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TOP 10 NEW LAWS FROM THE 80TH LEGISLATURE INTERESTING FOR ALL THE WRONG REASONS

Time again for the Top 10 New Laws Interesting For All the Wrong Reasons, a/k/a the dumbest laws passed by the 80th Legislature in its Regular Session. Bear in mind as you read this article that this is an opinion piece and it is subject to the disclaimers at the end of the article. With that caveat, enjoy.

NO. 10: HCR 109

Starting off the list this year is HCR 109, which formally recognizes Robstown, Texas, as the birthplace of the poker game “Texas Hold’em.” Tradition holds that the game originated in the 1900s and the very first hand was dealt in Robstown. It then moved North and finally arrived in Sin City. I know, it’s hard to believe a gambling game found its way to Las Vegas, but according to this resolution Vegas’ first Texas Hold’em game was dealt at the Golden Nugget in 1967. Three years later, the inaugural World Series of Poker was played at the Las Vegas Horseshoe Casino, featuring no-limit Texas Hold’em to determine the world champion.

That annual tournament has grown every year since, exploding more recently in popularity thanks to the magic of television, where viewers can see who has what cards during the game. Add on-line gambling, as HCR 109 duly notes, and you have a card game currently of gargantuan, dare we say Texas Sized Proportions. All thanks to a little ol’ Texas town on the outskirts of Corpus Christi.

And did you know that “a successful hold’em player relies on reason, intuition, and bravado, and these same qualities have served many notable Texans well throughout the proud history of the Lone Star State”? Is that you? Are you reasonable, intuitive, brave, and a citizen/resident of the Lone Star State? Well, if so, in order to legally play Texas Hold’em you have to leave Texas. That’s right, and that’s what lands HCR 109 on the Top 10 List. Our Legislature is dang proud of the game, even proud enough to pass a fancy-pants resolution about it, but they’re not

proud enough to legalize it here. Sounds a bit double-standardized to me.

NO. 9: HB 3190

Here’s the closest this list gets this year to public education, and as “interesting” as this one is, at least it doesn’t include the words “margin” or “finance” or “property tax.” First, the background from the bill analyses. This quote is priceless: “..at least 1.4 million students rely on school buses for their chosen mode of transportation to and from school and school events.” Chosen? Right. In Plano, most kids prefer their dad’s Hummer. Even a middle class Suburban-even the lemon-lime 1970s Ford LTD Station Wagon with the Country Squire paneling down the side that my parents had would be better than a school bus.

In the early 1990s (if that’s history, I’m ancient), Texas school districts made use of 28,334 buses; these days the number is closer to 33,642 buses, an increase of 18%. Due to this increase, this Legislature felt that certain statutory changes were needed to further ensure bus safety. So here goes.

Persons who have committed offenses such as vehicular manslaughter, DUI, and leaving the scene of an accident are prohibited from driving a school bus for 10 years after said offense. This is called a “blinding flash of the obvious (“BFO”). Why did it take until 2007 to see such common sense as this?

A “multifunction school activity bus” cannot be painted “National School Bus Glossy Yellow”, so that it will look obviously different than regular school buses “so that schools know which of these buses are safe for certain situations.” Never mind the cost of repainting, but parents, beware of allowing your kids to board any school bus painted other than “National School Bus Glossy Yellow.” I’m thinking if a kid is on a school

bus, what the bus is used for or where it's going should not determine the safety level of the bus. Either it has kids, or cargo, or is empty. But "kids is kids."

And we're not finished with this pride-and-joy yet. School bus drivers must wear seatbelts, but only if the school bus is equipped with seat belts for the driver. The bus cannot be "operated" if the number of people inside the school bus exceeds the manufacturer's design capacity, or if the door is open. Three more BFOs, right? That's 4 total BFOs so far if you're counting.

Drivers are now (finally!) authorized to prohibit a passenger from standing or sitting on the floor of a bus, or for that matter, anywhere that is not a seat. No more "just stand behind the white line right there." And now we're up to 6 or 7 total BFOs, depending on how you count.

Next we move into the micro-management part of the bill. School bus evacuation training programs must be developed, and an ISD must train all its students and teaching staff in this process at least twice per year. Reports of completion must be communicated to the Department of Public Safety within 30 days of completion.

