



2019 Guide to
Constitutional
Amendments *in* **Texas**



Texas Public Policy
Foundation

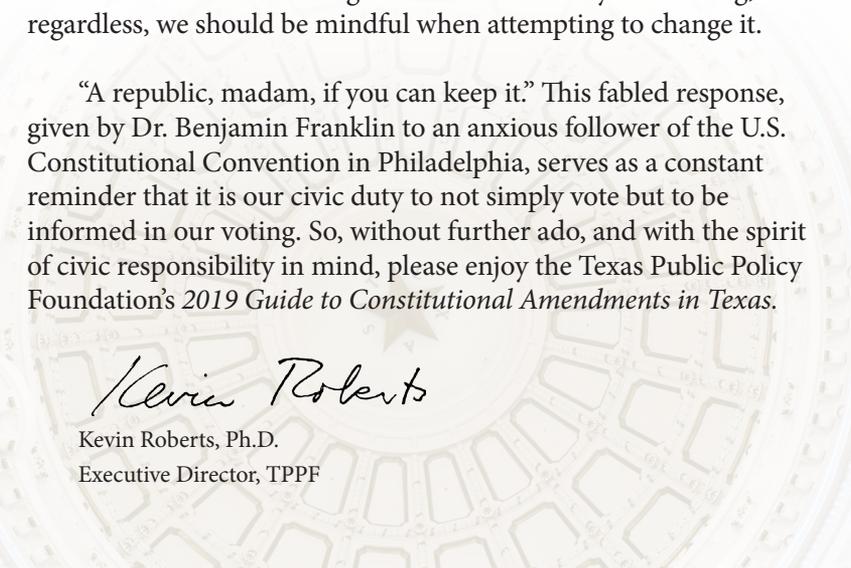
“A Republic, Madam— If You Can Keep It”

An educated citizenry is necessary for our survival as a free people. Texans go to the ballot box each November, and on odd-numbered years, they usually vote on amendments to the Texas Constitution. We do so again on November 5.

Oftentimes, though, voters leave the ballot box more confused than they were before they got there; ballot language outlining exactly what voters are voting for is frequently clunky, confusing, and difficult to understand. Furthermore, material providing context for what the voter is voting on is absent from the ballot. It's no wonder, then, that the vast majority of constitutional amendments that make it to the ballot end up passing with flying colors.

The Texas Constitution, unlike our U.S. Constitution, is a massive document. Excluding the upcoming vote, 680 amendments have been proposed since the Constitution was adopted in 1876, and 498 have passed, giving proposed amendments a 73 percent passage rate. The Texas Constitution's largesse is not necessarily a bad thing, but regardless, we should be mindful when attempting to change it.

“A republic, madam, if you can keep it.” This fabled response, given by Dr. Benjamin Franklin to an anxious follower of the U.S. Constitutional Convention in Philadelphia, serves as a constant reminder that it is our civic duty to not simply vote but to be informed in our voting. So, without further ado, and with the spirit of civic responsibility in mind, please enjoy the Texas Public Policy Foundation's *2019 Guide to Constitutional Amendments in Texas*.



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Table of Contents

PROPOSITION 1 (H.J.R. 72) 5
Allowing Municipal Court Judges to Hold Office in More Than One Municipality

PROPOSITION 2 (S.J.R. 79) 6
Allowing the Texas Water Development Board to Issue More Water Development Project Bonds

PROPOSITION 3 (H.J.R. 34) 7
Allowing Temporary Property Tax Exemptions After a Disaster

PROPOSITION 4 (H.J.R. 38) 8
Prohibiting a State Individual Income Tax

PROPOSITION 5 (S.J.R. 24) 9
Dedicating Sporting Goods Sales Tax Revenue to the Texas Parks & Wildlife Division and the Texas Historical Commission

PROPOSITION 6 (H.J.R. 12) 10
Increasing CPRIT’s Bond Authority From \$3 Billion to \$6 Billion

PROPOSITION 7 (H.J.R. 151) 11
Allowing Increased Distributions to Available School Fund

PROPOSITION 8 (H.J.R. 4) 12
Creating the Flood Infrastructure Fund

PROPOSITION 9 (H.J.R. 95) 13
Exempting Precious Metals Held in Texas Depositories From Property Taxes

PROPOSITION 10 (S.J.R. 32) 14
Allowing Retired Law Enforcement Animal Transfer Without Fee

Proposition 1 (H.J.R. 72): Allowing Municipal Court Judges to Hold Office in More Than One Municipality

Ballot Language: The constitutional amendment permitting a person to hold more than one office as a municipal judge at the same time.

Explanation: Municipal judges, who handle many different local issues ranging from simple traffic offenses to some initial felony proceedings, can currently serve more than one jurisdiction, but only if they are appointed. Elected municipal judges, on the other hand, are constitutionally prohibited from serving other jurisdictions. This amendment would allow elected municipal judges the same ability as appointed municipal judges to serve, concurrently, more than one jurisdiction.

