

## MEMORANDUM

TO: Deborah Fulton  
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FROM: Katherine Flukinger  
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DATE: April 9, 2012

SUBJECT: Summary of Recent Legislative Election Contests

The Texas Legislative Council has identified 114 legislative election contests over the period from 1846 to 2011. Of those, 89 occurred in the Texas House of Representatives and 25 occurred in the Texas Senate. From the time the council was created by the legislature in 1949 until 1979, there were no contests. Sixteen contests occurred in or after 1979, and all but one of them took place in the house. In the contest that arose in 1979, the council staff supported the contest process in a legal advisory and administrative role. That support has extended to all subsequent contests in the house, and the council remains the custodian of all the sets of election contest documents in those 15 house contests. The council provided limited support in the 2005 senate election contest, and the secretary of the senate retains custody of the election contest documents in that senate contest. The council also has assembled a collection of photocopied journal pages for the 98 identified contests before the creation of the council.

After the house contest of Patrick v. Cartwright (1979), the legislature significantly amended contest procedures, particularly by its authorization of a master of discovery to supervise contest discovery proceedings. This memorandum summarizes briefly, by session year, the 14 house contests and the one senate contest that occurred after the new procedures were adopted.

### Contest Histories

#### 1981

One challenge to the election of a house member was filed following the 1980 general election.

Brown v. Schoolcraft. Contestant Al Brown challenged the election of contestee Alan Schoolcraft to the House District 57C seat in Bexar County. The grounds for the contest related to absentee voting by military personnel whose San Antonio residency was disputed. The speaker appointed the master on December 8, 1980, and the committee on December 15. The committee met for organizational purposes on December 29 and in a four-day public hearing of the contest January 7-10, 1981. The legislature convened on January 13, and following another meeting on January 15 the committee issued two reports. The majority report recommended that the contestee be seated while the minority report recommended that the election be voided. The house adopted the minority report 78-52, voiding the election and prompting the call of a special election by the governor. Both majority and minority reports recommended continuance of committee proceedings to assess costs, but no house, journal, or council records indicate that the committee met again. Mr. Schoolcraft won the new election.

### **1983**

Two challenges to the election of house members were filed following the 1982 general election.

Scoggins v. Clarkston Shea. Contestant James Scoggins challenged the election of contestee Gwyn Clarkston Shea to the House District 98 seat in Dallas County. The contestant's petition alleged voting irregularities that enabled ineligible voters to cast ballots and have them counted while depriving certain eligible voters of those same opportunities. The speaker appointed the master and committee on December 10, 1982, but the contestant announced a withdrawal of the contest on December 17 before any discovery hearing by the master and before the committee first convened on January 5, 1983. The committee thus recommended seating the contestee and, in a supplemental report, recommended a partial assessment of costs against the contestant. On January 12, the second day of the session, the house without objection adopted the reports and approved the cost assessment.

Russell v. Staniswalis. Contestant Cecille Russell challenged the election of contestee Chip Staniswalis to the House District 87 seat in Potter County. The contestant's petition alleged illegal campaign communications and the casting and counting of ballots by ineligible voters, including convicted felons. The master and committee were the same as in Scoggins v. Clarkston Shea. Following a December 28, 1982, discovery hearing by the master, the contestant at the January 5, 1983, committee hearing announced a withdrawal of the contest. The committee recommended seating the contestee and, in a supplemental report, recommended a partial assessment of costs against the contestant. On January 12, the house without objection adopted the reports and approved the cost assessment.

## 1985

Two challenges to the election of house members were filed following the 1984 general election.

Walsh v. McKinney. Contestant Sam Walsh challenged the election of contestee Mike McKinney to the House District 15 seat encompassing Houston, Leon, Madison, and Grimes Counties and part of Montgomery County. The contestant's petition alleged a miscounting of ballots and voting by ineligible voters. The speaker appointed the master and committee on December 19, 1984. The master conducted discovery, and on January 4, 1985, the committee met for organizational purposes and ordered specified briefs from opposing counsel, setting a deadline of January 9. On January 8, the opening day of the session and one day before the deadline, the contestant filed a withdrawal of the contest. The committee so reported on January 10 and recommended against an assessment of costs. The house approved the report and recommendation on January 15.

Bigley v. Kuempel. Contestant George Bigley challenged the election of contestee Edmund Kuempel to the House District 46 seat encompassing Kendall, Comal, and Guadalupe Counties. The contestant's allegations related to influence by special interests, charges of ethics conflicts, and improper campaign activities by the opposing political party. The master, finding no legal grounds for the contest, ordered no discovery. The committee was the same as in Walsh v. McKinney. Following its organizational meeting on January 5, 1985, the committee on January 9 heard testimony from the contestant and voted to recommend seating the contestee. At a third meeting on January 14, the committee voted against an assessment of costs. The house approved the report and recommendations on January 15. The contestant subsequently sent a series of letters to the committee chairman, the Texas Legislative Council, and the Federal Election Commission, making additional allegations and challenging the handling of the contest. No further action was taken.

## 1989

One challenge to the election of a house member was filed following the 1988 general election.

Watson v. Jackson. Contestant Ed Watson challenged the election of contestee Mike Jackson to the House District 129 seat in Harris County. The contestant's petition alleged misconduct of the election by election administrators and the miscounting of ballots, including the counting of illegal votes. Following his December 28, 1988, appointment, the master issued a series of discovery orders relating to the ballots, and photocopies of the ballots were forwarded to the Texas Legislative Council. Committee appointment was deferred until January 11, 1989, the second day of the session. The committee chair on January 13 issued to the parties a prehearing order requiring from them a discussion of factual, legal, and jurisdictional issues and their respective contentions. The contestant offered a withdrawal of the contest on January 15, which

was accepted by the committee in a brief public hearing on January 16. The speaker announced the withdrawal on the house floor the same day and discharged the committee from further responsibility.

### **1993**

One challenge to the election of a house member was filed following the 1992 general election.

Fogo v. Talton. Contestant Donald Fogo challenged the election of contestee Robert Talton to the House District 144 seat in Harris County. The contestant's initial petition, before amendment, alleged a number of ineligible voters and the ineligibility of the contestee to hold the office of state representative. The contestee's response alleged improper service of contest notice by the contestant and mistakes by the local recount committee in favor of the contestant. The speaker appointed a master on December 18, 1992, and discovery conferences between the master and opposing counsel led to a severance from the contest of the issue of the contestee's eligibility for office. The contestant amended his petition accordingly. The master issued several discovery and scheduling orders, including the setting of deadlines and the requiring of specified briefs by opposing counsel. Redistricting and precinct boundary changes clouded the issue of voter ineligibility, and the Harris County voter registrar forwarded to the Texas Legislative Council a set of voter registration lists and other information, including a map of the boundary changes. The speaker appointed an election contest committee on January 4, 1993. Discovery continued, and the master opted for local deposition of questionable voters by opposing counsel. The parties agreed on a set of written deposition questions, and the master issued subpoenas for counsel to obtain the depositions. The master also secured from the district attorney and U.S. attorney for Harris County letters granting immunity from prosecution of any illegal voters potentially incriminated by their deposition testimony.