The sheer volume of language finally implementing some common sense, coupled with a dash of micromanagement overkill, puts this bill at Number 9 on The List.

NO. 8: HB 2931

Perhaps you heard the one about how the federal government and international treaties prevent the Great State of Texas from enacting or enforcing any meaningful immigration control laws. There is no argument that federal law preempts state law, and therein lies the problem. Well, I'm here to tell you that this Legislature found a loophole. House Bill 2931 is a Texas anti-illegal immigration bill. Here's how it works.

A vehicle is loaded South of the Texas border with a bunch of individuals who aren't U.S. citizens. Then, this vehicle is driven (by someone authorized to be in the U.S.) across the Mexico-U.S. border into Texas. The U.S. Border Patrol (a federal law enforcement agency, perhaps you've heard of them) gives chase and the vehicle driver, wishing to avoid what could only be described as an unpleasant scene and diminished future (no shades needed), drives a little harder with his (or her) right foot—means "goes faster." Sadly, the vehicle runs off the road and crashes through a fence. The vehicle is quickly abandoned by all who can flee. The Border Patrol rounds up the suspects, puts them in a paddywagon, and takes them away.

Now let's go back to the "scene", because we are left with a busted fence and an abandoned vehicle. And if the fence was used to corral livestock or animals of any kind, the scene may include the livestock wandering around the highway, roadkill-in-waiting style. The suffering landowner has no remedy. And many of these landowners who live on the well-traveled Illegal Immigration Highway (that's Valley-speak for "Farm to Market") can be accurately described as Longsuffering Landowners.

So here's what some of the more shrewd elements of the 80th Legislature did. They drafted and got passed this HB 2931 to help these Longsuffering Landowners. Now, a person who owns real property in Texas that is enclosed by a fence or other structure obviously designed either to exclude intruders or to contain livestock or other animals, may go to court (but note that it must be a Texas court). These landowners are entitled to a lien against the motor vehicle used in the operation if the person who damages the fence owns the vehicle, or has the consent of the owner of the motor vehicle to drive the vehicle at the time they whack the fence.

How effective do you think this law is really going to be? First, if the owner of the vehicle was driving, that part of the landowner's burden of proof is easy. But what if the driver was not the owner? The first problem is that the landowner would probably have to get permission to take the driver's deposition while he's in jail. Here's how the deposition would go:

LANDOWNER'S LAWYER: "Did you have the vehicle owner's permission to drive the vehicle when it made contact with my client's fence?"

(Translator translates question into Spanish)

DEPONENT (in perfect English): "I plead the Fifth Amendment."

Next problem with this new law. Have you seen the television footage of the vehicles used to transport these individuals? Or maybe you've seen one in person. We're not talking slicked-up cars with custom paint jobs built for speed or drift races. No Mazda RX-8 with NOS, Pirelli tires, BBS wheels, and stereos so loud even the guys carved into Mount Rushmore can hear them cross the border. How much damage can a lien on one of the border-crossing vehicles actually pay for? I wonder if some would even cover the legal fees and attorney costs to file the lawsuit, take the deposition, get the judgment, file the lien, and get the order for the sheriff to sell the vehicle.

At least somebody is trying to come up with something about illegal immigration, but unfortunately, this bill probably won't be helping out that many Texans.

NO. 7: HB 1183

For those of you who live in cities, have you noticed the recent creation of dog parks all around the town? Plano has a big one now as does Dallas at the Northwest corner of White Rock Lake. These parks were built once the state changed the law to shield owners from liability for such recreational use of land as a dog park. Or how about skate parks? The City of Allen (Northern suburb of Dallas) built an incredible skateboard facility once the law was changed to include skate parks, as did Midland in building an in-line skate park at a cost of \$454,000. This year, the Legislature added radio control flying to the mix.

Now think about this. A dog in a park does a few "bad" things. One, it bites. Two, it relieves itself. Both things are contained in the park (via a fence) and the dog is touching real estate generally at all times. Same thing generally happens at these skate parks but add the occasional live music and boy-girl "interaction." Been there, seen that. Both need real estate and can be contained by a fence. But radio controlled airplanes? They take off and land (if you're lucky) on real estate. And they crash on real estate. Problem is, fences can't require them to land or crash in the aviation park. Fences can't even keep the planes in the "park" or over the recreate-able land. So was this really a good addition to our recreational "land use" statute?

