

A Chance for the Public, the Bar, and the Bench to Reclaim Our 150-Year-Old Constitution

Taking stock of our state's most important legal document.

WRITTEN BY EVAN A. YOUNG

The Texas Constitution is our state's most important yet least understood legal document. Compared to any other law, the constitution uniquely belongs to the People—it was adopted and can be amended only with their direct consent. Likewise, the Texas bar should take great interest in the constitution's vast trove of detailed provisions that, when properly invoked, can advance their clients' litigation and transactional affairs. And among the Texas judiciary's highest obligations is accurately expounding our fundamental law's meaning, which will authoritatively govern all justiciable disputes.

As our constitution turns 150 on February 15, 2026, therefore, the public, the bar, the bench, and the rest of Texas government should give themselves a slightly delayed Valentine's Day present and take stock of their constitution with fresh eyes.

THE PEOPLE OF TEXAS

Ordinary laws are passed by those whom the People have chosen to represent them. The constitution is different. Without their approval, not one word of it can change.

If asked, however, many Texans—including highly informed Texans—would be hard-pressed to say much about why we have a constitution or how it differs from the federal constitution or other sources of law. Yet every other year, the People—some of them, at least—vote on a slew of proposed constitutional amendments. Most recently, they passed all 17 propositions in the November 2025 election.

At the time, according to the secretary of state, there were 18,623,931 registered voters.¹ The official results² show Proposition 2 attracted 2,964,635 voters—the highest number. Now enshrined as Article VIII, Section 24-b of the Texas Constitution, it passed by a 65-35 margin and prohibits taxing capital gains. Proposition 6 got the fewest voters (2,894,155) and passed by the narrowest margin (55-45); as new Article VIII, Section 30, it prohibits “certain taxes on securities market operators and securities transactions.”

Nearly 3 million voters for an off-year election is not bad, exactly. That's more than 16 other states' entire populations. But there are over 31 million Texans, so less than 10% of our population voted. Not everyone is or can be registered, though, so the relevant number is 16%: almost that many registered voters cast votes.

These days, most proposed amendments pass. (The only recent one to fail was in 2023, when voters refused to extend state judges' mandatory retirement age.)³ General success is unsurprising; propositions go to the People only when two-thirds of both legislative houses agree.⁴ This limitation marks a happy medium, allowing constitutional change without



ABOVE: Supreme Court of Texas Justice Evan A. Young at a special viewing of the Texas Constitution at the Lorenzo de Zavala State Archives and Library Building, courtesy of the Texas State Library and Archives Commission. PHOTO BY KASANDRA KEYES

inviting wild fluctuations. It is nearly impossible, by contrast, to amend the U.S. Constitution. The late U.S. Supreme Court Justice Antonin Scalia famously observed that the one thing he would amend in that constitution was the amendment process itself.⁵ On the other extreme, many states allow amendments by popular initiative and bare majority votes, risking massive swings in constitutional law without requiring much deliberation for such a solemn act. Article XVII of the Texas Constitution details our amendment procedure and is more like Baby Bear's porridge—just right, or close to it.

Yet that has not stopped our constitution from becoming America's second lengthiest because of hundreds of amendments since 1876. (Alabama has the dubious distinction of having the *world's* longest written constitution.)⁶

But why? The People were in a cranky mood in 1876—distrustful of government and motivated to prevent overreach by elected officials, whose power they severely circumscribed. One predictable consequence of that rigidity was that when Texans *want* new actions, the Legislature requires new constitutional authority, which only the People can confer. Last year, therefore, the People alone could allow property-tax exemptions for “the surviving spouse of a veteran who died as a result of a condition or disease that is presumed under federal law to have been service-connected.”⁷ Another illustration: Article VIII, Section 1-n permits property-tax exemptions for “raw cocoa and green coffee that is held in Harris County.”

One might not expect such granularity in a *constitution*, but that is the choice Texans have made. Of course, the People could amend the constitution to allow the Legislature to directly authorize such tax exemptions and make other policy choices—perhaps by the same super-majority vote that it must propose amendments. Otherwise, the constitution itself will continue to grow.

To be clear, our constitution includes the magnificence and poetry found in the U.S. Constitution. Many provisions in our Bill of Rights—Article I of our constitution—are even bolder and grander than their federal counterparts. Articles II through V of our constitution contain the tripartite structure of the original federal Constitution. But our constitution is approximately 10 times longer than the U.S. Constitution primarily because it reserves vast areas of lawmaking for constitutional rather than just legislative action.

Anyone who sets out to read the Texas Constitution—a daunting task—will discover that, except for the Bill of Rights and the bulk of the structural articles that form the

government and relate to the constitution itself (Articles II through V, XV, and XVII), the text resembles a collection of statutes. Many amendments, including those passed in 2025, are as long, as excruciatingly detailed, and as textually complex as ordinary statutes—complete with subsections and subparagraphs (like Article VIII, Section 30(c)(1)(D)) and technical definitions sections.

This tedium is probably one reason (of many) that most people rarely think about the Texas Constitution. Propositions may be important but inspire more eye-glazing than civic zeal. Exceptions—like last year’s much-discussed amendments to our Bill of Rights concerning bail reform and parental rights⁸—prove the rule.

Doesn’t this get things backward, though? Perhaps citizens should pay *more* attention to our constitution because it is so detailed, which results from our chosen form of government’s dependence on the People’s direct electoral oversight of so many legal topics. Self-government—the promise of those who framed our constitution in 1876—relies on an informed electorate that shows up to vote. A genuine resurgence of interest in our constitution would be one of the greatest gifts this generation could offer the future.

