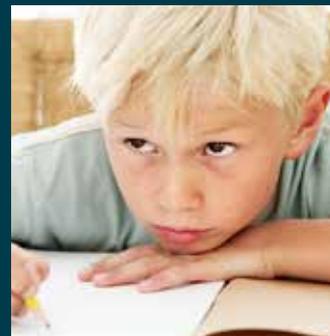


JULY 2017

Veritas

A PUBLICATION OF THE TEXAS PUBLIC POLICY FOUNDATION

Changing Lives. Leading for Liberty. Since 1989.



TEXAS PUBLIC POLICY
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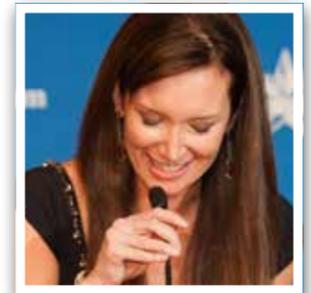
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PRESIDENT'S MESSAGE

The first half of 2017 was dominated by our work on your behalf in the 85th Texas Legislature. It was a legislative session filled with contentious debate, and it adjourned leaving significant unfinished business. But, I'm pleased to say that as far as the Texas Public Policy Foundation goes, this legislative session worked in our favor—by which I mean in the favor of the people of Texas.



For as much as we talk about budgets and taxes and numbers, public policy is really about people—We the People—and the impact conservative policy solutions have on our lives. It is about creating a robust culture of respect, integrity, and toleration where institutions protect the individual's ability to live their lives as they see fit and to add value to others.

When Governor Greg Abbott boldly called for a 30-day Special Session, we were overjoyed to have a second chance to achieve even more for the people of Texas. Of the 20 items on his agenda, 12 are long-standing TPPF priorities, and I can assure you we are aggressively campaigning to drive home our proposals to empower Texas families, defend local liberty, and promote statewide government reform. Look for our Agenda for the 85th Legislature Special Session later in this issue of *Veritas*.

Also in this issue of *Veritas*, you will find a thorough round-up of the 85th Legislative Session by Bill Peacock, our Vice President for Research. In summary: We the People have a second Conservative Texas Budget in as many legislative sessions; the foster care system has taken unprecedented steps toward ensuring the safety and well-being of children in its care; Texas joined the Convention of States movement devolving power from Washington, D.C.; children in rural Texas can now benefit from pediatric telemedicine options; true education freedom—a foundational issue for TPPF nearly three decades ago—came very close to passage in the Lone Star State; and criminal justice reform advanced significantly, including the closure of four unnecessary prisons.

The latter advances were a decade in the making. This year, along with several legislative victories, we celebrated the 10th anniversary of our work on criminal justice reform. This issue of *Veritas* includes a full iteration of that work, which has expanded through the Right On Crime Project into 37 states around the nation. The success of this vital work is illustrated by the restitution to redemption story of Doug Smith, a good friend and policy analyst at the Texas Criminal Justice Coalition, a partner organization in the Right On Crime Project.

Also dominating the debate over policy and politics this year has been the threat to free speech and tolerance on many college campuses. Free societies are characterized by integrity, respect, responsibility, and toleration, which, I am sad to say, appears to be endangered in our institutions of higher learning. For students, parents, and grandparents, *Veritas* includes a discussion about this disconcerting state of affairs and direction to helpful resources.

Every accomplishment this year—whether in the regular or special session of the Legislature—has been long-sought. Truly, every small stand for principle in Texas is an important moment for the big idea of liberty. It would not be possible for me to report some of the exciting victories for liberty herein without you, the individual Americans who speak up for freedom through your generosity of time, talent, and treasure.

Our work together did not end with the adjournment of the 85th Texas Legislature, nor will it end with the special session, for freedom will still need defenders—patriots like you.

In liberty,

Brooke Rollins
President and CEO

Veritas

Veritas is a publication of the Texas Public Policy Foundation, a 501(c)(3) nonprofit, nonpartisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas

public policy debate with academically sound research and outreach. Our goal is to lead the nation in public policy issues by using Texas as a model for reform.

THE 85th TEXAS LEGISLATURE ROUND-UP

by Bill Peacock

Fighting for liberty is a work in progress. Too often in the past, the legislative debate that takes place in Austin each odd-numbered year has not focused on the Foundation's principles of liberty: free association and free information that enable people from all walks of life to prosper and flourish.

Texans have awakened to this challenge, joining with the Foundation to help focus the debate in recent sessions of the Texas Legislature on freedom and prosperity. The regular session of the 85th Legislature, which adjourned on May 29, was no exception. A Conservative Texas Budget, major changes to our beleaguered foster care system, and significant criminal justice reform highlighted conservative successes. In addition to these substantial accomplishments, legislators successfully set the stage for more to come—most importantly in the 85th Legislature's Special Session.

Fiscal Policy

The Legislature made progress in limiting the size and scope of government by passing what could be two consecutive Conservative Texas Budgets, meaning increases in spending of no more than population growth plus inflation. The Legislature adopted the second half of the 2016-17 budget with the passage of the supplemental budget, HB 2, finalizing what will likely be the first true Conservative Texas Budget in years. Moreover, it passed SB 1, the 2018-19 state budget, providing what could be a huge win for Texans if the

Legislature in 2019 can follow up by completing the second straight Conservative Texas Budget.

SB 1831 also increased budget transparency by requiring the Comptroller to issue an annual report noting state programs that do not receive appropriations.

