

Heritage Lectures

No. 814

Delivered September 24, 2003



Published by The Heritage Foundation

December 9, 2003

Taxes and Torts in Texas

The Honorable Rick Perry

Ever since a photographer captured an image of President Reagan walking on the White House grounds with *Mandate for Leadership* in his hands, the political world has awakened to the power of conservative ideas and solutions championed by The Heritage Foundation.

I commend each of you here today—whether you are a distinguished board member, a policy analyst, or an intern grinding away in a cubicle—for the energy, ideas, and idealism that you have contributed to the cause. And that cause remains what it was the day Ronald Reagan first took the oath of office as our president: to spread the values of freedom, champion the possibilities of the free enterprise system, and limit the size, scope, and mission of government.

Our cause remains a journey, because our mission is far from complete. That is true on the federal level and certainly true among the states where spending increased by 39 percent during the economic boom years of the late 1990s. When the dot-com bubble began to burst and the economic engine finally began to cool, it was inevitable that many states would have new spending habits they could no longer afford.

There are two fundamental choices that must be made in tough budgetary times—especially in states like Texas where the constitution requires a balanced budget—and that is either to raise taxes or to control spending. I believe that when the economy softens, it is precisely the wrong time to raise taxes. Our families and businesses should not have to shoulder additional sacrifices so government doesn't have to.

Talking Points

- There are two fundamental choices that must be made in tough budgetary times: either raise taxes or control spending.
- Winston Churchill said, "For a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle."
- Instead of spending what we have always spent and raising taxes to support a growing spending habit, our new two-year state budget will spend \$2.6 billion less in general state revenue.
- The Texas success story can be traced to two historic achievements: Despite a \$10 billion deficit, we balanced our budget with no new taxes, and we passed the most sweeping lawsuit reforms in America.

This paper, in its entirety, can be found at:
www.heritage.org/taxes/hl814.cfm

Produced by the State Relations Department

Published by The Heritage Foundation
214 Massachusetts Ave., NE
Washington, DC 20002-4999
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Zero-Based Budgeting

We welcomed the New Year in Texas with the news that the state government was nearly \$10 billion in the hole, representing roughly 16 percent of what we spend in state general revenue. It was a huge challenge—one that would require more than a little tinkering with the levers of the government machinery. It was time to overhaul the engine.

The Texas Legislature meets only 140 days every two years, though there is a movement afoot to change that to two days every 140 years. And based on the refusal recently by some legislators to show up for work, I think that movement is gaining momentum.

But with a part-time legislature, tough decisions must be made quickly. When we convened in January, we did two things in short order. We required nearly every state agency to produce cuts of 13 percent for the remainder of the fiscal year. And second, because Texas elected its first Republican majority in 130 years, legislative leaders joined me in a new approach to budgeting. We started at zero.

We scrapped the practice that had gone on for decades—the writing of new budgets with the previous year's budget as the starting point. Instead, we viewed tough economic times as a unique opportunity to build government anew, reshape priorities, and refocus its mission.

Every state agency had to explain their priorities and identify ways that they could create additional savings. No government program or government expenditure was immune from inspection. And we refused to budge from our position of “no new taxes” even as the voices of big government began to fill the editorial pages and the halls of the state capitol with outrage.

The proponents of bigger government have complained I have been hardheaded in my opposition to tax hikes. They call it political calculation. I call it an act of principle. We often hear the voices of those opposed to budget cuts. Well, they have a right to be heard. But what about the voice of the taxpayers—the men and women who run the dry-cleaner up the street, who drive the trucks that put food on our tables, and who pay the bills and pay the taxes and represent everything that is best about America?

They are the quiet engines of progress, the silent majority of Americans, and they are wise enough to know that it is not the size of government that defines the compassion of our people, but the priorities we set. That is why we approached our state budget like families do. Our families can't count on a raise in salary to make ends meet; they have to address spending.

When the politicians refuse to cut spending, their version of a raise amounts to your version of a tax increase. And it's not right. No government in the history of mankind has ever taxed and spent its way to greater prosperity. It was Winston Churchill who said, “For a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle.”

New Priorities

At the end of the day, the people of Texas got a budget that did not contain one cent in new taxes. We consolidated 12 health and human service agencies down to five, while increasing education funding by more than a billion dollars. We pared down spending on the state education bureaucracy by more than \$70 million. And we invested in jobs because job creation in the private sector is the one proven revenue generator we have.

