The Right Time: The Case for a *Real* Tennessee Taxpayers Bill of Rights

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Is the timing right for a *real* Taxpayers Bill of Rights in Tennessee?

Tennessee already has a "Taxpayers Bill of Rights" on the books. Essentially, it "guarantees" fair and courteous treatment of taxpayers by the Tennessee Department of Revenue, user-friendly tax reforms and prompt service.[1] But nothing in the law protects Tennesseans from higher taxes, puts limits on the growth of government spending, or gives voters a say in tax increases. It is *not* the kind of "Taxpayers Bill of Rights" that an increasing number of Tennesseans say they want.

A real Taxpayers Bill of Rights, or, more specifically, a package of tax-and-spending limits enacted either statutorily or via constitutional amendment, would be in keeping with the latest variety of a grand American tradition, the tax revolt. Tax Revolts have been part of the American social fabric ever since the nation was founded on a tax revolt. We're the nation of the Boston Tea Party and "No taxation without representation," of the Whiskey Rebellion and "Live Free or Die," Howard Jarvis' Proposition 13, and the Tennessee horn-honkers.

In the 18th and 19th centuries, tax revolts were accomplished by a physical refusal to comply with tax laws. Tax collectors were tarred and feathered, people marched in the street. Sometimes, protestors were suppressed by the state militia or federal troops. Today, successful tax revolts can be accomplished through politics and in recent decades a variety of tax-cutting initiatives and referenda have limited or repealed taxes by popular vote.

The modern tax revolt started with the passage of California's Proposition 13 in 1978, limiting state property taxes. Within two years, 43 states had implemented similar legislation limiting state property taxes, and many analysts believe Proposition 13 was an early signal of the onset of anti-tax fervor that swept Ronald Reagan into the White House.

The next big crest of the modern tax revolt came in 1992, when voters passed the Taxpayers Bill of Rights Amendment in Colorado. TABOR, as it is called, restricts state expenditure to incremental growth except when popular vote says otherwise. Actually, what it restricts is how much revenue growth the legislature can spend without getting voters permission. And it bars tax increases without voter approval. It applies to local and county governments as well as the state government. And it has had spectacularly positive effects on Colorado's budget, taxes and economy.

Even more recently, the modern tax revolt notched another big win in Washington state, where voters passed Initiative 695, which killed Washington's progressive – and hugely expensive – car license fees system in favor of a $30 per car flat rate, returning three quarters of a billion dollars per year to tax payers. The initiative also made all future state and local tax increases subject to public vote. Voters approved it in a landslide, even though it was opposed by most major newspapers, the state's popular governor, and a cruise ship full of special interest groups who spent big bucks to defeat it.

It's worth noting that Howard Jarvis' Prop 13 passed in the middle of a down economy, while I-695 passed during a surging economy that had resulted in an almost $1 billion state government surplus. Portions of I-695 were soon struck down by the courts[2] on a technicality – because it addressed car tab fees and also required future tax increases be put to a vote, critics claimed it violated the state's single-subject rule for ballot initiatives, and that battle is ongoing in both the courts and at the ballot box...

Colorado's TABOR amendment, however, remains in force, and is considered the strongest tax-and-expenditure limit at the state level in the nation. In 1977, the Colorado legislature adopted a statutory limit on the growth of general fund appropriations. The provision was regarded as novel - Colorado was one of the first states to impose a tax and spending limit – and it was intended to allay citizens' concerns over budget growth during a time of state economic expansion. It restricted state appropriations increases to 7 percent, relative to state general fund appropriations in the prior year. That limit was imposed after a decade of double-digit growth in state spending that began in the late 1960s. The 7 percent limit resulted in the first tax rebates to taxpayers in the late 1970s.

It didn't work. State and local government mushroomed during Colorado's economic booms <u>and busts</u>. The limit effectively constrained the growth of state government for several years. However, by the mid 1980s, Colorado was in the midst of the worst recession of the post WWII period. While the private sector contracted, the public sector expanded at an even higher rate. Legislators simply avoided the 7 percent limit, increasing government spending in some years at double-digit rates. From 1979-90, property tax revenue increased 151 percent, two and one-half times faster than inflation. From 1981-1990, state income tax revenues outpaced the growth in personal incomes by a similar margin. Meanwhile, state and local debt was skyrocketing, up 180 percent from 1980-87.

In response, activists lead by Colorado Springs real estate investor Douglas Bruce attempted on three separate occasions to qualify and pass an initiative known as the Taxpayer Bill of Rights, which said voter approval would be required for any state or local expenditures of revenue above and beyond inflation and population growth.

Although the initiative's proponents failed to win at the polls in 1986, 1988, and 1990, their margin of defeat became smaller, and the activists continued to refine their TABOR proposal, with an eye on the 1992 elections.

Meanwhile, in 1991, Bruce led a successful effort to enact a local TABOR amendment in Colorado Springs, a city roughly the size of Knoxville. It passed with 61 percent of the vote.