You may want to note that this bill does not limit the size of the model airplane being flown, although it's purpose is not to absolve the owner of "gross negligence." If you hear the buzzing overhead, be on the lookout.

And guess who testified against this bill? A representative from the Texas Trial Lawyers Association ("TTLA"). He was concerned that someone injured and rightfully due damages would be inhibited from suing and collecting to the full extent. Are you kidding me? Is this not America? Is America's favorite pastime not baseball, at least until it was replaced with lawsuit lottery???

Now, if a person was injured by a model airplane, and if that person went to a member of the TTLA or other qualified attorney seeking to collect damages to the full extent, where's the problem? And if said person was hit with a really large model airplane, of grossly negligent proportions, well, supposedly there's still a remedy for that anyway.

So for amending a recreational land use statute for an activity that barely includes land, and for the TTLA's

meager attempt to kill this bill, this one lands at Lucky No. 7.

NO. 6: HB 2328

This bill made the list due to its legislative history. This was one of those times where it was actually helpful to have a Legislator (note the capital "L") with personal knowledge of the matters in issue actually on the relevant committee. The caption of the bill is "relating to the offenses of cruelty to livestock and nonlivestock animals" and, as you will soon realize, the Legislator made several attempts to save a witness from themselves. Our heroine in this story is Representative Debbie Riddle, from District 150, an area North of Houston. She is a horse breeder/small business owner. She was neither the author nor sponsor of this bill.

Things got going on HB 2328 around 2:40 p.m. on March 20, 2007, in a meeting of the House Committee on Criminal Jurisprudence. HB 2328 proposed to separate "cruelty to animals" into two separate categories, "cruelty to livestock animals" and "cruelty to non-livestock animals." The bill did not propose to change livestock cruelty laws, but rather was intended to add some protections for non-livestock animals. There are certain things an animal owner needs to do, in the right circumstance, to livestock that one does not necessarily need to do to non-livestock animals. According to the bill analysis, examples of acts which did not result in the punishment of the offender included drowning shelter dogs in cages dropped into a city's sewage tank; burning and mutilating live kittens; killing a puppy with a power lawn mower; and staking dogs and leaving them to die without food, water, or shelter.

So here we go. One witness for the bill asked if horses could be moved from "livestock" to "non-livestock" because horses are not food animals, but are instead pleasure animals for riding and showing. Horses, the argument went, deserved the same higher protections of dogs and cats. Rep. Riddle jumped in to the debate, asked the witness if she owned or bred horses (she did not), and said horses were indeed livestock and removing them would have unintended consequences.

Undeterred (you gotta at least love the moxy of Texans), the next witness also wanted horses moved from livestock to non-livestock, arguing horses should be protected the same as pets, and that horses were a huge part of Texas culture and history. And it was Riddle to the rescue again, stating that moving horses to non-livestock would, among other things, affect livestock taxes and have other bad consequences for horse owners.

The Assistant District Attorney for Harris County spoke favorably about the bill. Under questioning, she stated that Harris County expects to have about 100 cases prosecuted under the animal cruelty statute with 20 percent concerning horses and 80 percent concerning domesticated animals like dogs and cats.

But then, the Director of the Texas Exotic Wild Life Association testified against the bill, not because of the bill, really, but because it didn't address exotic wildlife. So, even though there was nothing wrong with the bill, they still wanted to kill it. This is the equivalent of the dog laying in the hay-it does the dog no good but keeps it away from the horse who needs it (see *Aesop's Fables*).

Next up to testify was the ACLU, which for those of you who don't know means "American Civil Liberties Union" but whose practices these days don't necessarily line up with the name. The ACLU said that increasing the penalty for animal cruelty would not prevent animal cruelty, and suggested public education be used instead. Dear ACLU: would you like to foot the bill for developing this curriculum, for multiple age groups, each of which must be age appropriate, submit said curriculum to the Legislature in 2009 for approval, shepherd the bill(s) through the House and Senate, and foot the bill to design and print the books or booklets needed to teach the people about this?

And here's where some political correctness came in to play. One of the committee members "agreed" with the ACLU by saying that sometimes a tougher penalty helps with the education message. I know my kids in their formative years learned more from one whuppin' than from seemingly endless lectures.

