THE EFFECT OF TABOR ON COLORADO MUNICIPALITIES

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Abstract

The Taxpayer's Bill of Rights (TABOR) is a tax and expenditure limitation in Colorado. Our research focuses on the TABOR's effect at the municipal level, and investigated the components of a successful TABOR related ballot initiative. We use interviews from four city officials to formulate case studies of municipalities that have successfully passed TABOR related ballot initiatives. We discovered that without intervention TABOR largest effect on local governments is not allowing them to provide high levels of basic services to its citizens. Our research suggests that municipalities wishing to pass a TABOR related ballot initiative will be more effective if they pass revenue retention measures as opposed to tax increases, use ordinances rather than resolutions in the propositions, and to avoid property taxes. TABOR can provide numerous difficulties to local governments, but with careful planning and well thought out ballot measures many of TABOR's restrictions can be mitigated.

Introduction

The Taxpayer's Bill of Rights – commonly known as TABOR – is a highly controversial amendment to the Colorado state constitution. TABOR is a form of a tax and expenditure limitation (TEL) and limits how the government can collect revenue and spend it. TABOR was created by Douglas Bruce, a real estate investor who moved to Colorado Springs in 1986. He placed similar initiatives to TABOR on the ballot in 1988 and 1990, both of which failed by votes of 38% and 49%, respectively. However, after the 1990 ballot initiative, the political climate towards TELs began to change, facilitating the passage of TABOR in 1992.[1] Bruce's measure earned support from several notable Republicans, as well as from several notable business organizations, such as the National Federation of Independent Business and the Colorado Farm Bureau.[2] Another key notable difference in how TABOR was presented in 1992 than in 1988 and 1990 was that the ability of the electorate to vote on every tax reallocation or tax increase was emphasized, as opposed to simply the TABOR revenue limit. Ultimately, TABOR was passed in 1992 by a 53% majority. [3] The amendment took effect on January 14, 1993.[4]

Since being passed in 1992, municipalities across Colorado have approved hundreds of ballot initiatives for the cities to have the ability to retain revenue collected that is over the limit set by TABOR.[5] Initiatives that attempt to allow the city to retain revenue in excess of TABOR limits is a practice that is commonly referred to in Colorado as "de-Brucing." Contrary to

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[1] Michael New, *U.S State Tax and Expenditure Limitations: A Comparative Political Analysis* (n.p.: University of Illinois, 2010), 38.
[2] New, *U.S State Tax and Expenditure*, 39.
[3] New, *U.S State Tax and Expenditure*, 39.
[4] Geoff Wilson and David Broadwell, *TABOR: A Guide to the Taxpayer's Bill of Rights* (n.p.: Colorado Municipal League, 2011), 1.
[5]Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 25.

popular belief, the practice of "de-Brucing" does not free a municipality from TABOR restrictions altogether; a municipality "is still fully subject to all of the other limitations set forth in TABOR."[6]

In this investigation, we will seek to answer two research questions. First, what are the effects of TABOR on local municipalities? Second, what are the components of a successful TABOR related ballot initiative? We will investigate the municipalities of Centennial, Frederick, Ouray, and Denver to form case studies to examine how TABOR has affected municipalities of varying sizes. We will investigate how municipalities have used their added revenue after their city has "de-Bruced" to better understand the effects of both how TABOR has limited the size, scope, and function of local municipalities, as well as how these "de-Brucing" measures have affected the local economy since they were approved. We will also look into the various tactics that have been attempted by municipalities to relieve themselves of TABOR restrictions, and will assess the effectiveness of these tactics. Finally, we will provide recommendations to local municipalities that seek to pass "de-Brucing" measures on how to effectively create ballot initiatives so as to give the measure the best chance of success. Overall, we seek to help municipalities to better understand the restrictions set forth by TABOR, and the various ways that these restrictions can be either dealt with or avoided.

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[6] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 22.

How TABOR Works

How TABOR Limits Revenue

As a tax expenditure limitation (TEL) TABOR limits the amount of revenue that can be collected and retained by a local government. TABOR has three main components.[7] Firstly, all tax increases had to be approved by voters in a ballot initiative process. Secondly, it strengthened existing TEL's in Colorado by stating that they could not be weakened or repealed without voter approval. Third, it implemented an extremely strict limitation on revenue collection for both the state government, and for local governments in Colorado. TABOR was, and continues to be, the strictest TEL passed by any of the states in the U.S.

The creation of an amendment in Colorado is rather unique among state level amendment processes. While most states require a high majority to create an amendment to the state constitution Colorado only requires a 50 percent or above majority. The Colorado constitution is the highest law in the state of Colorado, and this creates a barrier that even the Colorado legislature could not overcome if it wanted to disband TABOR. The only way to permanently repeal TABOR in Colorado would be to have another statewide ballot initiative that successfully collected a majority of votes in opposition of TABOR.

