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House of Representatives

OF THE
REGULAR SESSION
OF THE
Sixty-sixth Legislature

OF THE
STATE OF TEXAS
BEGUN AND HELD AT
THE CITY OF AUSTIN

JANUARY 9, 1979



The Chair laid before the House the following resolution:

By Nabers and Rains:

HR 2

BE IT RESOLVED by the House of Representatives of the State of Texas, That the Secretary of State shall call for nominations from the floor for the election of Speaker of the House of Representatives for the 66th Legislature and recognize every member who desires to make a nomination; that each person recognized shall immediately advance to the front microphone to make his or her nomination in a nominating speech not to exceed five minutes in length; and, be it further

RESOLVED, That after all nominations have been made, nominations shall be closed; whereupon seconding speeches shall be allowed, one for each nomination, in the order in which the nominations were made; and then other seconding speeches shall be allowed in rotation, with speeches in each round made in the order in which the nominations were made; provided that each nominee shall be allowed a maximum of four seconding speeches, none to exceed five minutes in length, and no person shall be considered a nominee unless his or her nomination is seconded by at least one member; and, be it further

RESOLVED, That after the election, the oath of office shall be administered under the direction of the Secretary of State to the Speaker-elect and the Speaker shall thereupon take the chair.

The resolution was read.

Representative Close offered the following amendment to the resolution:

Amend **HR 2** by substituting the following in its entirety:

WHEREAS, Article III, Section 9, of the Texas Constitution requires that the house of representatives elect a speaker of the house from its own membership; now, therefore, be it

RESOLVED, That the secretary of state shall call for nominations from the floor for the election of Speaker of the House of Representatives for the 66th Legislature and recognize every member who desires to make a nomination and who has obtained the consent of the nominee for the nomination; that each person recognized shall immediately advance to the front microphone to make his or her nomination in a nominating speech not to exceed five minutes in length; and, be it further

RESOLVED, That after all nominations have been made, nominations shall be closed; whereupon seconding speeches shall be allowed, one for each nomination, in the order in which the nominations were made; and then other

seconding speeches shall be allowed in rotation, with speeches in each round made in the order in which the nominations were made; provided that each nominee shall be allowed a maximum of three seconding speeches, none to exceed five minutes in length, and no person shall be considered a nominee unless his or her nomination is seconded by at least one member; and, be it further

RESOLVED, That the secretary of state, when the seconding speeches are completed, shall direct the temporary chief clerk of the house to prepare ballots with the names of persons officially nominated for speaker and conduct the election by secret ballot in such a manner that strict secrecy will be maintained; and, be it further

RESOLVED, That the temporary chief clerk and the temporary sergeant-at-arms and other temporary officers and employees of the house will assist the secretary of state in the election process as requested by the secretary of state; and, be it further

RESOLVED, That after the tabulation of votes is reported to the secretary of state, the secretary of state shall announce the results of the election; and if one nominee has received a majority of the votes cast, the secretary of state shall declare him or her to be elected to the office of speaker of the house of representatives; but if no nominee has received such a majority, the two nominees receiving the largest number of votes on the first ballot shall be in a runoff election and the procedure shall be repeated a second time with votes being cast for one of the two nominees, the member receiving the higher vote being declared elected; and, be it further

RESOLVED, That after the election, the oath of office shall be administered under the direction of the secretary of state to the speaker-elect and the speaker shall thereupon take the chair; and, be it further

RESOLVED, That the ballots will be kept in the custody of the secretary of state until the election of the speaker has been officially concluded and the speaker is declared to be the duly elected Speaker of the House of Representatives of the State of Texas for the 66th Legislature, at which time the ballots shall be destroyed by or under the supervision of the secretary of state.

Representative Nabers moved to table the Close amendment.

HR 2 - (consideration continued)

The vote of the House was taken on the motion to table the Close amendment and the vote was announced yeas 111, nays 35.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows:

Record No. 1 (Appendix, Jan. 9)

111 Yeas
35 Nays
3 Not Voting

The Chair stated that the motion to table prevailed by the above vote.

Representative Close offered the following amendment to the resolution:

Amend HR 2 by substituting the following in its entirety:

WHEREAS, Article III, Section 9, of the Texas Constitution requires that the house of representatives elect a speaker of the house from its own membership; now, therefore, be it

RESOLVED, That the secretary of state shall call for nominations from the floor for the election of Speaker of the House of Representatives for the 66th Legislature and recognize every member who desires to make a nomination and who has obtained the consent of the nominee for the nomination; that each person recognized shall immediately advance to the front microphone to make his or her nomination in a nominating speech not to exceed five minutes in length; and, be it further

RESOLVED, That after all nominations have been made, nominations shall be closed; whereupon seconding speeches shall be allowed, one for each nomination, in the order in which the nominations were made; and then other seconding speeches shall be allowed in rotation, with speeches in each round made in the order in which the nominations were made; provided that each nominee shall be allowed a maximum of three seconding speeches, none to exceed five minutes in length, and no person shall be considered a nominee unless his or her nomination is seconded by at least one member; and, be it further

RESOLVED, That the secretary of state, when the seconding speeches are completed, shall direct the temporary chief clerk of the house to prepare ballots with the names of persons officially nominated for speaker and conduct the election by secret ballot in such a manner that strict secrecy will be maintained but each member shall be required to sign each ballot cast for speaker; and, be it further

RESOLVED, That the temporary chief clerk and the temporary sergeant-at-arms and other temporary officers and employees of the house will assist the secretary of state in the election process as requested by the secretary of state; and, be it further

RESOLVED, That after the tabulation of votes is reported to the secretary of state, the secretary of state shall announce the results of the election; and if one nominee has received a majority of the votes cast, the secretary of state shall declare him or her to be elected to the office of speaker of the house of representatives; but if no nominee has received such a majority, the two nominees receiving the largest number of votes on the first ballot shall be in a runoff election and the procedure shall be repeated a second time with votes being cast for one of the two nominees, the member receiving the higher vote being declared elected; and, be it further

RESOLVED, That after the election, the oath of office shall be administered under the direction of the secretary of state to the speaker-elect and the speaker shall thereupon take the chair; and, be it further

RESOLVED, That all ballots cast and all tallies thereof will be kept in the custody of the secretary of state until the election of the speaker has been officially concluded, the speaker is declared to be the duly elected Speaker of the House of Representatives of the State of Texas for the 66th Legislature, and the speaker has appointed all of the standing committees provided for in Rule IV as it may be amended and appointed all the chairpersons and vice-chairpersons for each committee, whereupon the secretary of state shall certify the individual

vote of each member in the speaker's election to the chief clerk of the House who shall file it and cause the members individual votes to be printed and published in the House Journal.