Other bills that would have expanded on this success were not as fortunate. Both SB 17 and HB 28 that would have phased out the business franchise tax passed only their respective chambers. A more conservative spending limit could have been accomplished with SB 9, but it was never heard in the House after passage in the Senate. However, the possibility of two straight Conservative Texas Budgets increases the momentum to pass an effective spending limit in the special session. Other noteworthy bills were SB 1588 to eliminate auto safety inspections, which passed the Senate but died in House Calendars, and HB 1723, which would have created the Sales Tax Reduction (STaR) Fund but never received a hearing.

Families & Children

Actions taken by the Legislature represented a monumental step forward for Texas foster children. Coming on the heels of a federal court decision finding that "rape, abuse, psychotropic medication, and instability are the norm" in the state's foster care system, intense pressure existed to throw more money at the problem. However, rather than just follow past practices,



SB 11 draws on the success of a pilot program in Tarrant County and ensures the transfer of much of the responsibility for foster care from the state to communities—increasing the role of local agencies, community non-profits, and houses of worship in caring for children who are unable to remain safely at home. SB 11 serves as a pivot point in fulfilling the state's obligation to foster children.

Other significant legislation includes HB 5, which increases agency accountability and efficiency, and HB 7, which improves the legal process to ensure due process for parents and children. Along with HB 7, the Legislature passed a number of bills addressing the complaints of the federal judge.

Tension between protecting children and preserving liberty surfaced over a handful of Orwellian bills during the session. Most significantly, SB 687 and HB 1549 proposed using interagency government data to predict child abuse and target families for state intervention before it occurs. These measures failed to pass but are expected to reappear next session.

Effective Justice

Criminal justice reform made significant advances this session. Owing to the successes of conservative criminal justice reform in previous sessions, the budget adopted by the Legislature calls for the closure of four unnecessary prison units. Adding to the four prisons closed since 2007, lawmakers took more than 2,000 beds offline while saving taxpayers \$50 million. Texas also enhanced its nondisclosure statute, which prohibits public disclosure of a criminal record for first-time, low-level offenders. HB 3016 prohibits public disclosure for those with certain DUIs. Similarly, the Legislature expanded last session's provisions to cover Class C misdemeanors with HB 681, enhanced juvenile record

sealing with SB 1304, and extended nondisclosure and eligibility for veterans' courts.

The Legislature also reconvened the Commission to Study and Review Certain Penal Laws, a volunteer body created during the 84th Legislature to scour Texas' statutes for outdated, redundant, or unnecessary laws carrying a criminal penalty. While omnibus efforts to repeal and consolidate such laws ran out of time on the House calendar, Gov. Abbott has already signed several individual reforms like HB 2027, a bill reforming the laws regulating the sale of second-hand watches.

Texas also took strides to increase the effectiveness of probation and parole with the passage of SB 1584, ensuring that the terms of community supervision match both an offender's crime and any risk they may pose to society.

Further, the Legislature streamlined court-related fines and fees, granting judges more flexibility in adjudicating low-level indigent offenders for nonpayment. In FY 2015, more than 677,000 offenders chose jail time to satisfy the terms of their punishment, each costing Texans on average \$57 per day. HB 351 allows judges to institute an installment plan and other remedies before an offender defaults on their payments.

Local Governance

When it comes to local governance, the conversation at the Texas Legislature is shifting from how best to respect "local control" to how best to protect "local liberty." A number of bills demonstrate the shift toward local liberty. HB 100 preempts burdensome municipal ordinances regulating transportation network companies. SB 1248 limited city authority over manufactured homes in designated manufactured home parks. Even the imperfect Houston pension reform bill illustrates the changing terms of debate when it comes to local control. A key plank of the reform is that the issuance of \$1 billion of general obligation debt as pension obligation bonds must be subject to voter approval.

Unfortunately, some issues will have to wait until special session—or next session—to further enhance local liberty. SB 2 would have created a trigger establishing an automatic rollback election whenever locally collected property tax revenues rise above a certain threshold. SB 715 would have ended forced annexa-

continued >>

tion by requiring residents and property owners to consent to a proposed annexation, either by petition or by vote. And SB 461 would have greatly improved local debt transparency by mandating certain financial information be disclosed on bond proposition ballots.

Public Education

Education freedom made its greatest progress to date during this session. SB 3, the most expansive vehicle of school choice (creating a near-universal statewide Education Savings Account, or ESA, program), passed the Texas Senate after a strong showing of public support in the earlier Senate Education Committee hearing. Those favoring school choice throughout the legislative debate heavily outweighed the opposition—a true first for this issue in Texas. Furthermore, two bills did increase education freedom this session. SB 1480 increases charter schools' access to the lower interest rates for building facilities that are currently available to traditional schools, while the passage of SB 587 ensures that military children will be able to access virtual schools.



Joshua has flourished in a school designed especially for his learning needs.

HB 1335, another school choice proposal, would have established an ESA program for special needs students. In the final weeks of session, the Senate proposed a compromise in HB 21, a bill that would have combined additional funding for traditional schools with an ESA program for special needs students. The House wanted to accept the additional funding but reject any consideration of an ESA program for special needs children. The Senate rejected that offer. The near-constant media coverage and strong case made in support of education freedom set this issue up to go even farther during the special session.

Other initiatives to enhance educational freedom will need continued effort, such as the “Tim Tebow” bill, SB 640, which would have allowed homeschool students to choose to participate in local University Interscholastic League activities.

Federalism and the Tenth Amendment

We were pleased that the 85th Legislature chose to preserve, protect, and advance key principles of federalism. SJR 2 is Texas' application to Congress for a convention of states. If 33 other states pass the same resolution, Congress must call the convention of states, where delegates would propose structural reform amendments in three areas: 1) fiscal restraint, 2) term limits, and 3) restraining the power and authority of the federal government. Texas is now one of 12 states to have passed this resolution. SB 21 lays out the process for selecting delegates to such a convention and the guidelines for governing the delegates' actions. Amendments proposed to SB 21 that would have criminalized certain votes made by delegates were ultimately defeated, properly leaving accountability for delegates to the political process.

