

Texas

September 2020

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Kelly Hancock

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LETTER from the Chairman



HOLLIMAN

The upcoming election in November will shape the State of Texas and our Country's future for the next decade or longer. The pro-business values with limited regulations and low taxes have allowed Texas to build an economy envied by other states and countries. The economy of Texas is the second largest in the United States. If Texas were a nation, it would rank as the 10th largest economy in the world based on GDP. Texas continues to maintain its position as the nation's top exporter, a title the state has held for 15 consecutive years. This

accomplishment is not by accident, it is because of strong leadership that supports merit shop and free enterprise that keeps our economy growing and going; especially through this challenging year.

As we ponder the future of the freedom and liberties at risk in this election, I am reminded of the quotes:

"A government big enough to give you everything you want, is strong enough to take everything you have." – Thomas Paine

"Texas is the Lone Star State for a reason. It stands separate. It stands alone... as a model for the rest of the nation." – Governor Greg Abbott

Our founding fathers created a great framework that has worked for over 240 years in a free market economy. I encourage everyone to vote to maintain our constitutional rights and values that provide all of us freedom, liberty, and promote One Nation under God. Your future and future generations depend on you to keep the values we treasure in place for the generations to come.

As we approach the 87th Legislative Session, ABC of Texas leadership will continue to strive to communicate issues and educate voters on candidates who support the values of free enterprise and merit shop.

God Bless America, God Bless Texas, and God Bless each of you. Thank you for allowing me to represent this organization and be a voice on behalf of merit shop and free enterprise principles in Texas. 🇺🇸

GPPaul Holliman

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2019-2021 ABC of Texas Chairman

LETTER from the President



ADAMS

Dear ABC Members —

The Election of 2020 is now upon us, under conditions so turbulent some historians have opined that the stress on the country is more akin to that of 1864 than anything we have seen in 21st Century. I won't go that far, but this election will be unique.

We can all watch Fox News or CNN to see how the politics of the moment are at play on the national stage. But at the state level, I find it hard to overstate the consequences of the November elections. In Austin, political insiders believe that up to 33 districts within the Texas House of Representatives will have competitive races this year. Republicans only hold a 9-seat majority in that chamber, while Democrats believe they have the best chance since 2003 of retaking the House.

The Texas Senate is a secure ground for Republicans, but national trends will surely have down-ballot consequences in a growing state like Texas. State leaders have rejected the idea of expanding mail-in ballots due to concerns over voter fraud. That means that lines at the polls will be long and tedious, and once voters find that Texas no longer allows straight-ticket voting. Each candidate for each race down the ballot will need to be checked and counted.

This election will be won by candidates and policies who motivate voters to stick it out through the process. ABC members need to make sure we are supporting our candidates in an election where history will be written by those who win. 🗳️

A handwritten signature in blue ink that reads "Will Adams". The signature is fluid and cursive, with a long horizontal stroke at the end.

Will Adams

ABC of Texas

President

2021 ABC Legislative Priorities

BY WILL MCADAMS

Since January, when the first known cases of COVID-19 reached the United States, economic uncertainty has been the one unifying theme for all American businesses. With the 2020 Elections fast approaching, and every state legislature in the country set to meet in January of next year, every American business can anticipate political and regulatory uncertainty heaped upon anyone who employs people.

Here in Texas, we have no less than 33 races for seats in the Texas House of Representatives that insiders believe will be competitive in the fall elections. In this instance, Democrats campaigning in Texas believe they have the best chance to retake the Texas House since 2003 when they lost every statewide office and control of both chambers of the Legislature.

Layer on top, the Texas Comptroller recently released his mid-year revenue assessment for the State of Texas, forecasting a \$7.5 billion revision for the state's revenues. He now assesses that instead of running a surplus of \$2 billion in tax revenue going into the next session, we will most likely have a \$4.5 billion deficit for appropriators to sort through. And finally, it is a redistricting year where every elected official from congress on down will have their districts redrawn for the next ten years.

Suffice to say there is a lot of uncertainty out there, and readers can draw their conclusions about where state policymakers might take us in 2021. Considering such variables, the ABC of Texas Board of Directors recently met and adopted a conservative slate of policy priorities that the state Association will pursue during the next session of the Legislature.

