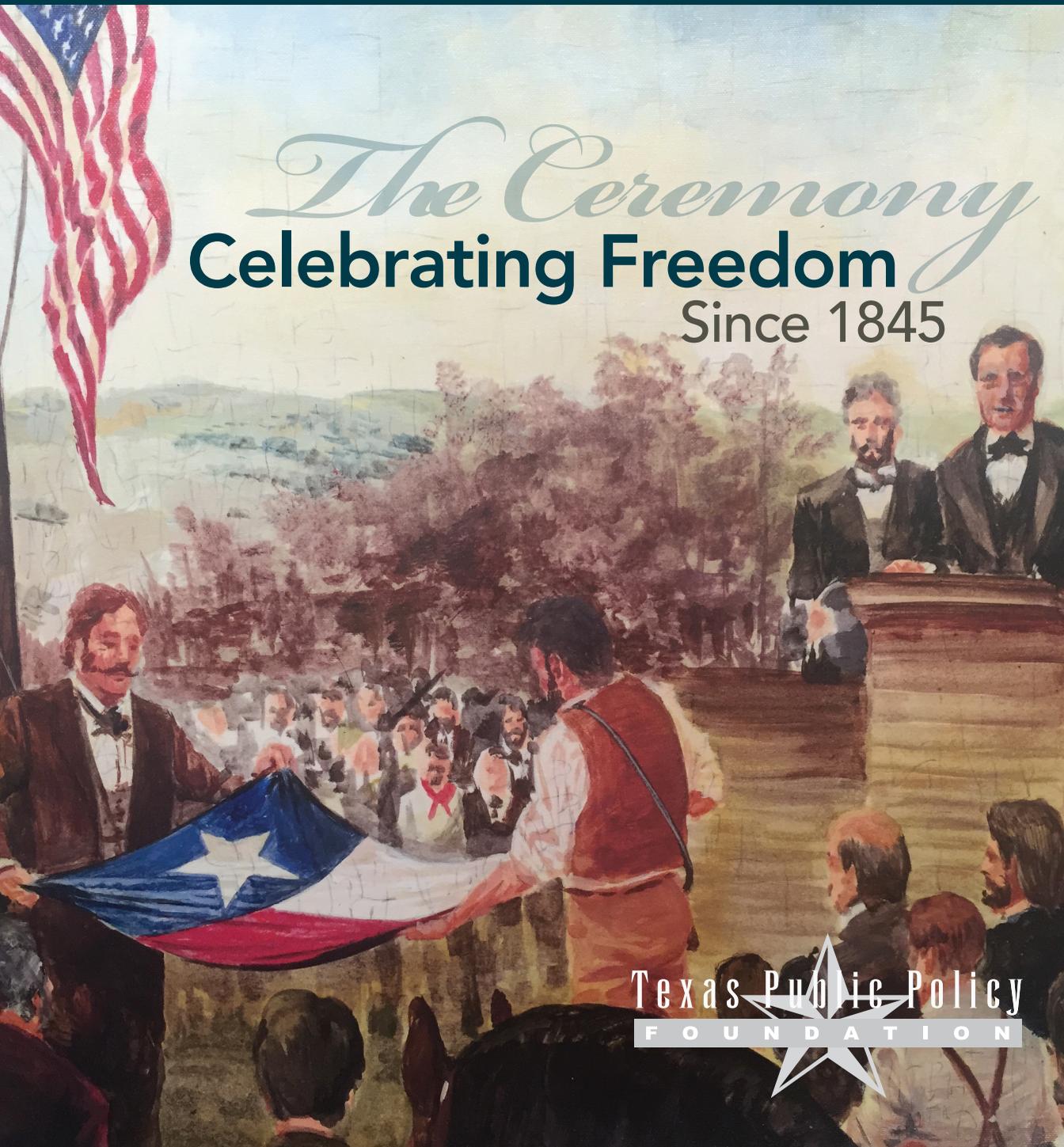


OCTOBER 2015

Veritas

A PUBLICATION OF THE TEXAS PUBLIC POLICY FOUNDATION



The Ceremony Celebrating Freedom Since 1845

Texas Public Policy
FOUNDATION

Veritas

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PRESIDENT'S MESSAGE

Dear friend,
In December, 1845, Texas was annexed to the United States by an act of Congress following a vote of the citizens of Texas. At a mov-

ing ceremony in the capital of Austin, the flag of the Republic of Texas was lowered, and replaced with the flag of the United States of America. Texas became the 28th state in the union.

Anson Jones, the last President of the Republic of Texas, declared: "The final act in this great drama is now performed. The Republic of Texas is no more."

In the Foundation's headquarters at liberty's new address—901 Congress Avenue—we are reminded daily of this pivotal moment in the nation's history as we gaze upon the beautiful painting called "The Ceremony" that proudly hangs in our second-floor lobby. This moving painting depicts a wide-ranging gamut of emotions for the early Texan freedom fighters. There are expressions of profound sadness at the loss of a brave, independent Republic—and profound joy at joining their destinies to that of the United States. "The Ceremony" immortalizes this historic moment, when Texas ended its "great drama" as an independent republic—and joined the still greater drama of a continental republic dedicated to "life, liberty, and the pursuit of happiness."

What if things had happened differently? Would Texas have prospered without the United States? Would the United States have flourished without Texas?

Today, I think we have the answer. Texas is the only state with the power and the will to stand in the way of those who would erode and end the American Constitutional order. Just as America saved Texas time and again over generations—starting with the defense of Texas from Mexican invasion in the war of 1846-1848—so today Texas has the opportunity and the energy to save America from the schemes and ambitions of the big-government left.

"The Ceremony" is a reminder to all of us: when we defend Texas, we defend America. It is in part the repayment of a debt. And it is entirely a fulfillment of an identity. Abraham Lincoln defined America as

a nation "conceived in liberty, and dedicated to the proposition that all men are created equal." It is the same creed that led Texans to create a nation. It is the same belief that led Texans to unite with the United States. And it is the same faith that compels Texans to lead the way in the defense of American liberty today.

