



## A Look At The 2010 TAB Annual Conference

### *Leaders tackle education at successful event*

The Texas Association of Business 2010 Annual Conference was a resounding success. Nearly four hundred people attended the event, which highlighted how the business community and lawmakers can prepare and equip Texas graduates to excel in the job market.

The Association was proud to welcome Lt. Governor David Dewhurst, Comptroller Susan Combs and the esteemed legislators and policy experts who brought attention to the myriad challenges we face in producing a world-class education system.

The conference kicked off with a keynote address from Lt. Governor Dewhurst, who highlighted the Tier One initiatives passed during the 2009 Legislative Session. The state will match funds raised by schools on the path to becoming a world-class research universities. Texas currently only has two public universities with a "Tier One" designation, while California and New York both have at least six. To remain competitive with our neighbors across America and the globe, the Legislature passed and the Governor signed legislation that will guide many of our great public universities to reach the next level in academic accomplishment.

Senator Dan Patrick closed out the first day of the conference with entertaining remarks that tied his current success in business, broadcasting and the Legislature to finding what he enjoyed doing as a young man. Much like in his experience, he pointed out that having the outlets for students who are interested in mechanics or repair can lead them to high-paying jobs. Patrick cited an employer in his district that was looking for a diesel mechanic paying \$85,000. Patrick's anecdote reflects perfectly the problem TAB's conference



Governor Rick Perry chats with TAB Chair Gray Mayes (L) and Board Member Brint Ryan at the 2010 Annual Conference

### WORKFORCE Q&A

*What is the "Franken Amendment" and how does this new law impact employers?*

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### TAB MISSION

*To make the Texas business climate the best in the world.*

# WORKFORCE Q&A



Bob Nichols  
Bracewell & Giuliani LLP

## **What is the "Franken Amendment" and how does this new law impact employers?**

The Franken Amendment is a provision included in the Department of Defense Appropriations Act for 2010. Specifically, that federal statutory provision, which was sponsored by Senator Al Franken of Minnesota, requires any defense contractor that receives a contract awarded under the Defense Appropriations Act on or after February 17, 2010, to refrain from entering into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any

claim under (i) Title VII of the Civil Rights Act of 1964 or (ii) any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment or negligent hiring, supervision or retention. Further, the provision prohibits an employer with a covered contract from taking any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates the employee or independent contractor to resolve any of the identified types of claims through arbitration.

Although many employers might assume the Franken Amendment is not a concern for them because they do not have a contract of over \$1 million with the Department of Defense, this new law also provides that, beginning 180 days after December 19, 2009, defense contractors will be required to certify that their subcontractors with subcontracts of over \$1 million on a defense project will also comply with these restrictions on arbitration agreements with employees and independent contractors.

Notably, while originally this legislation was characterized as just prohibiting employers from requiring employees making sexual assault allegations from arbitrating claims, the law appears to have much broader scope than that and extends to any (i) discrimination claim under Title VII and (ii) tort claims related not only to alleged sexual assault, but also to sexual harassment.

All employers should be concerned by the Franken Amendment because it demonstrates the widespread support in Congress for restrictions on workplace arbitration. There are bills currently pending in Congress that would broadly prohibit mandatory arbitration in the employment setting.

For the time being, those employers with significant defense-related contracts or subcontracts should evaluate whether they are covered by the Franken Amendment restrictions and, if so, modify any arbitration programs that may have to comply with these restrictions.

## **Employment Relations questions?**

**Don't forget to call TAB's Employment Relations Hotline  
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# Annual Conference Spotlights Education

## *continued from page one*

hoped to tackle: If we do not have a prepared workforce here in Texas, the jobs will move elsewhere.

Commissioner of the Texas Higher Education Coordinating Board Raymund Paredes led one of the most insightful panels featuring Representatives Dan Branch (R – Dallas) and Joaquin Castro (D – San Antonio) and Chair of the Governor's Business Council, Woody Hunt. The four tackled the subject of higher education, with Hunt laying out in a brief presentation the dire consequences Texas faces if we do not continue to improve how we educate our children. As Texas shifts to soon becoming a majority-minority state, educating and ensuring that the Hispanic student body graduates with a high school degree that prepares them to enter the job market is the most important public policy issue Texas faces.