Federalism also was preserved with the death of a number of bills. For example, HB 3493 would have expanded Medicaid eligibility in Texas, further intertwining Texas and its budget with federal dollars and the related requirements. HB 496, also defeated, would have added Texas to an interstate agreement to elect the president by national popular vote instead of respecting the Electoral College system.

Finally, some proposals to push back on federal overreach will have to wait until next session. SB 446 and HB 135 would have brought a first layer of transparency to the flow of federal funds to local governments (that currently bypasses the state) in Texas, by requiring reporting to the state when localities receive federal grant funds. And other bills, such as HB 110—which would have exempted all firearms accessories that were manufactured in and sold only in Texas from federal laws—will also have to wait until next session.

Economic Freedom

Economic freedom improved this session. Major tort reform in HB 1774 stops abuses by trial lawyers in

hail storm claims. SB 277 reverses years of growth of renewable energy subsidies by making wind turbines built near military aviation bases ineligible for local tax abatements. Two bills reduce restrictions imposed through occupational licensing: SB 1503 abolishes the shampoo apprentice license, and HB 3329 prevents cities from charging electricians licensed with the state additional licensing or permitting fees.



Of course, the protection of economic freedom requires not just the passage of good bills, but the death of bad bills as well. Numerous bills that would have harmed economic freedom and expanded corporate welfare failed to pass. HB 3832 would have limited the ability of homeowners to get loans to pay their property taxes, while HB 3015 would have forced taxpayers statewide to pay firefighters while doing union business—just like Austin taxpayers are already being forced to do.

While economic freedom was expanded this session, significant work remains to be done. One key area that should be addressed next session is ending the state's practice of fixing prices for title insurance—several bills created quite a stir around this issue this year. Likewise, the paycheck protection bill, SB 13, would have stopped the state government from acting as the dues collector for union fees within Texas. Both issues constitute great areas of opportunity for the Legislature to act on in the future.

Health Care

When it comes to increasing access to medical care through telemedicine, four bills stand out from the session. HB 1697 extends pediatric telemedicine to rural Texas. SB 1107 expands the types of telemedicine allowed. SB 1633 allows remote telepharmacy. SB 922 facilitates telemedicine within Texas schools. The net

effect, especially in view of resolution of recent lawsuits, will be greater access to health care in places within Texas where care is currently limited or not available at all. Additionally, passage of SB 1148 will prevent insurance carriers from withholding payments for lack of federal Maintenance of Certification.

Mid-level providers such as advanced practice registered nurses (APRNs) could ameliorate Texas' physician shortage but are prevented by Texas Medical Board regulations. A diverse coalition was formed of more than 20 organizations across the political spectrum, including the Foundation, the Center for Public Policy Priorities, the American Association of Retired Persons, and the Texas Association of Business. This coalition promoted HB 1415, releasing APRNs to practice in medically underserved areas. The bill did not pass following its hearing. However, groundwork was laid for negotiation with the Texas Medical Association in the interim and passage of legislation to “Release Our APRNs” during the 86th Legislature.

Overcoming regulatory barriers to free market health care and government control of the practice of medicine were the focus of several bills during the 85th Texas Legislature. A filibuster timed out HB 3990, a ban on insurance carrier control of doctor's choice of laboratory, before it could pass.



Texas could re-acquire control of Texas Medicaid if the governor instructs the commissioner of Health and Human Services to move forward with Chapter 537 of the Texas Government Code. SCR 24 was a joint resolution to urge Washington to grant Texas what is embodied in Chapter 537—a mandate-free Medicaid block grant. Though voted favorably in the Senate, SCR 24 failed to pass the House. continued >>

Energy & Environment

A prudent perspective on the environment marked action by the Legislature. Noteworthy success can be seen in this session's water policy reform, including a handful of bills passed that reduce barriers keeping water right applicants from being granted a permit. SB 1009 and HB 3735 narrow the scope of factors that the Texas Commission on Environmental Quality (TCEQ) may examine when considering permit applications. SB 1430 encourages water portfolio diversification by creating specific value for the development of seawater desalination, uplifting the market of up-basin benefits.

Several bills that could have hamstrung Texan entrepreneurs with no substantial environmental benefit failed to complete the legislative process. SB 1598 would have required developers to submit an "environmental justice" report detailing demographic information of the surrounding community before being granted a permit. HB 3175 would have created and charged eligible industrial facilities an annual greenhouse gas emissions fee, calculated by global warming impact.

There are some key efforts which will see success in the future. HB 815 and SB 939 would have required a cost-benefit regulatory analysis of all environmental

One of the best aspects of this legislative inaction is that none of the major bills that would have significantly increased the cost of higher education were passed.

rules adopted by TCEQ. Others include SB 225 and SB 226, which sought to narrow the instances when applications for water rights or permit amendments can be subject to technical review or referrals to the State Office of Administrative Hearings.

Higher Education

The Legislature was relatively quiet when it came to higher education, despite significant debate during the preceding interim.

One of the best aspects of this legislative inaction is that none of the major bills that would have significantly increased the cost of higher education were passed. Worst among these defeated bills was HB 1498, which would have allocated half a billion dollars from the Rainy Day Fund for campus construction that universities already have the ability to finance. The Legislature did well to pass a bill strengthening career and technical education (SB 2105). This bill will help to fill the middle-skills gap by increasing the focus of education in this area. Employers have been hard-pressed to find middle-skills applicants for some time.

