



The Republican Party of Texas Can Adopt Term Limits and Closed Primaries Without Legislative Approval

By Don Huffines

Executive Summary

Texas voters have a problem: career politicians. There are no state-imposed term limits for any office in Texas. The longer politicians stay in office, the more they cater to special interests and the less responsive they are to voters.

Term limits have proven to be popular among voters as a way to reduce corruption and recapture some of the attention of politicians. For instance, term limits have been shown to be effective in reducing spending growth. Sixteen states now have term limits on state legislators, while 37 have some kind of limits on governors. Before being struck down by the U.S. Supreme Court, 23 states had imposed limits on congressional offices.

Another way that voters in political parties have sought to refocus politicians on the priorities of their parties is through closed primaries. Nineteen states currently have some form of closed primary. The concept behind them is that if politicians are nominated only by members of the political party they are supposed to represent, they are more likely to adhere to party platforms and priorities.

Term limits and closed primaries are both examples of political parties exercising their freedom of association under the First Amendment to the U.S. Constitution. Courts have consistently upheld this right of political parties, particularly when it comes to the process of parties selecting their nominees. Many Republicans in Texas have expressed interest in using both mechanisms to improve party candidate selection in future elections.

Texas Republicans can't rely on career politicians to solve these problems for us. Career politicians want to keep their jobs without being accountable to the parties and voters. This history leaves no doubt; if Texans want to regain greater influence over their public servants by imposing term limits on them and selecting them through closed primaries, we cannot rely on the politicians to make this happen.

Fortunately, precedents in Texas, in other states, and in the U.S. Supreme Court provide a path for the Republican Party of Texas to take the extra-legislative step of adopting a closed primary and term limits through its own rules and implementing them in time for the next Republican primary in 2026.

Career Politicians and Term Limits

The people of Texas elect members of their communities to serve them in federal, state, and local governments. In particular, political parties nominate members of their party to “become the party’s ambassador to the general electorate in winning it over to the party’s views” ([California Democratic Party v. Jones](#), 575). However, the longer these party members stay in office, the less most of them seem to be interested in representing their party and the more interested they become in serving the special interests that descend on Austin and Washington hoping to get a piece of the ever-growing pie of government spending. Lobbyists, regulators, and other special interests become the chief constituency of career politicians, rather than the voters who elected them.

Elected officials’ lack of responsiveness to the voters and parties is reflected in voters’ attitude towards politics and politicians. According to the [Pew Research Center](#), only “4% of U.S. adults say the political system is working extremely or very well; another 23% say it is working somewhat well. About six-in-ten (63%) express not too much or no confidence at all in the future of the U.S. political system.” Additionally, 28% of Americans “express unfavorable views of both parties, the highest share in three decades of polling. And a comparable share of adults (25%) do not feel well-represented by either party.” When asked how they feel when they think about politics, 90% of Americans told Pew they felt exhausted; 89% said they were angry at least some of the time.

A major source of the anger and exhaustion of voters is that politicians keep feeding their special interest constituencies with taxpayer money as the size of government continues to grow despite taxpayer calls for property tax relief.

Never was this more apparent in Texas than in 2023. With a budget surplus (\$32 billion) and new revenue (\$46 billion) totaling almost \$78 billion, Republicans expected that money to be spent on cutting property taxes. In the [Republican Party of Texas’ 2022 Platform](#), the party said, “Any budget surplus shall be applied to property tax relief.” Further-

more, they “urge[d] the Legislature to immediately develop and implement a transition plan that is a net tax cut” that would lead “toward the ultimate abolition of property taxes” (13).

However, the vast majority of the \$78 billion went to new spending, not a property tax cut. Appropriations of state funds by the Texas Legislature in 2023 increased to \$233 billion, an increase of \$69 billion over 2021. At least \$18 billion of that will be given to companies in the energy, telecom, and water industries, along with other special interests. Only \$12.7 billion was dedicated to property tax relief. And because the Legislature did nothing to slow local property tax increases, neither did Texans receive a net tax cut. Instead, property taxes increased this year by \$165 million. Essentially, Texas individuals, families, and small businesses got nothing. This is nothing new; over the last 10 years, total spending of state and federal funds has increased 62%, up \$130 billion to \$340 billion for the current biennium. Over the same period, total property taxes have increased \$32 billion, from \$49 billion to \$81 billion.

