

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

THIRD DAY

(Wednesday, January 19, 2011)

The Senate met at 11:06 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Birdwell, Carona, Davis, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Ellis, Hegar.

The President announced that a quorum of the Senate was present.

The Reverend John W. Newton IV, Episcopal Student Center, Austin, offered the invocation as follows:

O Lord our governor, whose will is good and gracious and whose law is truth, we come before You now and commend this state to Your merciful care that being guided by Your providence, we may live in Your peace. We ask Your special blessing on our Senators that being filled with the spirit of wisdom, charity, and justice, they may faithfully serve in their office to promote the well-being of all people. Fill them with the love of truth and righteousness, and make them ever mindful of their calling to serve the people of this state. And finally, teach all of us to rely on Your strength and to accept the responsibilities we have to our fellow citizens, that we may serve You faithfully in our generation and honor Your holy name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

LEAVES OF ABSENCE

On motion of Senator Whitmire, Senator Ellis was granted leave of absence for today on account of important business.

On motion of Senator Whitmire, Senator Hegar was granted leave of absence for today on account of illness.

GUESTS PRESENTED

The President introduced to the Senate members of his family and business associates: Gene and Linda Dewhurst, Marty and Mary Ann Young, Chris Dewhurst, Naomi Dewhurst, Justin Nevins, Maria Sophia Dewhurst, Don Nevins, and Mr. and Mrs. Curt Beck.

The Senate welcomed its guests.

PHYSICIAN OF THE DAY

Senator Watson was recognized and presented Dr. John Frederick of Austin as the Physician of the Day.

The Senate welcomed Dr. Frederick and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **HCR 26, SCR 3.**

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Darrien Skinner and Samantha Garrett of Ingleside, serving today as Honorary Senate Pages.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Wednesday, January 19, 2011 - 1

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SCR 6

Whitmire

Sponsor: Smithee

Granting the legislature permission to adjourn for more than three days during the period beginning on Thursday, January 13, 2011, and ending on Tuesday, January 18, 2011.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 35

Senator West offered the following resolution:

SR 35, Honoring the victims and heroes of the Arizona shooting.

The resolution was read.

On motion of Senator Lucio and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator West, **SR 35** was adopted by a rising vote of the Senate.

In honor of the memory of the victims of the Arizona shooting, the text of the resolution is printed at the end of today's *Senate Journal*.

SENATE RESOLUTION 36

Senator Eltife offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That the Rules of the Senate of the 81st Legislature are adopted as the Permanent Rules of the Senate of the 82nd Legislature with the following modifications:

1. Amend Rule 7.07 to read as follows:

LIMITATIONS ON INTRODUCTION

Rule 7.07. (a) A bill filed for introduction [~~may be introduced at any time~~] during the first 60 calendar days of the regular session [~~and~~] may be thereafter referred to the proper committee and disposed of under the rules of the Senate.

(b) Except as provided in Subsection (a) and in Rule 7.08, no bill shall be introduced after the first 60 calendar days of the session. This provision may only be suspended by an affirmative vote of four-fifths of the members of the Senate.

(c) It shall not be in order to introduce a local bill as defined by Rule 9.01 unless notice of publication, as provided by law, is attached.

2. Amend Rule 11.02 to read as follows:

LIST OF STANDING COMMITTEES

Rule 11.02. At the beginning of each regular session, the President shall appoint the following standing committees with the number of members indicated:

STANDING COMMITTEES

- (1) Committee on Administration (7 members)
- (2) Committee on Agriculture and Rural Affairs (5 members)
- (3) [~~2~~] Committee on Business and Commerce (9 members)
- (4) [~~3~~] Committee on Criminal Justice (7 members)
- (5) Committee on Economic Development (7 members)
- (6) [~~4~~] Committee on Education (9 members)
- (7) [~~5~~] Committee on Finance (15 members)
- (8) [~~6~~] Committee on Government Organization (7 members)
- (9) [~~7~~] Committee on Health and Human Services (9 members)
- (10) Committee on Higher Education (7 members)
- (11) [~~8~~] Committee on Intergovernmental Relations (5 members)
- (12) [~~9~~] Committee on International Relations and Trade (7 members)

- (13) [~~40~~] Committee on Jurisprudence (7 members)
 (14) [~~41~~] Committee on Natural Resources (11 members)
 (15) [~~42~~] Committee on Nominations (7 members)
 (16) [~~43~~] Committee on State Affairs (9 members)
 (17) [~~44~~] Committee on Transportation and Homeland Security (9 members)
 (18) [~~45~~] Committee on Veteran Affairs and Military Installations (5 members)

