Texas BOMA Legislative Update
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Happy Texas Independence Day! While March 2 usually allows the celebration of Texas becoming an independent nation, it also marks another type of independence for Texans this year—it marks the end of the primary election cycle. Those elections, which were held yesterday, contained some surprises.

Democratic Primary

On the Democratic side, there were few contested races up and down the ballot. At the top of the ticket, former Secretary of State Hillary Clinton easily defeated Vermont Senator Bernie Sanders. Moving down the ballot, there were two incumbent state senators in contested primaries, along with a few state representatives facing challengers.

Senator Jose Menendez, who won his seat in the senate in a 2015 special election, was challenged by Representative Trey Martinez-Fischer. This race, a rematch of the 2015 special election runoff, had the same result: Senator Menendez will continue to represent his San Antonio district in Austin for the next four years. Representative Martinez-Fischer will serve out the remainder of his term, but he had to forego re-election to run for the state senate. Also in San Antonio, Senator Carlos Uresti was challenged by Helen Madla, the widow of former Senator Frank Madla, who Senator Uresti defeated in 2006 to gain his seat. Senator Uresti easily won this race.

In the House, three incumbents had serious challengers: Representative Ron Reynolds (Missouri City) will go to a runoff against Angelique Bartholomew; Representative Sergio Munoz Jr. (Palmview) defeated his well-funded opponent, Abraham Padron; and Representative Mary Gonzalez (El Paso) won re-election against former Representative Chente Quintanilla, who held the seat before choosing not to seek re-election several years ago.

Republican Primary

In the Presidential contest, Texas Senator Ted Cruz won the state with nearly 44% of the vote. Businessman Donald Trump came in second with about 27%, and Florida Senator Marco Rubio third with 17.7%. Across the nation, the Super Tuesday primaries mostly went to Mr. Trump, though Senator Cruz won three states (including Texas) and Senator Rubio carried one (Minnesota).
The Republicans had two contested Senate races, both of which resulted from incumbents choosing not to seek reelection. In East Texas, Senator Kevin Eltife (Tyler) retired, resulting in a four-way primary that included two incumbent state representatives who chose to forego re-election for a chance at higher office. In that race, Representatives Bryan Hughes and David Simpson—two individuals who were in the anti-Straus faction in the House—will square off in the runoff. Representative Hughes nearly won the race without a runoff by garnering 48% of the vote. In the hill country, Senator Troy Fraser (Horseshoe Bay) retired. This race had six contestants, and resulted in a runoff between Representative Susan King (Abilene) and Dr. Dawn Buckingham.

There was decidedly more action in the House Republican primaries. As we have previously reported, Speaker Joe Straus (R-San Antonio) has faced serious opposition from the far right. In 2015, there were 19 representatives that voted against re-electing him as Speaker. This election cycle, the groups backing those 19 representatives tried to oust several of Straus’s key supporters in the primaries while simultaneously holding on to the Straus opponents. On the whole, it appears to be a stalemate, though that means Speaker Straus and his supporters won, as they will maintain control for another two years.

There was decidedly more action in the House primaries. While many incumbents faced challenges, only a few of the races turned into true contests. Among the incumbents who won their contests were: Representative Byron Cook (Corsicana), viewed as the top target of the anti-Straus groups, who managed a roughly 220 vote victory against businessman Thomas McNutt; Charlie Geren (Fort Worth), another key Straus ally; and Dan Flynn (Van), a committee chairman under Speaker Straus, who narrowly defeated his opponent, Bryan Slaton. Two anti-Straus incumbents lost their races: Representative Stuart Spitzer (Kaufman) lost to former Representative Lance Gooden, who Spitzer defeated in 2014; and Representative Molly White (Belton), who was defeated by Hugh Shine. Two pro-Straus incumbents lost as well: Representative Marsha Farney (Georgetown) lost to Terry Wilson, and Representative Debbie Riddle (Spring) lost to Valoree Swanson. Finally, two other incumbents, both of whom are committee chairmen, are going to a runoff: Representative Doug Miller (New Braunfels) will face off against Kyle Biedermann; and Representative Wayne Smith (Baytown) will face Briscoe Cain.

What the Results Mean

The runoffs will be held May 24, 2016. At this time, however, there appear to be few seats in play in the general election, meaning the primary election decides who will represent each district in Austin. The partisan makeup in the 2017 session will look much like its composition in 2015, with about 60% of the House being Republican and almost 2/3 of the Senate being Republican. We continue to believe Speaker Straus will be re-elected to his fifth term as speaker when the legislature convenes in 2017.

Open Carry Update

The new Texas Open Carry legislation had a January 1, 2016 effective date. As we have discussed and written on, this law has been met with much interest by the public in general and building owners and managers in particular. Over the past four or five months, our firm has fielded numerous calls and emails from Texas BOMA members with questions about the law.
These inquiries generally focus on questions about whether members should post the signage prohibiting concealed and/or open carry (as of today, Texas BOMA does not have an official position on this issue); the ability of Texas BOMA members to keep open carry out of buildings without posting the signage at the front door; and other questions about policies or politics related to carrying handguns.

We thought it may be helpful to remind readers of the advice we have been providing when asked. First, the only way to make the open and/or concealed carry of handguns criminal trespass is to (a) post the signage notice on every entrance to the building in accordance with the law, (b) provide written notice in accordance with the law to the individuals openly carrying, or (c) provide oral notice to the individual in accordance with the law. More practically, though, there are some considerations to make.

- When deciding whether to use oral or the non-posted written notice (as opposed to the posted notice at the building entry), one should keep in mind they are confronting an individual carrying a handgun. This means whoever provides the notice must be comfortable, and must strive to provide this notice in a non-threatening manner.

- We strongly recommend that a building owner or manager have a policy and stick to it. If the building security is going to approach anyone openly carrying, they must approach everyone openly carrying. The company will run the risk of a discrimination claim if they selectively ask individuals to leave the property while allowing others (whether based on age, race, gender, etc.) to carry handguns.

- Communication with tenants is key. Tenants and landlords should know what to expect from one another regarding policies, including whether and what types of notices will be used and the procedures used when someone is openly carrying a handgun. Having this open communication, along with a policy the management sticks to, may help with potential litigation exposure should an incident occur.