution. Often, however, working on behalf of constituents involves nonlegislative activity, such as arranging an appointment for a constituent with a government agency that regulates some aspect of the constituent's life,

**electoral power** the legislature's mandated role in counting returns in the elections for governor and lieutenant governor

**investigative power** the power, exercised by the House, the Senate, or both chambers jointly, to investigate problems facing the state

**directive and supervisory power** the legislature's power over the executive branch; for example, the legislature determines the size of appropriations for state agencies

**judicial power** the power of the House to impeach and of the Senate to convict members of the executive and judicial branches of state government

**impeachment** according to the Texas Constitution, the formal charge by the House of Representatives that leads to a trial in the Senate and possibly to the removal of a state official

writing a letter of recommendation for a constituent, or giving a speech to a civic group in the legislator's district.

**Electoral powers** of the legislature consist of formally counting returns in the elections for governor and lieutenant governor. This is accomplished during a joint session of the legislature when it is organized for the regular session.

**Investigative powers** can be exercised by the House of Representatives, by the Senate, or jointly by both bodies. The legislature can undertake to investigate problems facing the state, the integrity of a state agency, or almost anything else it wishes. A special investigative committee is established by a simple resolution creating the committee, establishing the jurisdiction of the committee, and explaining the need for the investigation. If the special committee is formed in the House, the Speaker appoints the members of the committee. The lieutenant governor appoints members for special committees in the Senate. The Speaker and the lieutenant governor share appointments if it is a joint investigation.

**Directive and supervisory powers** enable the legislature to have considerable control over the executive branch of government. The legislature determines the size of the appropriation each agency has to spend for the next two years. The amount of money an agency has determines how well it can carry out its goals and objectives. A review of each agency of state government takes place every 12 years.

**Judicial powers** include the ability of the House to impeach members of the executive and judicial branches of state government. On **impeachment**, a trial takes place in the Senate. A majority vote of the House is required to bring charges, and a two-thirds vote of senators attending is necessary to convict an individual of the impeachment charges. Unlike the U.S. Constitution, the Texas Constitution does not explicitly define what constitutes an impeachable offense. This will be determined by the House and Senate in the impeachment process itself.<sup>26</sup>

Each body can compel attendance at regular and special sessions. More than once, Texas Rangers have handcuffed absent members and brought them to the legislature. On rare occasions, a chamber will punish nonmembers who disrupt proceedings by imprisoning them for up to 48 hours. The House and Senate judge the qualifications of members and can expel a member for cause.

## ● How a Bill Becomes a Law in Texas

**Trace the process through which law is made in Texas**

Anyone can write a bill, but only members of the legislature can introduce a bill. Bills may be written by members of the executive branch, by lobbyists, by constituents, or by local governmental entities. Legislators may also write bills, often with the help of

a legislative staff expert in drafting legislation. There are, of course, innumerable reasons for drafting and introducing a bill.

Revenue bills must start in the House of Representatives. Other bills can start in either the House or Senate. Figure 7.1 shows the flow of a bill from the time it is introduced in the Texas House of Representatives to final passage and submission to the governor. A bill introduced in the Senate would follow the same procedure in reverse. Examining this figure suggests that the process of how a bill becomes law is long, detailed, and cumbersome. However, when the process is distilled to its

basic parts, there are only six steps in how a bill becomes law. For a bill that starts in the House these steps are (1) **introduction**, (2) **referral**, (3) **consideration by standing committee**, and (4) **floor action**. Steps (1) through (4) are repeated in the Senate. Step (5) is action by a **conference committee** and approval by both houses, and finally, (6) is **action by the governor**.

## Introduction in the House

A legislator introduces a bill by placing copies of the bill with the clerk of the House. In the Senate, the secretary of the Senate receives the bill. The clerk or secretary numbers the bill and enrolls it by recording its number, title, caption, and sponsor in a ledger. Similar information is entered into a computer.

Rules of the legislature require that the bill be read on three separate occasions. After enrollment, the bill is read for the first time by its number, title, and caption.

## Referral

After undergoing first reading, the bill is assigned to a standing committee by the Speaker. In the Senate, the lieutenant governor assigns it to a committee. Since committees in the Texas legislature have overlapping jurisdictions, the Speaker and lieutenant governor can assign a bill to a friendly committee or an unfriendly one. The committee to which a bill is assigned can determine whether the bill survives or dies in committee.

## Committee Action

Every bill introduced in the Texas legislature is assigned to a **standing committee**, and the vast majority of bills die in committee. The chair of the committee kills most by pigeonholing. **Pigeonholing** means that the committee chair sets the bill aside and never brings it before the committee.

Standing committees are considered the “workhorses” of the legislature (see Table 7.1). If the bill does not die, it most likely is amended. Few bills leave the committee in the same form as they arrived. Parts of several bills can also be combined to form a single bill. Changes are made to make the bill more acceptable to the entire legislature or to meet the political desires of the leadership or members of the committee. Hearings can take place to allow experts and the public to educate committee members on the good and bad points of the bill. In the Senate, all bills reported by the committee must have a public hearing.

## Floor Action

In the House, bills referred by a standing committee go next to the Calendars Committee, which, after consulting the Speaker, schedules bills for debate. The Speaker determines the length of debate in the House. Customarily, each member is allowed 10 minutes of debate. Early in the session when the agenda is not crowded, debate may last longer. Later in the session when there is a crush of legislative business, debate will be more limited. Some bills will be voted on without debate; however, important or controversial bills are usually allocated adequate time.

**introduction** the first step in the legislative process, during which a member of the legislature gets an idea for a bill and files a copy of it with the clerk of the House or secretary of the Senate

**referral** the second step in the legislative process, during which a bill is assigned to the appropriate standing committee by the Speaker (for House bills) or the lieutenant governor (for Senate bills)

### consideration by standing committee

**consideration by standing committee** the third step in the legislative process, during which a bill is killed, amended, or heard by a standing committee

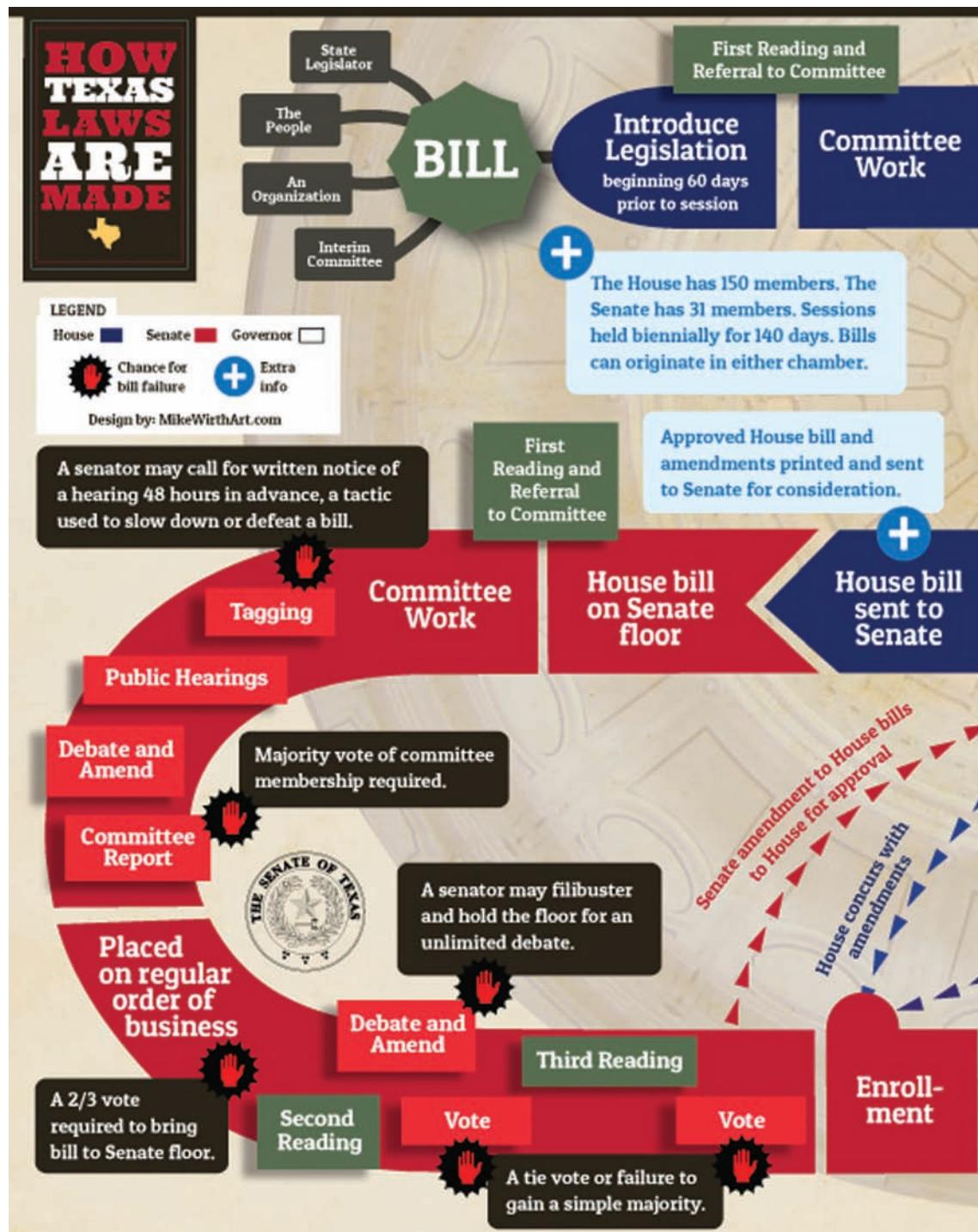
**floor action** the fourth step in the legislative process, during which a bill referred by a standing committee is scheduled for floor debate by the Calendars Committee

**conference committee** a joint committee created to work out a compromise on House and Senate versions of a piece of legislation

**action by the governor** the final step in the legislative process, during which the governor signs, vetoes, or refuses to sign a bill

**standing committee** a permanent committee with the power to propose and write legislation that covers a particular subject, such as finance or agriculture

**pigeonholing** a step in the legislative process during which a bill is killed by the chair of the standing committee to which it was referred, as a result of his or her setting the bill aside and not bringing it before the committee

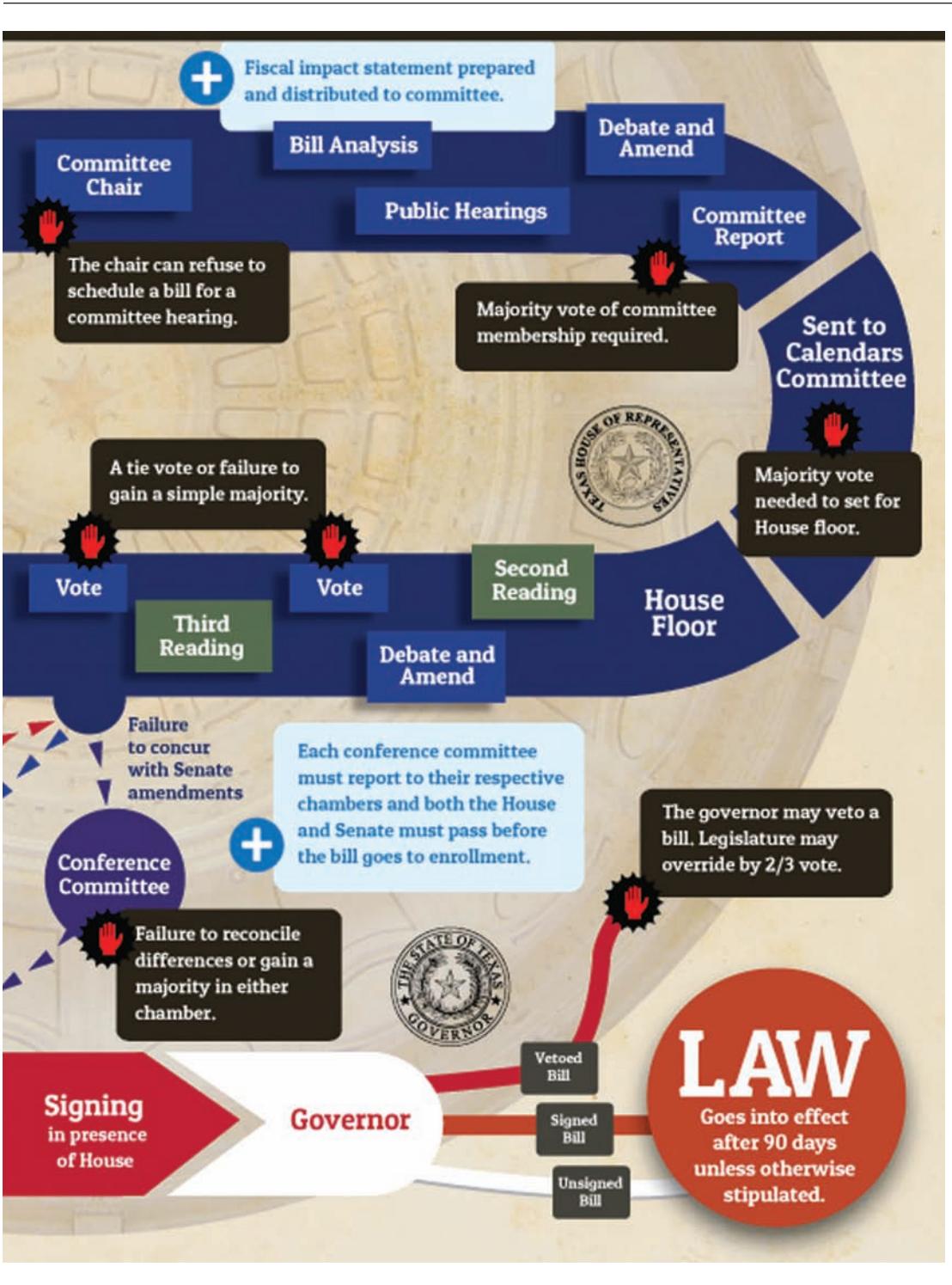


**FIGURE 7.1**

## How a Bill Becomes a Law in Texas

Passing legislation in Texas is a complicated process. There are many points along the way where a bill can die.

SOURCE: This graphic was created for the February 2013 Issue of Texas Co-op Power magazine, a publication of Texas Electric Cooperatives, [www.TexasCoopPower.com](http://www.TexasCoopPower.com).



**TABLE 7.1**

## Standing Committees of the Texas Senate and House (83rd Legislature), 2013–14

SENATE STANDING COMMITTEES		
Administration	Finance	Natural Resources
Agriculture, Rural Affairs & Homeland Security	Government Organization	Nominations
Business & Commerce	Health & Human Services	Open Government
Criminal Justice	Higher Education	State Affairs
Economic Development	Intergovernmental Relations	Transportation
Education	Jurisprudence	Veterans Affairs & Military Installations
HOUSE STANDING COMMITTEES		
Agriculture & Livestock	General Investigating & Ethics	Natural Resources
Appropriations	Government Efficiency and Reform	Pensions
Business & Industry	Higher Education	Public Education
Calendars	Homeland Security & Public Safety	Public Health
Corrections	House Administration	Redistricting
County Affairs	Human Services	Rules & Resolutions
Criminal Jurisprudence	Insurance	Special Purpose Districts
Culture, Recreation & Tourism	International Trade & Intergovernmental Affairs	State Affairs
Defense & Veterans' Affairs	Investments & Financial Services	Technology
Economic & Small Business Development	Judiciary & Civil Jurisprudence	Transportation
Elections	Land & Resource Management	Urban Affairs
Energy Resources	Licensing & Administrative Procedures	Ways & Means
Environmental Regulation	Local & Consent Calendars	

**filibuster** a tactic used by members of the Senate to prevent action on legislation they oppose by continuously holding the floor and speaking until the majority backs down. Once given the floor, senators have unlimited time to speak as long as they follow Senate rules, and it requires a vote of three-fifths of the Senate to end a filibuster

Debate in the Senate is unlimited, which means it is possible for a senator to **filibuster**. A filibuster occurs when a senator talks for a lengthy period of time in an effort to kill a bill or to obtain amendments or other compromises. There are certain rules that apply to the filibuster in the Texas Senate that are quite different from those in the U.S. Senate. There is no eating or drinking during a filibuster. Senators must stand at their desks and may not lean, sit, or use their desk or chair in any way. Remarks must be confined to the issue under consideration. Finally, one must speak in an audible voice.

In the past 72 years, there have been more than 100 filibusters. The longest filibuster was in 1977 by Senator Bill Meier, who spoke for 43 hours. Given the time constraints under which the Texas legislature operates, even the threat of a filibuster may be sufficient to kill or force changes in a bill.

Another tactic used in both the House and the Senate to prevent or delay passage of a bill is called “chubbing.” Here, one or more members debate bills at length to slow down the legislative process. Like the filibuster, this is a particularly effective tactic as the legislative session draws to a close.

Sponsors of a bill are expected to gather sufficient votes to pass the bill. In fact, before the Calendars Committee schedules the bill for floor debate, sponsors often assure the committee that they have enough votes to pass the bill.

The Texas Senate has a rule that bills generally shall be considered according to the “regular order of business.” This means that bills and resolutions are considered on second reading and listed in the order in which the committee report was received by the secretary of the Senate. Bills and resolutions are considered on the third reading in the order in which they were passed on the second reading. In order to conduct business, especially when dealing with legislation that is controversial, this “regular order” blocks consideration of legislation because it can be considered only if the Senate suspends this rule requiring consideration in order. A two-thirds vote is required to suspend the rules. Thus, for all practical purposes, legislation in the Senate must have two-thirds support to pass rather than a simple majority. In the 2011 legislative session, the highly partisan issue of requiring an identification document to vote was excluded from the two-thirds rule, which made it possible for Senate Republicans to pass the legislation.

## Conference Committee

Bills must pass the House and Senate in exactly the same form. If the bill is different in any way, it is sent to a conference committee. Conference committees have 10 members: 5 members from the House appointed by the Speaker, and 5 members from the Senate appointed by the lieutenant governor.

Senate rules require that 2 members of the standing committee that considered the bill must be appointed. Unless specifically instructed, the conference committee cannot change parts of the bill that are the same. Changes are made and compromises reached only on parts of the bill that differ.

Once a compromise is reached, the report of the conference committee goes to the House and Senate. It can be debated in each chamber, but the report cannot be changed. It must be either accepted or rejected as is. If either chamber fails to approve the report of the conference committee, the bill is dead. Although it is possible for the conference committee to try a second time to reach a compromise, it is unusual for conference committees to do so.

If the report is accepted in both chambers of the legislature, a final copy of the bill is prepared. The Speaker of the House, the clerk of the House, the president of the Senate (lieutenant governor), and the secretary of the Senate sign the bill. Signatures of the Speaker and lieutenant governor are required by Article 3, Section 38 of the Texas Constitution. The next stop is the governor’s desk.

*Before a law is passed in Texas, it is voted on by the two chambers of the legislature—the House and the Senate. Here, state senators Dan Patrick (left) and Robert Nichols cast votes on a 2013 transportation bill. Raising one finger means “yes” and raising two fingers means “no.”*



## The Governor

**veto** according to the Texas Constitution, the governor's power to turn down legislation; can be overridden by a two-thirds vote of both the House and Senate

**post-adjournment veto** a veto of a bill that occurs after the legislature adjourns, thus preventing the legislature from overriding it

**line-item veto** the power of the executive to veto specific provisions (lines) of an appropriations bill passed by the legislature

*Former governor Rick Perry speaks to the Texas legislature. The governor can influence legislation through the veto or the line-item veto. The threat of a veto can be powerful, as legislators often try to take the governor's preferences into account and avoid a veto. Governor Perry set a record for the number of vetoes in one year: 82 in 2001.*

It is the governor's responsibility to sign or **veto** legislation. During the first 130 days of a regular session, the governor has 10 days from the time a bill arrives on his or her desk to sign or veto the legislation. If the governor neither signs nor vetoes the bill in the 10 days, it becomes law without the governor's signature. In the last 10 days of a session, the governor has 20 days from the time the bill arrives on his or her desk to sign or veto the legislation. Again, if the governor does neither, it becomes law without the governor's signature. Unlike the U.S. president, who may sometimes kill a bill without signing it through what is called a "pocket veto," the Texas governor does not have this power.

The governor's veto can be overridden by a two-thirds vote of both the House and Senate. Anytime the governor vetoes a bill, he or she attaches a message explaining why it was vetoed. It is then returned to the chamber that originated the bill. If the presiding officer elects to allow a vote to override the veto, a vote is scheduled. Only two vetoes have been overridden in more than 70 years.

Many bills arrive on the governor's desk in the last few days of a session. Almost all important or controversial bills reach the governor in the waning moments of a session. If the governor wants to veto a bill that comes to him or her from day 131 to day 140, the governor simply waits until the legislature adjourns to exercise the veto. The governor's veto cannot be overridden because the legislature has adjourned. Vetoing legislation after legislative adjournment is called a **post-adjournment veto**, or a strong veto, since the legislature has no opportunity to overturn the veto. The post-adjournment veto provides the governor with an excellent bargaining tool, since the governor can threaten a veto unless changes are made in a bill.

The governor also has a **line-item veto** that allows him or her to sign a bill and draw lines through specific items, deleting them from the bill. Except for the items that the governor has deleted, the bill becomes law. In Texas, the line-item veto applies only to the state's omnibus appropriations bill. Governor Perry used the line-item veto in 2009 to reduce the state budget by \$97.2 million in general revenue and \$288.9 million from all funding sources.<sup>27</sup> In 2013, Governor Perry exercised his line-item veto on several appropriations such as a \$100,000 appropriation for the William P. Hobby Jr. School of Public Affairs at the University of

Houston and a \$1,500,000 appropriation for the Department of Mexican-American Studies at the University of Texas at Austin. Table 7.2 provides the total number of vetoes by Texas governors since 1991.

### Other Ways in Which the Governor Influences Legislation

Message power is the governor's ability to communicate with the legislature. Early in each session, the governor delivers a State of the State message that is similar to the president's State of the Union message. In this address, the governor puts forth a vision for Texas and what legislation will accomplish that vision. If the governor chooses to submit an executive budget, a letter stating why this budget should be adopted accompanies it.

Periodically, the governor will visit with legislators to gain their vote on a bill. A personal visit can be persuasive, but increasingly, it is members of the governor's paid staff who are sent on these



**TABLE 7.2**

## Total Number of Vetoes by Texas Governors, 1991–2013

YEAR	GOVERNOR	TOTAL VETOES
2013	Perry	26
2011	Perry	25
2009	Perry	38
2007	Perry	54
2005	Perry	19
2003	Perry	48
2001	Perry	82*
1999	Bush	33
1997	Bush	37
1995	Bush	25
1993	Richards	26
1991	Richards	36

\*Record number of vetoes by a Texas governor.

SOURCES: Texas Legislature, "Legislative Statistics," July 10, 2013; Legislative Reference Library of Texas, "Bill Statistics."

legislative visits. Like lobbyists for corporations and interest groups, the governor's representatives use their skills to encourage passage of bills the governor favors and to kill bills the governor opposes. However, there is a problem with this practice. The Texas Constitution forbids use of tax dollars to influence the legislature, and the governor's staff is, of course, paid through tax dollars. The governor's representatives avoid this ban by claiming they are simply providing needed information to the legislators. One should not underestimate the informal power that the governor has to influence legislation.

## ● Additional Players in the Legislative Process

**Describe the roles of other state officials and interested parties in shaping legislation**

In addition to the legislators and the governor, there are others involved in the lawmaking process during both regular and special sessions. One official, the comptroller of public accounts, has direct involvement in the legislative process, while other players are involved indirectly.



*The media can influence the legislative agenda through the stories that they cover. Accordingly, legislators try to attract media attention that will support their positions. Here, Speaker Joe Straus speaks at a press conference.*

## The Comptroller of Public Accounts

The comptroller of public accounts issues revenue estimates to inform the legislature of the amount of money it can spend in the next two years. Texas's operating budgets must balance. The Texas Constitution forbids borrowing money to conduct the daily operations of government. The estimate provided by the comptroller sets the limit on state spending. If the legislature wants to spend more than the comptroller estimates, it must enhance revenue—that is, increase taxes and fees.

The comptroller's estimates can be political in nature. The comptroller can provide a low revenue estimate and tell the legislature that the estimate will remain low until it passes bills the comptroller wants. On passage of those bills, the comptroller can revise the estimate to increase the spending limit and allow the legislature to complete its business.

## The Media

Media can determine issues of importance by the selection of stories they cover. If the media cover more stories on crime, crime and criminal justice issues will move toward the top of the legislature's agenda. A media focus on corporate fraud, rising homeowners' insurance rates, alcohol-related traffic deaths, or poor performance by Texas public school students will increase legislative attention to these issues.

The media inform the public about the issues the legislature is considering and about the job the legislature is doing during the session. Media coverage of the legislature provides the public with needed information on what is going on in Austin. Stories portraying the legislature as modern, efficient, and hardworking provide the public with a positive image of the legislature, whereas stories about legislators sleeping at their desks or killing legislation on technicalities provide a negative image.

## The Courts

Federal and state courts influence the legislative agenda. In recent years, the courts' scrutiny has included the prison system, the state's treatment of patients in state mental hospitals, the funding of public education, and equality of funding for colleges and universities in South Texas. The ability to rule acts of the legislature and actions of state agencies unconstitutional gives courts significant power over issues the legislature addresses. To a remarkable degree, state and federal courts have issued decisions that have forced the Texas legislature to act in areas that the legislature would have preferred to avoid—largely because action required a significant expenditure of money. For example, many recent legislative actions directed toward criminal justice and public education are responses to court rulings.

## Lobbyists

During a regular session, roughly 1,800 individuals register as lobbyists and attempt to influence the legislature. A lobbyist's responsibility is to convince legislators to

support the interest the lobbyist represents. Lobbyists want legislators' votes on bills. At the least, they desire access to legislators.

## The Public

Individuals can influence legislators. Legislators are evaluated at each election. If the people believe their elected officials are representing them well, legislators are re-elected. A legislator who fails to live up to expectations might not be re-elected.

The public can serve as lobbyists. Letters, email, or telephone calls urging representatives or senators to vote a certain way constitute a lobbying effort. Members of the public can also write legislation, but must convince at least one legislator to sponsor it and introduce it for consideration by the legislature.



*The public and interest groups may also influence the legislature. During a special session in which the legislature dealt with tax reduction, these Houston-area realtors and others demonstrated in favor of property tax relief.*

## ● Power and Partisanship in the Legislature

Analyze how party leadership and partisanship affect power in the legislature

Among the most powerful political figures in Texas are the leaders of the House and Senate. They play a key role in structuring the committees of the legislature, setting the state's political agenda, and passing or defeating bills.

### Leadership

The **Speaker** of the Texas House of Representatives and the lieutenant governor are two of the most powerful political figures in the state. Republican representative Joe Straus of San Antonio is currently the Speaker of the House. In November 2014, Dan Patrick was elected **lieutenant governor** and will lead the Senate. The Texas House and Senate endow both officials with considerable control over the legislative process. It is fair to say that either of them can usually kill legislation they oppose, and often they have the power to pass legislation they support.

Members of the House elect the Speaker at the beginning of the regular session. Additionally, at the start of each regular session, members of the House adopt rules that give the Speaker institutional powers sufficient to control the work of the House. Speakers usually are the dominant figures in the Texas House and wield vast power.

One of the most interesting developments in modern times in the Texas legislature was the turmoil surrounding the 2002–08 speakership of Republican Tom Craddick. Craddick first challenged the Democratic Speaker "Pete" Laney and ultimately displaced Laney when the Republicans gained control of the House. Craddick worked to redistrict Texas congressional districts so as to increase substantially the number of Republicans in the Texas congressional delegation. As Speaker, Craddick was accused of micromanaging the House, of taking discretion away from committee chairs, and of insisting that members support his views on key issues even when contrary to the desires of their constituents. Republicans also

**Speaker** the chief presiding officer of the House of Representatives; the Speaker is the most important party and House leader, and can influence the legislative agenda, the fate of individual pieces of legislation, and members' positions within the House

**lieutenant governor** a statewide elected official who is the presiding officer of the Senate; the lieutenant governor is one of the most important officials in state government and has significant control over legislation in the state Senate



*The Speaker of the House is one of the most powerful people in Texas politics. In 2009, Tom Craddick (left) was replaced as Speaker by Joe Straus (right).*

lost seats in the Texas House between 2004 and 2006—a loss blamed in part on Craddick’s leadership. The result was an open rebellion against Craddick, who was able to retain his position in the 2007 session only by resorting to a questionable parliamentary maneuver: he refused to recognize a motion to “vacate the chair,” which would have caused a vote on his fate as Speaker.<sup>28</sup> It is doubtful that such dissension over a Speaker had occurred since Ira Evans was removed as Speaker in 1871.<sup>29</sup> In 2009, Craddick lost his speakership to Joe Straus, a Republican from San Antonio, who was elected Speaker by a coalition of anti-Craddick Republicans and Democrats. Straus faced opposition in every legislative session from conservatives who saw him as too moderate and as too favorable to Democrats, but Straus was able to retain his position as Speaker.

The lieutenant governor is elected statewide to a four-year term. His or her major responsibility is to serve as president of the Senate and to preside over the Senate. Unlike the Speaker, the lieutenant governor is not a member of the Senate, simply its presiding officer, who may vote only to break a tie.

At the start of each regular session, senators adopt rules that the Senate will follow for the next two years. Article 22 of the Senate Rules requires a vote of two-thirds of the members present to suspend any rule of the Senate unless the rules specify a different majority. The rules also establish the office of president pro tempore of the Senate, who is a member elected by the Senate to perform the duties of lieutenant governor in the absence or disability of the lieutenant governor. These rules also give the lieutenant governor enormous control of the work of the Senate. Among these powers granted to the lieutenant governor under the rules are

- the power to decide all questions of order on the Senate floor (subject to appeal from members)

- the power to recognize members on the floor
- the power to break a tie on a particular vote
- the power to refer bills to committees
- the power to appoint members to standing committees, subcommittees, special committees, and conference committees

## Centralizing Power: Sources of the Leadership's Power

The operation of the Texas legislature is significantly different from that of the U.S. Congress. In the U.S. Congress, the leader of the president's party in the House and the Senate is the president's spokesperson in that house of Congress. Additionally, the level of partisanship is high. Committee appointments are made in such a way that the majority party controls every committee, and chairs of those committees are always members of the majority party. Each house of Congress has majority party leadership and minority party leadership. Such divisions do not exist in the Texas legislature. No member of the Texas legislature is formally known as the governor's spokesperson.

Because the governor has no leader in the legislature, the membership does not owe allegiance to party leaders in the legislature, and leadership and power have become centralized in the Speaker and lieutenant governor. The Speaker and lieutenant governor can make appointments with limited regard for party affiliation, thus ensuring that members will be loyal to them rather than to the party. The Texas legislature is not organized along party lines the way the U.S. Congress is. Committee assignments and committee chairmanship appointments cross party lines so that in the Texas House, for example, where the majority party is now Republican, a Democrat may chair an important committee and successfully sponsor important legislation. The bipartisan appointment of committee chairs, however, may be a declining tradition.

Certain factors may undermine the state legislature's tradition of nonpartisan politics. Most of the powers of the Speaker and of the lieutenant governor are granted by the rules that each chamber's membership votes on at the beginning of the legislative session. The powers of the Speaker and of the lieutenant governor could potentially be greatly reduced if the members of the legislature so chose. One could, for example, imagine a future Republican Senate that would reduce the powers of the lieutenant governor over the Texas Senate if a Democrat were elected lieutenant governor. Of course, one of the first rules that would have to change is the requirement of a two-thirds vote for a bill in the Senate to be voted on out of order. Indeed, the two-thirds rule in the state Senate encourages some degree of bipartisanship, because Republicans do not quite control two-thirds of the Senate and so need Democratic votes.

The two-thirds rule came under attack in the 2009 special session of the legislature and it continued to be criticized in 2011 and 2013, mainly because the requirement of such a large supermajority makes it difficult to pass bills that arouse partisan tensions. Democrats support the rule because with it, Democratic support is needed to pass any bill in the Senate. Some Republicans wanted to abandon the rule in order to allow their majority to pass legislation without Democratic support. Others want to weaken the requirement of a supermajority by having a three-fifths rule instead of a two-thirds rule. Still other Republicans are inclined to support the long precedent of a two-thirds requirement. At least for the time

### for critical analysis

Who are the most important leaders in the Texas legislature? What are their powers? How does the battle over redistricting illustrate the party politics within the legislature?

**recognition** the power to control floor debate by recognizing who can speak before the House and Senate

being, the two-thirds rule remains. However, it can be easily changed at some point, as the rules of the Senate are passed by majority vote.<sup>30</sup>

The Republican congressional redistricting bill in 2003 led to abandonment of the two-thirds rule for that bill so that redistricting that was beneficial to Republicans could be passed. That bill would have been impossible to pass without changes in the rules that allowed passage by majority vote. In the 2009 special session of the legislature, the Texas Senate was able to pass a highly partisan bill that required voters to show identification. This occurred solely because the two-thirds rule is not used in special sessions.<sup>31</sup> It was not until 2011, when the Texas Senate again abandoned the two-thirds rule, that the voter identification bill became law. The restrictions on abortion that were passed in the second special session of the legislature were passed because it was a special session in which the two-thirds rule in the Texas Senate is not used.

As the Texas Senate becomes more partisan, it seems likely that there will be increased use of special rule changes to allow for the passage of controversial bills, a lowering of the two-thirds supermajority requirement for passing a bill, or a complete abandonment of the two-thirds rule in favor of majority rule.

The structure of the Texas legislature and the lack of formal lines of gubernatorial authority in the legislature are very important in centralizing power in the hands of the Speaker and the lieutenant governor. However, these officials have other important sources of power as well. One of those powers—a power especially important in the Texas House—is the power of **recognition**. The Senate rule allowing unlimited debate decreases the lieutenant governor's power in this area. In the House, the Speaker controls legislative debate, including who speaks and how long debate will last. On occasion, the Speaker ignores or skips a member seeking recognition to speak. This is a signal to other members of the House that this individual has fallen from the Speaker's good graces. That ability to pick and choose among those desiring to speak on the House floor, however, allows the Speaker to structure the debate and to affect the outcome of legislation.

As mentioned earlier, the Senate has a rule that for votes to be taken on bills, the bills must be taken in order, or for a bill to be taken out of order, there must be a two-thirds vote. Given the vast powers of the lieutenant governor, on issues that are important to him, he can usually control the votes of at least one-third of the membership. Thus, if a bill is opposed by the lieutenant governor, he or she can frequently prevent it from being taken out of order for consideration.

One of the most important sources of power for the Speaker and the lieutenant governor is the committee assignment power. The committees on which legislators serve are important to individual members and to the presiding officer. For members, assignments to powerful committees increase their prestige in the legislature. Committee assignment also affects how well constituents are represented. Assigning members to standing committees is one of the most important duties of the lieutenant governor and the Speaker.

The Speaker and the lieutenant governor have major roles in appointing the membership of committees, appointing chairs of committees, and setting the legislative agenda. Party affiliation and seniority are of only moderate importance in committee assignments. The most important factor in committee assignments is the members' relationships with the presiding officer. In order to maintain control over the legislature, the Speaker and lieutenant governor use their committee assignment powers to appoint members who are loyal to them and who support their legislative agendas. When chairs and vice chairs of important committees are appointed, usually only the most loyal friends and allies of the Speaker and

**TABLE 7.3**

### Democrats/Republicans Appointed Committee Chairs during the Speakership of Joe Straus

	2009		2011		2013	
	Dem.	Rep.	Dem.	Rep.	Dem.	Rep.
Standing committees	14	20	11	25	13	24
Select committees	1	5	0	3	1	3
Joint committee	—	—	0	1	0	1
Percentage of Democrats in House	49%		33%		37%	

NOTE: We are indebted to Sachi Dave for her work on this table.

SOURCE: Legislative Reference Library and Texas Tribune.

lieutenant governor are chosen. In 2013, 6 of the 18 standing committee chairs in the Senate were Democrats. Thirteen of the 38 standing committee chairs in the House were Democrats. Speaker Straus has stated that one issue important to him when appointing chairs and members of committees is to ensure that the committees “reflect the geographic and demographic diversity of Texas.”<sup>32</sup> At the beginning of every legislative session, members of the House are asked to submit a list of committees on which they would like to serve. The Speaker then assigns committee memberships with consideration given to the House members’ seniority, their leadership skills, and their interest in particular issues. Chairs and other leadership positions are often given to more senior members with leadership skills and interests in the areas over which their committee has jurisdiction.<sup>33</sup> Straus, a Republican, was initially elected Speaker with Democratic votes in a successful challenge to the then Republican Speaker Tom Craddick’s leadership. As Table 7.3 shows, since being elected Speaker, Straus has named Democrats to the chairs of standing committees of the House roughly in proportion to their numbers in the House. Of course some committees are more important than others, but in a purely partisan legislative body, no Democrats would be appointed chair of a committee by a Republican Speaker.

During his tenure as Republican lieutenant governor, David Dewhurst was in a far different position from Speaker Straus. Straus was elected from a House district like all other members and then was elected to the Speaker’s office by the membership of the House; Dewhurst was elected to preside over the Texas Senate in a statewide election. Nevertheless, like Straus, as Tables 7.3 and 7.4 show, Dewhurst maintained a practice of appointing Democrats to chair standing committees roughly in proportion to the number of Democrats in the Texas Senate.

Not only do the Speaker and the lieutenant governor have vast committee assignment powers, but committees in the Texas legislature also have overlapping jurisdiction. Although each bill must be assigned to a committee, it can be assigned to more than one committee. Since the Speaker and the lieutenant governor assign bills to committees in their respective chambers, they use the bill assignment power to influence the fate of the bill. They can, for example, assign bills they oppose to committees they believe hostile to the bill and those they support to committees they believe will favor the bill.

**TABLE 7.4**

## Democrats/Republicans Appointed as Committee Chairs during David Dewhurst's Tenure as Lieutenant Governor

	2003		2005		2007		2009		2011		2013*	
	Dem.	Rep.	Dem.	Rep.								
Standing committees	6	9	5	10	11	20	6	12	7	12	7	11
Select committees	1	1	0	3	5	10	0	2	1	1	0	2
Percentage of Democrats in Senate	39%		39%		35%		39%		39%		37%	

NOTE: We are indebted to Sachi Dave for her work on this table.

\*As a result of the death of a Democratic senator, there were only 30 senators during this session.

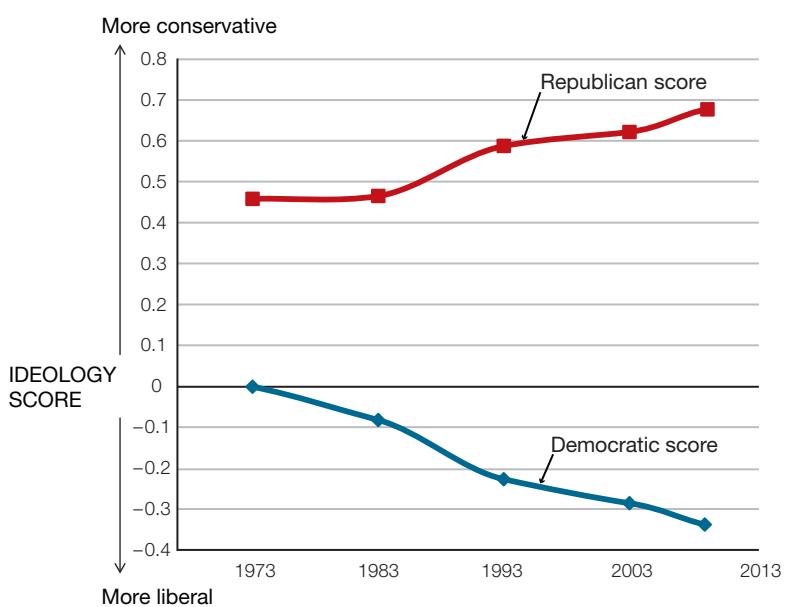
SOURCE: Legislative Reference Library and Texas Tribune.

Since bills must pass the House and Senate in exactly the same form, the Speaker and the lieutenant governor can exercise still another important influence on policy through their power to appoint conference committees. As we have seen, if any differences exist in a bill passed by both the House and the Senate, the bill goes to a conference committee that works out the differences in the House and Senate versions. By appointing the conference committee members, the Speaker and lieutenant governor can affect the language and even the fate of the bill.

### Partisan Voting in the Texas Legislature

Between 1876 and 1980, the Democratic Party controlled both houses of the Texas legislature. The last 20 years of the twentieth century saw the growth of the Republican Party in both the House and the Senate, culminating in the Republican seizure of power in both houses in 2004. As conservative Republicans replaced conservative Democrats, particularly from rural and suburban districts, more traditional ideological splits appeared along partisan lines. When Representative Straus initially gained the speakership in 2011 with liberal Democratic and moderate Republican votes, some observers felt that the partisan rhetoric might be muted. As more conservative Republicans were elected in his second term and moderate Republicans were either retired or defeated, partisan ideological fault lines appeared with a vengeance. Ideological differences between Democrats and Republicans now play a major role in legislative politics. Political journalist Paul Burka has written, “Over the past 40 years, the ideological differences between the members of the Democratic and Republican delegations in the Texas House of Representatives have increased dramatically.”

It is possible to show that increasing gulf between Democrats and Republicans by using roll-call votes cast by members of the Texas House over time. If one categorizes the votes along the dimension of liberalism-conservatism such that a score of -1.00 is extreme liberal and a score of 1.00 is extreme conservative, the average score of Republicans in the Texas House in 1973 was 0.44. The average score for Democrats was 0.01. In 2009 the average Republican score was 0.67, a significant



**FIGURE 7.2**  
**Ideological Differences in the Texas House of Representatives**

SOURCE: Paul Burka, "Partisanship Ranking: The Texas Tribune List," *Texas Monthly*, July 17, 2010.

movement toward increased conservatism. In contrast, the Democrats in the Texas House became increasingly liberal. In 2009 the Democratic score was  $-0.34$  (see Figure 7.2).

Another indication of the partisan gap between Democrats and Republicans in the Texas House is that in 1973, 37 percent of Democratic House members were more conservative than the most liberal Republican in the House. In 1995 only 4 percent of Democratic House members were more conservative than the most liberal Republican. Since 1999 there has been no Democrat in the House who has been more conservative than the most liberal Republican.<sup>34</sup> In a recent study of the 2013 Texas House, political scientist Mark Jones found that every Democrat was more liberal than any Republican.<sup>35</sup> Jones found the same pattern in the Texas Senate.<sup>36</sup> The ideological gap that exists between Democrats and Republicans makes it harder for common ground across party lines to be identified and to produce a policy consensus. In that sense, the Texas legislature is becoming more like the U.S. Congress. As sociologist Paul Starr has pointed out regarding the U.S. Congress,

Traditionally, political parties in the United States have been broad coalitions that overlapped each other ideologically. The Republicans had included liberals . . . and the Democrats had included conservatives. But by 2009, the ideological alignment of the parties was nearly complete. . . . The growing ideological divergence between the two parties made cooperation between them more difficult.<sup>37</sup>

That pattern Starr saw in the U.S. Congress is now seen in the Texas legislature. With it we are seeing the end of the cooperation between Democrats and Republicans in Austin.

## ● Redistricting

### Explain the politics of redistricting

**redistricting** the process of redrawing election districts and redistributing legislative representatives in the Texas House, Texas Senate, and U.S. House; this usually happens every 10 years to reflect shifts in population or in response to legal challenges in existing districts

**single-member district** a district in which one official is elected rather than multiple officials

### one-person, one-vote principle

the principle that all districts should have roughly equal populations

### How Redistricting Works

One of the most controversial and partisan issues is **redistricting**—the redrawing of district lines for the Texas House, the Texas Senate, and the U.S. House of Representatives, which must be done at least every 10 years, after the federal census.

There are 150 Texas House districts and 31 Texas Senate districts. One senator or one member of the House represents each district. This is called representation by **single-member districts**.

Although redistricting can be more frequent, at least after each census, the legislature draws new boundaries for each Texas House and Senate district. Newly drawn districts for the Texas House and Senate must contain an almost equal number of people in order to ensure equal representation. That requirement guarantees that each person's vote counts the same whether the vote is cast in Houston, Big Lake, El Paso, Presidio, Brownsville, or Commerce.

For much of the first half of the twentieth century, Texas and other states failed to draw new boundaries, and even after U.S. Supreme Court decisions, Texas did not do so willingly. Not until the U.S. Supreme Court's decisions in *Baker v. Carr* (1962) and *Reynolds v. Sims* (1964), compelling the legislature to draw new districts, were boundaries drawn that represented the population fairly.<sup>38</sup> These and subsequent decisions meant that Texas had to draw legislative districts of roughly equal populations—a concept known as the **one-person, one-vote principle**.

Congressional redistricting is also a responsibility of the legislature. Once the U.S. Congress apportions itself, the Texas legislature divides Texas into the appropriate number of congressional districts. According to the 1964 Supreme Court case *Wesberry v. Sanders*, each state's U.S. House districts must be equal in population.<sup>39</sup> Depending on how the districts are drawn, the representation of the two political parties in the U.S. House of Representatives can be significantly changed. Indeed, reapportionment can so change the division of the parties that control of the U.S. House of Representatives can be affected. Thus, maneuvering over redistricting is highly partisan.

In 2006 the U.S. Supreme Court upheld most of the new boundaries drawn in the Republicans' controversial redistricting but found that some of the redrawn districts failed to protect minority voting rights. Here, Governor Perry displays the new redistricting map. The new map drawn by Republicans after the 2010 census again went to federal courts.



If the legislature fails to redistrict at the first regular session after the census, the task falls to the Legislative Redistricting Board (LRB). The LRB has five ex officio members: the lieutenant governor, the Speaker of the House, the attorney general, the commissioner of the General Land Office, and the comptroller of public accounts.

When the legislature adjourns without redistricting, the LRB convenes. The LRB must meet within 90 days of legislative adjournment and complete its responsibilities within another 60 days. Even here, the influence of the Speaker and the lieutenant governor is clearly visible.

Texas redistricting plans must comply with the federal Voting Rights Act, although the U.S. Supreme Court has recently weakened that law. A federal court can temporarily redraw district lines if a redistricting violates this law by disadvantaging minority voters.

Partisan differences in the state legislature resulted in the failure to pass a redistricting plan in 2001 during its regular session, transferring the responsibility to the Republican-dominated LRB. On a split vote, the board developed redistricting plans that appeared to favor the Republican Party. The board's decision, in turn, was appealed to the federal courts. A three-judge panel, composed of two Democrats and one Republican, approved the lines drawn for the state senate, noting that the U.S. Justice Department had determined that the plan did not violate the Voting Rights Act. However, the court modified the board's plan for the House, arguing that the Department of Justice had rejected the plan because it was seen as diluting Hispanic voting strength in three areas of the state. The court felt that its role in the entire redistricting process was constrained. In their decision, the judges commented that "federal courts have a limited role in considering challenges to pre-cleared, legislatively adopted redistricting plans."<sup>40</sup>

The final plan approved by the court appeared to be a great victory for the Republican Party. Twenty-seven incumbent Democrats found themselves placed in districts with other Democratic incumbents. Four Democrats who chaired key committees announced that they would not seek re-election. Many observers felt that redistricting would make the Republicans the majority party in the House and would maintain their majority status in the Senate. And many doubted that the Speaker of the House, Democrat Pete Laney, would be able to mobilize the votes needed for re-election to the speakership in the next session. After the 2002 elections, these observers were proven correct.<sup>41</sup>

## Power and Partisanship in the Redistricting Battle

Republican control of the Texas House and Senate in 2002 heralded more than simply a shift in party control of the legislature. With Republican control came a significant decline in the harmonious, bipartisan spirit that had largely governed the Texas legislature. The Republican leadership, especially House Speaker Tom Craddick, chose to govern in a more partisan fashion. Additionally, a number of Democrats in the House who saw their power slipping away chose a rebellious course. They worked to make Craddick's speakership a difficult one, obstructing Republican legislative efforts as much as possible.

This new partisan tension in the Texas legislature rose to a fever pitch in 2003 when Republicans, with the support of the Republican majority leader Tom DeLay, sought to alter the Texas congressional districts for partisan advantage. The Republican goal was to increase Republican representation in the Texas congressional delegation and, in so doing, help ensure a continuing Republican majority in the

*Although the Texas legislature is not as susceptible to partisan squabbling as the U.S. Congress, flare-ups between the Democrats and Republicans do occur. For example, in this photo, Texas House Democrats celebrate their return to Texas in May 2003, after spending four days in Ardmore, Oklahoma, to kill a GOP-produced congressional redistricting plan.*



U.S. House of Representatives. The Republican effort was unconventional in that it occurred in midcycle—that is, it was the second redistricting after the 2000 census. As a rule, redistricting occurs only once after each decennial census, although there is no legal requirement that this be the case.

After the 2000 census, the Texas legislature could not agree on redistricting, and a federal court devised a plan. The 2000 congressional redistricting gave the Democrats an advantage. With control of the state legislature, however, Republicans argued that the existing redistricting plan was unsatisfactory because it reflected a Democratic majority that no longer existed. Republicans wanted a plan that more clearly reflected Republican voting in Texas.<sup>42</sup> In 2000, Democrats won 17 congressional seats and Republicans won 13, even though Republicans won 59 percent of votes in the state and Democrats received only 40 percent. In 2002, Democrats got only 41 percent of the statewide vote, but they won 17 seats to 15 for the Republicans. In fact, since 1996, Republicans had never received less than 55 percent of the statewide vote, and Democrats never won more than 44 percent, yet Republicans were a minority in the Texas congressional delegation. With the new redistricting plan in 2004, Republicans got 58 percent of the statewide vote and elected 21 members of Congress from Texas. Democrats got 41 percent of the statewide vote and elected 11 members of Congress from Texas.<sup>43</sup>

The Republican congressional redistricting plan was not enacted without political turmoil, however. At the end of 2003, 51 Democrats from the state legislature walked out and gathered in Ardmore, Oklahoma, where the Texas state police did not have jurisdiction to bring them back to the state capitol. The result was that a quorum could not be reached to pass the plan. The Democratic legislators did not return to Austin until redistricting was taken off the agenda. A special legislative session was called to deal with redistricting, but the bill did not pass. In a second special session dealing with redistricting, 11 of the 12 Democratic members of the Senate fled to Albuquerque in order to prevent a Senate vote. Finally, a third special session produced a plan that passed both houses of the legislature.<sup>44</sup>

Most notable about the 2004 redistricting was that seven incumbent congressional Democrats were targeted for defeat. A lawsuit that challenged the redistricting on the grounds that it diluted minority votes stressed that the Democrats had been elected with minority support. The lawsuit also pointed out that these seven Democrats had either been paired so that they had to run against another incumbent or had been given a more Republican district.<sup>45</sup> A case before the U.S. Supreme Court challenged the extremely partisan gerrymandering of the Texas redistricting, its reduction of the strength of minority voters, and its use of the now

outdated 2000 census. The Court did find that there had been a reduction in the strength of minority voters. However, the extremely partisan gerrymander and the mid-decennial redistricting using the 2000 census were upheld. For the most part, Republicans were successful in reshaping the partisan composition of the Texas delegation to the U.S. House of Representatives. However, the 2006 election led to Democratic control of the U.S. House and to a Texas congressional delegation with vastly weakened power because of the loss of key Democrats in the redistricting.<sup>46</sup>

The 2010 census led to another round of redistricting for the Texas legislature and the U.S. House of Representatives. The overwhelmingly Republican legislature designed a redistricting plan strongly favorable to Republicans, but the plan ran afoul of a federal court which held that minority voting rights were violated. The court ordered a redistricting plan that was more favorable to Democrats. Redistricting has seemingly become a perpetual issue before the Texas legislature. In 2013 the Texas legislature again voted on redistricting for the Texas House, the Texas Senate, and Texas's U.S. congressional districts. The legislature basically accepted the districting done by the federal courts prior to the 2012 elections, although there are legal challenges to the Texas House and the congressional district lines on the grounds that insufficient recognition of minority interests was given in developing the 2012 districts.<sup>47</sup>

## Thinking Critically about the Texas Legislature

The Texas legislature has undergone great changes and continues to do so. Perhaps the most significant change has been the increasing partisanship. The Texas legislature is less partisan than the U.S. Congress, but the Texas party divide was especially notable under Speaker Tom Craddick, during the redistricting battles, and during the battles over a voter identification law in 2009 and 2011. Straus's bipartisan election as Speaker in 2009 was indicative of a desire to calm down some of the partisanship in the House that had risen during the Craddick years. Tea Party supporters such as newly elected lieutenant governor Patrick, however, may be moving the legislature back into a more partisan direction.

The two-thirds rule in the Texas Senate is under attack. That rule requires considerable consensus to pass legislation from that body. If the two-thirds rule is reduced to a three-fifths rule or even majority rule, there will be renewed partisanship and rancor in the Texas Senate.

The Texas legislature seems in some ways like an archaic institution. Unless there are special sessions, it meets once every two years and is a part-time body with very limited compensation for its members. The structure of the legislature, however, has survived since the 1876 Constitution, and there seems little likelihood that the structure will soon change.

Especially notable regarding the legislature is the vast power held by the Speaker and the lieutenant governor. The 1876 Constitution showed its distrust of a powerful governor, and the result is that in Texas the governor must share political influence with two other major powers in Texas government—the Speaker and the lieutenant governor, over whom the governor exerts no formal control. Still, the revolt against Speaker Craddick does remind us that it is perilous for the Speaker to try to exert so much power that he becomes subject to rebuke from a constituency whose views he ultimately must reflect—the views of a majority of the members of the Texas House.

# studyguide

## Structure of the Texas Legislature

### Describe the bicameral organization of the legislature and the rules for membership (pp. 201–4)

The Texas legislature is bicameral. The leader of the House is the Speaker, and the lieutenant governor presides over the Texas Senate. Although the typical member of the legislature is white and male, women and minorities have increased their representation in recent years.

#### Key Terms

bicameral (p. 201)  
per diem (p. 203)

#### Practice Quiz

1. There are \_\_\_\_\_ members of the Texas Senate, and state senators serve a \_\_\_\_\_ -year term.
  - a) 31/4
  - b) 100/6

- c) 150/2
- d) 300/6
- e) 435/2

2. Texas House members differ from Texas Senate members because
  - a) House members represent smaller districts and are subject to more frequent elections.
  - b) House members represent people, and senators represent counties.
  - c) House members are elected from single-member districts and senators from multimember districts.
  - d) House members have term limits, and senators do not have term limits.
  - e) House members must live in the state for 10 years before standing for election, and senators do not have a residency requirement.

## Sessions of the Legislature

### Explain when the legislature meets (pp. 204–6)

The Texas legislature meets once every two years for 140 days and additionally as required in special sessions called by the governor. Special sessions must have a specific purpose, such as redistricting or school finance.

#### Key Terms

regular session (p. 204)  
biennial (p. 204)  
special session (p. 204)

#### Practice Quiz

3. The Texas legislature meets in regular session
  - a) 90 days every year.
  - b) 180 days every year.

- c) 140 days each odd-numbered year and 60 days each even-numbered year.
- d) 140 days each odd-numbered year.
- e) 180 days each even-numbered year.

4. The agenda for a special session of the Texas legislature is set by the
  - a) lieutenant governor and the Speaker of the House.
  - b) governor.
  - c) Texas Supreme Court.
  - d) chair of the joint committee on special sessions.
  - e) agenda-setting committee.

# Powers of the Legislature

## Outline the legislative and nonlegislative powers of the legislature (pp. 206–10)

The Texas legislature passes bills and resolutions and supervises the state bureaucracy through the budgetary process and sunset legislation.

### Key Terms

- bill (p. 206)
- local bill (p. 206)
- special bill (p. 206)
- general bill (p. 209)
- resolution (p. 209)
- concurrent resolution (p. 209)
- joint resolution (p. 209)
- simple resolution (p. 209)
- constituent (p. 209)
- electoral power (p. 210)
- investigative power (p. 210)

directive and supervisory power (p. 210)

judicial power (p. 210)

impeachment (p. 210)

### Practice Quiz

5. The Texas legislature does not pass this type of bill or resolution:
  - a) local bill
  - b) special bill
  - c) joint resolution
  - d) concurrent resolution
  - e) holiday resolution
6. Texas legislators do not
  - a) provide assistance to constituents.
  - b) investigate wrongdoing by federal agencies.
  - c) investigate wrongdoing in state agencies.
  - d) pass bills and resolutions.
  - e) count election returns for governor and lieutenant governor.

# How a Bill Becomes a Law in Texas

## Trace the process through which law is made in Texas (pp. 210–17)

The process of how a bill becomes a law is similar to the federal level. A key difference is the governor's use of the line-item veto by which the governor can eliminate individual appropriations or line items in the state budget. Additionally, the lieutenant governor and the Speaker of the Texas House have exceptionally strong powers. The committee system plays a major role in shaping the legislative process.

### Key Terms

- introduction (p. 211)
- referral (p. 211)
- consideration by standing committee (p. 211)
- floor action (p. 211)
- conference committee (p. 211)
- action by the governor (p. 211)
- standing committee (p. 211)
- pigeonholing (p. 211)

filibuster (p. 214)

veto (p. 216)

post-adjournment veto (p. 216)

line-item veto (p. 216)

### Practice Quiz

7. If a bill fails to pass the Texas House and Texas Senate in exactly the same form, the bill
  - a) dies.
  - b) is returned to the standing committee in the House or Senate that originally considered the bill.
  - c) is sent to a conference committee.
  - d) is sent to the governor, who decides which version of the bill will be signed.
  - e) becomes a law.
8. The \_\_\_\_\_ provides the governor with a powerful tool with which to bargain with the legislature.
  - a) ability to introduce five bills in a regular session
  - b) post-adjournment veto
  - c) pocket veto
  - d) message power
  - e) initiative

## Additional Players in the Legislative Process

### Describe the roles of other state officials and interested parties in shaping legislation (pp. 217–19)

Other than the two leaders in the House and the Senate, committee chairs have enormous influence in crafting legislation in Texas. The comptroller plays an important role in legislation by issuing revenue estimates to inform the legislation about the money available for the legislature to spend.

### Practice Quiz

9. Which state official, in large part, determines the total amount of money the legislature may appropriate?
  - a) governor
  - b) lieutenant governor
  - c) treasurer
  - d) comptroller of public accounts
  - e) attorney general

## Power and Partisanship in the Legislature

### Analyze how party leadership and partisanship affect power in the legislature (pp. 219–25)

The Speaker of the House and the lieutenant governor are the most important actors in the legislature. Together they help to centralize power in the legislature, and they facilitate or prevent the passage of legislation. The legislature has become increasingly partisan.

### Key Terms

Speaker (p. 219)

lieutenant governor (p. 219)

recognition (p. 222)

### Practice Quiz

10. The two most powerful political figures in the Texas legislature are the
  - a) governor and the lieutenant governor.
  - b) governor and the attorney general.
  - c) Speaker of the House and the governor.
  - d) Speaker of the House and the lieutenant governor.
  - e) chairs of the finance committee in each house.
11. The Speaker of the Texas House is chosen
  - a) in a statewide election.
  - b) in a party-line vote by members of the Texas House.
  - c) by a majority of the members of the House whether Democrat or Republican.
  - d) by seniority in the House.
  - e) by lot.

12. The lieutenant governor is the presiding officer of
  - a) the Texas Senate.
  - b) the governor's cabinet.
  - c) the Texas legislature.
  - d) the Legislative Conference committees.
  - e) the Treasury.
13. The chairs of the Texas House committees are
  - a) of the same party as the Speaker.
  - b) selected on the basis of seniority.
  - c) chosen because of their experience.
  - d) both Democrats and Republicans.
  - e) independents.
14. The ability of the lieutenant governor and the Speaker of the House to control the final outcome of legislation comes from their power to
  - a) appoint members of conference committees.
  - b) refuse to approve the work of standing committees.
  - c) exercise the legislative line-item veto.
  - d) change up to three lines in any bill.
  - e) control floor debate.
15. In recent years, the Texas legislature has
  - a) become more partisan.
  - b) become less partisan.
  - c) become more experienced in lawmaking.
  - d) been more inclined to let the governor make policy.
  - e) been more respectful of county officials.

# Redistricting

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## Explain the politics of redistricting (pp. 226–29)

One of the most partisan activities of the legislature involves redrawing of district lines for the Texas House of Representatives and the Texas Senate. New districts must be drawn at least every 10 years to reflect changes in the population of the state. This process of redistricting provides the opportunities for the dominant political party to create districts for their partisan advantage. While there are some legal and constitutional restrictions on redistricting, generally as long as the districts reflect equal populations and racial or ethnic minorities are not disadvantaged legislators have great freedom in drawing district boundaries.

### Key Terms

redistricting (p. 226)

single-member district (p. 226)

one-person, one-vote principle (p. 226)

## Practice Quiz

16. An important issue for the legislature at least every 10 years is
- a) adopting a budget.
  - b) deciding the order of succession to the office of governor.
  - c) impeaching the lieutenant governor.
  - d) redistricting.
  - e) electing the president.
17. Legislative districts in Texas
- a) are created by a nonpartisan commission.
  - b) are designed to benefit partisan interests.
  - c) are voted on in a special election.
  - d) are created in a cooperative effort between the two parties.
  - e) are designed by the Center for Legislative Districts every 10 years.

## Recommended Websites

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Chron.com—*Houston Chronicle*

[www.chron.com/new/politics](http://www.chron.com/new/politics)

Speaker of the Texas House of Representatives

[www.house.state.tx.us/speaker/welcome.htm](http://www.house.state.tx.us/speaker/welcome.htm)

Texas Legislative Council

[www.tlc.state.tx.us](http://www.tlc.state.tx.us)

Texas Legislature Online

[www.capitol.state.tx.us](http://www.capitol.state.tx.us)

Texas Lieutenant Governor

[www.senate.state.tx.us/75r/LtGov/Ltgov.htm](http://www.senate.state.tx.us/75r/LtGov/Ltgov.htm)

Window on State Government (Comptroller of Public

Accounts) [www.window.state.tx.us](http://www.window.state.tx.us)

Although the governor is the most visible leader in Texas politics, Texas governors have fewer powers than governors in other states. Greg Abbott, elected in 2014, succeeded one of the more powerful governors in Texas history, Rick Perry. Will Abbott use the power of the governor's office like Perry did?



# The Texas Executive Branch

**WHY THE EXECUTIVE BRANCH MATTERS** The late lieutenant governor of Texas Bob Bullock said that he did not want to be governor because he claimed that all a Texas governor did was cut ribbons. Bullock was a remarkably powerful and effective lieutenant governor, and he gave weight to the view that real power in Texas was not in the governor's office, but in the lieutenant governor's office. As one reporter put it, "Before Perry, half the stories about the doings in the state Capitol were either about the inherent weakness of the governor's office or the ancient lore about how the lieutenant governor holds the state's most powerful office."<sup>1</sup> After all, in Texas the governor has no cabinet, and although the governor appoints people to the various boards and commissions that run state agencies, only a third of board members come up for appointment every two years, and they cannot easily be fired.

While on paper the governor's office may appear to be weak in terms of the formal powers granted by the constitution, particularly when compared to that in other states, Texas governors can come to possess considerable power. Brian McCall, a former legislator and author of a book on the Texas executive, claims that there were Texas governors who have been real powers in the state and did not just let the state be run by the lieutenant governor, or the legislature and its leadership, or other powerful elected officials such as the attorney general or the comptroller. In spite of McCall's research, the myth persists that Texas governors are mere figureheads.<sup>2</sup>

How will Governor Greg Abbott wield the power of the governorship? If Abbott needs a model of a highly powerful Texas governor, he need not look further than his predecessor, Rick Perry. Perry may be the modern proof of McCall's thesis that a Texas governor could be a powerful figure in state politics and that the office of the governor matters. Perry came to the governor's office with considerable political experience. He was elected as a Democrat to the Texas House of Representatives in 1984 and served three two-year terms. In 1989 he changed parties from the Democratic to the Republican Party, and in 1990 he was elected commissioner of agriculture. In 1998 he was elected lieutenant governor, and in December 2000, upon the resignation of Governor George W. Bush to become president of the United States, Rick Perry assumed the governorship. He was elected to full terms as governor in 2002, 2006, and 2010. Perry was the longest-serving governor in Texas history. His many years in office gave him time to learn how to use the powers given to him under the Texas Constitution and to maximize his influence throughout Texas government.

Perry had failures—the most well known was his failed presidential campaign in 2012. He also failed in his effort to create the Trans-Texas Corridor, which was to be a \$175 billion network of roads, railways, data lines, and pipelines stretching from Mexico to Oklahoma. He called for mandatory vaccination of young girls against the human papillomavirus that can lead to cervical cancer and faced a backlash from religious conservatives who believed the vaccine would encourage promiscuity. Supporting the effort to put Texas in the forefront of cancer research, the Cancer Prevention and Research Institute of Texas, run by his appointees, came under investigation for possible misapplication of millions of dollars in grant money.

Perry, however, exerted control over state government in a way that no other Texas governor has. He was the only governor who appointed every member of the boards and commissions that run Texas government. He used the veto power to punish political opponents in the legislature, and he successfully advocated a social agenda that greatly limited access to abortion. He successfully pushed a pro-business agenda that includes tort reform, low taxes, and business-friendly regulation. He claimed that he caused Texas to weather the Great Recession better than other states and to be a job-creating state.<sup>3</sup> Greg Abbott, Perry's successor, may or may not be able to mobilize the limited constitutional power of the office of the governor as effectively as Perry did. But one thing is clear: Perry's record of failures and achievements as chief executive of the state shows that governors do matter.

## chaptergoals

- **Describe the powers of the Texas governor and the limits of the governor's power (pp. 236–54)**
- **Identify the other elected officials who make up the plural executive (pp. 254–63)**
- **Explain the roles played by boards, commissions, and regulatory agencies (pp. 263–69)**

### ● The Governor

**Describe the powers of the Texas governor and the limits of the governor's power**

At the national level, the president represents and is responsible to the people as a whole. The president is the spokesperson for the government and the people in national and international affairs. Throughout the twentieth century, various presidents parlayed the powers granted them by the U.S.

Constitution into what some commentators call the “imperial presidency.” The governorship in Texas is not an analogous imperial one. Compared with the president, the governor of Texas is weak. Executive power in Texas is divided among a

number of separately elected officials, all of whom are elected by and responsible to the people as a whole. This plural executive has important implications for democratic life in the Lone Star State.

Although the governor of Texas is the most visible state official, Texas's governor has far less formal power than most governors. In 1983 a study of the appointment, budget, removal, and organizational powers of governors ranked Texas's governor 49th in the nation, ahead only of the governor of South Carolina.<sup>4</sup> In 1990 a study of gubernatorial authority in the nation also ranked Texas's governor 49th, ahead of the governor of Rhode Island.<sup>5</sup>

To understand the restrictions placed on the office, it is necessary to remember that the Constitution of 1876 was a reaction to the Reconstruction government that existed in Texas following the Civil War. During Reconstruction, the governor was very powerful, and many regarded state government as oppressive and corrupt. When a new constitution was drafted at the end of the Reconstruction era, Texans did their best to ensure that no state official had extensive power. The Texas Constitution of 1876 placed strict limits on the governor's ability to control the people appointed to office and almost eliminated the possibility that appointees to office could be removed. Power was further fragmented among other officeholders, who are collectively known as the plural executive. Each of these officeholders is elected and has separate and distinct responsibilities. Members of major state boards, such as the Railroad Commission and the State Board of Education, are also elected and are largely outside the control of the governor.

Governors who are successful in pushing their programs through the legislature and seeing them implemented by the bureaucracy are able to use the limited formal powers available to them, exercise their personal political power, exploit the prestige of the office of governor, and marshal various special interests to their cause. One political writer likens the office of governor to a bronco that breaks most who attempt to ride it and will be successfully handled by very few. In short, successful governors are successful politicians.<sup>6</sup>

Former state representative Brian McCall has written about the modern Texas governorship, arguing that Texas governors can be quite powerful in spite of the weaknesses of the office that are inherent in the Texas Constitution. He points out that governors who develop a collaborative relationship with the legislature can realize many of their goals if they are flexible, have a vision, are willing to motivate others to achieve that vision, and will work cooperatively with the legislature. McCall notes that when former governor Allan Shivers was asked about the weak governorship of Texas, he responded, "I never thought it was weak. I had all the power I needed."<sup>7</sup> McCall, in stressing that capable individuals could parlay the Texas governorship into a position of power, noted that only the governor has the power to call special sessions of the legislature. The governor can pardon criminals and can permit fugitives to be extradited to other states. The governor appoints people to state governing boards and commissions. Only the governor can declare martial law. Only the governor can veto acts or specific appropriations passed by the legislature. Through the traditional State of the State address delivered at the beginning of every legislative session, the governor can outline state priorities and convince others of the importance of those priorities. The governor can be a major persuasive force in mobilizing interest groups, editorial boards of newspapers, and opinion leaders to support his or her agenda.

Not all governors have the personal skills to turn the office into a powerful one. Some have been unable to develop a collaborative relationship with the legislature.

### for critical analysis

What can governors do to overcome the inherent weakness of the position?  
What are the implications for democratic government of a weak chief executive?

*George W. Bush was governor of Texas from 1995 until he was elected president of the United States in 2000. Here, Bush is seen campaigning for re-election as governor in 1998. Like Rick Perry, Bush was able to achieve a number of his political goals as governor, despite the limited powers of the office.*



Others have not had the interest or the ability to develop their own vision and political agenda. Still others have been unable to accomplish their goals because of economic downturns that have limited their resources. However, McCall argues that modern governors such as John Connally, Ann Richards, and George Bush have had the persuasive skills that have enabled them to achieve major political objectives in spite of the constitutional limitations on the powers of the office.<sup>8</sup>

Still, even many successful governors have not acted as if the job is a demanding one. George W. Bush, according to McCall, would typically arrive at the office by eight in the morning, leave for a run and a workout at 11:40 AM, return at 1:30 PM, and play video golf or computer solitaire until 3 PM.<sup>9</sup> Governor Perry was so detached from the operation of state government that he did not receive a full briefing on the raid on a polygamist cult that put 400 children in protective custody and involved a half-dozen state agencies and 1,000 state personnel until five days after the event. One review of Governor Perry's schedule during the first four months of the 2011 legislative session showed that he averaged only 21 hours per week on state business and took six three-day weekends.<sup>10</sup>

## Qualifications

Only three formal constitutional qualifications are required to become governor of Texas. Article 4 of the Texas Constitution requires the governor to (1) be at least 30 years of age, (2) be a U.S. citizen, and (3) live in Texas five years immediately before election. Texas governors have tended to be male, white, conservative, either personally wealthy or with access to wealth, Protestant, and middle-aged, and they have had considerable prior political experience.

Women compose more than 50 percent of the population of the United States and Texas, but only two women—Miriam Ferguson (1925–27, 1933–35) and Ann Richards (1991–95)—have served as governor of Texas.

William Clements's victory over John Hill in the gubernatorial campaign of 1978 was the first time since Reconstruction that a Republican had won the office.

George W. Bush was the second Republican elected governor and the first individual elected for two consecutive four-year terms.

Access to money is important because running for governor is inordinately expensive. A campaign for the governorship can cost tens of millions of dollars, and few Texans have or can raise that kind of money. The 2010 gubernatorial campaign set a record, costing about \$91 million when all primary and general election candidates are considered. Tony Sanchez, the Democratic nominee for governor in 2002, spent over \$66 million in that campaign, a record for an individual candidate. About \$60 million of those funds came from his family's fortune in a losing effort for the governor's mansion.

Sam Kinch, a former editor of *Texas Weekly*, suggests that prior political experience is an important consideration in selecting a governor. Kinch maintains that although experience may not mean that someone will be a better governor, it does mean he or she is more likely to know how to handle the pressures of the office.<sup>11</sup>

## Election and Term of Office

Before 1974, Texas governors served two-year terms, with most being elected to a maximum of two consecutive two-year terms. As Table 8.1 shows, there have been exceptions, such as Coke Stevenson, Price Daniel, and John Connally, who each served for six years, or Allan Shivers, who served for eight years. In 1972, Texas voters adopted a constitutional amendment changing the governor's term to four years. In 1974, Dolph Briscoe was the first governor elected to a four-year term of office. Rick Perry served as governor from 2000 through 2014, the longest tenure for a Texas governor.

Gubernatorial elections are held in off-years (years in which a president is not elected) to minimize the effect of presidential elections on the selection of the Texas governor. The Texas legislature, controlled at the time by Democrats, designed the off-year system to eliminate the possibility that a popular Republican presidential candidate would bring votes to a Republican candidate for governor. Likewise, party leaders wanted to negate the chances of an unpopular Democratic presidential candidate costing a Democratic gubernatorial candidate votes in the general election. Unfortunately, because of this timing, voter turnout in gubernatorial contests is relatively low.

## Campaigns

Campaigns for governor of Texas last at least 10 months. Candidates hit the campaign trail in January of an election year to win their party's primary election in March; then they continue campaigning until the November general election. Successful candidates spend thousands of hours and millions of dollars campaigning. The money goes to pay staff salaries and for travel, opinion polls, telephone banks, direct mailings, and advertisements in print and broadcast media. Texas is so large that statewide candidates must purchase print and electronic advertisements in 19 media markets to reach every corner of the state.

In the 2010 Republican primary, Kay Bailey Hutchison spent over \$14 million in her losing battle against Rick Perry. Perry spent nearly \$13 million in the primary. Overall, Perry spent about \$39 million and Bill White spent about



Rick Perry's 14-year tenure as Texas's governor was the longest in the state's history. Here, Perry celebrates at the victory party for his successor, Greg Abbott.

**TABLE 8.1**

## Governors of Texas and Their Terms of Office since 1874

Richard Coke	1874–76	Miriam Ferguson	1933–35
Richard B. Hubbard	1876–79	James V. Allred	1935–39
Oran M. Roberts	1879–83	W. Lee O'Daniel	1939–41
John Ireland	1883–87	Coke Stevenson	1941–47
Lawrence S. Ross	1887–91	Beauford H. Jester	1947–49
James S. Hogg	1891–95	Allan Shivers	1949–57
Charles A. Culberson	1895–99	Price Daniel	1957–63
Joseph D. Sayers	1899–1903	John Connally	1963–69
S. W. T. Lanham	1903–07	Preston Smith	1969–73
Thomas M. Campbell	1907–11	Dolph Briscoe	1973–79*
Oscar B. Colquitt	1911–15	William Clements	1979–83
James E. Ferguson	1915–17	Mark White	1983–87
William P. Hobby	1917–21	William Clements	1987–91
Pat M. Neff	1921–25	Ann Richards	1991–95
Miriam Ferguson	1925–27	George W. Bush	1995–2000**
Dan Moody	1927–31	Rick Perry	2000–2015
Ross Sterling	1931–33	Greg Abbott	2015–

\*Term changed to four years with the 1974 general election.

\*\*Resigned to become president of the United States.

SOURCE: Dallas Morning News, *Texas Almanac and State Industrial Guide 1998–99* (Dallas: A. H. Belo, 1999).

\$26 million in their campaigns. That is \$14.37 for every vote Perry received and \$12.48 for every vote White received. High-priced campaigns illustrate that successful candidates need personal wealth or access to wealth. At the end of October 2014, Greg Abbott had spent \$46.8 million and Wendy Davis had spent about \$36 million. The 2014 governor's race will not involve record expenditures but will approach \$90 million in total.

### Removal of a Governor

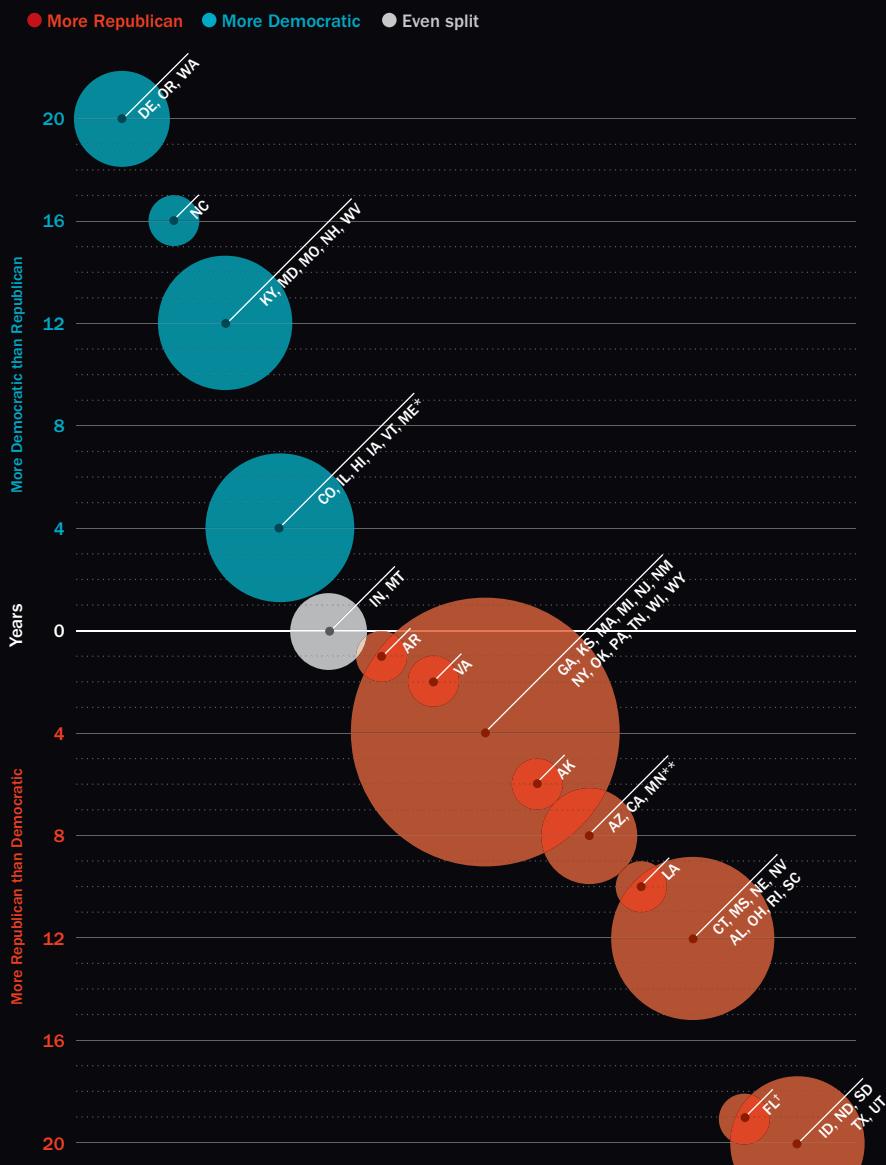
**impeachment** the formal charge by the House of Representatives that leads to a trial in the Senate and the possible removal of a state official

In Texas, the only constitutional method of removing a governor from office is by **impeachment** and conviction. “To impeach” means to accuse or to indict, and impeachment is similar to a true bill (indictment) by a grand jury. The Texas Constitution notes that the governor may be impeached but does not give any grounds for impeachment. Possible justifications for impeachment are failure to perform the duties of governor, gross incompetence, and official misconduct.

Impeachment begins in the Texas House of Representatives. A majority vote of the Texas House is required to impeach or to bring charges. If the House votes for

# Comparing the Governor of Texas with the Governors of Other States

## Years of Republican or Democratic Advantage in Control of Governorships, 1995–2014



\* Independent Angus King was governor from 1995-2003.

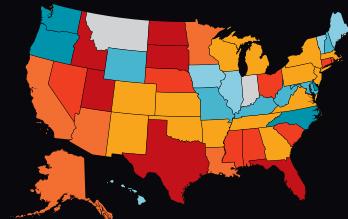
\*\* Independent Jesse Ventura was governor from 1999-2003.

<sup>†</sup> Charlie Christ left the Republican Party in April 2010 and held no party affiliation as governor until he left office in January 2011.

SOURCE: National Governor's Association, [www.nga.org](http://www.nga.org) (accessed 5/23/14).

Since 1994, Texas has elected only Republicans to the governor's office. Texas's neighboring states, Louisiana and Oklahoma, also are represented by Republican governors, but they haven't always been. This chart shows which party has controlled governorship most often in each state.

### Geographic distribution



Republican	Democratic
16-20 years	16-20 years
11-15 years	11-15 years
6-10 years	1-10 years
1-5 years	
Even split	

### for critical analysis

- Which region of the country had the most Democratic governors in the last 20 years? Why might this be?
- Are there states whose governorship has been more Republican or more Democratic than you expected? Why?

impeachment, the trial takes place in the Texas Senate. One or more members of the Texas House prosecute the case, and the chief justice of the Supreme Court of Texas presides over the impeachment proceedings. A two-thirds vote of the senators present and voting is necessary to convict. If convicted, the governor is removed from office and disqualified from holding any other state office.

Any member of the executive or judicial branch may be impeached. Once the House votes for impeachment charges against an official, that individual is suspended from office and cannot exercise any of his or her duties. Governor James Ferguson was the only Texas governor to be impeached and convicted.

## Succession

The Texas Constitution provides for the lieutenant governor to become governor if the office becomes vacant through impeachment and conviction, death, resignation, or the governor's absence from the state.

In December 2000 a succession occurred when Governor George W. Bush became president-elect of the United States and resigned as governor. Lieutenant Governor Rick Perry immediately took the oath to become governor of Texas. The *Houston Chronicle* has characterized Rick Perry as "a politician who so looks the part that it's been joked that he was ordered straight from central casting."<sup>12</sup> Perry, a former state legislator from Haskell, was a conservative Democrat who switched to the Republican Party in 1990 and ran successfully for commissioner of agriculture. His six years in the Texas House, eight years as head of a major state agency, and two years as lieutenant governor and president of the Texas Senate provided him with a great deal more experience than any other governor of the last three decades.<sup>13</sup>

Should the governor leave the bounds of the state, the lieutenant governor becomes acting governor. If the governor is impeached, the lieutenant governor serves as acting governor before and during the trial. While serving as acting governor, the lieutenant governor earns the governor's daily salary, which is far better

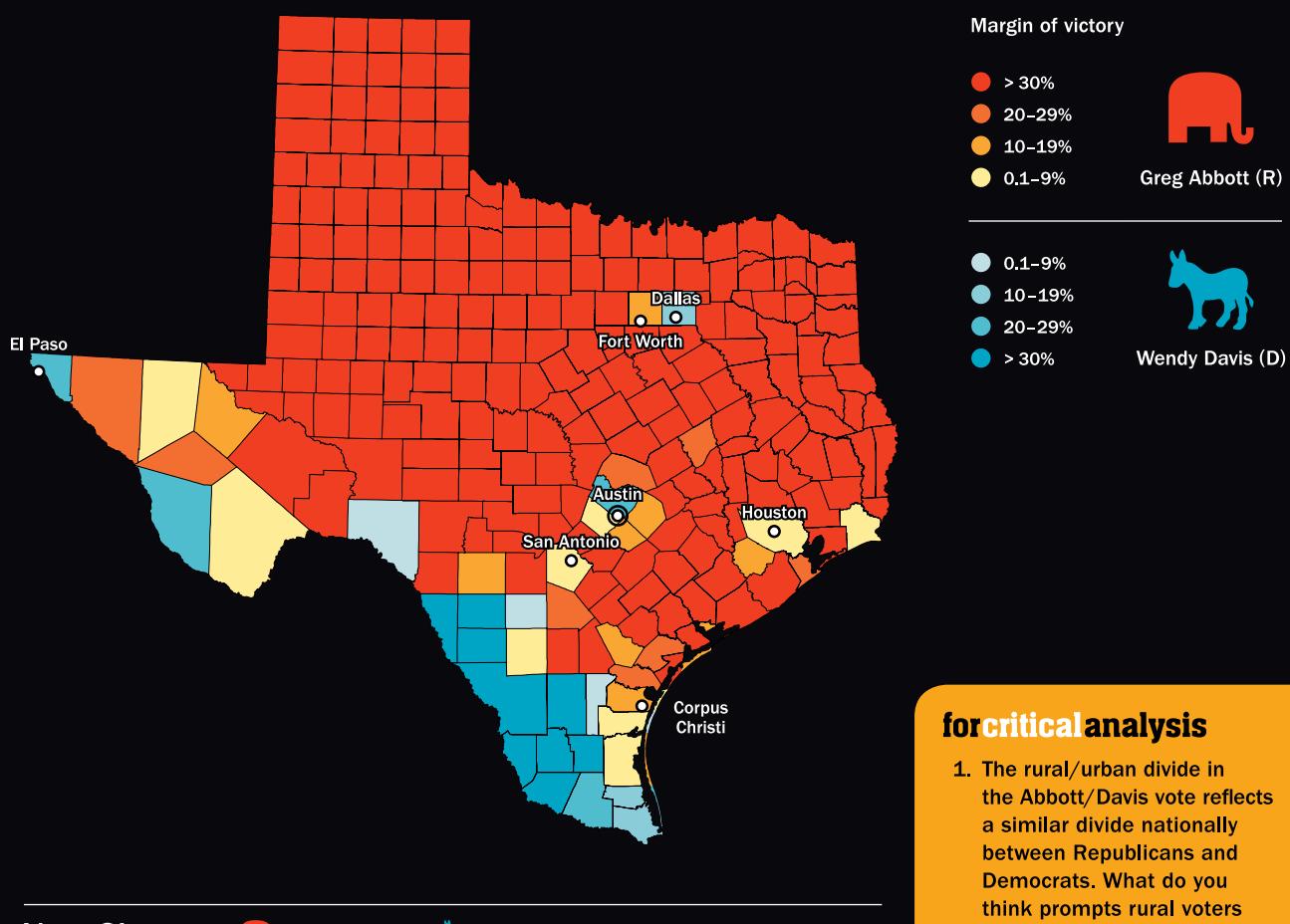
*Public debates give Texans the chance to see gubernatorial candidates face off over key campaign issues. In September 2014, Wendy Davis and Greg Abbott held their first debate in Edinburg in the Rio Grande Valley.*



# Who Elected Governor Greg Abbott in 2014?

Greg Abbott's support was widespread across the state. He had decisive support in non-border rural counties. Although not winning in all, he polled well in most urban counties. He received surprising support from Latino voters, including those living along the border.

## 2014 Election Results, by County



SOURCE: CNN, [www.cnn.com/election/2014/results/state/TX/governor](http://www.cnn.com/election/2014/results/state/TX/governor) (accessed 11/28/14).

### for critical analysis

1. The rural/urban divide in the Abbott/Davis vote reflects a similar divide nationally between Republicans and Democrats. What do you think prompts rural voters to vote differently from urban voters?
2. Now that Abbott has won the election, do you think he will tend to favor urban or rural areas in his actions as governor? What policies might he support that will be more favorable to rural areas?

than the \$20 earned as lieutenant governor. (However, a governor who is absent from the state still earns the same daily salary.)

When out of the state, the governor is legally entitled to Department of Public Safety protection. George W. Bush spent part of 1999 and 2000 campaigning to be president of the United States. During fiscal year 1999 it cost Texans an additional \$2,365,000 to provide protection for the governor while he was on the presidential campaign trail.<sup>14</sup> In 1992, Governor Ann Richards was often out of the state campaigning for Bill Clinton, and the Texas taxpayers picked up the cost of her security detail. Governor Perry was also out of the state a great deal during his campaign for the 2012 Republican presidential nomination.

Constitutionally, the governor's office is weak. Former lieutenant governor Bill Hobby noted that about the only way he knew when he was acting governor was by a note his secretary left on his daily calendar.<sup>15</sup> In the first three months of 2000, Rick Perry, then lieutenant governor, served as acting governor more days than George W. Bush was in the state to serve as governor. Perry's press secretary commented that the added duties of being acting governor were not very noticeable and that those duties made little difference in Perry's schedule.<sup>16</sup> State government takes little notice of the governor's absences. Former Speaker of the Texas House Pete Laney has said that the governor's office is "holding court and cutting ribbons" and in 2000 commented on Governor Bush's out-of-state campaigning by saying, "I guess we've been doing pretty well without [a governor]."<sup>17</sup>

Legislation further defines succession from the governor to the lieutenant governor, to the president pro tempore of the Texas Senate, speaker of the house, attorney general, and the chief judges of the Texas courts of appeal in descending order.

## Compensation

The governor's salary is set by the legislature. Texas pays its governor \$150,000 annually. In addition to this salary, the governor receives use of an official mansion near the capitol grounds, although fire damage prevented its use as an official residence from June 2008 to the summer of 2011. Governors and the legislature often squabble about the amount of money needed for upkeep of the mansion and its grounds. The governor also receives use of a vehicle, a state-owned aircraft, and a personal staff.

## Staff

The governor's staff consists of nearly 250 individuals. This includes a chief of staff, a deputy chief of staff, a general counsel, and a press secretary. A scheduler coordinates the governor's appointments, personal appearances, and work schedule. Governor Perry had 35 staff members who focus solely on policy issues.<sup>18</sup>

The staff keeps the governor informed about issues and problems facing the state, and it may suggest courses of action. In addition, during a four-year term, a governor makes several thousand appointments to various state posts. It is impossible for a governor to be acquainted personally with each appointee. Some of the staff find qualified individuals for each post and recommend them to the governor. Other staff members track legislation. They talk with legislators, especially key people such as committee chairpersons. The staff lets the governor know when his

or her personal touch might make a difference in the outcome of legislation. For each bill that passes the legislature, a staff member prepares a summary of the bill with a recommendation that the governor sign or veto the bill.

