

DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO

Civil Action No. 93CV423, Division MCV

AMICI CURIAE BRIEF OF THE COLORADO MUNICIPAL LEAGUE AND THE
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, INC. IN
SUPPORT OF DEFENDANT CITY OF WHEAT RIDGE

CARL CERVENY, GEORGE J. LANGDON and KENNETH K. SILER,

Plaintiffs,

vs.

CITY OF WHEAT RIDGE,

Defendant.

COMES NOW the Colorado Municipal League (the "League") and the American Civil Liberties Union Foundation of Colorado, Inc. ("ACLU of Colorado"), by their undersigned attorneys, and in their role as amici curiae present to the Court the following regarding the statewide practical effect of the legal arguments raised in the within action.

SUMMARY OF AMICI ARGUMENT

1. The issue presented at this juncture in this case is whether a preliminary injunction should be entered to enjoin the City of Wheat Ridge from proceeding with a special election set for May 4, 1993, or whether Art. X, Section 20 of the Colorado Constitution prohibits such election until the first Tuesday in November, 1993.

2. In Colorado the state constitutional rights of the people to petition and initiate laws is fundamental. These are not rights

which have been granted by government to the people. Rather the people have reserved these rights to themselves. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980). Accordingly, petition and initiative rights must be liberally construed to support their exercise, and laws threatening limitations to such rights must be carefully examined. Margolis v. District Court, 638 P.2d 297 (Colo. 1981). This is all the more true when cities have enacted their own ordinances protecting those rights. See Witcher v. Canon City, 716 P.2d 445 (Colo. 1986).

In addition to providing citizens the right to vote on a wide variety of issues, existing charter provisions and statutes provide citizens the right to exercise this power in a timely manner. The ballot title before the voters on November 3, 1992, which adopted Art. X, § 20 specifically stated it was "to allow additional initiative and referendum elections . . ." Amici seek to preserve the right of citizens to petition their government and have timely resolution of issues as these rights existed prior to November 3, 1992.

In this case the court should not use its extraordinary powers to interfere with the exercise of those rights because of the claim that a recently enacted amendment, which by its very title promised to protect the voting rights of the people, supposedly destroys those fundamental reserved rights.

FACTUAL ISSUES

3. Colorado municipalities historically have constitutional, home rule charter, and statutorily required special elections at times other than state general elections, their local biennial elections, and the first Tuesday in November of odd-numbered years. These elections are derived from statutes implementing Article V, §1(9), Colorado Constitution (Initiative and Referendum), and Article XX, §6.d., Colorado Constitution (Home Rule). Examples of statutory provisions which require elections within a specific time period include:

C.R.S.

1-40-115(2)	Referendum	election required within 60-150 days after receipt of petition
1-40-116(2)	Initiative	election required within 60-150 days after receipt of petition
31-2-204(2)	Formation of Charter Commission	election required within 150 days of ordinance or receipt of petition
31-2-207(1)	Adoption of Home Rule Charter	election required within 150 days of receipt of charter draft from charter commission
31-2-210(4)	Amendment of a Home Rule Charter	election required within 60-150 days of ordinance or receipt of petition
31-4-103(1) & 31-4-108(2) (b) & 31-4-303	Filling vacancies of mayor, council, or trustee	election required as soon as practicable if appointment by council not made within 60 days of vacancy
31-4-202(1)	Reorganization of Form of Government	election required within four months of receipt of petition

31-4-301.5(2) Towns reducing the number of trustees from four to six or increasing the number from four to six

election required within four months of receipt of petition

and

31-12-112

Annexation Election election required "forthwith" after determination that annexation election required

Additional statutory requirements for elections, that do not set a time period for holding such elections include C.R.S. § 31-15-713(1)(a) which requires an election prior to selling and disposing of public utilities, buildings, park property, and real property used for government purposes. In addition, many of the 69 home rule charters in the state require municipalities to have elections prior to disposing of public property, prior to awarding franchises, and within a specified time (usually 30 to 120 days) after receiving an initiative or referendum petition.

