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# POLITICAL WELFARE: HOW TEXAS TAXPAYERS FUND A DISCRIMINATORY SYSTEM THAT LIMITS VOTER CHOICE



Many Texans are surprised to learn that their tax dollars provide 100 percent of the funding for primary elections that the Republican and Democratic parties stage in each election cycle. These private entities have received public funds for their primary elections since 1972. The candidates who win the Republican and Democratic primaries become the parties' nominees, and the parties' nominees are listed on the general election ballot automatically. Meanwhile, anyone else who wants to run for public office in Texas must comply with an outdated, inefficient, overly burdensome and above all, expensive set of requirements to appear on the ballot. In our report [OUTDATED, OVERREGULATED AND JUST PLAIN COMPLICATED: How Ballot Access Laws Deny Texas Voters a Free Choice at the Polls](#), Texans for Voter Choice showed that new or minor party candidates for statewide office could expect to pay a minimum of \$210,000, and an independent candidate for president \$360,000, to comply with the nomination petition signature requirements to appear on Texas' 2016 general election ballot.

In this report, we examine how taxpayers subsidize the Republican and Democratic parties' process by which they place their candidates on the ballot. Based on data provided by the Office of the Texas Comptroller of Public Accounts<sup>1</sup>, we found that from 2001-2016 Texas taxpayers spent more than \$100 million to reimburse Texas Counties, and the Republican and Democratic parties for the cost of administering their primary elections and voter registration.

These expenditures are mandated by law, but a system that authorizes just two of the active political parties to place their candidates on the ballot at no cost, while imposing regulatory and financial barriers that are cost-prohibitive for all but the wealthiest of potential challengers, does not provide a level playing field for political competition. The very existence of such barriers acts as a strong disincentive to minor party or independent candidates who would otherwise run for office. Those that do attempt to qualify for the ballot find that it requires an all-consuming effort which, even if successful, drains their resources before the campaign begins. And unlike the Republican and Democratic parties, Texas law makes no provision for reimbursing them

The impact of this discriminatory system is reflected in the large number of general election races that lack real competition. In 2016, 44 percent of the races for Texas State Senate and 54 percent of the races for State House had only one candidate running unopposed. Voters in these districts – roughly half the state – had no choice at all as to who represents them in the Legislature. In many other safely "Red" or "Blue" districts, voters are routinely denied a genuine choice, because either the Republican or the Democrat is practically guaranteed to win. For these voters, the electoral process is fundamentally failing. It strips them of the power to choose their elected representatives, and relegates them to the role of passive observers in a system that produces largely pre-determined outcomes.

The net result is that Texas is starving its democratic processes. By subsidizing the two oldest political parties, while imposing cost-prohibitive barriers upon their potential competitors, the state is systematically denying voters the opportunity to hear from new candidates who can inject innovative ideas and perspectives into the political debate.

## How Did We Get Here?

Prior to 1972, Texas funded its primary elections by charging filing fees to the candidates running in them. The fees ranged from \$150 to \$8,900, depending on the office. Several candidates who sought to run in the Democratic Party's 1970 primary election, joined by a group of voters, challenged the constitutionality of these fees on the ground that they discriminated against candidates who lacked the means to pay them. The case eventually reached the United States Supreme Court, which affirmed a lower court decision enjoining the statute that imposed the fees.

"By requiring candidates to shoulder the costs of conducting primary elections through filing fees," the Court concluded in *Bullock v. Carter*, "and by providing no reasonable alternative means of access to the ballot, the State of Texas has erected a system that utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice".<sup>ii</sup>

Secretary of State Bob Bullock, the nominal defendant in *Bullock v. Carter*, then brought an original action before the Texas Supreme Court against the state comptroller, which sought to compel payment by the state of the costs of the Democratic Party primary<sup>iii</sup>. The Texas Supreme Court, overruling a prior precedent dating to 1916, held that primary elections fulfill a "public purpose" under Texas law. It therefore concluded that the Legislature had the power to appropriate public funds to pay for them. The Legislature responded by convening a special session, during which it appropriated \$2.15 million to reimburse the Republican and Democratic parties for the costs of their 1972 primary elections<sup>iv</sup>.

