

Keys to Understanding Texas Government

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Three exemplary stories

A persistent policy crisis

M.D. v Abbott (2015) Fed. Judge Janis Jack ruled Texas' foster care system violates clients' basic constitutional rights - after 4 ensuing legislative sessions the issue is still unresolved

Attorney General Paxton's legal problems

TX's top legal officer indicted for securities fraud (2015), accused of other possible crimes (2021), and is under FBI investigation

Hot-button issues -- some emphasized, some ignored

- Leaders fighting local governments on COVID-19 orders
- The anti-school book pornography crusade
- Border regulation Operation Lone Star,
- **Contrast with** inaction on mass shootings and gun regulation

Contemporary governance in Texas

- Conflict among leaders
 - Political flamboyance
 - Ineffective and interest-influenced policy (example: foster care, electric grid)
 - Corruption
-
- **Proposition: These traits arise from and persist owing to the historical context and structure of Texas government**

Outline

- Texas governance style
- Two factors that have most shaped Texas' government structure
 - Single-party dominance
 - Texas' Constitution
- Formal structure under Constitution of 1876
- The Judiciary
- The Legislature
- The Executive Branch
- Reform efforts



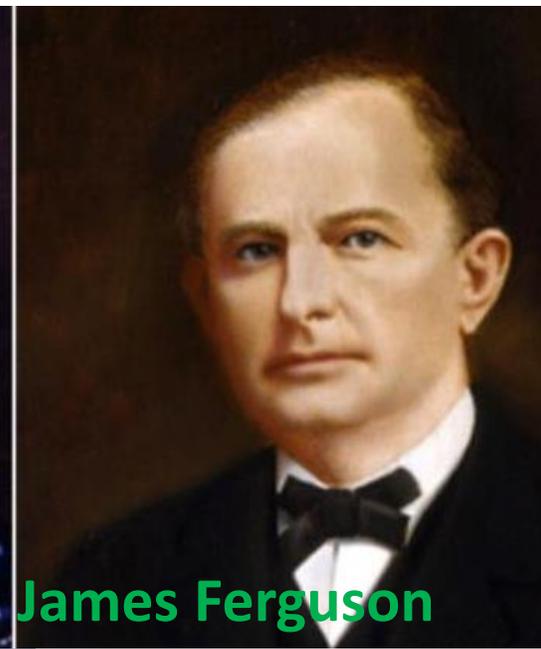
Style of governance -- exemplars of conflict

Gov Abbott versus --

- **Local governments** (Gov's aide: "we hate them") on
 - Mask mandates/closures
 - Taxes
 - Fracking
 - School library books
- **The U.S. government** on
 - Immigration
 - Vaccination policy

Other officials

- **Lt. Governor versus Speakers of the House** - over various pieces of legislation
- **Former Speaker Bonnen** versus Dem. and Republican members of the House



Govs. Miriam and James Ferguson

“Two
for the
price
of
one.”



Ag. Commissioner Sid Miller

Gov. Ann Richards

Style: Corruption

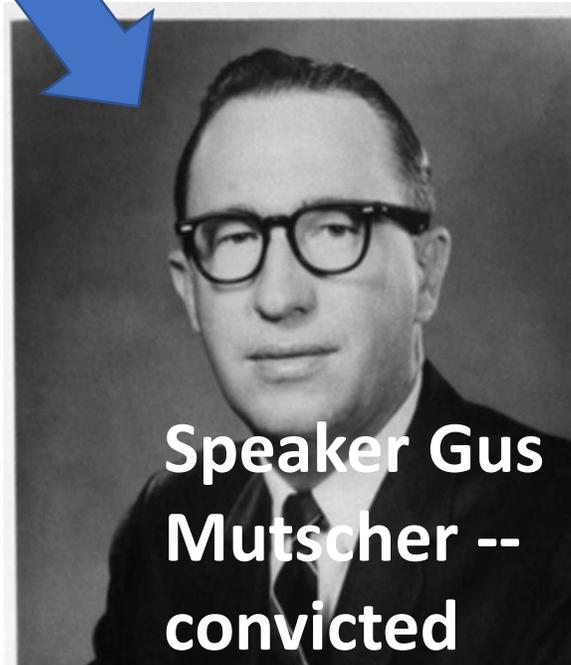
**Sharpstown
bribery scandal
Early 1970s**