4. Since November 3, 1992, at least 22 municipalities have received initiative or referendum petitions, had vacancies occur on councils, had franchises expire, and had the opportunity to sell public property. As a result they have been asked to determine whether Art. X, § 20 restricts their ability to conduct elections required by their charters or by state statute on these issues. Specifically, the issues that Colorado municipalities have faced in the past four months include referenda on land use decisions; new or renewed cable television and electrical service franchises; and initiated ordinances for creation of home rule charter

commissions, home rule charter amendments, sale of public property, changing the use of designated public funds, ordinances regarding sexual orientation, sales of public property, demolition of public buildings, and construction of public golf courses. There has been at least one special municipal election held on an initiated ordinance since November 3, 1992.

5. The interpretation urged by the Plaintiffs would result in the foregoing statutory and home rule charter provisions being repealed by implication, thus dramatically circumscribing the existing rights of citizens. Such a result is in direct contradiction of what the electorate understood to be the effect of the amendment and the ballot title before the voters.

Legislative Interpretation of
Election Provisions of Art. X, § 20

6. Senate Bill 93-98 ("SB93-98") has been adopted by the Colorado Senate and passed on second reading in the Colorado House of Representatives. A certified copy of SB93-98 is attached hereto and incorporated herein. SB93-98 is the legislative interpretation of Art. X, § 20 for purposes of the additional elections allowed under that amendment. The Colorado General Assembly adopted House Joint Resolution 93-1011 to request that the Colorado Supreme Court consider SB93-98 as finally adopted and determine the constitutionality thereof. A certified copy of HJR93-1011 is attached hereto and incorporated herein.

7. Exercising its legislative power to resolve ambiguities in Article X, §20, the General Assembly determined in SB93-98 that:

The submission of issues at elections in November of odd-numbered years in accordance with this section, or at other elections as provided in Section 20(3)(a) of Article X of the state constitution, shall not be deemed the exclusive method of submitting local issues to a vote of the people, and nothing in this section shall be construed to repeal, diminish, or otherwise affect in any way the authority of local governments to hold issue elections in accordance with other provisions of law. (SB93-98, page 7, lines 17-24)

8. The contemporaneous interpretation of a constitutional amendment by the General Assembly should be given great weight by the courts in construing the amendment. People ex rel. Bentley v. LeFevre, 21 Colo. 218, 40 P. 882 (1895); City Council v. Board of County Commissioners, 33 Colo. 1, 77 P. 858 (1904); Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950). Applying SB93-98 to the election which is the subject of this proceeding, no preliminary injunction is warranted, and the citizens of Wheat Ridge would be allowed to proceed with the election set for May 4, 1993.

PRE-ELECTION DEBATE

9. Attached hereto as Exhibit A is a copy of An Analysis of 1992 Ballot Proposals (Research Publication No. 369, 1992), prepared by the Legislative Council of the Colorado General Assembly. The summary of TABOR appears on pages 6-12 of the Analysis. The summary contains no discussion of any mandatory change of State and local government election dates, no discussion of any effects on Article V, Section 1 or on any other election

provision of the Constitution, and no discussion of any limitations on local government voter rights on non-TABOR issues.

Instead, the summary describes in detail the substance of the tax, spending, and debt limitations of TABOR as well as the arguments for and against those tax, spending and debt limitations. TABOR was described in pre-election debate as a measure which gives voters greater control over the tax, spending, and debt powers of the State and local governments. The Court's duty in construing the Constitution is to give the effect to the electorate's intent in enacting the amendment. Carrara Place, Ltd. v. Board of Equalization, 761 P.2d 197 (Colo. 1988). An accepted method of determining that intent is to review the Legislative Council's summary of the amendment, which is published statewide for the benefit of the voters prior to the general election. Id.

10. Art. X, § 20 was on the November 3, 1992, general election ballot as Amendment One. The ballot title provided that the amendment was ". . . to allow additional initiative and referendum elections . . ." The Amendment was titled the "Taxpayers Bill of Rights" or "TABOR" by the petition drafters. Neither the title nor the pre-election debate gave notice to the voters that the amendment was to be used for anything other than tax related issues. Certainly neither notified the electors that the amendment would be used to provide citizens less rather than more ballot-box control of their government.

INCORPORATION OF LEGAL AUTHORITY

11. The Plaintiffs cannot demonstrate any of the six elements they are required as set forth in Rathke v. MacFarlane, 648 P.2d 648 (Colo. 1982) in order for this Court to enter a preliminary injunction enjoining the May 4, 1993 election. Amici adopt and incorporate herein the legal arguments contained in Wheat Ridge's Response to Motion for Preliminary Injunction, With Incorporated Authorities.

