



Primer: How the Texas Speaker Killed Border Security

Introduction

The southern border is undeniably in crisis. President Joe Biden is overtly violating Article IV, Section 4 of the United States Constitution by failing to protect the states from invasion, as he persists in allowing cartels to have operational control of the border. In response, Texas has begun to take steps to invoke Article I, Section 10, Clause 3 of the United States Constitution to defend Texas from invasion. Thus far, such actions have mainly consisted of water buoy barriers and laying out razor wire to deter entry. While stronger actions can certainly be carried out by Gov. Abbott under an Article I invasion declaration, Texas faces resource and personnel limitations that limit or slow down his ability to carry out broader geographical actions under currently invoked authorities.

The Texas legislature had an opportunity to step in and do its job by passing new laws that address the logistical hurdles Texas faces in the broader implementation of Operation Lone Star, but it utterly failed to meet the moment. This failure ultimately lies at the feet of Speaker of the Texas House, Dade Phelan, who sabotaged legislative efforts that sought to protect Texas and enhance Gov. Abbott's border security enforcement capabilities.

While the political failure is confined to Texas elected officials—in particular, Speaker Phelan—the implications are more wide-ranging and ominous. Over 100,000 Americans are perishing every year from cartel-trafficked fentanyl and other lethal drugs. Fentanyl is the leading cause of death for Americans between the ages of 18 and 45.¹ Untold thousands of women and children are being sex trafficked. Communities all over America are overrun with illegal immigrants who do not share their culture, their language, or their values.

The actions of Speaker Phelan and his allies to thwart border security are not confined to the boundaries of the Lone Star state.

Background: Leading up to the 88th Legislative Session

As the humanitarian and security catastrophe at the southern border grew leading up to and during Texas's 88th Legislative Session, conservatives hoped that Texas would pass real border security legislation. The Republican Party of Texas (RPT) went into the legislative session with only eight priorities, one of which was securing the border. Nearly every Republican legislator campaigned on the issue, including Speaker Phelan.

¹Briano, C. (January 19, 2024). "Year in Review: DEA Innovates to Fight Fentanyl," *Drug Enforcement Administration*. <https://www.dea.gov/press-releases/2024/01/19/year-review-dea-innovates-fight-fentanyl>

Phelan became speaker in 2021 following former Speaker Dennis Bonnen's resignation in the wake of an alleged quid pro quo bribery scheme caught on tape, which blurred the lines of legality, but was clearly immoral at the very least.² Contrary to what one might assume, Phelan does not have total support from his party. He openly courted Democrat support in his campaign for the office. He announced he had received the endorsement of a bipartisan majority of lawmakers before the House Republican Caucus meeting in which the party would have normally chosen their nominee for speaker.³

Phelan is known to make backdoor (and sometimes not-so-backdoor) deals with Democrats to keep his leadership position in a mutually beneficial arrangement for both parties.⁴ Speaker Phelan has a handful of loyal Republicans who support him, many of whom are liberals who rank as some of the least conservative GOP members in the state House.⁵ There is an unspoken strategy of Phelan loyalists working with Democrats as a coalition to secure enough votes to protect Speaker Phelan's position if needed. Once the unofficial math is clear to all Members, and the writing is on the wall, the public-facing process of electing a Speaker commences. This usually has the appearance of near-unanimous Republican support for the Speaker candidate but it is often hard to ascertain what level of support is effectively coerced versus sincere.

This same uniparty strategy was exercised more openly during the tenure of former Speaker Joe Straus (R-San Antonio). Following political blowback to Straus's open alliances with progressive Democrats, this coalitional arrangement moved to a behind-the-scenes understanding. But its existence still lingers as a guard against any effort by conservatives to put in place a Speaker dedicated to advancing a conservative agenda. The unspoken threat of once again openly working with Democrats to bypass conservatives creates the mirage of near-unanimous Republican support for Phelan's speakership.

Republican dissenters from the Phelan regime risk a de facto session "death sentence" for their legislative priorities, meaning they will lose opportunities to serve on or chair good committees, any prospective legislative efforts will be routed towards committees where they will be pigeonholed, and establishment Republican groups will help pick well-funded primary challengers to run against them. Further, Speaker Phelan's close allies chair every single committee and carry legislation reserved for the "Speaker's priorities."