Calculating the revenue limit set by TABOR can be a convoluted and confusing process, but comes down in the end in "local growth", and inflation rates. TABOR's revenue cap was initially determined from a calculated revenue and spending base from the year 1992, the year that TABOR was enacted in the polls via a ballot initiative. From the 1992 base the adjusted

[7] New, *U.S State Tax and Expenditure*, 38.

limit is based on the “local growth” of the area, and is adjusted for inflation rates. Each new consecutive year after 1992 forms a new base limit calculated on the previous year’s revenue spent, and this base changes from year to year. This change in the base revenue and spending limit can create a problem known as the “ratchet down effect” in which revenue limits consistently decrease annually. We will talk in more detail about the “ratchet down effect” later in this report. Any of the revenue that is collected from taxes and fees that exceeds the calculated limit set must be returned to the citizens under the local government’s jurisdiction.

The way that the Colorado state government and local governments determine their yearly revenue limit is one large difference in TABOR’s effect on different levels of government. At the state level the revenue cap is determined by both inflation, and growth in population. At the local government level population does not play a role, but instead the term “local growth” is used to calculate the revenue cap. TABOR § 2 defines local growth as “ a net percentage change in actual value of all real property in a district from construction of taxable property elements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property.”[8] In more simple terms, TABOR is adjusted for inflation, and adjusted for the increased value of new taxable properties in the jurisdiction. School districts are treated differently than other local governments, and the TABOR limit is based on “the percentage change in its student enrollment”[9].

TABOR sets a new revenue limit each year for local governments based on inflation rates, and “local growth” in the area. If the local government collects more than these limits then all revenue in excess must be returned to the citizens of the local area.

[8] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).
[9] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).

Opposing Views about TABOR

TABOR has long been a large source of contention in Colorado. Though both proponents and critics of the amendment agree that TABOR would drastically limit the ability of the government to grow, the two parties have widely differing viewpoints on how the bill affects local governments.

Proponents of TABOR argue that the amendment is important due to its requirement that citizens get to vote on taxes. Indeed, the provisions in TABOR do give the electorate a wide degree of freedom to determine how their local and state governments spend the money collected in taxes. However, it is important to note that some of the claims made by proponents are widely exaggerated in terms of Colorado's history of taxation. The CML Guide to TABOR points out that there are already "several preexisting state and local laws and charter provisions [that require] municipal voters to approve tax increases."[10] Furthermore, prior to TABOR passing, proponents believed that the government was "inefficient and hostile towards the interests of ordinary people." Though tax rates in Colorado were historically lower than that in other states even prior to the passage of TABOR, Colorado conservatives believed that further tax breaks would be of benefit.[11] Proponents also argue that as a result of TABOR, Colorado voters tend to be more informed than those in other states. Though not a proponent of TABOR, Cary Kennedy, the Chief Financial Officer of Denver, pointed out that as a result of TABOR, Colorado voters are presented substantially more information about ballot initiatives than voters in other states[12], due to the provision in § 3 (b) that states: "At least 30 days before a ballot issue election, districts

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[10] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 1.
[11] New, *U.S State Tax and Expenditure*, 38.
[12] Cary Kennedy, interview by the author, Denver, CO, October 20, 2015.

shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or sets of notices addressed to 'All Registered Voters' at each address of one or more active registered electors."[13] Still, though, Kennedy also notes that the ballot initiative process can be confusing to voters and the initiative itself can be quite complex as well, which potentially undercuts the gains made by the additional education required by TABOR.[14] Despite these confusions, though, revenue change initiatives have been more successful than anybody could have predicted before TABOR was passed. In municipal elections, "voter approved revenue change" questions have been approved more than 90% of the time that they are submitted.[15]

Critics of the bill claim that TABOR has made Colorado governments ineffective. Patrick Rondinelli, the City Administrator of Ouray and a particularly harsh critic of TABOR, states that there are "flaws in the formulas associated with TABOR." He points out that the "ratchet-down effect" (discussed later in the paper) makes it extremely difficult for municipal governments to rebound after a recession. Moreover, when asked if he believed that TABOR allowed voters to be more informed, he said no, stating that the confusion caused by the legal requirements in the wording of the questions make the ballot initiatives too difficult to understand. Rondinelli criticized how "good ideas and good plans go down in elections because people do not take the time to educate themselves."[16]

Other agencies have strong criticisms of TABOR as well. The Bell Policy Center, a nonpartisan policy research group, conducted a study of TABOR in 2003 after 10 years of it