WHEREFORE, Amici urge this Court to preserve the right of citizens to directly participate in their government by timely resolution of initiated ordinances, deny the request for preliminary injunction, allow the City of Wheat Ridge to proceed with the election scheduled for May 4, 1993, and interpret Article X, Section 20 to allow special elections at times other than the three election dates set forth therein consistent with the position argued by the City of Wheat Ridge and adopted by the Colorado General Assembly in Senate Bill 93-98.

Respectfully submitted this 11th day of March, 1993.

COLORADO MUNICIPAL LEAGUE

By: 

Geoffrey T. Wilson, #11574
David Broadwell, #12177
1660 Lincoln St., Suite 2100
Denver, CO 80264
(303) 831-6411

ATTORNEY FOR APPLICANT
COLORADO MUNICIPAL LEAGUE

ACLU OF COLORADO

By: 

David H. Miller, #8405
Legal Director
815 E. 22nd Ave.
Denver, CO 80205
(303) 861-2258

James A. Windholz, #1253
1650 38th St., Suite 103-W
Boulder, CO 80301
(303) 443-3100

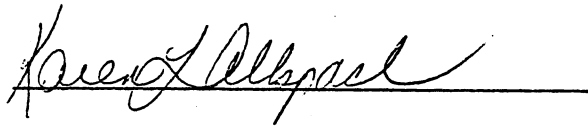
ATTORNEYS FOR AMERICAN CIVIL
LIBERTIES UNION FOUNDATION
OF COLORADO, INC.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 16th day of March, 1993, a true and correct copy of the foregoing AMICI CURIAE BRIEF OF THE COLORADO MUNICIPAL LEAGUE AND AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, INC. IN SUPPORT OF DEFENDANT CITY OF WHEAT RIDGE was placed in the U.S. mail, postage prepaid and addressed to:

Kevin B. Pratt, Esq.
480 Holly Sugar Bldg.
2 No. Cascade Ave.
Colorado Springs, CO 80903-1623

John E. Hayes, Esq.
Hayes, Phillips & Maloney, P.C.
1350 17th St., Suite 450
Denver, CO 80202

A handwritten signature in cursive script, appearing to read "Karen L. Allyn", is written over a horizontal line.

HOUSE JOINT RESOLUTION 93-1011

BY REPRESENTATIVES Berry, Anderson, Foster, Williams, Snyder, Armstrong, DeGette, Fleming, Friednash, George, Grampas, Greenwood, Hagedorn, R. Hernandez, Kerns, Pfiffner, Tanner, and Wright;
also SENATORS Norton, R. Powers, Johnson, Mutzebaugh, Roberts, Tebedo, Trujillo, and Wells.

WHEREAS, After the November, 1992, general election, the bipartisan leadership of the Fifty-ninth General Assembly set up a process whereby the members of the General Assembly could study and analyze the meaning and impact of section 20 of article X of the state constitution by holding a series of public meetings prior to the convening of the session on January 13, 1993; and

WHEREAS, The members of the Fifty-ninth General Assembly have formalized the high priority of legislative issues stemming from the approval of section 20 of article X by adopting special legislative deadlines for the consideration of implementing legislation; and

WHEREAS, The responsibility for determining the meaning and impact of section 20 of article X rests on all governmental officials, including the executive, legislative, and judicial branches of Colorado state government, and there is substantial uncertainty among government officials as to such meaning and impact; and

WHEREAS, The General Assembly, in the exercise of its legislative powers and functions, has the duty to enact legislation implementing section 20 of article X in order to address the uncertainty stemming from its provisions; and

WHEREAS, The enactment of section 20 of article X of the state constitution at the 1992 general election will require changes in the state's election laws; and

WHEREAS, Subsections (2) (a) and (3) of said section 20 appear to require that a ballot issue election be held on the first Tuesday of November in odd-numbered years; and

WHEREAS, It is not clear whether the odd-year election is restricted to ballot issues on taxation, spending, and debt issues arising under section 20 or whether that section permits ballot issues on any subject to be submitted; and

WHEREAS, The fact that the measure which added section 20 of article X did not specifically amend or rescind the preexisting provisions of the state constitution on the initiative, the referendum, and the submission of constitutional amendments by the general assembly has increased the uncertainty about the meaning of said section 20; and