The House Committee on Criminal Jurisprudence hearing concluded with a few more witnesses, such that the entire debate of this bill took around 50 minutes. Meanwhile, when the bill hit the Senate's Committee on Criminal Justice, it was laid out by Senator Whitmire, one witness testified for the bill, and that was that in less than 10 minutes.

Cudos to Representative Riddle for saving witnesses from themselves, and shame on the people who require our Legislature to spend time to figure out how to end animal cruelty.

NO. 5: HB 1781

This bill reminds me of the movie *Catch Me If You Can*, starring Leo DeCaprio and Tom Hanks. Perhaps you've seen it. Leo is a thief who changes identities and forges checks. Tom is the FBI agent charged with catching him. These days, theft apparently includes parking in

handicapped parking spots without proper authorization, stealing the parking space I suppose, and in this drama the part of forged checks is played by disabled parking placards.

According to testimony, 65% of the issued handicapped parking placards are being misused. Examples of illegal use include altered or stolen placards (yes, there is a black market for such items), unauthorized use of them by friends or family members (personally I give these guys a free pass-anybody who helps a handicapped person daily deserves a break), and the use of handicapped placards belonging to dead people. Apparently, few if any of these are enclosed in the applicable caskets or urns. Maybe that should be the next change in this law.

Anyhow, the problem is that these placards don't include enough information about the person to whom they are issued, and by whom they are issued, for police officers to verify legal (or illegal) use of them. This is a result of our current preoccupation with identity theft, a/k/a privacy concerns. In 2003 the Texas Legislature only allowed county tax assessors to record the first four digits of a drivers license number followed by the applicant's initials. Turns out, law enforcement was unable to determine whether the placard being used was valid, stolen, or issued to someone who was now dead.

The House committee testimony included a filmmaker who said he videotaped able-bodied persons using free meters and handicapped spaces with these placards. He testified not only for this bill but also against the prior bill the committee had just heard, which would have allowed chiropractors to issue handicapped placards. Apparently, some people capitalize (as in make money) on the ability to issue handicapped placards.

So, this bill requires handicapped placards to include the first 4 digits of the issuant's drivers license number and their initials, along with the issuing county's 3 digit code. In yet another wondrous example of micromanagement, one committee changed the order in which these bits of information go on the card.

But even with passage this bill, an officer will still have to sit and wait for drivers to return to their vehicle in order to verify the lawful use of the placard. Don't our officers have more important things to do? Really, is parking closer to the door of whatever establishment is trying to relieve us of our bankroll so important? If getting rid of money is this critical to you, please consider doing a drive-by and just throwing money out the window so our police can take care of more pressing matters.

NO. 4: HCR 151

There were 3 different resolutions filed this session all attempting to designate the cowboy boot as the official shoe of Texas. OK, I have no problem with this concept, but right off the bat we have to ask this: since when is a “boot” a “shoe”? I have both, and neither can be confused with the other. I have owned at least one pair of boots my entire life. I have also owned wingtips, sneakers, sandals, and flip flops. All are footwear. Boots are special. Perhaps the bill should have designated the boot as the official “footwear” of Texas. But I digress.

There were two things that caught my interest about these bills. My first curiosity was which bill would pass. All three were filed by Rep. Bohac. HCR 62 (filed 2-2-07) was referred to the Committee on House Rules and Regulations. HCR 132 (filed 2-28-07) and HCR 151 (filed 3-12-07) were referred to the Committee on House Culture, Recreation and Tourism. All three have different captions, but they all basically sought the same thing.

And believe it or not, the House Committee changed the language before adopting it, although there is no legislative history to indicate why the changes were made.

My second curiosity with this bill, and why it made this year’s Top 10 list, is why it took so long to recognize the cowboy boot. Why? So that you can share in my bewilderment let’s look at some other things that have been designated as the “Official [whatever] of Texas.” Kid Cardona is the “official caricature artist” of Texas, the “official state tartan” of Texas is the Texas bluebonnet Tartan (I guess these guys can now complete the official look with cowboy boots), and the “official state bread” is Pan de Campo. Have you ever eaten Pan de Campo? I’ve never even seen it. And we already have an “official state flower song” too-anybody wanna guess its title? “Bluebonnets” by Julia D. Booth and Lora C. Crockett. Now, let’s not take anything from these things and people, but why on Texas’ great historical legacy, Sam Houston, the Alamo and all other things sacred to Texas did any of these things get all “official” on us before the cowboy boot? And for that lapse of all things that are Texas, this HCR easily makes the Top 10 list.

