

# THE TEXAS MODEL

## PROPERTY RIGHTS AND PROSPERITY



### The **TEXAS Model**

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

Bill Peacock

[bpeacock@texaspolicy.com](mailto:bpeacock@texaspolicy.com)

512-472-2700

Texas Public Policy Foundation

[www.TexasPolicy.com](http://www.TexasPolicy.com)

Williamson Co. Realtors Farm and Ranch Association

September 2011



# Private Property v. the Public Good



# Problems w/ Property Rights in Texas

- “Property owners do not acquire a constitutionally protected vested right in property uses.”
- Texas courts give too much deference to local governments
- Courts do not consider all circumstances or facts that might effect the present market value
- There is no requirement that property taken for a public use is used for that public use
- Great confusion between “public use” and “public purpose”
- Can’t challenge the public necessity of a project

# Applewhite Reservoir



# Applewhite Reservoir



# Harry Whittington



# Woodard Paint & Body



# Texas Legislature - SB 18

- Prohibits ED takings that are not for a public use.
- Changes “public purpose” to “public use” in some cases
- Grants more leeway to roads crossing easements
- Requires entities to report that they have ED authority
- Requires payment for relocation expenses
- Material impairment of direct access to remaining property can be considered in compensation
- Poorly crafted buyback provision
- Procedural safeguards
  - Requires bonafide offer equal to or greater than the appraised value by a certified appraiser
  - Requires vote by governing body
  - Requires access to all appraisals by condemnor





# Property Rights Issues Affect More than Real Property Ownership

- Eminent Domain
  - Takings
  - Public Use v. Public Necessity
  - Compensation
- Regulatory Takings
  - Zoning
  - Regulations
- Taxes and Spending
- Civil Justice



# The TEXAS Model

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

- The Texas Model is:
  - Low spending and taxes
  - A predictable, low level of regulation and strong property rights protection
  - A sound civil justice system
  - Minimal dependence on/interference from the federal government.

# The Texas Model is in the News

**NATIONAL REVIEW ONLINE**

Agenda | Campaign Spot | Primary Event | The Home Front | Bench Memos | The Feed | Media B  
Light Field | Exchequer | Phi Beta Cons | Planet Gore | UK | Between the Covers | Radio Der  
NR Magazine | Subscribe: NR / Digital | NR Renewals, Changes & Payments | Shop! | Donate | Medi

**RICH LOWRY**  
ABOUT | ARCHIVE | LATEST | FOLLOW | E-MAIL | LOG IN

OCTOBER 15, 2010 12:00 A.M.

## The Texas Model

The Lone Star State speeds up its recovery with pro-business policies.

**T**exas already looms large in its own imagination. Its elevated self-image didn't need this: More than half of the net new jobs in the U.S. during the past 12 months were created in the Lone Star State.

According to the Bureau of Labor Statistics, 214,000 net new jobs were created in the United States from August 2009 to August 2010. Texas created 119,000 jobs during the same period. If every state in the country had performed as well, we'd have created about 1.5 million jobs nationally during the past year, and maybe "stimulus" wouldn't be such a dirty word.

See how fresh can help redefi  
Online Retirement C guidance to help yo  
Chartered Retireme to talk you through  
250 FREE TRADES  
GET  
TD A  
GET START LIMITED TI  
50K POIN



The  
**TEXAS Model**

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

# Jobs, Jobs, Jobs

Year	Texas Employment	Change	U.S. Employment w/o Texas	Change
2001	9,423,300		121,009,700	
2008	10,439,700	1,016,400	125,400,300	4,390,600
2011	10,623,600	1,200,300	120,296,400	-713,300



