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THE MISSOURI HANCOCK AMENDMENT  
A CASE STUDY OF A TAX-LIMITATION LAW

By

Laura A. Harrison

Presented in partial fulfillment of  
the requirements for the degree of  
Master of Public Administration  
University of Montana  
1984

Committee:

Dr. McGreygor Cawley, Chair

Dr. Thomas Payne

Dr. Richard Shannon

Approved by:

R. McGreygor Cawley  
Chairman, Board of Examiners

E. C. Murray  
Dean, Graduate School

August 2, 1984  
Date

UMI Number: EP39423

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## Introduction

I think there are lessons to be learned from Proposition 13. I think the passage of Proposition 13 has sent a shock wave through the consciousness of every public servant - presidents, governors, mayors, state legislators, members of Congress... I do believe that Proposition 13 is an accurate expression of first of all the distrust of government.

-President Jimmy Carter, 1978<sup>1</sup>

The passage of California's Proposition 13, authored by Howard Jarvis, incited a flurry of tax-cutting actions across the nation. The main goals of the tax-revolt movement were to limit government growth at the state level, and ultimately, to ratify a tax-limitation amendment to the U.S. Constitution.

Proposition 13 culminated a fifteen year struggle for tax reform in California. One leading spokesman in this effort was Ronald Reagan, who argued that the "people are facing a tax future which will leave them...defenseless at the mercy of a vast special-interest oriented government bureaucracy they unwittingly helped to create."<sup>2</sup> Also in support of the effort were leading economists Arthur Laffer, Neil Jacoby, and Milton Friedman.

The primary argument for tax-limitation was that groups

who participate in government decisions have more incentives to increase rather than decrease spending. Bureaucrats advocated increased spending to provide public jobs, higher salaries, contract funds, power, and prestige. Legislators advocated spending to benefit constituents, and also were engaged in the process of vote-trading which inherently led to escalated spending. Even the voters advocated spending because of the benefits received, and perhaps because voters have a different perception of costs and benefits.

Tax-limitation laws are basically of two types. The first is aimed at reducing the existing size of government through tax cuts, as Proposition 13 did. The philosophy of reduction is that the tax burden is too heavy and cutting measures are needed. These cutting measures are usually directed toward property taxes. The second type of philosophy emphasizes containing government growth. The containment philosophy is that government is expanding too fast and needs to be restricted to a growth rate more equivalent to the rest of society. Although these laws have different focuses and are more diverse, typically, these laws tie growth in expenditures to the rate of growth of the economy, inflation plus population, or another similar equation. Their severity depends on 1) the rate of growth permitted, 2) the comprehensiveness of the tax or expenditures base subject to the limit, and 3) the ease with which they may be



overridden.<sup>3</sup>

Popular as tax cuts might have been, the tax limitation effort has not gone unchallenged. Opponents argued that requiring a referendum before increasing revenues places the average taxpayer in the role of legislator without the background knowledge and current information available to legislators. They believed it unrealistic to expect voters to evaluate each issue. Secondly they argued that the protection of minority interests might disappear if tax increases were subject to popular vote. Opponents feared that voters will be more concerned with taxes than programs. They also warned that it would be unwise to permanently adopt a plan that reduces the state's ability to cope with unknown future changes in the economic variables.<sup>4</sup> Walter M. Heller, an economist of national stature, who opposes tax and expenditure limits, argued:

I think that to lock yourself into expenditure limitations in the constitution runs counter to the sensible principles of constitution making. You can never anticipate what shifts in public sentiment may occur...If public opinion should swing back towards a larger government role in case of severe economic recession, then spending limit amendments will have placed a constitutional hamstring on local and state government.<sup>5</sup>

Other arguments raised were that government offices would lose valuable employees to the private sector, local taxes would go up, and tuition fees would also be raised.

Dean Tipps, Executive Director for the Citizens for Tax Justice, raised another issue. Tipps said that in any case

where demand exceeds supply, limits have the effect of increasing the "political price" of spending decisions. Though officials may be forced to make decisions, the priorities chosen would not necessarily be connected with efficiency. Tipps claimed that officials would exploit loopholes and the spending reductions would be aimed at the least visible services.<sup>6</sup> The Advisory Commission on Intergovernmental Relations was another organization concerned about the growth in state and local government. ACIR advocated the "political accountability spotlight" rather than "fiscal shackles" as a way to moderate government growth.<sup>7</sup>

The tax revolt movement, the leaders, many years of hard work, and other variables made Proposition 13 a reality. This laid the groundwork for other states to follow suit. Since 1978, forty-one states have adopted some form of tax cuts for businesses and individuals.

Although the period of passing tax limitation laws appears to have ended, the impacts of these bills are still being felt. Legislators and bureaucrats must evaluate tax limitation laws because they have an enormous impact on the way decisions are made in state and local government. What can be learned from these experiences? What are the effects of these laws on the states? Did these laws fulfill the tax reduction goals?

The purpose of this paper is to show the complexities

and problems of tax limitation laws by examining the implementation of Missouri's Hancock Amendment. As noted later in this paper, one implementation study by Pressman and Wildavsky revealed how policy complexity led to problems in implementation and ultimately dissolution. In examining the political stances, the court's interpretations, and the wording of the Hancock Amendment, this study proposes to show the same problems and outcome in this Missouri Amendment.