That same year, the Colorado legislature realized the newest statewide TABOR proposal might well pass – and tried to head it off at the pass by enacting a new statutory expenditure limit. But its solution was tame – limiting annual increases in state general fund appropriations to 6 percent of the previous year's level or 5 percent of total state personal income for the two previous years, whichever is less.

TABOR activists were not impressed, and put their newest TABOR measure on the November 1992 ballot as Amendment 1.[3] And then all hell broke lose, politically speaking.

Public officials, from Democratic Gov. Roy Romer on down to the county sheriffs made dire predictions of fiscal and economic calamity if Amendment 1 passed. Romer was the most hysterical, repeatedly denouncing TABOR, and saying that defeating TABOR was the "moral equivalent of defeating the Nazis at the Battle of the Bulge." The governor personally attacked TABOR's author Douglas Bruce, calling him "a terrorist who would lob a hand grenade into a schoolyard full of children." And he predicted that TABOR would result in an "economic Armageddon" and that the Colorado border would have to be posted with signs reading "Colorado is closed for business."

But the voters ignored the rhetoric and adopted the tax limit. To date, not a single one of the far-fetched doom scenarios has come true. Colorado's economy has been exceptionally strong since TABOR went into effect. Between 1995 and 2000 Colorado ranks first among all states in gross state product growth and second in personal income growth. Furthermore, according to the National Association of State Budget Officers (NASBO), Colorado was one of only five states that did not run a deficit during fiscal 2002. I'll overload you with more data on Colorado's economy post-TABOR in just a bit.

Current Colorado Gov. Bill Owens was the state treasurer when TABOR was passed. In 1996, he had this to say about the amendment's impact:

> *"Our economy is booming, while the credit ratings for most public debt have actually improved. …Colorado's economy has improved more in the past four years than at any time since World War II; tax revenues have surged as the leveling off of taxes has led to new business investment; job growth has surpassed the national average every year since 1992 and unemployment has fallen to 2 percent below that of the rest of the country."*

History is on the side of those who favor imposing tax-and-expenditure limits on state governments. Some 27 states now have "Tax and Expenditure Limitation" laws, a catch-all phrase that describes any law intended to limit government revenues or spending.

Some are statutory laws; others are constitutional provisions that limit taxes and/or government spending. Many of them were enacted because of grassroots action.

Colorado's TABOR amendment was put in the constitution via the initiative and referendum process, but not all states offer voters that tool. In Colorado, the anti-tax activists could propose the toughest tax-and-spending limitation ever devised and if voters said No, they could refine the measure – and their message – and try again at the next election. They failed three times, but learned each time, and succeeded on the fourth try. But it only took six years from their first failure to their final victory.

In contrast, Tennessee makes it much more difficult to amend the state constitution. The people only get one shot every four to six years because the state constitution says that, short of a constitutional convention, the only way to amend the document is to pass a proposed amendment in two successive legislatures and then get voters to pass it in the next gubernatorial election. That means Tennessee TABOR supporters must pass a TABOR proposal either this year or 2004, and then again in either 2005 or 2006, and then convince voters to approve it in November 2006. Miss either of the first two deadlines and the soonest it can be back on the ballot is 2010.

Politically, that makes it necessary for TABOR supporters to propose the toughest TABOR *that can pass the legislature* AND *has a reasonable chance of winning with voters* – even if that means they don't get everything in it we want.

Supporters also may wish to consider pursuing TABOR on two tracks – a constitutional amendment and a statutory TABOR. But that route has political pitfalls. A statutory TABOR might lessen the willingness of the legislature to also put a constitutional TABOR amendment on the ballot. And the history of tax-and spending limits shows that statutory limits work less well than constitutional caps.

As the Initiative and Referendum Institute said in a 1999 study,[4] "even the National Conference of State Legislatures, not one of direct democracy's biggest boosters, acknowledged that *'generally citizen initiated limits are more restrictive.'*"

The Institute further said that the weakest tax-and-spend limits – or TELs – tend to be those that limit appropriations to a percentage of revenue estimates, because such limits *"do not establish an absolute limit or tie growth to any measurable index."* None of these TELs, currently in force in five states, were initiated by citizens. All were proposed by state legislatures.

The NCSL says laws that curtail the growth of spending to some economic measure such as inflation or personal income growth are somewhat more restrictive. Since 1978 Tennessee has a constitutional TEL, called the Copeland Cap after former state legislator David Copeland who wrote it, that limits the growth of spending to personal income growth. But it's a weak cap – it can be broken by a simple majority of the legislature. That's a loophole that has swallowed the law – and the Copeland Cap has been exceeded numerous times.

The legislature has exceeded the cap by a cumulative $3 billion since fiscal 1985, including $1,096,000,000 (one-billion-and-96-million dollars) during the Sundquist administration. Because much of that extra spending was for recurring programs, the actual cost to taxpayers far exceeds $3 billion and continues to mount year after year.