² Nicole Cobler (December 20, 2019). "Bonnen 'likely violated' law but shouldn't be charged, report says," *Austin American-Statesman*.
<https://www.statesman.com/story/news/politics/2019/12/20/bonnen-likely-violated-law-but-shouldnt-be-charged-report-says/2038089007/>.

³ Dade Phelan Tweet (November 4, 2020). "List of Endorsees," *Twitter*.

<https://twitter.com/dadephelan/status/1324057417387331584?s=46&t=yoRaohotqXP0omWUE7Z7EQ>

⁴ Waltens, B. (October 26, 2023). "Democrat Lawmaker: I've Been a 'Good F***ing Soldier' for Dade Phelan," *Texas Scorecard*. <https://texasscorecard.com/state/democrat-lawmaker-ive-been-a-good-fing-soldier-for-dade-phelan/>

⁵ Jones, M. (June 20, 2023). "Analysis: The 2023 Texas House, From Right to Left," *The Texas Tribune*.
<https://www.texastribune.org/2023/06/20/mark-jones-texas-house-2023-right-left/>

Importantly, Phelan's control extends to the two most powerful committees: Calendars and State Affairs.

The Key House Committees

The Texas House State Affairs Committee is where good bills often go to die. Nothing gets out of the State Affairs Committee without the approval of House leadership. Chaired by Rep. Todd Hunter (R-Corpus Cristi), a loyal ally to Speaker Phelan, they work together to throttle the flow of legislation, prioritizing advancing the efforts of their allies while routinely putting conservative efforts at the bottom of the stack to run out the clock and de facto kill those bills.

The House Calendars Committee, chaired by Speaker Phelan's ally Rep. Dustin Burrows (R-Lubbock), is even more powerful. It can hold bills already passed from their original committee and keep them from reaching the full floor. Short of that, the Calendars Committee can shove conservative priority bills so far down the calendar that they will never be heard by the body before the end of the session.

The night of the House bill passage deadline in the 88th legislative session saw the Democrats cheer, despite the death of some of their bills, because it meant the death of all of the remaining conservative bills sitting unheard at the bottom of the calendar as well. For Democrats, their unofficial alliance with Speaker Phelan, as with recent previous Speakers Joe Straus and Dennis Bonnen, pays off in a state where they remain in the minority.

The Calendars Committee allows the Speaker to pick and choose what the House will take up. This last year, this tactic was used to stall the advance of numerous conservative bills. These include:

- A ban on state pensions contributing to ESG funds;⁶
- A ban on voting machines from China;⁷ and
- A bill requiring parental consent for the sexual education of minors.⁸

While it might seem counterintuitive, these dynamics create an environment where congressional Republicans in Washington D.C. are arguably more ethical when it comes to respecting the will of voters than Republicans in the Texas House.

In Focus: Border Security Legislation

There were two particularly important border security bills put forward in the last legislative session that would have enhanced or greatly expanded Gov. Abbott's ability to secure the border. The first, [House Bill 1491](#), the Texas Title 42 Act, by Rep. Brian Harrison (R-Midlothian)—modeled after the federal Title 42 authorities invoked by the Trump administration—would have codified the ability of Texas to remove any illegal immigrant back to

⁶Texas Legislature Online (Accessed February 5, 2024). "History of Senate Bill 1446, 88th Legislative Session," *Texas Legislature Online*. <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB1446>

⁷Texas Legislature Online (Accessed February 5, 2024). "History of Senate Bill 1846, 88th Legislative Session," *Texas Legislature Online*. <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB1846>

⁸Texas Legislature Online (Accessed February 5, 2024). "History of Senate Bill 163, 88th Legislative Session," *Texas Legislature Online*. <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB163>

Mexico so long as the federal government has a declared state of emergency for COVID, COVID-related travel warnings when traveling to other countries, or a federal COVID vaccine mandate. Shortly after it was filed, Gov. Abbott specifically endorsed this bill and asked the Legislature to send it to his desk.