The  
**TEXAS Model**

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

# Unemployment & Domestic Migration

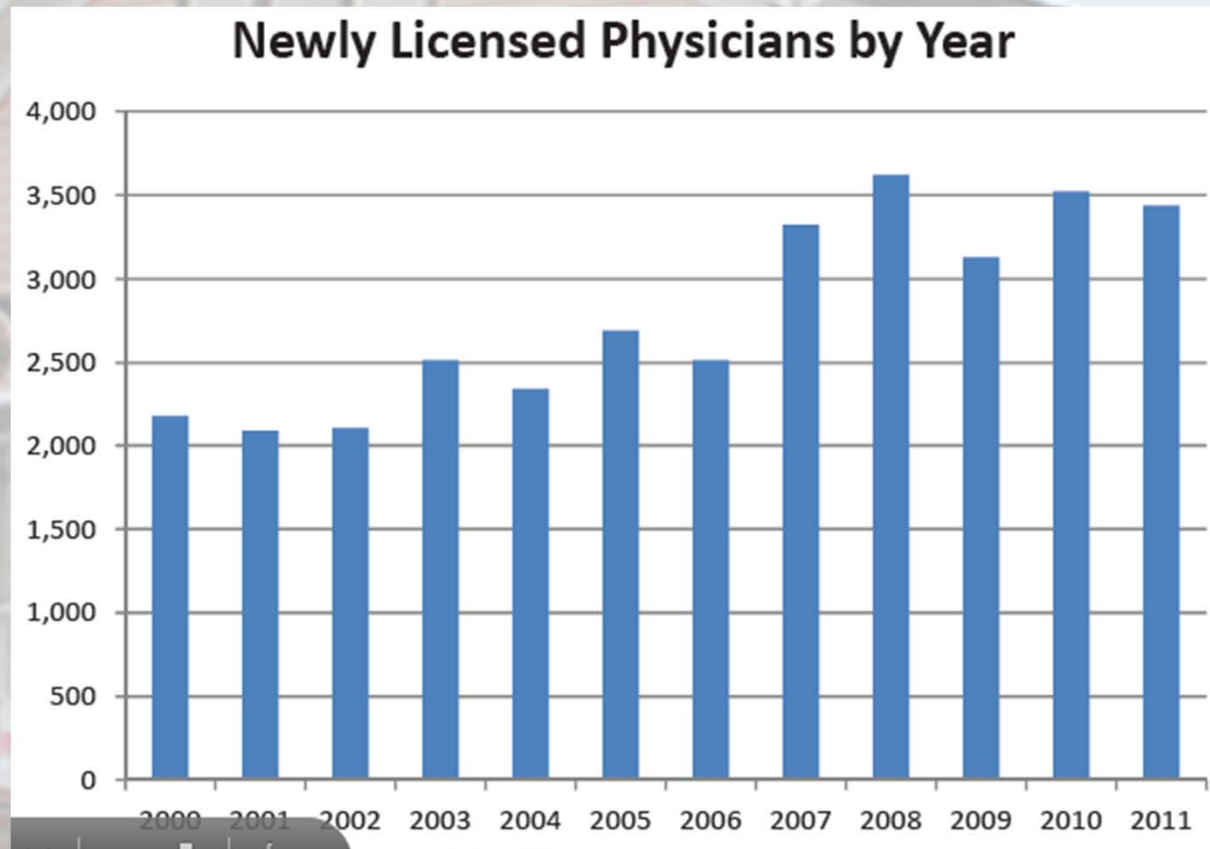
State	Unemployment Rate	Employment Change Jan. 2001 - June 2011*	% Change	Net Domestic Migration 2001-2010**
Texas	8.2%	1,200,300	12.74%	781,542
New York	8.0%	179,000	2.10%	-1,570,310
Massachusetts	7.6%	-34,400	-1.04%	-328,695