One year ago, Gov. Sundquist proposed a budget for fiscal 2002-03 that would've exceeded the state constitution's cap by a whopping $1.27 billion dollars. The legislature cut his budget request by some $500 million, yet Sundquist's legacy remains that he signed into law a budget that includes the largest spending in excess of the constitutional cap in the history of Tennessee - a whopping $771 million. That's 9 percent more spending than the constitutional cap allows.[5]

That's $771 million in just the first year. Because each year's budget increase is built on top of the previous year's budget, exceeding the cap by $771 million this year means next year's budget will also be $771 million higher than it would have been if the constitutional spending cap had been respected. And the next year's budget. And the one after that, etc... Over the next 10 years, this year's busted spending cap will cost Tennessee taxpayers an astonishing $7.71 BILLION dollars in additional taxes, unless something is done.

In breaking the Copeland Cap, Sundquist was only following tradition. The Copeland Cap was added to the constitution in 1978 and legislators and governors of both parties respected it for a few years. But since 1984-85 fiscal year, spending has exceeded the cap ten times, by a total of just under $3 billion.

The cap was exceeded twice during the Gov. Lamar Alexander years - by $446.1 million in fiscal year 1985, and $100 million in fiscal year 1987, and five times under Gov. Ned McWherter - $101 million in fiscal year 1989, $74 million in fiscal year 1990, a whopping $703.1 million in fiscal year 1992, and $450 million in fiscal year 1993. Gov Sundquist has been just as irresponsible, pushing budgets that ultimately lead the legislature to over-spend the cap by $55 million in fiscal year 1997, $270 million in fiscal year 2000, and $771 million in this fiscal year.

The Copeland Cap clearly isn’t working any more. Its approach – focusing on spending rather than taxes – its status as a legislature-created cap combine, and its easy loophole combine to render it ineffective.

The NCSL found that, of the 17 state TELs that generally focus on spending growth, only one was proposed by voter initiative and two were proposed through a constitutional convention. The remaining 14 originated in the state legislatures. They tend to be the weakest caps.

TELs that limit revenue growth instead of or in addition to the growth of spending tend to be more stringent. Of the eight state TELs that focus on revenue growth, five were

proposed through the initiative and referendum process, and three were created by state legislatures.

According to the Initiative and Referendum Institute, the tougher the TEL, the more likely it was initiated by voters rather than lawmakers.

There are 30 TELs operating in the 27 states - some states have more than one such law. Of the 30, are constitutional and 13 are statutory. Constitutional provisions stand the test of time longer than a statute, because constitutions typically require extraordinary procedures to amend them, as is the case in Tennessee. Most laws can be altered or repealed by a simple majority vote of the legislature. Nearly two-thirds of all citizen-initiated TELs are constitutional However, less than half of all legislatively-proposed TELs are constitutional. The evidence clearly shows that the toughest TELs are constitutional, and initiated by voters rather than lawmakers.

But because it lacks the Initiative and Referendum process, Tennessee requires a hybrid approach. TABOR supporters must foster sufficient grassroots support to convince legislators to pass a tough Taxpayers Bill of Rights – either statutorily or, preferably, as a proposed constitutional amendment, or maybe in both forms, with the statutory TABOR proposal waiting in the wings as a back-up.

A key point of debate will be whether TABOR has been good for Colorado. Here, the data is clearly on the side of those who support enacting a tough tax-and-expenditure limit. This next section discusses how TABOR has affected taxes and spending in Colorado, how it is impacted Colorado's politics, how voters have used it, and how it has helped Colorado's economy. On that last point, this section will offer comparison data for Tennessee.

Colorado's TABOR has five basic parts.[6]

- It limits the legislature to revenue growth equal to the combination of inflation and population growth.
- It requires surplus revenue be returned to taxpayers.
- It requires the legislature get approval from voters if it wants to spend surplus revenue, raise taxes or increase government debt.
- It applies to county and local governments.
- And local and county governments can hold referendums to ask voters permission to temporarily or permanently exempt the jurisdiction from the amendment. Such elections are called "de-Brucing" elections after TABOR author Douglas Bruce.

In 1992, TABOR won with 54 percent of the vote.[7]

Bruce calls the passage of TABOR the most important political event in Colorado since statehood. Colorado political pollster Floyd Ciruli calls it "a constitutional and fiscal turning point for the operation of government."[8]

Joan Johnson, a former state senator, says TABOR

> *"is probably the most revolutionary thing that has happened in this state in the whole 20th century. "What it did was strip away a layer of representative government. It took away the power of elected representatives to make decisions and moved it more to a direct democracy," she said. "Whether that is a good idea or not depends on whether you believe in representative government."* [9]

Larry Kallenberger, a cabinet member under former Gov. Roy Romer, said that, with TABOR, "The citizens were saying, `Quit giving us this crap about needing more money every year.'"

Romer, a popular governor at the time of the 1992 election, warned of dire consequences to state government and the state's economy if TABOR passed. All of Colorado's living former governors spoke out against it. The business community fought it. So did the public education establishment. Romer compared Bruce to a terrorist tossing a bomb. The *New York Times* called it "the most radical ballot issue" in the nation.