The bill's proposal to provide public health authorities to secure the border was predicated on having an existing declared COVID emergency. This was controversial at the time because of its perceived relation to unpopular COVID mandates, closures, shots, distancing, etc., occurring in Texas. However, the core concept of shutting down the border if it can be established that any communicable diseases are crossing it, unattached to unpopular COVID-related government overreach within the state, should have been more broadly debated and considered. This bill could have easily been amended and fixed to assuage concerns and add another arrow in the quiver of state border security efforts, as well as to address the plethora of other communicable diseases flowing across the open border.⁹

The second of these two important bills was [House Bill 20](#), by Rep. Matt Schaefer (R-Tyler), which also fully incorporated the previously mentioned Texas Title 42 Act, among other border security measures. HB 20 created a border protection unit under the Texas Department of Public Safety (DPS) with the specific goal of providing Gov. Abbott with a dedicated force to expand border security efforts. This was especially critical given the uncertainty of whether or not the Biden administration would attempt to deny Gov. Abbott the use of Texas National Guard units. To date, the biggest hurdle to expanding Operation Lone Star's footprint on the Texas border is manpower. HB 20 tackled that problem directly.

It is important to note that, by tradition, the Speaker and Lt. Governor each reserve roughly the first twenty bill numbers for their priority bills, which are generally fast-tracked through the legislative process. The first twenty numbered bills are assumed to pass its chamber with little interference. The fact that Rep. Schaefer's bill was HB 20 is no coincidence. Early on in the legislative session, Speaker Phelan indicated that he would work with Rep. Schaefer to get the bill passed. With that understanding, Rep. Schaefer sent his draft of the bill to Speaker Phelan's team for input and edits. At no point in this process with Speaker Phelan or his team were any technical concerns raised that would potentially prohibit passage.

Yet when Rep. Schaefer's bill made it to the House Floor, Rep. Rafael Anchia (D-Dallas) immediately initiated a "point of order" objection. Specifically, House Democrats cited Texas House Rule 8, Sections 1 & 3, arguing that the bill description did not give reasonable notice of the bill's contents and that the bill had more than one subject. As it pertained to the Rule 8, Section 1 claim, every bill in Texas has a summary describing the bill's contents. In this case, the description in HB 20 referenced efforts to "ensure the safety and welfare of the border region of this state, including protection from ongoing criminal activity..." The parliamentarian argued

⁹ Betsy McCaughey (April 18, 2023). "Biden's open borders are bringing contagious diseases to your neighborhood," *New York Post*.
<https://nypost.com/2023/04/18/bidens-open-borders-are-bringing-contagious-diseases-to-your-neighborhood/>.

that because the bill text advances “an express declaration of war” while the bill summary included no reference to “war power,” it constituted insufficient notice.

This is a faulty argument.

The bill did not advance an express declaration of war—only the U.S. Congress has the authority to “declare war.” Article I, Section 10, Clause 3 merely references a state war power that is analogous to the inherent natural right of defense. Moreover, the Texas legislature itself does not possess the legislative ability to invoke Article I, Section 10, Clause 3 as that power resides with the governor of a state alone. Thus, the bill merely acknowledges already existing authorities, in a de facto “whereas” manner, as the impetus for other statutory changes that were properly included in the summary of the bill. The situation was analogous to including the phrase “free speech” in a bill and subsequently bringing the bill down on a “point of order” because its summary did not explicitly list the First Amendment. Such reasoning is objectively a tortured and pedantic reading of the rule; on its own, reason enough to call for a new parliamentarian to be hired.

As it pertained to Rule 8, Section 3, the sustained “point of order” objection absurdly argued that various border security components comprised more than one subject in the bill—despite the overall bill being solely focused on border security and not other, extraneous matters. The parliamentarian clearly abused the spirit of these Texas House rules, and thus abused the power of his position to achieve a far-left policy outcome.¹⁰

While there may well be grounds for a robust debate over the technical merits of the invocation of Rule 8, Section 1, this specific decision by Speaker Phelan and the parliamentarian did not emerge in a vacuum. This type of “point of order” objection is extremely common in the Texas House. It is one of the primary tactics used by Democrats in the minority to kill Republican bills. With that in mind, it is revealing that no one on Speaker Phelan’s team, including Speaker Phelan himself, raised this issue in the drafting of the legislation with Rep. Schaefer. It is extremely unlikely that this potential “point of order” was overlooked by Speaker Phelan’s team.

In the immediate aftermath of HB 20’s demise, Speaker Phelan had one of his close liberal allies, Rep. Ryan Guillen (R-Rio Grande City), substitute a nearly identical piece of legislation ([HB 7](#)) but with all of the most important provisions stripped out. Specifically, the Guillen bill removed Texas Title 42 public health authority, eliminated all references to the state’s Article I self-defense powers, and severely watered down the powers of the border protection unit.

