CHAPTER 22

The Texas Constitution

LEARNING OBJECTIVES

After reading this chapter you should be able to

- Define the key terms at the end of the chapter.
- Differentiate between the Texas Constitution and the U.S. Constitution.
- Define and explain the state’s powers.
- Explain the importance of federalism.
- Compare and contrast all 8 Constitutions which have governed the Texas region.
- Explain why the current Texas Constitution is NOT the Constitution of 1876.
- Outline the process and problems with amending the Texas Constitution.
- Analyze why recent attempts to amend the Texas Constitution have failed.

AMENDMENTS IN A CROWDED CONSTITUTION

The opening case discusses the pro and cons of the Amendment to ban Gay Marriage. It outraged many gay Texans, who treated it as a form of discrimination. Proponents of the Amendment saw it as a further enhancement of current Texas law, so that it would prevent any legal challenges from overturning the law. Many also saw it as a confirmation of their societal beliefs, that gay marriage would destabilize society. Texas voters passed the Amendment by an overwhelming proportion of 3 to 1 at the ballot box. All they needed to win was a simple majority of 50% plus one vote.

This vignette also highlighted the two major problems with our Texas Constitution, it is overly detailed and has been changed way too many times. Texas has a long tradition of passing very strict and detailed Amendments to its Constitution. Although this helps in certain situations, it does not allow for much interpretation, and thus becomes less useful. In addition, this tradition has led to a very crowded Constitution. As of November of 2007, the Texas Constitution has 474 Amendments. Although Texas is bad, Alabama is worse with over 760 Amendments to its state Constitution.

CHAPTER OVERVIEW

The task of designing a Constitution for a State is much more involved than a National Constitution. Although it provides a basic framework for the state government, a State Constitution also provides many detailed rules for governing. This chapter discusses how the Texas Constitution evolved from its beginnings in 1824 as a Constitution for a Mexican province to the 1876 Constitution for a U.S. State. The Texas Constitution has evolved many times and has turned into a wordy and confusing document with over 90,000 words and over 450 Amendments.
Texas Within the Federal System

Citizens gain access to government goods and services through a federal system. Our federal system allows us an opportunity to participate more at the federal, state and local levels. Each level of government cooperates with those above it to provide the best kind of domestic goods and services possible. Although they cooperate, each level of government also has its own set of powers, which are granted and limited by the U.S. Constitution. Although there are problems, we have found ways to make it work for us.

The Texas Constitution and Its History

The area of land, known today as the State of Texas, has been governed by eight different Constitutions. The first two Constitutions were created while under Mexican authority. Texas then became a free nation and created its own Constitution, using the U.S. Constitution as a model. There have been five State Constitutions from 1845 to 1876. Although amended extensively, the 1876 Constitution is still in force today.

The Texas Constitution Today

Considered one of the most confusing Constitutions in the United States, the Texas Constitution is second in word count at 90,000+ words, and the fourth most amended with over 450 approved Amendments as of 2007. The Texas Constitution also has the distinction of having one of the longest sentences ever with 756 words. Despite attempts to re-write the document, Texans have had to settle for continuously amended the document to get rid of out-dated rules, misspelled words, poor punctuation and improper grammar.

Although somewhat restrictive, Texas has exceeded the U.S. Constitution in two key areas. The Texas Constitution gave women equal rights in 1972 and gave right to the victims of violent crimes in 1989. The U.S. Constitution does not mention these issues.

Articles III, IV & V establish the three branches of Texas Government; the Texas Legislature, the Texas Executive and the Texas Judiciary. The Texas Legislature is a part-time, bicameral legislature, which meets every other year for the first 140 days. The Constitutional authors of 1876 intentionally weakened the Texas Executive. Texas had a bad episode with one Governor in 1874, and did not want another episode like that, so they intentionally limited the Governor’s powers. The Texas Judiciary is one of the most complex in the nation, due to its partisan elections and dual nature. Texas is one of the few states to have both a Supreme Court and a Court of Criminal Appeals with relatively equal powers, but separate spheres of influence. The remaining 14 Articles of the Texas Constitution concern numerous rights and policies, and the last Amendment concerns amending the Texas Constitution.

Amending the Texas Constitution takes two-thirds of both houses of the Texas legislature to agree and then a majority vote by Texas voters. Most Amendments to the Texas Constitution have dealt with removing limitations on Texas Government, expanding public education and state finances. Despite all these changes, the structure of Texas Government has remained relatively the same. Even though the Texas Constitution remains confusing, it still works for Texas. As long as Texans have no major problems with the Texas Constitution, plans to re-write the Texas Constitution will stay in the planning stages.
Attempts at Reform

There have been several attempts in recent years to revise the Texas Constitution, but no majority consensus could be reached. The most serious attempt at revision occurred in 1974, when the Texas Legislature convened as a constitutional convention. Unfortunately, partisan bickering divided many members on some key questions. Many members wanted to strengthen the Executive Branch and give the Governor more power. Another reform would require every Justice of the Peace to have a completed law degree, which would throw 90% of the current Justices out of office. The final problem was keeping Texas a “right-to-work” state. Many members wanted that changed to allow Labor Unions more power, but it was blocked and the Legislature never approved this Constitution.

