

# THE 1876 TEXAS CONSTITUTION

A retrospective on its sesquicentennial birthday.

WRITTEN BY WILLIAM J. BASILEIOS CHRISS

*Constitution of the State of Texas*

*Preamble*

*Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.*

*Article I*

*Bill of Rights*

*That the general, great and essential principles of liberty and free government may be recognized and established, we declare: Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions.*

**T**exas' constitution, adopted 150 years ago, is one of the longest among the 50 states, since the Texas Legislature has proposed a total of 731 amendments since 1876, of which 547 have been ratified by Texas voters. Thus, history indicates a passage rate of nearly 75% once the Legislature puts an amendment on the ballot, which explains why our constitution was just a few pages of text in 1876 but now takes up four volumes in a book-and-shelf law library. In Texas, only the Legislature can place a constitutional amendment on the ballot. Unlike most states, Texas does not permit initiative and referendum.<sup>1</sup>

In approaching the Constitution of 1876, it is helpful to have some historical background. Texas, as a nation or state, had five constitutions before 1876. The first was the 1836 revolutionary constitution of the Republic of Texas; then the 1845 initial constitution of the state of Texas; and then the 1861 secession/Civil War constitution. The two ensuing constitutions, those adopted during Reconstruction after the Civil War, are particularly relevant because they greatly impacted the men who drafted the Texas Constitution of 1876.

## THE RECONSTRUCTION CONSTITUTIONS OF 1866 AND 1868

To rejoin the Union, Confederate states were required to ratify the 13th Amendment and reconstitute their governments to end slavery. Most Southern states opted for a new constitution rather than a series of amendments. In 1866, Texas voters adopted a new constitution that simply replaced the slavery articles of older constitutions with a new article on "freedmen" that abolished slavery but enshrined racial discrimination and segregation in its place.<sup>2</sup> In the same year, the U.S. Congress passed the 14th Amendment requiring equal treatment of all persons regardless of race. Then, in March 1867, radical antislavery Republicans in Congress passed two Reconstruction Acts placing 10 Confederate states, including Texas, under martial law until each approved the 14th Amendment and ratified another state constitution providing for equal rights and adult Black

male suffrage.<sup>3</sup> Meanwhile, since the 14th Amendment, once ratified, disqualified from state or federal office any prior state or federal officials who "engaged in insurrection or rebellion," more ex-Confederates than ever before would soon be disqualified from voting and holding office.<sup>4</sup>

Congress placed the determination of who was disqualified from voting by prior Confederate sympathies in the hands of the national army, which also administered the election of delegates to a new constitutional convention.<sup>5</sup> So, when another set of elected delegates assembled in Austin on June 1, 1868, most were Texas radicals who favored a strong governor, appointed judges, and government support for railroads, Black suffrage, public education, and civil rights.<sup>6</sup> In 1869, these Radical Republicans adopted a constitution abolishing the race-based restrictions in the 1866 Constitution in favor of a color-blind system of voter registration, which in the near term would continue to be supervised by the federal military. As long as the U.S. Army held sway in Texas, this system would exclude large numbers of white ex-Confederate voters while guaranteeing Black men the right to vote—effectively reconstituting the electorate in the Republicans' favor.<sup>7</sup>

The 1869 Constitution was adopted, and the Texas Legislature ratified the 14th and 15th Amendments, but Republican dominance would be short-lived. On March 30, 1870, President Ulysses S. Grant readmitted Texas to the Union and military rule ended. It would not take the segregationist Democrats long to regain control.<sup>8</sup> By 1872, Democrats had won preemptive margins in both houses of what would become the 13th Legislature.<sup>9</sup> Hoping to complete their coup, the Democratic majority quickly scheduled the next general election for all statewide offices at the earliest possible date, December 2, 1873. Meanwhile, Democrats in the Legislature impeached and removed 12 of the 35 judges appointed by Reconstruction Gov. Edmund J. Davis. On December 2, with Democrats impeaching Republican judges and intimidating voters at the polls, many Black citizens did not turn out, or their votes were not counted. Democrat Richard Coke defeated the incumbent Republican Gov. Davis

by a two-to-one margin, and the Democrats again swept the legislative elections.<sup>10</sup>

Then, to the surprise of many, the Supreme Court of Texas invalidated the election, ruling on a point of grammar that it would need to be held again.<sup>11</sup> Democrats were incensed, but Davis refused to leave office, so Democrats just ignored what they soon came to call “the Semicolon Case,” and the Legislature convened in Austin a few days later as if nothing had happened. Gov. Davis finally resigned, and the Texas House and Senate ratified the results of the election.<sup>12</sup>

## THE CONSTITUTION OF 1876

This Democratic takeover occupied itself with developing a modern economy and undoing the policies of Republican radicals. Secession and Reconstruction had demanded new constitutions. Another new political reality now also called for another constitution, one equal to the task of what Democrats called “reform and redemption.” Texas’ last constitution, the Constitution of 1876, was the creature of “Redeemers” interested in protecting white advantage and establishing a pro-business environment. Their biggest challenge was to deal with a new class-based discontent among rural whites that began as Grange movements and ended as populism.

