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Dear Client:

A Texas federal judge is expected to rule in the next few weeks on a lawsuit that could completely transform environmental regulation and enforcement across the country. The action will determine whether the Endangered Species Act violates the Commerce Clause of the US Constitution.

The case was originally filed in 1998 by State Representative **John Shields** (R-San Antonio) and rancher **Hunter Schuehle**, who complained that the Endangered Species Act's application to a species located entirely within a single state does not involve interstate commerce and thus violates the Tenth Amendment reservation of power to the states. The lawsuit further argues that the Act's delegation of enforcement authority to the Sierra Club is an unconstitutional delegation of legislative and executive policy-making authority to a private entity.

Judging from past history in cases involving the Act, US District Judge **Lucius Bunton** is expected to rule in favor of the defendants, Interior Secretary **Bruce Babbitt**, the US Fish and Wildlife Service, and the Sierra Club. According to lawyers for Shields and Schuehle, the case will be appealed to the US Fifth Circuit Court of Appeals and then on to the US Supreme Court.

They hope the high court will continue a recent trend in Commerce Clause litigation toward limiting congressional authority under the Commerce Clause.

If the plaintiffs eventually prevail, about 80% of the species on the Endangered Species list, including local Central Texas species such as the **Barton Springs salamander**, could be removed from federal protection.

In that event, state and local endangered species protections would have to fill the gap. Indeed, Shields and Schuehle claim that all they are trying to accomplish in this case is restoring local control to environmental regulation.

A group called the Texas Justice Foundation (TJF) is providing the legal team for the plaintiffs. Created in 1993, the San Antonio-based **conservative advocacy group is active in both property rights and education policy litigation.** The group is also soliciting business support for the Shields litigation and counts among its contributors the Texas Association of Realtors, Lumberman's Association of Texas, Texas Wildlife Association (a private rancher's group), and scores of farmers, builders, nurserymen, quarry owners, and other landowner interests.

When the Legislature convenes next January, what issue do you think will be of most importance of Austinites? Well, OK, redistricting is pretty important, especially since Austin stands to possibly gain representation in the Texas House and a part of Travis County may be sliced off into another Senator's district. But what we're talking about is **state employee pay raises**, an issue of immense significance to the tens of thousands of Austinites who work for state agencies.

Coming off last year's session in which state employees received a modest \$100 per month raise (which has now been substantially absorbed by recent increases in state health insurance co-payments for prescription drugs), the Texas Public Employees' Association (TPEA) is gearing up a major lobbying effort for an across-the-board 16.5% wage boost. TPEA has hired a pair of well-regarded hired guns, **Mignon McGarry** and **Doc Arnold**, for the big push.

However, it looks like **teachers and school district employees** may compete with state employees for the same dollars. After receiving a flat \$6,000 pay increase last year, teachers groups are turning their attention to health insurance. As things now stand, it's up to the 1,032 local school districts across the state to offer health insurance to their teachers, and both the quality and cost is widely divergent. In fact, the ability to offer some form of health care insurance is a big recruiting advantage for those districts that can afford it.

Currently, only retired school district employees can buy health insurance through the Teachers' Retirement System. A special legislative committee is studying whether to extend that option to active teachers and whether the state should pick up some or all of the cost. While most legislators think affordable health insurance for teachers is a good idea, the problem is the cost.

The state kicks in 100% of the cost of covering active and retired state employees, and 50% of the cost of insuring dependents. According to the Legislative Budget Board, if the state does the same thing for teachers, it would cost \$3 billion/year, with built-in annual increases of \$500 million. Times are good, but not that good.

The more likely solution is for the state to share the cost with local school districts, but even this will cost a lot more money. Given the state's tightening fiscal outlook for the next biennium, **neither the state employees nor the teachers are likely to get everything they want.**

There will be more controversial city issues on the November presidential election ballot than we've seen in a long time. And one of the reasons is the Austin City Charter can be changed only every two years. So, in addition to the already-announced vote on whether to authorize a very expensive light rail project, look for the Austin City Council to trot out, once-again, single-member council districts – even though the concept has been soundly trounced every time it has appeared on the ballot in the past. But that's not all. Check out the next story for what else is likely to be on the November ballot when voter turnout is expected to be higher than in recent elections.