Recent governors have used their staffs to be more accessible to the public. Governor Perry, like his immediate predecessors, wanted his staff to be no more than a phone call away from those who need assistance. In theory, individuals need only call a member of the governor's staff to receive help or find out where to go for help. The Office of the Governor has a Citizen's Assistance Hotline that handles thousands of calls each year from Texans needing assistance with their problems with state government.

## Executive Powers of the Governor

Texas has a board or agency form of government. Over 400 state boards, commissions, and agencies make up the executive branch of Texas government. Agencies may be as obscure as the Texas Funeral Commission or the State Preservation Board or as well-known as the Public Utilities Commission of Texas or the Texas Department of Human Services, but each is important to its constituents. These multimember boards are the policy-making bodies for their agencies. They employ and oversee the people who operate the agencies on a daily basis.

**Appointment Power** The governor's power of **appointment** is the most significant executive power. It allows a degree of control over 410 governmental entities, including a wide range of agencies, commissions, and boards, as shown in Table 8.2. Governor Perry's long tenure has allowed him to appoint more than 4,000 people to these boards, and through these appointments he has been able to exert control throughout state government. One lobbyist described Perry's appointees as much different from Governor Bush's in that they "appear to be much more concerned with the larger political context and what sort of direction, either signaled or voiced, is coming from the governor's office."<sup>19</sup>

The power of appointment enables the governor to exercise the power of **patronage**. It permits the governor to reward supporters by appointing them to office. Most of the offices pay very little, but they do offer supporters some prestige. The governor can also use the appointment power to repay political favors by appointing friends and associates of legislators to office as well as to garner political IOUs from politicians. Most important, a governor can use the appointment power to influence agency policy. To a great degree, the effectiveness of a governor's use of the appointment power will determine the governor's success in office.

There are 410 entities to which the governor makes appointments. In some cases, the appointment power to these entities is shared with others. For example, the State Commission on Judicial Conduct regulates the ethics and behavior of Texas judges. It is governed by a 13-member commission. Six of the commission members, appointed by the Texas Supreme Court, are judges representing various court levels. Two members, appointed by the State Bar, are non-attorneys and non-judges. The governor appoints five citizen members. The Texas Ethics Commission promotes ethics rules for states officials and the commission is where campaign finance data are reported. The commission has eight members—four appointed by the governor, two appointed by the lieutenant governor, and two by the Speaker of the Texas House of Representatives. Some of the entities to which the governor makes appointments are advisory as opposed to policy-making. For example, the

**appointment** the power of the chief executive, whether the president of the United States or the governor of a state, to appoint persons to office

**patronage** the resources available to higher officials, usually opportunities to make political appointments to offices and to confer grants, licenses, or special favors to supporters

**TABLE 8.2**

## The Governor's Appointment Power

The following are examples of some of the entities in Texas, in just four policy areas, where the governor has the power to appoint members. This power can provide the governor with significant power over policy in these areas.

### WATER

Angelina and Neches River Authority, Upper, Lower Central Colorado River Authority, Brazos River Authority, Canadian River Compact Commissioner, Board of Pilot Commissioners for Galveston County Ports, Guadalupe-Blanco River Authority, Upper Guadalupe River Authority, Gulf of Mexico Fishery Management Council, Gulf States Marine Fisheries Commission, Lavaca-Navidad River Authority, Nueces River Authority, Red River Authority and Red River Compact, Sabine River Authority and Sabine River Compact, San Antonio River Authority, San Jacinto River Authority, Trinity River Authority, Sulphur River Basin Authority, Western States Water Council, Evergreen Underground Water Conservation District, and Drought Preparedness Council

### HEALTH

Aging and Disability Services Council, Texas Council on Alzheimer's Disease and Related Disorders, Texas Council on Autism and Pervasive Developmental Disorders, Chronic Kidney Disease Task Force, Texas Council for Developmental Disabilities, Health Professions Council, Oversight Committee of the Cancer Prevention and Research Institute, Council on Cardiovascular Disease and Stroke, and Sickle Cell Disease Advisory Committee

### LAW ENFORCEMENT

Automobile Burglary and Theft Prevention Authority, Border Security Council, Task Force to Reduce Child Abuse and Neglect, Crime Stoppers Council, Crime Victims' Institute Advisory Council, Texas Board of Criminal Justice, Homeland Security Council, Commission on Jail Standards, Juvenile Justice Advisory Board, Juvenile Probation Commission, and Commission on Law Enforcement Officer Standards and Education

### PROFESSIONAL LICENSING

Texas Optometry Board, Board of Orthotics and Prosthetics, Board of Nursing, Board of Occupational Therapy Examiners, Board for the Licensure of Professional Medical Physicists, Medical Board, Board of Examiners of Marriage and Family Therapists, Board of Examiners in the Fitting and Dispensing of Hearing Instruments, Board of Podiatric Medical Examiners, Physician Assistant Board, Board of Plumbing Examiners, Board of Physical Therapy Examiners, Board of Pharmacy, Board of Veterinary Medical Examiners, Appraiser Licensing and Certification Board, Board of Architectural Examiners, Board of Chiropractic Examiners, Board of Dental Examiners, State Board of Examiners of Dietitians, and State Board for Educator Certification

governor appoints the three-member Firefighters' Star of Texas Award Advisory Committee, which considers firefighters killed or seriously injured in the line of duty for an award.

Some of these entities are both advisory and appointed by several different officers. For example, the Oil-Field Cleanup Fund Advisory Committee has 10 mem-

bers. One member is appointed by the lieutenant governor, one by the presiding officer of the house committee with primary jurisdiction over energy resources, one by the lieutenant governor from the academic field of geology or economics, one by the Speaker of the Texas House of Representatives from the field of geology or economics, one by the governor, and one by the executive officer (or the officer's designee) of the Texas Oil and Gas Association, the Texas Independent Producers and Royalty Owners Association, the Panhandle Producers and Royalty Owners Association, the Permian Basin Producers Association, and the Alliance of Energy Producers. The committee meets with the Railroad Commission about oilfield cleanup issues and reports to the governor, the lieutenant governor, and the speaker about any problems in the administration of oilfield cleanup funds and about any recommendations for legislation dealing with oilfield cleanup. Oilfield cleanup is not a top priority for most Texans, but it is a vital issue for oil producers and royalty owners. Such commissions provide input to state government for specialized issues such as oilfield cleanup. There are a number of these rather obscure advisory committees where the governor has an appointive role. For example, there is the Parental Rights Advisory Panel, the Nursing Facility Administrators Advisory Committee, the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, the Texas Academy of Mathematics and Science Advisory Board, the Governor's Advisory Council on Physical Fitness, the Preservation Trust Fund Advisory Board, the Real Estate Research Advisory Committee, and numerous other such groups.

The governor also makes appointments to many commissions that have major policy impact. Examples include the governing boards of Texas public universities that have considerable influence over the governance and policies of universities. The governor appoints all members to the boards of regents. Additionally, the governor appoints all of the nine members to the Texas Higher Education Coordinating Board, which oversees all public postsecondary education in the state including determining when public colleges and universities start or continue offering degrees, or what core class requirements all students in state colleges or universities must take. Another major commission is the Parks and Wildlife Commission. Appointed by the governor, the commissioners run an agency responsible for the management and conservation of the state's natural resources, with particular responsibility to provide for hunting, fishing, and outdoor recreation for Texans. The governor appoints the three members of the Alcoholic Beverage Commission, which is responsible for the regulation of all aspects of alcoholic beverages within the state and which collects \$200 million a year in taxes and fees on alcohol. Many of the bodies over which the governor has supervision through the appointment process deal with water (its conservation, use, control, and navigation), health and aging, law enforcement, and professional licensing.

To a great extent, Texas government is run through these many boards and commissions. These boards have three main purposes: (1) they provide the broad policy guidance and advice for the operation of Texas's executive branch; (2) they provide a place where interests can influence the executive branch—for example, the Timothy Cole Advisory Panel on Wrongful Convictions can provide information on ways to resolve some of the problems wrongfully convicted persons have in re-entering the free world after years in prison; (3) they can provide important patronage to the governor where political friends and supporters can be rewarded with positions of influence, honor, and sometimes income.

**Appointment Controversies** A governor, however, must exert some care in appointments. Failure to appoint responsible individuals can lead to serious political problems. In 2007 there was a scandal within the Texas Youth Commission, which has authority over institutionalized juveniles. It became clear that not only was there a widespread pattern of physical and sexual abuse of juveniles in the facilities, but authorities tried to cover up the abuse. As a result, Governor Perry's appointees had to resign from the commission, and it was necessary to reorganize the agency. When the Texas Forensic Science Commission decided to hear testimony from an arson expert who believed that Cameron Todd Willingham was convicted and executed on the basis of faulty evidence of arson in an arson-murder case, Governor Perry replaced the chairman of the commission and refused to reappoint other members of the commission. Perry was trying to avoid political embarrassment since he was in office when Willingham was executed and had denied him a reprieve even after a detailed arson report had been provided that said the evidence against Willingham was flimsy.<sup>20</sup>

A recent scandal involves the Cancer Prevention and Research Institute of Texas (CPRIT) and its 11-member oversight committee that is the entity's governing body. The governor, the lieutenant governor, and the speaker all appoint three members to serve staggered terms, and the attorney general and state comptroller are members of the committee. The CPRIT became involved in controversy when it approved an \$11 million commercialization grant without proper review. A state audit then revealed \$56 million in grants were approved without proper review and \$6.8 million in advance payments were made to a statewide clinical trial network that had since filed for bankruptcy.<sup>21</sup> The idea behind CPRIT was a promising one. In 2007, Texas voters supported a constitutional amendment that established CPRIT and authorized the state to issue up to \$3 billion in bonds to fund cancer research and prevention services in Texas. But mismanagement and scandal have hit the agency along with a criminal investigation. While members of the oversight committee have not been charged with a crime, they have not been good stewards of the agency and rather appear to be political cronies—members of the oversight committee have donated a combined \$1.5 million to Governor Perry, Lieutenant Governor Dewhurst, and Speaker Straus.<sup>22</sup> The peer review system for cancer funding proposals has fallen apart. The eight-member scientific review council has resigned, as have many on the roster of reviewers of funding proposals. The reason: according to Nobel prize-winning biologist Phillip Sharp of MIT, who resigned as chair of the CPRIT scientific review council, "Clearly there has been pressure at the board level to do things differently" than through peer review of proposals. When such problems emerge in an agency, ultimately the officials making the appointments are accountable for the flaws of their appointees.<sup>23</sup>

One developing story that holds potential for embarrassing Governor Perry is the possible impeachment and criminal prosecution of University of Texas System Regent Wallace Hall. Hall, a Perry appointee, was engaged in a two-year quest to remove University of Texas president Bill Powers, who had opposed Perry and some regents over tuition rates and the roles of research and teaching. Hall used open records laws to request over 800,000 pages of material from the university. His actions potentially are a misuse of office, and he may have improperly handled sensitive information and failed to disclose key information about himself on his application to become a regent. The last impeachment in Texas was about 40 years ago involving the impeachment of Judge O. P. Carillo in 1975, so an impeachment is a rare event in the state. Additionally, criminal charges are possible with



*The authority to appoint many state officials is an important executive power. In 2014, Rick Perry appointed Nandita Berry as Texas secretary of state.*

or without impeachment. Perry was the appointing officer for Hall, although his departure from the governorship may protect him from the political consequences of making an appointment whose fate may be a rare removal from office and/or criminal punishment.<sup>24</sup>

**The Senate and Gubernatorial Appointments** The governor appoints people to office, but the Texas Senate must also confirm them. However, because the Senate may not meet for almost two years, the appointee takes office immediately and does not wait for Senate confirmation. An example of how the governor must consider the views of the Texas Senate in making appointments occurred with the appointment of Eleanor Kitzman as Texas insurance commissioner. Insurance commissioner is a particularly important office in Texas, since it is a single appointed office rather than a board or commission and the commissioner has regulatory authority over insurance companies that operate in Texas. Kitzman had great problems with the legislature. She was criticized for being too favorable to insurance companies. What seemed to sink her chances for approval by the Senate, however, was when Kitzman, who never blocked any large insurance premium hikes while she was commissioner, withheld insurance company profit data from the legislature. If it had not been clear before the data were withheld, it was certainly clear afterward that Kitzman would not be confirmed. Governor Perry did not even submit her name to the Senate Nominations Committee and the Senate did not vote on her nomination, which meant that she had to leave office at the end of the regular legislative session.<sup>25</sup>

An important limitation on the power of the governor to appoint persons to office is the informal requirement that the individual's state senator must approve the appointment. This is known as **senatorial courtesy** and applies regardless of the

**senatorial courtesy** the practice whereby the president, before formally nominating a person for a federal judgeship, seeks the indication that senators from the candidate's own state support the nomination; in Texas, the practice whereby the governor seeks the indication that the senator from the candidate's home supports the nomination

party affiliation of the governor, senator, or appointee. Usually, if the appointee's senator concurs in the appointment, the remainder of the Senate will agree. However, if the appointee's senator opposes the appointment, the remainder of the Senate will also oppose the appointment.

The process for removing an appointee is also complicated. A governor can remove his or her appointee who refuses to resign with the approval of two-thirds of the Texas Senate.<sup>26</sup> This complex procedure for the termination of members of boards and commissions, along with the practice of senatorial courtesy, can be a significant limitation on the governor's power to influence the policies of state agencies. Chairs of boards, however, serve at the pleasure of the governor and so can easily be removed if they do something that displeases the governor.

**executive budget** the state budget prepared and submitted by the governor to the legislature, which indicates the governor's spending priorities. The executive budget is overshadowed in terms of importance by the legislative budget

**legislative budget** the state budget that is prepared and submitted by the Legislative Budget Board (LBB) and that is fully considered by the House and Senate

**Budgetary Power** Officially, the Texas governor is the state's chief budget officer. As such, governors submit an **executive budget** to the legislature. This budget suggests a plan for revenue and expenditure for Texas, but more important, it indicates the governor's priorities for the state in the next biennium.

In 1949 in an effort to gain more control over the state's budget, the legislature established the Legislative Budget Board (LBB), which is responsible for preparing a **legislative budget**. Thus, two budgets are prepared and submitted to the legislature: an executive budget by the governor and a legislative budget by the LBB. As a creation of the legislature, the LBB's budget proposal receives more consideration by the House and Senate than the governor's recommendations, and in recent years the governor's budget has fallen into disuse. Legend has it that the governor's budget has been used as a doorstop and a paperweight, and one diminutive legislator used two copies as a booster in his office chair. In 1989, Governor Clements recognized the futility of submitting an executive budget and simply endorsed the recommendations of the LBB. Ann Richards followed Clements's precedent, but Governor George Bush took a more active role in budget preparation and Governor Perry was very involved in dealing with the state's 2011 budgetary shortfall.

The governor has some control over the final appropriations bill through the use of the line-item veto; however, the governor must have the support of the legislative board to impound funds or transfer funds from one agency to another if circumstances change from the time the money was appropriated. There is one exception to the constraint on gubernatorial power to transfer funds. Under a 1993 law, the governor can declare an emergency and bypass the other legislative members of the LBB. In 2014, Governor Perry declared an emergency and shifted \$38.7 million from a Department of Public Safety fund to pay for the National Guard to patrol the Texas-Mexico border. Overall, the budgetary process does not provide the governor acting alone with a highly effective means of controlling state agencies.

### for critical analysis

What are the governor's formal powers? How does the governor exercise these powers?

**Military and Police Power** The governor is commander in chief of the state's National Guard units when they are not under presidential orders. These units are headed by the adjutant general, who is appointed by the governor. The governor can declare martial law, which suspends most civil authority and imposes military rule over an area. Martial law can be declared in the event of a riot, flood, hurricane, tornado, or other disaster to protect lives and property. In Texas, law enforcement and police power are primarily a local responsibility, and the governor has



*Deployment of the state's national guard in times of emergency is one aspect of the governor's military power. Here, Texas National Guard troops deliver relief supplies after Hurricane Ike in 2009.*

few responsibilities in this area. The governor appoints, with Senate approval, the three-member Public Safety Commission that directs the work of the Department of Public Safety (DPS). The DPS is responsible for highway traffic enforcement (highway patrol), drivers' licensing, motor vehicle inspection, truck weighing stations, and the Texas Rangers. When circumstances warrant, the governor can assume command of the Rangers, an elite, highly trained force of about 150 officers with 63 support staff. If there is evidence of ongoing violence or corruption, the governor can use informal powers, the prestige of the governor's office, and appeals to the media to compel appropriate action from local law enforcement officials.

## Legislative Powers of the Governor

As we saw earlier, the governor's legislative powers include message power, power of the veto, and the authority to call special sessions and set their agendas. If a governor uses these powers effectively, he or she can have considerable control over the state's legislative business, but they do not enhance his or her ability to control the executive branch of state government.

**Message Power** Any communication between the governor and the legislature is part of the message power. Early in each regular session, the governor delivers a State of the State message. In this speech to a joint session of the legislature, the governor explains his or her plan for the state in the coming two years. The governor may propose specific programs or simply set general goals for the state. The speech is covered by most news media, and it is often broadcast on public television and radio stations.

If the governor submits an executive budget, he or she may address the legislature on the important items in the proposed plan of spending and revenue. At the very least, the budget proposal is forwarded to the legislature with a letter briefly explaining the budget.

Lobbying by governors is part of the message power. Governors try to pass or defeat bills important to them. For example, early in 1991, Governor Ann Richards successfully lobbied for legislation that would expand higher educational opportunities in the Rio Grande Valley and that resulted in the creation of the University of Texas at Brownsville.

**veto** the governor's power to turn down legislation; can be overridden by a two-thirds vote of both the House and Senate

**post-adjournment veto** a veto of a bill that occurs after the legislature adjourns, thus preventing the legislature from overriding it

**line-item veto** the power of the executive to veto specific provisions (lines) of an appropriations bill passed by the legislature

Although not exactly part of the governor's message power, personal connections with and the use of staff are effective ways for a governor to communicate with and influence the legislature.

**Veto Power** Governors of Texas can sign or **veto** legislation—but in most cases they sign legislation. Since becoming governor in 2000, Perry vetoed 301 bills.<sup>27</sup> Examples of bills vetoed by the governor

- a bill that would have provided state training for armed classroom teachers
- a bill aimed at preventing wage discrimination against women
- a bill that would have required Texas Railroad Commission members to resign before running for another state office
- a bill that would have made it easier for small towns to obtain the rights to run their water systems if their water rates were at least 50 percent higher than the rates in some nearby cities
- a bill that would have ordered a study of the state's curriculum standards and would have limited the number of benchmark exams school districts could administer locally
- a bill that would have reduced the power of university regents and made it more difficult for the regents to fire a university president<sup>28</sup>

When the governor vetoes a bill after the legislature adjourns, it is called a **post-adjournment** (or strong) **veto**. This veto is absolute, because the legislature that passed the vetoed bills no longer exists. As a result, if the governor decides to veto a bill, it stays vetoed.

Texas governors possess the **line-item veto**, which is the ability to veto individual parts of an appropriations bill. The governor signs the bill but strikes out particular lines in the bill. Items struck from the bill do not become law, but the remainder of the appropriations bill does.

In 2013, Governor Perry used the line-item veto to eliminate about \$7.5 million in state funding for the prosecutors who investigate public corruption cases in the state capital. Perry claimed that the investigative unit had “lost the public confidence” as a result of the DWI conviction and unruly behavior while arrested of the Democratic district attorney of Travis County, Rosemary Lehmberg. The funding veto jeopardized the jobs of 35 employees and threatened about 400 cases being investigated. Critics of the veto claimed the veto was an effort to stop the continuing investigation into corruption in the Cancer Prevention and Research Institute that potentially could prove embarrassing to Governor Perry. The governor also vetoed a total of \$29 million in spending items, many for higher education such as \$2 million for the petroleum engineering program at Texas A&M International University, \$1.5 million for the Department of Mexican-American Studies at UT-Austin, and smaller items at the University of North Texas, Prairie View A&M, and the University of Houston.<sup>29</sup>

This line-item veto allows Texas governors considerable control over appropriations to state agencies, and this power can be used by the governor to reduce state expenditures or to punish agencies or programs disfavored by the governor.<sup>30</sup> It is one important power of the governor that is greater than that of the president of the United States, who does not have the power to issue a line-item veto because the U.S. Supreme Court has held that such a power violates separation of powers in the U.S. Constitution.

**Special Sessions** Special sessions of the Texas legislature are called by the governor, last for no more than 30 days, and may consider only those items placed on the agenda by the governor. **Special sessions** are called to address critical problems as defined by the governor. The nature of special sessions allows the legislature to focus attention on specific issues.

From 1989 through 2013 the legislature met in 22 special sessions. These sessions considered the complicated and divisive issues of reform of workers' compensation laws, public school finance, reapportionment, and voter identification. The sessions ranged from 30 days to 2 days, with six of the sessions occurring in 1989–90 and five occurring from 2005 through 2011.<sup>31</sup> In 2013 three special sessions were called, two lasting 30 days and one lasting seven days. The issues involved redistricting, sentencing, transportation, and abortion regulation, which received the most attention.

**special session** a legislative session called by the governor that addresses an agenda set by him or her and that lasts no longer than 30 days

## Judicial Powers of the Governor

Texas elects each of its appellate and district court judges, but when vacancies occur because of the death, resignation, or retirement of the incumbent or as a result of creation of new courts, the governor is responsible for appointing individuals to fill these vacancies. The governor also fills vacancies (before an election) in the office of district attorney.

Once appointed to office, judges tend to remain in office. More than 95 percent of incumbents win re-election. Through this power to appoint judges, the governor has considerable influence over the Texas judicial system.

Clemency normally includes the power to issue pardons, grant paroles, and issue reprieves. The governor's power in this area is severely limited because of abuses of previous governors. Pardons can be granted only on the recommendation of the Board of Pardons and Paroles. Texas governors can neither grant nor deny paroles. Governors have the ability to grant each person condemned to death one 30-day reprieve. Additional reprieves and any other act of clemency must be recommended by the Board of Pardons and Paroles.

In December 2012, Governor Perry granted clemency to 14 persons after receiving a recommendation from the Texas Board of Pardons and Paroles. In one case, a 41-year-old man who had been convicted of public intoxication in 1988 and sentenced to pay a \$215 fine was granted a full pardon. In another, a woman who had been convicted of debit card abuse in 1993 and sentenced to five years of deferred adjudication probation, a \$1,500 fine, and \$510 in restitution received a full pardon. In another case, a man had been convicted of assault in 1987 and theft in 1988. He had been sentenced to three months of deferred adjudication probation and a \$100 fine for the assault and six months of deferred adjudication probation and a \$100 fine for the theft. He received a full pardon. Interestingly, in none of these cases did the pardon release a person from imprisonment. Rather it cleared their record of a crime from years in the past.<sup>32</sup>

## The Office and Its Occupants

People often expect governors to be able to do things they are not equipped to do. They are expected to be chief executives in more than name only despite being granted little in the way of formal power. Constitutionally and statutorily, the governor is ill-equipped to exert control over the Texas bureaucracy.

John Connally was regarded as a strong governor, whereas Dolph Briscoe was regarded as weak. In part, the difference was that Connally actively sought to lead.

As governor, he had a dynamic personality, whereas Briscoe was more retiring in his personal style and did not seek to have the impact Connally had. Allan Shivers acted as if the governor of Texas had the powers of a king and so he was considered an imperial governor. Preston Smith was described as one of the most ordinary people ever to serve as governor. Smith is seldom given credit for doing much as governor, yet he established the first actual planning organization in Texas government. Rick Perry has used his lengthy service and his appointment powers over state boards and commissions to exert unusually strong control over the operation of government.

In large part, the office of governor is what the person holding the position makes it. Whether the governor is viewed as strong or weak depends on how the governor conducts him- or herself in office, uses the position's formal power, and exercises political influence.

## ● The Plural Executive

**plural executive** an executive branch in which power is fragmented because the election of statewide officeholders is independent of the election of the governor

**Identify the other elected officials who make up the plural executive**

When Texans drafted a constitution in 1876, they chose to limit executive power and disperse it through several elected officials called the **plural executive**. Texans elect six of the seven people who make up the plural executive:

the governor, lieutenant governor, attorney general, comptroller of public accounts, commissioner of the General Land Office, and commissioner of agriculture (see Table 8.3 and Table 8.4). The governor appoints the seventh person, the secretary of state. With the exception of the Commissioner of Agriculture whose office is created by statute, these offices are established by Article 3, Section 1, of the Texas Constitution. Except for the lieutenant governor, who receives the same salary as a legislator, salaries of members of the plural executive are set by the legislature.

**TABLE 8.3**

### Elected Officials in Texas with Executive Responsibilities

SINGLE-ELECTED EXECUTIVES	MULTELECTED EXECUTIVES
Governor	Railroad Commission (3 members)
Lieutenant governor	State Board of Education (15 members)
Attorney general	
Land commissioner	
Agriculture commissioner	
Comptroller	

**TABLE 8.4****State Executive Officeholders, 2015**

Governor	Greg Abbott (R)
Lieutenant governor	Dan Patrick (R)
Attorney general	Ken Paxton (R)
Comptroller of Public Accounts	Glenn Hegar (R)
Commissioner of the General Land Office	George P. Bush (R)
Commissioner of Agriculture	Sid Miller (R)
Railroad commissioners	Ryan Sitton (R) David Porter (R) Christi Craddick (R)
Secretary of State (appointed)	Carlos Cascos (R)

The Railroad Commission of Texas and the State Board of Education assume considerable executive authority in the state, although these offices are not formally part of the executive branch established under Article 4 of the Texas Constitution. Instead the Railroad Commission of Texas is created by the legislature under statutory law authority granted under Article 10, Section 2, of the Texas Constitution. The State Board of Education, in contrast, is created under Article 7, Section 8. This is important because the constitution allows the legislature to decide in both cases whether these offices will be appointed or elective, how large the commission or board will be, and how long terms of office will be.

If the legislature wanted to change the way that the Commissioner of Agriculture, the Railroad Commission, or the Board of Education is selected, all it would have to do is pass a new law. To change the other executive offices' term or authority would demand a constitutional amendment. The ultimate result of all these constitutional nuances is vast fragmentation of responsibility for public policy in the state.

Elections are partisan, and each member of the plural executive may choose to operate independently of the others. At times, members of the plural executive may be in competition with each other, often because of conflicting personal ambitions. That occurred when John Hill was attorney general and sought to take the governorship from Dolph Briscoe, and when Mark White was attorney general and sought the governorship from Bill Clements. Because of the difficulty of defeating incumbents, however, it is far more likely that members of the plural executive will wait for a vacancy in a more prestigious office before seeking that higher office. Champions of the plural executive believe that it limits the power of executive officials and makes these officers more accountable to the public. Opponents assert the plural executive is inefficient and does not promote good government. The governor is a member of the plural executive, but this multipart executive limits the governor's control of the executive branch because he or she has little authority over this group.

**TABLE 8.5****Campaign Contributions in 2010 and the Plural Executive**

OFFICE	LOSING CANDIDATE	CONTRIBUTIONS TO LOSER (\$)	WINNING CANDIDATE	CONTRIBUTIONS TO WINNER (\$)
Governor	B. White (D)	\$26,291,535	R. Perry (R)	\$39,328,540
Lieutenant governor	L. Chavez-Thompson (D)	958,040	D. Dewhurst (R)	9,240,480
Attorney general	B. Radnotsky (D)	1,135,031	G. Abbott (R)	5,828,370
Comptroller	(No Democratic candidate)	0	S. Combs (R)	2,744,001
Agriculture Commissioner	P. Gilbert (D)	336,363	T. Staples (R)	1,742,941
Land commissioner	H. Uribe (D)	102,487	J. Patterson (R)	864,688

SOURCE: National Institute on Money in State Politics.

One can get a sense of the importance of the various positions in the plural executive simply by looking at the campaign contributions received by winning candidates for these offices in the 2010 elections. Table 8.5 shows the contributions received by both the Democratic and the Republican nominees in 2010. Governor Rick Perry, the incumbent Republican, received over \$39 million in contributions. In contrast, his Democratic opponent, Bill White, received much less. The incumbent Republican lieutenant governor David Dewhurst had over \$9 million in contributions, compared with only about \$958,000 in contributions for his opponent. The winning candidate for attorney general had nearly \$6 million in contributions, the winning candidate for comptroller more than \$2.7 million in contributions even though she had no Democratic opponent. The agriculture commissioner had more than \$1.7 million, and the land commissioner had more than \$864,000. Two things are especially notable about these figures. One is the enormous amounts of money that are contributed to candidates. The other is how lopsided the contributions are in favor of the Republican candidates. It is a sign of the strength of the Republican Party and the weakness of the Democratic Party in Texas elections that Republican candidates raise so much more money for their campaigns than do Democratic candidates.

## Secretary of State

**secretary of state** state official, appointed by the governor, whose primary responsibility is administering elections

Strangely, given Texas's fragmentation of power, the governor does appoint the Texas **secretary of state**, even though this office is an elective one in 37 other states.<sup>33</sup> Though once considered a "glorified keeper of certain state records," the secretary of state is now an important officer.<sup>34</sup> The secretary of state has myriad responsibilities, and the appointment of a secretary of state is one of the governor's most important tasks.

As Texas's chief election official, the secretary of state conducts voter registration drives. His or her office works with organizations such as the League of Women Voters to increase the number of registered voters. The secretary of state's office also collects election-night returns from county judges and county clerks and makes the results available to the media. This service provides media and voters with a convenient method of receiving the latest official election returns in Texas.

All debt and Uniform Commercial Code filings are placed with the secretary of state's office. When any individual borrows money from a financial institution, a copy of the loan agreement is placed in the secretary of state's office.

## Lieutenant Governor

The **lieutenant governor** has executive responsibilities, such as serving as acting governor when the governor is out of state and succeeding a governor who resigns, is incapacitated, or is impeached. The real power of the office of lieutenant governor, however, is derived from its place in the legislative process.

According to the Texas Constitution, the lieutenant governor is the "Constitutional President of the Senate" and has the right to debate and vote on all issues when the Senate sits as a "Committee of the Whole." The Texas Constitution also grants the lieutenant governor the power to cast a deciding vote in the Senate when there is a tie. Like the Speaker of the House, the lieutenant governor signs all bills and resolutions. The constitution names the lieutenant governor to the Legislative Redistricting Board, a five-member committee that apportions the state into senatorial and house districts if the legislature fails to do so following a census. Other powers of the lieutenant governor are derived from various statutes passed by the legislature. For example, the lieutenant governor is chair of the Legislative Budget Board and is a member of a number of other boards and committees, including the Legislative Audit Committee, the Legislative Education Board, the Cash Management Committee, and the Bond Review Board.

The Texas Constitution grants the Senate the power to make its own rules, and lieutenant governors traditionally have been granted significant legislative power by the Senate itself. The Senate rules empower the lieutenant governor to decide all parliamentary questions and to use discretion in following Senate procedural rules. The lieutenant governor is also empowered to set up standing and special

**lieutenant governor** the second-highest elected official in the state and president of the state Senate



*In 2014, Texans elected conservative state senator Dan Patrick (left, R-Houston) to the powerful position of lieutenant governor. He defeated state senator Leticia Van de Putte (right, D-San Antonio) in the election.*

## for critical analysis

How does the power of the lieutenant governor differ from that of the governor?

committees and to appoint committee members and chairs of the committees. The Senate rules, and not just the Texas Constitution, make the lieutenant governor one of the most powerful political leaders in the state. New Senate rules passed by a future Senate could, of course, substantially alter the power possessed by the lieutenant governor.

**Political Style of Lieutenant Governors** Bob Bullock served as lieutenant governor of Texas from 1991 to 1999. A force in Texas politics for over 40 years, he was one of the strongest and most effective lieutenant governors Texas politics had ever seen. He took a bluff, rough, tough, head-knocking approach to leadership. He was feared and respected by friends and foes alike.

His successor, Rick Perry, brought a very different style to the office. The first Republican elected lieutenant governor in over 100 years, Perry had served two terms as the Texas commissioner of agriculture from 1985 to 1991. Prior to that, he served in the Texas House of Representatives, representing a rural west Texas district as a Democrat. His switch to the Republican Party reflected the broader movement of rural conservatives in the 1980s and 1990s. Expectations for Perry were low when he assumed office. In contrast to Bullock, Perry had a low-key style. But his style was appreciated by senators long under the demanding eye of Bob Bullock. Perry compared himself with a football player following in the footsteps of the Heisman Trophy winner Ricky Williams from the University of Texas. Like a running back imagining himself scoring a touchdown, Perry actually practiced banging a gavel in the empty Senate chamber. Perry's situation was also made more difficult by the fact that then-incumbent governor George W. Bush was actively pursuing the presidency, leaving additional jobs and uncertainties on Perry's shoulders.

Democratic senator John Whitmire, whom Perry had removed as chairman of the Senate Criminal Justice Committee, may have offered the best evaluation of Perry's leadership ability when commenting on a newspaper article that claimed Perry had lost control of the Senate during a debate over hate-crime legislation. Whitmire said, "I don't know how in the hell you say he lost control of the Senate. Was it a major difference in the way Bullock would have done it? Yeah. Serious difference. But I think members kind of appreciated the fact he didn't use his position as lieutenant governor to strong-arm members into positions that were contrary to their districts. Do I agree with all his decisions or operations, philosophy? Of course not. Essentially he was a freshman. . . . I'm sure he would be the first to tell you he learned by doing. No one's ever tried to govern us while the governor's been running for president. He had a good session."<sup>35</sup>

When George W. Bush became president and Lieutenant Governor Rick Perry became governor, the Senate elected one of its members to serve as lieutenant governor. That person was Bill Ratliff, a Republican from Mount Pleasant who was chairman of the powerful Senate Finance Committee. Ratliff had been in the Senate since 1989. A civil engineer, Ratliff was a strong believer in bipartisanship and was fascinated by the policy-making process. Known for his candor and moderation, he quickly alienated conservatives in his party when he named the Democratic senator Rodney Ellis of Houston as his replacement as chairman of the Finance Committee. As the presiding officer of the Senate, Ratliff oversaw a legislative session that had considerable accomplishments, such as passage of a statewide teacher health plan and the extension of Medicaid coverage to hundreds of thousands of poor children.

One poll showed Ratliff the leader in a Republican primary for lieutenant governor, and so he announced he would seek the office in the next election. However,

one of his opponents was Land Commissioner David Dewhurst, who claimed he would spend tens of millions of dollars of his own money in the race. Ratliff soon ran into trouble with Republican contributors whom he needed in order to compete with Dewhurst's money. Ratliff quickly discovered that his political moderation was not favored by many contributors, and with love for policy but distaste for politics, Ratliff concluded he should withdraw and not be a candidate for the office. One of his advisers suggested that Ratliff claim he was dropping out of the race because of a fatal disease. The fatal disease, noted Ratliff, was "independence and moderation."<sup>36</sup>

Dewhurst successfully ran for lieutenant governor in 2002 and was re-elected in 2006 and in 2010. As lieutenant governor, Dewhurst was in very different political circumstances from his two Republican predecessors, Perry and Ratliff. Republicans held a majority in the Senate throughout the Dewhurst years. Though Dewhurst pledged to work with state Democrats and appointed some as committee chairmen, partisanship became an increasingly divisive force in the state Senate under Dewhurst. Far more low-key than Bob Bullock and much less dominant a personality, Dewhurst has proven an effective lieutenant governor who unsuccessfully sought to replace Kay Bailey Hutchison as U.S. senator from Texas and was defeated in the Republican run-off primary for lieutenant governor by Dan Patrick, an ultra-conservative state senator. Patrick received 65 percent of the vote against Dewhurst in the run-off primary and won the general election with 58 percent of the vote. He will likely prove to be a more partisan and more bombastic personality than Dewhurst.

## Attorney General

The **attorney general** (AG) is elected to a four-year term and acts as the chief lawyer for the state of Texas. The AG is, in effect, head of Texas's civil law firm. Currently the Texas AG oversees the work of over 700 lawyers.

**attorney general** elected state official who serves as the state's chief civil lawyer

The AG's office is concerned primarily with civil matters. When a lawsuit is filed against the state or by the state, the AG manages the legal activities surrounding that lawsuit. Any time a state agency needs legal representation, the AG's office represents the agency. In any lawsuit to which Texas is a party, the AG's office has full responsibility to resolve the case and can litigate, compromise, settle, or choose not to pursue the suit.

One of the more important powers of the AG's office comes from the opinion process. Any agency of state or local government can ask the AG's office for an advisory opinion on the legality of an action. The AG's office will rule on the question, and the ruling has the force of law unless overturned by a court or the legislature.

Probably the most controversial and criticized aspect of the work of the AG's office is child support collection. Almost one-half of the AG's 4,000 employees are involved in collecting child support, and they have collected more than \$21 billion since Greg Abbott became AG. However, this program is the subject of intense criticism because much child support remains uncollected.

The AG's office has little responsibility in criminal law but may appoint a special prosecutor if a local district attorney asks the AG for assistance. This can happen when there is a potential conflict of interest, as, for example, if the district attorney is a friend of or works with a local official who is under criminal investigation. In one recent case, lawyers from the AG's office prosecuted a state district judge in Collin County on bribery charges.



*The General Land Office is influential in large part because it awards oil and gas exploration rights for publicly owned lands. Land Commissioner George P. Bush was elected in 2014.*

**land commissioner** elected state official who is the manager of most publicly owned lands

**agricultural commissioner** elected state official who is primarily responsible for enforcing agricultural laws

### for critical analysis

The commissioner of agriculture, the land commissioner, the state comptroller, and the attorney general each head agencies that have significant responsibility for the operation of state government. To what extent is the public aware of these agencies and the major role they play in government?

Generally, criminal cases in Texas are prosecuted by district or county attorneys elected in each county. The county is usually responsible for the costs of the trial and for all appeals in state court. If a criminal case is appealed to the federal courts, the AG's office assumes responsibility.<sup>37</sup>

### Commissioner of the General Land Office

The General Land Office (GLO) is the oldest state agency in Texas. Historically the **land commissioner** gave away land. Today, the GLO is the land manager for most publicly owned lands in Texas. Texas owns or has mineral interest in 13 million acres of land in the state, plus all submerged lands up to 10.35 miles into the Gulf of Mexico. All but 28 of Texas's 254 counties have some of these public lands.

The GLO also awards grazing and oil and gas exploration rights on this land. Thousands of producing oil and gas wells are found on state-owned land and are managed by the GLO. These responsibilities make the office of land commissioner quite influential. A significant portion of royalties on oil and natural gas produced by these wells goes to the Permanent School Fund and the Permanent University Fund.

The commissioner also manages the Veterans' Land Program, through which the state makes low-cost loans to Texas veterans. The program includes loans for land, housing, and home improvements. Recently, the GLO was given authority over some environmental matters. The land commissioner is responsible for environmental quality on public lands and waters, especially along the Texas coast. All of Texas's Gulf Coast beaches are publicly owned and under the jurisdiction of the GLO.

In recent years, the former commissioner of the GLO, Jerry Patterson, was involved in considerable controversy over the disposition of 9,269 acres of state land in the Christmas Mountains just north of Big Bend National Park. The Christmas Mountains land was under the control of the GLO and Patterson offered to sell the land to either public or private entities. After a public outcry over the proposed sale, the National Park Service expressed interest in accepting a donation of the land. However, Patterson, who is staunchly pro-hunting and pro-handgun, rejected the proposed donation because at the time the National Park Service banned hunting and the carrying of handguns in national parks. Finally, in 2011 the land was transferred to the Texas State University System, where it will serve as an "outdoor classroom." To satisfy Patterson's concerns, it was agreed that the land will be open to those who are licensed to carry handguns and to hunting.<sup>38</sup>

### Commissioner of Agriculture

The **agricultural commissioner** is primarily responsible for enforcing agricultural laws. These include administration of animal quarantine laws, inspection of food, and enforcement of disease- and pest-control programs. Enforcement of the state's laws helps to ensure that Texas's farm products are of high quality and are disease free.

The Department of Agriculture checks weights and measures. Each year a representative of the department checks each motor fuel pump to make sure that it dispenses the correct amount of fuel. Scales used by grocery stores and markets are checked to guarantee that they weigh products correctly.

Farming and ranching are big business in Texas. Although a large number of small family farms exist in the state, large corporate farms increasingly dominate Texas agriculture. These large agribusinesses are greatly affected by the decisions of the commissioner. Such decisions can increase or decrease the cost of production. Changes in production costs affect the profit margins of these agribusinesses and ultimately the price consumers pay for food products.

## Comptroller of Public Accounts

The **comptroller** is a powerful state official because he or she directs the collection of tax and nontax revenues and issues an evaluation and estimate of anticipated state revenues before each legislative session. Tax collection is the most visible function of the comptroller. The taxes collected by the comptroller include the general sales tax, severance tax on natural resources, business franchise tax, motor fuel tax, inheritance tax, most occupational taxes, and many minor taxes.

**comptroller** elected state official who directs the collection of taxes and other revenues and estimates revenues for the budgeting process

Although collecting billions in revenue is important, estimating revenues provides the comptroller with more power. These estimates, issued monthly during legislative sessions, are vital to the appropriations process because the legislature is prohibited from spending more than the comptroller estimates will be available. Final passage of any appropriations bill is contingent on the comptroller's certifying that revenues will be available to cover the monies spent in the appropriation. Because most bills require the expenditure of monies, this certification function provides the comptroller with significant power over the legislative process. If the comptroller is unable to certify that monies are available to pay for the appropriation, the legislature must reduce the appropriation or increase revenues. More than just an auditor, accountant, and tax collector, the comptroller is a key figure in the appropriations process.

In 1996 the office of state treasurer was eliminated, and the comptroller of public accounts assumed the duties of that office. Since then, the comptroller of public accounts has been the official custodian of state funds and is responsible for the safety of the state's money and for investing that money.

To ensure the safety of Texas's money, funds are deposited only in financial institutions designated by the State Depository Board as eligible to receive state monies. Deposits are required to earn as much money as possible. The more money earned as interest on deposits, the fewer tax dollars are needed.

An interesting responsibility of the comptroller is returning abandoned money and property to their rightful owners. In October of each year, the comptroller publishes a list of individuals with unclaimed property. One list included \$117,000 in a forgotten savings account, a certificate of deposit for \$104,000, gold coins, diamond rings, family photos, and rare baseball trading cards. Money or property that remains unclaimed goes to the state.

## Accountability of the Plural Executive

Except for the secretary of state, each member of the plural executive is directly accountable to the people of Texas through elections. The plural executive is accountable to the legislature in three ways: the budgetary process, Sunset Review, and the impeachment process.

The legislature can demonstrate its satisfaction, or lack thereof, with an agency of the plural executive by the amount of money it appropriates to that agency. A significant increase in appropriations indicates an agency in good standing with the



# A Plural or Single Executive?

## In many ways, the Texas

executive branch is similar to the federal executive branch. The governor, like the president, is the chief executive. The governor is the commander-in-chief of military forces in the state, has the power to appoint people to various administrative offices, and is responsible for making sure that the laws are faithfully executed. But unlike the president and vice-president who run on the same ticket, the governor and lieutenant governor are elected separately. Moreover, the governor of Texas does not have a cabinet that he appoints and controls. The Secretary of State is appointed by the governor, but the comptroller of public accounts, the attorney general, the land commissioner, and the agriculture commissioner (a statutory, not constitutional, office) are all elected separately. We call this a plural executive system because executive power is divided among different officeholders.

Many other states follow the federal model or single executive model, so that when the governor and lieutenant governor are elected to office together, they can appoint all of the relevant officeholders to run the executive branch. In these instances, the attorney general, the secretary of state, the agriculture commissioner, and all other "cabinet" officials are appointed by the governor and serve at his or her pleasure.

Advocates of the plural executive model, such as that used in Texas, argue that a decentralized system of power within the executive branch helps guard against abuses of power. The Texas Constitution intentionally provides for a weak governorship, and the plural executive is one way to guarantee this. If the attorney general and other statewide officials are not beholden to the governor, they will not necessarily support the governor's agenda. Supporters of the Texas model also argue that it is more democratic in that the



electorate has a larger role to play in the selection of executive officers.

Opponents of the plural executive model argue that the problem is not that the office of the governor is too powerful in Texas, but that it is too weak. The plural executive only makes it more difficult for the governor to govern effectively and creates a counterproductive tug of war among all of the separately elected officials. In the federal model, the president can decide who is best suited for a particular role and delegate power accordingly. The Texas governor, on the other hand, cannot give orders to the lieutenant governor or the attorney general, thus making it more difficult to run the state in a responsible manner.

In Texas's recent past, Republican governor George W. Bush had to work alongside Democratic lieutenant governor Bob Bullock in order to pass his legislative agenda. Some observers

saw this as a positive effect of the plural executive, because it required compromise for the good of the state. Opponents of the plural executive might have seen this as a negative effect, because it undermined the power of the governor to implement his agenda. Each form of governance has its benefits and its costs for democracy.

As of 2014 all of the statewide elected officials in Texas are Republicans. However, this does not guarantee policy unity. While former attorney general (now governor) Greg Abbott and former governor Rick Perry (both pictured above) have agreed on some of the major issues, such as the state of Texas suing the federal government over the Affordable Care Act, but this cooperation is not necessarily the norm. Many observers believe that the election of Tea Partyer Dan Patrick to lieutenant governor and Ken Paxton to attorney general in 2014 may pose problems to the newly elected governor Greg Abbott. In situations with a mix of Democrats and Republicans in the plural executive, disagreement is even more common. When Republican Bill Clements was governor of Texas, for example, Democratic attorney general Mark White and he were often at odds because of differences in their political views and White's ambition to become governor.

## critical thinking questions

1. Is the plural executive more democratic than the single executive model? Does it lead to more efficient and accountable government? Why or why not?
2. If you were to design a state executive branch, how would you decide whether to have a plural executive or a single executive? What are the pros and cons of each model?

legislature, whereas little or no increase in funds indicates legislative displeasure. Sunset Review can lead to reforms of an agency and even its elimination.

The Texas Constitution, not the legislature, creates most of the plural executive. Impeachment and conviction are the ultimate check on an elected official. The Texas House of Representatives can impeach an official for such things as criminal activity or gross malfeasance in office. The Texas Senate then tries the official. If convicted by the Senate, the official is removed from office.

## for critical analysis

What are the effects of a plural executive on accountability in state government?

### The Plural Executive and the Governor

The plural executive dilutes the ability of the governor to control state government. The governor appoints the secretary of state but has no control over other members of the plural executive. Officials are elected independently, and they do not run as a slate. They do not answer to the governor, and they do not serve as a cabinet. They tend to operate their offices as independent fiefdoms, and they jealously guard their turf. The plural executive can make state government appear as if it is going in several different directions at once. This is especially true when members of the plural executive are political rivals. For example, widely publicized tensions between Governor Rick Perry and Comptroller Carole Strayhorn led to Strayhorn's unsuccessful campaign as an independent against Perry in 2006.

With each member of the plural executive having separate and distinct responsibilities, state government and statewide planning lack cohesiveness. However, the plural executive is a product of Texas's history and environment. Like much of Texas government, it was a result of the public's negative reaction to Governor Edmund J. Davis at the close of Reconstruction.

## ● Boards, Commissions, and Regulatory Agencies

**Explain the roles played by boards, commissions, and regulatory agencies**

The state **bureaucracy** in Texas has numerous state boards, commissions, councils, and committees as well as major agencies within the plural executive that have administrative or advisory functions. In addition to the governmental bodies under the direct control of the single executives who are part of the elected plural executive, there are also bodies (1) run by multimember boards appointed by the governor and confirmed by the Senate; (2) with single executives appointed by the governor and confirmed by the Senate; (3) run by boards appointed by several persons within the plural executive or even by legislative officers, and confirmed by the Senate; and (4) run by multimember boards elected by the people. Overall, the state bureaucracy employed 308,800 in full-time equivalent positions in 2013, up from 274,776 employees in 2004.<sup>39</sup>

**bureaucracy** the complex structure of offices, tasks, rules, and principles of organization that are employed by all large-scale institutions to coordinate the work of their personnel

Governor Perry's lengthy service gave him enormous influence throughout state government, as he is the only Texas governor in modern history to have made every appointment in state government that a governor can make—and he also made numerous appointments to vacancies in office such as the Texas appellate courts and scores of district judgeships. State law usually sets the terms of persons on

state boards at four or six years. As a result, each new governor spends a great deal of time replacing holdover appointments from previous governors. With Perry's lengthy tenure as governor, however, those holdover appointments are long gone. The result, according to former state representative and author Brian McCall, is that "in this regard, [Perry] is by far the most powerful governor in Texas history. No governor has been able to do what he has done."<sup>40</sup>

Perry placed many of his closest advisers in key positions, which has spread not only his personal influence but also his personal political philosophy of a pro-business state government. To compare Perry's influence with previous governors, McCall noted that Governor Preston Smith in 1969 was able to appoint the entire board of regents at Texas Tech by getting an amendment inserted into a minor bill that changed the name of Texas Technological to Texas Tech University. When the name change took effect, the entire board of regents lost their positions and Smith was able to appoint the board. Perry appointed the entire boards of 17 public colleges and universities and has had a voice in selecting the chancellors of those universities.<sup>41</sup>

Perry also disciplined board members who have displeased him. The most notorious instance was in 2009 when he refused to reappoint three members of the Texas Forensic Science Board two days before they were to examine a flawed arson investigation. Perry also appointed a new chair of the Forensic Science Board, who abruptly canceled its meeting, and the review of the arson case never took place. In that same year, a Texas Tech regent who was a Perry appointee claimed that a former Perry staff member had told him to resign from the Board of Regents because the regent had endorsed Kay Bailey Hutchison in the Republican primary for governor.<sup>42</sup>

Not all of Perry's nominees were approved by the (overwhelmingly Republican) state Senate. One of his nominees for the Board of Pardons and Paroles, best known for her political activism and opposition to sex-toy parties in the Burleson, Texas, area, was turned down by the Senate with an overwhelming 27-to-4 vote against her confirmation. State senator John Whitmire, a Democrat and the chair of the Senate Criminal Justice Committee, argued that she was turned down not because the issue was a partisan one, but simply because she was not qualified for a position that considers "life and death matters."<sup>43</sup>

## Multimember Appointed Boards

Most boards and commissions in Texas are headed by members appointed by the governor and confirmed by the Senate. Some commissioners are appointed by a variety of other people, including the lieutenant governor, the Speaker of the House, or leaders of select professional organizations like the State Bar or State Medical Association. Multimember commissions with heads appointed by the governor include innocuous agencies, such as the Bandera County River Authority, the State Seed and Plant Board, the Caddo Lake Compact Commission, and the Texas Funeral Commission. There are also better-known agencies, such as the Texas Alcoholic Beverage Commission, the Department of Parks and Wildlife, the Texas Youth Commission, and the Texas Department of Corrections. Except in the case of a major controversy, such as the sexual abuse scandal that embroiled the Texas Youth Commission in 2007, these agencies work in anonymity, although several of them have a direct effect on the lives of Texans. One such example is the Public Utilities Commission.



The Department of Parks and Wildlife is an agency in the Texas executive branch and is led by a board appointed by the governor. The department manages natural resources and fishing, hunting, and outdoor recreation in the state. Here, an employee measures fish caught near Corpus Christi.

**Public Utilities Commission (PUC)** More than most other agencies, the Public Utilities Commission (PUC) has a direct effect on consumers' pocketbooks. Before 1975 cities in Texas set utility rates. The PUC was established in 1975, in part to protect consumers and to curb the rate at which utility costs were increasing. The commission is responsible for setting all local telephone and some electric rates.

Local telephone rates vary from one part of Texas to another, but all rates in a service area are the same. The commission also determines the maximum charge for pay telephones and approves additional services such as caller ID, call waiting, and call forwarding. A rule that took effect in September 1999 prohibits an individual's local service from being disconnected for nonpayment of long-distance bills. Another regulation by the PUC establishes a "no call" list for phone numbers of Texas residents who do not wish to receive telemarketing calls from companies that do not have a business relationship with the phone customer.

With the introduction of retail competition to the electric industry, the PUC has had a major role in providing information to consumers and in setting requirements for providers of electric services. The PUC maintains a web site that allows electric customers to compare the costs of electricity from the various electric service providers.

## Appointed Single Executives

**The Texas Department of Insurance** Whereas the PUC is run by a multimember body appointed by the governor and confirmed by the Texas Senate, the Texas Department of Insurance is run by one commissioner appointed by the governor for a two-year term and confirmed by the Senate. This single-member appointive system has been in effect since 1993, when governance of the agency by a three-member appointed board was abandoned in favor of single-member governance. The purpose of the Department of Insurance is to regulate the insurance market in Texas, a complicated task that affects most Texans.

In the early 2000s, Texas was faced with huge increases in the cost of homeowners' insurance brought on at least in part by major increases in insurance claims, most notably for mold damage. From the first quarter of 2000 to the fourth quarter of 2001, the number of mold claims increased from 1,050 to 14,706. Additionally, the costs of these claims increased significantly to the point that insurance payments became greater than insurance premiums. And with a declining economy during this period, insurance companies were no longer making substantial profits on their investment of insurance premiums. Homeowner premiums increased rapidly. Between 2001 and 2002 homeowners' premiums rose 21.8 percent. Some companies chose not to write any new homeowners' policies; other companies simply pulled out of the Texas market. In 1997, 166 companies were writing homeowners' policies in Texas; by 2003 only 101 companies were writing such policies.<sup>44</sup>

In response, the Texas Department of Insurance began to deregulate insurance coverage so that, for example, policies could be written that charged more for complete mold coverage, less for reduced mold coverage, and significantly less for no mold coverage.

The legislature also stepped into the homeowners' insurance cost issue, which by 2002–03 was reaching crisis proportions. One effect of the legislature's involvement was a "file and use" regulatory system that was implemented at the end of 2004. This system allowed insurers to institute new rates immediately after filing them with the Texas Department of Insurance. The commissioner of insurance can then disapprove of the new rates and may force the company to issue rebates to policyholders.<sup>45</sup> Thus, the commissioner of insurance appears to wield great power over insurance rates but only after those rates have gone into effect.

In 2007, Insurance Commissioner Mike Geeslin canceled Allstate's 5.9 percent rate hike, but Allstate got a court order allowing it to keep charging higher rates, at least temporarily. State Farm has been battling the Department of Insurance for years after ignoring an order from the commissioner to cut its rates by 12 percent.

State Farm's battle with the Texas Department of Insurance has taken on the characteristics of a marathon. The company has shown no sign of compromising with the state in its legal battle over the state's claim that it overcharged homeowners. Additionally, in 2009–10 it twice filed to increase its insurance rates and ignored the insurance commissioner's claim that customers deserved a break from increases. The result was a 35 percent boost in insurance rates for many customers in Dallas and nearby counties. State Farm has also successfully sued the Texas Department of Insurance to keep the agency from publicizing documents related to its rate increases. State Farm's obstinacy in dealing with the Insurance Commission means that for a 10-year-old brick home in north Dallas with an insured value of \$150,000, the premium would average about \$1,679 per year compared with the average premium charged by other companies of \$1,298 per year.<sup>46</sup> While the department's battles with Allstate and State Farm continue, insurance companies have been reducing coverage of homes on the Texas coast out of fear that a hurricane could cause the companies major losses.<sup>47</sup>

Although insurance companies advocate less regulation, consumer groups argue that the insurance commissioner has inadequate powers to deal with insurance companies. Indeed, it is doubtful that the commissioner has sufficient power to force an uncooperative insurer to comply with his or her decisions. The commissioner is also faced with the seemingly intractable problem of keeping rates low and coverage available in hurricane-prone areas to which more and more people are moving.

## Multimember Elected Boards

Members of two state agencies are elected by the voters: the Railroad Commission of Texas and the State Board of Education. The Railroad Commission has 3 members elected statewide to six-year terms of office. One of the 3 members is elected every two years. The Board of Education is a 15-member board elected to four-year terms from single-member districts.

**Railroad Commission of Texas (RRC)** At one time, the Railroad Commission of Texas (RRC) was one of the most powerful state agencies in the nation. It regulated intrastate railroads, trucks, and bus transportation and supervised the oil and natural gas industry in Texas. For most of the RRC's existence, regulation of the oil and gas industry was the RRC's primary focus.

Today the RRC is a shadow of its former self. Court decisions, deregulation of the transportation industry, other state and federal legislation, and the decline in the nation's dependence on Texas's crude oil production have diminished the commission's power. In 2005 the RRC's limited authority over railroads was transferred to the Texas Department of Transportation, so the RRC now has no authority over what was once its major reason for existence. During the RRC's heyday when Texas was a major oil producer, the commission limited production to conserve oil and to maintain prices. Because it restricted oil production, the RRC was one of the most economically significant governmental bodies on the national and international stage. As oil production shifted to the Middle East, the RRC became the model for OPEC, the Organization of Petroleum Exporting Countries, which also seeks to limit oil production to maintain prices. At one time, members of the Texas RRC wielded such vast economic power that they were among the state's most influential politicians. Renewed energy production in Texas as a result of fracking and horizontal drilling appears to again be increasing the importance of the RRC, although it will never again be a major decision-making body for world oil and gas prices. There are now simply too many major oil and gas fields outside of Texas.

**State Board of Education (SBOE)** The State Board of Education (SBOE) sets policy for public education (pre-kindergarten to 12th grade programs supported by the state government) in Texas. The education bureaucracy that enforces the SBOE's rules and regulations is called the Texas Education Agency (TEA). Together these two bodies control public education in Texas by determining licensing requirements for public school teachers, setting minimum high school graduation criteria for recommended or advanced curriculums, establishing standards for accreditation of public schools, and selecting public school textbooks.

Texas spends millions of dollars each year purchasing textbooks, and the state furnishes these books without charge to students. Books must meet stringent criteria, and because the state buys so many textbooks, publishers print books especially for students in Texas. Often states that spend less money on textbooks than Texas must purchase those originally printed for Texas.

The commissioner of education is appointed by the governor from a list of candidates submitted by the SBOE. He or she is administrative head of the TEA and serves as adviser to the SBOE. The commissioner of education is at the apex of the public education bureaucracy in Texas.

In recent years, the Texas SBOE has become an ideological battleground. In 2009 that conflict led the board to review how evolution was taught. In what was a partial defeat for the social conservatives, no longer would teachers be

*The State Board of Education sets policy for public education, from pre-kindergarten through 12th grade. In recent years, some of the board's decisions concerning curriculums and textbooks have generated controversy.*



required to teach “strengths and weaknesses” of evolution, although they would be encouraged to teach “all sides.” Other battles have broken out over other aspects of educational policy. For example, one policy goal was that high school students were to learn how the cultural contributions of “people from various racial, ethnic, gender, and religious groups shape American culture.” One of the leading social conservatives on the board proposed an unsuccessful amendment that would delete the words “from various racial, ethnic, gender, and religious groups.” That suggested, of course, that teaching would not focus on the role of those specific groups in shaping American culture. Another amendment proposed that students be required to evaluate the contributions of significant Americans—Thurgood Marshall, Billy Graham, Newt Gingrich, William F. Buckley, Jr., Hillary Rodham Clinton, and Edward Kennedy. All passed the board except for Edward Kennedy. Other issues involve whether César Chávez was significant enough to be in social studies textbooks and whether greater emphasis should be placed on Christianity in the founding of the nation.

Although many Texas voters may not be aware of them, the battles fought within the SBOE have wide-reaching effects. They affect not only the education of Texas schoolchildren but also that of children across the nation. Because the state’s textbook market is so large, the content of the textbooks used in Texas sets the tone for textbook content in other states that are less populous and therefore have smaller markets for texts.<sup>48</sup>

As a result of the 2010 elections, there was a power shift on the SBOE when the leader of the social conservatives who was the chair of the board was defeated. The 2012 elections created a new battle for control of the board. Because of changes in the single-member districts of the SBOE that were caused by redistricting, all members of the board were up for election.<sup>49</sup> The 2012 election reduced the social conservative block still further, continuing the anti-social conservative trend

begun in the 2010 elections. In 2014 there were seven seats up for election. Six incumbents ran, and all six were re-elected. The result is that the SBOE's position will likely change little.

## Making Agencies Accountable

In a democracy, elected officials are ultimately responsible to the voters. Appointed officials are indirectly accountable to the people through the elected officials who appoint them. Both are responsible to legislatures that determine responsibilities and appropriate money to carry out those responsibilities. In Texas, the plural executive is responsible to the legislature for its biennial funding and to the voters for re-election. The myriad state agencies look to the legislature for funding, and once every 12 years they must justify their existence to the **Sunset Advisory Commission (SAC)**.

The 12-member SAC has 5 members from the Texas Senate and 1 public member appointed by the lieutenant governor. Five members from the Texas House and 1 public member are appointed by the Speaker of the Texas House.

The Sunset Review Act created the SAC in 1977. The act established specific criteria to be considered in evaluating the continuing need for an agency. One of several laws enacted in the mid-1970s to bring more openness and accountability to Texas government, the Sunset process establishes a date on which an agency is abolished unless the legislature passes a bill for the agency to continue in operation.

During its Sunset review, an agency must, among other things, document its efficiency, the extent to which it meets legislative mandates, and its promptness and effectiveness in handling complaints, and it must establish the continuing need for its services. The review process is lengthy, lasting almost two years.

After a thorough study of an agency, the SAC recommends one of three actions to the legislature: (1) the agency continues as is, with no change in its organization or functions; (2) the agency continues but with changes (reorganization, a new focus for the agency, or merger with other agencies); or (3) the agency is abolished.

If option 1 or 2 is recommended, specific action by the legislature is required before the date of the agency's abolition. Option 1 requires specific legislation to re-create the agency in its existing form. Option 2 requires the legislature to re-create the agency with some or all of the changes recommended by the SAC. If the legislature agrees the agency should be abolished, no action is necessary. It will expire at the Sunset deadline; the sun sets and the agency is no more.

Each state agency has been through the Sunset process. The legislature has allowed the sun to set on more than 58 agencies; 12 agencies have been merged with existing bodies. Since 1978 the legislature has accepted the majority of recommendations of the SAC.

**Sunset Advisory Commission (SAC)** a commission created in 1975 for the purpose of reviewing the effectiveness of state agencies

### for critical analysis

What is the source of power of Texas bureaucratic agencies? How are these agencies held accountable to other elected public officials or the public?

## Thinking Critically about the Executive in Texas

At the national level, the president is elected, through the Electoral College, by the people as a whole. The president is the spokesperson for the nation in the world and is the commander in chief of the armed forces. When there is a national crisis, the people look to the president for leadership. Throughout the twentieth century, the power and authority of the presidency increased significantly, often at



Governor Perry experienced a significant check from the legislature in 2007 after he issued an executive order for girls in Texas to be vaccinated against human papillomavirus, or HPV, a sexually transmitted disease linked to cervical cancer. The legislature passed a bill overturning the order.

the expense of Congress. American democracy has become an executive-led system, with a weak Congress and a partially demobilized electorate.

Such is not the case in Texas. The fear of a strong executive who could ignore the wishes of either the legislature or the people, as was the case during Reconstruction in Texas, led in 1876 to a constitution that created a plural executive. The governor is the chief executive officer in the state, elected directly by the popular vote of all the people of Texas. People turn to the governor for leadership and direction during times of crisis. But compared with that of the president, the power of the Texas governor is more limited. Many key executive officials, including the lieutenant governor, the attorney general, the comptroller, and the land commissioner, are elected—like the governor—directly by the people. These members of the plural executive, along with other popularly elected statewide boards and commissions, possess power and authority that under other constitutional arrangements the governor might possess. As has been noted throughout this chapter, Governor Perry's ability to accumulate power in the governor's office is unprecedented in recent history. That his successors will be able to wield the limited powers of

the governor as efficiently is by no means certain.

The existence of an institutionally weak office of the governor and a plural executive has a number of important implications for democracy in Texas. First, because power and authority are divided among a number of distinct officers, no individual is fully responsible for executive initiatives in the state. Indeed, executive officials can struggle with each other for power as they seek to move the state government in different directions. Partisanship can exacerbate the natural conflict built into the executive branch in Texas. A Democratic lieutenant governor may or may not be willing to work closely with a Republican governor. But the worst clashes may be among executive officials of the same party. The fight between Governor Rick Perry and Comptroller Carole Strayhorn, both Republicans, culminating in Strayhorn's running against the incumbent governor as an independent in 2006, was an example of a fundamental truth in Texas politics: the executive does not have to speak with one voice or in harmony with itself.

A second consequence of the plural executive for democracy in Texas is that it has given rise to a powerful executive officer in the state legislature, outside the office of the governor. The lieutenant governor has become, along with the Speaker of the House, one of the two most important officials in the state legislature. The lieutenant governor, not the governor, runs the Texas Senate. The lieutenant governor, not the governor, is the executive branch's chief legislative official.

The dispersal of power and authority among a number of different executive offices in the state has a third consequence for democracy in the state. Additional points of access are created for interest groups seeking to influence government and public policy, making it easier for special interests to impose their will on the policy-making process. The 2014 elections have continued the Republican Party's firm hold over the plural executive and will have major consequences for policy and politics in Texas.

## The Governor

**Describe the powers of the Texas governor and the limits of the governor's power (pp. 236–54)**

Although the Texas governor is considered weak compared to governors of other states, the power of appointing members to boards made Governor Rick Perry the most powerful governor in state history largely because of his long tenure. Among the executive powers the governor possesses are appointment, budgetary, military, and police powers. Among his legislative powers are message and veto powers and the ability to call special sessions of the legislature.

### Key Terms

impeachment (p. 240)

appointment (p. 245)

patronage (p. 245)

senatorial courtesy (p. 249)

executive budget (p. 250)

legislative budget (p. 250)

veto (p. 252)

post-adjournment veto (p. 252)

line-item veto (p. 252)

special session (p. 253)

### Practice Quiz

1. Which of the following is *not* necessary to become governor of Texas?
  - a) A governor must be at least 30 years of age.
  - b) A governor must have lived in Texas for at least five years.
  - c) A governor must be a U.S. citizen.
  - d) A governor must be a lawyer.
  - e) A governor must have substantial campaign funding.

2. The election for governor of Texas is held in an off-year in order to
  - a) increase voter participation in elections in odd-numbered years.
  - b) influence the presidential vote in Texas.
  - c) decrease the likelihood of voter fraud.
  - d) give governors an opportunity to campaign for presidential candidates.
  - e) prevent the presidential vote in Texas from influencing the election of state officials.
3. The only constitutional method of removing the governor is
  - a) *quo warranto* proceedings.
  - b) *ex post facto* removal.
  - c) a vote of no confidence.
  - d) impeachment.
  - e) impeachment and conviction.
4. The governor's most effective power in controlling the executive branch of state government is the power
  - a) of the veto.
  - b) of appointment.
  - c) of removal.
  - d) of judicial review.
  - e) to create a state budget.
5. The governor's veto is absolute when it is a
  - a) line-item veto.
  - b) special veto.
  - c) budgetary veto.
  - d) post-adjournment veto.
  - e) select veto.
6. The governor can grant
  - a) pardons.
  - b) suspended sentences.
  - c) probation.
  - d) retrials.
  - e) parole.

# The Plural Executive

## Identify the other elected officials who make up the plural executive (pp. 254–63)

Unlike the president of the United States, the governor of Texas does not appoint a cabinet. Voters in Texas elect the lieutenant governor and other major statewide offices in separate elections. This disperses power within the executive branch, which means that executive officers must compromise not only with the legislature but also within the executive branch.

### Key Terms

- plural executive (p. 254)
- secretary of state (p. 256)
- lieutenant governor (p. 257)
- attorney general (p. 259)
- land commissioner (p. 260)
- agricultural commissioner (p. 260)
- comptroller (p. 261)

### Practice Quiz

7. Which member of the plural executive is appointed?
  - a) secretary of state
  - b) land commissioner

- c) lieutenant governor
- d) comptroller of public accounts
- e) attorney general

8. The attorney general is
  - a) part of the governor's cabinet.
  - b) elected independently of the governor.
  - c) appointed by the Texas Supreme Court.
  - d) the governor's lawyer.
  - e) chosen by the State Bar of Texas.
9. The land commissioner
  - a) records all property deeds.
  - b) administers state land.
  - c) surveys property in Texas.
  - d) is appointed by the state Senate.
  - e) administers Big Bend National Park.
10. Members of the plural executive are accountable to the
  - a) voters and the governor.
  - b) legislature and voters.
  - c) constitution.
  - d) state supreme court.
  - e) legislature.

# Boards, Commissions, and Regulatory Agencies

## Explain the roles played by boards, commissions, and regulatory agencies (pp. 263–69)

The governor's most important power is the ability to appoint people to boards, commissions, councils, committees, and regulatory agencies. Such institutions have important powers to interpret state regulations and make a difference in the lives of everyday Texans.

### Key Terms

- bureaucracy (p. 263)
- Sunset Advisory Commission (SAC) (p. 269)

### Practice Quiz

11. The Public Utilities Commission
  - a) regulates some electric rates.
  - b) regulates local phone rates.
  - c) maintains a website so consumers can compare electric rates.

- d) maintains a “do not call” registry.
- e) All of the above are features of the Public Utilities Commission.

12. The Texas Department of Insurance
  - a) has limited power to regulate insurance rates.
  - b) collects the penalties for not buying health insurance under Obamacare.
  - c) sells insurance for mold coverage.
  - d) is run by a five-member elected board.
  - e) All of the above are features of the Texas Department of Insurance.
13. The Railroad Commission of Texas
  - a) is responsible for the safety of the state's railroads.
  - b) issues bonds to support the state's transportation needs.
  - c) regulates oil and gas production in Texas.
  - d) approves mergers of railroads.
  - e) is the most powerful agency in the state.

- 14.** The State Board of Education
- a) has a major role in determining the books used in Texas public schools.
  - b) is appointed by the legislature.
  - c) reviews applications to state colleges and universities.
  - d) is responsible for school property tax rates.
  - e) governs local boards of education.
- 15.** Which agency investigates the performance of state agencies and recommends whether an agency should be abolished, continued as is, or continued with changes?
- a) Legislative Budget Board
  - b) Legislative Research Bureau
  - c) Texas Research League
  - d) Public Utilities Commission
  - e) Sunset Advisory Commission

## Recommended Websites

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**Attorney General of Texas**  
[www.oag.state.tx.us/](http://www.oag.state.tx.us/)

**Lieutenant Governor of Texas**  
[www.ltgov.state.tx.us/](http://www.ltgov.state.tx.us/)

**Office of the Governor**  
[www.governor.state.tx.us/](http://www.governor.state.tx.us/)

**Railroad Commission of Texas**  
[www.rrc.state.tx.us/](http://www.rrc.state.tx.us/)

**Sunset Advisory Commission**  
[www.sunset.state.tx.us/](http://www.sunset.state.tx.us/)

**Texas Department of Agriculture**  
[www.agr.state.tx.us/](http://www.agr.state.tx.us/)

**Texas General Land Office**  
[www.glo.state.tx.us/](http://www.glo.state.tx.us/)

**Texas Secretary of State**  
[www.sos.state.tx.us/](http://www.sos.state.tx.us/)

**Window on State Government (Comptroller's Office)**  
[www.window.state.tx.us/](http://www.window.state.tx.us/)



Judge Sharon Keller of the Texas Court of Criminal Appeals faced judicial misconduct charges after she refused to keep her court open late to accept death row inmate Michael Richard's last-minute appeal to stave off execution. This case called into question Keller's ethics, but Keller was re-elected in 2012.

# The Texas Judiciary

**WHY THE JUDICIARY MATTERS** The presiding judge of the Texas Court of Criminal Appeals, Sharon Keller, has cultivated a “tough on crime” image. Her campaign literature, for example, has shown a figure behind bars with the headline, “He won’t be voting for Judge Sharon Keller.”

However, Keller may have crossed the line in terms of her harshness toward criminal defendants on September 25, 2007. That evening, Michael Richard was scheduled to die by lethal injection. Earlier that day, the Supreme Court of the United States had agreed to hear a challenge to the constitutionality of death by lethal injection. Ordinarily, that would lead to a petition to the Court of Criminal Appeals for a stay of execution, in order to wait for the decision of the U.S. Supreme Court.

Things went terribly wrong. The lawyers for Michael Richard were working against a tight deadline for their petition, and they claimed they experienced computer problems that created a delay in preparing their documents. They called the Court of Criminal Appeals and asked that the court stay open an extra 20 minutes so that the stay of execution request could be filed. Judge Keller refused to keep the court open. In making this decision, she did not consult with other judges on the court, some of whom were working in the same building. Other judges on the court have stated that they would have stayed late to hear the appeal if they had known about it. Michael Richard was executed that evening.

Complaints were filed against Judge Keller with the State Commission on Judicial Conduct. The hearing officer, known as a special master, found plenty of blame to go around in this case. He found that the Texas Defender Service, which provided legal representation for Michael Richard, was unable to show that it actually had computer problems that made it unable to file the claim on time. In fact, the Texas Defender Service did not even contemplate filing a lethal injection claim until over two hours after the Supreme Court had agreed to hear a lethal injection case, and then it assigned a junior attorney to prepare documents, the first of which was not ready until 4:45 PM and all of which were not completed until 5:56 PM that day. Nor did the Court of Criminal Appeals escape criticism. And though Judge Keller’s behavior did not, according to the special master, justify removal from office or reprimand, it “was not exemplary of a public servant.” He stated, “Although [Judge Keller] says that if she could do it all over again she would not change any of her actions, this cannot be true. Any reasonable person, having gone through this ordeal, surely would realize that open communication, particularly during the hectic few hours before an execution, would benefit the interests of justice. Further, her judgment in not keeping the clerk’s office open past 5:00 to allow the TDS to file was highly questionable. In sum, there is a valid reason why many in the legal community are not proud

of Judge Keller's actions.”<sup>1</sup> In the fall of 2010 a special court of review dismissed the public warning against Keller on the grounds that a warning cannot be a penalty following a formal proceeding against a judge. For many people in the state, this dismissal of the public warning against Keller may have been technically correct but politically a mistake, making it appear that judges may be unaccountable for their actions. It led to broad-based support for a constitutional amendment during the 2013 legislative session allowing for such public warnings.

Michael Richard’s execution was not the only issue when Judge Keller ran for re-election in 2012. There was also her problem with the Texas Ethics Commission which had fined her \$100,000—the largest fine they had ever imposed—for failing to report \$2.4 million in property and income on personal financial statements that are required by the Ethics Commission.<sup>2</sup>

First elected in 1994, Keller was the only Court of Criminal Appeals judge who faced Democratic opposition. Her opponent, Keith Hampton, garnered endorsements or favorable mentions from all five of the major daily papers in Texas, and 52 percent of Texas lawyers favored him over Keller in a State Bar of Texas poll.

Still, Texas is a Republican state and Keller had the advantage of being an incumbent with a Republican Party label. In the election, she got 55.49 percent of the vote, which was only slightly less than the 56.64 percent of the vote that was her victory percentage in 2006 prior to the Richard execution and the Texas Ethics Commission fine. All did not go Keller’s way. In the 2013 constitutional amendment election, Proposition 9 received 84.65 percent of the vote. Proposition 9 was an effort to correct the problem that led to the dismissal of the public warning against Judge Keller. The Texas Constitution did not specifically say that a disciplinary case could lead to a warning, although the state’s legal code does. The amendment would correct that glitch and allow the warning.<sup>3</sup>

This episode highlights two reasons that judicial politics matters to each and every citizen: First, because judges are elected, judges and judicial candidates are encouraged to behave in ways that may cultivate the favor of voters even as the judges seem to sidestep notions of justice. Second, partisan judicial elections make party affiliation and incumbency especially important factors in judges’ being elected to office, since voters often have little other information about judicial candidates. One reason that Texas is the death penalty capital of the nation may be that it has a partisan election system for selecting not only judges but also the district attorneys, who prosecute crimes.

## chapter goals

- **Describe how the Texas court system is organized (pp. 277–82)**
- **Explain the legal process and the differences between criminal and civil law (pp. 282–85)**
- **Evaluate the process for selecting judges in Texas (pp. 285–98)**
- **Assess the impact of recent changes related to tort reform, litigation, and disciplining judges (pp. 298–305)**

## Court Structure

### Describe how the Texas court system is organized

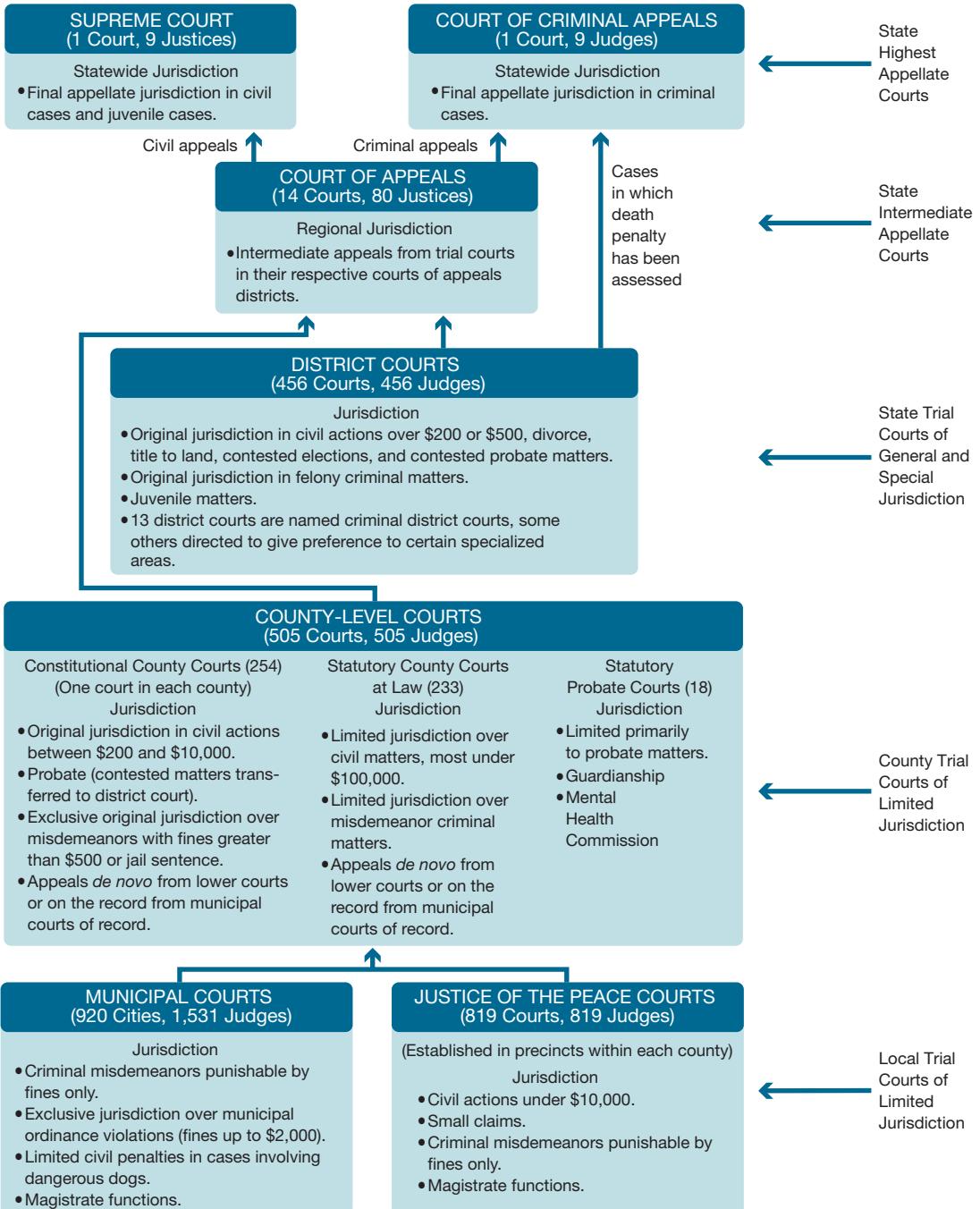
Like the federal courts, the state and local courts in Texas are responsible for securing liberty and equality under the law. However, the democratic mechanisms put into place in Texas to select judges and to hold them accountable for their actions are quite different from those at the national level. Federal judges are appointed by the president and confirmed by the Senate. They have lifetime appointments. This means that federal judges, subject to good behavior in office, are free from the ebb and flow of democratic politics. They do not have to cater to public opinion and are empowered to interpret the law as they see fit, without fear of reprisal at the polls. In Texas, however, judges are elected to office. Although they may initially be appointed to their offices, sooner or later they are responsible to the people for their decisions in office. Election of judges brings not only the people but also interest groups into the selection and retention of judges. The influence of special interest money in judicial campaigns raises important questions about the relationship between the rule of law and the nature of democratic politics.

Texas has a large and complex court structure consisting of a hodgepodge of courts with overlapping jurisdiction (see Figure 9.1). Additionally, some courts have specialized jurisdiction, whereas others have broad authority to handle a variety of cases. At the highest level for civil cases is the **Texas Supreme Court**, which consists of nine justices, including a chief justice. This court hears civil and juvenile cases only, and at the state level, it has final appellate jurisdiction. The only requirements for being a Texas Supreme Court justice are that one must be a citizen of

**Texas Supreme Court** the highest civil court in Texas; consists of nine justices and has final state appellate authority over civil cases



*The Texas Supreme Court is the highest civil court in Texas. The court consists of nine justices (pictured here as of 2014).*



**FIGURE 9.1**

## The Structure of the Texas Court System

SOURCE: Texas Office of Court Administration.

the United States and a resident of Texas, be at least 35 years of age, and have been either a practicing lawyer or judge for at least 10 years. The term of a justice is six years, with at least three justices being elected every two years. Justices on the Texas Supreme Court are paid \$150,000 a year; the chief justice receives \$2,500 a year more. Supreme Court justices are elected to six-year terms.

The **Texas Court of Criminal Appeals** is the highest appeals court in the state for criminal cases. This court also has nine judges, including a presiding judge. The pay, terms, and qualifications of Court of Criminal Appeals judges are the same as for the Texas Supreme Court. Perhaps the most important task of the Court of Criminal Appeals is its jurisdiction over automatic appeals in death penalty cases.

Both the Supreme Court and the Court of Criminal Appeals have appellate jurisdiction. This means that they have the authority to review the decisions of lower courts to determine whether legal principles and court procedures were followed correctly. This authority also provides the power to order that a case be retried if mistakes were made. Texas has 14 other appellate courts, located in various parts of the state, which have both criminal and civil jurisdiction. These courts are intermediate appellate courts and hear appeals from the trial courts. Usually, before the Supreme Court or the Court of Criminal Appeals hears a case, the initial appeal has been heard by one of the **courts of appeal**. These courts have intermediate appellate jurisdiction in various regions of the state for civil, juvenile, and criminal cases. Presently, there are 80 judges who serve on the 14 courts of appeal, which range in size from 3 to 13 judges. Although there are occasions when every judge on a court of appeal will hear a case, mostly appeals at this level are heard by panels of three judges. The requirements for a court of appeal justice are the same as those for justices of the higher courts. Courts of appeal justices are paid \$137,500 a year and the chief justice of each of the courts of appeal receives an additional \$2,500. All of the justices on the courts of appeal are eligible for a maximum of an additional \$7,500 that would be paid by a county supplement.

The major trial courts in Texas are the **district courts**. Each county has at least one district court, although rural parts of Texas may have several counties that are served by one district court. Urban counties have many district courts. Harris County (Houston), for example, has 59 district courts and Dallas County has 48. District courts usually have general jurisdiction, meaning that they hear a broad range of civil and criminal cases. However, in urban counties, some district courts with specialized jurisdiction hear only civil, criminal, juvenile, or family law matters. Those district courts having general jurisdiction would hear felony criminal cases, divorces, land disputes, election contests, and civil lawsuits. District court judges receive \$125,000 a year, and they may receive up to \$15,000 in additional salary a year from county supplement payments to the state salary. Currently, there are 456 district judges, 9 State Supreme Court judges, 9 court of criminal appeals judges, and 80 court of appeal judges.

Texas is unusual in having the office of **county judge** in each of its 254 counties. Not only does the county judge preside over the county commissioners' court and thus have responsibilities for administration of county government, but the county judge also presides over the county court. Often these **county courts** have jurisdiction over uncontested probate cases and over the more serious misdemeanor criminal offenses involving fines greater than \$500 or a jail sentence as well as over civil cases where the amounts in dispute are relatively small, generally in the \$200 to \$10,000 range. The county court may also hear appeals from municipal courts or from justice of the peace courts. Thus, the county judge combines political-administrative functions with some judicial functions. However, in the more populated counties,

#### **Texas Court of Criminal Appeals**

the highest criminal court in Texas; consists of nine justices and has final state appellate authority over criminal cases

#### **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

#### **district courts**

the major trial courts in Texas, which usually have general jurisdiction over a broad range of civil and criminal cases

#### **county judge**

the person in each of Texas's 254 counties who presides over the county court and the county commissioners' court, with responsibility for the administration of county government; some county judges carry out judicial responsibilities

#### **county courts**

the courts that exist in some counties that are presided over by county judges

*The Texas Court of Criminal Appeals is the highest court in the state for criminal cases. Like the Texas Supreme Court, it has nine justices (pictured here as of 2014).*



**statutory county courts at law**  
courts that tend to hear less serious cases than those heard by district courts

there are county courts at law and sometimes probate courts. As a result, in the larger counties most, and sometimes all, of the county judges' judicial duties are now performed by other courts.

In larger counties, there are **statutory county courts at law**. Since the county courts at law were created by statute, often at widely different times, the jurisdiction of these courts varies significantly. Usually, the county courts at law hear appeals from justices of the peace and from municipal courts. In civil cases, they usually hear cases involving sums greater than would be heard by a justice of the peace court but less than would be heard by district courts. Typically, county courts at law hear civil cases involving less than \$100,000. In comparison to the district courts, the county courts at law would hear less serious criminal offenses.

Some of the county courts at law have specialized jurisdiction; most commonly these are in the most urban counties, where some of the courts will have only civil jurisdiction and others only criminal jurisdiction. Currently there are 237 county court at law judges.

In the most urban areas of the state, the legislature has created courts known as **statutory probate courts**. These courts are highly specialized, as their primary activity involves probate matters that relate to the disposition of property of deceased persons. They may also deal with matters relating to guardianship of people unable to handle their own affairs, and they may handle mental-health commitments. In other parts of the state, depending on the statute, probate matters may be heard by the county court, the county court at law, or the district court. Currently, there are 18 statutory probate court judges.

**statutory probate courts**  
specialized courts whose jurisdiction is limited to probate and guardianship matters

**justice of the peace courts**  
local trial courts with limited jurisdiction over small claims and very minor criminal misdemeanors

Each county in Texas has between one and eight justice of the peace precincts, depending on population, although large urban counties have more than one judge in each precinct. Harris County, for example, has two in each of eight precincts. Within each precinct are **justice of the peace courts**. There are 819 justice of the peace courts



*The boxes of evidence that the State of Texas prepared for the trial against tobacco companies in 1997 occupied an entire gym in Texarkana. In a civil case, the plaintiff bears the burden of proof and must demonstrate that the defendant is more than not likely responsible for the harm suffered by the plaintiff.*

in Texas. These courts hear class C misdemeanors, which are less serious crimes. They also have jurisdiction over minor civil matters. In the past the courts functioned as small claims courts. Unfortunately, the courts used formal rules of evidence which gave a great advantage to parties represented by lawyers. As a result of a law passed in 2011, however, while suits must be for less than \$10,000, the suits can be handled more informally. Rules governing suits now may not be “so complex that a reasonable person without legal training would have difficulty understanding or applying the rules.”<sup>4</sup> Justices may issue search and arrest warrants. In counties without medical examiners, they may fulfill the administrative functions of coroners.

Justices of the peace mostly handle traffic misdemeanors. Of the more than 2.37 million cases disposed of by justice of the peace courts in 2012, more than 1.5 million were traffic and parking cases. In contrast, justice of the peace courts heard only about 391,000 civil cases.<sup>5</sup>

Justices of the peace have faced considerable criticism in recent years. In Dallas County, an auditor discovered 22,000 unprocessed traffic cases. The justice of the peace had failed to collect as much as \$2 million in fines. Unlike any other judge in Texas except for the county judge (who is often an administrator rather than a judge), 92 percent of the 819 justices of the peace in Texas are non-lawyers, and the lack of justices’ legal credentials has led to considerable debate in the state.<sup>6</sup> The office has its origins in medieval England and has existed in Texas since 1837, even before statehood. In the days of the frontier, justices of the peace provided legal authority where no other existed. Indeed, the famed Judge Roy Bean was a justice of the peace. The initial idea was that a justice of the peace would be a respected person in the community who was chosen for ability, judgment, and integrity. Today, as the former Texas state bar president Frank Newton has pointed out, “In almost every large metropolitan area, there are some JPs who do virtually nothing and sort of get lost in the shuffle. People don’t tend to get all excited about JP elections. Most people don’t know what a JP does. JP is not a very prestigious job.”<sup>7</sup>

**Municipal courts** have been created by the legislature in each of the incorporated cities of the state. There are 926 cities and towns in Texas that have these courts; larger cities have multiple courts. There are 1,559 municipal court judges in the

**municipal courts** local trial courts with limited jurisdiction over violations of city ordinances and very minor criminal misdemeanors

**ordinance** a regulation enacted by a city government each of Texas's incorporated cities and towns

state. Municipal courts have jurisdiction over violations of city **ordinances** and, concurrent with justice of the peace courts, have jurisdiction over class C misdemeanors, for which the punishment for conviction is a fine. Municipal judges may issue search and arrest warrants, but they have only limited civil jurisdiction.<sup>8</sup> Municipal courts, like justice of the peace courts, function primarily as traffic courts. In 2012 municipal courts disposed of slightly more than 6 million cases. About 4.94 million of these cases were traffic and parking cases.<sup>9</sup>

Great controversy has erupted in the city of Dallas, where the city council has demanded that municipal judges—there are 11 full-time and 18 part-time municipal judges in Dallas—get tougher with offenders or lose their judicial appointments. In particular, city officials have claimed that the judges give too many trial postponements, set fines too low, and don't hold accused violators accountable for ignoring citations.<sup>10</sup>

## ● The Legal Process

**Explain the legal process and the differences between criminal and civil law**

**civil law** a branch of law that deals with disputes, usually between private individuals over relationships, obligations, and responsibility

**criminal law** the branch of law that regulates the conduct of individuals, defines crimes, and specifies punishment for criminal acts

**complaint** the presentation of a grievance by the plaintiff in a civil case

**answer** the presentation of a defendant's defense against an allegation in a civil case

**contingent fee** a fee paid to the lawyer in a civil case which is contingent on winning the case

Just as the Texas Supreme Court hears civil cases and the Texas Court of Criminal Appeals hears criminal cases, it is useful to think of the law as divided into these parts. **Civil law** involves a dispute, usually between private individuals over relationships, obligations, and responsibility. Though there

are exceptions with a violation of the civil law, the remedy is often for the offending party to pay compensation to the injured party.