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[13] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).
[14] Kennedy, interview by the author.
[15] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 21.
[16] Patrick Rondinelli, interview by the author, Ouray, CO, October 14, 2015.

being in effect. The Bell Policy Center has three main criticisms of TABOR, stating that TABOR's revenue growth limit is too restrictive; that the ratcheting down effect makes cuts in governments permanent; that the restrictions in TABOR limit budget making flexibility; and finally that TABOR limits the ability of governments to use funds in good economic years to save for times of recession.[17]

Overall, the effects of TABOR are probably not nearly as drastic as critics may suggest, although it is important to note that TABOR has undeniably created difficulty for local governments. Prior to the passage of TABOR, many critics of the bill suggested that extreme difficulties would be faced, but ultimately those effects were diminished by the surprising rate at which voters have chosen to allow the government to retain revenue.

The "Ratchet Down" Effect

One of the key components of TABOR is that it not only sets a ceiling on the revenue that a municipality may collect or spend, it requires for the readjustment of revenue on a year to year basis. TABOR § 7 regulates how governments may adjust their spending limits on a year to year basis.

§ 7 (a) states: "The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991." § 7 (b) states: "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." § 7 (c) states: "The maximum annual percentage change in

[17] The Bell Policy Institute, *Ten Years of TABOR* (Denver, CO: Bell Policy Center, 2010), [Page 2].

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."[18]

The CML guide to TABOR points out that, when looking at these provisions, "there is no provision whatsoever for 'income averaging' or otherwise accounting for cyclical revenue swings that may occur over a multiyear period." The issue that this raises is that when a municipal government's revenue declines in any year, the revenue cap will decline for the following year. Then, if the revenues rebound in any consecutive year – even if it only rebounds to the revenue level that the municipality enjoyed prior to the decline – the revenue cap will remain at the lower level. Thus, the municipal government will be required under TABOR to refund all excess revenue.[19] Essentially, this means that the government will be operating as if the local economy is always in a down year, even when the economy rebounds.

The CML Guide to TABOR points out that the best way to avoid the ratchet down effect is for municipalities to stabilize the revenue base on a year-to-year basis. This can be done by using predictors to determine when the economy of the locality is going to have positive or negative years of fiscal growth. If a year is predicted to be a "down" year, revenue can be reallocated from the previous or next year into the revenue base of the "down" year.[20]

Just like the revenue base, under TABOR, the tax rate will also ratchet down. If a municipality chooses to lower its tax rates as a result of receiving excess revenue, it is important to note that to raise the tax rate again, voter approval is required. Therefore, if a city does choose

[18] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).
[19] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 16.
[20] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 16.

to lower its tax rate, it runs the risk of having its base ratchet down if the municipality has a down year.[21] Another difficulty that some municipalities have to deal with in regards to tax revenues declining comes from TABOR's ban on mill levy increases on property taxes. This creates difficulty because if in years where property tax revenues fall – even with the percentage tax rate remaining constant – the municipal governments will be limited in the revenue they collect. TABOR's prohibition on mill levy tax increases in order to keep revenue constant means that if property values fall and causes the municipality's revenue to fall below the TABOR ceiling, the ceiling will ratchet-down as a result – even when property values rise again.[22]

Overall, the ratchet-down effect imposed by TABOR has been shown to create difficulties for local municipalities. However, it is important to note that it is possible to take actions to stabilize the local economy and prevent the revenue ceiling from falling.

Property Taxes and TABOR

TABOR places limitations on the amount of property tax percentages that can be obtained by municipalities. TABOR sets a strict 5.5 percent limit on municipalities for collecting property taxes[23]. This limit is in addition to the TABOR revenue spending limit, and appears to be redundant as any property taxes collected in excess of the TABOR specified revenue cap would have to be returned to the citizens anyway. TABOR also sets a few kinds of property taxes that are prohibited from being voted upon including real estate transfer taxes, state property

[21] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 17.
[22] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 26.
[23] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 26.

taxes, and emergency property taxes.[24] This ban on emergency property taxes can create an issue for local governments that need funding during times of economic and natural crises.

It should be noted that a court ruled in 2001 that a single all-encompassing ballot question was ruled to have both allowed the municipality to get rid of the 5.5 % property tax limit, and allow the government to retain revenues in excess of the limit.[25] By wording a ballot initiative question in a broad enough form local governments can potentially knock out two birds with one stone, and retain excess revenue and increase property taxes simultaneously.