Curiously, Rep. Guillen’s bill was miraculously crafted in a short span of minutes, in the middle of the night, and ready to go. This suggests that the replacement bill had been in the works well in advance and that the defeat of HB 20 was orchestrated by Speaker Phelan and his team to advance toothless border bills that were “less controversial” in the eyes of his progressive Democrat allies and corporate press outlets in Texas.

¹⁰Texas Legislature Online (Accessed February 6, 2024). “Ruling by the Speaker on HB20,” *Texas Legislature Online*. <https://capitol.texas.gov/tlodocs/88R/pool/pdf/88R-HB20-Publish.pdf>

The result of Speaker Phelan's betrayal is that Gov. Abbott has been deprived of important public health authorities, legislative backing for his invocation of invasion authorities, and a dedicated border protection unit. The latter provision remains a critical missing element for Gov. Abbott's efforts to secure the border to this day, depriving him of the manpower needed to defend Texas from record illegal immigrant flow. While Speaker Phelan carried out a calculated effort to sabotage Gov. Abbott's efforts to secure the border, the "point of order" killing HB 20 was sustained by Speaker Phelan on the recommendation of the House parliamentarian.

The House Parliamentarian

The parliamentarian gives guidance, history, and precedence when there is a question asked of the Speaker—typically an inquiry or "point of order." Though it is not uncommon for the Speaker to defer to the parliamentarian's advice, the Speaker ultimately makes a final decision even if that means overruling the parliamentarian. Hugh Brady, the current parliamentarian who was first appointed to this role in 2019 by then-Republican Speaker Dennis Bonnen, is highly biased toward left-wing policy outcomes.

Brady served as general counsel for the White House Office of Administration under President Barack Obama from 2014 to 2017 as well as Parliamentarian for the Travis County Democrat Party. It was Brady who gave the recommendation that Rep. Schaefer's HB 20 violated Texas House rules. By sustaining the parliamentarian's opinion, instead of overruling it, Speaker Phelan effectively handed his power over to the open borders progressive minority of the Texas House.

Importantly, the position of parliamentarian is filled by appointment from the Speaker's office before each session. The parliamentarian is physically present next to the presiding member (usually the Speaker) to offer advice on rules of order, procedure, and questions by members. Although the parliamentarian is not a politician per se, he or she is chosen by and ultimately works at the pleasure of the Speaker. The appointment of a well-known progressive as his parliamentarian and one of his top advisors for House floor activity is illustrative of Speaker Phelan's mindset concerning key conservative policy priorities. This decision—to keep Brady in his role—allowed Speaker Phelan to sustain points of order that put an end to multiple RPT priorities, including key efforts to secure the border, empower students and parents through school choice, and abolish Democrat-controlled committee chairs.¹¹

Brady has a reputation for aiding progressive lawmakers throughout his three legislative sessions operating as the parliamentarian, and he has been accused of a conflict of interest, given that the law firm he founded has been retained by Democrat-led municipalities that have led efforts by Democrats to advance procedural maneuvers to kill conservative legislation that Brady is then tasked with ruling on.¹² Specifically, Democrats in the Texas House routinely

¹¹ RPT Staff Report (June 2, 2023). "Legislative Priorities Report for June 2023," *Republican Party of Texas*. <https://texasgop.org/legislative-priorities-6-2-23/>

¹²Austin Journal Report (June 1, 2023). "House Legislative Rulings' Connection to 'Shadowy Legal Efforts' Raises Questions," *Austin Journal*.

initiate a “point of order” against conservative bills even if they are unsure if their objection is valid. They know that the parliamentarian is their ally and will either coach them on how to make their specific objection valid or direct them toward a different objection under House rules that can be more justifiably sustained. Not only does Brady routinely help coach Democrats, but according to multiple Texas House members, he aggressively argues against Republicans who challenge these objections or raise a “point of order.” A parliamentarian should not see their position as a partisan cudgel, but instead as a neutral position that adjudicates procedural claims, and someone who neither helps nor harms either party.