In this issue of *Veritas*, you will read about some of the key ways in which the Foundation is pushing back against big-government overreach in the energy and environment arena. The Environmental Protection Agency (EPA) is holding liberty hostage by forcing states to comply with their idea of a national energy tax delivered through a cap-and-trade system and the heavy-handed regulations of the Clean Power Plan. The Foundation is leading the charge to stop this power grab by speaking out in forums, on the pages of newspapers across the country, through the airwaves, and online in social media. We are conducting research, showing that the plan hurts poor communities the most and commissioning polls to test public attitudes and awareness.

You will also read about how the Foundation's Right on Crime initiative is taking the national stage by storm, proving that successful criminal justice reform is grounded in strong, consistent, conservative principles. The Right on Crime campaign has been active in 39 of the 50 states and has garnered international interest from federal officials in countries such as Australia and the United Kingdom. And the momentum for being "right on crime" is not slowing down any time soon.

We were warned generations past that "the price of liberty is eternal vigilance," and so we take up the fight for liberty fought for so gallantly on the battlefields of San Jacinto so long ago. This fight has been passed down from generation to generation. We will not let their struggles be lost on new generations. We, here at the Foundation—with the strong commitment from our amazing supporters—will not rest in our vision of a freer, more prosperous Texas, and by extension, the nation.


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.



Holding Liberty Hostage

How the U.S. EPA Shreds the Constitution, Principles of Liberty, and Sound Science

by Doug Domenech

The United States Environmental Protection Agency (EPA) has announced a plan to save us and the planet from the economic prosperity, health, and wealth produced by abundant, affordable, and reliable energy from fossil fuels. Why aren't we happy about this?

For more than a decade the nation—and the world—has been debating the implications of changing levels of carbon dioxide (CO₂) in the atmosphere (approaching 400 parts per million). Some are convinced that a scientific consensus exists that anthropomorphic (man-made) “carbon pollution,” principally from the burning of fossil fuels, is driving the increase in atmospheric CO₂ and, in turn, driving up the temperatures of the earth resulting in rising oceans, increased wildfires, floods, hurricanes, tornados, and drought (among other natural catastrophes).

This view has become the accepted orthodoxy of government scientists and many academic researchers dependent on the flow of govern-

ment research dollars. They are convinced that the key to saving humanity, or at least saving the earth itself, is to cut the levels of carbon pollution in the atmosphere. Otherwise catastrophic global warming, or climate change, will occur. Instead of truly testing this hypothesis by the scientific method, they accept this conclusion and work backwards to prove it.

Even if carbon dioxide contributes to a warming climate, it is peculiar to call this colorless, odorless, naturally occurring element a pollutant. CO₂ and other trace gases make up only 5 percent of the greenhouse gases in the atmosphere with the balance (95%) made up of water vapor. Humans and other animals emit CO₂ when we exhale, and plants absorb the gas as food. Almost 97 percent of CO₂ is naturally occurring from vegetation decomposition, oceans, volcanos, and other sources. Humans produce only 3.4 percent of all CO₂ in the atmosphere.

Brave scientists, not dependent on government largess, have disputed the claimed connection between CO₂ concentration and atmospheric

“Ignoring scientific evidence to the contrary, the link between ‘carbon pollution’ and climate change is the basis of the latest ‘solution’ from the U.S. Environmental Protection Agency.”

temperature. They have demonstrated measurable flaws in climate models promoted by the United Nations International Panel on Climate Change (IPCC) that have predicted increased temperatures linked to higher concentrations of CO₂. These scientists point to historic higher concentrations of CO₂ and temperatures in the past, the benefits of a warming planet, and the lack of any measurable temperature change over the last 18 years in spite of rising CO₂ concentrations.

Ignoring scientific evidence to the contrary, the link between “carbon pollution” and climate change is the basis of the latest “solution” from the U.S. Environmental Protection Agency.

Elections Have Consequences

The 2008 election swept in a philosophy that revolutionized many parts of the American economy and society. This is especially true when it comes to energy development and environmental regulation. Aggressive new standards on ozone, auto, truck, and airplane fuel efficiency are among only the latest prescriptions. The Administration has restricted onshore/offshore oil and gas development, massively subsidized inefficient wind and solar energy, refused to permit the Keystone pipeline, challenged hydraulic fracturing (fracking), and essentially made it impossible to permit a new coal mine. Bottom line, the President is delivering on his promises to his far left environmental constituencies.

As a candidate, then Senator Obama famously promised, “if somebody wants to build a coal-powered plant they can, it's just that it will bankrupt them. ... under my plan of a cap-and-trade system electricity rates would necessarily skyrocket ...” It took him 6½ years but the Clean

Power Plan, finalized in August, is music in the ears of giddy global warmists.

The Clean Power Plan

Announced as part of the President's Climate Action Plan, the so-called Clean Power Plan is an EPA plan (2,278 pages) designed to cut carbon emissions from existing and new electric power plants 32 percent (below 2005 baseline levels) by 2030 and is administered under Section 111(d) of the Clean Air Act. It requires each state to submit a state plan to the EPA to show how it will comply with the rule based on individual state targets set by the EPA. If a state does not submit a plan, the EPA will impose its own Federal Plan. For some states complying will be easy, for others it will be hard ... or impossible.