**Houston
developer Frank
Sharp(convicted)**



**Gov. P. Smith --
Voted out**



**Speaker Gus
Mutscher --
convicted**

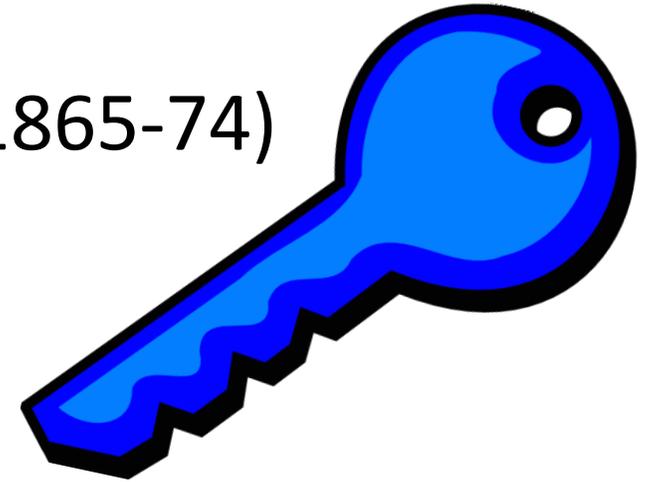


**Atty. Gen Ken Paxton
-- indicted for securities
fraud, accused of bribery**

Factors that have shaped Texas governance

Key 1. Single-party dominance since Independence

- Pro-slavery Democrats (1836-1865)
- US military occupation and Republicans (1865-74)
- Conservative Democrats (1874 -1970s)
- The Great Party Switch (1970s -1990)
- Republicans (1990 - present)
- **Effects – a conservative, small-government, pro-business, minority-resistant leadership from 1870s** on – whichever party name it used



How single-party rule affects elected officials

- **Primary elections are the key**
- Little effective competition exists in the general elections
- Primary voters (10-15 percent of electorate) tend to be each party's most ideologically committed (more conservative on right, more liberal on left)
- Therefore, under dominance by one party, one party's primary voters primaries become main deciders of victory general elections, and inform issues pursued by the winners

How single-party rule affects governance – cont.

- **Short term effects**

- To compete for these audiences, candidates adopt policy positions that appeal to the primary electorate
- Polls show that **successful candidates in the primary system tend to be more ideologically extreme than average citizen or voter**

- **Long term effect**

- **Policies** enacted by office-holders reflect these positions
- **Rules** (redistricting, election laws) **then reinforce the dominant party's staying power**

Factors that have shaped Texas governance

Key 2. Constitution of 1876 (still in force)

- Democrats (formerly pro-slavery) recaptured power in 1874, rewrote the Texas constitution (1876)
- Themes: reaction against federal control, Gov. E.J. Davis, his strong government, and racial integration
- **1876 framers' goals**
 - **Weaken and fragment government**
 - **Keep government close to “the people”**
 - **Promote racial segregation**





And now the
Texas civics lesson...

Structure of government -- the Judiciary

- Goal – to keep judges responsive to “the people”
- Arrangements
 - **Partisan election of judges** (nearly all), from Justices of the Peace up to the supreme courts...
 - A cheat: **early resignation** allows gubernatorial judicial appointments
 - **Dual appeals system** with two high courts -- Supreme Court (civil cases), and Court of Criminal Appeals (criminal cases)

The Judiciary -- continued

- Effects of the judicial provisions
 - **Judges are politicians**
 - **Courts are influenced by electoral and party politics**
 - Especially by campaign donors (esp. business interests and law firms) – e.g., Supreme Court justices get 62% of campaign funds from trial lawyers
 - **Atty. General's advisory opinions** interpret law and constitution for agencies and Legislature