NO. 3:HB 416

Placing on the podium this session is a criminal bill “relating to providing for restroom access for persons with certain medical conditions.” That’s right, you can now commit a crime for refusing certain people admission to a restroom.

This bill can be summarized as “if you refuse to treat others as you would want to be treated yourselves, we’re gonna make you do it.” Except that this version of the

Golden Rule involves a porcelain god and stops short of hell.

First up, it should be noted that some people have medical conditions that cause them to need a bathroom on very short notice, and often they are out and about, shopping or visiting commercial establishments of some sort. Nothing about my opinion on this bill should be taken in any way to belittle these people or denigrate their condition.

There was no lack of heartstrings being pulled on this one during the political process. In the House, a 10 year old, a 9 year old, and a gastro-urologist testified in favor of this bill. How can one refuse two children and one expert that says the kids are right? And it still wasn’t a cut-and-dried deal. The House committee rejected the original version and adopted a committee substitute, and the full House adopted 2 floor amendments. The Senate substituted its own version, which the whole Senate adopted, and then the House concurred in the Senate version.

OK, so here we go. Apparently, some businesses that have “employee only” bathrooms will not vary from that policy for anybody or for any reason. One can understand the need of a business to manage its waste management facilities, but this causes an obvious hardship on those who have the sudden need to go.

So this bill requires business owners to provide restroom access to *certain* people under *certain* circumstances. These *certain* details are what landed this bill in the Number 3 slot, by the way.

The person with the need must ask to use the restroom during the business’s regular business hours, and the business must not have a public restroom immediately accessible. Sounds reasonable, but note that a full public restroom triggers the right to the private, employee-only restroom. AND the requestor must have proof of their condition, as in a medical ID card or a letter from a doctor. OK, but now we’re starting to stretch a bit. I guess the Legislature expects people to take advantage of this like some do handicapped placards.

AND, to keep this from being an undue burden on the businesses, there must be “three or more employees working and physically present on the premises” at the time of the request. This is obviously not to document the request, but to prevent business interruption. BUT notwithstanding all of the foregoing, the business does not have to provide access to the employee-only restroom if doing so would create an obvious health or

safety risk to the customer or an obvious security risk to the business.

Once all these hurdles are cleared, the person may use the restroom but must “leave the toilet facility in the same condition as it was before the customer used the toilet facility.” Right about now I’m thinking that the point of the bill in the beginning was to help people who have an urgent need for a toilet. Seems like an awful lot of red tape to get through once the urgency hits.

Keep in mind that refusing to allow a properly-documented requester who makes the request at the right time of day and where there are three or more employees present and which does not jeopardize the business or individual is a misdemeanor punishable by a fine of up to \$100. This criminal liability is imposed on the employee who refuses access, not on the business itself. So now we just need errors and omissions policies that cover employees.

But in the end, this seems like a whole lotta trouble just to spell out one application of the Golden Rule.

NO. 2: HB 385

Eminent domain. Condemnation. Landowners quake at the mention of these terms. Decisions to take land by eminent domain are rarely popular with the affected landowner(s). In 2005, the United States Supreme Court issued its controversial opinion in *Kelo v. City of New London*, 545 U.S. 469 (2005), regarding the constitutional limits (or lack thereof, depending on your viewpoint) of eminent domain power. Texas has been scrambling ever since to make sure our state laws rein in the use of eminent domain powers. Why they decided to select this instance is, well, how HB 385 placed 2nd on this list.

In 1935 the 44th Legislature created the Commission of Control for Texas Centennial Celebrations (“CCTCC”) and funded it with \$3 million to conduct celebrations of the centennial of the State of Texas. Its job was to coordinate centennial celebrations, condemn land, and establish historical buildings, monuments, and grave markers. Examples of its more substantial work include the Alamo Museum, the Gonzalez Memorial Museum, and Texas Memorial Museum. Once the Texas Centennial came and went, so did the activities of the CCTCC, which appears to have completely ceased operations in 1940.

