SUPREME COURT, STATE OF COLORADO
CASE NO. 95SC572

BRIEF OF THE COLORADO MUNICIPAL LEAGUE, CITY OF BOULDER, CITY OF LITTLETON, CITY OF LAFAYETTE, AND TOWN OF FRISCO AS AMICI CURIAE

F. T. HAVENS,

Petitioner,

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARCHULETA, COLORADO,

Respondent.

Rule 50 certiorari to the Colorado Court of Appeals, 95CA1256, upon appeal from the Archuleta County District Court, 95CV03, Honorable Timothy A. Patalan, Judge.

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COMES NOW the Colorado Municipal League, the City of Boulder, the City of Littleton, the City of Lafayette, and the Town of Frisco (hereinafter collectively referred to as "the Cities"), as amicus curiae and, through their undersigned counsel, submit this brief in support of Respondent, the Board of County Commissioners of the County of Archuleta, Colorado ("the County").

I. Issues Presented for Review

1. Whether a district satisfies the strictures of Colorado Constitution Article X, Section 20 (7)(d), by merely obtaining voter approval for the retention and expenditure of excess revenues or whether the voter approved "revenue change" mandated by Section 20 (7)(d) must provide for a reduction in future revenues to be collected by the district "as an offset" to the expenditure of the excess revenues.

2. Whether the trial court erred in holding that the Archuleta County November 1994 ballot issue known as Referred Measure 1BA meets the requirements of Section 20 (7)(d).

II. Statement of the Case

The Cities hereby adopt and incorporate by reference the statement of the case and any statement of facts contained in the County's Answer brief, and would make the following additional

observations.

The second issue presented and accepted for review in this case suggests that the court may engage in a multi-faceted review of the County's ballot question in order to determine if the entire wording of the question and its various component parts comply with Colo. Const. Art. X, Sec. 20 (7)(d). However, in his Opening Brief, the Petitioner essentially makes one narrow argument and one argument only, to wit his assertion that the County's revenue change ballot question is invalid because it does not call for a reduction in the County's revenues in future years. This is precisely the same singular theory asserted by the Petitioner in the District Court.

Since the adoption of Amendment 1 in 1992, annual revenue increases for all Colorado local governments have, like those in Archuleta County, been constrained by Colo. Const. Art. X, Sec. 20 (7)(d). However, like the County, cities have construed this constitutional provision to clearly allow local voters to approve the receipt and expenditure of revenues in excess of the limitations set forth in Amendment 1. Since 1993, at least 189 ballot questions have been submitted to municipal voters wherein municipalities sought authorization to keep and spend excess revenues under the auspices of Colo. Const. Art. X, Sec. 20 (7)(d). A total of 173 of these questions have been approved in 138 different municipalities. (See Appendix B, attached.) *None of the*

173 revenue questions approved by municipal voters expressly or impliedly contemplated a reduction in future years' revenues. To date, though many of these municipal ballot questions bear a resemblance to the County's Referred Measure 1BA, none of the municipal questions has been directly challenged in court.[1]

The revenue changes approved by municipal voters represent only a fraction of the total number of such ballot issues as approved by other types of local governments (e.g. other counties, Title 32 Special Districts, and miscellaneous other entities such as the metropolitan area Scientific and Cultural Facilities District and the Regional Transportation District, both of whom were granted authority to keep and spend excess revenues at the November 7, 1995 election).

Given these circumstances, a vast number of Colorado local governments have a very tangible stake in the outcome of the instant case. If the Petitioner were to prevail in this case on the theory that he has interposed, then the validity of at least 173 popularly approved ballot issues may[2] be called into

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[1] There are two district court cases pending in which the claim is being made that particular revenues have exceeded or will exceed a municipality's Amendment 1 limitations, and the cities are *defending* on the basis that expenditures of the those revenues have received voter approval. Gilpin Hotel Venture, Ltd. v. City of Black Hawk, Gilpin County District Court, Case No. 93CV59; Baird v. City of Loveland, Larimer County District Court, Case. No. 95CV655.

[2] Even if the instant case were resolved in favor of the Petitioner, however, the cities would reserve the right to argue that their voter approved revenue changes should be allowed to

question.

III. Summary of Argument

The Supreme Court's prior decision in Aurora v. Acosta, 892 P.2d 264 (Colo. 1995) is thoroughly dispositive of the issues in this case. While the Petitioner's novel theory on the meaning of the term "offset" was neither argued nor specifically addressed by the court in Acosta, the theory is completely at odds with what the court said in that case. If the court applies the same standard of review, the same rules of construction, and the same analytical framework for understanding "revenue changes" in the context of Amendment 1 as it did in Acosta, the County should prevail.

Beyond Acosta, if the court simply applies the conventional rules of construction utilized in other Amendment 1 cases, the court will conclude that Colo. Const. Art. X, Sec. 20 (7)(d) allows local voters to approve revenue changes without a concomitant decrease in revenue in some future year or years. These rules

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stand asserting, among other things, the following arguments: (1) A decision adverse to the County in this case should not be applied retroactively to invalidate ballot questions which, at the time they were submitted, reflected "substantial compliance" with Amendment 1 and good faith efforts by local officials to implement it's election procedures pending the decision in this case, Bickel v. Boulder, 885 P.2d 215 (Colo. 1994); (2) Any effort to challenge the validity of a particular municipal ballot question is untimely if not filed as an election contest within 10 days of the canvass of votes, Molleck v. Golden, 884 P.2d 725 (Colo. 1994); (3) There is such tremendous variability in how local governments have framed "revenue change" ballot questions that a decision adverse to the County may not apply equally to other questions.

include, first and foremost, relying on the plain meaning of the words of Amendment 1 read in context, eschewing phantom proscriptions and revisionist explanations of Amendment 1 that have no basis in the text, granting some deference to widespread contemporaneous interpretations of Amendment 1 that have been made by coordinate branches of government since its adoption, deferring also to the legislative history of Amendment 1 if in doubt, and fairly determining what interpretation of Amendment 1 will "reasonably restrain most the growth of government."

The court should reaffirm that nothing in Amendment 1 dictates the manner in which revenue change ballot question may be worded, and therefore local voters enjoy wide latitude to approve the receipt and expenditure of "excess revenue" under Amendment 1 in any manner they choose.

IV. ARGUMENT

A. Introduction: A brief history of Amendment 1 revenue limitation and revenue changes in Colorado municipalities.

A brief review of the fundamental nature of Amendment 1's limitations on local government revenue is necessary in order to place the issues in this case in some context, to expose the specious nature of the Petitioner's arguments, and to illustrate the dramatic consequences that would ensue if local voters are no

longer permitted to approve increased revenue and spending within their communities.

From the outset, municipalities have viewed Amendment 1 more as a revenue limitation than a spending limitation, notwithstanding the caption of the particular subsection (Art. X, Sec. 20 (7) "Spending Limits") that is at issue in this case. Early on, this court recognized the dual nature of Amendment 1's fiscal constraints in Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1, at 10-11, when the court acknowledged that the receipt of lottery proceeds, rather than their ultimate expenditure, was the factor that could trigger an Amendment 1 violation, especially for local governments.