TABOR Guidelines on Borrowing and Emergency Funds

Prior to TABOR, debt was defined in Colorado as a transaction in which "a municipality pledged the full faith and credit of the government by promising to raise taxes as necessary to pay debt service."[26] Although TABOR did not redefine "debt," it did impose new restrictions on the government's ability to borrow money. § 4 (b) of TABOR states: "Starting November 1992, districts must have voter approval in advance for:…Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligations whatsoever without present cash reserves pledged irrevocably and held for payments in all fiscal years."[27]

This extends further than the traditional definition of debt. As a result of this wording, there are now several different types of multi-year financial obligations that were not considered to be debt before TABOR. For example, revenue bonds – which are a certain type of bond that is

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[24] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).
[25] Wilbur v. Board of County Commissioners of La Plata County, No. 00CA1038 (Colorado Court of Appeals Aug. 16, 2001).
[26] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 34.
[27] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).

"repaid from revenue derived as a result of improvements to be funded by the bonds or from any other special revenue source," – were not previously considered debt under Colorado law, but fell into the category of multi-year financial obligations.[28] However, there are several key exceptions to this rule to note, most of which are explicitly stated in § 4 (b). § 4 (b) explicitly states that cash reserves may be held and used for future obligations without voter approval. It also states that "refinancing bonded debt at a lower interest rate" is exempt, as well as financing new government employees on district pension plans.[29] Lease-purchase agreements, which are "transactions that were subject to annual appropriation or were subject to annual termination or nonrenewal by the local government,"[30] were made exempt shortly after the passage of TABOR by the General Assembly. After being challenged in the courts several times, it was ruled that a lease-purchase agreement can be passed without voter approval if there is a "non-appropriation clause clearly providing that the municipality has no obligation to continue the agreement in future years."[31]

TABOR also regulates emergency funds very strictly. § 5 of TABOR states: "To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve," where "emergency" explicitly is stated in § 2 (c) not to include "economic conditions, revenue shortfalls, or district salary or fringe benefit increases."[32]

[28] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 37.
[29] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 37-38.
[30] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 34.
[31] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 36.
[32] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).

TABOR is much more restrictive when it comes to emergency taxes. § 6 of TABOR explicitly states "Emergency property taxes are prohibited." However, TABOR does allow for the collection of other taxes, though under very strict regulation. For an emergency tax to be imposed on citizens, it must meet the criterion set forth in TABOR § 6 (a) through (c). These provisions require that "a 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency;" "Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency;" and, finally, that "A tax not approved on the next election date 60 days or more after the declaration shall end with that election month."[33]

Issues with TABOR Ballot Initiatives

There are multiple forms of ballot propositions for exempting local governments from TABOR's rules, and each form of ballot proposition presents its own inherent difficulties.

The most common and successful form of ballot initiative allows revenue in excess of TABOR's limit to be kept by the local government instead of being returned to the citizens, known as "de-Brucing" many of its issues arise from misinformation of its purpose. "De-Brucing", a play on the name of Douglas Bruce who led the charge on the TABOR amendment, allows local governments to keep instead of return revenue in excess of TABOR's specified limit. Many voters believe that "de-Brucing" allows the local government to take away their right to vote on taxes, or even to increase taxes. These assumptions are false, "de-Brucing" only allows local governments to keep excess revenue collected instead of returning it to their citizens. A well written "de-Brucing " question will calm ill-informed fears, address starting and

[33] The Taxpayer's Bill of Rights, Colo. Rev. Stat. Ann. §§ X-20 (1992).

ending dates for the revenue exemption, and state whether there is a fiscal limit associated with the measure. Successful "de-Brucing" questions must accurately inform voters not only how "de-Brucing" will affect their area, but also that it is not taking away their right to vote on taxes or increasing their taxes.

Voter approved initiatives involving taxes are typically met with less success than revenue allocation measures, and involve more complicated ballot questions. As of the spring of 2015 tax related ballot measures have been successful only 57.1 percent of the time.[34] TABOR § 4 divides tax increases into six types of taxes: new taxes, tax rate increases, tax extensions, tax policy change, mill levy increases, and increased assessment valuations. One issue associated with the creation of new local governments is that all taxes for these governments must be voted on in compliance with TABOR; without the approval of various new taxes these new governments may be unable to get off the ground. Mill levy restrictions provide their own unique set of problems. TABOR § 4 requires voter approval for a "mill levy above that for a prior year". Before TABOR, interannual variability in property valuations had little effect on revenue collected due to very fluid mill levy rates. Now on years where property valuations decrease the city is unable to raise the mill levy without a vote, and this can put them at risk of losing revenue and potentially the "ratchet down effect". An interesting note about tax extensions is that they are often much better received than are new taxes; one key to success may be extending taxes through ballot processes rather than having them run out and presenting it as a new tax.[35]

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[34] Colorado Municipal League, *Municipal Tax/ Tax Rate Questions*, CML TABOR.
[35] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 49.