In contrast, **criminal law** involves the violation of concepts of right and wrong as defined by criminal statutes. In criminal law, the state accuses individuals of violations and, if found guilty, the violator is subject to punishment. In some cases, that punishment may involve loss of liberty or even loss of life.

In civil law, an aggrieved person will usually obtain a lawyer and file a petition that details the **complaint** against the person accused of causing the harm. The petition is filed with the clerk of court, who issues a citation against the defendant. The defendant will usually file an **answer** explaining why the allegations are not valid. Depending on the issue, the amounts of money that may be awarded as damages, and the probability of success, the aggrieved person may be able to obtain the services of a lawyer on a **contingent fee** basis. This means that the lawyer will not charge the individual if the case is lost but will obtain a portion of the damages awarded if the case is won. It is not unusual for such contingent fee arrangements to involve one-third or more of the damages award plus expenses. Lawyers who handle cases on contingent fee agreements often handle personal-injury cases and are known as trial lawyers. Traditionally, these lawyers will contribute money to judicial candidates who are sympathetic to plaintiffs. They make money only if they win, so they have a strong economic interest in supporting judicial candidates who are sympathetic to plaintiffs and to the awarding of large damages.

The person being sued either will have to hire an attorney on his or her own or, if insured, will be represented by an attorney paid for by the insurance company. Fee arrangements vary for civil defense lawyers, but often they are paid by the hour, in which case they get paid whether they win or lose. Their economic

incentives to contribute money to judicial campaigns may be different from the incentives trial lawyers have, but civil defense lawyers do contribute large sums to judicial campaigns in order to elect judges who support their views on tort law.

The court to which a civil case is taken depends on the type of case and the amount of money involved. Most commonly, a civil case will be settled, meaning the dispute is resolved without going to court. Settlements may, however, occur during trial, sometimes immediately before a jury renders its decision. If a case is not settled and goes to trial, it may be heard either by a judge or, if requested by either side, by a jury. Although civil jury cases do not have to be unanimous in Texas, the burden of proof is on the plaintiff. The standard of proof that the plaintiff must meet is **preponderance of the evidence**. That means that the plaintiff must show that it is more likely than not that the defendant is the cause of the harm suffered by the plaintiff.

Civil cases may involve tiny amounts of damages or they may involve billions of dollars, which have the potential of breaking huge corporations, such as happened in the 1980s when Pennzoil successfully sued Texaco in a dispute over the takeover of the Getty Oil Company.<sup>11</sup>

Civil case verdicts may, of course, be appealed. Appeals are usually from the trial court to the intermediate court of appeal and perhaps further to the state supreme court. Given the cost of appeals and the delay that is involved, it is not unusual for some settlement to be reached after the verdict but before the case goes through the appellate process. For example, a plaintiff might agree to settle for much less than the verdict in the case to avoid the expense and delay of further appeals.

Litigating a civil case is time consuming and expensive. As a result, in Texas and in other states, it is increasingly common to try to negotiate a settlement through mediation or arbitration. With arbitration, the parties to the dispute agree to present their case to a decision maker and to be bound by the decision. With mediation, the parties to the dispute try to reach a compromise resolution of the problem without going to trial. Generally, lawyers are used in mediations and arbitrations that have significant financial value, although persons assisting the parties in mediations and arbitrations do not necessarily have to be lawyers. Mediation is especially popular in civil disputes because the parties to the dispute are reaching the agreement and are not forced into a particular decision as they would be with arbitration. Mediation is also a very flexible process for resolving disputes where resolutions of disputes are contractual agreements between the opposing parties. To resolve the dispute they may agree to any legal remedy. One of the most unusual such remedies for a dispute occurred a number of years ago when Southwest Airlines and Stevens Aviation had a dispute over which company could use the slogan "Plane Smart." The two sides initially agreed to determine which company would use the slogan by having an arm-wrestling match between Southwest's and Stevens Aviation's company chairmen. Lawyers later worked out another agreement, but the company chairmen went ahead and held their arm-wrestling event.

In criminal cases, the state alleges a violation of a criminal law and is usually represented in court by a prosecutor. Some prosecutors are career prosecutors with vast trial experience. These people will often prosecute the most difficult and complex cases, such as felonies and **capital cases**. However, because the pay of prosecutors is often much lower than that of private lawyers who do litigation in the private sector, it is common for most prosecutors to be quite young and inexperienced. Once they gain trial experience, prosecutors commonly move into the private sector.

**preponderance of the evidence**

the standard of proof in a civil jury case, by which the plaintiff must show that the defendant is more likely than not the cause of the harm suffered by the plaintiff

**capital case** a criminal case in which the death penalty is a possible punishment

Defendants may hire criminal defense attorneys, who usually charge a flat fee to handle the case. Criminal defense lawyers, of course, do not work on a contingent fee basis. Since most criminal defendants are found guilty, criminal defense lawyers often prefer to obtain as much of their fee as possible in advance of the verdict.

Some parts of Texas have public defender offices where salaried lawyers provide at least some adult indigent criminal defense services in a county. Bexar County has established the first public defender office for indigent criminal appeals. Travis County has a public defender office representing only indigents with mental impairments.<sup>12</sup> A public defender office represents indigents in capital cases in west Texas.<sup>13</sup>

In Texas, indigent criminal defendants are more commonly represented by court-appointed lawyers. These are lawyers appointed by the judge to represent a defendant. Usually, these government-paid fees are less than would be charged to nonindigent defendants. Thus, some lawyers are reluctant to fulfill court appointments; others may not put the time and energy into a court-appointed case that they would if they were privately paid; others take court appointments because they have a limited number of paying clients; and still others take court appointments to gain experience. Concern over the poor quality of legal representation provided indigent criminal defendants, especially in capital cases, led to legislation in 2001 to increase the pay and qualifications of court-appointed lawyers.

Serious crimes are **felonies**. In those cases, as well as many lesser offenses known as **misdemeanors**, prior to the trial there will be an indictment by a grand jury. In Texas, a **grand jury** consists of 12 persons who sit for two to six months. Depending on the county, a grand jury may meet only once or twice, or it may meet several times a week. Although sometimes grand juries are selected randomly from a pool of qualified citizens, mostly Texas grand jurors are chosen by a commissioner system. A district judge will appoint several grand jury commissioners, who will then select 15 to 20 citizens of the county. The first 12 who are qualified become the grand jury.<sup>14</sup>

Grand juries can inquire into any criminal matter but usually spend most of their time on felony crimes. They work in secret and rely heavily on the information provided by the prosecutor, though in some cases grand juries will work quite independently of the prosecutor. These grand juries are called runaway grand juries because the prosecutor has lost control of them, but such cases are very rare. If nine of the grand jurors decide a trial is warranted, they will indict a suspect. An **indictment** is also known as a “true bill.” On the other hand, sometimes a grand jury does not believe a trial is warranted. In those cases, the grand jury issues a “no bill” decision.

Although a suspect has the right to trial by jury, he or she may waive that right and undergo a **bench trial** before the judge only. Most commonly, the suspect will engage in a **plea bargain**. With plea bargaining, a suspect agrees to plead guilty in exchange for a lighter sentence than might be imposed if the suspect were found guilty at trial. Approximately 97 percent of criminal convictions in Texas are the result of plea bargains.<sup>15</sup> If the suspect does choose trial by jury, felony juries will have 12 members; misdemeanor juries will have 6 members. There must be a unanimous verdict of guilty or not guilty. If the jurors are not unanimous, the result is a hung jury and a mistrial is declared. The prosecutor may then choose to retry the suspect. In addition to the requirement of unanimity in jury decisions, another important difference between civil and criminal cases is the standard of proof. In criminal cases, rather than the standard of preponderance of the evidence, the stan-

**felony** a serious criminal offense, punishable by a prison sentence or a fine; a capital felony is possibly punishable by death

**misdemeanor** a minor criminal offense, usually punishable by a fine or a jail sentence

**grand jury** jury that determines whether sufficient evidence is available to justify a trial; grand juries do not rule on the accused's guilt or innocence

**indictment** a written statement issued by a grand jury that charges a suspect with a crime and states that a trial is warranted

**bench trial** a trial held without a jury and before only a judge

**plea bargain** negotiated agreement in a criminal case in which a defendant agrees to plead guilty in return for the state's agreement to reduce the severity of the criminal charge or prison sentence the defendant is facing



Judge Elizabeth Coker swearing in former prosecutor Kaycee Jones as a new district judge. Coker became known as the “texting judge” when it was discovered that during a trial of a defendant accused of felony injury to a child, she texted prosecutor Jones suggesting a line of questions that the prosecutors should ask the defendant. Coker resigned while she was under investigation by the State Commission on Judicial Conduct.

dard is **beyond a reasonable doubt**. This means that the prosecutor must prove the charges against the defendant, and they must be proven to a very high standard so that a reasonable doubt of innocence does not exist.

If a guilty verdict is returned, there will be a separate hearing on the sentence, which in Texas is sometimes also determined by the jury. At the sentencing hearing, factors such as prior record and background will be considered, even though these factors could not be considered at the trial portion of the proceeding.

Of course a defendant may also appeal a verdict. Usually, the appeals are by a convicted defendant who alleges that an error in the trial may have affected the case’s outcome. In rare cases, a prosecutor may also appeal. For the most part, however, criminal defendants will appeal their convictions to an intermediate appeals court and perhaps further to the Texas Court of Criminal Appeals. In capital cases, however, the appeal will be directly to the Texas Court of Criminal Appeals.

**beyond a reasonable doubt** the legal standard in criminal cases, which requires the prosecution to prove that a reasonable doubt of innocence does not exist

## ● Judicial Politics

### Evaluate the process for selecting judges in Texas

Although there are still generalist lawyers who handle all sorts of cases, much of the practice of law is very specialized. Thus, in the civil process, trial lawyers and civil defense lawyers tend to back opposing candidates for judgeships. It is not unusual for trial lawyers to support one candidate, often the Democrat, who is more likely to be the more liberal, or pro-plaintiff, candidate, and for the civil defense lawyers to support the Republican, who is more

### **for critical analysis**

What is the most important feature of how judges are selected in Texas? What does this feature reveal about Texas politics more broadly?

likely to be the conservative, or pro-defendant, candidate. The civil defense lawyers will often align themselves with business groups and with professional groups, such as medical doctors, to support judges inclined to favor the civil defense side.

In the criminal process, it is sometimes possible to see criminal defense lawyers backing one candidate and prosecutors backing the other. Some prosecutors' offices are quite political, and the prosecutors will publicly support pro-prosecution judicial candidates. They will often be aligned with victims' rights groups. Criminal defense lawyers, on the other hand, will often back one of their own in contested criminal court races.

One big difference in the campaigns of civil court judges versus criminal court judges is the amount of money involved. Enormous amounts can be involved in civil cases, and so it is worth lots of money to trial lawyers and civil defense interests to elect candidates favorable to their point of view. On the other hand, with the exception of a relatively few highly paid criminal defense lawyers, the practice of criminal law is not very lucrative. Prosecutors are on salary, and usually the salaries are not large. Criminal defense lawyers often represent clients with little money. And most criminal cases are plea-bargained. The economic incentives to contribute large sums to criminal court races don't exist. The result is that a strong candidate for the Texas Supreme Court may raise in the neighborhood of \$1,000,000 for a campaign, whereas a strong candidate for the Texas Court of Criminal Appeals may raise \$100,000. However, as Texas has become predominantly Republican at the statewide level, hard-fought contests between Democrats and Republicans for the Texas Supreme Court and the Texas Court of Criminal Appeals have become rare.

### **Initial Appointment of Judges by the Governor**

A notable aspect of the Texas judiciary is that with the exception of municipal judges, who tend to be appointed by local governments, all judges are elected in partisan elections. Still, because the governor appoints district and appellate judges to the bench to fill vacancies prior to an election or to fill judgeships on new courts, large percentages of judges initially get on the bench through appointment. Although there has been some controversy over the relatively small number of appointments of minorities made by some governors, gubernatorial appointment has generated little additional controversy.<sup>16</sup> Table 9.1 shows the percentage of district and appellate judges who have initially gained their seats through appointment by the governor. Currently, about 55 percent of appellate judges and 38 percent of the trial judges initially got on the bench through appointment.<sup>17</sup> Still, the controversial issue in Texas judicial politics deals with how the remaining judges obtained their seats and how all judges retain their seats if they wish to remain in office. That controversy involves the partisan election of judges in Texas.

### **The Elections Become Highly Partisan**

Until 1978 the selection of judges in partisan elections did not create much concern. Texas was overwhelmingly a Democratic state, and judges were elected as Democrats. The only real competition occurred in the Democratic primary, and with the political advantage of incumbency, judges were rarely defeated even in the primary. Competition in judicial races occurred in those relatively rare cases where there was an open seat in which no incumbent sought office. Beginning in 1978, however, changes began to occur in Texas judicial politics. William Clements, the

**TABLE 9.1**

## Percentage of Judges Obtaining Their Position Initially through Appointment

YEAR	TRIAL COURTS* (%)	APPELLATE COURTS** (%)
1962	57%	50%
1984	67	51
1998	46	40
2001	34	38
2003	43	43
2006	43	50
2009	36	51
2011	37	52
2012	38	55

\* Trial courts are the district and criminal district courts.

\*\* Appellate courts are the supreme court, the court of criminal appeals, and the courts of appeal.

SOURCES: Anthony Champagne, "The Selection and Retention of Judges in Texas," *Southwestern Law Journal* 40 (May 1986): 66; Texas Office of Court Administration, "Profile of Appellate and Trial Judges" as of September 1, 1998, 2001, 2003, 2006, 2009, March 1, 2011, September 1, 2012.

first Republican governor since Reconstruction, was elected. The governor has the power to appoint judges to the district and higher courts when new courts have been created or when a judicial vacancy occurs as a result of death, resignation, or retirement. Unlike the previous Democratic governors who appointed members of the Democratic Party, Clements began appointing Republicans. With that advantage of incumbency and with the increasing popularity of the Republican party label, some of the Republican judges began to win re-election.

Helped by the popularity of Ronald Reagan in Texas, other Republicans began seeking judicial offices and winning. Thus, by the early 1980s, in statewide elections and in several counties in Texas, competition began to appear in judicial races. With that competition, incumbent judges began to be defeated. Sensing the growth of Republican strength, a number of Democratic judges changed to a Republican Party affiliation. From 1980 through July 24, 1985, 13 district and appellate judges changed from the Democratic to the Republican Party; 11 county court judges switched; and 5 justices of the peace changed parties. Judge Don Koons switched parties in early 1985 and explained his move to the Republican Party by saying, "I ran as a Democrat in 1982. It was a long, tough year, but we won. On the other hand, it cost a lot more money and time away from the bench to run as a Democrat. The work suffers some, and you've got to be always hustling money."<sup>18</sup> Koons apparently believed that with the emerging strength of the Republican Party, a switch in party affiliation would make his job more secure.

Judicial elections became more expensive because judicial candidates needed money to run meaningful campaigns. In particular, campaigns that used television advertising became very expensive because of high media costs.



*Is justice for sale in Texas? Because statewide judicial races are expensive, candidates for judgeships have been forced to raise considerable amounts of money. This, in turn, has led to criticism that judicial decisions are, in effect, being bought.*

Judicial candidates needed money because judicial races tend to have low-visibility campaigns in which voters are unaware of the candidates. The races tend to be overshadowed by higher-visibility races, such as the race for governor or U.S. senator. Money was needed to give judicial candidates some degree of name visibility by voters. However, in general, Texas voters do not give much money to judicial campaigns. Instead, it is lawyers, interest groups, and potential litigants who tend to be donors in judicial races.<sup>19</sup> That money to judicial candidates often comes from parties interested in the outcomes of cases has raised concerns about the neutrality of Texas judges who are deciding cases that involve the financial interests of persons who have given them campaign funds. A Texas poll found that 83 percent of the public thought that judges were strongly or somewhat influenced by contributions in their decisions. Ninety-nine percent of lawyers believed that campaign contributions have at least some influence on judges. Perhaps even more striking, 86 percent of judges reported that they believed campaign contributions had at least some influence on judicial decisions.<sup>20</sup>

Contributions for judicial races in Texas can sometimes amount to several hundred thousand dollars, especially for hotly contested district court races or appellate races. In general, however, the most expensive races are for the Texas Supreme Court.

When races are contested between Democratic and Republican candidates, a candidate can raise well over \$1 million. However, hard-fought races are now rare as these statewide elections have moved into the Republican column. Because these are statewide races and because this court sets the tone of tort law

# Elected or Appointed Judges?

**Federal judges are appointed** for life by the president, with the advice and consent of the U.S. Senate. Several states follow the federal model in which the governor appoints state judges with the advice and consent of the state senate.

In Texas, however, members of the Texas Supreme Court and the Court of Criminal Appeals, as well as all lower state courts, are elected to their posts, rather than appointed, by the voters in partisan elections. Texas is one of only seven states that elect judges in partisan elections. Thirteen states elect judges in nonpartisan elections and another two have a mix of partisan and nonpartisan aspects in their election of judges.

Is there an alternative to appointing or electing judges? Many “good government” advocates support merit selection, which several states employ and which has been suggested many times as a possible alternative to the current system in Texas. Merit selection involves a commission that vets potential judges based on their character and temperament. A group of approved judicial nominees is then presented to the governor, who appoints one as judge. After a period of time, that judge runs in a retention election. The judge does not face an opponent, but the ballot question asks voters whether the judge should be retained in office.

Supporters of the Texas model like the fact that it holds judges accountable to the electorate. This system leads criminal court judges to run campaigns touting their tough sentencing practices and “zero tolerance” for criminals. Texas model supporters maintain that the alternative is undemocratic because elites would choose judges



who would become entrenched in their positions and make rulings without any fear of public backlash. If judges are insulated from the public, then they can render decisions without accountability.

Opponents of electing judges argue that the Texas model inevitably leads to corruption because lawyers and other interests can make campaign contributions to judges, which will influence their rulings. Especially in civil cases, Texas judges could sell out to the highest bidder. According to critics of judicial elections, in criminal cases, the rights of the accused might not be taken as seriously, as the public consistently favors tough rulings and sentences on criminals. With the partisan election of judges, the best-qualified persons are not chosen because voters tend to vote based on party affiliations rather than merit.

Some Texas state legislators have proposed changing the judicial selection system. One option that some observers have suggested is a hybrid system in which Texas Supreme Court and appellate court judges would be appointed, while lower court judges would be elected. This system might be an effective compromise to ensure responsiveness at a certain level. However, changing the selection system in any way would generally require a constitutional amendment, which is not easy to implement. The larger debate revolves around whether it is possible to keep politics out of judicial selection. Gubernatorial appointments also inevitably involve political considerations. As in most political debates, there are clear trade-offs involved when deciding which approach is best. Which would you choose?

## critical thinking questions

1. Should judges be elected or appointed? Is merit selection an effective compromise?
2. Should the selection system vary according to type of judge?

throughout the state, a great deal of money is needed and a great deal can be raised. Table 9.2 shows the average contribution to Texas Supreme Court candidates for each election period from 1980 through 2012. The contribution data are reported for those races that were contested by both a Republican and a Democratic candidate. In the 2000 Supreme Court elections, the Republicans were so strong that no Democrat even bothered to run for any position on the Texas Supreme Court. By 2012 the Democratic candidate against Republican incumbent Nathan Hecht could only raise a little less than \$76,000. Any real battle for a position on the Texas Supreme Court is now in the Republican primary.

**TABLE 9.2**

### Average Contributions to Texas Supreme Court Candidates\*

YEAR	AVERAGE FOR ALL CANDIDATES	AVERAGE FOR WINNING CANDIDATES
1980	\$155,033	\$298,167
1982**	173,174	332,998
1984**	967,405	1,922,183
1986	519,309	1,024,817
1988	859,413	842,148
1990	970,154	1,544,939
1992	1,096,001	1,096,687
1994	1,499,577	1,627,285
1996	656,190	1,277,127
1998	521,519	829,794
2000	NA <sup>†</sup>	584,719 <sup>††</sup>
2002 <sup>‡</sup>	425,474	568,430
2004**	394,906	548,685
2006**	995,218	1,792,523
2008	654,819	910,973
2010	438,854	744,033
2012	206,272	336,838

\*Averages are reported for candidates from contested races featuring both a Republican and Democratic candidate.

\*\* The 1982, 1984, 2004, and 2006 elections each featured only one contested race with both a Democratic and Republican candidate.

<sup>†</sup>No Democrats ran in the three Supreme Court elections in 2000.

<sup>††</sup>Average campaign contributions for the three victorious Republicans; none had a Democratic opponent.

<sup>‡</sup>Chief Justice Tom Phillips ran for re-election and refused to accept any campaign contributions beyond his cash on hand, which amounted to \$19,433. His Democratic opponent, however, raised almost no funds—\$12,815. Phillips was the victor in this race, which lowers the average contributions for this year.

SOURCES: Kyle Cheek and Anthony Champagne, *Judicial Politics in Texas* (New York: Peter Lang, 2005), p. 38; Institute on Money in State Politics.

In 2012, Democrat Keith Hampton ran against Sharon Keller for presiding judge of the Court of Criminal Appeals. Although he ran a fairly strong campaign, Hampton faced a major difficulty because Texas has more Republican voters than Democratic voters, and voters tend to follow party labels in judicial races. Keller defeated Hampton 55.5 percent to 41.2 percent in the general election.

In spite of judicial campaigns, however, voters often know little about judicial candidates. As a result, they vote not for the best-qualified person to be a judge, but for the party label. As the Republican Party has become increasingly dominant in statewide races, it is the Republican label, rather than the qualifications or experience of judicial candidates, that has determined the outcome of judicial races. Related to the importance of party label in judicial races is the effect of top-of-the-ticket voting. In 1984 the popularity of Ronald Reagan seemed to help Texas judicial candidacies, as many voters cast straight or almost straight Republican ballots. In that year Reagan received nearly 64 percent of the presidential vote in Texas. All four Republican incumbent district judges who were challenged by Democrats won. Sixteen Democratic incumbent district judges were challenged by Republicans. Only three of those Democrats won. In contrast, in 1982, U.S. Senator Lloyd Bentsen ran for re-election. Bentsen was a very popular senator and a Democrat. His candidacy on the Democratic ballot seems to have encouraged voters to cast ballots for Democrats further down on the ticket. Bentsen received slightly more than 59 percent of the vote in Texas. In that year, 26 Republican incumbent district judges faced Democratic opposition; only 14 won. Yet 16 Democratic district judges faced opposition, and 14 won.<sup>21</sup>

Even voters who try to make a serious effort to learn about judicial candidates can have a hard time. In Houston, for example, voters are faced with ballots loaded with so many judicial candidates that it becomes nearly impossible to be an informed voter. In 1994 one of the most extreme examples of a long judicial ballot occurred in Harris County, where voters were faced with 45 judicial elections that were primary elections and then 8 runoff primary elections. In the general election, there were 59 contested judicial elections and 16 more elections where the judicial candidate was unopposed. In 2010, Harris County voters cast ballots in 10 contested appellate court races and 36 contested district court races. In 2012, Harris County voters faced a ballot with 11 contested appellate races and 23 contested district court races.

## The Name Game

In 1994, Cathy Herasimchuk ran for the Texas Court of Criminal Appeals. In a three-way Republican primary, she won only 26 percent of the statewide vote. The candidates in the Democratic and Republican primaries who did make the runoff for that seat all had simple, easy-to-spell and easy-to-pronounce names. Herasimchuk was appointed to the Court of Criminal Appeals in 2001, but in running for election to the court in 2002, she realized she had a problem with her name. As she said, “Everybody told me you couldn’t win city dog catcher with the name Herasimchuk, and they all turned out to be accurate.” Herasimchuk’s problems getting elected certainly had nothing to do with her credentials. She has been a Harris County prosecutor, a criminal defense lawyer, an adviser to then-governor Bush, and a law school lecturer. When she successfully ran in 2002, she did so under her maiden name—Cathy Cochran.<sup>22</sup>

The name game continued in the 2008 elections for judges in Harris County. Most Republican judges in that county were swept out of office, but four Republicans survived. They had all been challenged by Democrats with unusual names. As a result, the incumbent Republican judge Sharon McCally was able to defeat the Democratic challenger Ashish Mahendru; Republican judge Mark Kent Ellis defeated Democrat Mekisha Murray; Judge Patricia Kerrigan, a Republican, defeated the Democrat Andres Pereira; and Judge Joseph Halback defeated his Democratic challenger, Goodville Pierre.<sup>23</sup>

Some have claimed that a Latino name will hurt candidates in Republican primaries. In reference to judicial races, for example, Justice David Medina was defeated by John Devine in the 2012 Republican runoff primary for the Texas Supreme Court, and in 2002 Justice Xavier Rodriguez was defeated in the Republican primary for the Texas Supreme Court by Steve Smith. There have been other nonjudicial Republican primary elections where persons with Latino names have been defeated by persons with non-Hispanic names. However, the victory of Ted Cruz over David Dewhurst in the 2012 Republican runoff primary for U.S. senator from Texas suggests that the assertion that there is ethnic bias in Republican primary voting may be overblown.<sup>24</sup>

### for critical analysis

How does the selection process influence who becomes a judge in Texas?

## Minority Representation in the Texas Judiciary

Minority groups have been concerned that countywide and larger partisan judicial races make it difficult for minorities to get elected to judgeships—and that Texas judges do not reflect the diversity of the state.

Although women do not make up 50 percent of the judiciary as they do of the population, there is a higher proportion of women in the Texas judiciary than of minorities. Women were at one time a great rarity on the bench. In 1970 only 1 percent of the nation’s judiciary was female. As late as 1979 only 4 percent of the nation’s judges were women.<sup>25</sup> In Texas, the first woman to serve as a state judge was Sarah Hughes, who was appointed in 1935 and who served as a district judge until 1961, when she was appointed to the federal bench. Famous for a number of her decisions, including one that forced Dallas County to build a new jail, she is probably best known as the judge who swore in Lyndon Johnson as president after the assassination of John F. Kennedy. In 2012, however, 42 percent of appellate judges in Texas were women, and 40 percent of district judges were women. Thirty-one percent of county court-at-law judges were female, as were 33 percent

of the probate judges. Eleven percent of county judges, 35 percent of municipal judges, and 36 percent of justices of the peace were women.<sup>26</sup>

Different interpretations have been offered for the low numbers of minorities on the bench. The lack of racial and ethnic diversity on the bench is a nationwide problem. Ninety-two percent of the state judges in the nation are white.<sup>27</sup> Civil rights groups in several states with elective judiciaries, including Texas, have argued that white voters dominate countywide and larger districts and will vote against minority judicial candidates. Civil rights organizations representing Latinos and African Americans have argued that for minorities to get elected to office, there must be smaller judicial districts where minority voters make up the majority.

An alternative argument is that minority candidates in Texas, like minority voters, tend to be Democrats at a time when Republicans increasingly are winning judicial races. Thus, minorities do not get elected to judicial office because they run as Democrats.<sup>28</sup> Still another argument is that there are few minority judges because there are few minority lawyers and, with the exception of county judges and justices of the peace, judges in Texas must be lawyers.

The issue of minority representation on the bench has been the subject of major concern by minority and civil rights leaders in Texas. It was also the subject of prolonged federal litigation. In 1989 a case was tried in federal court in Midland. The case, *League of United Latin American Citizens v. Mattox*, was a suit against countywide election of judges in 10 of the larger counties in Texas.<sup>29</sup> The suit, filed by minority plaintiffs, argued that countywide election of judges diluted the strength of minority voters and violated the Voting Rights Act. The trial judge agreed with the plaintiffs and, after a political solution failed, ordered that judges be elected in nonpartisan elections from smaller judicial districts. The trial court order, however, was blocked by the Fifth Circuit, which is the federal court of appeals for the region that includes Texas.<sup>30</sup> The case was then appealed to the U.S. Supreme Court, along with a Louisiana case; the Supreme Court held that the Voting Rights Act did apply to judicial elections.<sup>31</sup> The case was then returned to the Fifth Circuit to examine whether minority voting strength was diluted and to determine the state's interest in maintaining countywide elections. Ordinarily, the federal courts of appeal do not preside as an entire group to hear cases; instead, they hear cases in panels of three judges. Such a panel decided in favor of the minority plaintiffs, and a settlement seemed to be reached with the state to have elections of judges from smaller districts in the larger counties. However, in important cases, it is sometimes possible to appeal a decision of a panel of three judges to the entire court of appeal. When this happens, the court is said to sit *en banc*. That happened when some of the defendants in the suit were unhappy with the settlement, and the entire Fifth Circuit ruled in 1993 that party affiliation of minority candidates explained the failure of minority judicial candidates to win election rather than the candidates' minority status. Thus, countywide election of judges was not illegal, and there was no legal need to reduce the size of districts from which judges were elected.<sup>32</sup>

Since that decision, minority leaders and minority groups have continued to express concerns about the small numbers of minority judges, but any solution that would involve smaller districts would have to result from an act of the legislature rather than the actions of a federal court. Judicial reform bills in the legislature since this decision have included provisions for smaller judicial districts, but those bills have not passed. Perhaps the strongest judicial reform bill was one backed by then-Democratic lieutenant governor Bob Bullock, who created a task force to try to develop an acceptable compromise on the judicial selection issue. The proposed

## for critical analysis

Few minorities hold judicial office in Texas. Although African Americans and Hispanics make up about 50 percent of the Texas population, relatively few Texas judges belong to these groups. Offer at least three suggestions, including alternative election methods, to increase the number of minorities holding judicial office in Texas.

**en banc** referring to an appellate hearing with all judges participating

**retention election** an election in which voters decide whether to keep an incumbent in office by voting “yes” or “no” to retain the incumbent and where there is no opposing candidate

constitutional amendment designed by the task force passed the Texas Senate in 1995 but failed to pass the Texas House. Under the plan, all appellate judges would be appointed by the governor. District judges, on the other hand, would be chosen from county commissioner precincts in nonpartisan elections. After serving for a time, they would run countywide in **retention elections**, in which there would be a “yes” or “no” vote on their retention in office and where they would face no opponent on the ballot.

On the surface, the compromise seemed to offer something for almost everyone. Because the governor appointed appellate judges, judges would have greater career security and no worries about campaign funding. The business community, recognizing that Texas tended to elect conservative governors and was increasingly likely to elect conservative Republican governors, got appointed appellate judges. Nonpartisan elections would protect trial judges from party sweeps in which judges are voted out of office solely because of their party affiliation. Minorities would get smaller judicial districts for the major trial courts. But what looked like a great compromise fell through. Although African Americans supported the compromise, Latinos did not. The two largest counties in Texas—Harris and Dallas—elected a total of 96 of the 386 district judges then chosen in Texas. Under the compromise, one-fourth of Harris and Dallas county judges would be elected from each of the county commissioners’ precincts in that county. Both Dallas and Harris counties had three white county commissioners and one African American. Latinos, on the other hand, elected no county commissioner and believed that the compromise would not promote the election of more Latino judges. They believed that to elect Latino judges, considerably smaller districts were needed. As a result, much Latino support was not forthcoming. Further, the political parties opposed the compromise. Nonpartisan elections might protect the interests of judges, but they weakened the political parties. Additionally, an appointive system for appellate judges reduced the number of elective offices, thereby reducing the role of the political parties. Although his powers would have increased with an appointed appellate judiciary, Governor George W. Bush opposed the compromise, probably because he did not want to oppose the Republican Party. Because the plan had the support of Lieutenant Governor Bob Bullock and because he gave the legislation priority on his legislative agenda that year, it passed the Texas Senate. However, the proposal died in the Texas House. The Bullock proposal was probably the best hope for judicial change for a long time to come.<sup>33</sup>

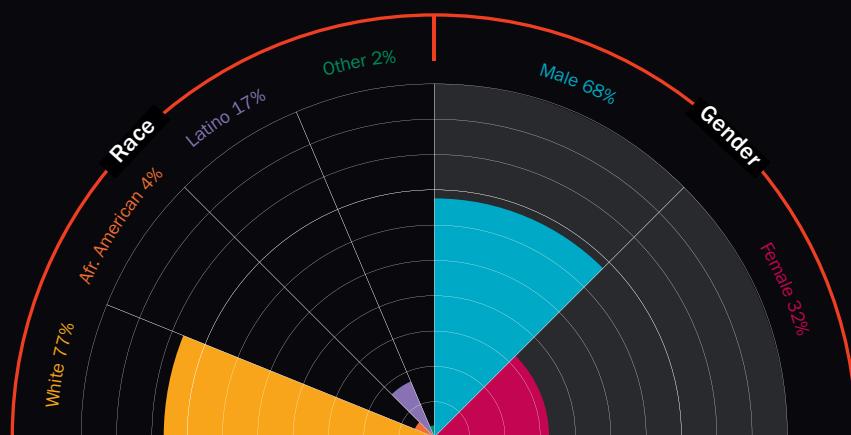
One of the business community’s underlying concerns about smaller districts seemed to be a fear that small districts might create a narrower electorate for judges. That narrow electorate might in some areas prove unduly sympathetic to plaintiffs who file suit against businesses. Whatever the cause of the low number of minority judges, the lack of diversity on the bench, the role of money in judicial races, the defeat of incumbents, the importance of party label, top-of-the-ticket voting, and the “name game” have all created support for alternative judicial selection systems.

## Alternative Means of Selection

Judges are selected in the United States by a variety of ways. One way is through appointment by the governor and approval by the state Senate. This method is used in Texas to select judges to new courts or courts where there has been a death, resignation, or retirement during a judicial term. It is also similar to the system for selecting federal judges, who are appointed by the president and confirmed by vote

# Who Are Texas Judges?

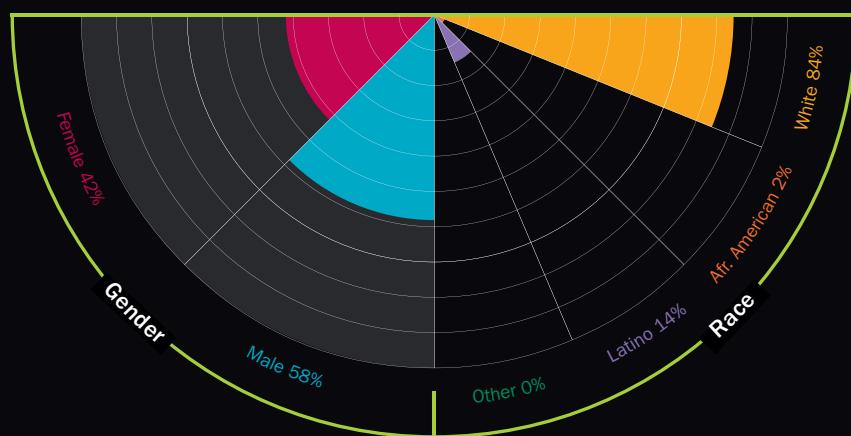
## Race and Gender of Texas Judges, 2012



### Trial Courts

Trial courts include district courts, county courts at law, and probate courts

Total judges: 663



### Appellate Courts

Appellate courts include the state Supreme Court, courts of appeal, and Court of Criminal Appeals

Total judges: 97

As Texas becomes more diverse, how does the racial and ethnic composition of the state's judges reflect this new racial reality?

### for critical analysis

1. Why do you think there are fewer minority judges in Texas courts than the overall minority population in the state (12% black and 38% Latino)?
2. What are some of the factors that might lead to an increase in the representation of minorities in the state's courts?

of the U.S. Senate. However, this method of judicial selection is contrary to Texas's traditional distrust of a powerful chief executive. At a time when Texas governors are Republicans, it also is not a system that Democrats tend to favor.

Another system for selecting judges is nonpartisan election. Such a system for selecting judges in Texas would eliminate much of the partisan politics, but at the same time, it would make it more difficult for candidates to reach voters. This is because in a truly nonpartisan election, judicial candidates would have to run for office without the benefit of political parties. In some states that have ostensibly nonpartisan elections, such as Ohio, the parties continue to take an active role to the point that it is difficult to distinguish that type of nonpartisan system from a partisan election system. If Texas instituted a truly nonpartisan system, however, candidates would require even more campaign money to reach voters they could no longer reach through the mechanisms of the political parties.

**merit selection** a judicial reform under which judges would be nominated by a blue-ribbon committee, would be appointed by the governor, and, after a brief period in office, would run in a retention election

*In 2009, Rick Perry appointed Eva Guzman—the first Latina woman to serve on the Texas Supreme Court—to fill a vacancy on the court. Guzman was elected to a full term in the 2010 election.*



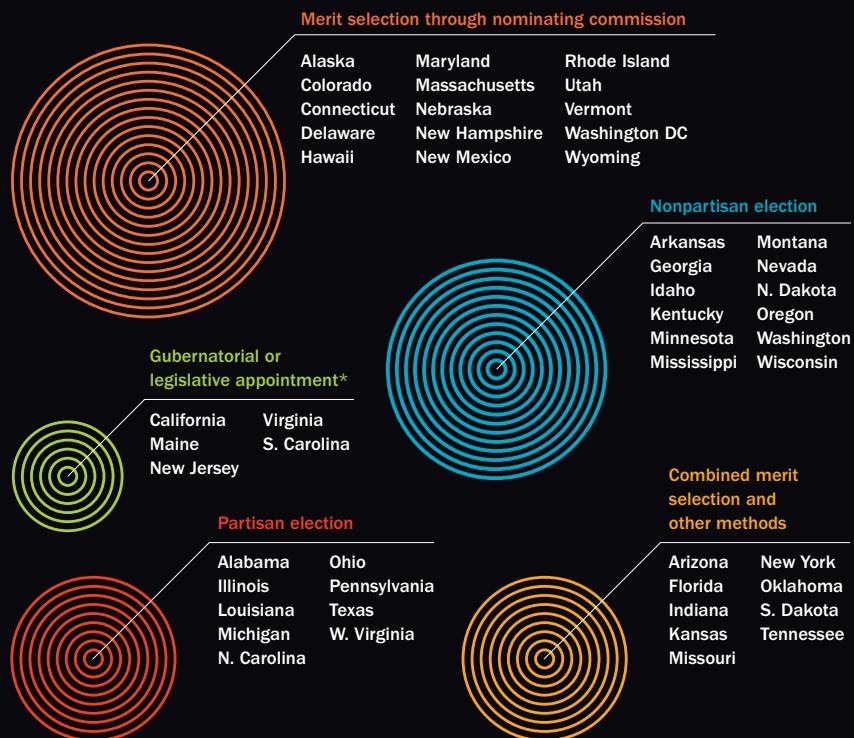
Most commonly, however, judicial reformers argue for a system of judicial selection that is commonly called **merit selection** of judges. In this system, a blue-ribbon committee consisting of lawyers and lay people supplies to the governor the names of a small number of candidates for a judgeship. The governor makes the judicial appointment from this list, and after the judge serves for a brief time, he or she runs in a retention election. In a retention election, the incumbent does not have an opponent. Instead voters are asked whether the incumbent should be retained for another term of office. The voters then vote "yes" or "no" on the judge's retention. As might be expected in an election where one does not have an opponent, the incumbent usually wins. One study of retention elections found that only 1.6 percent of incumbent judges were defeated in retention elections.<sup>34</sup> Yet from time to time, interest groups will organize against a judge in a retention election and spend a great deal of money trying to defeat him or her; sometimes those efforts have been successful. One of the great concerns about merit selection is the nature of the merit selection commission, because those commissioners filter out all but a handful of prospective judges. Some are quite fearful of this centralized method of determining who should be judges, and although there is much support for merit selection in Texas, there is also much opposition.<sup>35</sup>

In recent years, one of the most popular reform proposals has been a system known as "appoint-elect-retain." Under this system, the governor would appoint a judge with confirmation by two-thirds of the state Senate. The governor-appointed nominee would not assume office until confirmed by the Senate, which would meet year-round for the purpose of dealing with judicial confirmations. In the first election thereafter, the judge would run in a contested nonpartisan election and subsequently in retention elections. This is, of course, a hybrid plan that encompasses aspects of gubernatorial appointment, nonpartisan election, and merit selection.

Another reform plan would have appellate vacancies filled by gubernatorial appointment with senatorial confirmation. The appellate judges would then run in nonpartisan elections followed by retention elections. In Dallas, Tarrant, and Bexar counties, district court judges would be elected from county commissioner precincts rather than from one district encompassing the entire county. Additionally, in Harris County, district judges would be elected from smaller geographic regions than county commissioner precincts. Supporters of this plan tend to believe that it would increase the number of minority judges, especially trial court judges in urban areas. Of course, this is also a hybrid plan designed to combine various reform proposals in order to gain sufficient support to become the new way Texas selects its judges.

# Comparing How Texas Selects Its Judges to the Rest of the Country

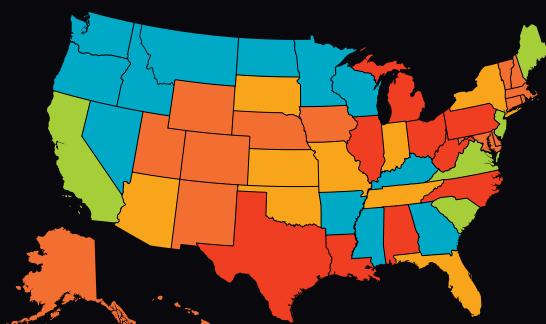
## Judicial Selection Methods



Texas is one of nine states that choose their state judges through partisan elections. This means that voters generally decide for whom to vote based on party affiliation. With so many offices on the ballot, it is simply easier for voters to use their party affiliation as a shortcut. Not all states select judges this way. Many states employ a merit selection method through nominating commissions which make recommendations to the governor. Other states have judges selected by the governor without nominating commissions. Twelve states elect their judges in nonpartisan elections, meaning that judges' parties are not listed on the ballot. The remaining states use a combination of merit selection and other methods.

## Judicial Selection Methods: A Regional View

- Merit selection through nominating commission
- Gubernatorial or legislative appointment without nominating commission
- Partisan election
- Nonpartisan election
- Combined merit selection and other methods



\* Without nominating commission

## for critical analysis

1. What are the advantages of nonpartisan elections to select judges? Which method of selection do you think is the most ideal and why?
2. Are there regional patterns in how judges are selected? If so, why do you think that is?

At least for the time being, however, it seems likely that not much will change in the way Texas selects its judges. Restructuring the system would be a major change, and these are always difficult to initiate. Changing might upset many voters, who like being able to vote for judges, and it would surely upset the political parties, which like having large numbers of judicial candidates running under their party label. It might also upset lawyers accustomed to the traditional ways of selecting judges and even judges who have benefited from the present system. That has led some to argue that judicial reform needs to be less drastic and more incremental. These reformers have suggested lengthening judicial terms of office on the grounds that longer terms mean fewer election contests and therefore less need for campaign money, less of a chance for defeat of incumbents, and less involvement of judges in politics. Another proposed incremental reform is to remove judges from the straight party vote. This means that a voter would actually have to cast a ballot for the judicial candidate rather than simply voting for everyone on the Republican or Democratic column by casting a straight party vote. Such a reform would remove judicial candidates from the effects of top-of-the-ticket voting. It would, of course, also reduce the votes that judges receive and lessen their dependence and reliance on the political parties. Still another suggested reform is to increase the levels of experience needed to serve on the bench. The idea is that even if judicial races are subject to the whims of voters, high qualifications for judges would mean that there would be experienced judges on the bench rather than highly inexperienced judges who won simply because they were good campaigners or because they had the right party affiliation in that election year.

#### Judicial Campaign Fairness

**Act** a judicial reform that places limits on judicial campaign contributions

Perhaps the most significant judicial reform in Texas is the **Judicial Campaign Fairness Act**. Texas is the only state with a campaign finance regulation of this type. Among the most important aspects of compliance with the act are campaign contribution limitations. For example, statewide judicial candidates limit themselves to contributions of no more than \$5,000 from any individual in any election. Additionally, statewide candidates can receive no more than \$30,000 per election from any law firm. Although the amounts of money that can be donated are still quite high, there has been a significant reduction from contribution amounts in the 1980s when, prior to the act, some donors would give candidates \$25,000, \$50,000, and even more in campaign contributions. A recent strengthening of campaign contribution limits requires that if a judge receives campaign contributions from a party to a lawsuit, or if the party's lawyer had made contributions in excess of the limits in the Judicial Campaign Fairness Act, the judge would recuse him- or herself from the case.<sup>36</sup>

For many, the role of money in judicial campaigns is the most troubling issue in Texas judicial politics. As long as judges are elected, however, money will be necessary to run judicial campaigns, and where elections are competitive, a great deal of campaign money will be necessary.

## ● Issues in the Texas Court System

**Assess the impact of recent changes related to tort reform, litigation, and disciplining judges**

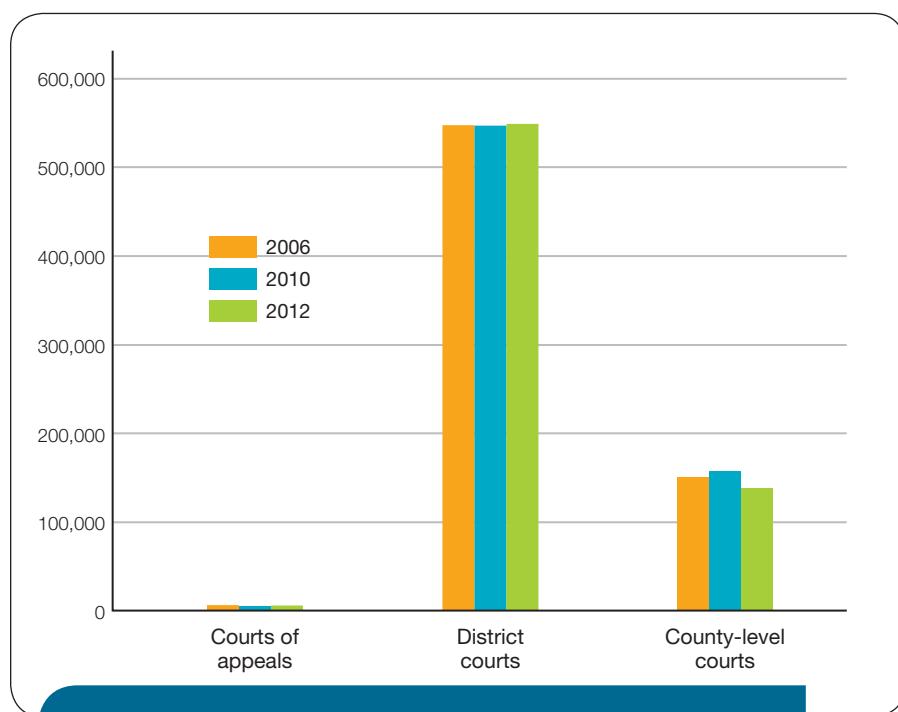
One of the most important issues in Texas has been tort reform, which is the effort to change the system for awarding damages in lawsuits where harm is claimed. Tort reform has had important effects on the Texas judiciary.

## Civil Cases and Tort Reform

Figure 9.2 shows the numbers of civil cases disposed of by the courts of appeal and the trial courts in 2006, 2010, and 2012. The Texas court system is overloaded and would not be able to function adequately without the aid of visiting judges who are retired or defeated judges who continue hearing cases in order to assist with the growing caseloads.

The Texas Supreme Court sets the tone for civil cases throughout the state. Most important of those types of cases, because of the large amounts of money involved, is tort law. Tort law refers to civil cases in which one person has been harmed by the actions of another. For example, medical malpractice cases are a common type of tort case. In the early to mid-1980s, the court tended to be sympathetic to the plaintiffs' positions in tort cases. That is, the court tended to support the side in a case that was suing businesses, professionals, and insurance companies. However, in 1988 more justices began to be elected who favored the defendants in civil lawsuits. One reason for this change was that in 1988 Republican justices began to be elected, and they were more conservative than many of the previous justices, who were Democrats. Another explanation is that interest groups that were harmed by the pro-plaintiff tendencies of the court began to organize, raise and spend money, and elect justices more sympathetic to their perspective.

In the 1980s plaintiffs' lawyers—lawyers who sue businesses, professionals, and insurance companies—worked to elect pro-plaintiff justices. The tide turned, and business, professional, and insurance interests were now electing pro-defense



**FIGURE 9.2**  
**Civil Cases Disposed of by Texas Courts**

SOURCE: Texas Office of Court Administration.

Justices. In 1996–97 civil defendants won three-fourths of the time, and insurance companies won almost all their substantive cases. Physicians, hospitals, and pharmaceutical companies won all seven of their cases before the Texas Supreme Court. In 1997–98 civil defendants won 69 percent of the time.<sup>37</sup> However, by 1998–99 the court was not as strongly pro-defendant, perhaps because of several new justices on the court who were regarded as somewhat moderate in their judicial philosophy. In insurance cases, defendants won only 40 percent of the time, plaintiffs won 40 percent of the time, and the decision of the court was a split decision 20 percent of the time. Defendants in medical cases (typically hospitals or doctors), however, still won 100 percent of the time.<sup>38</sup> Most recently, the court seems to have shifted strongly in favor of civil defendants. A study of the decisions of the Texas Supreme Court in tort cases found that defendants won 87 percent of the time.<sup>39</sup> Still another study of the Texas courts of appeal also found a strongly pro-defendant pattern in civil matters. When plaintiffs in tort cases won at the trial court level and the defendants appealed, the appellate courts reversed the decision 49 percent of the time. When defendants in civil cases prevailed and the plaintiffs appealed, the trial court decision was reversed only 25 percent of the time. The authors of this study add, “Tort reform measures enacted by the legislature, as well as Texas Supreme Court decisions favoring tort defendants, have discouraged some . . . plaintiffs from filing suit at all.”<sup>40</sup> It is this power of the Texas Supreme Court to set the tone in civil cases that makes that court a political battleground, since millions—even billions—of dollars can be at stake as a result of the court’s decisions.

## Judicial Districts

Texas judges may be elected, but Texas judges do not represent an electorate like legislators or county commissioners do. As a result, Texas judges are not subject to redistricting according to the one person—one vote standards used in districting officials in legislative bodies. The result is that Texas judicial districts are a hodge-podge of jurisdictions. Things have not changed since a 1993 report that criticized the structure of the Texas courts. That report stated,

The framers of our current Constitution deliberately designed a system to “localize justice,” establishing a multiplicity of largely autonomous conveniently located courts across the state. With the passage of time, the organization of the courts has become more, not less, cumbersome. A case may frequently be eligible for filing in more than one court, either because of overlapping geographical boundaries or overlapping subject matter jurisdiction. Courts with the same name may have different responsibilities and similar places may have quite dissimilar court structures.<sup>41</sup>

An illustration of this cumbersome court structure can be found in the district court structure in Anderson County in east Texas. There are four district courts in Anderson County. One of those courts also has jurisdiction in Henderson and Houston counties; one of them also has jurisdiction in Freestone, Leon, and Limestone counties; one has jurisdiction in Houston County; and the fourth has jurisdiction in Cherokee County. Bastrop County has three district courts—two of them have jurisdiction only in Bastrop County, but the third court has jurisdiction in Bastrop, Burleson, Lee, and Washington counties. Dallas County has 39 district courts—all with jurisdiction solely in Dallas County. Since district court judges

have four-year terms, that means there may be roughly 20 district court judgeships on the ballot in Dallas County in any general election. Harris County has 59 district courts, which means there might be about 30 district court judgeships on the ballot in Harris County. And, of course, the number of judgeships on the ballot is even more overwhelming for voters because Dallas County also has 16 courts at law and 3 probate courts—not to mention 11 justice of the peace courts at the precinct level. Harris County has 19 courts at law in addition to the 59 district courts and 16 precinct-level justice of the peace courts. These judgeships do not include appellate courts.<sup>42</sup> The idea may be that state judges should be accountable to voters through elections, but when there are numerous judicial contests—and since most judicial contests are low visibility races—it is hard for a voter to cast a thoughtful ballot, but very easy to simply vote on the basis of the party affiliation of the judicial candidate.

## The Role of Lawyers

Lawyers occupy a crucial role in the legal process. In order to practice law, one must be a licensed lawyer, and in order to be licensed in Texas, it is generally necessary to complete a Juris Doctor (JD) degree at a law school accredited by the American Bar Association. Usually this degree takes three years beyond the bachelor's degree if the law student attends full-time. After completing law school, it is necessary for a prospective lawyer to take the state bar exam. After passing the Texas state bar, one may be sworn as a lawyer in Texas. Texas has an integrated bar, which means that all licensed lawyers in the state must join and pay dues to the State Bar of Texas. That agency offers a variety of services to lawyers such as insurance plans, a journal, and professional meetings. Since lawyers must undergo continuing education, the state bar authorizes continuing education credit for a number of educational programs. The State Bar of Texas is unusual in that it is not only a professional organization of lawyers but also an agency of government that is charged with enforcing ethical standards for the profession. Lawyers can be disciplined for a variety of infractions ranging from serious criminal behavior, to failing to keep a client informed of the status of a legal matter, to failure to promptly pay out funds from a legal settlement. The state bar may also enforce rules against illegal efforts to generate litigation. In 2012, for example, a Houston lawyer was disciplined for permitting a non-lawyer to make a number of telephone calls from the lawyer's office to patient rooms at a large Houston hospital for the purpose of soliciting legal business for the lawyer.<sup>43</sup>

Illegal generation of litigation is commonly known as barratry, and the state legislature has become so concerned about lawyers' inappropriately generating legal business that in 2011 it passed new legislation that allows for a penalty of up to \$10,000 and the recovery of attorney's fees. The goal of the new legislation was to prevent what is commonly known as "ambulance chasing," something that appears to continue to be a problem in spite of long-standing state bar rules against it. Some of the horror stories of barratry include people being solicited to sign contracts with lawyers for lawsuits at home, in hospitals, and even during funerals. At times the relatives of accident victims have been offered large payments to sign a contract with a particular lawyer to file a lawsuit.<sup>44</sup>

It is too early to assess the value of the new law in discouraging barratry, though three months after the law was passed, the first barratry lawsuit was filed against two south Texas lawyers who were accused of firing their office manager when she

# STATE BAR of TEXAS

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The Oyez, Oyez, Oh Yay! website focuses on the landmark court decisions that Texas students must know to be successful in preparing for the Texas Essential Knowledge and Skills (TEKS) assessment tests in U.S. government and history. Visit the [website](#) for more information.

## FOR LAWYERS



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### NEWS & INFORMATION

Allan K. DuBois has been elected State Bar of Texas president-elect for 2014-2015. [View the results.](#) C. Barrett Thomas has been elected Texas Young Lawyers Association president-elect for 2014-2015. [View the results.](#) [Read the press release.](#)

The State Bar of Texas conducted the 2013 Texas Attorney Survey. Participants will be entered in a drawing to win one of two iPad Airs. The survey is now closed. Results will be published at [www.texabar.com/research](#).

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*The State Bar of Texas webpage shows the variety of activities of the state bar. Every lawyer licensed to practice in Texas must be a member of the State Bar of Texas.*

refused to sign a contract with them where the office manager would receive a bonus payment for illegally soliciting and referring cases to the lawyers.<sup>45</sup> In 2012 state representative Ronald Reynolds was arrested for the crime of barratry. Reynolds, who was a supporter of the new barratry law in 2011, was charged with illegally soliciting clients on his own and through the office of a chiropractor. The alleged scheme to solicit clients was discovered when a “runner”—a person used by an attorney to solicit clients for the attorney—approached an attorney who was involved in a car accident. The “runner” tried to get the attorney in the accident to hire Representative Reynolds to represent her, but the accident victim instead reported that solicitation to authorities.<sup>46</sup> That charge against Reynolds fell apart when an investigator in the case was arrested for stealing evidence in a case. But Reynolds was arrested a second time on another barratry charge for allegedly paying a man kickbacks who would examine accident reports and then approach and persuade accident victims to sign contracts for legal representation.<sup>47</sup>

In 2010 there were slightly more than 77,000 active lawyers in Texas and more than 1.2 million active lawyers in the United States. In Texas 30.56 active lawyers exist for every 10,000 people, and in the United States as a whole 38.42 active lawyers exist for every 10,000 people.<sup>48</sup> With the decline in the number of legal jobs during the Great Recession, both in Texas and nationally, there is much discussion about whether there are too many lawyers, although it seems likely that the demand for lawyers will increase with an improvement in the economy. Of course, lawyers trained in out-of-state law schools may take the bar exam and be licensed in Texas, but the state has a substantial number of law schools: the University

of Texas, Texas Tech, Texas Southern, St. Mary's, South Texas, Southern Methodist University, Baylor, and Texas Wesleyan. A new law school in Dallas, the University of North Texas College of Law, opened in 2014. In spite of the weakened job market for lawyers, Texas has law schools aplenty.

The legal process in Texas relies on lawyers. Constitutional county court judges are not required to be lawyers, and justices of the peace do not have to be lawyers, but all other judges must be "learned in the law," a term found in the Texas Constitution whose meaning has come to require a law degree. Even justice of the peace courts, which in theory are informal courts where people can easily resolve their minor criminal and civil issues, often have rules of operation that would be confusing to non-lawyers. The Texas Rules of Civil Procedure and Evidence, for example, apply to civil cases in justice of the peace courts, although not when justices of the peace sit as judges in small claims courts, a distinction that itself is confusing to non-lawyers—and much of the litigation in justice of the peace courts involves lawyers who, for example, are representing businesses trying to collect debts or apartment complexes trying to evict a tenant. Of course, in civil and criminal litigation, it is possible for a layperson to pursue a case without a lawyer, but it is generally recognized that non-lawyers are at a significant disadvantage if they are without legal help in either a civil or a criminal proceeding.

## Discipline of Judges

The State Commission on Judicial Conduct was created by a constitutional amendment in 1965. It is charged with investigating allegations of judicial misconduct and disability and is charged with discipline of judges. There are 13 members on the commission and they serve six-year terms. Members of the commission are unpaid. The commission also has a staff of 14. In 2011 the commission spent nearly \$997,000, mostly on staff salaries. The commission is an unusual hybrid agency in that two attorney members are appointed by the state bar and the six judicial members are appointed by the Supreme Court of Texas, with one of the judicial members being an appellate judge, one a county court at law judge, one a constitutional county judge, one a district judge, one a justice of the peace, and one a municipal judge. There are five citizen members who can neither be lawyers nor be judges who are appointed by the governor. The state Senate confirms the commission members.

In dealing with disciplinary issues involving Texas judges, the commission relies on complaints from the public, from attorneys, and from members of the judiciary. In 2012 there were 1,216 complaints filed with the commission, but some are immediately dismissed for failure of the complaint to allege misconduct. A common complaint is that the person disagrees with the judge's decision, but of course this is not a violation of the Code of Judicial Conduct, which is the ethical code promulgated by the Supreme Court of Texas that is enforced by the commission along with certain legislative requirements on judges. Indeed, one of the problems of the commission is that it is responsible for enforcing requirements that the Supreme Court of Texas places on judges and laws passed by the legislature that affect judges. Potentially, there could be a conflict between the Texas Supreme Court



*State representative Ronald Reynolds supported the new barratry law in Texas only to find himself in trouble for allegedly violating that law.*

rules and the legislatively imposed requirements, in which case it would be unclear what the commission should do. Still another problem with the commission is that because it deals with ethical issues of judges, its decision making is done behind closed doors and thus the commission lacks openness and transparency in decision making. Still, other than impeachment by the legislature or criminal prosecution of judges, both rare and extreme measures, the commission is the only mechanism for regulating ethical and legal conduct of Texas judges.<sup>49</sup>

In 2012 the commission imposed 49 sanctions on judges and three suspensions of judges. In addition, the commission accepted three resignations of judges who chose to resign rather than to be sanctioned. The commission can recommend public censure or removal of a judge or the judge's involuntary retirement to a seven-judge review tribunal that is composed of the chief justice of Texas and six appellate judges. The review tribunal's decision can be appealed by the affected judge to the Supreme Court of Texas. No such case occurred in 2012. Other decisions of the commission can be appealed by the affected judge to a court of review consisting of three appellate judges. Three such cases occurred in 2012.

Most of the disciplinary actions of the commission involve private sanctions of the judge. In 2012, 34 sanctions were of a private nature and consisted of the commission providing a private admonition, warning, or reprimand to the judge (admonitions are less severe sanctions than are warnings, which are less severe than are reprimands). In 13 of the private sanction cases, judges were ordered to obtain additional training. In only eight cases were sanctions made public. Five were public admonitions, one was a warning, one was a reprimand, and one was a public sanction with an order for continuing education of the judge. Public reprimands do have especially serious consequences for judges, as often when judges retire, they become visiting judges where they are paid to hear cases when sitting judges are on vacation or where dockets are overloaded and they also continue to be paid retirement income. Judges who receive a public reprimand are not allowed to serve as visiting judges.

A disproportionate share of sanctions are against justices of the peace—30 of the 49 sanctions in 2012 were against justices of the peace, 1 was against a county constitutional court judge, 1 against an appellate judge, 1 against a county court at law judge, 6 against district judges, and 10 against municipal judges.<sup>50</sup>

A widely publicized disciplinary case occurred against Judge William Adams. In 2012 Judge Adams, a county court of law judge in Aransas County, Texas, was suspended for a time and then disciplined by a public warning. In 2011 his adult daughter released a videotape on the Internet that depicted the judge beating her when she was 16 years old in 2004. He struck her at least 17 times, yelled profanities, and threatened additional harm to her. The release of the video led to international media coverage. In the course of the investigation of the matter, incidents were also discovered where Judge Adams appeared to display anger and a poor judicial demeanor toward some attorneys in his courtroom. The commission concluded "that Judge Adams' actions depicted in the 2004 videotape, once publicly released, cast reasonable doubt on his capacity to act impartially as a judge and interfered with the proper performance of his judicial duties." The commission also concluded "that Judge Adams' treatment of certain attorneys in his courtroom . . . fell far below the minimum standards of patient, courteous and dignified courtroom demeanor expected of judicial officials." As a result, the commission condemned Judge Adams's behavior by issuing a public warning.<sup>51</sup>

In another widely publicized case in 2013, Judge Elizabeth Coker (see photo on p. 285), a district court judge in Trinity, Polk, and San Jacinto counties, resigned rather than face discipline from the conduct commission. Judge Coker allegedly texted a prosecutor in the gallery during a trial when she disliked how a witness was being questioned and urged that the examining prosecutor should ask different questions that might yield greater success in the case, thus violating the neutrality expected of a judge in a case.<sup>52</sup>

The most widely publicized disciplinary case against a judge in recent years was the one against the presiding judge of the Texas Court of Criminal Appeals, Sharon Keller. As discussed in the introduction to this chapter, Judge Keller refused to keep the clerk's office at the court open beyond 5 PM to receive an appeal from death row inmate Michael Richard. As a result, Richard was executed later that evening. Although Keller received a public warning as a disciplinary action by the State Commission on Judicial Conduct, she was successful in her litigation against the discipline by arguing that a warning cannot be a penalty following a formal proceeding against a judge. Re-elected to another six-year term in 2012 with 55.49 percent of the vote, she remains the presiding judge of the court.

## ● Thinking Critically about the Judiciary in Texas

Texas elects its judges in partisan judicial elections. For many years, when the Democratic Party was dominant, Texas judicial elections were staid, low-budget, noncompetitive events. However, with the growth of the Republican Party, judicial elections became highly political, and large amounts of money have been raised for judicial candidates, especially in Texas Supreme Court races. Often these judicial races pitted business interests against candidates backed by the plaintiffs' bar because the Texas Supreme Court sets the tone of tort law in the state. These elections have calmed down in recent years as the Democratic Party has weakened and, at least in statewide races, judicial elections have become less competitive.

There have been problems in Texas judicial races, in large part because voters often don't know much about judicial candidates. As a result, voters often decide on the basis of the candidate's party affiliation or the candidate's name appeal. The result has been the election of several judicial candidates who lacked significant qualifications for the job.

Numerous efforts have been proposed to change the way judges are selected in Texas. There have been efforts to change the system of selection to "merit selection" and to nonpartisan election. Minority groups have pushed to reduce the size of judicial districts in order to increase the election of minority judges. However, no change so far has been successful. No majority coalition can agree on appropriate changes in the judicial selection system, and significant opposition to change comes from groups such as the political parties and business interests. Additionally, Texans seem satisfied with the current system of selection and seem to prefer to elect their judges. Recent injustices in the Texas criminal system do raise questions about how the system can be improved. One might speculate that a criminal justice system in which both judges and prosecutors are elected creates political pressures to gain convictions at all costs.

Texas courts handle large caseloads of both civil and criminal cases. The highest civil court in the state is the Texas Supreme Court, currently an all-Republican court elected with strong support from business interests. The court has been severely criticized for being too sympathetic to those interests. The highest criminal court in the state is the Texas Court of Criminal Appeals. That court is also an all-Republican court, which was elected with strong support from prosecutors and victims' rights groups. Perhaps its most important function is as the appellate court for the death penalty in the state.

Because the Texas court system affects the liberty and especially the pocketbooks of Texans, it will continue to be an area of concern and controversy. And the most controversial area of Texas justice will continue to be the process by which judges are selected.

## Court Structure

**Describe how the Texas court system is organized (pp. 277–82)**

The appellate court system in Texas is divided into civil and criminal tracks with the Texas Supreme Court being the highest state-level court for civil cases and the Texas Criminal Court of Appeals being the highest for criminal cases. Texas has an intermediate appellate court system and trial courts that range from district courts for the most important criminal and civil cases, to county courts for less important criminal and civil cases, to justice of the peace and municipal courts for settling the lowest level of conflicts.

### Key Terms

Texas Supreme Court (p. 277)  
Texas Court of Criminal Appeals (p. 279)  
courts of appeal (p. 279)  
district courts (p. 279)  
county judge (p. 279)  
county courts (p. 279)  
statutory county courts at law (p. 280)  
statutory probate courts (p. 280)  
justice of the peace courts (p. 280)

municipal courts (p. 281)  
ordinance (p. 282)

### Practice Quiz

1. The highest criminal court in the state of Texas is the
  - a) Texas Supreme Court.
  - b) Texas Court of Appeals.
  - c) Texas Court of Criminal Appeals.
  - d) county court.
  - e) district court.
2. The major trial courts in Texas are the
  - a) courts of appeals.
  - b) justice of the peace courts.
  - c) district courts.
  - d) municipal courts.
  - e) county courts.
3. Which of the following positions in the judiciary are filled primarily by non-lawyers?
  - a) Texas Supreme Court justices
  - b) district judges
  - c) justices of the peace
  - d) Texas Criminal Court of Appeals justices
  - e) probate judges

## The Legal Process

**Explain the legal process and the differences between criminal and civil law (pp. 282–85)**

Civil law is dramatically different from criminal law with the burden of proof relying on different standards. Plaintiffs are the initiators of legal actions in civil cases. Defendants in civil cases respond to accusations made against them. Civil cases may lead to trial or dismissal by a judge. They may also be resolved by a settlement between the parties. The state is a prosecutor in a criminal case, and the accused individual is the defendant. Criminal cases can result in a trial, a dismissal, or a plea bargain.

### Key Terms

civil law (p. 282)  
criminal law (p. 282)  
complaint (p. 282)

answer (p. 282)  
contingent fee (p. 282)  
preponderance of the evidence (p. 283)  
capital case (p. 283)  
felony (p. 284)  
misdemeanor (p. 284)  
grand jury (p. 284)  
indictment (p. 284)  
bench trial (p. 284)  
plea bargain (p. 284)  
beyond a reasonable doubt (p. 285)

### Practice Quiz

4. Grand juries
  - a) determine the guilt of defendants.
  - b) decide whether a trial of an accused is warranted.

- c) agree to plea bargains.
  - d) recommend that defendants undergo bench trials.
  - e) hear appeals of convictions.
5. On conviction, the criminal's punishment is determined
- a) by the grand jury.
  - b) in a separate hearing by the jury or judge that determined the person's guilt.
  - c) by the prosecuting attorney.
  - d) by the prosecuting and defense attorneys.
  - e) by the Texas Court of Criminal Appeals.

## Judicial Politics

### Evaluate the process for selecting judges in Texas (pp. 285–98)

Unlike federal judges, Texas judges are elected in partisan elections. Partisan elections make judges accountable to voters, but critics claim that unqualified judges are elected solely because of their party labels. These critics advocate alternatives for choosing judges such as merit selection. Minorities are not proportionately represented, possibly in part because most judges are elected from large districts that are non-minority.

#### Key Terms

- en banc* (p. 293)
- retention election (p. 294)
- merit selection (p. 296)
- Judicial Campaign Fairness Act (p. 298)

#### Practice Quiz

- 6. Civil defense lawyers often align themselves with
  - a) business and professional groups.
  - b) the grand jury.
  - c) groups that support workers.
  - d) judges supported by the Democratic Party.
  - e) labor groups.
- 7. Texas's movement from being a Democratic to a Republican state led to
  - a) defeats of large numbers of incumbent judges.
  - b) party switching by incumbent judges.
  - c) large campaign contributions to judges.
  - d) election of more Republican judges.
  - e) all of the above
- 8. In Texas, which event marked the rise of the Republican Party and partisan judicial elections?
  - a) the election of President Ronald Reagan
  - b) the impeachment of William Jefferson Clinton

- c) the appointment of Tom Phillips as Chief Justice of the United States
  - d) the election of Bill Clements as governor of Texas
  - e) the Shivercrat movement
9. Which of the following groups has the largest number of judges?
- a) African Americans
  - b) American Indians
  - c) Asian Americans
  - d) Latinos
  - e) women
10. Elections lost as a result of party membership rather than race or ethnicity do not violate
- a) the Fifth Amendment to the U.S. Constitution.
  - b) the Fair Elections Act.
  - c) Article I of the Texas Constitution.
  - d) *Clements v. Maddox*.
  - e) the Voting Rights Act.
11. How likely is Texas to change its method of selecting judicial candidates?
- a) Texas is scheduled to change to the Missouri Plan in January 2016.
  - b) extremely likely in the next two decades
  - c) likely in the next decade
  - d) a 50–50 chance change will soon occur
  - e) unlikely
12. Which of the following sets campaign contribution limits for judicial candidates in Texas?
- a) Judicial Campaign Fairness Act
  - b) Judicial Campaign Law
  - c) Equal Justice Act
  - d) Code of Judicial Conduct
  - e) Federal Rules of Civil Procedure

# Issues in the Texas Court System

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**Assess the impact of recent changes related to tort reform, litigation, and disciplining judges (pp. 298–304)**

Texas courts make decisions affecting Texans on a variety of issues, including the ultimate penalty of death and tort cases such as medical malpractice.

## Practice Quiz

13. Philosophically, in the past few years, Texas courts became
- a) more pro-defendant in civil cases.
  - b) more liberal.
  - c) more pro-defendant in criminal cases.
  - d) more conservative.
  - e) hostile to tort reform.

14. All lawyers who regularly practice in Texas
- a) must be members of the State Bar of Texas.
  - b) must have graduated from a Texas law school.
  - c) must appear in court at least twice a year.
  - d) must volunteer to sit on grand juries.
  - e) do not need any additional training once they have a law license.
15. The State Commission on Judicial Conduct
- a) screens judicial candidates to determine if they are qualified to be judges.
  - b) offers continuing education courses for judges.
  - c) investigates complaints of ethical violations by judges.
  - d) recommends trial judges for promotion to appellate courts.
  - e) makes rules governing the conduct of judges.

## Recommended Websites

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The Supreme Court of Texas  
[www.supreme.courts.state.tx.us/](http://www.supreme.courts.state.tx.us/)

Texans for Public Justice  
[www.tpj.org](http://www.tpj.org)

Texas Court of Criminal Appeals  
[www.cca.courts.state.tx.us/](http://www.cca.courts.state.tx.us/)

Texas Courts Online: Texas Court Structure  
[www.courts.state.tx.us/](http://www.courts.state.tx.us/)

Sometimes the decisions of local governments can have dire consequences. Fifteen people, including 12 firefighters, died in an explosion and fire at a fertilizer plant in West, Texas. West had no fire code and thus the plant was not required to install sprinklers. This photo shows the memorial service for the firefighters.



# 10

# Local Government in Texas

**WHY LOCAL GOVERNMENT MATTERS** On April 17, 2013, the tiny town of West, Texas, was rocked by an explosion at the local fertilizer plant. There were 15 fatalities, 200 injuries, and damage estimated at \$100 million. There are estimates that \$40,000 worth of sprinklers would have prevented the explosion, but the town did not have a fire code that mandated them. Under state law, both the city and the county could adopt a fire code, but they chose not to do so. Less than one week before the West explosion, state representative Walter Price testified before the County Affairs Committee that all Texas counties should be authorized to have a fire code. The proposal was opposed on the grounds that a fire code would require property owners to retrofit their buildings to comply with the code.

Only 15 counties in Texas have adopted a fire code, although 81 are allowed by state law to do so. Texas is one of just a handful of states with no statewide fire code. And there are many counties that cannot impose a fire code even if they chose to do so. For a county to have a fire code, state law requires that they have a population of more than 250,000 or that they touch a county of that size. One hundred seventy-three counties do not meet that requirement, and 85 percent of those counties do not have a full-time professional fire department anywhere in the county, although 21 of those counties do have special districts called emergency service districts that provide some fire protection. Still, Victoria County has approximately 39 million pounds of poisonous chemicals within its borders and 11 million pounds of flammable chemicals; Parmer County has 10 companies within its borders that have 2.3 million pounds of toxic anhydrous ammonia; Jasper County has a paper mill containing 83,280 pounds of chlorine dioxide. None of these counties are allowed by law to have a fire code.

Local government is generally praised for being closer to the people it serves and, therefore, being more responsive to those people than the state or national government can be. The problem is sometimes local governments do not have the power or the ability to provide adequate services for their citizens. The disaster in West raises the question of whether local governments are doing a basic job—protecting the people they serve.<sup>1</sup>

## chapter goals

- Explain the importance of county government in Texas (pp. 312–20)
- Describe the major types of city government in Texas (pp. 320–30)
- Examine the role of special districts in Texas government (pp. 330–36)
- Examine the financial problems facing local government (pp. 337–41)

### ● County Government in Texas

#### Explain the importance of county government in Texas

Local government institutions play a major role in Texas. There are more than 4,800 general-purpose local governments, an average of about 19 per county.<sup>2</sup> Local government is everywhere in Texas, providing water, electricity, and sewer services, as well

as police protection and public education.

All but two states have governmental units known as counties (or parishes), but Texas has 254 counties, more than any other state.<sup>3</sup> County government in Texas is primarily a way of governing rural areas. Because Texas is so vast, with huge areas that are sparsely populated, county government remains an important aspect of local government. As was discussed in Chapter 2, the Texas Constitution places numerous restrictions on government, and numerous provisions of the constitution place restrictions on counties. Indeed, in Texas, counties have very constricted governmental powers. Unlike city governments, county governments usually do not have powers to legislate. Because they lack much of the power of self-government, they often function primarily as an administrative arm of the state government.

Texas counties have their origins in the “municipality,” which was the local governmental unit under Spanish and Mexican rule. These municipalities were large and included settlements and surrounding rural territories. In 1835, Texas was divided into 3 departments and 23 municipalities. With the Republic of 1836, the 23 municipalities became counties. By the time Texas became a state in 1845, there were 36 counties, and when Texas entered the Confederacy in 1861, there were 122 counties. The number of counties increased steadily until 1921, when the 254th county was created. The underlying goal of the proliferation of counties was that any citizen could travel to the county seat—on horseback, of course—and return home in a day. Given the sparse population of west Texas, in particular, that initial plan for county organization was eventually rejected, but it does show that Texans believed that the local center of government, the county seat, should be accessible to the people.<sup>4</sup>

## Numerous County Offices: Checks and Balances or Built-In Problems?

As with the state government, one of the characteristics of county government in Texas is a multiplicity of elected governmental officials. Some argue that the large number of public officials at the county level is desirable because it creates a strong system of checks and balances, allowing no one official to dominate county government.<sup>5</sup> However, that system of checks and balances comes at a high price. There are problems of coordination of governmental activity, much as at the state level. One of the most important bodies of county elected officials is the **county commissioners' court**, which is the main governing unit in the county. Although the commissioners' court is not really a judicial court, it may have gotten its name from the Republic of Texas Constitution (1836–45), in which the county governing unit consisted of the chief justice of the county court and the justices of the peace within the county.<sup>6</sup>

The current structure of the county commissioners' court, shown in Figure 10.1, consists of a **county judge** and four commissioners. The county judge is elected countywide and serves for four years. He or she presides over the meetings of the commissioners' court and has administrative powers as well as judicial powers in rural counties. In those counties, the county judge hears minor criminal cases and handles some civil matters such as probate matters. In larger counties, the county judge is an administrator only, with the judicial duties of the office removed by the creation of judgeships, such as probate judgeships and county-court-at-law judgeships.

Each commissioners' court also has four **county commissioners**; each of these officials is elected from a precinct that encompasses roughly one-fourth of the population of the county. In the late 1960s one of the great issues in constitutional law involved the issue of malapportionment, the allegation that election districts did not represent equal population groupings. The malapportionment of Texas's county commissioners' courts became an important case before the U.S. Supreme Court because those precincts tended to be drawn to represent fairly equal land areas rather than equal population groupings. In *Avery v. Midland County* (1968), the U.S. Supreme Court held that the principle of "one person, one vote" applies to

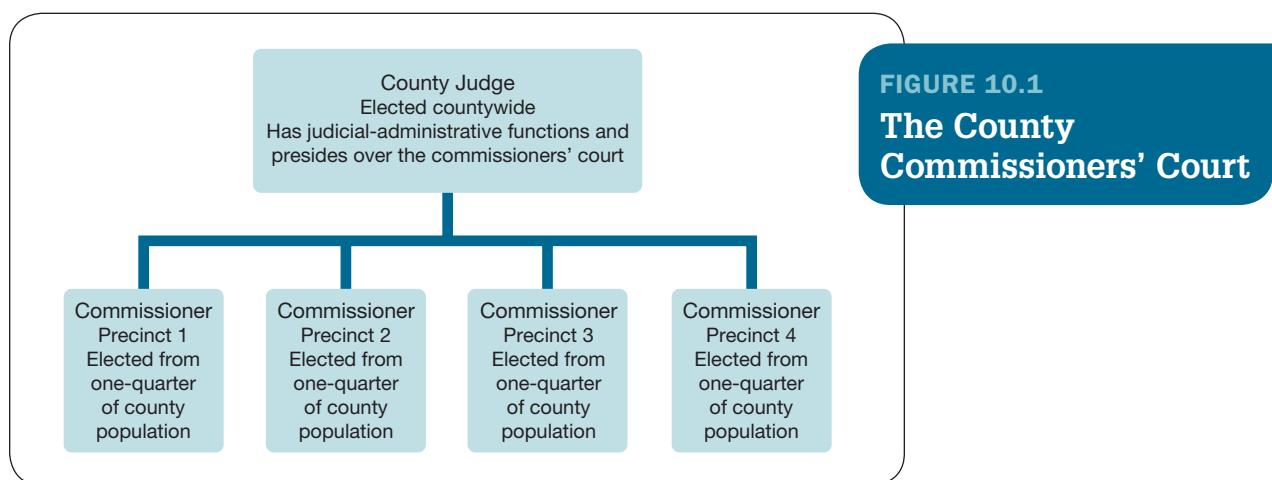
**county commissioners' court**

the main governing body of each county; has the authority to set the county tax rate and budget

**county judge** the person in

each of Texas's 254 counties who presides over the constitutional county court and county commissioners' court, with responsibility for the administration of county government; some county judges carry out judicial responsibilities

**county commissioner** government official (four per county) on the county commissioners' court whose main duty is the construction and maintenance of roads and bridges



commissioners' courts just as it applies to legislative districts. The result was that commissioners' precincts must now be drawn to reflect equal population groupings within counties.<sup>7</sup>

The main duty of county commissioners is the construction and maintenance of county roads and bridges; usually each commissioner provides for roadwork within his or her precinct. That aspect of a commissioner's work is, of course, very important to rural residents; it can be politically controversial and has sometimes been tinged with corruption.<sup>8</sup>

The commissioners' court also sets the county tax rate and the county budget. Related to its taxing and budgeting powers is its power to make contracts and pay bills. Perhaps the most important expenditure of most county commissioners' courts, other than road and bridge expenditures, is the cost of building and maintaining county jails. Indigent health care can be a significant cost for counties as well, along with, in some cases, fire protection and sanitation. Some counties also have costs associated with the maintenance of libraries and hospitals and costs for emergency welfare expenditures, such as those brought on by natural disasters or fires. The commissioners' court can appoint certain county officials, and it can hire personnel as well as fill vacancies in county offices. It also administers elections in the county.

However, as noted earlier, there are numerous elected officials in Texas counties, each with an independent power base. It seems nearly inevitable that tensions would develop between the budgetary powers of the commissioners' courts and the needs and desires of other elected county officials.

As Table 10.1 shows, other officeholders are elected at the county level and still others at the precinct level of the county. There is some variation in the numbers of officeholders, depending on the county. For example, larger counties will have more justices of the peace and more **constables** than smaller ones. In some counties, constables serve legal papers, while in others, constables also have a law-enforcement role with the authority to patrol, give tickets, and make arrests. Some

**constable** precinct-level county official involved with serving legal papers and, in some counties, enforcing the law

**TABLE 10.1**  
**Countywide and Precinct-Level Elected Officials**

COUNTYWIDE OFFICIALS	PRECINCT-LEVEL OFFICIALS
County judge	County commissioners
Possibly county court-at-law judges, possibly probate judges, and district judges	Justices of the peace
County and district attorney or criminal district attorney	Constables
Sheriff	
County and district clerk or district clerk	
Possibly county treasurer	
Tax assessor-collector	
Possibly county surveyor	



The county commissioners' court is the main governing unit at the county level, with control over the county budget and projects such as road construction. Here, Denton County commissioner Andy Eads appears with Texas Motor Speedway president Eddie Gossage at the groundbreaking for a highway extension near the speedway.

counties use constables to check on truants from school, having found a niche area that others in law enforcement do not seem to want.

Larger counties may have probate judges, numerous district judges, and county-court-at-law judges. Smaller counties may not have probate judges or even county-court-at-law judges. Some of the smaller counties may share district judges and district attorneys with other counties. Laws setting up different offices often vary from county to county as well. As a result, some counties have county attorneys and district attorneys; others have criminal district attorneys that combine the county attorney and district attorney offices. Some counties have county clerks and district clerks; smaller counties may combine the offices in one person. Some counties have county treasurers; others do not have such an office.

### Are Some Counties Too Small?

The reason for the variation in offices is not simply that laws were passed at different times, thus sacrificing uniformity among counties. It is also the case that Texas is a large, diverse state with great variation among its counties. The result is great variation in the numbers of government officials, the duties of officials, and the services provided by the different county governments. Brewster County has a population of only 9,316, but it covers a territory of 6,193 square miles, about the size of Connecticut and Rhode Island combined. Rockwall County, in contrast, has only 149 square miles and a population of 83,021. Although Harris County has a population of 4,253,700, Loving County has a population of only 71, yet Loving County covers a huge land area—nearly 677 square miles.<sup>9</sup> Most employed residents of Loving County work for the Loving County government. The fact that the county government is the major employer in the county may be the main justification for Loving County's continuing existence as a governmental unit—although people with taxable property may also prefer the Loving County tax structure to that of another governmental unit.<sup>10</sup>

*County courthouses are where civil and criminal cases are heard. This photo shows the Jasper County Courthouse during the capital murder case of the men accused of the 1998 dragging death of James Byrd, Jr.*



A small population may create a sense of community and closeness to local government, but it can place a terrific strain on county resources when unusual events occur.

One of the medium-size Texas counties is Jasper County in east Texas, which in 2012 had a population of 35,923. Jasper County had huge costs as a result of the capital murder trials of three men accused in the 1998 dragging death of James Byrd, Jr. Two of the three men were sentenced to death; the third got life in prison. Costs associated with the trial came to over \$1.02 million. The result was such a strain on the \$10 million annual county budget that the county was forced to increase property taxes by 8 percent over two years to pay for the trial. Only a massive flood in the county in the late 1970s had come close to creating a financial burden similar to that of the trial.<sup>11</sup>

Jasper County is not the only county struggling with a huge financial burden from capital murder trials. The basic cost of prosecuting a capital case averages \$200,000 to \$300,000, and that does not include the costs of indigent-defense lawyers, appeals, and trial transcripts.

The burden of the capital case on Jasper County convinced Texas lawmakers to expand a program to assist counties in paying the “extraordinary costs” of prosecuting capital murder cases. That aid program was motivated by a fear that underpopulated counties would pursue lesser charges than those carrying the death penalty to avoid incurring financial hardship. One of the sponsors of the legislation, for example, said that he had often heard concerns expressed over the cost pressures of capital trials from officials in the 17 rural counties he represented.

Polk County in east Texas (2012 population of about 45,656) estimated that it had unanticipated costs of \$200,000 when the U.S. Supreme Court overturned the sentence of Johnny Paul Penry, who was convicted in the stabbing death of a



*Agents and drug-sniffing dogs at the U.S. Customs and Border Protection checkpoint in Hudspeth County, 85 miles east of El Paso. Smaller counties on the U.S.–Texas border, like Hudspeth, have found prosecuting smaller drug violations too costly.*

woman in 1979, and sent the case back for another trial. Even with \$100,000 in aid from the state to help pay the bill, the costs of one trial tremendously burdened Polk County.<sup>12</sup> An even more severe situation faced tiny Franklin County (2012 population of 10,640) in 2007, when it needed to come up with a minimum of \$250,000 for a murder trial.<sup>13</sup> Since capital murder cases were so rare in the county, the commissioners had no money at all budgeted for such a purpose. For small counties such as Polk and Franklin, expenses like these require either major cuts in other budget items or tax increases.

Very small counties in the Big Bend area of Texas are discovering that they cannot afford to prosecute the drug violations that are too small for the federal government to prosecute. In counties that have Border Patrol checkpoints, relatively minor drug cases have been prosecuted at the county level rather than by the federal government, although the federal government has provided some aid for funding these prosecutions. But Hudspeth County (2011 population of 3,423) has discovered that for every dollar it gets for handling federal border crimes and seized assets, it costs the county \$2 to detain, process, and prosecute the offenders. As Hudspeth County is the site of a border checkpoint, the cost has gotten so substantial that the county has chosen to no longer prosecute the federal drug cases sent to it. Brooks County (2011 population of 7,222) had previously stopped taking the federal drug cases from its Border Patrol checkpoint because the county found the costs too great, and Kenedy County (2011 population of 437) has recently made the same decision. Part of the problem is that the federal government has decided to reimburse local authorities only for prosecution costs but not for detention costs. For small-population counties like Hudspeth County, that imposed too great a financial burden, since detention is the most expensive item in the county budget.<sup>14</sup>

According to the 2010 Census, 160 Texas counties have populations of fewer than 30,000, and 137 of those counties have populations of fewer than 20,000. One recent study confirmed fears that Texas has wide variations in its counties'



*The county commissioners' court is also responsible for constructing and maintaining bridges, such as this one near Houston.*

application of capital punishment, in part because of the costs of death penalty cases to smaller counties. Between 1976, when the U.S. Supreme Court reinstated capital punishment, and July 2011, Texas sent just over 1,060 inmates to death row. Only four of the state's most heavily populated counties—Harris, Bexar, Dallas, and Tarrant—accounted for 534 of these death sentences. By itself, Harris County, the county with the largest population, accounted for 280, or 28 percent, of the death sentences. In contrast, 135 Texas counties with relatively small populations have not sent an inmate to death row in 1976–2011.<sup>15</sup>

Counties exist as they do for a variety of reasons. The original goal of making county seats easily accessible by horseback is, of course, no longer pertinent. Other reasons are political. For example, wealthy landowners may have urged the legislature to create counties so that they could control county government and hence the amount of property taxes they might pay. Still, we must wonder if so many small counties are needed. The Jasper County situation suggests that even moderate-size counties by Texas standards may be too small to function adequately in unusual situations.