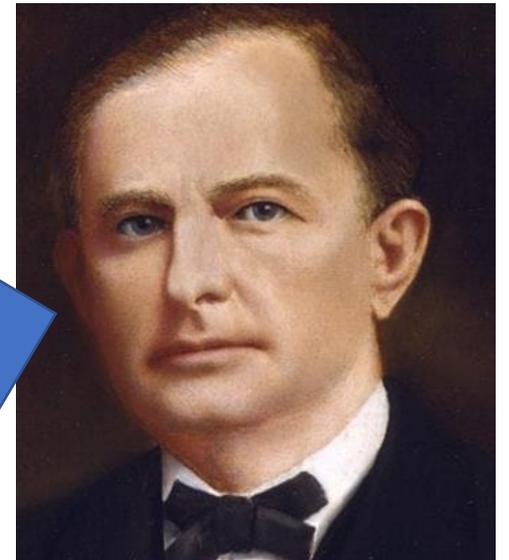
Structure of government -- the Legislature

- Framers' goals –a Legislature “close to the people”
- Provisions
 - **Bicameral body** – House (150), Senate (30+1)
 - **Power to legislate**, but it is restrained/shared
 - **Very low salaries of \$7,200 per year + per diem**, assuring amateurism, high turnover except for lawyers
 - **Limited sessions** – **140 days every other year** + special sessions
 - **No/little seniority system** -- increases lobbies' influence
 - **Budget authority is shared** with executive branch between sessions

The Legislature -- continued

- **Great detail in Constitution** (90,000+ words – 2nd longest); voter ratification restrains legislators from revising laws
- **Shared powers** (checks and balances)
 - **Senate ratifies** Gov's appointments
 - **Comptroller sets spending limits** for Legislature
 - **Governor shares budget execution** with Legislature between sessions
- **Legislature may impeach/remove elected executives** -- rare