Representative Bock moved to table the Close amendment.

A record vote was requested.

The motion to table prevailed by:
Record No. 2 (Appendix, Jan. 9)

114 Yeas
30 Nays
5 Not Voting

The resolution was adopted.

HR 2 - REMARKS ORDERED PRINTED

On motion of Representative Jones, the following remarks addressed to the House on **HR 2** were ordered printed in the journal:

CHAIR: The clerk will read the amendment.

CLERK: Amendment by Close; amend **HR 2** by substituting the following in its entirety.

CHAIR: The Chair recognizes Mr. Close to explain the amendment.

CLOSE: Mr. Chairman and fellow members. The resolution upon which you are voting today has to do with the manner and the mode of electing the next Speaker of this House. This is traditional that a resolution be adopted which will spell out the method of the election of the Speaker of the House of Representatives. Now the resolution which has been presented provides for an election other than by secret ballot. I have placed on each of your desks this morning a letter, a copy of the proposed resolution, and this amendment, by the way, tracks that resolution's exact language as well as an appendix which shows you from 132 years ago up to the present time that the election of the Speaker of the House has been by secret ballot except in two exceptions which have happened recently. Otherwise, the resolution which has been adopted provides specifically for a secret ballot or there is no contest in many cases, in some cases, and there is simply a motion to elect the Speaker by directing the chief clerk to cast all of the votes for the Speaker, the sole nominee.

My amendment to the resolution as presented provides for a secret ballot. It provides that the Secretary of State who is acting as a temporary chairman at this time shall conduct the election by secret ballot in such a manner that strict secrecy will be maintained. I want to point out that this is nothing new, and I know the argument will be made, well, we've got open government and the people have a right to know how you vote and so forth. This is the only election—this is the only vote during this legislature that I would propose would be secret, and the reason I propose that it should be secret is because of the fact that each member, in my judgment, will be in a better position to vote his honest convictions and conscience as to who would be the best qualified nominee for Speaker if the election is by secret ballot rather than by public ballot which would subject those who would have the courage to resist a sure-shot Speaker; it would insure that those would not have to vote against their convictions and against their conscience in order to insure that they would get the committee possibly they want, or the chairmanship, or to insure that their legislation will get through this body.

Now this amendment that I bring for you, is in no way, form or fashion a criticism of Speaker Clayton. I think many of you know how I vote on the Speaker. But it is for the purpose of answering the question, "What is the best manner for the election of the Speaker of this House of Representatives that will insure that each member of the House of Representatives will vote their true feelings, true conscience, and vote for the best qualified nominees?"

I submit to you ladies and gentlemen that that mode and that manner is by secret ballot. Thank you.

CHAIR: The Chair recognizes Mr. Massey to speak against the amendment. Mr. Massey.

MASSEY: Mr. Speaker and fellow members. The vote you are about to make for Speaker may not be the most important that you may make this term, but it will be one of most significance for you will be choosing the main director of the affairs of this House for the next two years. You will be selecting the person you determine to be the most able to lead this House, and I urge you to stand up and be counted in that decision.

First, let me say that Bob Close is a first class gentleman, and I certainly respect his honesty and his integrity. I know him to be an honorable, straightforward man of principle—my friend. And he and I have discussed this matter at some length in his office, and I just have to tell you that we have a difference of opinion.

Now, I want to make about three points. First, before I was a member, before I even announced for office, while I was considering running against a long-standing incumbent, the matter of the secret ballot for Speaker was in prominence in the news. There was a lot of talk about the secret deals that were made and the bad things that ensued from that principle. There was a lot of that in the print. And when I determined to run for the House, and when I was elected, I vowed that I would never have a part in a secret ballot for the Speaker of the House. I have seen nothing to change my mind.

Let me assure you that if this motion prevails, the next matter will be a motion to recess, and the reason for that will be that the forces that favor the secret ballot will want to get their game together and map out their strategy, and make their deals. I hope that that doesn't come about. And you won't know, and the people at home won't know anything about that. Now, if we should vote for the Speaker of the House on the secret ballot, why not school finance? I have been mixed up in that for a number of years now, and there would have been some times when it might have been handy to have a secret ballot. Some of you might agree with me. What about the Constitutional Convention? Some of you were here when we lacked three votes passing a Constitutional Convention on the sultry night of July 31, 1974, and the lights stayed on the boards up here for 20 or 30 minutes while there was a lot of convincing that was sought to be done on the members, but you stood out with your light lighted showing where you stood, and that is what you should do today. If we elect the Speaker by secret ballot, shouldn't the committee meeting votes be by secret ballot? How about the appropriations bill? Everybody has a special interest in that.

Now, finally, Mr. Close suggests that this vote is like your secret ballot that is cast in the primary and general election. Well, let me suggest that if you look on the second paragraph, or the first paragraph of the second page of his letter, he says, "In the election of a Senator, Governor, Lieutenant Governor, or other statewide officer, the legislator is acting as a representative of the people and, therefore, he should be held accountable to the people." Now let me suggest that when you go into your primary to your voting box in the primary election or the general election, you represent yourself. You are accountable only to

yourself, but here as state representative of the 60th District, I represent about 75,000 people; just about the same number that you do, and they should know how I stand, and they should know how I vote.

J. A. CLARK: Mr. Speaker.

CHAIR: Mr. Clark.

J. A. CLARK: Mr. Chairman, would the gentleman yield?

MASSEY: No.

CHAIR: For what purpose?

J. A. CLARK: To ask the gentleman a question.

CHAIR: Do you yield, Mr. Massey?

MASSEY: No.

CHAIR: The gentleman does not yield.

J. A. CLARK: I just have one short question.

MASSEY: As representative of the 60th District, I represent about 75,000 people, and I think that they are entitled to know how I stand today on the election of the Speaker, on the appropriations bill, or on any committee vote that I cast in this House. So this I pledge, whatever your collective thought, or your action is today, so long as I am a member of this House, my vote for Speaker will be open and known to all who wish to know, for prior to the balloting on any such election, I will place a written notice of my vote with the journal clerk. And now I hand to the journal clerk for entry in the House journal, January 9, 1979, this notice, "I will vote for Bill Clayton for Speaker of the House of Representatives, 66th Legislature, signed Tom C. Massey."