Other aspects of the inaction may have more costly outcomes. No action was taken to keep the costly Hazlewood program, which offers free tuition to veterans and dependents, from continuing to grow at an un-

sustainable rate. Similarly, limiting the rapid growth of tuition and the elimination of tuition set-asides started the session as high-priority items, but ultimately no action was taken on either. Likewise, nothing was done to promote more efficiency in higher education, like expanding the successful affordable baccalaureate programs and shifting funding toward outcomes-based education programs.

In contrast to this theme, the Legislature did make major changes to one very important aspect of higher education policy: reporting of sexual assault. While all understand the need for thoughtful legislation addressing campus sexual assault, public colleges and universities are legally bound to respect students' First Amendment rights. Unfortunately, the definition incorporated in SB 968 and 969 fails to require that allegedly harassing speech be "objectively offensive." This omission presents a serious threat to First Amendment rights, and federal courts have struck down college harassment policies in recent years because of similar deficiencies.

As we move through the Special Session, our policy warriors will remain focused on winning many more victories for liberty and prosperity—and ultimately for you. ★



Bill Peacock is the vice president of research and the director of the Center for Economic Freedom at the Texas Public Policy Foundation. He has been with the Foundation since February 2005. Bill directs the research of the Foundation to ensure its accuracy, integrity, and application of free-market principles to the issues facing Texas and the nation. His own research focuses on economic freedom and growth, property rights, civil justice, and regulatory issues. Bill has extensive experience in Texas government and policy on a variety of issues, including economic and regulatory policy, natural resources, public finance, and public education. His work has focused on identifying and reducing the harmful effects of regulations on the economy, businesses, and consumers.

PEOPLE YOU KNOW ARE HURT BY OCCUPATIONAL LICENSING



While perhaps well-intended, occupational licensing regulations hurt many of the very people they were designed to help. While we did achieve some small, but important, victories in this arena, much remains for the next legislative session. Illustrating the damaging effect of occupational licensing is the experience of a TPPF employee. Early this year Christy Anderson joined the Texas Public Policy Foundation team as our publications manager. Creative, practical, and self-reliant, Christy began working as a professional driver between jobs and to supplement her income back during the "Great Recession." She continued this part-time occupation after moving to Texas about two years ago from Seattle, Washington.

With her Chauffeur's Permit scheduled to expire in April, Christy began the renewal process last March: FBI fingerprinting, multi-state background checks, drug testing, and a written driver's test. Unfortunately, Christy's fingerprints do not reproduce easily, and after two attempts, the FBI had still not accepted her paperwork or completed her background checks. By early May, the bureaucracy had consumed at least \$65 and Christy's Chauffeur Permit had expired anyway.

Christy was now faced with paying to re-run her now expired driving record. Also, Austin—unlike Seattle—required a written test that included questions about horseshoeing, bicycles, and carriage wheels because the test is given for automobile, horse-drawn carriage, and hansom chauffer's. Moreover, in Austin a Chauffeur's Permit is granted for only two years, so in 2019 Christy would be forced to repeat this complicated renewal process all over again.

In the end, Christy decided to give up her part-time vocation.

"I am a responsible citizen hustling for work," Christy said. "Standing in my way are arbitrary licensing regulations substituting for demonstrated ability and employer discretion. Government should be hesitant to impose licenses in any marketplace, and only in order to preserve public health and safety."



MILLENNIALS: FREE SPEECH AND TOLERANCE ON CAMPUS

On nearly a daily basis, it seems that campuses—once the bastion of free speech—have been taken over by student and faculty protests, sometimes violent, demonstrating little tolerance for a culture of civility and the open exchange of ideas.

Toleration—in the sense of not demonizing, using, or advocating force against those with ideas, beliefs, and practices that one considers wrong, but which do not violate the person, property, or liberty of others—is a hallmark of a free society.

Free speech and tolerance on campuses is a topic in urgent need of discussion, and TPPF’s own Dr. Tom Lindsay, Director of the Center for Higher Education and a former professor, dean, and college president, has become recognized for his commentary and recommendations on the intersection of higher education and culture.

Taking a long-term view on the subject, Lindsay is spearheading and advocating for a required civics curriculum for Texas schools from Kindergarten through the undergraduate level because the above-mentioned conflict has brought to the forefront something we have known for some time: At least a generation of American school children have received no civics education. Requiring civics in Texas schools could not come soon enough, as a recent Pew Research Center study finds that 40 percent of millennials today approve of censorship, nearly double that of their parents’ generation. In addition to his advocacy, Lindsay is working to draft civics curriculum requirements for Texas schools.

So as a parent or grandparent, what are you to do? How do you respond to misguided pronouncements by your progeny? What can you do if your college student has had his or her free speech rights violated? How can you and your young adults avoid campus chaos?

- **Communicate.** As a father to four, Dr. Lindsay advises, “Keep your lines of communication open with your young adult offspring, no matter how much their views may diverge from what you taught them. Ask them open-ended questions that probe their rationale and encourage them to think through their assertions and beliefs.”
- **Explore Opposing Views.** Wearing his “educator” hat, Dr. Lindsay urges your millennial to read books such as Plato’s *Apology of Socrates*, which offers the classical defense of academic freedom: “The unexamined life is not worth living for a human being,” and Francis Canavan’s *Freedom of Expression: Purpose as Limit*, which offers the author’s view on freedom of speech and expression as he examines the views of John Locke, John Milton, John Stuart Mill and others. Another book worthy of exploration is Roy F. Baumeister’s *Evil: Inside Human Cruelty and Violence*, which illustrates the danger of hypersensitivity to ideas and comments that are contrary to one’s own views.

Requiring civics in Texas schools could not come soon enough, as a recent Pew Research Center study finds that 40 percent of millennials today approve of censorship, nearly double that of their parents’ generation.

