

# Perry, Abbott take EPA regulations to court

by William Lutz

Gov. **Rick Perry**'s battle against intrusions of the federal government into states' rights now heads to the courthouse.

Perry held a news conference Feb. 16 with Atty. Gen. **Greg Abbott** and Commissioner of Agriculture **Todd Staples** to denounce President **Barack Obama**'s Environmental Protection Agency for trying to regulate carbon dioxide administratively, in the event Congress does not pass "Cap and Trade" global warming regulation legislation sought by the administration.

The state's lawsuit seeks to prevent the Environmental Protection Agency from declaring carbon dioxide a danger to human health.

The U.S. Supreme Court ruled in *Massachusetts v. EPA*, in 2007, that the agency had the authority—if it found convincing scientific evidence—to regulate so-called greenhouse gasses, which some scientists argue cause global climate change. But Perry and Abbott are arguing the agency is relying on junk science to do so.

The Perry-Abbott action was not a campaign event, per se. The filing occurred on the deadline to challenge the EPA's endangerment finding in court, which is when lawyers traditionally file those actions.

That said, the deadline fell on a very politically convenient day for Perry—the start of early voting. For the past year, Perry has built his entire re-election campaign around bashing Washington, D. C., and portraying his economic leadership as a better alternative. In similar vein, Perry refused to take some federal unemployment insurance money that had

strings attached and told the federal government to buzz off when it tried to get the state to adopt national education standards.

Perry's action set off a flurry from interested parties. Environmentalists slammed the governor and accused him of being oblivious to green energy jobs.

"Instead of suing the EPA, Perry should be taking proactive steps to reduce greenhouse gas emissions and build up our clean energy economy," said **Tom "Smitty" Smith**, who heads the Texas office of Public Citizen, a Ralph Nader affiliate. "Our governor likes to brag about all he's done to promote wind and energy efficiency and the emissions Texas has avoided as a result, but at the same time he is hammering through a second Texas coal rush that will negate all that hard work and add 77 million tons of CO<sub>2</sub> to Texas's already overheated air."

Perry questions the science behind the global warming theory, and Abbott mentions expressly an English controversy over the integrity of global warming data in his remarks. "Prominent climate scientists associated with the [Intergovernmental Panel on Climate Change] were engaged in an ongoing, orchestrated effort to violate freedom of information laws, exclude scientific research, and manipulate temperature data," he added, referring several times in the news conference to the scandal in East Anglia, where climate change researchers ignored data and admitted to seeking to marginalize scientists who didn't agree with their viewpoint on climate change.

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# Perry appointee challenged in GOP Supreme Court primary

by **Andy Hogue**

After four months on the bench, Texas Supreme Court Justice **Eva Guzman** is running for a full term. She is challenged by **Rose Vela**, a Corpus Christi 13th Court of Appeals Judge, on the Republican ticket, for Place 9 on Texas' highest civil court.

One of them will go on to face Libertarian **Jack Armstrong** of Austin and Democrat **Blake Bailey** of Tyler in November.

Guzman, 49, was appointed by Gov. **Rick Perry** in October, replacing outgoing Justice **Scott Brister** and becoming the first Hispanic female on the Texas Supreme Court. After graduating from the University of Houston and South Texas College of Law, Guzman practiced family and civil law for a decade, and later served as a family court judge for two years. Perry nominated her to a vacancy on Houston's 14th Court of Appeals in 2001, where she captured the GOP primary in 2004 with 71 percent of those voting.

Vela, 45, also a Hispanic female judge with about a decade's worth of experience in district court, became the first Republican elected to the 13th Court of Appeals in 2006. Before that, she ran successfully as a Democrat for a district court spot.

Vela has not collected any endorsements — nor any major PAC donations — but said those may not be necessary, due to her history of unseating incumbents. In 1998, when President **Bill Clinton** named 148th Judicial District Judge **Hilda Tagle** to a federal district court after the Nueces County Democratic Primary, party executives named Vela as the general election candidate to face Gov. **George W. Bush's** appointee **Robert Pate**. Vela won by 51 percent.

"I grew up in a military family, and was raised conservative ..." Vela said. "But in South Texas back then, there was no such thing as a Republican elected official [laughs]. I firmly believe that partisan politics do not belong in the courtroom, and one change I'd like to see is that partisan politics should have no place in electing judges."

