

2021 GUIDE TO CONSTITUTIONAL AMENDMENTS IN TEXAS

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Key Points

- On November 2, 2021, Texans will vote on eight constitutional amendments covering a wide array of issues.
- The proposed amendments will ask voters to consider changes to tax policy, infrastructure funding, officeholder restrictions, and more.
- An amendment only becomes part of the Texas Constitution if a simple majority votes in favor of the proposition.
- Since its adoption in 1876, the Texas Constitution has been amended 507 times.

PROPOSITION 1: Allowing the Legislature to authorize charitable raffles at rodeo events (HJR 143, 2021)

Background: Article 3, Section 47 (d-1) of the Texas Constitution permits the Legislature to allow certain professional sports team charitable foundations to hold charitable raffles at particular times and places. Chapter 2004 of the Occupations Code, Section 2004.007, stipulates that those foundations are allowed to withhold "not more than 10 percent of the gross proceeds collected from the sale of tickets for the raffle to pay the reasonable operating expenses of conducting the raffle."

Qualified foundations must be organized in Texas and be part of one of the following organizations: Major League Baseball, the National Basketball Association, the National Hockey League, the National Football League, Major League Soccer, the American Hockey League, the East Coast Hockey League, the American Association of Independent Professional Baseball, the Atlantic League of Professional Baseball, Minor League Baseball, the National Basketball Association Development League, the National Women's Soccer League, the Major Arena Soccer League, the United Soccer League, or the Women's National Basketball Association. Other acceptable parties include a person hosting a motorsports racing team event that meets certain requirements and an organization hosting a Professional Golf Association event.

If approved by Texas voters, this amendment's enabling legislation takes effect on December 1, 2021 (HB 3012, 2021).

Overview: Proposition 1 asks voters to permit the Legislature to allow charitable foundations associated with either the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association to conduct a charitable raffle at rodeo venues.

Proposition Language:

The constitutional amendment authorizing the professional sports team charitable foundations of organizations sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association to conduct charitable raffles at rodeo venues. (Texas Secretary of State, 2021)

Supporters¹ Say: Current law already allows certain professional sports team charitable foundations to conduct charitable raffles. As a result, these raffles "have raised large amounts of money for worthy causes related to education, cancer research, and youth programs" (HJR 143 Bill Analysis, 2021, p. 2). Expanding the list of authorized entities allowed to host charitable raffles will not lead to any new forms of gambling. Proposition 1 is intended to simply allow an organization sanctioned by either the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association to be added to the list of authorized groups.

Opponents² **Say:** Proposition 1 expands the list of organizations authorized to conduct charitable raffles and may potentially lead to an expansion of gambling in the future. Although certain entities are currently allowed to engage in this type of activity, "the trend of expanding the list of parties who may conduct such raffles should be approached with caution to avoid opening the door to legalizing more games of chance in Texas" (<u>House Research Organization</u>, <u>2021</u>, <u>pp. 5–6</u>).

¹ In the <u>House</u>, the following witnesses testified or registered in support of the amendment in committee: Tillman, Calvin (self). In the <u>Senate</u>, the following witnesses testified or registered in support of the amendment in committee: Brown, Crystal (Houston Livestock Show and Rodeo).

² No witnesses testified or registered in opposition of the amendment in either the <u>House</u> or the <u>Senate</u> committee.

PROPOSITION 2: Authorizing counties to use certain tax increment financing (HJR 99, 2021)

Background: In 1981, Texas voters passed Proposition 1, enabling cities and towns to use tax increment financing for the purpose of constructing and redeveloping unproductive, underdeveloped, or blighted areas. Chapter 311 of the Tax Code establishes the process by which a municipality may engage in this type of activity using a tax increment reinvestment zone (TIRZ).

<u>Local Government Code</u>, <u>Section 374.003</u>, defines a blighted area as a place that "adversely affects the public health, safety, morals, or welfare of the municipality and its residents, substantially retards the provision of a sound and healthful housing environment, or results in an economic or social liability to the municipality" because of certain conditions, like deteriorating infrastructure.

