

# TRUSTING THE PUBLIC

## THE CASE FOR A TAXPAYERS BILL OF RIGHTS

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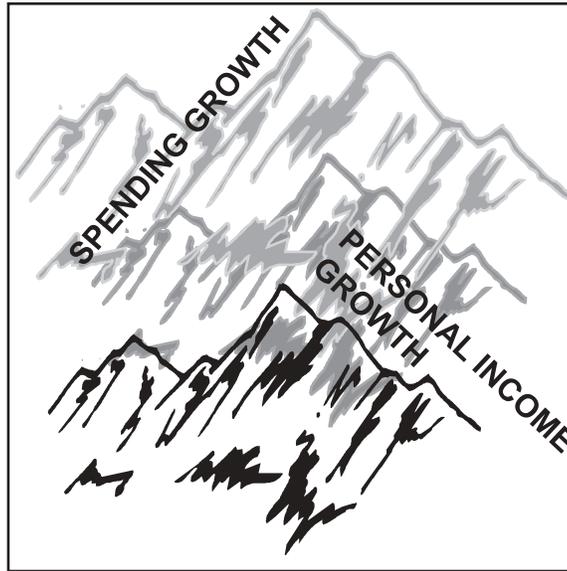
Despite their organizational muscle and media bullhorns, the opponents of the Taxpayers Bill of Rights (TABOR) find themselves in an unenviable position. While they continue to raise a host of objections, they are stuck with having to make three basic arguments:

First, they must convince the public that taxes in Wisconsin are not high enough and that state and local governments cannot be expected to live within their means. More specifically, opponents will have to argue that, even though Wisconsin's taxes are 12.8% above the national average, spending should continue to be allowed to grow faster than our ability to pay.

Second, they must make the case that we should trust politicians more than voters to restrain spending.

And third, they must argue that it is not necessary to restrain the growth of government spending to attract more jobs and investment in the private sector.

There are, of course, other objections to amending the state constitution, including issues of local control, the rigidity of the limits, the



effects on public services, and cautionary lessons from Colorado. But, ultimately, the debate on TABOR will turn on the questions of taxes, trust, and priorities—and whether Wisconsin needs a fundamental change in its political culture.

Here is the context for the debate:

- In June, the Bloomberg Wealth Manager rated Wisconsin dead last—the worst state

in the entire country—as a place for retirement; and second last in overall personal wealth friendliness.

- In July, new figures from the Census Bureau showed that Wisconsin ranked 5th in total state-local taxes as a share of income, down a notch from fourth in 2000.

- Despite—and, in part, because of—massive state aid to local governments and school districts, property taxes in Wisconsin are 27% higher than the national average while state income taxes are 34.5% higher.

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- New studies suggest that Wisconsin taxes more because it spends more. State and local governments spend 7.7% more than the national average, while our personal income was 2.8% below the national average. Put another way, former state budget director Richard Chandler estimates that state taxpayers pay \$2.4 billion a year more than if Wisconsin limited its spending to the national average. (See accompanying article.)
- State and local government spending now consumes 21.4% of the state's personal income, compared with a national average of 19.9% and a regional average of 19.6% in 2002.
- A year after the defeat of the property tax freeze, local school districts raised taxes by an average of 7.3%, the largest increase in a decade. More than half of the school districts that raised taxes increased their levies *by more than double the rate of inflation*. Nearly a third of them had double-digit increases; only 12% held the line or cut their levies. Much of the increase went to feed rapidly growing fringe benefit programs, which continue to devour ever larger portions of school budgets.
- In the City of Milwaukee, despite high-profile attempts to freeze taxes by both Mayor Tom Barrett and County Executive Scott Walker, the average taxpayer saw an 8.7% increase in their tax bills, largely as the result of a 13% increase in the tax levy for Milwaukee schools.

### Limiting the Growth

While all of these developments strengthen the case for a Taxpayers Bill of Rights (TABOR), it is important to note that no version of TABOR would necessarily have stopped any of these increases.

Indeed, TABOR is both radical and surprisingly moderate in its scope. While it would write a permanent and uniform limit on spending into the constitution (its radical component), it would force no deep cuts in spending or taxes. It simply ties spending growth to the ability of the taxpayers to pay for it (using the CPI or growth in personal income, plus population growth). While critics insist that

this would put government into a fiscal strait-jacket, the amendment provides an out by permitting the limits to be exceeded through referenda.

"To hear some people talk," sneers the *Journal Sentinel* editorial board, "if Wisconsin approves a taxpayer bill of rights, long-suffering taxpayers will finally find their promised land."

