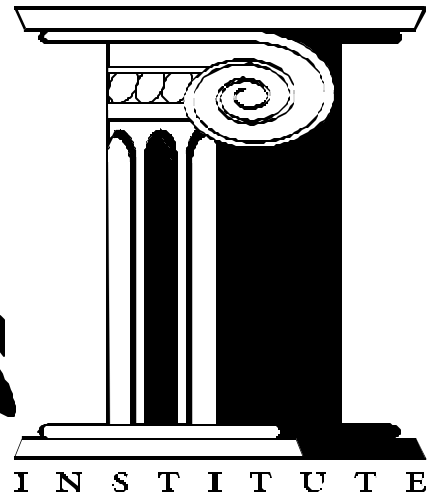


LIMITS



On Power and the Use of Coercion

States Need to Enact Real Tax and Expenditure Limits

by Chris Atkins

Irresponsible state spending over the past decade is fueling the current fiscal crisis in the states. From 1990-2000, only one state, Alaska, spent less at the end of the decade than the beginning. Every other state increased spending. Normally we would expect to see government spend, on average, about 3% more each year to keep pace with inflation. Growth in excess of 3% is an indication that government is expanding. In the past decade, however, 46 states enacted real spending increases, meaning they spent faster than the rate of inflation. Some states even increased spending by 100% or more. In fact, the appetite to spend money on new government programs was so voracious that states spent two out of every three surplus dollars in state coffers. Less than one out of three surplus dollars was returned to the

taxpayers or saved in rainy day funds.

Many liberals attempt to blame tax cuts for the budget deficits in the states. The evidence cited above dispels that myth; it should also put aside any talk about raising taxes to fix the problem.

What options do the people in the states have to control government spending? The best they can do is vote for another Legislator, another Governor, perhaps someone in the opposing party. History tells us, however, that political party and ideology make little difference in state appropriations. Big spending affected both sides of the political aisle, from the right to the left, in the past decade. In fact, there seem to be very few state lawmakers willing to take a stand against the expansion of state government. Finding a state lawmaker willing to cut

spending is almost as difficult as finding a good accountant at Enron.

Politicians are addicted to spending money and are unable or unwilling to kick the habit. If the people are serious about disciplining the states when it comes to spending, they need to limit what the politicians can do with their money. A good way to do this is through a tax and expenditure limitation (TEL). TELs instill fiscal discipline in state budgets by limiting spending increases to a fixed amount, like 4% per year, or to the rate of growth in population or inflation. Thus, even if the appetite to spend is enormous, the law will restrict the state from spending beyond the limit. It would be the equivalent of giving the state an "allowance." TELs also require super-majority votes for tax increases,

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**States Need to Enact Real
Tax and Expenditure Limits**
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meaning a simple majority would no longer be sufficient to change tax rates.

Since emergencies inevitably arise where the state would need to spend more money, many TELs contain emergency clauses allowing waiver of the tax and spending limits. In Colorado, for instance, the TEL only allows the state to exceed the limit if the state encounters a non-economic emergency, such as invasion.

If we learn any lesson from the current fiscal crisis in the states, it should be that it is time to enact *real* tax and expenditure limitations. Many states have TELs, but they are paper tigers. As a general rule, constitutional TELs are better than statutory TELs because lawmakers can override a statutory TEL by a simple majority vote. Yet many states have TELs that are statutory. They need to be enshrined in the state's constitution where they are insulated from legislative, executive, or judicial tinkering.

It is also crucial to make all general fund spending subject to the expenditure limitation. Many states exempt education, Medicaid, prisons, and other broad categories of spending from the TEL. In many cases,

the items exempted can be more than half of the entire state budget, making spending limitations nearly useless.

If states fail to enact TELs, the next decade will play out like the last one, with lawmakers enacting massive spending increases while the economy surges. Then, when the economy cools off, they will have to either cut spending or raise taxes. Either way, someone gets hurt. We must put an end to the vicious cycle and the destructive politics it engenders by enacting state constitutional limits on taxing and spending.

Chris Atkins is the Director of the Tax and Fiscal Policy Task Force of the American Legislative Exchange Council.

