

Amendment 59 Gives the Education Lobby a Blank Check

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Introduction

Amendment 59 on Colorado's November statewide ballot, also known as the SAFE (or Savings Account For Education) Initiative, suffers from two major shortcomings. One is the substantive impact this initiative would have on fiscal policies in the state. The second is the procedural problems the Initiative would create in designing and implementing our fiscal policies.

The Substantive Impact Amendment 59 Would Have on Fiscal Policies in Colorado

Amendment 59 would basically repeal revenue and expenditure limits that have constrained the growth of state revenue and spending since 1992. Limits on the growth of state revenue and spending imposed by the Taxpayer's Bill of Rights (TABOR) would be eliminated. Surplus revenue above the TABOR limit that would have been rebated to taxpayers would instead be transferred into the State Education Fund (SEF). Those monies would then be appropriated from the SEF to finance spending for education P-12.

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When the budget limitation of Colorado's TABOR Amendment was triggered in 1997, Colorado

citizens received \$3.25 billion in tax rebates over the next three years. If Amendment 59 is passed Colorado citizens would never again see a TABOR rebate. To understand why tax rebates would disappear we need to see how Amendment 59 would interact with Referendum C.

When Referendum C was passed in 2005, many Colorado citizens thought it would only permit the state to spend surplus revenue above the TABOR limit over a five-year period. In fact, Referendum C changed the way in which the TABOR limit is calculated. Under Referendum C the state can spend most of the surplus revenue indefinitely. If Amendment 59 is passed the state will be able to keep and spend all of the surplus revenue.

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Over the five year period 2005- 2010 Referendum C will allow the state to keep and spend \$6.4 billion in surplus revenue that would have been rebated to taxpayers under the TABOR Amendment.¹ That works out to almost \$6,000 per household.

In the following fiscal year, FY 2010-11, Referendum C does not disappear, as many people thought. Even though the state will receive \$1.2 billion in surplus revenue above the TABOR limit, taxpayers will not receive a dime of this surplus revenue. Under Referendum C the new revenue limit

is calculated as the sum of population growth and inflation times actual revenue in 2010, and in every year thereafter. Thus under Referendum C the new revenue limit for 2010 will be \$11.5 billion, instead of the TABOR limit of \$10.1 billion. The new revenue limit exceeds the actual revenue projected that year, and for every year over the forecast period.

If Referendum C has eliminated surplus revenue for the foreseeable future, one may well ask what difference Amendment 59 will make. At some point in the future Colorado is again likely to experience rapid growth in state revenue, as we did in the 1990s. Under those conditions the state could generate surplus revenue in excess of the new revenue limit. But, if Amendment 59 is passed, even that surplus revenue would be retained and spent, and no moneys would be rebated to taxpayers.

Not only would Amendment 59 allow the state to keep and spend all surplus revenue, a greater share of that revenue would be earmarked to fund P-12 education. Amendment 59 would deposit all surplus revenue the state receives above the new revenue limit into the State Education Fund. That money can only be spent for P-12 education.

Currently the state deposits a portion of income tax revenues into the State Education Fund. Amendment 59 would create a new savings account within the SEF. Ten percent of the income tax revenues currently deposited in the SEF would be deposited into this new SEF savings account until a threshold is reached. It is estimated that the amount earmarked for this SEF savings account would be

about \$46 million in 2010, and \$50 million in 2011. That money could only be spent for P-12 education. In years when state personal income grows less than 6 percent, the legislature could spend this money with a simple majority vote; in other years it would require a two-thirds vote.

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education at the expense of other state programs. Earmarking a greater share of state revenue for the State Education Fund will in effect mandate that more state revenue be spent on education. Funding for other state programs would continue to be subject to the cap on general fund spending. In recent years the share of the state budget allocated to P-12 education has increased significantly, and the proposed initiative would accelerate this increase.

Amendment 59 would also allow the state to spend more general fund revenues for P-12 education. In effect, the initiative would repeal portions of the Bird-Arveschough Amendment that limit the growth in general fund spending to 6 percent per year. Under current law any general fund revenues above that limit can only be spent for transportation and construction projects. Amendment 59 would allow the state to transfer this money, which is currently earmarked for transportation and construction spending, into the State Education Fund to increase spending for P-12 education.

The initiative would clearly have a negative impact on spending for transportation and capital projects. Currently most of the funding for these programs comes from general fund revenues in excess of the Bird-Arveschough cap. Allowing the legislature to spend some of that surplus revenue for P-12 education will reduce the funds available for transportation and capital projects.