So what happened to Colorado's taxes and spending under TABOR? For the first few years, nothing happened. From fiscal year 1993 until 1997 in Colorado, government spending was allowed to grow 5 to 6 percent per year, and there was no surplus revenue. But since then, until fiscal year 2002, the surpluses have totaled $3.2 billion, and about $2 billion has been returned to taxpayers via rebates and reductions, with more cuts and rebates pending.

Without TABOR, Colorado would have spent much or all of that $3.2 billion on new projects and expanded programs. In 1999, voters turned down a referendum on a legislative plan to spend that year's surplus of nearly $1 billion. If they had been allowed to spend those funds, legislators today would be faced with funding additional ongoing costs of those projects and programs. Colorado faces a shortfall this year because of the economy, but TABOR prevented that shortfall from being much larger.

But TABOR hasn't solved everything. Because of a weakness in TABOR, Colorado lawmakers have been able to pass laws that affect how surplus revenue is returned to taxpayers. Since 1998, they have passed laws allowing them to delay rebating TABOR surpluses.

One year, they delayed $927 million in TABOR refunds in order to use the money to pay for capital construction projects not affected by TABOR's spending limits. But Colorado had to refund that $927 million to taxpayers in 2002. That made up the largest portion of the state's billion-dollar shortfall last year. But because TABOR prohibits tax increases

without a referendum, legislators addressed the fiscal problem with spending cuts, a freeze on capital construction projects, a hiring freeze, and a 1.5 percent across-the-board spending reduction for many departments.

Compare that to Tennessee, where there is no effective cap on spending. Revenue in the 1990s grew significantly faster than the combined rate of population growth and inflation, but spending grew even faster as the Sundquist's administration feasted on record revenues and spent every dollar on a series of record high budgets, setting Tennessee up for a fiscal train wreck when the economy slowed.

During fiscal year 2001, Tennessee’s general-fund spending grew faster than all but 11 other states[10] — and second fastest among the dozen Southeastern states – with general-fund spending rising 8.7 percent, ahead of the U.S. average of 8.2 percent and second in the Southeast, trailing only Florida and well ahead of the Southeastern states’ average of 6.4 percent. And in fiscal 2002, Sundquist proposed increasing spending 9.2 percent, compared to 2.44 percent in the rest of the Southeastern states.

Sundquist’s proposed budget for 2002 would have shattered the Copeland Cap growth limit, increasing total appropriations from state tax dollars by 13 percent even though the economy – defined in Tennessee law as aggregate personal income – was expected to grow just 5.8 percent. Had Sundquist’s budget passed, the Copeland Cap would have been exceeded by $607.6 million. Thankfully, the legislature passed a reduced budget. But this year, thanks to the big tax increase, Tennessee is spending $771 million more than it should under the Copeland Cap.

Because of the sluggish economy, there is no TABOR surplus in Colorado this year. In fact, less-than-expected revenue has led the state to cut its budget. The legislature planned to spend $13.8 billion but instead the governor of the Rocky Mountain state has reduced spending to $13.1 billion. That’s a real spending cut of $700 million. As you know, Tennessee took the opposite approach to its similar-sized revenue shortfall this year, raising taxes by around $900 million.

Because of TABOR, Colorado’s government has learned how to economize and prioritize while Tennessee's government has not. Yet Colorado’s tax restraint has not hamstrung state government. In fact, Colorado has increased state spending by 72 percent, from $7.6 billion to $13.1 billion, since fiscal year 1993-94, while cutting taxes by about $3 billion over that same period. During those same years, Tennessee increased spending by 56 percent, while raising taxes about $1 billion.

From 1990 through 2000, Colorado increased per-capita state spending by 139 percent, the third-largest increase among all 50 states, while Tennessee increased per-capita spending by 76 percent.

In 1990, Colorado's government spent $2,504 per person. Tennessee spent about 50 percent more than that - $3,753 per capita. By the end of the decade, Tennessee spending per capita had risen to $6,593, and Colorado’s had increased to $5,992. Tennessee state

government now spends just 10 percent more per capita than does the government of Colorado.

Even though Tennessee raised taxes repeatedly during the 1990s in order to spend more, Colorado was able to increase spending faster by taxing less. If you're a fan of increased government spending, you have to be a fan of TABOR. I think that will be a key argument going forward, a useful tool to convince some moderate legislators who want to be seen as tax-cutters, but don't want to cut spending, and to convince voters who would like to pay less taxes but don't want government programs slashed.

It's an easy argument to make – because the data clearly shows TABOR has been a boon to the Colorado economy. Here is some data. Remember, TABOR took affect in 1993.

From 1993 through 2000, Colorado's gross state product – the measure of the state's total economic output – rose 79 percent,[11] according to the U.S. Department of Commerce's Bureau of Economic Analysis. Tennessee's rose just 49 percent.[12] In 1993, Tennessee's economy was 28 percent larger than Colorado's. But by 2000 it was just 6 percent larger.