The  
**TEXAS Model**

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

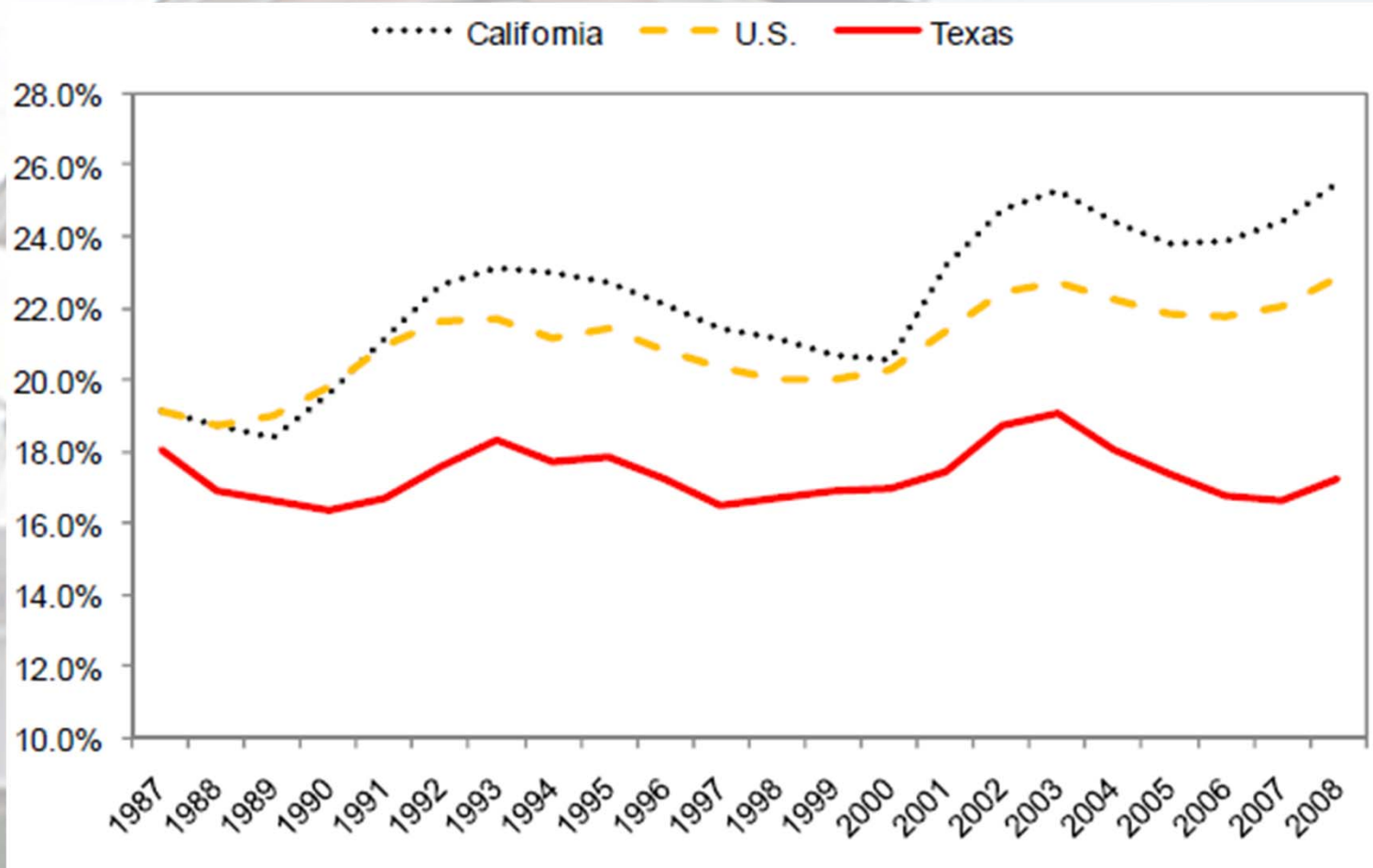
# Tort Reform & Health Care



The  
**TEXAS Model**

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

# Spending, Spending, Spending



The  
**TEXAS Model**

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

# Spending, Spending, Spending

Table 2: Impact of State's Fiscal Policy on Economic Growth

State Economic Policy		Economic Growth 2003-2007		
		Job Growth	Income Growth	Population Growth
State Economic Development Spending	Lowest States per capita	10.7%	36.6%	7.9%
	Highest States per capita	7.0%	30.0%	3.2%
State & Local Tax Burdens	Lowest States per capita	11.0%	38.0%	7.4%
	Highest States per capita	4.3%	28.3%	1.9%
Change in Tax Policy	Tax Cutting States	12.6%	39.1%	9.4%
	Tax Raising States	5.0%	29.4%	4.0%





# What Happened: 82<sup>nd</sup> Texas Legislature

- Balanced budget, no new taxes
- Rainy Day fund still strong
- Loser Pays
- Protecting Groundwater Rights
- Interstate Health Compact
- Controlled Education Spending
- Reduced Health Care Costs

# What's Ahead: 83<sup>rd</sup> Texas Legislature

- Increased Medicaid Costs: \$12 - \$16 billion
- Rainy Day spending: \$4 - \$5 billion
- Education spending
- Efforts to “fix” margins tax
- Efforts to reduce property tax
- The need to closely examine state spending?
- More property rights reform?



# What's Ahead: The Texas Supreme Court

- Four recent decisions have pumped new life into property rights
  - Texas Rice Land Partners, Ltd. And Mike Latta v. Denbury Green Pipeline-texas, Llc.
  - In Re State Of Texas v. Laws
  - City Of Dallas v. Heather Stewart
  - Barbara Robinson v. Crown Cork & Seal Company, Inc.