3. Amend Rule 12.08 to read as follows:

SUSPENSION OF CONFERENCE COMMITTEE RULES

Rule 12.08. (a) Limitations imposed on certain conference committees by the provisions of Rules 12.03, 12.04, 12.05, 12.06, and 12.07 may be suspended, in part, by permission of the Senate to enable consideration of and action on a specific matter or matters which otherwise would be in violation thereof. Such permission shall be granted only by resolution passed by majority vote of the Senate, with yeas and nays thereon to be recorded in the journal of the Senate. Such resolution shall specify in detail: (1) the exact nature of the matter or matters proposed to be considered; (2) the specific limitation or limitations to be suspended thereby; (3) the specific action contemplated by the conference committee thereon; and (4) except for a resolution suspending the limitations on the conferees for the general appropriations bill, the reasons why suspension of such limitations is being requested. In the application of this rule to appropriations bills, the resolution need not include changes in amounts resulting from a proposed salary plan or changes in format that do not affect the amount of an appropriation or the method of finance of an appropriation, but shall include a general statement describing the salary plan or format change. The resolution need not include differences in language which do not affect the substance of the bill. Permission thus granted shall suspend such limitations only for the matter or matters clearly specified in the resolution, and action of the conference committee shall be in conformity therewith.

(b) A copy of a resolution suspending the limitations on the conferees for the general appropriations bill must be furnished to each member at least 48 hours before any action thereon, if convened in regular session, and 24 hours before any action thereon, if convened in called session.

SR 36 was read and was adopted by the following vote: Yeas 18, Nays 11.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent-excused: Ellis, Hegar.

REASON FOR VOTE

Senator Birdwell submitted the following reason for vote on **SR 36**:

I cast a "Yes" vote on the rules package today so that the Senate may continue to address the people's business. I do, however, have great reservations about the "Two-thirds Rule," which requires the consent of 21 of 31 Members to allow a bill to

be considered on the floor by the entire body. This rule provides a minority of Members to direct or preclude the actions of the majority, an example of what founding father James Madison feared in Federalist 58: "It would no longer be the majority that would rule: the power would be transferred to the minority." The fundamental character of our Republic is that the will of the majority shall prevail.

BIRDWELL

REASON FOR VOTE

Senator Carona submitted the following reason for vote on **SR 36**:

This Journal notation is intended to register my opposition to the inconsistent application of the Senate's Two-thirds Rule by Special Order and to acknowledge my preference that the Senate operate by majority-rule in voting on all legislation. Regrettably, a sufficient number of votes to make such rule changes on this date does not exist.

CARONA

REASON FOR VOTE

Senator Davis submitted the following reason for vote on **SR 36**:

I will not vote in favor of the Senate Rules today because these rules fail Texas by promoting a single issue, voter ID, above all other issues in Texas such as funding public and higher education—which is critical to economic stability, job creation, and the ability to keep good-paying jobs—or legislation aimed at protecting the pocketbooks of Texans by lowering homeowners insurance rates and residential electricity rates or bills aimed at protecting our state's most vulnerable. I must oppose a change which excludes one particular issue from a rule, which has historically provided the Senate with a consensus-building tool that benefits constituents in districts throughout Texas.

DAVIS

REASON FOR VOTE

Senator Fraser submitted the following reason for vote on **SR 36**:

Since becoming a Senator in 1997, I have supported eliminating the rule requiring a vote of two-thirds of Members to bring a vote to the floor. However, I am voting today for this package of rules because as a whole it represents a good operating structure for the Senate.

FRASER

REASON FOR VOTE

Senator Huffman submitted the following reason for vote on **SR 36**:

Concerning the adoption of the Senate Rules for the 82nd legislative session. I respect the institution of the Senate and appreciate it as a deliberative body, however, I disagree with the limitations imposed by the use of the "blocker bill." I believe this practice limits the representation of the citizens of Senate District 17 and the majority of Texans. As the size and scope of each Senate district continues to grow, I believe a

vote of 60 percent of the Members present is a fair and equitable alternative. Over 60 years ago, when the Senate began using the "blocker bill," the population of Texas was under eight million. Today there are over 25 million Texans, with each Senator representing over 800,000. I believe the time has passed when a fraction of the body can prohibit debate on issues that have support of Members who represent over 16 million people.

HUFFMAN

REASON FOR VOTE

Senator Lucio submitted the following reason for vote on **SR 36**:

I voted against SR 36 for the same reason I voted against the rules resolution two years ago. The Senate Rules provision relating to "Special Orders" circumvents Senate tradition on the Two-thirds Rule and silences the voices of my constituents on issues deemed as "Special Orders," such as so-called voter ID.