From 1993 through 2001, Colorado's personal income grew 84.3 percent, compared to 54.3 percent in Tennessee.[13] That's 30 percentage points difference. Such growth in Tennessee would have added another $30 billion to Tennessee's total personal income growth – and both provided the extra revenue for and the authority for annual spending increases of 10 percent under the Copeland Cap.

Total personal income is an aggregate measure for the state and is one measure of the growth of the overall economy. Because some of that increase reflects growth in population, a better measure of real economic performance is per capita income - and there Tennessee also lags Colorado.

In 1993, Coloradoans' per capita income was $22,196, some $2,655 higher than Tennessee's. By 2001, per capita income in Colorado had risen 51 percent to $33,470, while in Tennessee it had risen just 38 percent to $26,988. Tennesseans' per capita income now lags that of Coloradoans by $6,482. That's a difference of $3,827.

Here is more data:

From 1993 through 2001, the number of total full-time and part-time jobs rose 17 percent in Tennessee, but 32 percent in Colorado.

From 1993 through 2001, the total amount of compensation paid to employees in Tennessee rose 45 percent, from $69.6 billion to $100.8 billion, but 80 percent in Colorado, from $56.4 billion to $101.5 billion. That's right: in just eight years, Coloradoans as a group went from being paid $13.2 billion less per year than the people of Tennessee to making $776 million more – even though there are 1.3 million fewer Coloradoans.

Any way you slice it, Colorado's economy far out-performed Tennessee's since 1993 – the year Colorado enacted a policy of tax restraint and Tennessee did not.

Colorado's Taxpayers Bill of Rights (TABOR), which took effect in 1993, created an environment of stable taxes and, indeed, tax cuts when revenue exceeds the generous TABOR limit. As a result, Colorado's economy boomed. That economic boom is reflected not only in its income statistics, but also in its population growth from 1993 through 2001 – 32 percent, compared to Tennessee's 16 percent.

All of that economic growth resulted in more money for the government to spend, even as Coloradoans' taxes were cut, because low taxes spur higher economic growth. Even though TABOR forced the state of Colorado to return more than $3 billion to taxpayers rather than spend it, Colorado was still able to increase per-capita state spending by 139 percent from 1990 to 2000, the third-largest increase among all 50 states. Tennessee, with no effective cap on revenues, taxes or spending, increased per-capita spending by 76 percent from 1990-2000.

Tennessee increased taxes to fund more government spending in the 1990s, and routinely exceeded its weak constitutional cap on spending. But because higher taxes reduce economic growth, the state actually brought in less revenue than it might have under a lower-tax/higher growth strategy. In 1990, Colorado's government spent $2,504 per capita and Tennessee spent $3,753 - 50 percent more than Colorado. By the end of the decade, Tennessee was spending $6,593 per capita, just 10 percent more than Colorado, which had increased spending to $5,992 per capita. Tennessee raised taxes repeatedly during the 1990s in order to spend more, but Colorado was able to increase spending faster by taxing less.

The data overwhelmingly indicates that, by restraining spending and taxes with a Taxpayers Bill of Rights modeled after Colorado's, Tennessee could actually create a future in which taxes would be guaranteed to remain low yet state government would actually have more money to spend, all within a system that would put a premium on accountability and prioritization.

Now, what about TABOR's impact at the local level? Since November 1993 through the spring of 2002 – but not including the November 2002 elections – voters at the local and county level have faced more than a thousand ballot questions asking their approval for tax increases, debt increases, new taxes and permission to let the government keep and spend surplus revenue.

If you think all government spending is bad, you're not going to like this: They said "yes" most of the time.

According to the Colorado Municipal League[14]:

- Voters approved 177 of 262 ballot questions to increase government debt, and rejected only 75 – a 68 percent approval rate.

- Voters approved 391 of 438 ballot questions to allow the government to retain and spend surplus revenue over the TABOR limit and rejected only 47 such requests – an 89 percent approval rate.

- And voters approved 174 of 329 ballot questions to allow tax increases or new taxes, and rejected 155 – a 53 percent approval rate.

Poulson, the University of Colorado economist, says Tabor "has worked exactly the way in which it was designed, giving taxpayers the final say on proposed increases in taxes."

> *In 1992 Governor Romer supported a referendum to increase sales taxes earmarked for public education K-12. That referendum was soundly defeated by the voters. This past year citizens in Denver voted on a proposed increase in sales taxes to fund the construction of light rail, and that proposal was also defeated. Other proposals, such as an increase in sales taxes to fund highway construction, have been taken off the drawing boards because it was clear that they could not muster taxpayer support. At the local level, proposed tax increases are frequently defeated by voters. There is probably no state in the union where citizens have more knowledge of and control over tax and spending decisions than they do in Colorado.*[15]

Pass or fail, the TABOR referenda give voters a choice. One ballot question in the affluent Denver suburb of Castle Rock last year essentially boiled down to a choice: a rebate of about one thousand dollars for each homeowner, or let the government spend the surplus on new trucks for the fire department – which would help lower homeowners' fire insurance premiums – and on other things like new parks. They voted for the rebate. But – and this is the key – they voted after listening to the government officials explain why they wanted to keep the money and what they wanted to spend it for.[16]