Case Studies and the Effect of TABOR on Municipalities

Although TABOR is an amendment to the Colorado state constitution, TABOR still regulates how local governments can operate in terms of collecting and spending revenue. It is commonly mistaken that local governments have the ability to opt out of TABOR; however, this is not possible for municipalities, as the state constitution overrides that of municipal governments.[36] As a result, local governments must learn to deal with the restrictions set forth by TABOR.

In our research, we interviewed officials from four local governments that have been affected by TABOR to use as a case study. We interviewed Cathy Noon, who is the mayor of Centennial; we interviewed Cary Kennedy, who is the Chief Financial Officer for the City and County of Denver; we interviewed Matt LeCerf, who is the Town Manager of Frederick; and, lastly, we interviewed Patrick Rondinelli, who is the City Administrator of Ouray. We believe that these four towns give us a good sample of different types of municipalities across Colorado. All four of these municipalities have passed different "de-Brucing" measures of various scopes, and therefore have had the experience of dealing with TABOR both with and without relief from the restrictions set forth. In our research set, we have Ouray, which is a small mountain town that is heavily reliant on tourism; we have Centennial, which is a medium-sized town with an older demographic; we have Frederick, which is another small mountain town that was formed as a mining town; and lastly, we investigated Denver, which is Colorado's largest city by population.

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[36] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 22.

Case Study of Ouray

The town of Ouray is a very small town in southwestern Colorado, with a population estimate of about 1,021 people. The estimated median age is 48.8 years old with an average household income of $63,750.[37] Its main industry is tourism, and receives a large proportion of its revenue from the local hot springs.[38]

In our case study, Ouray was particularly interesting because of the fact that they had two failed ballot initiatives that were proposed in 1994 and again in 2006, until they finally did manage to pass a de-Brucing measure in 2014.[39]

Prior to the de-Brucing measure that was passed in 2014, Ouray had been struggling economically. As a result of fluctuating property taxes, between 2006 and 2014, the property tax was ratcheted down to 2%, causing the city of Ouray to lose $1.1 million during that time,[40] losing between $120,000 and $150,000 per year. Rondinelli told us that as a result of the money that the city was losing from the general fund on a yearly basis, they were forced to use their enterprise fund to fund basic city services. The town's enterprise fund comes from government owned businesses that make money from fees. Since these businesses do not make their money from taxation, the revenue in the enterprise fund is not subject to TABOR restrictions. Because Ouray has strong tourism, they had a strong enterprise fund from the fees charged by the hot springs. This allowed the city to stay afloat despite the poor general fund, but not without going over a million dollars into debt.[41]

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[37] American FactFinder, "Ouray City Community Facts," in *United States Census Bureau*, accessed November 14, 2015, http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.
[38] Rondinelli, interview by the author.
[39] Rondinelli, interview by the author.
[40] Sheridan Block, "City to Make Third Attempt to De-Bruce," *Ouray City Plaindealer*, September 4, 2014, [Page 3].
[41] Rondinelli, interview by the author.

The measure proposed in 2014 effectively de-Bruced all property taxes in the city of Ouray, with the ballot initiative reading: “Provided that no mill levy shall be increased, above the preserved mill levy of 13.585 for general operating expenses, without further voter approval, shall the City of Ouray be authorized to collect, retain and spend all excess revenues from property taxes received in 2015 and each subsequent year, without regard to any revenue or expenditure limitations including those contained in Article X, Section 20 of the Colorado Constitution (TABOR)?”[42]

Patrick Rondinelli claims that the failure of the 2006 amendment was due largely to a lack of education on the ballot initiative. A harsh critic of TABOR, Rondinelli stated that TABOR is difficult to deal with because the requirements for the ballot initiatives are extremely confusing, and difficult for the voters to understand. Thus, he claims, the voters are much more prone to pay attention to misleading TV and radio ads because many voters simply do not take the time to educate themselves on the ballot initiatives. In 2014, though, advocates for the measure did a better job of educating the public. Rondinelli says that recently the city council members in Ouray have been effective and have gained a lot of credibility in the community. As a result, when several of them went out to talk about the measure, it was more effective. After the de-Brucing measure, Ouray was able to reduce its debt and rebuild its general fund and reserves, while also maintaining the city parks.[43]

[42] Block, "City to Make Third," [Page 3].
[43] Rondinelli, interview by the author.

