



STATE BAR *of* TEXAS

# ELECTION LAW TOOLKIT

*A public education resource guide for lawyers*

## **Welcome to the Election Law Toolkit!**

We have an amazing system in this country. Every four years, we have a peaceful exchange of power as citizens vote for a new president of the United States. Voting is one of the simplest, yet most powerful, duties we as citizens hold. Many Americans, however, do not go to the polls, perhaps thinking their vote doesn't make a difference or that it's not important.

In Texas, we the people have decided that electing judges is important to us. It is also important to get to know these candidates to make an informed decision. Most people can identify the presidential candidates, but few can name candidates for races further down the ballot — particularly judicial candidates.

It is important for every citizen to be an educated and informed voter. As a lawyer, you can help by going into your community and schools to speak about the importance of voting, which provides all Americans the opportunity to be heard and bring about change.

The State Bar of Texas has produced toolkits to aid you in engaging the public in conversations about various legal topics. This Election Law Toolkit provides talking points and a sample op-ed on being an informed voter. It includes questions you may frequently hear from the public about voting and elections and discussion points and tips for visiting a school. A list of online resources is also included.

Using these tools as a starting point, you can do your part to help educate the public about the importance of voting in our society, the struggles our ancestors undertook to expand voting rights, and why we can't take this freedom for granted.

## VOTING HISTORY

- Eight of the amendments to the U.S. Constitution since the Bill of Rights was adopted have involved voting rights.
- The Fifteenth Amendment (1870) decreed that the right to vote cannot be denied because of race, color, or being a former slave. The Nineteenth (1920) gave the vote to women; the Twenty-Fourth (1964) barred poll taxes in federal elections; and the Twenty-Sixth (1971) extended the vote to 18-year-olds.
- In *Wesberry v. Sanders* (1964), the Supreme Court ruled that states must draw congressional districts that are as equal in population as possible, ensuring proportional representation.
- The Voting Rights Act (1982) established a “results test” to outlaw the drawing of voting district lines that resulted in discrimination against a specific group, whether intentional or not.
- The National Voter Registration Act (1994) requires states to streamline voter registration by allowing registration for federal elections by mail and through state driver’s license facilities.

## VOTING IN TEXAS\*

- In the 2012 Republican and Democratic Primaries, 2.1 million Texans voted for a 16% turnout of registered voters.
- In the 2010 Gubernatorial Election, 5 million Texans voted for a 38% turnout.
- In the 2008 General Presidential Election, 8 million Texans voted for a 59% turnout.
- In the 2008 Republican and Democratic Primaries, 4.2 million Texans voted for a 33% turnout.

## VOTING PROCEDURE

- You must be a U.S. citizen and a resident of Texas to vote in Texas.
- You must be 18 years of age or older.
- You must register to vote.
- You must be registered 30 days before to an election.
- You should bring your voter registration card or an ID to vote.
- Learn about the candidates and make an informed choice!

## **AS A VOTER, YOU HAVE A RIGHT TO:**

- Inspect a sample ballot with written instructions.
- Ask for a demonstration of the voting mechanism.
- Receive voting assistance at the polls.
- Bring an interpreter to assist you if you do not understand English.
- Request a replacement ballot if you make a mistake or if yours is damaged.
- Bring written materials into the voting booth to assist you in casting your ballot.
- Cast a provisional ballot if your name does not appear on the list of registered voters or you do not have proper identification.
- Vote if you are in line by the time the polls close.
- Vote once at any early voting location.
- Report a possible voting rights abuse to the Secretary of State or to your local election official.
- Vote for the candidate of your choice in secret and free from intimidation.

## **AS A VOTER, YOU HAVE RESPONSIBILITIES TO:**

- Register to vote.
- Notify the registrar of any address change.
- Know the rules for absentee ballots and early voting.
- Know the hours and location of your polling place.
- Present proper identification to the polls if required.
- Ask for help at the polls if needed.
- Get out and vote!

Consider the following questions on election law and voting that the general public could ask. A basic answer is provided but think about how you would answer these questions if asked. You can also use these questions as a basis for a talk to a civic organization or student/youth group.