- **Ask Experts.** Standing up for liberty-loving, free-market views on campuses today can be a character-building experience to say the least. In addition to your personal support, several organizations provide guidance and help if your student’s individual rights have been violated. Check out the FIRE and Campus Reform websites for help.
- **Examine University Culture.** Pinpointing the right school for your young adult is difficult enough, but now many parents and entering students also want to know whether a college or university fosters free thought and speech. FIRE, Campus Reform, and ACTA offer a variety of rankings and profiles on U.S. colleges beyond what you will find, for example, in the annual *U.S. News* college rankings.

What can be done to reverse the trend toward censorship and intolerance on campus? Alumni and parents at the University of Missouri may have provided one possible answer. At the University’s Columbia campus in the fall of 2015, spiritless administrators caved to the radical demands of a few protesters—causing prospective students to avoid, and donors to flee, this haven of intellectual intolerance.

The damage done to “Mizzou” by its own hand has been profound: Freshman enrollment for 2016 dropped by an estimated 1,500 (or 25%), the Missouri legislature cut funding by \$7.6 million for the statewide university system, and the total projected budget shortfall for the Columbia campus alone was estimated at \$32.5 million. Fifty positions were eliminated in Columbia’s campus operations, forcing faculty to empty their own trash cans, and a hiring freeze was instituted. Other universities around the country now fear they may be the next campus to be “Mizzou’d.” Let the free market speak! ★

FREE SPEECH RESOURCES

FIRE. Founded in 1999, the Foundation for Individual Rights in Education defends and sustains individual rights at America’s colleges and universities. The FIRE website offers a speech code database ranking schools around the country, answers questions about student rights, pursues remedy when rights have been violated, and has a student network offering activist tips, speakers, internships, and a summer conference. www.thefire.org.

Campus Reform (A Project of the Leadership Institute). As a watchdog to the nation’s higher education system, Campus Reform exposes bias and abuse on the nation’s college campuses. Their team of professional journalists works alongside student activists and student journalists to report on the conduct and misconduct of university administrators, faculty, and students. Campus Reform offers campus profiles, student publication workshops, grants for campus newspapers, a reporting mechanism for abuse of individual rights on campus, and a “Leftist Abuse and Bias Guide.” www.campusreform.org.

ACTA. The American Council of Trustees and Alumni is an independent, non-profit organization committed to academic freedom, excellence, and accountability at America’s colleges and universities. The organization’s website, WhatWillTheyLearn.com, offers a free resource focusing on seven key areas of knowledge and helping parents decide whether a college will prepare their graduates to succeed. Two other resources: *Substance Abuse on Campus* and *Trouble in the Dorms* advise on issues of residential life. www.goacta.org.

TEN YEARS OF CRIMINAL JUSTICE REFORM

by Michael Haugen

Throughout much of Texas' history, the question of what to do about criminal wrongdoing had a fairly straightforward answer: "lock 'em up." Decades of "tough-on-crime" sentencing policies emphasized a punitive, carceral approach, especially as crime rates reached a high-water mark throughout the 1970's and 80's. Coupled with a lack of faith on the part of judges and prosecutors in the effectiveness of potential alternatives to incarceration, Texas' prison population ballooned to well over 150,000 inmates by the early 2000's.

The state's answer to what to do with all of those offenders was simple as well: build more prisons. Certain realities have a habit of asserting themselves, however. And in the case of Texas' criminal justice system, the clock had finally run out on the efficacy of the just-build-more-prisons model—both in terms of simple economics and achieving good outcomes.

In 2007, the Texas Legislature faced a crisis. The Legislative Budget Board estimated that, in just five years' time, the state would need to build as many as 17,000 additional prison beds to keep pace with its growing rate of incarceration—at a cost of more than \$2 billion. In a legislative session featuring an already tight budget, there was no longer any enthusiasm for continuing to construct costly new prisons—particularly when stubbornly high recidivism rates signaled the diminishing returns of simply warehousing offenders.

Then-House Speaker Tom Craddick's instructions to Rep. Jerry Madden—the then newly-appointed chairman of the House Corrections Committee and a current Right on Crime Senior Fellow—were simple:

"Don't build new prisons, they cost too much."

Instead of signing off on a massive new bill for taxpayers, state leaders studied the drivers of prison growth and researched effective approaches to reducing recidivism. Legislators heard testimony from prosecutors and judges stating that low-risk, nonviolent offenders were often sent to prison for lack of effective alternatives. These criminal-justice professionals cited unwieldy probation caseloads along with lengthy waiting lists for drug courts or mental health treatment options, which make it difficult to supervise and treat offenders effectively.

After completing their lengthy survey, legislators came up with and adopted a stark alternative: an historic \$241 million "justice reinvestment" package for treatment and diversion programs designed to stop prison expansion while protecting public safety. The front-end reform items included 800 new residential substance abuse treatment beds and 3,000 more outpatient substance abuse treatment slots—all to be used as initial options after sentencing and for those whose addiction problems undermine their compliance with community supervision.

Back-end reforms were no less substantial, and equally important. While examining drivers of prison growth, lawmakers discovered that the Board of Pardons and Paroles had been paroling offenders at a lower-than-possible clip because they lacked confidence that inmates were receiving necessary treatment in prison. The Board was also revoking a growing number of parolees because they had few other options. In fact, thousands of inmates approved for parole had to be



To help spread Texas' successes in criminal justice reform throughout the nation, the Texas Public Policy Foundation's Right on Crime team led a workshop in June, 2017 where two dozen State Policy Network and partner organizations shared ideas that could lead to reforms in their very own states. All totaled, 37 states are currently pursuing criminal justice reforms that will promote public safety and make the community's life better.

wait-listed for either halfway houses or in-prison treatment programs. The result? Overflowing prisons.