Rep. Castro provided insightful commentary on his experience representing an area that contains underprivileged students whose parents do not know enough about the higher education process to be able to help with financial aid, choosing a school or filling out the necessary paperwork – leaving the students to try to negotiate the difficult process on their own.

Paredes detailed the ideas being considered at the Coordinating Board to tie education grants and scholarships to merit and need, rather than just a need-based system that is currently in place. During the last legislative session, a bill was filed by Rep. Donna Howard (D – Austin) to enact Paredes' idea. Though it languished and was not passed by the House, Paredes remains hopeful that the 2011 Session will yield different results.

TAB's signature education issue, accountability, was the focus of a panel featuring Rep. Rob Eissler and Senator Florence Shapiro – who chair the respective House and Senate education committees, policy guru Sandy Kress and Chris Cloudt of the Texas Education Agency. Shapiro and Eissler were the architects behind House Bill 3, which will overhaul the accountability system, was one TAB strongly supported and continues to support. Cloudt reinforced that the bill took much of the wiggle-room away from TEA so that the vision outlined in the bill will be what is implemented in the classrooms.

The final panel of the conference featured Gary Scharrer of the *Houston Chronicle*, Terry Stutz of the *Dallas Morning-News* and Ross Ramsey of the *Texas Tribune*. They went into detail about the lack of credibility that politicians have when speaking honestly about education. The panel also gave their perspective on the 2010 elections and who's got the power in Texas.

In addition to the conference, TAB's political action committee announced its endorsement of Governor Rick Perry's gubernatorial re-election in 2010 just prior to his speech honoring the Best Companies To Work For In Texas. Perry spoke at length about the power of Texas business and how the employer base is what keeps Texas thriving.

"The event was a wonderful testament to the members of TAB," said President Bill Hammond. "This was one of the best conferences we have had to date and I am thankful to our panelists and sponsors for making this event such an overwhelming success."

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# Effect of the Tea Party Movement

*TAB is proud to present Perspectives, featuring commentary from influential, disparate voices on key political issues. Conservative watchdog Michael Quinn Sullivan and influential progressive blogger Matt Glazer share their perspective on the Tea Party movement.*

**Michael Quinn Sullivan, President, Texans for Fiscal Responsibility:** Predicting the future, especially of political movements, is a fool's errand. What's more interesting, and instructive, is the impact "tea parties" have had on the American political landscape in just the last twelve months.

Few would have suspected an unscripted rant from the Chicago trading floor by a CNBC analyst would turn into a national dialogue on citizen engagement. But it was a rant awakened many whose voices had gone silent.

Tens of thousands, then hundreds of thousands, took to rallies in the spring and summer. They were driven by many things, but mostly by a sense that America's spirit was being shackled by bank bailouts, ill-conceived stimulus plans and a European-style collectivist health care proposal.

Dismissed by the left as "tea-baggers," it was assumed they would go away once the signs waved at rallies got too heavy. Some have, but many continue to seek ways to invest their newfound political and policy interests.

With a super-majority in the Senate, President Obama's health care reforms seemed a foregone victory. Except these people had other plans, which involved raising the political cost of supporting such a thing. Today, no one expects that legislation to see the light of day, thanks to the energy of so many tea party activists.

These were the people mobilizing turnout in New Jersey, Virginia and elsewhere in November. They were door-knocking and sign waving passionately for Massachusetts' Scott Brown long before any polls reflected the intensity of their effort.

Even here in Texas the tea parties have been instrumental in shaking the status quo. Between new waves of volunteers to race-changing candidates, the 2010 election season has been radically transformed.

It would be tempting to consider the tea party movement as an auxiliary of the Republican

Party. But that misses the point; many of these are people driven by principles, not parties.

What's been shocking is just how spontaneous the activities really have been. It would be comforting for some, perhaps, to believe it was led or coordinated. Certainly no shortage of politicians future, current and former have tried to leap to the front of the parade. In reality, much of what these neophytes have done wouldn't have been allowed by the "professional" political class.