Guzman, on the other hand, has significant backing from political activists and called herself a lifelong Republican. Endorsements include Perry, Texas Atty. Gen. **Greg Abbott**, Sen. **Dan Patrick** (R-Houston), former state rep-turned CINTRA lobbyist **Dan Shelley**, former Justices **Thomas Phillips** and **Craig Enoch**, Republican National Committeeman **Bill Crocker**, and Republican Party of Texas Chairman **Cathie Adams** (who

endorsed Guzman prior to Adams' becoming head of the Texas GOP), and the state's major daily papers.

In terms of funds, Vela has spent about \$10,000 and has \$2,105 cash on hand, mostly from private donors and \$1,800 from her county's GOP. Guzman had \$267,334 by the Feb. 1 reporting deadline — mostly from attorneys and corporate executives, with a \$10,000 donation from the HillCo Partners lobbying firm.

## *Is the Supreme Court too defendant-friendly?*

Guzman said whether or not the Supreme Court favors defendants "is not simply a yes or no question."

"If you look at the role of the Supreme Court which is to interpret the law," she said, "and you look at the [tort] reforms in the legislature, then you simply cannot characterize the decisions of the court as pro-plaintiff or pro-defense ... If the Supreme Court applies those laws as written, then there may be some perception that the laws are tilted toward defendants."

Vela did not have a yes-or-no answer either, but cited a 2007 study from a University of Texas law professor saying that in 2004 and 2005, 87 percent of the cases were decisions in favor of defendants.

"There's that argument ..." Vela said, noting that medical malpractice tort reform in

the form of Proposition 12 was passed the year before the study, in 2003. "I think that study speaks for itself."

## *New rules as a means of reform*

Many are not aware that the Texas Supreme Court has rulemaking authority over the judiciary in Texas, so each candidate was asked to suggest new rules that could change the legal profession in the Lone Star State.

"I think that the best way to move toward new rules or different rules is to get input from the public," Guzman said. "We could use some guidance in the form of technological issues — providing better access to our litigants. You should be able to pull up a brief anytime."

Vela said she would advocate the publication of the number of cases coming per each appellate justice on all the intermediate courts of appeals and the Texas Supreme Court.

"And the reason for that is, the Office of Court Administration does its annual survey to show which courts are backlogged, and there are arguments to be made that the Texas Supreme Court has a backlog. If the public has a right to know which judges have how many cases ... I think each judge would be much more accountable, and it would improve the efficiency of the court ... I'm probably going to get resistance to that, though." ☞

## *Global Warming/from 8*

Environmentalists defend the theory that man's activity is overheating the planet. "The overwhelming evidence by almost every credentialed climate scientist says the Earth is heating up," Smith said. "There is always going to be debate in science about how fast, how soon, and what the impact is going to be. What you're seeing is the noise on the radar screen. But the enormous body of scientifically certified and credentialed scientists all say climate is cooking and that the impacts are going to be significant."

Business groups praised the governor. Said Texas Association of Business President **Bill Hammond**: "EPA's endangerment finding is one step on a plan by which the new administration is attempting to use federal regulations to do what Congress has been wisely unwilling to do — dramatically increase the costs of energy to every business and consumer in America for the purpose of cutting the emissions of greenhouse gases — which will

have no measurable effect on greenhouse gas levels or public health or welfare."

The Texas Public Policy Foundation, along with U.S. Sen. **John Cornyn**, unveiled in Houston Feb. 18 a study saying proposals to combat global warming by regulating carbon would severely damage the Texas economy. Specifically, the study found that carbon regulation would cost 144,600-196,900 even after accounting for so-called "green" jobs that environmentalists claim this regulation would create. It also argues the regulations could cost the state's economy \$40 billion and \$2.8 billion in tax revenues.

"The sectors that would absorb the most damage from a cap of carbon emissions are among the most productive and central to Texas' economic success during the last decade," said TPPF's **Kathleen Hartnett White**. "These are the type of good-paying jobs we need to bring to Texas, rather than lose those jobs to foreign countries that don't handicap their industries with costly and ineffective carbon mandates." ☞