The Legislature thereafter enacted permanent legislation authorizing the use of tax dollars to administer voter registration and primary elections. In 1985, the 69th session of the Texas Legislature passed a complete re-codification of Texas election laws. Title 2, Chapter 19, Financing Voter Registration,<sup>v</sup> and Title 10, Subtitle B, Chapter 173, Primary Election Financing,<sup>vi</sup> now provide for the public funding of voter registration and primary elections. Although these laws do not mention the Republican and Democratic parties by name, those are the only two parties that qualify for such funding.

### **The Data: Taxpayer Funds Expended on Primary Elections in Texas, 2001-2016**

From 2001-2016 Texas taxpayers spent more than \$100 million dollars for the costs of voter registration and administering primary elections to secure ballot access for Republican and Democrat candidates. In contrast, to comply with the nomination petition signature requirements that apply to them, independent statewide candidates and minor parties could easily spend hundreds of thousands of dollars, with no option to be reimbursed. The result is that qualified candidates are regularly excluded from the ballot because they lack sufficient funds to pay such costs. This discriminatory system, which is maintained and perpetuated by taxpayer funding, thus limits voter choice.

A summary of the annual subsidies is available below in Table 1. Texans for Voter Choice has also published its detailed findings of these taxpayer subsidies by county, year, and by payee at [texasvoterchoice.org](http://texasvoterchoice.org).

**TABLE 1**

| <b>Subsidy Year</b> | <b>Amount paid to counties or political parties as reimbursement for conducting primary elections and voter registration</b> |
|---------------------|--|
| 2001                | \$ 1,163,230   |
| 2002                | \$10,930,728   |
| 2003                | \$ 1,755,355   |
| 2004                | \$ 405,234   |
| 2005                | \$ 4,352,977   |
| 2006                | \$ 8,582,276   |
| 2007                | \$ 2,655,989   |
| 2008                | \$11,737,329   |
| 2009                | \$ 2,669,497   |
| 2010                | \$15,494,299   |
| 2011                | \$ 2,396,642   |
| 2012                | \$10,578,411   |
| 2013                | \$ 2,870,937   |
| 2014                | \$11,289,961   |
| 2015                | \$ 2,584,237   |
| 2016                | \$15,163,339   |
| <b>Total</b>        | <b>\$104,630,505</b>   |

Our research raises a number of questions about the fairness of the political system in Texas. Do a majority of Texas taxpayers support using millions of tax dollars annually to subsidize the process by which the Republican and Democratic parties place their candidates on the ballot? Given that approximately 1/3 of the registered voters in Texas do not belong to either the Republican or the Democratic Party, it is questionable whether a majority of Texas voters support the use of their tax dollars to maintain a system that discriminates against independent and minor party candidates.

The idea that a Primary election holds the same role as a general election has become entrenched. The political parties are ultimately responsible for the candidates they nominate to appear on the general election ballot. Yet, because state laws require certain parties to hold a primary election<sup>vii</sup> following *Bullock v. Carter* the state must reimburse the costs of holding that primary. The issue gets more complicated because the parties usually contract with the county Elections department to hold the elections. This merging of party activity with county government activity creates an unhealthy connection between the private entities nominating candidates and the government—which is supposed to remain neutral in elections.

Texans have a proud and distinguished history of celebrating liberty, freedom, and independence. Article 1 Sec. 2 of the Texas Constitution proclaims that all political power is invested in the people and that the people can alter or change their government as they need:

*Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT.  
All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.*

As currently constituted, the Texas ballot access system denies these principles to the approximately five million voters who are not affiliated with either the Democrat or Republican parties. Political power does not inherently reside with them, and they do not enjoy an inalienable right to alter, or reform their government as they may think expedient.