### **Why should I bother voting? My vote doesn't matter.**

It does count! Just not necessarily in the way you think. When you vote for president, remember you are voting in a state election, not a national election. Through the Electoral College process, the outcome of the popular vote in Texas determines the slate of electors for our state. These electors then make the actual choice of president and vice president, usually based on the popular majority. Each state has as many electors as it has U.S. senators and members of the U.S. House of Representatives. For a candidate to become president, he or she must win enough state elections to garner a majority of electoral votes.

### **If a presidential candidate has a majority of the popular vote, then shouldn't he or she be president?**

Not necessarily. As happened in 2000 with George W. Bush's victory over Al Gore, Bush ended up with more electoral votes and legally, through the electoral process set out in the Constitution, became president.

### **Why isn't there a popular national vote for president?**

The Electoral College was a compromise based on two issues — how much power should be given to the people, and how much power to small and large states. When the nation was founded, Americans distrusted concentrating

too much power in the hands of the people. They feared mob rule. Equalizing power between the small and large states also was a major issue. If a popular vote were held, then the smaller, less-populous states would have a correspondingly smaller voice. Thus, a system of “electors” was proposed, whereby the states would do the actual voting.

### **How is the Texas governor elected?**

The governor of Texas is elected with a plurality of the vote, meaning the candidate who receives the most votes wins. The Republican and Democratic candidates are chosen in primary elections. To gain ballot access, independent candidates must obtain signatures of registered voters in an amount equaling at least 1 percent of the total votes cast in the prior gubernatorial election.

### **Why are Texas judges elected?**

The Texas Constitution provides for Texans to elect their state judges, including Supreme Court judges. This provision originated from a desire by the framers of the Texas Constitution to give more power to the people. Texas is one of eight states to elect judges by party affiliation.

### **How do other states get judges?**

Twenty-four states and the District of Columbia use a merit selection system whereby a bipartisan judicial nominating commission of lawyers and public citizens recommends judicial candidates to an appointing authority, such as the governor. Thirteen states hold nonpartisan elections of judges, which precludes the nomination of candidates based on political party.

## What are the different courts in Texas and what kinds of cases do they decide?

At the local level, Texas has two types of courts:

- Justice Courts — Commonly called “justice of the peace” courts, these courts handle small claims, Class C (less serious) criminal misdemeanors, and magistrate functions.
- Municipal Courts — These courts oversee fine-only criminal misdemeanors and municipal ordinance criminal cases, and, like justice of the peace courts, perform magistrate duties.

### At the county level, the courts include:

- Constitutional County Courts — As the name implies, the Texas Constitution provides for one court per county (254 counties) presided over by a county judge. These courts handle various cases, including civil actions between \$200 and \$10,000, juvenile matters, misdemeanors, and some probate.
- County Courts at Law — These courts were created by the Texas Legislature to assist the constitutional court in larger counties. Jurisdiction varies but can include civil cases up to \$100,000 and appellate actions from municipal and justice of the peace courts.

At the state level, district courts handle civil and criminal matters. Certain district courts may specialize in civil, criminal, juvenile, or family law cases. Appeals from trial courts, both at the county and district levels, are heard by the courts of appeals. Texas has 14 courts of appeals that hear civil and criminal cases.

Texas is one of only two states (Oklahoma is the other) that has two courts of last resort — the Supreme Court for civil cases and the Court of Criminal Appeals for criminal matters.

## What are the qualifications for a person to become a judicial candidate in Texas?

Constitutional county court judge candidates do not need a law license, but they do need to be well-informed in state law. Statutory county court judges must be licensed attorneys who have practiced law or served as a judge for two years, be at least 25 years old, and be residents of the county for two years. District court candidates must be licensed attorneys and a practicing lawyer or judge for four years, be citizens of the United States and Texas, be 25 years of age or older, and be residents of the district for two years. Texas Supreme Court and Court of Criminal Appeals candidates must be practicing lawyers or judges of courts of record for at least 10 years, be at least 35 years of age, and citizens of the United States and Texas.