DESIGN DEFECTS

Foremost among these priorities will be a concerted effort to remedy the legal conflict of Design Defect liability for Texas contractors. In the next article, Ben Wescott admirably captures the legal knot that makes a contractor operating in Texas liable for the defects in designs and plans provided to them by an owner or their agent. Texas is currently the only state in the country that assigns fault this way. ABC of Texas will propose aligning construction liability with the national legal doctrine.

LIEN LAW MODERNIZATION

There is building momentum within Austin stakeholder groups to find common ground on modernizing the statutes affecting The Texas Mechanics Lien Law. So much time and effort have been expended on the part of construction groups and owners over the last ten years to hammer out a deal, many now believe it is time to grasp the least controversial reforms and file a bill that everyone can agree with. ABC of Texas will support a bill designed to provide transparency, simplicity, and efficiency for both contractors and owners processing claims.

Firstly, we would make the new Mechanics Lien Law optional, where market participants could opt-in or opt-out of the new legal framework. The law would provide the "fixed inception of the lien date." Once a project "owner" has opted-in, the project will continue under the new framework for the duration of the project term.

Secondly, we would create a web-based filing system, where an owner registers a project online. At the same


time, the contractor would check a box to be considered eligible to file a lien, eliminating all of the mailing requirements and costs. We would also set an early notice condition for contractors where they would need to check that box within 45 days of work starting on a project.





Finally, as an incentive for compromise, an ABC of Texas supported bill would simplify and expedite the timelines where owners can financially close out projects without risk of later filed liens.

CONSISTENT EMPLOYMENT REGULATIONS

ABC of Texas will again support the statewide business coalition, the Alliance for Securing and Strengthening the Economy in Texas, otherwise known as ASSET, which advocates for a consistent statewide approach to labor-related requirements for employers. Namely, issues like Paid Sick Leave, Predictive Scheduling, and Mandatory Rest Break policies considered by local governments have raised concerns within the construction community that we could face hundreds of new labor policies across thousands of jurisdictions. Each city or county, dictating the terms and conditions of the employer/employee relationship. We will support a bill that clarifies that our state government is the appropriate arbitrator on labor policy across all jurisdictions.

The environment ABC of Texas operates in is no less uncertain than the economic conditions our members face every day. Still, construction will be a large part of the national recovery. Policies that we will present to legislators will pave the way for our businesses to dust themselves off and get back to work. 🇺🇸

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Time to Make Design Defects a Legislative Priority

BY BEN WESTCOTT

Why would the majority of states and federal law require an owner to warrant the plans to the contractor? Why would the states that don't require this warranty, allow the contractor to sue the architect/engineer directly for the losses caused by the architect/engineer's plans? The answer is because logic and reasonable business practices dictate that the party that prepares the plans or procures the plans should be responsible for the damages caused by defects in those plans.

What's the problem? Texas doesn't follow the federal law or the law of other states on this design defect issue.

Unless otherwise protected by contract language, Texas contractors may be held responsible for defective plans and specifications created by the Owner or the Owner's architect or engineer. In other words, Texas is one of only a handful of states where owners don't impliedly warrant the sufficiency of the plans they give to the contractors. Many Texas owners use their contracts to shift the risk of defective design to the contractor, even when the contractor is not aware of the defects. This contract language problem is worse on hard bid public contracts where the contractor is not permitted to change the contract language. To add insult to injury, Texas contractors are also prohibited from suing architects for economic damages resulting from defective plans/drawings when the contractor does not have a direct contract with the architect or engineer. There have been a number of important cases surrounding the issue of "responsibility for defective plans," including: *El Paso Field Services LP v. MasTec North America*,¹ *Lonergan v. San Antonio Loan & Trust Co.*,² and *LAN/STV v. Martin K. Eby*.³ Each of these cases results in the contractor holding the bag for someone else's defective plans.

ABC proposed legislation to the 85th and 87th Legislature clarifying the parties responsible for defects in construction plans and specifications provided to

contractors or others who did not prepare the plans or specifications. These bills required owners to warrant and guarantee the accuracy, adequacy, sufficiency, and suitability of plans, specifications, or other related documents provided to contractors or subcontractors for the construction or repair of improvements to real property, and voids the waiver of this guarantee. This revision would have placed the responsibility of defective plans and specifications with the party that prepared and/or paid for the preparation of the plans and specifications for a project and prohibited an owner from transferring the risk of defects in plans or specifications to the contractor or others who did not prepare the plans or specifications. Secondly, the "void waiver" provision of the bills would have directly affected the holding of *MasTec* where the Owner used the contract to shift the liability for defects in the plans and specifications to the contractor.

