

EXECUTIVE SUMMARY

Citizens for Tax Reform, a group chaired by Ohio Secretary of State Ken Blackwell, is gathering signatures to place a proposed amendment to the state constitution on the November ballot. The amendment is a version of a tax and expenditure limitation, or “TEL,” that is similar to an initiative adopted by Colorado voters in 1992. Spending limits apply to the state and political subdivisions (a term that includes local governments as well as school districts and other local taxing districts). Political subdivisions are subject to additional restrictions on their ability to levy new taxes or raise existing taxes. Because of the sweeping nature of the amendment, the analysis that follows is not comprehensive. Instead, based on an initial review of the amendment, this analysis will point out how it would create radical changes in the way government operates, and how some provisions may prove to be unworkable from a practical standpoint. The key findings discussed in this *Report* are:

- The TEL contains a supremacy clause that ensures that it will prevail in case of conflict with any other constitutional section. The TEL’s mandatory year-end collection of unencumbered funds poses potential conflicts with constitutional sections that restrict the use of fuel taxes and workers’ compensation funds.
- The TEL imposes an overall cap on state spending and a separate spending cap for each local government. The spending cap applies not just to the expenditure of tax revenue, but also to revenues raised from certain voluntary transactions, such as lottery ticket sales.
- Significant portions of state four-year university spending may be subject to the aggregate state spending cap, including tuition, fees, and sales of tickets to sports and entertainment events.
- The TEL’s requirement that the state pay for mandates on political subdivisions fails to define the term “mandate.” This oversight creates an open invitation to litigation. If given an expansive interpretation by the courts, this provision will overturn the established relationship between the state and its political subdivisions. Political subdivisions may be able to object to state laws passed in order to comply with federal mandates.
- The tax refund mechanism in the proposed amendment would pool revenue from many different taxes and fees and will give it to individuals who paid the income tax. Individuals or businesses that paid a fee for a specific program or license may see little of this refund.
- By using a *pro rata* method for tax refunds, the TEL would direct the bulk of the tax relief to the wealthy. Many low income individuals pay more in sales and excise taxes each year than income taxes. Their fractional shares of a mandatory BRF refund would not reflect this reality, however.
- The TEL does not specify how to implement the spending cap formula in school districts and other taxing districts that cross political boundaries.

- The TEL makes no exception for the municipal home rule sections of the Ohio Constitution. Requiring voter approval before levying any tax conflicts with the authority of a charter municipality to levy a property tax for outside millage without voter approval.
- Both the state and local spending limits cover capital expenditures, even though voters have already authorized general obligation bonds through state constitutional amendments or local levies, and state law contains strict limits on debt service.
- The emergency clause exception to the spending limit is predicated upon a formal declaration of an emergency by the governor. There is no way for the General Assembly or a political subdivision to use the emergency spending safety valve if the governor refuses to act.
- When it is necessary to exceed the state spending cap, the imposition of a mandatory referendum delays the effective date of the state budget by at least three months, giving a new legislature just three months to produce a budget. This allows less time for public concerns to be raised in the legislative process, and makes it more likely that the legislature will not be able to pass a budget before the end of a fiscal year.
- Many important concepts and procedures in the amendment are unclear, and will generate many rounds of litigation before they are sorted out.