Case Study of Frederick

The town of Frederick is a relatively small town in Colorado with a population estimate of about 10,927 people. It has an estimated median age of 33.6 and an average household income of $81,015. The main source of income in the town is manufacturing and wholesale trade, with the two of them combined comprising 68.6% ($392,789,000) of Frederick's total value of sales, shipments, receipts, revenue, or business done ($572,864,000).[44] In 2013 the city of Frederick successfully "de-Bruced" from TABOR by passing ballot measure 2A which allowed the city to keep all revenue in excess of TABOR limits for use on city parks, street maintenance, and funding for the Frederick Police Department.

We interviewed Matt LeCerf, the town manager of Frederick, to determine what effect TABOR was having on the city and why they sought relief from TABOR. Before passing ballot measure 2A the local government was having difficulty providing some of the basic services to its citizens. In particular the city was unable to fund capital improvement projects and basic infrastructure upkeep was struggling such as maintaining city streets to a high standard. There was a worry that in the future they would be underfunding programs such as the police department, which would become a public safety issue. Matt LeCerf was quoted as saying that "if we're are unable to provide funding to replace a police car because of TABOR, that's a public safety issue, that puts the entire population at risk"[45] .

The city was also undergoing the stresses associated with the "ratchet down" effect. Economic activity varies year to year and peaks and valleys in revenue collected were affecting

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[44] American FactFinder, "Frederick Town Community Facts," in *United States Census Bureau*, accessed November 14, 2015, http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.
[45] LeCerf, Interview by Author

the city's overall budget. The years of low economic activity were providing less and less revenue to be collected, and affecting the budget even on economically active years. This limited revenue was even effecting the ability of the local government to provide pay for city employees. The ever limited amount of revenue able to be spent by the city was affecting the local governments' ability to provide services to its citizens, and provide for funding for necessary municipal jobs.

According to Matt LeCerf the key to success in this ballot measure was a successful education of the public. Educating the citizens on not only what the excess revenue would be used for, but also the negative effect TABOR was having on their community allowed this ballot measure to pass. The city of Frederick used blue books containing accurate information on the ballot measures to educate the public, and prevent misinformation that often spreads when knowledge is spread through word of mouth. All funding that has been retained after passing the ballot initiative has been used for improvement and maintenance of parks, infrastructure such as roads, and to fund needs of the local police department.

Case Study of Denver

The city of Denver is Colorado's largest city in terms of population, with an estimated population of 663,862 people. It has an estimated median age of 33.8 and a median household income of $50,313.[46] Denver has a wide variety of industries that it supports, including manufacturing, international banking, air traffic, and telecommunications, among many others.[47]

[46] American FactFinder, "Denver city Community Facts," in *United States Census Bureau*, accessed November 14, 2015, http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.
[47] "Denver: Economy," City Data, last modified 2009, accessed November 14, 2015, http://www.city-data.com/us-cities/The-West/Denver-Economy.html.

From Denver, we talked to Cary Kennedy, who is the city's Chief Financial Officer. The city of Denver passed a de-Brucing measure in 2012. Prior to the de-Brucing measure, Kennedy said, Denver had been struggling to maintain economic growth. In fact, it was becoming difficult for Denver to maintain its public services. Libraries were forced to cut back hours, the road repaving schedule was delayed, parks were falling into disrepair from a lack of maintenance, and children who were on public subsidies were put on waitlists. Ultimately, TABOR was preventing Denver from keeping up with real growth in the economy, she stated.[48]

Measure 2A allowed the city government to retain funds of $44 million annually and $68 million over time from revenue that would have been refunded to the tax payers in the form of a property tax credits, according to the Denver Chamber of Commerce. Opponents of the measure claimed that 2A limits the ability of citizens to control the growth of government. Critics also claimed that the increase in property taxes would limit growth on commercial enterprises.[49] Ultimately, 2A passed with an overwhelming majority vote of 74%.[50]

Cary Kennedy believes that the passage came as a result of several factors. She said that citizens in Denver were witnessing their city services reduced, and wanted to see them restored. Additionally, she said that there is strong support for the Denver city government, and citizens recognize that they still retain the right to vote on taxes. As a result of the passage of 2A, Kennedy says that Denver was able to restore many of the city's services, such as opening the libraries up again, funding the police and fire departments, resuming the road paving schedule,

[48] Kennedy, interview by the author.
[49] Mark Ver Hoeve, "Denver Measure 2A: Vote No on Measure That Would 'De-Bruce' the Budget," The Denver Post, accessed November 14, 2015, http://www.denverpost.com/ci_21701317/no-tabor-keeps-city-spending-check.
[50] Denver Metro Chamber, "Denver Measure 2A," Denver Metro Chamber of Commerce, accessed November 14, 2015, http://www.denverchamber.org/policy_committees/2012_ballot_measures.aspx.

maintaining the city parks, and also introducing a plan for the “My Denver Card,” which allows local children free access to city recreation centers and pools.[51]

Case Study: Centennial

The city of Centennial is a large suburb, with a population of over 100,000 people, located just south of the greater Denver metropolitan area[52]. Centennial was incorporated in the year 2001, and because of this they start with a TABOR limit of $0, and any and every new tax must be voted upon. In 2013 Centennial “de-Bruced” all revenue notwithstanding revenue obtained from recreational marijuana sources. Marijuana derived sales taxes will be on the ballot to be “de-Bruced” in 2015.