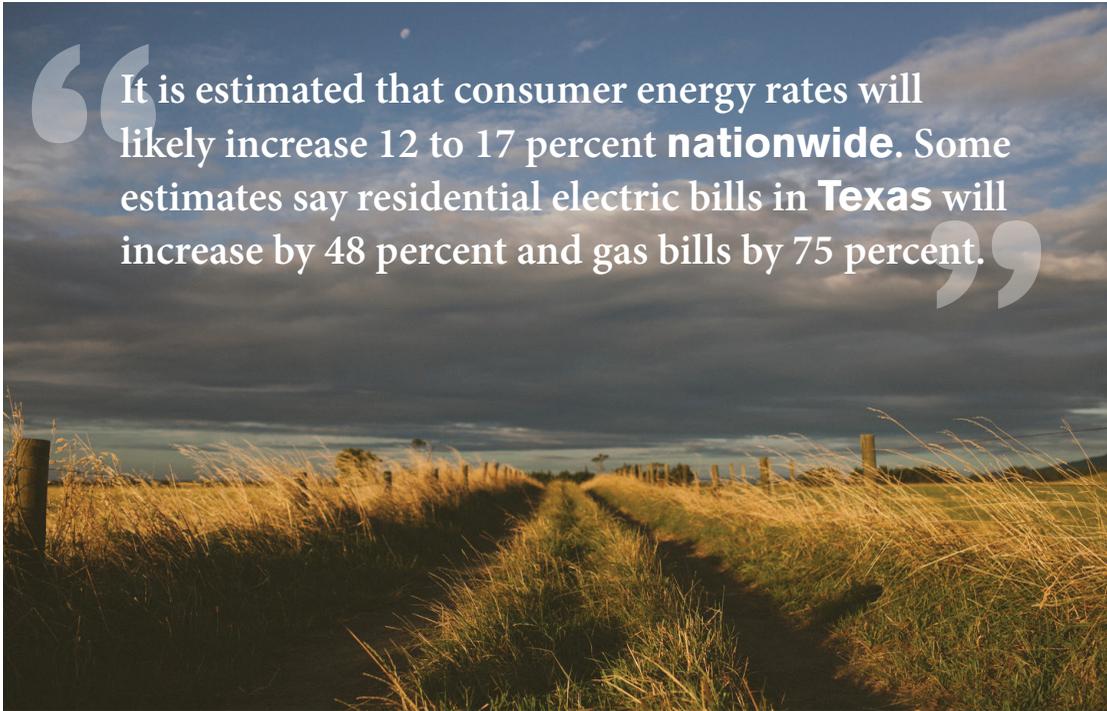
It is a complicated Plan and actually includes three rules: one for existing power plants, one for new (modified or reconstructed) power plants, and finally, a proposed Federal plan.

In addition to reducing CO₂ by 32 percent nationally, these rules require the use of renewable energy (wind and solar) to reach 28 percent and coal's contribution to the electricity production to drop to 27 percent.

Consequences for Texas

The consequences of this rule on Texas are significant, requiring the state to reduce its CO₂ emissions by 33.5 percent (or to 1,042 pounds of CO₂ per megawatt-hour) by 2030 based on a current (2012) rate of 1,566 lbs/Mwh. This will likely force the closure of as many as 20 fossil fueled power plants and the construction of more new renewable capacity than any other nation on Earth has now.

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“It is estimated that consumer energy rates will likely increase 12 to 17 percent nationwide. Some estimates say residential electric bills in Texas will increase by 48 percent and gas bills by 75 percent.”

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Concerns and Objections

There are many negative consequences of the plan on the nation's economy and prosperity. Objections include the following.

ILLEGAL: Many legal experts agree that the plan greatly expands the EPA's control beyond their Constitutional limits. The EPA's authority is limited to emission regulation strictly “within the fence” of power plants. Noted Constitutional lawyer Laurence Tribe of Harvard has called the rule “lawless.” Sixteen states filed a request asking the EPA for an immediate stay of the Clean Power Plan pending the outcome of a planned legal challenge to the rule. Six state Governors have announced that they will not comply with the rule. At least 15 states, if not more, will file

suit in the courts challenging the regulation. Texas joined the effort to stay the rule in court and it is likely that, once the rule is published in the Federal Register, Texas will be among the states suing on the merits of the rule.

EXPENSIVE: Many experts have estimated that the rule will cost billions of dollars to implement. The rule still imposes higher energy prices on families, businesses, and the poor. NERA Economic Consulting estimates that U.S. electricity prices will increase by an average of 12 to 17 percent. The Heritage Foundation estimates a loss of \$2.5 trillion in gross domestic product and more than 1 million job losses.

DESTABILIZING: According to the North American Electric Reliability Corporation, regional grid operators, and the Federal Energy Regulatory Commission, the rule threatens the electric power grid. The EPA builds into the rule flexibility if grids become unstable, but that unrealistically requires baseload coal capacity to be retained until needed by the

electric system. This kind of instability is inherent in sources of energy dependent on weather.

INEFFECTIVE: Even if carbon is a pollutant, by the EPA's own calculation, the rule does nothing to actually address climate change, with a claimed future reduction in global temperatures of an immeasurable 0.018 degrees Celsius by 2100. The EPA's climate rule fails to change the climate in any meaningful fashion, since the vast majority of manmade global emissions originate outside the U.S.

In fact, testifying before Congress, EPA Administrator Gina McCarthy admitted that the Agency's Clean Power Plan regulation will have no measurable impact on global climate. Administrator McCarthy said, “The value of this rule is not measured in that way. It is measured in showing strong domestic action....”

What does “strong domestic action” mean and why are we doing it?

President Obama made a promise to the United Nations that he expects us to deliver. Many believe that his “all pain for no gain” plan is designed to allow him to go to the UN Council of Parties (COP-21) meeting in Paris in December to say that he has instituted a plan that will reduce carbon pollution and “stop the rise of the oceans” as he promised on the campaign trail. A cynic might say he is hoping for his second Nobel Prize.

What Should States Do?