On January 11, one day before the legislature convened, Representative Ken Yarbrough notified the secretary of state of his intent to challenge the contestee's eligibility for office. The contestee later the same day signed an agreement to take his seat in the house conditionally, pending the outcomes of the election contest and eligibility challenge. Meanwhile, on January 11 the committee held an organizational hearing, at which time the chair issued a prehearing scheduling order setting deadlines for the completion of depositions, the amendment of pleadings, the filing of motions and evidence, and other conclusion of discovery. The house referred Representative Yarbrough's challenge to the master and committee on January 13, and the chair the following day issued a similar prehearing scheduling and procedural order relating to that challenge. The master later amended certain of these deadlines on behalf of the chair.

Voter depositions in Houston began on January 13 and continued through January 27. Opposing counsel, supported by subpoenas from the master, also took depositions from selected election and local government officials relating to contest and Talton eligibility issues. The master

issued subpoenas for testimony by certain of these officials before the committee in Austin. The committee held a prehearing conference on February 2 relating to both the election contest and the eligibility challenge. The vice chair resigned from the committee for personal reasons that day, and on February 3 the speaker filled the committee and vice chair vacancies. The committee held a public hearing of the election contest on February 3 and ruled that the contestant had failed to meet his burden of clear and convincing evidence that the election's outcome was not the true outcome. The committee held a public hearing of the eligibility challenge on February 4 and ruled that Representative Yarbrough had failed to show clear and convincing evidence demonstrating Mr. Talton's ineligibility for office. On February 12, Mr. Fogo tendered a request for withdrawal of the election contest. The house on February 15 adopted a resolution that read the withdrawal into the journal, discharged the master and committee, eliminated the need for a report from either, assessed to the parties in the election contest and eligibility challenge their own costs, assessed to the house the other costs of the proceedings, and provided for the unconditional seating of Representative Talton.

## **1995**

One challenge to the election of a house member was filed following the 1994 general election.

Erickson v. Wohlgemuth. Contestant Bernard Erickson challenged the election of contestee Arlene Wohlgemuth to the House District 58 seat encompassing Bosque, Johnson, and Somervell Counties. The contestant's petition alleged that the contestee's votes included a sufficient number of ineligible voters to reverse or place in doubt the election outcome. The contestee's response alleged that the Johnson County recount committee improperly counted certain ballots in favor of the contestant and that the recount committee chair was neither a resident nor a qualified voter in Johnson County. The speaker appointed the master and committee on December 21, 1994. On the following day at a discovery conference in Dallas, the master issued discovery orders to voter registrars and county clerks of the district's three counties. On December 23, the contestant filed a \$5,000 cost bond with the chief clerk of the house, pursuant to a statutory requirement that had taken effect since the Fogo v. Talton contest of 1993.

The master, the parties and their counsel, and Texas Legislative Council staff met in a second discovery conference in Austin on January 5, 1995. The master the next day signed initial subpoenas for the deposition of questionable voters. On January 10, the legislature convened, and the previously appointed committee met for organizational purposes that afternoon. Members were briefed on contest procedures and the role of the master, and they heard from counsel for both parties. The chair issued a tentative prehearing scheduling order setting depositions and other deadlines and providing for a February 13 prehearing conference between committee and opposing counsel and a February 14 hearing of the contest. On January 11, by proclamation of the speaker, the master and committee members were continued as appointees of the new legislature.

Deposition of voters began on January 13 and lasted through February 9, after an extension by the committee chair and master of the deadline for its conclusion. On January 20, the master issued a discovery order partially overruling portions of the contestant's amended petition and the contestee's amended response. The prehearing conference and the committee hearing of the contest occurred as scheduled on February 13 and 14. The committee ruled that the contestant had failed to establish, by clear and convincing evidence, that the election's outcome was not the true outcome. That result was announced by the chair on February 15 on the house floor. The contestant on February 27 forwarded a withdrawal of the contest. The house on February 28 adopted a resolution that read the withdrawal into the journal, discharged the committee and master without further need to report, assessed to the parties in the election contest their own costs, assessed to the house the other costs of the proceedings, returned the \$5,000 bond amount to the contestant, and confirmed the seating of Representative Wohlgemuth.

## **1999**

One challenge to the election of a house member was filed following the 1998 general election.

Bohac v. Yarbrough. Contestant Dwayne Bohac challenged the election of contestee Ken Yarbrough to the House District 138 seat in Harris County. The contestant's petition, delivered to the house before the completion of a recount, alleged as contest grounds the casting of illegal votes as well as fraudulent, illegal, or mistaken conduct by election officers or other election officials. The contestant failed to file a cost bond or other security by the applicable deadline, December 14, 1998, and on December 16, the speaker by letter to the contestant dismissed the contestant's petition.

## **2005**

Three challenges to the election of house members and one challenge to a senator's eligibility were filed following the 2004 general election.

On December 6, 2004, for the three house challenges, the speaker appointed a master of discovery and a select committee to investigate the contested elections. The legislature convened on January 11, 2005, and on January 12 the previously appointed master and committee were continued as appointees of the legislature, and the speaker ordered that any order, ruling, finding, or other determination issued or made by either the committee or the master in any contest before the convening of the 79th Legislature was continued in effect. On February 10, the house adopted, on motions by the committee chair, the committee reports regarding the assessment of costs to the contestants.

Stick v. Strama. Contestant Jack Stick challenged the election of contestee Mark Strama

to the House District 50 seat in Travis County. The contestant's initial petition, before amendment, alleged that because Travis County election officials indicated they had difficulty reconciling voter information from election day, it was impossible to determine before the deadline to file a petition challenging an election who voted, whether illegal voting occurred, whether nonresidents of Travis County voted, and whether ineligible voters cast ballots in the election.

On December 13, 2004, the chief clerk of the house received a \$5,000 cash deposit from the contestant. On that same day, the master, by electronic mail, notified the parties and their representatives of several early deadlines in the contest. He asserted that the state of the petition and the time constraints involved in the contest made the scheduling of an initial discovery conference unproductive and ordered the contestant to file, by noon on December 15, an amended petition including detailed information and numbers regarding allegations of illegal voters or excluded legal voters. The contestant amended his petition accordingly. Shortly after the master's order, counsel for both parties, the master, the deputy house parliamentarian, and Texas Legislative Council staff began a series of weekly conference calls in which the timetables, deadlines, and factual contentions of the contest were discussed. On December 15, the master notified both parties, by electronic mail, that neither he nor the select committee would consider any speculation in reaching a decision on the contest and ordered the contestant to file a second amended petition providing specific evidence for his allegations. The contestant amended his petition accordingly.