LUCIO

REASON FOR VOTE

Senator Patrick submitted the following reason for vote on **SR 36**:

Let the record reflect that I object to the Two-thirds Rule that requires a supermajority of two-thirds of the Members present in order to bring legislation to the Senate floor. This rule allows a minority of the Members to have veto power over the will of the majority. The Two-thirds Rule can prevent the majority from voting on legislation that is favored by their constituents. This rule also undermines the basic principle of the U.S. Constitution of majority rule. "The fundamental principle of our Constitution requires that the will of the majority shall prevail," President George Washington. The founders considered requiring a two-thirds majority to pass legislation in Congress but rejected the idea. James Madison explained in Federalist 58 that a two-thirds approval margin had been rejected because power would be transferred to the rule of the minority. Thomas Jefferson also said, "The will of the majority is the natural law of every society and is the only sure guardian of the rights of man." I will continue to fight to change the Two-thirds Rule in the Senate, known as the blocker bill, until the Senate one day reflects the basic principle of our Constitution.

PATRICK

REASON FOR VOTE

Senator Van de Putte submitted the following reason for vote on **SR 36**:

Today I voted "Nay" on the Senate Rules because the lone issue of voter ID legislation remained as an item considered as a Special Order for procedural purposes. This was first adopted in the Senate Rules of the 81st Legislature and was carried over into the 82nd Legislature's Senate Rules resolution. I voted against the 81st legislative Senate Rules then, and remain opposed now, because this bypass of the two-thirds Senate tradition remains in the rules. I oppose any exception to the Senate's two-thirds tradition because the tradition ensures that the Texas Senate maintains a collaborative bipartisan tone. Any exception to the tradition only encourages Washington, D.C.,

style extreme partisanship, which I oppose. Further, I voted against the rules because, with the inclusion of this Special Order, the vote on the Senate Rules amounted to a proxy vote on voter ID legislation. I oppose such legislation because it discriminates against minority voters, low-income voters, and elderly voters, while claiming to solve a problem which bill supporters have been unable to document. If not for the inclusion of the Special Order, I would have been pleased to vote in favor of the Senate Rules.

VAN DE PUTTE

REASON FOR VOTE

Senator Watson submitted the following reason for vote on **SR 36**:

My vote against Senate Resolution 36 was over the continued inclusion of the Special Order that allows bills regarding identification checks of voters to be excluded from the Senate's traditional Two-thirds Rule. I oppose the special treatment of these bills and efforts to exempt them from rules governing other bills before the Senate. However, I strongly support the rule change requiring a 48-hour layout of the outside the bounds resolution for the conference committee report on the General Appropriations Act, and I believe it is an important step in assuring budget honesty.

WATSON

REASON FOR VOTE

Senator Zaffirini submitted the following reason for vote on **SR 36**:

Today I voted against SR 36 because of the inclusion of voter ID legislation as a Special Order. Exempting voter ID legislation from the Two-thirds Rule was wrong in the 81st legislative session, and it is still wrong in the 82nd. The Two-thirds Rule is a time-honored tradition for good reason. Not only does it force consensus-building but it also results in better legislation. Any exception to the Two-thirds Rule fosters partisanship and discord. I am proud of the Texas Senate's record as a collegial, deliberative body, but I am disappointed that we are beginning the session by placing politics above policy. Texas faces many challenges this session, and we should be setting the stage for collaboration, not partisanship. Were it not for the inclusion of the Special Order, I would have voted for SR 36.

ZAFFIRINI

SENATE CONCURRENT RESOLUTION 7

The President laid before the Senate the following resolution:

WHEREAS, Section 17, Article III, Texas Constitution, provides that neither house of the legislature may adjourn for more than three days without the consent of the other house; now, therefore, be it

RESOLVED by the 82nd Legislature of the State of Texas, That each house grant the other permission to adjourn for more than three days during the period beginning on Wednesday, January 19, 2011, and ending on Monday, January 24, 2011.

WHITMIRE

SCR 7 was read.

On motion of Senator Whitmire, the resolution was considered immediately and was adopted by the following vote: Yeas 29, Nays 0.

Absent-excused: Ellis, Hegar.

ACKNOWLEDGMENT

The President acknowledged the presence of Diane Nielsen.

The Senate welcomed its guest.

GUEST PRESENTED

Senator Van de Putte was recognized and introduced to the Senate Krystal Garza of Saint Luke's Catholic School.

The Senate welcomed its guest.

CO-AUTHOR OF SENATE BILL 331

On motion of Senator Shapiro, Senator Davis will be shown as Co-author of **SB 331**.

CO-AUTHOR OF SENATE BILL 341

On motion of Senator Uresti, Senator Wentworth will be shown as Co-author of **SB 341**.

CO-AUTHOR OF SENATE BILL 357

On motion of Senator Van de Putte, Senator Gallegos will be shown as Co-author of **SB 357**.