As things too often go in the political world, for whatever reason the CCTCC was never formally dissolved, terminated or whatever you call ending the existence of a governmental agency (a miracle, perhaps?). And until this session, it still held the dreaded power of eminent domain. Apparently afraid the CCTCC would rise from the dead,

and that it would then decide to throw Texas another Centennial celebration (and you thought only women got to celebrate a particular birthday more than once), and wield the Power, the 80th Legislature passed HB 385 which, over 70 years after the fact, has finally stripped the CCTCC of its condemnation powers. Note that it did not terminate the agency-no need to use a machete when a scalpel will do the trick. Usually it’s the reverse-some good is taken out in the push to squash the bad. But because of wasting legislative time to kill one sliver of power instead of exterminating an entirely obsolete agency-and even taking 70 years to do that-this bill lands solidly at Number 2.

NO. 1: SCR 30

This resolution’s ranking was a total surprise. I didn’t connect the dots on this one until after the session was over. Who could have guessed that a resolution whose caption simply reads “relating to recognizing May 5, 2007, as Parliamentary Law Day” would be the Number One, Top Dog New Law Most Interesting for All the Wrong Reasons? But in the aftermath of the Regular Session, nothing was its equal in terms of wasted legislative effort. Talk about turn-about. So let’s get to the story. This one will be told for many years and many sessions to come.

SCR 30 was filed on March 2, passed by the Senate on March 5, and the House on May 18 (recognizing May 5 as the special day, so we’re already going downhill). This resolution noted that General Henry M. Robert, author of the infamous *Robert’s Rules of Order*, which by the way is the most widely used manual of parliamentary procedure, also played a role in the design of the Galveston Seawall and the Houston Ship Channel. More importantly, it went on to say in the preamble:

...The members of the Texas Legislature, as well as the citizens of the State of Texas, owe a debt of gratitude to the parliamentarians, secretaries, and clerks of the Texas Senate and House of Representatives, for their skillful, equitable, and efficient execution of session business is integral to ensuring the integrity and consistency of the legislative process in the Lone Star State...

Denise Davis had served as House Parliamentarian since 2003, starting at a salary of \$125,000 (which had increased to \$145,000 by 2007). Not small numbers, but still chump change for having to put up with some of the shenanigans under the Pink Dome. How do you put a price on that aggravation? Her dutiful assistant was

Deputy House Parliamentarian Chris Griesel.

Unbeknownst to the House members, apparently before this SCR passed the House, a series of events had already been put in motion that would threaten “the integrity and consistency of the legislative process in the Lone Star State”, ultimately causing the abrupt resignation of Parliamentarians Davis and Griesel.

You may have heard about the dissatisfaction with House Speaker Tom Craddick throughout the session. First, he survived a challenge to his position at the beginning of the session. Then, as the month of May progressed, the discontent mushroomed. Well, Craddick didn’t just sit around and accept the title of “former” Speaker. He proactively concocted a shrewd plan of action. When House members like Jim Dunnam (D-Waco), Fred Hill (R-Richardson) and Todd Smith (R-Eules), among others, began to take formal action to remove Craddick as speaker, Craddick simply executed the plan. And the plan made a mockery of SCR 30.

Things exploded on the House floor on May 25, a mere one week after the House passed SCR 30. Prior to this date, some members of the House had had conversations with House Parliamentarians Davis and Griesel about how to execute a “motion to vacate the chair”, the success of which would remove Craddick from his position as Speaker, after which the House would then presumably elect a new Speaker.

It is the job of the House Parliamentarians to advise both the Speaker and the House members as to the rules of combat, and so Davis and Griesel, whose “skillful, equitable, and efficient execution of session business is integral to ensuring the integrity and consistency of the legislative process in the Lone Star State”, researched it and concluded that such a motion was classified by House Rules as a “privileged” motion and, as such, had to be recognized by the Speaker, meaning the Speaker had to allow the motion to be made and voted on. Craddick, knowing this was their opinion, didn’t like it, and so in all likelihood before the House passed HCR 30 he began consulting other lawyers and experts to find someone with an opinion more protective of His Speakership (new title for Craddick-it was either this or Lord Craddick).

Meanwhile, armed with the opinion of Davis and Griesel, the anti-His Speakership faction began around 7:54 p.m. on May 25 to make the motion to vacate the chair. To everyone’s shock (and there is not a strong enough word to use here), His Speakership declared that he could recognize-or NOT recognize-any motion on anything at any time. AND his rulings on such were not appealable to anybody, anytime. His power was absolute.