The Foundation is fighting the Clean Power Plan and working with governors, state legislatures, and the U.S. Congress. Our message is:



- Governors should oppose the rule by refusing to submit a state plan. They should direct their environmental agencies to not comply or only submit a plan limited to the jurisdictional boundaries of the EPA's authority. (Although even a limited state plan is a risky move in itself).
- State legislatures should also oppose the rule by passing legislation to protect consumers, businesses, and low-income Americans, and by also restricting state agencies from submitting a state plan until the courts have ruled it legal. Almost 30 states filed negative comments on the proposed rule.
- Congress should continue its efforts to restrict funding for the plan, passing legislation protecting ratepayers, and allowing governors to have the flexibility to reject the plan if it raises electricity rates.
- Opposition to the EPA plan in the U.S. House of Representatives has been vigorous, principally along partisan lines. Texas has several strong leaders in this fight including Rep. Lamar Smith, chairman of the Science, Space, and Technology Committee. He has been unwavering in his opposition.

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The Foundation held an in-house Policy Primer on June 22 to release results of a TPPF poll of Texans regarding attitudes about federal versus state regulation of the environment. TPPF's Doug Domenech presented the poll results, followed by a panel of experts who discussed the detrimental stranglehold the EPA has on Texas energy producers and consumers. TPPF's Rob Henneke moderated the panel of Kathleen Hartnett White, director of the Center for Energy and the Environment; Brian Shaw, Chairman of TCEQ; and Mike Nasi, attorney with Jackson Walker.

tion to the plan. In addition, Rep. Randy Weber has been a key leader from his position as chairman of the House Science Subcommittee on Energy.

The Interstate Power Compact Solution

The EPA is relying on fear tactics and a strategy to divide and conquer the states into compliance. They are offering incentives to the states for early adoption and compliance in hopes that market disruption will be complete before the courts can rule against them. Any action by the states to say “no” is important and warranted.

States can and should stand together to respond to this EPA overreach. One option is adopting

the Interstate Power Compact, developed by the Foundation.

Compacts are a commonly used Constitutional method to facilitate policy of joint interest to states and to protect the sovereignty of the states. They act as a contract between consenting states, and when approved by Congress, have the effect of federal law. There are more than 200 compacts in force around the country today.

The best option is to restrict the power of the EPA through an interstate compact. The purpose of the Interstate Power Compact is to protect Member States’ sovereignty and the assurances granted under the Tenth Amendment.

Under the Compact:

- Member States agree that the Clean Power Plan lacks a statutory and constitutional foundation.
- Member States agree at most to file only a block one state plan limited to emission reductions actually and technically possible at existing plants, and
- Member States pledge to work with Congress to allow member states to opt-out of the Clean Power Plan thus preventing the EPA from implementing a federal plan within member states.

Conclusion

Picture a room full of centralized planners bent on taking control of the national energy system, designing a plan to force states into complying with their idea of a national energy tax delivered through a cap-and-trade system. One lesson we learned from the Affordable Care Act is that a centralized plan only raises costs and limits supply. But a couple of things stand in their way like watchmen on the wall: the Constitution, economics, and a free people.

The Foundation has mounted an aggressive effort to push back on the EPA plan by speaking out in forums, on the pages of newspapers across the country, through the airwaves, and online in social media. We are conducting research, showing that the plan hurts poor communities the most. We’re also commissioning polls to test public attitudes and awareness.

In November we will host our second “At the Crossroads: Energy and Climate Summit” designed to demonstrate the latest scientific research and findings. We are engaging the Congress and Statehouses across the country and building a broad coalition of like-minded groups.

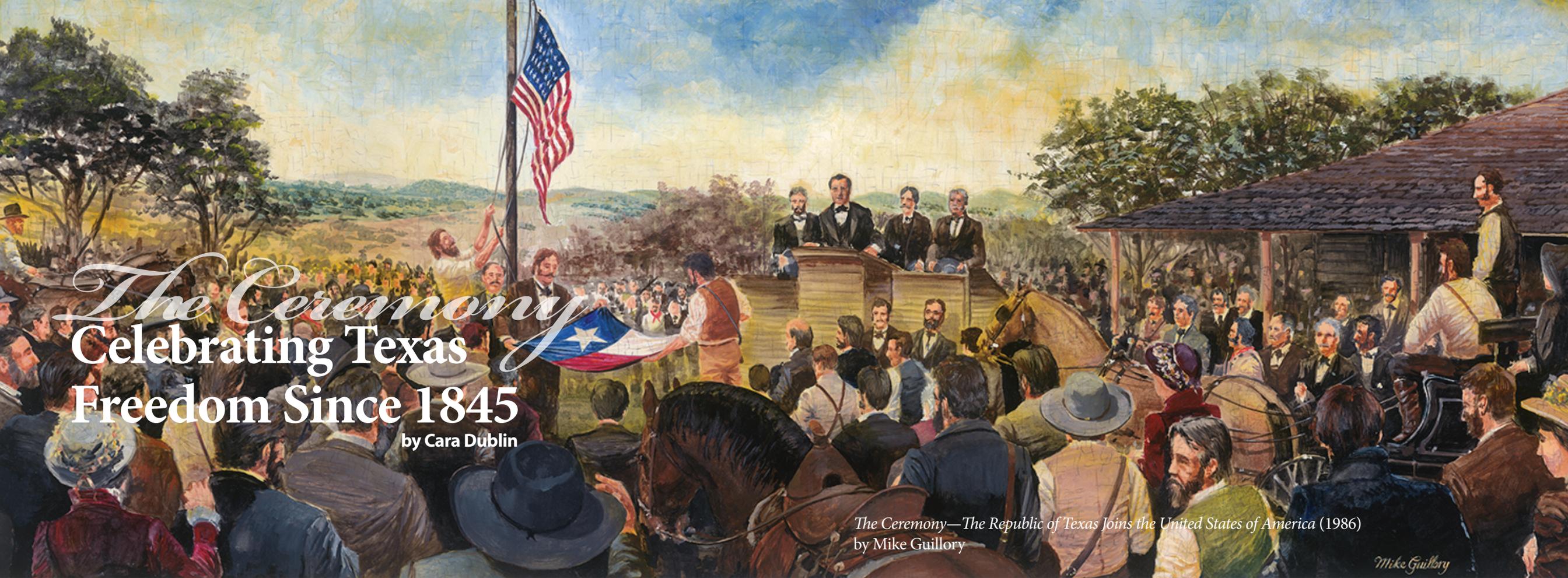
As House Science Committee Chairman Lamar Smith (R-Texas) said, “The Clean Air Act was never intended to regulate carbon. Yet the president and his Environmental Protection Agency are sidestepping Congress to push their extreme environmental agenda. The final plan will shut down power plants across the country, increase electricity prices and cost thousands of Americans their jobs. Higher energy prices means the price of everything will increase, and low-income families already struggling to make ends meet will be among those most burdened by this costly rule.”