## How can I learn about candidates and issues that will be on my ballot?

Your local newspaper is a great place to learn about local and state candidates and issues, as well as gubernatorial and presidential races. You can also attend community forums or go listen to the different candidates speak, such as at a “town hall” event. Organizations such as the League of Women Voters and Project Vote Smart are good sources for nonpartisan information. The League of Women Voters has a Texas branch and various local affiliates. To find a branch in your area, contact the Texas League at (512) 472-1100 or visit [www.lwvtexas.org](http://www.lwvtexas.org). Project Vote Smart provides information by state on elected officials, ballot measures, campaign finances, issues and legislation, etc. Project Vote Smart ([www.votesmart.org](http://www.votesmart.org)) also offers a Voter Research Hotline at (888) VOTE-SMART.

## **What are the requirements to vote in Texas?**

You must be a U.S. citizen, age 18 or older, and a resident of Texas.

## **Why should I register to vote?**

Voting is one of our basic civic duties, an important one that should not be taken for granted. Voting provides citizens the opportunity to voice their opinions on the issues and officials that affect their lives and the lives of their fellow Americans, and to effect change in government.

## **How do I register to vote?**

In Texas, you can register by filling out a Texas Voter Registration form, readily available at libraries, post offices, county driver's license offices, county voter registration offices, major grocery stores, and on the Texas Secretary of State's website: [www.votexas.org](http://www.votexas.org). Fill out the form and mail it in at least 30 days before the election date. No postage is required. You don't have to register every year, but you do have to update your address.

## **I'm a college student. Where do I vote?**

You will need to decide what your home base is and register there, whether you use your parents' address or your college address. You cannot be registered in both places. If you use your parents' address as your permanent address, you can use early voting by mail, but you will need to fill out an early voting ballot request application. Again, you can find this form on the Texas Secretary of State's website. Out-of-state students should consult with officials in their state regarding registration and ballot-by-mail procedures.

## **Can anybody vote early by mail?**

Formerly called "absentee voting," early voting by mail is available to those who will be away from their home county on election day and during early voting, the sick or disabled, persons 65 or older on election day, or persons in jail but eligible to vote.

## **Where do I go to vote?**

You vote in the precinct in which you are registered. Your precinct will be noted on your voter registration card. Most newspapers print precinct polling places before an election. You can also contact your County Clerk or Elections Administrator. Early voting locations are also publicized in the local media as well as listed on the Texas Secretary of State's website.

## **Do I need an I.D. to vote?**

You must bring either your voter registration card or an acceptable form of identification when you vote. Acceptable I.D. includes a valid driver's license, a birth certificate, U.S. citizenship papers, a U.S. passport, or a current utility bill, bank statement, paycheck, or other government document that shows your name and address.

## **What kind of voting methods does Texas have?**

Depending on which county you live in, you may use a paper ballot, an optical scan system, or a direct record electronic system (DRE). With a DRE, voters record their choices electronically directly into the machine, which allows for the connection of audio attachments, simple touch devices, or a sip/puff tube for blind, elderly, or disabled Texans.

For Texans wanting to take their civic participation to the next level, they may want to consider becoming a poll worker for an upcoming election. Below are some questions and answers about serving in that capacity.

### **What do poll workers do?**

Poll workers ensure the conduct of fair and accurate elections. They prepare the polling place by setting up voting equipment, greeting voters, verifying registrations, and providing voters with the appropriate ballots. They also close the precinct at the end of voting and prepare election materials to be delivered to the elections office.

### **How do I become a poll worker?**

Contact your local election office for application information. In Texas, you must be a qualified voter, 18 years of age or older. To be an election judge, you must reside in the precinct or county. To be an election clerk, you must reside in the county. Poll workers receive compensation and training (online training is also available through the Texas Secretary of State's website — [www.votexas.org](http://www.votexas.org)).

### **Are poll workers affiliated with political parties?**

Yes, poll workers are generally affiliated with a political party.

### **What is an election judge?**

An election judge or presiding judge hires the election clerks, sets up the voting area, manages the polling location, and completes all paperwork.

