

HOUSE JOURNAL

SEVENTY-NINTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SIXTH DAY — WEDNESDAY, JANUARY 26, 2005

The house met at 11 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 15).

Present — Mr. Speaker; Allen, A.; Allen, R.; Alonzo; Anderson; Bailey; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Absent, Excused — Anchia; Oliveira.

Absent — Baxter; Chisum.

STATEMENT OF VOTE

I was present in the house chamber when the roll call vote was taken today, but my vote failed to register.

Baxter

The invocation was offered by Archbishop Arlen Jones, St. Andrew's Anglican Holy Orthodox Church, Round Rock, as follows:

Almighty and everlasting God, from whom comes wisdom and understanding; be present, we humbly beseech you, in this meeting of the legislature of the State of Texas here assembled; that they may be guided in all their consultations and work to perceive the more excellent way and may have grace and strength to follow the same.

Save these your servants from all error, ignorance, pride, and prejudice; endue them with wisdom, patience, and courage. We pray that you would be pleased to direct and prosper all their consultations to the good of the State of Texas. We beseech you so to guide and bless the legislature of this state that it

may ordain for our governance only such things as please you, to the glory of your name and the welfare of the people. Amen.

The speaker recognized Representative Uresti who led the house in the pledges of allegiance to the United States and Texas flags.

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for today because of family business:

Oliveira on motion of Uresti.

The following member was granted leave of absence for today because of important business in the district:

Anchia on motion of Uresti.

CAPITOL PHYSICIAN

The speaker recognized Representative Naishtat who presented Dr. Elliot Trester of Austin as the "Doctor for the Day."

The house welcomed Dr. Trester and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

(Chisum now present)

(Dutton in the chair)

NOTICE OF WITHDRAWALS OF ELECTION CONTESTS

The speaker introduced and had read into the journal the following:

Pursuant to Section 241.017 Election Code, the following statements of withdrawal of election contests have been received and the statements of withdrawal shall be read into the House Journal.

1. On January 5, 2005, Contestant Jack Stick filed a "Notice of Withdrawal of Election Contest" in the Election Contest relating to District 50. In its pertinent part, the statement of withdrawal reads:

"Contestant Jack Stick withdraws his contest of the election results in House District 50"

2. On January 14, 2005, Contestant Eric Opiela filed a "Notice of Nonsuit" in the Election Contest relating to District 35. In its pertinent part, the statement of withdrawal reads:

"Eric Christopher Opiela is taking a nonsuit and withdrawing his election contest against Yvonne Gonzalez Toureilles, effective on the filing of this notice"

3. The complete text of the statement of withdrawals shall be printed in the House Journal.

4. Accordingly, the Election Contests involving District 35 and District 50 are dismissed.

**IN THE HOUSE OF REPRESENTATIVES
FOR THE STATE OF TEXAS
IN THE MATTER OF THE GENERAL ELECTION
OF NOVEMBER 2, 2004
FOR STATE REPRESENTATIVE FROM DISTRICT 50
OF TRAVIS COUNTY, TEXAS
JACK STICK, CONTESTANT
VS.
MARK STRAMA, CONTESTEE**

NOTICE OF WITHDRAWAL OF ELECTION CONTEST

TO THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES
FOR THE STATE OF TEXAS:

COMES NOW, JACK STICK, Contestant in the above styled cause of action, and files this Notice of Withdrawal of Election Contest.

I.

Chronology

- A. On November 2, 2004, the election for House District 50 was held; on or about November 18, 2004, the official tally indicated Contestee Mark Strama prevailed in the election by 569 votes;
- B. On November 3, 2004, Contestant tendered payment to Nelda Wells Spears, the Travis County Tax Assessor-Collector and Voter Registrar, for data related to the election and voter registration. Historically this data is available within two weeks of an election;
- C. From November 3, 2004 until November 30, 2004, Travis County officials failed to provide any election data to Contestant;
- D. On November 25, 2004, Contestant filed this election contest.

II.

Reasons for Withdrawal

Contestant withdraws this election contest for the following reasons:

- A. The failure of the Travis County Voter Registrar to provide to Contestant voter and election information following the November 2004 election afforded Contestant insufficient time to review and analyze election data prior to filing this contest. In fact, the Travis County Registrar provided the data only *after* Contestant had filed his contest.¹ The current statutory scheme for election contests places no affirmative duty on local election officials to provide timely information to election participants to allow those participants to make informed decisions concerning the filing of a contest. Oftentimes, as is the case here, review of election data in a State Representative's race can encompass more than 65,000 records. Delaying access to those records for any reason precludes meaningful review of the fairness of the voting process.
- B. On December 22, 2004, pursuant to instructions from the master of discovery, a subpoena request on behalf of Contestant was filed with the filing clerk at the Texas Legislative Council seeking information from the Travis County Clerk and

