

HOW TO RESEARCH AND USE TEXAS LEGISLATIVE HISTORY

BY NICHOLAS BRUNO, ELISABETH BUTLER, & ANSON FUNG

THE TEXAS SUPREME COURT HAS SAID THAT “text is determinative” in statutory interpretation. See *BankDirect Capital Fin., LLC v. Plasma Fab, LLC*, 519 S.W.3d 76, 80 (Tex. 2017). The U.S. Supreme Court agrees. *Corner Post, Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 815 (2024) (“[T]he text of a law controls over purported legislative intentions unmoored from any statutory text; the Court may not replace the actual text with speculation as to Congress’ intent.”) (citations omitted). Indeed, at least lip service to textualism is uncontroversial relative to a few decades ago; U.S. Supreme Court justices have stated that “we’re all textualists now in a way that was just not remotely true” decades earlier. Thomas W. Merrill et al., *Text over Intent & the Demise of Legislative History*, 43 DAYTON L. REV. 103, 105 (2018).

So why publish an article about how to locate and apply legislative history? The answer is both substantive and practical.

The practical reason is straightforward. Even one of the most recognizable textualists, Justice Antonin Scalia, acknowledged that “some do not accept it [textualism]: They seek to arrive at legal meaning through some method other than discerning the contextual meaning of words and sentences and paragraphs.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 33 (2012). Despite his reputation as a staunch textualist, Justice Scalia did not fault those whose legal work is subject to review from a higher court from relying on favorable legislative history in their work product. See William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 651 n.117(1990) (“As an intermediate federal judge, I can hardly ignore legislative history when I know it will be used by the Supreme Court.”); cf. *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring) (expressing concern about what an opinion’s discussions of legislative history “says to the bar”).

As a practical matter, as long as judges “will consider legislative history, prudent counsel will likely research, brief, and argue it.” Jonathan R. Siegel, *Judicial Interpretation in the Cost-Benefit Crucible*, 92 MINN. L. REV. 387, 409 (2007).

But that practical reason begs the question: if a court is truly committed to textualism, why bother citing legislative history at all? A textualist advocate (like at least one of these authors) will ask: If a court is truly committed to textualism, why bother citing legislative history at all? The textualist judge may not fault the advocate for citing it, but the judge will never be persuaded by it absent some compelling reason otherwise. And lawyers are left wondering how to effectively use legislative history, if at all, in a way that will benefit their clients.

To answer this question, Part I will discuss potential arguments that others have used to justify citing legislative history. And Part II will discuss how to find such history in Texas.

I. The Texas Supreme Court continues to use legislative history in its opinions.

Despite its stated adherence to the statutory text, the Texas Supreme Court still uses legislative history in its opinions. Consider the following cases:

- *Perez v. City of San Antonio*, 715 S.W.3d 709 (Tex. 2025): The Court stated that “in the context of constitutional interpretation, statements made by the legislature that proposed amendments to the people can be relevant, even though they lack any presumption of binding effect and are no more relevant than many other sources that can address the larger context in which the people considered ratification.” *Id.* at 717 n.8. Note that the Court stated that “when interpreting and construing a statute, [l]egislative history is generally useless to courts—indeed, it can be worse than useless because it is manipulable and relies on what *never* was the law.” *Id.* (quoting *Brown v. City of Houston*, 660 S.W.3d 749, 755 (Tex. 2023)).
- *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830 (Tex. 2018): The Court stated that legislative history “may be appropriate to give context to [the court’s] construction.” *Id.* at 844 n.6. This observation was not hypothetical; the Court expressly relied upon

legislative history and acknowledged that “the legislative history of the statute offers some context for our understanding of the Legislature’s intentional use of ‘only.’” *Id.* Nonetheless, the Court confirmed that “our general rule is that extrinsic aids, including legislative history, are inappropriate ‘to construe’ an unambiguous statute.” *Id.*

- *Ojo v. Farmers Group, Inc.*, 356 S.W.3d 421 (Tex. 2011): “In addition to the express language of the statute, courts have looked to a statute’s legislative history when determining whether the statute gives rise to a disparate impact theory of liability.” *Id.* at 430. The Court, however, stated that its use of legislative history was “more for evidence of the Texas Legislature’s awareness of potential disparate impacts, and to show that the Legislature, knowing this, still chose not . . . expressly [to] provide for disparate impact protection as it did in the Labor Code.” *Id.* at 433.