### **How do I become an election judge?**

You can submit an application to your local election office for consideration as an election judge. Appointment of election judges varies depending on the election. For primaries, the county chair of the political party holding the primary appoints the judges for each precinct, with the approval of the county executive committee. For county elections, the commissioners' court appoints judges for each precinct in the county. Judges serve a one-year term beginning Aug. 1 following appointment. An alternate presiding judge is also appointed to assist the presiding judge. The presiding judge and alternate presiding judge must be aligned with different political parties.

### **What is an election clerk?**

Election clerks are hired by a presiding judge for a single election only. Election clerks assist the election judge in various duties, including qualifying voters, assisting voters with the voting equipment, and helping to open and close the polls.

### **What about bilingual poll workers?**

Election judges must make reasonable efforts to hire bilingual election clerks, depending on the language needs of the precinct. The Texas Election Code contains provisions regarding assisting Spanish-speaking voters by having interpreters and bilingual voting materials available. Certain counties with large ethnic populations are required to provide voting materials in the appropriate language, such as Vietnamese in Harris County or Native American languages in El Paso and Maverick counties. In addition, non-English speakers can bring an interpreter to the polls to help them with the ballot.

## **Can election judges and clerks leave the polling area while the polls are open?**

No, the election judge and clerks must stay at their precinct until the polls close. Clerks may be assigned different time shifts, and the election judge may approve temporary absences for meals or other necessary activities.

## **How long do polls stay open in Texas?**

According to the Texas Election Code, polls open at 7 a.m. and close at 7 p.m. Individuals in line to vote when the polls are supposed to close can vote.

## **Why are there observers from various campaigns at polling places?**

These observers are called “watchers” and are appointed by each candidate on the ballot to observe the conduct of the election. If more than one person from the same party is on a ballot, the chair of that political party may appoint watchers. Watchers may go on duty at a particular polling place any time after the presiding judge has arrived and may remain until the judge and clerks have completed their duties. Watchers can make notes during the day, sit or stand near the election officers to observe a particular activity, and observe an election officer assisting a voter. However, watchers may not talk with election officers about the election except to point out a violation of law, and they may not communicate with voters in any manner.

## **What about the people handing out campaign information outside the polling sites?**

Persons are not allowed to campaign for candidates within 100 feet of a polling location while polls are open. If so, the

person is committing a Class C misdemeanor under the Texas Election Code.

## **Why aren't all elections held on the same date?**

In Texas, most general and special elections will be run on one of two dates: the second Saturday in May or the first Tuesday after the first Monday in November. There are exceptions to these dates, such as runoff elections, emergency elections to fill a vacancy in the Legislature, or elections under court order, but permission must be obtained from the governor by a political authority to hold an election on a different date. General primary elections are held the first Tuesday in March in even-numbered years; runoff primary elections are held the second Tuesday in April following the general primary; and presidential primaries are held the first Tuesday in March in each presidential primary year.

## **What are the issues with electronic vs. paper ballots?**

Security and accuracy of vote and vote counts are major concerns to all voters, and these issues seem to occur regardless of voting method (e.g., paper, optical scan, or electronic). Paper ballots are still used in many Texas precincts, with votes counted by hand. These ballots, which are not immune to voter fraud, such as ballot stuffing, are considered by some to be more secure and provide greater accountability because of an actual paper trail. However, many precincts have turned to electronic voting methods for more efficient vote counts and hopefully better accuracy. The potential of equipment issues to cause loss of data or mistakes by poorly trained election workers to cause the wrong votes to be cast are key issues influencing electronic voting format choices.

**GENERAL DISCUSSION POINTS:**

Discuss the importance of voting, as a privilege of citizenship. Include practical information on how to register and the voting process.

Many people feel their vote doesn't really count and may not vote. Discuss how each person's vote does count in the electoral process.

Look at elections at the local and state levels and how they differ from the presidential election.

Discuss other ways people can get involved in the election process, such as working on a campaign or becoming a poll worker and what that entails.

