

TIME FOR A DIVORCE: DISSOLVING THE SHOTGUN MARRIAGE BETWEEN SCHOOL FINANCE AND COLORADO'S CONSTITUTION

BY KENNETH A. DELAY

Colorado school finance over the last 40 years is a sad tale of broken promises, neglect and dependency. What began as a wary courtship between local school districts and the state has become an unhappy three-way relationship between local districts, the state and our constitutional tax code. If there is a way back to fiscal and policy health, it is probably to be found in revitalizing that early courtship between local school districts and the state.

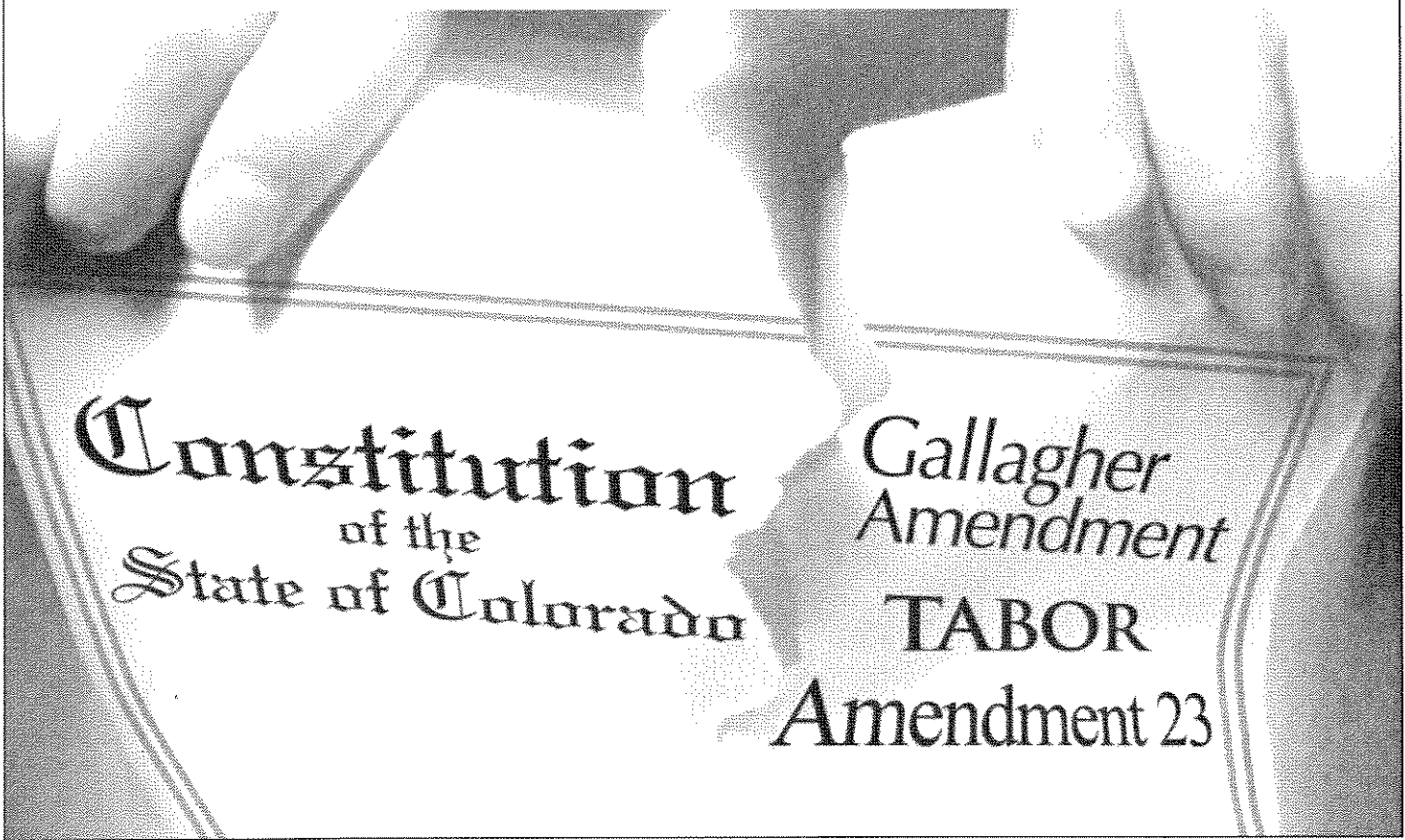
We cannot understand where we are today without revisiting where we began 35 years ago and