Gov. Jim
'Pa'
Ferguson
1917



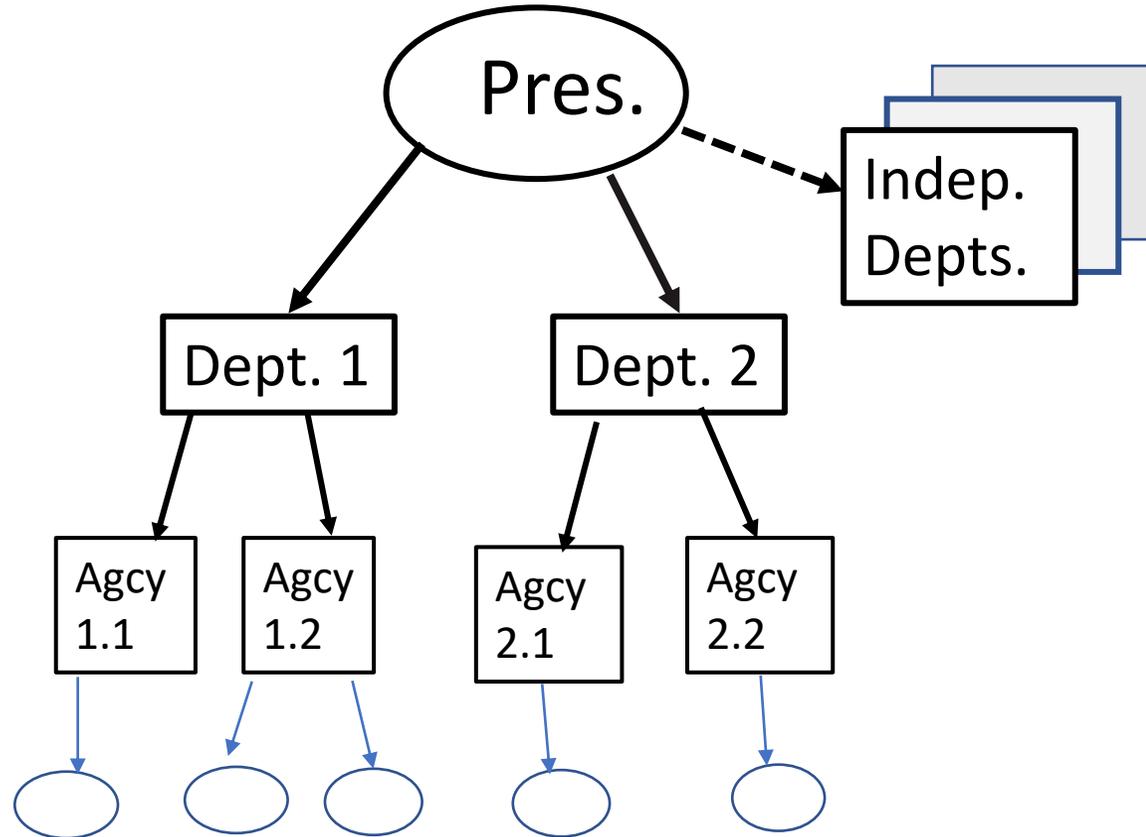
The Legislature –more shared powers

- The **governor's legislative powers**
 - Specify “**emergency**” **topics** during regular sessions
 - **Line-item veto** of budget items
 - Special session powers enhance Governor's influence
 - **The governor Special session calls**
 - **The governor designates/restricts topics** for special sessions

Structure of government -- the Executive Branch

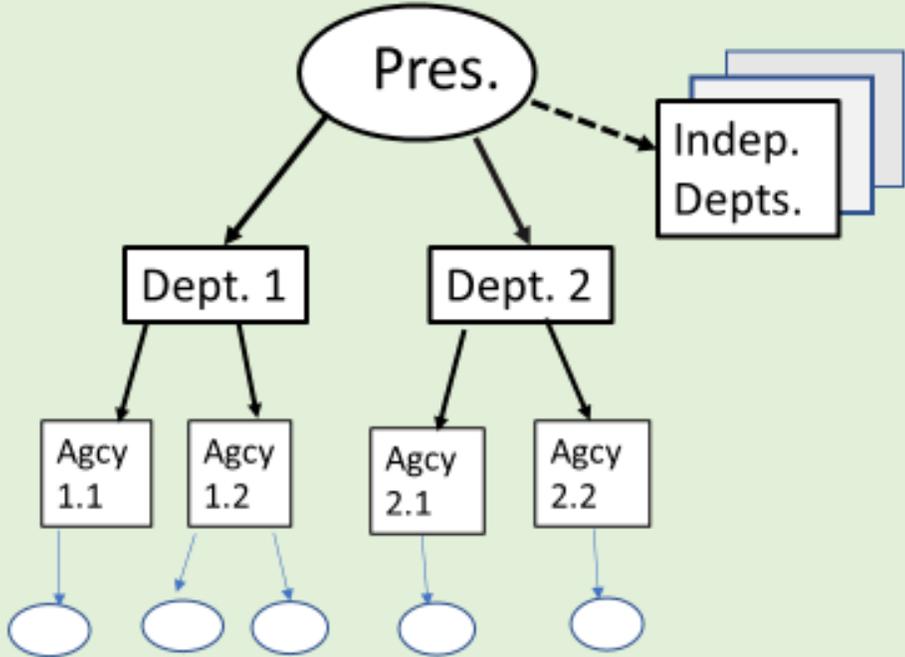
- Framers' goals – **to limit concentration of executive power**
- Provisions
 - **Extreme division of executive powers**
 - **Plural executive system** – separately elected executives
 - **Fragmented bureaucracy**
 - Illustration: The Texas executive Branch compared to U.S. government