On December 31, the contestant filed a motion to extend the deadline for production of illegal or excluded voter lists from January 1, 2005, to January 5, 2005. The master did not extend the deadline, but he noted that if the contestant discovered, through belated discovery of information held by public officials, additional alleged illegal votes, he would consider an extension of the deadline for such votes, provided that they did not materially prejudice the contestee and were only discoverable through new information provided by the elected officials. On January 5, the contestant withdrew the election contest. On January 26, the speaker ordered the statement of withdrawal to be printed in the journal and dismissed the contest. That same day, the committee met to consider the master's recommendations regarding the assessment of costs and agreed to assess costs against the contestant and return to him the remainder of the cost bond.

Opiela v. Gonzalez-Tourelles. Contestant Eric Opiela challenged the election of contestee Yvonne Gonzalez-Tourelles to the House District 35 seat encompassing Atascosa, Bee, Goliad, Jim Wells, Karnes, Live Oak, and McMullen Counties. The contestant's petition, delivered to the house before the completion of a recount, alleged illegal voting. On December 9, 2004, the contestant filed a \$5,000 cash deposit with the chief clerk's office.

On December 10, the master initiated a series of conference calls between counsel for both parties, the master, the deputy house parliamentarian, and Texas Legislative Council staff

during which the timetables, deadlines, and legal and factual contentions of the contest were discussed. In the first conference call, the master set a January 15, 2005, discovery deadline for the contest and emphasized to both parties that he would have to modify the rules of procedure to shorten time periods and use emergency guidelines as to scheduling because of the logistics of coping with large numbers of alleged illegal voters. The master further asserted that the contestant's allegations of a specific number of illegal ballots were not strong enough evidence to prove that the number of illegal voters exceeded the apparent victory margin. Pursuant to the master's orders, the contestant amended his petition three times from December 17, 2004, through January 4, 2005, each time alleging a different number of illegal votes cast in the election and providing a description of the classification of violations for each illegal vote, the factual basis of the alleged illegality, and the total number of votes within each classification. On January 10, the contestee filed a motion to dismiss the contest, alleging that the number of ballots in question would not be sufficient to overturn the margin of votes by which the contestant lost the election.

On January 14, the contestant filed a notice of nonsuit and withdrew the election contest. On January 26, the speaker ordered that the notice of nonsuit be printed in the journal and dismissed the contest. That same day, the committee met and adopted the master's recommendations to assess costs against the contestant and refund to him the remainder of the cost bond.

Heflin v. Vo. Contestant Talmadge Heflin challenged the election of contestee Hubert Vo to the House District 149 seat in Harris County. The contestant's petition, delivered to the house before the completion of a recount, alleged that voting irregularities and voter fraud occurred during the election and that the contestee was not a resident of District 149 under Section 1.015, Election Code. (The eligibility issue raised in the contestant's petition on the basis of the contestee's residence was not pursued in subsequent proceedings.) On December 3, 2004, the contestant filed a \$5,000 cash deposit with the chief clerk of the house.

Shortly after the appointment of the master, counsel for both parties, the master, the deputy house parliamentarian, and Texas Legislative Council staff began a series of eight weekly conference calls during which the parties presented their views regarding the case to the master, discussed the matters related to the conduct of the election contest, planned discovery procedures, and exchanged information. During these conference calls, the master issued several deadlines relating to the conduct of the election contest, including a January 15, 2005, discovery deadline. The parties agreed, with the master's approval, to a method of summoning witnesses, mostly persons alleged to have voted illegally. The parties also exchanged interrogatories and disclosures and exchanged informal discovery by electronic mail. Over the next several weeks, both parties took written and oral voter depositions. On January 5, the master modified his procedural order of December 9, 2004, and ordered that motions in the proceeding could be filed solely in the form of an electronic mail message.

On January 14, 2005, the master issued a notice of public hearing for the contest to be held on January 27. During the hearing, held on January 27 and 28, both parties tendered, and the master received, arguments and evidence in the contest. Following the hearing, the parties submitted post-hearing briefs to clarify evidence or expand on arguments of counsel. On February 7, the master issued to the committee his report and findings, which concluded the following: that the contestant failed to establish by clear and convincing evidence that the outcome of the contested election indicating the contestee had won was not the true outcome of the election, thus, the contest should be dismissed; that the contestee's vote margin was reduced from 33 votes to 16 votes and the additional ballots not yet opened and examined would not be enough to eliminate the margin of the contestee's victory; that the contestant produced no evidence of any intentional voter fraud that affected the final vote tally; and that Harris County election and legal authorities were investigating evidence that several voters in the district were fraudulently transferred into another district and their voter registrations transferred in a similar manner.

The contestant on February 7 filed a notice to withdraw the election contest. On February 8, the speaker ordered the contestant's statement of withdrawal to be printed in the journal and dismissed the contest. That same day, the committee met to consider the assessment of costs and unanimously adopted the master's recommendations that no costs be assessed against the contestant and that the entire cost bond be refunded to the contestant.

Delgado v. Gallegos. Contestant Susan Delgado challenged the election of contestee Mario V. Gallegos, Jr., to the Senate District 6 seat in Harris County. The contestant's petition, filed with the secretary of state on November 4, 2004, and delivered to the lieutenant governor on November 9, alleged as contest grounds that the contestee failed to comply with residency requirements and was ineligible for the District 6 state senatorial seat because the contestee had not lived in the district for the six months immediately preceding the date of the general election. The contestee filed a response on November 10 alleging that the contestee's eligibility to be a candidate for public office was not a proper ground for filing an election contest.

On November 19, the lieutenant governor appointed a master of discovery on the matter of the election contest, and on December 3, the master filed a report and order with the Senate Committee on State Affairs stating that the contestant's petition did not state the grounds necessary to maintain the contest and that discovery should not proceed in the contest.

On December 4, the contestant filed a first amended petition restating allegations of ineligibility of the contestee for office. On December 7, the master of discovery submitted another response stating that the contestant had still failed to cite the grounds necessary to maintain the contest and that the order signed on December 3 remained valid.

The Senate Committee on State Affairs conducted a public hearing on January 10, 2005, to investigate the factual and legal issues of this election contest. The committee found that the contestant failed to state the grounds necessary to maintain an election contest and recommended

that the contest be dismissed. The committee, on a vote of 9-0, voted to send the committee report to the full senate. On January 11, the committee report was read and adopted by the senate on a vote of 30-0.

## **2009**

One challenge to the election of a house member was filed following the 2008 general election.