And now, I have just one more word, and that would be directed to you new members. Don't let your first vote be one for closing again the doors of the capitol. Vote for free and open election for Speaker of the House.

J. A. CLARK: Mr. Secretary of State.

CHAIR: Mr. Clark, for what purpose?

J. A. CLARK: Will Mr. Close have the mike again?

CHAIR: Yes, sir, he will. The Chair recognizes Mr. John Whitmire.

WHITMIRE: Mr. Speaker, Secretary of State, and fellow members. Let's stop and analyze what Mr. Massey, who I respect his right to differ, what he has just told us that secret ballot would be going against integrity in which our district wishes us to express down here. But he just defeated that argument by showing you the process if you want to make that vote public, you simply do as he does, come down and file it in the journal.

We all know that there are many many ways to make our wishes and our voice and our vote on the Speaker known if we choose to go by secret ballot; many many ways. You can come to this mike and announce it. You can file it in the journal for a permanent record. You can release a notice to the press. So that issue is not the relevant one in which we are going to discuss today. What I want to impress upon you today is, and the members know this, particularly the veterans, the incumbents, and certainly the freshmen by now have learned the sphere of influence of a Speaker. I am beginning my fourth term, and I will not go into the instances in which I have noticed where because a member chose to disagree with the incumbent Speaker or voice his opinion in the Speaker's race, it was used against him when committee assignments came. When it came reelection time, we saw money cut off from that member in the way of contributions or endorsements. But ladies and gentlemen of the House, I submit to you today that we do not have a Speaker's race as of January 9, 1979. This is an excellent time for us to get back and create a process whereby you can vote for the Speaker of your choice by secret ballot and whoever is elected Speaker, whether the person you are for or against cannot come back two days after that election and use that decision by you in the judgment of

what committee you should serve on. Furthermore, two years from now when you are running for reelection, it will not be a factor. Today is the day for us to exercise that option of going by secret ballot, keeping in mind what I told you a while ago. If you want to make it public after the vote, file it in the journal, file it with your local papers, or come to this mike and announce it.

But we do not have a Speaker's race today. It is the excellent opportunity for this House to come together and tell the public that, yes, we are going to let members vote their conscience, who they think is right or wrong for Speaker, and he doesn't have to, or she doesn't have to worry about his chairmanship that he is wanting, the committee assignment, and most of all being threatened about a reelection bid two years from now.

And I want to speak just for a moment to the members who came down here in 1973. There were 77 of us, many of whom were elected because they ran for such a secret ballot because you didn't want the pressure of the Speaker or the lobby, or special interests telling you how to vote for Speaker. There are 35 of that 77 who got elected on that principle, and I submit to you if you will recall in your memory some of those people who have publicly and privately said they are against secret ballot today were stumbling all over each other in 1973 for a very same principle. They were voting in committee and cosigning on a piece of legislation to limit the Speaker to one term because they were afraid of the influence of an incumbent Speaker, and the power. Where are you 35 today? And don't use that excuse and hide behind it that the public has the right to know how you vote. That is foolish. You know how to express your will to the public. Put it in your newsletter. I haven't seen many of you that haven't sent out 20,000 of them to tell them what is going on down here. Start off the paragraph with who you voted for Speaker. But you and I know the influence, and don't—it won't just begin after I have sat down from here, it has been going on during the special session, all fall, and you know good and well that you are afraid to vote publicly against a Speaker that you feel like is going to win.

And I would just like to close and say that I admire Bob Close more than I can express to you. I wish I had had the nerve, and I bet you wish you had the nerve to have gotten up here and offered that amendment. And I just ask you to search your conscience. I am proud to serve with a man like Bob Close. I wish I had the nerve to have gotten up here and offered the amendment, but I didn't because I am still influenced by that fear of what the Speaker is going to do, whoever that Speaker might be. But we don't have a Speaker's race today. We can adopt this amendment. We can set the precedent, which I might submit that our present Speaker has previously voted for.

J. A. CLARK: Mr. Acting Chairman, will the gentleman yield?

CHAIR: For what purpose?

J. A. CLARK: For a question.

WHITMIRE: I will when I finish, Jim, in just about one second. I am beginning to preach, but I will sit down.

I wish that I had had the nerve that Bob Close had, but I didn't, but when I hear people come up here, and I respect Mr. Massey's right to his opinion, but don't hide behind that bit that the public has a right to know. This is a unique race out of all the races, and don't compare this with the appropriation bill or school finance. Certainly no one would tell you to hide a secret and vote one way or the other. We are voting on probably the most powerful person in state government when we elect the Speaker; a man that can exert undue influence, strong influence, on your position and your realm of influence as a Speaker throughout this spring when you run for reelection. Let's do it, and remember that sphere of influence, then be proud of who you vote, come out and publicly state it.

Representative Close, I thank you on behalf of a lot of members who privately would like to thank you. Mr. Clark.

CHAIR: The gentleman yields, Mr. Clark.

J. A. CLARK: Thank you. Why would Mr. Close recommend an amendment such as he has recommended, and at the same time, stand at the front mike and indicate—and say that many of you out there in the House know who I am going to vote for, yet I am recommending the secret ballot. Can you explain that to me?

WHITMIRE: I can't begin to speak for Mr. Close, but he is. . .

J. A. CLARK: I mean, he stood upon the front mike. . .

WHITMIRE: He has explained it to me, Jim, that, as I pointed out, we do not have a Speaker's race today. If anybody thinks we do, you are kidding yourself, and anybody in this room.

J. A. CLARK: But he stood upon the front mike and indicated and said he was offering a secret ballot, and then told everybody in this House, and the news media across this state, who he was supporting. Has each one of us got to come to the front mike and do the same thing?

WHITMIRE: Jim, you have to search your own conscience.

J. A. CLARK: I think Bob needs to. Thank you.

WHITMIRE: He is searching his conscience, and I admire his conscience. What he is saying if those members are afraid to vote against the apparent winner in a Speaker's race, they can use the vehicle of a secret ballot. Personally, I will use that—if we are successful in this amendment—I will vote the secret ballot, but I am not afraid for as that means if I oppose an incumbent Speaker, and I will release it to the press, and I will use the methods as I have described, a newsletter, in the journal, as Mr. Massey, who has spoken against it, has already displayed the ability to do so.