The following are a few of the primary reasons, based directly upon the text of Amendment 1, that Article X, Section 20 is essentially a revenue limitation.

First is the unique way the definition of "fiscal year spending" at Colo. Const. Art. X, Sec. 20 (2)(e) effectively equates each dollar of "revenue" with "spending." This interpretation is derived from the fact that included within "spending" are "reserve increases." Thus, each dollar of revenue received by a local government in a particular fiscal year, whether it is "spent" out of pocket in any conventional sense of the word or simply saved for a rainy day will be considered "fiscal year

spending" in the year of receipt. The court adopted this interpretation in Submission of Interrogatories on Senate Bill 93-74, 852 P.2d at 12.

Second, many of the exclusions from "fiscal year spending" as defined in subsection 2(e) are, in reality, exclusions of particular *revenue* sources. For example, revenue from gifts, revenue from federal funds, revenue from property sales, and revenue from damage awards are excluded from "spending."

Third, the circumstances that may lead to a violation of Amendment 1 are expressed in terms of excess revenue, not excess spending, and the remedy for such a violation is expressed as a refund of revenue, not a curtailment of spending. The first sentence of Colo. Const. Art. X, Sec. 20 (7)(d) indicates that receipt of excess revenue in any particular year will trigger the obligation to refund the excess in the following year unless the voters approve a "revenue change." In Subsection (1), the penalty for violating Amendment 1 is keyed directly to revenue as follows: "Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct." Similarly, Subsection (3) requires new tax proposals to be accompanied by an estimate of the total amount of "revenue" anticipated, with a concomitant obligation to refund any revenue which exceeds the estimate.

Fourth, Colo. Const. Art. X, Sec. 20 (7)(d) refers to "voter approved revenue changes" as the designated method for exceeding the fiscal limitations of Amendment 1. Nowhere does Amendment 1 refer to "voter approved spending changes" or any other kind of spending change for that matter. The clear implication is that local governments are working with bases and limitations that are keyed to revenue, not spending in any conventional sense of the word.

As this court has implicitly acknowledged in Nicholl v. E-470 Public Highway Authority, 896 P.2d 859, at n. 16, the amount of revenue that a local government receives in any particular year will govern the amount of revenue it may receive in the following year, as the "base" is recalculated from year to year.

Colo. Const. Art. XX, Sec. 20 (7)(b) and (c) does permit local government revenue to increase automatically according to two escalators: inflation[3] and local growth.[4] In his opening brief, Petitioner claims that his interpretation of Amendment 1 is

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[3] Inflation "means the percentage change in the United State Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index," Colo. Const. Art. X, Sec. 20 (2)(f).

[4] Local growth "for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment." Colo. Const. Art. X, Sec. 20 (2)(g).

"reasonable per se" (Opening Brief, p. 18) because local governments would still enjoy these escalators, even though local voters would never be able to exceed the limits established by these escalators according to the Petitioner's reasoning.

In fact, in the first three years of Amendment 1 implementation, local governments have found that the one-size-fits-all automatic escalators can and will work arbitrarily to cause a deterioration in government services over time. For example, if the rate of inflation in a particular community (e.g. a resort town with a super-heated economy) exceeds the rate of inflation in the Denver-Boulder area, local government revenue will not be able to keep up with the cost of living.

Or if "growth" in a particular community is manifested by something other than "additions of taxable real property" then government revenue will not be allowed to keep pace under the "local growth" escalator. For example, increases in population, traffic, or economic activity in a particular community will not necessarily be manifested by the addition of taxable real property, but may nevertheless require increased government revenue and expenditures just to keep the level of services to the entire community constant. Or, paradoxically, a *decline* in taxable property (e.g. the loss of a major factory) may precipitate a desire in a particular community for an actual *increase* in government revenue and spending to fund increased social welfare or

economic development activity. Under this scenario, even if excess revenue were available from another source, the government may be incapable of keeping and spending it unless the voters approve a revenue change.

However, the most arbitrary aspect of the revenue limiting features of Amendment 1 is the unrealistic expectation that local government revenue can and should grow in a purely linear, as opposed to a cyclical, fashion. The problem with this assumption is starkly apparent in two ways, especially in smaller municipalities. First, municipal budgets are based largely on sales tax revenues. Sales tax receipts are tied directly to the vitality of local economies which, in this state at least, are notoriously cyclical and highly volatile. Recent years have seen double digit sales tax revenue increases in many locations, but an economic downturn is inevitable at some point. Prior to the adoption of Amendment 1, local governments could bolster their fund balances during the good years and save for the lean times to come. Amendment 1 now makes this approach difficult unless voters are allowed to approve the retention of excess revenues.

Second, smaller municipalities can and often do experience a one-time "spike" in revenue that may be unacceptable under Amendment 1's revenue limitations absent a voter-approved override. For example, a small town may be incapable of receiving a state grant for a desperately needed infrastructure improvement because

to do so would violate Amendment 1.[5]

The foregoing discussion serves to highlight and possibly explain why revenue change ballot questions have been successful over 90% of the time in Colorado municipalities during the last three years, and why at least 173 such questions have been approved in at least 138 municipalities. (Appendix B)

While not one of these questions have contemplated a reduction in revenue in a future year to "offset" excessive revenue in a prior year (as Petitioner argues they should), these questions evince a tremendous variety in styles of wording. As much as anything, this is probably due to the fact that Amendment 1 does not dictate how a "voter approved revenue change" that is not associated with a "tax increase" must be worded. Acosta, 892 P.2d at 268-269. A few examples of municipal revenue change ballot questions, juxtaposed with the County question at issue in this case, are attached as Appendix C.

Municipal revenue change ballot questions uniformly contemplate the receipt, the retention, and the ultimate expenditure of revenues in excess of Amendment 1 limitations. They

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[5] This example is based on the fact that inter-governmental revenues from non-federal sources are not excepted from the definition of "fiscal year spending' in Colo. Const. Art. X, Sec. 20 (2)(e) and it is assumed that grant money must be counted by both the grantor and the grantee for purposes of applying Amendment 1's revenue limitations.

all tend to refer on their face to Article X, Section 20 of the constitution and clearly inform the voters that it is the limitations set forth therein that will be exceeded if the question is approved. They may differ in the following respects, however: some may apply only prospectively while others refer to revenues received in the current or a prior year; some limit the authorization to a specific dollar amount while others are open-ended as to amount; some are limited by a term of years while others are open-ended as to duration; some indicate specific revenue sources from which excess receipts will be authorized while others refer generally to any and all revenues of the local government; and some earmark the excess revenue for particular public purposes while others do not.