Walker v. Hopson. Contestant Brian Walker challenged the election of contestee Chuck Hopson to the House District 11 seat encompassing Cherokee, Houston, Panola, and Rusk Counties. The contestant's petition, delivered to the house on December 18, 2008, alleged as contest grounds the casting of illegal votes as well as fraudulent, illegal, or mistaken conduct by election officers or other election officials.

The contestant filed a notice of withdrawal of election contest with the house on December 22. On December 23, the speaker by letter notified the contestant and contestee that he would not appoint a master of discovery or refer the contest to a committee and dismissed the contest. On January 14, 2009, a statement was read into the house journal confirming the dismissal of the contest.

## **2011**

One challenge to the election of a house member was filed following the 2010 general election.

Neil v. Howard. Contestant Dan Neil challenged the election of contestee Donna Howard to the House District 48 seat in Travis County. The contestant's original petition, delivered to the house on December 20, 2010, alleged as contest grounds the disparate treatment of certain overseas voters and the miscounting of ballots by county election officials, the possible loss or misplacement of ballots by the county clerk, and the casting of illegal votes by fraudulent and ineligible voters. The speaker appointed a master of discovery on December 28, and on January 12, 2011, following the convening of the 82nd Legislature on January 11, reappointed the master and appointed a select committee to investigate the contested election. On December 30, 2010, the contestant filed a \$5,000 cash deposit with the chief clerk of the house.

On December 29, the master began a series of conference calls and in-person conferences with counsel for both parties to discuss matters relating to discovery and the issues of the contest. On December 30, the master ordered the contestant to file an amended petition by January 3, 2011, to specifically identify any additional claim regarding certain alleged illegal voters and ordered the contestant to complete his discovery by January 7. In the contestant's first amended petition, filed on January 4, the contestant included as grounds for the contest that 531 suspense

voters may have illegally voted. On January 14, the master ordered the contestant and the contestee each to file a brief detailing their legal argument and authorities regarding the alleged disenfranchisement of certain overseas voters and the legality of votes of certain voters requiring a statement of residence. The master ordered the contestee to complete her discovery and file by January 25 any amended pleadings on which she intends to rely in this election contest.

On January 18, the contestant filed a brief in support of the argument that certain overseas voters were disenfranchised by the Travis County clerk. In the brief, the contestant argued that 222 Travis County residents living abroad who were eligible to vote in House District 48 and submitted a Federal Post Card Application (FPCA) to vote by absentee ballot in the November 2, 2010, general election, identifying themselves on the FPCA as a "U.S. Citizen Residing Outside the U.S. Indefinitely," wrongfully received a partial ballot that allowed them to participate only in the federal election. In support of this argument, the contestant cited provisions of the Texas Election Code that establish the conditions under which an FPCA applicant is entitled to a full ballot or a partial ballot. On the same day, the contestee filed a brief on election law issues in which the contestee argued that the secretary of state correctly concluded that citizens residing abroad indefinitely are not allowed to vote for state and local offices. In the brief, the contestee also argued that the votes of voters placed on a suspense list who were not asked to sign a statement of residence were rightfully counted, asserting that if any voters were required to sign a statement of residence but failed to do so, that failure would be the fault of the election officials and not the voter. The brief stated that there is no explicit command in the Election Code that a voter sign a statement of residence and no express provision of law that requires election officials to not count votes for people who failed to execute a statement of residence at the polls. The brief cited several court cases in which similar circumstances led to a finding that certain laws are considered directory and not mandatory.

The master's public hearing was held February 1-3, 2011, and February 7. During the hearing, the master heard arguments from both parties' counsel, heard live testimony of or conducted phone interviews with more than 40 witnesses, supervised a recount of mail ballots from three precincts in the district, and presided over the opening of three mail ballots that had previously been disallowed by the Travis County Early Voting Ballot Board. On February 12, the master issued his report and findings, which concluded that the contestant had failed to establish by clear and convincing evidence that the outcome of the contested election was not the true outcome of the election and that the contest should be dismissed; that the contestee's vote margin should be reduced from 12 to 4 votes; that the contestant produced no evidence of any intentional voter fraud that affected the final vote tally to his detriment; and that the contestant's challenge to all of the votes in question was based on technical, and apparently unintentional, violations of election law.

On February 23, the House Select Committee on Election Contest met to hear and consider the master's report and on March 15 held a public meeting on the election contest at which the committee heard presentations from both parties' counsel and a summary by the master

of his report. Immediately following the hearing, the committee met in executive session to consider the outcome of the contest and assess its costs. The committee ruled that the contestant failed to establish by clear and convincing evidence that the election contest outcome was not the true outcome and agreed to an assessment against the contestant for the costs of preparing the transcripts of the master's public hearing and a return to the contestant of the remainder of the cost bond.

On March 18, the contestant filed a notice to withdraw the election contest. On March 21, before the full house, the chair of the select committee made a motion to the speaker that the contestant's notice of withdrawal be printed in the journal, that the contest be dismissed, and that the cost assessment be approved. The speaker, hearing no objection from the members, so ordered.

### **General Commentary on Election Contests**

The speaker and lieutenant governor have broad discretion under Texas election law and rules of their respective chambers to appoint and determine the duties of masters and committees to hear election contests. The masters and committees appointed in the last 15 contests have used various procedures to discharge their duties. Contests in 1981, 1993, 1995, and 2011 proceeded all the way to a formal public hearing in the committee. The committee for the 1985 Bigley v. Kuempel contest conducted a more informal hearing on the merits. In the Heflin v. Vo contest in 2005, the master conducted the public hearing and issued a report of findings to the committee, which was followed by a withdrawal by the contestant. The committee and the house dealt only with the issue of cost assessment. In the Neil v. Howard contest in 2011, the master conducted a public hearing and issued a report of findings to the committee. The committee met in a public hearing to consider and hear testimony from the master on the report, then met again in a public hearing to consider presentations by the parties in the contest and receive a summary of the report by the master. Immediately following the second committee hearing, the committee met in executive session to determine its ruling and the assessment of costs. The contestant filed a notice of withdrawal, the speaker dismissed the contest, and the house voted only on the cost assessment. Other contests essentially ended before a hearing.

Under current election law, the chamber's presiding officer may refer the contest to a special committee, standing committee, or committee of the whole. Recent practice uniformly has been referral to a special committee. Committees in 1983 and 1985 had seven members. Those in 1981, 1989, 1993, 1995, 2005, and 2011 had nine. The 1983 and 1985 committees each were responsible for two different contests. The 1999 and 2009 contests ended before appointment of a committee. The 2005 house select committee was responsible for three house contests, while the Senate Committee on State Affairs was responsible for the single senate contest in 2005. The 2009 contest was dismissed without the appointment of either a master of discovery or a committee when the contestant filed a notice of withdrawal.