HJR 99 would expand the use of tax increment financing to include counties. In 2015, the Texas attorney general issued an advisory opinion finding that a court would likely rule that counties could not form a TIRZ or use tax increment financing in a manner similar to municipalities (Paxton, 2015).

Overview: Proposition 2 would grant counties the authority to issue bonds to fund the development of transportation and infrastructure projects in blighted areas. It would also disallow counties from using more than 65% of any increased revenues for debt repayment or fund the construction, acquisition, operation, or maintenance of a toll road.

Ballot Language:

The constitutional amendment authorizing a county to finance the development or redevelopment of transportation or infrastructure in unproductive, underdeveloped, or blighted areas in the county. (Texas Secretary of State, 2021)

Supporters³ **Say:** Cities and towns can issue bonds to develop blighted areas, so Proposition 2 is a logical extension of that authority. Counties would be able to redirect additional property tax revenue to finance development projects in blighted areas without imposing a new tax or tax rate increase. The existing tax rate stays the same. Revenue in the newly created zone only grows "through some combination of land development, land-use up-zoning, and land value increase" (<u>Federal Highway Administration, 2020, p. 4</u>). This tool would help modestly boost transportation infrastructure funding without raising taxes and while supporting Texas' growing economy. This is important as "Texas is underinvesting in its transportation infrastructure by billions of dollars each year, and as the state's population continues to grow, so does the gap in funding" (<u>HJR 99 Bill Analysis, 2021, p. 2</u>).

In the House, the following witnesses testified or registered in support of the amendment in committee: Cassidy, Brian (self; Alamo RMA, Central Texas RMA, North East Texas RMA, Cameron County RMA, Camino Real RMA, Webb County-City of Laredo RMA, Grayson County RMA); Albright, Steven (Associated General Contractors of Texas—Highway Heavy Utility and Industrial Branch); Allison, Jim (County Judges and Commissioners Association of Texas); Campbell, Drew (Transportation Advocates of Texas); Collins, Daniel (El Paso County; Haynes, Adam (Conference of Urban Counties); Lacy, Sarah (Trinity Metro); Laine, Dale (VIA Transit); MacDougal, Vanessa (self); Narvaez, Thamara (Harris County Commissioners Court); Painter, Lillian (Dallas County Commissioners Court); Rove, Karen (Central Tx Regional Mobility Authority); Shannon, Melissa (Bexar County Commissioners Court); Shields Chris (San Antonio Mobility Coalition); Stewart, Scott (American Council of Engineering Companies of Texas); Wehmeyer, Mackenna (Texas Rail Advocates); and Wheeler, Julie (Travis County Commissioners Court). In the Senate, the following witnesses testified or registered in support of the amendment in committee: Cassidy, Brian (self; Alamo RMA, Central Texas RMA, North East Texas RMA, Cameron County RMA, Camino Real RMA, Webb County-City of Laredo RMA, Grayson County RMA); Albright, Steven (Associated General Contractors of Texas—Highway Heavy Utility and Industrial Branch); Allison, Jim (County Judges and Commissioners Association of Texas); Campbell, Drew (Transportation Advocates of Texas); Collins, Daniel (El Paso County; Haynes, Adam (Conference of Urban Counties); Lacy, Sarah (Trinity Metro); Laine, Dale (VIA Transit); MacDougal, Vanessa (self); Narvaez, Thamara (Harris County Commissioners Court); Painter, Lillian (Dallas County Commissioners Court); Rove, Karen (Central Tx Regional Mobility Authority); Shannon, Melissa (Bexar County Commissioners Court); Shields Chris (San Antonio Mobility Coalition); Stewart, Scott (American Council of Engineering Companies of Texas); Wehmeyer, Mackenna (Texas Rail Advocates); and Wheeler, Julie (Travis County Commissioners Court).