Federal government executive branch structure

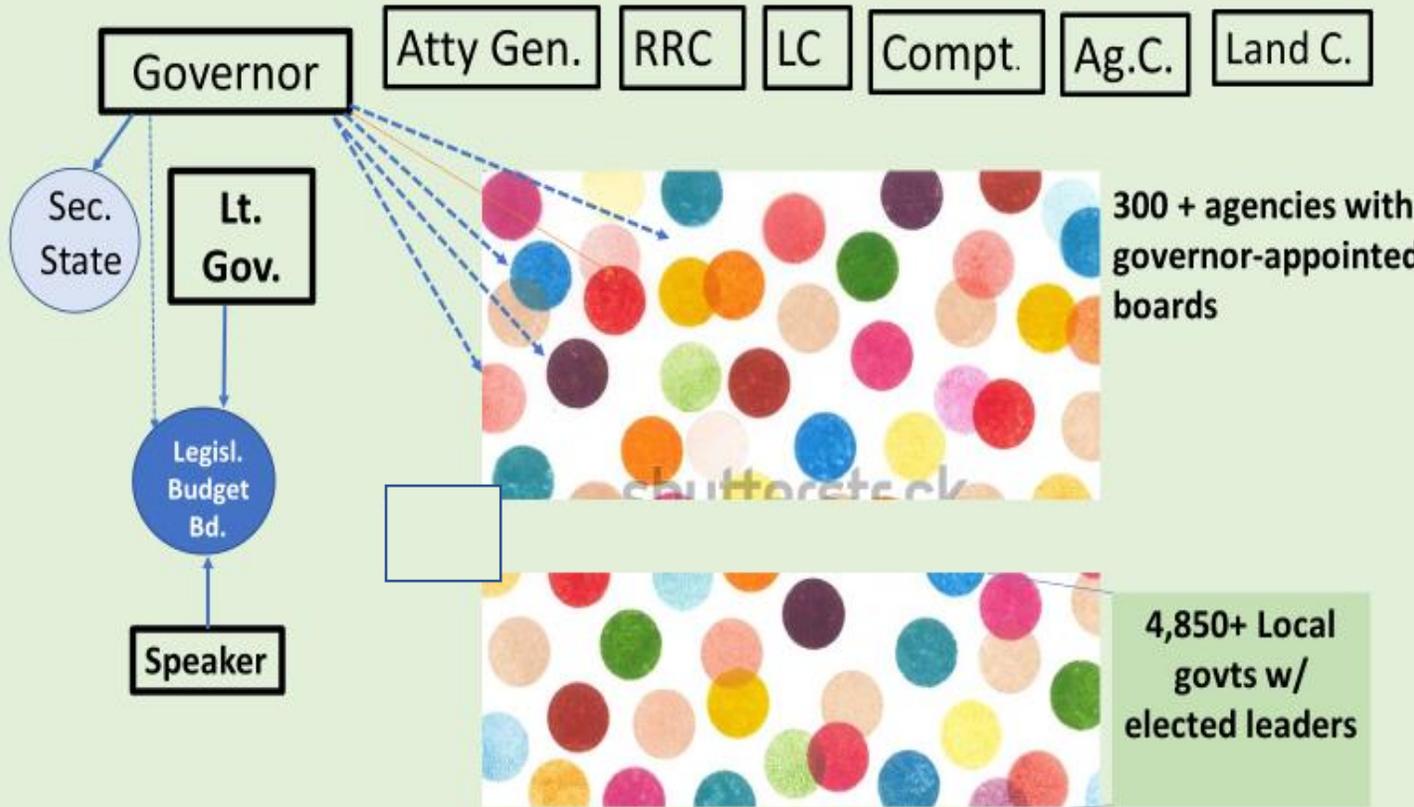


Executive arrangement compared

Federal



Texas -- plural executive and decentralized agencies



Executive Branch – plural executive officers

- **Separately elected executives/boards**
 - Attorney General -- Land Commissioner
 - Comptroller -- Agriculture Commissioner
 - Railroad Commission -- State Board of Education
- These **executives/boards cannot be fired by the Gov.**
- Some are **potential electoral challengers** for Governor
- Texas' **Lt. Gov. is ranked among the most powerful**

Executive Branch – plural executive officers

- **Attorney General**

- Litigates for Texas
- A.G. advises Legislature on pending legislation
- Rules on FOI cases
- Important limit: **may not prosecute without participation of local District Attorneys** (to prevent potential abuse of power)

Executive Branch – industry/interest links

- **The “captive agency” problem** – many agencies dominated by the interests they nominally regulate – from barbers to CPAs to utilities
 - **By law Gov. appoints most board members** (include representatives of interests) but **may not remove them**
 - **“Revolving door”** (personnel trading agency to industry)
 - **Several key agency boards are directly elected per the constitution**
 - **Not subject to Sunset Review**
 - These are the least responsive to public or legislature
- **Examples:**
 - **RRC** –oil and gas interests dominate the Commission
 - **Public Utility Commission** – commissioners from industry