Now comes the Petitioner in this case and argues, in effect, that along with the County Commissioners and voters in Archuleta County, 138 municipalities and their voters and an untold number of other local governments have been hopelessly misguided. In essence, Petitioner argues that the voters never can approve a net increase in revenue over time in excess of Amendment 1's rigid annual limitations. On the contrary, local governments would be punished if their voters ever chanced to approve the receipt of excess revenues in any particular year because this would require a permanent ratcheting down of the government's revenue base in a future year. Here are just a few consequences of Petitioner's reasoning:

Voters could never effectively allow their local governments to save excess revenues in good years as a hedge against economic downturns.

Voters could never effectively allow their local governments to reap the benefits of excess revenues simply to improve public infrastructure and services.

Voters could never effectively allow local governments to receive an exceptional one-time "spike" in revenue, such as a state grant.

Voters could never approve revenue changes simply to keep pace with exceptional rates of inflation in their community.

Voters could never approve revenue changes to keep pace with forms of growth in a community that may not be reflected in a "local growth" factor based purely on additions of taxable real property.

B. The Court should apply a "substantial compliance" standard of review for determining whether the County's ballot question complied with Amendment 1.

This case marks the third time the court has been called upon to construe the validity of the wording of a ballot question under Amendment 1. The Cities assume that the court will apply a "substantial compliance" standard of review in determining whether or not the County's ballot question is constitutional as the court did previously in Bickel and Acosta. (Interestingly, the Petitioner ignores this principle in his cursory discussion of the standard of review to be applied in this case, Opening Brief, pp. 4-5.) The Cities will not belabor the point, other than to say that this court has unequivocally identified a three-pronged analysis to determine substantial compliance, Bickel, 885 P.2d at 227, and the Petitioner has failed to adduce any evidence or argument that the County has failed any part of the test. In fact, the County not only substantially complied but completely complied with Amendment 1 in framing and submitting its ballot question to the voters.

Perhaps more important from the Cities' perspective is a brief review of the Court's rationale for adopting the "substantial compliance" standard of review in the first place. "Imposing a requirement of strict compliance with voting regulations, especially in the absence of fraud or intentional wrongdoing, would unduly restrict the franchise. . . .We have recognized that

'elections should not be lightly set aside' and that, as a matter of public policy, courts should not invalidate the results of a bond election unless 'clear grounds' for such action is shown." Bickel v. Boulder, 885 P.2d at 227, quoting Felzien v. School District RE-3 Frenchman, 152 Colo 92, 96, 380 P.2d 572, 574 (1963). The court's desire to preserve as much as possible the results of elections takes on extra significance under circumstances where a ruling adverse to the County may be read to effectively invalidate scores of other popularly approved ballot questions around the state.

In addition to the substantial compliance standard of review, the Cities would assert that the adoption of a revenue change by the voters should be deemed a legislative act, presumed constitutional, and overturned only if proven unconstitutional beyond a reasonable doubt. In McNichols v. Denver, 101 Colo. 316, 74 P.2d 99 (1937), this court applied just such an analysis to a voter-approved fiscal matter (i.e. a bond issue). The court noted the essential duality in the process whereby a local legislative body determines to submit a fiscal matter to the voters, and then the voters approve it. Under these circumstances, in the face of a constitutional challenge to an approved ballot question, Denver argued, and the court agreed that:

> a determination by the legislative authorities of the municipality is ordinarily conclusive thereof, and, except in the most extreme cases, will not be interfered with by the courts. On this subject, it is sufficient to say that so much of these proceedings as can properly

> be considered legislative come within the general rule that where the constitutionality of legislative acts is questioned all presumptions are indulged in their favor, and their invalidity must be established beyond a reasonable doubt. Id. at 323-324.

As recently as Evans v. Romer, 854 P.2d 1270 (Colo. 1993), the court appears to have reaffirmed this principle while noting that legislation adopted by the voters is presumed valid in the same fashion as laws adopted by a legislative body.

The Petitioner in this case is seeking to directly invalidate a legislative action taken by the voters of Archuleta County, and perhaps by implication many others adopted around the state. In order for the Court to accept the Petitioner's strained interpretation of Colo. Const. Art. X, Sec. 20 (7)(d), Petitioner bears the burden of proving his case beyond a reasonable doubt. As more fully discussed below, Petitioner's interpretation is unconvincing by any standard.

C. Acosta is dispositive of the issues raised in this case.

The Cities acknowledge that Petitioner has asserted in this case a entirely new argument concerning how the phrase "voter approved revenue change as an offset" must be interpreted. However, on at least two levels, this court's prior decisions in Acosta and other cases should be deemed thoroughly dispositive of

the Petitioner's claims.

Under Petitioner's theory, local voters would never really be able to authorize increases in government revenue and spending over time. While extra revenue may be retained in any particular year with voter approval, local governments would be highly disinclined to seek such approval if they were required to reduce their revenue the next year by a commensurate amount (and coincidentally ratchet down their revenue base for purposes of calculating future years' revenue limitations.) Thus any ability to seek and obtain voter approval to keep and spend excess revenue would be purely illusory.

On one level, this theory should be rejected out of hand because it flatly ignores the fact that this court has already acknowledged in Acosta and elsewhere that Colo. Const. Art. X, Sec. 20 (7)(d) allows governments to seek and local voters to approve real increases in revenue and spending. In its initial analysis of Amendment 1 as applied to the state government, the court noted that Subsection (7) limits the growth of state spending "unless voter approval for an increase in spending is obtained." Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1, 4. In Nicholl v. E-470 Public Highway Authority, 896 P.2d at 873, the court took a very expansive view of "voter approved revenue changes," apparently finding that even such a measure approved prior to the adoption of Amendment 1 (e.g. the motor vehicle registration fee in that case) could allow for the free spending of

the approved revenues outside the strictures of Section (7) indefinitely into the future.

And then, of course, in Acosta the court reiterated that Amendment 1 limits spending increases "unless approved by the voters" and, in delineating three different types of voter approval for "the collection, retention or expenditure of excess revenues," the court identified one category as being "where revenues actually collected exceed the dollar amounts of the spending limits imposed in section 7(b). In this situation the voters may 'approve a revenue change as an offset' to the excess revenues." Aurora v. Acosta, 892 P.2d at 268, (emphasis supplied). Read in context, it is clear that the court was saying that a "revenue change" in this category was a method of increasing revenue, not decreasing it as suggested by the Petitioner.

On yet another level, Acosta should again be deemed dispositive of the Petitioner's claim. While the substance of the Petitioner's argument in this case differs from that of the plaintiff in Acosta, the nature of it does not. In the earlier case, the plaintiff asserted that a portion of Aurora's tax increase ballot question was invalid or ineffectual because it did not state a specific dollar amount. The court rejected this assertion because no provision of Amendment 1 "explicitly required" the style of ballot wording the plaintiff was suggesting. In the absence of language in Amendment 1 that "expressly required" the

outcome sought by the plaintiff, the court upheld the validity of the ballot question. "If Amendment 1 had been intended to require that all revenue changes be presented to the voters for approval in terms of dollar amounts, it could have been drafted to state precisely that." Aurora v. Acosta, 892 P.2d at 269.