In fact, no serious supporter imagines that TABOR will be a panacea. To the contrary, it would require continued vigilance by taxpayers, who would still be confronted by well-organized campaigns to increase the size of pet spending programs.

But it changes the rules fundamentally by giving voters, rather than politicians, the final say on tax increases.

### The Billion-Dollar Question

Perhaps because of its intrinsic appeal, opponents of TABOR often seem uncertain whether they should dismiss the tax limit as unnecessary (by insisting that taxes aren't really that high, and we are already holding the line), or denounce it as a reckless scheme that will beggar the public sector.

One story in the *Journal Sentinel*, for example, suggested that some units of government were already meeting the goals set by the authors of TABOR, while another in the same paper suggested that the amendment might lead to the elimination of all state support for the University of Wisconsin System or dismantling the state Department of Corrections. (The award for the most intemperate rhetoric goes to the *Journal Sentinel* editorial board, which coupled its apocalyptic warnings about draconian cuts with the suggestion that supporters of the measure regarded government as the "Great Satan." Does this imply that opponents regard it as a "savior"?)

But the evidence suggests that TABOR is neither pointless nor extreme.

Chandler's study, for example, found that if state and local government spending had grown only as fast as the rise in personal

income, spending in Wisconsin would have been \$2.58 billion lower in 2002 alone. Firehouses would not have closed; schools would have kept their doors open. The sky would not have fallen. Those savings would have allowed us to maintain essential government services and could have translated into a 19% cut in property taxes and a 25% cut in income tax collections.

Chandler's analysis suggests how out-of-control public sector spending increases have been.

Between 1986 and 2002, inflation rose by 64% and personal income in Wisconsin rose by 107%. But K-12 school spending per pupil rose 125%. County spending jumped 151%.

The numbers are eye-popping: If state and local spending had been held to the increase in the cost of living plus population growth, in 2002 total state and local spending would have been \$9.62 billion less than the actual level.

But even tying spending growth to personal income growth—a far more liberal benchmark—yields dramatic results. If Wisconsin had tied spending growth to personal income growth in 1986, Chandler estimates that by 2002 Wisconsin's state and local government spending level would have been brought roughly into line with national and regional averages. Instead of spending 21.4% of personal income on state and local government, Wisconsin would have spent 19.8% of personal income, compared with the national average of 19.9% in 2002.

That, in a nutshell, is the case for a Taxpayers Bill of Rights, a constitutional amendment that sets a reasonable benchmark for the scope of government spending and establishes a system of checks and balances. On the merits, opponents of tax limits will

have to argue that it would be a disaster if spending by schools and local governments had risen by 107% instead of 125% or 151%. They will also have to explain why voters cannot be trusted to see the distinction.

### Precedents

Contrary to the opposition's often-fervent rhetoric, TABOR is hardly an untested idea. Not only do 27 states already have spending limits (with the majority using growth in personal income as a starting point), but the amendment is also based on two well-established principles in Wisconsin government: cost controls and the use of referenda as a check on excessive spending.

Since 1993-94, the state has limited increases in local school spending. State law also limits how much money counties can raise through the property tax, while the Expenditure Restraint program rewards municipalities that hold the line on spending.

Like TABOR, current state law limiting school revenue increases provides for referenda if local districts wish to pass building programs or exceed the revenue caps. Since 1991, voters have approved more than \$5 billion in school building referenda and revenue cap exemptions worth tens of millions of dollars. But in both cases, the amounts approved were less than half what elected school boards had sought.

This leads to several conclusions:

- Wisconsin voters have a long track record of voting directly on tax and spending issues.
- Without the check and balance of referenda, spending would have been dramatically higher; and in the case of school building projects, more than \$5 billion higher.

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- The limits are not a suffocating and rigid straitjacket because tax increases are not always defeated. Many districts have been able to proceed with their building projects and exceed state-mandated revenue caps by getting the consent of their constituents. (In Colorado, the success rate of referenda to raise taxes for specific purposes tops 90%. But officials are forced to narrowly tailor their proposals and make the case for each increase.)

- The requirement that voters approve tax increases has prevented an unknown number of other spending increases, acting as a brake on elected officials who wanted to avoid the referendum process. It's impossible to know how many such schemes died aborning, because officials knew they would be unable to convince voters to approve them.

Perhaps most important of all though, is the way that the referenda change the political culture, because they re-engage the electorate in the decision-making process that is otherwise dominated by entrenched special interests. In Colorado, even the sharpest critics of that state's TABOR concede that the requirement of taxpayer approval for tax increases is politically untouchable, which suggests that the referendum requirement may be the keystone concept of the amendment.