Maybe it’s extortion, maybe it’s blackmail but what the EPA is trying to do to the states is force them into doing something the EPA is unable to do on its own.

The Foundation is working to oppose the Clean Power Plan, assist states in opposing the rule, and pass the Interstate Power Compact in as many states as possible. Ultimately the solution is to end the regulation of CO2 as a pollutant. This will require both legal and scientific action. ★



The Honorable Doug Domenech is the Director of the Fueling Freedom Project at TPPF. Prior to joining TPPF he served as secretary of natural resources in the Commonwealth of Virginia. As a member of the governor’s Cabinet he oversaw six state environmental, natural, and historic resource agencies with a combined budget of \$480 million and staff of over 2,000. He also served as a member of the governor’s energy policy team. From 2001 to 2009 Doug served in several positions at the U.S. Department of the Interior in Washington, DC including White House liaison and deputy chief of staff to two secretaries of the interior. He holds a degree in Forestry and Wildlife Management from Virginia Tech.



The Ceremony Celebrating Texas Freedom Since 1845

by Cara Dublin

The Ceremony—The Republic of Texas Joins the United States of America (1986)
by Mike Guillory

Mike Guillory

Malcolm Stewart Morris is a dedicated supporter of liberty, a leader in business as former President and CEO of the Stewart Title Guaranty Company, and one of TPPF's committed friends. To celebrate the Grand Opening of Liberty's New Address at 901 Congress, Mr. Morris and Stewart Title graciously donated a commemorative painting entitled "The Ceremony—The Republic of Texas Joins the United States of America" (1986).

In December, 1845, Texas was annexed to the United States by an act of Congress. "The Ceremony" depicts the moment when the flag of The Republic of Texas was lowered, ending the self-governance of an independent nation, and replaced with the flag of the United States of America, transforming Texas into the 28th state in the nation. Judge William H. Stewart, great-grandfather of Mr. Morris, was one of

two to three thousand attendees at the ceremony and had the honor of writing a moving depiction of the event that was published in newspapers across the State of Texas.

In his article, Judge Stewart reflects on the transition, centered around the symbolic exchange of the Texas flag for the Stars and Stripes. His account documents the Texans' experience, first of profound sadness at loss of their brave, independent Republic, followed by profound joy as they realized that they were under a new banner of liberty. "The Ceremony" immortalizes this historic moment, when Texas stood on the cusp of two different national commitments to liberty and the rights of free men.

Maryland-born Judge Stewart and his family epitomize the spirit of Texas. In 1844, as a young attorney, he sailed into Galveston,

in the nascent Republic of Texas, practically penniless. He established a law practice in Gonzales, Texas, where in 1847, he was elected mayor and served three terms on the state legislature from that county, including service on the First Legislature of the State of Texas. He returned to Galveston in 1869, and in 1876, he became Judge of the District Court there, a post he would hold until his death in 1903.

He was elected a delegate to the Texas Constitutional Convention of 1875 and was the author of the clause that set apart three million acres of public land for capitol and public buildings as the seat of government. These three million acres of land were then traded to the Farwell brothers of Chicago to build the present Texas State Capitol building in Austin. Judge Stewart was later recognized

by the Texas Legislature as "The Father of the Capitol of Texas" for his role in enabling the construction of the iconic pink granite hub of Texas governance, and his portrait is displayed today in the Senate Chambers of the building he thus facilitated. Judge Stewart's great-grandson, Mr. Morris, had the privilege of unveiling the portrait at the Senate Ceremony in Austin as a young boy.

Judge Stewart's son Maco Stewart, also an attorney, built on his father's success to found a Law and Land Title office in Galveston, which grew into today's Stewart Title. On the occasion of the Texas Sesquicentennial, the business published an annual report, reprinting Judge Stewart's moving article and elucidating the historic ties between the Stewart and Morris families and the State of Texas. "The Ceremony" was commissioned to commemorate

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this anniversary, and it served as the centerpiece of the published report, which was used in classrooms across the state and placed in the Texas archives. Stewart's annual report team chose Houston artist Mike Guillory to capture the event and move it from words to a canvas.



As CEO of the Stewart Title Guaranty Company, Malcolm Stewart Morris helmed a multigenerational legacy of business, family, and Texas history. Below, he takes a moment to share why he values the work of TPPF so much that it impelled him and Stewart Title to donate this commemorative artwork to the Foundation, to be displayed permanently at Liberty's New Address.

Why do you support the Texas Public Policy Foundation?

TPPF was founded by a friend and a great Texan, Dr. Jim Leininger. I first admired how Jim fought for and funded programs for liberty in education, which is key to the success of Texas. TPPF has grown in its focus to be so much more, but has not lost that focus on school choice that originally attracted me.

How and when did you first become involved with TPPF?

Having served as President of the Texas Land Title Association and the American Land Title Association, I always seem to have been involved in political matters. Generations of my family have served in the Texas Legislature. When my son Matthew Morris took over as CEO of Stewart Title, I had a little more time on my hands, and I felt that TPPF was so important to keeping Texas focused on the proper role of limited government that I decided this was a good place to dedicate my time.

What are your biggest policy concerns?

In addition to school choice, it is important to rein in spending. It is hard as a legislator to focus on what must be done when people are

banging on your door with all kinds of ideas on how to spend more money. We must limit the role and the cost of government.