## The Functions of County Government

What, then, are the main functions of Texas county government? Table 10.2 lists them. Like most other aspects of county government in Texas, these five primary functions are performed with great variation among the counties.

County road and bridge construction and maintenance have traditionally been such important functions of the commissioners' court that often county commissioners are called "road commissioners." County commissioners maintain more than one-half of the roads in the state.<sup>16</sup> There are roughly 134,000 miles of rural roadways and 17,000 rural bridges in Texas. Maintenance of these roads and bridges is a major cost for county government.<sup>17</sup> For example, a 20-foot-wide asphalt road for lightweight traffic costs a county \$45,000 per mile to resurface; a road of the same width for heavy trucks costs about \$100,000 per mile.<sup>18</sup> Although a 1947 law allowed counties to place the road system under the authority of a county engineer, in most counties roads and bridges remain one of the most important responsibilities of the commissioners.

Law enforcement is another important responsibility of county government. This job is undertaken by constables and by the sheriff. The sheriff is the chief law-

enforcement officer within county government. In rural counties with few city police departments, the sheriff may be the major law-enforcement official in the county. In addition to law enforcement and the provision of deputies for the district and county courts, sheriffs are responsible for the county jail and the safety of prisoners. In many counties, operating a county jail is an expensive and major undertaking. On May 1, 2013, for example, Harris County was guarding and supervising 8,834 inmates in its county jail, Dallas County had 5,958 inmates in its jail, and Tarrant County had 3,096. On the other hand, 19 counties had no jails. Glasscock County had room for 12 inmates in its jail but had no inmates; Trinity County had room for 7 inmates but had 6 inmates. Real County had a jail capacity of 3 and had 1 inmate, and Terrell County had a capacity of 8 and had 1 inmate.<sup>19</sup>

**TABLE 10.2**

### Primary Functions of County Government

- Construction and maintenance of county roads and bridges
- Law enforcement
- Dispute resolution
- Record-keeping
- Social services

Although the law-enforcement budget is approved by the county commissioners' court, sheriffs often have considerable influence in county government and develop their own law-enforcement styles. The sheriff of Montgomery County was the first sheriff in Texas to have an aerial drone at a cost of \$220,000 until it rose into the air about 18 feet, went out of control, and crashed into the Sheriff's Department SWAT team armored vehicle.<sup>20</sup>

**County attorneys** and **district attorneys** also perform a law-enforcement role by prosecuting criminal cases. Usually, the district attorneys prosecute the more serious criminal cases in the district courts, whereas the county attorneys prosecute the lesser criminal cases in the county courts. In more urban counties, the offices of county attorney and district attorney may be combined into one office that is usually called the office of criminal district attorney.

Record-keeping is an important function of county government. **County clerks** keep vital statistics for the county and issue licenses; they maintain records for the commissioners' court and the county courts. Most important, the county clerk is responsible for records relating to property transactions. Sometimes the county clerk maintains election and voting records. If there is a **district clerk**, he or she maintains records for the district courts, though in small counties this office is combined with the office of the county clerk. Tax records are maintained by the **county tax assessor-collector**, who also collects taxes, though in the smaller counties the sheriff often performs this job. Although constitutional amendments have eliminated the office of county treasurer in many counties, where the office does exist, the treasurer is responsible for receiving and expending county funds. The **county auditor** now does much of the work of the county treasurer. There are now about 200 county auditors in Texas. Auditors are not elected; they are appointed by the county's district judges. Not only do they audit the county's funds, but in large counties they will often prepare the county budget for the commissioners' court.

Counties also have an important role in dispute resolution through their court systems. Civil law is a way to resolve disputes between people, and the justice of the peace court and the county and district courts deal with large numbers of civil disputes as well as criminal matters. County and district attorneys may also represent the interests of the county or state in disputes that involve governmental interests.

Finally, counties may perform a social service function. The social services provided vary from county to county. However, the most important social services involve emergency welfare assistance to individuals. This may include the provision of food, housing, rental assistance, or shelter to needy individuals. Larger counties have health departments to work on the prevention and control of communicable diseases. Some counties operate mental health services. Some counties provide parks, airports, fire protection, and sanitation facilities. One of the most important social services provided by counties is indigent health care.

## County Government in Perspective

County government occupies an important role in Texas local government, although the powers of county government are greatly restricted by the Texas legislature. One of the most notable features of Texas counties is their great variation in geographical size, in population, and even in county offices, duties of county



*Counties have control over law-enforcement budgets, but sheriffs often decide how the money gets spent. Pictured here is Montgomery County Sheriff's Department's \$220,000 drone that quickly crashed because it was too heavy to fly.*

**county attorney** county official who prosecutes lesser criminal cases in the county court

**district attorney** public official who prosecutes the more serious criminal cases in the district court

**county clerk** public official who is the main record-keeper of the county

**district clerk** public official who is the main record-keeper of district court documents

**county tax assessor-collector** public official who maintains the county tax records and collects the taxes owed to the county

**county auditor** public official, appointed by the district judges, who receives and disburses county funds; in large counties, this official also prepares the county budget

## for critical analysis

Should county governments be merged into larger units? What would be the advantages and disadvantages of larger units than the current structure of county governments?

officials, and services provided by county government. Additionally, like state government, county government has a large number of elected county officials. Although this may limit the power of any one county official, it also produces disagreement, conflict, and difficulty in accomplishing objectives.

Many of Texas's counties are very small, possibly too small to meet the needs of Texans in the twenty-first century, although there is no serious effort to change the current structure of counties. Counties perform important and often expensive functions. Some of those functions of county government and the costs associated with them—for example, road and bridge construction and maintenance and jail construction and operation—are likely to increase significantly in the future.

## ● City Government in Texas

### Describe the major types of city government in Texas

As of the 2010 Census, there were 1,221 municipalities in Texas, ranging in size from 27 residents in Corral City to nearly 2.1 million in Houston (see Table 10.3). Like county governments, municipal governments are creations of the state of Texas. In the early

years of the Republic of Texas, the Texas Congress was responsible for enacting laws that incorporated cities. The number of urban areas grew in the state in the late nineteenth and early twentieth centuries, making the management of local affairs a growing burden on the state legislature. In 1912 the legislature passed the Home-Rule Charter Amendments that enabled cities of more than 5,000 inhabitants to adopt home-rule charters with a majority vote of qualified voters.

**Home-rule charters** essentially lay down the rules under which a city will operate.<sup>21</sup> They provide for the form of government that operates in the city and specify the number of members serving on the city's governing body. They also may grant the governing body the power to annex land adjacent to the city as well as to set property tax rates up to \$2.50 per \$100 valuation. Home-rule cities are also constitutionally authorized to borrow money in ways not available to smaller municipal entities. Home-rule charters must be consistent with the state constitu-

tion and any other relevant statutory provisions. For example, the state has mandated that most city elections take place on a date provided by the Texas Election Code. City elections must be conducted under the general guidelines set by the state. Nevertheless, home rule in Texas has delegated enormous power to local city governments. According to a report by the Advisory Commission on Intergovernmental Relations, the Texas Constitution leaves cities more "home rule" than does any other state. There are now 335 home-rule cities in Texas.<sup>22</sup> Table 10.4 lists the 10 largest of these.

Cities and towns of fewer than 5,000 people are chartered by general statute, as was the case for all cities and towns prior to the 1912 home-rule amendments. These "general-law" cities and towns may act or organize themselves only as explicitly permitted by statutory law passed by the state legislature. The constitution also limits what they can do. For example, general-law cities may levy, assess, and collect taxes as authorized by statute. But the constitution sets a maximum property tax rate of \$1.50 per \$100 valuation, compared with \$2.50 per \$100 valuation for home-rule cities.

**TABLE 10.3**

### Municipal Entities in Texas

SIZE	NUMBER
100,000 or more	28
50,000–99,999	30
10,000–49,999	157
5,000–9,999	115
Fewer than 5,000	891
Total	1,221

SOURCE: Calculated from [www.texasalmanac.com/topics/government/government](http://www.texasalmanac.com/topics/government/government).

**TABLE 10.4****The Largest Home-Rule Cities**

NAME	2010 CENSUS POPULATION	2012 POPULATION ESTIMATES	FORM OF GOVERNMENT	FIRST CHARTER	PRESENT FORM ADOPTED
Houston	2,099,451	2,160,821	Mayor-council	1905	1994
San Antonio	1,327,407	1,382,951	Council-manager	1914	1951
Dallas	1,197,816	1,241,162	Council-manager	1889	1907
Austin	790,390	842,592	Council-manager	1919	1994
Fort Worth	741,206	777,992	Council-manager	1924	1985
El Paso	649,121	672,538	Council-manager	1873	2004
Arlington	365,438	375,600	Council-manager	1920	1990
Corpus Christi	305,215	312,195	Council-manager	1926	1993
Plano	259,841	272,068	Council-manager	1961	1993
Laredo	236,091	244,731	Council-manager	1848	1911

SOURCES: Compiled from *Texas Almanac 2006–2007* (Dallas: Dallas Morning News, 2006), 340–64; *Texas Almanac 2008–2009* (Dallas: Dallas Morning News, 2008), 8; Texas State Data Center; [www.citypopulation.de/USA-Texas.html](http://www.citypopulation.de/USA-Texas.html); City Charter of the City of Laredo as Amended (2010); City of El Paso website, [www.elpasotexas.gov.](http://www.elpasotexas.gov/); U.S. Census Bureau, "State and County QuickFacts," [www.quickfacts.census.gov/qfd/states/48/484/464.html](http://www.quickfacts.census.gov/qfd/states/48/484/464.html).

Politics at the local level is often politics at its most basic. Unlike in presidential elections, in which the issues may well involve questions of war and peace, or state elections, which may involve issues such as whether a state should have an income tax, in local elections the most pressing issue may well be potholes in the city streets. Although pothole repair may not seem earthshaking in the hierarchy of political concerns, it is exactly such an issue that most directly and routinely affects most people's lives, and thus it becomes a prime issue for discussion among candidates. As mundane as such concerns are, these are the fundamental issues in most local elections because they reflect the needs and expectations that residents have of local government.

## Forms of Government in Texas Cities

Texas home-rule cities have had three major forms of city government: the mayor-council form, the commissioner form, and the council-manager form. The **mayor-council form of government** is the oldest. It consists of an elected mayor and city council. The mayor is usually elected from the city in an **at-large election**. The council may be elected either at large or from a series of **single-member districts**, or a mixture of the two. In the mayor-council form of government, the mayor is the chief executive officer of the city. He or she presides over council meetings and has a variety of appointment powers. The city council, meanwhile, serves as the legislative body in the city, passing local laws and watching over the executive departments.

There have been both strong mayor-council systems and weak ones, depending on the powers given to the mayor by the city charter or state statute. In the *strong mayor-council* variation, various executive powers, such as appointive and removal powers to boards and departments or veto powers, are concentrated in the

**mayor-council form of government** a form of city government in which the mayor is the chief executive and the city council is the legislative body; in the *strong mayor-council* variation, the mayor's powers enable him or her to control executive departments and the agenda of the city council; in the *weak mayor-council* variation, the mayor's power is more limited

**at-large election** an election in which officials are selected by voters of the entire geographical area, rather than from smaller districts within that area

**single-member district** an electorate that elects only one representative for each district

office of mayor. These powers enable the mayor to establish effective control over various executive departments in the city and to control the legislative agenda of the city council. In the *weak mayor–council* variation, these executive powers are much more limited, fragmenting power between the mayor and other elected or appointed officials.

In the 1990s the mayor-council form of government was the dominant form of government in most of the incorporated cities in Texas, particularly among general-law cities. However, among home-rule cities the mayor-council government was not popular. According to a 1995 survey of 284 home-rule cities conducted by the *Texas Almanac*, only 31 had adopted the mayor-council form of government.

**commissioner form of government** a form of city government in which the city is run by a small group of elected commissioners who act in both legislative and executive capacities

A second form of city government found in Texas is the **commissioner form of government**.<sup>23</sup> Under the commissioner system, the city is run by a small commission, composed of between five and seven members generally elected at large. The commission acts in both a legislative and an executive capacity. As a group, commissioners enact laws for the city. Each commissioner is in charge of one of a variety of departments. One commissioner is also designated as the mayor to preside at meetings.

The commission plan was developed as a response to the devastating hurricane that hit Galveston in 1900, claiming an estimated 6,000 lives. It reflected a desire to bring good business practices to city government that would somehow escape the squabbles and inefficiency of traditional local government found in the mayor-council form. The commission plan was adopted by Houston in 1905 and by a number of other Texas cities in 1907, including Dallas, Fort Worth, and El Paso. Progressives across the country supported the plan and other reform principles often integrated with it, including nonpartisan elections, merit selection of employees, and such direct democracy techniques as the initiative, referendum, and recall. At its peak in 1918 the commission form was used by approximately

*The commissioner form of government was developed as a response to the devastating hurricane that hit Galveston in 1900.*



# How Extensive Are Texas's Local Governments?

## Number of Local Governments in Each State, 2012



Total local govs.	Per 100K people								
IL 6,968	54	MI 2,877	29	AK 1,543	53	TN 920	14	UT 613	22
PA 4,905	39	CO 2,818	55	OR 1,509	39	NM 854	41	NH 542	41
<b>TX 4,856</b>	<b>19</b>	IN 2,694	41	GA 1,365	14	MA 852	13	LA 530	12
CA 4,350	12	ND 2,666	390	NJ 1,344	15	ME 841	63	VA 497	6
KS 3,806	133	NE 2,581	140	KY 1,314	30	WY 795	140	MD 347	6
MO 3,752	62	SD 1,979	240	MT 1,240	124	VT 728	116	DE 338	37
OH 3,702	32	IA 1,939	63	AL 1,208	25	SC 681	15	NV 190	7
MN 3,633	68	OK 1,854	49	ID 1,161	73	AZ 659	10	AK 177	25
NY 3,454	18	WA 1,831	27	MS 991	33	WV 658	36	RI 134	13
WI 3,123	55	FL 1,554	8	NC 964	10	CT 644	18	HI 21	2

Like other states, Texas has many local governments, including county governments, school board districts, special districts, and municipal utility districts. One would expect that Texas's political culture would lead it to have fewer local governments than other states with traditions of more governmental involvement. Is this the case?

### for critical analysis

- What are some of the characteristics of states with large numbers of local governments?
- Does the picture change when we factor in population? Which states have larger numbers of local governments per capita? What might explain these differences?

NOTE: Different sources provide different numbers of local governments, but Texas does have somewhat more than 4,800 local governments.

SOURCE: [www.governing.com/gov-data/number-of-governments-by-state.html](http://www.governing.com/gov-data/number-of-governments-by-state.html) (accessed 2/20/14).

**council-manager form of government** a form of city government in which public policies are developed by the city council and executive and administrative functions are assigned to a professional city manager

500 cities across the country and 75 cities in Texas. Following World War I, the number of commission-form cities decreased. By 2000 no city in Texas had a pure commission form of government, although 26 still claimed to have some variation of a commission-manager form of government.<sup>24</sup> In practice, none of the “commissioners” in these cities exercised executive control over specific city departments as envisioned in the original commission system. Instead, they functioned more like council members under the council-manager form of city government.<sup>25</sup>

The third form of city government found in Texas is the **council-manager form of government**.<sup>26</sup> As originally envisioned, a city council elected in at-large elections was to be the policy-making body. Council members generally received little or no pay and were intended to be publicly motivated citizens interested in serving the public good, rather than professional politicians. A mayor was selected from among the council members. The city manager was to be a professional public manager who served as the chief executive and administrative official in the city. As in the commissioner form of government, the goal of the council-manager form of government was twofold: to free local government from the seamier side of politics and to bring administrative expertise to local government.

In 1913, Amarillo was the first city to abandon the commissioner form of government for the council-manager system. In 1914, Taylor and Denton followed suit. By 1947 there were 47 council-manager systems in Texas. By the mid-1990s, 251 of the home-rule cities had council-manager systems. Across the United States, it has become the most popular form of government for cities of over 10,000 residents.

Today, council-manager systems vary across the state in a number of ways. The desire for professional administration of local government remains high. Most city managers have graduate degrees and are paid high salaries like other executive officers in the private sector. But a desire for more political accountability through traditional democratic processes has introduced some changes. The growing ethnic and racial diversity of some Texas cities has forced many political leaders to question the wisdom of freeing local government too much from democratic controls. In most cities, mayors now are elected at large from the population as a whole, rather than only from the council. Many cities also elect council members from single-member districts rather than only from at-large districts. Many see at-large districts as undercutting minority representation by diluting minority votes. Only when Dallas moved from an at-large council to a council elected from single-member districts in 1991 did minorities come to play a major role in the decision-making processes of city government. But most cities and towns under the council-manager system continue to view local political offices as part-time jobs. Mayoral and council salaries remain low. A few cities, such as Austin, offer considerably higher salaries. The demand for more democratic accountability in local government will likely continue to lead to more changes in the council-manager system of government across Texas. Balancing an efficient city government run by professionals with democratic political processes will continue to be a problem as Texas’s metropolitan areas grow and diversify in the early twenty-first century.

## A Tale of Five Cities

**Houston** Houston is the largest city in Texas, with over 2.1 million people. It has a strong mayor–council form of government. There are 16 elected officials in the city serving concurrent two-year terms, including a mayor, a controller, and 14 council members. The mayor serves as the chief executive official in the city and is the

city's chief administrator and official representative. Much of the mayor's power stems from the authority to appoint department heads and people serving on advisory boards, subject to council approval. The mayor also presides over the city council with voting privileges. The 14-member council is a legislative body composed of five at-large seats and nine single-member district seats.

Unlike in most other cities, the city controller in Houston is an elected official.<sup>27</sup> The city controller, currently Ronald Green, is the city's chief financial officer. Besides investing city funds, conducting internal audits of city departments, and operating the city's financial management system, the controller is also responsible for certifying the availability of funds for city council initiatives. In the end, the office of the controller is both a professional position and a political position. Not surprisingly, the controller often comes into conflict with the mayor and the council over important policy issues.

Although local politics in Houston is nominally nonpartisan, in recent years it has taken on a partisan flavor. Houston's current mayor is Annise Parker, who serves as executive officer of the city. She is a well-known Democrat and is also a lesbian who supports gay marriage. Her call for legalizing gay marriage and her proclamation that Valentine's Day was Freedom to Marry Day have led to a political outcry among social conservatives including Republican leaders who claim that she is putting her personal political agenda ahead of the interests of Houston. Parker barely escaped a runoff in her election campaign in November 2011, and two incumbent city council members were defeated by opponents of gay marriage. Even after the election, the partisan furor over gay marriage has not died down in Houston.

**San Antonio** Recently, San Antonio has overtaken Dallas as the second-largest city in Texas. San Antonio has a council-manager form of government. The council is composed of members elected from 10 single-member districts on a nonpartisan basis. The mayor, currently Ivy R. Taylor, is the 11th member of the council and is selected at large. All members of the council serve for two-year terms and receive largely honorific salaries. The mayor's salary is a paltry \$3,000 per year in addition



*Pictured here are the mayors of Texas's two largest cities. Annise Parker (left) is the current mayor of Houston. She previously served as a member of the city council and as city controller. San Antonio mayor Ivy R. Taylor (right), was chosen in a special election by the city council in 2014 to replace former mayor Julian Castro, who was appointed to the position of Secretary of Housing and Urban Development in the Obama Administration.*

to payment as a council member; other council members are paid \$20 per meeting, not to exceed \$1,040 per year. Members are subject to recall if 10 percent of the qualified voters in a district sign a petition of recall and a recall election is successful. The city charter also provides for initiatives and referendums that emerge from the voters.

The city manager in San Antonio serves at the pleasure of the council as the chief executive and administrative official in the city. He or she has wide-ranging appointment and removal authority over officers and employees in the administrative service of the city. The current city manager is Sheryl Sculley. Prior to becoming city manager, she was assistant city manager of Phoenix. She supervises the activities of all city departments, a budget of \$2 billion, and 12,000 employees.

**Dallas** Dallas also operates under a council-manager form of government. For years, city politics had been dominated by the white business community. At-large nonpartisan elections tended to elect a council that was relatively united in its understanding of the problems facing the city and its vision of where the city should go. A bitter struggle in the late 1980s and early 1990s over rewriting the city charter divided the city along racial lines. The new charter, which went into effect in 1991, called for a 14-member council elected from single-member districts and a mayor elected at large. Members are limited to serving four 2-year terms consecutively. Under the new charter, membership on the council was transformed as a significant number of African Americans and Latinos were elected to the council.

As in other council-manager systems, the power of the mayor in Dallas is weak. The mayor—currently Mike Rawlings—presides over council meetings, creates council committees, and appoints members, chairs, and co-chairs. In many ways, however, the mayor is only first among equals on the council. The council as a whole is the legislative body for the city, approving budgets, determining the tax rate, and appointing key public officials, including the city manager, city attorney, city auditor, city secretary, municipal court judges, and various citizen boards and commissions. The city manager serves at the will of the council and is removable by a two-thirds vote of the council. As in San Antonio, the city manager's powers in Dallas are great. As the chief administrative officer, the city manager has the power to appoint and remove all heads of departments and subordinate officers and employees in the city, subject to civil service provisions. Despite the attempt to remove the city manager from the pressures of political life in Dallas, recent city managers have found themselves forced to accommodate the reality

of an increasingly politicized city council. The political pressures emerging from Dallas's single-member district council may ultimately compel the city to reexamine the wisdom of retaining a council-manager system. As Dallas learned in the 1990s, efficient government and democratic governance are not as easy to balance as advocates of the council-manager system once thought.

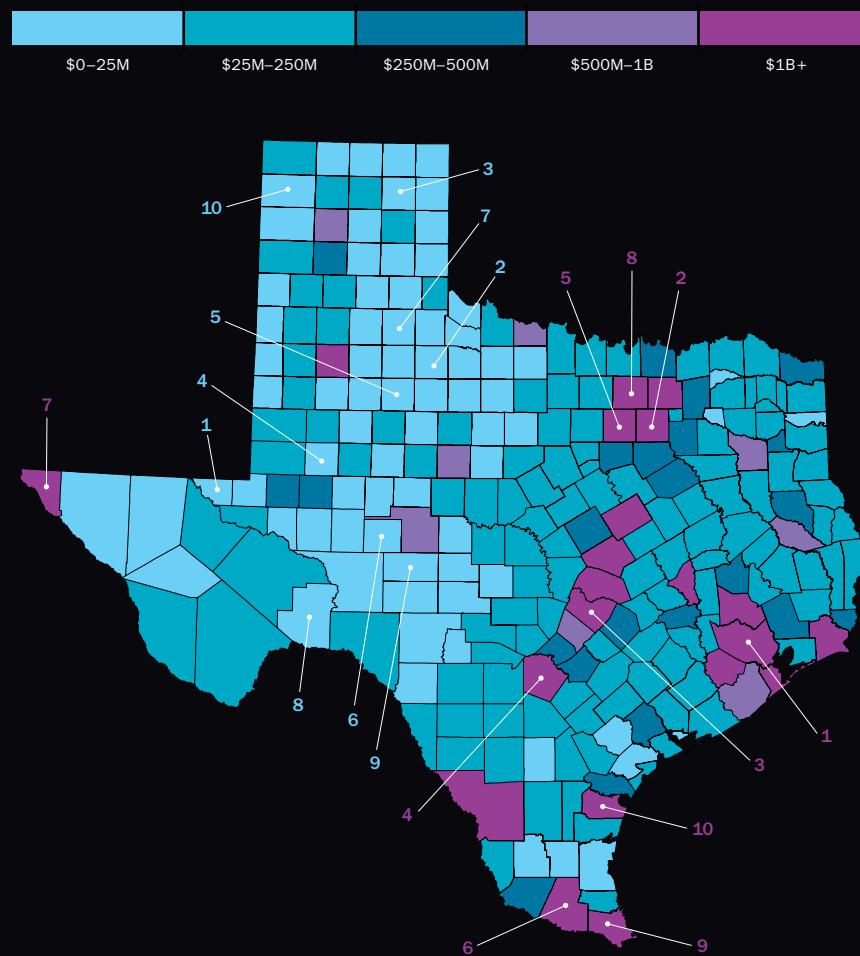
One illustration of the push for change is that in 2001–02, each of the three major candidates for mayor suggested that the structure of city government needed reexamining. One of the mayoral candidates publicly commented on the need for more power to be in the hands of the mayor. A city council member argued that council members have so little power to set spending priorities or influence city staff that individual citizens do not see city government as a way to influence their lives. There has even been some discussion of the value of partisan elections in city races.

*Mayor Mike Rawlings of Dallas was elected in 2011. He was previously the CEO of Pizza Hut.*



# Where Does Texas Spend Its Money?

## State Expenditures by County, 2012



### Top 10 counties (county seats)

1. Harris (Houston)	\$15,863,264,716
2. Dallas (Dallas)	\$12,890,306,321
3. Travis (Austin)	\$8,048,586,713
4. Bexar (San Antonio)	\$7,517,864,851
5. Tarrant (Fort Worth)	\$6,678,436,744
6. Hidalgo (Edinburg)	\$3,547,478,110
7. El Paso (El Paso)	\$3,206,552,540
8. Denton (Denton)	\$1,908,027,396
9. Cameron (Brownsville)	\$1,786,468,683
10. Nueces (Corpus Christi)	\$1,676,906,880

### Bottom 10 counties (county seats)

1. Loving (Mentone)	\$188,710
2. King (Guthrie)	\$2,059,931
3. Roberts (Miami)	\$2,871,832
4. Glasscock (Garden City)	\$3,456,705
5. Kent (Jayton)	\$3,519,166
6. Irion (Mertzon)	\$3,871,967
7. Motley (Matador)	\$3,941,857
8. Terrell (Sanderson)	\$3,995,636
9. Schleicher (Eldorado)	\$5,140,537
10. Hartley (Channing)	\$5,257,381

Texas is a diverse state with 254 counties. Some counties in Texas are heavily populated, such as Harris County, which includes the seat of Houston and is the largest in the state. Other counties, however, such as Brewster, have small populations. We might expect the heavily populated counties to receive more state money, but do they?

### for critical analysis

- Are there major differences in funding between the largest counties in the state? For example, compare Harris (Houston), Dallas (Dallas), Travis (Austin), and Bexar (San Antonio).
- Other than county size, what might help explain any differences in state funding?

*Austin city manager Mark Ott (far left) and Austin mayor Lee Leffingwell (far right) announce transportation projects with U.S. transportation secretary Anthony Fox (center).*



**Austin** Austin is the 11th most populous city in the United States and the 4th most populous city in Texas. It is the county seat of Travis County and is the state capital. In the November 2012 elections, Austinites adopted a plan by more than a 60 percent margin to change the method for selecting members of the city council. The system had been a mayor and a six-member city council. All seven of the officials were elected citywide. A city manager, Marc Ott, then served as chief administrative officer of the city. Austin continues to have a city manager; however, as of 2014 only the mayor is elected citywide. The 10 city council members are elected from single-member districts. Until this change, Austin was unusual in that it was the largest city in the United States that lacked a city council where at least some of the members were elected from geographic districts.<sup>28</sup>

Over the past 40 years, Austin voters had rejected district plans six times. This time, however, there was a strong grassroots movement favoring the 10-district plan with support from a broad coalition of groups such as the Travis County Republican Party and Hispanic groups. One important reason for the success of the proposal was that the issue appeared on the November ballot when there is a larger and more diverse group of voters than in the prior six elections when district plans were submitted in elections when turnout is less than November turnout.

A peculiar characteristic of the election was that another proposal was on the ballot which had been submitted by the mayor and city council that provided for eight city council seats to be elected through single-member districts, and the mayor and two other council seats to be elected citywide. Critics of that proposal claimed that the city council put that proposal on the ballot to confuse voters and keep the status quo by dooming both plans to failure. That proposal also gained a majority of the voters with about 51 percent approving. However, since the 10-district plan got about 60 percent of the vote, it was the proposal that was implemented.

The proposal required that the districts be drawn by a commission of citizens chosen through an application process that is overseen by the city auditor. The first elections under the new system were in 2014.<sup>29</sup>

**El Paso** El Paso, located in the far western part of the state, has a council-manager form of government with eight city council members chosen by single-member districts and a mayor who is elected at large. The mayor and council are elected in

# Choosing City Council Members

**City councils are the legislative** bodies for municipalities in Texas. They are tasked with making laws that affect the residents of their city.

The number of city council members and the type of district that each council member represents vary from city to city. How a city elects council members—whether in at-large districts, from specific single-member districts, or by a combination of at-large and single-member districts—can affect representation and policy decisions.

Some cities employ an at-large system of electing city council members, in which each city council member is elected by the whole city, similar to the way the mayor is chosen. Other cities use single-member districts, such that city council members are elected by and represent different parts of the city rather than the city as a whole. Many cities have a hybrid system with some at-large members and others elected via a single-member district system. Each city decides how to elect its city council, and any changes must be implemented by voter approval of an amendment to the city charter (the city “constitution”). Until the U.S. Supreme Court’s decision in June 2013 in *Shelby County, Ala. v. Holder*, the U.S. Department of Justice had to approve these changes in Texas (and other states subject to certain requirements of the Voting Rights Act) to make sure that they did not dilute the voting power of minorities.

Social science research seems to suggest that minorities fare better under a system of single-member districts, although this may not necessarily be the case in all cities. This research presupposes that minority



*Bill Capener (left) and Ana Reyes (right) ran for a city council seat in a newly drawn district in Farmer's Branch. Reyes won, becoming the first Latina to hold a seat on the city council.*

populations are concentrated in certain areas of the city, which makes it easier to draw districts ensuring a majority of minority voters. In one instance in Farmers Branch, Texas, minority citizens challenged the town’s at-large system of electing city council members because they felt that it diluted their influence in the city. A federal judge later ordered the town to hold single-member district elections, giving Farmers Branch a realistic possibility of electing a Latino council member in the 37 percent Latino population town. It is also important to consider that minority groups might not form

coalitions with other minority groups. For example, African Americans and Latinos might have distinct interests in some localities.

Advocates of the at-large approach argue that single-member district systems are more divisive, and say that city council members must represent the interests of the city as a whole rather than only their narrow neighborhood interests. They also point to research that shows that female candidates are more likely to win in cities with at-large districts. Which system is best for the representation of the city’s residents?

## criticalthinkingquestions

1. What are the trade-offs of at-large versus single-member districts for city council elections?
2. What alternatives are there to at-large districts and single-member districts? What are their strengths and weaknesses?



Poverty and unemployment plague El Paso, and the city is trying to attract more jobs by developing the downtown area. Here, you can see the old city hall is being demolished. It is to be replaced by a new triple-A baseball park.

nonpartisan elections. The city manager, Joyce Wilson, reports to the elected mayor and city council.

Home to over 672,000 people, El Paso is on the border with Mexico, which makes the city a center for international trade. The military is also important to the El Paso economy because of the presence of Fort Bliss. El Paso has only a tiny African American population. In 2010 only 3.4 percent of the city's population was African American—far smaller than the proportion of African Americans statewide. However, 80.7 percent of the city's population is Latino, far larger than the overall proportion of Latinos in Texas.

The main problem facing El Paso is its poverty. The U.S. Census reports that 22.3 percent of its population is in poverty compared to 17.4 percent of the state as a whole. Median household income is \$40,808 compared to \$51,563 in Texas as a whole. The per capita income in El Paso is \$19,262 compared to \$25,809 statewide.<sup>30</sup>

What El Paso desperately needs are well-paying jobs. This explains the strong efforts being made by city government to attract business to El Paso and to make it easier to conduct business in the city.

## ● Special Districts

**special district** a unit of local government that performs a single service, such as education or sanitation, within a limited geographic area

**Examine the role of special districts in Texas government**

A **special district** is a unit of local government that performs a single service in a limited geographic area. These governments can solve problems that cross borders of existing units of government. Special districts can be created to serve an entire county,

part of a county, all of two or more counties, or parts of two or more counties. The number of special districts has increased dramatically in the last 50 years. In the United States, the number increased by 400 percent.<sup>31</sup> In Texas, the number increased by more than 600 percent.<sup>32</sup> By the year 2002 there were more special districts than any other form of local government. There are now 2,309 special districts in Texas, not including school districts.<sup>33</sup>

Districts can be created to do almost anything that is legal. Some districts are formed to provide hospital care, others to furnish pure water to communities, still others to provide mosquito control—Texas has 13 mosquito control special districts<sup>34</sup>—navigation, flood control, sanitation, drainage, fire protection, ambulance services, and law enforcement. Some special districts can be very large—one, for example, manages Houston's two hospitals for the poor and uninsured and collects well over \$500 million in property taxes every year. On the other hand, the North Fort Worth Water Control and Improvement District No. 1 collected a total of \$85 in property taxes from its constituents.<sup>35</sup>

### Types of Special Districts

**school district** a specific type of special district that provides public education in a designated area

There are two types of special districts in Texas. The first is the **school district**, which consists of independent school districts in the state. These districts offer public education from pre-kindergarten through 12th grade. Almost all school districts of-

fer the full range of educational opportunities; however, some small, rural schools provide education only through the 8th grade. Others limit their programs to the 6th grade, and still others end with the 4th grade. Those with limited offerings contract with nearby districts to complete the education of their students.

The second classification of special districts is the **nonschool special district**. Everything except the school districts is included in this category. Municipal utility districts, economic development corporations, hospital districts, and fire-prevention districts are the most common examples.

In addition to county taxes, for example, a property owner in Upshur County, Texas, will pay taxes to two special districts—the Union Grove Independent School District and the Emergency Services District No. 1 (fire protection). A property owner in Hopkins County, Texas, will pay to the Sulphur Springs Independent School District and to the Hopkins County Hospital District. A property owner in Collin County, Texas, will pay taxes to the Plano Independent School District and to the Collin College special district. One property owner in Houston pays taxes to the Houston Independent School District, the Harris County Department of Education, the Harris County Flood Control District, the Port of Houston Authority, the Harris County Hospital District, the Lone Star College System, Emergency Service District No. 13 (fire protection), and Emergency Service District No. 11 (EMS).

One problem is that sometimes local governmental officials work in relative obscurity, avoiding media and public scrutiny. This means that if they abuse their power, their behavior often takes longer to come to light. One example has been a recent scandal involving two of the five constables in Dallas County. Traditionally in Texas, the office of constable has been an elective office with limited duties. Constables have served civil court papers and have provided bailiffs for justices of the peace. However, some constables, such as those in Dallas County, transformed their offices into full-fledged police departments. Dallas County constables, for example, developed a traffic enforcement role. In Dallas County in 1995 no deputy constable positions were devoted to traffic enforcement; in 2010, 76 deputy constables in that county handled traffic enforcement. Constables also formed heavily armed, tactical units. They patrolled high-crime areas, shut down drug houses, arrested parents who were behind on child support, and cracked down on drug dealers selling “cheese” heroin to students. County commissioners not only approved some of the expanded activities of constables but also implemented new legal strategies to expand their law enforcement functions. Since constables are elected officials, they are not subject to much oversight by other public officials and instead function as law enforcement fiefdoms in larger counties in Texas.

In two constables' precincts in Dallas County, there have been problems with vehicles being impounded. These constables have impounded thousands of vehicles without requiring that the towing companies account for what happened to the vehicles. Subsequent investigations of the two constables have also identified issues such as complaints that deputy constables have been forced to work on unpaid security details and to sell raffle tickets to raise money for constables' re-election campaigns.<sup>36</sup> These problems, going on for years, have only recently caused county commissioners to reconsider the expanded role of constables.

**nonschool special district** any special district other than a school district; examples include municipal utility districts (MUDs) and hospital districts

## School Districts

Every inch of land in Texas is part of a school district, and the state contains 1,265 school districts. Some districts in east and west Texas cover an entire county. In

metropolitan counties, there may be a dozen or more districts. Each is governed by an elected board of trustees composed of five to nine members. The board employs a superintendent to oversee the daily operation of the district. On the recommendation of the superintendent, the trustees

- set overall policy for the school district
- adopt the budget for the district
- set the tax rate for the district (The maximum tax rate for a district is \$1.04 for each \$100 the property is worth. A rate higher than \$1.04 requires voter approval.)
- select textbooks for classroom use
- hire principals, faculty, and support staff
- set the school calendar
- determine salaries and benefits for employees

Educating millions of students is a daunting task. By localizing public education, the state places much of the burden on the local school districts. This allows local residents to participate in governing the school districts. Unfortunately, few people vote in the elections to select members of the board of trustees. Even fewer individuals attend meetings of the school board.

## Nonschool Special Districts

There are a vast number of types of special districts. Larger counties tend to have many different special districts. Dallas County, for example, has 13 nonschool special districts. Harris County is the record-holder for special districts in Texas. It contains a total of 436 nonschool special districts. Some of the most common are as follows.<sup>37</sup>

### **municipal utility district (MUD)**

a special district that offers services such as electricity, water, sewage, and sanitation outside the city limits

**Municipal Utility Districts** Municipal utility districts (MUDs) offer electricity, water, sewer, and sanitation services outside the city limits. These governments might offer all utility services or only one or two, depending on the needs of the special district. Though MUDs are located throughout Texas, the vast majority are found in the Houston greater metropolitan area.

MUDs can be a financial blessing for developers. Entrepreneurs who build housing additions outside the city limits must furnish utilities to the homes they build, but few developers can afford to do this over a long period of time.

Banks and finance companies, legislators, and land developers maintain a warm and snug relationship with each other. Banks and finance companies willingly lend land developers millions of dollars to establish residential subdivisions, build new homes, and run water and sewer services to these houses. When a few houses are sold, the developer asks the residents to establish a MUD. Enabling the legislation is seldom a problem because of the close relationship between developers and local legislators.

Once the MUD is up and running, the board of directors sets a tax rate and determines how much to charge residents for its services. One of its first activities is to borrow money by issuing bonds. The bond proceeds are used to purchase the utilities from the developer, often at a premium. Using the proceeds from the sale of the utilities, the developer is able to repay loans. By establishing the MUD, residents agree to pay a property tax to retire the bonded indebtedness. In addition to

the property tax, residents pay a monthly fee for the water, sewer, and sanitation services.

**Community College Districts** Community college districts are classified as nonschool special districts because they do not offer public education from pre-kindergarten through 12th grade. Community colleges offer postsecondary academic and vocational programs. They are governed by an elected board of regents. Residents of the district pay a property tax to the district. In return, residents pay lower tuition. The board employs a president or chancellor, who operates the college on a daily basis. The regents set policy on the recommendation of the president or chancellor. Among the regents' responsibilities are to

- set overall policy for the district
- set the tax rate
- set the cost of tuition and fees
- build new buildings and repair older ones
- hire teachers, counselors, administrators, and nonprofessional staff
- set the school calendar
- determine salaries and benefits for employees

**Hospital, Emergency Services, and Flood Control Districts** A number of counties have hospital districts that serve the poor and uninsured. These districts may collect payments from patients and government programs such as Medicaid for medical services, although it is necessary to supplement the costs of indigent medical care through the creation of hospital districts with taxing authority. Emergency services districts provide fire and ambulance services to areas not served otherwise. The districts can be of varying size—Harris County has more than 30 emergency services districts, though most counties in Texas would contain only one or two such districts. A rural county, Delta County, for example, has only one emergency services district.<sup>38</sup> Flooding is seldom confined to a single county. Flood control districts are established to solve a multicounty problem.

**Creating, Governing, and Paying for a Special District** Special districts are created by voters of the area to be served. Creating a special district requires

- a petition signed by the residents of the area to be served, requesting the legislature to authorize an election to create a special district
- enabling legislation in the form of a law that authorizes a special election to create the district
- a majority positive vote of those voting in the special election

Most special districts are governed by boards elected by the voters of the district. The board of a school district is called the board of trustees, the governing board of a community college is often called the board of regents, and the governing boards of other special districts are usually known as boards of directors. Each board is the policy-making group for its district. The directors set the tax rate and establish rules and policy for the operation of the district. The district often employs an individual who runs the district on a day-to-day basis. **Property taxes** are the primary source of revenue for special districts. This was not always the case. In 1949 school districts received 80 percent of their income from the state, and the school dis-

**property tax** a tax based on an assessment of the value of one's property, which is used to fund the services provided by local governments, such as education

**user fee** a fee paid for public goods and services, such as water or sewage service

**hidden government** a term that refers to special districts of which many citizens are unaware

trict furnished 20 percent of necessary funds, primarily from property taxes. Today, property taxes constitute as much as 90 percent of revenues for some districts. The second-largest source of income is **user fees**. State and federal aid furnish the remainder of special district funding.

Property tax rates and actual user fees are set by governing boards. User fees are raised from providing goods and services. Water districts, for example, sell water, sewer, and possibly sanitation services.

Hospital districts set fees for room occupancy, medicine dispensed, use of surgical suites, X-rays taken and evaluated, nursing and laboratory service, and myriad other charges. The board of trustees of a school district sets the local property rate for taxes, which fund pre-kindergarten through 12th grade education. Tuition paid by in-district and out-of-district students, building fees, student fees, and technology and lab fees are determined by the board of regents of a community college district.

**Hidden Governments** Everyone in Texas lives in at least one special district, their school district. Most people live in several, have the opportunity to vote for people to represent them on the governing board of each district, and pay property taxes to these agencies of government. Yet few people are aware these agencies exist, thus their reputation as "**hidden governments**."

Special districts provide needed services in specific geographic areas. Existing governments may lack authority to provide the service or the necessary funds to finance the project. In theory, special districts are an example of democracy at work. Districts are created by a vote of the residents of the area to be served, and the districts' governing boards are elected by the voters. Board meetings, at which decisions on policy, taxing, and fees are made, are open for attendance by any interested residents. However, fewer than 10 percent of eligible voters cast ballots in special district elections, and fewer than 1 percent of district residents ever attend a board meeting.

**Problems with Special Districts** There is a potential for abuse in the creation of special districts. Many special districts were originally authorized by the Texas legislature to develop the economies of poor, rural counties. More recently, however, developers of large tracts of land began creating these districts to place the burden of developing the property's infrastructure on future owners of the property. In order to comply with the law, all the developers must do is create the district and hold an election where at least one short-term resident must vote. These short-term residents then approve bonds (interest-bearing financial instruments that are sold in financial markets to fund government projects) in the millions of dollars that must be paid for with the taxation of future homes and property owners. In the 1980s this kind of special district creation in Harris County led to defaults on bond issues after a housing bust.

In 2001 a major investigation of special districts created by developers in Dallas found unusual and questionable practices. Some developers drew district boundaries to exclude existing residents of an area. The developers then moved people into rent-free mobile homes shortly before the special district election. These newly established "residents" were the only ones eligible to vote in the election. After the election, the voters for the new district would often move away after approving large bond sales for the construction of roads, water lines, and sewers. Future homeowners in the area were then expected to pay for the bonds with property taxes on their homes. The investigation found that sometimes a single voter—and



*The creation of special districts by real estate developers has sometimes been controversial. Recent investigations have charged developers with abusing the process in order to circumvent inconvenient laws and to give the developers greater control over taxes and other government functions in the district.*

always fewer than 10 voters—approved the bonded indebtedness that helped the developers create an infrastructure for their properties. In the Lantana subdivision near Flower Mound, for example, a family of three voted to authorize \$277 million in bond sales by two water districts. That bond proposition rivals the biggest bond proposals by the city of Dallas.<sup>39</sup>

Similar schemes have been especially prevalent in Travis, Harris, and Denton counties. In 2006 developers in Denton County housed six people at below-market rents on property to be developed. These temporary residents were thus eligible to vote in a special tax-district election that would affect the taxation of thousands of future homeowners.<sup>40</sup>

In 2010 two voters in the Four Seasons Ranch Municipal Utility District No. 1 approved \$292.5 million in bonds, including \$138.5 million in bonds for water, sewer, and storm sewer systems and \$154 million in roads. Recent special district elections near the Four Seasons Ranch district in Denton and Collin counties have authorized close to \$1 billion in public debt.<sup>41</sup>

The pervasiveness of special districts is shown by one study of Texas special districts that address water issues. The study found that about 1,000 MUDs were engaged in supplying water; 48 special districts existed to deal with water drainage issues; 66 special districts existed solely to supply fresh water. Others had these purposes: 91 to conserve groundwater, 25 for irrigation, 46 to improve levees, 42 to manage municipal water, 26 to deal with navigation, 31 to deal with rivers. Fifty-five special utility districts dealt with general water issues; 221 were water control and improvement districts; and 18 were water improvement districts. Of course, this hodgepodge of special districts dealing with all aspects of water makes a coherent approach to statewide water policy virtually impossible.<sup>42</sup>

Special districts are among the least-studied areas of Texas politics, but their use as an instrument of private gain and their use by developers as a way to minimize their financial risks suggest the need for much greater scrutiny. Of course, developers may defend this system as a way to improve property and enhance the tax base of communities. On the other hand, the extent of enlistment of governmental taxing powers with little public scrutiny or accountability is disturbing. And if the huge bond issues floated by these entities default, thousands of people could suffer the financial consequences.

### for critical analysis

Why are there so many special districts in Texas?  
Why don't cities and counties do the jobs of special districts?

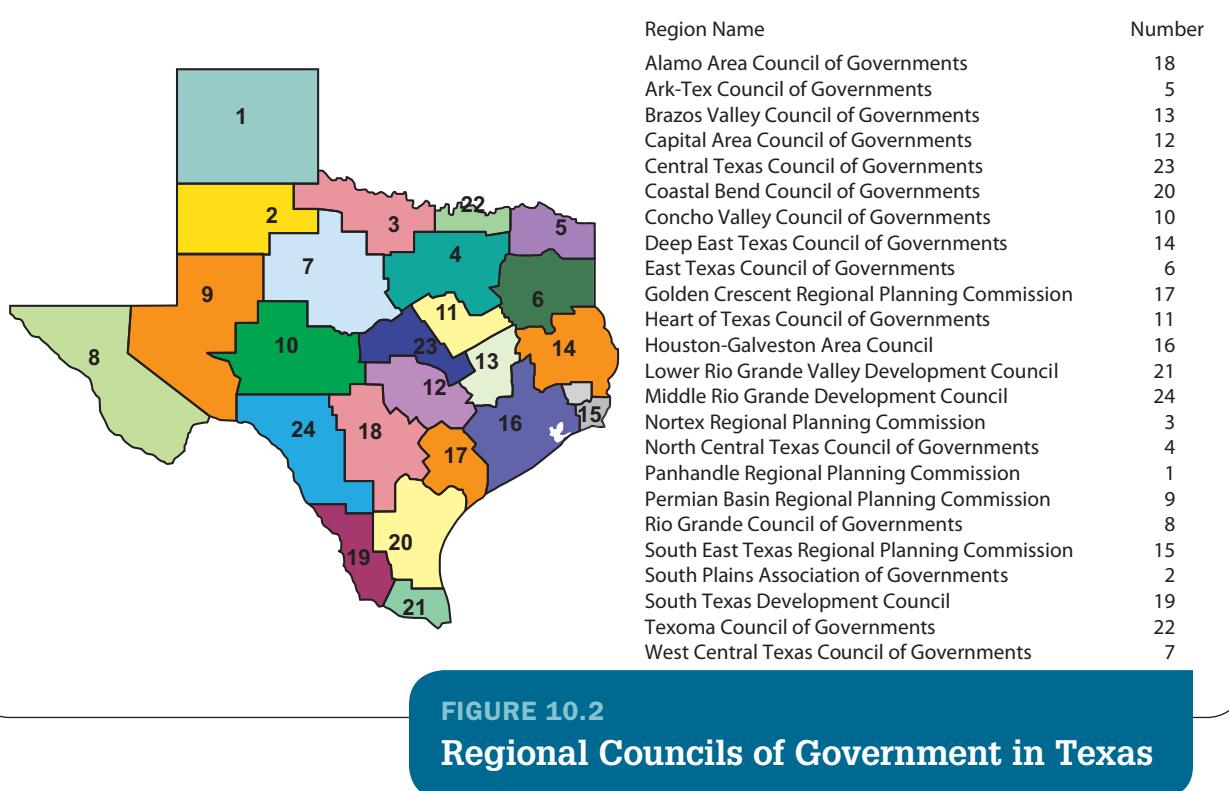
## Councils of Government (COGs)

### council of government (COG)

a regional planning board composed of local elected officials and some private citizens from the same area

One of the greatest problems facing local governments in Texas today is coordination across legal boundaries. The Regional Planning Act of 1965 initially provided for the creation of regional **councils of government (COGs)** to promote coordination and planning across all local governments in a particular region. There are 24 regional councils in Texas today, each with its own bylaws or articles of agreement. The governing body of a regional council must consist of at least two-thirds of local elected officials of cities and counties and may include citizen members and representatives of other groups.

The basic responsibilities of regional councils include planning for the economic development of an area, helping local governments carry out regional projects, contracting with local governments to provide certain services, and reviewing applications for state and federal financial assistance. Originally, COGs focused considerable attention on meeting federal mandates for water and sewer provision, open space, and housing planning. More recently, activities have focused on comprehensive planning and service delivery in such policy areas as aging, employment and training, criminal justice, economic development, environmental quality, and transportation.<sup>43</sup> Figure 10.2 provides a map and listing of the 24 regional COGs in Texas.



# ● Financial Issues Facing Local Government

## Examine the financial problems facing local government

As noted earlier, there are many different forms of local government in Texas, including county governments, municipal governments, school districts, and special districts. These governments often raise money through special financial mechanisms based on their ability to tax.

Among these financial mechanisms are capital appreciation bonds and local government pensions. Both raise important opportunities and problems for local government.

### Capital Appreciation Bonds

A **capital appreciation bond (CAB)** is a type of security issued by municipalities. It is used primarily by school districts to raise revenue for development in times of rapid population growth.<sup>44</sup> This new financial instrument has been causing a great deal of controversy, especially in California and Texas—but despite the controversy, CABs are becoming more and more common in Texas. According to the nonpartisan group California Watch, “in Texas, 590 districts and other government entities have issued these bonds over the past six years—more than any other state.”<sup>45</sup> Combined, Texas’s local governments issued more than \$2.3 billion in CABs in over 700 separate issuances between 2007 and 2011—debts that will eventually cost more than \$20 billion to repay.<sup>46</sup> The per capita debt of Texas’s state government ranks 45th in the nation. However, when local debt is taken into consideration, it jumps to the 15th-highest.<sup>47</sup>

When a municipality issues a traditional bond, it is obligated to make periodic interest payments to its bondholders. However, CABs are different; they are classified as “zero-coupon bonds.”<sup>48</sup> The issuer of a zero-coupon bond pays back the initial investment and all accrued interest in one lump sum when the bond reaches maturity.<sup>49</sup> This lump sum, called the “maturity value,” is the face value of the bond—typically a multiple of \$5,000.<sup>50</sup> The bonds are sold to investors for significantly less than the maturity value. The difference between the maturity value and the price at which the bond is sold is called the “original issue discount”<sup>51</sup> and is the buyer’s expected return on investment. However, CABs are distinct from typical zero-coupon bonds in an important way: the issue price, not the maturity value, is considered the principal. This means that the amount of debt that appears on the issuing government’s balance sheet is much less than what it will actually owe when the bonds mature.<sup>52</sup> In California, many municipalities use this fact to borrow large amounts of money without exceeding their statutory debt limits.<sup>53</sup>

CABs are extremely long-term bonds. In many cases they do not mature until 40 years after they are issued.<sup>54</sup> For this entire time period, the issuer does not have to pay a dime to investors—meaning that local government officials can promise new education facilities to voters without raising taxes.<sup>55</sup> CABs are also very high yield. An analysis of the numbers provided by the *Austin American-Statesman* shows that Texas municipalities will owe, on average, nearly \$9 for every \$1 they have borrowed using CABs.<sup>56</sup> In extreme cases, the ratio of money owed to money borrowed can reach 35 to 1.<sup>57</sup> As with most municipal bonds, the interest accrued by capital appreciation bonds is tax exempt. Essentially what this all means is that

**capital appreciation bond (CAB)**  
a long-term, high-interest-paying bond that pays off both principal and interest in one lump sum when the bond reaches maturity

the debt burden facing local government is considerably more than is found on the books.

**Controversies over Capital Appreciation Bonds** Most of the controversy about the use of capital appreciation bonds centers on two issues: the large amounts of debt taken on by the issuer and the relative unaccountability of elected officials and voters. Chuck DeVore, vice president of policy for the Texas Public Policy Foundation, is a vocal opponent of CABs for these reasons. He calls them “a tool that allows elected officials to enjoy the fruits of borrowed money while telling today’s voters not to worry about the debt.”<sup>58</sup> Texas senator Juan Hinojosa warns that “the buy-now, pay-later approach often results in crippling repayment obligations, with the repayment costs being greater than the benefits derived from the bond.”<sup>59</sup> In the 2013 legislative session there were unsuccessful efforts to prohibit the use of CABs. Those who support CABs are concerned that prohibiting CABs will make it more difficult for school districts to keep pace with population growth.<sup>60</sup>

The dilemma of entities that use these bonds is well illustrated by the Anna Independent School District in Collin County. State law caps the school district tax rate on property, which is the primary funding source for public schools, yet Anna was undergoing tremendous growth as it was a rural school district that was becoming a suburban school district as the Dallas metropolitan area grew to the north. In 2002–03, Anna Independent School District had about 1,000 students; in 2012–13, it had about 2,500 students. By issuing CABs, Anna could build schools for its rapid growth, but since periodic interest payments are not required as they would be by traditional interest-bearing bonds, CABs do not count against the state cap on property taxes until the payment is due many years later. The state cap required that when school bonds are issued, they must be paid back at a tax rate that is not greater than 50 cents per \$100 of assessed property value. In 2003, Anna’s debt service tax rate was 13 cents, but by 2008 it had reached the 50-cent limit, which offered no additional bond funding unless CABs were used. When these bonds are repaid, Anna’s taxpayers will have to pay back about five times the amount borrowed unless the bonds can be refinanced at a lower rate, but in the meantime Anna’s schools can deal with the district’s burgeoning growth.<sup>61</sup>

Over the next 40 years, California municipalities will have to pay back a combined \$36 billion of CAB debt—on average 3.89 times as much as they borrowed.<sup>62</sup> The California State Assembly recently passed a measure placing new restrictions on CABs, including a maximum length of 25 years and a debt cap of 4 times the amount borrowed.<sup>63</sup> In Michigan, legislators have already taken more direct measures—they banned CABs outright in 1994.<sup>64</sup> Texas has not passed restriction on the bonds, and under the current bond financing structure CABs may be the only way that school districts can obtain the funding to pay for rapid growth, but the incautious use of CABs could have dire consequences for local government finances.

## Local Government Pensions

Another area of concern with local government involves the cost and financial health of pension plans. Several municipal bankruptcies throughout the United States in the summer of 2012 brought attention to the instability of a number of state and local public pension plans. California cities have been particularly hard hit by the cost of local pensions. For example, in 2012, San Bernardino, California,

failed to make a payment on \$1 million in bonds that it had issued to support pensions. Two California cities claimed that their local employee pension costs were a major factor in their declarations of bankruptcy.<sup>65</sup>

Texas has 81 different local governmental pension plans that cover nearly 184,000 persons and that have net assets of over \$28 billion. When a pension plan is fully funded and can meet all its obligations, it has a funded ratio of 100 percent. A rough rule (over which there is disagreement) is that a funded ratio of below 80 percent means that a pension plan is not fiscally healthy. Eighty-one percent of local pension plans in Texas have a funded ratio that is below 80 percent.<sup>66</sup> In 2014 and 2015 new standards will be put into effect for the valuation of public pension assets and liabilities. These new accounting standards will significantly reduce the funded ratios for many Texas public employee pension plans and will allow pension plans to operate with more unfunded liabilities, pushing more costs into the future.<sup>67</sup>

**Pension Funding Controversies** There are other measures of the financial stability of Texas public pension plans other than funded ratios, but those measures provide further support for the concern that there is a looming financial crisis in public pensions in the state. One other measure of financial stability is the amortization period for pensions. This is simply the length of time that is required to eliminate a pension plan's unfunded liabilities based on current contributions to the plan from employers and from active members of the pension plan. In 2012 the Texas Pension Review Board considered a plan with an amortization period of 40 years or more to be actuarially unsound. The Governmental Accounting Standards Board recommends that an amortization period be no more than 30 years. Fifty-eight of the public pension plans in Texas have an amortization period of less than 30 years, 12 have an amortization period of 31 to 40 years, and 19 have amortization periods of more than 40 years.<sup>68</sup> Houston's city workers have three major pension systems—Houston Police Officers Pension System, Houston Firefighters' Relief and Retirement Fund, and the Houston Municipal Employees Pension System. The police and firefighters' funds have funded ratios of 82.8 and 93.4 percent, respectively, which suggests sufficient funding to meet their obligations. However, the municipal employees fund has a funding ratio of 61.4 percent, which suggests this fund is in poor financial condition. Altogether, the three funds have unfunded liabilities of over \$2.4 billion. Houston expects that its contributions to employee pensions will rise from \$181 million, which is 10.9 percent of all city expenditures in 2007, to \$394 million, or 17.1 percent of all city expenditures, by 2017.<sup>69</sup>

Fort Worth's Employees' Retirement Fund began having serious funding issues in the 1990s when the city's contributions to the fund were decreased while plan benefits were increased. Additionally investment returns to the fund were wiped out in the 2008 Great Recession. In 2011, Fort Worth's pension problems led to a reduction in benefits for new hires other than public safety workers that included increases in the minimum retirement age, reduction of the multiplier used to calculate benefits, elimination of cost-of-living adjustments, and removal of overtime earnings from benefit calculations. In spite of these reductions, Fort Worth's unfunded liability has increased from \$431.7 million in 2010 to \$748.2 million at the end of 2012.<sup>70</sup>

In comparison with private pension plans, local government retirement pensions can be remarkably generous. As an example, in Dallas after 32 years of service, some police and firefighters can receive pensions that are equal to 96 percent

**deferred retirement option plan (DROP)** retirement plan in which local government employees who are eligible to retire have their retirement benefits deposited in an account in which the benefits draw interest until actual retirement. Some of these plans pay high interest and cost-of-living adjustments and may be coupled with very early retirement ages

of their highest average annual pay. In some cases, it is possible to retire at 96 percent of annual pay in one's mid-50s and the pension payments would continue, along with annual increases, as long as the retiree lives.<sup>71</sup>

One aspect of local pension plans that has become very controversial and that has a huge effect on local budgets is the **Deferred Retirement Option Plan (DROP)**. With a DROP, a local employee who is eligible to retire can continue working. During this time, the employee's retirement benefits are deposited in a fund where the benefits draw interest until actual retirement when the DROP funds are withdrawn. DROP plans can have vastly negative consequences on local budgets when they allow for very early retirement ages, high interest rates, and cost-of-living adjustments. As an example, in 2012, Dallas had 3,014 employees with deferred retirement accounts. A major attraction of the DROP for Dallas police and fire employees is that it guarantees an 8 to 10 percent return on funds in the deferred retirement account at a time of very low interest payments from other sources. The average deferred retirement account balance in Dallas is about \$347,000. The 20 oldest active police and fire department employees have an average of \$1.3 million in their deferred retirement accounts. There have recently been benefit cuts for new hires, declines in the guaranteed interest rate, and increases in the employee contribution into the retirement system. Still, the system's unfunded liabilities amount to about \$1.2 billion, and the return on investment by the system was only 0.3 percent.<sup>72</sup>

The Collin County judge has recently criticized Collin County employee pensions, arguing that the current pension system is too costly and a drain on the county budget. Collin County employees are part of the statewide plan, the Texas County and District Retirement System. Currently Collin County employees deposit 7 percent of their pay into the fund and the county matches that contribution with \$2 for every \$1 deposited. No matter what the market return, the county employees are guaranteed a 7 percent return per year. When investments of the pension money do not produce the 7 percent return, the county must make up the difference. By any standard, the pension system is very generous and, according to the county judge, so generous that it burdens taxpayers.<sup>73</sup>

The locally administered plans serve only 31 percent of local government pension members. About 400,000 county and municipal workers contribute to statewide plans for their pensions. Two of the largest statewide plans are the Texas County and District Retirement System (TCDRS) and the Texas Municipal Retirement System (TMRS). Both of these funds appear to be financially secure. The TCDRS, for example, has a funded ratio of 89 percent and the TMRS has a funded ratio of 85.1 percent. The biggest state plan is the Teacher Retirement System of Texas (TRS), which provides retirement pensions for Texas public school teachers, some state higher education teachers, and nonteaching staff. Its funding ratio is 82.7 percent. However, of the eight statewide retirement plans, even though six of them have funded ratios above 80 percent, four of the plans will run out of money with current contributions, benefits, and actuarial assumptions.<sup>74</sup>

**Future Pension Policy** Pensions have a huge effect on state, county, and local governments. And for some local governments, employee pensions have already become unmanageable. In 2011 in Houston, for example, the mayor tried to get legislation from the state that would allow the city a stronger role in setting pension benefits. However, the mayor was unsuccessful, in part because the municipal employees pension, the police pension, and the firefighters' pension plans in Houston spent at least \$375,000 on lobbyists to oppose the mayor's effort.<sup>75</sup>

A looming financial crisis for many local governments in Texas is its pension systems. It is likely that in the near future there will be increased efforts by cities to lower their pension liabilities and increased tension with employees who wish to keep their current benefits.

Some pension plans have already recognized that their plans were no longer economically viable and have instituted significant plan changes. Table 10.5 identifies the types of changes that are occurring in some pension plans.

One example of significant pension plan changes is the El Paso city retirement plan. Prior to September 1, 2011, normal retirement was age 55 if the employee had 10 years of credit with the pension system or age 60 with 7 years of credit, or any age with 30 years of credit. The employee pension was 2.5 percent of the employee's final wages times the years of pension credit. Final wages were calculated as the greater of average monthly gross earnings over the prior 3 years or average monthly base salary in the prior year or base salary for the month prior to retirement. After the pension changes were put into effect on September 1, 2011, normal retirement was age 60 with 7 years of credit or any age with 35 years of credit. The employee pension was calculated at 2.25 percent of final wages times the years of pension service credit and final wages which are calculated as the average monthly gross earnings over the prior three years.<sup>76</sup>

While those changes may seem trivial, those changes can significantly affect the pension received by an employee, and over large numbers of employees, the amounts of money can be dramatic. As an example, assume an El Paso city employee chooses to retire at age 60 with 25 years and 5 months of credited service with the city and that the employee's final wages were \$2,000 per month. That employee's pension would be \$1,270.85 per month, which is .025 times 25.417 times \$2,000. Under the new plan, however, a 60-year-old employee with 25 years and 5 months of credited service with the city and the same final wages would receive .0225 times 25.417 times \$2,000 or \$1,143.76. Not only would the pension amount be less, but an employee could not begin normal retirement at 55 or at any age with 30 years of credit, and with fewer options to calculate the amount of final wages, it would be harder for the employee to actually have a final wage of \$2,000 per month.<sup>77</sup>

The complex financial issues involved with providing pensions to local government workers may seem tiresome to students of politics. But they cut to the core of the problems facing government officials in the early twenty-first century. If local governments in Texas are to thrive in the coming decades, they must not be burdened with debts that cannot be paid.

**TABLE 10.5**

### Options for Fully Funding Texas Public Employee Pension Plans

Increases in employee contributions to pensions

Increases in employer contributions to pensions

Formula for calculation of pension that is less favorable to employee

More years of employment required in calculation of pension

Increased retirement eligibility ages

SOURCE: State Pension Review Board, "2013 Guide to Public Retirement Systems in Texas" (2013).

### for critical analysis

Why do local governments rely on bonds for fund projects? What advantage do capital appreciation bonds have in funding governmental projects? Why have public pensions become so controversial?

## Thinking Critically about Local Government

In this chapter, we have investigated the role of local government in Texas government and politics. In many ways, local government affects the average citizen's life much more than either the federal or the state government. Sadly, local government may not be functioning as well as we might hope. Part of the problem may lie

in the conflicting demands we have come to place on it. On the one hand, Texans want local government of all kinds to provide an efficient delivery of services to all in a fair and equitable manner. On the other hand, Texans also want to keep local government under some sort of democratic control. But what sort of local controls are the best? The demands of efficiency and democracy are not easily balanced. The social, political, and economic changes of the last 20 years may spark a rethinking of local government in Texas for the first time since the early decades of the twentieth century. The disaster in West, Texas, that was discussed in the introduction was certainly an extreme case that reflected a major failure of regulation at the local governmental level, but that failure is not the only problem facing local government in the state. There are potential financial disasters facing local governments in their pension systems and in their method of borrowing money, and there is the fundamental question of whether the structure of local government in Texas at the county, municipal, and special district levels is adequate in providing necessary services for Texans.

## County Government in Texas

**Explain the importance of county government in Texas (pp. 312–20)**

There are more counties in Texas than in any other state. County governance in Texas affects the lives of everyday Texans in ways ranging from hospital care to trash pickup.

### Key Terms

county commissioners' court (p. 313)  
county judge (p. 313)  
county commissioner (p. 313)  
constable (p. 314)  
county attorney (p. 319)  
district attorney (p. 319)  
county clerk (p. 319)  
district clerk (p. 319)  
county tax assessor-collector (p. 319)  
county auditor (p. 319)

### Practice Quiz

1. Which of the following is not a type of local government found in Texas?
  - a) city
  - b) council of government
  - c) county
  - d) special district
  - e) municipal
2. The basic governing body of a county is known as
  - a) a council of government.
  - b) a county council.

- c) a city-manager government.
- d) a county commissioners' court.
- e) a county governing committee.
3. How many counties are there in Texas?
  - a) 25
  - b) 56
  - c) 110
  - d) 254
  - e) 500
4. All county commissioners' precincts must be equal in population according to
  - a) Article 1 of the Texas Constitution.
  - b) the Civil Rights Act of 1964.
  - c) the Voting Rights Act of 1975.
  - d) *Avery v. Midland County*.
  - e) *Marbury v. Madison*.
5. A county judge
  - a) only hears appellate cases from JP courts.
  - b) is an appointive position from the governor.
  - c) presides over the constitutional county court and the county commissioners' court.
  - d) implements all the decisions of the Supreme Court affecting the county.
  - e) judges juvenile cases.
6. Which county officials are responsible for the jail and the safety of the prisoners?
  - a) sheriff
  - b) county council
  - c) county commissioners' court
  - d) council of mayors
  - e) city manager

## City Government in Texas

**Describe the major types of city government in Texas (pp. 320–30)**

Municipalities in Texas vary in terms of how they are governed. Some cities have strong mayors who run the city, while other cities have weak mayors where the day-to-day running of the city is delegated to city managers. Mayors and city councils often decide issues that directly affect the lives of everyday people.

### Key Terms

home-rule charter (p. 320)  
mayor-council form of government (p. 321)  
at-large election (p. 321)  
single-member district (p. 321)  
commissioner form of government (p. 322)  
council-manager form of government (p. 324)

### Practice Quiz

7. To adopt a home-rule charter, a city must have a minimum population of
    - a) 201.
    - b) 5,000.
    - c) 10,000.
    - d) 50,000.
    - e) There is no minimum.
  8. The two legal classifications of Texas cities are
    - a) local and regional.
    - b) general law and home rule.
    - c) tax and nontax.
    - d) charter and noncharter.
    - e) big and small.
  9. The form of city government that allows the mayor to establish control over most of the city's government is called the
- a) commissioner form of city government.
  - b) council-manager form of city government.
  - c) council of government form of city government.
  - d) strong mayor–council form of city government.
  - e) none of the above
10. A city controller
    - a) works directly for the governor.
    - b) controls and manages the election in a city.
    - c) is a city's chief elected official who presides over the city council.
    - d) is independent of all political control in a small statutory city.
    - e) is a city's chief financial officer.

## Special Districts

### Examine the role of special districts in Texas government (pp. 330–36)

Special districts often span different cities and counties. They are tasked with operating such things as school districts or water utility districts. They have the authority to levy property taxes to fund the operation of services essential to the lives of many residents.

### Key Terms

- special district (p. 330)
- school district (p. 330)
- nonschool special district (p. 331)
- municipal utility district (MUD) (p. 332)
- property tax (p. 333)
- user fee (p. 334)
- hidden government (p. 334)
- council of government (COG) (p. 336)

### Practice Quiz

11. Which local government provides a single service not provided by any other local government?
  - a) special district
  - b) council of government
  - c) police district
  - d) city
  - e) county
12. What are the two types of special districts found in Texas?
  - a) school and nonschool
  - b) home rule and general law
  - c) tax and nontax
  - d) statutory and constitutional
  - e) none of the above
13. A special district
  - a) must be limited to under 150,000 people.
  - b) covers the entire state to provide a particular service.
  - c) is a unit of local government that provides a special service to a limited geographic area.
  - d) temporarily combines two congressional districts.
  - e) none of the above
14. A MUD
  - a) serves the needs of developers.
  - b) is generally opposed by banks and real estate developers as being too expensive.
  - c) provides ambulance service inside a city's geographic limits.
  - d) delegates the setting of tax rates in a particular geographic area to the state legislature.
  - e) provides funding for special districts.
15. Comprehensive planning and service delivery in a specific geographic area are the function of a
  - a) special district.
  - b) council of government.
  - c) city.
  - d) county.
  - e) town.

# Financial Issues Facing Local Government

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## Examine the financial problems facing local government (pp. 337–41)

Local government in Texas is facing a looming financial crisis as a result of widespread issuance of capital appreciation bonds, which allow funds to be raised in the present while interest and payments on the principal are paid far into the future, and the liabilities imposed on local government by generous retirement plans for governmental employees.

### Key Terms

capital appreciation bond (CAB) (p. 337)

deferred retirement option plan (DROP) (p. 340)

### Practice Quiz

16. Capital appreciation bonds

- a) are long-term bonds on which local governments pay back principal and interest on a yearly basis.
- b) are short-term bonds on which local governments borrow money for emergencies.

c) are bonds on which interest is paid quarterly by local governments but the principal is not paid back for 40 years.

d) are bonds on which principal and interest are not paid back until the end of a lengthy term while local governments can use the borrowed money immediately.

e) create such long-term financial risks that they are illegal in Texas.

17. Some governmental employee retirement plans in Texas

- a) impose huge financial liabilities on government.
- b) need to be increased to support needy retired employees.
- c) have not kept up with inflation.
- d) will soon be merged into the Social Security retirement program.
- e) are so minimal that it is hard to recruit employees at the local level.

## Recommended Websites

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Individual State Descriptions

[www.census.gov](http://www.census.gov)

Texas Association of Counties

[www.county.org](http://www.county.org)

Texas Local Government Code

[www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us)

U.S. Census Bureau, State and County QuickFacts

<http://quickfacts.census.gov/qfd>

In 2010 students at UT Austin protested against cuts in education spending and increases in tuition. As lawmakers work to balance the state budget, the decisions they make about taxes and spending affect all Texans.



# Public Finance in Texas

**WHY PUBLIC FINANCE MATTERS** For college students, the state budget might appear to be pretty far removed from everyday life. Decisions made in Austin every two years may seem to have little to do with attending class, preparing for an exam, or getting everything in order for a timely graduation. But like it or not, the budgetary decisions made by legislators every two years affect students where they matter most: in the pocketbook.

In 2003 state political leaders found themselves staring at a \$10 billion shortfall in the upcoming budget period. Mandated by the state constitution to maintain a balanced budget, they needed to find new and creative ways to close the budget gap without raising taxes. One method was to cut higher education funding.

Prior to 2003 tuition and fee rates for state universities had been set by the state legislature, and in Texas they tended to be low when compared to tuition in other states. Costs ranged from \$2,870 per year at Texas A&M at Texarkana to \$4,912 per year at the University of Texas (UT) at Austin. General revenues funded a large portion of the state university's education budget. In 2003, as a trade-off for a 2 percent cut in the higher education budget, the legislature gave the regents of the various state schools the authority to raise tuition to make up the difference.<sup>1</sup>

Tuition skyrocketed across the country in the first decade of the twenty-first century. Labor-intensive instruction and other high fixed expenditures fueled these increases. Texas higher education was not spared these inflationary pressures. Granted the discretion to increase tuition and fees by the legislature, universities across the state lined up to solve their own budget problems by raising tuition and fees on their students. Tuition and fees for Texas A&M at Texarkana rose 71 percent between 2003 and 2011 to \$5,204 per year. At UT Austin, they rose 80 percent to \$9,796 per year, and at UT Dallas, they rose 110 percent from \$5,244 per year to \$11,014 per year. Overall, the average cost of attending a four-year institution in Texas for a year rose 90 percent from \$3,864 to \$7,342. Although this was below the national average of \$8,244 per year for an in-state public institution, higher education had become an expensive commodity in Texas.<sup>2</sup>

In response to the budget crisis of 2011, cuts in higher education were again made and pressures to increase tuition at most state institutions continued unabated.<sup>3</sup> The president of UT Austin had been locked in a struggle with the UT System Board of Regents over micromanaging higher education on a

variety of issues in 2011. This conflict spilled over in the debate over how much students should pay to attend the university. While accepting the proposals from most member schools for increases in tuition and fees between 2 and 4 percent for the next budgetary period, the Board of Regents, all of whom were appointed by Governor Perry, turned down a UT Austin proposal to increase tuition for in-state undergraduates by 2.6 percent. To offset some of the lost revenues, the board allocated \$6.6 million to UT Austin for the next two years out of the state's Permanent University Fund.

By the spring of 2014 the Texas economy was in full recovery. Increasing sales tax and oil and gas severance tax revenue meant that the budget was looking good for the upcoming legislative session in the spring of 2015. One might have thought that the legislature and various boards of regents would be more favorably disposed to new requests to raise tuition and fees at state universities, but that was far from the case. Demands across the state to hold the line on tuition increases continued to be popular inside and outside the state legislature. For example, in May of 2014, the UT System Board of Regents decided not to raise tuition for in-state students at all UT System institutions. Provisions were made to raise out-of-state tuition and to allow universities to approve optional four-year fixed tuition programs. But the message being sent to the universities was the same as when the budget was under stress: the board was not in the business of rubber-stamping universities' requests for higher tuition and fees. Like the decisions about the state budget facing legislators in Austin, tuition and fees decisions faced by university boards of regents remained deeply political.<sup>4</sup>

## chapter goals

- Explain the purpose of the state budget and what is typically included (pp. 349–51)
- Describe the general pattern of state spending in Texas and where state revenue comes from (pp. 351–61)
- Describe how the money in the budget is organized into specific funds (pp. 361–66)
- Outline the constitutional provisions that affect how the state budget is made (pp. 366–68)
- Identify the major steps and players in making the state budget (pp. 369–72)
- Analyze major budget crises in Texas (pp. 372–77)

# ● What Is the Budget?

## Explain the purpose of the state budget and what is typically included

One of the most distinguishing characteristics about public finance in Texas is that the state constitution mandates that the legislature operate within a “balanced budget.” On its face, the idea of a balanced budget is straightforward. A budget, according to

*Webster's Dictionary*, is an “estimate of future financial income and outgo.” A balanced budget would exist whenever the projected income from tax revenues is equal to or exceeds the projected expenditure. But public finance is a complicated business and the devil is in the details. There are actually a number of different ways to talk about the funds that constitute the “budget.” One way to look at them is to divide them into the following five broad budgetary categories.<sup>5</sup>

- The **General Revenues Fund budget** is a nondedicated revenue account and is the state’s primary operating fund. It is the place where most state taxes and fees flow. It also includes three educational funds (the Available School Fund, the State Textbook Fund, and the Foundation School Fund). Expenditures may be made directly from the nondedicated funds and may be transferred to special funds or accounts for allocation.
- The **General Revenue-Dedicated Funds budget** includes funds dedicated to specific purposes. In 1991, 200 special funds were brought into the General Revenue-Dedicated Funds Account as part of a budget reform and consolidation package. Other budget reforms and consolidation have taken place since then, the most recent being during the 2013 legislative session. This budget includes such funds as the State Parks Account and the college operating accounts (which hold tuition funds). Generally speaking, the legislature can appropriate money from these accounts only for their dedicated purposes. The balances in this budget are used to certify that the constitutional pay-as-you-go limits (discussed below) are being met.
- The **Federal Funds budget** includes all grants, payments, and reimbursements received from the federal government by state agencies and institutions.
- The **Other Funds budget** consists of all other funds flowing into the state treasury not included in the other methods of financing. These include, among other funds, the State Highway Fund, trust funds, and revenue held in certain local higher education accounts.
- The **All Funds budget** is the aggregate of all of the above budgets, referring to all spending that goes through agencies, including federal and state programs.

Appropriations from these funds for the period 2014–15 are shown in Table 11.1.

Some important things must be noted about this complicated system of public financing through these various budgets. First, the state budget involves huge amounts of money. Table 11.2 shows that for the 2014–15 biennium, more than \$73.89 billion was appropriated for Health and Human Services activities (encompassing the

### General Revenues Fund budget

budget for a nondedicated revenue account that functions as the state’s primary operating fund

### General Revenue-Dedicated Funds budget

budget composed of funds for dedicated revenues that target money for specific purposes

### Federal Funds budget

state budget that includes all grants, payments, and reimbursements received from the federal government by state agencies and institutions

### Other Funds budget

budget consisting of all other funds flowing into the state treasury that are not included in other state budgets; this includes the Texas Highway Fund, various trust funds operated by the state, and certain revenues held for local higher education accounts.

**All Funds budget** budget that aggregates all monies flowing into the state treasury and all state spending

TABLE 11.1

### Texas Budgetary Funds Appropriated, 2014–15 (in billions of dollars)

General Revenues Fund budget	\$94.977
General Revenue-Dedicated Funds budget	7.315
Federal Funds budget	68.716
Other Funds budget	31.153
All Funds budget	29.413

SOURCE: Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, February 2014, pp. 3–8.

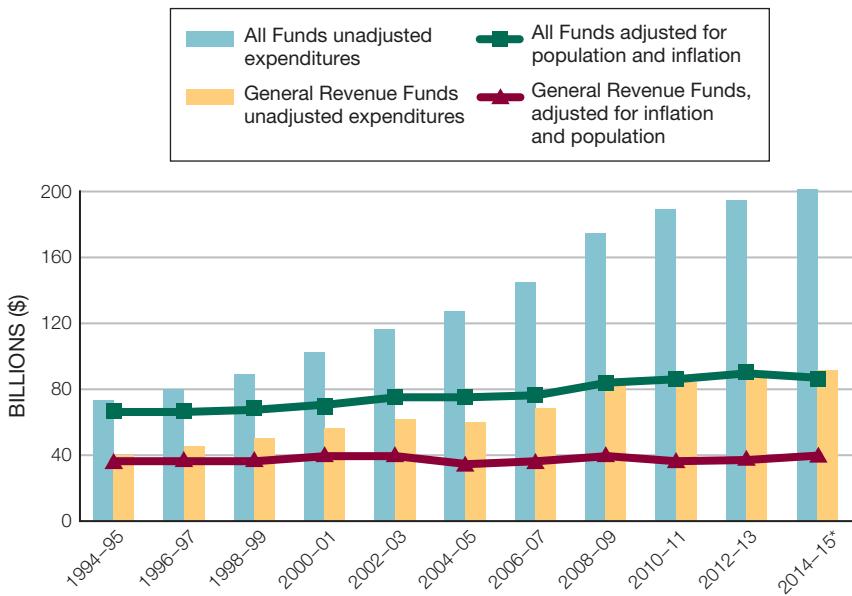
**TABLE 11.2**

## Summary of All Funds State Budget Allocation by Biennium (in billions of dollars)

	2012–13	2014–15	PERCENTAGE CHANGE
Governmental functions	\$4.92	\$4.84	−1.6%
Health and human services	68.83	73.89	7.4
Education	75.77	74.20	−2.1
Judiciary	0.66	0.76	15.4
Public safety and criminal justice	11.71	11.68	−0.2
Natural resources	4.96	6.76	36.4
Business and economic development	22.86	26.29	15.0
Regulatory	0.70	1.29	82.9
General provisions	0.00	0.35	N/A
Legislature	0.35	0.36	3.1
<b>Total all functions</b>	<b>\$190.75</b>	<b>\$200.42</b>	<b>5.1%</b>

SOURCE: Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, February 2014, p. 2.

Medicaid and Temporary Assistance for Needy Families programs). There were \$74.2 billion appropriated for education, including \$50.8 billion for public education and \$17.94 billion for higher education, and \$26.29 billion appropriated for business and economic development. Second, much of this money lies outside the direct control of the legislature. Trust funds and other dedicated funds exist for particular purposes and are hard to manipulate for other budgetary purposes. Legislators seeking to balance the budget are often left with relatively few places to cut expenditures. Given its large proportion of the General Revenues Fund budget, education is often at the top of the list. Third, federal expenditures have a very important role in shaping the overall direction of the state budget. The bulk of federal funds expenditures is in two areas: health and human services, and education. Strings are often attached to these monies. If legislators want federal dollars, they must spend state dollars first. Figure 11.1 highlights the increasingly important role that federal dollars have played in spending patterns in Texas. Unadjusted expenditures from the General Revenues Fund (state funds) have increased modestly between 1994–95 and 2014–15. But expenditures from the All Funds budget (which takes into account federal spending) have exploded during the same period. The pressure to maximize federal dollars flowing into Texas is one legislative goal. But legislators also desire to minimize state spending and not raise taxes.



**FIGURE 11.1**  
**Trends in State Government Expenditures, 1994–95 to 2014–15 Bienniums**

\*Appropriated

SOURCE: Texas Legislative Budget Board, Comptroller of Public Accounts; Texas Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, February 2014, pp. 13–14.

## Spending and Revenue in Texas

**Describe the general pattern of state spending in Texas and where state revenue comes from**

Texas has a reputation of being a “low service, low tax” state that seeks to maintain a favorable environment for business. In this section, we will look at the general pattern of state spending in Texas, as well as taxes and other sources of revenue in the state.

### Trends in State Spending

For the most part, Texas’s reputation as a low-spending state is well earned. On a variety of measures, Texas spends less than other states. One Texas Legislative Budget Board study found that among the 50 states, Texas ranked 46th on per capita state government expenditures. Texas’s spending of \$4,916 per person was far below the U.S. average of \$6,433. On a per capita basis, Texas ranks 27th in educational spending, 44th in highway spending, 25th in hospital spending, and 41st in public welfare spending.<sup>6</sup> Conversely, Texas ranked high when compared to other states on the per capita federal dollars flowing into the state. In 2012, Texas took in \$10,647 per capita from the federal government, ranking it 11th among the states, above the national state average of \$8,844.<sup>7</sup>

The trend in overall spending reveals a similar story, particularly in recent years. As Figure 11.1 shows, in unadjusted dollars (that is, dollars spent not taking into account inflation or population increases), state spending in Texas rose from \$39.959 billion in the 1994–95 biennium to \$94.977 billion in the 2014–15 biennium. However, in real per capita dollars (that is, dollars spent controlling for

inflation and population increases), state spending rose slightly from \$39.959 billion to \$40.973 billion.

When considering state and federal spending in Texas together (see the All Funds State Budget in Figure 11.1), the story is a little bit different. Unadjusted spending for all funds (state and federal) in Texas rose from \$72.769 billion in 1994–95 to \$200.421 billion in 2014–15. But in real per capita dollars, spending in the same periods rose from \$72.769 billion to \$86.461 billion. In other words, between the 1994–95 budget and the 2014–15 budget, real federal spending in Texas (per capita) increased by 18.9 percent while real state spending (per capita) increased only slightly, by 2.8 percent. There is a lot of federal money flowing into Texas.

The number of workers employed by Texas was smaller than that of many other states. In 2011 there were 124 state employees for every 10,000 people living in Texas. This figure was far below the U.S. state average of 140 state employees for every 10,000 state residents, ranking Texas 43rd among the 50 states. Interestingly, though, Texas ranked only a little behind New York at 41st with 125 state employees per 10,000 people, and ahead of California at 46th with 108 state employees per 10,000 people.<sup>8</sup>

## Revenue in Texas

Spending and size of government are only part of Texas's "low service, low tax" reputation. The taxes that fund government are the other dimension. It is difficult to measure the state tax burden Texans face compared to that of citizens in other states. There are a variety of taxes that individuals can pay to the state government, including state income taxes, general state sales taxes, specific state sales taxes, local sales taxes, and property taxes. Moreover, some state taxes can be lower in one state but be offset by higher local taxes. Conversely, state taxes can be higher, offsetting lower local taxes.

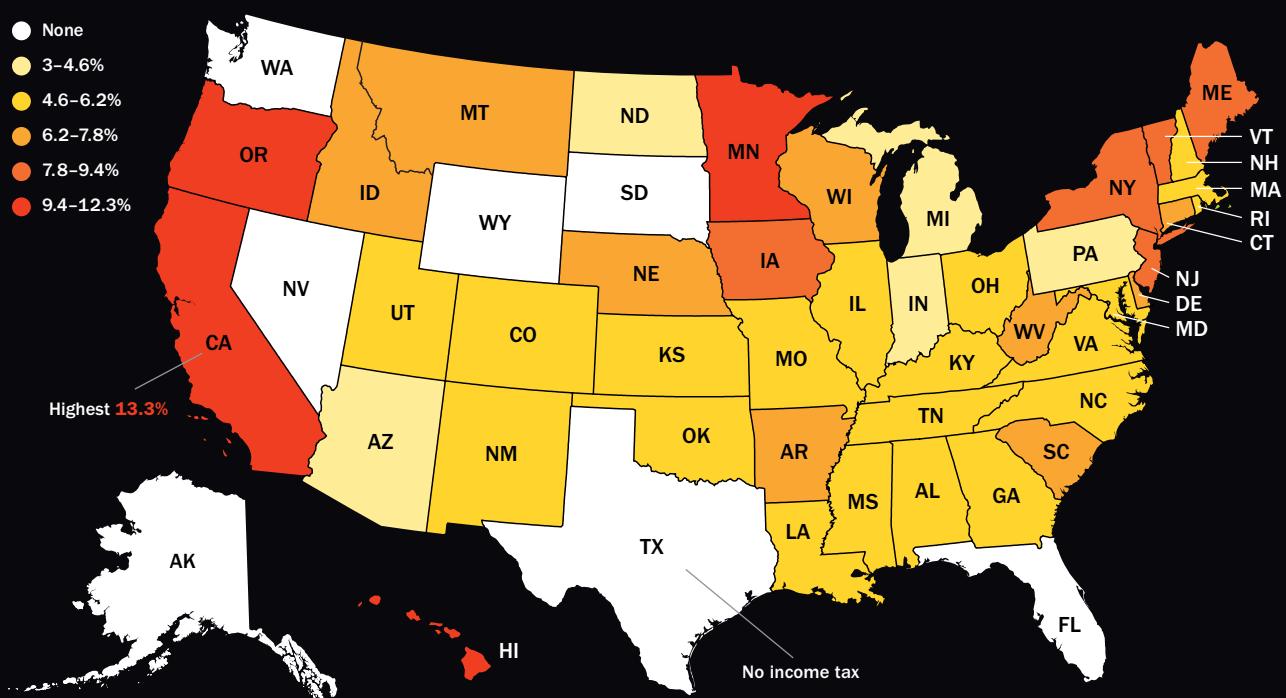
*After the legislature passes the biennial state budget, the state comptroller certifies the budget, confirming that it is within current revenue estimates for the period. Here, State Comptroller Susan Combs discusses the 2012–13 budget.*



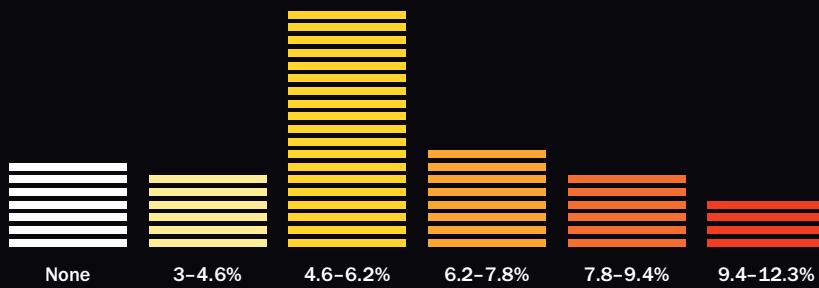
# Who Pays the Highest State Taxes?

Texas is one of a handful of states that do not tax income. This means that Texans pay income taxes only to the federal government. Where does the state get its money? Through sales and property taxes, the state is able to fund roads, schools, prisons, and other needs. Critics of this approach argue that the poor pay a larger percentage of their incomes in states without income taxes. Proponents argue that businesses are attracted to Texas because it does not tax personal income.

## Top State Income Tax Rates, 2014



## Number of States in Each Tax Bracket



**for critical analysis**

1. Which regions of the country have the highest income tax rates? Which have the lowest? What might explain this?
  2. What are the advantages and disadvantages to having no state income tax in Texas?

**TABLE 11.3**

### State Revenue Biennial Comparison, by Source, 2012–13 and 2014–15 Bienniums (in billions of dollars)

REVENUE	2012–13	2014–15*	PERCENTAGE CHANGE
Tax collections	\$91.86	\$98.75	7.5%
Federal receipts	65.45	73.92	12.9
Fees, fines, licenses, and penalties	15.51	16.46	6.1
Interest and investment income	2.28	2.18	-4.4
Lottery	3.72	3.15	-15.3
Land income	2.70	2.37	-12.2
Other revenue sources	12.15	11.31	-6.9
Total net revenue	\$193.67	\$208.14	7.5

\*Appropriated monies.

