

TO: HIGGINS, ANDERSON, CONNER, SO, CONRO
FROM: SCHMITT

Notes on a conversation with Ray Hutchison concerning his latest environmental proposal. June 8, 1974

Susan Reid had stopped by Hutchison's office to pick up the statement but they did not have a copy. This was a Saturday morning and his staff was not working. Hutchison called a short time later and requested that I come down to get the statement and let him explain it to me. He said he was very anxious to clear up the misunderstandings that were occurring. I spent one and a half hours with him that afternoon. He will not ask for reconsideration, will instead ask Style and Drafting to add his sentence as a clarification --does not change substance. This newest proposal is basically the same as the sec.6 a and b that was adopted. He said that he knew that the earlier version was poorly worded and had led to misinterpretations that he did not intend. He has added a last sentence to this one that makes it clear that the citizen right to sue agencies is an addition to rights that the citizen already has. (...Cumulative of those now or hereafter provided under law.) The whole tone of the statement is milder. Following are points that he made during the conversation.

Persons, as beneficiaries, of this trust..this did not preclude citizens suing when they had another status... as injured parties etc.

--- Trust, should it be determined by the courts, or by the legislature? Doggett's proposal was self executing, would have the courts decide parameters of the trust. Hutchison's would have the legislature determine parameters, with the Executive branch to carry it out. The citizen could use the courts to force the agencies to carry out what the law required them to do.

---Claimed that Doggett's "reasonable restrictions" was self executing and would lead to endless litigation while courts determined what it meant. "Only in manner provided by law" however would allow leg. to designate which courts would handle cases (Travis County District courts for instance); set up prerequisites like notification of violation with lead time for agency to correct violation, etc. This would allow citizens to sue in courts that had developed some expertise in the area rather than allowing 24 District courts to be handing down different decisions on similar cases.

---In the case of these suits the courts would be dealing with the question of the agency fulfilling the statutes, and the courts would not be setting up their own standards. Cases could be brought on both fact (of pollution?) and the law. Either individual or class action suits would be possible.

---Hutchison said in all fairness he had to warn us that his proposal would not permit citizens to sue state agencies once a project was approved and bonds sold. Citizens could sue during the planning stage and he would work for laws that made proper notification of public hearings at various stages of the planning mandatory. He said that it was important for revenue bonds to be incontestable once they were sold (and not subject to citizen suit that could halt a project) because no bond house would buy them with the risk of suit possible. ~~That~~ If project could not be funded with bonds then they would have to be funded from taxes.

---Hutchison sec.6a is much broader than just air and water.

---Doggett's "conserve and maintain" might not allow any development -- like hike trails etc. Might also prevent plants or industry from moving into less populated areas--~~degradation~~ of environment theory. He favors less concentrated population --dispersal of pop.

---Agreed that his proposal would require much careful legislation to be written, outlining agency duties, need for guidelines, etc.

ARTICLE X
GENERAL PROVISIONS

Section 6. PROTECTION OF THE ENVIRONMENT. (a) It is the public policy to protect the quality of the State's environment, and the legislature shall enact laws implementing and enforcing this policy.

(b) State agencies shall perform duties imposed on them by laws enacted by the legislature conserving, protecting, and regulating the use and appropriation of the State's air and surface waters and such other public natural resources as may be designated by law. Such agencies shall act as trustees for the benefit of the people of Texas in the performance of such duties, ^{each} and ^{in addition to} each person, as a beneficiary, has a right to enforce this trust against any such agency, but only in the manner provided by law. The rights herein granted are cumulative of those now or hereafter provided under law.

delete

*S & D changes
marked in*

50

The Dallas Morning News

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while Texas was a Republic

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SATURDAY, JUNE 8, 1974

Protecting Environment

Conservationists have jumped the constitutional convention's environmental section in the general provisions article. They should take another look.

Delegate Ray Hutchison of Dallas sponsored a substitute section that sets up a public trust doctrine naming specifically air and water as assets to be protected. Other items can be added by statute.

Environmentalists claim that Hutchison's proposal is a sell-out to polluters. But that's hardly the case. Under the section, the Legislature would set air and water quality standards and designate an agency to draw up rules to meet these standards. This is present procedure.