following the state's efforts since to build a fair and robust system of finance for Colorado's public schools. Telling that story will not illuminate the future but it does suggest two key principles on which a successful future must rest. First, we cannot repair the relationship between local school districts and the state, or fix school finance, if we do not reform Colorado's constitutional tax code. Second, Amendment 23, whatever its virtues, is not sufficient either to overcome the negative effects of TABOR or to adequately fund our

schools. We learn from the past that taxpayers and educators alike must end their unhealthy dependency on formulas in the Constitution.

BEFORE TABOR: 1960-1973

As late as the 1960s, Colorado's school finance lived in bustling towns all over the state. Education funding in those days came almost entirely from local property taxes and the wealthier communities built the best schools. Spending decisions were made in the places where the money was raised. Local

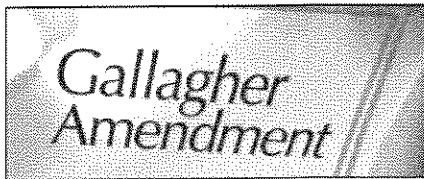


The state we are becoming will always present challenges never anticipated in formulas constructed based on the past.

school boards were clear that their school's primary mission was to educate the community's next generation of farmers, ranchers, businessmen and professionals.

The Public School Finance Act of 1973 was Colorado's first tentative effort to equalize funding regardless of a local school district's property wealth. By using state funds, the legislature began to raise the per-pupil funding in Colorado's least wealthy districts.

The debates which shaped the 1973 Finance Act are now almost forgotten. However, two of the themes from those debates have dominated school finance debates ever since. We are still trying to equalize education funding among districts and we are still trying to find the right mix of state and local money to accomplish that end. We also are still struggling with the implications for local control as the state assumes an ever larger share of the cost of operating our schools.



COLORADO'S THREE-PART
CONSTITUTIONAL TAX CODE
Part 1: Gallagher
Amendment

In 1982, Colorado voters passed the first of the three measures which have become Colorado's constitutional tax code.

The Gallagher Amendment purported to give local taxpayers relief from rising property taxes, which in significant measure were being driven by school finance needs. The result of Gallagher was to begin shifting the burden of local property taxes away from residential property owners and onto business owners. More fundamentally, Gallagher introduced a new force in Colorado politics—a rising aversion to taxes of any sort, but especially to property taxes.

School Finance Act of 1988

The Colorado legislature made a second attempt to create a modern school finance act by passing the Public School Finance Act of 1988. The 1988 Act saw two new themes enter the school finance debate. First, one of the Act's goals was to fund an adequate level of education for every student in the state, regardless of local wealth and costs. Adequacy (how much money is adequate to fund the education our students need) remains the dominant theme of school finance today.

Second, the 1988 Finance Act sought to address tax equity issues. The Act assumed that both the local school district and the state had an important role in funding public education and it sought to balance funding between local and state sources at 50 percent from each source. In addition, the 1988 Act sought to standardize the mill levy in all Colorado school districts. Every district was to have

the same mill levy, regardless of the district's property values.

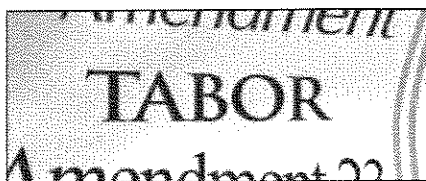
The 1988 Finance Act had some success. Between 1988 and 1992, the legislature largely succeeded in equalizing the mill levy in every school district. Except for the high-assessed valuation districts like Aspen, by 1992 every school district was paying the same mill levy, regardless of local wealth. Similarly, the state successfully met its target of equalizing the contributions from local and state sources to school finance. By 1992, the state and the local share of school finance were each roughly 50 percent of the overall Colorado school finance expenditures.

