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# The Lone Star Report

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## Interview: TEA Commissioner Robert Scott

by William Lutz

This week, Gov. **Rick Perry** announced the State of Texas will not be applying for aid under the federal "Race to the Top" program. This follows an earlier announcement that the state won't subject itself to the federal government's new education standards. We spoke with Commissioner of Education **Robert Scott**—a Perry appointee—to discuss recent policy trends at the Texas Education Agency and find out why there's so much concern about what's going on at the federal level.

**LSR:** Why were you concerned with what the Obama administration is trying to do with national standards, and why have you and the Governor taken the stand that you all have decided to take here?

**Scott:** We were initially asked to sign a piece of paper that we would commit to adopt national standards before they were even drafted. So it felt like that moment when you're at a car dealership

when the salesman writes down a number and says, "Please sign here, and I'll go check with my sales manager." It felt a lot like that where you get that pit of your stomach feeling that something's not quite right if they won't even show me the standards before I'm committed to them. So that was the first red flag.

The second red flag was when they tied it to this Race to the Top Program. So they were originally sold as voluntary standards, and we said "Okay, we'll wait and see." And I publicly said, "Hey if they're higher than ours, then we ought to take a look at them and see what we need to adopt." But then they tied it to the Race to the Top money. So they said, "You can't get your tax dollars back from the federal government unless you sign on to these standards, which by the way still haven't been written." So I'm worried about the switch after the bait, and what these standards will look like.

And I think it's also an issue of fiscal responsibility. We have just gone through our college and

career readiness standards development process and are incorporating that into our state curriculum standards. We bought the English-Language Arts books and the math books. We've aligned our assessments and our professional development. To throw all of that work out and just start over with these yet unwritten standards, I'd have to send a bill to the Legislature for about \$3 billion, to go and do that process again, buy new books, align our professional development and align our assessments. Again, for standards that no one has seen.

**LSR:** The public and some folks in DC may not understand how connected the adoption of new standards is with the rest of the Texas education system. The elected State Board of Education gets public input and adopts standards, like they just did with English-Language Arts and are about to do with social studies. With respect to English-Language Arts,

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## TPPF orientation highlights current controversies

by Mark Lavergne and William Lutz

The Texas Public Policy Foundation began its annual policy orientation Jan. 14, covering a host of issues from criminal justice to property rights to western education to transportation. Attendees numbered in the hundreds, including several state House and Senate members.

The orientations often provide a crash course in Texas' current political controversies, featuring panels that include state-level policymakers and other experts. It's not uncommon for state lawmakers to express a concern at a TPPF conference in the interim and bring a bill addressing those concerns the following session.

The two-day forum was to wrap up Friday, Jan. 15. Some highlights from opening day.

### Criminal Justice

The criminal justice system is likely going to face cuts next session. The question is, where?

Senate Criminal Justice Chairman **John Whitmire** (D-Houston) and House Corrections Chairman **Jim McReynolds** (D-Lufkin) both

urged that diversionary measures not take cuts on "the front end or the back end," meaning neither probation nor parole programs should be shrunk.

The Texas Department of Criminal Justice spends 88 percent of its budget on correctional facilities and 12 percent on those diversionary programs, said Dr. **Tony Fabelo** of the Council of State Governments. Whitmire and McReynolds hope to keep diversionary spending at the same level, meaning the state might shut down facilities in favor of diversionary programs.

Panelists generally agreed that such would be the fiscally responsible thing to do. **Adam Gelb**, with the Pew Center on the States' Public Safety Performance Project, said it costs Texas \$42 a day to house someone in jail, about 15 times what it costs to supervise someone in a community.

### 'Overcriminalization'

Perhaps it would be easier to find jails to close if more people were not imprisoned for breaking obscure laws, of which Texas has too

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many. **Marc Levin**, director of TPPF's Center for Effective Justice, said Texas has on the books over 1700 criminal offenses, not counting new rules enacted by state agencies.

**Shannon Edmonds**, government relations director for the Texas District and County Attorneys Association, said 196 new criminal offenses have been created since 2001. In non-criminal codes, he said, there are more than over 1500 enumerated crimes.

Why so? "Follow the money," Edmonds suggested, saying limited access to the civil justice system, litigation costs, and tort reform have contributed to "overcriminalization." In other words, a person injured by a drunk chiropractor, and unable to sue, asks the Legislature to make chiropractic treatment under the influence a crime. That happened in Texas.

Rep. **Bill Callegari** (R-Katy) said that occupational licensing, which provides practitioners the exclusive right to engage in a practice, has gotten out of hand, with more than 400 types of businesses and occupations presently regulated. About a third of Texas' workforce is now subject to licensing, including auctioneers, he said, and operating without a license can be a criminal offense. Callegari said licensing protects existing licensees from competition, increases costs for consumers and reduces the rate of job growth.