But Hutchison's approach allows citizens to sue the state agency if it fails to do its job. Under present law, citizens don't have this right.

What properly concerns environmentalists is the last sentence of the section. They construe it as preventing citizens from suing polluting companies for nuisance and injury

and as preventing the Legislature from allowing citizen suits in pollution cases.

Hutchison admits the language may be faulty, and he has asked the convention's style and drafting committee to straighten it out.

Unlike other proposals, Hutchison's amendment does not set out a lengthy list of items to be protected. Since air and water are necessities of life, they are given constitutional recognition.

The amendment provides the Legislature with the flexibility to provide protection in other areas as it desires while strengthening the citizen's role in enforcing antipollution laws.

Although some purists feel that the constitution should not speak to environmental protection at all, Hutchison's amendment represents a sensible and flexible approach to the problem. It is a compromise that should meet the requirements of both environmental and constitutional purists.

approved for
distribution
Ray Hutchison

Statement of
Representative Ray Hutchison
June 5, 1974

FOR IMMEDIATE USE

I am today inviting and urging representatives, with authority to speak, of the Sierra Club, the Environmental Coalition, the business and industrial community, the League of Women Voters, the news media and interested delegates to try again, in open session, to determine the real extent of the differences among the groups affected concerning the action of the convention to date concerning the environment, so that the convention can clearly perceive the issues in connection with any further consideration of this matter.

I am asking that the meeting be held upon recess, Monday, June 10, in the Member's Lounge of the House of Representatives.

I deeply regret that some members of the Sierra Club, the Environmental Coalition and other important and dedicated environmental groups have now placed themselves on the growing list normally reserved to special interest groups who march to the convention in its preliminary stages with the threat that if the new constitution in their special area of interest is not drafted in their own way they will try to defeat the entire document.

This is a special tragedy since the subject deals with the important fundamental rights of all, and not just a few, citizens of Texas in relation to their environment. The net effect of an emotional strategy of threat in order to achieve change is to polarize the convention and to jeopardize attempts to further consider this important question. Especially is this a possible result since I am informed that they may also oppose Section 7, which will continue to furnish a regulatory basis of our State's privately and publicly owned natural resources, a concept

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which was contained in their own proposed amendment.

It is noteworthy that the environmentalists became "constitutional purists" only after their own Doggett proposal was overwhelmingly defeated by the convention.

It is nevertheless obvious, even after brushing aside the demagoguery and emotion surrounding this subject, that either perceived or artificial misunderstandings persist with reference to the matters considered by the convention regarding the environment. No significant and meaningful conclusion can be reached regarding this subject until there is a clear understanding of the differences of the four proposals considered by the convention: the Committee Report, the Doggett Minority Report, the Doggett Substitute for the Minority Report, and my amendment, the now famous "Hutchison Amendment" and the new right for citizens which it grants.

Accordingly, I would hope that each representative in attendance would be prepared to express, by example or otherwise, his own views as to the meaning of the proposals listed above, one by one, and to detail the consequences of each to the people of Texas as he sees it.

I continue to believe that a positive step forward in the protection of the environment can be achieved in the new constitution. All interested groups can make a positive contribution by attending and participating in this effort. The first emotional hurdle to overcome may be for all to recognize that the convention has sought and welcomed the opinions of all

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citizens and groups, but that every effort is being made for the new constitution to be written by the delegates to the convention as representatives of all of the people, and not by those having special areas of interest, however and for whatever reason they may be motivated.

I will notify the press of the names of those who accept this invitation.

Thank you,

Ray Hutchison

June 25, 1974

The Honorable Doyle Willis
State Capitol, Room 147A
Austin, Texas 78711

Dear Delegate Willis:

Thank you for your note of June 10th. The League of Women Voters takes a position only on matters that we have studied. The League of Women Voters of Texas has never studied the state's right of appeal, and we have no position on it.

The League of Women Voters of Texas did issue a press release following passage of the Judicial Article on second reading that said although the article is less than we had hoped, it is still a product we can support.

Thank you for your support of the article on second reading.