Travis County Voter Registrar.² The master of discovery did not receive the documents from the Texas Legislative Council until December 27, 2004. On December 29, 2004, the master directed Contestant to try to obtain the documents and information described in the subpoenas outside of the subpoena process.³ Unfortunately, the discovery deadlines imposed in this matter included a January 1, 2005 date for Contestant to provide a final list of contested names to Contestee. In light of the master of discovery's direction of December 29, 2004 and the sequence of events prior to that direction, Contestant was not in a position to provide the materials requested.⁴

C. The burden in an election contest is for the Contestant to prove by clear and convincing evidence that, but for the irregularities which Contestant brings to the attention of the Texas House of Representatives, Contestant would have won the election. Given the lack of data presently available to Contestant in this race, the significant issues facing the Texas House in the coming months, and recognizing both the heavy burden of proof in this matter as well as the potentially divisive nature of this contest's proceedings, Contestant believes the interests of the residents of House District 50 and the interests of the Texas House of Representatives will best be served by withdrawing this election contest.

D. Contestant urges the Texas Legislature to enact legislation requiring local officials promptly to provide election return data, voter registration data, polling information and voting procedure information to all participants in an election. Without such a procedure and affirmative duty on the local elections and voter registration officials, candidates will continue to be subject to the political whims of local officials. Receiving information vital to ensuring that all votes are tallied in a fair and impartial manner is fundamental to the elections process and should not be left to the discretion and whims of local officials.

WHEREFORE, PREMISES CONSIDERED, Contestant Jack Stick withdraws his contest of the election results in House District 50.

Respectfully submitted,

Michael C. Crowley
State Bar No. 05170300
401 West 15th Street, Suite 850
Austin, Texas 78701
Telephone: (512) 469-7474
Facsimile: (512) 469-7480

ATTORNEY FOR CONTESTANT

¹The Registrar subsequently claimed she would have made data available sooner had she "known" of Contestant's interest. On November 3, 2004, a representative of Contestant's campaign filed a request for the data and received acknowledgement from the Registrar of payment. Numerous subsequent telephone requests for the data revealed it was unavailable because the Registrar's office was experiencing trouble "reconciling voters with votes"; that is, there were too many votes for the number of voters who cast ballots. Despite the advantages an electronic voting system provides Travis County in compiling voting data, the Registrar ultimately provided polling data on November 30,

2004, a full twenty-eight days after the election and later than nearly every other county in Texas. Perhaps coincidentally, the Registrar's office earlier on that day had estimated the data would be available in another five days. When Contestant and a television camera appeared, the Registrar expedited that schedule.

²In an earlier telephone conference, the master had encouraged Contestant to avail himself of the broad subpoena power possessed by the master of discovery in these matters.

³Although the master noted that most of the information Contestant sought through the subpoenas is also available through open records requests, that process permits a delay of up to ten days initially, and even more in some circumstances. Subpoenas authorized by the master in this matter would have been returned within three days. Given the strict timelines in operation in this contest, Contestant sought information through subpoenas rather than run the risk of further delay.

⁴Contestant states that on or about November 30, 2004 the Travis County Voter Registrar was quoted on television and the local newspaper saying Contestant had not requested elections data from her. Contestant disputes this statement.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been mailed via certified United States Mail, return receipt requested and restricted delivery, to Shannon Ratliff and Michael Navarre, Ratliff Law Firm, 600 Congress Avenue, Suite 3100, Austin, Texas 78701, or been served upon them by facsimile, on this the 5th day of January, 2005.

Michael C. Crowley

**IN THE HOUSE OF REPRESENTATIVES
FOR THE STATE OF TEXAS
IN THE MATTER OF THE GENERAL ELECTION
OF NOVEMBER 4, 2004
FOR STATE REPRESENTATIVE FROM DISTRICT 35
OF ATASCOSA, BEE, GOLIAD, KARNES, JIM WELLS, LIVE OAK AND
McMULLEN COUNTIES, TEXAS
ERIC CHRISTOPHER OPIELA, Contestant
VS.
YVONNE GONZALEZ TOUREILLES, Contestee**

NOTICE OF NONSUIT

TO THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES
FOR THE STATE OF TEXAS, THE CHAIRMAN OF THE HOUSE SELECT
COMMITTEE ON ELECTION CONTESTS, AND THE MASTER OF
DISCOVERY:

Eric Christopher Opiela, Contestant in the above styled election contest, hereby gives notice pursuant to § 241.017 of the Texas Election Code and Rule 162, T.R.C.P. to The Speaker of the Texas House of Representatives, the Chairman of the House Select Committee on Election Contests, Rep. Will