Other parts of the 1988 Finance Act were less successful. The effort to create funding categories that would fairly equalize the differences in the many Colorado school districts was at its best controversial and at its worst, perpetuated several underlying inequities in the school finance system. Perhaps most importantly, during the six years of its existence, the 1988 Finance Act was never fully funded. Indeed, in several of those years the legislature cut the funds available for school finance in the middle of the school district's budget year. The state never came close to meeting its goal of adequacy.

The 1988 Act only had a six-year run. This was partly because it was ambitious and devised untried funding mechanisms which did not work as well as the original drafters of the legislation

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had hoped. It was also because TABOR, the second element of our constitutional tax code, was passed in the fall of 1992. TABOR began immediately to impact every part of local and state government activity, including school finance. With TABOR, Colorado's aversion to taxes became a gale force wind in the state's politics.



COLORADO'S THREE-PART CONSTITUTIONAL TAX CODE
Part 2: The TABOR Hegemony

The 1982 Gallagher Amendment had put mild constraints on both local school districts and the state in their school funding decisions. TABOR, by contrast, sharply restricted all decisions made at both the state and the local levels. Most importantly, TABOR destroyed the state's ability to make or sustain good tax policy decisions either for the state or for local communities.

The interaction between TABOR and Gallagher had a disastrous effect on school finance. Gallagher drove down residential property owners' assessment rate. To compensate for this lower assessment rate, school districts raised the mill levy from year-to-year to ensure that

property tax revenues remained stable. TABOR stopped this process by prohibiting school districts from raising mill levies from one year to the next without voter approval.

After 1992, as Gallagher drove down the residential assessment rate, school finance revenues from local property taxes began to fall immediately because school districts were no longer able to raise their mill levies to compensate for the lower assessment rate. From 1993 on, the state was required to increase the state share of school finance to "backfill" this loss of local tax revenues. Therefore, the overall effect of Gallagher and TABOR was to make local property taxes an increasingly smaller share of school finance and state revenues an increasingly larger share.

The mischief wrought by TABOR did not end there. TABOR also prohibited school districts from keeping local property tax revenues that exceeded the TABOR revenue limits. In high growth areas, local property tax revenues routinely blew through the TABOR revenue limits even with a level mill levy. Districts were forced to lower their mill levies during the 1990s, further decreasing the share of local tax revenues in school finance.

The TABOR effect that drove down mill levies was not evenly distributed across the state. Those school districts which were experiencing little or no growth in their assessed values could not lower

their mill levies. In fact, mill levies have remained at or near their 1992 highs in those school districts. TABOR had undone the legislative accomplishment of tax equity between the rich and poor districts. Perversely, it drove down tax rates in wealthy districts and maintained high tax rates in poorer districts.

School Finance Act of 1994

The effects of Colorado's constitutional tax code on school finance, local property taxes and the state's General Fund were not widely understood or appreciated in 1994. Nonetheless, that year the legislature passed the School Finance Act of 1994. The Act was in part an effort to correct problems that were by then apparent in the 1988 Act. It was also an attempt to address school finance in a TABOR world. The 1994 School Finance Act was only partly successful in correcting the problems in the 1988 Act. Unfortunately, it exacerbated some of the effects that TABOR had begun to have on school finance.

The 1994 Act tried to correct inequities in the 1988 Act by doing a better job of setting district funding based on the unique characteristics of school districts. Under the 1994 Act, every school district received the same base per-pupil amount that was then adjusted for additional costs resulting from district size, cost of living, personnel costs and at-risk students. The 1994 Act was a better plan but in practice faired only marginally better than the 1988

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Act. Again, there were insufficient moneys to fund the promises made in the Act.

