

## **CLOUT Lawsuit – Frequently Asked Questions:**

### **1. *What is CLOUT's lawsuit about?***

According to their own figures, the Texas Legislature is \$1.3 billion dollars over the limit they are allowed to spend under the state's constitution.

CLOUT is asking the courts to order the Texas Legislature to enforce the relevant constitutional provision which, since 1978, has placed a cap on the growth of the state budget by requiring that the government's rate of growth cannot exceed the growth rate of the overall Texas economy.

CLOUT's suit points out three different ways the constitutional requirements are being violated.

- First, the yardstick the state is using to measure growth is unreliable. They use "State Personal Income" (SPI), which measures only personal income and not the total economy. Most experts agree that "Gross State Product (GSP)," which measures the entire state economy, is more accurate.
- Second, this yardstick of SPI has been misapplied for over 20 years. Past legislative budget caps use *estimated* projections of SPI growth from the time they were adopted. These estimates, which were almost always wrong, have been retained in subsequent years, even though actual growth numbers for SPI have become available. The legislature has never recalculated its figures using the actual historic numbers. Furthermore, the Legislature has never voted on the SPI caps – thereby delegating that function to the LBB, which is unconstitutional. The Legislature must vote each budget to accept these calculations.
- Third, even when using the state's flawed and misapplied SPI yardstick, the Texas Legislature has exceeded its own stated budget cap for the 2006-07 biennium by a minimum of \$1.3 billion.

### **2. *CLOUT's lawsuit asks the court to enforce a budget cap of \$52.145 billion for 2006-07. Where does this number come from?***

The figure of \$52.145 billion is the original spending cap set and formally approved by the Legislative Budget Board for the 2006-07 biennium (See Exhibit E in the suit). This figure represents the last time the cap was voted on by the LBB. Subsequent changes to the cap have been approved by LBB staff without even a vote of the elected members of the LBB. CLOUT has accordingly asked that \$52.145 billion be enforced as the most recent budget cap.

**3. *Alternatively, CLOUT's lawsuit asks the court to enforce a budget cap of \$55.158 billion for 2006-07. Where does this number come from?***

The figure of \$55.158 billion comes from our calculations of the current growth rate in the state economy using current actual figures for Gross State Product, a more accurate measure than State Personal Income used by the LBB (See Exhibit O in the suit). CLOUT has proposed this cap as an alternative the legislature could implement to help bring the state budget into compliance with the constitution

**4. *CLOUT's lawsuit mentions another number, \$55.6 billion. Is this a valid budget cap and where does it come from?***

In early 2006 the staff of the Legislative Budget Board adjusted its estimates of the LBB's previously approved budget cap (\$52.145 billion) to \$55.6 billion in anticipation of increased spending. This cap appeared in a staff memorandum and was not officially approved by the LBB (See Exhibit M). It is an unapproved number, which is based on faulty measurements as detailed above. This number is nevertheless claimed as the current cap by the State Legislature for 2006-07.

**5. *I see these three different possible numbers given as the budget cap. Isn't at least one of these figures in effect? And if so, hasn't the State Legislature abided by it as a cap?***

The Texas Legislature currently claims that the highest of these figures, \$55.6 billion, is in effect as the current cap. The state budget was \$53.0 billion at the beginning of 2006, meaning they had already outspent the previously adopted \$52.145 billion cap before the year began. In 2006 the Governor convened a special session of the legislature. The special session appropriated an additional \$3.9 billion, bringing the applicable budget to a total of \$56.9 billion (See Exhibit L). That means current state spending that is subject to the cap has already exceeded all three budget cap figures.

**6. *So, did the legislature outspend the current budget cap for three different measures, including the one they claim is the current cap? Just how much in excess are we talking here?***

Yes, they are over the cap using all three different numbers.

- Even when using the unapproved LBB staff calculation of \$55.6 billion – the highest of the figures and the one the legislature currently claims is correct – they have overspent the limit by \$1.3 billion.

- If the GSP is used to calculate the budget cap, they have overspent by \$1.742 billion.
- If the last cap that was officially approved by the LBB is used, they have overspent by \$4.755 billion.

Using any measure—including their own—the legislature has broken the Constitutional spending cap.

**7. *But you also said that the State Legislature has been violating the cap for several years now, and that they've never corrected their data with historical records. Doesn't that mean they've overspent the cap by even more?***

Correct! The legislature's budget caps have always been set using estimated measures of SPI that are often found to be wrong when the real numbers become available. As a result, they've been overspending for almost as long as the budget cap has been in place.

In fact, when you use actual growth figures for SPI (Exhibit P, Table 6), the accumulated spending in excess of the cap since 1980 is almost \$17 billion. Using other measures such as GSP, the accumulated excess spending is even higher – possibly more than \$76 billion.

**8. *Is CLOUT filing this suit to overturn HB-1 from the 2006 Special Session?***

No. CLOUT is simply seeking to enforce the Texas Constitution's budget cap.

Because HB-1 appropriated about \$3.9 billion dollars in spending, HB 1 makes up a part of the current \$56.9 billion state budget that is subject to the cap. It is not HB-1 alone that is in violation of the cap though – it is the total discretionary state budget of \$56.9 billion.

CLOUT is only asking for the legislature to bring the state budget into compliance with the cap as mandated by the Texas Constitution. The source of the reductions in expenditures needed to meet this cap will be left to the legislature itself.

Since \$1.3 billion overage is less than one percent of the total state budget, we are confident the legislature can accomplish this.

**9. *Does this lawsuit have anything to do with HB-3, the new Texas business tax?***

No. This lawsuit is solely concerned with spending.

CLOUT is making no attempt with this lawsuit to limit the ways the legislature can raise money. We are simply asking the courts to enforce the Constitutional limit on how much money the legislature can spend.

In 1978, more than 84% of Texas voters approved this limitation on spending, which was passed by more than two-thirds of the legislature. We think that the current legislature should follow that constitutional limit.

***10. Doesn't this suit just hurt down-ballot Republican political candidates?***

CLOUT is a non-partisan organization that works to defend the interests of all Texas taxpayers—regardless of their political affiliation—by encouraging a fiscally conservative approach to governance by elected officials at the state, county and local levels.

CLOUT never has, does not, and never will exist to advance the political interests of any one particular party or individual candidate.

We are devoted to principles, and welcome the support and alliance of all who share our beliefs.

If statewide or down-ballot Republican candidates are concerned about the fallout this suit will have on their political careers, a simple solution lies before them—embrace and champion our agenda.

Such action should not be particularly difficult on their part, since in most cases, genuine fiscal conservatism is a position Republicans commit themselves to practicing whenever they are on the campaign trail asking voters for their support.