



Why Vote Again?

Voting is even more important in runoff elections.

The question that many people may ask themselves when thinking about voting in the runoff election is: will my vote really make a difference? The answer is a resounding **yes.**

The simple fact is fewer people vote in runoff elections. Because there are fewer people voting that makes every vote very important.

“We face some critical choices in this runoff election,” said TAB CEO Bill Hammond. “There are many long-time friends of TAB and friends of Texas business facing some very tough competition in this runoff election. It is critical that Texas business makes a strong showing at the polls.”

Early voting begins May 19. Election Day is May 27.

Among those candidates facing the toughest challenges on the state level are Lt. Governor David Dewhurst and State Rep. Dan Branch, who is running for attorney general.

“Those two men have supported TAB’s policies and helped the Texas business community for many years,” said Hammond. “They certainly deserve our members’ strong consideration at the polls and have both been endorsed by our Business and Commerce Political Action Committee (BAC-PAC)”



Lt. Governor David Dewhurst speaks at TAB Annual Conference

There is a full list of BAC-PAC endorsements for the primary runoff election on Page 3 of this month’s Texas Business Report.

Turnout was down for both Democrats and Republicans in March. Turnout for the GOP dropped by about 10 percent compared to the last gubernatorial primary in 2010. The drop was even larger for Democrats, seeing a 20 percent drop this year compared to 2010.

WORKFORCE Q&A

When an employee is separating from the company and is receiving a severance payment in exchange for a release, what types of provisions should be included or excluded in the release?

(see page 2)

UPCOMING EVENT

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Texas Association of Business and SHRM - Texas State Council bring you the annual Employment Relations Symposium. The program focuses on the latest in laws and policies for the HR professional and is presented by experts in HR law.

Registration and more information available at www.txbiz.org

TAB MISSION

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

WORKFORCE Q&A



Kate Suh,
Norton Rose Fulbright

When an employee is separating from the company and is receiving a severance payment in exchange for a release, what types of provisions should be included or excluded in the release?

Although employers generally have an incentive to draft a release in a separation agreement as broadly as possible, the EEOC recently claimed that a company's standard separation agreement was overly broad and constituted a "pattern or practice" of interfering with employees' rights to file discrimination charges or to communicate with the EEOC. Because certain provisions may be unenforceable or worse yet, invalidate the entire release, employers should carefully draft any release of claims in a separation agreement.

In exchange for a severance, a release can cover claims under common law and state and federal statutes, such as the Texas Commission on Human Rights Act and Title VII, among others. Typical common law claims released in a separation agreement are wrongful discharge, breach of contract, fraud, libel, slander, defamation, disparagement, intentional infliction of emotional distress, personal injury, negligence, misrepresentation and invasion of privacy.

Certain claims, such as for unemployment and workers' compensation benefits, should not be released. Employees in Texas cannot release their rights to unemployment compensation, and a company cannot require or accept a waiver of unemployment rights. Although Texas employers are not required to purchase workers' compensation insurance, if a company opts to provide insurance, employees cannot waive their rights unless they do so within five days after: (1) starting employment or (2) receiving written notice from their previously uninsured employer that workers' compensation insurance has been newly obtained.

Claims related to an employee's wages and overtime should also be released with caution. The presumption is generally that wage claims under the federal Fair Labor Standards Act cannot be released without approval by the DOL or a court. Recently, the U.S. Court of Appeals for the Fifth Circuit has held that a private FLSA settlement agreement is enforceable in certain circumstances, but this has been approached cautiously by employers and courts.

Courts have generally taken the approach that a waiver of the right to file a charge with the TWC or the EEOC is prohibited. Although employees cannot waive the right to file a charge, a release can lawfully include a waiver of any monetary benefits or other relief resulting from the complaint or charge. Given the EEOC's history of examining separation agreements and to avoid doubt, a best practice is to include an express provision stating that the release excludes the filing of an administrative charge or complaint and the employee's participation in such an investigation or proceeding.

To prevent the later use of the separation agreement as evidence of liability or admission of wrongdoing, employers also should include a provision stating that the agreement and any payments pursuant to the separation agreement will not be deemed an admission of liability or wrongdoing by the company.

Employment Relations questions?

***Don't forget to call TAB's Employment Relations Hotline
for your next HR Question***

1.800.856.6721, ext. 164 or E-mail smcgee@txbiz.org

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Runoff Election Endorsements

The full list of BAC-PAC runoff endorsements.

The Business and Commerce Political Action Committee has a full list of endorsements for the May 27 runoff election. Early voting for that election starts in just a few days on May 19.

Below is the full list of endorsed candidates for the runoff election.