It is impossible to predict the long term impact of the tea parties.

Frankly, the success of a grassroots movement isn't measured in months; the tea party will be no different. Its impact will be most visible looking back, not ahead. What can be safely predicted about the remainder of the 2010 election season is that the political game has been changed.

**Matt Glazer, Partner, GNI Strategies:** The Tea Party is to Republicans today what the Green Party was to Democrats in 1999-2000. The biggest difference is that the Tea Party has been co-opted by corporate Republicans almost immediately, whereas the Green Party was brought into the big tent of the Democratic Party over a long period of time.

In 1999, Al Gore seemed perfectly positioned to take the torch from President Clinton. Yet, the social justice centered Green Party capitalized on an anti-incumbent, anti-corporate feeling among very liberal Americans who felt Bill Clinton's "Third Way" centrism ignored their policies and passions.

After the 2000 election and subsequent 2002 Republican rise, the Democratic Party took careful steps to include more diverse voices. The only solution for Democrats was to move slowly into a two-front campaign to win the hearts and minds of both the far left and conservative middle. It is a struggle we see play out even today among Democrats on issues like health care – but the struggle is exclusively among Democrats. The electoral consequences of the Green Party peeling off voters from traditional Democrats are no longer a reality in American politics.

Texas Republicans, however, missed the lesson.

# 2010 BACPAC Endorsements

BACPAC recently announced its first round of candidate endorsements for the 2010 election cycle. Endorsements are based on candidate interviews, questionnaires and the TAB legislative voting record. Here are our picks for some of the most important races:

## **Governor**

Rick Perry

## **Lt. Governor**

David Dewhurst

## **Railroad Commission**

Victor Carrillo

## **Supreme Court, Place 9**

Eva Guzman

## **Texas House**

District 2	Dan Flynn
District 4	Betty Brown
District 5	Bryan Hughes
District 6	Leo Berman
District 7	Tommy Merritt
District 10	Jim Pitts
District 11	Chuck Hopson
District 13	Lois Kolkhorst
District 14	Fred Brown
District 15	Rob Eissler
District 16	Brandon Creighton
District 18	John Otto
District 19	Mike Hamilton
District 20	Milton Rister
District 21	Alan Ritter
District 24	Larry Taylor
District 25	Dennis Bonnen
District 26	Charlie Howard
District 29	Randy Weber
District 30	Geanie Morrison
District 32	Todd Hunter
District 43	Tara Rios-Ybarra
District 44	Edmund Kuempel
District 45	Patrick Rose
District 52	Larry Gonzales
District 53	Harvey Hilderbran
District 54	Jimmie Don Aycock
District 55	Ralph Sheffield
District 58	Rob Orr
District 59	Sid Miller
District 60	Jim Keffer
District 61	Phil King
District 62	Larry Phillips
District 63	Tan Parker
District 64	Myra Crownover

District 65	Burt Solomons
District 66	Mabrie Jackson
District 67	Jerry Madden
District 68	Rick Hardcastle
District 69	Lanham Lyne
District 70	Ken Paxton
District 71	Susan King
District 72	Drew Darby
District 73	Doug Miller
District 78	Donald "Dee" Margo
District 80	Tracy King
District 81	Tryon Lewis
District 82	Tom Craddick
District 83	Zach Brady
District 84	John Frullo
District 85	Jim Landtroop
District 86	John Smithee
District 87	Victor Leal
District 88	Warren Chisum
District 89	Jodie Laubenberg
District 91	Kelly Hancock
District 92	Todd Smith
District 93	Barbara Nash
District 94	Diane Patrick
District 97	Mark Shelton
District 98	Vicki Truitt
District 99	Charlie Geren
District 100	Eric Johnson
District 101	Greg Noschese
District 102	Stefani Carter
District 105	Linda Harper-Brown
District 108	Dan Branch
District 112	Angie Chen Button
District 115	Jim Jackson
District 121	Joe Straus
District 122	Lyle Larson
District 126	Patricia Harless
District 128	Wayne Smith
District 129	John Davis
District 130	Allen Fletcher
District 135	Gary Elkins
District 136	Beverly Wooley
District 149	Bryan Le
District 150	Debbie Riddle

*To view the full list of BACPAC's endorsements, please visit us online at <http://www.txbiz.org> for all the information you need.*

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# Perspectives

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If the Republican Party had read the tea leaves and adjusted ahead of time, Debra Medina would not be polling at 16%. If Rick Perry and the Republican Party of Texas hadn't fought against Ron Paul throughout the 2008 elections, Medina may not even be running for office.