In fact, we created a new \$295 million enterprise fund to attract new jobs and employers to Texas. In tough economic times, a lot of leaders like to talk about jobs. But you can't create jobs by passing the tax hikes that kill jobs.

Now, I'm not going to stand up here and tell you I signed the perfect budget. It was a product of consensus and compromise. Some are really worked up about new fines and fees on drunk drivers to fund trauma care and highway safety. The legislature also used payment deferrals continued from past budgets and drew down \$1 billion from our state's rainy day reserve fund.

But instead of spending every dime of federal assistance sent to the states, we set aside hundreds of millions of dollars to deal with future bumps along the road to economic recovery. Our budget reflects new priorities and a new way of governing, but fundamental shifts in governance are not fully accomplished overnight. Rome was not built in a

day and neither was bureaucracy. It takes time to implement lasting, fundamental reform.

But we avoided the lunacy of selling tobacco revenue bonds at less than 50 cents on the dollar. We didn't raid our pension funds. We didn't fund a bunch of ongoing obligations with one-time sources of funding, and we didn't mortgage our future on a mountain of public debt. Slowly but surely, good news is starting to appear in our state's newspapers—a group sometimes accused of shunning good news.

Texas public schools continue to advance. Hispanic enrollment in Texas universities is at an all-time high. Our bond rating has remained steady and strong, and the economic storm clouds lingering since the twilight of the Clinton Administration are clearing.

Last month we added more jobs in Texas than any month since May of 2000. While California lost 30,000 jobs, Texas gained 28,500 jobs. Since New Year's Day, I have stood up time and again with entrepreneurs and business leaders across Texas to announce thousands of new, private sector jobs adding billions of dollars to our economy. The signs of an economic recovery are there.

And I don't think it is a coincidence that Texas is now at the forefront of good economic news because instead of spending what we have always spent and raising taxes to support a growing spending habit, our new two-year state budget will spend \$2.6 billion less in general state revenue. It represents the first time since World War II that the legislature has spent less general revenue than the previous one.

We would be wise to remember that the wealth of our people is not defined by how much money is in government's coffers, but taxpayers' pockets. Jobs are not created by government, but the ingenuity of the private sector. But government can unleash private sector ingenuity by removing the impediments to job creation: high taxes, over-regulation, and frivolous litigation.

Many states have sought to go a different route in tough economic times, including some states with Republican governors. I am not here to criticize my colleagues, but I will say this: If even Democrats refuse to campaign on big government ideas, why would any Republican govern on them?

When Bill Clinton stood before the Congress and said the era of big government is over, we reached a pivotal point in our great national debate. The liberals knew they could no longer win on the merits of their own ideas, but they could win based on the theft of our ideas. Suddenly, the other side was for deficit reduction, welfare reform, and a middle-class tax cut. Conservatives do not have to worry about selling conservative ideas when Democrats are running on them. Our task is not to redefine a conservative vision, but to always articulate one.

Lawsuit Reform

On no issue is there a more stark difference than on lawsuit reform. The Texas success story can be traced to two historic achievements: Despite a \$10 billion deficit, we balanced our budget with no new taxes, and we passed the most sweeping lawsuit reforms in America.

Our health care system was in a state of crisis. We had neurosurgeons and other specialists leaving high-risk areas, or the practice of medicine altogether, because of the threat of frivolous lawsuits and the reality of skyrocketing medical liability rates. Today in Texas, three out of five counties do not have an obstetrician. That's a hardship for many pregnant women in certain areas of our state, but especially women with high-risk pregnancies.

A large part of the problem was a litigation climate rife with abuse. There was a jackpot mentality among some in the legal profession who were simply looking to strike it rich with one big verdict. There have been so many frivolous medical claims filed that seven out of every eight are dismissed without payment. The Texas airwaves, billboards, and telephone books are filled with advertisements from our robust personal injury bar. One trial lawyer even opened an office across the street from a children's hospital advertising his expertise in birth injury cases.

We decided to address this issue head-on before one more good doctor left our state. Legislators placed caps on arbitrary non-economic damages. Individual health care providers are no longer subject to non-economic damages above \$250,000 per case. Health care institutions are subject to a separate \$250,000 cap with an entire claim not to exceed a total of \$750,000 in non-economic damages.