Whether we use the \$32 billion surplus, the \$78 billion of surplus plus new funds, or the net tax cut as the standard, the career Republican politicians in Texas, who hold every statewide political office and make up a majority of the Texas Legislature and who have overseen Texas government this entire time, have not adhered to the Republican Party of Texas’ platform or serve as the party’s ambassadors on these issues.

Runaway spending and taxes are not the only frustrations of Texas Republican voters. Career Republican politicians in Austin have put special interests ahead of the interests of Texas voters in other areas as well. Border security, school choice, voter integrity, and appointing Democrats as chairs of legislative committees are just a few examples.

Across the country, term limits have been a popular way of trying to turn the attention of politicians of both parties back to the voters. By 1995, 23 states had adopted congressional term limits ([U.S. Senate](#)). Today, 16 states have term limits that apply to their legislatures ([U.S. Term Limits](#)): Arizona, Arkan-

sas, California, Colorado, Florida, Louisiana, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, and South Dakota. Thirty-seven states have some kind of term limit on their governor. Nine of the ten largest cities (as of the 2020 census) also have term limits on their local elected officials ([Ballotpedia](#)).

The adoption of term limits has been driven by its support among voters. A [2023 Pew Research Center poll](#) showed that 87% of voters favored term limits on members of Congress; only 12% opposed term limits. Term limits are popular in Texas as well. A [poll by U.S. Term Limits](#) found that 71% of Texas voters favor imposing term limits on members of Congress. Support for term limits was strong across men and women, all ages, races, and party affiliations. Two-thirds of Texas voters said they would be more likely to support a candidate for the Texas Legislature who supported term limits.

Unfortunately, wide support for term limits disappears among those who have been elected or appointed to office in Texas and across the United States. On May 22, 1995, the U.S. Supreme Court, in a 5-4 vote, struck down state term limit laws that applied to members of Congress on the basis that state legislatures couldn't add additional qualifications to those listed in the Constitution. This halted the grassroots movement in the 1990s that resulted in the 23 states with congressional term limits. In his [dissent to the Court's decision](#), Justice Clarence Thomas wrote, "It is ironic that the Court bases today's decision on the right of the people to 'choose whom they please to govern them.' ... The majority therefore defends the right of the people of Arkansas to 'choose whom they please to govern them' by invalidating a provision that won nearly 60% of the votes cast in a direct election and that carried every congressional district in the State."

The opposition to term limits is not limited to Washington D.C. Six states, Massachusetts, Oregon, Idaho, Utah, Washington, and Wyoming, once had term limits, but they were repealed either by their legislatures or courts. And of the 16 states that have adopted term limits on their state legislatures, only in one—[Louisiana](#)—were limits adopted by the

legislature itself; in the other 15 states the limits were all adopted by voter initiative and referendum ([Ballotpedia](#)).

Texas does not have initiative and referendum. Thus it is no surprise that Texas does not have term limits. All previous attempts to adopt term limits for Texas over the years have been defeated. For instance, in 2013, the [Texas Senate passed a proposed constitutional amendment](#) that would have limited the governor and other statewide elected officials to two four-year terms. Amendments to add limits on legislators and judges to the bill were defeated due to opposition by senators. Later, the bill was [defeated in the Texas House](#). No attempt was made during debate on the House floor to extend the term limits to state legislators.

Research has shown that term limits are effective in reducing spending growth ([Holcombe and Gmeiner](#)) in states. This would be in line with the Republican Party of Texas Platform's "call on the Texas State Legislature to freeze State spending until wasteful programs have been eliminated, a sustainable size of government has been restored, and substantive property tax relief has been provided to Texas citizens" ([12](#)). However, it is unlikely that Texas' career politicians will be willing to impose term limits on themselves.

Political Parties and First Amendment Rights of Association

Political parties rose in the United States almost as soon as our nation did. As the U.S. Supreme Court has explained, "Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views ([Jones, 574](#)).