At the statewide level, there have been six TABOR referenda after passage of the initial amendment. Voters have rejected five of them. Two of the referenda are especially instructive. In one, voters said yes to a plan pushed by the state public education establishment that dedicates roughly one fourth of future TABOR surplus revenue to public education. Amendment 23 increased funding for public schools by at least enough money to pay for the cost of any increase in the number of students plus the rate of inflation increased by one percent for the next 10 years. Funding for the initiative would come from projected state revenue surpluses, which otherwise would have had to be returned to taxpayers under TABOR.

It passed with 53 percent of the vote. Economists estimate voters gave up more than $11 billion in tax cuts over the coming decade by saying "Yes" to that amendment.[17]

In the second notable referendum, in 1999, voters statewide rejected a plan to let the state keep and spend a $1 billion TABOR surplus on a laundry list of pork projects, mostly

road and mass transit pork. Voters in the six-county Denver metro area also voted against that proposal – but on the same day, voters in that same six-county area approved a local TABOR referendum that extended a temporary local sales tax to pay for building a new football stadium for the NFL Denver Broncos. The tax - one cent for every $10 – was originally assessed in the six-county Denver metro area in 1990 to pay for Coors Field, home of the Colorado Rockies major league baseball franchise. The tax was up for re-authorization and voters were asked to extend it until the new Invesco Field at Mile High is paid for. It was approved by 57 percent of voters.[18]

What's the lesson? It is that voters are willing to listen to requests for higher taxes or spending and evaluate them on their merits. In the first, voters were willing to, in effect, raise their own taxes for public education – but only after public education made the case that it needed the money. In the second, voters in the same six counties rejected one plan to spend their money but approved another plan that also required their tax dollars.

As Michael New, a post-doctoral fellow at the Harvard-MIT data center and an adjunct scholar at Americans for Tax Reform and the Cato Institute, describes it:

> *"In addition to providing tax relief and fostering economic growth, TABOR has also forced Colorado residents to see the costs inherent in government programs. In other states, residents often support higher government spending because they can see the benefits of a particular program, but remain blissfully unaware of the costs that they and other taxpayers will be forced to bear."*[19]

There is one other facet of Colorado's TABOR that is worth studying – and that is how it returns surplus money to taxpayers. While TABOR was considered a model TEL a decade ago, now it is seen to have a loophole.[20]

As University of Colorado economics professor Dr. Barry Poulson describes it, TABOR did not carefully spell out how surplus revenue is to be returned to taxpayers.

Most surplus revenue in Colorado is generated by the state's income tax, so returning it "would seem to be a straightforward decision for the Legislature," Poulson said in a piece written for the Independence Institute, a Colorado think tank. If most of the surplus revenue is generated by the income tax, the surplus revenue should be returned to those taxpayers through a cut in the income tax rate, he said.

> *"Instead, the legislature has used a variety of targeted tax cuts and refunds targeted to a wide range of different interest groups to "return" surpluses. Along with a complicated sales tax refund, the legislature passed a tax exemption for farm equipment, reduced the "marriage penalty," exempted coins and precious metals. food from vending machines, agricultural pesticides and agricultural compounds from the sale tax, exempted portions of foreign source income from the income tax, exempted interest dividends and capital gains, reduced severance taxes,*

exempted alternative fuel vehicles from certain taxes, increased the state's earned income credit, gave a tax credit for personal property taxes, refunded sales and use taxes for property used in biotech, excluded pensions from the income tax, gave a tax credit for conservation easements, and cut the capital gains tax."

Said Poulson:

> *"Legislators could have designed a direct expenditures program to accomplish the same objective of benefiting special interests as that achieved through these targeted tax refunds and tax cuts. However, voters have consistently turned down proposals to increase taxes or to spend surplus revenue above the TABOR limit. Colorado's legislative history also reveals that legislators were frequently unable to muster the votes required to finance direct expenditure programs to benefit these special interest groups. Thus Colorado's tax and spending limits have had a perverse outcome. The generation of surplus revenues above these limits has enabled politicians to pursue a political agenda that they would not have been able to pursue in the absence of surplus revenues."*[21]

In other words, because Colorado's TABOR does not clearly require across-the-board rate cuts or some other method of returning surpluses on a general basis, legislators are still able to use surplus money to reward special interests. A Tennessee TABOR should be designed with much tougher rules.