To the extent that Amendment 59 would erode the revenue and spending limits in place, we should expect higher levels of state spending. The limits on total state spending imposed by the TABOR Amendment would be eliminated; and, the limits imposed by the Bird-Arveschough Amendment on General Fund spending would be weakened. State spending could grow in excess of the growth in state income, as it did before these spending limits were imposed. In periods of rapid economic growth, state revenue and spending could again increase at double-digit rates. This would make it more difficult to balance

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the state budget in periods of recession and revenue shortfall. We should then expect increased pressure to raise taxes and issue more debt to finance the higher levels of state spending. California experienced this outcome when the GANN Amendment limit was weakened to exempt spending for education K-12 from the limit.²

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will clearly be an expansion of the public sector relative to the private sector. Unconstrained growth in the public sector relative to the private sector would create a less favorable business tax climate. Higher taxes would make the state less attractive to new business investment and job creation.³ Currently, Colorado's economic growth exceeds that in most other states. If Amendment 59 passes we should expect lower rates of economic growth, comparable to that in the 1980s when the state was growing less rapidly than other states.⁴

The Impact Amendment 59 Would Have on the Design and Implementation of Fiscal Policies in Colorado

In addition to the substantive impact, Amendment 59 would have a procedural impact on the design and implementation of fiscal policy in Colorado. To understand this procedural impact we must explore the role of initiative and referendum (I&R) in amending the Colorado Constitution, and also a bit of the legislative background that has resulted in this proposed amendment.

I&R is a specific form of the right to petition protected under the First Amendment of the U.S. Constitution. As Dennis Polhill points out in his excellent survey, the origins of I&R can be traced to the Progressive era in the late 19th century, when citizens began to challenge many of the excesses of state legislatures.⁵

John Shafroth, a leader of the Progressive movement in Colorado, promised to put I&R on the ballot when he ran for Governor. Despite opposition from the legislature, this measure was placed on the ballot and passed in 1910 by a 76-to-24 percent margin. Of the 111 amendments to the Colorado Constitution, only 42 have been the result of citizen initiative.

The original Colorado Constitution set a number of constraints on the fiscal powers of state and local governments, including balanced budget provisions, debt limits, and constraints on the power to tax. Over the years a number of statutory limits were also placed on the power of state and local governments to tax and spend.⁶

In 1978 Colorado was one of the first states to impose a statutory limit on state spending growth, the Kadlichek Amendment. While that limit was initially effective in constraining the growth of state spending, it proved to be ineffective in the 1980s. Colorado's experience was typical of states with statutory tax and spending limits: statutory limits proved to be too easy for legislatures to evade or overturn.

Several attempts were made to impose constitutional limits on state spending beginning in the 1960s. However, it was not until the Taxpayer's Bill of Rights was enacted through citizen initiative in 1992 that constitutional limits were imposed on state and local revenue and spending in Colorado. The TABOR Amendment has proven to be the most effective tax and spending limit in the country.

The experience with tax and spending limits in Colorado is not unique. The most effective tax and spending limits imposed on state and local governments have been constitutional rather than statutory; and the most effective of these, like the TABOR Amendment, have originated through citizen initiative. There is a fun-

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damental difference between constitutional tax and spending limits that originate through citizen initiative and statutory limits originating through legislation or legislative referendum. Constitutional limits originating through citizen initiative are more likely

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to reflect citizens' desire to impose effective constraints on the power of the state to tax and spend. The legislative process is more likely to be dominated by special interests who oppose these constraints. Legislators are more likely to enact tax and spending limits that are less stringent, and in some cases limits that fail to constrain anything.⁷

The Bird-Arveschough Amendment, enacted through legislative referendum, was designed to preempt the more stringent TABOR Amendment.

When both of these measures passed in 1992 Colorado ended up with a constitutional limit on the growth of all state revenue and spending, and a statutory limit on the growth in General Fund spending. Initially the Bird-Arveschough Amendment was the binding constraint; annual General Fund spending growth was limited to 6 percent. The budget constraint of the TABOR Amendment was not triggered until 1997. Over the next three years \$3.25 billion in surplus revenue above the TABOR limit was refunded to taxpayers.

When recession came in 2001, state revenue fell below the TABOR limit. As the economy began to recover from that recession state revenue again grew in excess of the TABOR limit. At that point Referendum C was enacted through legislative referendum. This statutory change not only allowed the state to spend surplus revenue for five years; it has also changed the way in which the revenue limit is calculated to allow a significantly greater growth in state revenue and spending. At this point one may well ask how the legislature through statutory law could change a constitutional limit on the growth of state revenue and spending. If citizens had understood this change in the state fiscal constitution in 2005, the outcome of Referendum C might have

been different. Perhaps the court will rule on this constitutional issue at some point in the future.