WHEREAS, State and local election officials need guidance as to what subjects can be voted upon at the November, 1993, election and what election notice and time requirements apply; and

WHEREAS, Citizens who at this time are beginning the initiative process are in doubt as to whether they will be able to use the full six months to obtain signatures on their petitions as provided by section 1-40-104, Colorado Revised Statutes, or whether they will be required to complete signature gathering by August 2, 1993, which is three months before the first Tuesday in November, 1993; and

WHEREAS, Some local governments have scheduled special elections in the spring of 1993; and

WHEREAS, In order to respond to the need for clarification, Senate Bill 93-98 has been introduced in the Senate of the Fifty-ninth General Assembly, duly passed by the Senate, and duly passed by the House of Representatives on Second Reading; and

WHEREAS, Senate Bill 93-98 provides that only ballot measures on taxation, spending, and debt issues may be submitted at an odd-year ballot issue election; and

WHEREAS, If the provisions of Senate Bill 93-98 are unconstitutional, citizens may be deprived of their right to submit measures to the voters in 1993 and to obtain answers this year, instead of waiting until the general election in 1994, as to whether a particular public policy should be adopted; and

WHEREAS, It is in the interests of the people of this state to secure an answer to these constitutional issues at the earliest possible date and to avoid the prolonged litigation that would be required for a citizen who wishes to initiate a measure in 1993, or for a member of the General Assembly who wishes to sponsor a measure to be referred to the voters in 1993, to obtain redress; and

WHEREAS, The issues raised by Senate Bill 93-98 are strictly legal issues, involving the interpretation and construction of various sections of the state constitution, and no factual issues are likely to arise in the context of a private suit which would enhance the Supreme Court's ability to adjudicate these issues; and

WHEREAS, The General Assembly wishes to avert the serious frustration of public rights that would occur if Senate Bill 93-98 is unconstitutional and has therefore expedited its passage early in the 1993 regular session so that a response can be secured; and

WHEREAS, The General Assembly recognizes that, in submitting these interrogatories by joint resolution of the two houses, it is departing from its prior practice of submitting interrogatories by a House or Senate resolution, but it has elected to do so in order to demonstrate to the Supreme Court that both houses concur in the importance of the issues set forth below and the urgency of the situation described herein; now, therefore,

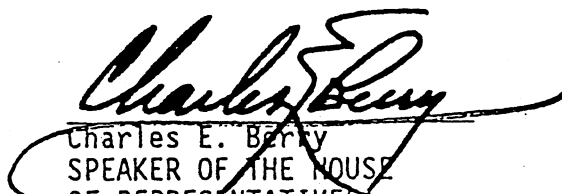
Be It Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

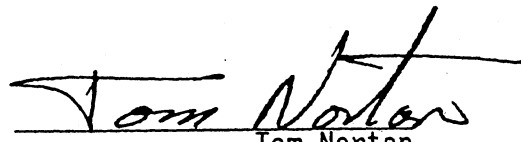
That, in view of the premises, there is an important question as to the constitutionality of Senate Bill 93-98, and it is the judgment of the House of Representatives and the Senate that the question of the constitutionality of Senate Bill 93-98 is a matter of extreme importance and public interest; that it is essential that an immediate judicial determination be secured; and that a solemn occasion within the meaning and intent of section 3 of article VI of the state constitution has arisen, and the House of Representatives and the Senate accordingly request the Supreme Court of the State of Colorado to render its opinion upon the following questions:

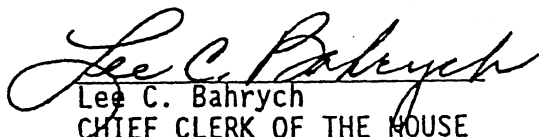
1. Can Senate Bill 93-98 constitutionally provide that the state and local measures which can be voted upon at the election in November in odd-numbered years shall relate solely to the taxation, spending, or debt matters treated in section 20 of article X of the state constitution, construing said section together with the remainder of the state constitution?

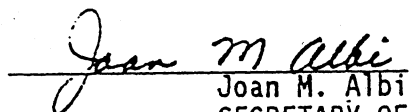
2. Does section 20 (3) (a) of article X prohibit local governments from submitting issues which do not relate to taxation, spending, and debt at other elections in accordance with current law? Does said section 20 (3) (a) prohibit local governments from submitting taxation, spending, and debt issues to the people in accordance with current law at elections other than the three enumerated elections?