The Executive “Branch” -- continued

- **Lieutenant Governor**

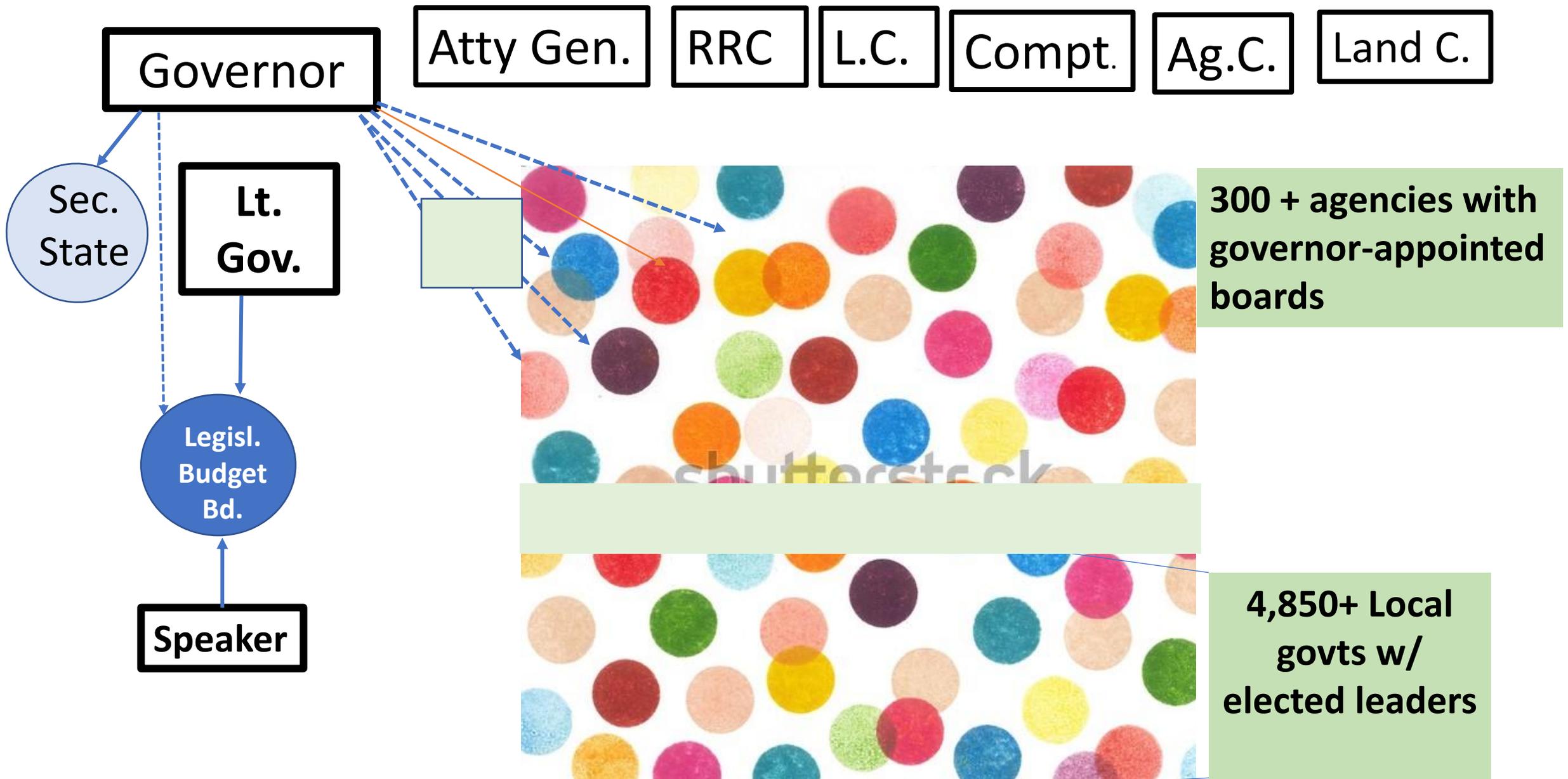
- Elected separately from Governor
- Presides in Senate (not a member, but votes in tie votes)
- Appoints all committees and assigns bills
- Succeeds or fills in for Governor