The Colorado Union of Taxpayers suggests the loophole needs to be closed to make TABOR more effective:

> *"TABOR required that surplus revenue be rebated to taxpayers but left it up to the legislature to determine how the money would be rebated. Most of the surplus revenue is generated by excess personal income taxes, so one might expect the rebates to be tied to those taxes. What the legislature has chosen to do is to enact tax reductions and tax rebates that have little to do with the excess taxes paid. These tax reduction and tax rebate schemes have become more complex each year: twenty different bills have been passed to offset surplus revenue above the TABOR limit.*
>
> *"It was only a matter of time before the most powerful interest group in the state, the teachers' unions, would lay claim to what they perceived to be their share of the TABOR surplus revenue. Amendment 23 earmarks more than $11 billion for K-12 education over the next ten years, a significant portion of which will be taken from the TABOR surplus. It seems that every interest group with a lobbyist is trying to convince the legislature that they deserve part of the surplus revenues.*

"The privilege-seeking that now dominates the disposition of the TABOR surplus introduces inefficiency and inequity into the tax system in several ways. Targeted expenditures, tax cuts, credits and tax rebates are really loopholes in the tax system that create incentives for more lobbying activity to benefit special interest groups. Inefficiency is also created in the private sector as people respond to these tax loopholes."[22]

And of course there was Amendment 23, of which Ciruli Associates said this: "Amendment 23 may be the most serious challenge to state budgeting since the passage of the tax-limiting TABOR Amendment in 1992. The legislature lost power over much of state revenue during the decade. Now with the passage of Amendment 23, the state legislature is increasingly a check-writer for education."[23]

And that's a problem because, despite what Amendment 23 boosters said, the economy did slow down enough to end Colorado's string of annual TABOR surpluses, yet Amendment 23 *still requires* the higher level of education spending.[24]

Even with its flaws, Colorado's TABOR has been a big success politically. Even some past critics are coming around. Voters in the Rocky Mountain State continue to support TABOR – and you can see why, now that they have enjoyed the power of decision in more than 1,000 referendums on taxes and spending.

Each year, Colorado polling firm Ciruli Associates surveys Coloradoans each year on taxes, on behalf of the Colorado Commission on Taxation, and consistently finds a high level of support for TABOR. In late 2001, Ciruli Associates found that two-thirds of Colorado residents believe federal taxes are unfair and too high, but only about one-third of Coloradoans believe state taxes are unfair and too high.[25] Ciruli's survey also revealed that 54 percent of those polled support TABOR Amendment – the same percentage it won with. But that doesn't mean 46 percent oppose the basic concept of TABOR – in fact, Ciruli Associations found that 71 percent of those polled said they believe all tax increases should be put before voters on and not left to elected officials.

A decade ago, the *Rocky Mountain News* urged Colorado voters to reject the TABOR amendment when it was on the ballot but seven years later, when voters in Washington state had the chance to pass Initiative 695 – the newspaper published an editorial urging them to vote "Yes," because TABOR "strengthens the political process rather than destroys it."

The newspaper added:

"Shifting responsibility for taxes from politicians to the public hasn't resulted in automatic rejection of every spending plan. But while TABOR hasn't straitjacketed government, it has accomplished a number of good things. It has heightened interest in elections and government policy; it has given public officials mandates they otherwise would have lacked; it has shrunk voters' sense of helplessness over the use of their hard-earned

taxes; and last, but hardly least, it has strengthened the fiscal responsibility of state and local government."[26]

And that, after all, is the goal of tax-and-expenditure limitation laws like a *real* Taxpayer Bill of Rights.

ENDNOTES:

[1] Tennessee Department of Revenue fact sheet on the "Tennessee Taxpayer Bill of Rights," Tennessee Code Annotated Section 67-1-110. Summary of the fact sheet: "You, as a taxpayer, have certain rights. Your rights are so important that, in 1992, the Tennessee General Assembly enacted legislation to spell them out. The Tennessee Taxpayer Bill of Rights summarizes state tax laws and revenue rules with which the Department of Revenue must comply while serving you." Noting in the current Tennessee Taxpayer Bill of Rights protects you against rising taxes. www.state.tn.us/revenue/pubs/billofrights.pdf

[2] "Superior Court judge declares I-695 unconstitutional", *Seattle Times*, March 14, 2000 http://seattletimes.nwsource.com/news/local/html98/initweb_20000314.html. For a good reference on Initiative 695, go on the Internet to http://seattletimes.nwsource.com/i695/

[3] My primary source for the history of tax limitation efforts in Colorado is a study by the Initiative & Referendum Institute, *By Popular Demand: How Citizen-Driven Ballot Measures Have Shaped Tax Policy for the Bette,* by Peter J. Sepp, May 21, 1999, www.iandrinstitute.org/indepth/pop_demand.htm

[4] *By Popular Demand: How Citizen-Driven Ballot Measures Have Shaped Tax Policy for the Better*
by Peter J. Sepp, May 21, 1999, Initiative & Referendum Institute, www.iandrinstitute.org/indepth/pop_demand.htm

[5] Tennessee Public Acts, Chapter No. 857, www.state.tn.us/sos/acts/102/pub/pc0857.pdf

[6] Taxpayers Bill of Rights Fact Sheet, Colorado Fiscal Policy Institute, www.cclponline.org/cfpi/tabor2002.pdf

[7] Colorado also continues to operate under the strictures of the previous TEL laws already on the books. See: *Taxpayers Bill of Rights Fact Sheet*, Colorado Fiscal Policy Institute, www.cclponline.org/cfpi/tabor2002.pdf

[8] "'92 Election was fiscal face lift," August 3, 1999, *Rocky Mountain News*, http://www.denver-rmn.com/millennium/0806mill.shtml

[9] Ibid.