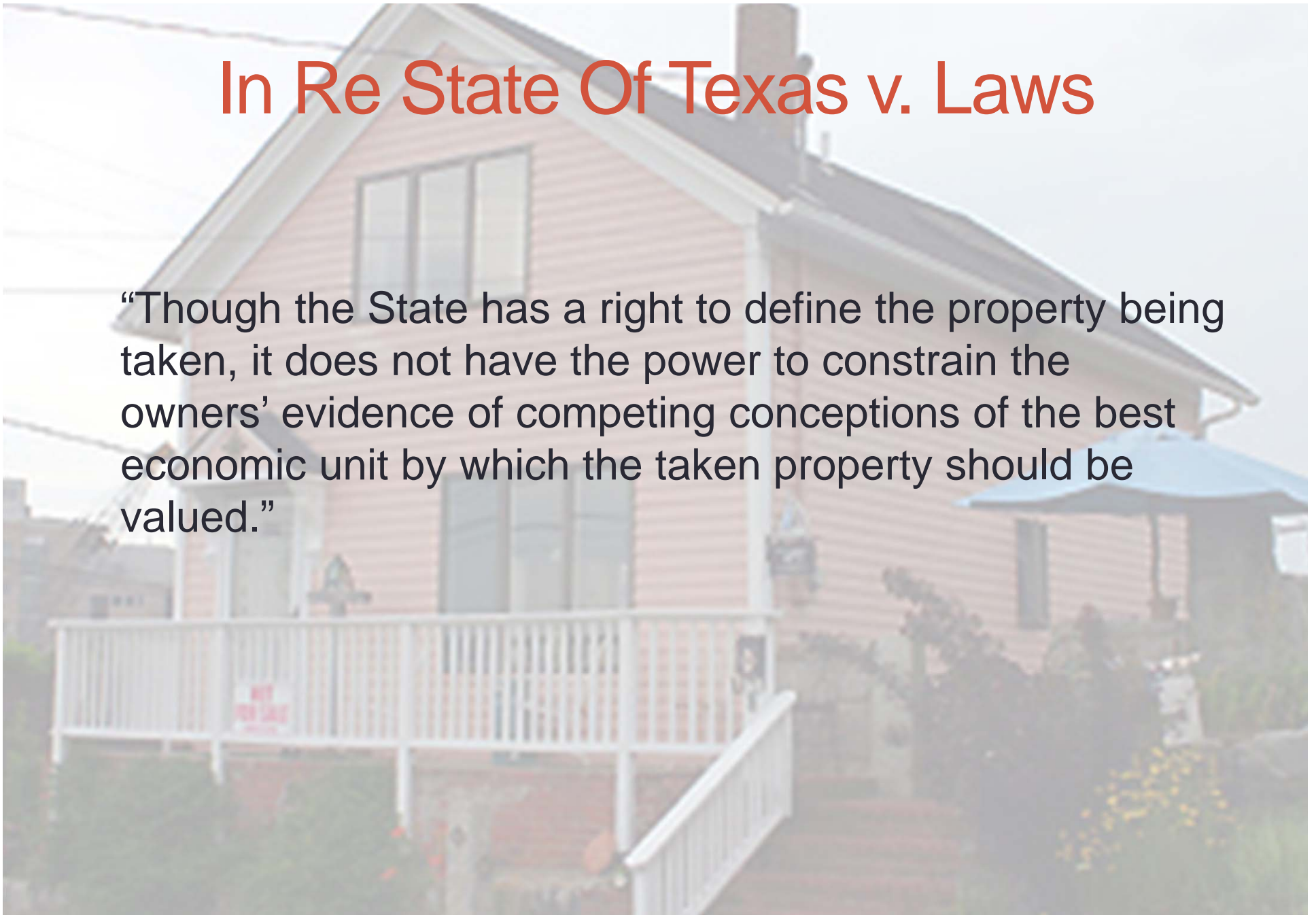


# Texas Rice Land Partners v. Denbury

“Merely registering as a common carrier does not conclusively convey the extraordinary power of eminent domain or bar landowners from contesting in court whether a planned pipeline meets statutory common-carrier requirements. Nothing in Texas law leaves landowners so vulnerable to unconstitutional private takings.”

# In Re State Of Texas v. Laws

“Though the State has a right to define the property being taken, it does not have the power to constrain the owners’ evidence of competing conceptions of the best economic unit by which the taken property should be valued.”



A photograph of a two-story house with a porch, overlaid with text. The house has light-colored siding and a dark roof. A white porch railing is visible in the foreground. The text is overlaid on the image in a semi-transparent box.

# City Of Dallas v. Heather Stewart

“The protection of property rights, central to the functioning of our society, should not—indeed, cannot—be charged to the same people who seek to take those rights away. ... [W]e believe that unelected municipal agencies cannot be effective bulwarks against constitutional violations.”

A photograph of a two-story house with a porch, overlaid with text. The house has a gabled roof, a chimney, and a white porch railing. The text is overlaid in the center of the image.

## Robinson v. Crown Cork & Seal Company, Inc.

“Judges are properly deferential to legislative judgments in most matters, but at some epochal point, when police power becomes a convenient talisman waved to short-circuit our constitutional design, deference devolves into dereliction.”

# THE TEXAS MODEL

## PROPERTY RIGHTS AND PROSPERITY



### The **TEXAS Model**

A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION

Bill Peacock

[bpeacock@texaspolicy.com](mailto:bpeacock@texaspolicy.com)

512-472-2700

Texas Public Policy Foundation

[www.TexasPolicy.com](http://www.TexasPolicy.com)

Williamson Co. Realtors Farm and Ranch Association

September 2011