One of my big concerns is property taxes. When property taxes exceed the bare minimum, it amounts to confiscation of private property by the government. Harris County now has the highest property tax rate in the state. With the growth in both taxable values and tax rates since 1988, property taxes are eating up 6-7 percent of a property's value each year. That means in 15 years, the government has taken the entire value of your home! This has a very detrimental effect on home values. Clearly, property taxes are completely out of control and must be rethought—and TPPF is doing some good thinking on this subject.

What, in your mind, is the most important thing TPPF does?

TPPF presents research that our legislators can count on to give them the tools they need to do their job. I believe TPPF is preeminent in its field. Some states have something similar, but it is a mirror image—set on securing the destruction of our freedoms. TPPF is making a statement and keeping true to its mission, and that resonates with Texans. Other states are now emulating Texas, and are even citing TPPF research.

What does TPPF's new headquarters mean for the future of the organization?

It makes a huge statement that TPPF is here to stay. I am so thankful to Brooke Rollins and team for this vision! I believe this will become a regional center for other states to emulate. There has to be a constant battle to retain the God-given rights of our citizens against the planned, funded machinery that seeks to overthrow our freedom—all in the name of the false comfort of believing that the government will take care of everything, from cradle to grave. The new TPPF headquarters has set a beacon of light on a hill, all within the eyesight of the elected representatives of our state.

How do you share information about TPPF with others?

I share the role of TPPF with friends and business leaders. I recently brought the president of Weathermatic, an advanced irrigation and water management technology firm, to meet with TPPF. He was amazed at the reach of what this organization is accomplishing, and we had a great discussion about meeting the future water needs of this state.

State planning for new reservoirs only went through the 1980s, and now our state population is growing immensely more than anyone projected. I have been working in the water sector on a global basis for over 25 years, and I've been a witness to the devastation and loss of life and property when the water needs of a population are not met. Most people focus on saving water inside homes and buildings. This company focuses on savings outside, using smart technology, smart controllers, and on-site weather stations all connected through the Cloud to a control center. In six years, this kind of management could lower the state's water usage to make do with existing reservoirs—and this is a free-market, not a government, solution.

TPPF has the resources to study the water situation, and possible free-market solutions like this, before the next Legislature has to meet and deal with water policy. So this will become an important area for TPPF—defending against government regulation that won't solve our state's water needs.

Why do you believe in a free market, limited government approach to policy?

Government is to provide the platform on which to dance. It is not to make you dance. Government is not meant to do everything for you. Its purpose is to set in place the mechanisms for commerce and opportunity which are available to all—and then get out of the way.

What inspired your decision to gift the painting to TPPF?

From TPPF's Governor Perry Liberty Balcony, you can look down to the capitol grounds and see the flag pole. There were times in the past when I wondered if Texas joining the U.S. was the right thing to do. Would we have been better off as our own Republic? Today, I think we have the answer. If Texas had not joined the United States, would there even be a United States as we know it?

Texas is the only state with enough power standing in the way of those that would destroy the U.S. and its constitution. If Texas were to go the way of other large states, the U.S. would have no chance of recovery. So, "The Ceremony" is a reminder to all of us. When Texas joined the United States of America, it was to uphold the ideals set forth in our Constitution: a free nation with limited rights of government. TPPF must continue to fight to roll back the takeover of the rights reserved to the citizens by the constitution and given to them by Almighty God. Texas must hold the U.S. accountable to be the nation we agreed to join.

Any other thoughts you would like to share?

I did not plan this, but in the grand staircase of TPPF is another painting, Henry McArdle's "The Battle of San Jacinto" (1901), which depicts the moment when the Republic of Texas won its independence. That painting faces "The Ceremony," when the Republic of Texas joined the United States. Let us all remember that the battle at San Jacinto gave us liberty and that in joining the United States, we did not give up that liberty, but swore to uphold it. That is what TPPF is doing. This headquarters is a working monument to liberty that free men and women must continue to support. Liberty is never free; it must be carefully and intentionally sustained. ★



What Will Your Legacy Be?

Announcing the Lone Star Legacy Society

The price of liberty is eternal vigilance...

This statement is attributed to many of America's leaders, but it rings true for all of us. Who will safeguard liberty when we are gone? Will future generations continue to speak of freedom and rally to its defense? Will they be equally dedicated to America's founding principles?

Lone Star Legacy Society members are helping to ensure that they will.

The Texas Public Policy Foundation has established the Lone Star Legacy Society to celebrate and thank those individuals who share in our desire to preserve liberty. The society's goal is the advancement of freedom—both the policy that creates it and the thought that supports it—in perpetuity. Lone Star Legacy Society members are individuals who take a values-based approach to giving, ensuring that they leave a lasting impression of their life and beliefs.

By creating your will or estate plan today, you can ensure that the Texas Public Policy Foundation remains a permanent voice in Texas and the nation for conservative principles, while avoiding unnecessary taxes, increasing spendable lifetime income, honoring your family, and upholding our Founding Fathers' principles.

Each one of us already has a default estate plan: a government plan, in which hard-earned assets can be unnecessarily taxed, leaving heirs and causes we care about with little to no benefit. The only way to ensure that your legacy plan reflects your wishes and your principles is to design it yourself, with competent counsel. Careful planning can protect you from income erosion due to capital gains taxes and preserve what you have worked so hard to build.

To join the Lone Star Legacy Society, you simply need to notify TPPF that you have included the Foundation in your will or estate plan in some way. This could be as simple as a line in

Pictured on opposite page: The Rollins children, Luke (11), Lily (5), Anna (7), and Jake (9).

your will or a life insurance gift, or could take the form of a trust or gift annuity.