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How to Make TELs More Effective

by Amy K. Frantz

Cato Institute recently published a study, “Limiting Government through Direct Democracy: The Case of State Tax and Expenditure Limitations” by Michael J. New. In this study, the author uses regression analysis to examine the effectiveness of the various tax and expenditure limits (TELs) in the states, and what factors make TELs more or less successful in limiting government spending.

TELs are implemented to limit the growth of government by limiting how much a state can increase taxes, revenues, or expenditures. Twenty-six states, including Iowa, currently have some type of TEL in place. (Iowa’s TEL limits appropriations to 99 percent of adjusted general funds receipts.)

The results of Michael New’s study are hardly surprising — TELs that are passed by citizen initiative are more effective at controlling government spending than TELs implemented by Legislators. The analysis shows that “per capita state and local expenditures will decrease by \$16.29 every year after a state has passed a TEL by citizen initiative.

Conversely...TELs enacted by state legislatures will actually cause per capita expenditures to *increase* by \$14.00.”¹

The study cites four reasons why a TEL passed by citizen initiative might be more effective than one passed by the Legislature.

1. Citizen initiative TELs are more likely to have more stringent limits and fewer loopholes. The majority of TELs limit government spending or revenues to the growth in personal income, but a few of the citizen-passed TELs have tougher limits.

“Twenty-nine percent of the TELs passed by initiative hold increases in spending or revenues to the inflation rate plus population growth, while none of the TELs enacted by legislatures do.”²

2. Citizen initiative TELs are more likely to have provisions to prevent state governments from “passing the buck” to local governments.

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Table 1. State Tax and Expenditure Limits, 1976-1996

States With TELs Enacted Through Citizen Initiatives

California
Colorado
Massachusetts
Michigan
Missouri
Washington

States With TELs Enacted Through Constitutional Conventions

Hawaii
Tennessee

States With TELs Enacted Through Referenda

States With TELs Passed by State Legislatures

Colorado
Idaho
Iowa
Louisiana
Mississippi
Montana
New Jersey
North Carolina
Oregon
Utah

Alaska
Arizona
Connecticut
Delaware
Florida
Louisiana
Oklahoma
Rhode Island
South Carolina
Texas

Source: Mandy Rafool, “State Tax and Expenditure Limits,” National Conference of State Legislatures Legislative Finance Paper No. 104, 1996, p.6; found in Michael J. New, “Limiting Government through Direct Democracy: The Case of State Tax and Expenditure Limitations,” Cato Institute Policy Analysis No. 420, December 13, 2001, p. 4. (States that are listed more than once have more than one TEL.)

Die, Death Tax, Die!

by Paul Jacob

I don't like the death tax. Being dead will be bad enough. Does the government have to rob my grave too? They're already taxing my income five or six different ways while I'm alive. I mean, come on guys. Let me leave the piggy bank to the wife and kids.

The federal government is phasing out the death tax. But after it expires completely in 2010, Congress has to renew the expiration or it will come popping back to life. What I'm afraid of is that the death tax will be like the vampire in a bad vampire movie. Just won't stop coming.

And looks like I'm right already. (I hate it when I'm right.) With the federal government at least temporarily getting out of the death business, all the state governments are rushing in to pick up the slack. The phasing out of the federal tax means lost revenue for the states. Twenty-three billion or so lost dollars over the next five years, according to the Center for Budget and Policy Priorities.

Well, can't have that. So instead of letting the deceased rest in peace, state governments are coming up with their own new death taxes or increasing the ones they already have. Meet the new Dracula, same as the old Dracula.

Is there anything you and I can do about this? I mean, aside from living forever? Well, depends. Does your state have an initiative and referendum process? If so, then you can do what the citizens of South Dakota did a couple years ago: Kill the death tax yourself, right at the voting booth.

Paul Jacob is National Director of U.S. Term Limits.

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Common Sense, a unique perspective on the latest insanity from Washington, is produced by U.S. Term Limits and can be heard on 277 radio stations in 49 states and on the Internet. For more information or a free subscription to Common Sense, call 800-733-6440 or e-mail commonsense@ustermimits.org.

Initiative and Referendum in the States

by Amy K. Frantz

Watch state ballots this fall for initiatives on issues like drug policy reform, restrictions on gun permits, cockfighting, and making English the official state language.

California

California voters faced several measures on the March 5 primary ballot, including a proposal to weaken the state's term limits. For more on this issue, see the article, *Term Limits, Unlimited*, on page six.