The endgame in the effort to eliminate and weaken tax and spending limits began in the Colorado legislature, where House Speaker Andrew Romanoff introduced a legislative referendum very similar to Amendment 59. A legislative referendum requires a two-thirds vote of the legislature. The vote on this measure fell out along party lines, with the Republicans able to block passage of the proposed legislative referendum.

Having failed to enact Amendment 59 through legislative referendum, Speaker Romanoff chose the I&R route to enact this legislation. Romanoff has worked with interest groups to promote Amendment 59 as an education funding measure. This strategy is designed to obfuscate the parts of Amendment 59 that would eliminate and weaken tax and spending limits.

If proponents would separate out the different parts of Amendment 59 there is little question what the outcome would be. A number of surveys reveal that Colorado citizens overwhelmingly support the TABOR Amendment.⁸ Amendment 59 would retain that portion of TABOR that requires citizens to vote on new taxes and debt. But, surveys show that Colorado citizens support each of the TABOR provisions; including, limits on the growth in state and local revenue and spending, and rebates of surplus revenue above those limits. Only with an omnibus initiative that obfuscates these issues can Romanoff and the education lobby hope to secure passage.

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An obvious question raised by this tactic is how Amendment 59 could pass judicial muster under the single subject rule for modifying the Colorado Constitution. The Initiative would modify different parts of the Colorado Constitution, including TABOR, Bird-Arveschough, and Amendment 23's automatic annual education funding increases.

Amendment 59 would impact a number of state programs in addition to education, including transportation and capital projects. It would impact different levels of state and local government, most importantly, school districts which are supposed to have autonomy in fiscal decisions. It would impact the ability of the state to generate revenue as well as budgetary decisions in allocating those revenues. In other states, most recently in Florida, the courts have ruled that such omnibus measures violate the single subject rule for modifying the constitution. It is not clear how the Colorado Supreme Court would rule on this issue.

Finally, one of the arguments often made for changing Colorado's fiscal Constitution is to remove conflicting provisions, and to give the Legislature more discretion in fiscal decisions. Amendment 59 removes some provisions imposed by TABOR and Amendment 23, at the same time it introduces more complex rules for funding P-12 education. With this mandated allocation of revenue to the State Education Fund, the General Assembly would have even less discretion in allocating the state budget, particularly when it comes to funding programs such as transportation and capital projects.

Conclusions

Amendment 59 is designed to eliminate and weaken Colorado's tax and spending limits. This will further increase the tax burden on Colorado citizens. The

initiative mandates increased spending for P-12 education, at the expense of other state programs such as transportation and capital projects.

Rather than simplifying the state fiscal constitution, the initiative would introduce more complex rules for funding education that leave less discretion to the legislature in making fiscal policy decisions. At a time when citizens are demanding greater transparency in state government,

this initiative obfuscates fiscal rules and fiscal policy decisions. The Initiative would subvert the I&R pro-

cess from one designed to set limits on government excess, to one that will capture more state revenue for special interests.

Endnotes

¹ State of Colorado, Office of State Planning and Budgeting, June 2008 Revenue Forecast (June 20, 2008), http://www.state.co.us/gov_dir/govnr_dir/ospb/index.html

² Barry W. Poulson, *Tax and Spending Limits: Theory, Analysis, and Policy*, Independence Institute Issue Paper 2-2004, (January 31, 2004) p.11, http://www.independenceinstitute.org/articles/2004_E.pdf

³ For a discussion of the impact of taxes on business climate and state economic growth see, Barry W. Poulson and Jules Gordon Kaplan, *State Income Taxes and Economic Growth*, Cato Journal, Vol. 28, no. 1 (Winter 2008).

⁴ For a discussion of the impact of TABOR on economic growth in Colorado see, Barry W. Poulson, *Colorado's TABOR Amendment: Recent trends and Future Prospects*, Americans for Prosperity Foundation, (July 2004), Chapter 2.

⁵ Dennis Polhill, *Protecting the People's Voice: Identifying the Obstacles to Colorado's Initiative and Referendum Process*, Independence Institute Issue Paper 7-2006 (October 2006), http://www.i2i.org/articles/IP_7_2006_b.pdf

⁶ Poulson, *Tax and Spending Limits*; Poulson, *Colorado's TABOR Amendment*.

⁷ Barry W. Poulson, and Randall Holcombe, *Empowering Florida's Taxpayers*, The James Madison Institute Backgrounder 47, (November 2005), <http://www.jamesmadison.org/article.php/424.html>

⁸ See for example, *Colorado Commission on Taxation Statewide Survey*, Ciruli Associates, Denver, Colorado, July 30-August 9, 2001, <http://www.ciruli.com/polls/tabor03.htm>

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