HB 2899 (2019) which specifies that road and bridge construction contractors are not liable for design defects was passed and signed into law by the Governor. Shockingly, road and bridge construction continues today despite the new law taking effect. Thankfully, an Interim Committee has also been set up as a part of the Judiciary & Civil Jurisprudence Committee to investigate whether HB2899 should be expanded to other areas of public/private contracting (Answer: "Yes").

In closing, ABC members should support legislation addressing this problem and ask their legislators to bring Texas in line with the rest of the country and place the risk of defects in plans and specifications on those that actually prepare them. 📌

1. *El Paso Field Services, L.P. v. MasTec N. Am., Inc.*, 389 S.W.3d 802 (Tex. 2012).

2. *Lonergan v. San Antonio Loan & Trust Co.*, 104 S.W. 1061 (1907).

3. *LAN/STV v. Martin K. Eby Const. Co., Inc.*, 435 S.W.3d 234 (Tex. 2014).



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At the heart of the Free Enterprise Alliance's mission is the belief that while we need government for common sense regulations, the scales have tipped too far in favor of government intrusion and its advocates. The Free Enterprise Alliance believes small business and entrepreneurs—not union bosses and federal bureaucrats—grow jobs and our economy.

The Free Enterprise Alliance is not a 527, 501(c)(4) or other tax exempt political entity—it is simply a checking account at ABC National, a 501(c)(6), and therefore NOT required to disclose its donors with the Federal Election Commission.

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ONE-ON-ONE

TEXAS SENATOR

Kelly Hancock

Senator Kelly Hancock has served in the Texas Legislature since 2007 when he was elected to the Texas House of Representatives. He was elected to the Texas Senate in 2012 and has held several senior leadership positions in both chambers. Senator Hancock currently serves as the Chairman of the Texas Senate Committee on Business and Commerce. He has an extensive business background as owner and operator of Advanced Chemical Logistics, his family-founded company. Since 2013, Senator Hancock had either authored or sponsored ABC of Texas top priority legislation, "Neutrality in Government Contracting". He has acted as a tireless advocate for the free market and a voice for the merit shop inside the Texas Capitol.

Much has happened since the Texas Legislature adjourned last summer. How do you think our state government did last session?

SENATOR HANCOCK: Last session was a historic session, from my point of view. We accomplished historic property tax reform that limits the growth of property taxes. We came together to completely reform our state's school finance system to put more money directly into Texas classrooms, without a court mandate. We also passed the Neutrality in Government Contracting bill to protect taxpayer dollars by ensuring that every business can compete for government contracts. Overall, I was very proud to be a part of the 86th Legislature, and I think Texans are better off because of the work we accomplished.

What do you consider your most important accomplishment during the last session?

As Chair of the Senate Business & Commerce Committee, I have structured the committee to act as a referee among business interests with a goal of ensuring a fair economic playing field, tearing down barriers to entry, and enhancing competitive markets. With these goals in mind, we passed a wide range of important measures like eliminating many unnecessary state-required licenses, ensuring our electrical grid is secure, and increasing the protections in place for patients who receive a surprise medical bill.

After many sessions working to address surprise medical bills, last session SB 1264 passed. That legislation prohibits surprise medical bills. Now patients with health insurance plans regulated by the State of Texas will no longer receive a surprise medical bill and are taken out of the middle of the fight between insurance companies and health care providers.

As Chairman of the powerful Business and Commerce Committee in the Texas Senate you will be a key policymaker focused on restarting our economy after the threat of COVID-19 finally passes. What will your priorities be to get Texans back to work?

The best thing that we can do to help restart the economy right now is to continue to reopen safely and responsibly. Further down the road, we believe that reducing regulatory burdens will be essential to helping Texas bounce back. Governor Abbott, along with many of our state agencies, has eliminated unnecessary hurdles for both businesses and employees that just want to get back to work. We are looking closely at which rules and regulations can be permanently eliminated to allow our free market economy to thrive.

During the last four sessions of the Texas Legislature you carried the "Neutrality in Government Contracting" bill, an ABC of Texas top priority. How do you think this policy plays out in practice as governments of all sizes attempt to maintain essential services and infrastructure amidst strained budgets?

This policy is about fairness and open competition in the marketplace. The passage of the bill allows every qualified company a chance to bid on, and win, a state contract while ensuring tax-payer dollars are being used properly. This is especially important as every level of government face huge budget strains because of COVID-19.