What other priorities for our state are we not addressing because of this subsidy? In a recent Texas Politics survey by the University of Texas/Texas Tribune<sup>viii</sup> on budget priorities for the state, Texans' three highest priorities were:

|   |     |
|---|-----|
| Lowering property tax bills for homeowners                | 20% |
| Redesigning the system of K-12 public school funding      | 17% |
| Limiting government by approving no new spending or taxes | 16% |

Other priorities mentioned included Border Security, Child Protective Services, School Vouchers, and Lowering Business Taxes. In reviewing these results it is not a stretch to conclude that funding the

administration of partisan primary elections seems an unlikely priority for Texans in the current budget climate.

Are there better, more efficient ballot access procedures that could restore fairness and improve free voter choice that are being used in other states? Texas could substantially reduce the burden and expense of conducting ballot access petition drives immediately, by authorizing voters to sign nomination petitions online, through a secure portal maintained by the Secretary of State. Such a system would allow minor party and independent candidates to demonstrate public support without the inefficiency and waste of collecting signatures by hand. It would also reduce the state's administrative expenses, by verifying signers' eligibility and registration status and validating petitions automatically. This reform has already been implemented in Arizona. [AZ Ballot Access](#).

### **The Remedy: THE TEXAS VOTER CHOICE ACT**

The Texas Voter Choice Act (HB 3068), introduced in the 85th Texas Legislative Session, would restore and protect the right of every Texan to cast a meaningful vote in local, state and federal elections. Texans who want to run for public office as minor party or independent candidates face some of the most difficult and restrictive barriers in the nation. Outdated and inefficient ballot access procedures, unnecessarily high nomination petition signature requirements, early filing deadlines, short signature gathering periods, restrictions on who may sign nomination petitions and many other burdensome requirements combine to make mounting such a candidacy prohibitively difficult and expensive for all but the wealthiest citizens.

Should they make it through the arduous process of gaining access to the ballot, they then must contend with a system that subsidizes the campaigns of their opponents by using taxpayer dollars to pay for their primary election.

The Texas Voter Choice Act, H.B. 3068, amends certain provisions of the Texas Election Code to protect the First and Fourteenth Amendment rights of the citizens of Texas to cast meaningful votes in local, state and federal elections. It does so by modernizing ballot access procedures through the implementation of secure, web-based technologies now commonly used for commercial transactions throughout the state of Texas and nationwide. At the same time, it eliminates needless regulations that restrict voter choice, while establishing reasonable requirements for independent and new party candidates to appear on the ballot.

The Texas Voter Choice Act – Key Provisions:

- Establishes Reasonable Signature Requirements and Filing Deadlines

- Authorizes Voters to Sign Nomination Petitions Online

Eliminates Restrictions on Voters' Right to Sign Nomination Petitions

Eliminates Unneeded Filing Requirements for Candidates

#### ENDNOTES

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<sup>i</sup> Secretary of State budget- Public Assistance Payments 7623 Community Service Programs.  
<https://bi.cpa.state.tx.us/OpenDocument/.opendoc/openDocument.jsp>

<sup>ii</sup> 405 U.S. 134, 149 (1972).

<sup>iii</sup> Bullock v. Calvert, 480 SW 2d 367 (Tx. 1972).

<sup>iv</sup> William David Burdett, Access to the Political Arena – Texas Looks to a New Primary Election Law: Bullock v. Carter and Bullock v. Calvert, 26 Sw L.J. 905, 910 (1972).

<sup>v</sup> <http://www.statutes.legis.state.tx.us/SOTWDocs/EL/htm/EL.19.htm>

<sup>vi</sup> <http://www.statutes.legis.state.tx.us/SOTWDocs/EL/htm/EL.173.htm>

<sup>vii</sup> <http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.172.htm>

<sup>viii</sup> <https://texaspolitics.utexas.edu/set/top-priorities-budget-february-2017#overall>