So lawmakers filled the gap, adding 2,700 substance abuse treatment beds behind bars, 1,400 new intermediate sanction beds (a short-term program for those offenders who commit technical violations), and 300 halfway-house beds. They also capped parole caseloads at 75 to ensure closer supervision.

For a state system that had previously responded to capacity shortfalls by simply building new prisons, these reforms were a paradigm shift—and have exceeded expectations, both for public safety and cost control. Not only has the state averted the need to construct thousands of new prison beds and bolstered confidence in alternatives, but for the first time in its history, Texas is closing facilities: four adult units have been shuttered already, with an additional four slated for closure with the signature of the 2018-2019 budget into law.

Expanding treatment and community supervision capacity is great. Closing prisons is great. But achieving better public safety outcomes is the true measure of success, and Texas has been delivering.

In 2007, almost 16 percent of probationers failed and were revoked to prison. This figure fell to 14.7 percent by 2015. Thus, as more nonviolent offenders were diverted to community supervision instead of prison, probation success rates climbed. This likely stemmed from several factors, namely improved supervision—for instance, the use of graduated sanctions such as curfews to promote compliance—and court officials' assessment that many of these individuals could succeed given the right resources in the community.

The gains in parole are even more impressive: Even with 11,000 more people on parole today than in 2007, more than 17 percent fewer crimes are being alleged against parolees now than previously.

continued >>



2016 Texas Smart-On-Crime Coalition meets to announce its agenda for 85th Legislature. Speakers include: Derek Cohen, Deputy Director, Right on Crime; Traci Berry, Goodwill Central Texas; Bill Hammond, then-President, Texas Association of Business; and (far right) Doug Smith, Policy Analyst, Texas Criminal Justice Coalition.

In 2010, South Carolina passed a justice reinvestment package along the same vein of Texas' after lawmakers faced that ol' familiar pickle: change course, or face unacceptable prison population growth.

And crime rates? Nationwide, the index crime rate fell 20 percent between 2007 and 2014. In Texas, it fell 26 percent. Even more impressively, this occurred while its general population increased and its number of prisons decreased. Simply put, crime and incarceration can be addressed at the same time, and Texas (and other southern conservative states) have proven it.

Texas hasn't been idle since passing its initial reforms, either, with subsequent legislative sessions building on these earlier successes:

In 2009, the Texas Department of Criminal Justice was authorized to restore "good time" credits that were previously revoked for minor infractions.

In 2011, counties were allowed to enroll in performance incentive funding if they met certain requirements such as reducing prison populations, reducing recidivism, increasing the number of probationers providing victims with restitution, and increasing probationers' employment rates.



Also in 2011, judges were allowed to give "good time" credits for probationers if they perform certain tasks, such as earning a degree, paying the full amount of restitution, and completing treatment programs.

In 2015 (and again in 2017, pending Gov. Abbott's signature), orders of nondisclosure were expanded to cer-

tain first-time, non-violent offenders allowing them to seal their criminal records for employment, housing, and other purposes. Studies have consistently shown that proper housing and vocation are critical to successful reentry, and expanding nondisclosure laws will aid in this—while providing a free-market alternative to "ban the box" policies.

As reform efforts in Texas began to bear positive fruit in 2010, the decision was made to "take the show on the road," giving birth to Right on Crime. As the nation's premier conservative criminal justice reform initiative, Right on Crime seeks to leverage research and policy ideas—and mobilize strong conservative voices—to raise awareness of the growing support for effective reforms.

Thanks in part to Right on Crime's efforts since its inception, many other states have realized the enormous value and effectiveness of those reforms, especially in light of similar budgetary or capacity constraints that Texas experienced. In 2010, South Carolina passed a justice reinvestment package along the same vein of Texas' after lawmakers faced that ol' familiar pickle: change course, or face unacceptable prison population growth.

The results? Again, similar to Texas. The number of inmates has since fallen to under 21,000, and instead of building new prisons, the state has closed six of them—saving \$33 million in operating costs.

In 2012, Georgia passed comprehensive adult corrections reforms in an attempt to avert expected population growth. Between 2011 and 2014, the state eliminated virtually all of its previous backlog of newly-sentenced offenders into prison and saved more than \$25 million. Over the same period, its violent and property crime rate fell 8 percent, according to the Pew Charitable Trusts.

Alaska, Louisiana, and Maryland have all recently passed similar justice reinvestment packages, which are now informed by a decade's worth of data and experience that originated in large part here in Texas.

Those states that have passed justice reinvestment proposals, have continued to see substantial reductions in crime rates and recidivism after their passage, while providing the sort of returns that the public demands of government: cost savings, increased sentencing flexibility for judges, an expansion of treatment beds for substance abuse, greater safety, and opportunities for wrongdoers to atone, get clean, and seize upon second chances.

This is the aim of the Center for Effective Justice and Right on Crime: To breathe some flexibility into a system that's been without it for a long time. We know we can save taxpayers money. We know what works to reduce recidivism. We know that finite prison space should be reserved for those "we're afraid of, not those we're mad at." We know that rehabilitation, not imprisonment, provides better outcomes for those who have fallen under the dark influence of drugs. And we know that, when possible, parents should be present in the lives of their children, rather than sit behind bars as unavailable wards of the state.

To accept the status quo is to accept a system that isn't working as well as it could. This should provide conservatives all the motivation they need to learn about criminal justice and seek to improve it—lest reality intrude to make decisions for us.

Thanks to the leadership of dedicated conservatives, Texas has led the nation toward a more free, more prosperous future where crime rates remain low while the public enjoys a commitment to justice. Who will be next to learn from it? ★



Michael Haugen is policy analyst for the Foundation and its Right on Crime campaign. He joined the TPPF staff in May 2015 and focuses primarily on criminal justice reform topics, especially civil forfeiture, mandatory sentencing, and 'mens rea' reform. He's also written about federal corporate subsidies, school choice, and gun rights. His writing has appeared in *Townhall*, *Breitbart Texas*, and the *Washington Examiner*.