Help for our growing traffic congestion may be on the way. It's possible the City of Austin will roll out a large roadway improvement bond authorization election to be voted upon in the big 11/7/00 election. And while improvement of our traffic flow is non-controversial, the **cost to unclog our streets** may trigger debate — at the same time the cost of light rail is up for a decision.

When the fact that you can only change the City Charter every two years becomes more widely-known, it's possible other controversial items will be put on the ballot by the City Council. After all, there is minimal political risk because no council member will face the voters for another two years and, even then, less than a majority of the council's terms end in 2002.

The cost to Texas businesses of complying with federal clean air mandates could reach \$7 to \$10 billion in the next several years, says Texas Taxpayers and Research Association (TTARA).

As you are no doubt aware, Texas currently has four non-attainment areas in which drastic air emissions reductions must be accomplished by 2007: Dallas-Fort Worth, Houston-Galveston, Beaumont-Port Arthur, and El Paso. Other metro areas, including Austin and San Antonio, are not far behind, although **Austin was recently granted a brief reprieve from mandatory compliance.** Instead, the Texas Natural Resource Conservation Commission is asking the EPA to allow Austin to initiate voluntary measures in an effort to stave off non-attainment designation and the possible loss of federal highway funds to the area.

TTARA is looking for ways to help businesses finance the enormous capital investments required to achieve air quality standards. For example, the standards recently adopted for the DFW area hit utilities, cement kilns, and airlines particularly hard. Those being considered for Houston-Galveston will not only affect those industries, but manufacturing and refining as well. Things are so bad in the Houston area that the TNRCC may be forced to begin **denying new permits for activities that increase air emissions** in counties between the coast and Huntsville. It's not just an urban problem any more, and the costs of compliance could become so burdensome that the Texas economy may be adversely affected.

For these reasons, TTARA is exploring a wide range of **pollution control financing ideas**, including: expanding current property and sales tax exemptions for pollution control activities; allowing businesses to expense capital investment in pollution control machinery and equipment; granting a state franchise credit for pollution control property; and creating a bond-financed, low-interest loan program to assist businesses in purchasing and retrofitting necessary control measures.

There is real money at stake in this debate. Since the voters approved a property tax exemption for pollution control property back in 1993, for example, the total value of exempt property has grown from \$349 million on 1/1/95, to almost \$2.5 billion on 1/1/99. And remember, those investments represent a **fraction of what will be required under the new standards.**

Political insiders are continuing to talk about potential statewide candidates – not just for this year, but two years hence. You'll remember, a few weeks ago we wrote about a potential Democratic "dream team" for the 2002 election (hey, it's only 29 months away!).

Well, since then, we've learned that **Henry Cisneros**, the Democratic dream team Senate candidate, won't say yes and won't say no to the possibility of running statewide. He did take himself off the list to become superintendent of Los Angeles schools and is keeping all his options open.

You can bet the former San Antonio mayor (who showed his still considerable muscle in San Antonio by organizing successful opposition to two incumbent San Antonio state representatives) will continue to test the turbulent political waters in the months to come. And, even though he's working in Los Angeles these days heading up a Spanish-language TV network, his political base is still in Texas.

We've also learned former Comptroller **John Sharp** is thinking very seriously about another run for public office. Sharp believes he would have beaten Lieutenant Governor **Rick Perry** if Governor George W. Bush hadn't won in a landslide — and he may be right, because Sharp's race with Perry was very close. He is considering another crack at Perry, either in a race for Governor (if George W. moves up) or Lieutenant Governor (if George W. doesn't move up and another Republican, like US Senator **Kay Bailey Hutchinson**, decides to run for Governor).

The dream team lives — at least in the minds of Democratic political insiders, anyway. We'll keep you posted on the rumblings and the ruminations. And, since elections never really end anymore, it's always fun to start talking about the next one.

Dr. Louis Overholster says he has one patient who didn't like it when the good doctor put him on a diet. Said his patient: "As a result, I went on two diets because one diet was not giving me enough food!" So, since the diet prescription didn't work, Dr. Overholster prescribed exercise. His patient reports now that he tries to do 20 situps every morning. "That might not sound like a lot," he told Dr. Overholster, "but you can only hit the snooze alarm so many times!"

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