Better alternatives, he said, are enforcement of existing fraud and deceptive practices laws, private accreditation services, and more tools for consumer choice.

**Tim Lynch**, director of the Cato Institute's Project on Criminal Justice, said the traditional definition of crime—intent plus overt act—is eroding. The proliferation of obscure criminal laws, he said, means people can break laws with no knowledge, far less any intent.

**Regulatory takings and "smart growth"**

Recent progress has been made in the area of property rights protections in Texas, particularly against government use of eminent domain, but conference panelists expressed concern over regulatory takings whereby the government takes only the use of the land, not legal ownership. Which means the private citizen's name remains on the title. He pays taxes on a property he no longer controls. Panelist Rep. **Bryan Hughes** (R-Mineola) called this approach the worst type of taking.

A property rights and land use expert from Houston, Prof. **Matthew Festa** of South Texas College of Law, warned that regulatory takings could be heavily employed by local govern-

ments, thus undermining individual property rights. Festa said that under most zoning codes such regulatory takings are illegal. But proponents of smart growth policies are pushing for different regulations that allow such takings, rather than seeking to do away with the ordinances altogether in favor of a market-based approach—which Festa, like Hughes, prefers.

Hughes said he plans to bring some property rights-related bills in the next session, including one to protect a landowner's right to harvest minerals on his land. He also plans to look at the "takings impact analysis." The way the property rights bill of 1995 was written, the government does not have to do an analysis in every case. But he said requiring governments to do such analyses in all cases would make the process more transparent.

He said legislation like that has a real chance to pass next session because of 1) the Taxed Enough Already ("TEA") party movement and frustration with government over-reaching, and 2) the slowing economy.

**Western Civilization**

Addressing the question, "Western Civilization: Dead or Alive in Academia," panelists all agreed Western Civilization is important but disagreed as to the extent it is dying in academia and also how to revive it.

**Richard Brake** with the Intercollegiate Studies Institute, Wilmington, Del., praised the Legislature for requiring six hours of American history and government of all students. He noted that at most elite private colleges and universities, students leave knowing less about American government than when they arrived, but that Texas students do better after four years.

**Steve Balch**, president of the National Association of Scholars, called for a greater commitment on the part of universities to teaching Western Civilization. He noted that whereas there are 249 women's studies major programs and 154 African-American Studies majors at U. S. universities, only nine institutions profiled in the Peterson's Guide to Colleges had a Western Civilization major.

**Lorraine Pangle**, co-director of the Thomas Jefferson Center for the Study of Core Ideas at the University of Texas at Austin, noted that the program she helps lead gained the approval of the university's faculty council. Emphasis on pre-professional programs like engineering has undercut interest in "Western Civ," she said. She argued for fixing historical ignorance at the K-12 level and said lawmakers could encourage modification of the state core curricu-

lum and fund promising faculty-led programs that emphasize great books.

Rep. **Lois Kolkhorst** (R-Brenham) discussed her experiences trying to get more study of Western Civilization at state universities, which eventually resulted in the filing of HB 2746—a bill creating a school of Ethics, Western Civilization, and American Tradition at the University of Texas at Austin. Kolkhorst noted with surprise that last year the University of Texas at Austin took the phrases "Western Civilization" and "American Institutions" out of the name of what eventually became the Thomas Jefferson Center for Core Ideas. She noted that the attacks, or lack of emphasis, on Western Civilization can eventually lead to calls for redistribution of wealth. She mentioned a student from UT who had testified before the Legislature on the difficulty of finding courses that explain what it means to be an American.

**Transportation**

At the panel sessions titled, "There's no such thing as a Free Road," lawmakers debated whether raising taxes is a solution to the state's road problems.

Former House Appropriations chairman **Talmadge Heflin**, who now directs TPPF's Center for Fiscal Policy, argued against the need for a tax increase. Before even considering such an increase, said Heflin, cities and counties should use the second penny of local sales taxes to improve transportation. He said the state should also end diversions from the highway fund and set reasonable priorities.

Rep. **Joe Pickett** (D-El Paso) noted that the current gas tax, unchanged since 1991, is a flat amount per gallon rather than a percentage of the price. He noted that any proposal to reduce diversions requires general revenue—a likely problem in the next session, which will have a tight budget and the duty of redistricting. He encouraged those who don't like a gas tax increase to come up with a better idea to pay for needed roads.

Sen. **Robert Nichols** (R-Jacksonville) pointed to the failure of the existing gas tax to keep pace with growth and the improving fuel economy of cars. He suggested a constitutional amendment to end diversions and also discussed his idea to dedicate a portion of severance taxes that currently go into the rainy day fund in years with high oil and gas prices (and hence high revenues for the tax).

When asked whether comprehensive development agreements or public-private partnerships would be renewed in 2011, both Nichols and Pickett expressed skepticism. ☐