Be It Further Resolved, That the Speaker of the House, immediately upon passage of this Resolution, shall transmit a certified copy thereof and a certified copy of Senate Bill 93-98 to the Clerk of the Supreme Court, and that the Committee on Legal Services be directed to furnish said Court with an adequate number of copies of this Resolution and said bill and to submit to said Court such further documents and briefs as the Court may require to expedite its procedure in the premises.


Charles E. Berry
SPEAKER OF THE HOUSE
OF REPRESENTATIVES


Tom Norton
PRESIDENT OF THE
SENATE


Lee C. Bahrych
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES


Joan M. Albi
SECRETARY OF
THE SENATE

STATE OF COLORADO

REVISED

BY SENATORS R. Powers, Norton, Bishop, Schroeder, and Trujillo;
also REPRESENTATIVE Anderson.

STATE, VETERANS &
MILITARY AFFAIRS

A BILL FOR AN ACT

101 CONCERNING MATTERS WHICH MAY APPEAR ON THE BALLOT AT ELECTIONS TO
102 BE HELD IN NOVEMBER OF ODD-NUMBERED YEARS PURSUANT TO SECTION
103 20 OF ARTICLE X OF THE STATE CONSTITUTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Article X, Section 20 - Category I Bill. Specifies the matters which may be placed on the ballot at state and local elections required to be held in November of odd-numbered years pursuant to article X, section 20, of the state constitution. On the state level, includes initiated and referred amendments to the state constitution, initiated and referred statutes, and initiated and referred questions on taxation and spending matters arising under article X, section 20. States that the subject matter of constitutional amendments and statutes is not limited to article X, section 20 issues. On the local level, includes parallel provisions for initiated and referred ordinances, resolutions, and franchises.

1 *Be it enacted by the General Assembly of the State of Colorado:*
2 SECTION 1. Title 1, Colorado Revised Statutes, 1980 Repl.
3 Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to
4 read:

HOUSE
Amended 2nd Reading
Date 2-8-93

1 ARTICLE 41

2 Odd-Year Elections

3 1-41-101. Legislative declaration. THE GENERAL ASSEMBLY
4 HEREBY FINDS, DETERMINES, AND DECLARES THAT SECTION 20 OF ARTICLE
5 X OF THE STATE CONSTITUTION REQUIRES THAT A BALLOT ISSUE ELECTION
6 BE HELD ON THE FIRST TUESDAY IN NOVEMBER OF ODD-NUMBERED YEARS;
7 THAT THE PROVISIONS OF SECTION 20 (2) AND 20 (3) OF SAID ARTICLE
8 X ARE UNCLEAR AS TO WHAT ISSUES CAN BE SUBMITTED TO A VOTE IN THE
9 ODD-YEAR ELECTION; THAT ARTICLE X, SECTION 20 DID NOT AMEND
10 PREEXISTING PROVISIONS OF THE STATE CONSTITUTION ON THE INITIATIVE,
11 THE REFERENDUM, AND THE SUBMISSION OF CONSTITUTIONAL AMENDMENTS BY
12 THE GENERAL ASSEMBLY, AND REPEAL OR AMENDMENT OF SUCH PROVISIONS
13 BY IMPLICATION IS NOT PRESUMED; THAT THIS LEGISLATION IMPLEMENTS
14 SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, WHICH ARTICLE
15 IS ENTITLED "REVENUE" AND CONCERNS EXCLUSIVELY GOVERNMENT REVENUE
16 RAISING AND APPROPRIATIONS; THAT ARTICLE X, SECTION 20 REQUIRES
17 PUBLIC VOTES ON ADDITIONAL GOVERNMENT TAXES, SPENDING, OR DEBT;
18 THAT THE LANGUAGE OF ARTICLE X, SECTION 20 EVINCES THE PUBLIC'S
19 DESIRE TO HAVE MORE OPPORTUNITY TO VOTE ON GOVERNMENT TAX,
20 SPENDING, AND DEBT PROPOSALS; THAT A CONSTRUCTION OF ARTICLE X,
21 SECTION 20 THAT LIMITS LOCAL GOVERNMENT ELECTORS' OPPORTUNITIES TO
22 VOTE ON TAX, SPENDING, DEBT, OR OTHER PROPOSALS WOULD BE
23 INCONSISTENT WITH THE BALLOT TITLE OF AND THE VOTERS' INTENTION IN
24 ADOPTING SAID AMENDMENT; THAT STATE AND LOCAL ELECTION OFFICIALS
25 NEED GUIDANCE AS TO HOW TO ADMINISTER THE NOVEMBER, 1993, ELECTION;
26 AND THAT, IN VIEW OF THE ISSUES SET OUT IN THIS SECTION, THE