Members, I ask you to let's start this session off on the right foot, show your independence, give the members who would like to express their true feeling in a Speaker's race in the future that opportunity to vote secretly with the option to make it public if they would like, and not have to worry about what committees they might be placed on or being fearful of being elected two years from now. Again, I would like to close, irregardless of how this amendment goes, I admire Mr. Close and I think we all owe him a great deal for offering this amendment. Thank you.

CHAIR: The Chair recognizes Mr. Allred to speak for the amendment.

ALLRED: Mr. Chairman, members. I am starting my seventh term in the House. I have served under at least six different Speakers. We all know what we are talking about here today. We are talking about an election that is unlike any other election in the State of Texas. You had a pledge card read to you. Any of you who have worked in Speaker's politics at all know that in most cases the different sides have a pretty good reading on who is on the other side, and who is on their particular list.

Let me submit to you that we are not talking simply about this House. We are talking about the House nobody ever mentions, the third House, the lobby. There's a lot of them in the gallery today. There's a lot of them in the gallery any day. I would remind you again that there is no contest for Speaker this time. Consequently, this is not intended as a criticism. Like the other speakers, I presume, and I know with Mr. Close, I am pledged to Mr. Clayton, plan to vote for his election. However, I want to say some words in favor of a secret ballot just as I did in 1971 when the contestants were the Honorable DeWitt Hale of Nueces County and the Honorable Rayford Price of Palestine. We knew then, because we had just been through one of the bloodiest sessions in the history of this legislature, particularly those of us who were in that little

group that came to be known the "dirty thirty" knew. I can remember standing right here and having a Speaker lean over and threaten me from the platform. That is what we are talking about. We are talking about power, raw, unadulterated power that is used by some Speakers, that is used by some lobbyists, and any of you who have gone through a campaign know that a great deal of your campaign money comes from the lobby, and that lobbyists are friendlier with some Speakers than with others, but any Speaker has the say with that lobby as far as campaign funds, as Representative Whitmire pointed out.

In thirteen years, listening to arguments from this mike, I have seen a lot of fog jobs. I have seen a lot of straw men thrown up. We are not talking about any other type of race except the unique Speaker's race. I don't think that I can be accused of trying to close up government when I have sponsored and supported the Open Records Act, the Open Meetings Act, and other things to open up government. What we are talking about right now is to keep members from being threatened, to let members vote their conscience, to let members vote the way they feel that their representation of their districts, their conscience, their own ideals provide. It was said that when we had secret ballots, deals were made. My Heavens! Do you think that political deals are not being made with open ballots or secret ballots either one? We just did away last session with the signing of ballots in our secret ballots in the polls in a bill sponsored by the Honorable Ernestine Glossbrenner.

I simply want to submit to you that we are talking about an election like no other. We are talking about more than simply this House. We are talking about that ominous old third House, and those of us who lived through the "dirty thirty" days, those of us who had our blood let by that third House, by the man with the gavel up here, we knew what we were talking about when we voted then for secret ballots, and I urge that you continue what is a fine and honorable American tradition and not be taken in by a bunch of straw men. Thank you.

CHAIR: The Chair recognizes Mr. Nabers to speak against the amendment. Mr. Nabers.

CHAIR: Excuse me, Mr. Rains will be recognized by the Chair to speak against the amendment. Mr. Rains.

RAINS: Mr. Chairman and members. I perhaps feel very strongly, just as you do, about the members of this body, and I have said throughout the great State of Texas, and particularly in my district, that I serve with 150 of the most honorable men and women there are in the State of Texas, and I still say that. And I also say throughout the State of Texas and the fine district that I represent, that these people have integrity, and with that integrity comes the ability to represent your districts, and with that integrity comes the responsibility to vote the way you feel; not what some potential Speaker candidate thinks you ought to vote, or perhaps the way he thinks you ought to feel about his reelection. And to me this is a very good opportunity to tell the people back home that I can pass the gut test. If you want to vote against Speaker Clayton, vote against him, but do it openly. Do it where the people know, where the Speaker knows, and where the people at home know. I am voting for Speaker Clayton, and I think he will be a reelected Speaker of the House of Representatives. He has been a good Speaker, and will be a good Speaker, and I don't think he will be vindictive toward any member who has the guts to say, I voted the way I felt was best to vote. Thank you.

CHAIR: The Chair recognizes Mr. Nabers who will speak against the amendment. Mr. Nabers.

NABERS: Thank you, Mr. Secretary and members. I will be brief. I know we have a lot of guests here today, and let me welcome each of you to the

House of Representatives. You are seeing a good first class open debate, many of which will come this session, if you have the opportunity to come and watch. But it is a serious discussion. It is one that affects each one of you here today; one, I know that each one of you may have a little bit of emotion about one way or the other. But we have elected Speakers in the past, and we will do so in the future, and we will continue to have these fights and these arguments, and I don't have to remind each one of you what they are, and I don't have to bring new ones to you because you know what they are. Each one of you are elected. You've got the political savvy to know what is going on, and I challenge each one of you to have the intestinal fortitude to stand up and vote your convictions, and I know you will. You will find, for those of you who are the first here, and those that have been here many sessions, that you learn to respect that person which will stand up and be counted. You will learn to respect the person that has an opinion and that you know where his opinion is, and why he is, and you will respect that, and I will respect each of your decision today on this vote. But we need—and I think each one of you will agree with me—there will be some exceptions, that the election of the Speaker—and this is a simple election process—everyone just votes their convictions. Everyone is going to vote the convictions in Mr. Close's amendment, but we are going to have the ballots destroyed. We are going to destroy part of the openness in government.

HENDRICKS: Mr. Secretary.

CHAIR: For what purpose?

HENDRICKS: Will the gentleman yield for a question?

NABERS: In a minute, Mr. Hendricks.

But I submit to you that each one of you know that you will have many tough decisions to make this session of the legislature, and this is just the beginning of many. But it is really not that difficult because each one of you will have the courage to stand up and be counted, and you will do so in public. Many times, I have wished that I didn't have to be on record, but each time that I do that, I think, you know, I am not going to be here forever. I am only temporary. And the first one of you that thinks that you are not temporary, you had better stop and think again because we are all temporary, we are all down here at the election of the people and the desires of the people, and when we are not, we will be defeated and retired, and that is the way it ought to be. But the reason it is that way, is for openness in government and the right that people need to know how you stand and why you vote as you vote. And I submit to you that this the first test of standing up and being counted and letting the people in your district know how you feel whenever it comes time to vote. And I appreciate your indulgence and your attention, and I will yield to Mr. Hendricks.