Cordially yours,

Mrs. Darvin Winick, President
League of Women Voters of Texas

cc: SO, Con 0

League of Women Voters of Texas



Convention Office

MRS. DARVIN M. WINICK, PRESIDENT

May 28, 1974

To the Delegates of the Constitutional Convention:

The LWV of Texas is disappointed and discouraged that the Judiciary Article is becoming the victim of special interests. We are aware of the many hours of work that went into producing the Committee report. We thought it was a vast improvement over our current antiquated system.

Obviously some compromise was necessary, but we are fearful that the unified court system is about to be gutted. We are particularly concerned that the unified court system, especially the merger of the courts, the circuit courts and the unified administrative structure, be retained.

We believe that the circuit courts are an integral part of the unified system. The county judges have been well protected in this new constitution, now it is time to protect the right of the citizens of Texas to equal justice.

Very cordially yours,

Veta Winick

Mrs. Darvin Winick, President

6-10-74

MRS. WINICK:

I believe I have tried

to amend the Judicial Article

by allowing the State to appeal "ON QUESTIONS OF LAW" IN CRIMINAL CASES - to prevent criminals from escaping

cc: DeWitt Hale

Anderson, Conner, Hunter, Cragon, SO., ConO.

just sentences because of some technicality - WHAT SAYS THE LWVT on this vital section? Thanks!!

Bayle Willis - Delegate from Tarrant County

DEWITT HALE
STATE DEPARTMENT
STATE CAPITOL
AUSTIN, TEXAS 78701

STATE OF TEXAS
OFFICE OF THE SECRETARY OF STATE
AUSTIN, TEXAS 78711

ACTIVITIES REPORT

Report of activities designed to influence legislation
pursuant to Article 6252-9c, V.A.C.S., filed for the period of
through

month day year month day year
by

Registrant
on behalf of

- I. EXPENDITURES - For purposes of this report, the word
"expenditures" is defined by Article 6252-9c, V.A.C.S.,
as follows:
"a payment, distribution, loan, advance, reimburse-
ment, deposit, or gift of money or any thing of value,
and includes a contract, promise, or agreement, whether
or not legally enforceable, to make an expenditure."*

1. Total expenditures made by registrant for directly
communicating with a member of the legislative or
executive branch to influence legislation, including
expenditures made by others on behalf of myself for
those direct communications if the expenditures were
made with my express and/or implied consent or were
ratified by me:

A. Postage and telegraph	\$	
B. Publication and advertising	\$	
C. Travel and fees	\$	
D. Entertainment	\$	
E. Gifts, loans, and political contributions	\$	
F. Other *expenditures	\$	
TOTAL	\$	

- II. LEGISLATION - For purposes of this report, the word
"legislation" is defined by Article 6252-9c, V.A.C.S.,
as follows:

"a bill, resolution, amendment, nomination, or other
matter pending in either house of the legislature;
any other matter which may be the subject of action
by either house, including the introduction, consider-
ation, passage, defeat, approval, or veto of the matter;
or any matter pending in or which may be the subject of
action by a constitutional convention."

1. List legislation supported or opposed by Registrant.

	() supported	() opposed
	() supported	() opposed
	() supported	() opposed
	() supported	() opposed
	() supported	() opposed

2. List legislation supported or opposed by any person you, the registrant, have retained or employed to appear on your behalf, or by any other person appearing on your behalf, together with a statement of your position for or against such legislation.

Legislation

_____	() supported	() opposed
_____	() supported	() opposed
_____	() supported	() opposed
_____	() supported	() opposed
_____	() supported	() opposed

Statement of Registrant's Position:

Legislation

_____	() supported	() opposed
_____	() supported	() opposed
_____	() supported	() opposed
_____	() supported	() opposed
_____	() supported	() opposed

VERIFICATION

I do solemnly swear that the foregoing Activities Report, filed herewith is in all things true and correct, and fully shows all information required to be reported by me pursuant to Article 6252-9c, V.A.C.S.

Signature of Registrant

Sworn to and subscribed before me by _____
this the _____ day of _____, 197____,
to certify which, witness my hand and seal.

Notary Public, _____
County, Texas

Where additional space is needed, please attach pages of the approximate same size and identify section to which the attached pages pertain.