The 1979 law amending contest procedures allowed an election contest committee to be appointed and begin its deliberations in advance of the regular session. Since then, the usual practice has been to appoint the master and committee after the filing of the contest papers and to reappoint them once the new legislature convenes. In the 2011 contest, the speaker appointed only the master after the filing of contest papers and reappointed the master and appointed the committee after the legislature convened. Election laws do not necessarily require such reappointment, nor continuation of the same master or committee members. The original master and committee are creatures of the previous legislature, however, and consequently the advisable procedure is to reaffirm their status by appointment under the jurisdiction of the new legislature. Even in 1983, when the original committee completed its deliberations and adopted a report before the house convened, the speaker reappointed the committee and the committee readopted its report. Another common practice has been to appoint carryover incumbents, as the master legally must be a house member, and carryover committee members enable continuity once the new legislature convenes.

Texas law subsequent to the 1979 amendments remained silent on the question of whether either party to an election contest was entitled to take the oath of office pending contest determination. Based on congressional precedents, the parties to the 1981 contest executed and presented for filing in the house journal a seating agreement authorizing the contestee to be sworn in and vote on matters other than those involving the election contest. The parties to the two 1983 contests signed and filed similar documents. The legislature amended the law that year to make the crux of the agreements statutory, eliminating further need for such agreements as part of an election contest. However, a seating agreement was filed in 1993 since the challenge to the contestee's eligibility for office was not within the scope of an election contest and therefore not subject to the applicable statutes. Reference in the agreement to the contest as well as the eligibility issue was made only to avoid confusion about the fact that both issues were before the house.

Amendments in 1983 provided also that an election contest withdrawal preceding the committee report ended the contest without the need for such report for or approval of a report by the full chamber. The first withdrawal after this change occurred in 1985, but the committee and house followed earlier procedure and adopted and approved a committee report seating the contestee. Initial use of the simplified procedure did not occur until 1989, when the contestant submitted a withdrawal letter to the speaker the day before the committee's organizational meeting and followed with a statement to that effect before the committee. The committee simply accepted the withdrawal, and an announcement was read into the journal by the speaker. In 1993 and 1995, the contestant's withdrawal occurred after the committee had ruled adversely but before any filing of a committee report. The house in both cases adopted a resolution as a vehicle to read the withdrawal into the journal, conclude the eligibility challenge, and settle the issue of cost assessment. In 2005, all three house contests, including the contest on which the master held a public hearing, were withdrawn before the committee reports on cost assessment issues. In all three cases, by proclamation of the speaker, the withdrawals were read into the journal.

A 1993 amendment authorized the master, on the master's own motion or that of the

committee, to determine whether a contestant's petition is frivolous or does not state adequate grounds for a contest and to make any recommendations the master considers appropriate in the master's report to the committee. The committee may refuse to hear evidence or testimony presented in person if the master determines the contest to be frivolous or groundless. In the 2005 senate election contest, the master determined that the contestant's petition did not state the grounds necessary to maintain the contest, recommended to the Senate Committee on State Affairs that it refuse to hear testimony or other evidence, and ordered that discovery not proceed in that contest. The committee also found that the contestant failed to state the grounds necessary to continue with the contest, recommended that the contest be dismissed, and submitted a committee report to that effect to the full senate, which unanimously adopted the committee report.

### **Cost Assessment**

The house assessed costs against the parties in only 5 of the 15 contests covered by this memorandum. Partial assessments occurred in 1983, when contestants James Scoggins and Cecille Russell were assessed \$333.18 and \$572.66, respectively. The committee in its recommendation to the house deleted Texas Legislative Council staff salaries from the assessments in view of the fact that the contestants withdrew before the contests went to hearings. For Mr. Scoggins, the deleted amount was \$407.69; for Ms. Russell, \$1,787.25.

The 1981, 1993, and 1995 contests were more expensive because of the committee's formal hearing of evidence and the necessity for transcription of that record. Full costs of the three contests are unavailable, but the court reporter alone in 1993 yielded invoices totaling \$1,873.15, a figure that includes the eligibility challenge. In 1995, the court reporter expenditure increased to \$3,624. Those 1993 and 1995 amounts, moreover, represent only the transcription cost incurred by the legislature for the prehearing conferences and contest hearings, not the separate court reporter transcription and other expenses involved in the depositions, which were incurred by the parties. Other substantial but undocumented costs typically involve photocopying, telephone calls, fax transmissions, and the contributory time of council attorneys and assisting research staff.

A 1993 amendment required the contestant in a legislative election contest to file with the chief clerk of the house or the secretary of the senate a \$5,000 cost bond payable to the chamber and contestee. Alternatively, absent an affidavit of inability to pay costs, the contestant may file a cash deposit in lieu of bond. The decision whether to assess costs against the contestant or contestee (with certain restrictions), and the decision as to the amount of any assessments, remains with the appropriate chamber. The \$5,000 security does not set a ceiling on the ultimate assessment amount. A cost bond was filed and returned in 1995, but one was not filed in 1999, ending that contest.

In 2005, the house adopted the committees' reports and recommendations that costs be assessed against the contestant in two of the three contests. In Stick v. Strama, the house assessed \$1,500 against the contestant and refunded to him the remaining amount of the cost bond. In Opiela v. Gonzalez-Tourelles, the house assessed the contestant \$2,000 and refunded to him the

remaining amount of the cost bond. In Heflin v. Vo, the master made no recommendation regarding costs but stated in his report and findings to the committee that the committee, in determining whether to award costs, may wish to consider the costs to the house of conducting the master's public hearing in January 2005, the costs incurred by the parties in recording and transcribing the two-day hearing, and the contestant's and contestee's discovery of numerous illegal votes in that election. The house adopted the committee's recommendation that no costs be assessed against the contestant and that the entire cost bond be refunded to him. In Neil v. Howard, the house assessed against the contestant the costs for the court reporter's fees for the master's public hearing, totaling \$3,993.75, and refunded to the contestant the remaining amount of the cost bond.

### **Contest Chronologies**

Following the text of this memorandum are four tables showing the sequence of major events, with corresponding dates, for the 15 election contests since 1981. Table 1 covers the 1981, 1983, 1985, 1989, 1995, and 1999 contests and Table 3 covers the 2005, 2009, and 2011 contests. In both tables, the notation "N.A." indicates an action that was not applicable to a particular contest or pair of contests. In Table 2, shading of a row indicates actions relating to the eligibility challenge. Tables 2 and 4 cover the 1993 contest in the house and the 2005 contest in the senate, respectively, each of which involved a challenge to the contestee's eligibility for office. The eligibility issue raised in the petition in the 2005 Heflin v. Vo house election contest was not pursued in subsequent proceedings, and that contest is included in Table 3.