CHAIR: The gentleman yields.

HENDRICKS: Mr. Nabers, as I understand every speaker, it is a foregone conclusion that there is no contest for the Speaker's race. Is that correct?

NABERS: Well, I guess that will depend on who you ask, Mr. Hendricks.

HENDRICKS: Well, everyone that spoke from the front podium, and everyone I have talked to in the chamber here, seems to say that. Well, if this rule is passed, what effect will it have on the 67th Legislature? Will they not adopt their own rules?

NABERS: Absolutely correct, Mr. Hendricks.

HENDRICKS: Well, what purpose would we serve if we adopted this? They will adopt their own rules.

NABERS: I don't know, Mr. Hendricks, because as you know the rules are changed and these resolutions come through every session whenever we start out.

HENDRICKS: Well, that's a question I would like answered. What purpose would it serve when the 67th Session will adopt their own rules?

NABERS: Absolutely none. Mr. Speaker and members, I move to table the amendment. I would ask for an aye vote on the motion to table.

CHAIR: The Chair recognizes Mr. Close to close.

CLOSE: Mr. Secretary of State, temporary chairman, members. I will be brief, but I want to just sum up a few things in support of this resolution for a secret ballot.

First of all, it has been said, but the power of the Speaker of this House is really unbelievable. It takes a while for you to be here, I have found out, to really realize how powerful the Speaker is, and that is great if you have got the right man for the Speaker. But there are some problems if you've got the wrong man for the Speaker.

Now, to illustrate the situation—and by the way, Tom Massey knows that I am not advocating that we not vote on the appropriations bill publicly and that we not vote on every issue that comes up in this legislature. My goodness, I had to vote publicly on the ERA issue; one of the few people that had to because I was on the subcommittee. And that is tough, but that is the way it ought to be. I am talking, and we are talking about, and we are considering one single election, a very important election for the Speaker of the House, and we are talking about a tradition in this state that goes back to the year one. And we are talking about—Mr. Hendricks, we are talking about a tradition that has been broken recently, a good tradition that needs to be continued, a tradition that will continue after this election and the next election, and the next election.

How many of you have been polled by folks this very day representing the Speaker's office and have been asked, not do you agree that there is merit, or not merit, to a secret ballot, but have you been asked, do you support the Speaker, or do you not support the Speaker on these amendments, without explaining to you what the amendments are, the arguments for or against. How many of you feel pressure right now? This is going to be a public vote here that is coming up on this matter. All of you have been made aware of the fact that the Speaker is opposed to this amendment. How many of you have the courage to get up right now and vote your convictions on this very resolution? Does this not demonstrate, if you will examine yourself, the problem? Now, we are not asking for a secret ballot for any other purpose but for this. What I am asking you to do is to adopt the best manner and mode to elect the Speaker of this House by your true convictions, your conscience, and who you believe will make the best Speaker, and who is best qualified. The issue is, ladies and gentlemen, under what circumstances is it most likely that each member of this House will vote for the best qualified person as Speaker. What voting procedure will insure that each member will vote his true feelings, exercise his best judgment, to fill this high office? Is it a public ballot where you might be subjected to reprisal by some Speaker in the future? No, I submit it is the secret ballot, and I respectfully request you to vote for this amendment.

REYES: Mr. Secretary.

CHAIR: For what purpose?

REYES: Will the gentleman yield?

CHAIR: Mr. Reyes asked if the gentleman will yield. Will the gentleman yield?

CLOSE: I yield.

REYES: Mr. Close, I am concerned, like Bob Hendricks back here, that we are talking about a rule that really will have no effect on future legislatures, are we not?

CLOSE: I think we are talking about a tradition, Mr. Reyes, and I think we are perpetuating, we are going against a tradition of this state.

REYES: But Bob, I have looked at the journals for the last six or seven elections of the Speaker of the House and prior to each election, each individual House adopts its own resolution on the manner it selects to elect the Speaker of the House. Are you. . .

CLOSE: That's correct.

REYES: You are aware of that?

CLOSE: Yes, sir.

REYES: And you know that—I don't know, I just don't think there is a Speaker's race right now, so that practically, your amendment would not have any binding effect on future legislatures, would it?

CLOSE: That's correct.

REYES: So. . .

CLOSE: Except it would perpetuate a tradition that we have had in this state for 130 years.

REYES: May I ask, is your concern the power surrounding the Speaker, or are you concerned about the tradition itself?

CLOSE: I am concerned about the manner—the best manner for electing a Speaker of this House by the members of this House voting their true convictions and their true feelings without respect to whether committee assignments, committee appointments or anything else.

REYES: Would you agree that the election on the Speaker of the House this time is a foregone conclusion?

CLOSE: I hope it is.

REYES: Well then, Mr. Close, it seems to me that if your concern is that power around the Speaker's chair, which is one that is a concern of a lot of the other members, that your struggle and that your concerns would certainly come around when we start adopting rules for this legislative session in limiting the Speaker's powers in those rules.

CLOSE: I will be in your committee when that time comes.

REYES: Thank you, sir.

J. A. CLARK: Mr. Chairman, will the gentleman yield for one question?

CHAIR: Mr. Clark. Will the gentleman yield?

CLOSE: I yield.

J. A. CLARK: Bob, let me ask you this one question.

CHAIR: The gentleman yields.

J. A. CLARK: There is a lot of concern in the House about the amendment which you have introduced about the secrecy of a ballot, and also about the rules being changed every time. I am still wondering, and I should have asked you this question a while ago, why would you get up and offer an amendment for a secret ballot, and at the same time tell this House and the present Speaker, and the people, and everybody you know, who you were supporting? I mean, this seems to me like unethical to a degree if you want to know it, Bob.

CLOSE: Well, I don't know what your code of ethics is, but. . .

J. A. CLARK: Well, okay, you said. . .

CLOSE: Let me answer the question. It's no question about who I am voting for. That is not the issue in this matter whatsoever.

J. A. CLARK: That is what you said. I admit that.

CLOSE: I am presenting a proposal for a tradition for the secret ballot in this state in electing a Speaker, and I think I made. . .