Before passing the ballot initiative in 2013 funding for Centennial was complicated. Past ballot initiatives had “de-Bruced” property and sales taxes, and Centennial was receiving money from the Arapahoe County government, which had its own TABOR restrictions. To simplify the process the Centennial government asked its citizens to “de-Bruce” all revenue, and its citizens responded positively, successfully passing the ballot initiative with a majority.

There are a number of reasons that the ballot measure may have passed, but Cathy Noon, Mayor of Centennial believes it’s due to a trusted local government, and a highly involved populace. Noon believes that city of Centennial has an average voter that is both older and more politically engaged than an average Colorado voter[53]. Centennial’s elections have high voter turnout rates, and the local government has very high approval ratings. Noon believes that

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[51] Kennedy, interview by the author.
[52] American FactFinder, "Centennial city Community Facts," in United States Census Bureau, accessed November 14, 2015, http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.
[53] Noon, interview by the author

because the local government has a balanced budget, and has spent voter's money wisely in the past they were able to easily pass a "debrucing" measure. The trust in the local government combined with a public that is well educated on the effects of TABOR allowed the city of Centennial to "de-Bruce".

Differences between Successful and Unsuccessful Ballot Initiatives

If a municipality is struggling from TABOR restrictions, then, in many cases, the best option may be to propose a ballot initiative that grants the municipal government more revenue. If a municipality does choose to propose a ballot initiative, there are several keys between ballot initiatives that wind up passing and those that end up failing.

The first, and most important, key to having the best chance at passing a ballot initiative to relieve a municipality from some TABOR restrictions is to propose a revenue retention measure, rather than a tax increase. Since TABOR has been in effect, hundreds of ballot initiatives have passed allowing for revenue retention, with over 90% of retention measures proposed being passed[54], while only 57.1% of tax increases have passed.[55] The CML guide to TABOR points out, "On the rare occasion when a revenue change question has been defeated in a municipality, it has sometimes been retooled and resubmitted, and then has been approved on the second go around."[56] Assuming that the rate at which a revenue retention measure is passed remains constant and is independent of the number of times that it is proposed, we can configure that a revenue retention measure will have approximately a 99% chance of passing within its first two times proposed. This fact has made it substantially easier than most people would have predicted prior to TABOR's passage in 1992 for municipalities to maintain the revenue that would have been otherwise refunded to the tax payers.

Second, it is recommended that a municipality choose to propose a revenue retention measure using an ordinance rather than a resolution. The main difference between an ordinance

[54] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 3.
[55] "Municipal Elections," table, Colorado Municipal League, Fall 2015, accessed December 11, 2015, http://www.cml.org/issues.aspx?taxid=11107.
[56]Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 3.

and a resolution and an ordinance is that "A resolution deals with matters of a special or temporary character and an ordinance prescribes some permanent rule of conduct or government to continue in force until the ordinance is repealed."[57] In the context of TABOR resolutions, what this means is that an ordinance, if passed, will typically be more permanent than a resolution, thereby allowing the government to retain funds for longer. Second, an ordinance must be overturned or amended by another ordinance, which makes it more difficult than a resolution to change. Third, ordinances tend to allow more broad changes, which can make it easier for municipalities to spend retained revenue.[58]

The wording of the initiative is also key to ensuring that the wording of the question is conducive to the ballot initiative passing. This can sometimes be a problem as a result of the legal requirements of what must be put onto the ballots. Patrick Rondinelli found this particularly frustrating in our interview with him, claiming that ballot initiatives are often extremely confusing and hard to understand.[59] Still, though, there are certain things that municipalities can do to help the measure's chance of success. First of all, the ballot initiative should specifically make sure to reference that it is indeed a "voter approved revenue change" and not a tax increase. It may be beneficial to add that taxes cannot be increased without the approval of voters.[60] Cary Kennedy of Denver promotes this line of thinking, claiming that a big reason that Denver's de-Brucing measure passed was because citizens recognized that their right to vote had not been infringed.[61] Second, it is important for the municipality to reference where the revenue is being de-Bruced from, as well as the intended allocation. The intended allocation of the excess revenue