Lt. Gov Dan Patrick

The Executive “Branch” -- continued

- At the state level are many agencies -- **302 appointed boards and commissions**
 - Regulatory bodies, law enforcement, universities
 - Total of over 3,000 gubernatorial appointees
 - Staggered appointee terms
- Below the state level are +/- **4,850 elected local governments**
 - **Counties** are extensions of the state,
 - **Municipalities** have state-allowed charters
 - **Special districts**



300 + agencies with governor-appointed boards

4,850+ Local govts w/ elected leaders

Executive Branch – legislative checks/balances

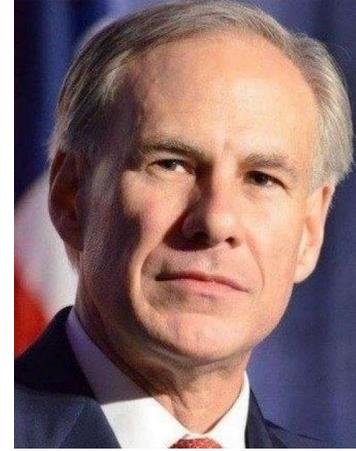
- Generally **weak legislative oversight** of exec. Branch
- Reasons:
 1. Short Legislative sessions + high legislator turnover + weak seniority systems in Lege. allows **heavy lobby influence on legislation and oversight**
 2. Recall **the “captive agencies”** – Gov. appoints **people from regulated agencies to regulatory boards**

Executive Branch – legislative checks/balances

- **However, Sunset Advisory Commission** of 12 legislators + 2 public members appointed by Lt. Gov and Speaker
- **Commission staff evaluate** a portion of 130 legislatively formed state agencies in a 12-year rotation
- **Commission recommends to “sunset” (abolish) an agency, or keep it with mandated reforms; Lege. decides**
- So far **90+ agencies have been abolished or merged** (e.g., into Department of Regulations) ... bye-bye Boll Weevil Commission, hello Health and H. Services, \$1 billion savings

Executive Branch – The Governor

- Formal provisions
 - **Terms** -- 4 years (off-year elections), no term limit
 - **Salary** \$150,000
 - **Large staff** (approx. 300)
 - **Charge:** to “**cause the laws to be faithfully executed**” – difficult given structure
- Formally weak (**ranked among bottom half** of govts. in power) but **time in office builds influence**



The Governor -- continued

- Tools:

- **Executive orders** (trending up)
- **Proclamations** (may activate special powers)
- **Appointments** -- 3,000+ in agencies, boards, and commissions (1/3 per term)
- **Legislative powers** -- “legislative emergencies”, budget line-item veto, special session calls & special session agendas