Around 8:29 p.m., some House members sought a ruling on His Speakership’s stunning interpretation directly from Parliamentarians Davis and Griesel, naively believing they knew the answer. At approximately 8:48 p.m. His Speakership abruptly recessed the House until 11 p.m., so that some of his supporters who were not under the Pink Dome could return. Supposedly one of these was Dan Branch (R-Dallas) who was attending his child’s high school graduation. Folklore holds that His Speakership was busy arranging private air transportation all around the state for several of his supporters.

Around 9:52 p.m., clearly and publicly undercut by His Speakership, Davis and Griesel turned in their black “HP” armbands and resigned as House Parliamentarian and Deputy House Parliamentarian, giving new meaning to the “what have you done for me lately” mindset-remember the ink was barely dry on the “thank you-you’re the best” of SCR 30.

And it didn’t take His Speakership long to replace the disgraced HPs. When the House reconvened just after 11 p.m. on the same day, Terry Keel (Austin, Republican) was announced as interim House Parliamentarian, and Ron Wilson (Houston, Democrat) as interim Deputy House Parliamentarian. These lawyers had an even more stunning argument than His Speakership had espoused a few hours earlier: the post of House Speaker is created by and protected in the Texas Constitution, and only a 2/3rds vote of the House can remove a House Speaker. Shortly thereafter, His Speakership released this statement:

In the last few weeks, the Speaker has received a number of informal inquiries on intricate and complicated constitutional issues. Consequently, he canvassed a wide range of legal opinions, and in some cases has put a higher premium on that counsel. As a result, Denise has resigned and has asked to be transferred. The Speaker will be complying with her wishes.

To paraphrase: “You parliamentarians are only skillful, equitable and efficient when you help me keep my position.” Not exactly what the House had in mind when they passed HCR 30 now, is it?

But don’t think this melodrama, soap opera, whatever-you-want-to-call-this is over yet. Davis and Griesel may yet be officially vindicated. The real booby prize goes to Attorney General Greg Abbott, who has the completely thankless job of responding to a request for

a formal Advisory Opinion on 4 questions regarding the constitutionality of His Speakership's interpretation of House Rules. Now there's another guy who doesn't get paid nearly enough considering the challenges of his job.

Somewhere around the end of the session, Rep. Harold Dutton (D-Houston) was quoted as saying "There's two things about every session that's the same. They begin and they end." And so, as we await the commencement of the next round of unpredictable legislative lunacy, we await the ruling of the Attorney General on His Speakership.

And th-th-th-th-that's all, folks. Now for these important disclaimers.

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Texas Legislature Online:
<http://www.capitol.state.tx.us/>

Texas State House of Representatives:
<http://www.house.state.tx.us/welcome.php>

Texas State Senate:
<http://www.senate.state.tx.us/>

Texas Attorney General:
<http://www.oag.state.tx.us/>

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ABOUT THE AUTHOR

Mr. McPherson has over 17 years of experience in commercial real estate. He has represented national and local companies, entrepreneurs, investors, landlords and tenants in a wide variety of matters, including:

- | | |
|---|---|
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Mr. McPherson is and has been an active lecturer at CLE programs in Texas. He has served in numerous leadership positions with the State Bar of Texas' Real Estate, Probate and Trust Law Section ("REPTL"), including being a member of the REPTL Council and Chair of its Real Estate Legislative Affairs Committee for the past two Legislatures.

Mr. McPherson is Author of the MCTEXLAW E-MAIL ALERT, a periodic newsletter circulated to clients and colleagues, and posted on www.mctexlaw.com, concerning recent Texas legal developments affecting business owners and commercial real estate, with circulation of approximately 2,172 as of May 31, 2007. Free subscriptions are available at www.mctexlaw.com/emailalerts.com

He is also the Administrator and Host of the MCTEXLAW REAL ESTATE E-MAIL DISCUSSION GROUP, an E-mail based discussion group for professionals in the Texas real estate industry, with approximately 139 members as of May 31, 2007. Free subscriptions are available to qualified individuals upon request to mark@mctexlaw.com

Mr. McPherson received his J.D. from Washington & Lee University School of Law (1990) and his B.S., *cum laude*, in Political Science from Belmont University (1987). Mr. McPherson is not certified by the Texas Board of Legal Specialization.