This insufficiency of funds was partly a consequence of TABOR's impact on local tax revenues. As TABOR and Gallagher eroded Colorado's local tax base for school finance, the state had to make up for the lost local tax revenues in addition to the state's ongoing share of school finance. Thus, as the state's share of the overall school finance bill climbed from approximately 50 percent in 1992 to approximately 60 percent a decade later, school finance had to take an increasingly larger share of the state's overall budget. School finance appropriations from state revenues grew throughout the 1990s at a rate faster than inflation because the state had to make up lost revenues from local tax sources each year. At the same time, the state's overall revenues under TABOR's limitations could not grow at a rate faster than inflation.

In most years, the state legislature compromised by increasing school finance but never by an amount necessary to keep up with the growth of inflation and costs to school districts. This permitted the state legislature to at least partially protect other parts of the budget, but it also ensured that during the entire decade of the 1990s, school finance continued in real terms (that is in inflation adjusted dollars) to decline. By the year 2000, school finance had declined in real terms by approximately 10 percent. This

was true even though the state's share of school finance was increasing during those years at a rate faster than inflation.

In summary, during the 1990s TABOR eroded the local tax base of school finance, caused unfair inequities in local property tax rates and sharply limited the state's ability to replace lost local revenues. All this in a time when the economy was rapidly growing.

School Districts Take Action: Mill Levies and Bonds

School districts did not sit idly by during the 1990s while their purchasing power steadily lost ground as a result of TABOR and legislative decisions. Those districts that could went to their voters to ask for mill levy override authority in order to supplement the funds authorized under the School Finance Act. The 1994 Finance Act permitted local school districts to increase their per-pupil funding with increased local taxes by as much as 20 percent of the district's total program amount.

Raising additional funds from a local mill levy override was not, however, an equal opportunity option. As a general rule, school districts with higher growth or higher wealth had a much better chance of convincing local voters to approve a mill levy override than did a district which had neither rapid growth nor high local wealth. Some school districts have been able to significantly supplement the amounts authorized under the

School Finance Act, in some cases by the full 20 percent of total program that is authorized in the 1994 Act. Most districts have been forced to operate within the allotments of the School Finance Act.

Perversely, TABOR indirectly accelerated the trend toward inequity that results from mill levy override elections. One of the consequences of the falling local mill levies caused by TABOR, especially in the high growth school districts, is that a local school district requesting a mill levy or a bond can assure the voters that the district's total mill levy will only go up very modestly or not at all if the mill levy or bond is passed. In some cases it may even fall. Therefore, as TABOR drove down local mill levies and destroyed the local tax base, it also created an environment in which it was easier for high growth school districts to pass mill levy overrides and bond elections. School districts came to rely on the declining mill levy argument as a way to pass much needed overrides and bond issues.

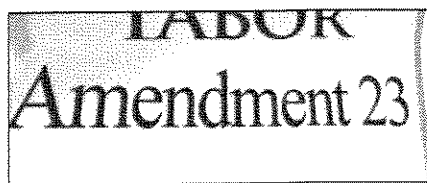
Local Control Threatened

As the state continued to increase its share of school finance, the legislature became increasingly active in directing local school boards. Accountability became the watch word of the 1990s and we found state standards, the CSAP and a new and much more muscular state accreditation system for school districts. In 2000, we saw the

Most disappointing of all, Amendment 23 did not solve the problems in school finance.

State Accountability Reports and a wide variety of accountability measures sought by then new Governor Bill Owens. When CASB asserted local control as an argument against new legislation infringing on the authority of local school boards, legislators routinely pointed out that they were paying the freight for school finance and they darn well were going to have some say as to how those dollars were spent.

In 2000, public education decided to stop crying to legislators and go directly to the voters. Amendment 23, the last leg of our three-legged constitutional tax code stool, was hatched in the minds of parents around their kitchen tables and passed by an electorate which had decided that the legislature was not doing enough to fund our schools.



COLORADO'S THREE-PART CONSTITUTIONAL TAX CODE Part 3: Amendment 23

Voters approved Amendment 23 in the fall of 2000 as a way to shore up funding for Colorado's public schools. It was conceived as an antidote to TABOR's effect on school finance. It is designed around the tax and revenue structures imposed by TABOR and largely

leaves those structures undisturbed. Finally, Amendment 23's effects, both good and bad, can only be understood in reference to TABOR.

