

**Hendee v. Dewhurst, et al.**  
**Executive Summary of CLOUT Lawsuit**

**I. Purpose:**

In 1978 the voters of Texas overwhelmingly approved an amendment to the State Constitution imposing a constraint on the growth of the state's budget. This amendment appears in Article VIII, Section 22 (a):

*In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.*

It is the contention of this action that the Texas Legislature and the Legislative Budget Board (LBB) have violated both the intent and letter of this clause, resulting in the appropriation of expenditures well in excess of the state economy's growth rate between the clause's 1980 implementation and the current 2006-07 biennium.

**II. Nature of the violations**

Research into the implementation of Article VIII, Section 22 (a) in preparation for this action by CLOUT has revealed several instances where the state constitution has been violated or neglected by the Texas Legislature and the LBB. Specifically:

- Section 22 (a) clearly indicates that the calculation process is to be implemented by the legislature through general law. The Texas Legislature has unconstitutionally delegated its obligation to do so to the Legislative Budget Board (LBB). The State Legislature has never voted on the limit or findings of the LBB.
- When calculating the 2006-07 biennium's constitutional budget cap, this obligation further devolved upon the LBB's staff without a formal meeting to approve the proposed limitations and estimates. LBB staff adjusted State's Budget limitation without a vote from the committee – staff is not empowered to do this.
- Adopted estimates of the Texas economy's growth rate have relied on measures of State Personal Income (SPI). A review of the LBB's figures indicates that past biennium estimates have been substantially over the actual realized growth rates in SPI.
- In addition to being off in most given biennia, the SPI estimates used by the LBB have not been recalibrated with correct historical data as actual figures have become available. As a result, the current budget constraint is built upon faulty, unrealistic, and historically inaccurate SPI estimates from previous biennia.

- Though LBB procedures use SPI, another measure of growth – Gross State Product (GSP) – is widely acknowledged among economic forecasters as a more comprehensive and reliable indicator of state economic growth.
- Even when using the LBB’s own generous estimates of SPI for the 2006-07 biennium as a basis for the limits, recent appropriations indicate that the state budget for the current biennium has exceeded its constitutional limit.

### **III. Remedies**

To correct the aforementioned violations of the Texas Constitution, CLOUT is seeking the following remedies:

- The Texas legislature must abide by the Article VIII, Section 22 (a) of the Texas Constitution, requiring the budget constraint to be implemented by vote of the Legislature through general law rather than being delegated to an unelected board.
- Require the use of Gross State Product, a more reliable measure of state economic growth, to calculate future budget constraints.
- The recalibration of the current budget limitation to actual reported historical data rather than the unreliable and historically incorrect estimates currently being used.
- The Texas legislature must correct the current state budget for the 2006-07 biennium, bringing it into compliance with the stated current budget limitation, which was recently exceeded.
- The Texas legislature must adjust its current appropriations to reflect an accurate measure of state economic growth based on realized historical data rather than incorrect estimates.