Lone Star Legacy Society Members are recognized with the full benefits of our most generous donors. Benefits of the Society include:

- Permanent recognition on the Legacy Society wall at TPPF's new headquarters building
- Special recognition at events and in printed materials
- Reserved VIP seating at all TPPF events and invitations to exclusive, private events
- Priority communication with TPPF's President and Chairman of the Board

TPPF has received estate gifts from generous individuals who did not inform us of their intentions, and we were not able to recognize them. If you plan to leave a legacy of freedom through a gift to TPPF, we want to honor you today!

Will you consider supporting the opportunity of all Texans—old and young, men and women, living and yet to be born—to live under the principles of liberty, personal responsibility, and free enterprise that have built, sustained, and prospered our great state? Truly, this is a hero's legacy, worthy of our Founding Fathers' efforts and dreams. ★

To notify us about your membership in the Lone Star Legacy Society, or to learn more about how to secure your legacy, please contact Annie Casteel at (512) 615-7982 or acasteel@texaspolicy.com.

Contribute to the Texas Public Policy Foundation today!

I would like to advance freedom in Texas by contributing to the Texas Public Policy Foundation (TPPF). \$_____.
I would also like a free subscription to: *Veritas* *Texas Public Policy News (TPPN)* electronic newsletter.

GIVING LEVELS

- Patriot \$100-499
- Liberty Circle \$500-999
- Leadership Council \$1,000-2,499

VISIONARY LEVELS

- Visionary \$2,500-9,999
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RIGHT ON CRIME and the Genesis of Conservative Criminal Justice Reform

by Derek Cohen

By a singular concourse of events, religion is entangled in those institutions which democracy assails, and it is not unfrequently brought to reject the equality it loves, and to curse that cause of liberty as a foe which it might hallow by its alliance.” -Alexis de Tocqueville, *Of Democracy in America*, Volume 1.

Alexis de Tocqueville’s seminal treatise on American sociopolitical thought and action, originally intended as a detailed analysis on the fledgling country’s penal system, has in turn lent itself more to an understanding of why the now-sprawling criminal justice functions as it does rather than how. What was originally intended to be a sparingly-used tool of public safety and beneficence has, in the interim two-and-a-half centuries, become an infringement upon American liberty as well as an inefficient and ineffective means of addressing crime.

Since its inception, the American penal system has sought to affect positive social change. The very etymological root of the penitentiary—penitence—is the religious construct enveloping one’s acceptance of the inherent wrongness of their actions, contrition, the atonement for these deeds through labor and self-reflection. However, as the penal functions of the state

became more captured by and integrated into the political process, principles of retribution and the utilitarianism-based function of punishment usurped the Judeo-Christian ideals of rehabilitation and restoration.

Mechanisms intended to combat persistent violence and thievery—just two of the common law offenses seen as anathema to the ideals of individual freedom and property rights; the very premise upon which our nation was founded—are now regularly used against innocuous activities or to seize and wholly forfeit property without so much as a criminal complaint, much less an actual conviction.

In tandem, the criminal law has also seen unprecedented growth. In Texas alone, some 1,500 nontraditional criminal offenses exist outside of the penal code. These include felony-level punishments carrying substantial prison time for such offenses as lying during

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a fishing tournament or harvesting oysters at night. This proliferation of “overcriminalization” has led legal scholars to posit that, by way of overlapping criminal jurisdictions and ever-expanding criminal law, the average American citizen commits on average three felonies per day.

Our voluminous criminal code has brought us to the point that the fundamental legal precept that “ignorance of the law is no excuse” is invalid because partial ignorance is the only plausible condition of the vast majority of Americans. Of course, this is to say nothing about how this disregard for time-honored legal concepts like proportionality, effectiveness, and the rule of law is anathema to conservative philosophy.

These factors have led to the unprecedented rise of the carceral state. Statistical shorthand such as “The United States has only 5 percent of the world’s population, though 25 percent of the world’s prisoners” and “Nearly one-third of the United States’ population is under some form of correctional control” (while not widely understood or without qualification) has reached the point of cliché in public policy discussion.

These platitudes are not without justification. Between 1925 and 1972, the annual percent change in the federal and state incarcerated population was almost 3 percent; roughly similar to general population growth over the same time period. This incarceration rate of 110 out of every 100,000 Americans was remarkably consistent during the half-century. However, from 1972 to the present, the imprisonment rate grew roughly 6 to 8 percent per year, before beginning to taper off in the early 2000s. This produced an incarceration rate of 471 per 100,000 Americans, roughly 4.3 times greater than the preceding historical period.

Blame for the growth of the penal state and the rise in incarceration is bipartisan. One of the fleeting points of policy agreement between Republicans and Democrats in the 1980s and 1990s was in combating the endemic rise in crime of that period—specifically those dealing with drug use and trafficking—with harsher, carceral sanctions, oftentimes at the expense of rehabilitation. While the omnibus federal legislation at this time that greatly grew criminal law and appropriated a great deal of money for prison expansion (the Violent Crime Control and Law Enforcement Act of 1994) was pushed through the 103rd Congress by Democrats, Republicans were equally at fault. Though the fundamental conservative principle of personal responsibility was properly viewed as the basis for addressing the liberal criminal justice policies imposed on the nation through the courts and legislatures, ever-stricter criminal sanctions under “tough on crime” rhetoric at times began to lose sight of other conservative principles like limited, efficient government, redemption, and public safety. “Tough on crime” policy initiatives remained a lynchpin of the conservative movement well into the 2000s.

However, in 2005, the practical reality in state politics began to shift. After a decade of leading the nation in per-capita incarceration, the quintessentially “tough on crime” state of Texas began to reevaluate its approach to criminal justice. Under then-Governor Rick Perry and the support of TPPF’s newly-founded Center for Effective Justice, Texas dealt with its drug problems by enacting a statewide drug court policy in lieu of stiffening sanctions. This policy approach of seeking alternatives to incarceration for lower-level offenses was made permanent in 2007 when the Legislature managed to avoid an additional \$2.1 billion appro-

continued >>



Right on Crime is one of the main players on the national stage of conservative criminal justice reform. Marc Levin, director of TPPF's Center for Effective Justice and one of *Politico* magazine's 50 "thinkers, doers, and dreamers," testifies before the U.S. Senate Judiciary Committee, discussing federal corrections reforms.

priation for building additional prison capacity by relying more heavily on community supervision.