Supporters Say: Nearly all municipal judges in Texas can serve in more than one jurisdiction concurrently simply because they are appointed rather than elected. The constitutional prohibition on elected municipal judges from serving more than one jurisdiction puts smaller, rural cities at a disadvantage. Ending this restriction would allow the municipal court system to operate more efficiently and could save local resources by allowing one municipal judge to cover areas that may not each need a full-time judge.

Opponents Say: Even though the vast majority of municipal judges can currently hold more than one judicial office at once, this amendment would further chip away at the prohibition of elected officials being compensated for more than one office at the same time and could eventually lead to the elimination of this necessary restriction. Secondly, cities currently have the choice to appoint, rather than elect, their municipal judges and should use this power should they desire their municipal judges to serve more than one jurisdiction at once.

Proposition 2 (S.J.R. 79): Allowing the Texas Water Development Board to Issue More Water Development Project Bonds

Ballot Language: The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$200 million to provide financial assistance for the development of certain projects in economically distressed areas.

Explanation: In 1989 and in 2007, Texas voters approved the constitutional authorization of \$250 million in bonds to the Economically Distressed Areas Program (EDAP), a program administered by the Texas Water Development Board. EDAP facilitates the creation of water infrastructure and wastewater services in areas of the state that are below the state's safe water standards. Most of the proceeds of these bonds have been depleted; accordingly, this amendment would simply continue this method of financing for the program in an amount not to exceed \$200 million.

Supporters Say: This amendment is necessary to continue the furtherance of EDAP, which helps provide water-related infrastructure and services to economically disadvantaged areas of the state. Using bonds, rather than general revenue, would allow these projects to be funded through more stable, long-term methods.

Opponents Say: According to Texas' own Bond Review Board, Texas currently ranks "second among the ten most populous states in terms of local debt per capita, seventh in state debt per capita, and fourth in total state and local debt per capita. ..." Put simply, Texans are mired in bond debt, which, upon having to service that debt, raises expenses for governmental entities and potentially raises the tax burden for Texas taxpayers. Accordingly, proponents of EDAP should find other methods of financing if they wish to continue the program.

Proposition 3 (H.J.R. 34): Allowing Temporary Property Tax Exemptions After a Disaster

Ballot Language: The constitutional amendment authorizing the legislature to provide for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.

Explanation: Currently, governor-declared disaster areas in Texas allow local taxing entities to authorize the reappraisal of damaged property after the disaster occurs. To the detriment of the taxpayer, not all taxing jurisdictions exercise this option, but the entities that do exercise it must use their resources to reappraise property in potentially dangerous areas. This amendment eliminates the optional reappraisal process after a disaster and replaces it with a mandatory tax exemption for properties that are damaged before local tax rates are adopted. Entities could base the exemptions on assessments by the Federal Emergency Management Agency or other appropriate sources. For properties damaged after local tax rates are adopted, local entities would have the option of allowing exemptions—much like the status quo.

Supporters Say: This amendment would alleviate many difficult and duplicitous actions by local governments in relation to damage assessment and reappraisal after a disaster. It would also benefit homeowners in that the property tax exemptions described would now be mandatory—at least if the disaster occurred before local tax rates were adopted. For homeowners whose property is damaged after tax rates are adopted, they would have the option of pressuring local entities to adopt the property tax exemptions, which is not much different from the current state of affairs.

Opponents Say: The mandatory nature of this amendment could deprive local taxing entities of much-needed revenue to provide services, especially after a disaster hits the area. This could especially disproportionately affect smaller taxing units. On the other hand, other opponents say that this amendment is unfair to property owners hit by a disaster after tax rates have been adopted. The optional nature of the exemption after property tax rates have been adopted should be changed to a mandatory exemption.

Proposition 4 (H.J.R. 38): Prohibiting a State Individual Income Tax

Ballot Language: The constitutional amendment prohibiting the imposition of an individual income tax, including a tax on an individual’s share of partnership and unincorporated association income.

Explanation: Texas does not currently impose an income tax, but the Constitution does allow for its implementation. This amendment would strike the section that allows for its implementation and replace it with a strict prohibition on an income tax.

Supporters Say: Studies show that states without an income tax perform better economically than states that impose one. Adopting this amendment would signal to Texans and to the business community that the business-friendly environment in our state is not going away anytime soon, as the amendment would make it more difficult for the Legislature to adopt an income tax in the future. Currently, the Legislature must go through two steps should it desire to adopt an income tax: it must first pass a law through both chambers by a simple majority vote, then that law must be ratified by a majority vote of Texans in a referendum election. If this amendment were to be adopted, the Legislature would need to have a two-thirds majority vote to repeal it, then its repeal would have to be ratified by a majority vote of Texans in a constitutional amendment election. Thus, it would be much harder for future legislatures to impose an income tax on Texans.