Other attempts at revising the Texas Constitution came in 1999 and 2001. In 1999, Senator Bill Ratliff and Representative Rob Junell made several proposals to alter the structure of Texas Government, but these proposals never made it out of committee. Junell tried again in 2001, but without the backing of the Governor, his proposals died in committee, again. Efforts at Constitutional reform will continue to suffer without widespread support among the legislature, the governor and the general public.

KEY TERMS

federalism
Bill of Rights
police power
secession
Reconstruction
suffrage
separation of powers
checks and balances
Grange
habeus corpus
amendability
constitutional revision commission

RESEARCH AND RESOURCES

A typed copy of the current Texas Constitution, which includes all changes by Amendment through Nov 8, 2005, can be found at this site; <http://tlo2.tlc.state.tx.us/txconst/toc.html>. For a look at the Amendments passed during the Nov., 2007 Election go to this large pdf site; <http://www.tlc.state.tx.us/pubsconamend/analyses07/analyses07.pdf>.

The Texas State Library site contains a good bit of history about the Texas Constitution; <http://www.tsl.state.tx.us/treasures/constitution/>. The University of Texas Tarlton Law Library has a digitized copy of all the Texas Constitutions from 1824 through 1876, as well as other valuable resource links; <http://tarlton.law.utexas.edu/constitutions/text/1876index.html>.

A good, general resource for all things Texas can be found through the Texas Handbook On-Line, a project of the University of Texas at Austin Libraries and the Texas State Historical Association. <http://www.tsha.utexas.edu/handbook/online/>.
USING YOUR KNOWLEDGE

1. Look up the current Constitutional Amendments that just passed and see how they will affect you, or your parents. Did you, or your parents, vote against any of the Amendments. Why. Why not?

2. E-Mail your State Representative and/or State Senator, and ask them why they have not proposed re-writing the Texas Constitution. Ask them if they will consider convening a Constitutional Convention after the next election, and see what they say.

GETTING INVOLVED

With over 450 Amendments added to it already, the Texas Constitution is rather crowded and confusing in some places. Try reading through it and writing your own Amendment to fix a sentence or a section of our Constitution, then send it to your State Representative or State Senator in Austin. Find them at the state legislative site; <http://www.capitol.state.tx.us/>. Who knows, maybe they will use your suggestion!

SAMPLE EXAM QUESTIONS

Multiple-Choice Questions

1. What is the basic purpose of the Texas Constitution?
   a. Define powers of Texas Government.
   b. Define basic framework for Texas Government.
   c. Separate the powers of Texas Government.
   d. Provide that the voters are the ultimate authority to Texas Government.
   e. Ensure that Texas Government provide the basic services needed by citizens.

2. What are the three main tasks of state government?
   a. Dividing, running and legitimizing government.
   b. Electing, empanelling and empowering government officials.
   c. Providing education, basic services and law enforcement to the general public.
   d. Regulating trade, law and order and spending revenue.
   e. Legislating, enforcing the law and interpreting the law.

3. What term do we use to describe the division of power between the central government and regional governments?
   a. federalism
   b. federal authority
   c. separation of powers
   d. checks and balances
   e. secession

4. Which U.S. Constitutional Amendment guarantees that all powers not given to the national government are reserved for the states?
   a. First Amendment
   b. Fourth Amendment
   c. Fifth Amendment
   d. Eighth Amendment
   e. Tenth Amendment
5. Which of the following is NOT a power of state government?
   a. conducing elections
   b. coining money
   c. maintaining a militia
   d. provide for public health
   e. protect citizens and maintain social order

6. One power states do not have is the power to withdraw from the Union known as the United States. What is this power called?
   a. remission
   b. suffrage
   c. secession
   d. exhumation
   e. recidivism

7. Which of the following is an advantage/aspect of federalism?
   a. Allows for experimentation at the local level.
   b. Allows citizens to participate more directly with government decision-making.
   c. Allows flexibility between the national and state governments.
   d. All of the above
   e. None of the above

8. Both the Mexican Federal Constitution of 1824 and the 1827 Constitution of Coahuila y Tejas declared what which of the following as the state religion?
   a. Christianity
   b. Judaism
   c. Puritanism
   d. Catholicism
   e. Protestantism

9. What was a major aspect of the 1836 Texas Constitution?
   a. universal suffrage
   b. outlawed slavery
   c. protected ownership and community property rights
   d. unicameral legislature
   e. liberal taxing and spending policies