- Lt. Governor –
David Dewhurst
- Attorney General –
Dan Branch
- U.S. Rep. District 4 –
Ralph Hall
- Texas Senate District 2 –
Bob Deuell
- Texas Senate District 10 –
Mark Shelton
- Texas House District 10 –
John Wray
- Texas House District 53 –
Rob Henneke
- Texas House District 58 –
Dewayne Burns
- Texas House District 76 –
Norma Chavez
- Texas House District 102 –
Stefani Carter
- Texas House District 108 –
Chart Wescott
- Texas House District 132 –
Ann Hodge

There are a few races that the BAC-PAC board did not make an endorsement.

“We urging our members to take the time to cast a ballot in this very critical runoff election,” said TAB CEO Bill Hammond. “This election will shape the future of Texas for years to come, and it is very important that people take the time to cast a ballot.”

Early voting runs from Monday, May 19, through Friday, May 23. Election Day is May 27. “Not only is this a runoff election, which means lower turnout, but there is only one week for early voting, which also could make a difference in the turnout for this election,” said Hammond.



Congressman Ralph Hall



Representative Dan Branch speaks at TAB Annual Conference

Runoff Election Vote Critical

continued from page one

“There are several hot Republican races in highly populated parts of the state, and that could drive turnout a little higher in the Republican runoff in those areas,” said Hammond. We know, however, that overall the numbers will be way down from March.”

There are several reasons for the expected low turnout. Many of these result from the fact that the Election Day falls immediately after Memorial Day, the traditional start of the summer travel season. Many families will be traveling on the last day of early voting, Friday. Some also may extend their trips through Tuesday, the day of the election.

If you did not vote in the March primary you may still choose between both party primary elections in which to cast a ballot. If you did vote in March you must vote in the same party primary runoff.

Another factor that could decide the turnout, and fate, of some of these races is a preconceived notion that these races have already been decided. “I would strongly discourage that kind of thinking,” said Hammond. “We have seen over and over again that people who take races for granted, or think they have been decided before votes are even cast, are wrong. Nothing is decided, and no race is lost, until people go to the polls and all the ballots are counted. These races are critical because they will decide the direction of Texas for the next decade or more. That is why it is so important to take the time and vote this month.”

MEMBER PROFILE

VChain Solutions, Inc. – One of a kind business education solutions

VChain Solutions was formed in 2012 to address the growing problems in demand planning. Their aim was to make driving the supply chain as easy as driving a car, so that companies can focus on the bottom line, which is exceptional delivery. This can only be achieved by enabling users to proactively drive the supply: Determine where the problem is, and develop the best course of action through scenario planning. VChain Solutions sets out to help address the skill shortages in Austin, the state of Texas and throughout the world.

In the educational technology industry, there isn't currently a facility or solution that offers the ability to remotely teach supply chain execution and analytics, while infusing real world issues to the user in a role based training platform. VChain Solutions is the first program of its kind that teaches students the basic concepts of supply chain management along with vital soft skills needed to be successful. Soft skills include: Demand planning, PO negotiation, communication, decision making, cost reduction, and business ethics. The students use a revolutionary platform called VChain ProActive. Students learn by serving in job roles such as, buyers, planners, and inventory control analysts. They get on the job training while in school through a direct link to a supply chain simulation laboratory located in Austin.

VChain Solutions was founded by James Vinson, an entrepreneur with a unique story of perseverance. James was living in San Francisco, CA, hiking to the top of Mount Tamalpais, when his business vision came to him. He was so inspired and determined to make VChain Solutions successful that he used all of his financial resources to build it. Unfortunately, 2008 was not a good year for upcoming businesses, and James lost everything he had, everything except his dream. James put his pride aside, moved into a homeless

shelter and returned to school. In 2011, he competed in the Collegiate Business Plan Competition, where his company won numerous awards, and became one of the top 40 best new innovations in the world for clean technology.

In 2012, shortly after moving to Austin, James met Llyas Salahud-Din, Business Development Director with Austin Can Academy. They both shared a common dream of helping mold the lives of youths in the community. Llyas also introduced James to TAB. James shares, "TAB has been instrumental in helping connect VChain Solutions with key organizations that set the company on a trajectory toward profitability and beyond."

With a large number of residents in the community lacking the soft skills such as communication and decision making, VChain Solutions is deeply committed to solving those issues. James Vinson's determination and dedication are clear. Even though his parents are no longer with him, James says they are his driving force. "My father gave me the courage to start my dreams, and my mother has given me the strength to succeed."

"TAB has been instrumental in helping connect VChain Solutions with key organizations that set the company on a trajectory toward profitability and beyond."