Instead, Medina is rising in the polls, Kay Bailey Hutchison is falling, and Rick Perry cannot break the magical 50% marker. Medina, meanwhile, has suggested that if she loses she would support an independent or Libertarian-style candidate in the general election instead of Perry or Hutchison.

While Perry is doing everything in his power to co-opt the Tea Party movement, you have to remember: he only got 39% of the vote in 2006. The Libertarian Party in Texas can receive anywhere from 3-7% in Texas elections, easily. If Medina champions a Libertarian-style Independent candidate throughout 2010, that number could easily double.

That leaves Rick Perry to fight a two-front political battle as he's running for election – much as the Democrat he once previously endorsed in 1988, Al Gore, tried and failed to do in 2000. Any attempts by Perry to galvanize and co-opt the Tea Party movement only moves him further to the right, leaving him vulnerable to recruit the moderates and independents in Texas he needs to pull away from Bill White in order to win in November.

Ultimately, the Tea Party movement does not indicate a fundamental shift in political identity. Instead, Debra Medina and the Texas Tea Party are signs of a growing problem for the Republican Party – one they are trying to co-opt before they suffer Nader-like consequences in the 2010 Governor's race.



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# Talk **About** Business

## Can't Tax And Spend Your Way To Prosperity



Bill Hammond, TAB President

As the preeminent voice for the state's business community, the Texas Association of Business often hears from employers about the challenges they face in growing their business and adding employees during this particularly difficult time in our state's history.

Our state and nation are in the midst of an historic, global recession, but there are true glimmers of hope for our state. According to the Texas Workforce Commission's most recent data, Texas added over 50,000 jobs in the last three months. Our 8.3% unemployment rate, while too high, remains far below the national average.

Despite the tough times, employers remain unwavering in their belief that Texas is best positioned to get out of this Wall Street-created mess sooner than our neighbors across America.

In just a few short years, Texas has become an economic beacon for the nation in large measure because of fiscally conservative leadership in the Legislature.

The business community has thrived in Texas, as we continue to maintain the highest number of *Fortune* 500 companies in our state than any other.

We have been cited by countless publications as having the best business climate and being regarded as the best place in America to do business. Texas had more job growth in 2008 than all other 49 states in America combined.

That being said, a nod from *Forbes* doesn't put food on the table for Texas families. The fact remains that men and women are struggling. People are delaying paying certain bills from month to month to make ends meet. Families are tapping into college and retirement funds to pay their mortgage. They are unsure that their representatives are taking care of their needs. And the constant refrain from Washington seems to be "Give us your money, and we'll do a better job of taking care of your needs than you can."

Here in Texas, we know that the best thing government can do is to get the hell out of its citizens' pockets.

To get down to brass tacks, we stand taller than our peers because we keep taxes and spending low. The feedback our Association has received from employers is that Texas is attractive because they have to pay less to the state to make their businesses thrive.

A thriving business is not an extra comma in an executive's salary. It is the resource that provides families with jobs, and often pays for health insurance and retirement programs. Attracting and retaining companies that employ Texans is job one for the business community.

Toward that end, the Texas Association of Business is proud to support two state constitutional amendments to limit spending growth to correspond with the growth rates of the state's population and inflation, and require a two-thirds vote of the Legislature to approve all tax increases.

By controlling these two economic factors, we can avoid the disastrous results we have seen in California, whose 20 billion dollar budget shortfall has been caused by spiraling growth in taxes and spending.

We currently have a multi-billion dollar budget surplus. And to face the challenges to come, we must be prepared to fend off foolishly trying to tax and spend our way into a better economy the way that we have seen in Washington D.C. and California.

Taking these important steps will ensure that Texas remains open for business.