**IDEAS FOR SPEAKING TO  
CLASSROOMS OR YOUTH GROUPS:**

Discuss the voting process and its importance. Help arrange a mock voter registration and election.

Examine the history of voting rights in the United States, such as Constitutional amendments and the Voting Rights Act of 1965, and what these expanded voting rights mean to students today.

Discuss the presidential election process, including the Electoral College. Hold a debate on a popular vote vs. the Electoral College.

Discuss why a person would want to run for office, from the local level to President.

As a lawyer, you have the ability to share your knowledge and expertise with students — whether a class of second-graders or high school seniors. You can provide a better understanding of how elections work, the voting process, and why voting is one of our essential responsibilities as citizens.

### **What steps should you take to speak with a group of students?**

1. Choose a school and grade level. This can be a school where your children or a friend's children attend, your alma mater, or just a school in your neighborhood.
2. Contact the principal or another administrator about arranging a speaking engagement. Ask about special civics programs that your talk on election law could complement.
3. Meet with the teacher to discuss your presentation and to determine what materials, if any, should be provided ahead of time for student preparation.
4. Outline your presentation. Discussion ideas are included in this toolkit as well as other online resources.
5. Follow up after your presentation with a thank you to the teacher and the class. Be willing to answer any further questions from the students.

### **TALKING ABOUT ELECTIONS AND VOTING TO STUDENTS:**

Contact your local schools to make sure instructors and administrators are aware of the educational programs available through the Texas Young Lawyers Association and the Office of the Secretary of State of Texas. There are programs and curricula for all grade levels.

In 2008, the Texas Young Lawyers Association produced a video, *Vote America! Honor the Fight, Exercise Your Right*, to educate high school juniors and seniors who will soon be eligible to vote about the struggles for voting rights. TYLA is also sponsoring voter registration drives among young voters. For more information, visit [www.tyla.org/voteamerica](http://www.tyla.org/voteamerica) or call the TYLA office at (800) 204-2222, ext. 1529.

TYLA's VoTexas curriculum, which ties in with the Vote America video, is also geared toward junior and senior high school students, many of whom soon will be new voters. The curriculum, which is nonpartisan, covers the following topics: 1) history of the right to vote; 2) history of voter registration; 3) candidate research and mock debate preparation; 4) political parties and primaries; 5) mock debate; and 6) mock election. For more information, visit [www.tyla.org/voteamerica](http://www.tyla.org/voteamerica).

Student curricula from the Texas Secretary of State's office include "Project V.O.T.E.," "Roles of Political Parties," "Following a Campaign," and "Campaign Evaluation Activity." For more information, visit [www.sos.state.tx.us/elections/projectvote/index.htm](http://www.sos.state.tx.us/elections/projectvote/index.htm).



***Vote America! Honor the Fight, Exercise Your Right*** is an 11th and 12th grade curriculum and video project (the Texas curriculum satisfies TEKS requirements) made possible by the Texas Young Lawyers Association.

Today, every adult American citizen regardless of race, gender, religion or socioeconomic background has the opportunity to vote. The dreams of our founding fathers, propounded by action, gave us the right to change, the right to be heard, and the right to vote. However, this was not always so. To remind us of our civic duty, *Vote America!* educates students about the heroic efforts made for equality and democracy; the struggles of the civil rights era, passage of the 1965 Voting

Rights Act, and the 15th, 19th, and 26th amendments to the U.S. Constitution are all chronicled in this historical video.



*Vote America!* continues a long-standing tradition of the Texas Young Lawyers Association's commitment to producing quality, lawfocused education programming for the citizens of Texas and beyond.

For more information on this project, or a TYLA-sponsored presentation at your school, please contact the TYLA office at (800) 204-2222, ext. 1529,

email [tyla@texasbar.com](mailto:tyla@texasbar.com), P.O. Box 12487, Austin, Texas 78711-2487 or go to [www.tyla.org/VoteAmerica](http://www.tyla.org/VoteAmerica)

In the early 1900s, the term “Yellow Dog Democrat” came into currency to describe Southern voters who were so committed to voting for Democratic candidates that they would rather vote for a yellow dog if it appeared on the ballot than they would for a Republican.