*- James Vinson,
President,
VChain Solutions, Inc.*



Finalist eligible to receive a laptop computer and internship with VChain Solutions

Setting the PACE

Conserving energy and water is part of the long-term strategy to meet the growing needs of business and the public in Texas. That is where the PACE program comes in. It provides a funding mechanism to pay for building improvements that will enhance energy and water conservation and create new business opportunities for local businesses and lenders.

“Making sure Texas uses all of its resources wisely makes good economic sense,” said TAB Vice President of Governmental Affairs Stephen Minick. “This program is a way for businesses to afford to upgrade buildings to ensure that they aren’t wasting energy and water. In the long run, it will save them money and save the state precious resources. More importantly, it is based on free market principles and works without government mandates or tax subsidies.”

PACE is an innovative financing program that enables owners of commercial and industrial properties to obtain low-cost, long-term loans for water conservation, energy-efficiency improvements and renewable retrofits.

The term of a PACE loan may extend up to 20 years, resulting in utility cost savings that exceed the amount of the assessment payment. As a result, improvements financed through PACE generate positive cash flow upon completion with no up-front, out-of-pocket cost to the property owner. The lien securing the PACE assessment follows the title to the property, meaning if the property is sold before the full amount of the loan is repaid the repayment obligation automatically transfers to the new owner.

“TAB supported the legislation that created the PACE program,” said Minick. “We feel it is a unique, low-cost way to make these needed improvements.”

Owners of developed commercial, industrial and multifamily residential buildings in Texas can qualify to make these facility upgrades using PACE loans. These loans serve also as another product that lenders may offer in Texas. Lenders can leverage the program to better serve their clients with property in need of infrastructure improvements.

QUOTES

“Low taxes, sensible tort reform, sensible regulation, his message is the same as ours, come to Texas and do business.”

– TAB CEO Bill Hammond on WOAI Radio speaking about Toyota’s headquarters moving to Texas.

“If an individual receives a windfall, the best thing they can do is pay down their debt.”

– TAB CEO Bill Hammond in the *Texas Tribune* talking about what the state should do with a budget surplus.

“There’s a reason people are leaving California and why they’re not enjoying the growth that other states are enjoying.”

– TAB Vice President of Government Affairs Stephen Minick in the *Texas Tribune* addressing the reasons businesses are moving from California to Texas.



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Talk **About** Business

New Accountability System Shows System Weakness



Bill Hammond, TAB President

There is a problem when a student is considered academically ready for college when they are not even academically eligible to graduate high school. Unfortunately, that is what the state's new accountability system, precipitated by last year's HB-5, will mean.

Under the new system, students who pass two end-of-course exams will be considered career or college ready. They might only pass history or Biology, neither of which is a predictor of college success. At the very least, they should be required to pass English and Algebra to be considered college ready.

Here is the detail that really upsets me about this standard. It takes passing scores on five end-of-course exams to be eligible for high school graduation. How can we possibly consider a student college ready without those students first being eligible to graduate high school? Isn't the first rule of getting into college a high school diploma or its equivalent?

I would say I'm disappointed in Education Commissioner Williams for approving those standards, but it really isn't his fault. He is trapped by a new system that won't do enough to get our students ready for college or for employment after high school, in

the first place. I know the lawmakers that came up with House Bill 5 wanted to ensure students had more options, but what they did instead is take away some core graduation curriculum requirements that students need to be ready for life after high school, whether that life is on a college campus or in a welding shop.

Here is the real problem. The best accountability systems do more than measure students' success or failure. The best drive change in our education system. That is what our accountability system did for years, and we reaped the benefits. Minority students closed the gap with their counterparts. Our dropout rate started to improve. Our students' performance in every socio-economic group improved. The system was working.

Under this new accountability system, I'm not sure you can say the same thing. The new requirements do not ensure student mastery of basic core subjects (When 37 percent is passing I don't exactly think you can consider a course mastered.). The new system does not truly address the parental concern that our students are tested too much. While the state requires fewer standardized tests and passed limits on the kind of practice tests a

district can require, the Legislature did not include individual campuses, which are still doing far too much test prep and not focusing on actually teaching courses. That has always been the real problem, not that the state mandates too many tests.

Because of the way this system is set up, it will be easy to mask problems at individual schools and districts. I expect only nine percent of schools will be listed as "needs improvement." I think we all know that number is too low. That low number, and the corresponding high number of 91 percent of schools that will meet expectations, will make it appear that our schools are just fine. When only around 25 percent of our graduates are truly ready for college, we should all know better. Remember, too, that is 25 percent of those who graduate, which says nothing about the kids who dropout.

Florida implemented an A-F accountability system. That system graded schools just like students are graded, and it drove change, because it was an honest accountability system. An honest accountability system does just that, drives change. What Texas is implementing is not an honest system. It is frosted with good feelings that mask the problems underneath.