In the same vein, if Amendment 1 had been intended to mean that "revenue changes" under Section 7(d) could only mean "decreases" in future years' revenue, it could have been drafted to state precisely that. And absolutely nothing in Section 7(d) "explicitly" compels this interpretation. Thus, applying the same standards and the same mode of analysis as that employed in Acosta, the court should uphold the validity of the County's ballot question.

D. Colo. Const. Art. X, Sec. 20 (7) should be construed to allow local voters to approve revenue increases in excess of Amendment 1's annual limitations.

If the court chooses to go beyond prior case law on the meaning of the term "revenue change" and engage in a separate construction of the term "offset" as urged by the Petitioner, the Cities would urge the court to consider the following additional arguments.

Obviously, the court's first responsibility is to give every word in Amendment 1 its "plain and ordinary meaning." Bolt v.

Arapahoe County School District Number Six, 898 P.2d 525, 532 (Colo. 1995). In this spirit, the Cities willingly accept the Petitioner's dictionary definition of the word "offset," i.e. "something that serves to counterbalance or compensates for something else." Opening Brief, p.7. It is abundantly clear that, in the context of Colo. Const. Art. X, Sec. 20 (7)(d), the "something" is the voter approved revenue change and the "something else" is the excess revenue that the government would be unable to keep absent voter approval. The existence of the former allows the latter to occur by "compensating" for it.

In further support of the Cities' position, however, the court is urged to glean the plain meaning of the term "revenue change" by reading it in context all six times it is used in Section 7. For example, in subsections (a), (b) and (c) the various limitations on increases in government "spending" are "adjusted for revenue changes" and in subsection (d) "voter approved revenue changes are dollar amounts that are exceptions to and not a part of any district base." If "revenue changes" could only mean decreases in revenue, as argued by the Petitioner, these references would be gratuitous at best. These provisions clearly are meant to provide that certain components of a government's revenue stream that have received special voter authorization will lie outside the calculation of fiscal year spending and the application of the inflation and growth factors provided for in Section 7. If "revenue change" meant, in effect, the inability to receive certain

revenue in future years, the use of the term in these other contexts would be meaningless.

Section 7 finally provides that, "Voter approved revenue changes do not require a tax rate change." This provisions would simply appear to buttress the notion that new taxes, which require voter approval under Colo. Const. Art. X, Sec. 20 (4) (a) are not the exclusive way for voters to approve increased revenue. This interpretation was expressly adopted by the court in Acosta.

On occasion, the court has resorted to the legislative history of an initiated constitutional amendment when confronted with ambiguities in its interpretation and has specifically looked to the Legislative Council's analysis as disseminated to the public in the form of the "Blue Book." While this analysis is not dispositive, it may provide important guidance for the court. Carrara Place Ltd. v. Arapahoe County Board of Equalization, 761 P.2d 197 (Colo. 1988); In the Matter of the Title, Ballot Title, Submission Clause, and Summary Adopted April 5, 1995 by the Title Setting Board Pertaining to a Proposed Initiative "Public Rights in Waters II", 898 P.2d 1076, n.5. The Blue Book has been specifically invoked to construe Amendment 1. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d at 4; Zaner v. Brighton, 24 Colo. Law. 356, 359 (Colo. App. 1994); cert. granted (1995).

Attached hereto as Appendix D is the Legislative Council Analysis of Amendment 1. In describing the "local revenue limits" feature of the amendment, the Blue Book said: "The proposed amendment to the Colorado constitution would . . . provide an exception from the revenue limit through voter approval." Legislative Council of the Colorado General Assembly, An Analysis of 1992 Ballot Proposals, pp. 6-7 (1992).

In describing various arguments in support of Amendment 1, the Blue Book said:

> ". . . only with voter approval will government be able to grow faster than the private sector . . ." Id. at p. 10.
>
> ". . . Yearly opportunities to ask voters for increases in revenue and spending authority for various projects and programs will not hinder government's ability to provide adequate services. . ." Id. at p. 10.
>
> ". . . The cost of complying with refund requirements is not excessive since government is not required to refund the money directly to individual taxpayers. It may use temporary rate reductions to accomplish the same end. Governments may also ask voters if it may keep the excess revenue . . ." Id. at p. 11 (emphasis supplied).

Thus, as it was sold to the voters, Amendment 1 clearly contemplated that voter approved increases in revenue and spending would be allowed. Conversely, nowhere does the Blue Book mention or even hint at the possibility that the retention of revenue in one year may require a decrease in revenue in a future year.

In addition to looking to the unequivocal intention of

Amendment 1 as described prior to its adoption, the court should also lend some credence to the universal interpretation of the term "revenue change" that has been made by coordinate branches of government over the last three years. While obviously not dispositive, the good faith construction of a constitutional provision by literally scores of local legislative bodies is at least entitled to some consideration and the court should "adopt, where possible, a construction of a constitutional provision in keeping with that given it by the coordinate branches of government." Hudson v. Annear, 101 Colo. 551, 75 P.2d 587 (1938); Bedford v. White, 106 Colo. 439, 106 P.2d 469 (1940); Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

Furthermore, any and all efforts of local governments to "give flesh and body" to the term "voter approved revenue change" and infuse it with some meaning should be permitted even though Amendment 1 purports to be self-executing, Colo. Const. Art. X, Sec. 20 (1), so long as these efforts do not impair, limit or destroy rights granted by the constitution. In Re Interrogatories Propounded by the Senate, 536 P.2d 308 (Colo. 1975); Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952). In the context of Article V of the Colorado Constitution, the other self-executing provision of the constitution dealing with the people's right to propose and vote on ballot issues, the court has traditionally granted the state and local governments considerable latitude in "prescribing the procedures" whereby those rights may be exercised,

so long as those procedures do not directly contradict anything in the constitution itself. See, e.g., Committee for Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992); Clark v. City of Aurora, 782 P.2d 771 (Colo. 1989).

Finally, the Cities would acknowledge that the court must construe Amendment 1 in a way that "reasonably restrains most the growth of government," Colo. Const. Art. X, Sec. 20 (1). The court has previously interpreted this term to mean "where multiple interpretations of an Amendment 1 provision are equally supported by the text of that amendment, a court should choose that interpretation which it concludes would create the greatest constraint on government growth." Bickel v. Boulder, 885 P.2d at 229. However, as explained above, the Cities assert that the Petitioner's interpretation of the meaning of "voter approved revenue change as an offset" is not "equally supported by the text" when compared to the interpretation of the County and the numerous other local governments that have submitted revenue change ballot questions to their voters over the past three years.

Moreover, even if it were equally supported by the text, the Petitioner's interpretation could not be considered a "reasonable" restraint on government growth. As set forth in section IV (A) of this brief, an inability of local voters to approve revenue increases in excess of Amendment 1's rigid annual limitations could, under some circumstances, actually lead to a deterioration

of government services, not merely an inhibition on the growth of government. This court has previously refused to adopt a "rigid interpretation" of Amendment 1's election requirements "that would have the effect of working a reduction in government services." Bolt v. Arapahoe County School District Number Six, 898 P.2d at 537.