Montana

The Montana Supreme Court rejected an attempt by two State Senators to sue the voters to overturn the term limits approved by the voters almost ten years ago.

Amy K. Frantz is a Research Analyst with Public Interest Institute.

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Will the Voters in New York and Minnesota Be Able to Use the Initiative and Referendum?

by Amy K. Frantz

Twenty-four states currently give citizens the ability to place measures on the ballot for consideration. Two states, New York and Minnesota, have taken steps to give their citizens that same authority.

In April, the New York Senate approved a Constitutional Amendment, introduced by New York Governor George Pataki, to establish the citizen initiative and referendum process. This Amendment gives citizens the power of initiative, to collect signatures on a petition to place a measure directly on the ballot, and popular referendum, giving citizens the power to petition to place measures previously adopted by the Legislature on the ballot for the people to accept or reject. Governor Pataki's Amendment makes this process available on the state and local government levels.

The next step in granting New Yorkers the citizen initiative and popular referendum is approval by the New York State Assembly. However, Assembly Speaker Sheldon Silver has vowed to prevent a vote on the measure, stating he is convinced that elected officials are capable of representing their constituents.

In order to amend New York's Constitution, this proposal must be approved by two separately-elected Legislatures and then be submitted to the voters for approval.

Minnesota is facing a situation similar to that in New York. Earlier this year, the Minnesota House approved a bill to allow voters to decide if they would like the power of initiative and popular referendum. A poll conducted by the Initiative and Referendum Institute found that 80 percent of voters polled support the idea of establishing

the citizen initiative and referendum process in Minnesota. Granting the initiative and referendum process to voters is also supported by Minnesota Governor Jesse Ventura. Senate leaders opposed to the idea, however, have given the bill no chance of passage this year.

In the last decade, only one state — Mississippi — has granted citizens the right of initiative.

Amy K. Frantz is a Research Analyst with Public Interest Institute.

LIMITS Question of the Quarter:

Do you believe Iowa Legislators should adopt legislation permitting the Citizen Initiative and the Popular Referendum process in our state?

Send your thoughts on this issue to us at public.interest.institute@limitedgovernment.org.

We will publish some of your ideas in the next issue of *LIMITS* in September 2002 and on our web page at www.limitedgovernment.org.

Term Limits, Unlimited

by Fred Barnes

Elected officials loathe term limits (they're forced to retire). Special interest groups don't like them (they lose allies they've assiduously wooed). The media rarely have a kind word for them (their sources leave town). And the consensus for several years in the political community has been that the term limits movement is dying.

Alas, voters still love them, a fact loudly underscored last week by the defeat of a clever California initiative to roll back term limits on state Legislators. Supporters of term limits were outspent ten to one. Even a quotation from Ronald Reagan was used against them. Yet they trounced Proposition 45, the initiative that would have allowed term-limited Legislators to stay in office, 58 percent to 42 percent. Now the question is whether the California triumph has legs.

The case for term limits hasn't changed. They promote competition in elections and

turnover in legislative bodies. They remove Legislators or other elected officials who've become entwined with special interests, replacing them with newcomers with closer ties to actual voters. They make room for more non-professional politicians, grass-roots types, women, and minorities. Many conservatives believe term limits will result, not immediately but over the long run, in conservative policies, since elected officials will be more responsive to voters and less to lobbyists and liberal elites who often dominate state capitals and local governments.

Naturally, leaders in the fight for term limits believe the California vote has transformed the politics of the issue. "California is so often a trendsetter," says Stacie Rumenap of U.S. Term Limits. Not always, though. Remember Proposition 187 restricting government aid to illegal immigrants? It wasn't widely copied. The Proposition 45 vote is "a turning point," says Eric O'Keefe, president of Americans for Limited Terms. Officials seeking to undo term limits in their states are bound to have second thoughts after California, he says. This makes sense. So at least the drive to eliminate term limits may have peaked.