Another keystone is its permanence, embodied in the state constitution. This has also drawn fire, again most notably from the *Journal Sentinel* editorial board which declared that the "TABOR premise is . . . fundamentally flawed" whatever spending benchmark it uses.

"Simply," the editorialists declare, "spending limits do not belong in a state constitution."

To which the obvious question is: why not? By their very nature constitutions set limits on the powers and size of government vis-à-vis both its citizens and its taxpayers.

Indeed, Wisconsin's state constitution already addresses numerous issues involving both spending and taxing in addition to Article I, Section 22, which declares: "The blessings of

a free government can only be maintained by a firm adherence to justice, *moderation, temperance, frugality*, and virtue. . . ."

How quaint. And, given our track record over the last few decades, how ironic. Founded on the notion of moderation and frugality, Wisconsin has become an icon of runaway spending and massive budget deficits, matched only by our enthusiasm for raising taxes.

As for the constitution being too "sacred" a document to clutter up unnecessarily, one wonders whether any of the editorialists have waded through the 16-page document that addresses everything from the uniformity rule of taxation, the requirement of a balanced budget, rules for contracting state debts, municipal home rule, the powers of county boards, the creation of town governments, the transportation of school children, the use of school buildings, the quorum requirements for votes on fiscal bills, and rules involving the state school fund.

TABOR would hardly be out of place. Moreover, writing it into the constitution as opposed to a biennial budget or state statutes would have the added advantage of being both uniform and permanent, providing a degree of predictability wholly lacking in the current environment.

### **Trusting Politicians**

But, critics will ask, doesn't the responsibility for high taxes lie with the voters in the first place? The *Journal Sentinel* editorial board articulates the argument:

Voters hold legislators accountable for spending decisions every few years—in elections. And if local democracy means anything, it means that locally-elected officials should be able to make the decisions they were elected to make and not have the state or voters from elsewhere in the state make those decisions for them. If these officials are consistently wrong, they get boot-ed out.

In other words, if taxpayers really want lower taxes shouldn't they just elect more fis-

cally conservative officials? The answer is, of course, yes. But, unfortunately, that may not be enough.

In Milwaukee, for example, voters elected both a county executive and a mayor who promised to freeze property taxes. (As well as for a governor who promised no tax increases.) Sentiment on the issue continues to run high. No school referendum has been offered in the City of Milwaukee since the early 1990s, when voters defeated an ambitious bonding plan by a margin of 3 to 1.

Sticking to their promises, Mayor Barrett proposed and eventually signed a budget that met the requirements of the legislative Republican “freeze,” while County Executive Walker proposed a no-increase county tax levy.

Despite the fact that voters had elected officials who promised to hold the line, however, the average Milwaukee taxpayer ended up with a 2004 tax bill that was 8.7% higher.

How had that happened? Despite the heroic efforts by Barrett and Walker, the Milwaukee School Board approved a levy increase of more than 13%, effectively wiping out the savings in city and county government. Of course, voters had also elected the school board members, but they had a much lower profile and are elected with only a fraction of the attention and turnout of the higher profile races.

Milwaukee’s experience illustrates the radical breakdown in accountability of the current system: taxpayers vote against tax increases only to see their bills skyrocket.

That scenario would be far less likely under TABOR. If the voters had had a chance to vote on the Milwaukee School Board’s double-digit tax, it is likely the board would have adopted a far more modest package.

Conversely, if they had taken the full increase to a referendum, property taxes would only have risen if voters wanted them to rise. There would no longer be a disconnect between the voters and the results.

But, critics complain, doesn’t the reliance on referenda undermine our system of representative government, implying a more general lack of confidence in elected officials to make critical decisions?

To which the honest answer is: Well, yes.

The series of scandals engulfing city, county, and state politicians—Milwaukee County’s pension grab, the indictment and conviction of

Milwaukee aldermen, the imprisonment of Senator Gary George, the widening scandal involving OIC—makes this an especially inopportune moment to insist that we “trust” politicians. But, taking a longer view, neither political party has a particularly admirable record of restraint in taxing and spending.

Part of that, however, is systemic.

It’s the spending, stupid.

Given the state’s Rube Goldberg fiscal system in which one unit of the government (the state) raises most of the money while others (local) spend most of it, it is impossible to unbundle the various taxes or taxing units.

For years, what passed for property tax relief was really an inducement to tax and spend at even higher levels. For every dollar in aid the state sent in relief, local officials leveraged the found money into \$1.60 in spending. And so it went.