You own and operate a family business and understand the challenges small and midsize businesses all over the country are trying to overcome. What advice do you have for ABC members considering all the uncertainty we see in our economy and for our government?

Follow the guidelines that are set out by the CDC, state, and local ordinances that are currently in place. We know that businesses need to protect themselves. The federal government has shown interest in legislation ensuring businesses have immunity from civil suits related to COVID-19, but nothing has passed to this point. In the absence of federal action, this will definitely be a priority next session. Texans have always been resilient and we will get through this together and stronger than ever. Don't wait for COVID to end to determine how you will maintain your business financial success. Be willing to adapt and always maintain the "can do" spirit that Texas instills in all of us. 🇹🇽



In August, ABC Greater Houston new members gave introductions via Zoom for the Membership Breakfast.

Greater Houston Chapter

The past few months have looked different for the ABC Greater Houston Chapter. Since March, the chapter has held committee meetings and events virtually, as well as hosted weekly Peer Group Calls to keep members informed about any coronavirus changes for contractors.

In July, the chapter's women's committee (LOGIC) hosted a virtual Leadership Panel event where over 100 ladies listened to a panel of industry leaders discuss how they are navigating work and personal life because of the coronavirus. In August, the women's committee hosted a small gathering to have a clay shoot how-to, which allowed ladies to learn how to use a firearm and prepare for a future ABC Clay Shoot.

With the regulations for in-person events constantly changing, the chapter held its Membership Breakfast via Zoom on August 7th. This event featured Congressman Dan Crenshaw, who gave a congressional update and recognized the 2020 STEP award recipients, and virtually recognized over 100 STEP members.

We may never know when things will go back to the "normal" we had before, but in the meantime, we can work to keep our members engaged and informed while still fighting for the merit shop philosophy. There is a light at the end of the tunnel – we need to keep pushing our way through to the other side.

Central Texas Chapter

In July, the ABC Central Texas Chapter welcomed a new Chapter President, Crystal Smith. Tracey Littlefield, former Chapter President, relocated to Arizona in July. Tracey's vision of enhanced membership engagement, programs, and events led to the chapter's substantial growth. Tracey left the ABC CTX chapter positioned for continued success and was critical in the onboarding and training of Crystal. Crystal is excited to continue the great work at ABC CTX.

DPR Construction hosted our Coffee & Contractors event, virtually, in August. Our Coffee & Contractors events continue to bring multitudes of members into our office to network with other sub and supplier members and learn from local GC members about their company culture, bid list, and upcoming projects.

Charisse Bodisch, Senior Vice President of Economic Development with the Austin Chamber of Commerce were our guest speakers at the August 26th Construction Executives Breakfast Group. Bodisch shared information on Opportunity Austin, including current prospect activity, recent announcements such as Tesla and BAE Systems and trends in the marketplace.

As Tesla announced the construction of its new gigafactory, ABC CTX is working with Tesla and Travis County Economic Board to provide information to our



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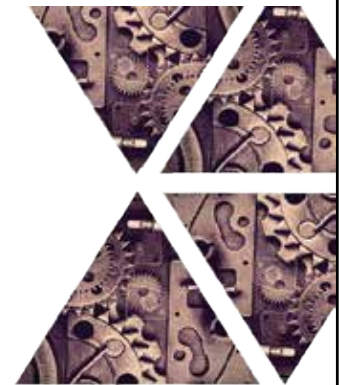
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South Texas Chapter

members. Our OSHA Partnership continues to meet to discuss and explore best practices in safety, including COVID-19 related issues.

The chapter's golf tournament is scheduled for September 21st and has nearly sold out! The ABC CTX has implemented COVID-19 protocols at the tournament. As ABC CTX continues to navigate the waters of COVID-19, many of our events became impossible to safely and responsibly host resulting in cancelation or indefinite postponement. Like our members, we continue to find ways to creatively and safely offer programs to our members.

South Texas Chapter

When will this ever end? Plans are made one day only to be changed or cancelled the next day. But the chapter continues to move the ball forward.

In the Advocacy arena, the Government Affairs Committee continues to hold its monthly meetings via Zoom with great participation and input. While construction continues to be considered "essential," there still are efforts to hamper construction activity. The latest effort by the city is something called the "Deconstruction Ordinance." This would require any demolition to be done by hand and all materials either recycled or repurposed. The first phase would impact

any residential structure built before 1924, second phase any residential structure built before 1945 and the third phase would apply to commercial structures. Luckily we were able to get commercial excluded. Probably the most surprising comment by city staff as to why this is needed - "...it works in Portland."