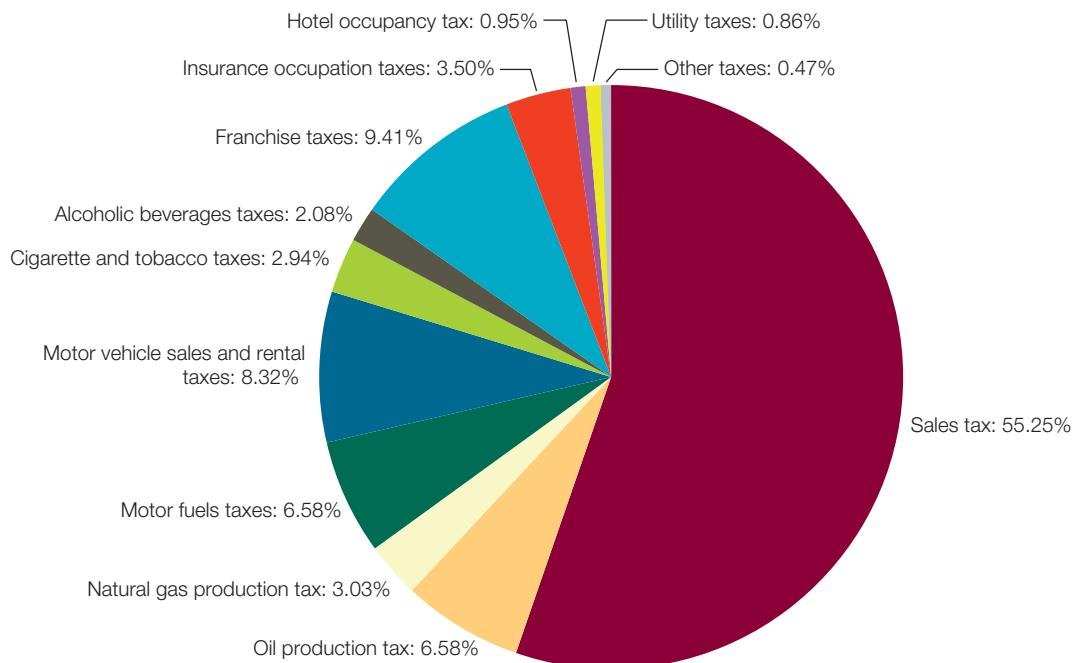
SOURCE: Texas Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, February 2014, p. 27.

Two measures are often used to compare tax burdens across states: state tax revenue per \$1,000 of personal income and per capita state tax revenues. On both measures, Texas's low tax reputation seems to be well earned. In 2012, Texans paid \$44.97 in state taxes for each \$1,000 of personal income, ranking it 46th among the 50 states. This was well below the \$59.29 national average in terms of per capita state tax revenue. A study by the Tax Foundation found that for 2011 per capita state taxes in Texas stood at \$2,109, well below the \$3,064 national average.<sup>9</sup>

Texas is one of seven states that still do not have a personal income tax. Two states, Tennessee and New Hampshire, only tax income from dividends and interest. There is a high sales tax in Texas of 6.25 percent, the 13th highest in the nation. Combined state and local sales taxes in the state can reach 8.25 percent. As we will see later in this chapter, there are a variety of other specific sales taxes that bring revenue into the state to fund government, including cigarettes, alcohol, and gasoline.

Although Texas state taxes are low compared with other states' taxes, local taxes are a different story. In 2011, Texas ranked 12th among the states in terms of property taxes paid per capita, at \$1,393. When state and local taxes are taken together, however, Texas remains a low-tax state. Combined state and local taxes were \$3,197 per capita in 2009, ranking Texas 45th in the nation. A 2011 study conducted by the Tax Foundation concluded that Texas had the 13th most business-friendly tax system.<sup>10</sup>

Government and public policy in Texas are funded from a variety of sources, including sales tax, severance taxes on oil and natural gas produced in the state, licensing income, interest and dividends, and federal aid (Table 11.3). In 2014–15, 47.4 percent of state revenues are expected to come from taxes of one sort or



**FIGURE 11.2**  
**State Tax Revenue Source,  
 2014–15 Biennium\***

\*Percentages calculated based on constitutionally and statutorily dedicated tax revenues and appropriations in the 2014–15 General Appropriations Act, as modified by other legislation.

SOURCE: Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, p. 27.

another. Many of these taxes are based on complex formulas. People often are unaware that they are paying them. But they are important sources of state revenue.

**Sales Tax** The most important single tax financing Texas government is the sales tax. Today, the sales tax in Texas is 6.25 percent of the retail sales price of tangible personal property and selected services. Together county, city, and metropolitan transit authorities are allowed to impose an additional 2 percent sales tax. For the 2014–15 biennium the sales tax is expected to account for 55.25 percent of the total tax collections in the state (see Figure 11.2).<sup>11</sup>

**Oil Production and Regulation Taxes** The oil severance tax is 4.6 percent of the market value of oil produced in the state. (There is also an oil regulation tax of three-sixteenths of one cent per barrel of oil produced in Texas.) The tax revenue from oil production fluctuates with the price of oil and the volume of oil produced in Texas. For 2013 the average price of oil per barrel was \$91.99, and Texas produced 720 million barrels. Production for 2013 was up an astonishing 53.4 percent from 2012. Projected revenues from the oil severance tax are expected to rise to



The state of Texas collects a tax of 20 cents per gallon on motor fuels. The federal government collects an additional 18.4 cents per gallon, but Texans still pay less tax on gasoline than residents of many other states.

\$6.5 billion in the 2014–15 biennium, an increase of 27.6 percent over the previous biennium. It is not too far from the truth to say that fracking and horizontal drilling, new technologies lying behind Texas's latest oil boom, have come to the rescue of the state budget in the nick of time.

**Natural Gas Production Tax** There is a 7.5 percent tax on the market value of all natural gas produced in the state. As with the oil tax, the tax raised from natural gas depends on the price and the amount produced. Revenues from natural gas have fluctuated considerably over time. They fell significantly from \$734 million, or 6.9 percent of state revenues, in 1980 to \$489 million, or a little more than 1 percent of state revenues, in 1997. Prices rose to \$3.96 per thousand cubic feet in 2010 and \$4.13 per thousand cubic feet in 2011. For the 2012–13 biennium, \$3.03 billion flowed into the state treasury from the natural gas tax. That amount is projected to slightly decrease to \$2.99 billion in the 2014–15 biennium.

**Motor Fuels Tax** The motor fuels tax in Texas is 20 cents per gallon of gasoline and diesel fuel. There is a 15-cents-per-gallon tax on liquefied gas. In 2014–15 the motor fuels tax is projected to generate approximately \$6.5 billion, or 6.6 percent of all state revenues, far below the historical average of 10 to 12 percent.

The revenues flowing from the motor fuels tax are “dedicated” monies. This means that the tax revenues can only be used for purposes specified by the legislature. About three-quarters of these monies are appropriated to the Texas Department of Transportation and the Texas Department of Public Safety and are dedicated to the construction, maintenance, and policing of public roads. Most of the remaining one-quarter of the revenues are dedicated to public education.

**Motor Vehicle Sales and Rentals and Manufactured Home Sales Tax** There is a 6.25 percent tax on the sales price of all motor vehicles in the state. There is also a 10 percent tax on all rental vehicles up to 30 days and 6.25 percent thereafter. Newly manufactured homes are also taxed at 5 percent of 65 percent of the sale price. Because of the effects of the economic slowdown brought on by the Great Recession, motor vehicle sales and rental taxes declined by 5.6 percent in the 2010–11 biennium to \$5.6 billion. The economic rebound in 2012–13 increased the revenues from these taxes by 32.6 percent, up to \$7.4 billion. For the 2014–15 biennium, it is projected that tax revenues from this source will increase another 10.5 percent, up to \$8.2 billion.

**Franchise Tax** The so-called franchise tax is imposed on all corporations in Texas. Prior to 2008 the tax was imposed on taxable capital and on earned surplus. The franchise tax became a “margins tax” based on the “taxable margin.” The “taxable margin” is the lesser value derived from one of four methods of calculation: (1) 70 percent of total revenue, (2) total revenue minus cost of goods sold, (3) total revenue minus total compensation and benefits, or (4) total revenue minus \$1 million. Most businesses pay a tax rate of 1 percent on their taxable margin, although a lower rate is available to businesses primarily in retail or wholesale trade. Some reforms aimed at small businesses were introduced into the franchise tax during the 2013 legislative session.

The goals of the legislature in reworking the franchise tax were to make it more difficult for corporations to escape the tax and to offset some of the costs of property tax reform. The Property Tax Relief Fund was established to take in excess

revenue above and beyond the pre-2008 franchise tax amounts, which were put in the General Revenue Fund. There were some serious miscalculations, however, and the revenue generated was far less than expected. The \$4.4 billion generated in 2009 was almost 30 percent less than originally forecast. Part of the budget crisis during the 2011 legislative session can be attributed to the miscalculation. As the economy recovered, so did the revenues produced by the franchise tax. For the 2012–13 biennium, tax receipts from the franchise tax rose to \$9.36 billion. In 2013 alone, \$4.8 billion came into the state from the tax, \$2.8 billion allocated to the General Revenue Fund and \$2 billion allocated to the Property Tax Relief Fund. The comptroller's franchise tax revenues are projected to decline slightly in 2014–15 to \$9.3 billion.

**Tobacco Taxes** Texas imposes a variety of taxes on cigarettes and tobacco products. For example, every pack of 20 cigarettes has a \$1.41 tax per pack and every pack of 25 cigarettes has a \$1.76 tax per pack included in the purchase price. The tax on tobacco products like cigars, snuff, chewing tobacco, and smoking tobacco is based on the manufacturer's listed net weight. This tax was \$1.22 per ounce in 2013. Approximately 87 percent of tobacco taxes are derived from cigarette sales, the remainder from other tobacco products. Revenues from these taxes are expected to total \$2.9 billion for the 2014–15 biennium, a decrease of 4.0 percent from 2012–13.

Like the franchise tax reforms, increases in the tobacco taxes passed in 2006 were linked to property tax relief. Tax revenues generated by the tax rate in place before 2007 go directly into the General Revenues Fund. The excess above this amount goes into the Property Tax Relief Fund. A portion of the other tax increase on tobacco products put into effect in 2007 goes to a Physician Education Loan Repayment program. The remainder of the excess goes into the Property Tax Relief Fund.<sup>12</sup>

**Alcoholic Beverage Taxes** As with tobacco, a variety of taxes are imposed on alcoholic beverages. Some of these were increased during the 2013 legislative session. This tax took in \$1.9 billion in the 2012–13 biennium and is expected to increase to \$2.06 billion in the 2014–15 biennium.

**Insurance Occupation Taxes** A complex schedule of tax rates is applied to insurance premiums. For example, life, health, and accident insurance is taxed at the rate of 1.75 percent on gross premium receipts. In the 2014–15 biennium insurance premium taxes are expected to be \$3.5 billion, up from \$3.3 billion in the 2012–13 biennium.

**Utility Taxes** Utility tax revenue flows from three sources in Texas: First, there is a tax on gas, electric, and water utility gross receipts. Rates vary from 0.581 percent to 1.997 percent based on the size of the city population. There are also taxes posed on the gross receipts of public utilities and a gas utility pipeline tax. In 2014–15 it is estimated that the utility tax will take in \$846.8 million, representing a 4.4 percent decline from the 2012–13 biennium.

**Hotel and Motel Tax** This state tax is 6 percent of the hotel and motel occupancy bill paid by the occupant. This tax revenue fell during the Great Recession but has rebounded along with the economic recovery over the past two years. It

is expected to generate \$937 million in the 2014–15 biennium, an 11.2 percent increase from the previous biennium.

**Inheritance Tax** Federal tax reforms in 2001 effectively eliminated the Texas inheritance tax by 2005. The law was scheduled to expire in 2012 along with other portions of the Bush tax cuts. The federal law was extended in 2011, meaning that there would be no inheritance tax collected in Texas for the 2014–15 biennium.

**Other Taxes** There are a small number of other taxes on such items as attorney services, cement, sulfur, coin-operated machines, and bingo rental receipts that are expected to generate \$467.8 million for the 2014–15 biennium.

## The Question of the Income Tax in Texas

**regressive tax** type of tax where the tax burden falls more heavily on lower-income individuals

**progressive tax** type of tax where the tax burden falls more heavily on upper-income individuals

Many commentators have complained that the tax system in Texas is too **regressive**.<sup>13</sup> By this they mean that the tax burden in the state falls more heavily on lower-income individuals. Sales and use taxes such as those found in Texas are generally considered to be regressive. Property taxes on individuals and businesses are generally considered to be somewhat regressive. Poor homeowners and renters generally pay more of their income in property taxes than do the wealthy.

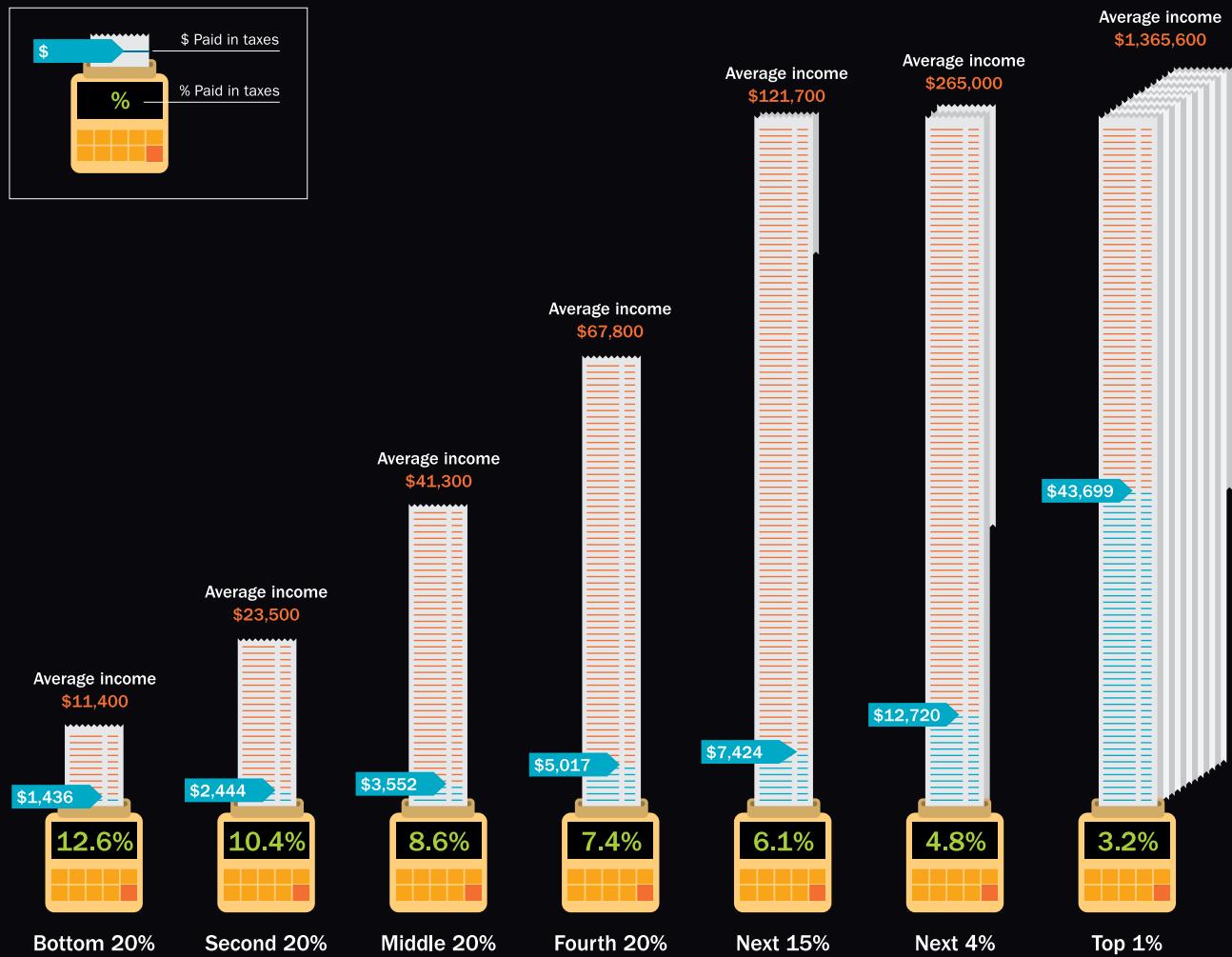
There have been occasional calls for the institution of a state income tax in Texas. Supporters argue that not only is the income tax a more reliable source of revenue for the state, it can also be made fairer. Unlike sales and use taxes, which are applied equally to everyone whatever their income, income taxes can be made **progressive**. With a progressive income tax, people with lower income pay a lower tax rate than people with higher income. Progressive income taxes thus place a higher tax burden on the rich than on the poor. A 2013 study conducted by the Institute on Taxation and Economic Policy found that among the states Texas had the fifth most regressive tax system in the nation, behind Washington, Florida, South Dakota, and Tennessee. The study estimated that in Texas people with incomes at the bottom 20 percent paid 12.6 percent of their income in state and local taxes, while those with incomes in the upper 1 percent paid only 3.2 percent of their income in taxes.<sup>14</sup>

Few politicians have ever been willing to support an income tax. One of the attractive features of Texas to business has always been the absence of an income tax. It was not until the late 1980s and early 1990s that the first serious attempt to put a state income tax in place was undertaken. Responding to mounting budgetary pressures, the retiring lieutenant governor, Bill Hobby, came out in favor of an income tax in late 1989. Bob Bullock, Hobby's successor, announced in early 1991 that he would actively campaign for an income tax. A blue-ribbon panel chaired by former governor John Connally was charged with looking into new revenue sources for the state. The committee ended up recommending to the legislature both a corporate and a personal income tax, but not without generating an enormous amount of controversy.<sup>15</sup>

Chairman Connally himself opposed the income-tax recommendations, as did Governor Ann Richards. By the 1993 legislative session, Lieutenant Governor Bullock was backing off. Bullock proposed a constitutional amendment requiring voter approval of any personal income tax. Moreover, the amendment specified that funds raised under the personal income tax be used to support public education. The amendment quickly passed the 73rd legislature and was overwhelmingly

# Who Pays the Most Taxes in Texas?

Taxes as a Percentage of Income in Texas, 2013\*



Texas has no state income tax, which does keep overall tax rates down. However, this means that the state's revenues come primarily from sales and property taxes. These taxes are regressive—those with less income pay a higher share of their income in taxes; those with higher incomes pay a lower share of their income in taxes.

\*Based on family income for non-elderly taxpayers

Source: Institute for Taxation and Economic Policy, [www.itep.org/pdf/tx.pdf](http://www.itep.org/pdf/tx.pdf) (accessed 3/6/14).

## for critical analysis

1. Which income groups benefit from Texas's state and local taxes? Which do not?
2. Most other states have income tax. Do you support a state income tax for Texas? What would be the advantages and disadvantages?

**TABLE 11.4**

## Estimated State Revenue Collections, 2014–15 Biennium

Federal funds	35.5%
Sales tax	26.2
Other receipts	16.0
Motor vehicle sales and rental tax	3.1
Other taxes	5.1
Franchise tax	4.5
Motor fuels tax	3.1
Severance tax	4.6
Investment income	1.0

SOURCE: Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, February 2014, p. 28.

**matching funds** federal monies going to a state based on state spending for a program

approved by voters on November 2, 1993. As this amendment effectively gave the electorate a veto over any proposal for an income tax, it is unlikely that Texans will have a personal income tax in the foreseeable future.

## Other State Revenue

Next to taxes, the second-largest source of revenue for Texas is the federal government (see Table 11.4). Historically, Texas spends relatively little, compared with other states, for state-federal programs. As a result, the federal grants and **matching funds** (federal monies going to a state based on state spending for a program) also have been relatively low. Nevertheless, federal aid to Texas skyrocketed in the 1980s because of the expansion of transportation and human-services programs. For the 2014–15 biennium, federal funds accounted for \$70.54 billion, about 35.5 percent of the total appropriations. Much of the increase in these federal funds in recent years can be attributed to Medicaid, a state-federal program providing funds to finance health care delivery to the poor.<sup>16</sup>

In addition to federal monies, there are a number of other revenue sources, as shown in Table 11.5, including interest income, licenses and fees, the sales of goods and services provided by the

state, and land income. Two other sources in recent years have had a major impact on monies flowing into the state budget. A state lottery was passed by the state legislature and approved by the voters in 1991. Although the lottery was passed by voters overwhelmingly, attitudes about the appropriateness of using gambling as a source of state revenues are mixed. Some argue that the lottery unfairly takes money from people who can least afford it by fooling them into thinking that they, too, can strike it rich if only they have a little luck. Large numbers of people from all social classes continue to play the lottery. In 2013, 36.5 percent of Texans claimed that they had played a lottery game in the previous year. The median monthly dollar amount spent on any lottery game was \$12.00. In 2013 the lottery took in \$4.4 billion in sales, an increase of 4.4 percent from the previous year. Payouts to winners totaled \$2.8 billion. After administrative expenses were paid, \$1 billion was transferred to the Foundation School Account, \$5.2 million was transferred to the Texas Veterans Commission, and \$41.9 million of unclaimed prizes was transferred to the state. It is projected that over \$2.1 billion will be available to transfer to the Foundation School Account in the 2014–15 biennium.<sup>17</sup>

A second major source of nontax revenue is a result of the settlement the state reached with tobacco companies in January 1998. Under the settlement, Texas would receive over \$17.3 billion over the next 25 years and an additional \$580 million every year thereafter from the tobacco industry. The largest payment—\$3.3 billion—came up front, while the remainder was to be spread out over the remaining 25 years. Nationwide, states received a total of \$246 billion in the final settlement reached with the tobacco industry. The Texas Comptroller's Office projects that Texas tobacco settlement receipts will total \$916.5 million in 2014–15, down from the \$959.3 million received in 2012–13. This drop is the result of a projected decline in cigarette sales.<sup>18</sup>

**TABLE 11.5**

## Tax Collections Biennial Comparison by Source, 2012–13 and 2014–15 Bienniums (in billions of dollars)

	2012–13	2014–15	PERCENTAGE CHANGE
Sales tax	\$50.14	\$54.57	8.8%
Oil production taxes	5.09	6.50	27.6
Natural gas production tax	3.03	2.99	-1.2
Motor fuels tax	6.39	6.50	1.7
Motor vehicle sales and rental taxes	7.44	8.22	10.5
Franchise tax	9.36	9.30	-0.7
Cigarette and tobacco taxes	3.03	2.91	-4.0
Alcoholic beverage taxes	1.90	2.06	7.9
Insurance occupation taxes	3.26	3.47	6.3
Utility taxes	0.89	0.85	-4.4
Hotel occupancy tax	0.84	0.94	11.2
Inheritance tax	-0.01	0.00	-100.0
Other taxes	0.50	0.47	-6.2
<b>Total tax collections</b>	<b>\$91.860</b>	<b>\$98.755</b>	<b>7.5%</b>

NOTE: Biennial change and percentage change have been calculated on actual amounts before rounding in all tables and graphics in this chapter. Totals may not sum as a result of rounding.

SOURCE: Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, February 2014, p. 27.

## State Funds

**Describe how the money in the budget is organized into specific funds**

Money comes into state coffers from a variety of sources and is dispersed in a wide range of activities. But money spent by the state doesn't just flow into and out of one pot. There are, in fact, 400 funds in the state treasury whose monies are directed to a

wide variety of functions. Understanding how money flows into and out of these funds lies at the heart of mastering the state budget. We examine some of the most important funds here.

As previously mentioned, the **General Revenue Fund** consists of two parts: non-dedicated general revenue and general revenue-dedicated accounts. The nondedicated revenue is the state's primary operating fund and is the place where most state taxes and fees flow. In 1991, 200 special funds were brought into the General Revenue-Dedicated Funds account as part of a budget reform and consolidation

**General Revenue Fund** the state's primary operating fund

### **Permanent School Fund (PSF)**

fund created in 1854 that provides monies for primary and secondary schools

package. Expenditures may be made directly from the nondedicated funds and may be transferred to special funds or accounts for allocation.

The **Permanent School Fund (PSF)** was created in 1854 with a \$2 million appropriation by the legislature to fund primary and secondary schools. The Constitution of 1876, along with subsequent acts, stipulated that certain lands and sales from these lands would constitute the PSF. The second-largest educational endowment in the country, the PSF is managed primarily by the state board of education. The fund distributes money to school districts across the state based on attendance and guarantees bonds issued by local school boards, enabling them to get lower interest rates in the bond markets. At the end of 2013 the fund was guaranteeing about \$55.2 billion in school district bonds across the state.

How much money is available to public education through the PSF is determined by the State Board of Education by (1) taking into account the average market value of the fund for the preceding 16 fiscal quarters and (2) setting a distribution rate that does not jeopardize the likelihood that the fund can support future students at a similar rate. Issues of generational equity thus lie at the heart of managing the PSF. Future generations are not to be sacrificed to solve current budgetary shortfalls.

The value of this fund has fluctuated throughout the turbulent first decade of the twenty-first century, dropping to a little over \$20 billion in 2009. At the end of 2013 the fund balance has recovered to \$29 billion with a return on investment of approximately 10 percent. Distribution rates have ranged from 4.5 percent for the 2004–05 biennium to 2.5 percent for the 2010–11 biennium to an adopted rate of 3.3 percent for the 2014–15 biennium. Projections are that the PSF will yield approximately \$1.6 billion to help fund public education in the 2014–15 biennium.<sup>19</sup>

### **Available School Fund (ASF)**

dedicated fund established by the constitution for the support of public education in the state

The **Available School Fund (ASF)** is a dedicated fund established by the constitution for the support of public education in the state. The ASF is funded through distributions of the Permanent School Fund (mentioned above) and 25 percent of the state's motor fuels tax. The ASF also provides funds for another fund, the Instructions Materials Fund, that funds state purchases of instructional materials. Revenue flowing into the ASF for the 2012–14 biennium from the motor fuels tax and PSF together is projected to be \$3.25 billion.

**State Highway Fund** fund that supports the construction, maintenance, and policing of roadways and acquires rights of way; funded through a variety of taxes such as motor vehicle registration fees, the federal highway fund, and the sales tax on motor lubricants

The **State Highway Fund** comes from a variety of sources, including motor vehicle registration fees, the federal highway fund, and the sales tax on motor lubricants. A significant portion of the motor fuels tax initially is deposited in the General Revenue Fund and then is allocated to the State Highway Fund. The purposes of the State Highway Fund are constructing, maintaining, and policing roadways in Texas and acquiring rights of way. An amendment to the constitution which will be voted on November 4, 2014, provides for diverting \$1.2 billion of oil and gas tax revenue from the Rainy Day Fund into the State Highway Fund. Over \$9.8 billion was allocated from this fund in the 2014–15 biennium, with more than 83 percent of the monies going to the Texas Department of Transportation.<sup>20</sup>

### **Economic Stabilization Fund (ESF)**

fund established by constitutional amendment in 1988 to provide funds for the state during times of financial stress, commonly known as the Rainy Day Fund

The **Economic Stabilization Fund (ESF)**, commonly known as the Rainy Day Fund, was established through constitutional amendment in 1988 to provide relief during times of financial distress. The fund is generated by a formula involving the base year of 1987. If collections from oil and gas taxes exceed the 1987 base year amount, 75 percent is transferred to the fund. Transfers are made in February by the comptroller. Half of any “unencumbered” general revenue, that is, revenue not already targeted for a specific purpose, also goes into the fund. The legislature has the authority to contribute additional funds but never has.

Under certain extraordinary circumstances, ESF monies can be appropriated only with a three-fifths vote of members of both houses of the legislature. These circumstances include when a budget deficit develops in a biennium or the comptroller estimates that revenue will decline from one biennium to the next. Money can also be appropriated from this fund for other purposes at any time with the support of two-thirds of present members in each house.

Few thought that large sums would accumulate in the fund. As noted in Table 11.6, the first transfer of funds from oil and gas tax revenues of \$18.5 million took place in 1990. The ESF account balance was kept below \$100 million until 2001, when deposits transferred into the account exceeded \$700 million. In 2003 the ESF was depleted to help solve the impending \$10 billion budget shortfall. In 2003 and 2005 the legislature appropriated ESF monies to a variety of agencies, including the Teachers' Retirement System, various health and human service agencies, the governor's office, and the Texas Education Agency. Rising tax revenues from oil and gas production in the first decade of the twenty-first century flooded the ESF with funds. By the end of fiscal year 2013 the Texas Rainy Day Fund had grown to over \$6.17 billion. This was after expenditures to cover budget shortfalls of \$3.2 billion in 2011 and \$1.87 billion in 2013. This fund contained more cash than similar funds in any other state. Only Alaska, also awash in oil and gas revenues, had a fund that approached that of Texas. The debate over whether or how to use the Rainy Day Fund to close the budget shortfall was a major issue during the 2011 and 2013 legislative sessions, and likely will be so again whenever the economy falters and the state revenues decline.<sup>21</sup>

**TABLE 11.6**

### Economic Stabilization Fund History, Fiscal Years 2004 to 2015 (in millions of dollars)

FISCAL YEAR	REVENUES	EXPENDITURES	ENDING BALANCE
2004	\$358.1	\$553.0	\$365.6
2005	611.8	970.5	6.9
2006	926.5	508.2	405.2
2007	1,617.7	691.5	1,311.4
2008	3,114.5	90.5	4,355.4
2009	2,370.7	0.4	6,725.7
2010	966.9	0.0	7,692.6
2011	518.5	3,198.7	5,012.4
2012	1,121.0	0.0	6,133.4
2013	1,908.6	1,871.8	6,170.2
2014*	2,541.8	2,056.0	6,656.0
2015*	1,414.5	0.0	8,070.5

\*Projected estimates.

SOURCE: Comptroller of Public Accounts.

# What to Do with the Budget Surplus

**Unlike the federal government,** Texas state government cannot approve a budget deficit and must pass a balanced budget every two years. Discussion of the budget reached a fevered pitch during the 2010 legislative session, when Texas faced a budget shortfall because of the national recession and a serious shortfall in projected revenues from various taxes. Some Texans considered it a “rainy day” and urged the state government to tap the Rainy Day Fund for education and health services. Others believed that the fund should be preserved for the future and should be used only in extreme circumstances. In the end, Governor Perry decided to use the fund only sparingly in order to balance the state budget, instead implementing severe cuts in state spending on higher education, health care, and education.

In the 2015 legislative session, state lawmakers face a budget surplus instead of a budget shortfall. In other words, the state comptroller of public accounts predicts that the state will have approximately \$11 billion to spend in the next budget cycle. This amounts to a substantial increase over the previous state budget. Why the surplus? Revenues from various sales taxes as well as the oil and gas severance taxes and the relatively recently revamped franchise tax have exceeded expectations as the economy has improved and unemployment has fallen.

How should state lawmakers deal with the budget surplus? On the one hand, some policy makers, such as Chuck DeVore of the Texas Public Policy Foundation, a conservative think tank in the state, argue that the surplus means that Texas taxpayers have overpaid the state and they should receive refunds. In particular, DeVore proposes creating what is called a Sales Tax Relief (STaR) fund which would allow state legislators to move any surplus money into an account allowing the comptroller of public accounts to temporarily cut state sales tax rates. He argues that this would



make possible a reduction of the state sales tax from 6.25 percent to 5.75 percent for approximately two years. Generally, Texas taxpayers pay no more than 8.25 percent on most items other than food and medicine because local governments can add to the state's baseline sales tax. Other conservatives have called for a reduction in the franchise tax.

On the other hand, Dick Lavine and Eva DeLuna Castro of the Center for Public Policy Priorities, a progressive think tank in Austin, argue that cuts to education and health care from the last session should be restored so that the state can better prepare for an uncertain economic future. Lavine and Castro argue that Texas is already a low-tax state that provides minimal

funding to education, social services, and health care. In education, they argue, the student population continues to increase yet the need to hire more teachers is not being fulfilled. In addition, cuts in state funding do not occur in a vacuum. Many localities rely on property taxes to fund schools, and if state funding to schools decreases, local school boards have no option but to raise property taxes, thus increasing the tax burden through other channels, all while the state sits on over \$8 billion in a “rainy day fund.” In addition, liberals and conservatives have noted that transportation projects like the building and repair of roads and bridges may be underfunded to the tune of \$5 billion.

DeVore counters that education money is spent not on the classroom but on bureaucratic overhead, and he points to the fact that the student-teacher ratio in Texas is better than the national average. He also contends that as the legislature spends more on new programs, a sense of entitlement will develop, making it difficult to make cuts later on during times of economic difficulty. Lavine and Castro, in turn, counter that Texas is simply not spending enough in real dollars given the state’s rapid growth. With new residents on highways, in classrooms, and in hospitals, the state needs to maintain these public goods for future generations. Spending the same amount of money as we did when the state’s population was smaller will not lead to a prosperous state.

What, then, should lawmakers do when deciding priorities for the next state budget?

## critical thinking questions

1. How should policy makers deal with the projected budgetary surplus? Should taxes be cut or spending increased? If the latter, where should it be increased first?
2. What would be the budgetary consequences of replacing sales and franchise taxes with an income tax? Who would benefit? Who would lose?

To appreciate the importance of the operations of Texas's 400 funds and the complexity that they introduce into the budgetary process, one need only look at a few funds lying at the heart of higher education. Legislative goals are met through the creation of these funds and the allocation and reallocation of funds to and from them. Some funds, such as the Permanent University Trust Fund or the Higher Education Fund, were established to channel money directly to certain institutions of higher education. Others, like the National Research University Fund, operate in order to encourage universities to behave in certain ways and to achieve a specific set of legislative objectives.

The **Permanent University Trust Fund (PUF)** contributes to the support of most institutions in the University of Texas (UT) and Texas A&M University systems. Originally established in 1876 by a land grant of 1 million acres, the fund contains approximately 2.1 million acres in 24 west Texas counties. Under provisions in the state constitution, all surface lease income goes into the Available University Fund (AUF), a fund set up to distribute PUF monies. Mineral income and the proceeds from the sale of PUF lands go into PUF and are invested. In 1999 an amendment to the constitution authorized the UT Board of Regents to channel investment income into the AUF. Two-thirds of the monies going to AUF go to the UT system; one-third goes to the Texas A&M system. The first obligation of any income earned by PUF is to pay the debt service on outstanding PUF bonds. The estimated value of the PUF on June 30, 2013 was \$14.4 billion.<sup>22</sup>

The **Higher Education Fund (HEF)** was established by a constitutional amendment for universities that did not have access to PUF monies. It is funded through the General Revenue Fund. Appropriations for the HEF are projected to be \$525 million for the 2014–15 biennium. An advisory committee made up of member institutions provides input to the Texas Higher Education Coordinating Board, which in turn makes recommendations to the legislature for budgetary allocation to each school out of the HEF.

The **National Research University Fund (NRUF)** was established through a 2009 constitutional amendment to provide a source of funding for universities seeking to achieve national prominence as research institutions. Under the amendment, money was transferred from the HEF to the NRUF. UT Austin and Texas A&M are already considered to be national research institutions and therefore do not qualify for this fund. Eligibility criteria as well as distribution rules were established in 2011 by the legislature. An institution must be identified as an emerging research university by the Higher Education Coordinating Board and must expend at least \$45 million in specifically defined types of research. In addition, universities must meet at least four of the following criteria to qualify: (1) maintain an endowment of at least \$400 million in the two preceding academic years; (2) produce 200 Ph.D. degrees during the previous two years; (3) have a freshman class of high academic achievement; (4) be designated as a member of the Association of Research Libraries, have a Phi Beta Kappa Chapter, or be a member of Phi Kappa Phi; (5) have a certain number of tenured faculty who have demonstrated excellence by winning a Nobel Prize or other prestigious fellowships, or have been elected to one of the National Academies; and (6) have a demonstrable excellence in graduate education. In early 2014 the value of the fund was over \$630 million.

In 2011 seven universities were designated as emerging research universities, each of which could have access to these funds if certain criteria were met. They were Texas Tech University, the University of Texas at Arlington, the University of Texas at Dallas, the University of Texas at El Paso, the University of Texas at San

**Permanent University Trust Fund (PUF)** fund established in 1876 and funded from the proceeds from land owned by the state; monies go to various universities in the University of Texas (UT) and Texas A&M systems

**Higher Education Fund (HEF)** state higher education fund for universities not having access to PUF monies

**National Research University Fund (NRUF)** fund established in 2009 to provide funding to universities seeking to achieve national prominence as research institutions

Antonio, the University of Houston, and the University of North Texas. In January 2012, Texas Tech and the University of Houston were identified by the Coordinating Board as being eligible to receive some of these NRUF monies subject to meeting a state audit.<sup>23</sup>

## ● The Texas Constitution and the Budget

**Outline the constitutional provisions that affect how the state budget is made**

of the constitutional provision that the legislature may meet in regular session only once every two years. One of the effects of this restricted time frame is to force government agencies to project their budgetary needs well in advance of any clear understanding of the particular problems they may be facing during the biennium. In addition, the legislature can meet for only 140 days in regular session. This seriously limits the amount of time that the legislature can spend analyzing the budget or developing innovative responses to pressing matters of public importance.

Another important factor is that a large portion of the biennial budget is dedicated for special purposes by federal law or by the Texas Constitution or state statute. These dedicated funds include federal monies earmarked for financing health care for the poor (Medicaid), as well as state funds for highways, education, teachers' retirement, and numerous other purposes. The purpose of dedicated funds is not difficult to understand. Supporters of particular programs want to create a stable revenue source for priority programs. But in protecting their own programs, supporters encourage other interests to do likewise, with the result that the legislature loses control of a large portion of the budget.

Finally, a number of specific constitutional provisions constrain the legislature's control of the budget.<sup>24</sup>

**Article 3, Section 49a (Pay-as-You-Go Limit)** portion of the Texas Constitution that requires the state to maintain a balanced budget

**appropriations** authorization by the legislature to a government agency or body to spend up to a particular amount of money

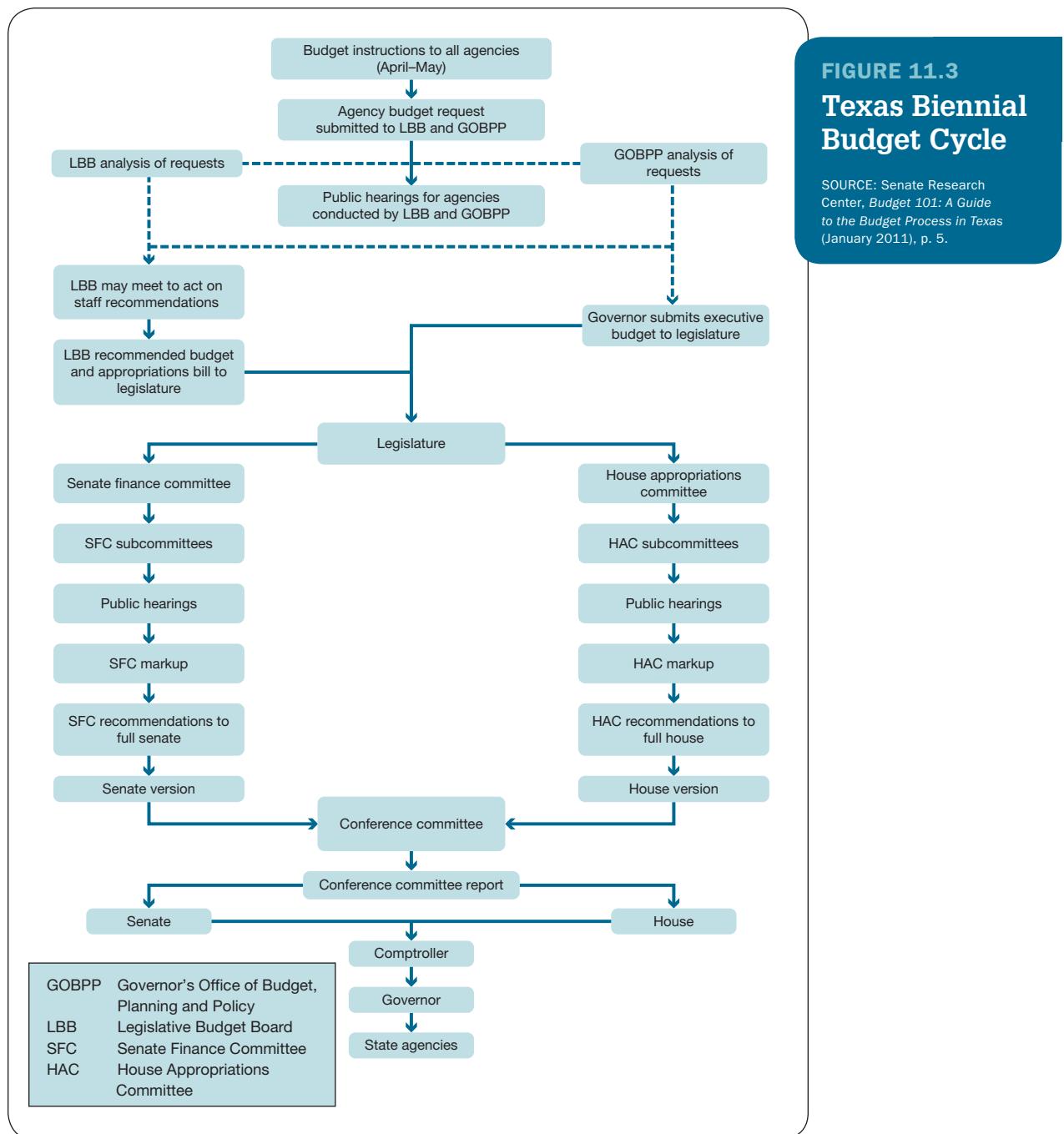
**The Pay-as-You-Go Limit Article 3, Section 49a (Pay-as-You-Go Limit)**, of the Texas Constitution requires the state to maintain a balanced budget. All bills that get as far as **appropriations** in the legislative process must be sent to the comptroller of public accounts so the comptroller can certify that the bills are within available budget limit projections. One of the most important consequences of the pay-as-you-go limit is to put the comptroller at the heart of the budget process. In the summer of 2013 the comptroller certified that the 2014–15 General Appropriations Act and other appropriations acts passed during the 2013 session met the pay-as-you-go requirements. In December 2013 new estimates projected a budgetary surplus of \$2.6 billion for the 2013–14 biennium. By June 2014 the projected surplus had risen to \$3.6 billion, according to the comptroller.<sup>25</sup>

**The Welfare Spending Limit** Article 3, Section 51a, provides that the amount of money the state pays for assistance to or on behalf of needy dependent children and their caretakers shall not exceed 1 percent of the state budget in any biennium. This article sets a constitutional limit on the amount of money that the state may pay out to welfare beneficiaries under the Temporary Assistance for Needy Families program (TANF). The total state budget appropriated by the 83rd legislature

A number of constitutional factors affect the way the budget is made in Texas. Probably the biggest constraint on the budgetary process has to do with time limits. As noted in Figure 11.3, the legislature is compelled to write a two-year, or biennial, budget because

**FIGURE 11.3**  
**Texas Biennial Budget Cycle**

SOURCE: Senate Research Center, *Budget 101: A Guide to the Budget Process in Texas* (January 2011), p. 5.



was \$200.4 billion, instituting a welfare spending limit of over \$2 billion. State funds appropriated for TANF, however, were only \$132.5 million, far below the 1 percent limit. State expenditures on Medicaid are not included in this spending limit.<sup>26</sup>

**The Limit on the Growth of Certain Appropriations** Article 8, Section 22, which was passed in 1978, specifies that the growth in appropriations cannot be more

than the growth of the state's economy, not counting dedicated spending as specified in the state constitution. This means that when the state's economy shrinks, appropriations also have to shrink. The Legislative Budget Board (LBB) is responsible for determining what the proper financial figures are to meet this mandate. Under Texas law, the LBB determines this by dividing the estimated total state personal income for the next biennium by the estimated total state personal income for the current biennium. The LBB may adopt "a more comprehensive definition of the rate of growth" if the alternative definition is approved by a special committee composed of the governor, the Speaker of the House, and the comptroller.<sup>27</sup>

One might think that there would be times that the LBB would be reluctant to perform its constitutional duties. Adopting particularly dismal projections derived from the growth formula hardly makes one popular politically. But there are checks in place to make sure that the projections are made and the limit on growth is delivered in a timely fashion to the legislature. Under law, the LBB is prohibited from distributing the budget or the appropriations bill to either the legislature or the governor until this limit on the rate of growth of appropriations has been adopted. If the LBB fails to adopt a growth limit (and a spending limit), the rate of growth in the state's economy is treated as if it were zero. State revenues not dedicated by the Texas Constitution to particular functions must remain at the same level as in the previous biennium.

For the 2014–15 biennium, \$85.2 billion was authorized under Article 8 provisions. Note that \$200.4 billion of the state's budget for the 2014–15 biennium was funded with nontax revenue or constitutionally dedicated tax revenue and was not subject to the Article 8 spending limits. Since only \$85 billion was actually appropriated by the legislature, that meant that the budget was within mandated constitutional limits. Indeed, rosy economic projections in December 2013 projected that up to \$380.5 million could be appropriated from General Revenue Funds during the next biennium before the spending limit was reached.<sup>28</sup>

**Budget-Execution Authority** Under a constitutional amendment passed in 1985 (now Article 16, Section 69), the legislature was empowered to establish rules for the expenditure of funds by state agencies. Today this means that between legislative sessions, the governor or the LBB may propose (1) that an agency stop spending money appropriated to it in the budget, (2) that money be transferred from one agency to another, or (3) that the purpose for an appropriation to a particular agency be changed. If the governor proposes the changes, the LBB must approve or amend the proposal. If the LBB proposes the changes, the governor must approve or amend the proposal.

**Limitation on Debt Payable from the General Revenue Fund** The state constitution also limits the amount of debt the state can incur. Under a 1997 amendment to Article 3, Section 49j, the legislature cannot authorize additional debt if the resulting **debt service** is greater than 5 percent of the average General Revenue Fund revenue for the three preceding fiscal years (this excludes dedicated spending). Basically, Texas state debt cannot be more than 5 percent of state revenue.

**debt service** money spent by the state to pay off debt; includes interest and principal payments

One of the consequences of this constitutional debt limit is that compared to other states (as well as to the federal government), the Texas debt burden is relatively low. A 2012 Tax Foundation study calculated that Texas's per capita debt burden was \$1,765. This contrasted with per capita debts of \$6,956 in New York, \$4,997 in Illinois, and \$4,036 in California. Texas's per capita state debt was ranked 45th out of the 50 states.<sup>29</sup>

# The Budgetary Process

## Identify the major steps and players in making the state budget

In theory, Texas has a “dual-budget” system. This means that responsibility for preparing an initial draft of the budget is shared by the governor through the Governor’s Office of Budget, Planning, and Policy (GOBPP) and the legislature through the LBB. In practice,

the budget is primarily the responsibility of the legislature.

In 1967 the legislature designated the governor the chief planning officer of the state. The GOBPP was created in 1976, through the consolidation of an older agency, the Division of Planning Coordination, with the GOBPP. The GOBPP is responsible for advising the governor regarding fiscal matters. It prepares the governor’s budget recommendations for the legislature and monitors state appropriations and operations. It also serves the governor in a variety of other capacities, including providing analysis on fiscal and economic matters and coordinating federal programs in the state as well as assisting in the operations of various regional and state planning councils.

Before 1949 there was little coordination in public budgeting. Financial procedures varied, and state agencies were funded by individual appropriations. In 1949 a law was enacted to establish the 10-member LBB, whose primary job would be to recommend appropriations for all agencies of state government. The board is chaired by the lieutenant governor. The vice chair is the Speaker of the House. Other members include the chairs of the House Appropriations Committee, the House Committee on Ways and Means, the Senate Finance Committee, and the Senate State Affairs Committee. Two additional members from the Senate and the House are chosen by the lieutenant governor and the Speaker, respectively.

The LBB appoints a budget director, who brings together budgeting requests from the various state agencies and prepares appropriations bills for them. Since 1973 the LBB has also been responsible for evaluating agency programs and developing estimates of the probable costs of implementing legislation introduced in a legislative session. The LBB’s draft budget, not the governor’s, is the basis for final legislation. Table 11.7 summarizes the duties of key players in the budgetary process.

Preparing and implementing a budget are complex matters. The budgetary process involves two stages. In the first stage, the LBB develops a draft budget based on requests supplied by state agencies. This draft budget follows a series of steps. First, strategic plans are developed by each agency. A strategic plan includes (1) a mission statement, (2) a statement about the goals of the agency, (3) a discussion of the population served by the agency, (4) an explanation of the means that will be used to achieve these goals, and (5) an identification of the measures to be used to assess the agency’s success in meeting these goals. This information provides the basis for LBB funding recommendations for each agency. In the spring or early summer prior to the legislative session, the LBB sends out detailed Legislative Appropriation Request (LAR) instructions to the agencies. Hearings are then held by the LBB and by the GOBPP with each agency where the agency’s strategic plan and LAR are discussed. LARs become the starting point for the appropriations bill that is prepared by the LBB. *Legislative Budget Estimates* is a publication of the LBB that contains information on the proposed appropriations bill, including expenditures for previous bienniums and proposed expenditures for the next biennium.<sup>30</sup>

While the draft budgets are being prepared, the comptroller’s office prepares the Biennial Revenue Estimate (BRE). The BRE is a detailed forecast of the total

**TABLE 11.7**

## Key Players in the Budgetary Process

The Legislative Budget Board (LBB)
<ol style="list-style-type: none"> <li>1. adopts a constitutional spending limit</li> <li>2. prepares a general appropriations bill</li> <li>3. prepares agency performance reports</li> <li>4. guides, reviews, and finalizes agency strategic plans</li> <li>5. prepares fiscal notes regarding costs and impacts of proposed legislation</li> <li>6. engages in “budget execution actions” in conjunction with the governor by transferring money from one assigned purpose to another purpose or to another agency</li> </ol>
The governor and the Governor’s Office of Budget, Planning, and Policy (GOBPP)
<ol style="list-style-type: none"> <li>1. develop a strategic plan for the state</li> <li>2. help to develop agency Legislative Appropriation Requests (LARs)</li> <li>3. hold LAR hearings, often in conjunction with the legislature</li> <li>4. deliver a governor’s appropriations budget and a general appropriations bill at the beginning of the legislative session</li> <li>5. exercise a line-item veto after an appropriations bill is passed by the legislature</li> <li>6. engage in “budget execution actions” in conjunction with the LBB by transferring money from one assigned purpose to another purpose or to another agency</li> </ol>
The comptroller of public accounts
<ol style="list-style-type: none"> <li>1. submits a statement regarding the estimated anticipated revenues for the coming biennium</li> <li>2. certifies that an appropriations bill is in balance with projected state revenues</li> <li>3. collects state taxes</li> <li>4. tracks 600 separate revenue and spending funds and makes sure that agencies stay within their budgets.</li> </ol>
<p>The state auditor’s office develops independent audits of state agencies, including institutions of higher education. These audits are used to evaluate agencies.</p>

revenue that the state is expected to take in over the next biennium. The Texas Constitution requires that the BRE contain “an itemized estimate of the anticipated revenue . . . to be credited during the succeeding biennium.”<sup>31</sup> The BRE includes other information to assist legislators in the budget process, including (1) statements about the anticipated revenue from different sources, (2) an analysis of the economic outlook facing Texas and the nation, and (3) a detailed accounting of the funds in the state treasury. The comptroller effectively sets a ceiling on what the state legislature may spend. Although the legislature can override the comptroller’s estimates with a four-fifths vote of each house, this has never happened. The BRE is updated by the comptroller when economic conditions change significantly and for special sessions of the legislature.<sup>32</sup>

The second stage of the budget process involves the legislative process. By the seventh day of each regular session, appropriations bills are submitted by the LBB to the House Appropriations Committee and the Senate Finance Committee.

Traditionally, the bills are introduced to these committees by their respective chairs, although any member may do so. The bills then work their way through the committee system of each house separately and are subject to hearings, debates, and revisions. This process of drafting the bill is referred to as a “markup.” Final versions of the budget are prepared by the House Appropriations Committee and the Senate Finance Committee. Each house then votes on the bill. Differences between the two versions of the bill are reconciled in a conference committee.

The conference committee is composed of representatives from the Senate and the House. Senate members are selected by the lieutenant governor or the president pro tempore of the Senate. The senator sponsoring the bill, traditionally the chairman of the Senate Finance Committee, appoints the chair of the Senate conferees. At least two members from the Senate Finance Committee must sit on the conference committee. The Speaker of the House appoints all conferees from the House as well as the chair of the House conferees. Traditionally, Senate and House representatives alternate each session in chairing the conference committee.

Specific rules govern how disagreements between the Senate and House versions of the appropriations bills are to be handled.<sup>33</sup>

- Items that appear in both versions of the bill must be included in the final conference committee report.
- Items that appear in both versions of the bill with identical amounts allocated to them may not be changed by the committee.
- Items that appear in both versions of the bill with differing amounts allocated to them cannot be eliminated. The committee has the discretion to fund these items at a level not larger than the larger allocation or smaller than the smaller allocation.
- Items that appear in one version of the bill but not the other can be included or eliminated from the final bill subject to the discretion of the committee. However, no more money may be allocated to that item than is found in the original version of the bill.
- Items found in neither version of the bill may not be included in the final conference report. However, the conference committee has the discretion to propose the appropriation of money for bills that already have been passed by the legislature.

While constraining the discretionary authority of the committee to a degree, these rules still leave considerable room for political maneuvering on the part of the committee. Membership on this important committee is a highly prized commodity. Once the bill passes the conference committee, it is returned to both houses for final passage.

Under Article 3, Section 49a, of the Texas Constitution, the comptroller has the formal authority to “certify” the budget. This means that the comptroller confirms that the comptroller’s office has analyzed the budget and concluded that it is within the current revenue estimates. For all intents and purposes, the budget is being declared balanced. If the general appropriations bill is not certified by the comptroller, it is returned to the house in which it originated. The legislature must then either decrease expenditures or raise revenues to make up the difference. According to provisions set out in Article 3, Section 49a, under conditions of “imperative public necessity” the legislature may with a four-fifths vote in each house decide to spend in excess of anticipated revenue.

After certification, the budget moves on to the governor, who can sign, not sign, or veto the entire bill or exercise the line-item veto. With the line-item veto, in particular, the governor has the power to unravel some of the compromises that legislators may have

forged to get the bill through the committee system. The line-item veto also potentially gives the governor enormous power to limit expenditures in certain targeted areas. Of course, line-item vetoes exercised too vigorously in one session can come back to haunt the governor's legislative agenda in the next session.

The appropriations bill takes effect on September 1 in odd-numbered years. All agencies are bound by it. Monitoring agency compliance with the budget is the job of the LBB and the state auditor's office. The governor and LBB have the authority to execute the budget. This includes the power to shift funds between agency programs or between agencies if necessary when the legislature is not in session. This power to execute the budget is an important one. It has been a tool used by the governor and LBB to cope with the unanticipated shortfalls in the state budget by ordering state agencies to cut their expenditures in the middle of a biennium.

As noted in the chapter on the executive power, the governor is able to move funds from one account to another without permission of the LBB if he declares an emergency. Such a situation has only occurred once—in the summer of 2014—when Governor Perry declared an emergency and transferred funds to pay for the deployment of National Guard troops along the border with Mexico to cope with illegal immigration into Texas.

## ● Budget Crises in Twenty-First-Century Texas

### Analyze major budget crises in Texas

The 1970s and early 1980s were boom years for the Texas economy. Rising inflation coupled with high oil prices and rapid economic growth drove the economy forward.<sup>34</sup> Tax increases were unnecessary as tax revenues

soared. The problem facing the legislature was not how to balance the budget, but how to spend revenue windfalls. There were no tax increases in Texas during this time.

The collapse of oil prices and a sputtering state economy in the mid-1980s, particularly severe in real estate and construction, brought on a budget crisis. As projected deficits mounted, tax increases became commonplace. Between 1985 and 1986, state tax collections fell. Income from the oil severance tax alone dropped 28 percent. Tax rates were increased, and the tax base was broadened in almost every year between 1984 and 1991.

As the state's economy turned around in the early 1990s, the budgetary situation brightened considerably. However, renewed budget surpluses did not bring a return to the spending patterns of the pre-oil crash years. Business and political leaders from both parties expressed an ongoing concern that taxes were becoming burdensome, perhaps placing Texas at a disadvantage with other states in trying to create a favorable environment for business. Additionally, a growing concern that state government was expanding too fast sparked demands for making government more efficient. With the recession beginning in 2008, all this changed. Over the next four years, political leaders in the state faced a series of budget crises that proliferated as the Great Recession worked its way through the economy and into the federal and state budgets.

The 2011 legislative session was a particularly difficult one.<sup>35</sup> From the outset, legislators knew that difficult budgetary choices would have to be faced. For two

years, Texas had dodged the worst effects of the Great Recession. But in 2011 hard decisions were going to have to be made to balance the budget.

Two factors had delayed the full impact of the recession upon the Texas budget. First, LBB projections in January 2009 for tax revenues for the 2010–11 biennium grossly underestimated the impact that the recession would have upon tax revenues. The projection had anticipated a surplus of \$2.1 billion in General Revenues and \$3 billion set aside for property tax relief from the previous budget, making the 2010–11 financial outlook appear to be quite secure. But in reality the surpluses had evaporated, revealing the budget to be far too optimistic and exposing policy makers to some difficult decisions. Second, Texas had been initially protected from the worst of the recession by an infusion of federal funding. In an effort to fight the recession at the national level, the federal government instituted a surge of deficit spending under the American Recovery and Reinvestment Act passed in February 2009. This enabled the 2009 Texas legislature to appropriate \$6.4 billion in federal funds to cover a projected General Revenues Fund gap and maintain educational and health and human services programs sponsored with the federal government. By the end of the 2010–11 biennium, the federal dollars coming into the state rose to \$8 billion, largely as a result of higher-than-expected caseloads for Medicaid, as well as an expansion of that program through federal legislation.

The pressures on the budget continued unabated through 2009 and 2010. One of the chief effects of the Great Recession across the country was the sharp contraction in real estate prices.<sup>36</sup> Low interest rates supported by Federal Reserve policy along with loose credit standards had led to a “bubble” in real estate that had pushed up property values through the early years of the twenty-first century. The real estate bubble popped in 2008, bringing many banks to their knees as the value of their portfolios plunged with collapsing real estate prices. Banks turned to Washington for assistance and were ultimately bailed out by a massive intrusion of the federal government into the banking system.



*A key component of the 2008 financial crisis was home foreclosures like this one in San Antonio. This crisis put intense strains on the Texas state budget.*



Pressures to balance Texas's state budget often create difficult and controversial choices for legislators, like how much funding to provide for public schools.

Although Texas escaped the worst of the real estate collapse, largely because the real estate bubble had been more muted in Texas than elsewhere, credit tightened and property values declined across the state through 2007, 2008, and 2009. As property values declined, so did property tax revenues. What had been a banking crisis at the national level became a funding crisis at the state and local levels, particularly for schools, community colleges, and health districts where funding was based largely on property taxes. In addition, sales tax receipts in Texas fell for the first time in 2009 since 2003. Sales tax receipts fell each month from February 2009 to April 2010 in Texas.

By January 2011 the comptroller projected a \$4.3 billion shortfall in general tax revenues against projected expenses for fiscal year 2011, the second year of the previous biennium. The deficit projections for the 2012–13 biennium were even worse, putting the shortfall in general tax revenue at around \$17 billion. Taking into account increasing demands for Medicaid and school district funding put the general revenue shortfall for the coming biennium somewhere between \$24 and \$27 billion.

The Great Recession was not the only cause of the financial shortfall. There were also long-term structural problems facing the budget brought on by property tax reform. In 2006 the legislature required schools to reduce their school property tax rates by one-third. The reasons were complicated. The Texas Supreme Court had ruled in *West Orange Cove ISD v. Neeley* that school districts needed to have some “meaningful discretion” in the setting of property tax rates.<sup>37</sup> If all property tax rates were set at the maximum allowed under law, a situation found in many districts, the court concluded that a statewide property tax essentially would have been put into place, and this was a violation of the state constitution prohibiting such a statewide property tax. Lowering property tax rates was thus one way to bring the existing property tax into compliance with the court’s ruling.

Lowering property tax rates, however, would have serious funding implications for public schools. In an effort to replace lost property tax revenues and maintain funding levels at the schools, the legislature also increased the state corporate

franchise tax and the cigarette tax. The LBB calculated that lost revenue from the property tax cut would be \$14.2 billion for the next 2014–15 biennium. Tax increases would bring in \$8.3 billion. From the outset, there was thus a projected shortfall of \$5.9 billion for the next 2013–14 biennium. Proponents argued that this shortfall would evaporate as new tax collections grew. Unfortunately, these optimistic predictions were wrong. The new taxes actually brought in \$3.78 billion less than projected for 2008–09 and \$5.13 billion less than anticipated for 2010–11. Thus, there was a structural deficit built into the budget from the property tax relief of \$9.16 billion for 2008–09 and \$9.95 billion for 2010–11. For 2012–13 the deficit from tax relief was projected to be \$9.84 billion.

The initial response of state leaders to the impending fiscal shortfall was a call for immediate spending cuts in the current fiscal year. In January 2010 the governor, lieutenant governor, and Speaker of the House asked all state agencies and institutions of higher education to plan to reduce spending by 10 percent in fiscal year 2010 and 5 percent for fiscal year 2011. In December 2010 there was an additional 2.5 percent cut in spending. State leaders also drew upon the Economic Stabilization Fund (the Rainy Day Fund). Under a supplemental appropriations bill in 2011, the 2011 budget deficit thus was closed, \$1.2 billion coming from reduced spending and \$3.2 billion coming from the Rainy Day Fund (see Table 11.8).

But the bigger problem lay with the multibillion-dollar shortfall for the next biennium. Legislators had to agree exactly on what the deficit was, finally concluding that it was approximately \$22.6 billion. How was this to be addressed? Conservative Republicans led by Governor Perry and Tea Party supporters rejected the idea that new taxes might be a solution. Instead they looked to spending cuts, payment deferrals, and various “revenue enhancements” that would bring the budget back into balance. It took a special session of the legislature in June 2011 to finally pass the bill that brought the budget for 2012–13 back into balance. There were a few financial tricks used to balance the budget. For example, some taxpayers were required to speed up payments of various sales, alcohol, and motor fuels taxes so that the revenues would be received during this biennium rather than the next. The transfer of motor fuels tax receipts from the General Revenue Fund to the State Highway Fund was delayed, keeping money in this biennium. Payments to school districts for August 2013 were also deferred to September 2013, pushing another set of expenditures into the next biennium. Such budgetary sleights of hand can be done only once. But the hope was that the worst of the crisis would have passed by the time that these tactics became an issue in a future biennium.

The most important initiatives taken up to address the budget shortfall were spending cuts. Entitlement funding to public schools in the state was cut by \$4 billion for the 2012–13 biennium. In addition, five months of the two-year Medicaid budget, approximately \$4.3 billion, was not funded. On the face of it, one might think that a partially unfunded Medicaid proposal would not pass constitutional muster. But key legislators and the comptroller agreed to cover these unfunded Medicaid expenditures with either unexpected revenues or the remaining \$7 billion in the Rainy Day Fund. They also agreed that this would meet the balanced budget requirement. Medicaid also underwent \$1.8 billion in “cost containment savings.” Ultimately, a total of \$5 billion in new revenues was put into place along with \$17.6 billion in cuts in expenditures (Table 11.9).

**TABLE 11.8**

### Legislative Response to the 2011 Budgetary Shortfall during the 2011 Session (in billions of dollars)

Reduce spending during the 2010–11 biennium	\$1.2
Tap Economic Stabilization Fund (Rainy Day Fund)	3.2

SOURCE: Legislative Budget Board, *Fiscal Size-Up: 2012–13 Biennium*, January 2012, p. 3.

**TABLE 11.9**

## Legislative Response to the 2012–13 Biennium Deficit (in billions of dollars)

REVENUE SOLUTIONS	
Increased recurring revenues	\$0.7
Created onetime revenues	1.4
Improved revenue estimate and other revenue	1.9
Made some funding contingent on improved revenue collection	1.0
<i>Subtotal</i>	5.0
SPENDING SOLUTIONS	
Reduced entitlement funding to local schools	4.0
Deferred 8/2013 payment to school districts until 9/2013	2.3
Medicaid cost containment	1.8
Underfunded Medicaid for 5 months in 2012	4.3
Reduced other spending in 2012–13	5.2
<i>Subtotal</i>	17.6
<b>Total</b>	<b>\$22.6</b>

SOURCE: Legislative Budget Board, *Fiscal Size-Up: 2012–13 Biennium*, January 2012, p. 3.

On paper at least, the budget deficit had been addressed and political leaders had met their constitutional duties to balance the budget. Sales tax receipts began to recover from the depths of the recession throughout 2011 and into 2012. In June 2012, Comptroller Susan Combs reported that sales tax receipts were up 7 percent over the previous year and had increased every month for 12 months. The Texas economy was outperforming that of much of the nation, but not enough to cover a projected \$4 billion budget shortfall for the 2012–13 biennium. There were also a number of school financing lawsuits in court that could potentially cost the state over \$4 billion. In addition, state leaders had to figure out how to cover the onetime school payment delay and the Medicaid underfunding in the 2012–13 budget. But the biggest threat to a balanced budget did not lie in school funding or even in sales tax receipts. President Obama's federal reforms to health care presented new short-term and long-term spending commitments that could pose new and unanticipated challenges to the Texas budget in coming years.

### Looking Beyond the Budget Crisis of 2011

The regular 2013 legislative session was smooth regarding budget matters, at least when compared to the 2011 session. Collegiality on budget matters was largely the result of Republican control of all branches of government coupled to a burgeoning state economy fueled by expanding job opportunities, rising housing prices, increased exports, and a resurgent oil and gas industry. Rosy budget projections for the next biennium offered legislators some wiggle room to do what they did best: cut taxes and increase spending on popular programs.



*Public finance deeply affects the trade-offs in Texas's public policy. In 2013 the legislature compromised on a bill that would continue to fund highway construction (like this one in Sebastian) while still balancing the state budget.*

During the 2013 session some modifications to the franchise tax were passed by the legislature, including modest tax cuts contingent upon the comptroller's certifying that the state will receive enough revenue to offset the proposed cuts. Also, a constitutional amendment was proposed during the regular session and passed by the voters in November 2013 providing the establishment of two new funds: the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT). The amendment also provided for a onetime transfer of Rainy Day Fund monies to support the financing of water supply projects in Texas through these funds.

Perhaps the most controversial budget issue dealt with by the legislature during the 2013 session centered upon transportation policy. How was the legislature going to pay for improving and expanding state highways, a cost that some experts put at up to \$4 billion? Failing to pass a bill during the regular session and the first two special sessions in the summer of 2013, legislators finally brokered a compromise in the third special session. The financial mechanism that was established says much about the byzantine way in which budgetary matters often operate in the state. Under current law, 75 percent of funds raised above 1987 tax collection levels (which were \$531.9 million for oil and \$599.8 million for gas) was transferred from the General Revenue Fund to the Rainy Day Fund. The legislature sought to change this by proposing an amendment to the constitution (Article 3, Section 49g) taken before the voters on November 4, 2014. The amendment allowed half of this money (that is, half of the 75 percent above the 1987 levels) to still go to the Rainy Day Fund, but the other half would go to the State Highway Fund. There would be two provisos: first, certain statutory defined requirements would have to be met regarding the minimum funding of the Rainy Day Fund; second, the proposals for transferring money to the State Highway Fund would sunset in 2025. The amendment passed with 79.8 percent of the vote in favor.

## Thinking Critically about Public Finance in Texas

Public finance in Texas will continue to be a troubling issue for political leaders in Texas. Revenues from the sales tax, severance taxes, and local property taxes are increasing once again. Confidence has grown among policy makers that the worst of the Great Recession is behind Texas. Despite this newfound optimism, state and local political leaders remain cautious in their projections about the future. There still remains uncertainty about the future course of the national and international economies. Texas's economy is tied inextricably to the booms and busts of the U.S. economy as well as the world economy. Moreover, the revenue mechanisms that support policy initiatives in Texas are sensitive and can move down quickly when the national and international economies falter. A declining economy can cut back on consumer spending, which affects the sales tax revenue. Falling housing prices can adversely affect property revenue. Falling prices for oil and natural gas can cut into severance revenues and undercut the revenue flowing into the Rainy Day Fund. Such are the rules that govern public finance in Texas in the early twenty-first century.

State budgetary policy ultimately depends on the successful implementation of a national recovery policy that works. Few leaders in the state, particularly Tea Party Republicans, are confident about the current direction of national economic policy. A looming national deficit with no solution in sight may lead to calls in Washington to push more responsibilities (and costs) onto the backs of the states, further exacerbating Texas's budgetary problems.

Four factors will continue to dominate public finance in Texas over the next biennium. First, economic conditions look favorable in the short run, assuring the state a healthy flow of revenues from its complex structure of state and local taxes. Second, there will be increased demands from the federal government for paying for expanded federal initiatives in health care (see Chapter 12). Third, increased population will lead to increased demands on state agencies for services ranging from health care to roads, to water, and to public education. All other things being equal, a larger population demands more from government, and that costs money. Fourth, there is a growing antigovernment feeling among portions of the population in Texas that state government is too big already. For Tea Partyers and other conservative Republicans, "No new taxes" is a successful mantra for winning office. Whether it will be a successful one for legislating and leading is another question. Navigating a passage between the rock of intensifying demands for expanded services and the hard place of "No new taxes" may be the most difficult problem legislators face in the foreseeable future.

## What Is the Budget?

**Explain the purpose of the state budget and what is typically included (pp. 349–51)**

Texas is required to operate within a balanced budget. The budget can be considered in light of five revenue streams: the General Revenues Fund budget, the General Revenue-Dedicated Funds budget, the Federal Funds budget, the Other Funds budget, and the All Funds budget.

### Key Terms

General Revenues Fund budget (p. 349)

General Revenue-Dedicated Funds budget (p. 349)

Federal Funds budget (p. 349)

Other Funds budget (p. 349)

All Funds budget (p. 349)

### Practice Quiz

1. The Texas Constitution requires that the Texas budget must be
  - a) balanced.
  - b) approved by the governor's cabinet.
  - c) funded only from sales taxes.
  - d) approved by the governor, the legislature, and the state treasurer.
  - e) funded only from federal grants.
2. Federal expenditures primarily affect the state budget in which two areas?
  - a) energy and law enforcement
  - b) health-human services and education
  - c) business development and highways
  - d) interstate highways and airports
  - e) Medicare and transportation

## Spending and Revenue in Texas

**Describe the general pattern of state spending in Texas and where state revenue comes from (pp. 351–61)**

Texas spends less than the national average in a variety of policy areas, including education and highway spending. Although Texas does not have an income tax, it has one of the highest sales taxes in the nation. However, the per capita revenue from those sales taxes is among the lowest in the nation. Property taxes in Texas are among the highest in the nation. Among other important state taxes are the natural gas production tax and the oil production and regulation tax. Although a controversial issue in the past, a state income tax has little support either in the legislature or in the population as a whole. Texas also has on average fewer state employees per capita than other states.

### Key Terms

regressive tax (p. 358)

progressive tax (p. 358)

matching funds (p. 360)

### Practice Quiz

3. Texas has the reputation for being
  - a) a low-service, low-tax state.
  - b) a high-service, high-tax state.
  - c) a low-service, high-tax state.
  - d) a high-service, low-tax state.
  - e) an average-service, average-tax state.

4. The proportion of state employees to the population in Texas is
  - a) far below the national average.
  - b) far above the national average.
  - c) right at the national average.
  - d) exactly the same as in California.
  - e) greater than in New York.
5. One major revenue source for Texas is the sales tax, which is
  - a) 8.25 percent for state government and 2.25 percent for local government.
  - b) 4.25 percent for state government and 2 percent for local government.
  - c) 6.25 percent for state government and 2 percent for local government.
  - d) 5 percent for state government and 1.25 percent for local government.
  - e) none of the above
6. A Texas personal income tax
  - a) used to exist but was repealed because of new taxes on oil production.
  - b) would have to be approved by the voters, and the revenues from it would have to support public education.
  - c) would have to be passed through a constitutional amendment.
  - d) could only be imposed on incomes greater than \$250,000 per year.
  - e) would be unlikely to raise much revenue.

# State Funds

## Describe how the money in the budget is organized into specific funds (pp. 361–66)

Money flows into and out of a variety of over 400 different funds controlled by the state. Among the most important are the General Revenue Fund, the Permanent School Fund, the State Highway Fund, and the Economic Stabilization Fund (the Rainy Day Fund). The existence of these funds makes budgeting a complicated process.

### Key Terms

General Revenue Fund (p. 361)

Permanent School Fund (PSF) (p. 362)

Available School Fund (ASF) (p. 362)

State Highway Fund (p. 362)

Economic Stabilization Fund (ESF) (p. 362)

Permanent University Trust Fund (PUF) (p. 365)

Higher Education Fund (HEF) (p. 365)

National Research University Fund (NRUF) (p. 365)

### Practice Quiz

7. The Rainy Day Fund
  - a) provides funds for flood victims.
  - b) was designed to provide funding for the state during times of financial distress.
  - c) contains only a small amount of state funds.
  - d) is used to promote oil and gas development.
  - e) can only be spent by the Texas comptroller.
8. The National Research University Fund
  - a) pays for university-level research at all state universities.
  - b) provides the funding for the University of Texas at Austin.
  - c) funds Texas universities seeking national prominence as research institutions.
  - d) only provides funds to universities with Nobel Prize winners.
  - e) will not provide funds if more than 20 percent of students fail to graduate in four years.

# The Texas Constitution and the Budget

## Outline the constitutional provisions that affect how the state budget is made (pp. 366–68)

There are many constitutional restrictions on the budget, including the requirement of a biennial budget, a pay-as-you-go limit, a welfare spending limit, a limit on the growth of some appropriations, rules on the spending of funds by state agencies, and limitations on debt payable from the general revenue fund. These restrictions play important roles in shaping the budget policy-making process.

### Key Terms

Article 3, Section 49a (Pay-as-You-Go Limit) (p. 366)

appropriations (p. 366)

debt service (p. 368)

- c) a pay-as-you-go limit
  - d) a limitation on the debt payable from the General Revenue Fund
  - e) All are constitutional limits.
10. What is meant by “the budget-execution authority”?
    - a) the power to execute the laws of the land
    - b) the legislature’s power to establish rules for the expenditure of funds by state agencies
    - c) the governor’s power to veto the budget
    - d) the LBB’s power to create the budget for the judiciary in Texas
    - e) none of the above

### Practice Quiz

9. Which of the following is *not* a constitutional constraint on the budgetary process in Texas?
  - a) the annual budget
  - b) a welfare spending limit

# The Budgetary Process

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## Identify the major steps and players in making the state budget (pp. 369–72)

In theory, Texas has a dual budget system with budgeting shared by the governor and the legislature. In reality, the budget is the responsibility of the legislature. There are a series of steps that the budget must go through to be passed by the legislature. Among the most important is the requirement that the Texas comptroller certify the budget as being balanced.

### Practice Quiz

11. Who is the chief planning officer of the state of Texas?
- a) the lieutenant governor
  - b) the Speaker of the House

- c) the comptroller
- d) the governor
- e) the state treasurer

12. The principal job of the Legislative Budget Board is
- a) to keep track of the expenses of the executive.
  - b) to monitor the operations of the House.
  - c) to raise taxes.
  - d) to recommend appropriations for all agencies of state government.
  - e) to conduct audits of state expenditures.

# Budget Crises in Twenty-First-Century Texas

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## Analyze major budget crises in Texas (pp. 372–78)

Texas has experienced a number of budgetary crises in the early years of the twenty-first century. Budgetary problems were exacerbated by property tax reforms and the Great Recession, which led to serious declines in revenue while the demands for services were increasing.

### Practice Quiz

13. Which factors lie behind the budget crisis of 2011?
- a) the Great Recession and property tax reform
  - b) declining oil and gas prices

- c) a burdensome income tax being implemented for the first time
- d) bipartisan government
- e) Obamacare

14. Which solution was put into place to address the budget crisis of 2011?
- a) instituting a state income tax
  - b) speeding up the payments of various taxes on alcohol and motor fuels
  - c) increasing the state sales tax
  - d) allocating more money to elementary and secondary education
  - e) increasing gasoline taxes

# Recommended Websites

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Texas Comptroller of Public Accounts  
[www.window.state.tx.us](http://www.window.state.tx.us)

General Appropriations for the 2014–15 Biennium  
[www.lbb.state.tx.us/Documents/GAA/General\\_Appropriations\\_Act\\_2014-15.pdf](http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2014-15.pdf)

Texas Legislative Budget Board  
[www.lbb.state.tx.us](http://www.lbb.state.tx.us)

### The Religious Viewpoints

Antidiscrimination Act required Texas school districts to protect religious speech on campus, allowing students to express their faith in public. These students at Grapevine High School sang along with a Christian band at an event organized by the Christian organization Students Standing Strong.



# Public Policy in Texas

**WHAT PUBLIC POLICY DOES AND WHY IT MATTERS** Like other states, Texas is involved in a broad range of public-policy initiatives. Some of these activities, such as criminal corrections or public education, are largely state responsibilities. Although the national government may contribute some funds and regulate various aspects of these public-policy areas, they remain for the most part the duty and responsibility of the state of Texas. Other public-policy areas, however, have involved considerable intermingling of state and federal government responsibilities. The balance of power between the state and federal governments in these areas has shifted over time.

Throughout the first decade of the twenty-first century, state policy makers in Texas waded through a variety of policy problems, including tax reform, educational testing, and criminal incarceration. Republican domination of both houses of the state legislature and the executive offices in the state ensured that a new conservative agenda would dominate policy debates across a variety of issues. Perhaps nothing captured this ideological orientation in public policy better than a new law that was passed during the 2007 session of the state legislature: the Religious Viewpoints Antidiscrimination Act.<sup>1</sup>

The law, which many claimed simply codified existing constitutional rulings by the federal courts, required Texas school districts to adopt a number of policies that would protect religious speech on campus. School districts were ordered to develop a neutral method for choosing student speakers at school events and graduation ceremonies, to ensure that religious-oriented clubs had the same access to school facilities as secular-oriented clubs, and to protect students who wished to express their religious beliefs in classroom assignments. The legislation did more than just give students permission to express their religious views in public schools; it also mandated the creation of a “limited public forum” for student speakers at public events that wouldn’t discriminate against expressions of faith.

Social conservatives were ecstatic about the Religious Viewpoints Antidiscrimination Act, claiming that, at last, individual religious expression would be protected in the schools. Professional educators were somewhat hesitant in their praise for the bill, citing concerns about how the bill would be implemented and what it might mean for members of religious minorities. One commentator wrote for a law review that under the act “a student would be free to ask his or her fellow students to join in prayer to accept Jesus Christ as their personal savior so that they might have eternal life. Or a student would be free to tell his or her fellow students that Jesus was not God’s son or that the Bible is a book of myths. Alternatively, a student might talk about why Catholics or Mormons are not Christians.”<sup>2</sup> Far from solving

the problems of religious discrimination, the act may unintentionally introduce religious bias and controversy into the classroom.

The Religious Viewpoints Antidiscrimination Act brings out two important truths about public policy in Texas. First, what goes on in Austin matters. The state legislature plays a major role in defining how public policy is conducted in the state. Second, public policy involves more than just introducing a bill in the legislature, passing it, and getting it signed. Laws also must be implemented. Implementation of policy by state agencies such as school boards is where the rubber meets the road in political life.

This chapter explores public-policy making in Texas across a variety of leading issue areas including public education, welfare, Medicaid, and water. In Chapter 13, we will explore criminal justice policy. We will begin with a discussion of the policy-making process and key concepts that shape political scientists' understanding of how public policy is made. We will then provide an overview of the problems confronting policy makers in these key areas and explain how political choices have shaped and continue to shape policy making in each case. We will also consider the current debates that are driving public policy in these areas.

## chapter goals

- **Describe the key steps and concepts in the policy-making process (pp. 384–87)**
- **Describe the major issues that have shaped education policy in Texas (pp. 387–97)**
- **Describe the state's role in addressing poverty and how it is affected by national policies (pp. 397–403)**
- **Explain why Medicaid in particular and health care policy in general have been so controversial in Texas (pp. 403–12)**
- **Consider the growing importance of policies related to water supplies in Texas (pp. 412–18)**

### ● The Policy-Making Process

**Describe the key steps and concepts in the policy-making process**

In broadest terms, public policy refers to the outputs of governmental institutions. More narrowly, public policy can be defined as the expressed goals of a governmental body backed by incentives or sanctions.<sup>3</sup> Public policies can be found in laws passed by legislative bodies as well as in the rules, regulations, and orders from properly authorized public agencies. The incentives or sanctions can include a wide range of actions from subsidies encouraging individuals to act in a certain way to monetary penalties or admonitions to severe criminal penalties that punish people for engaging in particular actions.

One way that political scientists have approached the study of public policy is by focusing attention upon the different stages of the policy-making process, the political and administrative process through which governmental goals are identified, formulated, articulated into law, and evaluated.<sup>4</sup> The idea that there are stages of the policy-making process is not so much a step-by-step description or explicit roadmap of how public policy is made within institutions such as a legislature or a bureaucracy. Public policy is not made in a simple linear way. The real world of policy making is, in fact, much messier than a simple progression of stages moving neatly from one stage to another. In the real world, stages may overlap or even collapse into one another. Nevertheless, the idea that there are stages of the policy-making process has proven to be a useful analytical framework for understanding the various factors that go into the making of public policy.

**Problem Identification** The first stage is problem identification. Here society at large and actors in the political system develop an understanding of how we must think about and address a particular problem. Roger Cobb and Charles Elder refer to this set of ideas as a “systemic agenda” where all issues are “commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority.”<sup>5</sup> This systemic agenda is used by citizens and policy makers as a conceptual framework to understand the nature of public problems and to shape and direct the way policy makers will develop public policy aimed at them. For example, if we view the problem of poverty being fundamentally one of limited income, we might conclude that the best solution is increasing welfare payments to the poor. However, if we consider the problem of poverty to be behavior that causes people to be poor such as unwillingness to work or poor job skills, we might conclude that policies directed toward encouraging work or subsidizing education are better courses of action. In the problem identification stage, our ideology—that is, our ideas, concepts, and visions about the way society works—plays a major role in defining public-policy making.

**Policy Formulation** Policy formulation is the second stage of the policy-making process. Here the more general ideas that we have about social and political problems become clarified and strategies for dealing with these specifically defined problems are developed. Policy formulation involves the detailed procedures in passing legislation as well as in making administrative rules and regulations. Here a kind of agenda setting—institutional agenda setting—takes place. As we noted in our earlier discussion of interest groups, one of the goals of interest groups is to gain access to policy discussions inside legislatures and agencies. Access provides interest groups with the opportunity to help set the institutional agenda in the policy formulation stage. Setting the agenda on what problems will be discussed, how these problems will be understood, and what concrete measures will be taken to address them lies at the heart of all policy formulation.

**Implementation** The third stage in the policy-making process is implementation. At this stage, the goals of public policy along with the incentives or sanctions to support them are put into effect by a particular government agency. Identifying the appropriate agency to implement a program is crucial at this stage. Similarly, budgetary policy plays a major role in the implementation stage and can determine the success or failure of a particular public policy. A well-formulated public policy can be dashed by poorly executed or poorly funded implementation.



As shown here, education policy involves the four key stages in the policy-making process. Clockwise from top left: A policy issue like school funding is identified. Politicians, like Wendy Davis, who filibustered a bill to lower school funding, create policies to address the issue. Bureaucrats implement policy changes (for example, adding more computers in classrooms). Finally, policies are evaluated and changes are considered. Here, the Texas Education Commissioner visits a school in Abilene.

**Evaluation** The fourth stage of the policy-making process is evaluation. At a certain point all public policies must be evaluated for their effectiveness. In the best of all possible worlds, good evaluation procedures would assess the stated goals of a particular policy against the actual outcomes of the implemented policy. Good evaluation would lead to a rethinking of the public policy in light of the problems being addressed and the solutions being formulated to address the problem. Similarly, good evaluation could lead to a rethinking of the strategies being used and the resources being committed to implementing the policy. Closing the loop between problem identification and program evaluation is one of the most difficult problems facing policy makers.

Some political scientists identify policy legitimization as another stage in the policy-making process. Legitimation—the establishment and recognition in the political community of the legality and constitutionality of a particular policy initiative—is probably better understood not as a separate stage but as something that takes place throughout the entire policy-making process. Legitimation can include a wide range of activities: open discussions of a problem in the press, committee investigations and oversight investigations, following the appropriate rules for passing a bill in the legislature or making a rule in an administrative agency, and judicial review of the policy. Establishing the legitimacy of a public policy throughout the various stages of the policy-making process is an essential part of any democratic political system.

**rationality** the idea in public-policy making that we have clearly identified goals and that we seek to achieve these goals in an optimal or efficient manner

### Rationality in Policy Making

An often-stated goal of policy makers is to make public policy more rational and more efficient. **Rationality**, in this regard, generally refers to the idea that we have

clearly identified the goals that we wish to achieve and have formulated and implemented policies that address these problems in an optimal or efficient manner. Optimality or efficiency refers to the idea that policy will be developed that will maximize the outputs of government with a minimum commitment of resources. Given this commitment to rationality in policy making, people are often surprised by how irrational and inefficient public policy can seem in a democracy. Part of the problem lies in the fact that the policy-making process is highly complex. Writing reports, holding committee hearings, and passing legislation often involve political compromises that muddy the waters of policy making. Vagueness in the problem identification stage along with compromises made among competing parties in the policy formulation stage can work against the development of rational and efficient solutions to problems.

There are additional factors that tend to work against rationality and efficiency in the making of public policy. The first is the fact that governments tend to work incrementally. Neither legislators nor government agencies begin their work on a particular problem from ground zero every year. Year in and year out, there is a general agreement among policy makers on the nature of a public problem and on how it should be addressed. Unless measures are taken to compel agencies to reassess what they are doing and why, programs, policies, and budgets tend to grow incrementally from one policy cycle to another. And even when such measures are taken, as in the Sunset process, as discussed in Chapter 8, or major changes are initiated in the fundamental direction of public policy, incrementalism governs the decision-making process.

A second factor that tends to work against rational and efficient government is that policy makers and other politically active individuals may not behave strictly rationally or efficiently. The economist Herbert Simon has argued that individual rationality is limited by a number of factors, including the expense of getting information about a problem, the cognitive limitations of the human mind, and the time constraints that all individuals face in making a decision.<sup>6</sup> Policy makers' rationality may be a **"bounded rationality."** Rather than seeking to rationally understand everything that is involved in a particular policy problem or optimize every action taken to address this problem, they may actually simply seek to "satisfice." Essentially, satisficing means to reach a decision that is satisfactory rather than optimal to the individual. From the perspective of the policy process as a whole, satisficing by many individuals and groups can lead to less-than-rational and less-than-efficient public policy.

To appreciate the intricacies of policy making, we will turn to a discussion of four policy areas shaping political life in Texas: education, welfare, health care, and water.

**bounded rationality** the idea in policy making that decision makers may seek satisfactory solutions to problems that are not necessarily optimal or efficient

## ● Education Policy

**Describe the major issues that have shaped education policy in Texas**

Education is big business in Texas. For the 2014–15 biennium, \$52.8 billion in state monies went to public education, 37 percent of all state spending. Local property taxes contributed an estimated \$42.8 billion in revenue to local school districts. The

federal government contributed an estimated \$10.3 billion to fund a variety of programs including Child Nutrition Grants, No Child Left Behind Grants, disabilities funding, and other formula grants.<sup>7</sup>

There were over 5 million students enrolled in public schools in Texas in 2013, second only to California. Enrollments increased by 19.3 percent between 2003 and 2013, far above the 4.8 percent national increase. There are 1,025 regular school districts in Texas along with 202 charters operating 552 open-enrollment charter school campuses. Although funded with public monies, charter schools have been set up as an alternative to traditional public schools, often because the public schools have failed to meet the needs of certain groups of students. Charter schools are in many ways more flexible than public schools, but they must meet the standards set by the state for public schools.

Eight hundred and twenty-five state school districts and charters had fewer than 1,600 students in 2014. A large number of these school districts were small and in rural areas. Eighteen school districts enrolled over 50,000, 62 percent of all students in the state. The largest school districts are in Houston (203,354), Dallas (158,932), Cypress-Fairbanks in Harris County (110,013), and Northside in Bexar County (100,159).<sup>8</sup> Over 292,000 students graduated from Texas high schools in 2012.

State school districts employ almost 327,000 teachers, with an average salary of \$48,373, well below the national average of \$55,418. The race and ethnicity of teachers differ considerably from those of the student body in Texas: 64.4 percent of teachers are white, 22.5 percent are Latino, and 9.5 percent are African American. The districts also employ over 25,000 administrators and almost 65,000 professional support staff (such as counselors, librarians, and nurses). On top of that, they employ another 226,000 educational aides and auxiliary staff. Total staffing in elementary and secondary schools in Texas exceeds 643,000 people.<sup>9</sup>

The challenges facing educational policy in Texas are great, but a few stand out. First, Texas ranks 44th on public expenditures per enrolled student in 2012, spending \$8,498 per pupil, well below the \$10,834 national average. Second, the demographics are increasingly minority and disadvantaged. In 2013, 51.3 percent of students in Texas were Hispanic, 30 percent were white, 12.7 percent were African American, and 3.6 percent were Asian or Pacific Islander. Of these students, 16.9 percent had “limited English proficiency.” In addition, 59 percent were considered to be “economically disadvantaged” (meaning they were poor), and 47.2 per-

*Texas has a large and complicated public school system fraught with nearly constant public-policy battles including that over the level of funding for public schools.*



cent were consider to be “at risk” (meaning that given their circumstances, they are more likely to fail academically). Not surprisingly, these demographic characteristics often lead to lower performance on national and state tests. Third, there are high dropout rates in Texas. For example, in 2012 over 36,000 students dropped out of school. Dropout rates, particularly among Latinos and African Americans, affect other state and federal efforts to address the problem of poverty. To understand how policy makers are dealing with these challenges, we must look deeper into the making of educational policy since the founding of the state.