But we took it one step further. To prevent the legal delays that would have ensued for years and to give Texas patients and doctors immediate relief, we asked voters to approve a constitutional amendment to give legislators the authority to limit non-economic damages in all civil cases.

And despite a \$10 million advertising blitz by the Texas trial lawyers, 11 days ago Texas voters protected their health care, saved their doctors, and restored balance to our system of civil justice by passing Proposition 12. Our tort reforms extended beyond the practice of medicine. We passed into law the most sweeping tort reform measures in the nation. The *Wall Street Journal* called it “Ten-Gallon Tort Reform,” and said, “Texas not only provides an example for other states but also for Republicans in Congress.”

Now, I’m not a lawyer by trade. I’m a farmer. But I know what a lot of entrepreneurs know as someone who helped run the family business: There is no greater job killer than a legal system run amok. We reformed our class action laws, allowing defendants to appeal class certification directly to the Texas Supreme Court to decide up-front, not after years of litigation, if the plaintiff has a class action.

And we did something else regarding class action suits. Have you heard about plaintiffs’ lawyers receiving millions in fees for a class action while the clients get nothing but coupons? Now, if the clients get paid in coupons, so do the lawyers!

We passed a new offer-of-settlement law. If a party refuses a settlement offer and receives less from a jury than what was offered at settlement, they get to pick up the other side’s legal fees and costs from the date of their refusal. Texas created a new standard to ensure sued parties pay only their proportionate responsibility. Sometimes the individual or entity that causes the damage isn’t in the lawsuit. Under our new law, you don’t get blamed for what you didn’t do.

We also reformed our product liability laws so innocent retailers are not left on the hook for a manufacturer’s mistake. We enacted liability limits for good Samaritans, voluntary firefighters, charity volunteers, and teachers, who should not be sued for simply doing an important public service.

We closed loopholes that allow trial lawyers to venue shop, and we did something else that makes

abundant sense: If it can be shown that failing to wear a seat belt contributed to a person’s injuries, it can now be admitted as evidence in a court of law. These comprehensive reforms restore balance to our system of justice while maintaining proper protections for Texans who are harmed.

As a leading CEO told me, there is no better way to create jobs than to pass tort reform. We are doing everything we can to make Texas a state attractive for jobs and entrepreneurs, opportunity and prosperity. And Texas has done everything it can to make America stronger and more secure by offering our native son in service to this nation—President George W. Bush.

I can’t leave here today without a word about my good friend and the leader of our nation. With as many as 10 candidates running to defeat President Bush, we can expect the attacks to continue and the rhetoric to sharpen. But it’s the record that counts.

Democrats who would seek to make the economy an issue would be wise to remember that on the day George W. Bush moved into the White House, the previous residents took the china and silverware and left in its place the Clinton-Gore recession.

President Bush’s tax cut was the right prescription for an ailing economy, and the tax hikes proposed by some Democrat candidates represent the surest way to derail economic recovery. This election will be about leadership, not just on the economy, but around the globe.

Al-Qaeda and Hussein are on the run. America is safer, not because of tough talk, but because of the actions and leadership of our President and the skill and sacrifice of Americans in uniform. America has always been willing to take decisive action in order to protect freedom and liberate the world of tyrants. Our freedom is a precious commodity purchased at a great cost—a cost measured in blood spilled and lives lost. May we always be a nation willing to make the tough decisions, willing to stand for freedom at any cost and at all times. Thank you. God bless you, and may God bless America.

Q & A

SPEAKER: Have you been as enthusiastic about faith-based initiatives in Texas as your predecessor was? Do you have an update on some of the more

controversial groups like Teen Challenge or Prison Fellowship?

GOV. PERRY: The short answer is yes. I'm very much a supporter of faith-based initiatives and the private sector working with the public sector to address some of the areas. As a matter of fact, we have a new foundation in Texas called the One Star Foundation that we're just kicking off that's going to be working substantially with the faith communities across the state of Texas addressing a host of issues—social, cultural, and educational. But like President Bush, I have great faith that the faith-based community will address areas of our society in which government either cannot, will not, or should not be involved.