Hartnett, master of discovery, and all parties to this Contest that **Eric Christopher Opiela** is taking a nonsuit and withdrawing his Election contest against **Yvonne Gonzalez Toureilles**, effective upon the filing of the notice. **Eric Christopher Opiela** is filing this in the interests of his family. **Mr. Opiela** believes that his Contest raised legitimate issues relative to the conduct of the House District 35 election of November 2, 2004. The materials presented to the master of discovery evidence voter fraud and practices in violation of the Election Code. The issues raised in this Election Contest demand pursuit by law enforcement authorities to preclude future violations of Texas Election laws. Of particular concern is that payments totaling over \$50,000 were made in furtherance of the election fraud and violations of the Election Code outlined in the pleadings filed by Mr. Opiela in this Contest. **Eric Christopher Opiela** looks forward to the day that it can truly be said that fair and legal elections were conducted in Jim Wells and Bee Counties. **Eric Christopher Opiela** is filing this notice, but not abandoning his belief that he was the legally elected Representative of the District 35 election of November 2, 2004.

Respectfully submitted,

DE LEON, BOGGINS & ICENOGL, P.C.

Hector De Leon

State Bar No. 05650800

221 West 6th Street, Suite 1050

Austin, Texas 78701

(512) 478-5308

(512) 482-8628 Telecopier

ATTORNEYS FOR CONTESTANT

ERIC CHRISTOPHER OPIELA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent by e-mail, facsimile and/or mailed by Certified Mail, Return Receipt Requested on this 14th day of January 2005, to:

Chris Kuykendall
Research Division
Texas Legislative Council
P.O. Box 12128
Austin, Texas 78711
Fax No. 936-1020

Rep. Will Hartnett
Master of Discovery
P.O. Box 2910
Austin, Texas 78768
Fax No. 463-7827
Fax No. 214-855-7857

C. Robert Heath and David Méndez
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443
Fax No. 320-5638

HECTOR DE LEON

HR 102 - ADOPTED
(by Corte)

Representative Corte moved to suspend all necessary rules to take up and consider at this time **HR 102**.

The motion prevailed.

The following resolution was laid before the house:

HR 102, Recognizing January 23-29, 2005, as Nurse Anesthetists Week.

HR 102 was adopted.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

HR 103 - ADOPTED
(by Corte)

Representative Corte moved to suspend all necessary rules to take up and consider at this time **HR 103**.

The motion prevailed.

The following resolution was laid before the house:

HR 103, Congratulating Lieutenant Colonel Joseph Helminiak of San Antonio on his promotion to colonel on February 1, 2005.

HR 103 was read and was adopted.

On motion of Representative Hill, the names of all the members of the house were added to **HR 103** as signers thereof.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 2).

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Election Contests, Select, upon adjournment today, Desk 59, for a formal meeting, to consider election challenges which have been withdrawn by contestants in Districts 35 and 50.

HOUSE AT EASE

At 11:45 a.m., the chair announced that the house would stand at ease.

The speaker called the house to order at 12:03 p.m.

ADDRESS BY GOVERNOR RICK PERRY
(The House of Representatives and Senate in Joint Session)

In accordance with the provisions of **HCR 26**, providing for a joint session of the senate and the house of representatives for the purpose of hearing an address by the Honorable Rick Perry, governor of the State of Texas, the Honorable David Dewhurst, lieutenant governor of the State of Texas and the honorable senators were announced at the door of the house and were admitted.

The senators occupied seats arranged for them.

Lieutenant Governor Dewhurst was escorted to a seat on the speaker's rostrum.

COMMITTEE APPOINTED

The speaker announced the appointment of the following committee to escort Governor Rick Perry to the speaker's rostrum: Representatives F. Brown, chair; Turner; Peña; Laubenberg; and Orr.

Governor Perry and his party, escorted by Senators Shapiro, chair; Fraser; Whitmire; Zaffirini; and Staples, committee on the part of the senate; and Representatives F. Brown, chair; Turner; Peña; Laubenberg; and Orr, committee on the part of the house; were announced at the door of the house and, being admitted, were escorted to the speaker's rostrum.

Lieutenant Governor Dewhurst called the senate to order.

A quorum of the senate was announced present.

The Honorable Tom Craddick, speaker of the house, called the house of representatives to order.

A quorum of the house was announced present.

Speaker Craddick stated that the two houses were in joint session pursuant to **HCR 26** for the purpose of hearing an address by the Honorable Rick Perry.

Speaker Craddick introduced Anita Perry, first lady of Texas.

Speaker Craddick recognized Lieutenant Governor Dewhurst, who introduced the Honorable Rick Perry, governor of the State of Texas, to the joint session.

Governor Perry addressed the joint session, speaking as follows:

Thank you. Statewide officials and members of the judiciary, members of the legislature and distinguished guests, friends and fellow Texans. I am honored to uphold our constitutional tradition and speak to you today on the state of our state.