Opponents Say: Opponents to this amendment contend that eliminating this potential source for taxation could tie the hands of the state should it need additional sources of revenue in the future, and that there are already major hurdles for the Legislature to impose an income tax. Additionally, some critics argue that since the word “individual” is not defined in the proposed amendment, upon its passage businesses could potentially argue that they are considered “individuals” therefore depriving the state of all business taxation. Article VIII, section 1(c) of the Constitution explicitly allows for taxation of corporate incomes, though, so this argument may not be valid.

Proposition 5 (S.J.R. 24): Dedicating Sporting Goods Sales Tax Revenue to the Texas Parks & Wildlife Division and the Texas Historical Commission

Ballot Language: The constitutional amendment dedicating the revenue received from the existing state sales and use taxes that are imposed on sporting goods to the Texas Parks and Wildlife Department and the Texas Historical Commission to protect Texas' natural areas, water quality, and history by acquiring, managing, and improving state and local parks and historic sites while not increasing the rate of the state sales and use taxes.

Explanation: Currently, the Texas Parks and Wildlife Department (TPWD) and the Texas Historical Commission (THC) are funded through general state revenue under the regular legislative budgetary process. In 2007, the Legislature passed a law that requires the taxes collected from the sales, storage, or use of sporting goods be allocated solely to TPWD and THC. Historically, though, the Legislature has failed to allocate all of those proceeds to these entities, oftentimes using the funds for other purposes. This amendment would create a constitutionally dedicated fund requiring those proceeds be used strictly for TPWD and THC purposes, but that requirement could be overridden by a two-thirds majority vote of the Legislature should it desire those funds be used for other purposes.

Supporters Say: The amendment would ensure a predictable and consistent source of income for the THC, which is millions of dollars behind in maintenance projects, and TPWD, which is nearly a billion dollars behind. The amendment would not restrict future legislatures that deem those funds necessary for other unforeseen purposes as the requirement may be overridden by a two-thirds majority vote.

Opponents Say: Constitutionally dedicated accounts generally make the Legislature's ability to prioritize spending during budgetary proceedings more difficult. If a future Legislature could not reach the two-thirds threshold necessary to override the constitutional requirement, it could potentially lead to unnecessary budgetary growth if that Legislature desires revenue to be allocated to more important state needs at that time. Additionally, passing this amendment could lead other agencies to compete for dedicated spending amendment in the future, thus further tying the hands of the Legislature's power to appropriate discretionary funds.

Proposition 6 (H.J.R. 12): Increasing CPRIT’s Bond Authority From \$3 Billion to \$6 Billion

Ballot Language: The constitutional amendment authorizing the legislature to increase by \$3 billion the maximum bond amount authorized for the Cancer Prevention and Research Institute of Texas.

Explanation: The Cancer Prevention and Research institute of Texas (CPRIT) was approved by voters in 2007 to provide grants for research related to the causes of and for advancing eventual cures to cancer. CPRIT was authorized then to issue up to \$3 billion in general obligation bonds through the Texas Public Finance Authority. Since then, CPRIT has granted nearly \$2.2 billion in grants to different entities in the state, and the Legislature authorized the issuance of the remainder of the bonds this past session. This amendment would continue to allow the Legislature to issue bonds to fund cancer research through CPRIT, but it would also increase their authority to issue bonds from \$3 billion to \$6 billion.

Supporters Say: The CPRIT program has been successful in both providing additional research for cancer cures and prevention and making Texas a national leader in cancer research. Supporters argue that, through CPRIT, cancer patients receive better care and live longer, and that funding for CPRIT has led to economic growth in the state by incentivizing research companies to relocate to Texas.

Opponents Say: Critics of the CPRIT program argue that the funding of cancer research is not a proper function of state government. The bond proceeds should be used, rather, for other essential state functions. Additionally, the debt service on these bonds is estimated to exceed \$120.6 million alone this fiscal year. Texans are already paying enormous amounts in debt service; according to Texas’ own Bond Review Board, Texas currently ranks “second among the ten most populous states in terms of local debt per capita, seventh in state debt per capita, and fourth in total state and local debt per capita. ...” Accordingly, some argue the Legislature should instead convene next session to discuss the future of CPRIT and, if it will continue, other mechanisms to fund it.

Proposition 7 (H.J.R. 151): Allowing Increased Distributions to Available School Fund

Ballot Language: The constitutional amendment allowing increased distributions to the available school fund.