1 GENERAL ASSEMBLY SHOULD EXERCISE ITS LEGISLATIVE POWER TO RESOLVE
2 THE AMBIGUITIES IN ARTICLE X, SECTION 20 IN A MANNER CONSISTENT
3 WITH ITS TERMS.

4 1-41-102. State ballot issue elections in odd-numbered
5 years. (1) AT THE STATEWIDE ELECTION TO BE HELD ON THE FIRST
6 TUESDAY OF NOVEMBER IN 1993, AND IN EACH ODD-NUMBERED YEAR
7 THEREAFTER, THE FOLLOWING ISSUES SHALL APPEAR ON THE BALLOT IF THEY
8 CONCERN STATE MATTERS ARISING UNDER SECTION 20 OF ARTICLE X OF THE
9 STATE CONSTITUTION AND IF THEY ARE SUBMITTED IN ACCORDANCE WITH
10 APPLICABLE LAW:

11 (a) AMENDMENTS TO THE STATE CONSTITUTION SUBMITTED BY THE
12 GENERAL ASSEMBLY IN ACCORDANCE WITH ARTICLE XIX OF THE STATE
13 CONSTITUTION;

14 (b) STATE LEGISLATION AND AMENDMENTS TO THE STATE
15 CONSTITUTION INITIATED IN ACCORDANCE WITH SECTION 1 OF ARTICLE V
16 OF THE STATE CONSTITUTION AND ARTICLE 40 OF THIS TITLE;

17 (c) MEASURES REFERRED TO THE PEOPLE BY THE GENERAL ASSEMBLY
18 IN ACCORDANCE WITH SECTION 1 OF ARTICLE V OF THE STATE
19 CONSTITUTION;

20 (d) MEASURES REFERRED TO THE PEOPLE PURSUANT TO PETITIONS
21 FILED AGAINST AN ACT OR ITEM, SECTION, OR PART OF AN ACT OF THE
22 GENERAL ASSEMBLY IN ACCORDANCE WITH SECTION 1 OF ARTICLE V OF THE
23 STATE CONSTITUTION;

24 (e) QUESTIONS WHICH ARE REFERRED TO THE PEOPLE BY
25 THE GENERAL ASSEMBLY IN ACCORDANCE WITH THE LAW PRESCRIBING
26 PROCEDURES THEREFOR;

1 (F) QUESTIONS WHICH ARE INITIATED BY THE PEOPLE IN
2 ACCORDANCE WITH THE LAW PRESCRIBING PROCEDURES THEREFOR.

3 (2) IF NO QUESTIONS CONCERNING STATE MATTERS ARISING UNDER
4 SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION ARE REFERRED OR
5 INITIATED AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, NO
6 STATEWIDE ELECTION SHALL BE HELD ON THE FIRST TUESDAY OF NOVEMBER
7 IN 1993, OR ON THE FIRST TUESDAY IN NOVEMBER OF ANY SUBSEQUENT
8 ODD-NUMBERED YEAR.

9 (3) AS USED IN THIS SECTION, A "QUESTION" MEANS A
10 PROPOSITION WHICH IS IN THE FORM OF A QUESTION MEETING THE
11 REQUIREMENTS OF SECTION 20 (3) (c) OF ARTICLE X OF THE STATE
12 CONSTITUTION AND WHICH IS SUBMITTED IN ACCORDANCE WITH THE
13 LAW PRESCRIBING PROCEDURES THEREFOR WITHOUT REFERENCE TO SPECIFIC
14 STATE LEGISLATION OR A SPECIFIC AMENDMENT TO THE STATE
15 CONSTITUTION.