It is no surprise that politicians are constantly trying to meddle with the ability of political parties to choose who represents them. Whether led by politicians from opposition parties who oppose a minority parties' policies or by career politicians from both parties who no longer desire to advocate for the party they are supposed to represent, governments have for many decades attempted to

regulate political parties and wrest control of the nominating process to protect and extend their political careers.

The courts, however, have consistently held that American's First Amendment rights of association place significant limits on the states' ability to regulate political parties. For instance, the courts have recognized "the distinction between a private organization's right to define itself and its messages, on the one hand, and the State's right to define the obligations of citizens and organizations performing public functions, on the other" ([Jones, 592](#)). Seeking to protect rights of association, the courts "have continually stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution" ([Jones, 573](#)).

One of those limits imposed on governments involves political parties' "right to exclude." The [Free Speech Center](#) explains that "parties generally are able to assert a freedom of association claim, arguing that they, not the government, have the right to decide who may join the organization or be excluded and how they conduct their internal affairs." For this reason, Roberts Rules of Order, Newly Revised, dedicates an entire chapter (Chapter XX) to Disciplinary Procedures, including those related to expulsion of a member. Robert's Rules are incorporated into the Rules of the Republican Party of Texas under Rule 5, pursuant to Tex. Gov't Code § 163.002. These rules recognize the Republican Party of Texas' right as a party to exclude those members who work against the Parties' stated objectives.

The U.S. Supreme Court makes it clear that the right to exclude involves not only who may join a political party but who the political party may nominate ([Jones, 568](#)):

In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views.

There are two main ways that political parties can exercise their rights of association through exclusion in the nomination process. The obvious first way is to limit who can run as a candidate in a political party's primary. The second is to limit who gets to choose the party's nominee for the general election.

A Texan can take two paths towards securing a place on the state's November general election. One is to gather enough signatures on a petition to run as an independent candidate. The other is to file as a candidate in the primary for an established political party, such as the Republican and Democrat parties, or to seek the nomination of a third party at its convention.

Because the state has given the established parties special status when it comes to the state election process, the courts have allowed states to regulate primaries to protect the states' interests. As has been discussed, however, there are limits to these regulations. In *Democratic Party v. Wisconsin*, the Supreme Court held that while Wisconsin "asserted compelling interests in preserving the overall integrity of the electoral process, providing secrecy of the ballot, increasing voter participation in primaries, and preventing harassment of voters, ... such asserted interests do not [always] justify the State's substantial intrusion into the associational freedom of members of the National Party" ([108](#)).

Likewise, in *Cousins v. Wigoda* (1975), the Supreme Court overruled an injunction issued by the state courts of Illinois which sought to control the credentialing and seating of Illinois delegates to the 1972 Democratic Party's convention. The Court recognized that the State of Illinois' interference with the Party's credentialing process imposed a severe burden on its right to choose with whom it would associate.

This principle in support of parties' freedom of association was validated in Texas as the state was heading into the 2018 midterm elections. Section 172.052(a) of the Texas Election Code prevented the Republican Party from removing candidates from its primary election ballot past a certain date. Yet

the Republican Party removed Blake Farenthold's name from the Republican primary election ballot after that date at Farenthold's request. To defend its right to exclude Farenthold, the Republican Party of Texas filed a lawsuit against the state alleging that the provision in the Election Code was an "unnecessary abridgement of Plaintiffs' First Amendment freedoms." The [Texas Secretary of State agreed](#) that "that the party chairman ... is ultimately responsible for submitting the list of candidates running in the 2018 primary election." The Secretary of State conceded he had no means of compelling the Republican Party of Texas and Farenthold to associate with each other when both the party and the candidate wished for him to withdraw from the ballot. In effect, Texas acknowledged the Republican Party of Texas' freedom of association by allowing the party to make the change even though that action expressly violated state statute.

Can Texas Political Parties Exercise Freedom of Association Without A Change in State Law?

Political parties have wide latitude in choosing how they nominate candidates for the general election. Given the Texas Legislature's historical reluctance to adopt either a closed primary or term limits, the question becomes whether a party can exercise its freedoms of association to accomplish the same goals without asking permission from the Legislature. The 2018 Farenthold situation shows that when a party exercises its right to associate, including the right to exclude, the state is not well positioned to override the party's decisions. But that battle was over whether the party was required to keep a candidate (Farenthold) on its ballot who no longer wanted to run. What about scenarios with two of the most popular ways these rights have been exercised in the United States, closed primaries and term limits? This section will examine each of these.