E. Local governments and local voters should be permitted to draft and approve revenue change ballot questions under Colo. Const. Art. X, Sec. 20 (7) in any form they may choose.

Returning to Acosta, the Cities would note that the court rejected the assertion in that case that a "revenue change" must be worded in a particular way on two distinct theories. First, the court could find nothing in Amendment 1 affirmatively requiring the city to word its question as proposed by the plaintiff in that case. Equally as significant, the court found nothing in Amendment 1 *prohibiting* the manner in which the city had worded its ballot question. Aurora v. Acosta, 892 P.2d at 268.[6]

Despite the fact that the term "voter approved revenue change" is not defined in Amendment 1 and, in contrast to tax and debt increase questions as described in subsection 3(c), no particular

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[6] In contrast, when Amendment 1 means to work a prohibition, it does so in no uncertain terms; e.g. proscriptions against the government collecting attorney's fees in enforcement in subsection (1); against the inclusion of certain information in election notices in subsection (3)(b); against emergency property taxes in subsection (6); against real estate transfer taxes, local property taxes, etc. in subsection (8); etc.

wording for revenue change ballot questions is prescribed by Amendment 1, the court is once again faced in this case with a plaintiff who is claiming that the only way to structure a revenue change ballot question is his way.

In so arguing, the Petitioner is ignoring one of the most basic tenants heretofore laid down by this court in its Amendment 1 jurisprudence: Amendment 1, like other constitutional provisions that preceded it, is simply a further limitation on the powers of the legislative branch of government, and all legislative power ultimately resides in the people. Colo. Const. Art. II, Sec. 1; Bickel v. Boulder, 885 P.2d at 226. Amendment 1 undeniably limits the ability of the legislative branch of state and local governments in Colorado to receive and spend money over and above an annually limited amount. This limitation is a *fait accompli* under the constitution. But the Petitioner in this case wants more. In an act of supreme irony, what the Petitioner in this case really wants is a further limitation, not on the prerogatives of the legislative branch, but on the reserved legislative power of the people themselves.

If anything, Amendment 1 is supposed to empower voters. Yet, like the plaintiffs in Acosta, the Petitioner in this case seems intent on limiting voter options. The court should take this opportunity to reaffirm that, in the absence of any language in Amendment 1 expressly to the contrary, voters can approve revenue

and spending changes under Section 7(d) in any form they choose.

V. Conclusion

The Supreme Court should affirm the judgment of the district court and find that the wording of the County's ballot question 1BA complies fully with Amendment 1. In so doing, the court should reject Petitioner's claims that revenue changes approved by the voters under Colo. Const. Art. X, Sec. 20 (7)(d) require a concomitant decrease in revenue in future years as an "offset." Rather, the court should reaffirm its interpretation in Acosta of the term "offset"--that the revenue change acts as an offset "to the excess revenue." Finally, the court should reaffirm the principle that, in the absence of any required wording for voter approved revenue changes in Amendment 1, governments are free to draft and voters are free to approve revenue changes in any form they may choose.

Respectfully submitted this 3rd day of January, 1996.

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Brief of Colorado Municipal League as amicus curiae was placed in the U.S. Postal System on the 3rd day of January, 1996, addressed to the following:

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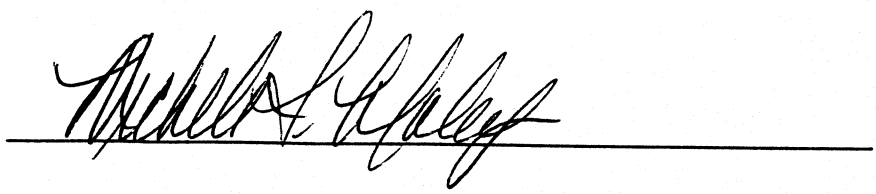

Appendix A

Colorado Constitution Article X

Section 20. The Taxpayer's Bill of Rights. (1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class actionenforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section: (a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions. (a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) 15-25 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. Titles shall have this order of preference: "NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE." Except for district voter-approved additions, notices shall include only:

year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Enacted by the People November 3, 1992 -- Section 1 of article V of this constitution provides that initiated measures shall take effect upon the Governor's proclamation. Subsection (1) of this section provides that this section shall take effect December 31, 1992, or as stated. (See subsection (4).) The Governor's proclamation was signed January 14, 1993. (For the text of this initiated measure, see L. 93. p. 2165.)

Appendix B

Municipalities Where Voter-Approved Revenue Changes Have Been Adopted, 1993-95

Since 1993, at least 189 ballot questions have been submitted to municipal voters wherein municipalities sought authorization to keep and spend excess revenues under Amendment 1. A total of 173 of these questions have been approved in the following 138 municipalities:

Akron
Alamosa
Alma
Aspen
Avon (2)
Ault
Basalt
Bayfield
Berthoud
Black Hawk (2)
Blue River
Boulder
Breckenridge (3)
Brighton
Broomfield
Buena Vista
Calhan
Canon City
Carbondale
Castle Rock
Center
Central City
Cheyenne Wells
Collbran
Colorado Springs
Cortez
Crawford
Crested Butte
Cripple Creek
Crowley
Dacono (2)
Deer Trail
Delta
Dillon
Dolores
Dove Creek
Durango
Eads
Eagle
Eaton
Empire (2)
Erie
Estes Park
Evans
Federal Heights (2)
Fort Lupton
Fort Morgan (2)
Foxfield
Fraser
Frederick
Frisco
Fruita (4)
Garden City
Georgetown
Gilcrest
Glendale
Glenwood Springs
Golden
Granby
Grand Lake
Greenwood Village (2)
Gunnison
Gypsum
Haswell
Haxtun
Hayden
Holyoke (2)
Idaho Springs
Ignacio
Jamestown (2)
Johnston
Keenesburg
Kremmling
La Junta
Lafayette (2)
Lake City
Lakewood
Larkspur
Las Animas
Littleton
Loveland (2)
Lyons (3)
Mancos
Marble
Milliken
Minturn
Monument (3)
Morrison
Mountain View
Mt. Crested Butte
Nederland (3)
New Castle
Northglenn
Norwood
Nucla
Nunn
Olathe
Ordway
Ouray
Pagosa Springs
Palisade
Palmer Lake (2)
Paoli
Parachute
Parker
Pierce
Platteville (2)
Pueblo (4)
Red Cliff
Rico (2)
Ridgway
Rifle
Rocky Ford
Saguache
Salida
Sawpit
Severance
Sheridan
Silt
Silverthorne (2)
Silverton
Simla
Snowmass Village
South Fork
Springfield
Steamboat Springs
Sterling
Telluride
Trinidad (2)
Vail
Victor
Walden
Walsenburg
Westminster (4)
Wiley
Winter Park
Woodland Park
Wray

Appendix C

Wording of Revenue Change Ballot Questions

Archuleta County (Nov. 94)
PROVIDED THAT NO LOCAL TAX RATE OR MILL LEVY SHALL BE INCREASED WITHOUT FURTHER VOTER APPROVAL, SHALL ARCHULETTA COUNTY, COLORADO BE AUTHORIZED TO COLLECT, RETAIN AND EXPEND ALL EXCESS REVENUES AND OTHER FUNDS COLLECTED DURING 1994 AND EXPIRING AFTER 1997 (4 YEARS) WITHOUT FURTHER VOTER APPROVAL EXCEPT FOR STATE GRANTS WHICH COULD BE COLLECTED, RETAINED OR EXPENDED STARTING IN 1994 AND EACH SUBSEQUENT YEAR THEREAFTER, NOTWITHSTANDING THE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION.