The debate over public education in Texas extends back to the break with Mexico.<sup>10</sup> One of the indictments of the Mexican regime contained in the Texas Declaration of Independence was that the government had failed to establish a public system of education. Later, the Constitution of the Republic of Texas required a public system of education, but a bill actually establishing a public school system did not pass the legislature until 1854.

Public education was to be financed with a special school fund that would use \$2 million of the \$10 million given to Texas by the U.S. government on Texas's admission to the Union to settle outstanding land claims in parts of what are now New Mexico, Colorado, and Oklahoma. Unfortunately, the fund was used for a variety of other purposes in the following years, including the purchase of railroad stock and the building of prisons. When Democrats returned to power following Reconstruction, an effort was made to protect the fund and commit its use solely to education. Under the Constitution of 1876, the Special School Fund became the Permanent School Fund, and restrictions were placed on how the money could be used and invested.<sup>11</sup> The Constitution of 1876 also had provisions to support public education through one-quarter of the occupation tax, a \$1 poll tax, and local taxation.

Throughout much of the late nineteenth and early twentieth centuries, public education remained largely a local affair. Schools were funded by local taxes, and decisions such as what to teach and how long the school year would be were made at the local level. Many of the school systems were chronically short of funds, facing such problems as a shortage of supplies and textbooks, inadequate facilities, and poorly trained teachers. In 1949 the state legislature tried to address some of these problems by passing the **Gilmer-Aikin Laws**, under which school districts were consolidated into 2,900 administrative units, state equalization funding was provided to supplement local taxes, teachers' salaries were raised, and a minimum 175 teaching days school year was established. In addition, the laws established the Texas Education Agency (TEA), originally known as the State Department of Education, to supervise public education in the state.

The Gilmer-Aikin Laws also established bureaucratic institutions responsible for public education in the state. Previously, public education had been run by a state board of education, whose 9 members were appointed by the governor for six-year terms, and an elected state superintendent of public instruction. This was replaced by an elected 21-member board. The State Board of Education became the policy-making body for public education in the state, selecting budgets, establishing regulations for school accreditation, executing contracts for the purchase of textbooks, and investing in the Permanent School Fund. The board also had the power to appoint a commissioner of education, subject to confirmation by the Texas Senate. The commissioner of education served a four-year term and became the chief executive officer for the TEA. The TEA was responsible for setting standards for public schools, for supervising the public schools of the state, and for handling federal funds related to public education. For the next 50 years, educational

**Gilmer-Aikin Laws** education reform legislation passed in 1949 that supplemented local funding of education with public monies, raised teachers' salaries, mandated a minimum length for the school year, and provided for more state supervision of public education

policy in the state would work through the institutional framework established by the Gilmer-Aikin Laws.<sup>12</sup>

Since 1949 the State Board of Education has undergone occasional restructuring. Membership was expanded to 24 in 1973 and to 27 in 1981. Following a special legislative session, the board became a 15-member appointed body in 1984. But in 1988 it reverted to an elected body composed of 15 members serving four-year terms. Three issues have played a major role in shaping educational policy over the last 50 years: desegregation, equity in funding, and the search for educational excellence.

## Desegregation

Few issues have troubled educational policy in Texas as much as desegregation. Segregation of the races was provided for under the Texas Constitution of 1876. In *Plessy v. Ferguson* (1896), the U.S. Supreme Court upheld the validity of state-imposed racial segregation through the now-infamous “separate but equal” doctrine. In Texas, as elsewhere across the South, segregated schools may have been separate, but they were far from equal. In the 1920s and ’30s, for example, the length of the school term for black schools was only about four days shorter than that for white schools, but Texas spent an average of \$3.39 less per student (about one-third less) on the education of African American students than on white students.<sup>13</sup>

The U.S. Supreme Court overturned *Plessy v. Ferguson* in the 1954 case *Brown v. Board of Education*, ruling that state-imposed segregation in schools violated the equal protection clause of the Fourteenth Amendment. School districts were ordered to desegregate their school systems “with all deliberate speed.” In some cases, “all deliberate speed” was rapid. The San Antonio school district, for example, became one of the first school districts in the nation to comply with the Supreme Court’s order. Other school districts in the state, such as Houston’s, were much slower in implementing the Court’s desegregation ruling.

The desegregation of public schools was hampered further by political opposition at both the local and state levels. In 1957 the Texas legislature passed laws encouraging school districts to resist federally ordered desegregation, although then-governor Price Daniel, Sr., chose to ignore such laws.<sup>14</sup> By the late 1960s legally segregated schools were largely a thing of the past. Nevertheless, de facto segregation remained a problem, particularly in urban areas with large minority populations. As in many other urban areas across the country, a large number of middle- and upper-income whites in Texas abandoned urban public school systems for suburban public schools or private schools.

## Equity in the Public School System

Federal court cases such as *Brown v. Board of Education* played a major role in shaping educational policy regarding the desegregation of schools. Two other important court cases have affected education policy and politics in Texas over the last 30 years: *San Antonio v. Rodriguez* and *Edgewood ISD v. Kirby*.

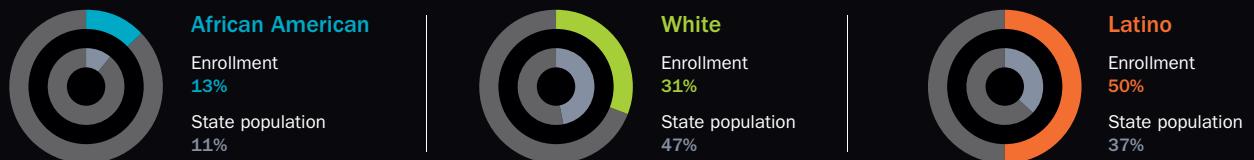
***San Antonio v. Rodriguez*** *San Antonio v. Rodriguez* was a landmark case involving the constitutionality of using property taxes to fund public schools.<sup>15</sup> At the heart of the case lay the question of the equitable funding of public schools. Lawyers for Rodriguez and seven other children in the poor Edgewood independent school

# Who Attends School in Texas?

## Total Public School Enrollment by Race, 2006–11



## Public School Enrollment by Race vs. Texas State Population, 2011



The demographics in Texas are rapidly changing. The state is becoming more diverse and the population is growing, especially in major cities. As more people move to Texas, they bring their children, and the state is responsible for educating them in public schools. What are the demographics of Texas schoolchildren? What socioeconomic classes do they come from? Are Texas's schoolchildren representative of the population of the state as a whole?

SOURCE: [www.tea.state.tx.us/acctres/Enroll\\_2010-11.pdf](http://www.tea.state.tx.us/acctres/Enroll_2010-11.pdf) (accessed 2/20/14).

### for critical analysis

1. Which racial/ethnic group has seen the largest growth in Texas's public schools? What might account for this?
2. How does the growing number of children from lower socioeconomic backgrounds affect how education is delivered in Texas public schools?

**equal protection clause** provision in the Fourteenth Amendment of the U.S. Constitution guaranteeing citizens the “equal protection of the laws”; this clause has been the basis for the civil rights of African Americans, women, and other groups

district (ISD) in the San Antonio area argued that the current system of financing public schools in Texas was unfair. The Edgewood school district had one of the highest property tax rates in the country, but it could raise only \$37 per pupil. Meanwhile the neighboring school district of Alamo Heights was able to raise \$413 per pupil with a much lower property tax rate. The difference was that the value of the property subject to taxation in Alamo Heights far exceeded that in Edgewood. Equalizing educational funding would require Edgewood to tax at the rate of \$5.76 per \$100 of property value, while Alamo Heights could tax at a rate of \$0.68 per \$100 of property value.

A three-judge federal district court was impaneled to hear the case in January 1969. The district court initially delayed action, giving the 1971 Texas legislature time to address the funding issue. When the legislature failed to act during its regular session, the court took action. On December 23, 1971, it ruled that the Texas school finance system was unconstitutional under the **equal protection clause** of the Fourteenth Amendment to the U.S. Constitution. However, on appeal to the U.S. Supreme Court, the decision was overturned. On March 21, 1973, the Supreme Court ruled 5–4 that states such as Texas were not required to subsidize poorer school districts under the equal protection clause of the U.S. Constitution. The question of equity in public school funding would have to be addressed later in terms of Texas’s state constitution and in Texas courts.

***Edgewood ISD v. Kirby*** The second landmark case involving the financing of public schools was *Edgewood ISD v. Kirby*. Unlike *Rodriguez*, *Edgewood* considered whether the system of funding public schools through local property taxes fulfilled the Texas State Constitution’s provisions on education. Much of the litigation over the next few years would center on Article 7, Section 1, of the 1876 Constitution, which read:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, 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 free public schools.

A key constitutional issue would be exactly what constituted an “efficient system of free public schools.”

On behalf of the Edgewood ISD, the Mexican American Legal Defense and Education Fund (MALDEF) sued William Kirby, the state commissioner of education, on May 23, 1984. Initially, only 8 districts were represented in the case. By the time the case was finally decided, 67 other school districts had joined the original plaintiffs. The plaintiffs argued that the state’s reliance on local property taxes to fund public education discriminated against poor children by denying them equal opportunities in education. One month after the original case was filed, the legislature passed House Bill 72, a modest reform measure that increased state aid to poor districts. In 1985 plaintiffs filed an amended lawsuit, arguing that the legislature’s action was far from satisfactory.

The amended case was heard early in 1987 by a state district judge, who ruled on April 29, 1987 in favor of the plaintiffs, calling for the institution of a new system of public school funding by September 1989.

The decision was reversed on appeal to the state appeals court in late 1988. But in a 9–0 decision, the Texas Supreme Court held that the funding system was, indeed, in violation of the state constitution. The court held that education was a fundamental right under the Texas Constitution and that the “glaring disparities”

between rich and poor schools violated the efficiency clause of the constitution. In its ruling, the court did not demand “absolute equality” in per pupil spending. But it did require a standard of “substantially equal access to similar revenues per pupil at similar levels of tax effort.”<sup>16</sup> It ordered the legislature to implement an equitable system by the 1990–91 school year.

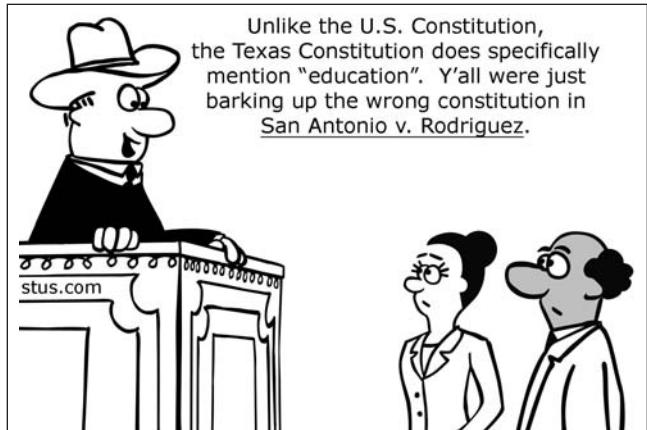
The Texas Supreme Court’s ruling touched off a political firestorm that swept through Texas politics throughout the 1990s and into the 2000s. Over the years, various courts held various funding provisions of public education to be unconstitutional. The legislature responded with various funding plans for public education. One was dubbed the “Robin Hood” plan because it transferred funds from rich to poor districts.

In November 2005 the Texas Supreme Court upheld a lower court ruling that the school districts lacked “meaningful discretion” in setting local maintenance and operation tax rates. In the court’s opinion, too many districts were being forced to set tax rates at the maximum \$1.50 per \$100 valuation. Essentially, this meant that the school system was being financed by an unconstitutional state property tax. The court gave the legislature until June 1, 2006, to address the matter or the court would enjoin the state from distributing funding to the public school system.

It took three special sessions of the state legislature to craft a compromise and finally put constitutional concerns over the financing of public schools brought on by Robin Hood to rest. The final proposal cut property taxes by one-third and replaced lost revenues with money raised statewide by an expanded business tax and a new \$1-per-pack tax on cigarettes. General revenue monies are now used to address some of the inequities of the property tax system.<sup>17</sup> Unfortunately, the compromise generated, at least in the short run, as many problems as it solved.

The Great Recession of 2008–09 brought a budget crisis to the 2011 legislative session that shook educational policy in Texas to its core. One of the principal ways that the 2011 legislature balanced the budget without raising taxes was by making severe cuts to the tune of \$5.6 billion in elementary and secondary education funding. The cuts not only jeopardized many of the reform initiatives of the previous 20 years, but raised fundamental questions about fairness that had been resolved with the Edgewood decisions. Approximately \$3.4 billion in educational funds from the state were restored during the 2013 legislative session, but many educational reformers believed that was not enough. School districts went to court arguing that the state was no longer meeting the demands for a fair and equitable school system laid down by the Texas Supreme Court. Judge John Dietz had ruled in February 2013 during the legislative session that the state had violated the constitution by underfunding schools during the 2011 session. He reopened the case after the \$3.4 billion had been put back into the budget during the 2013 regular session. In the summer of 2014, Judge Dietz found the current funding system to be unconstitutional again. The legislature was going to have to reconsider, one more time, the whole issue of funding education constitutionally.<sup>18</sup>

Financing public education became a defining issue during the 2014 election campaigns. Republican candidate for governor Greg Abbott found himself as attorney general in the unenviable position of representing the state in the lawsuits that were claiming Texas was underfunding public education. Democratic candidate



*In San Antonio v. Rodríguez, the U.S. Supreme Court based its ruling to uphold Texas’s public school finance system on its reading of the federal constitution. Edgewood ISD v. Kirby, however, evaluated the constitutionality of the system in light of the provisions for education set forth in the Texas State Constitution, giving the Texas Supreme Court grounds to overturn the original unequal funding system.*

Wendy Davis, meanwhile, staked out a position for increasing funding significantly. Davis, it must be noted, had filibustered the 2011 budget that had contained all the cuts.

The struggle to rework the funding mechanism for public education was only one dimension of educational policy in Texas in the 1980s and '90s. Concerns over the quality of education in the state and how best to promote educational excellence would also help to define educational policy in the early twenty-first century.

## Educational Excellence and Accountability in Texas

The equity issue in public education had been touched off by litigation. Only when forced by the courts to rethink how schools were being funded was the legislature finally willing to act. A different set of factors has driven the debate over educational excellence and accountability.

The issue of education reform came to a head in the early 1980s in Texas. The Texas debate was actually part of a larger national debate over the state of education in the United States.<sup>19</sup> A 1983 report by the National Commission on Excellence in Education, *A Nation at Risk*, identified a number of crises that were beginning to grip the nation's educational system. Test scores were declining and functional illiteracy was on the rise. Students were simply not equipped with the intellectual skills required in the modern world. If steps were not taken soon to reform education in the United States, the report argued, the nation was at risk of falling behind other countries in the rapidly changing world of international competition.<sup>20</sup>

Educational reform was put on the state agenda when, at the end of the 1983 regular session, the legislature established the Select Committee on Public Education (SCOPE). SCOPE was created as a 22-member committee to which the governor would have only 5 appointees.<sup>21</sup> The remaining seats were filled by appointees made by the House and Senate leadership and by 3 members of the State Board of Education. The intent of the legislature in creating SCOPE was not only to figure out how to fund pay raises for teachers but also to evaluate the entire system of public education in the state.

One of the most important decisions made by Governor White was appointing the Dallas businessman Ross Perot to chair the committee. Perot had supported White's opponent in the 1982 gubernatorial race. It was felt that Perot's participation in the process would help broaden support for the committee across party lines as well as bring in needed support from the business community. At the time of his selection, however, few knew how important Perot would be to the process of educational reform. To the surprise of many, Perot took an active role in SCOPE, mobilizing the committee in private and public to take on what he considered abuses in the public education system.

Perot was particularly scornful of athletic programs and what he considered the misplaced priorities of the existing educational system. In the end, SCOPE presented 140 recommendations for reforming the Texas education system in its final report on April 19, 1984. Among the most controversial of the proposed reforms was "No Pass, No Play." Students who failed to earn a passing grade of 70 would be unable to participate in any extracurricular activities for the next grading period of six weeks. But "No Pass, No Play" was only the tip of the iceberg. Other reform proposals set new standards for students' attendance and performance; annual school performance reports and tighter accreditation standards, with schools that did not meet these higher standards losing state funds; a longer school year—



*One means of encouraging educational excellence has been to allow students to transfer from low-performing to high-performing schools, thus promoting competition among the schools and allowing parents more choices.*

from 175 to 180 days; and a professional career ladder for teachers, tying pay raises to performance.<sup>22</sup> In early July 1984 many of the reform proposals were put into place in a 266-page education reform bill, along with the necessary accompanying tax increases.

The so-called Perot reforms were but the first round in the debate over excellence and accountability in the public school system. A second round opened during the 1995 legislative session. As in the past, there was strong business and bipartisan support for reforms that supported increased accountability through testing. There were some important differences in the reform package finally signed by Republican governor George W. Bush. The Perot reforms had generally centralized control over education policy in the state. The Bush reforms, in contrast, gave more discretion to local school districts to achieve the educational goals the state was mandating. Some of the reforms put through were symbolic. The controversial “No Pass, No Play” rule was relaxed, cutting the period of nonparticipation from six to three weeks and lifting a ban on practicing while on scholastic probation. But other changes were more substantive. Local control of public schools was increased by limiting the power of the TEA. Local voters were empowered to adopt home charters that could free their school districts from many state requirements, including class-size caps at lower grades. The 1995 reforms also enabled students under certain circumstances to transfer from low-performing schools to high-performing schools in their districts, thus promoting competition among the schools by holding the schools accountable for the performance of their students.<sup>23</sup>

One of the most controversial aspects of the reform movement in public education in Texas was the development of statewide assessment standards. “Testing,” as assessment came to be known, was first instituted in 1986 with the Texas Educational Assessment of Minimal Skills (TEAMS) exams. TEAMS sought to certify that students from all districts met certain minimum academic expectations. Students had to pass TEAMS to be eligible to receive a high school diploma. TEAMS was replaced with the Texas Assessment of Academic Skills (TAAS) test in 1990, which focused upon minimum academic skills in reading, writing, and math at grade 10. The implementation of Texas Assessment of Knowledge and Skills (TAKS) in 2003 pushed statewide testing across the state-mandated curriculum, requiring students to pass exit-level tests in English, math, science, and social studies. TAKS, in turn, was replaced by the State of Texas Assessments of Academic Readiness (STAAR), 15 end-of-course exams across the curriculum for grades 9 through 12 beginning in 2011. The idea was to have passing standards increased with subsequent administrations of the exam. Schools would be held accountable for their student performances. In the process, it was hoped that public education in Texas would ratchet upward in quality.

Unfortunately, high-minded expectations about reforming public schools through intensified testing and accountability were dashed as failure rates stayed stubbornly high. In 2012 the TEA reported passing rates on five of the STAAR end-of-course exams ranged from 87 percent in biology to 55 percent in English writing. Although failing students were allowed to retake the test, fears began to mount about the impact that failure rates would have on retention and graduation rates. In addition, a storm brewed up out of the classrooms as teachers and administrators complained about the growing need to teach to the test.<sup>24</sup>

Support among business and political elites for an expanded, intensified set of tests to reform public education collapsed during the 2013 legislative session. As



*Testing has remained a controversial issue in Texas schools. Some say frequent testing will raise standards and student performance, while others say that it will lead to “teaching to the test.”*

we discussed in the introduction to Chapter 6, new groups with different interests emerged to challenge the consensus around accountability and testing that had driven educational reform policy for 25 years. Under House Bill 5, the state legislature cut the number of required end-of-course tests from 15 to 5. The idea of testing to promote academic excellence was not being abandoned completely, but it no longer held center stage for reformers. As State Senator Dan Patrick, the chair of the Senate Public Education Committee, noted, “By the elimination of 15 [tests] to 5 . . . that could save 40 or more days of testing, give teachers more time to teach, be innovative and creative.”<sup>25</sup>

## Education Policy in a New Era

One might have hoped that the educational reforms of the past 25 years would have ushered in an era of rising educational attainment in Texas in the first decade of the twenty-first century. Such was hardly the case. Despite the efforts of policy makers, teachers’ salaries and overall state and local spending on public education remained low compared with those in other states as did graduation rates. In 2010 the average SAT scores in Texas were 481 in reading and 504 in math, compared with a national average of 1017 for the two tests together.<sup>26</sup> These scores represented a slight but ongoing drop in Texas test scores in the first decade of the twenty-first century.

Although the dropout rate in grades 7 through 12 has been declining since the 1990s, it remained high among minorities. For a few years at the turn of the century, scores on standardized tests such as the TAAS test improved across the state, sparking calls for the development of new assessment tests to hold teachers and schools more accountable. But with the implementation of more rigorous STAAR assessments, overall student performance stayed flat or fell on various tests. More disturbingly, there appeared to be a growing “achievement gap” where minorities and at-risk students failed at higher rates than whites in consecutive iterations of the tests.<sup>27</sup>

**Vouchers and Charter Schools** The perceived failure of educational reform efforts based on the ideas of testing and accountability led some to advocate new ideas in public education. One new idea—actually an old idea from the early ’60s—being offered up by conservatives, particularly in the Tea Party wing of the Republican Party, is vouchers. The basic idea of vouchers is simple. Increase competition in the school system by letting funding follow the students. If the public school doesn’t work, let parents and students opt out and take their funding with them.<sup>28</sup> Among the recurring criticisms of voucher-based reform is that middle- and upper-middle-income students will leave poorer students behind in poorly funded public schools.

An alternative to vouchers has been available to some in Texas through open-enrollment charter schools. Like vouchers, the idea of charter schools is to make more options available to parents and students, particularly in places where schools are underperforming. As part of a larger reform package, in 1995 the legislature authorized the establishment of charter schools, which would be given increased flexibility to deliver education to student populations with special needs. Working under their own charter and granted freedom to manage their own schools, charter schools operate under the Texas Education Agency and receive their own accountability ranking based on test scores. While they receive state monies, as of 2014 charter schools do not receive local tax revenue or, in most cases, funding for

facilities. Charter schools are able to receive privately raised funds. There is a cap in Texas of 215 open-enrollment charters with about 460 campuses across the state. Approximately 154,000 students attend these schools. Significantly, there are approximately 101,000 on waiting lists seeking admission to the schools.<sup>29</sup>

The criticisms of charter schools resemble, in some ways, the criticism of vouchers. Opponents fear that charter schools will drain money from public schools. While serving the needs of their specially identified student bodies, they will distract attention away from the needs of other, possibly more needy groups. In addition, there is some concern that charter schools will not be able to meet the challenges of educating youth any better than traditional public schools.

**Increased Funding** A third alternative to current education policy is rather simple. Spend more money, a lot more money. Here the idea is that Texas schools fail us because they are woefully underfunded. Salaries of teachers are too low and state regulations of the curriculum and classroom are too great. Get the best teachers to be in the classroom and the problem of public education will be able to right itself. Vouchers and charter schools are seen as threats to this alternative.

New interest groups have emerged over the last two sessions of the Texas legislature to champion approaches to educational reform far different from the business-led bipartisan efforts of the Bush and Perry years that championed testing and accountability.<sup>30</sup> Groups like Texans for Educational Reform, Texans Deserve Great Schools, and Raise Your Hand Texas will change the direction of the debate on education policy in the future.

The 2014 election may prove to be a pivotal election for educational policy in the state. Both gubernatorial candidates articulated positions calling for reform. Republican candidate Abbott called for pre-K programs with lofty goals but smaller budgets. Democratic candidate Wendy Davis called for increases in spending. Not surprisingly, these proposed increases were branded as excessive by Abbott attack ads.

Interestingly, the public appears to be in favor of increased expenditures going to public education, but it splits along partisan lines. A poll conducted by the University of Texas in 2014 found that 74 percent of Texans believed that increasing pay to teachers would be an effective way of improving public education in Texas, including 87 percent of Democrats and 65 percent of Republicans. Even 52 percent of self-identified Tea Partyers supported increased pay to teachers as a way to improve public education. But when respondents were asked if increasing overall funding would be effective, a different story emerged. Eighty-nine percent of Democrats agreed that increased overall funding would improve public education, but only 51 percent of Republicans did. One of the problems facing policy makers in the future will be negotiating reform proposals amid a divided electorate.<sup>31</sup>

## ● Welfare Policy

**Describe the state's role in addressing poverty and how it is affected by national policies**

One long-term policy issue has been how to provide for the basic needs of poor people in Texas. This issue raises fundamental questions about the state's role in helping people in poverty and the extent to which national policies determine the state's response to the needs of poor people.



*The Texas Department of Public Welfare was established in 1939 during the New Deal. This photo shows farmers receiving support from the government at the time.*

## Poverty in Texas

Poverty has never been a popular subject in Texas. The idea that some individuals have trouble taking care of themselves or meeting the basic needs of their families seems to fly in the face of Texas's individualistic culture. In light of the booming Texas economy, many policy makers may have hoped that the poverty problem would go away. It hasn't. Between 1990 and 1999 the percentage of Texans living in poverty fell from 15.9 percent to 15.0 percent, but it rose again during the Great Recession. In 2014, 17.4 percent of Texans (4,270,218 people) lived below the poverty line. In addition, in October 2013 a total of 3,651,344 people were enrolled in Medicaid, the federally financed, state-operated program providing medical services to low-income people. Poverty remains one of the most intractable problems facing the state.<sup>32</sup>

Policy makers define poverty in very specific terms. Poverty is the condition under which individuals or families do not have the resources to meet their basic needs, including food, shelter, health care, transportation, and clothing. The U.S. Department of Health and Human Services developed a "poverty index" in 1964. This index was revised in 1969 and 1980. The index calculates the consumption requirements of families based on their size and composition. The poverty index is adjusted every year to account for the rate of inflation. Although there is considerable controversy as to whether it adequately measures the minimal needs of a family, the poverty index is the generally accepted standard against which poverty is measured.

In 2014 the federal poverty guideline was \$11,670 a year for one person and \$4,060 a year for each additional person in the family. Over 26 percent of Latinos and 23.8 percent of African Americans in Texas are poor. Of those over age 65 in Texas, 11.4 percent are poor compared with 9.4 percent in the nation as a whole. Poverty among children under age 18 is much higher in Texas (24.8 percent) than in the United States as a whole (20.8 percent).

Texas uses these federal poverty guidelines to determine eligibility for a variety of social programs. For example, a family of three is eligible for reduced-price school meals if the family is at no more than 185 percent of the poverty level. A family of three is eligible for free school meals if the family is at no more than 130 percent of the poverty level, and is eligible for food stamps (the Supplemental Nutritional Assistance Program or SNAP) if the family is at no more than 130 percent of the poverty level.

Since 2003 the Texas Health and Human Services Commission (HHS) has been responsible for overseeing the state's health and human services system, including the Department of Family and Protective Services, the Department of Assistance and Rehabilitative Services, the Department of Aging and Disability Services, and the Department of State Health Services (see Table 12.1). HHS is responsible for coordinating, determining eligibility for, and administering the major welfare and antipoverty programs in Texas, including Temporary Assistance to Needy Families (TANF), a welfare program for families with dependent children; Medicaid (a state-federal program providing health coverage to the poor); SNAP; and other programs to address family violence, provide disaster relief, and settle refugees. The appropriated budget for HHS programs is over \$73.9 billion, 38.9 percent of all state appropriations. HHS agencies employ over 55,000 state workers at more than 1,000 locations.<sup>33</sup>

Poverty is a complicated policy issue in Texas. There are more than 200 programs administered by HHS that are aimed at different problems related to poverty. We will now focus attention upon two of the most important initiatives aimed at addressing poverty in Texas: welfare and health care financing. Understanding how these programs evolved over time and the reforms that were put into place over the past 20 years will shed considerable light on public-policy making in the state.

## Welfare in Texas, 1935–96

The origins of modern welfare policy lie in President Franklin Delano Roosevelt's **New Deal**.<sup>34</sup> Prior to the 1930s welfare was considered to be a state and local responsibility. The Great Depression overwhelmed many state and local welfare arrangements, causing the federal government to expand its role in addressing the needs of the poor and the unemployed. The Social Security Act of 1935 transformed the way in which welfare policy was implemented in the United States. Along with two social insurance programs (Old Age Insurance and Unemployment Insurance), the Social Security Act established a number of state-federal public assistance programs: Aid for Dependent Children (ADC, later **Aid to Families with Dependent Children or AFDC**), Old Age Assistance (OAA), and Aid for the Blind (AB). States administered and determined the benefit levels for these programs. In exchange for federal assistance in funding, state programs had to meet certain minimum federal guidelines.

The Department of Public Welfare was established in Texas in 1939 to run the state's various public assistance programs. It was to be supervised by a state board of welfare, composed of three members appointed by the governor for six-year terms. The board appointed an executive director who, in turn, was the chief administrative officer of the department.<sup>35</sup>

Through the early 1960s the basic strategy adopted by welfare-policy makers in Texas was to minimize the cost to the state while maximizing federal dollars. Some programs were expanded during these years. In 1950, ADC became AFDC as mothers were included in the program. Other new social-service programs were also added. Much of the initiative for the expansion of welfare came from the federal government. One of the major issues in Texas was the problem of the constitutional ceiling on welfare spending. This had to be raised from \$35 million in 1945 to \$52 million in 1961, and again to \$60 million in 1963.<sup>36</sup>

Welfare policy in Texas was transformed fundamentally in the 1960s. Federal court decisions between 1968 and 1971 effectively ended a series of policies such as bans on men in the houses of mothers receiving welfare and residency requirements, both of which had been used by states to keep welfare rolls low. In 1965, Congress established **Medicaid**, a state-federal program to finance health care for the poor. President Lyndon Johnson's "War on Poverty" also expanded the number of social service programs available to the poor. Increasingly, it was argued, the solution to alleviating poverty was through expanded federal control over welfare programs.

In 1965 the Department of Public Welfare was authorized to work with the federal government's new antipoverty programs. The welfare ceiling was raised to \$80 million in 1969. Among the welfare programs administered by the department were four public assistance programs: AFDC, Aid for the Blind, Aid to

**TABLE 12.1**

## Agency Budgets for the 2014–15 Biennium

Health and Human Services Commission:  
\$48.5 billion

Department of Aging and Disability Services:  
\$13.8 billion

Department of Assistive and Rehabilitative Services: \$1.3 billion

Department of Family and Protective Services:  
\$6.5 billion

Department of State Health Services: \$6.2 billion

SOURCE: Texas Legislative Budget Board, *Fiscal Size-Up: 2014–15 Biennium*, p. 161.

**New Deal** President Franklin Delano Roosevelt's 1930s programs to stimulate the national economy and provide relief to victims of the Great Depression

**Aid to Families with Dependent Children (AFDC)** a federally and state-financed program for children living with parents or relatives who fell below state standards of need; replaced in 1996 by TANF

**Medicaid** a federal and state program financing medical services to low-income people



In 2012, 3.6 million Texans participated in the food stamps program (now called SNAP), which allows low-income people to buy groceries with a special debit card. SNAP benefits are paid by the federal government, but the state and federal governments share administrative costs.

**Supplemental Security Income (SSI)** a national welfare program passed in 1972 that provides assistance to low-income elderly or disabled individuals; replaced the federal-state programs that had offered assistance to the blind, the permanently and totally disabled, and the aged

the Permanently and Totally Disabled, and Old Age Assistance. The latter three programs were taken over by the federal government in 1972 in the form of the new national **Supplemental Security Income (SSI)** program to provide assistance to individuals in need who have disabilities or are aged. Along with these programs, the department ran the Texas Medical Assistance Program (Medicaid), the national food stamp program, and a series of social-service programs.

In 1977 the Department of Public Welfare became the Department of Human Resources. It was renamed again in 1985 as the Texas Department of Human Services and then as the Health and Human Services Commission in 2003. The name reflected an ongoing desire on the part of policy makers to think of the agency less as a welfare agency and more as a service agency to the poor. By 1980 the department was reorganized to focus on the major client groups it served: families with children and aged and disabled people. In 1981 the constitutional ceiling on welfare spending was replaced with a more flexible standard. Instead of having a flat cap of \$80 million, welfare expenditures could not exceed 1 percent of the total state budget.

Between 1967 and 1973 participation rates and welfare expenditures in Texas exploded. The number of children on AFDC during this time rose from 79,914 to 325,244, while the number of families on AFDC went from 23,509 to 120,254. Rates leveled off in the late 1970s, but they began to push upward again in the 1980s. Liberal attempts to reform welfare by nationalizing AFDC (turning the state-federal program into a national program like SSI) failed throughout the 1970s. Conservative attempts to compel welfare recipients to participate in job-training programs, such as the Work Incentive Program of 1967, had limited success. A frustrating political stalemate set in. Few were happy with welfare policy as then conducted. But no consensus had emerged as to what would be a better alternative. Meanwhile, welfare rolls expanded and expenditures continued to increase in both Texas and the nation.

## The Idea of Dependency and Welfare Reform in the 1990s

By the mid-1980s a new critique of welfare programs had begun to emerge. At its heart lay the idea that the well-intentioned policies of the 1960s had backfired, creating a dysfunctional underclass of people dependent on welfare. Welfare programs such as AFDC may have helped people financially in the short run, but in the long run they had robbed people of the character traits and the moral values that would enable them to succeed in a market economy.<sup>37</sup> Observers believed that the skyrocketing rate of children born to poor, unwed mothers was in part the result of a perverse set of incentives created by welfare programs. Under the existing welfare system, at least to a point, the more children you had, the higher the welfare payment. Because some states did not provide welfare to families with fathers in the home, fathers were actually being encouraged to abandon their families so that the families might qualify for welfare. According to critics, the poor needed encouragement and proper incentives to become independent workers rather than have a permanent source of income from the state.

At the national level, the deadlock over welfare reform was broken with the passage of the Family Support Act in 1988. In the attempt to stem the rising tide of illegitimacy rates and single-parent families among the poor, the act mandated two-parent coverage for all state AFDC programs. It also established a number of new “workfare” programs whose goals were to get people off welfare and into the

workforce. New standards were also developed requiring parents to participate in these workfare programs or lose their benefits.<sup>38</sup>

Much hyperbole surrounded the passage of the Family Support Act. Although the act did break new ground in formulating programs to help people make the transition from welfare to work, it also was an important expansion of the existing AFDC system. Far from declining, welfare roll expansion was unabated in the early 1990s. In Texas, this expansion was especially rapid. By 1994 an average 786,400 people were receiving AFDC in Texas. Total federal and state expenditures rose from \$188.3 million in 1984 to \$544.9 million in 1994. Food stamp costs also rose rapidly during this period, from \$664.9 million to \$2.2 billion. But AFDC and food stamps were only part of the problem. Medicaid was escalating at a rate of more than 20 percent a year. During the 1994–95 biennium, \$18.6 billion in state and federal funds was being spent on Medicaid. Texas's share was 13 percent of the state budget, or \$6.7 billion. Escalating costs of AFDC, food stamps, and Medicaid provided the backdrop to the welfare reforms that would be put into place by Texas policy makers in 1995.

Growing discontent over welfare policy across the country encouraged many states to seek waivers from federal regulations so that they too might experiment with welfare reform.<sup>39</sup> Some states sought to modify AFDC rules to eliminate some of the perverse incentive structures in the welfare system. Other states set caps on benefits and how long one could continue to receive welfare. Welfare became a state issue during the 1994 elections. As governor of Texas, George W. Bush echoed the ideas of conservative critics of the welfare system, arguing that the existing system was robbing people of their independence. Among the changes that he called for were

- strengthening child-support procedures and penalties
- imposing a two-year limit on benefits for recipients able to work
- requiring individuals receiving welfare to accept a state-sponsored job if after two years they were unable to find work
- creating new child-care and job-training programs
- requiring unwed mothers to live with their parents or grandparents
- moving family support systems from the state to the local level

Data released by the comptroller's office lent support to the Bush contention that there were serious problems with the existing system of welfare in Texas. Over one-quarter of all welfare recipients in 1993 were "long-term" recipients who had remained on the rolls for five years or more. The publication of *A Partnership for Independence: Welfare Reform in Texas*, by the office of the comptroller, John Sharp, a Democrat, helped to set the legislative agenda for the debate over welfare policy. Agreeing with other critics across the nation who were unhappy with the current state of welfare policy, the report documented how welfare often failed to help those most in need or to encourage those dependent on welfare to become independent of government largesse. Among the report's 100 proposals were many of the reforms that had been put into place by conservative reformers in other states or by the Bush gubernatorial administration.

A bipartisan legislative coalition ultimately supported major welfare reform in Texas. On May 26, 1995, the vote on House Bill 1863 was 128 to 9 in the House and 30 to 1 in the Senate. The law provided a number of "carrot and stick"

**Temporary Assistance for Needy Families (TANF)** a welfare program passed in 1996 to provide temporary assistance to families with needy children; replacing the AFDC program, TANF sought to make poor families self-sufficient and to give states greater flexibility in setting benefit levels, eligibility requirements, and other program details

incentives that sought to mold the character of welfare recipients in positive ways and wean them off welfare. Among the carrots were expanded education and job-training programs, as well as a select number of pilot studies involving transitional child care and medical benefits. Among the sticks were a limitation on benefits to 36 months, alimony for ex-spouses who couldn't support themselves, and the institution of a five-year ban on reapplying for benefits once benefits ran out. To implement the state reforms, Texas secured a waiver from the federal government that freed the state from various federal regulations regarding welfare programs. In granting the waivers to Texas and other states, the Clinton administration hoped to stimulate innovative reforms that might be duplicated elsewhere.

Texas was ahead of the welfare reform curve in 1995. In 1996, President Bill Clinton signed into law the most important reform in federal welfare policy since the New Deal. The Personal Responsibility and Work Opportunity Reconciliation Act essentially rethought the assumptions that had guided the expansion of welfare programs for 60 years. Under the legislation, AFDC, JOBS (a work-related training program), and the Emergency Assistance Program were combined into one block grant entitled **Temporary Assistance for Needy Families (TANF)**. As with the welfare reforms instituted in Texas and in other states across the country, the primary purpose of TANF was to make families self-sufficient by ending the cycle of dependency on government benefits. States such as Texas were given great flexibility in setting benefit levels, eligibility requirements, and other program details.

Today in Texas, TANF provides temporary financial assistance to families with needy children when one or both of the parents are missing or disabled.<sup>40</sup> The TANF program provides a onetime \$1,000 payment to individuals in certain crisis situations. To qualify, a recipient's income must be below 17 percent of the poverty income limit based on family size. In addition, the combined equity of the family may not exceed \$2,000 (\$3,000 for the elderly and disabled). People participating in TANF receive a monthly assistance payment based on the size of their family. They cannot receive benefits for more than 36 months. They are also eligible for Medicaid benefits, food stamps, and child day-care services. Unless legally exempt, recipients are also required to participate in an employment services program.

The maximum monthly grant available to a household of three under TANF is low, only \$277 a month. For the 2014–15 biennium \$187.7 million in grants will be distributed to under 100,000 recipients on average per month, close to 85 percent being children. Of this money, \$131.9 million (70.2 percent) will be from state General Revenue Funds, \$55.9 million from federal funds (29.8 percent).

## Evaluating Welfare Reforms

The welfare reforms in Texas have been evaluated along two dimensions. First, they are measured in terms of the number of people receiving welfare assistance from the state. Success is determined by the degree to which the reforms help lower the number of welfare recipients in Texas. If the reforms do not decrease the welfare rolls, they likely will be considered a failure. A second measure of success is the degree to which the reforms help take people off welfare and move them into the workforce as productive, independent members of society.

Judged by changes in the number of people on welfare, the reforms appear to be a success. The average monthly number of people on welfare in Texas rose from a little more than half a million in 1989 to a peak of more than three-quarters of a million in 1994 but then began to fall in 1995. Time limits and work requirements

were put into place by the state legislature in 1995, one year before similar measures were passed nationally by the U.S. Congress. The decline in the number of people on welfare continued over the next decade, falling to 155,895 people in 2006 and to approximately 100,000 in 2014.<sup>41</sup>

By a second measure—the number of people moving from welfare to work—indications are that the welfare reforms of 1995 are more mixed in their success. Studies by the Center for Public Priorities in Austin over the past decade have found that caseloads on TANF may have fallen, but child poverty was on the rise. Moreover, there were indications that people leaving the welfare rolls were not necessarily transitioning to work. Such problems were likely exacerbated by the economic downturn of the Great Recession that began in 2008.<sup>42</sup> Welfare reform in the 1990s took place under conditions of a booming economy and a rising demand for all types of labor. Jobs seemed to be available for people who were willing and able to work. But how will the new welfare policies respond to the economic problems of the early decades of the twenty-first century? Now that labor markets have tightened and jobs are difficult to find, will Texas policy makers be satisfied with the welfare reforms in place? How far will unemployment be allowed to go before policy makers demand that we reconsider the incentive structure created to get people off the public dole? These are questions that policy makers concerned with welfare reform will have to consider one day. Only then will we be able to have a more accurate evaluation of the welfare reforms of the mid-1990s.



*Though poverty in Texas afflicts many different social groups, Latinos currently make up the majority of Texans living below the poverty line. The border counties in Texas are by far the poorest in the state.*

## ● Medicaid and Health Care Policy

**Explain why Medicaid in particular and health care policy in general have been so controversial in Texas**

Health insurance is a major policy problem facing Texas. In 2010 it was estimated that 6.2 million Texans (24.6 percent of the state population) were without insurance. This number was the highest percentage in the nation. Figure 12.1 shows the breakdown of this uninsured population by age group. Approximately 1.2 million children under

age 18 (16.3 percent) were without insurance, far below the national average of 9.8 percent.<sup>43</sup> A report released by Rice University's Baker Institute in April 2014 found that the uninsured rate had only fallen slightly since the implementation of the first stages of the Affordable Care Act, a piece of federal legislation, dubbed Obamacare, that sought to address the uninsured problem across the nation. According to the report, the uninsured population had fallen to 23.5 percent. Still, over 5 million people were believed to have no health insurance in the state.<sup>44</sup>

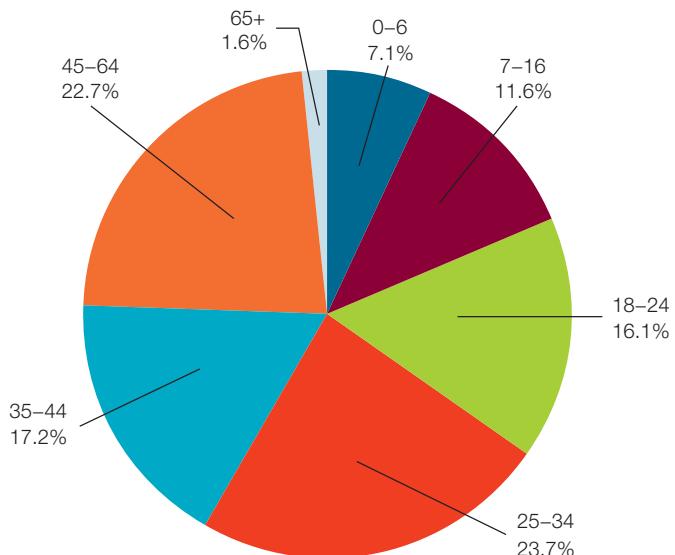
### Medicaid

Other than health insurance programs established for state employees, Texas's principal policy initiative regarding health care and health insurance is Medicaid, a health financing program closely linked to poverty programs. Medicaid, which provides for the health care of poor people, particularly poor children, is an especially

**FIGURE 12.1**

## Texas's Uninsured Population by Age Group

SOURCE: Texas Health and Human Services Commission, *Texas Medicaid and CHIP in Perspective*, 9th ed. (January 2013), [www.hhs.state.tx.us/medicaid/about/PB/PinkBook.pdf](http://www.hhs.state.tx.us/medicaid/about/PB/PinkBook.pdf), pp. 1–7.



costly program for the state. The caseload for Medicaid has exploded in recent years, pushed up by the Great Recession. Between 2008 and 2012 the caseload grew 26.8 percent, and it is expected to reach 4.2 million monthly clients by the end of the 2014–15 biennium. For the 2014–15 biennium a total of \$56.2 billion of state and federal funds will be appropriated to Medicaid programs in Texas, an increase of \$4.2 billion from the previous biennium. The program's costs have risen more quickly than the rate of inflation, which makes Medicaid increasingly burdensome for the state budget. Funding Medicaid is a major issue in the broader debate over the state and national governments' roles in providing health care.

Medicaid is a state-federal program that was established under the Social Security Amendments of 1965 as Title XIX of the Social Security Act. The Social Security Act requires that Texas and other states follow certain principles and meet certain standards if they are to receive federal funds. First, Medicaid services must be available on a statewide basis. Second, the same level of service must be available to all clients throughout the state. Children are entitled to a broader range of services than adults. Third, participants must be allowed to use any health provider who meets program standards. (Providers, of course, must be willing to accept Medicaid recipients.) Fourth, the amount, duration, and scope of medical services must be "sufficiently reasonable." Exactly what this constitutes is a problem, and Medicaid reimbursement rates tend to be much lower than those provided for under conventional private insurance plans. While Texas may limit the services provided to adult clients, it may not arbitrarily deny services for specific conditions or illnesses.

Federal law also allows states to be granted waivers from these principles to create programs directed toward particular clients. In this approach, federal Medicaid policy mirrors the initiatives in welfare policy by providing states more freedom of action in developing programs to serve clients. For example, Texas has been granted the authority to enroll clients in managed care programs. In traditional fee-for-service programs a doctor or a hospital provides a service directly to the patient and is paid a fee for that service. In the managed care organization (MCO) model, programs such as health maintenance organizations or doctor-hospital net-

works act as an intermediary between the patient and the doctor, and negotiate discounted fees for medical services. In addition, MCOs reimburse their member health care providers with a monthly payment, which is known as a capitation payment because it has a limit or "cap" based on medical expenses calculated for the average patient. The State of Texas Access Reform program (STAR) is the managed care program where the Health and Human Services Commission contracts with MCOs to provide health care in various areas to poor populations in Texas.

Another model, found primarily in rural areas in Texas, is now referred to as Traditional Medicaid. It is a noncapitated program enabling Medicaid recipients to receive medical home services from a primary care provider. As a noncapitated plan, it does not contain any average dollar amount per patient per month set by the state to pay for the cost of health care service. Primary care providers receive fee-for-service reimbursement and a small monthly management fee directly from the state. A recent initiative, Medicaid Rural Area STAR, has been implemented to provide managed care to clients in 164 mostly rural counties. The goal is to move rural clients away from traditional fee-for-service delivery as much as possible.

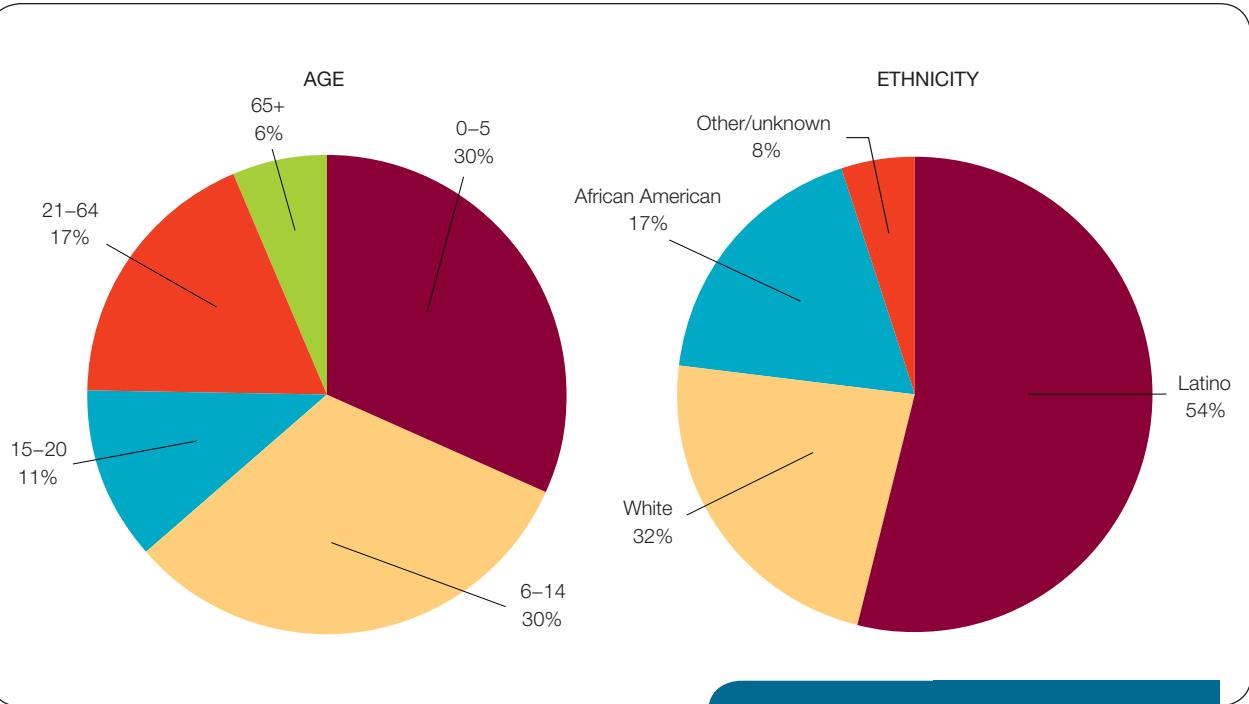
Managed care programs in Texas Medicaid have been growing in popularity since the early 1990s and became an essential part of cost containment measures instituted by the legislature over the next 20 years. In 1994, 2.9 percent of Texas Medicaid recipients were in state-sponsored managed care programs. By 2004 this participation had risen to 41.44 percent. By 2012 almost 78 percent of Medicaid recipients were in managed care programs.<sup>45</sup>

**Medicaid Participation** The initial goal of Medicaid in 1965 was to pay the medical bills of low-income individuals on public assistance. Over the last five decades, Medicaid has grown from a narrowly defined program targeting people on public assistance to a large, complex insurance program serving a variety of special groups. In the late 1980s and early 1990s Medicaid was expanded to include older adults not fully covered by Medicare (a federal medical insurance program funded through payroll taxes for persons age 65 and older), people with disabilities, and pregnant women. Individuals participating in TANF and SSI automatically qualify for Medicaid, as do others who meet these other criteria.

A variety of factors can affect an individual's eligibility to participate in Medicaid. People can go on and off Medicaid given their changing eligibility status. For example, eligibility can change when a parent or caregiver has a change in income or when a child is born. Eligibility also can change when a child reaches a certain age. For these reasons, there is significant fluctuation in Medicaid enrollment from month to month. However, one fact is strikingly clear: participation rates have gone up significantly in the first decade of the twenty-first century. Between 2001 and 2009 the average monthly Medicaid enrollment in Texas rose from 1.87 million people to 3.1 million.

The increase in participation is not caused by a rise in participation through Texas's principal public assistance program, the TANF program. As the number of monthly caseloads grew between 2001 and 2009 for Medicaid, the number of those eligible through the TANF actually decreased from approximately 500,000 to less than 350,000 in 2009. Although Medicaid and public assistance are still joined together, the close link between them that existed at the founding of Medicaid has largely been severed.

Figure 12.2 shows participation in Medicaid by age and ethnicity. Seventy-one percent of those on Medicaid are under the age of 20. Over 54 percent on Medicaid roles are Latino, 22 percent are white, and 17 percent are African American.



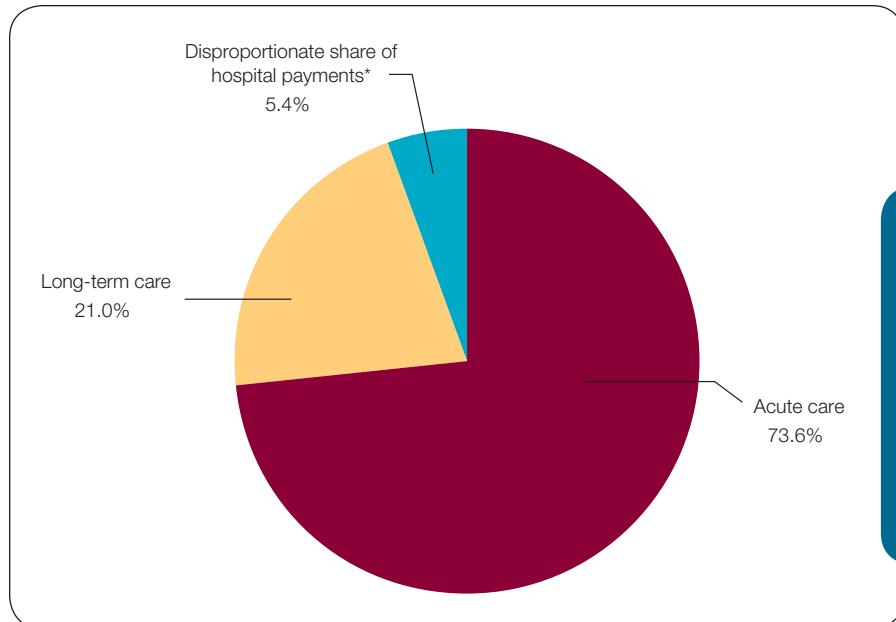
**FIGURE 12.2**  
**Texas Medicaid Recipients by Age and Ethnicity**

SOURCE: Texas Health and Human Services Commission, *Texas Medicaid and CHIP in Perspective*, 9th ed. (January 2013), [www.hhsc.state.tx.us/medicaid/about/PB/PinkBook.pdf](http://www.hhsc.state.tx.us/medicaid/about/PB/PinkBook.pdf), pp. 5, 13–14.

**Administration and Financing of Medicaid in Texas** In Texas, Medicaid is administered through the Texas Health and Human Services Commission. At the federal level, the Centers for Medicare and Medicaid in the Department of Health and Human Services monitor Texas's Medicaid program and establish basic services, delivery, quality, funding, and eligibility standards. Through Medicaid, Texas and the federal government together pay for a variety of health care services for a number of low-income populations. The acute health care services paid for include physicians' bills, inpatient care in a hospital and outpatient care, and pharmacy, lab, and X-ray services. Medicaid also provides for selected long-term and support services, including home- and community-based services for the disabled, home-health and personal care, and nursing services (Figure 12.3).

The federal portion of the program is determined every year by comparing average state per capita income to the average national per capita income. Each state thus has its own FMAP (the federal medical assistance percentage). Poorer states receive more federal assistance for the program than richer states. In 2014 the FMAP for Texas was 58.69 percent, which means that 41.31 percent of all Medicaid expenditures were state funded.<sup>46</sup>

A related program to Medicaid is the Children's Health Insurance Program (CHIP), which provides coverage for children in families with incomes too high



**FIGURE 12.3**  
**Distribution of Medicaid Spending by Service in Texas**

\*A disproportionate share of hospital payments is made to hospitals that serve a disproportionate share of patients in poverty who are on Medicaid.

SOURCE: Henry J. Kaiser Family Foundation, [www.statehealthfacts.org](http://www.statehealthfacts.org).

to qualify for Medicaid. Established in 1997 under Title XXI of the Social Security Act, CHIP is administered like Medicaid through the Centers for Medicare and Medicaid Services in the U.S. Department of Health and Human Services. The 2010 federal allocation to Texas for CHIP was more than \$925 million. The average monthly caseload for CHIP was 497,666 in 2002. After falling to 312,101 in 2007 before the Great Recession, enrollment in CHIP has fluctuated between 500,000 in early 2010 and 600,000 in early 2013. Participation numbers were falling throughout the first half of 2014 as the economy continued to improve, dropping below 500,000 in April 2014. The bulk of the increase in Medicaid caseload in the 2014–15 biennium mentioned in Chapter 11 will come because of the transfer of children from CHIP to Medicaid under the Affordable Care Act.

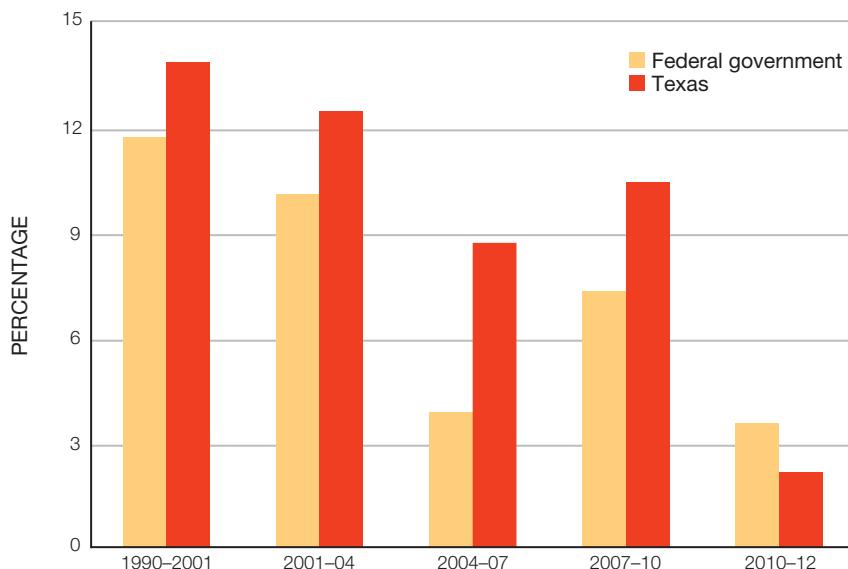
Medicaid and CHIP expenditures have become an increasing part of both the national and state budgets. In 1996 the total Medicaid budget of both federal and state dollars was \$8.2 billion. By 2009 this had risen to \$22.8 billion. By 2009 federal expenditures on Medicaid and CHIP encompassed 7 percent of the \$3.5 trillion federal budget.<sup>47</sup> For Texas in October 2013 the monthly enrollment on Medicaid had reached 3,651,344 people. Figure 12.4 shows the average increases in Medicaid spending between 1990 and 2012. Figure 12.5 shows the distribution of Medicaid payments across various enrollment groups.

## Broader Health Care Issues in Texas

Medicaid policy is embedded in a larger national discussion over health care in America and the proper way to fund it. Numerous controversies divide the public and politicians at all levels of government. Is health care fundamentally a private or a public issue? How can exploding health care costs, including the costs of private health care insurance like Blue Cross/Blue Shield or public health care insurance like Medicare and Medicaid, be brought under control? Should individuals be compelled to purchase health care insurance? How much and what kind of

**FIGURE 12.4**  
**Average Annual Growth in Medicaid Spending, 1990–2012**

SOURCE: Henry J. Kaiser Family Foundation, [www.statehealthfacts.org](http://www.statehealthfacts.org).



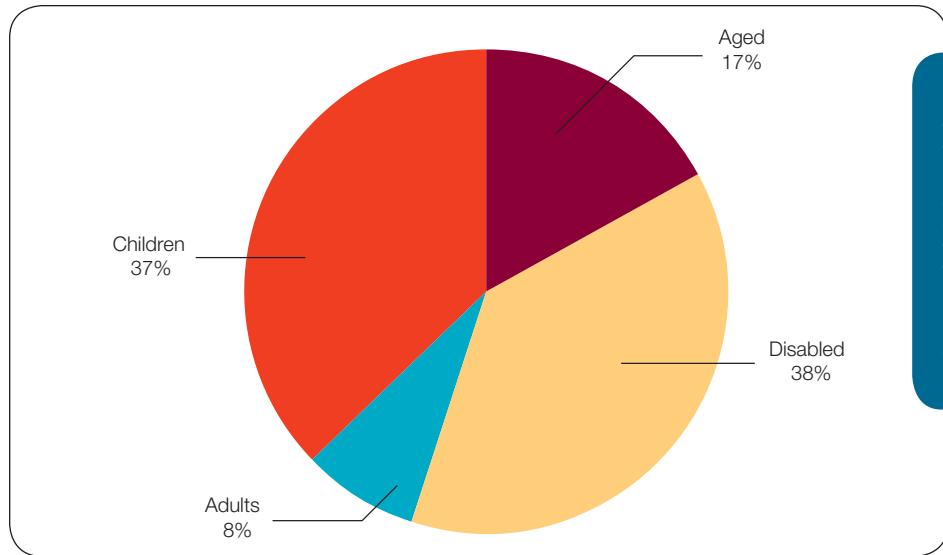
insurance? Who should foot the bill for individuals who cannot afford to pay for private insurance? What is the proper role for the state and federal governments in the delivery of health care across the nation?

As in other state-federal programs, federal money for Medicaid is accompanied by federal rules and regulations with which the state must comply in order to maintain this funding. This sometimes breeds tremendous political controversy between the state and the federal government. One such controversy broke out in early 2012 over provisions relating to Texas's Medicaid Women's Health Program.<sup>48</sup>

The Medicaid Women's Health Program in Texas serves more than 100,000 women and is funded by \$35 million from federal funds and \$7 million from state funds. Through subsidized clinics located across the state, the program helps pay for birth control, health screening, and family exams for a select group of women on Medicaid. Planned Parenthood offers these services as well as abortion services at its various clinics across the state. Conservatives in Texas, including Governor Perry, were unhappy with any state monies being used to subsidize groups supporting abortion and moved to cut program funds from going to these clinics. But federal regulations clearly state that patients in the program, not state officials, decide where money from the program is spent.

By March 2012 an impasse had been reached. On one side were Governor Perry and the Republican-dominated state legislature, who ordered an end to Medicaid funding of Planned Parenthood clinics. On the other side were the federal government and supporters of Planned Parenthood, who insisted on strictly following federal rules and guidelines. Interestingly, some moderate Republicans, like Senator Kay Bailey Hutchison, broke with the governor and backed Planned Parenthood in the dispute. By early March 2012 all federal funding of the Texas Women's Health Program had been pulled. Governor Perry claimed that he would find new funding for the program at the state level that would exclude Planned Parenthood.

In early May 2012 the issue became even more complicated. Eight Planned Parenthood clinics that did not provide abortion services sued the state, claiming



**FIGURE 12.5**  
**Distribution of Medicaid Payments by Enrollment Group in Texas**

SOURCE: Henry J. Kaiser Family Foundation, [www.statehealthfacts.org](http://www.statehealthfacts.org).

their rights to freedom of speech and freedom of association had been violated. A federal appeals court ruled on August 22, 2012 that Texas could ban Planned Parenthood from receiving funds. Texas solicitor general Jonathan Mitchell reiterated the state's opposition to providing taxpayer money "to entities that affiliate with abortion-promoting entities."<sup>49</sup> The conflict over the funding and administration of the Texas Women's Health Program signals the emergence of a new set of conflicts over Medicaid in Texas and a new round in the debate over the relationship between the national and the state government in the federal system. Cost, however, is the single most important issue confronting policy makers regarding Medicaid in Texas. Now encompassing more than 25 percent of state expenditures, Medicaid in Texas as in other states threatens to overwhelm the budget. In the spring of 2012, Texas comptroller Susan Combs began referring to Medicaid as "The Big Red," the program that was going to push an otherwise healthy state budget into the red. She claimed that by 2023 "Big Red is going to be over a third of state spending."<sup>50</sup> Medicaid expenditures, many mandated by the federal government, would begin to crowd out other forms of spending from the state budget.

Policy makers are forever looking for ways to make the program less costly. Two strategies have predominated over the past 20 years: first, to bring more efficiency into the program by expanding managed care initiatives across the state, and second, to institute cost controls and cutbacks to providers. Both efforts have had limited success, and at the same time have sparked concern over the quality of care being offered to Medicaid participants across the state. As cost containment efforts intensify, Texas policy makers inside and outside the legislature will be compelled to increase their monitoring of the delivery of the program.

## The Affordable Care Act

In March 2010, Congress passed two bills, the Patient Protection and Affordable Care Act and the Health Care and Reconciliation Act of 2010, which together became known as the Affordable Care Act (ACA), often referred to as Obamacare. The passage of the ACA transformed the debate over health care policy in the

United States. Passed on a party line vote by Congress, the legislation requires individuals not covered by existing plans to pursue health insurance or pay a penalty. Along with this “individual mandate,” as the mandatory coverage came to be called, the act also increased coverage for preexisting conditions and expanded medical insurance to an estimated 30 million people.<sup>51</sup>

When fully implemented, the ACA is expected to bring significant change to the health insurance market in Texas as well as to Texas’s Medicaid program.<sup>52</sup> Initial estimates in 2012 projected that under the ACA, insurance coverage in Texas will rise to 91 percent, with almost 40 percent of the remaining uninsured being undocumented persons. The expansion of Medicaid in Texas will be funded through a complicated set of subsidies based on family income. For the first three years of the expansion (2014–16), the federal government will cover all costs for newly eligible participants in Medicaid and CHIP. Thereafter, the percentage will slowly decline, committing Texas to a larger portion of the funding. The long-term effect of the ACA for Texas will be a budgetary one. Increased expenditures on Medicaid and health care in Texas are all but inevitable.

The ACA sparked a national controversy. A majority of the states and a number of private individuals and groups challenged the constitutionality of the act in court, focusing on the mandatory coverage provisions. For three days in March 2012 the U.S. Supreme Court held oral argument on the case, *National Federation of Independent Business v. Sebelius*. A complicated decision was delivered by a divided Court on June 28, 2012. Four liberal justices believed that most features of the ACA were constitutional. Four conservative justices countered that they were not. Representing the decisive vote, Chief Justice Roberts rejected the idea that people could be mandated or forced to buy insurance under Congress’s power to regulate commerce, but he nevertheless concluded that a tax penalizing people who did not get medical insurance met constitutional muster. Regarding the expansion of Medicaid, he supported a conservative position, arguing that states could not be bullied into expanding medical insurance coverage for poorer segments of the population. Chief Justice Roberts wrote that for federalism to thrive, states had to have a meaningful and real choice as to whether or not they would participate in federally sponsored programs.

The complicated U.S. Supreme Court decision opened the door for a new round of political posturing around the health care issue in Texas. Governor Perry announced that Texas would refuse to participate in the expanded Medicaid program, giving up millions of federal dollars for not having to incur new financial responsibilities at the state level. The state legislature, supporting Governor Perry, has refused to expand Medicaid in Texas. An estimate by the Kaiser Family Foundation in 2014 concluded that over 1 million uninsured adults in Texas, 17 percent of the uninsured in the state, would not be brought under the ACA provisions to expand Medicaid because of Texas’s actions (or inactions).<sup>53</sup> Perry also decided that the state would not go into the business of designing an insurance exchange in the state. Texas would let the federal government sell federally designed insurance policies in the state on its own.

As if things weren’t complicated enough in the emerging discussion over what to do about Medicaid and health care coverage in Texas, a 2012 survey was released by the Texas Medical Association that found only 31 percent of Texas doctors were accepting new patients who relied on Medicaid for insurance coverage, down from 42 percent in 2012 and 67 percent in 2000. Low payment and excessive red tape were cited as the reasons for the declining acceptance of Medicaid as a form of medical insurance.<sup>54</sup> Further complicating matters, officials from the Texas Health

# The Texas Sonogram Law

## In 2011 the Texas legislature

passed a law requiring doctors who perform abortions to provide a sonogram to women before carrying out the procedure. Abortion laws are among the most contentious social policies in the United States, and the Texas law garnered national attention. Conservative supporters of the sonogram policy passed it through the Texas legislature, and it was signed into law by former governor Rick Perry, who at the time was preparing his 2012 run for president. Opponents of the law immediately challenged it in court, arguing that it is unconstitutional given the U.S. Supreme Court's rulings in abortion cases since the landmark *Roe v. Wade* in 1973.

The law requires doctors to provide with the sonogram "a simultaneous verbal explanation of the results of the live, real-time sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of arms, legs, external members, and internal organs." Doctors are also required to make the fetus's heartbeat audible to the woman. Although the law does not require vaginal sonograms, which entail an invasive procedure of inserting a probe into the pregnant woman's vagina, some cases would require this type of sonogram, according to medical experts. Pregnant women affected by the law may choose not to view the sonogram, listen to the doctor's explanations, or listen to the heartbeat. However, doctors who refuse to comply with the law are subject to losing their licenses to practice medicine. Doctors are not required to perform the sonogram procedure for women who were impregnated as a result of rape or incest.

Proponents of Texas's new law argue that because abortion involves a nascent human life, efforts to make

women think twice about going forward with an abortion should be implemented. They believe that the state has a compelling interest to protect the lives of what they consider to be human beings in the earliest stages of development. Supporters emphasize

that women can still go forward with a legal abortion if they so choose, but they should have full and complete information about the consequences of the decision they are making. They also argue that the procedure is constitutional because it does not prevent women from having abortions; it only makes them go through an additional step. The Court, they argue, has already upheld waiting periods and parental consent laws for abortion, and this law falls in the same vein.

Opponents of the new law argue that abortion is a constitutional right that has been protected by the Supreme Court and that, through forcing women to take the extra step of having a sonogram, the state is making it more difficult for women to exercise this right. They cite the Court's argument that no abortion law can place an undue burden on women who choose to obtain an abortion, and they note that the law makes women come into a medical office twice—once for the sonogram and



again for the abortion after the 24-hour waiting period. In particular, opponents argue that vaginal ultrasounds invade a woman's privacy, as they necessarily involve an invasive procedure that women should not be required to endure. They also argue that the law violates doctors' First Amendment rights because it requires them to make statements and perform activities that are not medically necessary and that some women may not want.

Opponents sought a court ruling to delay the implementation of the law, but in February 2012, a federal district court judge refused to delay the law, deciding that the U.S. Court of Appeals for the Fifth Circuit, which includes Texas, had already ruled that the law was constitutional. In March 2014 the Fifth Circuit agreed with the district court judge and allowed the law to remain on the books. The U.S. Supreme Court also decided not to hear the challenge, which means that the law will remain in effect for the foreseeable future.

## critical thinking questions

1. What are the trade-offs of this piece of legislation? Does it balance the rights of women and the interests of the state to protect fetuses?
2. Are there any possible compromises to this issue? If so, what would they look like?

and Human Services Commission released a new estimate of the costs of the ACA in Texas based upon new, more conservative assumptions about how quickly newly eligible people might apply to participate in the program. The new estimates were 42 percent less than the original ones. In July 2012 state officials believed that if Texas opted into the new ACA Medicaid programs, by 2023 the state would spend \$15.6 billion of state money and bring in \$100.1 billion of federal money. Despite these new projections, neither the Health and Human Services commissioner Tom Suehs nor Governor Perry believed that Texas should opt into the new ACA programs. Before Texas should participate in an expanded program, they believed the act should be “fixed” by Congress.<sup>55</sup>

The ACA is in effect, but it is unclear what that will mean for poorer Texans. Individuals will have to buy a health insurance package or pay a penalty on their federal income tax. Federal exchanges will be offering health insurance, but not with the assistance of Texas. The failure to opt into the expanded federal programs under ACA will mean a sizable portion of the poor population will continue to not have health insurance coverage, including undocumented persons whose health care was not addressed under the ACA. One thing is clear: few individuals are willing to argue that Texas has solved the problem of providing health care to the poor. In a report released by the federal Agency for Health Research and Quality in July 2012, Texas ranked dead last in health care services and delivery.<sup>56</sup>

## Water Policy

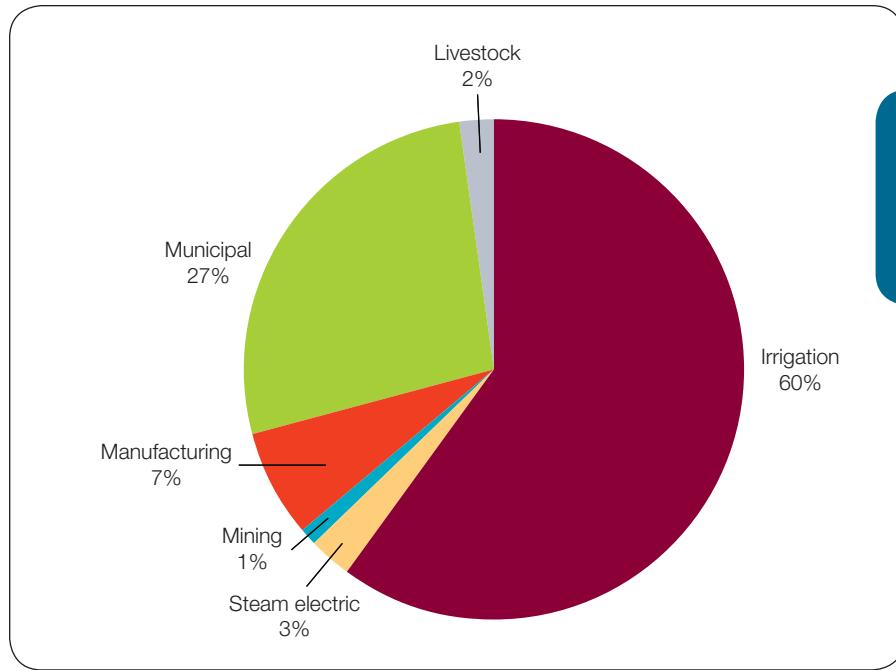
**Consider the growing importance of policies related to water supplies in Texas**

Water is the life blood of Texas. Access to plentiful water supplies over the past 100 years has been a necessary condition for a thriving economy and an expanding urban population in Texas. Approximately 59 percent of the water used in Texas comes from aquifers (underground pools of water),

the vast majority of which (60 percent) is used in irrigation, particularly in the arid Panhandle region (Figure 12.6). The remainder comes from surface sources, including rivers and reservoirs. Twenty-seven percent of the state’s water use is in municipal areas. Individual cities rely on various amounts of aquifer and surface water, but overall, aquifers are the source for more than one-third of the water consumed by metropolitan areas.

Texas’s water consumption is projected to increase by 82 percent, from about 18 million acre-feet per year in 2010 to about 22 million acre-feet per year in 2060.<sup>57</sup> An acre-foot is a volume measurement used by water planners. It comprises an acre of area (66 feet × 660 feet) one foot deep.<sup>58</sup> At the same time, existing supplies under current systems of production and conservation are expected to decrease by 10 percent, largely as a result of the depletion of the Ogallala Aquifer in the Texas Panhandle and reduced reliance on the Gulf Coast Aquifer. By 2060 experts project that an additional 8.3 million acre-feet per year will be needed for the state to continue to thrive.

Formulating a coherent water policy in Texas to address these and other issues is difficult for many reasons. As noted in Chapter 1, Texas is a large state with a diverse climate. The water-related issues along the Gulf Coast in southeast Texas near Houston, which is subtropical and humid, are quite different from those in the high plains Panhandle, which is semiarid savanna, or in the El Paso desert. For



**FIGURE 12.6**  
**Water Usage by Sector**

SOURCE: Texas Water Development Board.

example, along the southeastern border with Louisiana, average annual rainfall is more than 80 inches per year, while near El Paso it is only 10 inches per year.<sup>59</sup> There are 15 major river basins and 8 coastal basins across the state, as well as 9 major and 21 minor aquifers.

Water policy is further complicated by the fact that various regions of the state have periodically experienced severe droughts and devastating floods. Throughout the twentieth century, reservoirs have been built to more effectively distribute water during times of shortage and to control flooding. In 1913, when the Texas Board of Water Engineers was established, there were only 8 major reservoirs in the state. By 1950 the number of major reservoirs had grown to 53. Today there are 188.<sup>60</sup>

## Water Law in Texas

Underlying water policy in Texas is a complicated system of private property rights derived from three sources: Spanish law, traditional English common law, and statutory law. Texas law recognizes several legal classes of water rights for surface water and groundwater that are governed by different rules. Historically, these variations in the law have made the forging of water policy an arduous and at times a politically charged matter.

In 1967 the law covering surface water and relatively well-defined underground streams was clarified when the state legislature passed the Water Rights Adjudication Act. This legislation essentially merged the various water rights doctrines dating back to the nineteenth century into a unified water permit system. It requires individuals seeking water rights to file a claim with the Texas Commission on Environmental Quality (originally called the Texas Water Commission) before using the water. A complex administrative and judicial process was put into place that essentially grants water rights holders certificates of adjudicated water rights. The ability of the state to control and manage surface water use thus was greatly expanded by the 1967 act.<sup>61</sup>

**law of capture** the idea that the first person “to capture” water or oil by pumping it out of the ground and using it owns that water or oil

Groundwater law, that is, law regarding water flowing, or “percolating,” underground, differs significantly from surface water law.<sup>62</sup> In *Houston and Texas Central Railroad Company v. East* (1904), the Texas Supreme Court adopted a strict common law notion of property law for percolating underground water called the **law of capture**. This standard is also found in Texas oil and gas law. Essentially, the law says that the first person to “capture” the water by pumping it out of the ground and using it owns the water. Landowners have the right to capture as much groundwater that is under their property as they wish without regard to the interests of other property owners whose land may also lie on top of the pool of underground water. The rule of capture in water property rights has one important consequence for the development of underground water resources in the state. It encourages landowners to take as much water as possible from groundwater sources without considering the needs of other consumers. The law of capture can work against conservation efforts of private individuals who are trying to protect the water under their lands. It can also undercut efforts of planning authorities to develop a water plan for a particular area that takes into account the short-term and long-term availability of water as well as the competing uses for available water.

Finding a balance between the law of capture and the need to plan has troubled policy makers for much of the last 60 years. *Houston and Texas Central Railroad v. East* was reaffirmed by the Texas Supreme Court in 1955. In its ruling, the court stated that “percolating waters are regarded as the property of the owner of the surface who may, in the absence of malice, intercept, impede and appropriate such waters while they are on their premises, and make whatever use of them they please, regardless of the fact that use cuts off the flow of such waters to adjoining land and deprives the adjoining owner of their use.” Nevertheless, the court also accepted the state’s authority to regulate groundwater. In 1949 the state legislature passed the Texas Groundwater Act, which created water districts to manage groundwater supply.

Today there are 99 groundwater districts in Texas with varying powers. The smallest district is the Red Sands Groundwater Conservation District in Hidalgo County, covering 31 square miles. The largest is the High Plains Underground Water District, covering 12,000 square miles over the Ogallala Aquifer. Generally, the groundwater districts are able to develop regulations to protect the water supply provided by groundwater sources, including rules that may restrict pumping, require well permits, delineate well-spacing, and establish rates of water usage. The rules and regulations generated by these groundwater districts, however, can come into direct conflict with the law of capture, as we will see later.<sup>63</sup>

## Planning Authorities and Water Policy

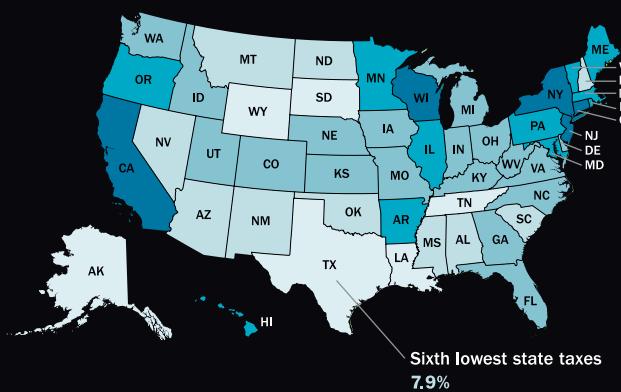
The history of water planning in Texas stretches back to the early twentieth century. A constitutional amendment in 1904 paved the way for the development of various agencies and authorities concerned with water planning. Among the most important innovations put into place by the state legislature in the early 1900s were drainage districts (1905); conservation and reclamation districts, later referred to as river authorities (1917); and water and control improvement districts (1925).

From 1950 to 1956 Texas experienced its worst drought in history. Every major urban area experienced the effect of the drought, many turning to emergency supplies and to rationing. In 1957 the drought was ended by heavy rains that resulted in the massive flooding of every major river and tributary in the state. Two hundred fifty-three of Texas’s counties were declared disaster areas. Estimates were that the

# What Are the Trade-Offs in Texas Public Policy?

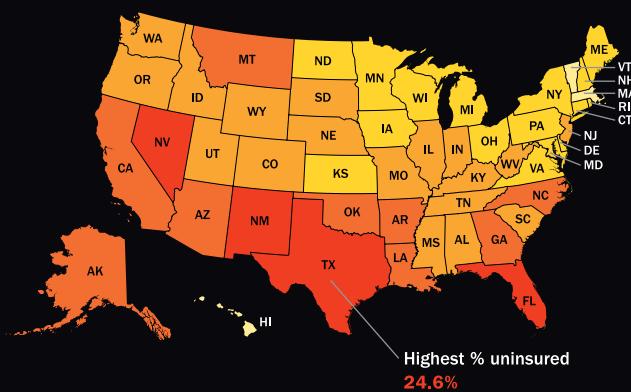
The contemporary Texas government tends to pass conservative policies (low taxes and lower levels of social services). The figures below show this in comparison to other states. Texas collects the sixth lowest share of taxes of any state. But when government lacks revenue, it cannot spend money to address social problems, such as providing health insurance to those who cannot afford it.

**State Taxes** (as a percentage of gross state product)



7.0% ● ● ● ● 12.8%

**Percentage without Health Insurance**



4.1% ● ● ● ● 24.6%

**State Taxes Compared with Percentage Uninsured\***

	Low Tax Rank	Uninsured Rank		Low Tax Rank	Uninsured Rank		Low Tax Rank	Uninsured Rank
Alaska	1	6	Georgia	18	5	Oregon	35	16
South Dakota	2	21	Colorado	19	26	Arkansas	36	7
Tennessee	3	25	Delaware	20	42	Hawaii	37	48
Louisiana	4	8	Virginia	21	33	Vermont	38	49
Wyoming	5	16	Utah	22	21	Maryland	39	34
<b>Texas</b>	<b>6</b>	<b>1</b>	Washington	23	27	Illinois	40	27
New Hampshire	7	37	Florida	24	4	Pennsylvania	41	37
Alabama	8	19	Kentucky	25	15	Maine	42	45
Nevada	9	2	Idaho	26	14	Massachusetts	43	50
South Carolina	10	23	Iowa	27	43	Minnesota	44	46
Arizona	11	10	Indiana	28	29	Rhode Island	45	35
New Mexico	12	3	Kansas	29	32	Wisconsin	46	44
Montana	13	9	Nebraska	30	30	California	47	11
Mississippi	14	18	Ohio	31	35	Connecticut	48	47
Oklahoma	15	12	West Virginia	32	20	New Jersey	49	24
North Dakota	16	39	Michigan	33	41	New York	50	40
Missouri	17	30	North Carolina	34	12			

SOURCES:

Tax Data: 2010 tax data from TaxFoundation.org (accessed 3/7/14).  
Uninsured Data: 2012 uninsured data from U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplements, www.census.gov (accessed 3/7/14).

## for critical analysis

1. What appears to be the relationship between state taxes and insurance rates in a state?
2. When Obamacare is fully implemented, will the numbers of uninsured change? Why or why not?

\*States with the same percentage of uninsured individuals have been given the same rank.

drought had cost the state hundreds of millions of dollars. Damages from flooding were calculated to cost another \$120 million. Calls for a more permanent planning and policy agency to direct and coordinate water policy came from all over the state.<sup>64</sup>

New agencies were established by the state in the 1960s to address various water issues. In 1977 the three major state water agencies (the TWDB, the TWRC, and the Water Quality Board) were combined into the Texas Department of Water Resources, whose job was to develop Texas's water resources, maintain the quality of water, and assure an equitable distribution of water rights. Sunset legislation in 1985 reorganized this single agency into two new agencies: a new Texas Water Commission and a new version of the Texas Water Development Board. Today, the TWDB is the state's primary water planning and financing agency. Enforcement of the state's environmental regulations regarding water is the job of the Texas Commission on Environmental Quality, an agency that resulted from the 1993 consolidation of the Texas Water Commission with the Texas Air Control Board.<sup>65</sup>

The TWDB is composed of a six-member board serving six-year terms with overlapping membership. Each member comes from a different part of the state. Since 1997, when the legislature passed an omnibus water planning law, the TWDB has had a number of important responsibilities, including the following:

- Supporting the development of 16 regional water plans
- Developing a state water plan every five years
- Providing financial assistance to local governments for (1) water supply and waste management projects, (2) flood protection and control projects, (3) agricultural water conservation projects, and (4) the creation of groundwater districts
- Administering the Texas Water Bank, which facilitates the transfer, sale, and lease of water and water rights throughout the state
- Administering the Texas Water Trust, which holds water rights for environmental flow maintenance purposes
- Data collection for the state's freshwater needs<sup>66</sup>

A number of strategies for meeting the short- and long-term water needs in the state were articulated in the 2012 State Water Plan. Two elements of the plan stand out. First, there is a notable focus on the importance of conservation. Policy makers agree that in the future water must be used more efficiently in Texas. One of the most important policies is a conservation strategy throughout all regions that seeks a more efficient use of current water supplies. Second, there is an emphasis on the importance of expanding and developing available surface water throughout Texas. The plan calls for the building of 26 new major reservoirs by 2060, each with a storage capacity of at least 5,000 acre-feet. Most of the proposed reservoirs would be along the Interstate Highway 35 corridor, where rainfall and runoff are more plentiful than in the western part of the state.<sup>67</sup> Another surface water recommendation is to build new pipeline infrastructure from existing sources to new points of use. Proposed construction includes a pipeline from Lake Palestine to Dallas and from Tarrant Regional Water District Lakes to Fort Worth. Such projects represent an important shift in existing water policy in some planning areas, as they shift the focus of water policy from flood control or hydroelectric power generation to the provision of water.

Groundwater strategies include the expansion of production by drilling more wells or building treatment plants for water quality. Conservation efforts also play

a major part in groundwater initiatives, as some of the aquifers are experiencing overuse. The TWDB estimates that total groundwater supplies available to Texans will decline by 30 percent between 2010 and 2060. The Ogallala Aquifer (which runs from the Texas high plains up through western Kansas and into Nebraska) and the Edwards Aquifer (which runs along the Balcones fault line near San Antonio) are estimated to decline by 50 percent by 2060.

The total capital needs of funding these future initiatives proposed by regional water planning groups are estimated to be \$53 billion, along with annual operating and maintenance costs. But cost is not the only challenge facing water policy makers. Some environmental groups in the state are opposed to the further expansion of the state reservoir system, arguing that the costs to the ecosystem of the state far outweigh the advantages provided by more water. On the other hand, some property owners, particularly in west Texas, are opposed to any new conservation restrictions or penalties put upon them by the state. Texas water law itself may be one of the most intractable problems that water planners may have to face in coming years.

On February 24, 2012, the Texas Supreme Court ruled on the case *The Edwards Aquifer Authority v. Burrell Day and Joel McDaniel*, which has important implications for future attempts to regulate water usage in Texas, particularly in those areas that rely heavily upon aquifers. The case involved two farmers who had applied to the Edwards Aquifer Authority for permission to pump 700 acre-feet per year of water to irrigate their 350-acre ranch in Van Ormy, a small town south of San Antonio. The farmers argued that they had rights to water from the aquifer based on their ownership of land above it. Maintaining that the farmers were unable to prove "historical use" of water from the aquifer, the authority granted them a permit for pumping only 14 acre-feet.

Writing for the 9–0 court majority, Justice Hecht ruled that using "historical use" as a criterion for granting a permit to pump water was a departure from the Texas Water Code. "Unquestionably," Hecht wrote, "the state is empowered to regulate groundwater production . . . [but] groundwater in place is owned by the landowner on the basis of oil and gas law."<sup>68</sup> Texas regulatory authorities thus had the power to reasonably regulate the use of water drawn from an aquifer in the public interest, but they may have to pay property owners with a stake in that water any damages that are incurred by the regulation.

The ruling sparked a firestorm of controversy among interested parties. Landowners celebrated the decision as vindication of their ownership of water under their lands. In contrast, state planning authorities and environmentalists were aghast at the implications that the case could have for their attempts to efficiently allocate and conserve water in Texas. The Texas Supreme Court's ruling raised an important question regarding water policy in Texas: Which policy-making body would dominate water policy in the foreseeable future in Texas? Would it be the courts working through judicial interpretations of the applicability of water property law? Or would it be the regulatory bodies whose job was to plan and to allocate water based on their assessment of available water supplies and the competing needs for water? Developing regulatory rules for the use of aquifer water that both protect property rights and promote the public interest through reasonable and efficient regulations will be a challenge facing these policy makers in years to come.<sup>69</sup>

A major step toward planning for water in the future took place in November 2013, when voters approved a constitutional amendment to create a \$2.0 billion water fund. The bulk of the monies being directed to water policy came from a onetime transfer of money from the Rainy Day Fund to the State Water Implementation Fund for Texas (SWIFT). Proponents claimed that the two accounts



*The drought of 2011 was the worst in the history of Texas. The drought extended into 2012, 2013, and 2014, threatening the state's prosperity, causing dust storms in the Texas panhandle (top), and drying lake beds throughout the state. Many of the state's cities were put on various levels of water emergencies that restricted use. Some smaller towns saw their water supplies drift down to 60 days and less.*

could fund over \$25 billion in water development projects over the next 50 years.