SPEAKER: I have a question about the Texas Constitution. It seems that every year, we come back to vote on many more constitutional amendments that are not necessarily poor decisions, but is there any movement going on in Texas, or even the other states that have the same problem, to go back to change our constitution so that it's flexible, so that it's more of a framework, so that our legislatures can do the job for us as opposed to having us vote every time?

GOV. PERRY: The Texas Constitution, just for a quick little history lesson, was last written in 1876. We do, as you shared, rewrite portions of it. We amend it on a relatively regular basis because it is an antiquated document. We won't get into the deep history of why it was written the way it was written, but the bottom line is that we do have an effort.

I don't know if it's currently going on. I know four years ago that two members of the legislature looked at the rewriting of the constitution. I certainly would support the effort. We realize that it will be quite contentious and quite an effort, but that's fine. We have one other major issue in front of us as a state—the restructuring of public school financing, which we're working on as we speak—that most likely would take precedence over that issue. But after that, if it's the will of the legislature to address a constitutional convention, I certainly have no problem with doing that.

SPEAKER: I certainly admire your courage and share your belief that taking on the Texas Plaintiffs' Trial Bar was important for business. I'm a former

defense attorney in Texas and currently still a proud member of the Texas Bar.

What interests me is the real profile in courage you did show, because this is a group whose life-blood you've injured and who normally pledges to take retribution on politicians who get in the way of their money.

Perhaps that's why you did decide to also put this before the people, to have them sort of ratify the good decision the legislature made, to show the members of the legislature that the people are behind you. I wonder if you would address that and provide an example to other legislatures and governors on why you made the decision to take on that issue.

GOV. PERRY: Well, actually going before the people of the state of Texas wasn't necessarily to ratify the people's support of this, because generally speaking, elections are how you ratify what goes on in the legislature.

We did this so we wouldn't spend the next eight to 10 years at the courthouse and so doctors and those of us who would like to have access to appropriate and affordable health care would not have to wait eight years or some lengthy period of time. We knew this was going to be taken to the courts and the appeal process would go on for no other reason than stalling tactics. The number of medical malpractice lawsuits filed had a 250 percent increase from June 30th of this last year through Labor Day. Our doctors didn't just become really inept all of a sudden. We know what was going on, and so did the people of the state of Texas, through their duly elected officials and through this constitutional amendment. I might add we were outspent substantially in that effort, but this was about what was doing right.

If Texas is going to stand up and say we want you to look at this state, Mr. Businessman. Mrs. Businesswoman, as you look and decide, is there a better place for you to live in America? Is there a place you'd rather raise your children, grow your business, expand in the nation—where would it be? We obviously would like for that to be Texas.

Philosophically, we're not going to have a runaway government that can't make decisions like you make as a businessperson dealing with the issue of spending. We're not going to raise taxes just

because we can't say no. We're going to have a tort system that is not out of kilter. We're going to have a balanced regulatory approach in the state of Texas.

That's the message that is going across the nation today, and I will suggest to you, with what's happening in some of the other states, that people are going to look to Texas and say that's where we want to live, that's where we want to raise our family. We want our kids to go to those good schools. We want to be involved in a state where we're not afraid that we're going to be sued every time we turn around in our business.

That's why we did this. And yes, the Plaintiffs' Bar was not happy, and they put an extraordinary amount of money into defeating this campaign. But generally speaking, when you allow the balance to go so far in one direction, the people are pretty good about pulling it back to the center, to a place of balance, and that's what's occurred in Texas.

SPEAKER: Governor, what are the trial attorneys in Texas doing now? Are they fleeing the state like some of your legislators have in the past? Are they

going to fight this? If they do flee, which states are most vulnerable to this type of activity?

GOV. PERRY: I have no idea. Everyone will have to make their own decision about this. I have an idea that the Plaintiffs' Bar will be looking for a new cottage industry, and I think that is the reason that the legislature wisely put wording into the constitutional amendment that basically said that now we could cover all civil issues with the noneconomic damage cap, not just the medical profession, because we know that the Plaintiffs' Bar are bright, capable individuals and that they will move from one area to another area.

We just want a balance in Texas. When people are truly harmed, we want people to have access to the courts. We want them to be able to appropriately and justly be compensated, but not this lawsuit lottery that was going on in Texas. We are now free from that in Texas. No longer is hunting season open on doctors and nurses and hospitals in Texas.

—*The Honorable Rick Perry is Governor of Texas.*