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# COMMENTS ON TAXPAYER BILL OF RIGHTS

JAMES S. HANEY\*

Professor Reschovsky's presentation was very interesting, and it reminds me of why I did so poorly in economics. I never cease to marvel at how economists, now with power points, can show us that an increase in spending is a cut. That just always fascinates me, but he did it very well.

I am supposed to talk about TABOR, and one of the problems with this is that there is no TABOR yet in Wisconsin. There are lots of ideas floating around, none of which has been settled on. I think the ultimate version will end up linking increases in public sector spending to the rise in personal income, rather than to inflation or to inflation plus population growth.

Why TABOR? What is the problem? You know, as I have been listening to this talk about the state's fiscal problem, the presentations to date have emphasized that there is not enough money to do all the things we want to do. Mark Marotta said last night, "We've got to figure out what kind of revenue we need to support the kind of spending we want."<sup>1</sup> That was his direct quote. Today, Mike Morgan said, as he talked about the characteristics of the new economy, that we need to use different tax structures that will "fund what we think is important."<sup>2</sup> Professor Fox talked about the reliability of revenue as being the primary concern in going forward.<sup>3</sup>

The problem that we have in Wisconsin, it seems to me, is that we are talking today about trying to devise a more rational tax collection system, but we are not spending much time at all on the spending side of the equation, which really is what drives all of our taxes historically. The problem we have in Wisconsin is that there has been no collective will, no political will, no leadership about controlling, somehow, the growth of public sector spending. Say what you want about rankings, the fact of the matter remains, we have been in the top five state and local tax burdened states since 1991 and in the

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\* President, Wisconsin Manufacturers & Commerce. Former Deputy Secretary, Wisconsin Department of Revenue. Presentation at the Wisconsin Tax Policy Colloquium, Marquette University Law School, April 15-16, 2004.

1. Mark J. Marotta, *Taxing Thoughts*, 88 MARQ. L. REV. 5 (2004).

2. Michael L. Morgan, *The Department of Revenue Perspective*, 88 MARQ. L. REV. 11 (2004).

3. William F. Fox, *The Ongoing Evolution of State Revenue Systems*, 88 MARQ. L. REV. 19 (2004).

top ten for three decades. Three decades, three decades we have been in the top ten! We are in the top ten in tax burden even though our personal income lags behind the national average by at least 4%, and our wealth as a state is back in the middle of the pack.

The problem is this insatiable appetite to spend. One of the things I have learned over the years is we are all very adept at protecting our little piece of the status quo. So, when you say we need to "support the kind of spending we want" or "fund what we think is important"—I can tell you what the municipalities think is important, I can tell you what the road builders think is important, I certainly know what the teachers think is important, I know what my manufacturers think is important. What we get is grief because everybody gets more spending.

To fix the Marquette interchange, which we agree has to be done, we are going to pave every town road in La Crosse County and Eau Claire County to get the votes. That is just the way the system works. And you know, you have been there, so you know that hope springs eternal that suddenly statesmanship will blossom and suddenly people will be responsible and say, "How much do we absolutely have to spend?" or maybe they will say, "How much money can we reasonably expect to take in?" That is the way I do my personal budget—what are my wages, what am I likely to make on the market, and then how am I going to spend it? Then I draw a budget within that revenue.

We do it just the opposite in the public sector: How much do we think we need to spend? How much would we like to spend, in our wildest dreams? If we could spend everything we could, what would that amount be? And now, how are we going to adjust the taxes so we can pay for it?

That philosophy has put us way out of line. The tax burden exceeds the people's ability to pay. And that is why you have a tax revolt. That is why, when you ask people—do you support some arbitrary limit on the ability of government to grow, not to cut government, but to put some limits on the rate of growth?—73% say "You bet!" And when you push them and say that might mean larger class sizes, that might mean cuts in medical systems, that might mean other things, 63% say they are still for it. That is the political reality of where we are in the state today. No matter how we spin these issues, the public understands that the tax burden here is oppressive. I have known this and have observed it for 20 years, because we poll constantly. Except for last year, taxes are the number one issue raised not only by my members, the business people around the state, but by the general public. The number one problem facing the State of Wisconsin is the tax burden.

I do not know if the biggest tax problem is the property tax burden. We get that bill in one lump sum, and it hurts, and everybody sees it. But

collectively taxes are a problem, and the voters want to do something about it. There are so many systemic problems here, and historically we have said we can fix some of them on a pay-as-you-go basis. That sounds terrific. The Doyle administration did not balance this budget on a pay-as-you-go basis. They panned the prior administration for using one-time tobacco money, but how much of this year's fix was raided from the transportation fund, which is sort of a pay as you go program? We borrowed quite a lot of money from the transportation fund to make this budget work without any tax increases.

Discussions of tax policy often reference rainy-day funds. We have had one since the last Democratic governor, who saw that as a big problem and said, "We better get a rainy-day fund." Over the course of 25 years, we have \$200 in it and that is Doris Hanson's contribution with a little compounded interest I suspect. Targeted tax relief is another common buzz word. Usually it means that we should be creative in how we shift taxes around.

The one constitutional provision we have got, and it was in the original constitution, is the Uniformity Clause. The Uniformity Clause has served us all very well. It says that if you are going to tax property, you cannot tax it in different ways; all property will be taxed the same. There is a constant effort, sometimes with proposed constitutional amendments, to change that to say that we can tax industrial and commercial property at rates higher than residential and agricultural property.

It seems to me that TABOR is a concept whose time has come. It does permit the growth of public sector spending. I think it does it in a humane way, particularly if revenues are linked to a higher inflator, such as personal income. To go beyond that is to say to the taxpayers of this state, "You might get a raise, but we are going to take it." As a taxpayer, you know you are not going to get ahead because government cannot control the way it does business, so it will continue to take more than you can truly afford. Somehow you have to put pressure on the system to change that. I do not know how else you can do it. We tried it with the schools, and it worked for a couple of years; property taxes clearly did go down. The school tax portion of the property tax went down. But we did not include everything in the cap, and they put all kinds of restrictions on how they had to spend the money. That made Michael Butera and his people very upset, and understandably so. And so we have begun to punch holes in the school tax levy, and property taxes have begun to creep up again, certainly faster than the cost of living.

It seems to me that you have to impose discipline on the system, so that people start asking the really important questions, like how much government do we really need and how much can we afford? You will never get to that if it is business as usual. I can identify every tax cut the business community has ever gotten and tell you why you should not touch it. Local governments

can defend everything they have to do, usually because the state mandates it. And we have heard Andy Reschovsky say that you cannot control education costs or medical costs.<sup>4</sup> Well businesses have to control costs. Their medical costs go up and they have to control it; they cannot just pass it on. So, that is where we are. We have to curtail the growth of government spending. That is why I think TABOR is a good idea.

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4. Andrew Reschovsky, *The Taxpayer Bill of Rights: A Solution to Wisconsin's Fiscal Problems or a Prescription for Future Fiscal Crises?*, 88 MARQ. L. REV. 135 (2004).