Today, Texas voters are as liable to be considered Yellow Dog Republicans as Yellow Dog Democrats, a straight-ticket designation facilitated (and possibly reinforced) by the ability to cast a straight-ticket ballot.

Straight-ticket voting is indeed simple — instead of wading through the contests on a sometimes lengthy ballot, one punches (or, more often these days, clicks) a single mark allowing one to vote for all of the candidates of the political party of one’s choice. In recent elections, more than half of Texas voters opted to vote straight ticket.

Straight-ticket voting is easy, but is it a good idea?

During a presidential election year, most of us develop strong opinions about the candidate we support for president. We may also learn a lot about candidates for senator or governor or a well-publicized local race. But how many of us take the time to learn the policy positions and qualifications of candidates lower down the ballot — all those railroad commissioners, school board representatives, and county court-at-law judges?

As Americans, one of our greatest privileges is to vote for our elected officials. As citizens, one of our greatest responsibilities is to study our candidates for public office and make informed decisions about who the best candidate is to lead our communities, state, and nation.

Straight-ticket voting is not bad in and of itself, but we owe it to our fellow citizens (not to mention the candidates who have agreed to serve) to study the ballot before deciding whether to vote straight ticket.

Texas generously allows voters to select many of our government officials. And while candidates for these positions may be identified on the ballot and in campaign literature as Republicans or Democrats or Libertarians or Independents, many of these offices are not overtly political. Texas judges, for example, are committed to ensuring access to justice for all Texans, maintaining the integrity of the judicial system, and diligently applying the law irrespective of party affiliation. District attorneys in counties across the state are charged with enforcing the law, not creating it.

By studying the ballot before choosing to vote straight ticket, you may see the name of a sheriff you believe has served your community well even though he or she represents a different political party than your preferred presidential candidate. Or maybe you see the name of a candidate who served well in another position who has decided to run for a new office and deserves consideration.

As Texans, it’s our duty to elect outstanding leaders. Register to vote and do your election homework. Study the candidates and choose those whose positions and experiences most closely align with the issues you believe we need to address. If you determine that all of your preferred candidates are of the same party, vote straight ticket, affix your “I Voted” sticker with pride, and encourage your friends and families to take their civic responsibility seriously.

After all, even a yellow dog can learn new tricks.

## GENERAL

State Bar of Texas Let's Do Justice for Texas  
public education initiative:  
[www.texasbar.com/justicefortexas](http://www.texasbar.com/justicefortexas)

Texas Young Lawyers Association:  
[www.tyla.org](http://www.tyla.org)

American Bar Association:  
[www.abavoteinfo.org](http://www.abavoteinfo.org)

Texas Secretary of State:  
[www.sos.state.tx.us](http://www.sos.state.tx.us) or [www.votexas.org](http://www.votexas.org)

Texas Ethics Commission:  
[www.ethics.state.tx.us](http://www.ethics.state.tx.us)

Federal Election Commission:  
[www.fec.gov](http://www.fec.gov)

U.S. Election Assistance Commission:  
[www.eac.gov](http://www.eac.gov)

League of Women Voters:  
[www.lwv.org](http://www.lwv.org)

League of Women Votes of Texas:  
[www.lwvtexas.org](http://www.lwvtexas.org)

Vote411:  
[www.vote411.org](http://www.vote411.org)

Project Vote Smart:  
[www.votesmart.org](http://www.votesmart.org)

## FOR STUDENTS:

TYLA's Vote America! Honor the Fight, Exercise Your Right:  
[www.tyla.org/voteamerica](http://www.tyla.org/voteamerica)

TYLA's VoTexas:  
[www.tyla.org/voteamerica](http://www.tyla.org/voteamerica)

State Bar of Texas Law-Related Education:  
[www.texaslre.org](http://www.texaslre.org)

Project V.O.T.E.:  
[www.sos.state.tx.us/elections/projectvote/index.htm](http://www.sos.state.tx.us/elections/projectvote/index.htm)

Rock the Vote:  
[www.rockthevote.com](http://www.rockthevote.com)