Former Chief Justice Jefferson gave a nuanced concurrence, explaining that “while the Court today does cite several pieces of legislative history, none [is] used to construe the relevant statute”; instead, the legislative history “gives context to [the court’s] decision” and provides “a narrative . . . to legitimize [the] decision by placing it in historical context, demonstrating that it is consistent with our notions of justice—and, indeed, that it comports with the state of the law.” *Id.* at 436-37 (Jefferson, C.J., concurring).

- *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644 (Tex. 2006): “Wherever possible, we construe statutes as written, but where enacted language is nebulous, we may cautiously consult legislative history to help divine legislative intent.” *Id.* at 652. An entire subsection of the majority opinion “consult[ed] the legislative history to help glean the statute’s fair and ordinary meaning.” *Id.* The Court justified this decision, in part, on “the Code Construction Act,” which “expressly authorizes courts to use a range of construction aids, including legislative history.” *Id.* at 652 n.4. The Court, however, cautioned that “over-reliance on secondary materials should be avoided, particularly where a statute’s language is clear.” *Id.*

That the Texas Supreme Court continues to cite legislative history is not necessarily a demonstration of inconsistency in

the law. Indeed, there are at least two substantive reasons that Texas courts may use to justify their continued consideration of legislative history. It is beyond the scope of this paper to fully develop the doctrinal reasons why that usage may not be inconsistent in the context of the opinions this paper cites.

First, a pure textualist approach is not concerned with the subjective intent of the legislator. Instead, “[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” SCALIA & GARNER, *READING LAW* at 56. In other words, a textualist is not focused on “the legal drafter’s desires,” he is focused on the “discernible meanings” that a reasonable reader would intuit. *Id.* at xxix, 56; see also *Conroy*, 507 U.S. at 519 (Scalia, J., concurring) (“We are governed by laws, not by the intentions of legislators.”). When the meaning conveyed by a text—rather than the meaning intended—is the focus, it follows that legislative history is of little importance.

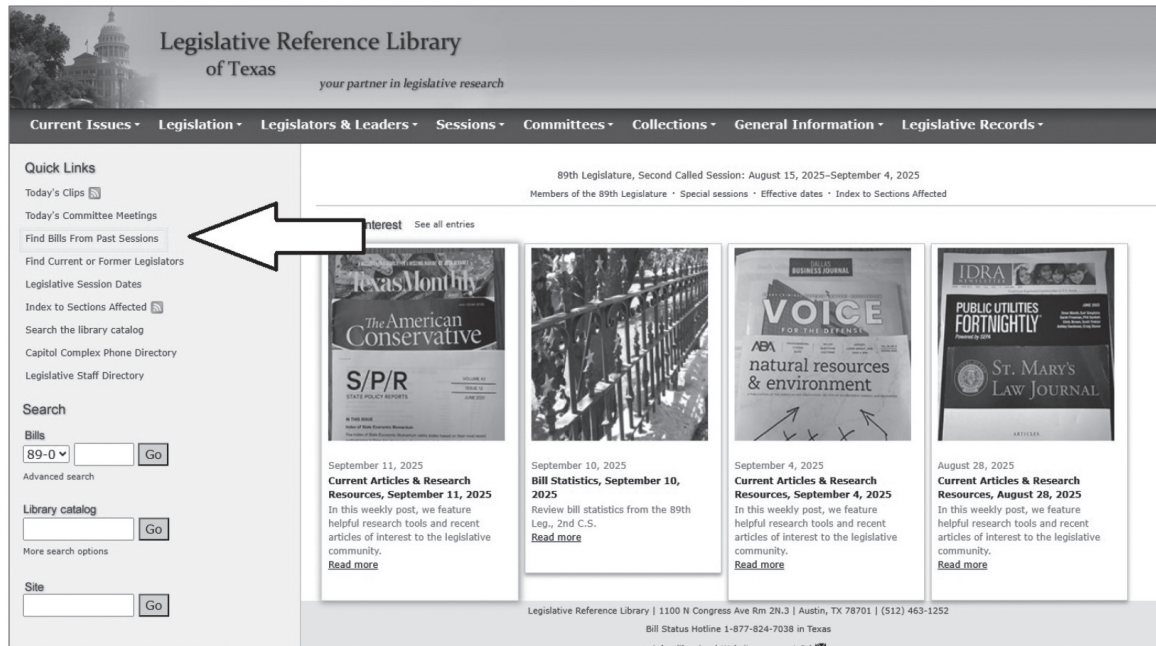
Texas law has taken a different approach—an approach that creates some tension with placing little emphasis on legislative history. The Supreme Court has said that “our goal is to ascertain and give effect to the Legislature’s intent” and that the “text is determinative of legislative intent[.]” *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012). But if the goal is to determine what the legislature *intended*, why not include other parts of legislative history? There is some tension between the textualist approach to statutory interpretation endorsed by the Court and its stated goal of discerning legislative intent. Advocates can exploit that tension if they desire to rely upon legislative history.