As always, we are joined on this occasion by distinguished friends and neighbors. Please join me in welcoming Governor Eugenio Hernandez Flores of Tamaulipas. And please join me in recognizing two distinguished guests from Canada, Premier Gary Doer of Manitoba, and Premier Bernard Lord of New Brunswick.

In this people's house we have many outstanding officials, two of whom join me today on this dais. Please help me recognize a great lieutenant governor, David Dewhurst. And please join me in recognizing an equally extraordinary leader and a fellow West Texan, Speaker Tom Craddick.

West Texas not only raised me, it gave me the love of my life. I'm proud to have by my side today, and every day, a wonderful woman who makes every day a radiant one—your first lady, Anita Perry.

It was twenty years ago that I first took the oath of office in this house. And while much has changed, it's good to know some things have stayed the same. It's good to see in this house so many veteran lawmakers, including two old classmates, Harold Dutton and John Smithee. And it is good to see long-serving leaders in the senate such as the dean, John Whitmire, and Ken Armbrister.

Anita and I want to issue a special welcome to our newest members. You are the invigorating lifeblood every democratic body needs. Thank you for your willingness to serve.

Democracy functions best when we have an active citizenry. It is great to see the balconies filled by folks our forefathers called "we the people." I want to issue a special welcome to a group of Texans who have a vision for extending educational opportunity to every corner of this great state—the members of HOPE, Hispanics for Opportunity and Progress in Education.

As we gather today, I am more optimistic than ever about our future. Dark economic clouds are dissipating into an emerging blue sky of opportunity. In the last 15 months, we have added 162,000 jobs. In 2003, we attracted nine of the 24 largest capital investments in the nation, including the single largest investment, a \$3 billion Texas Instruments semiconductor plant.

Last year we convinced Vought Aircraft to add 3,000 jobs in Texas, and then we persuaded Countrywide Mortgage to bring 7,500 jobs to our state—the largest job expansion nationwide in four years.

These major investments, and many more, were made possible by the Texas Enterprise Fund, a fund that is not only bringing jobs to the big cities, but to towns like Brownwood, New Braunfels, Buda, Nacogdoches, Port Neches, League City, and Ennis too, Chairman Pitts.

It's no wonder *Site Selection Magazine* called Texas the best business climate in the nation in 2004.

We can feel good about our economic progress because more families are making a good living. Jobs are not just economic statistics, they are an investment in our people and a generator of revenue.

Job growth has led to tremendous revenue growth. In two years we have gone from \$10 billion in the red to \$6 billion above what we last budgeted. That didn't happen by accident. It happened because we made the hard decisions and you cast the tough votes. And today you deserve much of the credit.

Among the ten largest states, six still faced revenue shortfalls heading into this year. All six recently raised a patchwork of taxes, and one borrowed up to \$15 billion to address their budget gap.

We took a different path. We asked every agency to justify their budgets. For the first time since World War II, we lowered general revenue spending. And we addressed the priorities of our people without raising their taxes.

Going forward, we must not retreat on the principle behind our prosperity, fiscal responsibility.

We did not tax and spend our way to a revenue surplus, and we need not tax and spend our way to future shortfalls. Our challenge is to make sound, strategic investments that stand the test of time.

That is what we have done for many years in education. Standards are higher, and test scores are rising again. According to a study by Achieve Incorporated, Texas is the first state to make a college-prep curriculum the standard coursework in high school, starting with this year's ninth grade class.

We were the first state to require individual graduation plans for at-risk students and provide a personalized study guide for eleventh grade students that fail state assessments. And we have joined the Gates Foundation in investing \$130 million in the Texas High School Initiative to reorganize and reconstitute failing schools.

The foundation for future prosperity is built on the bedrock of good jobs and great schools. We are building a strong foundation one job at a time and one educated Texan at a time.

Progress can be measured on other fronts too. Because of leadership on both sides of the aisle, doctors are returning to areas once deemed high-risk, hospitals are seeing double-digit declines in their insurance costs, and patient access is improving because the personal injury trial lawyers are no longer calling the shots when it comes to Texans' health care.

We also passed sweeping reforms to address one of the top job-killers in Texas: frivolous lawsuits.

Texans stuck in traffic now know that help is on the way. The Trans Texas Corridor is quickly becoming a reality with the private sector willing to expend \$7.2 billion up front without asking for one dime in state money for construction. This toll project will allow us to build needed corridors sooner and cheaper. And for those who like driving on free lanes today, let me be clear. I do not support tolling existing lanes.

The reforms of the last two years have protected Texans' pocketbooks, preserved their health care, and improved the job climate. With our recent economic growth, continuing gains in education and a better budgetary picture, the Lone Star of Texas is once again on the rise.

So today I am proud to declare the state of our state is vibrant and our future is limitless.