City of Boulder (Nov. 93)
Shall the City of Boulder, Colorado, be permitted to collect, retain, and expend the full proceeds of the City's sales and use tax, admissions tax, and accommodations tax, and non-federal grants, notwithstanding any state restriction on fiscal year spending, including without limitation the restrictions of Article X, Section 20 of the Colorado Constitution, effective January 1, 1993?

Town of Frisco (Nov. 94)
SHALL THE TOWN OF FRISCO BE AUTHORIZED TO DELAY UNTIL NOVEMBER 6, 2001 A VOTE UPON ALL BALLOT QUESTIONS ARISING UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION EXCEPT FOR PETITIONS, BONDED DEBT, TAX RATE INCREASES OR CHARTER AMENDMENTS; TO KEEP AND SPEND ALL REVENUES COLLECTED BY THE TOWN THROUGH THE YEAR 2001 REGARDLESS OF ANY LIMITATION CONTAINED IN ARTICLE X, SECTION 20 AND TO THEREAFTER UTILIZE 2001 AS THE BASE YEAR FOR FUTURE CALCULATIONS WITH THE FOLLOWING CONDITIONS:

(a) PROCEEDS FROM THE GENERAL FUND PORTION OF THE MILL LEVY SHALL BE REBATED TO THE PROPERTY OWNER AND

(b) A PORTION OF THE PROCEEDS SHALL BE USED FOR CAPITOL IMPROVEMENTS INCLUDING BUT NOT LIMITED TO THE MARINA PARK, THE SOUTH FRISCO BAY RECREATION AREA AND ONGOING STREET/SIDEWALK/BIKEPATH IMPROVEMENTS.

YES _____ NO _____

City of Lafayette (Nov. 95)
SHALL THE CITY COUNCIL OF THE CITY OF LAFAYETTE, ADOPT AN ORDINANCE, WHICH ORDINANCE SHALL AUTHORIZE THE CITY: (1) TO RETAIN ALL REVENUE DERIVED FROM ITS SALES AND USE TAXES NOT DEDICATED TO THE OPEN SPACE, PARK AND TRAIL FUND AND ALL REVENUE DERIVED FROM ITS DEVELOPMENT-RELATED FEES AND CHARGES (COMPRISING ITS DEVELOPMENT FEES, CONSTRUCTION PERMIT FEES, SERVICE EXPANSION FEES, PUBLIC LAND

DEDICATION IN-LIEU PAYMENTS, PARK LAND ACQUISITION AND DEVELOPMENT FEES, AND STORM DRAINAGE FEES), IN 1995 AND IN ALL SUBSEQUENT YEARS AND (2) TO SPEND ALL OF SUCH REVENUE AND ANY INVESTMENT EARNINGS THEREON AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO ANY SPENDING LIMITATIONS WHICH MIGHT OVERWISE APPLY; AND WHICH ORDINANCE SHALL REQUIRE THAT ANY SUCH REVENUE AND INVESTMENT EARNINGS THEREON WHICH WOULD, IN THE ABSENCE OF SUCH REVENUE CHANGE, BE SUBJECT TO REFUND PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, BE SPEND EXCLUSIVELY FOR LIBRARY, POLICE, AND FIRE PROTECTION SERVICES; ALL WITHOUT LIMITING THE COLLECTION AND SPENDING OF ANY OTHER REVENUE OF THE CITY IN ANY YEAR?

City of Littleton (Nov. 95)

If revenues exceed the limitations established by Article X, Section 20, of the Colorado Constitution (commonly known as Amendment 1 or the TABOR Amendment), shall the City of Littleton be authorized to retain and spend all revenues received during 1994 and 1995 for municipal operations (such as police, fire, and street maintenance) and capital projects, with all provisions of Article X, Section 20, of the Colorado Constitution remaining in effect, including voter approval of any new tax, tax rate increase or additional debt?

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

AN ANALYSIS OF
1992 BALLOT PROPOSALS

Research Publication No. 369
1992

2) Passage of this constitutional amendment would assure that gambling would not be conducted in communities that did not want it. Persons who are in support of the extension of gambling for a community are not necessarily speaking for the majority of people in that locality. Simply having the question on the ballot for a statewide vote does not necessarily mean that local concerns have been heard. Elections have been conducted in some of the cities proposed as new gambling communities, and the results have been negative in some towns and positive in others.

3) A community should not have to face pressures involving gambling proposals more than once every four years. By limiting a vote on a gambling question to every four years, the issue will be less of a source of controversy for a community. For example, a gambling initiative can result in speculative activities that affect property values and may affect the development of businesses and neighborhoods near the proposed gambling locations. These pressures can be divisive and should not be a constant source of community conflict.

Arguments Against

1) Restricting a vote on a gambling proposal to not more than once every four years establishes a precedent in limiting the initiative process. The right of the initiative is a powerful tool of the people of the state in making changes that might otherwise not be possible. Further, the proposal will give a locality veto power over what the voters of the state have thought to be a good idea. Questions of whether it is appropriate to limit the right of initiative, and whether it is appropriate for an area to be able to overturn the statewide vote of the people, should be considered seriously.

2) With this proposal in place, proponents of gambling may argue that new gambling proposals should be adopted, saying "Let this city decide whether it wants limited gambling." The argument then is shifted from the state level to the local level. It becomes an argument based not on the merits of the proposal – "Is this proposal beneficial to the state of Colorado?" – but on a procedural detail of merely asking the state voters to allow a local vote on the question.

AMENDMENT 1 – CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

Tax Limitations – Voting

Ballot Title: *An amendment to the Colorado Constitution to require voter approval for certain state and local government tax revenue increases and debt; to restrict property, income, and other taxes; to limit the rate of increase in state and local government spending; to allow additional initiative and referendum elections; and to provide for the mailing of information to registered voters.* *

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

Voter Approval of Tax Increases, Debt.