Closed Primaries

The Republican Party of Texas [recently announced](#) the formation of a working group "to investigate legislative and extra-legislative avenues for Texas Republicans to close its primaries who are unaffiliated with the Republican Party. This is in response to candidates who have "solicit[ed] cross over

votes" from Democrats in Republican primaries.

Nineteen states have either closed (10) or partially closed (9) primaries ([NCSL](#)). A closed primary is where a voter must be a registered party member in order to vote in a party's primary. A partially closed primary is where members of other parties are excluded, but the state gives the party the ability to decide whether to allow independent or unaffiliated voters to participate.

The courts have spoken directly and strongly on the ability of parties to challenge open primaries. Courts have recognized that allowing members of opposition parties to select a party's nominees has a considerable effect on the party. In a reference to *Democratic Party v. Wisconsin*, the Supreme Court wrote, "We held that, whatever the strength of the state interests supporting the open primary itself, they could not justify this "substantial intrusion into the associational freedom of members of the National Party" ([Jones, 576](#)).

In *Jones*, the Supreme Court was faced with California's blanket primary in which the ballots of all voters contained all candidates of all parties. In this case, the Court concluded:

Respondents' legitimate state interests and petitioners' First Amendment rights are not inherently incompatible. To the extent they are in this case, the State of California has made them so by forcing political parties to associate with those who do not share their beliefs. And it has done this at the "crucial juncture" at which party members traditionally find their collective voice and select their spokesman.

The rulings of the Supreme Court provide ample evidence that the Texas Legislature's mandate of open party primaries violates the Republican Party of Texas' rights of association.

Additional Qualifications Including Term Limits

Can the Republican Party of Texas impose additional qualifications for those who seek to run in the Republican Primary, including term limits? Constitutional principles and case law say: "Yes."

Imposition by party rule of additional qualifications to run in a primary for a party's nomination is not unprecedented. The Democratic Party of the Commonwealth of Massachusetts imposes a "15% Rule" in addition to state laws governing access to the Party's primary ballot and this rule has survived legal challenges for decades.

In order to run in the Democratic Primary in Massachusetts, candidates must get at least 15% of the vote amongst delegates at the Party's state convention. This Party rule was upheld by the Massachusetts Supreme Court in [Langone v. Sec'y of Commonwealth](#) (1983) and indeed the court has stated that any state law overruling the Party's 15% rule would violate the Party's right to freedom of association. On a 6-3 basis, the U.S. Supreme Court declined review of the 15% rule on the grounds that it did not present "a substantial federal question" [Bellotti v. Connolly](#) (1983).

While litigation over Massachusetts' 15% rule is not conclusive on the merits, the Supreme Court's denial of review and the rule's staying power (it is still in place over 40 years later) suggests that it is considered a lawful exercise of the Democratic Party of Massachusetts' right to impose additional qualifications (convention support) on those who seek to run in the Massachusetts Democratic Primary.

Just like how Massachusetts Democrats have been permitted to add an additional qualification to run in its primary—15% support of delegates—the Texas GOP has the right by party rule to set additional qualifications for those who wish to seek our nomination. There is nothing fundamentally dissimilar from an additional qualification like the "15% rule" and additional qualifications such as a limit on the number of terms in office.

If the Republican Party of Texas adopted a rule limiting our nominees to no more than a certain number of terms in office, and afterward left such disqualified individuals to run as independents, or to seek the nomination of the Democrats or a third party, doing so would be within its rights to freedom of association. Any candidate wishing to challenge such a rule would be required to show

that state laws trump Party rules regarding the qualifications of its nominees and the Party's right to exclude individuals from its primary. There is no precedent for invalidating such a rule.

Solution: Taking Action

Given the evidence that the Republican Party of Texas can legally express its right of association through closed primaries and implementing term limits, it can take action in several ways. In the case of closed primaries, it might sue the state of Texas claiming the state mandated open primary violates the party's rights of association. A problem with this, though, is the cost in time and money the party would have to bear. When it comes to term limits, there is nothing to sue about since there is no law related to term limits.