[10] "Zoom zoom zoom: state's spending boom," *Nashville City Paper*, July 12, 2001. www.nashvillecitypaper.com/index.cfm?section_id=10&screen=news&news_id=5101

[11] Increased from $93.6 billion to $167.9 billion.

[12] Increased from $119.7 billion to $178.3 billion.

[13] All data in this section comes from the U.S. Department of Commerce Bureau of Economic Analysis website, http://www.bea.gov, or the U.S. Census website, http://www.census.gov.

[14] Tables of data from the Colorado Municipal League on TABOR elections are available in a separate file by contacting the author. Data does not include TABOR election results from the November 2002 elections but will be updated with that data when it is available. Here is a link to a good example of how city officials in one Colorado town sought to convince voters there to let the city keep and spend excess revenue: “Frequently Asked Questions Regarding an Additional Community Facility in our Town,” Castle Rock Parks and Recreation Department: www.ci.castlerock.co.us/ONLINE/FAQpage.pdf

[15] *Are Colorado voters myopic?* Dr. Barry Poulson, Independence Institute, http://i2i.org/Publications/Op-Eds/Taxfiscal/980415.htm

[16] “Tennessee should consider taxpayers’ bill of rights, Bill Hobbs, *Nashville City Paper*, Aug. 3, 2001, www.nashvillecitypaper.com/index.cfm?section_id=10&screen=news&news_id=6277

[17] *Amendment 23: A Critique*, E. Barry Poulson, PhD., Professor of Economics, University of Colorado, and Senior Fellow, Independence Institute, Sept. 21, 2000, http://i2i.org/Publications/IP/Education/Amendment23.htm

[18] *What's the Appeal of Regional Tax Districts?* various presenters, National Conference of State Legislators, April 2000, www.ncsl.org/programs/fiscal/fac0004r.htm

[19] “Massachusetts tax reformers need a new strategy,” Michael New, The Cato Institute, Nov. 25, 2002, http://www.cato.org/dailys/11-25-02-2.html. Also, *Fiscal Trailblazer: Colorado’s Taxpayer Bill of Rights is leading the way*, Michael New, National Review Online, Nov. 4, 2002, www.nationalreview.com/nrof_comment/comment-new110402.asp

[20] “Stop raiding the TABOR surplus,” by state Reps. David Schultheis and Mark Cloer, originally published in the *Colorado Springs Gazette,* www.daveschultheis.com/currentissues/issues/tabor_oped.htm

[21] *Where There’s Money There’s Muck*, Barry Poulson, Professor of Economics, University of Colorado, Oct. 6, 1999, http://i2i.org/Publications/Op-Eds/Taxfiscal/moneymuck.htm. For a more detailed treatment of this trend, also see: *Rent Seeking and Surplus Expenditures in Colorado*, Poulson, Sept. 21, 1999, http://i2i.org/Publications/IP/Taxfiscal/RentSeeking.htm

[22] *Implementing a Just Tax System in Colorado & Strengthening Our Fiscal Constitution*, Colorado Union of Taxpayers, page 5 http://i2i.org/Publications/IP/Taxfiscal/3-2001.PDF

[23] Ciruli Associates, www.ciruli.com/archives/schfunding.htm

[24] Jeffrey Zax, an economics professor at the University of Colorado at Boulder, is quoted in an Oct. 22, 2000, *Denver Post* editorial saying: "You'd have to have a recession bigger than anything since the Great Depression to see these surpluses go away, assuming no one changes the tax rates." He was wrong.

[25] *Taxpayers Bear Tax Burden with Frustration, Mistrust of Government*, Colorado Commission on Taxation 2001 Survey Results, Ciruli Associates, www.ciruli.com/archives/CC-taxation.htm

[26] The *Rocky Mountain News* editorial of Nov. 7, 1999, is not available online for free. However, I have reproduced the relevant portion of it here: www.hobbsonline.blogspot.com/2002_07_01_hobbsonline_archive.html#79078221

About the author: Bill Hobbs is a veteran Nashville journalist whose expertise is primarily covering business and public policy. He has written for numerous publications, including *The Tennessean*, *Nashville Business Journal*, the *St. Petersburg Times*, *Business Nashville* magazine, *Nashville City Paper*, Corante.com and many, many others. A graduate of Abilene Christian University in Texas, Bill also has experience as a magazine editor, helped start an Internet-based news database company. His political experience includes serving as an aide in the Tennessee state legislature and serving as press secretary to a Nashville mayoral candidate. For the past four years he has written political and economic commentary for two Nashville newspapers and has made numerous radio and television appearances as a political commentator and policy analyst. He currently works in the marketing and communications office of a Nashville university.