– require voter approval for any new tax, any tax rate increase, any mill levy increase over the prior year, any increase in the assessment ratio for a class of proper-

* One * indicates that signatures for the measure were gathered by volunteers. Two ** indicate that signatures were gathered in part by paid petition circulators.

ty, any extension of an expiring tax, or any tax policy change that causes a net tax revenue increase;

– require voter approval for the creation of most financial obligations that extend beyond the current fiscal year unless government sets aside enough money to fund the obligation in all years that payments are due;

– require voter approval to weaken other limits on government revenue, spending, and debt;

– temporarily suspend the requirement for voter approval of tax increases in declared emergencies and when revenue is insufficient to meet payments for general obligation debt, pensions, and final court judgments;

Government Spending Limits.

– limit the annual growth in most state government spending to the rate of inflation plus the percentage change in state population;

– limit the annual growth in most spending by each local government to the rate of inflation plus the net change in the actual value of local real property due to additions to and deletions from the tax rolls and construction and destruction of improvements;

– limit the annual growth in most school district spending to the rate of inflation plus the percentage change in student enrollment;

– require that increases in annual debt service payments be added to total fiscal year spending and that decreases in annual debt service payments be deleted from total fiscal year spending;

– exclude certain funds from the base figure used for calculation of the spending limits, such as the principal and interest payments on government bonds, voter approved revenue increases, emergency taxes, taxpayer refunds, and federal funds;

– temporarily suspend these limits when revenue is insufficient to meet payments for general obligation debt, pensions, and final court judgments;

– provide a temporary exception from these provisions by voter approval or during declared emergencies;

Local Revenue Limits.

– limit the annual rate of growth in property tax revenue for: a) local governments to the rate of inflation plus the net change in the actual value of local real property due to additions to and deletions from the tax rolls and construction and destruction of improvements to real property; and b) school districts to the rate of inflation plus the percentage change in student enrollment;

– exclude certain funds from the base figure used for calculating the annual property tax revenue limit such as principal and interest payments on government bonds, voter approved revenue increases, emergency taxes, taxpayer refunds, and federal funds;

– provide an exception from this revenue limit through voter approval;

Prohibited Taxes.

– prohibit any new or increased real estate transfer taxes, any local income tax, and any new state real property tax;

– require that any future state income tax law change have a single tax rate with no added surcharge;

– require that any income tax law change may not take effect until the following tax year;

Tax Limitations – Voting

Taxpayer Refunds.

– require refunds of revenue collected in excess of the various revenue and spending limits;

– require that, in the case of a successful lawsuit, illegal revenue for up to four full fiscal years prior to the filing of the suit, plus 10 percent simple interest, be returned to taxpayers;

– permit government to use any reasonable method to make such refunds;

– permit judicial review of the refund method;

– require that refunds need not be proportional when prior payments are impractical to identify or return;

– allow voters to authorize that government retain excess collections;

Emergency Taxes, Emergency Reserves.

– require a two-thirds vote of the state legislature for the declaration of a state emergency and the same vote for local governing boards;

– prohibit a government from citing economic conditions, revenue shortfalls, or salary or fringe benefit increases as reasons for declaring an emergency;

– prohibit increased property taxes to fund an emergency;

– specify that emergency taxes expire unless such taxes receive subsequent voter approval;

– require that, by 1995, each government have emergency reserves equal to or greater than 3 percent of fiscal year spending (excluding debt service);

– provide that revenue from emergency taxes may be spent only after emergency reserves are spent;

Election Procedures, Ballot Information.

– authorize voters to approve delays of up to four years in voting on ballot issues, except in cases of ballot issues involving bonded debt, citizen petitions, and amendments to local charters and the state constitution;

– require that one notice of election be mailed to each household with active, registered voters, and that such notices be mailed bulk rate and combined with election notices from other governments holding ballot elections;

– require that election notices include ballot issue summaries that incorporate public comments and figures representing projected revenue or debt levels with and without the proposed tax or debt increase;

– limit ballot issue elections to the state general election, the first Tuesday in November of odd-numbered years, or biennial local government election dates;

State Mandates.

– allow local governments to reduce or end, over a three-year period, their subsidy to any program that has been delegated to them by the state legislature for administration;

– exclude from this provision public education and programs required of local governments by the federal government;

Assessment of Property.

– allow governments to enact uniform exemptions and credits to reduce or end the property taxation of business personal property;

– require that annual assessment notices be mailed to property owners regardless of the frequency of reassessment;

– continue the current annual property tax appeals process;

– require that all property tax bills and assessment notices state the property's actual (market) value;

– require that the actual value of residential property be based solely on the market approach to appraisal;

– require that sales by lenders and government agencies be used in the appraisal of property; and

– prohibit a legal presumption in favor of the pending valuation of real property as established by the assessor.

Background

Current law. At the state level, current law limits the annual growth in state General Fund appropriations to 6 percent over prior year General Fund appropriations or, in total, no more than 5 percent of state personal income. The General Fund is the state's main account from which many programs are financed. Except in specific circumstances, the state constitution also prohibits state general obligation debt (i.e., borrowing based on a government's overall revenue-raising ability rather than a specific revenue source). However, the state does issue revenue bonds (i.e., bonds repaid from specifically designated revenue sources, most often those raised directly from the project itself) and participates in multi-year lease-purchase agreements in which annual payments are used to retire principal and interest provided up front by an entity other than the government.

At the local level, state law limits the annual increase in local government and special district property tax revenue to 5.5 percent over the prior year. This law also contains various exceptions that accommodate conditions such as rapid local growth, and does not apply to cities and counties with home rule charters. Many such charters do, however, contain restrictions on property tax revenue or limits on the number of mills that may be levied. Concerning school district finances, the state legislature largely controls annual increases in district general fund revenue raised from local property taxes through the Public School Finance Act of 1988. In many instances, increases beyond these various local government, special district, and school district limits are subject to voter approval, as are most proposals for new taxes, tax increases, and general obligation debt. However, local government revenue bonds and multi-year contracts do not require voter approval in most instances. Currently, there are no limitations on local government expenditures that apply generally to all local governments throughout the state. However, locally initiated tax and spending limits do exist. For instance, in April, 1991, Colorado Springs voters approved a local measure that is similar to this statewide proposal.

Impact of the proposal. The proposed amendment would supersede any provisions in current state or local law that are in conflict. In instances where there is no conflict, the existing limits and restrictions would continue to apply. For example, where a local provision limits the number of mills that can be levied, that local levy limit would apparently continue in effect because the amendment does not specifically address such limits. The levy limit would be in addition to the amendment's restrictions on spending. However, if the local mill levy limit resulted in more property tax revenue than allowed under the amendment, the amendment would supersede the mill levy limit. State and local government would be restricted to making changes in tax policy and the tax code that decrease taxes. All other changes would require voter approval. State and local governments would not be able to issue new revenue bonds or other multi-year financial obligations without voter ap-

proval. The amendment also states that "other limits on [government] revenue, spending, and debt may be weakened only by future voter approval." This apparently means that, whether such limits were created by local ordinance, state law, or through an election, weakening those limits would require voter approval.

Arguments For

1) The amendment would slow the growth of government and prevent taxes from rising faster than the taxpayers' ability to pay. Existing limits on state appropriations and local property taxes have not accomplished this. The amendment imposes the discipline and accountability that is needed to require government to consider the ability of taxpayers to support new or expanded programs before it raises taxes.