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Attachments

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

Action	Year					
	1981	1983	1985	1989	1995	1999
1. General election	11-04-80	11-02-82	11-06-84	11-08-88	11-08-94	11-03-98
2. Notice of contest given to contestee	11-12-80	11-10-82 (Russell) 11-12-82 (Scoggins)	11-08-84 (Bigley) 11-13-84 (Walsh)	12-16-88	12-14-94	11-27-98
3. Contest papers delivered to speaker	12-05-80	12-09-82 (Russell) 12-10-82 (Scoggins)	12-10-84 (Bigley) 12-14-84 (Walsh)	12-22-88	12-21-94	12-02-98 and 12-09-98
4. Speaker appoints master (*date of press release)	12-08-80	12-10-82*	12-19-84*	12-28-88*	12-21-94	N.A.
5. Speaker appoints committee	12-15-80	12-10-82	12-19-84	(see #27)	12-21-94	N.A.
6. Contestant posts bond	N.A.	N.A.	N.A.	N.A.	12-23-94	N.A.
7. Deadline for contestant's posting of bond passes	N.A.	N.A.	N.A.	N.A.	N.A.	12-14-98

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

Action	Year					
	1981	1983	1985	1989	1995	1999
8. Notice of withdrawal given	N.A.	12-17-82 (Scoggins)	N.A.	(see #22)	N.A.	N.A.
9. Speaker dismisses contest for lack of timely bond posting	N.A.	N.A.	N.A.	N.A.	N.A.	12-16-98
10. Master's proposed order of no discovery	N.A.	N.A.	12-21-84 (Bigley)	N.A.	N.A.	N.A.
11. Committee organizational meeting	(see #16)	(see #16)	1-04-85	(see #36)	(see #24)	N.A.
12. Master's prehearing meeting or discovery conference	12-29-80	12-28-82	1-05-85	12-29-88 (see also #29)	12-22-94 and 1-05-95	N.A.
13. Contestee amends response or files special exceptions to contestant's petition	N.A.	N.A.	N.A.	12-29-88 (see also #28)	(see #28 and #34)	N.A.
14. Master's report to committee	N.A.	12-31-82	N.A. (orders filed at various times)	(see #33)	N.A.	N.A.

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

Action	Year					
	1981	1983	1985	1989	1995	1999
15. Master's supplemental report to committee	N.A.	1-01-83	N.A.	N.A.	N.A.	N.A.
16. Committee organizational meeting	12-29-80	1-05-83	(see #11)	(see #36)	(see #24)	N.A.
17. Notice of withdrawal given	N.A.	1-05-83 (Russell)	(see #22)	(see #31)	(see #46)	N.A.
18. Contestant amends petition	N.A.	N.A.	N.A.	1-07-89	1-05-95	N.A.
19. Master's discovery deadline	N.A.	N.A.	N.A.	1-09-89	N.A.	N.A.
20. Committee discovery deadline, final prehearing conference	1-06-81	N.A.	N.A.	N.A.	N.A.	N.A.
21. Master begins issuing signed subpoenas for voter depositions	N.A.	N.A.	N.A.	N.A.	1-06-95	N.A.
22. Notice of withdrawal given	N.A.	(see #8 and #17)	1-08-85 (Walsh)	(see #31)	(see #46)	N.A.
23. House convenes	(see #40)	(see #40)	1-08-85	1-10-89	1-10-95	N.A.

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

Action	Year					
	1981	1983	1985	1989	1995	1999
24. Committee organizational meeting	(see #16)	(see #16)	(see #11)	(see #36)	1-10-95	N.A.
25. Master issues requests for voter immunity to district attorneys and U.S. attorney	N.A.	N.A.	N.A.	N.A.	1-10-95	N.A.
26. Resolution continues committee	(see #41)	(see #41)	1-09-85	N.A.	1-11-95	N.A.
27. Speaker reappoints committee	(see #5)	(see #5)	(see #5)	1-11-89	1-11-95	N.A.
28. Contestee amends response or files special exceptions to contestant's petition	N.A.	N.A.	N.A.	1-11-89 (see also #13)	1-11-95 (see also #34)	N.A.
29. Master's prehearing meeting or discovery conference	(see #12)	(see #12)	(see #12)	1-12-89 (see also #12)	(see #12)	N.A.
30. Voter depositions begin	N.A.	N.A.	N.A.	N.A.	1-13-95	N.A.
31. Notice of withdrawal given	N.A.	(see #8 and #17)	(see #22)	1-15-89	(see #46)	N.A.

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

Action	Year					
	1981	1983	1985	1989	1995	1999
32. Master's discovery ruling against portions of contestant's petition and contestee's answer	N.A.	N.A.	N.A.	N.A.	1-20-95	N.A.
33. Master's report to committee (*part of packet previously prepared for distribution at committee organizational meeting)	N.A.	(see #14)	(see #14)	1-16-89*	N.A.	N.A.
34. Contestee amends response or files special exceptions to contestant's petition	N.A.	N.A.	N.A.	(see #13 and #28)	2-09-95 (see also #28)	N.A.
35. Voter depositions end	N.A.	N.A.	N.A.	N.A.	2-09-95	N.A.
36. Committee organizational meeting (*formal announcement and acceptance of withdrawal)	(see #16)	(see #16)	(see #11)	1-16-89*	(see #24)	N.A.
37. Committee prehearing conference	N.A.	N.A.	N.A.	N.A.	2-13-95	N.A.

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

Action	Year					
	1981	1983	1985	1989	1995	1999
38. Committee hearing of contest (*because of second withdrawal, committee discussed costs, adopted partial recommendations)	1-07-81 to 1-10-81	1-05-83*	1-09-85	N.A.	2-14-95	N.A.
39. Parties agree to seating and voting issues	1-12-81	1-11-83	N.A.	N.A.	N.A.	N.A.
40. House convenes	1-13-81	1-11-83	(see #23)	(see #23)	(see #23)	N.A.
41. Resolution continues committee	1-13-81	1-11-83	(see #26)	N.A.	(see #26)	N.A.
42. Committee meeting post-hearing	1-15-81	N.A.	N.A.	N.A.	N.A.	N.A.
43. Committee adopts report (*includes minority report)	1-15-81*	1-11-83	1-14-85	N.A.	2-14-95	N.A.
44. House adopts committee report, seating contestee (*and assessing costs)	N.A.	1-12-83*	1-15-85	N.A.	N.A.	N.A.