"I believe we can take an approach to crime that is both tough and smart ... [T]here are thousands of non-violent offenders in the system whose future we cannot ignore. Let's focus more resources on rehabilitating those offenders so we can ultimately spend less money locking them up again."

—Former Governor Rick Perry

"The work we did—reforming the probation system in Texas and dealing smartly with juvenile justice issues—led to a reduction in both Texas' crime rate and in the state's prison population."

—Jerry Madden, Former Texas House Corrections Chairman

"Playing against type, hang-'em high Texas has been a model of prison reform and innovative reentry programs of the sort championed by Right on Crime. It has sent fewer people to prison while crime has continued to decline in the state."

—Rich Lowry, *National Review*

"Under the directorship of Texas lawyer Marc Levin, [Texas Public Policy Foundation] became the hub of a national movement as requests for legislative help poured in from other states. The center adopted a formal platform in early 2010 and took its campaign national under the name Right on Crime."

—Neil King, Jr., *Wall Street Journal*

FROM PRISON SENTENCE TO POLICY MAKING: ONE MAN'S STORY OF RESTITUTION AND REDEMPTION



DOUG SMITH, policy analyst, TCJC

For the last decade the Texas Public Policy Foundation and the Right On Crime (ROC) project have led the nation in criminal justice reform. One of TPPF's closest allies in this effort is Doug Smith, policy analyst at the Texas Criminal Justice Coalition, a partner organization for ROC.

Smith found hope in prison. From the very first day of his incarceration, he said "Yes!" to every offer of support, counseling, or self-improvement. The more he said "yes," the more opportunities came his way.

Smith's parole requests were denied four times, "but, I was blessed," he says, "when my fifth request was granted." Five months passed before Smith landed a \$9 per hour job selling used smart phones. "I attended job fair after job fair where I qualified for almost every job, but even with a lot of folks helping me, I received no offers. In truth, few employers are motivated to hire a convicted felon," says Smith.

Smith applied for a policy analyst position that had suddenly opened at the Texas Criminal Justice Coalition (TCJC). "It was the perfect job for me, but based on my post-release experience I was not optimistic." Much to Smith's surprise, the Coalition thought he was perfect. It was at this point that left-of-center Doug Smith began working with TPPF on criminal justice reform, and discovered they had the same views on the issue.

"The fact that I am free and doing this work is so astonishing."

In his position at the Texas Criminal Justice Coalition, and working with TPPF's ROC team, Smith is dedicated to reversing the 62 percent recidivism rate for people convicted of low-level offenses. "The fact that I am free and doing this work is so astonishing. It speaks to the efforts of Right on Crime, TCJC, and legislators like Rep. Jerry Madden, who are making sure that we have rehabilitative opportunities and intensive parole supervision. I want to change the criminal justice system by helping the people I met in prison obtain mental health and addiction treatment services, learn job skills, and access the two things most likely to prevent a return to criminal activity: a job and a place to live."

A series of mistakes brought Smith together with the Right on Crime team in a mission to turn the criminal justice system from a zero-sum model of punitive engagement to a mutual-benefit model of restitution and rehabilitation: promoting public safety and making the community's life better.

Raised by Kennedy-era Democrat parents, he was comfortable with those left-of-center leanings. He began a professional career in social work and subsequently worked for Democrat elected officials on issues where he did not typically see eye-to-eye with TPPF.

Under the surface, his life was falling apart due to unaddressed life-long mental health issues. Smith began to self-medicate, attempted suicide, and was hospitalized as a result. Rather than pursuing intensive help, Smith—a former drug court counselor—went to the street for drugs.

Eighteen months later, Smith's wife had filed for divorce, and he could no longer support his family. Smith attempted to rob a bank for \$500 to "score" enough crack to make himself feel better and enough heroin to finally end his life. Thankfully, he did not succeed, but was arrested, convicted, and placed on probation. Smith went on to relapse and commit three more robberies. He was sentenced to 15 years in prison.



□ The Texas Public Policy Foundation's Center for the American Future is representing the Texas General Land Office in a lawsuit against the U.S. Department of the Interior and the U.S. Fish & Wildlife Service over the continued inclusion of the Golden-Cheeked Warbler, a central Texas migratory songbird, on the Endangered Species List. A recent study has shown that the Warbler, which was first listed as endangered in 1990, has made a significant recovery—there is now 19 times more Warbler habitat and 5 times more Warblers than existed in 1990.



Golden-cheeked Warbler

Despite this new data, the federal government refuses to delist the Warbler, so CAF is heading to federal court in order to protect the property rights of Texans from unnecessary government intrusion. In addition to arguing that the U.S. Fish & Wildlife Service was wrong to ignore the new data on the Warbler's recovery, CAF will also tell the court that the Service made two major errors when it first listed the Warbler in 1990, and that as a result the listing should be revoked.

□ Representing small businesses operating in California, the Center for the American Future also has been engaged in litigation in the United States Court of Appeals for the Ninth Circuit to hold EPA to the duties imposed on it by Congress in the *Clean Air Act*. *Dalton Trucking, Inc. v. EPA*, Case No. 13-74019. In 2013, EPA approved a stringent and unnecessary California air emissions regulation on diesel equipment, applicable to thousands of businesses ranging from small lawn care operations to enormous manufacturing firms. By approving the regulation with supine deference to California's determinations, the EPA refused to bring its scientific expertise, and nationally accountable frame of reference, to bear on an issue that affects businesses and consumers throughout the nation.



Terry Klenske, President of Dalton Trucking Inc.