Juvenile justice reforms followed shortly thereafter, prioritizing keeping delinquents closer to home and out of state correctional schools. Money spent by the state to house youth was given to counties, who were better able to find approaches that produced the best results for their specific circumstances. Between 2009 and 2014, Texas has shuttered three adult prisons and six juvenile prisons, with a seventh currently being phased out.

In 2010, a sluggish economy and dire projections of incarceration growth prompted other states to investigate the Foundation's policy initiatives that allowed Texas to reverse the incarceration spending trend while increasing public safety. The Texas Public Policy Foundation launched the "Right on Crime" campaign in order to both provide conservative leaders interested in criminal justice reform a com-

mon venue to discuss and develop their ideas and to provide technical support for similar efforts in other states.

The Right on Crime campaign boasts an impressive roster of conservative luminaries, from former Speaker of the House Newt Gingrich to tax reformer Grover Norquist to former gubernatorial candidate and Virginia Attorney General Ken Cuccinelli. The campaign has been active in 39 of the 50 states and has garnered international interest from federal officials in countries such as Australia and the United Kingdom.

Right on Crime-branded reforms have also been gathering momentum in addressing the poorly-performing federal criminal justice system. The three major reform bills—the Smarter Sentencing Act, the CORRECTIONS Act, and the SAFE Justice Act—apply the proven conservative reforms that Right on Crime has advocated for in the states with input and revisions being sought from the campaign's personnel.

NATIONAL SIGNATORIES (PARTIAL LISTING)

Chuck Colson (1931–2012), Prison Fellowship Ministries

GOVERNORS & FORMER GOVERNORS

- Rick Perry**, Former Texas Governor
- Asa Hutchinson**, Governor of Arkansas; Former U.S. Attorney and Administrator of the U.S. DEA
- Jeb Bush**, Former Florida Governor
- Robert Ehrlich**, Former Maryland Governor
- Luis Fortuño**, Former Puerto Rico Governor

FORMER FEDERAL & STATE ELECTED OFFICIALS

- Newt Gingrich**, Former Speaker, U.S. House of Representatives; American Solutions for Winning the Future
- J.C. Watts**, Former Member of the U.S. House of Representatives (OK)
- Ken Blackwell**, Former Ohio Secretary of State
- B.J. Nikkel**, Former House Republican Majority Whip, CO House of Representatives
- Kris Steele**, Former Speaker, OK House of Representatives
- Allan Bense**, Former Speaker, FL House of Representatives
- Craig DeRoche**, President, Justice Fellowship; Former Speaker, MI House of Representatives
- Jerry Madden**, Former Corrections Committee Chairman, TX House of Representatives

FORMER ATTORNEYS GENERAL

- Edwin Meese, III**, Former U.S. Attorney General
- Ken Cuccinelli**, Former Virginia Attorney General
- Richard E. Doran**, Former Florida Attorney General
- Mark Earley**, Former Virginia Attorney General
- Jim Petro**, Former Ohio Attorney General
- Hal Stratton**, Former New Mexico Attorney General
- Deborah Daniels**, Former U.S. Attorney and U.S. Assistant Attorney General

- Larry Thompson**, Former U.S. Deputy Attorney General
- Joe Whitley**, Former Acting U.S. Associate Attorney General and U.S. Attorney

JOURNALISTS & COMMENTATORS

- William J. Bennett**, Former U.S. Secretary of Education and Federal "Drug Czar"
- Michael Reagan**, The Reagan Legacy Foundation
- Monica Crowley, Ph.D.**, Fox News political analyst
- Erick Erickson**, *Red State*

RELIGIOUS LEADERS

- Rabbi Daniel Lapin**, American Alliance of Jews and Christians
- Bishop Harry Jackson**, Hope Christian Church
- David Barton**, WallBuilders

ACADEMICS

- John J. Dilulio, Jr.**, University of Pennsylvania
- Ward Connerly**, American Civil Rights Institute; Former Regent of the University of California
- Viet Dinh**, Georgetown University Law Center and former U.S. Assistant Attorney General

OTHER

- Donald Devine**, Former Director, Office of Personnel Management
- Henry Juszkievicz**, CEO of Gibson Guitar
- B. Wayne Hughes, Jr.**, Businessman/Philanthropist

Note: This is only a partial listing. To see all of the national signatories and read more about Right on Crime, please visit www.rightoncrime.com.

Perhaps the largest contribution made by the Texas Public Policy Foundation through its Right on Crime campaign is the fundamental shift it brought about in the discussion of criminal justice policy. Prior to our work, a conservative reticent of spending more money on prison beds or interested in dialing back the criminal code would be instantly deemed "soft on crime" in the political forum by liberals and other conservatives alike. This allegation would be perceived as an attack point that could be exploited in future primary or general elections.

There is now a strong and consistent record that demonstrates the success of truly conservative criminal justice reform. With local, state, and federal entities spending hundreds of billions of dollars each year on operating and maintaining an inefficient criminal justice system, the contributions of Right on Crime are more salient now than ever. Rightfully so, as the fiscal and human cost associated with preserving the status quo has long since grown untenable. ★



Derek M. Cohen is a deputy director in the Center for Effective Justice at TPPF and the Right on Crime campaign. Cohen graduated with a B.S. in Criminal Justice from Bowling Green State University and an M.S. in Criminal Justice from the University of Cincinnati, where he is currently completing his Ph.D. dissertation. His academic work can be found in *Policing: An International Journal of Police Strategies & Management* and the forthcoming *Encyclopedia of Theoretical Criminology* and *The Oxford Handbook on Police and Policing*. He has presented several papers to the American Society of Criminology, the Academy of Criminal Justice Sciences, and the American Evaluation Association.



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