The basic idea behind this water initiative is that SWIFT projects would generate revenue that would go into another account (the State Water Implementation Revenue Fund for Texas or SWIRFT) that could be used to fund more water projects. Proposals for projects to be funded by the SWIFT and SWIRFT would come from regional water planning groups and could include such things as building new reservoirs, fixing pipes, and groundwater development. A number of provisos were attached to the legislation that put forward the constitutional amendment: 20 percent of the funds had to be directed to conservation and 10 percent would have to serve rural areas. Interestingly, concerns were raised about the fact that the agency managing the program, the Texas Water Development Board, might be too close to the governor given that the board would be appointed by him or her. The authorizing legislation thus established a separate committee to oversee how the SWIFT and SWIRFT funds are managed. The committee would be appointed by the Speaker of the House and the lieutenant governor and be composed of the comptroller, three state representatives, and three state senators. Planning for Texas's water future did not mean that traditional concerns over too much executive power in public policy matters would be ignored.<sup>70</sup>

## Thinking Critically about Public Policy in Texas

In this chapter, we examined various aspects of public-policy making in Texas. We focused particular attention on the complex issues that have driven policy making in public education, welfare, health care, and water policy. Looking at these matters with a critical eye demands that we pay attention to a number of key political questions: Who benefits by a particular public policy? Who pays for the policy? What ideas are used to justify or legitimate a particular program? How do particular public policies evolve and change over time to address new problems? How do they alter the relationship between individual citizens and the government that represents them in Austin?

In earlier chapters, we saw how the high-tech revolution transformed Texas's economy in the 1980s and '90s. We also traced how social and political changes have restructured the political party system in the state and the increasing power of the Republican Party. In this chapter, we have seen how many of these shifts resulted in important changes in public policy in the twentieth and twenty-first centuries. These policy changes are occurring as the Texas political economy moves from an oil, cattle, and cotton economy into an era of computers, high technology, and globalization. We can't be sure exactly where public policy in Texas will go in the next decade. We can be sure that new solutions will be required in the areas of welfare, education, health care, and water policy as the Texas political system tries to meet the challenges and opportunities of the twenty-first century.

In Chapter 13, we will explore one final area of public policy that differs in many ways from the four broad areas of public policy considered in this chapter. The criminal justice system in the state performs two of the most important functions of any state: maintaining order and policing society.

## The Policy-Making Process

### Describe the key steps and concepts in the policy-making process (pp. 384–87)

Public policies are the outcomes of governmental institutions. There are a number of stages in the policy-making process. One stage is problem identification, where political actors and society at large develop an understanding of a problem and how that problem can be addressed. The second stage in the process is policy formulation, where strategies for dealing with specifically defined problems are developed. The third stage is policy implementation, where the goals of public policy along with sanctions to support them are put into effect by a particular government agency. A fourth stage of the process is evaluation, where efforts are made to evaluate the effectiveness of a policy. Some political scientists argue that still another stage in the process is policy legitimization, where the legality of a particular policy initiative is determined.

### Key Terms

rationality (p. 386)

bounded rationality (p. 387)

### Practice Quiz

1. Satisficing means that policies are developed that
  - a) are the optimal means of solving a problem.
  - b) are satisfactory ways of solving a problem.

- c) are policies that will satisfy voters.
- d) are the easiest policies to adopt.
- e) are likely to be policies that satisfy the courts.
2. Among the factors that work against rationality and efficiency in the making of public policies is that
  - a) politicians are more interested in votes than in effective policies.
  - b) administrators of policies seek the easiest way of administering laws rather than rational or efficient ways.
  - c) governments work incrementally.
  - d) rational and efficient policies are too expensive to implement.
  - e) government is inherently irrational and inefficient.
3. An example of policy legitimization is
  - a) the Supreme Court upholds the constitutionality of a law.
  - b) the president talks about an issue in his State of the Union Address.
  - c) the governor talks about an issue in his State of the State Address.
  - d) political scientists research the effectiveness of a law.
  - e) The legislature does not repeal a law during the legislative session following its passage.

## Education Policy

### Describe the major issues that have shaped education policy in Texas (pp. 387–97)

One of the most important functions of state government is providing and funding public education. Under the Gilmer-Aikin Laws, Texas extended its control over financing and administering public education through local school districts. As in many southern states, segregation of public schools was a major problem that was not dealt with until federal courts forced Texas to desegregate in the 1950s and '60s. Equity in the funding of public education remains a major issue in Texas. State courts continue to play an important role in addressing the equity issue. Concerns over excellence and accountability in public education persist today.

### Key Terms

Gilmer-Aikin Laws (p. 389)

equal protection clause (p. 392)

### Practice Quiz

4. The Gilmer-Aikin Laws
  - a) regulate schools in the Gilmer-Aikin ISD.
  - b) were major educational reforms passed in 1949.
  - c) established an office of elected state superintendent of public instruction.
  - d) allowed for homeschooling of children.
  - e) required that money raised from the poll tax be spent on public education.

5. State courts tried to address the issue of equity in the funding of public schools
  - a) in the case of *Edgewood ISD v. Kirby*.
  - b) in the case of *Brown v. Board of Education*.
  - c) in the case of *San Antonio v. Rodríguez*.
  - d) by appointing Ross Perot to recommend changes to the property tax in Texas.
  - e) by abolishing the office of the State Board of Education.
6. Among the reforms in public education in Texas to improve the quality of education was
  - a) "No Pass, No Play."
  - b) "No Play, No Pass."
  - c) a shorter school year.
  - d) more flexible standards for accrediting schools.
  - e) tying teacher pay raises to student grades.

## Welfare Policy

### Describe the state's role in addressing poverty and how it is affected by national policies (pp. 397–403)

Texas has large numbers of people living in poverty who have received governmental assistance since the New Deal when the Social Security Act of 1935 was passed. Texas's most important welfare program was AFDC. President Lyndon Johnson's War on Poverty expanded social welfare programs for the poor in the 1960s. But compared with other states, welfare benefits remained low in Texas. Concerns over the problem of welfare dependency led to major reforms at the national level in 1996 when AFDC was replaced with TANF. Since these reforms, welfare rolls have declined, although poverty has remained a chronic problem among a significant portion of the Texas population.

### Key Terms

New Deal (p. 399)

Aid to Families with Dependent Children (AFDC) (p. 399)

Medicaid (p. 399)

Supplemental Security Income (SSI) (p. 400)

Temporary Assistance for Needy Families (TANF) (p. 402)

### Practice Quiz

7. Poverty among those over age 65 and those under age 18 in Texas
  - a) is almost nonexistent because of the welfare reforms of the 1990s.
  - b) is at a level above the national average.
  - c) is at a level below the national average.
  - d) was largely eliminated by the Social Security Act of 1935.
  - e) was largely eliminated by Lyndon Johnson's "War on Poverty."
8. The welfare reforms of the 1990s
  - a) resulted from a belief that the welfare policies of the 1960s had failed.
  - b) led to a 36-month limitation on welfare benefits in Texas.
  - c) led to a five-year ban on reapplying for benefits once benefits ran out.
  - d) expanded education and job-training programs.
  - e) all of the above
9. Two presidents who had major roles in welfare policy are
  - a) Franklin Delano Roosevelt and Lyndon B. Johnson.
  - b) Dwight Eisenhower and Herbert Hoover.
  - c) Harry Truman and John F. Kennedy.
  - d) Woodrow Wilson and Franklin Delano Roosevelt.
  - e) Lyndon B. Johnson and George H. W. Bush.

## Medicaid and Health Care Policy

### Explain why Medicaid in particular and health care policy in general have been so controversial in Texas (pp. 403–12)

One major welfare program that has become increasingly costly is Medicaid, a state-federal program that finances health care for the poor. Reforms instituted under the Obama administration have significantly expanded health care coverage for the poor. Texas, however, is not participat-

ing in that expansion. The rising cost of Medicaid is seen by many conservatives to be a growing threat to the financial integrity of the state's budget.

### Practice Quiz

10. Which of the following statements is *true* about Medicaid in Texas?
  - a) Medicaid is a program that was part of the New Deal.

- b) Texas policy makers make all the major decisions regarding the principles and standards directing Medicaid in Texas. There is no federal oversight.
  - c) Texas can apply for a waiver with the federal government, enabling it to create programs directed toward particular clients.
  - d) Medicaid employs doctors and nurses as members of the Department of Health and Human Services hired to provide medical care to the poor.
  - e) Medicaid is funded entirely by the state.
11. Managed care programs
- a) are not found in the Texas Medicaid program.
  - b) provide medical care to an increasing number of Medicaid clients in Texas.
- c) provide medical care to a small number of Medicaid clients in Texas.
  - d) provide direct fee-for-service care for Medicaid recipients.
  - e) have declined in popularity since the 1990s.
12. The Affordable Care Act
- a) was part of the War on Poverty.
  - b) merged Medicare and Medicaid into a single program.
  - c) will increase health insurance coverage to millions of Texans.
  - d) was declared unconstitutional by the Texas Supreme Court.
  - e) originated in the Texas legislature.

## Water Policy

**Consider the growing importance of policies related to water supplies in Texas (pp. 412–18)**

A looming threat to Texas's further economic development is access to freshwater. Over the next 50 years, water consumption is expected to vastly increase while existing supplies may decrease. Current water law in Texas adds complexity to the development of rational water policies for the state.

### Key Term

law of capture (p. 414)

### Practice Quiz

13. Which of the following is true?
- a) Texas water consumption will decrease as the population expands.
  - b) The idea of planning for future water provision has been rejected by the Texas state legislature as being too socialistic.
  - c) Water law in Texas distinguishes between surface water and ground water.
  - d) Providing water in Texas is primarily a federal responsibility.

- e) Current state water policies do not emphasize conservation.
14. The law rule of capture concerns
- a) property rights in underground percolating water.
  - b) the right of the state to regulate rivers and estuaries.
  - c) political control of the legislature by a particular policy interest.
  - d) the Corps of Engineers' various attempts to direct the flow of the Rio Grande.
  - e) the federal government's ability to override Texas water laws.
15. Which of the following is true?
- a) The Texas Supreme Court rejects the idea that the state can regulate surface water.
  - b) Texas is empowered by the state constitution to seize without compensation an individual's right to use underground water.
  - c) Aquifers provide a negligible supply of water to Texas.
  - d) Attempts to regulate groundwater access frequently come into conflict with property rights.
  - e) The Water Rights Adjudication Act of 1967 prohibits the state from regulating surface water permits.

## Recommended Websites

Texas Education Agency  
[www.tea.state.tx.us](http://www.tea.state.tx.us)

Texas Health and Human Services Commission  
[www.hhsc.state.tx.us](http://www.hhsc.state.tx.us)

U.S. Medicaid Website  
[www.medicaid.gov](http://www.medicaid.gov)

Texas Water Development Board  
[www.twdb.texas.gov](http://www.twdb.texas.gov)

In 2011, Michael Morton was released from prison based on new DNA testing in his case. He served nearly 25 years in prison before another man was arrested for the crime. DNA evidence has revealed a series of wrongful convictions, raising questions about criminal justice in Texas.



# Crime and Corrections Policy in Texas

**WHY CORRECTIONS POLICY MATTERS** On August 13, 1986, Christine Morton was beaten to death at her home in Austin. Her husband, Michael Morton, was charged with the murder and was prosecuted by Williamson County district attorney Ken Anderson. Michael received a life sentence for the murder, though he persisted in claiming his innocence and argued that some unknown intruder must have killed his wife after he had gone to work. The day after the murder, Christine's brother had found a bloodstained blue bandana near the crime scene, and he had turned it over to detectives. In 2005, Michael asked for DNA testing on several items including the blue bandana.

District Attorney Ken Anderson had by this time been appointed to a state district judgeship by Governor Rick Perry, who then appointed John Bradley, an assistant district attorney under Anderson, as the new district attorney. Bradley was known as a tough prosecutor, and he opposed the requests for DNA testing, claiming there was no way the testing would lead to some "mystery killer." Michael Morton's lawyers were, argued District Attorney Bradley, "grasping at straws." Morton's lawyers suspected that key evidence had been withheld in the case, and so they sought investigative materials in Morton's case. Bradley opposed those requests as well. In 2008, Bradley was forced to turn over the investigative materials, and Morton's defense lawyers discovered that Eric Morton, who was three years old at the time of his mother's murder, had seen the murder and described the killer as a "monster" who had red gloves and a big mustache. He also had said that the killer was not his father.

Defense lawyers discovered other information as well from the newly released files of the case. Police reports noted that there was a check to Christine that was cashed with a forged signature after her death, and there were also reports of fraudulent use of her credit card after her death. There were also neighbors' statements to police that a man was seen parked in a green van near the Morton home on several occasions before the murder. Contrary to a legal requirement that prosecutors share exculpatory materials, this information had not been provided to the defense lawyers.

Then, in 2010, DNA testing on the blue bandana was allowed. DNA was found on the bandana to belong to the victim, Christine, and to a man whose DNA was in a national database as a result of an arrest in California. That man was Mark Alan Norwood. On October 4, 2011, Michael Morton was released from prison—he had been convicted in 1987. Mark Alan Norwood was convicted of the murder of Christine Morton on March 27, 2013. He has also been indicted in another murder of a woman in 1988.

District Attorney Bradley was defeated for re-election in the Republican primary in 2012. His opponent, Williamson County Attorney Jana Duty, won with 55 percent of the vote and hammered Bradley for blocking the postconviction DNA testing for Morton. Bradley's resistance to that testing meant that Morton spent six additional years in prison.<sup>1</sup> Judge Ken Anderson was sentenced to 10 days in jail, a \$500 fine, and 500 hours of community service for criminal contempt in telling the Morton trial judge that he had no evidence favorable to Morton.<sup>2</sup> He has also lost his judgeship and law license. Morton is free and will receive financial restitution from the state for the quarter century that he spent in prison for a murder he did not commit. He was present when the Texas legislature passed a bill, the Michael Morton Act, which establishes a uniform policy for district attorneys to make material that can help defendants' cases available to defense attorneys.<sup>3</sup>

The Morton case highlights several aspects of the criminal justice system in Texas and raises questions about how it works. The defeat of District Attorney Bradley at the polls, the punishment and disciplining of Judge Anderson, and the passage of the Michael Morton Act demonstrate in stark terms how important the fair operation of the criminal justice system is to all residents in the state of Texas. In this chapter we will look both at the basics of the criminal justice system and at recent issues related to criminal justice in Texas.<sup>4</sup>

## chapter goals

- **Identify the major classifications of crime under Texas law and the types of punishments that may be imposed (pp. 425–27)**
- **Outline the procedural steps that occur after a person is arrested (pp. 427–34)**
- **Describe prisons and corrections policy in Texas (pp. 434–45)**
- **Explain why Texas's criminal justice system is often controversial (pp. 445–50)**
- **Consider recent proposals to improve Texas's criminal justice system (pp. 450–51)**

# Categorizing Crime in Texas

**Identify the major classifications of crime under Texas law and the types of punishments that may be imposed**

Crimes, of course, have different levels of seriousness, and punishments vary according to the legislature's classification of the seriousness of the crime. In the Texas criminal justice system, crimes are classified as felonies or misdemeanors. Table 13.1 shows the punishment range for the various classifications of crime in Texas.

## Felonies

A **felony** is a serious criminal offense that subjects a person to state prison punishment. Fines can be up to \$10,000, and prison punishment can range from six months to the death penalty. The right to vote, to have a gun, or to have certain occupational licenses can also be taken away, although in Texas voting rights for felons are restored after the sentence has been fully discharged. The most serious felony is capital murder, for which the penalty can be death or life imprisonment without parole. The next most serious felony is a first degree felony, for which the punishment can be 5 to 99 years in a state prison and a possible fine of up to \$10,000. First degree felonies include such crimes as aggravated assault on a public servant, aggravated kidnapping, aggravated sexual assault, and arson of a habitation. A crime defined as "aggravated" involves the use of some sort of weapon. A second degree felony is punished with a sentence of 2 to 20 years in state prison

**felony** a serious criminal offense, punishable by a prison sentence or a fine. A capital felony is punishable by death or a life sentence

**TABLE 13.1**

## Classification of Crimes

FELONY CRIMES	PENALTIES*
Capital murder	Death or life without parole
First degree	5 to 99 years in state prison; fine up to \$10,000
Second degree	2 to 20 years in state prison; fine up to \$10,000
Third degree	2 to 10 years in state prison; fine up to \$10,000
State jail	180 days to 2 years in a state jail; fine up to \$10,000
MISDEMEANOR CRIMES	PENALTIES*
Class A	No more than 1 year in county jail; fine up to \$4,000
Class B	No more than 180 days in county jail; fine up to \$2,000
Class C	Fine up to \$500

\*In many cases, probation is a possible substitute for serving jail or prison time. If jail or prison time is imposed, it is possible to obtain parole or early release.

SOURCES: "Texas Criminal Laws & Penalties," Texas Criminal Defense Lawyer, [www.mytexasdefenselawyer.com](http://www.mytexasdefenselawyer.com); Fred Dahr, "Crimes and Punishment in Texas State Court," [www.texasdefenselaw.com](http://www.texasdefenselaw.com).



*While possession of a small amount of marijuana is a misdemeanor, possession of larger amounts and selling drugs are felonies. Here, a Fort Worth police captain holds a press conference on an investigation into a drug-dealing ring.*

**misdemeanor** a minor criminal offense usually punishable by a small fine or short jail sentence

**probation** punishment where an offender is not imprisoned but remains in the community under specified rules and under the supervision of a probation officer

and a possible fine of up to \$10,000. Second degree felonies include such crimes as arson, bigamy, bribery, robbery, sexual assault, manslaughter, and possession of 50 to 2,000 pounds of marijuana. A third degree felony is punished with a sentence of 2 to 10 years in state prison and a possible fine of up to \$10,000. Examples of third degree felonies include a stalking conviction, a third driving while intoxicated (DWI) charge, or a third offense of violation of a protective order. The last category of felonies, state jail felonies, results in 180 days to 2 years in a state jail and a possible fine of up to \$10,000. Examples of a state jail felony include burglary of a building, DWI with a child as a passenger, forgery of a check, and possession of less than one gram of a controlled substance.

## Misdemeanors

**Misdemeanors** are less serious crimes, for which the fine is \$4,000 or less and the sentence is up to one year in the county jail. No rights such as the right to vote, the right to possess a weapon, or the rights to have some occupational licenses are lost as a result of a misdemeanor conviction. There are three classes of misdemeanors. The most serious is a class A misdemeanor, for which the fine is not more than \$4,000 and the sentence would not be more than one year in the county jail. Examples of class A misdemeanors include burglary of a vehicle, a second DWI offense, public lewdness, and possession of two to four ounces of marijuana. Class B misdemeanors are punishable with a sentence of up to 180 days in the county jail and a fine not to exceed \$2,000. Examples of class B misdemeanors are prostitution, terrorist threats, a first DWI charge, criminal trespass, and possession of two ounces or less of marijuana. Finally, class C misdemeanors are punished with fines not to exceed \$500 and involve such crimes as public intoxication, disorderly conduct, and a minor's possession of alcohol.

## Punishing Crime

In some cases, the judge may allow **probation**, or community supervision, rather than a jail or prison sentence, especially if it is the defendant's first conviction. Probation is a suspension of the jail or prison sentence with the understanding that the defendant will meet certain requirements that are imposed by the court. These requirements usually include reporting to a probation officer on a regular basis, holding a steady job, paying fines or restitution, and abstaining from alcohol or drug use. Generally, community supervision can run up to 2 years for misdemeanors and up to 10 years for felonies, although if a probationer is compliant with the rules of community supervision, it is possible to obtain early release from probation after serving one-third of the term.<sup>5</sup>

Violation of probation requirements can result in being sent to jail or prison to serve out the remainder of the sentence behind bars. Often prosecutors know that people with lengthy probation sentences will find it difficult to comply with all of the requirements. So, in cases where they believe it will be difficult to get a conviction, they might agree to a plea bargain allowing community supervision for a long period. They expect that the defendant will violate probation and spend time in jail or prison.

People who are sentenced to prison may be released on **parole** after a period of time behind bars. This decision to grant parole is made by the Texas Board of Pardons and Paroles. The agency is composed of a chair and six board members. Members of the board serve six-year staggered terms. The board makes recommendations about state prisoners' sentences, clemency, parole, and supervision. In order for the governor to alter a prisoner's sentence, a majority of the board must support the change. The board also determines which prisoners are to be released on parole, determines conditions of parole, determines revocation of parole, and recommends clemency matters to the governor.

People serving time for capital crimes are not eligible for parole, and generally those convicted of other violent crimes must serve at least half their sentence before being considered for parole. People convicted of nonviolent crimes must serve at least one-fourth of their sentences or 15 years, whichever is less, before being considered for parole. A complex formula is used by the Board of Pardons and Paroles that considers the crime, when it was committed, the time served, and the behavior of the inmate, so that no simple rule generally applies to offenders. If a prisoner is granted parole, he or she must comply with the requirements imposed on the parole or, like probation violators, he or she can be sent to prison for the remainder of the sentence.<sup>6</sup>

There are also sentencing enhancements that increase sentences or increase the classification of the crime in certain circumstances. Previous convictions can be used to enhance the punishment for a crime. For example, a DWI offense is a class B misdemeanor, but a second DWI is a class A misdemeanor, and a third DWI is a third degree felony. That means, of course, that a second or third DWI conviction will result in more serious penalties than will the first DWI offense.

Texas enhances sentences for repeat felony offenders as well. If a person who commits a third degree felony has a prior felony conviction, that person is sentenced for a second degree felony. Similarly, a second degree felony is punished as a first degree felony if the person had a prior felony conviction. A person convicted of a third felony can be sentenced to life imprisonment based on a "**three strikes**" **provision** in the penal code, and in some cases, such as sexual assault cases, two felony convictions are sufficient for life imprisonment.

**parole** the conditional release of an offender who has served some prison time, under specified rules and under the supervision of a parole officer

**"three strikes" provision** a law that allows persons convicted of three felonies (or in some cases two felonies) to be sentenced to life imprisonment

## ● The Criminal Justice Process

**Outline the procedural steps that occur after a person is arrested**

There are several procedural steps that occur after a person is arrested and prior to the determination of guilt or innocence. In Texas, as in most other states, this process may take months or even years. The major procedural steps are listed below.

### Arraignment and Posting Bail

Generally, when a person is arrested for a felony or misdemeanor and jailed rather than ticketed, he or she will be arraigned before a judge. At the arraignment, the charges will be explained to the accused, and he or she will be reminded of the due process rights—such as the right to remain silent and the right to an attorney. Generally, bail will be set at this point. In some cases, a date will be determined for the judge to review the charges against the defendant.



*After being charged, a defendant may be released on bail. If the individual does not have enough money to post bail, he or she may make arrangements with a bail bondsman, who posts bail in exchange for a nonrefundable payment.*

**bail** payment of money to the state as an assurance that an accused person who is released from jail pending trial will appear for trial; if the accused does not appear, the bail is forfeited

**grand jury** jury that determines whether sufficient evidence is available to justify a trial; grand juries do not rule on the accused's guilt or innocence

After being charged, a defendant may be released on bail until the trial. **Bail** is money that is provided by the defendant to assure his or her appearance in court. Usually, if a defendant does not show up for trial, the bail is forfeited. If the defendant appears as required, the bail money is returned. An individual may put up the entire sum for bail in order to be released from prison pending trial. Often, however, bail is more than the accused can pay, and so he or she will arrange with a bail bondsman to pay the bail in exchange for a nonrefundable payment that is often 10 percent of the amount but can be higher. A recent scandal involving bail bondsmen in Dallas County is leading to a reconsideration of how bail bonds are administered in that county. In Dallas, many bail bondsmen have had accused persons flee, but they have not forfeited the bail money for those persons. Additionally, many bail bondsmen can use property as security for their bonds and have gotten unusually high valuations on their property to support the bail bonds that they underwrite. This means that the property guaranteeing the bail does not actually equal the value of the bail, which means people are being released from jail for less than the amount of money that should be provided to guarantee their appearance at trial.

If a person cannot provide bail on the person's own or cannot pay a bondsman, the accused possibly can be released on personal recognizance, which is the accused's promise to appear. This process is most likely if the accused has ties in the community such as a family or employment and does not have a criminal record. If an accused person cannot provide bail, he or she usually will be held in jail pending the trial.

## Grand Jury Indictment

Although the procedure can vary, generally after arraignment, a felony case will be presented to a **grand jury** which consists of 12 persons who will hear the case to determine if there is sufficient evidence to hold the accused for trial. Grand juries do not find people guilty of a crime, but instead will vote a "true bill," meaning that they find probable cause that an accused person has committed the crime, or they will return a "no bill," meaning that they did not find probable cause. A person would, of course, be held for trial only if a grand jury voted a "true bill." A grand jury indictment is far from conviction, as all a grand jury determines is the existence of probable cause and usually the grand jury's decision is based only on a presentation made by the prosecutor. In a trial, to find a person guilty, there must be a finding of guilt "beyond a reasonable doubt," which is a demanding standard of proof for a prosecutor. At a trial the defense is also heard and has the opportunity to cross-examine witnesses and present the defense's version of events. The major criticism of the grand jury is that it usually hears only what the prosecutor chooses to let it hear and that it serves as a "rubber stamp" for the prosecutor's decision.

## Pretrial Hearings

After indictment for a felony, there will likely be a number of pretrial hearings in which the accused will formally plead guilty or not guilty, the trial is scheduled,

and various motions may be presented such as motions to move the trial or motions to exclude certain evidence. These hearings vary in length but in most cases are quite brief. In a criminal trial, a common motion is one to exclude certain evidence on the grounds that the evidence was seized in violation of the Fourth Amendment to the U.S. Constitution, meaning that it was illegally seized. In these instances, the judge examines the facts of the seizure and determines whether the evidence was legally seized and therefore can be used at trial.

Although plea bargaining can occur even during a trial and even after a finding of guilt but before sentencing, the prosecution and the defense will often discuss a punishment in exchange for a guilty plea and reach an agreement before the trial.

## Trial and Sentencing

If the case does go to trial, a defendant may waive the right to a jury trial and have the determination of guilt made by a judge. A jury trial may be waived in cases where a judge is perceived as more inclined to be favorable because of past decisions by the judge or because the crime is believed to be one that would inflame the emotions of jurors, resulting in less favorable treatment. A defendant may also have a jury trial but waive the right to sentencing by a jury so that the judge determines the sentence if there is a guilty verdict. In Texas, felony juries are composed of 12 people and misdemeanor juries are composed of 6. Decisions by criminal juries must be unanimous, and for both felonies and misdemeanors the standard of proof is "beyond a reasonable doubt." If the jury's decision in a felony case is not unanimous, the case results in a mistrial, and the prosecutor must decide whether to retry the defendant.

If the defendant is acquitted (found not guilty), the defendant is, of course, set free. If the defendant is found guilty, there will be a jail or prison sentence or probation and/or a fine. A defendant may appeal a determination of guilt, meaning that the defendant asks a higher court to reconsider the lower court's decision. Very minor criminal cases that are heard by municipal courts or by justice of the peace courts can be appealed to the county courts. More serious misdemeanors and felonies, however, are heard by county or district courts, and appeals from county courts or district courts will be to one of the 14 courts of appeal in Texas. An appeal beyond the Texas courts of appeal will be to the highest criminal court in Texas, the Texas Court of Criminal Appeals. In rare events where a question of U.S. constitutional or statutory law is raised, it may also be possible to appeal to the federal courts.

## Does the Criminal Justice System Create Criminals?

In some cases, the requirements of the Texas criminal justice system can be quite burdensome on individuals. For some people, complying with the rules of the process can be difficult and even financially impossible. One common crime in Texas, especially among younger offenders, is possession of less than two ounces of marijuana. Although Travis County treats this crime as the equivalent of a typical traffic offense where the police officer tickets the offender, in other Texas counties offenders will be taken to a local jail to be held until the bond hearing and until they can make bail. Commonly, the bail on such a charge would be \$500, which means that the full \$500 will have to be posted with the county, or a bail bondsman will have to be retained for roughly a \$50 nonrefundable fee. After bail is posted, the defendant will eventually have to go to trial in a county-court-at-law.

Some defendants hire an attorney, which may cost \$1,000 to \$3,000 for the entire process in this type of case; others may appear in court without an attorney. It would not be unusual for a first offense to result in at least a \$500 fine plus court costs, a sentence of 30 hours of community service, a sentence of 15 hours in an approved drug education course, and nine months' probation where the defendant would pay a fee for each visit to the probation officer and any drug testing required by the probation officer. After court costs, probation costs, and the fine, the offender will probably have spent about \$1,000 to \$1,200, excluding legal fees.

While on probation, the offender will not be allowed to use drugs or alcohol and will be subject to testing. There will be a required visit with a drug counselor and regular trips to a probation officer. Travel will be restricted. If the offender is in compliance, he or she will probably get early release from probation. If not, probation could be full length and jail time is possible. Additionally, because this is a drug case, the driver's license of the offender will be suspended for six months. If driving is necessary for the offender, in order to be in compliance, the offender must go to court and obtain an occupational driver's license in order to drive to and from work or care for family matters. Filing this paperwork can easily cost nearly \$300 not counting possible attorney's fees. Additionally, the offender will have to purchase an SR-22 automobile insurance policy for two years in order to drive legally. This is a high-risk insurance policy in which the insurance company reports directly to the state that the offender has automobile insurance coverage. This type of insurance can cost twice as much as a regular insurance policy. Thus, an arrest for possession of a marijuana cigarette can easily cost more than \$5,000 to \$7,000 overall in fines, court costs, insurance charges, probation fees, and attorney costs, not to mention time in jail after arrest and, if the marijuana was found in the offender's vehicle, towing and impoundment charges. Failure to comply with all probation requirements can lead to violation of probation and other criminal charges such as driving with a suspended license or driving without proper insurance.

The structure of the criminal justice process even for minor crimes such as a class B misdemeanor may deter future crimes because of the severity of punishment, but the cost and penalty structure also seems to encourage failure and further criminality by the offender.

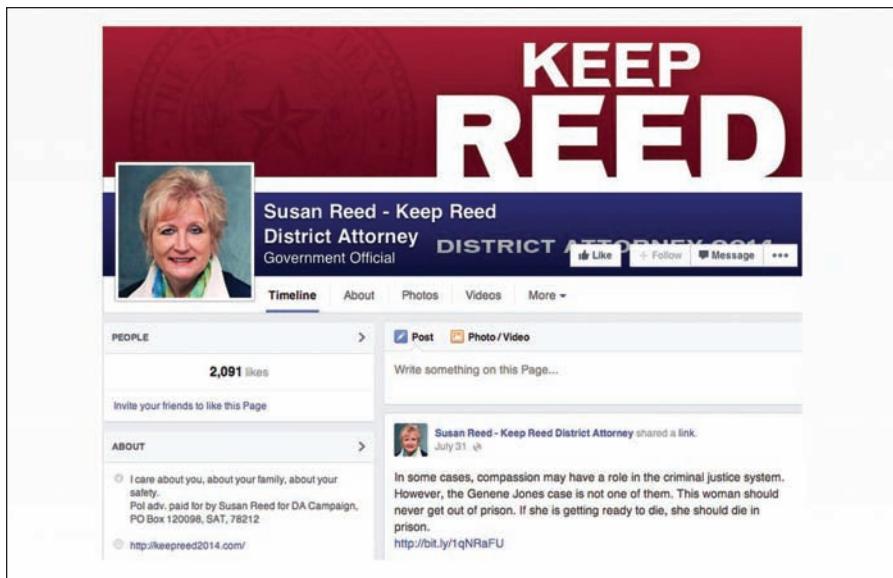
## Crime and Texas District Attorneys

Ordinarily when we think of the criminal justice system, we think of the police who make arrests and the Texas criminal courts that adjudicate those criminal cases. The most important actors in the Texas criminal justice system, however, are probably the prosecuting attorneys. Some counties have an elected county attorney whose office represents the state in misdemeanor criminal cases. The county attorney usually provides legal advice to the county commissioners as well, although generally the **county attorney** does not represent the county in civil cases. Counties with elected county attorneys also have elected **district attorneys**. They represent the state in felony cases. There are counties that have merged the offices of county and district attorney into a combined office that represents the state in both misdemeanor and felony cases. Often, when the offices of county and district attorney are merged, the combined office is called the office of the criminal district attorney.<sup>7</sup>

**county attorney** an elected official in some counties who prosecutes misdemeanor cases

**district attorney** public official who prosecutes the more serious criminal cases in the district court

In the urban counties in Texas, the office of the district attorney is huge, encompassing several hundred lawyers, investigators, and support staff. In August 2014, Dallas County's District Attorney's office employed 242 prosecutors, 72 investiga-



*Susan Reed's Facebook page shows how candidates for district attorney must emphasize how they are "tough on crime." Reed is a Republican from Bexar County.*

tors, and 128 support staff. In the most rural counties, the district attorney's office may be composed of only one or two lawyers. The head of every district attorney's office in Texas is an elected officer who runs under a party label. The term of office is four years. And as the chief prosecuting officer of the county or district, the district attorney has the responsibility for criminal prosecutions within the district attorney's jurisdiction. This means that the district attorneys generally campaign as officials who are "tough on crime," and they brag about high conviction rates. If they appear too lenient or their conviction rates are too low, political opponents will emerge who will accuse them of not doing their job appropriately. Because prosecutors often deal with people who have committed terrible crimes, they often see the worst aspects of humanity, and this also may lead to a "tough on crime" approach. A Parker County prosecutor wrote in a periodical widely read by other prosecutors of the mindset that prosecutors develop in the course of their work, "Like many of you, I've become jaded. The past nine years as a felony prosecutor has convinced me that an unending supply of humanity is willing to lie, cheat, steal, maim, or kill for the smallest reasons or for no reason at all. I had begun to think that my conscience could no longer be shocked, regardless of the facts and circumstances of any case I prosecuted."<sup>8</sup> Thus, the political pressures of the job coupled with the experiences one has in the job do not incline prosecutors to be sympathetic in their dealings with defendants.

Prosecutors must maintain high conviction rates in order to keep their positions. One way that high conviction rates are maintained is through plea bargaining. In a **plea bargain**, a prosecutor will meet with the accused or his lawyer and offer a sentence in exchange for a plea of guilty. The prosecutor's offer might involve reducing the charge, dropping some of the charges, or recommending a lighter sentence than the defendant might get at trial if found guilty. Plea bargaining is not only necessary politically for an elected district attorney to maintain high conviction rates but also crucial in managing the limited resources of the prosecutor's office and the courts. Prosecuting a case that goes to trial after a defendant pleads not guilty can cost thousands and even hundreds of thousands of dollars and uses

**plea bargain** a negotiated agreement in a criminal case in which a defendant agrees to plead guilty in return for the state's agreement to reduce the severity of the criminal charge or prison sentence the defendant is facing

up the time of employees. If plea bargaining were suddenly abandoned in Texas, the criminal justice system would quickly come to a halt as a result of a massive overflow of trials. There is often an incentive for defense lawyers to plea bargain as well. In many cases, defense lawyers can generate more income by representing numerous defendants (who often have limited resources) in plea negotiations than they can generate in a few time-consuming trials. And, of course, plea bargains can benefit defendants, even innocent defendants, in that they get an assured sentence that may be less than they would receive if they went to trial and were found guilty and sentenced by either a judge or a jury.

In almost all cases that involve plea bargaining, the judge with jurisdiction over the case will agree with the bargain made by the district attorney's office. For one thing, plea bargains reduce the crowded dockets of judges. Without a trial, the judge cannot be aware of the strengths and weaknesses of the state's case and so will generally recognize that the district attorney is in a far better position to determine the appropriate sentence.

The district attorney has prosecutorial discretion, which includes the power to charge or not charge a person with a crime. Even when a case is presented before a grand jury to determine if a criminal indictment should be issued, the grand jury is dependent on the prosecutor to present the evidence that may lead to an indictment, and a prosecutor has great discretion in choosing to go before a grand jury and in deciding to accept or not accept the decision of a particular grand jury. There have been several recent examples of the vast power of the district attorney in the state's criminal justice process. Prosecutors are powerful enough to even go after judges. In Collin County in late 2011, District Judge Suzanne Wooten was convicted of six counts of bribery, one count of money laundering, tampering with a government record, and engaging in an organized criminal activity. In order to get the indictment of Judge Wooten that led to her conviction, the district attorney had to go before at least six different grand juries. The first five grand juries did not decide to indict. It was an extraordinary example of prosecutors shopping for a grand jury that would finally indict someone they had targeted. After Wooten was convicted at trial, she faced the possibility of a 20-year sentence. Prosecutors then offered her a sentencing deal. She would get 10 years' probation, get a \$10,000 fine, and have to do 1,000 hours of community service. She took the deal even though it meant that she also had to agree not to appeal the conviction, which protected the prosecution from an appeal and from further controversy over whether the case was tainted by local politics.<sup>9</sup>

In another case, a Dallas County judge held a prosecutor in contempt for not following a court order. The judge had ordered the prosecutor to hand over the criminal histories of police officers, and the assistant district attorney had objected, claiming the district attorney's office was not required to do so and that federal law prohibited that information from being provided to defense lawyers. The assistant district attorney who refused was confined by being ordered to remain in the courtroom. Later the judge suspended her decision to hold the assistant district attorney in contempt and agreed to hold a hearing about the matter. However, prior to the hearing, the district attorney's office began (though it later dropped) a grand jury investigation of the judge for official oppression. In still another Dallas County case the district attorney was found in contempt by a judge when the district attorney refused to testify about allegations that he had indicted a person on mortgage fraud charges as a favor to an influential lawyer who was in a dispute with that person over legal fees. The district attorney's contempt charges were dismissed, but he has begun a grand jury investigation of the judge who found him in

contempt along with two other judges with whom the first judge consulted.<sup>10</sup> Most recently, the Dallas County district attorney has been accused of urging his assistant district attorneys to run for judgeships—at least six of them are running for state district judge and five of those are running against incumbent Democratic judges.<sup>11</sup> A clear message seems to be that even judges, who are commonly perceived as all-powerful within the legal process, should be cautious when dealing with the power of a district attorney.

In Harris County, a grand jury investigated the district attorney's office over allegations that assistant district attorneys who prosecute DWI cases knew about possible problems with the Houston Police Department's breath alcohol vehicles and violated the law by not telling defendants about those concerns. There had been charges that the breath alcohol tests conducted by the vehicles were not accurate because of overheating and electrical spikes. It was highly unusual for a grand jury to take on an investigation of a district attorney's office, but again, the power of the district attorney was evident in a report issued by the grand jury in 2012. The report claimed that the district attorney's office had investigated the grand jurors, two judges, and a political opponent of the district attorney. It also criticized a prosecutor for refusing to testify and the district attorney's office for "unexpected resistance." When the grand jury issued its one-page report criticizing the Harris County district attorney's office, the district attorney called a press conference and attacked the grand jury, claiming, "This politically motivated investigation, I would submit to you, is an outrage. It's an abuse of power and a corruption of the criminal justice system. For months our office has been hounded, and there have been a torrent of grand jury leaks."<sup>12</sup> When district attorneys can mobilize the power of the state to prosecute and attempt to intimidate judges and grand juries, it emphasizes their power in the criminal justice system and power over ordinary citizens they charge with wrongdoing.

**assigned counsel** private lawyers appointed by judges to provide legal representation for indigent defendants in serious criminal cases. The lawyer's fee is determined by and paid by the county

**public defender** salaried lawyer who is funded by the government or by grants who represents indigents in Texas in some counties or for some types of cases

## Crime and Criminal Defense

Persons accused of crime may represent themselves or may retain a criminal defense lawyer to represent them. Since the famous Supreme Court case *Gideon v. Wainwright*, persons too poor to hire a lawyer have had a constitutional right to have an attorney appointed to represent them in serious cases. In Texas, that representation will generally be provided by **assigned counsel**—that is, the judge will appoint a lawyer to represent the indigent accused of crimes. However, in some counties in at least some types of cases, a **public defender** will represent an indigent. A public defender is a lawyer who is paid a salary by the government to represent indigents. With assigned counsel, usually judges appoint a private attorney on a case-by-case basis for a fee that varies according to the county and the legal service performed. One concern with the assigned counsel system is that the fee paid by counties may be so small that the assigned attorneys do not do an adequate job in representing their indigent client. The issue of the quality of representation provided to indigents in Texas, however, is an important one because large numbers of cases and substantial amounts of money are spent in providing this representation. Table 13.2 specifies the 2012 costs of indigent defense in the state and the numbers of cases involving indigents whose lawyers are paid by the state.

**TABLE 13.2**

### Indigent Defense in Texas, 2013

State costs of indigent legal services	\$217,068,685
Number of noncapital trials	191,558
Number of misdemeanor Felony trials	228,357
Juvenile hearings	48,114
Appeals	3,093
Capital cases	487

SOURCES: Texas Indigent Defense Commission, "Indigent Defense Data for Texas," [www.tidc.tamu.edu/public.net](http://www.tidc.tamu.edu/public.net).



*Jim Bethke is executive director of the Texas Indigent Defense Commission. The commission helps counties maintain adequate legal services for criminal defendants in Texas with financial need.*

### for critical analysis

To what extent is there a class bias in the criminal justice system where it is poor people who get convicted and go to prison? Are there checks on the power of district attorneys? Should there be?

With the use of assigned counsel, different counties have different fees that they pay lawyers. Some of those fees seem remarkably inadequate. As examples, Bexar County pays appointed counsel \$75 an hour for trial work involving a state jail felony, \$100 an hour for a second degree felony, and \$125 an hour for a first degree felony. The first chair—the lead defense attorney—in a capital case in Bexar County gets \$150 an hour for trial time. Harris County pays \$300 a day for trial work in a state jail felony, \$400 a day for a second degree felony, and \$500 a day for a first degree felony. In capital cases a flat rate of \$35,000 is paid. Hunt County pays \$100 an hour, but in a capital case, the lead lawyer gets \$110 an hour with a minimum payment for all trial work of \$250.<sup>13</sup>

Public defenders are far rarer in Texas than are assigned counsel. However, there is a public defender program available for capital cases that is statewide and serves participating small and midsize counties. Altogether there are 19 public defender offices

in Texas serving 140 counties. Most of these offices are regional in scope and most have specialized caseloads such as mentally ill defendants, rural areas, appeals, or juvenile defendants. Interestingly the public defender program for capital cases has been evaluated by comparing the program with assigned counsel in capital cases. Several interesting findings emerged from the study. For one thing, in rural areas of the state, there are few lawyers qualified to handle capital cases. In an area of Texas spanning over 80,000 square miles, for example, there are only 13 private lawyers qualified for capital cases. For such an area, death penalty specialists who are public defenders are particularly useful. Additionally, death penalty public defenders have the necessary support team that would be difficult to organize in the more rural and isolated parts of the state. For many smaller counties, the cost of death penalty cases is prohibitive—defense costs alone often exceed \$100,000. Participating in a public defender program with death penalty specialists can greatly reduce costs for these counties. The public defenders were also more likely than assigned counsel to avoid a death penalty and were more likely than assigned counsel to get better dispositions for their clients overall.<sup>14</sup> Death penalty work is very specialized and complex, but the success of public defender programs over assigned counsel in death penalty cases suggests that an expansion of public defender programs in other areas may be beneficial to indigent defendants.

## ● Crime, Corrections, and the Texas Prison System

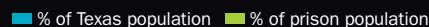
**Describe prisons and corrections policy in Texas**

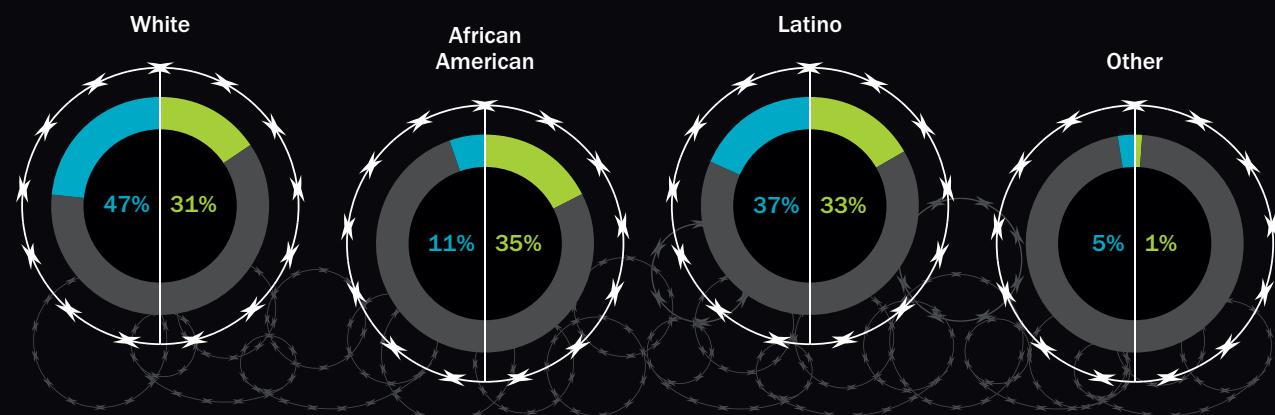
It has long been claimed that Texas does things in a big way. That is certainly true of its levels of crime and the way it deals with criminals. As of August 31, 2012, there were 152,303 offenders incarcerated in the state's prisons, state jails, and substance abuse facil-

ties.<sup>15</sup> These numbers exclude those incarcerated in municipal and county facilities. In 2012 the average cost per day for each bed in the state's correctional facilities was \$50.04.<sup>16</sup>

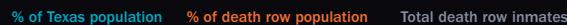
# Who Is in Prison in Texas?

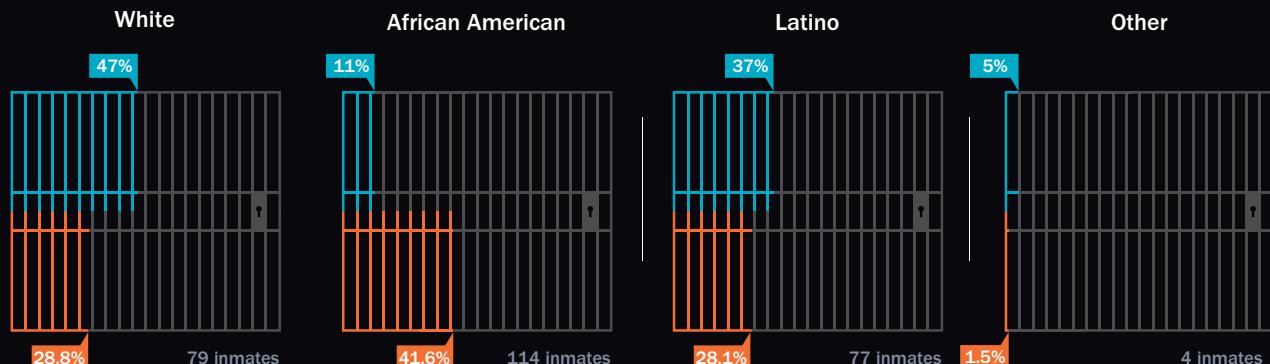
## Prison Population in Texas by Race, 2012





## Death Row Population in Texas, 2013





While Texas does not lead the nation in its incarceration rate, it is still the fifth highest in the United States. Who are the people in Texas's prisons? A disproportionately high number of African American men, for example, are serving in the state's prisons compared to their percentage of the population in the state. In fact, 7 out of every 10 prisoners in Texas is either African American or Latino.

SOURCES: Texas Department of Criminal Justice, Statistical Report 2012 (pages 10–11), [www.tdcj.state.tx.us/documents/Statistical\\_Report\\_FY2012.pdf](http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf); Texas Department of Criminal Justice, Gender and Racial Statistics of Death Row Offenders, [www.tdcj.state.tx.us/death\\_row/dr\\_gender\\_racial\\_stats.html](http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html) (accessed 5/16/14).

### for critical analysis

- The Texas population is 37% Latino, 11% African American, and 47% white. How does the Texas prison population compare?
- What might help explain the racial/ethnic makeup of the prison population in Texas?

## History of the Prison System

Shortly after Texas joined the Union, construction was authorized for a state penitentiary in Huntsville. The 225-cell facility opened in 1849. It confined prisoners in single cells at night and congregated inmates during the day to work in silence. From 1870 to 1883 the entire prison system was leased to private contractors who used the labor of inmates in exchange for providing maintenance and security for prisoners. After 1883 convicts in the Texas prison system were leased to railroads, planters, and others who provided the prisoners with food and clothing and paid a stipend to the state. These leasing arrangements were abandoned in 1910 as a result of scandals and abuses of the system.<sup>17</sup>

Although Texas moved to a state-run system, abuses continued. In 1924 an investigation of the system found cruel and brutal treatment of prisoners, inefficient management, and inadequate care of inmates. That investigation led to the creation of a state prison board, which supervised the work of a general prison manager. Still, however, the abuses continued. By the mid-1940s the Texas prison system was considered one of the worst in the United States. In 1974 the Joint Committee on Prison Reform submitted findings to the legislature that were very critical of the Texas prison system. The committee found fault with numerous aspects of the prison system's operation—from living and working conditions for inmates to classification of inmates to medical care to staff training. Still, no significant reforms were made to the system.<sup>18</sup>

The event that had the most dramatic effect on the operation of the Texas prison system in modern times was a federal court case, *Ruiz v. Estelle*.<sup>19</sup> Lawsuits filed by prisoners are nothing new. During the tenure of W. J. Estelle, Jr., the prison director from 1973 to 1983 and the defendant in the *Ruiz* case, prisoners filed 19,696 cases in the federal courts in Texas, a caseload amounting to about 20 percent of the federal court docket in Texas during that period.<sup>20</sup> However, the *Ruiz* case was

*David Ruiz (right) and other Texas prison inmates filed a class-action lawsuit demanding stronger rights for prisoners. The case resulted in changes in how Texas prisons operated.*



exceptional. It was a class-action suit on behalf of inmates that began in 1972, and it focused on issues of crowding in the system, security and supervision, health care, discipline, and access to the courts. In 1980 the federal court concluded that inmates' constitutionally guaranteed rights had been violated. Texas joined several other states in having its prison system declared unconstitutional.

The result was the appointment by the court of a special master, a court officer, to oversee the Texas prison system to eliminate the constitutional problems such as overcrowding, improper supervision of inmates, and improper care of inmates. There was a massive reform of the system, one that had to be imposed by the federal courts, because the state seemed unwilling or unable to reform its own prison system. Federal court supervision of the prison system ended in 2002.

For a long time, many in Texas government were resistant to federal court supervision of the prison system, arguing, for example, that the *Ruiz* decision involved federal court judicial activism and interfered with the rights of the state. In order to reduce the overcrowding in state prisons to comply with *Ruiz*, the state also encouraged the early release of prisoners, some of whom reentered society and committed more crimes. *Ruiz* did, however, help turn the criminal justice system into a major public policy issue in Texas.

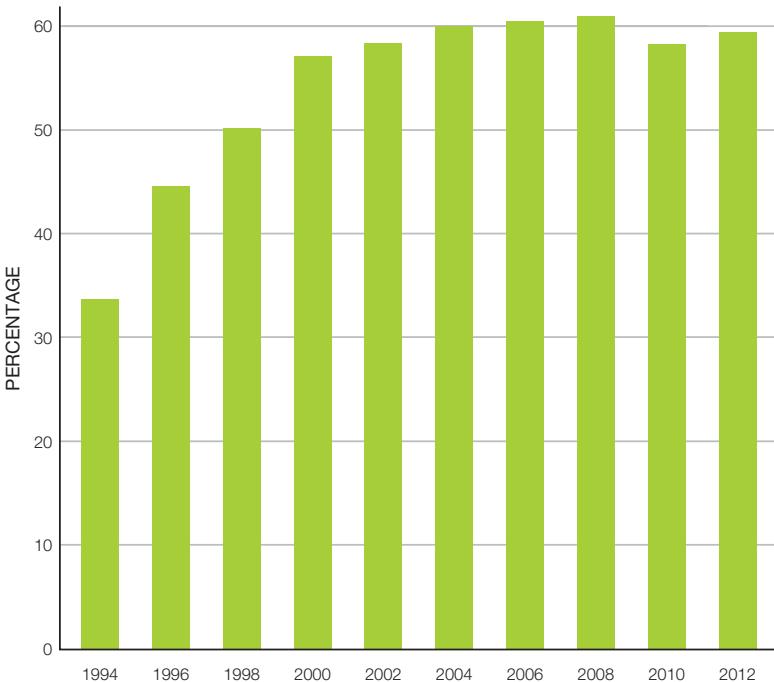
## The Prison System Today

The Texas prison system is operated by the Texas Department of Criminal Justice. This agency is run by a nine-member board that is appointed by the governor, and board members serve staggered six-year terms. The board hires an executive director to lead the sprawling agency, and it is responsible for developing the rules and regulations that govern the entire state prison system.<sup>21</sup>

There have been dramatic increases in the costs of prison construction and prison maintenance in Texas over time. Operating costs of Texas prisons rose from \$147 million in 1982 to \$609 million in 1990 to nearly \$1.5 billion in 1996 and over \$2.8 billion in 2008. In 2011 the total operating budget for the Texas Department of Criminal Justice was \$3.06 billion. Despite a steady increase in prison operating costs, prison construction costs have varied from year to year. In 1982, \$126 million was spent on prison construction, but in 1990 only \$24 million was spent. The greatest period of prison construction was from 1991 through 1995. During those years, nearly \$1.4 billion was spent on prison construction. In 2011 prison construction costs were \$62.4 million.<sup>22</sup> In the wake of estimates in 2007 that Texas would need 17,000 new prison beds costing \$1 billion by 2012, the Texas legislature increased the capacity of prison alternatives such as drug treatment and halfway homes, much cheaper alternatives to prison.<sup>23</sup>

Until 2007 when the Texas legislature began to seriously address alternatives to imprisonment, the state government had significantly increased the incarceration of offenders by building more prisons. In 2011, however, for the first time in Texas history, the state actually closed a prison—the century-old Central Unit in Sugarland. State leaders also announced plans to close three juvenile detention centers with its move toward rehabilitation, crime prevention, and cost-cutting. Two other prisons closed on August 31, 2013, the Dawson State Jail and the Mineral Wells Pre-Parole Transfer Facility.<sup>24</sup>

From 1976 to 1990 the rate of property crime in Texas rose 38 percent, and the violent crime rate rose 113 percent. During the same time period, prison expansion did not keep up with the increase in the crime rate. Instead, generous early-release

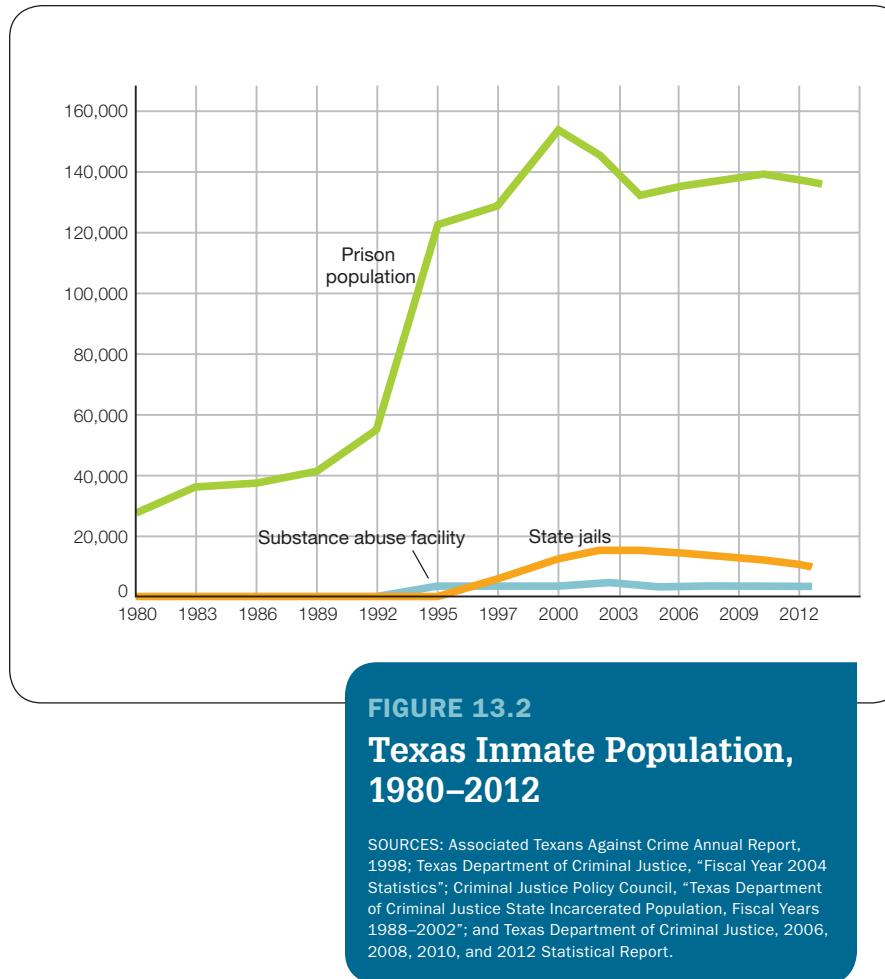


**FIGURE 13.1**  
**Percentage of Prison Sentence Served by Texas Inmates**

SOURCES: Criminal Justice Policy Council, "Percentage of Prison Sentence Served for All Release Types, Fiscal Years 1994–2004"; Texas Department of Criminal Justice, Fiscal Year 2006 Statistical Report; Texas Department of Criminal Justice, Fiscal Year 2008 Statistical Report; Texas Department of Criminal Justice, "Fiscal Year 2011 Operating Budget and Fiscal Years 2012–2013 Legislative Appropriations Request," August 16, 2010. Texas Department of Criminal Justice, Fiscal Year 2012 Statistical Report.

policies were used to move prisoners out of jail to allow room for newly convicted inmates. With prison expansion, however, early-release policies were reduced. In 1990, for example, 38,000 prisoners were given early release from prison; however, even with a much larger prison population in 1997, only slightly more than 28,000 prisoners were given early release.<sup>25</sup> The steady lengthening of sentences is shown in Figure 13.1. In 1994 prisoners on average were released after serving one-third of their sentences. In 2012 prisoners were serving about 59.6 percent of their sentences before being released. Inmates at state jails served on average 98.5 percent of their sentences.<sup>26</sup>

As shown in Figure 13.2, the Texas prison population has soared, especially since about 1992. In 1980, at the time of the *Ruiz* case, the Texas prison population consisted of fewer than 30,000 inmates. A decade later, in 1990, there were slightly more than 49,000 inmates in Texas prisons. Only seven years later, in 1997,



there were almost 130,000 inmates in state prisons. In 2000 the number of inmates in state prisons had jumped to over 150,000, dropping back to about 145,000 in 2002, to 139,316 in 2010, and to 137,095 in 2012. Put another way, there were more than 4.57 inmates in state prisons in 2012 for every inmate in state correctional facilities in 1980.<sup>27</sup>

For much of the 1980s the rates of violent and property crime in Texas were especially high. By the mid-1990s, however, those rates had dropped. Some observers argued that the reduction in the crime rate is caused by the increased incarceration of offenders.<sup>28</sup> There may also be other causes, however. Other analysts have suggested demographic change determines the size of the prison population. The most prison-prone group in society is males between the ages of 20 and 29. If that demographic group is large, then we would expect the prison population to also be large.<sup>29</sup> Indeed, 92.5 percent of Texas prisoners are male, and the average age of prisoners is 38.1 years.<sup>30</sup> Of course, changes in laws and treatment practices also affect the crime rate and the incarceration rate. Long sentences for habitual criminals, for example, are relatively new, as are long sentences for the use of a firearm in the commission of a crime.<sup>31</sup> The number of prison inmates per 100,000

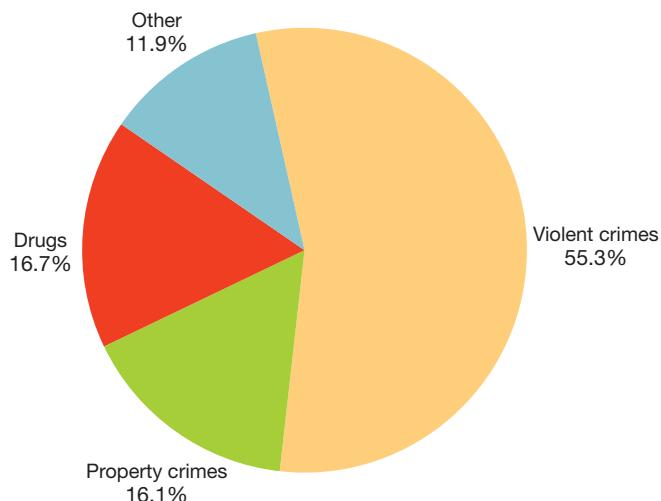
population in Texas in 2012 was 601. The average for all states was 480. California and New York, the closest states in population to Texas, incarcerate 351 per 100,000 population and 276 per 100,000, respectively. Only Oklahoma with an incarceration rate of 648 per 100,000 population, Alabama with an incarceration rate of 650 per 100,000, Louisiana with an astronomical incarceration rate of 893 per 100,000 population, and Mississippi with an incarceration rate of 717 have a higher rate of incarceration than Texas. (See the “Texas and the Nation” graphic.) Texas had 10.4 percent of the nation’s total state prison population in 2011. Neither the national government nor any other state had more inmates in its prison system than Texas.<sup>32</sup> In spite of its high rate of incarceration, Texas ranked high in crime. A study of crime rates nationwide found that Texas in 2011 ranked 38 in the United States in crime where a ranking of 1 is the least crime and 50 is the greatest crime ranking.<sup>33</sup>

As Figure 13.3 shows, Texas imprisons mostly violent offenders. In 2012, 55.3 percent of Texas inmates had been convicted of violent offenses and 16.1 percent had been convicted of property offenses. Nearly 17 percent of the inmate population was convicted of drug offenses.<sup>34</sup> Whether imprisonment for drug offenses is an appropriate remedy for the drug problem has been debated, but it is interesting to note that almost one in five people in Texas prisons are there because of drugs.

It is especially difficult for felons to gain legitimate employment after their release—so much so that the federal government offers a large tax credit to employers who will give jobs to people who have been convicted of a felony and have served their sentence. This difficulty in finding legal employment makes it more likely that former prisoners will commit further crimes. Another problem that inmates face once they leave prison is that the average sentence in a Texas prison is 19.3 years. After serving substantial time in prison, it is hard to readjust to life in the free world, and support structures such as family members have often died or removed the inmate from their lives. Still another difficulty is that 44.3 percent of inmates in Texas prisons do not have a high school diploma or GED and their

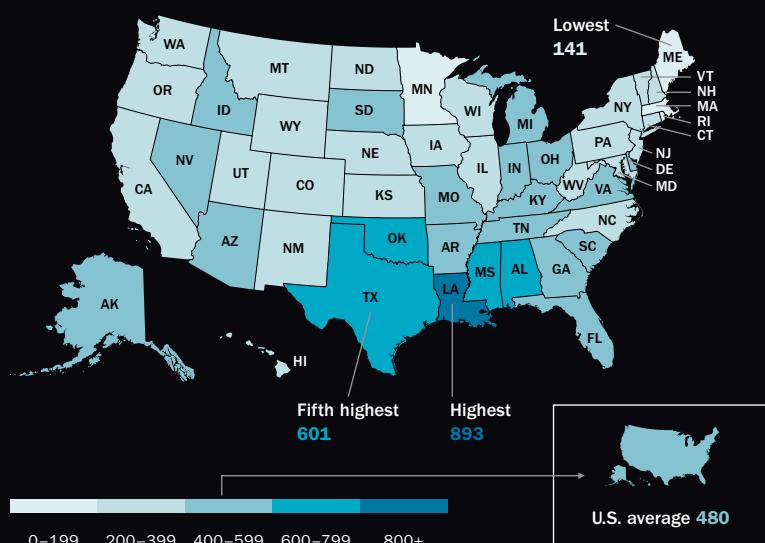
**FIGURE 13.3**  
**Prison Population by Offense, 2010**

SOURCE: Texas Department of Criminal Justice, FY 2010 and 2012 Statistical Reports.



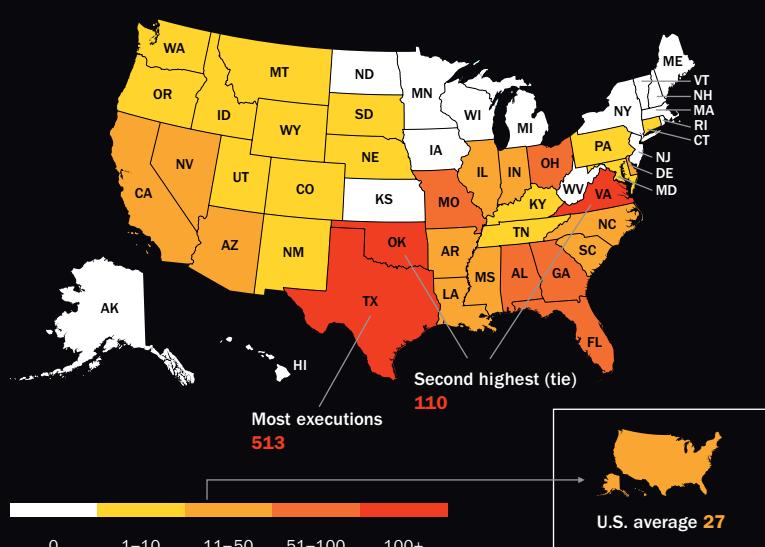
# How Does Criminal Justice in Texas Compare to Other States?

**Incarceration Rate, 2012** (per 100,000 residents)



The Texas criminal justice system is known for high incarceration rates. In 2012, 601 out of every 100,000 Texans were sentenced to time in prison, and rates in other recent years are similar. Texas is also known for its harsh punishment of criminals, especially the use of the death penalty. Since the U.S. Supreme Court reinstated the death penalty in 1976, Texas has executed 513 people: four times more than any other state.

**Total Executions, 1976-2014**



SOURCES: Incarceration rate: The Sentencing Project, [www.sentencingproject.org/map/map.cfm](http://www.sentencingproject.org/map/map.cfm)  
Total executions: Death Penalty Information Center, Number of Executions by State and Region since 1976, <http://deathpenaltyinfo.org/number-executions-state-and-region-1976> (accessed 5/14/14).

## for critical analysis

1. Which elements of Texas political culture or public opinion may contribute to the willingness to use the death penalty and to have high incarceration rates?
2. Examine the regional patterns on the two maps. Do certain regions of the country have higher incarceration rates and death penalty usage? What do you think explains these regional patterns?



# Concealed Weapons on Campus

**In January 2013, students at** Lone Star College in North Harris County, Houston, were stunned when a gunman opened fire on the campus and injured four people. While this incident resulted from a dispute between two men and was not an indiscriminate act of violence, it nevertheless raised the contentious policy debate on whether concealed weapons should be allowed on Texas campuses. Just two years earlier, in May 2011, the Texas Senate had discussed legislation sponsored by Senator Jeff Wentworth (R-San Antonio) to allow the carrying of concealed handguns on public college campuses. Officials at the University of Texas and Texas A&M argued that they did not want the law to be implemented on their campuses. Some student groups organized on both sides of the issue. Eventually in 2013, the legislature passed a law allowing guns on campus if authorized by the campus and allowing guns to be stored in vehicles.

The politics of gun control continues to be a polarizing topic in the United States, as it involves tough trade-offs between liberty, public safety, public law, and collective security. Many people already have their minds made up on the subject of gun legislation and are unwilling to consider viewpoints different from their own. As the topic changes from laws regulating the constitutional “right to keep and bear arms” to laws expanding access to firearms and the “right to carry” firearms, the issue becomes even more controversial. These divergent viewpoints are evident in the reactions to tragic events such as shooting massacres.

On April 16, 2007, Seung-Hui Cho shot 49 people—killing 32—on the campus of Virginia Tech. In the aftermath of the shooting, police determined that Cho had illegally bought the firearms after having been declared mentally ill and “an imminent danger

to self or others” over one year prior to the shootings. As a result, a “mental health loophole” was identified in the firearms background check process, and federal and state governments passed legislation seeking to close the loophole.

Since the April 2007 Virginia Tech shooting, concealed carry advocates have expressed concerns about student safety, offering that students, faculty, and staff should have the right to carry weapons on college campuses. Proponents of carrying concealed handguns on college campuses have argued that firearms have not had a negative impact on learning; some point to Utah’s 2004 concealed carry law, which allows the possession of weapons on college campuses and in student housing, as a model. However, while most people might agree that an individual has a right to self-defense in his or her own home, many dispute whether student housing on college campuses should be included.

Opponents of carrying concealed handguns on college campuses have argued that the presence of concealed weapons in a classroom would be disruptive to the learning environment and represent a safety hazard. They



claim that the risk of an accidental or an intentional discharge on campus increases if more firearms are present. Moreover, opponents often contend that institutions of higher learning are not appropriate venues for any kind of weapon. They argue that concealed handgun carriers may lack the necessary training to defend themselves, let alone others, while proponents argue that with law enforcement several minutes away, concealed handgun carriers can potentially defend themselves and others.

Are college campuses with “gun-free zones” some of the safest places in Texas, or do they represent a prime place for criminal predators seeking easy unarmed prey in “victim zones”? Do more guns lead to more crime or enhance collective security? Would you feel more or less secure with the prospect that your fellow students may be legally concealing handguns?

## critical thinking questions

1. If opponents and proponents of concealed weapons on campus cannot agree, how should lawmakers determine what policy to pass? Can you think of a compromise that might be proposed?
2. Do you think allowing concealed weapons would make your campus safer or less safe? Can you find any data that support your view?

average educational achievement is slightly less than 8 years.<sup>35</sup> That lack of education makes adjustment to life and legitimate employment outside of prison an extremely difficult experience.

For persons under community supervision who were convicted of felonies, from 2001 to 2012, the average percentage of persons whose community supervision was revoked was 15.2 percent. Almost everyone whose community supervision was revoked was sent to prison or state jail. In 2012 there were 44,608 new admissions to Texas prisons and 13,523 were persons whose community supervision was revoked. Of the 23,226 new admissions to state jails, 9,926 were persons whose community supervision was revoked. Of those revocations, about 45 percent were because of a new arrest or conviction. The rest were because of violations of rules of community supervision—such as consumption of alcohol or drugs or failure to make required payments.<sup>36</sup>

During the administration of Governor Ann Richards (1991–95), there was recognition that very large proportions of prisoners were involved with alcoholism, drug addiction, and drug-related crimes. An effort was made to create alcohol- and drug-abuse treatment programs within the prison system to help alleviate these problems, although the problems remain severe. In 2007 the Texas legislature again spent resources on prison alternatives, which have helped reduce the need for new prison construction.

## The Death Penalty

Political scientists Paul Brace and Brent Boyea found that judges tend to affirm death penalty sentences in states where judges are elected and where there is strong public support for the death penalty.<sup>37</sup> This may explain why Texas appellate courts are so supportive of the death sentences imposed by juries at the trial court level. Texas judges are elected and polls show strong public support in Texas for the death penalty. One 2012 Texas poll, for example, showed that 73 percent of Texas voters either somewhat or strongly supported the death penalty and only 21 percent were opposed.<sup>38</sup> Texas has led the nation in the number of executions since the death penalty was reinstated in 1976. Of the top 15 counties in the United States that have issued death sentences since 1976, 9 of the counties have been in Texas (see Table 13.3).<sup>39</sup>

Since 1977 lethal injection has been the means for execution in Texas. The first execution by lethal injection was on December 7, 1982. Beginning in 1923 the state ordered that executions be carried out in Huntsville by electrocution. Prior to that time, each county was responsible for carrying out executions.<sup>40</sup> In March 2011, Texas replaced sodium thiopental with pentobarbital in the three-drug execution cocktail that is used for lethal injection. That was because the maker of sodium thiopental quit producing the drug after

**TABLE 13.3**  
**U.S. Counties with the Most Executions, 1976–2012**

COUNTY (LARGEST CITY)	STATE	EXECUTIONS
Harris (Houston)	Texas	116
Dallas (Dallas)	Texas	50
Oklahoma City (Oklahoma City)	Oklahoma	38
Tarrant (Fort Worth)	Texas	37
Bexar (San Antonio)	Texas	36
Montgomery (Conroe)	Texas	16
Tulsa (Tulsa)	Oklahoma	15
Jefferson (Beaumont)	Texas	14
St. Louis (Florissant)	Missouri	13
St. Louis City (St. Louis)	Missouri	12
Brazos (College Station)	Texas	11
Maricopa (Phoenix)	Arizona	11
Nueces (Corpus Christi)	Texas	11
Pima (Tucson)	Arizona	11
Potter (Amarillo)	Texas	11

SOURCE: Data are from the Death Penalty Information Center, [www.deathpenaltyinfo.org/executions-county](http://www.deathpenaltyinfo.org/executions-county).



In 1998, Karla Faye Tucker became the first woman executed in Texas since 1863. She was convicted of murder in 1983.

there were international protests over its use as an execution drug in the United States. Although there is controversy over this practice, at least for now Texas is using a single dose of pentobarbital because of drug shortages for the three-drug execution cocktail. Texas executed 515 people from 1976 through 2013. As of July 2013 there were 282 people on death row.<sup>41</sup> In Texas, one is subject to the death penalty for the murder of a public safety officer, fireman, or correctional employee; murder during commission of a kidnapping, burglary, robbery, aggravated rape, or arson; murder for hire; multiple murders; murder during a prison escape; murder by a prison inmate serving a life sentence; or murder of a child under the age of 6.

A stay on death row can be a lengthy one, even in Texas. The average time spent on death row prior to execution is 10.6 years, although the time varies considerably. One inmate under a death sentence waived his appeals and spent only a little more than eight months on death row prior to execution. On the other hand, David Lee Powell

spent 31 years on death row prior to being executed in 2010.<sup>42</sup> A death sentence carried out in February 1998, however, initiated the greatest controversy over the death penalty. The case of Karla Faye Tucker, a convicted ax murderer, generated national demands for clemency. Tucker was widely believed to have undergone a religious conversion after her 1983 conviction. She was also attractive and articulate and was the first woman in modern times condemned to be executed in Texas. Supporters of her execution argued that her gender, appearance, articulateness, and possible religious conversion were irrelevant to the fact that she was a convicted murderer who should be treated like others in similar situations.

One of the issues involving the death penalty is whether all offenders are treated in the same way. There is a racial and ethnic disparity such that minorities, especially African Americans, are disproportionately represented on death row. Currently 110 death-row inmates are African American, 84 are Hispanic, 84 are white, and 4 are classified as "other."<sup>43</sup>

Since 1982, 225 whites have been executed, 187 African Americans, 86 Hispanics, and 2 of "other" racial and ethnic groups.<sup>44</sup> It may be that there is a bias in the criminal justice system such that minorities are disproportionately subject to the death penalty, although a counterargument is that the murder rate is higher among minorities. When the issue of whether there was racial bias in the imposition of the death penalty was presented to the U.S. Supreme Court, the Court refused to strike down the death penalty on the basis of statistical generalizations—essentially saying that there had to be evidence of racial bias in the imposition of the death penalty in the specific case presented to the Court.<sup>45</sup>

The Texas Board of Pardons and Paroles votes on clemency for death-row inmates. The board was originally considered to be a remedy for possible corruption in clemency granted by the governor. Prior to 1936 the governor essentially had unlimited power to grant clemency. This power was often abused, especially by Governor Miriam Ferguson, who granted 4,000 requests for commutations of sentences in 1922 alone. It was widely believed that payments were made for many of these acts of executive clemency. In reaction, a constitutional amendment was passed in

1936 that charged the board with giving the governor recommendations on clemency. Without such a recommendation, the governor can only grant a single 30-day reprieve. No other state so limits the powers of the governor.

In August 2007 the board recommended commutation of Kenneth Foster's sentence to be executed—only seven hours before Foster was scheduled to die. Governor Perry commuted Foster's sentence to life imprisonment about one hour later.<sup>46</sup> Foster's much-publicized case seemed to challenge two aspects of the death penalty in Texas: (1) Foster had been tried simultaneously with the other capital defendants rather than getting a separate trial, and (2) he was the getaway driver in the crime and not the actual shooter in the robbery and murder. Simultaneous trials with other defendants in murder cases can be a huge disadvantage for a defendant like Foster who was not the shooter but who is being tried with the shooter. Texas also has the law of parties—a person involved in a crime that leads to a murder is guilty of murder even though that person is not actually the person who committed the murder.

Though Texas has been called the nation's "Death Penalty Capital," in recent years the number of death penalties imposed in the state has dropped. One study of the Texas death penalty compared its imposition from 1992 to 1996 with its imposition from 2005 to 2009 and noted there was a 70 percent drop in death sentences. One explanation was a decline in capital murder convictions over this time period, and another was that beginning in 2005, Texas juries could impose a sentence of life without parole. Additionally, U.S. Supreme Court decisions now prevent execution of juveniles or the mentally retarded. The cost of death penalty prosecutions has greatly reduced death penalty prosecutions in all but the 12 largest counties. Finally, Harris County was the major county for imposing the death penalty in Texas. Because of changes in district attorneys there, scandal in the Houston crime lab, and improvements in the quality of capital defense work in Houston, there has been a huge drop in the imposition of the death penalty in Harris County.<sup>47</sup>



*Kenneth Foster's father and wife celebrate after hearing that Governor Perry had commuted Foster's sentence only hours before Foster was to receive the death penalty. Foster was convicted of murder despite only driving the getaway car.*

### for critical analysis

Should prison be only for violent offenders? Will Texas ever eliminate the death penalty? Why or why not?

## ● The Integrity of the Texas Criminal Justice System

**Explain why Texas's criminal justice system is often controversial**

In recent years, numerous controversial issues and cases have raised questions about how criminal justice works in Texas. Earlier in the chapter we discussed concerns with prosecutorial abuses of power and with the difficulty some people may have in complying with the rules of the criminal justice process. Here, we consider whether aggressive use of the death penalty, wrongful convictions, and flawed evidence procedures are compromising the integrity of the criminal justice system. At the end of this section, we consider some of the reforms that have been attempted and proposed as ways to address concerns about criminal justice in Texas.

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## How Fair Is the Criminal Justice System?

Ideally, the criminal justice system should hold the guilty accountable and the innocent should be protected from punishment. That has not always been the case in Texas. There seem to be problems with fairness in the implementation of the death penalty, and there are a number of cases where overzealous police and prosecutors have punished innocent parties. The question is how common are those abuses and what, if anything, can be done about them.

**The Death Penalty and Wrongful Convictions** Texas has been more aggressive than any other state in imposing the death penalty. Yet as Texas continues to execute people, in 2000 Illinois suspended the death penalty after revelations of a number of wrongful convictions. New Jersey, North Carolina, and California are all considering moratoriums on the death penalty. Since 1989, 280 people wrongfully convicted of crimes in 34 states have been cleared as a result of DNA testing, including 17 people who served time on death row. The average prison time served by an exoneree was 13 years.<sup>48</sup> In the summer of 2005, Supreme Court Justice John Paul Stevens publicly noted that DNA evidence had shown that a number of death sentences had been erroneously imposed.<sup>49</sup>

This concern about the death penalty has even affected the internal dynamics of the Texas Court of Criminal Appeals, which is the state's court of last resort for death penalty appeals. Judge Tom Price challenged presiding judge Sharon Keller in the Republican primary in 2006 in part because he thought Judge Keller was too strict in her support of the decisions of trial courts in death penalty and other criminal cases. The Price-Keller primary battle reflected an emerging concern in Texas that the state has been too free in its imposition of the death penalty and too unquestioning of the evidence that leads to the imposition of criminal punishments.

Texas is the home of more verified wrongful convictions than any other state. As of July 12, 2013, 49 exonerations have occurred in Texas as a result of DNA testing.<sup>50</sup> Dallas County has emerged as the national leader in DNA exonerations of wrongfully convicted men. Twenty-four men in Dallas County were exonerated by DNA evidence.<sup>51</sup>

**Problems with Police Procedures and Evidence** Concerns about wrongful convictions are often related to the methods police and prosecutors use to convict suspects. One reason for the large number of DNA exonerations in Dallas County is simply that Dallas County has a policy of preserving physical evidence for lengthy periods of time, but others point to a pattern of convictions based on eyewitness identification with little or questionable forensic evidence. Many of the wrongfully convicted were prosecuted during the administration of District Attorney Henry Wade, whose office was known for high conviction rates. Critics claimed his office prized those high conviction rates above all else.<sup>52</sup>

Immediately after he became Dallas County district attorney in 2007, Craig Watkins did something no other Texas district attorney had ever done: he created a Conviction Integrity Unit in his office to investigate postconviction claims of actual innocence, to identify valid claims, and to then take appropriate action. Interestingly, with the exception of one case, every exoneration case that was investigated by the Conviction Integrity Unit involved mistaken eyewitness identification. At some point before their trial testimony, each eyewitness became certain that the

innocent man was the criminal. In most cases, the innocent man was in the photo spread or the police lineup even though there was no specific reason to believe that he was the criminal. Being wrongly chosen in the lineup or photo spread by the eyewitness became the evidence against the innocent man. In many cases that was the only evidence against the innocent man, and in every case it was the most compelling evidence against him. That has led to a suggestion that there needs to be some minimum threshold of probability that those displayed in the photo spread or the lineup actually committed the crime. Additionally, it has been suggested that pretrial identification procedures be done in a way recognized by scientific best practices rather than in a haphazard, potentially unreliable way.<sup>53</sup> For example, with photo spreads, eyewitnesses are provided six photographs and asked if they recognize anyone in the photographs. However, sometimes those in the photographs are wearing distinguishing clothing or they are smiling or posed differently. One case examined by the Innocence Project of Texas, an organization that works on claims of innocence of those who have been imprisoned, involved a photo spread of six persons. A rape victim had told the police that the rapist was wearing a blue windbreaker. Only one person in the photo spread was wearing a blue windbreaker.

There have also been problems with the handling of evidence sent to state and local crime labs. In 2002 the Houston Police Department Crime Laboratory was closed. An independent audit of the lab's DNA section had identified enormous problems. Analysts did not know how to do their jobs, and supervisors were also incompetent. There was no quality control system, and there were few standardized procedures. Other sections of the lab had problems as well, but the most serious were in the DNA section. Harris County sends more people to death row than any other county in America, and it had done thousands of other tests in non-death-penalty cases. All these tests were now placed in doubt. One of the first retests of the lab's work showed that a man who had been convicted of rape in 1998 at the age of 16 and had been given a 25-year sentence largely on the basis of DNA evidence was actually innocent. The problem with the lab was that as DNA technology changed, the analysts got no training in new methods, were overworked, and were following procedures inconsistently. Additionally, the lab was never inspected by an outside agency and did not seek accreditation. Nor were judges, prosecutors, and defense attorneys able to spot the lab's sloppy work—they had not kept up with DNA technology either. The lab's facilities were not conducive to good forensic science. The roof leaked over the DNA section of the crime lab, and the leaks were never patched. In 2001 when Tropical Storm Allison hit Houston, water poured through the roof, and DNA evidence in three dozen murder and rape cases was soaked. Bloody water was seen seeping out of evidence boxes.<sup>54</sup> DNA is often seen as the definitive proof of guilt or innocence in many serious crimes, but it is hardly definitive when the facilities are defective and the analysts are incompetent.

Another area of concern is the use of dog scent evidence to convict persons accused of crimes. Some prosecutors have claimed this evidence is as powerful as DNA evidence in supporting a conviction. This technique does not involve following a scent or picking out a package of drugs by trained dogs. Instead, it



*Johnny Pinchback celebrates after being freed from prison after serving 27 years. In 1984, Pinchback was convicted of aggravated sexual assault of two teenage girls, but DNA evidence cleared him in 2011. At the time, Pinchback was the twenty-second person to be exonerated through DNA testing in Dallas County since 2001.*

involves distinguishing different odors among people, identifying one odor, and then matching that odor to evidence obtained from a crime scene. A dog will be introduced to a scent sample collected at a crime scene. It will then be presented with a series of containers with similar scents—one taken from a suspect and others taken from other people matching the general description of the suspect. The dog will communicate to its handler if the first scent matches one of the scents in the containers. The handler will then testify that the dog accurately picked out the scent of a particular person or suspect. It is called a “scent lineup” and it has become a prosecution tool in Texas. The problem is that scent lineups are not reliable scientific evidence. Though some prosecutors in Texas have used them since the mid-1990s, defense lawyers have only recently successfully challenged them. The result is that the Innocence Project of Texas is now trying to identify persons in Texas who were convicted on the basis of scent lineups in the belief that this evidence is invalid and that those prisoners can be exonerated.<sup>55</sup>

**The Willingham Case** The case of Cameron Todd Willingham raises serious questions about whether questionable evidence led to the execution of an innocent man for the arson murders of his three children. In 1991, Willingham’s three girls were killed in a fire at their home shortly before Christmas. Willingham was convicted of starting the fire that killed them. Even though he was offered a plea bargain of a life sentence, he refused the plea, claiming that he was innocent. Willingham was executed in 2004. His conviction was largely based on expert testimony that the fire was arson. To a great extent, that testimony was based on the opinion that the fire had burned so hot that a fire accelerant must have been used to start the fire. Additionally, forensic tests had found evidence of an accelerant on the front porch of the house. However, before Willingham was executed, a noted arson expert examined the case and prepared a report that showed that the fire patterns relied upon by the forensic experts who testified for the prosecution could have occurred without the presence of an accelerant and that the prosecution experts were relying on outdated information about the behavior of fire to reach their conclusions. That report was submitted to the Board of Pardons and Paroles, but the board rejected the plea for clemency.

After Willingham’s execution, reporters for the *Chicago Tribune* investigated the case and asked three fire experts to examine the evidence. They concluded that the fire was not arson. Later, the Innocence Project of Texas asked four fire experts to review the Willingham case. They all agreed that the fire was not arson.

In 2005, Texas created a commission, the Texas Forensic Science Commission, to investigate claims of error or misconduct by forensic scientists. A fire scientist was hired by the commission to investigate the Willingham case and he too concluded there was no evidence that the fire was arson.<sup>56</sup> In September 2009, 48 hours prior to the review of the report by the Texas Forensic Science Commission, Governor Perry replaced the head of the commission and two of its members. The meeting of the commission was canceled as a result. Earlier, Governor Perry had expressed confidence in Willingham’s guilt, called the critics of the original arson investigation “supposed experts,” and said that he had not “seen anything that would cause me to think that the decision [to execute Willingham] was not correct.”<sup>57</sup> The commission, however, did not drop the Willingham case, which remained under its review.

In July 2011, Attorney General Greg Abbott issued a ruling that restricted the further investigation of the Willingham case after a new commission chair showed

greater interest in investigating the case. Nevertheless, cases of persons now in prison on arson charges are being reviewed by the Innocence Project to determine if their imprisonment resulted from bad arson science.<sup>58</sup>

**The Tulia Drug Arrests** Other widely publicized matters have also contributed to the questions raised about the adequacy of the Texas criminal justice system in protecting the innocent. One of those matters in particular became a national scandal—drug arrests in 1999 in Tulia, Texas. An undercover narcotics officer was responsible for the arrests of 47 persons in Tulia; 38 of them were black and made up about 20 percent of the black adults in the town. The defendants were zealously prosecuted. Though they were charged with possessing only small amounts of cocaine, the defendants, including those with no prior records, received long sentences—including one as long as 361 years. The undercover officer was supported by local authorities even as questions about his veracity mounted, and he was even named Officer of the Year in Texas. Doubts about the arrests and convictions, however, did not die. The officer never wore a wire, never videotaped his alleged drug buys, and was never observed by another officer. Indeed, most of his alleged drug buys had no corroboration at all.

Two and a half years after the last trials of the Tulia defendants, the undercover officer had been fired from two later narcotics assignments. It became clear that he had no undercover narcotics experience prior to coming to Tulia and that he had left jobs as a deputy sheriff in two other towns, leaving behind significant unpaid debts. One of the sheriffs who had employed him had filed criminal charges against him, which meant that he was indicted while working undercover in Tulia. Accusations were also made against him that he had racist attitudes as well as difficulties with telling the truth.