Opponents⁴ Say: Local governments in the Lone Star State have borrowed an excessive amount already. Compared to the top 10 most populous states in the nation, Texas' local debt per capita ranks as the second highest total, behind only New York (Texas Bond Review Board, 2021, p. 4). Proposition 2 may aggravate this situation by allowing counties to take on even more debt, which could result in higher future taxes, increased debt service payments, and credit rating risk. The potential downside is significant especially considering that tax increment financing has mixed success at best. Municipalities use TIRZ with increasing frequency, but it is unclear to what degree these efforts have succeeded. In addition, allowing counties to use tax increment financing would mean certain funds are effectively trapped in predetermined areas and not expended for the larger community's benefit. Finally, county governments are generally "not as close or well known to the taxpayers of these areas and should not be issuing this kind of debt for taxpayers to bear" (HJR 99 Bill Analysis, 2021, p. 3).

In the <u>House</u>, no witnesses testified or registered in opposition of the amendment in committee. In the <u>Senate</u>, the following witnesses testified or registered in opposition of the amendment in committee: Dixon, Don (self); and Hall, Terri (Texas Turf/Texans for Toll Free Highways).

PROPOSITION 3: Prohibiting state limits of religious services (SJR 27, 2021)

Background: During the initial stages of the COVID-19 pandemic, Texas Governor Greg Abbott issued an executive order limiting social gatherings of more than 10 people (<u>Executive Order No. GA-08, 2020a</u>). Twelve days later, he issued another executive order that included religious services in the definition of "essential services" (<u>Executive Order No. GA-14, 2020b</u>). The governor's executive order strengthening protections for houses of worship was well-received, but state lawmakers nevertheless made it a priority to strengthen protections for houses of religious worship in the 2021 session.

Overview: Proposition 3 would prohibit all governments in Texas from barring or limiting in-person attendance of religious services.

Ballot Language:

The constitutional amendment to prohibit this state or a political subdivision of this state from prohibiting or limiting religious services of religious organizations. (<u>Texas Secretary of State, 2021</u>)

Supporters⁵ **Say:** During the COVID-19 pandemic, some local officials forced religious institutions like churches, temples, and mosques to close. These buildings and their affiliated religious organizations are sources of spiritual, mental, and physical support in difficult times. While some institutions were able to provide their services online, "others were not able to use technology to reach their congregations" (<u>House Research Organization, 2021, p. 9</u>). Restrictions on religious services deprived Texans of that support and violated their religious freedom guaranteed by the Texas Constitution and the United States Constitution.

Proposition 3 is not meant to prevent the enforcement of safety measures like fire or building safety codes. Religious organizations and their members are responsible enough to decide whether to continue their services in times of emergency.

Opponents⁶ **Say:** Proposition 3's language is too broad. It places all Texans at risk by preventing local governments from taking appropriate action during pandemics. It also puts worshippers at risk by prohibiting the government from imposing any limit on capacity at any time, preventing the enforcement of capacity limits and fire codes. The Religious Freedom Act of Texas already forbids all levels of government from interfering with religious worship unless the interference is narrowly tailored to serve a compelling government interest. The amendment "should include language similar to a provision in the Texas religious freedom statute, which provides an exception from the prohibition on a government agency substantially burdening a person's free exercise of religion if the government agency demonstrates that the application of the burden is the least restrictive means of furthering a compelling governmental interest" (House Research Organization, 2021, p. 10).

In the <u>Senate</u>, the following witnesses testified or registered in support of the amendment in committee: Allmon, Jennifer (Texas Catholic Conference of Bishops); Castle, Mary Elizabeth (Texas Values Action); Covey, Jonathan (Texas Values Action); Endres, Kathy D. (self); Garner, Don (Texas Faith & Freedom Coalition); Long, Rev. Bob (Rally Call Ministries/Rally Call Leadership Network); McCarthy, Gregory (Texas Values Action); McDonald, Terry (self); Morgan, Jeffrey S. (self); Saenz, Jonathan (Texas Values); Turner, Kathy (self). The House did not have a witness list available online.

⁶ In the <u>Senate</u>, the following witnesses testified or registered in opposition of the amendment in committee: Simpson, Matt (American Civil Liberties Union of Texas); and Sparks, Clifford (City of Dallas). The House did not have a witness list available online.

PROPOSITION 4: Changing eligibility requirements for appellate and district court judges (SJR 47, 2021)

Background: The Texas Constitution currently sets forth eligibility requirements for judicial candidates for the Texas Supreme Court, the Court of Criminal Appeals, appellate courts, and state district courts.