Because of the right choices you have made, we find ourselves at the brink of a new era of possibility. And today I ask you to consider what is possible if we make wise investments in good jobs, great schools, and stronger families.

Nothing impacts our future like the education of our children. It is the one issue foremost on the minds of every leader in this room. And today it is the focus of my remarks.

Education often gets reduced to a numbers game inside the walls of this Capitol. But inside the walls of our schools, the greatest concern is whether our children grow and learn. Let us keep the most important issue the most important issue, and that is the quality of education in our schools.

This is not merely an exercise in accounting or a chance to change our complex funding formulas. It is a once-in-a-generation opportunity to make sure children of every background are given a chance in life.

The financing component is critical, but it is only the means to an end destination. And we will not arrive at that destination until every child in every corner of this state can walk through the schoolhouse doors and have waiting for them the best teachers, the best curriculum, and the best opportunity to succeed.

Our challenge in education is to go from good to great by empowering children of modest means to live unlimited dreams.

I ask you to think about what is possible, not what is standard practice, when it comes to education. We've climbed a long way up the mountain, but many of our schools still have no view of the top. We must have two goals: ensuring more students graduate and ensuring more students graduate prepared for college. It's that simple, and it is the greatest challenge we face.

Despite a decade of progress and gains by students of every background, we still have an achievement gap in Texas schools that will be an opportunity gap when today's students become tomorrow's workers.

Today we have 36,399 students trapped in failing schools. Last year 889,468 students failed at least one section of the TAKS. And two years ago 15,665 students dropped out.

The answer to these great challenges is not simply more money poured into the same system. If it were, then the \$7 billion in new money appropriated in the last six years would have solved these challenges.

How much money we spend on education is important but not nearly as important as how the money is spent. Washington, D.C., has some of the best-funded public schools in America, and yet they consistently rank near the bottom.

When our work is done, parents won't measure our success by how much money we spend, but whether more children learn. I support additional dollars for our schools, but even more importantly, I support dedicating new money to rewarding and supporting our best teachers and providing incentives for progress at schools with large numbers of economically disadvantaged students.

Let's attract our best and brightest teachers to our toughest learning environments. Too often our struggling schools attract our most inexperienced teachers. We need to recruit proven teachers to under-performing schools, teachers who can turn around a campus one child and one classroom at a time.

We have many excellent teachers in Texas. I want our best and brightest teachers to be paid salary incentives as high as \$7,500 a year when they rekindle the love of learning among children too often left in the shadows of success.

Excellence should not be rewarded the same as mediocrity; otherwise, mediocrity becomes its own incentive. When money follows results, we will get more results for our money.

That's exactly what is happening with the Advanced Placement incentive program that rewards schools with up to \$100 for each student that registers a high score. In its first five years, the A.P. incentive helped double student participation and helped us nearly triple participation among African American and Hispanic students.

Achievement incentives work. With the right incentives, we can encourage more students to take our hardest course of study, the distinguished achievement program, and improve student performance on the TAKS test. We should also reinstate end-of-course exams in subjects like algebra, biology, English, and history and allow schools to offer these exams on an optional basis with incentives tied to student results.

The achievement gap will begin to narrow when we reward student performance and teaching excellence. But for any incentive plan to succeed in closing the achievement gap, it must be focused on schools with the greatest challenges.

We have more than 660,000 students who have limited proficiency in English. Many show up for class several grades behind. We must provide meaningful progress incentives for schools that serve mostly disadvantaged student populations. The challenges these schools face are difficult but not impossible. Let's meet this challenge with new resources, proven teachers, and higher expectations.

At the same time, bad schools that refuse to change and chronically fail our children must not be allowed to do so without consequences. And we must have zero tolerance for those that tamper with test results.

It is wrong to blame our testing system for test tampering. Cheaters are not victims. They are perpetrators of a crime and a terrible example to our children.

While test tampering is likely an isolated problem, schools that fail our children remain too prevalent.

Our first response to failing schools should be to send extra help. We must establish school turn-around teams at the Texas Education Agency that specialize in improving management practices and provide additional mentoring to teachers who lack the support they need.

But if schools refuse to change, they must be shut down and begin again with new leadership. Here is why. We simply cannot sentence our children to a lifetime of mediocrity because of a state-sponsored policy of passive indifference.

Instead, we must be passionate about making a difference, especially in pockets of failure where parents lack the opportunity to say "no" to failing schools.

That is why, as we look to end the era of Robin Hood, we cannot turn our back on the era of equity. Equity should be about more than fair funding. The fact is, a poorly run school will produce poor results regardless of funding. We won't have equity in education until we have equity in educational opportunities.

Parents that can't afford private tuition and can't afford to quit their jobs to home school their children have fewer choices, and their children have fewer opportunities. They deserve better than to leave their fate in the hands of a local monopoly that is slow to change without the benefit of competition.