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

Action	Year					
	1981	1983	1985	1989	1995	1999
45. House adopts minority report of committee, declaring election void	1-15-81	N.A.	N.A.	N.A.	N.A.	N.A.
46. Notice of withdrawal entered in journal	N.A.	N.A.	1-15-85 (Walsh)	1-16-89	2-28-95	N.A.
47. House adopts resolution, seating contestee (*and discharging committee and master, assessing parties their own costs, assessing other costs to house, and returning contestant's bond amount)	N.A.	N.A.	N.A.	N.A.	2-28-95*	N.A.
48. Governor calls special election	1-16-81	N.A.	N.A.	N.A.	N.A.	N.A.
49. Holdover attends house session and votes	1-16-81 to 2-07-81	N.A.	N.A.	N.A.	N.A.	N.A.
50. Filing deadline for special election	1-21-81	N.A.	N.A.	N.A.	N.A.	N.A.

**Table 1. House Election Contests Without Eligibility Issues: 1981 to 1999**

<b>Action</b>	<b>Year</b>					
	<b>1981</b>	<b>1983</b>	<b>1985</b>	<b>1989</b>	<b>1995</b>	<b>1999</b>
51. Special election	2-10-81	N.A.	N.A.	N.A.	N.A.	N.A.
52. Winner of special election seated	2-16-81	N.A.	N.A.	N.A.	N.A.	N.A.

**Table 2. House Election Contest of 1993, With an Eligibility Issue**

Action	Date
1. General election	11-3-92
2. Notice of contest in possession of contestee (from contestee's testimony; notice was delivered indirectly, and contestee contended that service did not meet legal requirements)	12-10-92
3. Contestant's petition filed with secretary of state	12-10-92
4. Speaker receives contestant's petition from secretary of state	12-11-92
5. Speaker receives canvass from secretary of state	12-11-92
6. Contestee's response filed with secretary of state	12-17-92
7. Speaker receives contestee's response from secretary of state	12-18-92
8. Speaker appoints master	12-18-92
9. Master issues discovery order scheduling first discovery conference	12-21-92
10. Master issues discovery orders to county clerk and voter registrar to make relevant information available to parties	12-21-92
11. First discovery conference between master and opposing counsel	12-22-92

**Table 2. House Election Contest of 1993, With an Eligibility Issue**

Action	Date
12. Master issues discovery order scheduling second discovery conference and instructing parties to prepare specified briefs and other documents	12-22-92
13. Contestee files special exceptions to contestant's petition	12-23-92
14. Master issues amended discovery order to voter registrar	12-23-92
15. Second discovery conference between master and opposing counsel; parties file briefs and other required documents	12-29-92
16. Contestee files amended special exceptions to contestant's petition	12-29-92
17. Master issues new discovery order to voter registrar designating contestant's counsel as master's agent for receipt of certified copies of poll lists and other documents for precincts in which illegal voters are alleged	12-29-92
18. Contestant files first amended petition, dropping from the contest the issue of contestant's eligibility for office (effectively severing that issue for separate house consideration)	12-30-92
19. Negotiation of voter deposition questions begins	1-4-93
20. Speaker appoints committee	1-4-93
21. Contestant files list of voters for whom contestant seeks subpoenas and depositions	1-5-93
22. Contestant's counsel files copies of poll lists and other documents received from voter registrar	1-5-93

**Table 2. House Election Contest of 1993, With an Eligibility Issue**

Action	Date
23. Contestee files first amended response to contestant's first amended petition	1-7-93
24. Contestee files list of voters for whom contestee seeks subpoenas and depositions	1-7-93
25. Master issues voter subpoenas to contestant	1-11-93
26. District attorney letter to master pledging not to prosecute illegal voters potentially incriminated by depositions	1-11-93
27. Contestee signs agreement taking house seat conditionally, dependent on outcome of contest and eligibility issue	1-11-93
28. Committee organizational meeting; chair issues prehearing scheduling order scheduling committee hearing of contest, scheduling prehearing conference, and setting deadlines for completion of depositions and other discovery activities	1-11-93
29. Notice of intent to challenge contestee's eligibility for office filed with secretary of state by reelected house member of opposite political party	1-11-93
30. House convenes	1-12-93
31. U.S. attorney letter to master pledging not to prosecute illegal voters potentially incriminated by depositions	1-12-93
32. Voter deposition questions finalized	1-12-93
33. Contestant's counsel, with participation of contestee's counsel, begins contestant's voter depositions	1-13-93

**Table 2. House Election Contest of 1993, With an Eligibility Issue**

Action	Date
34. Speaker reappoints master and committee	1-13-93
35. House refers to master and committee separate issue of contestee's eligibility for office	1-13-93
36. Chair issues prehearing scheduling and procedural order scheduling committee hearing of eligibility issue and setting deadlines for completion of various filings, including statement of grounds for eligibility challenge	1-14-93
37. Master issues voter subpoenas to contestee	1-15-93
38. Opposing counsel, without necessity for subpoenas, conducts depositions relating to contestant's attempt to serve notice of contest to contestee	1-19-93
39. Master issues subpoena to contestee for deposition of voter registrar and staff	1-19-93
40. Contestee's counsel, with participation of contestant's counsel, begins contestee's voter depositions	1-20-93
41. Master issues subpoena to contestee for deposition of county clerk	1-20-93
42. House member of opposite political party files statement of grounds for challenge of contestee's eligibility for office	1-20-93
43. Contestee's voter depositions conclude	1-21-93
44. Contestee's counsel, with participation of contestant's counsel, conducts deposition of county clerk, voter registrar, and voter registrar's staff	1-22-93

**Table 2. House Election Contest of 1993, With an Eligibility Issue**

Action	Date
45. Master issues discovery order extending deadline for completion of voter depositions as specified previously in chair's prehearing scheduling order for election contest	1-22-93
46. Master issues discovery order extending other specified deadlines from chair's prehearing scheduling order for election contest	1-25-93
47. Master issues protective order for specified counsel in election contest and eligibility challenge, giving house matters priority over conflicting court dates	1-25-93
48. Master issues subpoenas to contestee for depositions of local officials relating to eligibility challenge	1-26-93
49. Contestant's voter depositions conclude	1-27-93
50. Contestee's counsel, with participation of contestant's counsel, conducts depositions of local officials relating to eligibility challenge	1-27-93
51. Master issues subpoenas to contestant for appearances before election contest committee by voter registrar and local recount committee chair	1-27-93
52. Contestee files response to eligibility challenge	1-27-93
53. Master issues order amending specified deadline from chair's prehearing scheduling and procedural order relating to the eligibility challenge	1-28-93
54. Contestant files second amended petition	1-29-93

**Table 2. House Election Contest of 1993, With an Eligibility Issue**

Action	Date
55. Contestee files second amended response to contestant's second amended petition	1-29-93
56. Final discovery deadline	2-2-93
57. Committee vice chair resigns	2-2-93
58. Speaker fills committee and vice chair vacancies	2-3-93
59. Committee prehearing conference with parties and counsel on election contest and eligibility challenge	2-3-93
60. Committee formal hearing of election contest	2-3-93
61. Committee finds contestant has failed to meet burden of clear and convincing evidence	2-3-93
62. Committee formal hearing of eligibility challenge	2-4-93
63. Committee finds no clear and convincing evidence of contestee's ineligibility for office	2-4-93
64. Contestant requests withdrawal of election contest	2-12-93
65. House adopts resolution reading withdrawal into journal, discharging master and committee, assessing parties their own costs, assessing house all costs of master's and committee's proceedings, and seating contestee unconditionally	2-15-93