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[57] "Ordinances, Resolutions, and Other Legislation," US Legal, accessed November 14, 2015, http://municipal.uslegal.com/ordinances-resolutions-and-other-legislation/#sthash.Mn7Dkv4C.dpuf.
[58] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 23.
[59] Rondinelli, interview by the author.
[60] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 23.
[61] Kennedy, interview by the author.

is considered "earmarks." Different initiatives have earmarked their ballot initiatives in different ways, and there doesn't seem to be a pattern as to whether more broad or more specific earmarks are more successful. Some municipalities choose to be exceptionally broad about what the revenue will go towards, while some have been very specific about the allocation of funds, and all types of measures have passed. The CML Guide to TABOR mentions that the extent to which earmarks are specified is "a political decision."[62]

Another key component to successful ballot initiatives typically are the avoidance of property taxes. People tend to be more "sensitive" about property taxes than other forms of taxes[63], and so measures that have allowed for the retention of property taxes have typically been met with more opposition than those without. This opposition is understandably unavoidable. Policy expert Kenneth Bickers points out: "Property taxes are insensitive to how much income people earn, especially elderly people whose income may be fixed, even though their property becomes more valuable. They generally resist – and understandably so – having to sell their property as a way of making tax payments."[64] As a result, many of the previously mentioned hundreds of revenue retention ballot initiatives that have been passed since TABOR went into effect have explicitly removed property tax revenue from the proposal.[65]

As for other ways to promote the successful passage of ballot initiatives, that depends on the political climate of the municipality. Many of the city officials that we chose to interview claimed that the passage of their ballot initiative ultimately came down to one thing: trust in the municipal government. Cathy Noon from Centennial points out that the city of Centennial has

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[62] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's,* 23-24.
[63] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 25.
[64] "Walker and Hartman Paper," November 15, 2015.
[65] Wilson and Broadwell, *TABOR: A Guide to the Taxpayer's*, 25.

historically been good with tax dollars. The city has no debt, she says, and the strong record with the city's money has allowed the citizens of Centennial to trust the municipal government.[66] Patrick Rondinelli from Ouray says that in recent years, the city council members have earned a lot of credibility, and, as a result, were more willing to allow the municipal government to retain revenue.[67]

Another factor that some of the city officials pointed out as being helpful to the passage of revenue change initiatives is the education of the public. Cathy Noon pointed out that as a result of Centennial's older demographic and because the town was created only 15 years ago, a lot of the citizens are more educated about ballot initiatives, and they have a high voter turnout.[68] On the other end of the spectrum, Patrick Rondinelli believes that the reason why the ballot initiative in 2006 was not successful was because the citizens of Ouray were simply not informed and found the ballot initiatives confusing. He said, "Good ideas and good plans go down in elections because people don't take the time to educate themselves."[69] Another factor in the education of the public is simply an engaged public. Matt LeCerf from Frederick pointed out that his city took a bottom-up, grassroots approach to promoting their de-Brucing measure, and therefore had a high level of citizen engagement.[70]

Ultimately, there are a broad variety of factors that contribute to a ballot initiative's passing or failing. Certainly, there isn't a "one size fits all" approach to passing revenue retention measures. If a municipality does choose to go the route of creating a revenue retention measure, it is critical to take into account various factors that may influence a bill's passing. The city's

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[66] Kennedy, interview by the author.
[67] Rondinelli, interview by the author.
[68] Cathy Noon, telephone interview by the author, Centennial, CO, October 14, 2015.
[69] Rondinelli, interview by the author.
[70] LeCerf, telephone interview by the author.

size, its level of citizen engagement, and the political climate are all important factors. That being said, a city can take steps to maximize the likelihood of passing a ballot initiative.

Conclusion

Our research has found that TABOR results in many difficulties for local governments, and many of its restrictions can be exacerbated by the "ratchet down" effect, and the public's opinion of the amendment. However, if a local government decides to mitigate the effects of TABOR there are steps to take to pass a successful ballot measure removing some of TABOR's restrictions. Through our research in four Colorado municipalities affected by TABOR we discovered a few recommendations for those that would like to reduce the restrictions brought about by the Tax Payers Bill of Rights. "De-Brucing" measures rather than tax increases are more likely to be successful, and avoiding contested topics such as property taxes can be essential to passing a ballot measure. Successfully educating the public about the pros and cons of a ballot measure, and wording a question in a way that taxpayers understand their rights will not be limited are two ways to improve the chance of success of a ballot measure. By considering all aspects of how TABOR effects a community, and then creating a ballot measure that is crafted to the specific needs of a municipality and its populace we can reduce the negative impacts that TABOR has on local governments.

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