It eventually became clear that the Tulia drug busts were a massive miscarriage of justice. Thirty-five of the 47 defendants were pardoned by the governor; 9 had their charges dismissed prior to trial or were placed on deferred adjudication. One was a juvenile at the time of his alleged crime and so will not have an adult criminal record. The remaining 2 were sent to prison on probation violations. The disturbing factor is that without the efforts of a small number of concerned citizens, lawyers, and the press, this gross abuse of the criminal justice process would have remained undetected and unresolved.<sup>59</sup>

Nor was the Tulia affair the only major problem with drug arrests. In 2001 the Dallas Police Department agreed to pay an informant \$1,000 per kilogram of confiscated drugs. Although the informant did know actual drug dealers, he realized they were dangerous, so he found harmless persons—Mexican immigrants and legal residents—on whom he could plant drugs. Apparently the informant also realized he could make more money with less risk if he passed off gypsum as cocaine. (Gypsum is a substance found in billiard-cue chalk.) Convictions on dozens of drug cases were obtained without even testing to see if the seized material contained real drugs. The informant was the Dallas Police Department's highest paid in 2001, earning more than \$210,000 for the seizure of nearly 1,000 pounds of cocaine and amphetamines that turned out to be fake drugs. Twenty fake drug cases were multikilo seizures, and two were

*Billy Wafer stands along Main Street in Tulia, Texas. Wafer was part of a large group of black Tulia residents who were arrested and imprisoned in a highly questionable 1999 drug sting. All of the people arrested were either pardoned or had their sentences greatly reduced.*



*Does Texas's criminal justice system need to be reformed? Some observers feel that, beyond problems with wrongful convictions, the emphasis on imprisonment and the large number of inmates in Texas are major concerns, though incarceration rates are declining.*



the largest busts in the history of the Dallas police. Yet nothing seemed to arouse the suspicions of the police about the arrests. This scandal reached deep into the police department, where there was a lack of supervision of undercover officers and an extreme push for numbers in terms of amounts of drugs seized and number of arrests. The implausibility of some of the arrests is amazing: a lone mechanic working under his car, with no guns or cash seized; a drug buy on credit, according to the uncorroborated word of a confidential informant; and a seizure of 25 kilos of fake cocaine, for example. Nor did the district attorney's office escape blame: its policy was not to test seized drugs unless plea bargains failed and a case went to trial. When more than 80 of the drug cases were dismissed, Dallas district attorney Bill Hill went on television and insisted that many of those who were released were guilty. Were it not for the efforts of some criminal defense attorneys who were suspicious of the drug seizures, the Dallas Police Department might well still be seizing huge quantities of gypsum and paying its informant, and Texas might be sending innocent men and women to prison.<sup>60</sup>

## Reforms

**Consider recent proposals to improve Texas's criminal justice system**

Improvements in the Texas criminal justice system have occurred. Texas is no longer handling its crime problem solely by incarceration. The number of drug treatment programs has increased and there is greater emphasis on imprisonment as a last response to

criminal behavior and more emphasis on community supervision such as requiring increased reporting to probation officers, community service, electronic monitoring of offenders, or mandatory treatment for alcohol or drug addiction as a first response. Parole supervision costs \$4 a day for a prisoner as opposed to about \$50 a day for incarceration. Probation costs are about 10 percent the cost of prison.<sup>61</sup>

The result has been a decline in prison construction and even the beginning of prison closings. Efforts are being made to compensate those who are wrongfully convicted. Texas has one of the most generous compensation systems in the nation for the wrongfully convicted. If a wrongfully convicted person waives his or her right to sue the state and is not convicted of further felonies after exoneration, he or she will receive a lump sum payment of \$80,000 for each year wrongfully served in prison as well as an additional yearly payment during his or her lifetime that can amount to as much as \$80,000 per year.

Some police departments are modifying their procedures for obtaining eyewitness evidence. For example, the Dallas Police Department has changed the way lineups are conducted so that the police officer administering the photographic lineup does not know who the actual suspect is, thus avoiding the police officer providing cues to the witness as to which photo to pick. Additionally, photos are now shown by many police departments sequentially rather than as a group. Research has shown that this helps prevent witnesses from comparing the photos and choosing the photo that most closely resembles the suspect rather than picking the suspect's picture. Prosecutors often call on scientific experts, such as arson investigators, to help prove their cases. However, fields such as arson science are rapidly evolving and sometimes the scientific theories that were once used to convict defendants in the past have now been debunked. For example, certain indicators that were once considered signs of arson are now known to appear in accidental fires.<sup>62</sup> A new Texas law makes it much easier for an inmate to challenge a conviction if it was based on bad science. As noted in the introduction, the Michael Morton Act has established a uniform system for district attorneys to provide exculpatory evidence to defense attorneys. Finally, some Texas district attorneys, most notably the district attorneys in Dallas county, have recognized the problem of wrongful conviction and have appointed prosecutors who review claims of wrongful convictions and who take a cooperative approach toward lawyers working with various innocence projects that exist to provide legal representation to people who claim they have been wrongfully convicted.

### for critical analysis

Are wrongful convictions inevitable? Overall, is the Texas criminal justice process working as it should?

## Thinking Critically about Criminal Justice in Texas

Perhaps the criminal justice system in Texas works well. Overall, the previous examples may be exceptions to the rule. However, the documented problems with evidence, the Willingham case, the Tulia drug arrests, the Anthony Graves case, and the Michael Morton case discussed in the introduction to this chapter do raise questions about whether the criminal justice system in Texas is working as well as it should.

One of the issues facing Texas is the fairness of the process toward those accused of crime. Will Texas, for example, decide that there needs to be greater quality in the representation of people accused of crime so that the problems in the system can be identified and resolved before a person is convicted and imprisoned for a lengthy period? Dallas County district attorney Craig Watkins has received national acclaim by offering a new perspective on the role of a district attorney. Watkins sees the role of a prosecutor as not only convicting the guilty but also protecting the innocent charged with crime.

Texas is recognizing that the cost of imprisoning offenders is enormous and that there are alternatives to prison, especially for nonviolent offenders. The issue of the future will be whether Texas will continue pursuing alternatives to prison for offenders. On a related note, the death penalty has declined in its imposition in Texas. Will that pattern continue with urban counties reducing the imposition of the death penalty and with life without parole being increasingly seen as a reasonable alternative punishment? Finally, many states are reducing the penalties for some crimes such as possession of small amounts of marijuana. Will Texas join the national movement toward decriminalization? Crime and corrections have always been a major issue in Texas politics, and we may be on the cusp of major changes in this area.

## Categorizing Crime in Texas

**Identify the major classifications of crime under Texas law and the types of punishments that may be imposed (pp. 425–27)**

Crimes are categorized along a number of dimensions. The more serious crimes are felonies. The less serious crimes are misdemeanors. Within each classification are various degrees of crime based upon the severity of the offenses. The more serious the crime, the greater are the penalties.

### Key Terms

**felony (p. 425)**

**misdemeanor (p. 426)**

**probation (p. 426)**

**parole (p. 427)**

**“three strikes” provision (p. 427)**

### Practice Quiz

1. The most serious crimes are classified as

- a) felonies.
- b) misdemeanors.

- c) trial-eligible crimes.
- d) grand jury felonies.
- e) county-court-at-law crimes.

2. Probation refers to

- a) a judge's initial term in office.
- b) a suspension of the jail or prison sentence.
- c) a court in the local state court system.
- d) release into the community after time in prison.
- e) failure to pay bail.

3. Which of the following is true?

- a) Parole is granted by the governor.
- b) Members of the Texas Board of Pardons and Paroles are elected by the legislature every two years.
- c) People convicted of capital crimes are not eligible for parole.
- d) The death penalty is required in all serious felonies.
- e) Texas does not enhance the sentence of repeat felony offenders.

## The Criminal Justice Process

**Outline the procedural steps that occur after a person is arrested (pp. 427–34)**

There are a number of stages in the criminal justice process, including arrest, arraignment, possible posting of bail, possible grand jury indictment, pretrial hearings, and either plea bargaining or trial. If a person is found guilty, he or she will be sentenced, after which there may be appeals. Within this process, the most important actor is probably the district attorney, who is the key decision maker with regard to charging a suspect, presenting evidence to a grand jury, plea bargaining, or recommending a sentence to a jury or judge.

### Key Terms

**bail (p. 428)**

**grand jury (p. 428)**

**county attorney (p. 430)**

**district attorney (p. 430)**

**plea bargain (p. 431)**

**assigned counsel (p. 433)**

**public defender (p. 433)**

### Practice Quiz

4. Grand juries

- a) review all decisions made by a trial judge.
- b) determine if witnesses are telling the truth by voting “true bills” or “false bills.”
- c) determine if there is probable cause to prosecute an individual for a crime.
- d) hear trials involving the death penalty.
- e) hear trials in district court.

5. District attorneys may have the most important roles in the criminal justice process because

- a) they have the power to charge people with crimes.
- b) they have the power to plea bargain with defendants.

- c) they usually make the only presentation before grand juries.
  - d) all of the above
  - e) none of the above
6. Which of the following statements about plea bargaining is true?
- a) Plea bargaining threatens to overwhelm the limited resources of a prosecutor's office.
  - b) Plea bargaining does not benefit defendants.
  - c) Plea bargains are made by defendants with district attorneys and agreed to by a judge.
  - d) Most Texas district attorneys oppose plea bargaining.
  - e) Most Texas criminal defense attorneys oppose plea bargaining.
7. Indigent defendants charged with serious crimes in Texas
- a) must represent themselves.
  - b) are represented by private attorneys pro bono as part of their ethical obligation to help others.
  - c) most commonly are represented by public defenders.
  - d) most commonly are represented by judicially appointed private attorneys.
  - e) are usually represented by legal clinics at law schools.

## Crime, Corrections, and the Texas Prison System

### Describe prisons and corrections policy in Texas (pp. 434–45)

The Texas prison system is one of the largest in the nation. A major federal court decision (*Ruiz v. Estelle*) found serious overcrowding in the prison system. A series of reforms have been implemented to address the concerns raised by the decision. There has been an effort to lessen the number of people in prison through community supervision. While Texas remains the death penalty capital of the United States, fewer death penalties have been imposed recently than in earlier years.

### Practice Quiz

8. The Texas prison system
- a) was vastly affected by a federal court decision, *Ruiz v. Estelle*, that declared that the overcrowded system was unconstitutional.
  - b) holds mostly persons convicted of violent crimes.
  - c) is a very costly way of dealing with crime as opposed to community supervision such as drug and alcohol programs and probation and parole.
9. The Texas Department of Criminal Justice
- a) is run by a nine-member board appointed by the governor.
  - b) is run by an elected body.
  - c) runs the court system for felony murder.
  - d) establishes sentencing guidelines for crimes.
  - e) grants probation to those convicted of crimes.
10. The death penalty
- a) is imposed in Texas for all murders.
  - b) has been imposed less frequently since Texas allowed juries to sentence a defendant to life without parole.
  - c) is carried out in the county where the crime occurred.
  - d) is carried out with an electric chair.
  - e) cannot be carried out without approval by the Texas Board of Pardons and Parole.

# The Integrity of the Texas Criminal Justice System

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## Explain why Texas's criminal justice system is often controversial (pp. 445–50)

Texas has had a significant number of people who have been wrongfully convicted. Numerous recent cases in which convictions were overturned have raised questions about the criminal justice system in Texas.

### Practice Quiz

11. People have been wrongfully convicted in Texas because of  
a) police misconduct.

- b) bad or outdated forensic science.  
c) mistaken identifications.  
d) prosecutorial misconduct.  
e) All of the above are reasons for wrongful convictions.

12. An advance in which technology has conclusively proved the innocence of a large number of convicted people is  
a) drug testing.  
b) ballistics testing.  
c) DNA analysis.  
d) fire science.  
e) fingerprinting.

# Reforms

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## Consider recent proposals to improve Texas's criminal justice system (pp. 450–51)

Recent reforms that have been enacted may help reduce the number of wrongful convictions in Texas and improve the fairness of the criminal justice system. Reforms also may rely more on rehabilitation programs and less on incarceration as a solution to crime.

### Practice Quiz

13. Reforms in the criminal justice process include  
a) financial compensation for people wrongfully convicted.  
b) changes to suspect lineups so that the police officer in charge of the lineup does not know who the actual suspect is.

- c) expanding drug treatment programs.  
d) showing photos in photo identifications to witnesses sequentially rather than at the same time to reduce the danger of witnesses comparing photos and choosing the one that best fits their memory of the assailant.  
e) All of the above are reforms to the criminal justice process.

14. Probation costs are  
a) about 10 percent of the cost of prison.  
b) 10 percent higher than the cost of prison.  
c) the same as the cost of prison.  
d) half the cost of prison.  
e) double the cost of prison.

# Recommended Websites

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Texas Criminal Justice Coalition  
[www.texascjc.org](http://www.texascjc.org)

The Stand Down Texas Project  
<http://standdown.typepad.com>

Texas Department of Criminal Justice  
[www.tdcj.state.tx.us](http://www.tdcj.state.tx.us)

Innocence Project of Texas  
<http://ipoftexas.org>

Texas Coalition to Abolish the Death Penalty  
[www.tcadp.org](http://www.tcadp.org)



# appendix

Here we include a series of documents that capture the nature of philosophical and practical problems the people of Texas confronted during their lengthy founding period. For each text we provide short introductions to guide the reader from the Texas Revolution, through statehood and the Civil War, to the Constitution of 1876. Copies of the various constitutions of Texas are available online at [www.tarlton.law.utexas.edu/constitutions](http://www.tarlton.law.utexas.edu/constitutions).

## Texas Declaration of Independence (1836)

The Texas Declaration of Independence was the product of the Convention of 1836.<sup>1</sup> Drawing upon John Locke's Two Treatises of Government (1689) and Thomas Jefferson's Declaration of Independence (1776) for inspiration, it lays out an explanation of the nature of government, lists the grievances that Texas's people hold against the Mexican government, and declares independence and the establishment of a new "free, sovereign, and independent Republic." Note the appeals to "the first law of nature, the right to self-preservation," "the inherent and inalienable right of the People to appeal to first principles," and the "sacred obligation" that people have to their posterity to create a government that will "secure their future wealth and happiness." In addition to presenting the Texas Constitution of 1836, the Texas Declaration of Independence lays down the republican principles that would define government and politics in Texas from 1836 to 1845, when Texas joined the United States of America.

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To the Public.

The undersigned, Plenipotentiaries from the Republic of Texas to the United States of America, respectfully present to the

American People the unanimous DECLARATION OF INDEPENDENCE, made by the People of Texas in General Convention, on the 2d day of March, 1836; and, also, the CONSTITUTION framed by the same body.

ROBERT HAMILTON,  
GEO. C. CHILDRESS.  
WASHINGTON CITY, May 22, 1836.

Unanimous Declaration of Independence, by  
the Delegates of the People of Texas.

In General Convention, at the town of Washington, on the  
2d day of March, 1836.

When a Government has ceased to protect the lives, liberty, and property of the People from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted, and so far from being a guarantee for the enjoyment of their inestimable and inalienable rights, becomes an instrument in the hands of evil rulers for their oppression: when the Federal Republican Constitution of their country, which they have sworn to support, no longer has a substantial existence, and the whole nature of their Government has been forcibly changed, without their consent, from a restricted Federative Republic, composed of sovereign States, to a consolidated central military despotism, in which every interest is disregarded but that of the army and the priesthood, both the eternal enemies of civil liberty, the ever-ready minions of power, and the usual instruments of tyrants: when, long after

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<sup>1</sup>"Unanimous Declaration of Independence, by the Delegates of the People of Texas," *Laws of the Republic of Texas, in Two Volumes* (Houston: Printed at the Office of the Telegraph, 1838), 1:3–4; Thomas W. Streeter, *Bibliography of Texas, 1795–1845* (5 vols.; Cambridge, MA: Harvard University Press, 1955–60). Errors in the original document are retained.

the spirit of the constitution has departed, moderation is at length so far lost by those in power, that even the semblance of freedom is removed, and the forms themselves of the Constitution discontinued; and so far from their petitions and remonstrances being regarded, the agents who bear them are thrown into dungeons and mercenary armies sent forth to force a new Government upon them at the point of the bayonet.

When, in consequence of such acts of malfeasance and abdication on the part of the Government, anarchy prevails, and civil society is dissolved into its original elements: in such a crisis, the first law of nature, the right of self-preservation, the inherent and inalienable right of the People to appeal to first principles, and take their political affairs into their own hands in extreme cases enjoins it as a right towards themselves, and a sacred obligation to their posterity, to abolish such Government, and create another in its stead, calculated to rescue them from impending dangers, and to secure their future welfare and happiness.

Nations, as well as individuals, are amenable for their acts to the public opinion of mankind. A statement of a part of our grievances is therefore submitted to an impartial world, in justification of the hazardous but unavoidable step now taken, of severing our political connexion with the Mexican People, and assuming an independent attitude among the nations of the earth.

The Mexican Government, by its colonization laws, invited and induced the Anglo-American population of Texas to colonize its wilderness, under the pledged faith of a written constitution, that they should continue to enjoy that constitutional liberty and republican Government to which they had been habituated in the land of their birth, the United States of America.

In this expectation they have been cruelly disappointed, inasmuch as the Mexican nation has acquiesced in the late changes made in the Government by General Antonio Lopez de Santa Ana, who, having overturned the Constitution of his country, now offers us the cruel alternative, either to abandon our homes, acquired by so many privations, or submit to the most intolerable of all tyranny, the combined despotism of the sword and the priesthood.

It hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed, through a jealous and partial course of legislation, carried on at a far-distant seat of Government, by a hostile majority, in an unknown tongue; and this too notwithstanding we have petitioned in the humblest terms for the establishment of a separate State Government, and have, in accordance with the provisions of the National Constitution, presented to the General Congress a Republican Constitution, which was, without just cause, contemptuously rejected.

It incarcerated in a dungeon, for a long time, 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.

It has failed and refused to secure, on a firm basis, the right of trial by jury, that palladium of civil liberty and only safe guarantee for the life, liberty, and property of the citizen.

It has failed to establish any public system of education, although possessed of almost boundless resources, (the public domain,) and 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.

It has suffered the military commandants stationed among us to exercise arbitrary acts of oppression and tyranny, thus trampling upon the most sacred rights of the citizen, and rendering the military superior to the civil power.

It has dissolved by force of arms the State Congress of Coahuila and Texas, and obliged our Representatives to fly for their lives from the seat of Government, thus depriving us of the fundamental political right of representation.

It has demanded the surrender of a number of our citizens, and ordered military detachments to seize and carry them into the interior for trial; in contempt of the civil authorities, and in defiance of the laws and the Constitution.

It has made piratical attacks upon our commerce by commissioning foreign desperadoes, and authorizing them to seize our vessels and convey the property of our citizens to far-distant ports for confiscation.

It denies us the right of worshipping the Almighty according to dictates of our own conscience, by the support of a national religion calculated to promote the temporal interests of its human functionaries rather than the glory of the true and living God.

It has demanded us to deliver up our arms, which are essential for our defence, the rightful property of freemen, and formidable only to tyrannical Governments.

It has invaded our country, both by sea and by land, with intent to lay waste our territory, and drive us from our homes; and has now a large mercenary army advancing, to carry on against us a war of extermination.

It has, through its emissaries, incited the merciless savage, with the tomahawk and scalping-knife, to massacre the inhabitants of our defenceless frontiers.

It has been, during the whole time of our connexion with it, the contemptible sport and victim of successive military revolutions, and hath continually exhibited every characteristic of a weak, corrupt, and tyrannical government.

These and other grievances were patiently borne by the People of Texas, until they reached that point at which forbearance ceases to be a virtue. They then took up arms in defence of the National Constitution. They appealed to their Mexican brethren for assistance. Their appeal has been made in vain: though months have elapsed, no sympathetic response has yet

been heard from the interior. They are, therefore, forced to the melancholy conclusion that the Mexican People have acquiesced in the destruction of their liberty, and the substitution therefor of a military despotism; that they are unfit to be free, and incapable of self-government.

The necessity of self-preservation, therefore, now decrees our eternal political separation.

We, therefore, the Delegates, with plenary powers, of the People of Texas, in solemn Convention assembled, appealing to

a candid world for the necessities of our condition, do hereby resolve and DECLARE that our political connexion with the Mexican nation has forever ended, and that the People of Texas do now constitute a FREE, SOVEREIGN, AND INDEPENDENT REPUBLIC, and are fully invested with all the rights and attributes which properly belong to independent States; and, conscious of the rectitude of our intentions, we fearlessly and confidently commit the issue to the decision of the Supreme Arbiter of the destinies of nations.

RICHARD ELLIS,  
*President.*

C. B. Stewart,  
Thomas Barnett, of Austin,  
James Collinsworth,  
Edwin Waller,  
Asa Brigham  
J. S. D. Byrom, of Brazoria,  
Francisco Ruis,  
Antonio Navaro,  
Jesse B. Badgett, of Bexar,  
Wm. D. Lacy,  
Wm. Menifee, of Colorado,  
James Gains,  
M. B. Menard,  
A. B. Hardin, of Liberty,  
Baily Hardiman, of Matagorda,  
J. W. Bunton,  
Thos. J. Gazeley,

R. M. Coleman, of Mina,  
Robert Potter,  
Thos. J. Rusk,  
Charles S. Taylor,  
Jno. S. Roberts, of Nacogdoches  
Robert Hamilton,  
Collin McKinney,  
Alb. H. Lattimer, of Red River,  
Martin Palmer,  
W. Clark, jr., of Sabine,  
John Fisher,  
Matt. Caldwell, of Gonzales,  
Wm. Motley, of Goliad,  
L. de Zavala, of Harrisburg,  
S. C. Robertson,  
Geo. C. Childress, of Milam,  
Steph. H. Everett,

Geo. W. Smith, of Jasper,  
Elijah Stapp, of Jackson,  
Claiborne West,  
Wm. B. Scates, of Jefferson,  
E. O. Legrand,  
S. W. Blount, of San Augustine,  
Syd. O. Bennington,  
W. C. Crawford, of Shelby,  
J. Power,  
Sam. Houston,  
David Thomas,  
Edward Conrad, of Refugio,  
John Turner, of San Patricio,  
B. Briggs Goodrich,  
G. W. Barnett,  
James G. Swisher,  
Jesse Grimes, of Washington.



# Ordinance of Annexation Approved by the Texas Convention on July 4, 1845

*The independent Republic of Texas ceased to exist in 1845 following the implementation of a new state constitution and Texas's formal admission into the Union as a state. Resolutions passed by the U.S. Congress stated the conditions under which Texas was to be admitted into the Union.<sup>2</sup> Note that the resolutions demand a republican form of government be adopted by the people through a constitutional convention (via a new constitution) and that the existing government consent to this action. Passage of this ordinance by the convention is an expression of the consent of the people of Texas to this new political configuration.*

An Ordinance  
Whereas,

the Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were offered by the President of the United States on the first day of March, 1845; and

Whereas,

the President of the United States has submitted to Texas the first and second sections of said resolutions, as the basis upon which Texas may be admitted as one of the States of the said Union; and

Whereas,

the existing Government of the Republic of Texas, has assented to the proposals thus made,—the terms and conditions of which are as follows:

"Joint Resolutions for annexing Texas to the United States  
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within and rightfully belonging to the Republic of Texas, may be erected into a new State to be called the State of Texas, with a republican form of government adopted by the people

of said Republic, by deputies in convention assembled, with the consent of the existing Government in order that the same may by admitted as one of the States of this Union.

2<sup>nd</sup>. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, to wit: First, said state to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments,—and the Constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action on, or before the first day of January, one thousand eight hundred and forty-six. Second, said state when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines and armaments, and all other means pertaining to the public defense, belonging to the said Republic of Texas, shall retain funds, debts, taxes and dues of every kind which may belong to, or be due and owing to the said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. Third—New States of convenient size not exceeding four in number, in addition to said State of Texas and having sufficient population, may, hereafter by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution; and such states as may be formed out of the territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri Compromise Line, shall be admitted into the Union, with or without slavery, as the people of each State, asking admission shall desire; and in such State or States as shall be formed out of said territory, north of said Missouri compromise Line, slavery, or involuntary servitude (except for crime) shall be prohibited."

Now in order to manifest the assent of the people of this Republic, as required in the above recited portions of said

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<sup>2</sup>*Journals of the Constitution Convention of Texas, 1845* (Austin: Miner and Cruger, Printers to the Constitution, 1845), 367–70.

resolutions, we the deputies of the people of Texas, in convention assembled, in their name and by their authority, do ordain and declare, that we assent to and accept the proposals, conditions and guarantees, contained in the first and second sections of the Resolution of the Congress of the United States aforesaid.

In testimony whereof, we have hereunto subscribed our names

THOMAS J. RUSK

*President*

followed by 61 signatures

Attest

JAMES H. RAYMOND

*Secretary of the Convention*

# Sam Houston's Address on Secession (1860) and Declaration of Causes (1861)

*Texas joined the Union in 1845 and left it in 1861. Following the lead of other southern states after the election of Lincoln, Texas called a Secession Convention that met in January 1861. Despite the efforts of Governor Sam Houston to keep Texas in the Union, the convention passed an Ordinance of Secession on February 1 and a Declaration of Causes on February 2, 1861.<sup>3</sup> Texas joined the Confederacy as a state on March 1, 1861. Following a four-year conflict, as a practical matter the war ended in April 1865 with the surrender of Lee's Army of Northern Virginia. The last battle of the war (the Battle of Palmito Ranch) was fought May 12–13, 1865, near Brownsville.*

*Sam Houston's address captures the minority pro-Union position in Texas. A disciple of Andrew Jackson who rigorously opposed the attempts of South Carolina to reject the dominance of the national government during the Nullification Debates of the 1830s, Houston argued that leaving the Union was a dangerous action for the South. Note that Houston does not reject slavery as an institution but argues that the best way to defend Texans and Texas's interests is within the existing constitutional structure.*

*The Declaration of Causes presents the pro-secession argument in Texas, the one that ultimately carried the day. Note this document expresses the fear that southern proslavery states will become a minority in the Union. It also rejects the northern abolitionist contention that there is a "higher law" operating above the U.S. Constitution.*

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*From Sam Houston's Address on Secession, Austin, Texas, 1860*

... [I]n 1836, I volunteered to aid in transplanting American liberty to this soil, it was with the belief that the Constitution and the Union were to be perpetual blessings to the human race,—that the success of the experiment of our fathers was beyond dispute, and that whether under the banner of the Lone Star or that many-starred banner of the Union, I could

point to the land of Washington, Jefferson, and Jackson, as the land blest beyond all other lands, where freedom would be eternal and Union unbroken. . . . Power, wealth, expansion, victory, have followed in its path, and yet the aegis of the Union has been broad enough to encompass all. Is not this worth perpetuating? Will you exchange this for all the hazards, the anarchy and carnage of civil war? Do you believe that it will be dismembered and no shock felt in society? You are asked to plunge into a revolution; but are you told how to get out of it? Not so; but it is to be a leap in the dark—a leap into an abyss, whose horrors would even fright the mad spirits of disunion who tempt you on.

. . . What is there that is free that we have not? Are our rights invaded and no Government ready to protect them? No! Are our institutions wrested from us and others foreign to our taste forced upon us? No! Is the right of free speech, a free press, or free suffrage taken from us? No! Has our property been taken from us and the Government failed to interpose when called upon? No, none of these! The rights of the States and the rights of individuals are still maintained. We have yet the Constitution, we have yet a judiciary, which has never been appealed to in vain—we have yet just laws and officers to administer them; and an army and navy, ready to maintain any and every constitutional right of the citizen. Whence then this clamor about disunion? Whence this cry of protection to property or disunion, when even the very loudest in the cry, declared under their Senatorial oaths, but a few months since, that no protection was necessary? Are we to sell reality for a phantom?

There is no longer a holy ground upon which the footsteps of the demagogue may not fall. One by one the sacred things placed by patriotic hands upon the altar of our liberties, have been torn down. The Declaration of our Independence is jeered at. The farewell counsels of Washington are derided. The charm of those historic names which make glorious our past has been broken, and now the Union is no longer held sacred, but made secondary to the success of party and the adoption of abstractions. We hear of secession—"peaceable secession." We are to believe that this people, whose progressive civilization has known no obstacles, but has already driven

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<sup>3</sup>Edwin Anderson Alderman, *Library of Southern History*, ed. Joel Chandler Harris (Atlanta: Martin and Hoyt, 1909).

back one race and is fast Americanizing another, who have conquered armies and navies,—whose career has been onward and never has receded, be the step right or wrong, is at last quietly and calmly to be denationalized, to be rent into fragments, sanctioned by the Constitution, and there not only be none of the incidents of revolution, but amid peace and happiness we are to have freedom from abolition clamor, security to the institution of slavery, and a career of glory under a Southern Confederacy, which we can never attain in our present condition! When we deny the right of a State to secede, we are pointed to the resolves of chivalric South Carolina and other States; and are told, "Let them go out and you can not whip them back." My friends, there will be no necessity of whipping them back. They will soon whip themselves, and will not be worth whipping back. Deprived of the protection of the Union, of the aegis of the Constitution, they would soon dwindle into petty States, to be again rent in twain by dissensions or through the ambition of selfish chieftains, and would become a prey to foreign powers. They gravely talk of holding treaties with Great Britain and other foreign powers, and the great advantages which would arise to the South from separation are discussed. Treaties with Great Britain! Alliance with foreign powers! Have these men forgotten history? Look at Spanish America! Look at the condition of every petty State, which by alliance with Great Britain is subject to continual aggression! And yet, after picturing the rise and progress of Abolitionism, tracing it to the Wilberforce movement in England, and British influence in the North, showing that British gold has sustained and encouraged Northern fanaticism, we are told to be heedless of the consequences of disunion, for the advantages of British alliance would far over-estimate the loss of the Union!

. . . It is but natural that we all should desire the defeat of the Black Republican candidates. As Southern men, the fact that their party is based upon the one idea of opposition to our institutions, is enough to demand our efforts against them; but we have a broader, a more national cause of opposition to them. Their party is sectional. It is at war with those principles of equality and nationality upon which the Government is formed, and as much the foe of the Northern as of the Southern man. Its mission is to engender strife, to foster hatred between brethren, and to encourage the formation here of Southern sectional parties equally dangerous to Southern and Northern rights. The conservative energies of the country are called upon to take a stand now against the Northern sectional party, because its strength betokens success. Defeat and overthrow it, and the defeat and overthrow of Southern sectionalism is easy.

I come not here to speak in behalf of a united South against Lincoln. I appeal to the nation. I ask not the defeat of sectionalism by sectionalism, but by nationality. These men who talk of a united South, know well that it begets a united North. Talk of frightening the North into measures by threats of dis-

solving the Union! It is child's play and folly. It is all the Black Republican leaders want. American blood, North nor South, has not yet become so ignoble as to be chilled by threats. Strife begets strife, threat begets threat, and taunt begets taunt, and these disunionists know it. American blood brooks no such restraints as these men would put upon it. I would blush with shame for America, if I could believe that one vast portion of my countrymen had sunk so low that childish threats would intimidate them. . . .

The error has been that the South has met sectionalism by sectionalism. We want a Union basis, one broad enough to comprehend the good and true friends of the Constitution at the North. To hear Southern disunionists talk, you would think the majority of the Northern people were in this Black Republican party; but it is not so. They are in a minority, and it but needs a patriotic movement like that supported by the conservatives of Texas, to unite the divided opposition to that party there and overthrow it. . . .

I came not here to vindicate candidates or denounce them. They stand upon their records. If they are national, approve them; if they are sectional, condemn. Judge them by the principles they announce. Let past differences be forgotten in the determination to unite against sectionalism. I have differed with all three of the candidates; but whenever I see a man at this crisis coming boldly up to the defense of the Constitution of the country, and ready to maintain the Union against its foes, I will not permit old scores to prejudice me against him. Hence I am ready to vote the Union ticket, and if all the candidates occupy this national ground, my vote may be transferred to either of them. This is the way to put Mr. Lincoln down. Put him down constitutionally, by rallying the conservative forces and sacrificing men for the sake of principles.

But if, through division in the ranks of those opposed to Mr. Lincoln, he should be elected, we have no excuse for dissolving the Union. The Union is worth more than Mr. Lincoln, and if the battle is to be fought for the Constitution, let us fight it in the Union and for the sake of the Union. With a majority of the people in favor of the Constitution, shall we desert the Government and leave it in the hands of the minority? A new obligation will be imposed upon us, to guard the Constitution and to see that no infraction of it is attempted or permitted. If Mr. Lincoln administers the Government in accordance with the Constitution, our rights must be respected. If he does not, the Constitution has provided a remedy.

No tyrant or usurper can ever invade our rights so long as we are united. Let Mr. Lincoln attempt it, and his party will scatter like chaff before the storm of popular indignation which will burst forth from one end of the country to the other. Secession or revolution will not be justified until legal and constitutional means of redress have been tried, and I can not believe that the time will ever come when these will prove inadequate. . . .

Declaration of Causes: February 2, 1861<sup>4</sup>  
A declaration of the causes which impel the State  
of Texas to secede from the Federal Union.

The government of the United States, by certain joint resolutions, bearing date the 1st day of March, in the year A.D. 1845, proposed to the Republic of Texas, then a free, sovereign and independent nation, the annexation of the latter to the former as one of the co-equal States thereof,

The people of Texas, by deputies in convention assembled, on the fourth day of July of the same year, assented to and accepted said proposals and formed a constitution for the proposed State, upon which on the 29th day of December in the same year, said State was formally admitted into the Confederate Union.

Texas abandoned her separate national existence and consented to become one of the Confederate States to promote her welfare, insure domestic tranquility [*sic*] and secure more substantially the blessings of peace and liberty to her people. She was received into the confederacy with her own constitution, under the guarantee of the federal constitution and the compact of annexation, that she should enjoy these blessings. She was received as a commonwealth holding, maintaining and protecting the institution known as negro slavery—the servitude of the African to the white race within her limits—a relation that had existed from the first settlement of her wilderness by the white race, and which her people intended should exist in all future time. Her institutions and geographical position established the strongest ties between her and other slaveholding States of the confederacy. Those ties have been strengthened by association. But what has been the course of the government of the United States, and of the people and authorities of the non-slaveholding States, since our connection with them?

The controlling majority of the Federal Government, under various pretences and disguises, has so administered the same as to exclude the citizens of the Southern States, unless under odious and unconstitutional restrictions, from all the immense territory owned in common by all the States on the Pacific Ocean, for the avowed purpose of acquiring sufficient power in the common government to use it as a means of destroying the institutions of Texas and her sister slaveholding States.

By the disloyalty of the Northern States and their citizens and the imbecility of the Federal Government, infamous combinations of incendiaries and outlaws have been permitted in those States and the common territory of Kansas to trample upon the federal laws, to war upon the lives and property of Southern citizens in that territory, and finally, by violence and

mob law, to usurp the possession of the same as exclusively the property of the Northern States.

The Federal Government, while but partially under the control of these unnatural and sectional enemies, has for years almost entirely failed to protect the lives and property of the people of Texas against the Indian savages on our border, and more recently against the murderous forays of banditti from the neighboring territory of Mexico; and when our State government has expended large amounts for such purpose, the Federal Government has refused reimbursement therefor, thus rendering our condition more insecure and harrassing [*sic*] than it was during the existence of the Republic of Texas.

These and other wrongs we have patiently borne in the vain hope that a returning sense of justice and humanity would induce a different course of administration.

When we advert to the course of individual non-slaveholding States, and that [of] a majority of their citizens, our grievances assume far greater magnitude.

The States of Maine, Vermont, New Hampshire, Connecticut, Rhode Island, Massachusetts, New York, Pennsylvania, Ohio, Wisconsin, Michigan and Iowa, by solemn legislative enactments, have deliberately, directly or indirectly violated the 3rd clause of the 2nd section of the 4th article of the federal constitution, and laws passed in pursuance thereof, thereby nulling a material provision of the compact, designed by its framers to perpetuate amity between the members of the confederacy and to secure the rights of the slaveholding States in their domestic institutions—a provision founded in justice and wisdom, and without the enforcement of which the compact fails to accomplish the object of its creation. Some of those States have imposed high fines and degrading penalties upon any of their citizens or officers who may carry out in good faith that provision of the compact, or the federal laws enacted in accordance therewith.

In all the non-slaveholding States, in violation of that good faith and comity which should exist between entirely distinct nations, the people have formed themselves into a great sectional party, now strong enough in numbers to control the affairs of each of those States, based upon the unnatural feeling of hostility to these Southern States and their beneficent and patriarchal system of African slavery, proclaiming the debasing doctrine of the equality of all men, irrespective of race or color—a doctrine at war with nature, in opposition to the experience of mankind, and in violation of the plainest revelations of the Divine Law. They demand the abolition of negro slavery throughout the confederacy, the recognition of political equality between the white and the negro races, and avow their determination to press on their crusade against us, so long as a negro slave remains in these States.

For years past this abolition organization has been actively sowing the seeds of discord through the Union, and has rendered the federal congress the arena for spreading firebrands and hatred between the slaveholding and non-slaveholding States.

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<sup>4</sup>Ernest William Winkler, ed., *Journal of the Secession Convention of Texas 1861, Edited from the Original in the Department of State by Ernest William Winkler, State Librarian* (Austin: Texas Library and Historical Commission, 1912), 61–65.

By consolidating their strength, they have placed the slaveholding States in a hopeless minority in the federal congress, and rendered representation of no avail in protecting Southern rights against their exactions and encroachments.

They have proclaimed, and at the ballot box sustained, the revolutionary doctrine that there is a "higher law" than the constitution and laws of our Federal Union, and virtually that they will disregard their oaths and trample upon our rights.

They have for years past encouraged and sustained lawless organizations to steal our slaves and prevent their recapture, and have repeatedly murdered Southern citizens while lawfully seeking their rendition.

They have invaded Southern soil and murdered unoffending citizens, and through the press their leading men and a fanatical pulpit have bestowed praise upon the actors and assassins in these crimes, while the governors of several of their States have refused to deliver parties implicated and indicted for participation in such offences, upon the legal demands of the States aggrieved.

They have, through the mails and hired emissaries, sent seditious pamphlets and papers among us to stir up servile insurrection and bring blood and carnage to our firesides.

They have sent hired emissaries among us to burn our towns and distribute arms and poison to our slaves for the same purpose.

They have impoverished the slave-holding States by unequal and partial legislation, thereby enriching themselves by draining our substance.

They have refused to vote appropriations for protecting Texas against ruthless savages, for the sole reason that she is a slave-holding State.

And, finally, by the combined sectional vote of the seventeen non-slave-holding States, they have elected as president and vice-president of the whole confederacy two men whose chief claims to such high positions are their approval of these long continued wrongs, and their pledges to continue them to the final consummation of these schemes for the ruin of the slave-holding States.

In view of these and many other facts, it is meet that our own views should be distinctly proclaimed.

We hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable.

That in this free government all white men are and of right ought to be entitled to equal civil and political rights; that the servitude of the African race, as existing in these States, is mutually beneficial to both bond and free, and is abundantly authorized and justified by the experience of mankind, and the revealed will of the Almighty Creator, as recognized by all Christian nations; while the destruction of the existing relations between the two races, as advocated by our sectional enemies, would bring inevitable calamities upon both and desolation upon the fifteen slave-holding States.

By the secession of six of the slave-holding States, and the certainty that others will speedily do likewise, Texas has no alternative but to remain in an isolated connection with the North, or unite her destinies with the South.

For these and other reasons, solemnly asserting that the federal constitution has been violated and virtually abrogated by the several States named, seeing that the federal government is now passing under the control of our enemies to be diverted from the exalted objects of its creation to those of oppression and wrong, and realizing that our own State can no longer look for protection, but to God and her own sons—We the delegates of the people of Texas, in Convention assembled, have passed an ordinance dissolving all political connection with the government of the United States of America and the people thereof and confidently appeal to the intelligence and patriotism of the freemen of Texas to ratify the same at the ballot box, on the 23rd day of the present month.

Adopted in Convention on the 2nd day of Feby, in the year of our Lord one thousand eight hundred and sixty-one and of the independence of Texas the twenty-fifth.

# **Ordinance of Secession Null (1866) and Texas v. White et al. (1869)**

*Once the South and Texas had been defeated in the Civil War, the question arose as to the constitutional status of the secessionist states, including Texas. From the perspective of law and constitutional thought, had the southern states ever left the Union? Were the actions of state governments under the Confederacy legal or not? Two documents help clarify this issue.<sup>5</sup>*

*The ordinance declaring secession null and void answers these questions directly. By the expressed declaration of the Texas people in convention, the ordinance proclaims the 1861 act of secession to be null and void. Texas may have been in rebellion, but it never left the Union. Actions by the Confederate state of Texas thus were not legal.*

*The Texas v. White et al. case answers this question further by exploring the legality of specific actions of the Confederate legislature in Texas. In 1850, Congress authorized \$10 million in bonds to Texas. In 1862 the Confederate legislature authorized using the bonds for war supplies. In 1866, after the war, the Reconstruction government of Texas tried to reclaim the bonds on the grounds that the Confederate state government had illegally sold the bonds. Note the constitutional theory about the nature of the Union and the rebellion that is developed in the Chief Justice's opinion. The union established under the Articles of Convention and the U.S. Constitution is "perpetual" and "indissoluble." Once Texas joined the Union, Texas and Texans became part of this Union. Texas may have been in rebellion against the Union, but it had never left the Union. The actions of the Confederate government, like the act of secession, were thus null and void. The bonds thus had not been legally sold.*

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## An Ordinance, Declaring the Ordinance of Secession Null and Void (March 15, 1866)

Be it ordained by the people of Texas in Convention assembled, That we acknowledge the supremacy of the Constitution of the United States, and the laws passed in pursuance thereof;

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<sup>5</sup>The Constitution of the State of Texas, as Amended by the Delegates in Convention Assembled, Austin, 1866 (Austin: Printed at the Southern Intelligencer Office, 1866), 32.

and that an Ordinance adopted by a former Convention of the people of Texas on the 1st day of February, A.D. 1861, entitled "An Ordinance to Dissolve the Union between the State of Texas and the other States, united under the compact styled 'Constitution of the United States of America,'" be and the same is hereby declared null and void; and the right heretofore claimed by the State of Texas to secede from the Union, is hereby distinctly renounced. Passed 15th March, 1866.

## *From TEXAS v. WHITE ET AL. (1869) Supreme Court of United States.*

The CHIEF JUSTICE delivered the opinion of the court.

. . . If, therefore, it is true that the State of Texas was not at the time of filing this bill, or is not now, one of the United States, we have no jurisdiction of this suit, and it is our duty to dismiss it.

We are very sensible of the magnitude and importance of this question, of the interest it excites, and of the difficulty, not to say impossibility, of so disposing of it as to satisfy the conflicting judgments of men equally enlightened, equally upright, and equally patriotic. But we meet it in the case, and we must determine it in the exercise of our best judgment, under the guidance of the Constitution alone. . . .

. . . [T]he word . . . [state is] used in the clause which provides that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion. . . .

The Republic of Texas was admitted into the Union, as a State, on the 27th of December, 1845. By this act the new State, and the people of the new State, were invested with all the rights, and became subject to all the responsibilities and duties of the original States under the Constitution.

From the date of admission, until 1861, the State was represented in the Congress of the United States by her senators and representatives, and her relations as a member of the Union remained unimpaired. In that year, acting upon the theory that the rights of a State under the Constitution might be renounced, and her obligations thrown off at pleasure, Texas undertook to sever the bond thus formed, and to break up her constitutional relations with the United States. . . .

The governor and secretary of state, refusing to comply, were summarily ejected from office.

The members of the legislature, which had also adjourned and reassembled on the 18th of March, were more compliant. They took the oath, and proceeded on the 8th of April to provide by law for the choice of electors of president and vice-president of the Confederate States.

The representatives of the State in the Congress of the United States were withdrawn, and as soon as the seceded States became organized under a constitution, Texas sent senators and representatives to the Confederate Congress.

In all respects, so far as the object could be accomplished by ordinances of the convention, by acts of the legislature, and by votes of the citizens, the relations of Texas to the Union were broken up, and new relations to a new government were established for them.

The position thus assumed could only be maintained by arms, and Texas accordingly took part, with the other Confederate States, in the war of the rebellion, which these events made inevitable. During the whole of that war there was no governor, or judge, or any other State officer in Texas, who recognized the National authority. Nor was any officer of the United States permitted to exercise any authority whatever under the National government within the limits of the State, except under the immediate protection of the National military forces.

Did Texas, in consequence of these acts, cease to be a State? Or, if not, did the State cease to be a member of the Union? . . .

The Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to "be perpetual." And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained "to form a more perfect Union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not? . . .

When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican gov-

ernment in the Union, attached at once to the State. The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration, or revocation, except through revolution, or through consent of the States.

Considered therefore as transactions under the Constitution, the ordinance of secession, adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The obligations of the State, as a member of the Union, and of every citizen of the State, as a citizen of the United States, remained perfect and unimpaired. It certainly follows that the State did not cease to be a State, nor her citizens to be citizens of the Union. If this were otherwise, the State must have become foreign, and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion, and must have become a war for conquest and subjugation.

Our conclusion therefore is, that Texas continued to be a State, and a State of the Union, notwithstanding the transactions to which we have referred. And this conclusion, in our judgment, is not in conflict with any act or declaration of any department of the National government, but entirely in accordance with the whole series of such acts and declarations since the first outbreak of the rebellion. . . .

These new relations imposed new duties upon the United States. The first was that of suppressing the rebellion. The next was that of re-establishing the broken relations of the State with the Union. The first of these duties having been performed, the next necessarily engaged the attention of the National government.

The authority for the performance of the first had been found in the power to suppress insurrection and carry on war; for the performance of the second, authority was derived from the obligation of the United States to guarantee to every State in the Union a republican form of government. . . .

It follows that the title of the State was not divested by the act of the insurgent government in entering into this contract. . . .

## **From Governor Richard Coke Second Inaugural Address (1876)**

*Following the Civil War, Texas operated under two constitutions (the Constitution of 1866 and 1869). The return to power of the Democratic Party in the elections of 1872 and 1873 effectively ended reconstruction in Texas. A Constitutional Convention dominated by the Democrats in 1875 drafted a new constitution for the state that took effect in 1876.*

*Governor Richard Coke's second inaugural address in 1876 captures how many people thought of the new constitution. For Coke the 1876 Constitution was not meant to be a reworking of the earlier state constitutions. The people of Texas had become dissatisfied with the power granted to governmental institution over the last decade and were seeking to limit the powers and reach of government. The new constitution was to be unabashedly conservative in design and intent.*

After years of trial and struggle, the people of Texas have at length inaugurated a government made in all its parts by themselves. Its faults and errors, as well as its blessings, have no uncertain paternity. The highest exercise of sovereign power of which a State in the American Union is capable, is that through which the people of Texas have swept out of existence the old government and enacted in its stead that which today has been put in operation in all its departments. Thus has a great revolution been accomplished, without violence or disorder, and with no other conflict than the attrition of opposing opinions in the field of argument and discussion, preparatory to the grand arbitrament of the peaceful ballot. . . . This is the sixth time in the history of Texas that this sovereign right has been exercised. . . .

In the more recently framed constitutions we plainly see a wide departure from the beaten track of constitutional structure, and in none of them is this more apparent than in the new Constitution of Texas.

The accepted theory of American constitutional government is that State constitutions are limitations upon, rather than grants of power; and, as a general rule, not without its exceptions, that powers not prohibited exist in State government. Hence, express prohibitions are necessary upon the powers the people would withhold from the State government, and as time and circumstances and experience suggest their wisdom, these restrictions upon the powers of government have

multiplied in the more recently created instruments of fundamental law. Many causes have conspired to produce these great changes of constitutional theory, and prominent among them are the enormous amounts of capital concentrated in few hands, operating under charters which perpetuate its power; immense railroad systems, which drive off competition and monopolize the carrying trade of the country; the wonderful growth of towns and cities, whose immediate local governments are peculiarly subject to abuses and malign influences, general extravagance, and frequent corruptions of all departments of government, of late years becoming so alarming—all producing results which necessitate a clearer definition and closer guardianship of the rights of the people; and, for their protection, constitutional barriers not demanded by the conditions of society a quarter of a century ago.—

In this instrument we see mirrored the result of issues made in the politics of the State, in the halls of legislation, and in the primary assemblies of the people during the last decade; and we see faithfully reflected in its restrictions upon the power of government, as in its assertion of powers, the dangers of the past, a recurrence of which is so well guarded against in the future. The instrument presents in its fundamental and leading features a basis on which a government may be reared, eminently conservative of all the purposes for which government is instituted; adapted to a sound and healthy growth and development of the State. It may possibly be, in some respects too restrictive, but when such is the case, the error is on the safe side, and while temporary inconvenience may ensue, no permanent injury will result. . . .

The country and people whose welfare depends upon our deliberations and action need and expect a government light in its burdens, effective in administration, and certain in its securities for person and property. Naught else is necessary to ensure prosperity and continued progress and advancement. With such government the elements of greatness so abundant in the noble State we represent, in the hands of our intelligent adventurous and enterprising people, will combine, and evolve from the womb of the future a destiny of grander proportions than the most gorgeous dream of the enthusiast now pictures. . . .



# Government of Texas Key Offices

LEGISLATIVE BRANCH				
Name	Party	District	City	Began serving
<b>Texas House of Representatives</b>				
Gary Van Dever	Republican	1	Texarkana	2015
Dan Flynn	Republican	2	Canton	2003
Cecil Bell, Jr.	Republican	3	Magnolia	2013
Stuart Spitzer	Republican	4	Terrell	2015
Bryan Hughes	Republican	5	Mineola	2003
Matt Schaefer	Republican	6	Tyler	2013
David Simpson	Republican	7	Longview	2011
Byron Cook	Republican	8	Corsicana	2003
Chris Paddie	Republican	9	Marshall	2013
John Wray	Republican	10	Waxahachie	2015
Travis Clardy	Republican	11	Nacogdoches	2013
Kyle Kacal	Republican	12	College Station	2013
Lois W. Kolkhorst	Republican	13	Brenham	2001
John Raney	Republican	14	College Station	2011
Mark Keough	Republican	15	The Woodlands	2015
Will Metcalf	Republican	16	Conroe	2015
Tim Kleinschmidt	Republican	17	Lexington	2009
John Otto	Republican	18	Dayton	2005
James White	Republican	19	Woodville	2011
Marsha Farney	Republican	20	Georgetown	2013
Dade Phelan	Republican	21	Nederland	2015
Joe D. Deshotel	Democrat	22	Beaumont	1999
Wayne Faircloth	Republican	23	Galveston	2015
Dr. Greg Bonnen	Republican	24	Friendswood	2013
Dennis Bonnen	Republican	25	Angleton	1997
Rick Miller	Republican	26	Sugar Land	2013
Ron Reynolds	Democrat	27	Missouri City	2011
John Zerwas	Republican	28	Richmond	2007

(continued)

Name	Party	District	City	Began serving
Ed Thompson	Republican	29	Pearland	2013
Geanie Morrison	Republican	30	Victoria	1999
Ryan Guillen	Democrat	31	Rio Grande City	2003
Todd A. Hunter	Republican	32	Corpus Christi	1989
Scott Turner	Republican	33	Frisco	2013
Abel Herrero	Democrat	34	Robstown	2005
Oscar Longoria	Democrat	35	Mission	2013
Sergio Muñoz, Jr.	Democrat	36	Palmview	2011
René O. Oliveira	Democrat	37	Brownsville	1981
Eddie Lucio III	Democrat	38	Harlingen	2007
Armando Martinez	Democrat	39	Weslaco	2005
Terry Canales	Democrat	40	Edinburg	2013
R. D. "Bobby" Guerra	Democrat	41	Mission	2012
Richard Peña Raymond	Democrat	42	Laredo	1993
J. M. Lozano	Republican	43	Kingsville	2011
John Kuempel	Republican	44	Seguin	2010
Jason Isaac	Republican	45	Dripping Springs	2011
Dawnna Dukes	Democrat	46	Austin	1995
Paul Workman	Republican	47	Austin	2011
Donna Howard	Democrat	48	Austin	2006
Elliott Naishat	Democrat	49	Austin	1991
Celia Israel	Democrat	50	Austin	2014
Eddie Rodriguez	Democrat	51	Austin	2003
Larry Gonzales	Republican	52	Round Rock	2011
Andrew Murr	Republican	53	Kerrville	2015
Jimmie Don Aycock	Republican	54	Killeen	2007
Molly S. White	Republican	55	Temple	2015
Charles "Doc" Anderson	Republican	56	Waco	2005
Trent Ashby	Republican	57	Lufkin	2013
Dewayne Burns	Republican	58	Burleson	2015
J. D. Sheffield	Republican	59	Gatesville	2013
Jim Keffer	Republican	60	Eastland	1997

(continued)

Name	Party	District	City	Began serving
Phil King	Republican	61	Weatherford	1999
Larry Phillips	Republican	62	Sherman	2003
Tan Parker	Republican	63	Flower Mound	2007
Myra Crownover	Republican	64	Denton	2000
Ron Simmons	Republican	65	Carrollton	2013
Matt Shaheen	Republican	66	Plano	2015
Jeff Leach	Republican	67	Plano	2013
Drew Springer, Jr.	Republican	68	Muenster	2013
James Frank	Republican	69	Wichita Falls	2013
Scott Sanford	Republican	70	McKinney	2013
Susan King	Republican	71	Abilene	2007
Drew Darby	Republican	72	San Angelo	2007
Doug Miller	Republican	73	New Braunfels	2009
Poncho Nevárez	Democrat	74	Eagle Pass	2013
Mary E. González	Democrat	75	Clint	2013
César Blanco	Democrat	76	El Paso	2015
Marisa Márquez	Democrat	77	El Paso	2009
Joseph E. Moody	Democrat	78	El Paso	2009
Joe C. Pickett	Democrat	79	El Paso	1995
Tracy O. King	Democrat	80	Batesville	1995
Brooks Landgraf	Republican	81	Odessa	2015
Tom Craddick	Republican	82	Midland	1969
Dustin Burrows	Republican	83	Lubbock	2015
John M. Frullo	Republican	84	Lubbock	2010
Phil Stephenson	Republican	85	Wharton	2013
John Smithee	Republican	86	Amarillo	1985
Walter "Four" Price	Republican	87	Amarillo	2011
Ken King	Republican	88	Canadian	2013
Jodie Laubenberg	Republican	89	Parker	2003
Ramon Romero, Jr.	Democrat	90	Fort Worth	2015
Stephanie Klick	Republican	91	Fort Worth	2013
Jonathan Stickland	Republican	92	Bedford	2013

(continued)

Name	Party	District	City	Began serving
Matt Krause	Republican	93	Fort Worth	2013
Troy Tinderholt	Republican	94	Arlington	2015
Nicole Collier	Democrat	95	Fort Worth	2013
Bill Zedler	Republican	96	Arlington	2003
Craig Goldman	Republican	97	Fort Worth	2013
Giovanni Capriglione	Republican	98	Southlake	2013
Charlie Geren	Republican	99	Fort Worth	2001
Eric Johnson	Democrat	100	Dallas	2010
Chris Turner	Democrat	101	Grand Prairie	2009
Linda Koop	Republican	102	Dallas	2015
Rafael Anchia	Democrat	103	Dallas	2005
Roberto Alonzo	Democrat	104	Dallas	1993
Rodney Anderson	Republican	105	Irving	2015
Pat Fallon	Republican	106	Frisco	2013
Kenneth Sheets	Republican	107	Dallas	2011
Morgan Meyer	Republican	108	Dallas	2015
Helen Giddings	Democrat	109	DeSoto	1993
Toni Rose	Democrat	110	Dallas	2013
Yvonne Davis	Democrat	111	Dallas	1993
Angie Chen Button	Republican	112	Richardson	2009
Cindy Burkett	Republican	113	Sunnyvale	2011
Jason Villalba	Republican	114	Dallas	2013
Matt Rinaldi	Republican	115	Coppell	2015
Trey Martinez Fischer	Democrat	116	San Antonio	2001
Rick Galindo	Republican	117	San Antonio	2015
Joe Farias	Democrat	118	San Antonio	2007
Roland Gutierrez	Democrat	119	San Antonio	2008
Ruth Jones McClendon	Democrat	120	San Antonio	1996
Joe Straus (Speaker of the House)	Republican	121	San Antonio	2005
Lyle Larson	Republican	122	San Antonio	2011
Mike Villarreal	Democrat	123	San Antonio	2000
José Menéndez	Democrat	124	San Antonio	2001

(continued)

Name	Party	District	City	Began serving
Justin Rodriguez	Democrat	125	San Antonio	2013
Patricia Harless	Republican	126	Spring	2007
Dan Huberty	Republican	127	Houston	2011
Wayne Smith	Republican	128	Baytown	2003
Dennis Paul	Republican	129	Houston	2015
Allen Fletcher	Republican	130	Cypress	2009
Alma Allen	Democrat	131	Houston	2005
Mike Schofield	Republican	132	Houston	2015
Jim Murphy	Republican	133	Houston	2007
Sarah Davis	Republican	134	West University Place	2011
Gary Elkins	Republican	135	Houston	1995
Tony Dale	Republican	136	Cedar Park	2013
Gene Wu	Democrat	137	Houston	2013
Dwayne Bohac	Republican	138	Houston	2003
Sylvester Turner	Democrat	139	Houston	1993
Armando Walle	Democrat	140	Houston	2009
Senfronia Thompson	Democrat	141	Houston	1993
Harold V. Dutton, Jr.	Democrat	142	Houston	1985
Ana Hernandez	Democrat	143	Houston	2005
Gilbert Peña	Republican	144	Houston	2015
Carol Alvarado	Democrat	145	Houston	2009
Borris Miles	Democrat	146	Houston	2007
Garnet Coleman	Democrat	147	Houston	1991
Jessica Farrar	Democrat	148	Houston	1995
Hubert Vo	Democrat	149	Houston	2005
Debbie Riddle	Republican	150	Tomball	2003
<b>Texas Senate</b>				
Brian Birdwell	Republican	22	Granbury	2010
Donna Campbell	Republican	25	New Braunfels	2013
Mike Dooling	Republican	16	Dallas	2015
Konni Burton	Republican	10	Fort Worth	2015
Bob Hall	Republican	2	Greenville	2015

(continued)

Name	Party	District	City	Began serving
Charles Perry	Republican	28	Lubbock	2014
Rodney Ellis	Democrat	13	Houston	1990
Kevin Eltife	Republican	1	Tyler	2004
Craig Estes	Republican	30	Wichita Falls	2001
Troy Fraser	Republican	24	Horseshoe Bay	1997
Sylvia Garcia	Democrat	6	Houston	2013
Kelly Hancock	Republican	9	North Richland Hills	2013
Undecided*		18	Katy	
Juan "Chuy" Hinojosa	Democrat	20	McAllen	2003
Joan Huffman	Republican	17	Houston	2008
Eddie Lucio, Jr.	Democrat	27	Brownsville	1991
Jane Nelson	Republican	12	Flower Mound	1993
Robert Nichols	Republican	3	Jacksonville	2007
Paul Bettencourt	Republican	7	Houston	2015
Van Taylor	Republican	8	McKinney	2015
José Rodríguez	Democrat	29	El Paso	2011
Charles Schwertner	Republican	5	Georgetown	2013
Kel Seliger	Republican	31	Amarillo	2004
Larry Taylor	Republican	11	Friendswood	2013
Carlos Uresti	Democrat	19	San Antonio	2007
Leticia Van de Putte	Democrat	26	San Antonio	1999
Kirk Watson	Democrat	14	Austin	2007
Royce West	Democrat	23	Dallas	1993
John Whitmire	Democrat	15	Houston	1983
Brandon Creighton	Republican	4	Conroe	2014
Judith Zaffirini	Democrat	21	Laredo	1987

\*A special election will be held to replace Glenn Hegar, who resigned his Senate seat to take his position as Comptroller of Public Accounts.

(continued)

EXECUTIVE BRANCH				
Name	Party	District	City	Began serving
<b>Governor</b>				
Greg Abbott	Republican	Statewide		2015
<b>Lieutenant Governor</b>				
Dan Patrick	Republican	Statewide		2015
<b>Attorney General</b>				
Ken Paxton	Republican	Statewide		2015
<b>Commissioner of the General Land Office</b>				
George P. Bush	Republican	Statewide		2015
<b>Comptroller of Public Accounts</b>				
Glenn Hegar	Republican	Statewide		2015
<b>Commissioner of Agriculture</b>				
Sid Miller	Republican	Statewide		2015
<b>Railroad Commission</b>				
Ryan Sitton	Republican	Statewide		2015
David Porter	Republican	Statewide		2011
Christi Craddick (Chairman)	Republican	Statewide		2012
<b>State Board of Education</b>				
Martha Dominguez	Democrat	1	El Paso	2013
Ruben Cortez, Jr.	Democrat	2	Brownsville	2013
Marisa Perez	Democrat	3	San Antonio	2013
Lawrence A. Allen, Jr.	Democrat	4	Fresno	2005
Ken Mercer	Republican	5	San Antonio	2007
Donna Bahorich	Republican	6	Houston	2013
David Bradley	Republican	7	Beaumont	1997
Barbara Cargill (Chair)	Republican	8	The Woodlands	2005
Thomas Ratliff (Vice Chair)	Republican	9	Mount Pleasant	2011
Tom Maynard	Republican	10	Georgetown	2013

(continued)

Patricia Hardy	<b>Republican</b>	11	Fort Worth	2003
Geraldine Miller	<b>Republican</b>	12	Dallas	1984
Erika Beltran	<b>Democrat</b>	13	Dallas	2015
Sue Melton	<b>Republican</b>	14	Waco	2013
Marty Rowley	<b>Republican</b>	15	Amarillo	2013
<b>JUDICIAL BRANCH</b>				
Name	Party	District	City	Began serving
<b>Supreme Court of Texas</b>				
Nathan Hecht (Chief Justice)	<b>Republican</b>	Statewide		1989
Don R. Willett	<b>Republican</b>	Statewide		2005
Debra Lehrmann	<b>Republican</b>	Statewide		2010
John Phillip Devine	<b>Republican</b>	Statewide		2012
Paul W. Green	<b>Republican</b>	Statewide		2004
Jeff Brown	<b>Republican</b>	Statewide		2013
Jeffrey S. Boyd	<b>Republican</b>	Statewide		2012
Phil Johnson	<b>Republican</b>	Statewide		2005
Eva Guzman	<b>Republican</b>	Statewide		2009
<b>Court of Criminal Appeals</b>				
Sharon Keller (Presiding Judge)	<b>Republican</b>	Statewide		1994
Lawrence Edward Meyers	<b>Republican</b>	Statewide		1992
Bert Richardson	<b>Republican</b>	Statewide		2015
Kevin Patrick Yearly	<b>Republican</b>	Statewide		2015
Cheryl Johnson	<b>Republican</b>	Statewide		1998
Michael E. Keasler	<b>Republican</b>	Statewide		1998
Barbara Parker Hervey	<b>Republican</b>	Statewide		2000
Elsa Alcala	<b>Republican</b>	Statewide		2011
David Newell	<b>Republican</b>	Statewide		2015

# glossary

**action by the governor** the final step in the legislative process, during which the governor signs, vetoes, or refuses to sign a bill

**agricultural commissioner** elected state official who is primarily responsible for enforcing agricultural laws

**Aid to Families with Dependent Children (AFDC)** a federally and state-financed program for children living with parents or relatives who fell below state standards of need; replaced in 1996 by TANF

**All Funds budget** budget that aggregates all monies flowing into the state treasury and all state spending

**answer** the presentation of a defendant's defense against an allegation in a civil case

**appointment** the power of the chief executive, whether the president of the United States or the governor of a state, to appoint persons to office

**appropriations** authorization by the legislature to a government agency or body to spend up to a particular amount of money

**Article 3, Section 49a (Pay-as-You-Go Limit)** portion of the Texas Constitution that requires the state to maintain a balanced budget

**assigned counsel** private lawyers appointed by judges to provide legal representation for indigent defendants in serious criminal cases; the lawyer's fee is determined by and paid by the county

**at-large election** an election in which officials are selected by voters of the entire geographical area, rather than from smaller districts within that area

**attorney general** elected state official who serves as the state's chief civil lawyer

**Available School Fund (ASF)** dedicated fund established by the constitution for the support of public education in the state

**bail** payment of money to the state as an assurance that an accused person who is released from jail pending trial will appear for trial; if the accused does not appear, the bail is forfeited

**bench trial** a trial held without a jury and before only a judge

**beyond a reasonable doubt** the legal standard in criminal cases, which requires the prosecution to prove that a reasonable doubt of innocence does not exist

**bicameral** having a legislative assembly composed of two chambers or houses

**biennial** occurring every two years

**bill** a proposed law that has been sponsored by a member of the legislature and submitted to the clerk of the House or Senate

**block grants** federal grants that allow states considerable discretion on how funds are spent

**Blue Dog Democrats** another name for conservative Democrats, mostly from the South

**bounded rationality** the idea in policy making that decision makers may seek satisfactory solutions to problems that are not necessarily optimal or efficient

**bundling** the interest-group practice of combining campaign contributions from several sources into one larger contribution from the group, so as to increase the group's impact on the candidate

**bureaucracy** the complex structure of offices, tasks, rules, and principles of organization that are employed by all large-scale institutions to coordinate the work of their personnel

**capital appreciation bond (CAB)** a long-term, high-interest-paying bond that pays off both principal and interest in one lump sum when the bond reaches maturity

**capital case** a criminal case in which the death penalty is a possible punishment

**categorical grants** congressionally appropriated grants to states and localities on the condition that expenditures be limited to a problem or group specified by law

**checks and balances** the constitutional idea that overlapping power is given to different branches of government to limit the concentration of power in any one branch

**civil law** a branch of law that deals with disputes, usually between private individuals over relationships, obligations, and responsibility

<b>closed primary</b>	a primary election in which only registered members of a particular political party can vote	<b>county commissioner</b>	government official (four per county) on the county commissioners' court whose main duty is the construction and maintenance of roads and bridges
<b>coercive federalism</b>	federal policies that force states to change their policies to achieve national goals	<b>county commissioners' court</b>	the main governing body of each county; has the authority to set the county tax rate and budget
<b>commissioner form of government</b>	a form of city government in which the city is run by a small group of elected commissioners who act in both legislative and executive capacities	<b>county convention</b>	a meeting held by a political party following its precinct conventions, for the purpose of electing delegates to its state convention
<b>complaint</b>	the presentation of a grievance by the plaintiff in a civil case	<b>county courts</b>	the courts that exist in some counties that are presided over by county judges
<b>comptroller</b>	elected state official who directs the collection of taxes and other revenues and estimates revenues for the budgeting process	<b>county executive committee</b>	the party group, made up of a party's county chair and precinct chairs, that is responsible for running a county's primary elections and planning county conventions
<b>concurrent resolution</b>	a resolution of interest to both chambers of the legislature and which must pass both the House and Senate and generally be signed by the governor	<b>county judge</b>	the person in each of Texas's 254 counties who presides over the county court and the county commissioners' court, with responsibility for the administration of county government; some county judges carry out judicial responsibilities
<b>Confederacy</b>	the Confederate States of America, those southern states that seceded from the United States in late 1860 and 1861 and argued that the power of the states was more important than the power of the central government	<b>county tax assessor-collector</b>	public official who maintains the county tax records and collects the taxes owed to the county
<b>conference committee</b>	a joint committee created to work out a compromise on House and Senate versions of a piece of legislation	<b>courts of appeal</b>	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
<b>consideration by standing committee</b>	the third step in the legislative process, during which a bill is killed, amended, or heard by a standing committee	<b>criminal law</b>	the branch of law that regulates the conduct of individuals, defines crimes, and specifies punishment for criminal acts
<b>constable</b>	precinct-level county official involved with serving legal papers and, in some counties, enforcing the law	<b>dark money</b>	political money where the donors of the money do not have to be disclosed
<b>constituent</b>	a person living in the district from which an official is elected	<b>debt service</b>	money spent by the state to pay off debt; includes interest and principal payments
<b>constitution</b>	the legal structure of a government, which establishes its power and authority as well as the limits on that power	<b>deferred retirement option plan (DROP)</b>	retirement plan in which local government employees who are eligible to retire have their retirement benefits deposited in an account in which the benefits draw interest until actual retirement; some of these plans pay high interest and cost-of-living adjustments and may be coupled with very early retirement ages
<b>contingent fee</b>	a fee paid to the lawyer in a civil case which is contingent on winning the case	<b>directive and supervisory power</b>	the legislature's power over the executive branch; for example, the legislature determines the size of appropriations for state agencies
<b>cooperative federalism</b>	a type of federalism existing since the New Deal era in which grants-in-aid have been used to encourage states and localities (without commanding them) to pursue nationally defined goals; also known as "intergovernmental cooperation"	<b>district attorney</b>	public official who prosecutes the more serious criminal cases in the district court
<b>council of government (COG)</b>	a regional planning board composed of local elected officials and some private citizens from the same area	<b>district clerk</b>	public official who is the main record-keeper of district court documents
<b>council-manager form of government</b>	a form of city government in which public policies are developed by the city council and executive and administrative functions are assigned to a professional city manager	<b>district courts</b>	the major trial courts in Texas, which usually have general jurisdiction over a broad range of civil and criminal cases
<b>county attorney</b>	county official who prosecutes lesser criminal cases in the county court	<b>Dixiecrats</b>	conservative Democrats who abandoned the national Democratic Party in the 1948 presidential election
<b>county auditor</b>	public official, appointed by the district judges, who receives and disburses county funds; in large counties, this official also prepares the county budget	<b>dual federalism</b>	the system of government that prevailed in the United States from 1789 to 1937, in which most fun-
<b>county chair</b>	the county party official who heads the county executive committee		
<b>county clerk</b>	public official who is the main record-keeper of the county		

damental governmental powers were strictly separated between the federal and state governments	general election the election in which voters cast ballots to select public officials
<b>Duverger's Law</b> the observation that in a single-member district system of electing representatives, a two-party system will emerge	<b>General Revenue Fund</b> the state's primary operating fund
<b>early registration</b> the requirement that a voter register long before the general election; in effect in Texas until 1971	<b>General Revenue-Dedicated Funds budget</b> budget composed of funds for dedicated revenues that target money for specific purposes
<b>early voting</b> a procedure that allows voters to cast ballots during the two-week period before the regularly scheduled election date	<b>General Revenues Fund budget</b> budget for a nondedicated revenue account that functions as the state's primary operating fund
<b>Economic Stabilization Fund (ESF)</b> fund established by constitutional amendment in 1988 to provide funds for the state during times of financial stress, commonly known as the Rainy Day Fund	<b>Gilmer-Aikin Laws</b> education reform legislation passed in 1949 that supplemented local funding of education with public monies, raised teachers' salaries, mandated a minimum length for the school year, and provided for more state supervision of public education
<b>electoral power</b> the legislature's mandated role in counting returns in the elections for governor and lieutenant governor	<b>grand jury</b> jury that determines whether sufficient evidence is available to justify a trial; grand juries do not rule on the accused's guilt or innocence
<b>elite</b> a small group of people that dominates the political process	<b>Grange</b> a militant farmers' movement of the late nineteenth century that fought for improved conditions for farmers
<b>en banc</b> referring to an appellate hearing with all judges participating	<b>hidden government</b> a term that refers to special districts of which many citizens are unaware
<b>equal protection clause</b> provision in the Fourteenth Amendment of the U.S. Constitution guaranteeing citizens the "equal protection of the laws"; this clause has been the basis for the civil rights of African Americans, women, and other groups	<b>Higher Education Fund (HEF)</b> state higher education fund for universities not having access to PUF monies
<b>executive budget</b> the state budget prepared and submitted by the governor to the legislature, which indicates the governor's spending priorities; the executive budget is overshadowed in terms of importance by the legislative budget	<b>home-rule charter</b> the rules under which a city operates; local governments have considerable independent governing power under these charters
<b>Federal Funds budget</b> state budget that includes all grants, payments, and reimbursements received from the federal government by state agencies and institutions	<b>impeachment</b> under the Texas Constitution, the formal charge by the House of Representatives that leads to trial in the Senate and possible removal of a state official
<b>federalism</b> a system of government in which power is divided, by a constitution, between a central government and regional governments	<b>impresario</b> an individual who promotes, organizes, or helps to finance a particular endeavor
<b>felony</b> a serious criminal offense, punishable by a prison sentence or a fine; a capital felony is punishable by death or a life sentence	<b>independent state grounds</b> allow states, usually under the state constitution, to expand rights beyond those provided by the U.S. Constitution
<b>filibuster</b> a tactic used by members of the Senate to prevent action on legislation they oppose by continuously holding the floor and speaking until the majority backs down; once given the floor, senators have unlimited time to speak as long as they follow Senate rules, and it requires a vote of three-fifths of the Senate to end a filibuster	<b>indictment</b> a written statement issued by a grand jury that charges a suspect with a crime and states that a trial is warranted
<b>"first past the post"</b> an election rule that states that the winner is the candidate who receives a plurality of the votes	<b>individualistic political culture</b> the belief that government should limit its role to providing order in society, so that citizens can pursue their economic self-interests
<b>floor action</b> the fourth step in the legislative process, during which a bill referred by a standing committee is scheduled for floor debate by the Calendars Committee	<b>interest group</b> an organization established to influence the government's programs and policies
<b>free rider problem</b> the incentive to benefit from others' work without making a contribution, which leads individuals in a collective action situation to refuse to work together	<b>interest-group capture</b> government agency that serves the objectives of the interests that the agency is supposed to regulate
<b>general bill</b> a bill that applies to all people and/or property in the state	<b>intermediate standard of review</b> primarily used for classifications in the law based on sex; for the law to be constitutional the government must show important governmental objectives and the law must be substantially related to achievement of those objectives
	<b>introduction</b> the first step in the legislative process, during which a member of the legislature gets an idea for a bill and files a copy of it with the clerk of the House or secretary of the Senate

<b>investigative power</b> the power, exercised by the House, the Senate, or both chambers jointly, to investigate problems facing the state	<b>matching funds</b> federal monies going to a state based on state spending for a program
<b>issue advocacy</b> independent spending by individuals or interest groups on a campaign issue but not directly tied to a particular candidate	<b>mayor-council form of government</b> a form of city government in which the mayor is the chief executive and the city council is the legislative body; in the <i>strong mayor-council</i> variation, the mayor's powers enable him or her to control executive departments and the agenda of the city council; in the <i>weak mayor-council</i> variation, the mayor's power is more limited
<b>Jaybird Party</b> after the white primary was ruled unconstitutional, this offshoot Democratic party preselected candidates for the Democratic primary and prohibited African Americans from participating	<b>Medicaid</b> a federal and state program financing medical services to low-income people
<b>joint resolution</b> a resolution, commonly a proposed amendment to the Texas Constitution or ratification of an amendment to the U.S. Constitution, that must pass both the House and Senate but which does not require the governor's signature	<b>merit selection</b> a judicial reform under which judges would be nominated by a blue-ribbon committee, would be appointed by the governor, and, after a brief period in office, would run in a retention election
<b>Judicial Campaign Fairness Act</b> a judicial reform that places limits on judicial campaign contributions	<b>misdemeanor</b> a minor criminal offense usually punishable by a small fine or short jail sentence
<b>judicial power</b> the power of the House to impeach and of the Senate to convict members of the executive and judicial branches of state government	<b>moralistic political culture</b> the belief that government should be active in promoting the public good and that citizens should participate in politics and civic activities to ensure that good
<b>justice of the peace courts</b> local trial courts with limited jurisdiction over small claims and very minor criminal misdemeanors	<b>motor voter law</b> a national act, passed in 1993, that requires states to allow people to register to vote when applying for a driver's license
<b>La Raza Unida Party</b> political party formed in Texas in order to bring attention to the concerns of Mexican Americans	<b>municipal courts</b> local trial courts with limited jurisdiction over violations of city ordinances and very minor criminal misdemeanors
<b>land commissioner</b> elected state official who is the manager of most publicly owned lands	<b>municipal utility district (MUD)</b> a special district that offers services such as electricity, water, sewage, and sanitation outside the city limits
<b>law of capture</b> the idea that the first person "to capture" water or oil by pumping it out of the ground and using it owns that water or oil	<b>National Research University Fund (NRUF)</b> fund established in 2009 to provide funding to universities seeking to achieve national prominence as research institutions
<b>layer-cake federalism</b> a way of describing the system of dual federalism in which there is a division of responsibilities between the state and the national governments	<b>necessary and proper clause</b> Article I, Section 8, of the U.S. Constitution; it provides Congress with the authority to make all laws "necessary and proper" to carry out its powers
<b>legislative budget</b> the state budget that is prepared and submitted by the Legislative Budget Board (LBB) and that is fully considered by the House and Senate	<b>New Deal</b> President Franklin Delano Roosevelt's 1930s programs to stimulate the national economy and provide relief to victims of the Great Depression
<b>lieutenant governor</b> the second-highest elected official in the state and president of the state Senate	<b>New Federalism</b> the attempts by Presidents Nixon and Reagan to return power to the states through block grants
<b>limited government</b> a principle of constitutional government; a government whose powers are defined and limited by a constitution	<b>Nineteenth Amendment</b> ratified in 1919, amendment guaranteeing women the right to vote
<b>line-item veto</b> the power of the executive to veto specific provisions (lines) of an appropriations bill passed by the legislature	<b>nonschool special district</b> any special district other than a school district; examples include municipal utility districts (MUDs) and hospital districts
<b>lobbyist</b> an individual employed by an interest group who tries to influence governmental decisions on behalf of that group	<b>North American Free Trade Agreement (NAFTA)</b> trade treaty among the United States, Canada, and Mexico to lower and eliminate tariffs among the three countries
<b>local bill</b> a bill affecting only units of local government, such as a city, county, or special district	<b>Occupy movement</b> political movement aimed at limiting the influence of Wall Street and big corporations in Amer-
<b>marble-cake federalism</b> a way of describing federalism where the boundaries between the national government and state government have become blurred	

ican politics; created following government bailouts in 2008	elections by the Twenty-Fourth Amendment, and in state elections by the Supreme Court in 1966
<b>one-person, one-vote principle</b> the principle that all districts should have roughly equal populations	<b>post-adjournment veto</b> a veto of a bill that occurs after the legislature adjourns, thus preventing the legislature from overriding it
<b>open primary</b> a primary election in which any registered voter can participate in the contest, regardless of party affiliation	<b>precinct chair</b> the local party official, elected in the party's primary election, who heads the precinct convention and serves on the party's county executive committee
<b>ordinance</b> a regulation enacted by a city government each of Texas's incorporated cities and towns	<b>precinct convention</b> a meeting held by a political party to select delegates for the county convention and to submit resolutions to the party's state platform; precinct conventions are held on the day of the party's primary election and are open to anyone who voted in that election
<b>Other Funds budget</b> budget consisting of all other funds flowing into the state treasury that are not included in other state budgets; this includes the Texas Highway Fund, various trust funds operated by the state, and certain revenues held for local higher education accounts	<b>precinct</b> the most basic level of political organization at the local level
<b>parole</b> the conditional release of an offender who has served some prison time, under specified rules and under the supervision of a parole officer	<b>preclearance</b> provision under Section 5 of the Voting Rights Act of 1965 requiring any changes to election procedures or district lines to be approved by the U.S. Department of Justice or the U.S. district court for the District of Columbia
<b>partisan polarization</b> the degree to which Republicans have become more conservative and Democrats have become more liberal	<b>preemption</b> where the national government imposes its priorities and prevents the state from acting in a particular field
<b>patronage</b> the resources available to higher officials, usually opportunities to make political appointments to offices and to confer grants, licenses, or special favors to supporters	<b>preponderance of the evidence</b> the standard of proof in a civil jury case, by which the plaintiff must show that the defendant is more likely than not the cause of the harm suffered by the plaintiff
<b>per diem</b> daily payment to a public official engaged in state business	<b>presidential Republicanism</b> a voting pattern in which conservatives vote Democratic for state offices but Republican for presidential candidates
<b>Permanent School Fund (PSF)</b> fund created in 1854 that provides monies for primary and secondary schools	<b>primary election</b> a ballot vote in which citizens select a party's nominee for the general election
<b>Permanent University Trust Fund (PUTF)</b> fund established in 1876 and funded from the proceeds from land owned by the state; monies go to various universities in the University of Texas (UT) and Texas A&M systems	<b>probation</b> punishment where an offender is not imprisoned but remains in the community under specified rules and under the supervision of a probation officer
<b>pigeonholing</b> a step in the legislative process during which a bill is killed by the chair of the standing committee to which it was referred, as a result of his or her setting the bill aside and not bringing it before the committee	<b>progressive tax</b> type of tax where the tax burden falls more heavily on upper-income individuals
<b>plea bargain</b> negotiated agreement in a criminal case in which a defendant agrees to plead guilty in return for the state's agreement to reduce the severity of the criminal charge or prison sentence the defendant is facing	<b>property tax</b> a tax based on an assessment of the value of one's property, which is used to fund the services provided by local governments, such as education
<b>plural executive</b> an executive branch in which power is fragmented because the election of statewide officeholders is independent of the election of the governor	<b>proportional representation</b> a multimember district system that allows each political party representation in proportion to its percentage of the total vote
<b>political action committee (PAC)</b> a private group that raises and distributes funds for use in election campaigns	<b>provincialism</b> a narrow, limited, and self-interested view of the world often associated with rural values and notions of limited government
<b>political culture</b> broadly shared values, beliefs, and attitudes about how the government should function and politics should operate; American political culture emphasizes the values of liberty, equality, and democracy	<b>public defender</b> salaried lawyer who is funded by the government or by grants who represents indigents in Texas in some counties or for some types of cases
<b>political socialization</b> the introduction of individuals into the political culture; learning the underlying beliefs and values on which the political system is based	<b>Radical Republicans</b> a bloc of Republicans in the U.S. Congress who pushed through the adoption of black suffrage as well as an extended period of military occupation of the South following the Civil War
<b>poll tax</b> a state-imposed tax on voters as a prerequisite for voting; poll taxes were rendered unconstitutional in national	

- rational basis test** presumes that the legal classification made by the government is constitutional; all the government must show is some rational justification for the law
- rationality** the idea in public-policy making that we have clearly identified goals and that we seek to achieve these goals in an optimal or efficient manner
- reapportionment** process that takes place every 10 years to determine how many congressional seats each state will receive, depending on population shifts
- recognition** the power to control floor debate by recognizing who can speak before the House and Senate
- Reconstruction** the period after the Civil War when much of the South was under military occupation
- redistricting** the process of redrawing election districts and redistributing legislative representatives in the Texas House, Texas Senate, and U.S. House; this process usually happens every 10 years to reflect shifts in population or in response to legal challenges in existing districts
- referral** the second step in the legislative process, during which a bill is assigned to the appropriate standing committee by the Speaker (for House bills) or the lieutenant governor (for Senate bills)
- regressive tax** type of tax where the tax burden falls more heavily on lower-income individuals
- regular session** the 140-day period, occurring only in odd-numbered years, during which the Texas legislature meets to consider and pass bills
- republican government** a representative democracy, a system of government in which power is derived from the people
- resolution** an expression of opinion on an issue by a legislative body
- retention election** an election in which voters decide whether to keep an incumbent in office by voting “yes” or “no” to retain the incumbent and where there is no opposing candidate
- runoff primary** a second primary election held between the two candidates who received the most votes in the first primary election if no candidate in the first primary election had received a majority
- Sanford dictum** held in *Gitlow v. New York* that the First Amendment right of free speech was a fundamental right that applied to the states
- school district** a specific type of special district that provides public education in a designated area
- secretary of state** state official, appointed by the governor, whose primary responsibility is administering elections
- selective incorporation** rights in the Bill of Rights that the Court believes are fundamental and are held to apply to the states as well as the national government because they are part of the “liberty” protected from state action in the Fourteenth Amendment
- senatorial courtesy** the practice whereby the president, before formally nominating a person for a federal judgeship, seeks the indication that senators from the candidate’s own state support the nomination; in Texas, the practice whereby the governor seeks the indication that the senator from the candidate’s home supports the nomination
- “separate but equal”** an interpretation of the equal protection clause of the Fourteenth Amendment that held that states could segregate races as long as equal facilities were provided; it was overturned in 1954
- separation of powers** the division of governmental power among several institutions that must cooperate in decision making
- Shivercrat movement** a movement led by the Texas governor Allan Shivers during the 1950s in which conservative Democrats in Texas supported Republican candidate Dwight Eisenhower for the presidency because many of those conservative Democrats believed that the national Democratic Party had become too liberal
- simple resolution** a resolution that concerns only the Texas House or Senate, such as the adoption of a rule or the appointment of an employee, and which does not require the governor’s signature
- single-member district** an electorate that is allowed to elect only one representative for each district
- sovereign** possessing supreme political authority within a geographic area
- Speaker** the chief presiding officer of the House of Representatives; the Speaker is the most important party and House leader, and can influence the legislative agenda, the fate of individual pieces of legislation, and members’ positions within the House
- special bill** a bill that gives an individual or corporation a special exemption from state law
- special district** a unit of local government that performs a single service, such as education or sanitation, within a limited geographic area
- special election** an election that is not held on a regularly scheduled basis; in Texas, a special election is called to fill a vacancy in office, to give approval for the state government to borrow money, or to ratify amendments to the Texas Constitution
- special session** a legislative session called by the governor that addresses an agenda set by him or her and that lasts no longer than 30 days
- standing committee** a permanent committee with the power to propose and write legislation that covers a particular subject, such as finance or agriculture
- state chair and vice chair** the top two state-level leaders in the party
- state convention** a party meeting held every two years for the purpose of nominating candidates for statewide office, adopting a platform, electing the party’s leadership, and in presidential election years selecting delegates for the national convention and choosing presidential electors
- state executive committee** the committee responsible for governing a party’s activities throughout the state

**State Highway Fund** fund that supports the construction, maintenance, and policing of roadways and acquires rights of way; funded through a variety of taxes such as motor vehicle registration fees, the federal highway fund, and the sales tax on motor lubricants

**statutory county courts at law** courts that tend to hear less serious cases than those heard by district courts

**statutory probate courts** specialized courts whose jurisdiction is limited to probate and guardianship matters

**strict scrutiny** the most rigorous equal protection standard; it requires that the government show a compelling state interest in order to successfully defend a law that makes certain classifications such as racial classifications; additionally, that classification must be one that is narrowly tailored by the least drastic means possible to achieve the government's objective

**suffrage** term referring to the right to vote

**Sunset Advisory Commission (SAC)** a commission created in 1975 for the purpose of reviewing the effectiveness of state agencies

**Supplemental Security Income (SSI)** a national welfare program passed in 1972 that provides assistance to low-income elderly or disabled individuals; replaced the federal-state programs that had offered assistance to the blind, the permanently and totally disabled, and the aged

**supremacy clause** Article VI of the U.S. Constitution, which states that the Constitution and laws passed by the national government and all treaties are the supreme law of the land and superior to all laws adopted by any state or any subdivision

**Tea Party movement** created after Barack Obama's election, a political movement that advocates lower government spending, lower taxes, and limited government

**Temporary Assistance for Needy Families (TANF)** a welfare program passed in 1996 to provide temporary assistance to families with needy children; replacing the AFDC program, TANF sought to make poor families self-sufficient and to

give states greater flexibility in setting benefit levels, eligibility requirements, and other program details

**Texas Court of Criminal Appeals** the highest criminal court in Texas; consists of nine justices and has final state appellate authority over criminal cases

**Texas Supreme Court** the highest civil court in Texas; consists of nine justices and has final state appellate authority over civil cases

**"three strikes"** provision a law that allows persons convicted of three felonies (or in some cases two felonies) to be sentenced to life imprisonment

**traditionalistic political culture** the belief that government should be dominated by political elites and guided by tradition

**tyranny** according to James Madison, the concentration of power in any one branch of government

**unfunded mandates** federal requirements that states or local governments pay the costs of federal policies

**unicameral** comprising one body or house, as in a one-house legislature

**urbanization** the process by which people move from rural areas to cities

**user fee** a fee paid for public goods and services, such as water or sewage service

**veto** the governor's power to turn down legislation; can be overridden by a two-thirds vote of both the House and Senate

**Voting Rights Act of 1965** important legislation passed in order to ensure that African Americans would be guaranteed the right to vote; renewed several times since 1965, the act also prevents the dilution of minority voting strength

**white primary** primary election in which only white voters are eligible to participate



# endnotes

## Chapter 1

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# answer key

<b>Chapter 1</b>	<b>Chapter 3</b>	<b>Chapter 5</b>	<b>Chapter 7</b>	<b>Chapter 9</b>
1. B	1. C	1. C	1. A	1. C
2. A	2. C	2. C	2. A	2. C
3. C	3. A	3. D	3. D	3. C
4. D	4. B	4. E	4. B	4. B
5. B	5. B	5. C	5. E	5. B
6. D	6. A	6. C	6. B	6. A
7. E	7. A	7. A	7. C	7. E
8. A	8. C	8. A	8. B	8. D
9. E	9. A	9. A	9. D	9. E
10. C	10. C	10. C	10. D	10. E
11. B	11. B	11. C	11. C	11. E
12. C	12. A	12. A	12. A	12. A
13. A	13. A	13. D	13. D	13. A
14. A	14. B	14. B	14. A	14. A
	15. C		15. A	15. C
<b>Chapter 2</b>	16. E	<b>Chapter 6</b>	16. D	
1. A		1. B	17. B	<b>Chapter 10</b>
2. C	<b>Chapter 4</b>	2. E		1. B
3. D	1. B	3. E		2. D
4. C	2. B	4. E		3. D
5. E	3. A	5. A		4. D
6. D	4. B	6. E		5. C
7. A	5. A	7. A		6. A
8. D	6. A	8. D		7. B
9. D	7. A	9. C		8. B
10. C	8. D	10. C		9. D
11. A	9. C	11. E		10. E
12. A	10. B	12. B		11. A
13. D	11. B	13. D		12. A
14. D	12. A	14. D		13. C
15. D		15. B		14. A
		16. A		15. B
				16. D
				17. A

**Chapter 11**

- 1. A
- 2. B
- 3. A
- 4. A
- 5. C
- 6. B
- 7. B
- 8. C
- 9. A
- 10. B
- 11. D
- 12. D
- 13. A
- 14. B

**Chapter 12**

- 1. B
- 2. C
- 3. A
- 4. B
- 5. A
- 6. A
- 7. B
- 8. E
- 9. A
- 10. C
- 11. B
- 12. C
- 13. C
- 14. A
- 15. D

**Chapter 13**

- 1. A
- 2. B
- 3. C
- 4. C
- 5. D
- 6. C
- 7. D
- 8. E
- 9. A
- 10. B
- 11. E
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- 13. E
- 14. A

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