To serve as the chief or as a member of the Texas Supreme Court, a justice must:

- be licensed to practice law in Texas;
- be a citizen of the United States and Texas at the time of the election;
- be at least 35 years old; and have been a practicing lawyer or a lawyer and judge of a court of record together for at least 10 years. (SJR 47 Bill Analysis, 2021, p. 1)

To serve as the presiding judge or as a member of the Court of Criminal Appeals, a justice must meet the same qualifications. The same requirements are also extended to justices serving on courts of appeals.

For candidates seeking office as a state district judge, "the eligibility qualifications require that a person be licensed to practice law in Texas; be a citizen of the United States and Texas; have been a practicing lawyer or a judge of a court in Texas, or both combined, for four years; have resided in the district in which the person was elected for two years; and reside in the district during the person's term in office" (SJR 47 Bill Analysis, 2021, pp. 1–2).

Overview: Proposition 4 would change the eligibility requirements for certain judicial offices in Texas. Candidates for the Texas Supreme Court, the Texas Court of Criminal Appeals, or a court of appeals would need to be at least 35 years old and have 10 years of experience as a lawyer or judge of a state or county court. The proposition requires that these candidates for judicial offices meet strict ethics standards by requiring that their license to practice law has not been revoked, suspended, or subject to probate suspension. These new requirements would take effect on January 1, 2022 and would only apply to candidates whose first term would begin on or after January 1, 2025.

Ballot Language:

The constitutional amendment changing the eligibility requirements for a justice of the supreme court, a judge of the court of criminal appeals, a justice of a court of appeals, and a district judge. (Texas Secretary of State, 2021)

Supporters⁷ **Say:** The more time you spend as an attorney or lower court judge, the more experience and insight you bring to your position on a higher court. More importantly, the more time you spend as an attorney or judge in Texas, the more familiar you are with the Texas legal system. The state should avoid situations where someone moves to Texas and is quickly elected to a judicial office without enough knowledge of how the system works. Proposition 4 would ensure that candidates for Texas' highest courts have the experience and ethical standards necessary to preside over important trials without preventing a sitting judge or justice from seeking reelection. If passed, the amendment "would not prevent anyone from a judicial appointment or election once the minimum experience level had been reached" (SJR 47 Bill Analysis, 2021, p. 4).

Opponents⁸ **Say:** The current requirements are sufficient to ensure voters can choose between qualified judicial candidates. Texans are able to choose the candidates that they feel are most qualified or will do the best job. Moreover, more experience does not make a candidate more competent. However, requiring more experience could reduce the number of candidates and "exclude groups of younger, more diverse lawyers from judicial appointments or races" (SJR 47 Bill Analysis, 2021, p. 4).

In the <u>Senate</u>, the following witnesses registered in support of the amendment in committee: Parkinson, Thomas (self); and Parsley, Lee (Texans for Lawsuit Reform). In the <u>House</u>, the following witnesses testified or registered in support of the amendment in committee: Heimlich, Ed (self); Herman, Guy (self, Statutory Probate Courts of Texas); Parkinson, Thomas (self); Parsley, Lee (Texans for Lawsuit Reform); and Richards, Joanne (self, Texas Fair Courts Network).

⁸ No witnesses testified or registered in opposition of the amendment in either the Senate or the House committee.

PROPOSITION 5: Permitting the State Commission on Judicial Conduct to accept complaints on all candidates for judicial office (HJR 165, 2021)

Background: The Texas State Commission on Judicial Conduct (SCJC) has authority to investigate and discipline sitting judges in several ways. Following the investigation, the SCJC can issue private or public admonitions, warnings, or reprimands of offenders. In addition, they can require that judicial officeholders pursue additional training.

Overview: Proposition 5 would give the SCJC the authority to receive complaints, conduct investigations, and take disciplinary action against judicial candidates, even if a candidate is not a sitting judge.