J. A. CLARK: Next session?

CLOSE: And I request the members to vote no on this motion to table.

J. A. CLARK: Thank you.

CLOSE: Thank you.

CHAIR: The following amendment, the clerk will read the amendment.

CLERK: Amendment by Close.

CHAIR: The Chair recognizes Mr. Close to explain the amendment. Let's please have order on the floor and in the gallery. The Chair recognizes Mr. Close to explain the amendment. Mr. Close.

CLOSE: Mr. Secretary and members. I have a follow-up amendment which would provide again for a secret ballot, but it would provide that the Secretary of State keep those ballots in his possession until after the Speaker of the House who is elected has had an opportunity to appoint all committees and all committee chairpersons. It would read, that the election, as I said, would be conducted by secret ballot, and that after the tabulation of votes as reported by the Secretary of State, the Secretary of State shall announce the results of the election, and provide specifically that all ballots cast, and all tallies thereof will be kept in the custody of the Secretary of State until the election of the Speaker has been officially concluded, and the Speaker is declared duly elected as Speaker of the 66th Legislature. It further provides that after the Speaker has appointed all standing committees, provided for in Rule IV of the House rules, and appointed all chairpersons and vice-chairpersons, then at that point, the Secretary of State would bring the ballots over and the tallies to the chief clerk of the House and the chief clerk of the House would be instructed to publish each member's vote in the House journal and make it a matter of public record. The purpose of this is to ensure that in no way will the vote of any member of this House affect the Speaker's judgement in his appointment of committees and committee chairpersons. And I move the adoption of this amendment.

CHAIR: The Chair recognizes Mr. Bock to speak against the amendment. Mr. Bock.

BOCK: Mr. Speaker, Mr. President, and members. This is a rose by any other name except in disguise. There is no difference between this and what you just voted on, but since I haven't been up here yet, I thought I would take this opportunity to tell you that insofar as I think the majority of the members of this House are concerned, and we have spoken to that already, by an overwhelming majority, secrecy is not something that this administration or the members of this House and the majority are for. I know I am not for it, and I came here after some of the people who are here today called the "dirty thirty" asked for openness in government; some of those very same people are supporting this type of amendment today. It is a bit ironic to me to see that happen, and to see a situation where we are going to vote secretly and then we will publish it later. It kind of reminds me of a situation—was that Box 13? Because elections can be stolen by this method, I think it is time for everybody to stand up and be counted, and be counted now and let's get on with the business of the day.

BROWDER: Mr. Secretary.

CHAIR: Mr. Browder.

BROWDER: Will the gentleman yield?

CHAIR: For what purpose? The gentleman yields.

BROWDER: Mr. Bock, we have heard over and over again from the people who are proponents of these types of amendments that the Speaker's race is a closed issue, that there will be no Speaker's race. Now, it comes to mind to me that possibly if these type amendments to the rules were in place, do you think that there is any possibility that all of a sudden we might see a Speaker's race develop?

BOCK: Well, Mr. Browder, all I know is I had said something to Mr. Whitmire a while ago when he was speaking in favor of this about maybe I would nominate him if the amendment passed and he said he thought he would probably have to take grape Kool-Aid if that happened. So, as far as I am concerned, I don't think that there is a Speaker's race, and I think this is just simply a delaying tactic and something that we don't need to go on any further with. And at this time, Mr. Presiding Officer, I move to table the amendment. Vote aye on the motion to table.

CHAIR: Recognize Mr. Close to close.

COLEMAN: Mr. Secretary.

CHAIR: Mr. Coleman.

COLEMAN: Will the gentleman yield for just a moment?

CHAIR: For what purpose?

COLEMAN: To just ask a question.

CLOSE: I yield.

COLEMAN: Mr. Close, some members of the House have been sitting around here listening and want to know whether or not you were aware that some members of the House have been told by other members that there is no race at all, but some of us might indeed want to nominate somebody for the Speaker of the House. You know that is a possibility, isn't it?

CLOSE: That is one of the things that will be encouraged by this amendment.

COLEMAN: Thank you, Mr. Close.

CLOSE: Members, let me tell you just very quickly again what this does. This provides for a secret ballot for the election of the Speaker, if I might have your attention, and after the secret election—a secret ballot election is made—and incidentally provides that each member sign his ballot, then the Secretary of State will take these signed ballots and have the custody of these signed ballots until after the Speaker of the House has appointed all of the committees and all committee chairpersons. There will be no reprisals about how you vote in this public election that we are going to have. After the Speaker has appointed all chairpersons and all committee members, then at that point, the Secretary of State would return those signed ballots to the chief clerk of this House of Representatives and the chief clerk of this House of Representatives would then be instructed to put the vote of each individual member on the Speaker's race in the House journal and make it a matter of public record, which is, I understand, the principle argument against this amendment. I would ask you to vote no against the motion to table this amendment. Thank you.

STATEMENT BY REPRESENTATIVE MASSEY

I will vote for Bill Clayton for Speaker of the Texas House of Representatives—66th Legislature.

Massey

ELECTION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

The Secretary of State announced that the next order of business was the election of the Speaker of the House of Representatives of the 66th Legislature of the State of Texas, and stated that nominations for Speaker are now in order.

The Secretary of State recognized the Honorable Gib Lewis who placed in nomination for Speaker of the House of Representatives of the 66th Legislature

of the State of Texas the Honorable Bill Clayton of Lamb County, speaking as follows:

The Honorable Secretary of State, ladies and gentlemen, colleagues: I have the pleasure to stand before you today to place in nomination the name of a friend of Texas for the office of Speaker of the House.

When I first came to the House in 1971, he served as chairman of my first important committee assignment. His knowledge and leadership guided me through that first difficult session.

His service to the state is widely recognized.

He has served 16 years in the House of Representatives. He is experienced in all matters of concern to the state through his service on every important committee in the House. He knows the workings of the House from introduction of legislation through final passage.

This man is widely recognized not only in Texas, but across the nation. He has served as chairman of the Southern States Speakers Conference, chairman of the Southern Legislative Conference, and chairman of the 50-state Council of State Governments.

During the last two sessions he has proven his leadership and fairness as Speaker of the House.

He has brought about many improvements and reforms in the House, most notably, substantial improvements in the mechanics of House operations and increased staff capabilities.

He has brought true democracy to the House of Representatives.