16 (4) AS USED IN THIS SECTION, "STATE MATTERS ARISING UNDER
17 SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION" INCLUDES:

18 (a) APPROVAL OF A NEW TAX, TAX RATE INCREASE, VALUATION FOR
19 ASSESSMENT RATIO INCREASE FOR A PROPERTY CLASS, OR EXTENSION OF AN
20 EXPIRING TAX, OR A TAX POLICY CHANGE DIRECTLY CAUSING A NET TAX
21 REVENUE GAIN PURSUANT TO SECTION 20 (4) (a) OF ARTICLE X OF THE
22 STATE CONSTITUTION;

23 (b) APPROVAL OF THE CREATION OF ANY MULTIPLE-FISCAL YEAR
24 DIRECT OR INDIRECT STATE DEBT OR OTHER FINANCIAL OBLIGATION WITHOUT
25 ADEQUATE PRESENT CASH RESERVES PLEDGED IRREVOCABLY AND HELD FOR
26 PAYMENTS IN ALL FUTURE FISCAL YEARS PURSUANT TO SECTION 20 (4) (b)

1 OF ARTICLE X OF THE STATE CONSTITUTION;

2 (c) APPROVAL OF EMERGENCY TAXES PURSUANT TO SECTION 20 (6)
3 OF ARTICLE X OF THE STATE CONSTITUTION;

4 (d) APPROVAL OF REVENUE CHANGES PURSUANT TO SECTION 20 (7)
5 OF ARTICLE X OF THE STATE CONSTITUTION;

6 (e) APPROVAL OF A DELAY IN VOTING ON BALLOT ISSUES PURSUANT
7 TO SECTION 20 (3) (a) OF ARTICLE X OF THE STATE CONSTITUTION; (H)

8 (f) APPROVAL OF THE WEAKENING OF A STATE LIMIT ON REVENUE,
9 SPENDING, AND DEBT PURSUANT TO SECTION 20 (1) OF ARTICLE X OF THE (H)
10 STATE CONSTITUTION.

11 1-41-103. Local ballot issue elections in odd-numbered
12 years. (1) AT THE LOCAL ELECTION TO BE HELD ON THE FIRST TUESDAY
13 OF NOVEMBER IN 1993, AND IN EACH ODD-NUMBERED YEAR THEREAFTER, THE
14 FOLLOWING ISSUES SHALL APPEAR ON THE BALLOT IF THEY CONCERN LOCAL
15 GOVERNMENT MATTERS ARISING UNDER SECTION 20 OF ARTICLE X OF THE
16 STATE CONSTITUTION AND IF THEY ARE SUBMITTED IN ACCORDANCE WITH
17 APPLICABLE LAW:

18 (a) AMENDMENTS TO THE CHARTER OF ANY HOME RULE CITY OR HOME
19 RULE COUNTY INITIATED BY THE VOTERS OR SUBMITTED BY THE LEGISLATIVE (H)
20 BODY OF THE HOME RULE CITY OR COUNTY IN ACCORDANCE WITH SAID
21 CHARTER;

22 (b) ORDINANCES, RESOLUTIONS, OR FRANCHISE PROPOSED IN
23 ACCORDANCE WITH SECTION 1 OF ARTICLE V OF THE STATE CONSTITUTION
24 AND SECTION 1-40-116;

25 (c). MEASURES REFERRED TO THE PEOPLE PURSUANT TO PETITIONS
26 FILED AGAINST AN ORDINANCE, RESOLUTION, OR FRANCHISE PASSED BY THE

1 LEGISLATIVE BODY OF ANY LOCAL GOVERNMENT IN ACCORDANCE WITH SECTION
2 1 OF ARTICLE V OF THE STATE CONSTITUTION AND SECTION 1-40-115;

3 (d) QUESTIONS WHICH ARE REFERRED TO THE PEOPLE BY
4 THE GOVERNING BODY OF THE LOCAL GOVERNMENT IN ACCORDANCE WITH THE
5 LAW PRESCRIBING PROCEDURES THEREFOR;

6 (e) QUESTIONS WHICH ARE INITIATED BY THE PEOPLE
7 IN ACCORDANCE WITH THE LAW PRESCRIBING PROCEDURES THEREFOR.

8
9 (2) AS USED IN THIS SECTION, "LOCAL GOVERNMENT" MEANS A
10 COUNTY, A MUNICIPALITY AS DEFINED IN SECTION 31-1-101 (6), C.R.S.,
11 A SCHOOL DISTRICT, OR A SPECIAL DISTRICTS AS DEFINED IN SECTIONS
12 32-1-103 (20) AND 35-70-109, C.R.S.