Every child is entitled to a public education, but public education is not entitled to every child. Let's give children who need a second chance new choices that can forever change their future. Let's give them school choice.

Choice has worked for many at-risk charter school children. Because of innovative charter schools, once-struggling students are now succeeding.

Successful charter schools should be emulated across Texas. But those that fail our children, and worse yet, those that exist to enrich fly-by-night operators should be shut down without delay. I'm tired of bad charter schools obscuring the work done by the good ones.

Reforming education must begin long before our five-year-olds enter the kindergarten classroom. Two years ago, I worked with Senator Zaffirini and Chairman Grusendorf to initiate a pilot pre-K program that takes a scientific approach to early childhood learning. The Early Start Initiative focuses on the building blocks of reading and language development, and it is working for our youngest children. It is time to take the next step and increase funding for the Early Start program to give more children a true head start.

I also support the expansion of teacher mentoring. A good mentor can be as valuable to a young teacher as any course offered by a college of education. And a good mentor can make a tremendous difference for children who come from broken homes.

That is certainly true for Jamar Gipson, whose father has been in prison since he was three months old. A sixth grader at Fitzgerald Elementary in Arlington, Jamar has had a big brother looking out for him for the past two years. Jamar's performance in school has improved, and he has his sights set on one day becoming either a police officer, a business owner, or a professional basketball player. We are honored to be joined today by Jamar and his Big Brother, Charles Pierson—shining examples of the difference mentoring can make in young lives.

Charles Pierson left a successful career in international business to work full-time at Big Brothers Big Sisters as the North Texas chapter's CEO. He is one of many Texans who make a difference by mentoring.

Let's do more to help children in broken families, including children of prisoners, make right choices and break the cycle of incarceration. Let's do more to promote responsible fatherhood for dads that have lost their way. Let's invest \$25 million more in mentoring programs that can build stronger communities, one changed life at a time.

The two essential ingredients to our children's success are strong families and great schools. I have talked a lot today about education because we have no greater priority. In order to get better results in our schools, we need more transparency in school budgeting. That's why we need a "Truth in Spending" initiative that gives every taxpayer detailed information on how local school dollars are spent.

Taxpayers should know what percentage of their money makes it to the classroom and what is considered a classroom expenditure. They deserve to know how much is spent on administration and how much they are paying for lobbyists and lawyers who seek to extract even more tax dollars from their pockets.

The taxpayers writing the check ought to be able to look at every debit on the account. It's a matter of trust. If schools are going to demand more money for education, then Texans should be able to demand more education for their money.

Reforming education is a tremendous challenge with great possibilities. And I can't think of two better Texans to help lead this effort than Senator Florence Shapiro and Representative Kent Grusendorf.

Like both of them, I believe the work of the legislature should not be left to the courts.

Each day that passes without a school finance bill represents another day of uncertainty for our schools and another day Texans must live under a property tax system gone awry.

It is time to cut property taxes for the hardworking people of Texas. In fact, let's not only give Texans property tax relief, let's give them appraisal relief too.

Texans don't like taxation without representation, and they are sick and tired of taxation by valuation.

The time has come to draw a line in the sand for the taxpayer. Let's cap appraisals at three percent.

If you oppose a three percent cap on the philosophical grounds of local control, I can respect your position. But then I would hope you would be consistent, and advocate for the repeal of the ten percent cap on the same basis. There is no point in being lukewarm on this issue. Either be hot or cold; either provide real appraisal relief, or none at all. But let's stop this false pretense of taxpayer protection at ten percent.

Last year I also proposed a property tax revenue cap. Since then, I have listened to other ideas, and I think we can learn a lesson from some wise West Texans. In Lubbock, the city council refuses to accept the proceeds of an appraisal windfall because, as Councilman Gary Boren points out, re-evaluations often amount to a hidden tax.

Excluding new construction, Lubbock leaders automatically lower their rate to adjust for appraisal growth so they generate the same amount of revenue as the year before. Then they have a vote on whether they need to raise or lower that rate.

Two years ago, this saved Lubbock taxpayers from having to pay \$2 million more in taxes. I think it is such a good idea that I asked Lubbock's Mayor, Marc McDougal, and Councilman Boren to join us today in honor of their fiscal restraint on the local level. Thank you for your leadership. I look forward to working with you and Representative Isett to champion this issue.

The fact is it's not a tax cut when your rate goes down if your total tax bill goes up. Let's bring Lubbock's "Truth in Taxation" plan to every local jurisdiction in Texas.

As we lower property taxes, we must all work together to find the right mixture of new revenues without harming Texans' jobs. I join the leadership of both houses in support of the concept of a broad-based business tax that is fairly distributed, assessed at a low rate, and reflects our modern economy.

When it comes to a business tax, most employers want you to keep it simple, treat everybody fairly, and create protections so the rate is not easily raised. This is vital to continuing our prosperity.