Texas Republicans could also petition the Texas Legislature to close the primaries and adopt term limits. However, in addition to the time and expense of this approach, the hostility of career politicians toward allowing citizens more input into the selection of candidates suggests such an effort would likely prove futile.

The better path forward on both issues is for the party to take the extra-legislative step of adopting a closed primary and term limits through the Party's own rules, implementing them in time for the next Republican primary in 2026. This would put the onus on the Secretary of State and candidates who would be excluded from the 2026 primary to bring suit challenging the party's rules. The burden would be on those plaintiffs to show what compelling interest the state has to interfere with the Party's exercise of the right to freedom of association. That is a winning battle.

FAQs

Are term limits hard to implement? Why not just start with closing primaries?

Implementing both term limits and closed primaries is a straightforward application of the Republican Party of Texas' First Amendment rights of association. Both have support under existing law and can be implemented through changes in party rules. (I wouldn't say anything negative about closed primaries; the concept is pretty popular)

Are you trying to deny ballot access to those seeking public service?

We are not prohibiting someone from running for office; we are simply prohibiting someone from running for office as a Republican once they have termed out according to whatever parameters the RPT sets. Candidates are always welcome to run as independents or Democrats.

How long should term limits last?

In the 16 states that currently have term limits in place for state legislators, all have set the limit at 8 or 12 years. In 13 of the states, once legislators reach the limit for their office, they can run for office in the other house of the legislature. Three states have set a lifetime cumulative limit of 12 years for all offices. Limits in Texas should be 8 years for statewide elected officials, every other elected office should be limited to 12 years.

Should we apply term limits only to statewide officeholders or also to legislators?

Term limits should apply to members of the Legislature, statewide officers, and judges. Applying them to only one branch of office would create an imbalance of power, just like it has in Washington, D.C. While it looks like the president is powerful, that is only the case when he goes along with congressional priorities. Conservative presidents who try to reduce the size and scope of government have very little ability to implement the policies that Americans elected them to implement.

What about municipal and other nonpartisan positions?

Term limits on municipal and other nonpartisan positions are a good idea. In fact, many Texas cities already have term limits in place. However, the Republican Party of Texas can only impose term limits on candidates who seek to run in the Republican Primary.

How do term limits help make Texas government more conservative?

Politicians are only as conservative as the members of the public who elect them. But far too often, politicians who start out conservative succumb to the pressure of special interests in Austin. They become more focused on keeping constituents in Austin satisfied than on those back home. Term limits protect both politicians and their constituents from the pressure of the Austin swamp.

Don't term limits give more power to the bureaucracy?

No. In fact, just the opposite is true. Legislators and members of the executive branch who stay in office too long become dependent on the bureaucrats; they need the bureaucrats to increase their power and stay in office. So, they partner with each other at the expense of taxpayers. Newcomers to office are not so beholden and thus more willing to tackle the swamp. It doesn't take years of experience to take on special interests in Austin, it simply takes the will to cut budgets and repeal bad laws.

HUFFINES

LIBERTY FOUNDATION



About the President

Don Huffines

Former Texas State Senator Donald B. Huffines is a strong Christian, proud fifth-generation Texan, husband, father, grandfather, and self-made businessman.

Don Huffines fought fearlessly for fiscal restraint and government accountability in the Texas State Senate while representing Dallas County.

During his time in the Senate, Senator Huffines served as the Vice-Chairman of the Border Security Committee. Huffines also earned a reputation as one of Texas's most conservative lawmakers.

Don Huffines now serves as President of the Huffines Liberty Foundation and leads the Texas First movement by promoting the values we all cherish that make Texas great.

The Huffines Liberty Foundation is a 501(c)(3) non-profit, non-partisan research institute.

Our mission is to advance the cause of liberty, prosperity, and virtue in the State of Texas by educating citizens so they may hold their elected officials accountable.

We have developed an agenda based upon the common sense liberty principles of individual rights, fiscal restraint, personal responsibility, limited government, and social conservatism.

The Huffines Liberty Foundation encourages and educates citizens so they are better informed to tackle the toughest challenges.