Ballot Language:

The constitutional amendment providing additional powers to the State Commission on Judicial Conduct with respect to candidates for judicial office. (Texas Secretary of State, 2021)

Supporters Say: Being exempt from the Code of Judicial Conduct gives non-judge candidates an unfair advantage over their incumbent opponents, who are held to a higher standard. Proposition 5 would level the playing field by "fairly and consistently subjecting all candidates for judicial office to the SCJC complaint and investigation process" (<u>HJR 165 Bill Analysis, 2021, p. 2</u>).

Opponents¹⁰ **Say:** Proposition 5 could significantly increase the State Commission on Judicial Conduct's responsibilities by expanding the number of people they are responsible for investigating (<u>HJR 165 Bill Analysis, 2021, p.2</u>). This expanded authority may lead to increased fiscal pressures for the agency in the future.

⁹ The House did not have a witness list available online. In the <u>Senate</u>, no witnesses testified or registered in support of the amendment in committee.

¹⁰ The House did not have a witness list available online. In the <u>Senate</u>, no witnesses testified or registered in opposition of the amendment in committee.

PROPOSITION 6: Creating the right of long-term care residents to designate an essential caregiver (SJR 19, 2021)

Background: During the COVID-19 pandemic, the Texas Health and Human Services Commission ordered nursing facilities to prohibit non-essential visitors from their facilities.

Overview: Proposition 6 would give residents of nursing facilities the right to select an essential caregiver who could not be prohibited from visiting the resident who selected them. It would also authorize the Legislature to pass guidelines for facilities in implementing the visitation policies and procedures for essential caregivers. The proposition applies to the resident of any type of assisted-care facility.

Ballot Language:

The constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation. (Texas Secretary of State, 2021)

Supporters¹¹ **Say:** Many residents of nursing homes and assisted living facilities depend on friends and family for social and emotional support. The prohibition on non-essential visitors isolated these residents for months, significantly and negatively affecting their physical and mental health. Proposition 6 would ensure that these residents have access to their loved ones, which would greatly "improve residents' physical and mental health" (SJR 19 Bill Analysis, 2021, p. 2).

Opponents¹² **Say:** Proposition 6 does not go far enough—limiting nursing home residents to one essential caregiver "could prevent other family members and friends from seeing a loved one who was near or at the end of life" (<u>House Research Organization, 2021, p. 15</u>). Once this is codified in the Texas Constitution, it will be incredibly difficult to increase the number of designees who cannot be prohibited from seeing residents of care facilities.

In the <u>Senate</u>, the following witnesses registered in support of the amendment in committee: Allmon, Jennifer (The Texas Catholic Conference of Bishops); Ayres, Monica (self; Citizens Commission on Human Rights Texas); Borel, Dennis (Coalition of Texans with Disabilities); King, Kendra (Nexion Health for the Independent Coalition of Nursing Home Providers); Mehta, Hannah (self; Protect TX Fragile Kids); Nichols, Mary (self); Parkinson, Thomas (self); Pitcher, Katherine (self; Texas Right to Life); Spence, Logan (Creative Solutions in Healthcare); and Trigg Adrienne (self; Texas Medical Equipment Providers Association). The House did not have a witness list available online.

¹² In the <u>Senate</u>, no witnesses testified or registered in opposition of the amendment in committee. The House did not have a witness list available online.

PROPOSITION 7: Continuing the residence homestead exemption for certain surviving spouses (HJR 125, 2021)

Background: Texans pay some of the highest property taxes in the nation. In response, the Legislature has, over the years, offered targeted relief to certain classes of property owners in the form of residential homestead exemptions. Per the Texas Comptroller, "A partial exemption removes a percentage or a fixed dollar amount of a property's value from taxation. A total (absolute) exemption excludes the entire property from taxation" (Texas Comptroller of Public Accounts, 2020, p. 1). Along these lines, the 86th Texas Legislature passed HB 1313 in 2019, which "entitle[d] the surviving spouse of an individual who qualifies for the residence homestead property tax exemption for individuals who are disabled to retain the limitation applicable to the residence homestead under certain conditions" (HB 1313 Enrolled Bill Summary, 2019). The proposition before voters will validate the change made by HB 1313 and official actions taken with it in mind.