2) Government has not demonstrated that it can effectively and efficiently spend the tax revenue it receives. The only answer is to control how much money the government receives. By limiting state spending to inflation plus population growth, the proposal allows spending to grow as the economy grows and as the demand for government services increases. Conversely, when the economy is in trouble, the government should share in the hard times. Only with voter approval will government be able to grow faster than the private sector. Local property taxes are a significant burden for the elderly and others on fixed incomes. Limiting local property tax revenue increases will provide a measure of protection for taxpayers.

3) The language in the proposal is tightly crafted to prevent its intent from being misinterpreted. Its placement in the state constitution, rather than in state statute, will prevent its requirements from being circumvented. Using more general language and allowing the state legislature to define the scope of various provisions would give special interests the opportunity to influence the amendment to the point where it would become meaningless.

4) Restrictions on debt are necessary to limit excessive use of borrowing to finance government activities. Though there are limits in current law regarding debt levels and some requirements for voter approval of debt, government has created many forms of multi-year obligations that are not considered debt by the courts. In this way government has avoided voter scrutiny. Debt is an all-too-convenient and an unnecessarily expensive way to finance programs and facilities. Government should live within its means and the proposal's debt provisions provide the necessary discipline.

5) The requirement of voter approval fosters greater citizen involvement in government and weakens the influence of special interest groups in the current political process. The voters should be the ultimate authority on matters of taxation and should be trusted to exercise sound judgment. Granting tax concessions to special interest groups will be more difficult if governmental units are required to seek voter approval for replacement revenue. Consolidation of the various elections at the state and local level will reduce the cost of holding such elections. Election notice and information requirements will provide voters with an understanding of the need for new revenue and will result in a more informed electorate.

6) Controlling the growth of government and limiting the tax burden are the surest means to improve the state's economic climate. Business is reluctant to invest when tax rates increase regularly. By allowing people to keep more of what they earn, productivity and investment will be rewarded and boost the economy. Creating a stronger economy in this way will increase the tax revenue needed for government to operate. Yearly opportunities to ask voters for increases in revenue and spending authority for various projects and programs will not hinder government's ability to provide adequate services.

7) Local governments must be allowed to reduce or end their subsidies to state-mandated programs. The proposal prevents state government from forcing programs onto the local level without their approval and without proper funding. Thus, the proposal improves the ability of local governments and citizens to control their own affairs and requires greater fiscal responsibility at each level of government.

8) Requiring refunds of excess tax collections forces government to be honest. If voters approve a tax increase based on government estimates of the revenue expected from the increase and that increase is what the government stated that it needs to continue its activities, then retaining excess revenue is wrong and contrary to what the voters agreed. The cost of complying with refund requirements is not excessive since government is not required to refund moneys directly to individual taxpayers. It may use temporary rate reductions to accomplish the same end. Government may also ask voters if it may keep the excess revenue.

Arguments Against

1) Placing such a complex and detailed set of provisions in the state constitution is unwise. The several constraints in the amendment fundamentally redefine the relationships between each level of government and between government and citizens. The consequences of an amendment of this magnitude are unpredictable. Placing the amendment in the constitution does not allow the necessary flexibility should unforeseen circumstances arise.

2) The amendment weakens representative government by taking important decisions regarding spending, taxes, and tax policy out of the hands of elected officials. Offered in its place is the cumbersome alternative of voter approval. For example, unless a delay is approved at election, changes such as eliminating exemptions in the state sales tax or closing loopholes in the state income tax would require voter approval. Voters would also be required to approve mill levy increases over the prior year even though the increase may only be required to raise the same amount of money because of a decrease in local assessed value.

After a few years under this system, voters will tire of constant elections concerning many different issues and cede election results to a minority of voters who are in favor of or opposed to a given tax proposal. The result will be a small number of voters deciding issues that affect all taxpayers. Another potential consequence is an increase in the influence of special interests through their willingness to finance campaigns on either side of an issue. If taxpayers are dissatisfied with the decisions made by elected officials, a simpler remedy is selecting new representatives at the next election.

3) State officials have responded to concerns about growth in government by limiting annual increases in local government property tax revenue to 5.5 percent and limiting annual increases in state general fund appropriations to 6 percent or 5 percent of state personal income, whichever is less. These are more appropriate measures than are the limits proposed by the amendment – the rate of growth in population, inflation, or property value – which have little, if any, relationship to a taxpayer's ability to pay.

4) The proposal may be counterproductive to promoting the state's economic climate by limiting government's ability to raise revenue and expend funds at those times when demands for government services increase. State and local governments are already experiencing difficulties providing existing services. Further restricting their ability to adequately fund roads, education, and other services hinders government's ability to engage in those activities required for further economic development. Long-term uncertainty about Colorado's ability to adequately fund programs important to commerce will have a chilling effect on its business climate.

Provisions that prohibit raising property taxes in declared emergencies will especially impact special districts and school districts, both of which depend to a large degree on property taxes for funding.

5) The various limits and restrictions in the proposal do not recognize the degree to which the fiscal affairs of local, state, and federal governments are intertwined. For instance, the proposal excludes federal funds from the calculation of spending limits but does not exclude expenditures required by the federal government for state participation. If such expenditures increase faster than the limits allowed under the proposal, state government would have to divert funds from other programs or request voter approval for additional revenue.

6) The language used in the proposal is vague and confusing and will require judicial interpretation. Professionals in the areas of law, accounting, and public finance have arrived at conflicting interpretations of the same provisions in the proposal. Such ambiguity will result in extensive and costly litigation in order to clarify the meaning of the proposal and will lead to an undesirable amount of court involvement in the administration of state and local governments. The uncertainty may also affect the value of outstanding government securities.

7) The absolute requirement that state and local governments refund excess tax collections will lead to compliance costs that may be greater than the amount of the excess collections. These costs will affect both business and government. For example, if sales tax collections were $1 million over estimated amounts approved by the voters, the proposal apparently requires that an excess of this size be refunded to the state's 3.4 million citizens. The result could be checks issued to each citizen that would be worth less than 30 cents. If tax rates were decreased to accomplish the refund, businesses would be required to constantly change the rates required to collect the sales tax. Further, the proposal permits refunds to be non-proportional or to come from an unrelated tax so that excess sales tax collections could be returned to taxpayers through a property tax rebate. The possibility exists, therefore, that those who paid the excess taxes would not receive a refund equal to the amount of their overpayment.

8) Several property tax provisions in the proposal will decrease local property tax collections and shift the property tax burden to other property owners. For instance, if an exemption is approved for business personal property, this will decrease the local property tax base and decrease local property tax revenue. If voters subsequently approve a mill levy increase to make up the lost revenue, the exemption of business personal property from taxation will shift the tax burden to those businesses that are not able to take advantage of such exemptions. Given the current structure of school finance, the resulting loss of school district property tax revenue will increase the burden on state resources.