Reviewing: Effects on Texas' governance

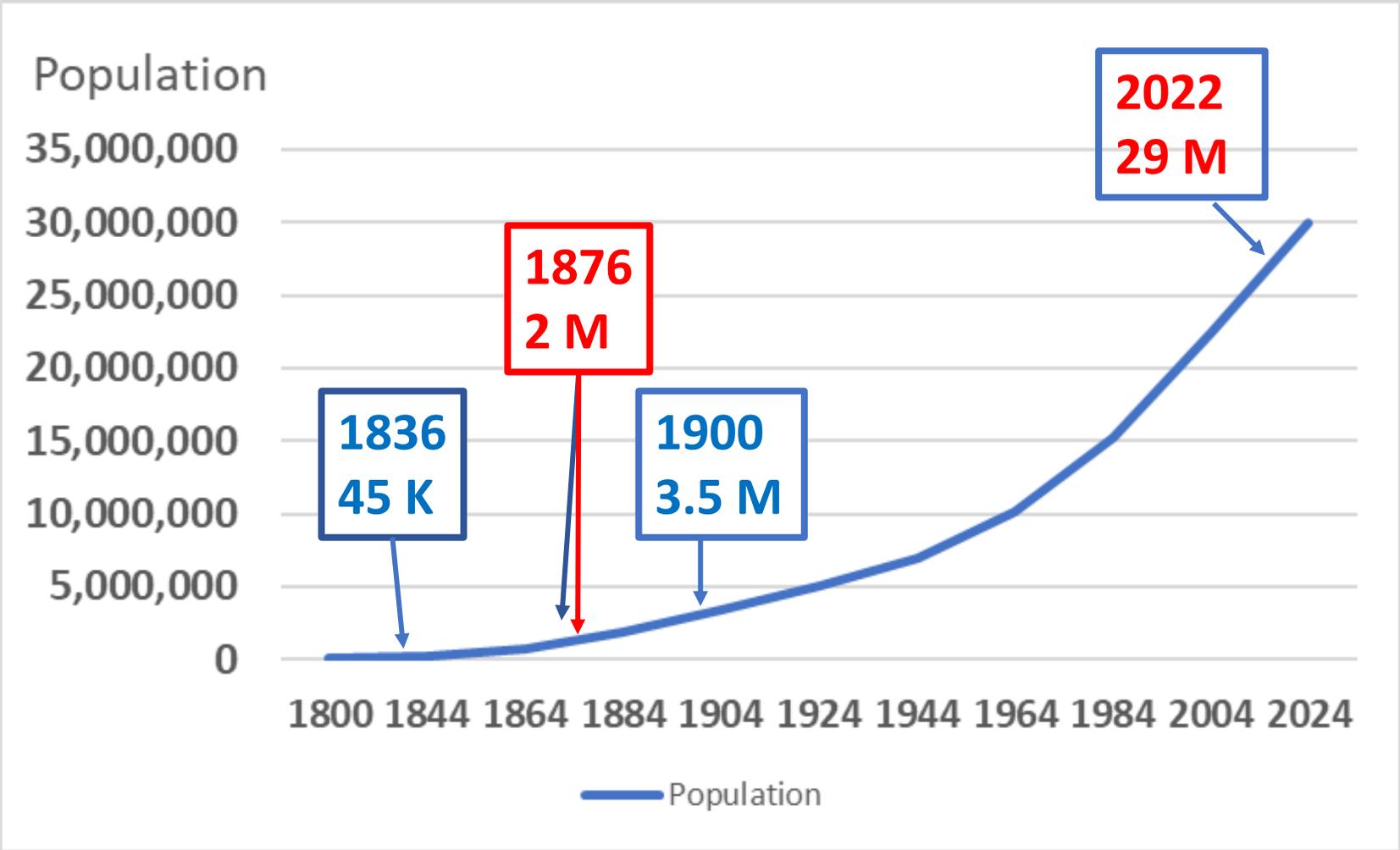
- **Single party dominance and ideological consensus lead to theatrics by politicians to win attention**
 - Leaders address **hot button distractions**, e.g., “pornography” in school libraries, “bathroom bill”, sue Washington (source of 37% of state’s funds)
 - Meanwhile, **they ignore difficult and persistent public policy problems** – e.g., pollution, foster care, education quality



Reviewing: Effects on Texas' governance

- **“Closer to the people” (fragmentation of government) has become “closer to the interests of campaign donors” by politicians and judges**
- **Structure of policy making facilitates industry influence on legislation and regulatory agencies** (e.g., ERCOT, RRC, and PUC failures to strengthen electric power grid)





Reform efforts

- **Failed constitutional reform efforts**

- **1974** constitutional convention's revisions scuttled by interest groups' complaints and lack of Gov's support;

- **Rejected by voters**

- **1999** – two legislators attempted to revive reforms and streamline government;

- proposals **died in committee**

Reform prospects

- **Reforms require a major scandal** (e.g. 1972 Sharpstown bribery scandal)
- Post Sharpstown scandal reform results:
 - Open Records Law
 - Open Meetings Law
 - Sunset Review process
- **Reforms have and will be been piecemeal**



Questions?

Thank
you!