Second, the legislature itself has indicated that Texas courts should consider legislative history. Texas is one of those “states [that] have specifically permitted . . . courts to consider legislative history.” SCALIA & GARNER, *READING LAW* at 44. The Code Construction Act, for example, expressly provides that “[i]n construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the . . . circumstances under which the statute was enacted [and] legislative history[.]” TEX. GOV’T CODE § 311.023(2)-(3). Of course, “[t]he validity of such enactments is subject to reasonable debate,” SCALIA & GARNER, *READING LAW* at 44, and the applicability of the Code Construction Act, likewise, has its own nuance. See TEX. GOV’T CODE § 311.002. But practitioners who want to take advantage of legislature history may turn to the Code Construction Act to justify doing so.

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II. How can an advocate locate legislative history? To locate Texas legislative history, one can look first to the Legislative Reference Library of Texas. The current

URL is <https://lrl.texas.gov/>. On the “Quick Links,” select “Find Bills from Past Sessions”:



After entering a particular bill from a particular session, the library will then provide much of the legislative history. For example, House Bill 19 from

the 88th Regular Session has Committee Reports, Minutes from Committee Meetings, and other relevant legislative history:

HB 19, 88th R.S. history
[Help](#) | [Status](#)

[History](#) | [Text](#) | [Actions](#) | [Articles](#) | [Committee information](#) | [Additional sources](#)

HB 19, 88th R.S.
Relating to the creation of a specialty trial court to hear certain cases; authorizing fees.
Last action: Effective on 9/1/23

Author: Andrew Murr
Joint Author: Jeff Leach | Brooks Landgraf | Morgan Meyer | John Lujan
Coauthor: Steve Allison | Charles "Doc" Anderson | Trent Ashby | Ernest Bales | Cecil Bell | Keith Bell | Greg Bonnen | Brad Buckley | Ben Bumgarner | DeWayne Burns | Angie Button | Briscoe Cain | Giovanni Capriglione | David Cook | Charles Cunningham | Drew Darby | Jay Dean | Mano DeAyala | Mark Dorazio | James B. Frank | Frederick Frazier | Gary Gates | Stan Gerdes | Craig Goldman | Ryan Guillen | Sam Harless | Caroline Harris | Cody Harris | Brian Harrison | Richard Hayes | Cole Hefner | Justin Holland | Lacey Hull | Todd Hunter | Carrie Isaac | Jacey Jetton | Kyle Kacal | Stan Kitzman | Stephanie Klick | John Kuempel | Stan Lambert | Terri Leo Wilson | Janie Lopez | J. M. Lozano | Will Metcalf | Geanie W. Morrison | Candy Noble | Tom Oliverson | Angella Orr | Jared Patterson | Dennis Paul | John Raney | Glenn Rogers | Matt Schaefer | Nate Schatzline | Mike Schofield | Matt Shaheen | Hugh Shine | Shelby Slawson | Reggie Smith | David Spiller | Lynn Stucky | Valoree Swanson | Carl Tepper | Kronda Thimesch | Ed Thompson | Tony Tindenholt | Steve Toth | Ellen Troclair | Gary VanDeaver | Cody Vasut | Terry M. Wilson