Redemption began with the Democrats’ 1873 electoral victory, and it came to fruition in their 1875 constitutional convention. One of the convention’s principal tasks would be reducing the power of the state, especially the governor and judiciary, while also limiting attempts by the new Granger faction of the Democratic Party to regulate business. Reforming the judiciary was high on the list of almost all Democratic delegates at the 1875 constitutional convention, and the issue symbolized all that chafed about Reconstruction. The “platform” ballyhooed for weeks prior to the convention by the Democrat editors of the Austin-based *State Gazette* demanded “The election of Supreme, District, and County Court Judges by the people ... (and) reduction in the number of District Judges, as well as their salaries.”<sup>13</sup>

Other issues included how to weaken an executive branch that the Redeemers perceived as tyrannical and “pro-black.” In dealing with these issues, the conservative white majority had to compromise with a faction of between 30 and 40 Granger Democrats for the first time in a position to influence state politics. These Grangers were mainly farmers who wanted homestead protection, railroad regulation, and emasculation of the spendthrift Reconstruction government that had raised their taxes, worsened their lot, and diluted their political ability to protect themselves. So, at this early stage of the reform movement that would come to be known as populism, while many of the Grangers agreed with Republican protection of debtors and homesteaders, they also wanted many of the same things the Democratic leadership wanted.<sup>14</sup>

This was because most Grangers mistakenly saw freedmen and Reconstruction as the biggest sources of their farm problems, so they wanted lower taxes and a weak state government, goals the Redeemers shared. The result was

a constitution that condemned Reconstruction, satisfied business interests, and protected some of the interests of white laborers and Granger small farmers, but frustrated Black people. The one exception was a short-lived and ultimately unsuccessful alliance between Grangers and Republicans to fight the poll tax as a method of disenfranchising Black people and other poor voters.<sup>15</sup>

In addition to reducing state government, the 1876 Constitution made other changes indicative of the new mood of the state. The mirage of vast public lands was relied upon to pay for almost everything in an effort to avoid taxation while still funding public education and economic development. The yeoman farmer-homestead ideal of Republican Reconstruction was continued, but the Republican program of unrestrained commercial development was rolled back with new Granger-backed provisions against usury, unsafe work practices, price gouging, and any subsidization of business other than land donations to railroads that laid more track. For example, the Legislature was specifically mandated to “regulate freights, tolls, wharfage or fares ... for the use of highways, landings, wharves, bridges and ferries, devoted to public use.”<sup>16</sup> In this way, anti-corporate “Granger laws” became part of Texas’ constitution.

But it is an exaggeration to dub the new constitution a creature of either Grangers or populists. Rather, it represented a new *zeitgeist* synthesizing ex-Confederate “Redeemerism” with the concerns of unhappy white farmers and those of lawyers and businessmen who saw the need for economic development. These groups each achieved a modicum of success by avoiding the demands of the most radical white reformers while freezing out Black people and Republicans. The primary tool for accomplishing this feat was racism. Maverick white politicians that went too far in protecting workers, farmers, and the poor quickly drew accusations of being “in league” with Republicans and “negroes.”

The Constitution of 1876 cut back state government, eliminated the state police, drastically reduced the power of the governor, required an elected judiciary, and limited the Legislature to meeting only once every two years except in emergencies.<sup>17</sup> The new constitution was ratified in the general election of February 1876 by a margin of almost three-to-one, roughly the same margin by which Gov. Coke won reelection over Republican nominee William Chambers. Compared to the 1873 election, approximately 65,000 more Democratic votes were cast in 1876, returning a preemptive Democratic majority to both houses of the 15th Legislature.<sup>18</sup> Texas’ new constitution reflected the dominant political ethos of its time: a segregationist, small-government, and pro-business consensus enshrined in one-party Democratic rule that would last for almost a century thereafter. **TBJ**

## NOTES

1. *Constitutional Amendments*, the Legislative Reference Library of Texas, <https://lrl.texas.gov/legis/constamends/index.cfm>.
2. *Texas Constitutions 1824–1876*, Tarlton Law Library, Jamail Center for Legal Research, Texas Law (Aug. 15, 2023), <https://tarlton.law.utexas.edu/constitutions/texas-1866/introduction>; see also *Journal of the Texas State Convention: Assembled*