**Table 3. House Election Contests Without Eligibility Issues: 2005, 2009, and 2011**

<b>Action</b>	<b><u>Stick v. Strama</u> (2005)</b>	<b><u>Opiela v. Gonzalez-Tourelles</u> (2005)</b>	<b><u>Heflin v. Vo</u> (2005)</b>	<b><u>Walker v. Hopson</u> (2009)</b>	<b><u>Neil v. Howard</u> (2011)</b>
1. General election	11-02-04	11-02-04	11-02-04	11-04-08	11-02-10
2. Notice of contest given to contestee	11-25-04	11-24-04	11-24-04	12-15-08	12-20-10
3. Contest papers delivered to speaker	11-29-04	11-24-04	11-24-04	12-18-08	12-21-10
4. Contestee files special exceptions	N.A.	N.A.	N.A.	N.A.	12-21-10
5. Speaker appoints master	12-06-04	12-06-04	12-06-04	N.A.	12-28-10
6. Speaker appoints committee	12-06-04	12-06-04	12-06-04	N.A.	(see #14)
7. Contestant posts bond	12-13-04	12-09-04	12-09-04	N.A.	12-30-10
8. Contestant amends petition	12-15-04 12-20-04	12-17-04 12-22-04 1-04-05	1-21-05	N.A.	1-03-11 1-12-11
9. Master's discovery deadline	1-20-05	1-15-05	1-15-05	N.A.	1-07-11 <sup>1</sup> 1-25-11 <sup>2</sup>
10. Master's deadline for contestant and contestee each to file a brief detailing their legal argument and authorities	N.A.	N.A.	N.A.	N.A.	1-18-11

<sup>1</sup> Master's discovery deadline for contestant.

<sup>2</sup> Master's discovery deadline for contestee.

**Table 3. House Election Contests Without Eligibility Issues: 2005, 2009, and 2011**

<b>Action</b>	<b><u>Stick v. Strama</u> (2005)</b>	<b><u>Opiela v. Gonzalez-Tourelles</u> (2005)</b>	<b><u>Heflin v. Vo</u> (2005)</b>	<b><u>Walker v. Hopson</u> (2009)</b>	<b><u>Neil v. Howard</u> (2011)</b>
11. Master begins issuing signed subpoenas for voter depositions	N.A.	N.A.	1-11-05	N.A.	N.A.
12. Master issues an official notice over his signature that contestant and contestee may attach to subpoenas delivered to any witnesses requiring their appearance and testimony at the master's public hearing	N.A.	N.A.	N.A.	N.A.	2-01-11
13. House convenes	1-11-05	1-11-05	1-11-05	1-13-09	1-11-11
14. Speaker reappoints master and committee	1-12-05	1-12-05	1-12-05	N.A.	1-12-11 <sup>3</sup>
15. Contestant and contestee file briefs detailing their legal argument and authorities	N.A.	N.A.	N.A.	N.A.	1-18-11
16. Formal committee meeting announced before the house	1-26-05	1-26-05	(see #18)	N.A.	1-19-11 2-23-11
17. Master's public hearing of contest	N.A.	N.A.	1-27-05 to 1-28-05	N.A.	2-01-11 to 2-03-11; 2-07-11

<sup>3</sup> Speaker reappoints master and appoints committee.

**Table 3. House Election Contests Without Eligibility Issues: 2005, 2009, and 2011**

<b>Action</b>	<b><u>Stick v. Strama</u> (2005)</b>	<b><u>Opiela v. Gonzalez-Toureilles</u> (2005)</b>	<b><u>Heflin v. Vo</u> (2005)</b>	<b><u>Walker v. Hopson</u> (2009)</b>	<b><u>Neil v. Howard</u> (2011)</b>
18. Committee is granted permission to meet while the house is in session	(see #16)	(see #16)	2-03-05	N.A.	1-13-11
19. Master issues his report and findings of contest to the committee	N.A.	N.A.	2-07-05	N.A.	2-12-11
20. Contestant and contestee file briefs with house select committee	N.A.	N.A.	N.A.	N.A.	3-8-11
21. Committee's public hearing and executive session	N.A.	N.A.	N.A.	N.A.	3-15-11
22. Committee meets to consider the assessment of costs of the election contest	1-26-05	1-26-05	2-08-05	N.A.	(see #21)
23. Notice of withdrawal given	1-05-05	1-14-05	2-07-05	1-14-09	3-18-11
24. Notice of withdrawal entered in journal and election contest dismissed	1-26-05	1-26-05	2-10-05	1-14-09	3-21-11
25. House adopts committee report	2-10-05	2-10-05	2-10-05	N.A.	N.A. <sup>4</sup>

<sup>4</sup> The committee provided its decision on the outcome of the contest and assessment of costs in the minutes of its executive session held March 15, 2011.

**Table 4. Senate Election Contest of 2005, With an Eligibility Issue**

<b>Action</b>	<b>Date</b>
1. General election	11-2-04
2. Contestant's petition received by secretary of state	11-9-04
3. Lieutenant governor receives contestant's petition from secretary of state	11-9-04
4. Contestee's response filed with secretary of state	11-10-04
5. Lieutenant governor receives contestee's response from secretary of state	11-12-04
6. Lieutenant governor appoints master	11-19-04
7. Master issues discovery report to the Senate Committee on State Affairs and, on a finding that the petition failed to state the grounds necessary to maintain the election contest, orders that discovery not proceed in the contest	12-3-04
8. Contestant files first amended petition with the secretary of the senate	12-4-04
9. Master issues a letter to the chairman of the Senate Committee on State Affairs that upholds the first discovery order on the same basis	12-7-04
10. Committee requests briefs by both parties	12-16-04
11. Contestant files a brief in support of the contestant's second amended petition	12-23-04
12. Contestee files brief	12-29-04

**Table 4. Senate Election Contest of 2005, With an Eligibility Issue**

<b>Action</b>	<b>Date</b>
<b>13.</b> Contestant files reply to contestee's brief on jurisdiction	1-5-05
<b>14.</b> Committee conducts a public hearing to investigate the factual and legal issues of the election contest, finds that the contestant failed to state the grounds necessary to maintain the contest, and recommends that the contest be dismissed	1-10-05
<b>15.</b> Senate convenes	1-11-05
<b>16.</b> Committee report read and adopted by the senate	1-11-05