Since the mid-1990s, when Congressional term limits were

defeated and courts struck down limits on Legislators in three states, this effort has been both intense and bipartisan. Last year, the overwhelmingly Republican Legislature of Idaho repealed term limits over the veto of Gov. Dirk Kempthorne. Despite polls in Florida and Michigan showing the enduring popularity of term limits, Republicans and Democrats are pressing to kill them in both states. Efforts are also underway in Maine, Missouri, Ohio, and Arizona, where GOP Governor Jane Hull has endorsed an end to limits. But all that was pre-California, where term limits are more popular than ever. In 1990, they were approved 52 percent to 48 percent. "When we've moved from a 4-point win in 1990 to a 16-point win this year, it's fair to say that term limits have actually gained strength," insists Rumenap.

Terms limits are, of course, common in America. The Twenty-second Amendment holds a President to two terms, 38 states restrict their Governor's term, and Congressional Republicans put limits on their leaders and committee chairmen. Roughly 3,000 local governments have term limits, including New York City, where Rudy Giuliani was required to step down as mayor on January 1. Seventeen states currently have limits on

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legislative terms, and in all but two of them — Utah and Louisiana — they’ve been imposed by referenda. For term limiters, the next step is to get a new initiative on the ballot in Idaho this fall and to defeat a few Legislators who voted for repeal. That might concentrate the minds of others contemplating repeal.

The biggest problem comes in the 26 states that have no effective provision for referenda. There, Legislators would have to vote to limit their own terms and getting them to do so is a daunting task. The Utah Legislature passed term limits only because a referendum was imminent. Nonetheless, leaders of the term-limits movement, sensing a California win, began strategizing earlier this year on how to approach state Legislatures. Should they seek to get an initiative and referendum process enacted or prod the Legislators to vote for limits? Their strategy will probably be to lobby Legislators to act.

What helped the term-limits movement in California was the brazen bid by Democrats to keep their jobs in the Legislature. The initiative would have allowed term-limited Legislators to run again if they collected the signatures of 20 percent of the voters in the last election. This favored Democrats because many more of them represent low turnout,

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How to Make TELs More Effective continued from page 3

“TELs passed by initiative are more likely to include provisions that mandate automatic changes in the limits when responsibility for government programs is transferred.”³ State governments under such provisions can’t escape the limits by simply mandating government functions to lower levels of government.

3. Citizen initiative TELs are more likely to be Constitutional rather than statutory. TELs are easier to change or circumvent if they are part of the state’s laws rather than a part of the Constitution. “By definition, all TELs passed by legislatures are statutory. However, 56 percent of TELs passed by citizen initiative are Constitutional.”⁴

4. Citizen initiative TELs are more likely to send surplus revenue back to the taxpayers as refunds or tax credits. “TELs requiring such refunds make it difficult for state governments to generate revenues that exceed the limit and give taxpayers and watchdog groups a greater incentive to see that TELs are enforced.”⁵ Forty-four percent of citizen initiative TELs call for immediate taxpayer refunds,

while only one Legislatively enacted TEL does so.⁶

The Cato Institute’s study shows that “TELs passed by citizen initiative procedures are more effective in limiting state spending and revenues than are TELs passed by Legislatures.”⁷

Endnotes:

¹Michael J. New, “Limiting Government through Direct Democracy: The Case of State Tax and Expenditure Limitations,” Cato Institute Policy Analysis No. 420, December 13, 2001, p. 8.

²Ibid., p. 6.

³Ibid.

⁴Ibid.

⁵Ibid., p. 7.

⁶Ibid.

⁷Ibid., p. 13.

For more information on the Cato Institute or the study by Michael J. New, visit Cato Institute’s web site at www.cato.org.

For more on state Tax and Expenditure Limits, visit Public Interest Institute’s web site at www.limitedgovernment.org, and click on “Limitations on Government.”

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minority districts. The state Democrat party donated \$3.2 million to the anti-limits effort, and it was backed by labor unions and industries (gambling, alcohol, banking, insurance) regulated by the state. The opposition to Proposition 45 was led by a Republican consultant, Dan Schnur.

The campaign to shave back term limits was also deceptively packaged as a way to make limits “work better” and to expand “local voter rights.” On the ballot, the

preamble to the initiative said: “Term limits have reinvigorated the political process by promoting full participation and bringing a breath of fresh air to California government.” A mailer showed a picture of Reagan and quoted from him. “Like President Reagan, Proposition 45 puts its faith in the voters to make the right decisions for themselves,” it said. Voters weren’t fooled.

Fred Barnes is executive editor of The Weekly Standard.

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