By 2000, state government was raising 64.5% of state taxes, but accounted for only 39.9% of the total state-local spending. As Dale Knapp and Todd Berry of the Wisconsin Taxpayers Alliance noted: “The more local

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governments rely on outside state and federal aid to fund their services, the more they spend per capita.”

The result is an “accountability gap” in Wisconsin politics. Knapp and Berry describe the political gavotte:

If citizens perceive local taxes to be too high, they will protest to state and local government officials. The gap between state taxing and local spending allows public officials to place at least some of the blame on each other. Local officials can claim that state aids have not kept up with the costs of dual-funded programs, thus placing a larger burden on property taxpayers. State officials can deflect the blame for high taxes to local governments, maintaining that, despite a large portion of state tax dollars being returned to local governments, local taxes are high because local governments are spending more.

This dance of blame was played out in this year’s school tax hikes, as local officials pointed to lower state aid for their increases after Governor Doyle’s budget had abandoned the pledge that the state would pay two-thirds of the cost of K-12 education. But history suggests that if state officials restore the cuts and increase “relief” payments, the moves will simply result in more local spending. And so it goes: cut the aid, taxes go up. Increase the aid: taxes and spending go up.

“Hence,” wrote Knapp and Berry, “the great Wisconsin contradiction: Almost two-thirds of state general fund expenditures are aimed at relieving property taxes, but levies here remain 23% above the national average.”

The failure of Milwaukee’s officials and of “property tax relief” schemes to protect taxpayers are also reminders that without a comprehensive approach to limiting taxes, any effort to halt the tax-and-spend spiral is doomed to fail. At this point, only a Taxpayers Bill of Rights attacks spending at all levels of government simultaneously.

### **TABOR’s Pinch**

Perhaps the most compelling argument against TABOR is the threat that it poses to existing public services. In their doomsday scenarios, opponents warn of massive layoffs and cuts in popular programs.

But the worst-case scenarios for cuts under TABOR assume that the rest of the state’s fiscal and political culture will remain untouched, and that decision-makers will continue to avoid making hard choices and difficult cuts. This is especially true when it comes to controlling the cost of public employee fringe benefits, especially public school teachers.

At current rates of growth, the cost of fringe benefits will exceed the cost of teacher salaries in a few years. The average school district pays more than 95% of the cost of insurance premiums, which have risen 40.7% since 2001-02. Already, Wisconsin provides far more lavish benefits than neighboring states. In 2002-03, benefits for Wisconsin teachers topped 46% of the cost of salaries.

If TABOR were to pass and Governor Doyle were to continue to block efforts to give school districts flexibility on teacher health insurance, school budgets would be increasingly squeezed. On the other hand, TABOR would also increase pressure on officials to make choices and changes that they have been reluctant to make to date. As Scott Niederjohn demonstrates in an accompanying article, taxpayers could save \$100 million a year simply by shifting teachers into the still generous (but less costly) state health insurance program.

### **Political Will**

As the debate is joined this spring, there is likely to be continued infighting among erstwhile supporters of a so-called strong TABOR versus weaker versions: debates over whether it should be pegged to consumer prices or growth in personal income. Some supporters may try to plant poison pills in the measure such as making it a statutory rather than a con-

stitutional provision, thus guaranteeing its death by veto; and the *Journal Sentinel* and other major newspapers have staked out adamant anti-TABOR positions.

So far, though, the strongest objections to constitutional tax limits are less intellectual than they are institutional, as local governments and school officials protect their turf by mobilizing against the amendment.

In the end, the greatest barrier to fundamental, meaningful reform may be a lack of political will.

Despite the evidence of strong grass roots support for a tax-limiting measure, legislative Republicans, especially those in the senate, are clearly conflicted on the issue. While support for a property tax freeze remains strong, senate Republicans would not even bring the amendment up for a vote in 2004, a move that cost Majority Leader Mary Panzer her job. Panzer had repeatedly promised a vote on the amendment, only to pull the plug twice in the summer of 2004.

Largely as a result of her abandonment of TABOR, she was defeated in her own primary by a margin of almost 80 to 20. While that should have been a resounding message to her colleagues, the senate Republicans responded in December by ousting the pro-TABOR interim senate leader and replacing him with one of the anti-TABOR hold-outs, Dale Schultz.

The senate's repeated failures on TABOR suggest just how acclimated even Republicans have become to the fiscal culture of the Capitol and reluctant to fundamentally change the rules that have fueled the spending culture of government for generations.

But in the absence of a Taxpayers Bill of Rights, it seems unlikely that taxpayers will get any of the relief they are increasingly demanding, which guarantees that taxes and spending will be at the center of the 2006 gubernatorial election.