H

13 (3) AS USED IN THIS SECTION, A "QUESTION" MEANS A
14 PROPOSITION WHICH IS IN THE FORM OF A QUESTION MEETING THE
15 REQUIREMENTS OF SECTION 20 (3) (c) OF ARTICLE X OF THE STATE
16 CONSTITUTION AND WHICH IS SUBMITTED IN ACCORDANCE WITH
17 THE LAW PRESCRIBING PROCEDURES THEREFOR WITHOUT REFERENCE TO A
18 SPECIFIC ORDINANCE, RESOLUTION, FRANCHISE, OR OTHER LOCAL
19 LEGISLATION OR A SPECIFIC AMENDMENT TO THE CHARTER OF A HOME RULE
20 CITY OR HOME RULE COUNTY.

21 (4) AS USED IN THIS SECTION, "LOCAL GOVERNMENT MATTERS
22 ARISING UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION"
23 INCLUDES:

24 (a) APPROVAL OF A NEW TAX, TAX RATE INCREASE, MILL LEVY
25 ABOVE THAT FOR THE PRIOR YEAR, OR EXTENSION OF AN EXPIRING TAX, OR
26 A TAX POLICY CHANGE DIRECTLY CAUSING A NET TAX REVENUE GAIN

1 PURSUANT TO SECTION 20 (4) (a) OF ARTICLE X OF THE STATE
2 CONSTITUTION;

3 (b) APPROVAL OF THE CREATION OF ANY MULTIPLE-FISCAL YEAR
4 DIRECT OF INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WITHOUT
5 ADEQUATE PRESENT CASH RESERVES PLEDGED IRREVOCABLY AND HELD FOR
6 PAYMENTS IN ALL FUTURE FISCAL YEARS PURSUANT TO SECTION 20 (4) (b)
7 OF ARTICLE X OF THE STATE CONSTITUTION;

8 (c) APPROVAL OF EMERGENCY TAXES PURSUANT TO SECTION 20 (6)
9 OF ARTICLE X OF THE STATE CONSTITUTION;

10 (d) APPROVAL OF REVENUE CHANGES PURSUANT TO SECTION 20 (7)
11 OF ARTICLE X OF THE STATE CONSTITUTION;

12 (e) APPROVAL OF A DELAY IN VOTING ON BALLOT ISSUES PURSUANT
13 TO SECTION 20 (3) (a) OF ARTICLE X OF THE STATE CONSTITUTION;

14 (f) APPROVAL OF THE WEAKENING OF A LOCAL LIMIT ON REVENUE,
15 SPENDING, AND DEBT PURSUANT TO SECTION 20 (1) OF ARTICLE X OF THE
16 STATE CONSTITUTION.

17 ~~(5) THE SUBMISSION OF ISSUES AT ELECTIONS IN NOVEMBER OF~~
18 ~~ODD-NUMBERED YEARS IN ACCORDANCE WITH THIS SECTION, OR AT OTHER~~
19 ~~ELECTIONS AS PROVIDED IN SECTION 20 (3) (a) OF ARTICLE X OF THE~~
20 ~~STATE CONSTITUTION, SHALL NOT BE DEEMED THE EXCLUSIVE METHOD OF~~
21 ~~SUBMITTING LOCAL ISSUES TO A VOTE OF THE PEOPLE, AND NOTHING IN~~
22 ~~THIS SECTION SHALL BE CONSTRUED TO REPEAL, DIMINISH, OR OTHERWISE~~
23 ~~AFFECT IN ANY WAY THE AUTHORITY OF LOCAL GOVERNMENTS TO HOLD ISSUE~~
24 ~~ELECTIONS IN ACCORDANCE WITH OTHER PROVISIONS OF LAW.~~

25 SECTION 2. Safety clause. The general assembly hereby

1 finds, determines, and declares that this act is necessary for the
2 immediate preservation of the public peace, health, and safety.

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY



AN ANALYSIS OF
1992 BALLOT PROPOSALS

Research Publication No. 369
1992

Tax Limitations - Voting

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.

Tax Limitations - Voting

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;

Tax Limitations - Voting

- 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-

Tax Limitations - Voting

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.

Tax Limitations - Voting

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.