THE BAR AND THE BENCH

As I have noted in several concurring opinions, I remain surprised that, 150 years later, so many constitutional provisions still lack any definitive interpretation. I refer not to recent amendments but to provisions materially unchanged since 1876, and not to abstruse or archaic terms, but to unquestionably vital principles.

For example, instead of “due process,” our constitution refers to the “due course of the law of the land.”⁹ “But what *does* that clause protect—and how does it do so? We still do not really know, even as we approach the sesquicentennial of our current Constitution.”¹⁰ Or how about takings—a crucial protection of everyone’s property rights. The Texas Takings Clause’s text is far broader than its federal analogue, but—as my colleague Justice Brett Busby and I have both noted—we really have no idea whether or to what extent they substantively differ because lawyers almost always cite only federal cases without articulating grounds for giving the Texas Constitution independent meaning.¹¹ And take religious liberty—central to the identity of millions of Texans—for a third example. Our constitution’s beautifully written religious-liberty provision does not parallel the First Amendment’s text. “Given the Texas Constitution’s distinct language and history, is its church-autonomy doctrine meaningfully different from its federal counterpart? As with other important constitutional guarantees,” and for the same reasons, we still don’t have caselaw resolving the question.¹²

As I have stated, “I hope that in coming years the lower courts, able counsel, amici, and scholars will focus on the constitutional text, history, and structure so that we can systematically articulate what the People of our State meant by ‘the due course of the law of the land.’”¹³ The same invitation applies to *every* part of the constitution. As put by U.S. Court of Appeals for the Sixth Circuit Chief Judge Jeffrey S. Sutton, who has done more than anyone to emphasize the often-forgotten but always-important role of state constitutional law: “[A]ll too often lawyers ‘rais[e] the federal claims and

rarely address[] in any detail, if . . . at all, a counterpart state constitutional claim. State judges referee the game. They do not play it, and they thus cannot rely on state constitutional grounds never raised.”¹⁴

This 150th anniversary celebration, I hope, will allow the bar and the bench of Texas to work together in a renewal of focus on the Texas Constitution.

THE REST OF THE GOVERNMENT

Texas judges have a special duty to give accurate and reliable constructions of the constitution that will govern all disputes properly brought into the judicial process. No federal court, and no other branch of state government, can do that. Of course, the rest of the government is bound and empowered by the constitution even when (as is often true) the courts have no role to play. The other two branches thus have every reason to devote themselves to understanding and honoring its provisions. This celebratory year is for them no less than for the courts.

We all owe obedience to the constitution because it *is* the constitution. Our system is built on recognizing it as reflecting the sovereign will of the People, whether its provisions are high and lofty or detailed and granular. *All* of it—ranging from aspirational claims of equality and religious liberty to tax exemptions for green coffee beans—is our fundamental and highest law. My prayer for 2026 is that the People, the bar, the bench, and the rest of Texas government will not miss this chance to renew their interest in and commitment to the Texas Constitution. **TBJ**

NOTES

1. Alicia Pierce, *Texas has 18.6 Million Registered Voters*, Texas Secretary of State Jane Nelson (Oct. 19, 2024), <https://www.sos.state.tx.us/about/newsreleases/2024/101924.shtml>.
2. Election Results—Tuesday, November 4, 2025, Texas Secretary of State Jane Nelson, <https://electionresults.sos.state.tx.us/results.html>.
3. *See Texas Voters Approve 13 New Constitutional Amendments*, Texas State Law Library (Nov. 8, 2023), <https://www.sll.texas.gov/spotlight/2023/11/texas-voters-approve-new-constitutional-amendments/>.
4. Tex. Const. art. XVII, § 1(a).
5. Marcia Coyle, *A Constitution “hard, but not that hard” to change*, National Constitution Center (Aug. 19, 2024), <https://constitutioncenter.org/blog/how-difficult-should-the-constitution-be-to-amend>.
6. *See, e.g.*, Sue Bell Cobb & Elizabeth H. Bowles, *Book Review and Response: Robert F. Williams’s The Law of American State Constitutions*, 45 N. Eng. L. Rev. 803, 805 & n.11 (2011).
7. *See* Tex. Const. art. VIII, § 1-b(q) (Proposition 7).
8. *See* Tex. Const. art. I, §§ 11d, 37.
9. *See* Tex. Const. art. I, § 19; *see id.* § 13 (“due course of law”).
10. *Tex. Dep’t of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648, 664 (Tex. 2022) (Young, J., concurring) (internal citations omitted).
11. *City of Baytown v. Schrock*, 645 S.W.3d 174, 182–84 (Tex. 2022) (Young, J., concurring); *see also Jim Olive Photography v. Univ. of Houston Sys.*, 624 S.W.3d 764, 780 (Tex. 2021) (Busby, J., concurring).
12. *S. Methodist Univ. v. S. Cent. Jurisdictional Conf. of the United Methodist Church*, 716 S.W.3d 475, 508 (Tex. 2025) (Young, J., concurring) (discussing Tex. Const. art. I, § 6).
13. *Crown Distrib.*, 647 S.W.3d at 666 (Young, J., concurring).
14. *City of Baytown*, 645 S.W.3d at 184 (Young, J., concurring) (quoting Jeffrey S. Sutton, *Who Decides?: States as Laboratories of Constitutional Experimentation* 128-29 (2022)).



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was appointed to the Supreme Court of Texas in 2021 by Gov. Greg Abbott and subsequently was elected to a full term in November 2022.