During the 1990s, Colorado enjoyed one of its best economies in decades. Notwithstanding those growth rates, TABOR continuously drove down the level of school finance during the 1990s. Equally important, everyone in public education finally realized that the experience of the 1990s was the best future public education could ever expect for school finance. As long as TABOR and Gallagher were in the Constitution, the legislature could do no better than it had done during the good times of the 1990s, and could do much worse.

The method chosen in Amendment 23 to address this problem was not a tax increase. Rather, Amendment 23 "de-Bruces" a small portion of the state tax revenues, dedicates that portion to a State Education Fund and requires that the state spend an amount on public education every year which is higher than the previous year. Spending formulas under Amendment 23 were designed to catch up K-12 spending in real dollars to the ground lost in the previous decade, and thereafter to keep education funding at 1989 levels. Amendment 23 shares the basic assumption underpinning TABOR that it is enough to adjust tax revenues year to year for inflation and growth.

Amendment 23 made no attempt to reform either TABOR or

Gallagher. It required funding increases for education but it did not correct the flaws of TABOR and Gallagher that had driven down revenues. The goal of Amendment 23 was to restore education funding to its 1988 levels, a time pre-dating most state and federal accountability laws, without offending Masters Gallagher and Bruce.

Amendment 23 did not slow or change the ongoing erosion of the local tax base for school finance. Since Amendment 23 passed, TABOR and Gallagher have forced the state's share of school finance to increase from approximately 60 percent in 2000 to approximately 70 percent today. The additional 20 percent share represents almost one billion additional dollars each year in state revenues for school finance that could be used for other purposes if local taxpayers were still paying a full 50 percent of the school finance bill.

Amendment 23 also did nothing to change the ongoing and increasing inequities in local tax rates between different jurisdictions as a result of TABOR. By 2007, those inequities ranged from approximately 40 mills in some of the state's poorest school districts to less than 5 mills in the state's wealthiest school districts. Even discounting some of the state's wealthiest school districts, the mill levy differential between the poorer and wealthier districts was approximately 25 mills by 2007.

In addition, Amendment 23 did nothing helpful for any other

part of the state's budget. Because it contained mandatory funding increases that continued even during tough economic times and continued regardless of other state needs, Amendment 23 began to crowd out funding for other parts of the state budget, such as higher education. In this sense, Amendment 23 aggravated many of the pressures that TABOR otherwise placed on the state's revenues and budget.

Most disappointing of all, Amendment 23 did not solve the problems in school finance. Adequacy remains as elusive today as ever. The inflation-adjusted 1988 funding levels are far short of the amounts necessary to meet the challenges imposed by state and federal legislatures on public education in the last 20 years. Costs that have grown faster than inflation, such as transportation and employee benefits, are not captured by the Amendment 23 formula. Perhaps nothing illustrates Amendment 23's funding shortcomings better than the statistic that Colorado has fallen from approximately \$700 under the national per-pupil funding average in 2000 to more than \$1,000 under that average today. Colorado has lost more ground since Amendment 23 passed.

Finally, Amendment 23 has not altered the tendency of the system under TABOR to widen the gap between the "haves" and "have nots." Those school districts with the local wealth and political support to successfully obtain mill levy overrides have continued to do so since Amendment 23 passed, still safely able to promise in their campaigns that overall mill levies would not go up because TABOR and Gallagher were continuing to drive down mill levies. School

districts that cannot pass overrides (the majority) do not have access to these additional funds. For example, several school districts have mill levy authority in their districts that totals more than \$1,000 of additional school finance funds per pupil. Greeley, St. Vrain, and many rural Colorado districts receive no additional dollars from mill levy overrides. The goal of the 1973 School Finance Act to equalize funding in all school districts regardless of local wealth remains unmet under Amendment 23.

Amendment 23 attempted to solve the problems in school finance without disturbing the framework TABOR imposed on state tax policy and revenues. It was an attempt to permit school finance to live happily in relationship with TABOR. On the plus side, Amendment 23 was successful in maintaining a basic level of funding for school finance, especially during some tough economic times in the early parts of this decade. It also restored Colorado to 1989 funding levels in real dollars. It did both these things without changing TABOR.