Overview: Proposition 7 would guarantee that the surviving spouse of a disabled individual who previously qualified for a homestead exemption would continue to receive tax benefit. The expanded tax limitation offering would provide the same benefit on the surviving spouse's residence homestead.

Ballot Language:

The constitutional amendment to allow the surviving spouse of a person who is disabled to receive a limitation on the school district ad valorem taxes on the spouse's residence homestead if the spouse is 55 years of age or older at the time of the person's death. (Texas Secretary of State, 2021)

Supporters¹³ **Say:** This amendment is necessary so as to ensure that "the surviving spouse of an individual with a disability who qualified for a homestead exemption could continue to receive the school district property tax limitation, of 'freeze,' on the surviving spouse's residence homestead" (<u>House Research Organization, 2021, p. 17</u>). Doing so will help prevent the surviving spouse of a disabled homeowner from having to shoulder a large property tax increase. It often makes an already-difficult situation worse. This proposition would also validate legislation that was passed in 2019 and took effect on January 1, 2020, but which is not enforceable "because the Texas Constitution does not reflect the statutory change" (<u>p. 17</u>).

Opponents¹⁴ Say: Creating special carve-outs for specific taxpayers is unfair to other Texas taxpayers, including businesses, renters, or other homeowners. Not only does it give this select group of property owners an unfair advantage, but it puts an additional burden on other taxpayers to cover the difference in tax revenues for school districts. Texas should focus on expanding property tax relief for all Texans. In addition, the passage of this amendment "could reduce school district revenues and increases costs to the state through the operation of school funding formulas" (House Research Organization, 2021, p. 18).

¹³ In the <u>House</u>, no witnesses testified or registered in support of the amendment in committee. In the <u>Senate</u>, the following witnesses testified or registered in support of the amendment in committee: Craymer, Dale (Texas Taxpayers & Research Association).

¹⁴ In the <u>House</u>, no witnesses testified or registered in opposition of the amendment in committee. In the <u>Senate</u>, no witnesses testified or registered in opposition of the amendment in committee.

PROPOSITION 8: Expanding homestead exemption eligibility for surviving spouses of service members (SJR 35, 2021)

Background: In 2013, Texans approved Proposition 1, which allowed the Legislature to grant homestead property tax exemptions to the spouses of troops killed in action.

Overview: Proposition 8 would extend that exemption to the spouses of service members killed or fatally injured during military training or in the performance of their military duties if they do not remarry. This exemption applies to property taxes on all or part of the total market value of the home.

Ballot Language:

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 or fatally injured in the line of duty. (Texas Secretary of State, 2021)

Supporters¹⁵ **Say:** Spouses of service members killed in training accidents, vehicle crashes, and terrorist attacks are not eligible for homestead property tax exemptions under the current law. That is an oversight Proposition 8 would close. The new property tax exemption would apply to less than 10 people per year, which means that "there would not be a large impact to taxing units" (<u>SJR 35 Bill Analysis, 2021, p. 2</u>). Service members killed in accidents died for their country, and their sacrifice deserves the same exemption as those killed in combat.

Opponents¹⁶ Say: Proposition 8 would expand property tax exemptions to a select group of homeowners while foisting the remaining tax burden on all other Texas property owners. What's more, the amendment would also "expand an exemption that could be claimed by wealthy individuals capable of paying the taxes, since there is no value limit, and would continue it for an indefinite period of time until the spouse remarried" (House Research Organization, 2021, p. 20). The Legislature should focus on lowering property taxes for all Texans rather than continuing to carve out special exemptions for certain taxpayers.

¹⁵ In the <u>Senate</u>, the following witnesses testified or registered in support of the amendment in committee: Brennan, Jim (Texas Coalition of Veterans Organizations). In the <u>House</u>, the following witnesses testified or registered in support of the amendment in committee: Fuller, Mitch (self; Department of Texas, Veterans of Foreign Wars aka Texas VFW); and Hale, J.D. (Texas Association of Builders).

¹⁶ No witnesses testified or registered in opposition of the amendment in either the Senate or the House committee.

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Quintero and his wife Tricia have five children, a Great Dane, and an exceptionally large grocery bill.



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