Speaker Phelan not only understands that this questionable activity occurs, but allows for it to happen as it ensures that the mutually beneficial power-sharing arrangement between himself and progressives in the minority remains in place. The arrangement serves as a political and policy bulwark against conservatives seeking to upend the status quo. This dynamic has led some Texas House lawmakers to suggest changing the rules to force the microphones to be turned on at the parliamentarian’s desk so that citizens can hear for themselves how the scales are tilted.

It remains an open question as to whether Speaker Phelan, who is known to meet with progressive lawmakers and erstwhile legislative allies behind closed doors, instructed the Democrat minority on how to kill HB 20. Did Speaker Phelan work with Rep. Anchia and his parliamentarian to coach the minority on what point of order to raise and how it could be sustained? Given the quick existence of the Guillen bill at the time the strong border bill was stopped, did Speaker Phelan coordinate ahead of time to let progressives in the minority know that there would be an effort to stop the Schaefer bill?

The answer to these last two questions is likely “yes.”

Although some defenders of Speaker Phelan have tried to argue that he cannot overrule the parliamentarian, there is nothing in the Texas House rules requiring a Speaker to adhere to the viewpoints of a parliamentarian. The parliamentarian is simply an advisor who gives recommendations before decision-making; in this case insight regarding the legislative history and parliamentary procedure. Making a decision contrary to the views of one's parliamentarian is no different than making a decision contrary to one's communications advisor. Speaker Phelan possesses the full authority to overrule any recommendation of a parliamentarian, especially when those recommendations are incorrect.

Moreover, members of the House can appeal the decision of the chair (appeal rulings made by Speaker Phelan), with a relatively low starting threshold of support from 10 members, followed by a two-thirds vote to officially overrule. This is notable in light of Speaker Phelan’s leadership team actively opposing an effort to appeal the decision. If Phelan argued that it was technically a rule violation, then even though he has the unilateral power to overrule the parliamentarian, he at least could have encouraged (or not actively opposed) a vote to overturn the decision. By not

only sustaining the parliamentarian's recommendation but also actively opposing efforts to overturn the decision, it appears that Speaker Phelan wanted to kill Rep. Schaefer's border security effort and then replace it with a toothless and weak replacement bill offered by Rep. Guillen.

The Biden Administration is Putting Texas in a Dangerous Situation

The Biden Administration is willfully refusing to secure the border and uphold its Article IV, Section 4 responsibilities to defend the states from invasion. As record numbers of Americans perish from cartel-trafficked fentanyl, communities are overwhelmed, and human trafficking proliferation hits all-time highs at the U.S. southern border, states must wield their inherent self-defense powers through Article I to protect their citizens from the chaos. The Biden administration's lawsuit against the State of Texas for erecting its border barriers signals that the administration intends to abrogate its constitutional responsibilities. In that environment, the federal government is actively seeking to harm its citizens, meaning the states are the last line of defense to defend the constitutional order and America's sovereignty.

Gov. Abbott and Attorney General Paxton have finally moved in the right direction on Texas state action, though Gov. Abbott must authorize illegal border crossers to be taken back into Mexico if they cross into Texas between ports of entry if he wants to ultimately achieve his stated goals. The Texas legislature should have been hot on the heels of this action, making it clear that if the governor fully invokes and operationalizes his authorities, they will fully support that effort.

Texas remains in a dangerous and volatile situation. The Lone Star State faces a public health crisis, as fentanyl and infectious disease pour through the open border. Texas also faces a humanitarian crisis, as cartels are allowed to murder, rape, abuse, and traffic men, women, and children, leaving ill-equipped small border towns to deal with the healthcare, shelter, and food and water provisions for wave after wave of illegal aliens.

Conclusion

Speaker Dade Phelan and his allies in the Texas House bear a substantial part of the blame for the ongoing crisis at the Texas border. They bear complete responsibility for depriving Gov. Abbott of the resources, manpower, and additional authorities he needs to address the crisis. Procedural gimmicks and legislative hoodwinking cannot mask this reality.

To break up the corrupt status quo, institutional changes that allow the Speaker to be chosen within the majority party caucus only, through a secret ballot, should be adopted until there is confidence that a more open process will yield uncorrupted results.

Future Texas legislatures would do well to move away from the mold of recent Texas Speakers, who merely serve to advance the interests of the uniparty status quo in Austin. They should instead put in place a conservative, results-oriented Speaker who prioritizes advancing conservative policy goals, especially to ensure Texans—and Americans in general—are protected from the chaos overtaking the southern border and threatening the country.