In all other respects Amendment 23 has been a failure. It has failed to put enough money into our schools to meet the challenges of the 21st century. It has failed to advance any of the policy goals of equity and adequacy explicitly called for in every finance act since 1973. It has failed to stop the ongoing deterioration in equity in our property tax system and it has failed to address the true problem for school finance in Colorado, which is insufficient state revenue and flexibility to meet the needs of the state and its citizens.

TIME FOR A DIVORCE

The citizens of this state, including public educators and

school board members, have tried to live with TABOR for 16 years. We have accepted as true what TABOR tells us. TABOR assumes that our elected legislators, school board members and municipal leaders cannot be trusted with taxpayer money; that our public schools, public healthcare systems, transportation authorities and institutions of higher learning have more money than they need; and that there is no reason for the public sector ever to grow faster than the rate of inflation.

Any fair-minded assessment of where Colorado finds itself today must end with the conclusion that each of those premises is wrong. The public sector in Colorado will never succeed in a TABOR world. A public school finance system that must live in relationship with TABOR will fail. A healthy system of school finance cannot be built on formulas in a constitution.

Moreover, if we value local control of our schools, or even a healthy balance between state and local control, we must restore some semblance of balance and stability between local and state funding for public schools. Without that balance, local hopes and dreams for our public schools will increasingly be forced to come on bended knee to the altar of state expectations. Money, be it local, state or federal dollars, comes with strings attached. If local boards want to continue to pull some of those strings, they must have money in the game.

The legislature took a stab at stabilizing local funding last year when it tried to correct one of the least understood flaws in the 1994 School Finance Act. The Mill Levy Stabilization Act mandated that mill levies would not decline when local tax revenues exceed the

TABOR revenue limit if the school district has de-Bruced. This is a sensible step. It at least builds the flexibility into school finance permitted by TABOR. Had the legislature fully understood TABOR in 1994, it undoubtedly would have provided for that option then.

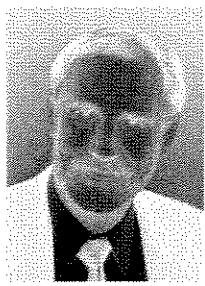
Today it is too little too late. The ground lost since 1994 cannot be recovered. Mill levies, even with the top rates lowered by the Stabilization Act from 40 to 27 mills, remain grossly inequitable between wealthy and poor school districts. The related phenomena of declining local tax revenues caused by Gallagher and TABOR continue unabated by the Mill Levy Stabilization Act. Even the little that this Act accomplished may yet fail in the face of a lawsuit brought by the

Independence Institute.

School finance is a graphic illustration of why the effort to live with TABOR has failed and why it will always fail. Formulas in the Constitution, even when well designed, are based on the past, on the needs of a state that no longer exists. The state we are becoming will always present challenges never anticipated in formulas constructed based on the past. If we want the legislature to respond to present and future needs, we must dispense with governing by formula. It is time to return to representative government.

There is risk in this of course. There is uncertainty and there will be tough years, perhaps even a stretch of tough years. On balance, public education will be healthier

and better able to articulate and justify its needs if it must go to the state legislature every year and make a case for taxpayer support. We can at least begin to move once more toward the policy goals of the 1973 Finance Act, the 1988 Finance Act and the 1994 Finance Act. Who knows, we may even find the political will and the resources to write the Finance Act of 2010. █



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COLORADO SAFE: STEP 1 IN UNTANGLING THE SCHOOL FINANCE KNOT

What is SAFE?

What does SAFE do?

What does SAFE do for schools?

What does SAFE mean for taxpayers?

How can the State Education Fund be used?

The State Education Fund can be used only for public education, from preschool through the 12th grade. Specific purposes include:
- class size reduction
- gifted and talented programs
- performance incentives for teachers
- preschool and kindergarten
- school building construction
- special education
- student safety
- technology education and vocational education

Note: 2008