After years of litigation, the Ninth Circuit received briefing from all interested parties and was set to hear oral arguments on May 18, 2017. However, on May 10, EPA moved the court to postpone indefinitely the argument and any further proceedings so the agency's new leadership could reconsider its action approving California's regulations. The court granted EPA's motion, over the vehement objections of California, pausing the case while EPA reconsiders the state's regulation. Attorneys at TPPF plan to file an administrative petition formally requesting that EPA revoke its 2013 decision.

Building a Legacy

DONOR PROFILE GINNY AND BRYAN MAUPIN



Bryan and Ginny Maupin at their home in Lewisville.

Not many American couples saw “The Wall” fall in Germany. Thanks to Bryan Maupin’s Air Force career, he and wife Ginny not only saw the wall between East and West Germany demolished, they saw the contrast between the two sides of that wall—the difference between liberty and tyranny.

This experience clearly illustrated to the Maupins what they—as busy young military parents—had failed to fully appreciate about our American freedoms and founding principles. It set the stage for their future involvement with the Texas Public Policy Foundation.

After graduating from Texas A&M in 1969 with a B.S. in chemical engineering, Bryan was commissioned into the Air Force. He met Ginny, a dental hygiene student, while stationed in Sacramento, and they married in 1974. After earning a Master’s in physics, Bryan went on to complete the prerequisites for medical school in preparation for a post-Air Force career in medicine.

In 1981 he entered the Texas A&M College of Medicine while Ginny supported their growing family as a dental hygienist. After graduating, Bryan began his residency in diagnostic radiology at Scott and White Hospital, but a year later reentered the Air Force when they agreed to sponsor the remaining three years of his residency in exchange for three more years of full-time military service.

Bryan retired in 1994 after a 20-year Air Force career. Ultimately, the family moved to Lewisville, Texas, and Bryan partnered with two other physicians to found Prestige Women’s Imaging, where he practices to this day.

The Maupins became acquainted with the Foundation while still in Bryan, and they co-hosted a gathering to introduce friends to TPPF and President Brooke Rollins. They later became Visionary Level donors, fulfilling their commitment in monthly installments. For nearly 16 years, the couple has enjoyed attending the annual Policy Orientation in Austin, a benefit of their Visionary Level generosity.

Today, the Maupins are grandparents and more concerned than ever about ensuring a future of freedom and prosperity for their four grandchildren. They decided to provide for TPPF in their will even before TPPF formed its Lone Star Legacy Society.

“Since we’ve been involved as Visionaries,” Bryan says, “we have received so much more from TPPF than we have given.” Ginny observes, “This gift from our estate helps ensure a legacy of liberty to our children and grandchildren.”

You too can continue supporting TPPF beyond your lifetime by donating through your will or living trust. For more information, contact Shri Hanrahan, Special Campaigns Director, at (512) 627-9831 or shanrahan@texaspolicy.com. ★

WAYS TO GIVE: LONE STAR RISING CAPITAL CAMPAIGN

It’s not too late to join the Lone Star Rising Capital Campaign! In addition to your annual contribution, you can permanently add your name to the list of patriots investing in the future of Texas with a special gift of between \$1,000 and \$25,000. Your gift may be paid over five years. The following naming opportunities are available in recognition of your generosity.

- \$1,000: Listing on the Lone Star Rising Capital Campaign Donor Wall in the headquarters Lobby.
- \$5,000: Name plate on a beautiful Hogsett Theater Chair (52 opportunities available)
- \$10,000: Name plate on a Perry Balcony Bench (2 opportunities available)
- \$15,000: Staff Office Name Recognition (50 opportunities available)
- \$25,000: Name Recognition in a variety of areas (14 opportunities available)

To invest in the Lone Star Rising Capital Campaign Freedom Fund, contact Shari Hanrahan at (512) 627-9831 or shanrahan@texaspolicy.com.

AGENDA: FOR THE 85TH LEGISLATURE SPECIAL SESSION



Governor Greg Abbott has called a special session of the Texas Legislature, beginning July 18, 2017. Of the 20 items on the agenda, more than half are long-standing TPPF priorities.

The special session, therefore, offers a significant opportunity to advance the following goals:

Empowering Texas Families

Empower Texas families through enhanced educational opportunities and quality.

- **School Finance:** Overhaul—finally—Texas’ antiquated, unjust regime of funding schools.
- **Teacher Pay:** Incentivize excellent performance through a merit pay system, using funds from the excessive spending on non-instructional purposes.
- **Teacher Hiring and Retention:** Ease restrictions on recruitment of best teachers and termination of low performers.

Education Choice for Special Needs Students: Enhance parents’ ability to identify best options for their children.

Defending Local Liberty

Help citizens defend liberty from local government overreach.

- **Property Tax Reform:** Enact rollback rate reform.
- **Cap on Local Spending:** Stop the excessive rate of local government growth—which often occurs at expense of liberty and economic growth.
- **Local government Permitting Reform:** Eliminate costly permitting delays that reduce job growth and make living in cities less affordable.
- **Preventing Excessive Regulation of Trees:** Stop the practice of some local governments that place trees over private property rights.
- **Municipal Annexation Reform:** Allow residents the right to vote on whether their property will be annexed by another jurisdiction.

Promoting Statewide Reform

Stop excessive government growth.

- **Cap on State Spending:** Keep spending growth to less than population growth plus inflation.
- **Paycheck Protection:** Stop governments from being dues collectors for unions.
- **Mail-in Ballot Fraud:** Protect the integrity of the ballot box.



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*Our Visionaries Meeting offers special programming for Visionary-level donors. For information on sponsorship opportunities or Visionaries membership, contact Annie Casteel at (512) 615-7982 or acasteel@texaspolicy.com.