Explanation: The Permanent School Fund (PSF) is a trust that uses returns on investment of the state's land and mineral rights to create disbursements to the Available School Fund (ASF), which in turn funds different forms of classroom education in Texas. The PSF held approximately \$44 billion in assets in 2018. Currently, the General Land Office and State Board of Education co-manage the PSF and can disburse up to \$300 million in investment revenue to the ASF each year. This amendment would increase the amount that can be disbursed from the PSF to the ASF from \$300 million each year to \$600 million each year.

Supporters Say: Returns on investment from the PSF would have allowed a greater disbursement in previous years had the \$300 million cap not been in place. These lost opportunities to provide funding would be addressed in doubling the amount of disbursements to the ASF from the PSF but would still allow for flexibility and discretion of disbursements by not requiring that the entire \$600 million be disbursed.

Opponents Say: There is no guarantee that adding more dollars to the ASF will result in better-quality education for Texas schoolchildren. Accordingly, Texans should not authorize greater spending on the part of the state but rather encourage elected officials to find different ways of making funding that is already available more efficient for the public education system.

Proposition 8 (H.J.R. 4): Creating the Flood Infrastructure Fund

Ballot Language: The constitutional amendment providing for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects.

Explanation: While any withdrawal from the state treasury is constitutionally barred outside of appropriations made by the Legislature, several funds exist in the treasury that operate apart from the general revenue that may be appropriated by the Legislature every biennium. These funds do not require legislative approval for use. This amendment would create the Flood Infrastructure Fund in this manner. The fund would be used by the Texas Water Development Board for planning, flood mitigation, and infrastructure in preparation for and in response to natural disasters in Texas.

Supporters Say: The creation of this fund is necessary to help provide options for local entities to cooperate with one another and with other entities like the federal government to plan and produce flood mitigation infrastructure in affected areas. Local entities would only be able to draw from the fund if it followed several provisions, such as cooperating with other local governments and considering questions and concerns from other affected stakeholders. Furthermore, the fund would provide grants to local governments that otherwise would not be eligible for federal assistance due to those governments not being able to match federal funding for relief.

Opponents Say: The state should use the funds that already exist at the federal, state, and local levels to help mitigate and prevent flood damage. The enabling legislation to this amendment, which would go into effect soon after its passage, would allocate \$793 million from the Economic Stabilization Fund (ESF) toward this newly created fund. Opponents to this amendment argue that ESF funds should be used only to address disaster responses and contend that this fund should be financed through general appropriations from the Legislature.

Proposition 9 (H.J.R. 95): Exempting Precious Metals Held in Texas Depositories From Property Taxes

Ballot Language: The constitutional amendment authorizing the legislature to exempt from ad valorem taxation precious metal held in a precious metal depository located in this state.

Explanation: While metals such as gold, silver, and the like are exempt from sales taxes in Texas, these metals could be subject to local property taxes if they are income-producing since the Texas Constitution requires that “all real property and tangible personal property ... be taxed in proportion to its value” unless exempt. Additionally, while non-income producing precious metals are exempt from ad-valorem taxation, local entities have the option of overriding this exemption. This amendment would make clear that precious metals held in depositories in Texas—whether they are income-producing or not—are exempt from ad valorem taxation.

Supporters Say: While the vast majority of precious metals are not currently taxed in Texas, the option local governments currently have to implement such a tax creates a disincentive for owners of these metals to deposit them into precious metal depositories. This uncertainty would be alleviated by passing this amendment and would also address any disadvantages other states’ depositories have over Texas depositories. Since these metals are not currently taxed, this amendment would not affect state revenue but would create consistent statewide regulations with respect to precious metal depositories.

Opponents Say: While the property tax system in Texas is being debated, changed, and accounted for, Texas should not provide for any type of property tax exemption. These types of carve outs could act as a type of property tax abatement and put individuals and entities that can afford to purchase and store precious metals at an unfair advantage compared to those who do not currently have this financial option. The government should not exempt a few at the expense of the many.

Proposition 10 (S.J.R. 32): Allowing Retired Law Enforcement Animal Transfer Without Fee

Ballot Language: The constitutional amendment to allow the transfer of a law enforcement animal to a qualified caretaker in certain circumstances.

Explanation: The Texas Constitution, with few exceptions, currently prohibits the Legislature from allowing the transfer of any government-owned property to an individual. This prohibition has caused confusion among law enforcement entities desiring to release retired law enforcement animals to their handlers or other qualified individuals. The amendment would rescind this prohibition with respect to law enforcement animals.

Supporters Say: This amendment would clear up confusion among law enforcement entities on being able to allow handlers to take possession of retired law enforcement animals. The amendment would only apply to law enforcement animals upon their retirement, or in situations that would require, in the animal's best interest, the animal be transferred. The enabling legislation for this amendment, passed in the 86th Legislature, outlines the method for the transfer under different circumstances.

Opponents Say: Law enforcement entities can currently relinquish retired law enforcement animals to their handlers or other qualified individuals by charging a small fee, so this change is not required.

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