- at Austin, Feb. 7, 1866. Adjourned April 2, 1866. (Austin: Southern Intelligencer, 1866), <https://tarlton.law.utexas.edu/c.php?g=810765&p=5785188>; see also Carl H. Moneyhon, *Republicanism in Reconstruction Texas* (Texas A&M University Press, 2001), 23, 32–33. Further citations to the 1866 *Journal* will be cited as *Journal of the 1866 Texas Convention*.
3. The new U.S. Congress was the 40th Congress, which took over from the 39th Congress on March 4, 1867. The First Reconstruction Act was passed March 2, so only the Second Act was passed by the new Congress, on March 23, 1867, but it is logical to assume that the Republicans in the 39th Congress were affected by the outcome of the 1866 elections in which Andrew Johnson campaigned strenuously against the radicals and lost badly.
  4. Congress of the U.S., Chapter CLIII: An Act to Provide for the More Efficient Government of the Rebel States, Texas State Library and Archives Commission, <https://www.tsl.texas.gov/ref/abouttx/secession/reconstruction.html>; see also U.S. Constitution, Amendment XIV, Section 3.
  5. Congress of the U.S., Chapter VI: An Act Supplementary to an Act Entitled “An Act to Provide for the More Efficient Government of the Rebel States,” passed March 2, 1867, and to facilitate Restoration, Texas State Library and Archives Commission, <https://www.tsl.texas.gov/ref/abouttx/secession/reconstruction.html>.
  6. Moneyhon, *Republicanism in Reconstruction Texas*, 83–86, 248–49.
  7. Constitution of the State of Texas (1869), Article III, Sections 1, 5, 13.
  8. Carl H. Moneyhon, *Reconstruction Era in Texas: Political, Social, and Economic Changes*, Texas State Historical Association (1952), <http://www.tshaonline.org/handbook/online/articles/mzr01>; see also Alwyn Barr, *Reconstruction to Reform: Texas Politics 1876–1906* (Austin: University of Texas Press, 1971), 8–9.
  9. Moneyhon, *Republicanism in Reconstruction Texas*, 145–51 (12th Legislature), 152–65 (congressional elections of 1871), 168–91 (elections of 1872 and 1873); see also James R. Norvell, “The Reconstruction Courts of Texas, 1867–1873,” *Southwestern Historical Quarterly* 62, No. 2 (Oct. 1958): 148–50.
  10. *Id.*; see also Michael S. Ariens, *Lone Star Law, A Legal History of Texas* (Texas Tech University Press, 2011), 45; see also John W. Payne, Jr., *Richard Coke: Texas Governor and U.S. Senator*, Texas State Historical Association (1976), <https://www.tshaonline.org/handbook/entries/coke-richard>; see also Norvell, *Reconstruction Courts of Texas*, 148–50.
  11. *Ex Parte Rodriguez*, 39 Tex. 705 (1874); see also Moneyhon, *Republicanism in Reconstruction Texas*, 145–51 (12th Legislature), 168–91 (elections of 1872 and 1873); see also Ariens, *Lone Star Law*, 45.
  12. Moneyhon, *Republicanism in Reconstruction Texas*, 192–96; see also Ariens, *Lone Star Law*, 44–47; see also George E. Shelley, “The Semicolon Court of Texas,” *The Southwestern Historical Quarterly*, Vol. 48, No. 4 (April 1945), 449–68; see also Norvell, “Reconstruction Courts of Texas,” 150–55; see also Lance A. Cooper, “A Slobbering Lame Thing? The Semicolon Case Reconsidered,” *Southwestern Historical Quarterly*, Vol. 101, no. 3 (Jan. 1998), 321–39; see also T.B. Wheeler, “Reminiscences of Reconstruction in Texas,” *Quarterly of the Texas State Historical Association*, 11, No. 1 (July 1907): 56–63.
  13. Seth Shepard McKay, *Making the Texas Constitution of 1876* (Philadelphia: University of Pennsylvania Press, 1924), 68, quoting *State Gazette* (Austin), 24 August 1875; see also Frank M. Stewart and Joseph L. Clark, *The Constitution and Government of Texas* (Boston: D.C. Heath & Co., 1933), 15.
  14. Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* (New York: Oxford University Press, 1976), 45–49.
  15. Joe E. Ericson and Ernest Wallace, *The Texas Constitution of 1876: A Historical Overview*, Texas State Historical Association (1952), <http://www.tshaonline.org/handbook/online/articles/mhc07>; see also Seth McKay, *Making the Texas Constitution of 1876* (Philadelphia: University of Pennsylvania, 1924), 95–99; see also Patrick G. Williams, “Of Rutabagas and Redeemers: Rethinking the Texas Constitution of 1876,” *Southwestern Historical Quarterly*, Vol. 106, No. 2 (Oct. 2002), 230–35.
  16. Constitution of the State of Texas (1876), Article XII, Sections 3 and 4; Article X, Section 2.
  17. McKay, *Making the Texas Constitution of 1876*, 151, 169, 177–82; see also *Galveston News*, January 28, 1876; January 30, 1876.
  18. Barr, *Reconstruction to Reform: Texas Politics 1876–1906*, 25–26.



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