In July, a small group of board and GAC members met with Congressman Chip Roy. Expecting to only have fifteen minutes, the conversation lasted over an hour. Main topics were CARES Act and the PPP. Great meeting.



South Texas Chapter

In the Business Development arena just about every event has been postponed or cancelled. The chapter was fortunate to host a Breakfast Club program in July featuring ABC Texas President Will McAdams. Will reviewed the recent elections and upcoming November general election, and the impacts on the 2021 Texas Legislative session. Planning is still underway for the September Golf Tournament, October Fishing Tournament, and the Sporting Clay Shoot and rescheduled EIC banquet in November.

The main Construction Education focus has been on the 2020/2021 Apprenticeship school year, and continued safety course offerings. Enrollment numbers appear to be trending upwards, and safety classes have maxed with the COVID-19 protocols in place. The chapter is also working with a handful of high schools to conduct pre-apprenticeship programs starting in September.

The board of directors started the 2021 planning process in August, holding four board breakout sessions to identify challenges and opportunities to be fleshed out at the October board retreat. Of course, all planning needs to be flexible during these times!

TEXO Chapter

Throughout the spring and summer of 2020, TEXO was primarily focused on its response to COVID-19 and efforts to maintain a semblance of normalcy for the membership. Members have shared that TEXO has proven to be more valuable than ever before thanks to its continuous efforts to help sustain their businesses and the construction industry at-large, even in the face of the uncertainty all around us.

Despite having to reschedule multiple events and pivot to accommodate ever-changing COVID-19 health and safety protocols, TEXO's Challenge Cup series – presented in 2020 by Milwaukee Tool – was eventually kickstarted by the TEXO Golf Tournament on July 27th at Brookhaven Country Club. The membership was incredibly supportive of this event, with team spots selling out and almost all sponsorships being claimed. The remaining Challenge Cup events will take place this fall, and TEXO and its members look forward to the networking and friendly competition that will be enjoyed.

Like many organizations during this time of social distancing, TEXO dove into the world of virtual events as a way to keep its membership and partners connected with each other and engaged with insightful content –

with great success. Some of the most applauded events have been Member-to-Member Virtual Roundtables, where TEXO members can have in-depth conversations led by representatives from the Board of Directors about relevant topics with their peers in a small group setting. Topics discussed have included: company culture during the pandemic, current human resources trends, and diversity and inclusion efforts in the workplace.

Additional virtual events included a Constructing Student Success virtual workshop hosted by the TEXO Foundation's High School Outreach Committee for educators and administrators with speakers from Apple, Procore, Bluebeam, NCCER, Texas Education Agency (TEA), and more. Later in August, TEXO is partnering with the Dallas chapter of the Society of Marketing Professional Services (SMPS) to host a two-part Crisis Communications Webinar



TEXAS MIDCOAST CHAPTER



TEXAS MIDCOAST CHAPTER

Series, including a Crisis Response Panel representing the full spectrum of the Architecture/Engineering/Construction industry and a Crisis Communications 101 class taught by a public relations professional.

Looking ahead, TEXO is preparing for a full slate of both online and in-person professional development courses, as well as TEXO Foundation's Building Knowledge Virtual Conference for college professors.

While day-to-day life has not yet returned to normal and does not look to do so any time soon, TEXO continues to work tirelessly to provide the membership with the resources, opportunities, and value they expect from their association.

Texas Mid Coast Chapter

The ABC, Texas Mid Coast Chapter has cancelled or shifted many scheduled events to the Fall due to the COVID-19 restrictions and social distancing protocols. The Annual Fishing Tournament will take place 100% outdoors with a drive-thru style registration and weigh-in and food served to-go. The registrations have increased compared to the past few years and the staff and committee are committed to safety of all attendees. More outdoor events are planned for later in the year!

ABC is preparing for the upcoming school year for the Mid Coast Construction Academy (MCA). With the COVID-19 restrictions, this year looks much different than those prior. The program offers pre-apprenticeships and apprenticeships for plumbers and electricians and so far, it appears that the MCA will receive an increased number of applicants seeking a seat in the classes that being on August 19, 2020. Much of the success of the program can be attributed to student peer and employer recruitment since social protocols restricted marketing presentations, such as those completed in previous years.