We should view this as a rare opportunity to modernize our tax system and eliminate inequities. But just to be clear, the goal is to create greater tax fairness, not a greater tax burden for the people of Texas.

With our vastly improved budgetary picture, we can provide new money for education and real reductions in property taxes without increasing the net tax burden on Texans. Some say it can't be done. But if we can avoid a tax hike in the face of a \$10 billion shortfall, we can do it again in times of surplus. And I pledge to work with you over these 140 days to get it done.

Today I am submitting a budget that substantially increases investments in jobs, public education, higher education, health care, and protective services and that reduces spending at 60 percent of our state agencies. And it provides a \$2.3 billion cushion to close out the books on this biennium and invest even more money in key priorities.

Some will argue we can't invest in jobs when we have so many human needs. Those critics argue against themselves. To make long-term investments in health care, education, and the social welfare, we need the revenue generated by economic growth.

To date, we have attracted more than 22,000 new jobs and \$6 billion in capital investment because of the visionary job creation tool you created last session: the Texas Enterprise Fund.

We are in stiff competition for these jobs. Sometimes we lose, such as when we made a \$45 million offer to bring jobs to the Rio Grande Valley. But we've had more than our fair share of victories because I have two strong negotiating partners in Governor Dewhurst and Speaker Craddick.

Because of our good economic climate, we're spending a lot less than other states to attract a lot more jobs. One state offered \$240 million and another state offered a \$3.2 billion package to land a single project. Both amounts are more than we have allocated to bring more than a dozen projects to Texas.

But consider the possibilities if we not only invest in specific job creation projects but in the innovations and new technologies that will be the foundation of the future economy. I ask you to not only replenish the Enterprise Fund. I ask you to make investments to grow our world-class research institutions, develop cutting edge technologies, and harvest the miracle of modern science with a new \$300 million Emerging Technology Fund.

Over the next ten years, California is investing \$3 billion in one area of biotechnology, Ohio is putting up \$1.1 billion for technology commercialization, and Kansas is investing half a billion dollars in biotechnology. We can't afford to be left behind.

In the next ten years, emerging technologies will generate \$3 trillion in revenue worldwide. The question is, where will those investments be made, and who will reap the benefits? Where will the better, faster computer architecture be designed, the gene therapies and treatments that will rescue people from terminal

and chronic diseases, the cleaner technologies that will clean the air our children breathe? I want them developed in Texas labs by Texas minds to the benefit of the Texas economy.

This is a test of our vision. Will we succumb to short-term thinking or invest in limitless possibilities?

Preserving jobs requires action on three other fronts.

First, I ask you to relieve Texas employers of some of the highest workers compensation costs in the nation. With the leadership of Senator Staples and Representatives Giddings and Solomons, I know we can get this done.

Second, as the Public Utility Commission goes under sunset review, I ask you to modernize telecommunications laws so we have a regulatory framework that keeps up with technology advances and allows for greater economic opportunity.

And third, it is time to end Texas' status as the home of frivolous asbestos lawsuits. Let's care for those who are truly sick while preserving legal rights for those who are not.

Our choice this session is not between jobs and human services as some suggest. We can make sound, strategic investments in both. Medicaid and CHIP meet a great need. Today more than two million children are insured by these two programs, compared to one million children just six years ago.

When it comes to CHIP, better economic times will allow this legislature to re-examine the program's benefits, and provide dental, vision, and mental health care. I support such an investment. Our goal should be to provide benefits we can afford while preserving CHIP for families that need it the most.

The most startling fact regarding the uninsured in Texas is not that we rank 18th in the nation in the percentage of children covered by Medicaid, but that we rank 46th in the percentage of children receiving employer-sponsored insurance.

We must not lose sight of the long-term goal to move more Texans from subsidized insurance to private insurance. Last session we provided small employers lower cost options, and today there are health insurance options available that cost up to 30 percent less.

We need to continue these successes by promoting innovative options like health savings accounts so Texans have viable health care alternatives that put them back in charge of health care decisions.

And when it comes to a healthier border region, I ask you to make two critical investments. Let's fully fund the Irma Rangel Pharmacy School in Kingsville. And let's fully fund the Texas Tech Medical School in El Paso.

Our greatest concern in health and human services must be to invest in the most fundamental components of our safety net so we can protect those who can't help themselves—those in the dawn of their lives or the twilight of their years who are at risk of neglect and abuse.

The investigations I ordered last year revealed a safety net that fails many vulnerable Texans. But the results of these investigations can lead to lasting improvements that will change Texas for the better.

Working with Senator Nelson and Representatives Hupp and Uresti, I am confident we can greatly reduce investigator caseloads at Child Protective Services, improve salaries, improve case management with better technology, and refocus this important agency on its core mission: protecting our most precious resource, Texas children.