Sponsor: Bryan Hughes
CoSponsor: Mayes Middleton | Brandon Creighton

Session Law Chapter:
 Acts 2023, 88th R.S., [ch. 380](#), General and Special Laws of Texas

[Signed legislation](#)

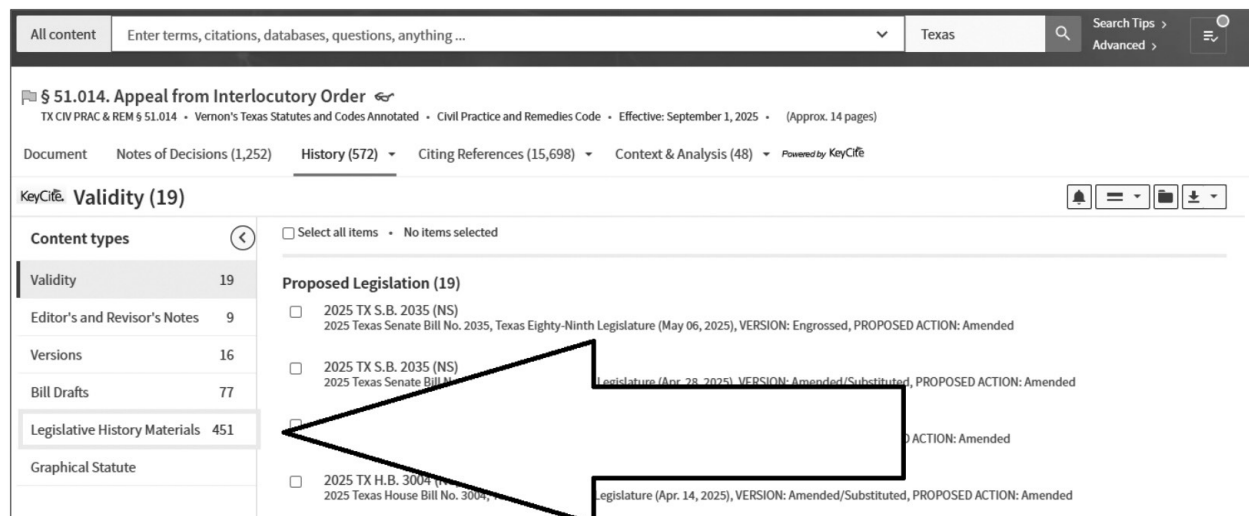
Companion:
[SB 27](#) (Identical)

Bill Analyses:
[Committee Report \(TLC\)](#)
[Committee Report \(Senate Research Center\)](#)
[Committee Report \(House Research Organization\)](#)

Speaker of the House documents:
[Speaker Phelan announces additional Texas House priorities for 88th Legislature on economic and workforce development](#)

For attorneys who have a subscription, much legislative history is available on Westlaw. To access that history,

(1) locate the statute, (2) select “history,” and (3) then filter by “legislative history materials”:



Most Texas legislative history will be available through one of those resources. But often more is needed—especially for older legislation. Below is a list of some useful free resources for finding additional context about legislation:

- **Google Scholar:** <https://scholar.google.com/>. This search engine will give links to several scholarly articles that may be useful.
- **Archive.org:** <https://archive.org/>. This tool has several old books. Often, legal dictionaries or other legal treatises from around the time of a statute's enactment may be useful—especially for a textual analysis of the statute.
- **Texas State Law Library:** <https://guides.sll.texas.gov/electronic-databases>. The Texas State Law Library contains many useful resources. For example, HeinOnline has many old journal articles. Lexis access is limited, but useful.

Again, Texas advocates should be aware of the difficulties in using legislative history in Texas. But should they desire to find that legislative history, it is our hope that this paper provides some useful tools to do so.

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