It is my great honor to place the name of Bill Clayton of Springlake in nomination for Speaker of the House of Representatives for the 66th Session of the Texas Legislature.

The Secretary of State then asked if there were further nominations for the office of Speaker of the House of Representatives of the 66th Legislature.

There being none, the Secretary of State then recognized the Honorable Susan McBee, who seconded the nomination of the Honorable Bill Clayton, speaking as follows:

Mr. Secretary, distinguished guests, fellow members: I am delighted to second the nomination of Bill Clayton as Speaker of the House.

You know, there's probably never been a newly-elected member of the House who agonized over pledging to a Speaker candidate any more than I did when I was first elected in 1974!

After a long period of hesitation, I finally pledged to Speaker Clayton; and not once since then have I ever had one moment of misgiving or regret.

Now that I've had the opportunity to serve with Bill Clayton for two terms, I know that the reason for that is because he's the type of person that he is—one in whom you can put your trust and confidence now without ever feeling it's been misplaced or misused later.

During his last two sessions as Speaker, Bill Clayton has demonstrated again and again his fairness—in even the most difficult situations and under the most trying circumstances.

His dedication to good government for the State of Texas, and his hard work and long hours are exactly the kind of qualities a successful Speaker should possess.

I think we can all be proud of the job he's done in the past; but even more importantly, we can look forward to the job he'll do in the future.

It is with a great deal of enthusiasm that I second the nomination of a capable legislator and a fellow Aggie—the Honorable Bill Clayton.

The Secretary of State then recognized the Honorable Doyle Willis, who seconded the nomination of the Honorable Bill Clayton, speaking as follows:

Mr. Secretary of State, my colleagues, and ladies and gentlemen: You know it's rather difficult to follow one of the most eloquent members of the legislature, Gib Lewis, and then one of the most beautiful, Susie McBee. But I want to say just a few words about my good friend and good captain, Bill Clayton, as I end these nominating speeches.

I have served in the legislature under six different Speakers—six different Speakers—and all of those Speakers under whom I have served had a lot of tremendous qualities, good qualities, qualities of leadership. But I have never served under a Speaker that had the two qualities that I think are the most important, and that is accessibility and a willingness to work with members, and being absolutely fair. I have gone to the Speaker on numerous occasions in support of Fort Worth state schools, Tarrant County Junior College, University of Texas at Arlington, the independent school districts in my district, talking about money and those things, and he has always been accessible. He has never turned me down, but at the same time I have gone in that office during this last summer and talked to him about child abuse. Now, ladies and gentlemen, child abuse is something that a lot of power isn't concerned with, not a lot of big money is concerned with it. You've got to be human-oriented to be interested in child abuse. And I want to assure you that I was received, and that Bill Clayton sat down and talked with me about three hours about what has been done, what needed to be done, what agencies ought to be correlated, and out of that conversation that day, he appointed a committee that has made a statewide study that is going to give this state some startling results.

Now, another thing that I like about Bill Clayton, is that you can always know where he stands. He is not like the politician that was down in Louisiana running for the legislature that Jim Wright and Lanny Hall told me about the other day. This man was running for the legislature and he went up, and it seems as if in this certain district of Louisiana, they were having a problem of conservation that had to do with wildlife and the ducks. So this fellow went up to the first door and he knocked on the door and a lady came to the door and she said "How do you stand on the duck bill?" He said, "I'm against it," and she slammed the door in his face. Then he went to the next house and he knocked on the door. He said, "I'm running for the legislature." and she said, "How do you stand on the duck bill?" He said, "I'm for it." She slammed the door in his face. He went to the third house and knocked on the door. And the lady came to the door and before she could say anything, he said, "I just want you to know I'm alright on that duck bill."

Well, Bill Clayton is not that way. If you are right, if you are fair, if you have something that should be done, he'll be fair with you. And I am especially grateful having served under these many Speakers to have served with a man who will listen to me when I go to him, that will listen to my colleagues. He's probably been to more representatives' districts than any Speaker under whom I've ever served. He's probably been to nearly all of the districts that you represent. He's been accessible, he's been fair, and it gives me a great deal of pleasure to second the nomination of the representative from Springlake, from the 74th District, the Honorable Bill Clayton. Thank you.

The Secretary of State then recognized the Honorable Tom Craddick, who seconded the nomination of the Honorable Bill Clayton, speaking as follows:

Mr. Secretary of State, fellow members, and guests: It is my pleasure to second the nomination of a man I have known and served with in the Texas House for 10 years. He is known for not only being fair but sometimes said to be too fair, if this is possible. His fairness and honesty is known to all no matter of his race, creed, color, or political party. His sense of fairness has brought a new light to the Texas House. His word is his bond. He is known as just a "good old boy" or a true "West Texan"—there is no greater compliment for a person from our area of the state. It is with great pride that I second the nomination of a true member's Speaker and a fellow West Texan—Representative Bill Clayton of Springlake.

The Secretary of State then recognized the Honorable Craig Washington, who seconded the nomination of the Honorable Bill Clayton, speaking as follows:

Mr. Secretary of State, Members of the House of Representatives, honored guests, ladies and gentlemen: We are gathered here today, in this brief moment of history, to elect the 59th Speaker of the House of Representatives. I am privileged to rise to second the nomination of Bill Clayton for the office of Speaker of the House of Representatives. Bill Clayton was first elected to the House in 1962. He was first elected as Speaker in 1975, and was reelected in 1977.

Bill Clayton is a capable man, serving not only Texas but the nation as chairman of the Southern States Speakers Conference, chairman of the Southern Legislative Conference, and chairman of the 50-state Council of State Governments.

As we know, Bill Clayton is an expert in the areas of water and conservation. He is not only a successful farmer-businessman but is also a successful man in the political arena. Under his administration in the House, many bills have been passed touching on every concern and need of the people of Texas.

The 64th Legislature placed emphasis on the regulation and operation of water districts. Achievements were made in areas of water rights and water development. For example, the Harris-Galveston Coastal Subsidence District was created and given authority to regulate the withdrawal of groundwater in Harris and Galveston Counties. The Gulf Coast Waste Disposal Authority was created to contract with certain state agencies to carry out the first phase of a land subsidence control problem and to work with certain state agencies.

The 65th Legislature accomplished significant reforms in the regulation and operation of water districts and made significant changes in the state-level administration of water related matters.

The state's three major water agencies were consolidated into the Texas Department of Water Resources which performs legislative, executive, and judicial functions.