Tonya Perez, MCA Education Coordinator, proudly accepted the 2020 Workforce Excellence Award on June 23, 2020. The award was based on innovativeness, transferability, community commitment and leverage, measured objectives and secondary benefits. The MCA was nominated for this award by the Victoria Economic Development Corporation.

The mission of the MCA is to promote and educate students and jobseekers about the construction industry and develop skilled labor. The MCA will prepare students with career-ready job skills to enter the workforce with confidence. This workforce development initiative will promote regional job growth in: Bee, Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio and Victoria Counties.



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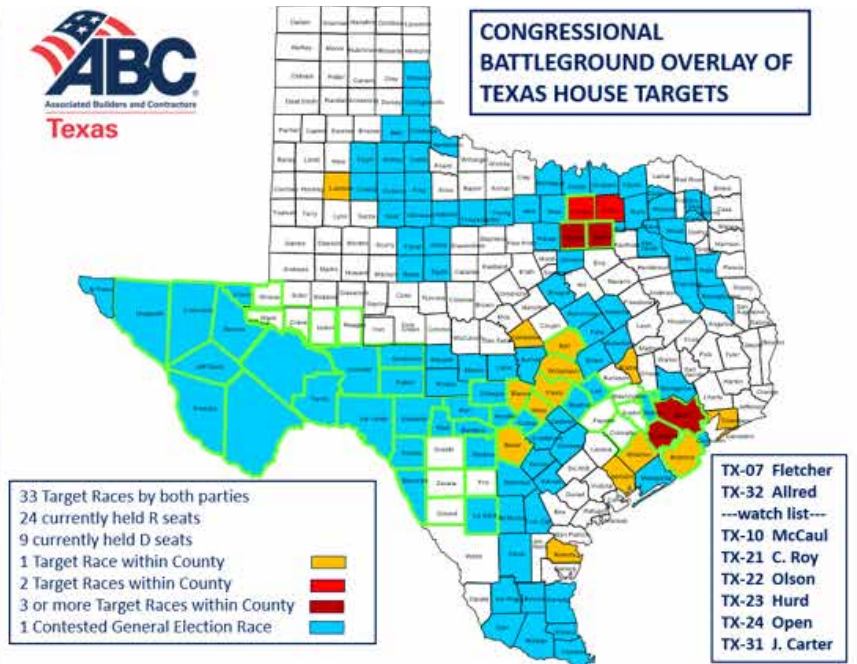
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Gulf Coast Chapter

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Gulf Coast Chapter

With a summer season like no other before, ABC Texas Gulf Coast Chapter continues to bring value to members in completely new ways. With record speed, ABC members have adapted to an online environment providing safe distancing. Using new techniques and technology platforms, ABC boards, committees, and training have been able to convene virtually to ensure that essential business continues. Initially the magnitude of these changes was daunting. Now, virtual meetings and events are daily occurrences and there are benefits that have emerged from this new environment.

Distance and schedule limitations are largely diminished in our new electronic world. ABC Texas Gulf Coast was able to have Will McAdams, President of ABC of Texas, easily join the chapter board meeting to give an excellent update on the upcoming elections in the battleground state. With many registered voters moving to Texas, PAC dollars are extremely important to ensure favorable outcomes in the upcoming elections. Residing in the state capitol and embedded in Texas politics, Will's ability to virtually report to the chapter board was enlightening and impactful.

Virtual events also allowed the chapter to expand reach and volume when needed. Popular speakers, such as Congressman Dan Crenshaw (R-TX), can have a much larger audience. In August, ABC Texas Gulf Coast members were able to join the virtual "Coffee with Dan Crenshaw" event hosted by ABC Greater Houston without having to limit attendance to the capacity of a physical space.

Another benefit is that ABC can deliver value to its members when and where they need it most. The valuable resources and webinars provided to members are recorded and broadcast, allowing members to choose when and where they take advantage of the resources provided whether it be in a boardroom or on a smart phone.

ABC Texas Gulf Coast has also been able to provide support to essential industrial construction by providing training in a safe environment. With the ability to provide distancing, hygiene protocols, face masks, and temperature scans, the chapter has been able to implement a safety-first approach and continue to support their members locally with services needed.

The world has changed, but everyone has adapted by implementing changes for the better. While we wait expectantly for a "return to normal", we are pleased that some of the changes are permanent as they have improved us and allowed us to move forward. 📍



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*ABC 2019 Safety Performance Report, abc.org/spr



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