We must take the same passion to reforming Adult Protective Services, with expanded training, additional caseworkers, and the transfer of guardianship services to the Department of Aging and Disability Services.

We must not only reform protective services, we must improve programs that can prevent the need for protective services for many Texans. With greater local control, decreased administration, and a better integration of services, we can improve behavioral health for persons with mental illness and chemical dependency while also improving aging services and care for Texans with disabilities.

This is the unfinished work of our health services reorganization. Improvements made on the state level must now occur on the local level so that when Texans need help, they will always have somewhere to turn.

Our vow as a society to protect those who cannot help themselves must never exclude some of our most vulnerable Texans—unborn children.

Within a matter of weeks, a beating heart can be detected in the womb, and early sonograms show human life in its most precious and fast-developing state. This great human journey, from the moment of conception until our last moments on earth, is sacred.

The right to life is a fundamental right declared by our forefathers. If you send me a bill requiring parental consent for a minor to have an abortion, I will sign it without delay because it will protect innocent life.

And in order to preserve the sanctity of human life, I ask you to send me a bill to ban human cloning in Texas.

Texans agree there is a legitimate role for government but there must also be a limited role for government. While government must meet a great many social needs, it should never loom larger in our lives than our freedoms.

What makes this state great is not the size of our government or how much we spend. The greatness of this state is measured by the vision, the values, and the virtue of our people.

Texans have never shied away from the tough tasks and have never viewed sacrifice as the calling of another. A great many Texans have made sacrifices for freedom in recent years in the American spirit of service to causes greater than self. Today we have once again been reminded that freedom is protected at a great price with the news that 31 Marines were killed in a helicopter crash early this morning in Iraq, the deadliest day since American forces began the liberation.

These brave Americans gave up their dreams so our children can realize theirs. Every member of the armed forces makes a great sacrifice, as is the case with two Texans here with us today who served a tour of duty on the front lines of the war on terror.

Technical Sergeant Cindy Matzen with the 204th Weather Flight of the Texas Air National Guard was deployed north of Kabul, Afghanistan, for seven months in 2003, leaving five children behind and five precious grandchildren.

And Lieutenant Colonel Foy Watson, the son of one of our senate doorkeepers and a deputy commander with the 71st Information Operation Group of the Texas Army National Guard, served in Baghdad as the Chief of Information Operation Plans for Lieutenant General Ricardo Sanchez. He left behind four children and six grandchildren who missed him dearly those six months he was gone in 2003 and 2004.

These two Texans and a great many more honor us with their heroic service. And the least we can do is honor them with a hero's welcome for their courage on the front lines of freedom.

The state they have returned to is a state that honors service. Each of you has answered the noble calling of public service as elected representatives of the people. And though we come from different places and different points of view, we all gather to do what is best for Texas.

A new era of possibility awaits us, one full of promise and prosperity if we invest in our children and the opportunities worthy of their future.

It can only happen if we stand together reconciled in causes that serve a greater interest than party or personal ambition. We must strive to be, as Dr. Martin Luther King, Jr. envisioned, a "beautiful symphony of brotherhood," a people in pursuit of the common good united by the common bonds of our humanity.

Our work is before us. It cannot be passed to future legislatures and must not be passed to future generations. May we boldly seize the moment with singular unity. And may we build a Texas of unlimited possibility. Thank you, God bless you, and God bless Texas.

SENATE ADJOURNMENT

At 1:04 p.m., Lieutenant Governor Dewhurst stated that the business of the joint session had been accomplished and the senate would, in accordance with a previous motion, stand adjourned until 11 a.m. tomorrow.

INTERPRETER FOR THE DEAF

The interpretation of the proceedings of the house was provided today by Sandra Rouse.

HOUSE AT EASE

At 1:05 p.m., Speaker Craddick announced that the house would stand at ease pending the departure of guests.

The speaker called the house to order at 1:20 p.m.

ADJOURNMENT

Representatives Uresti and Corte moved that the house adjourn until 9:30 a.m. tomorrow in memory of the 31 U. S. Marines who were killed this morning in a helicopter crash in western Iraq.

The motion prevailed.

The house accordingly, at 1:22 p.m., adjourned until 9:30 a.m. tomorrow.

ADDENDUM

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 2**HCR 33****MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

Message No. 1**MESSAGE FROM THE SENATE****SENATE CHAMBER**

Austin, Texas

Wednesday, January 26, 2005

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:**HCR 23**

Craddick

SPONSOR: Seliger

Honoring Thomas Clark Brown of Midland on his receipt of the 2004 Permian Basin Petroleum Association Top Hand Award.

HCR 32

Hilderbran

SPONSOR: Armbrister

Honoring the Huff Diary and Wagon Train Project in January 2005.

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

SENT TO THE SECRETARY OF THE STATE

January 25 - HCR 25, HCR 26