10. What term describes a major strength of the Texas Constitution whereby each branch of government exercises some form of control over the others?
    a. federalism
    b. federal authority
    c. separation of powers
    d. checks and balances
    e. secession

11. Which Texas Constitution specified that Austin would become the state capital, until an election by the people, which just confirmed Austin as our permanent state capital?
    a. 1827 Constitution of Coahuila y Tejas
    b. 1836 Constitution of the Republic of Texas
    c. 1845 first Texas State Constitution
    d. 1861 Confederate Constitution
    e. 1876 Current Texas Constitution
12. Which Constitution is remembered for its straightforward and simple approach to governing and was admired by Washington politicians at the time?
   a. 1836 Constitution of the Republic of Texas
   b. 1845 first Texas State Constitution
   c. 1861 Confederate Constitution
   d. 1866 Presidential Reconstruction Constitution
   e. 1869 Congressional Reconstruction Constitution

13. Which Texas Constitution required universal male suffrage and ratification of the 14th Amendment?
   a. 1836 Constitution of the Republic of Texas
   b. 1845 first Texas State Constitution
   c. 1861 Confederate Constitution
   d. 1866 Presidential Reconstruction Constitution
   e. 1869 Congressional Reconstruction Constitution

14. What did James Lamare see as “the principal legacy of the 1875 constitution convention?”
   a. Creation of a fragmented and weak political institution.
   b. Development of universal, adult suffrage.
   c. Severely restricting the power of government to tax and spend.
   d. Increasing the power of the Executive branch to allow more control of government.
   e. Institute partisan elections for a more balanced government.

15. How many Articles are written into the current Texas Constitution?
   a. Three
   b. Seven
   c. Thirteen
   d. Seventeen
   e. Twenty One

16. Compared to the U.S. Constitution’s Bill of Rights, what is so special about the Texas Constitution’s Bill of Rights?
   a. More restrictive
   b. More detailed
   c. No habeus corpus guarantees
   d. Closed access to the court system
   e. No Due Process rights

17. What term do we use to describe the right of an accused person to be brought before a judge and informed of the charges against them?
   a. secession
   b. nolo contendre
   c. habeus corpus
   d. stare decisis
   e. public mandate

18. Article III defines the powers and limitations of the legislature, but in what area is the Texas Legislature limited the most?
   a. taxing and spending
   b. checks and balances
   c. property rights
   d. regulating the economy
   e. access of interest groups
19. According to your text, most of the powers of the Texas Governors office come not through the constitution, but by what method?
   a. check on other branches
   b. political influence
   c. partisan politics
   d. electorate
   e. judicial appointments

20. According to the Texas Constitution, which entity appoints our judges?
   a. The Secretary of State
   b. The Attorney General
   c. The Governor
   d. The Texas Senate
   e. None of these

21. Which Article of the Texas Constitution addresses the establishment of and funding for public education.?
   a. Article IV
   b. Article V
   c. Article VI
   d. Article VII
   e. Article VIII

22. Whereas the U.S. Constitution adapts to changes in society through the interpretation of its provisions, articles and Amendments, how does the Texas Constitution adapt to new circumstances?
   a. Judicial interpretation
   b. Executive policies
   c. Initiative and Referendum
   d. Nullification
   e. Amendability

23. Which of the follow ultimately doomed the attempt to revise the Texas Constitution in 1974?
   a. Requiring Justices of the Peace to have a law degree.
   b. Universal suffrage
   c. A “right-to-work provision” prohibiting union membership as a requirement for hiring.
   d. A provision for a state income tax.
   e. Strengthening the powers of the Governor.

24. According to Representative Rob Junell, why did his efforts to revise the Constitution fail in 2001?
   a. wrong type of political environment
   b. no momentum from high-profile politicians or special interest groups
   c. crushed in committee
   d. no support from Governor Perry
   e. “red-herring” political maneuver

25. Without public support, what is the considered the best, and only way, to revise our Texas Constitution?
   a. Legislation
   b. Judicial interpretation
   c. Amendments
   d. Executive mandates
   e. None of the above
Essay Questions

1. Discuss some of the major problems and advantages of the current Texas Constitution.
2. Specifically, how does the Texas Constitution differ from the U.S. Constitution?
3. Explain the differences between the eight constitutions that have ruled over the area of Texas.
4. Discuss why the Constitution of 1876 is so restrictive.
5. Explain why attempts to reform/revise the current Texas Constitution have failed.
ANSWERS TO MULTIPLE-CHOICE QUESTIONS

1. b
2. e
3. a
4. e
5. b
6. c
7. d
8. d
9. c
10. d
11. c
12. b
13. e
14. a
15. d
16. b
17. c
18. a
19. b
20. e
21. d
22. e
23. c
24. b
25. c