Many bills of the 65th session dealt with the administration, regulation, and creation of various types of special districts involved in water resources.

(Let's go on to dryer matters.)

The 64th Legislature brought forth more innovative and corrective legislation than that of any legislature in the past decade.

There was the creation of a Public Utility Commission for the first time in Texas history.

There was authorization for the establishment of health maintenance organizations.

There was enactment of a new voter registration bill, considered by many as a model for the entire United States.

There was attention devoted to mass transportation through merger of the Texas Highway Department and the Texas Mass Transportation Commission.

There was enactment of a strip-mining law protecting the environment.

There was some legislation to help doctors and hospitals deal with the touchy area of malpractice insurance rates.

There was reapportionment legislation approving single-member districts for counties then electing representatives-at-large.

There were improvements in public school financing to achieve equality in education.

There was an increase in beginning teachers starting pay.

The 65th Legislature dealt with public school finance, medical malpractice, highways, mandatory supervision of all persons released from prison, created the Adult Probation Commission, created several new district courts, dealt with our great state's energy needs and resources.

The 65th session aimed at reducing the cost of state government and eliminating overlapping duties and functions of state departments and agencies by the passage of the Sunset Law, an enormously significant piece of legislation which provides for periodic review of state agencies. State agencies must now justify their existence.

The 65th session dealt with the recodification of the election laws.

This session promises a large number of bills ranging from agricultural land use to consumer protection to water district rules and regulations.

With the Speaker's modernization of certain processes in the House and with better access to information for members and the public, provided by the Speaker's innovative ideas, this 66th session will be active. We look forward to working in concert with our Republican Governor-elect. We stand on the threshold of a monumental historical session. It is my privilege to second the nomination of an outstanding Texan and the next Speaker of the House.

A record vote was requested on the election of Speaker of the House of Representatives of the 66th Legislature.

Representative Clayton was elected Speaker by:

Record No. 3 (Appendix, Jan. 9)

137 Yeas

8 Nays

4 Not Voting

The Honorable Steven Oaks, Secretary of State of the State of Texas, then declared the Honorable Bill Clayton of Lamb County to be the duly elected Speaker of the House of Representatives of the State of Texas of the 66th Legislature.

COMMITTEE APPOINTED

The Secretary of State announced the appointment of the following committee to escort the Honorable Bill Clayton to the Speaker's rostrum for the purpose of taking the constitutional oath of office as Speaker: Representatives Thompson, chairperson; Brown, Collazo, Evans, Simpson, Looney, J. A. Clark, Bush, Mayes, Sutton, Valles, Grant, Hanna, Presnal, Laney, and Browder.

OATH OF OFFICE TAKEN BY THE SPEAKER OF THE HOUSE

The Honorable Bill Clayton of Lamb County, having been escorted to the Speaker's rostrum, took the constitutional oath of office as Speaker of the House of Representatives of the 66th Legislature of the State of Texas, which was administered by the Honorable Joe Greenhill, Chief Justice of the Supreme Court of the State of Texas.

The Secretary of State then recognized the Honorable Jim Browder who introduced Delma Clayton, wife of Speaker Clayton.

ADDRESS BY SPEAKER BILL CLAYTON

The Secretary of State recognized the Honorable Tim Von Dohlen who introduced Speaker Clayton to the House.

Speaker Clayton then addressed the House, speaking as follows:

Mr. Secretary, Judge, fellow members and friends: How can one find words to express true gratitude to those of you who have supported me in the past and again today as together we witness history in the making?

Records are made to be broken. The 10 second 100 yard dash for so long was mythical but now considered slow compared to today's standard for runners. The athlete now consistently towers over the 7 foot high jump mark and the 17 foot pole vault records of yesteryear.

The scientist and inventor continue to make breakthroughs in old theories and physical properties with more imaginative ideas and better products for our use. Medicine, for example, has advanced so fast in the last few years it is hard to comprehend, yet the world awaits even more accomplishments. The horse and buggy transportation of our grandparents has been surpassed with space travel.

What I'm saying is that history marches on and many things leave tracks that can be traced through the pages of time. Those tracks that are left or those records that are broken generally endure to the public benefit.

This is an era which historians will write about. A Republican Governor of Texas—the first time in over 105 years. Fewer House members defeated in reelection bids than at any time in this century. Three consecutive sessions with large cash surpluses in our State Treasury. Taxpayer relief assured by voters overwhelmingly approving a constitutional tax relief amendment. And finally on this day—honoring me with your votes which in effect writes another chapter of history about the Texas House of Representatives. You have made me the first person to serve three consecutive terms as Speaker of this most noble body. This honor in itself and your confidence in me, humbles me more than you can imagine.

I know what this will require of me and more especially my family. My wife, Delma; my son, Tommy; and daughter, Brenda; and their families mean a great deal to me. They have accepted my role as Speaker knowing I could not be with them as much as I would like. This is a sacrifice they make so that I might serve and I appreciate them so much for that.

Because you have provided me this historic honor, I pledge my total dedication, time, and effort to make this legislature the most efficient, the most productive, and the most respected of the 65 legislatures that have preceeded us. To do this it will take a coordinated and unified effort from each of us. Some will be selected for more visible roles than others. However, all will have a post to fill and a constituency to represent.

All proceedings and all positions will be entered into or filled with a conscientious effort to be fair to all and at the same time not forgetting those who have always been there. I think if I have ever been accused of anything it is that of being too fair. This, of course, was my heritage and upbringing. My fairness will certainly continue to be practiced in remembering those who have fought the good fight.

I know it will be harder to fill committee appointments than ever before—I know it will be a different relationship between state officials— I know we will face some of the hardest decisions ever—I know it will take a miracle to accomplish all we need to in 140 days, particularly in light of the general attitude of our citizenry; tax relief on the one hand—additional services on the other.

But you know—I believe in miracles. There was a man who nearly 2000 years ago performed many miracles. The one thing, however, He imparted to all mankind was that through Him all things are possible. If we in our work here in the next five months, will believe in His truths and apply them as we work together, we can overcome—overcome the doubt—overcome the pessimism—overcome the anxiety and produce the miracle of accomplishment the people of this great state so rightly deserve. Thank you.

REMARKS ORDERED PRINTED

Representative Allred moved that the remarks by Speaker Clayton be printed in the journal.

The motion prevailed without objection.