CO-AUTHOR OF SENATE JOINT RESOLUTION 14

On motion of Senator Van de Putte, Senator Gallegos will be shown as Co-author of **SJR 14**.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 27 by Estes, In memory of Susan Holland Campbell of Bowie.

SR 28 by Estes, In memory of Ray Clymer of Wichita Falls.

SR 30 by Uresti, In memory of Israel Diaz "Lito" Trinidad.

SR 32 by Watson, In memory of Maria Teresa "Terrie" Rabago of Austin.

SR 33 by Watson, In memory of Donato P. Rodriguez, Jr.

Congratulatory Resolutions

SR 26 by West, Commending Cristian Andrew-Rene Mattoon for achieving the rank of Eagle Scout.

SR 37 by Lucio, Recognizing Antonio Limas Hernandez of Harlingen on the occasion of his 100th birthday.

SR 38 by Lucio, Recognizing Resaca Elementary School in Brownsville on the occasion of its 80th anniversary.

Legislative Policy Resolution

SR 24 by Whitmire, Granting the Texas DeMolay Association permission to use the Senate Chamber in the State Capitol on February 12 and 13, 2011.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 12:00 p.m. adjourned, in memory of Christina Taylor Green, Dorothy Morris, Judge John Roll, Phyllis Schneck, Dory Stoddard, and Gabe Zimmerman, and in honor of those individuals who stepped forward to help the victims of the Arizona shooting, until 1:30 p.m. Monday, January 24, 2011.

APPENDIX

RESOLUTIONS ENROLLED

January 18, 2011

SR 15, SR 18, SR 19, SR 20, SR 21, SR 22, SR 23

In Memory
of
**Christina Taylor Green, Dorothy Morris, Judge John Roll, Phyllis
Schneck, Dory Stoddard, and Gabe Zimmerman**

Senate Resolution 35

WHEREAS, The Senate of the State of Texas joins the nation in mourning the six people tragically killed on January 8, 2011, when a gunman unleashed a hail of bullets during a community event held by United States Representative Gabrielle Giffords in Tucson, Arizona; and

WHEREAS, The members of the Texas Senate would like to recognize and honor those victims and those who were wounded in the shooting and express profound sympathy to their friends and family, as well as pay tribute to those who helped to put an end to the incident through their heroism; and

WHEREAS, The youngest victim, Christina Taylor Green, was only nine years old and attending the rally because of her budding interest in politics; and

WHEREAS, Dory Stoddard was a retired construction worker and was trying to shield his wife when he was shot; as a result of his selfless act, Mrs. Stoddard survived; and

WHEREAS, Dorothy Morris was a retired secretary, and her son spoke of her upbeat and helpful nature; she is survived by her husband, George, who was also shot during the incident; and

WHEREAS, Gabe Zimmerman was the constituent services representative for Congresswoman Giffords and was known for the tremendous compassion and understanding he demonstrated for others; and

WHEREAS, Judge John Roll was nominated by President George H. W. Bush to the federal bench in 1991 and was elevated to the position of chief judge in 2006; he is survived by his wife, three sons, and five grandchildren; and

WHEREAS, Phyllis Schneck is survived by three children, seven grandchildren, and a great-granddaughter; her daughter spoke of how she loved to laugh and talk with people; and

WHEREAS, President Obama is asking the American people to come together as a nation and to keep the victims and their families in their thoughts and prayers; and

WHEREAS, The members of the Texas Senate are also deeply concerned for those wounded in the shooting, including Congresswoman Giffords, and wish them all a swift recovery; and

WHEREAS, In the wake of this great tragedy, a number of heroes are deserving of special recognition for their courage and determination; Patricia Maisch was able to wrest another gun clip away from the shooter after he had been tackled by Roger Salzgeber and Bill D. Badger; Joseph Zamudio also

helped pin down the assailant, and Daniel Hernandez, Jr., stayed with Congresswoman Giffords after she was shot and kept her conscious and talking; and

WHEREAS, This terrible event has stunned our nation, and our hearts go out to those who were injured and to the loved ones of those who were killed; now, therefore, be it

RESOLVED, That the Senate of the 82nd Texas Legislature hereby pay tribute to all the victims of the tragic Arizona shooting and honor those brave individuals who stepped forward to help their fellow Americans; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the victims and their families and that when the Texas Senate adjourns this day, it do so in memory of Christina Taylor Green, Dorothy Morris, Chief Judge John Roll, Phyllis Schneck, Dory Stoddard, and Gabe Zimmerman.

WEST
CARONA
DAVIS
DEUELL
DUNCAN
ELLIS

GALLEGOS
HINOJOSA
HUFFMAN
NELSON
RODRIGUEZ
SELIGER

SHAPIRO
VAN DE PUTTE
WATSON
WHITMIRE
WILLIAMS