### Background

In 1977, Mel Hancock, an unknown businessman from Springfield, began traveling throughout Missouri denouncing state government taxation. Hancock's basic message was that "Government is going to overwhelm free society. Government has gotten into areas where government should not be through coercive power of taxation."<sup>8</sup>

Tax limitation had been a controversy long before the Amendment was passed. The passage of tax limitation laws proved there was nationwide support that even a strong opposition could not overcome. Howard Jarvis and other initiators of the movement developed a strategy in which the general population was named as the sponsors of these bills. This strategic move was made in order that opposition could not pin a label on the issue, like Republican versus Democrat

or Liberal versus Conservative. This way there would not be a negative connotation linked to the bill. Another reason for the move was that if a politician opposed the bill, it might indicate he supported big government, not a popular stance. Hancock, following this strategic plan, used only Missouri Farm Bureau and the Taxpayers' Survival Association as the strength behind his drive.

The list of opponents was considerably larger. Legislators and politicians claimed the law was unneeded, unlawful, and furthermore, in violation of the Fourteenth Amendment to the Federal Constitution.

The opinions of the political actors were split in three ways. The first group wanted the Amendment ruled unconstitutional or at least radically changed. The second group was not as adamant for repeal because they recognized that the public mood was probably adverse to total reform. They believed they should live with it as best as possible and deal with problems as they became evident. The third group believed the subject to be political suicide and did not voice an official opinion. One critic stated that "traditional political wisdom is that this is an untouchable subject."<sup>9</sup> Many leaders and groups, however, did speak out against the Amendment. For instance, the League of Women Voters told legislators, at one meeting, that the law's restrictions had stifled the state's ability to provide needed

services. The league members were concerned that budget constraints would hurt program proposals high on their list of legislative priorities.<sup>10</sup>

The following list is a representation of the powerful leaders who headed the opposition to the Amendment:

Lieutenant Governor Ken Rothman

Representative John Buechner

Senator George Hoblitzelle

Representative Joe Holt

Missouri League of Women Voters

Missouri Council of Churches

Northeast Missouri Client Council  
for Human Needs

Don Moschenross, Executive Director  
of the St. Louis County Municipal League

Gary Markenson, Executive Director of the  
450-member Missouri Municipal League

James Olsen, President of the University  
of Missouri.

The battle over the Hancock Amendment pitted this broad array of legislators and interest groups against the Taxpayer's Survival Association and Missouri's Farm Bureau.

Before Hancock took his plan in writing to the people, he lobbied lawmakers to institute a spending lid. The Missouri Senate passed a watered down version of Hancock's Amendment and sent it across the hall to the House. Lieutenant Governor Kenneth Rothman, then Speaker of the House, refused to allow debate on the proposal. Rothman said, "He could not find one honest senator that thought we needed this thing."<sup>11</sup> The opponents' substantive arguments, at that

time, were that the bill's content included more than one subject, a legislative act should not be placed in a constitution, and the bill failed to specify all parts of the constitution it would change.

This heated controversy came to an end when Hancock decided to take his bill to the people through the initiative process. After taking only three months to collect petition signatures, the Hancock Amendment was passed on November 4, 1980. The vote tabulation shows that the average percent vote cast for Amendment #5 per county was 55.4%, with 44% being the low and 75% being the high.<sup>12</sup> The Amendment became effective December 4, 1980.

The Hancock Amendment is, in fact, Article X, Taxation, sections 16 through 24, of the Missouri Constitution. The preamble of the Amendment spells out that the objectives, purposes, and intent of the drafters, petitioners, and the voters are clearly to place specifically defined limitations on both state and local governmental units and to place these limits under the direct and absolute control of the voters. The intent in the formulation of the Amendment was explained in drafter's notes prepared by the Taxpayers Survival Association. It states:

The purpose of the Amendment is to put a halt to the growth of government at the state level, and ultimately to cause Missouri to ratify a constitutional tax limitation amendment on the Federal Constitution. It is the opinion of the drafters that government is rapidly overwhelming free society, the productivity of our economy is declining, and the coercive power of taxation is

creating a society which is rapidly becoming dependent upon government to provide its needs. This continued growth in government will eventually cause the collapse of our society as we have known it. 13

The preamble of Hancock, Section 16, is a summary of the condition of the Amendment. It reads:

Section 16. Property taxes and other local taxes and state taxation and spending may not be increased above the limitation specified herein without direct voter approval as provided by this constitution. The state is prohibited from requiring any new or expanded activities by counties and other political subdivision without full state financing, or from shifting the tax burden to counties and other political subdivisions. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed.

Implementation of the section is specified in sections 17 through 24, inclusive, of this article. Adopted at general election November 4, 1980. 14

This Amendment imposed three main limitations on the powers of state and local governments.<sup>15</sup> First, it placed a tax limit on the powers of state and local government. This limitation was based on a complex formula which will be discussed later. However, the state may not exceed the income limit by more than one percent unless an emergency situation is declared by the governor and is ratified by two-thirds vote of both the legislative bodies.

Secondly, the Amendment prohibited the state from shifting costs for governmental activities to local governments. It did this by providing that the state may not reduce the state financed portion of the cost of any existing activity or service required of a political subdivision. In addition, the added cost of any new

service or activity required by the state must be funded by the state.

Finally, it prohibited local governments from levying any new or increased "tax, license or fee" without the approval of a majority of the voters. Also in the Amendment was a provision which stipulated a rollback of tax rates if assessed values of real property increase faster than the consumer price index. It should be noted that the law contained an enforcement provision which allows any taxpayer to bring suit in circuit court against any political unit for an alleged violation. If the taxpayer wins, he may recover all costs of litigation, including attorney fees.

The concluding section of the Amendment stated that "the general assembly may make laws implementing it." In the opinion of the Taxpayer's Survival Association this "mandated the legislature to pass such laws during the 1981 session"<sup>16</sup> Although the Amendment dominated the 1981 session, no implementing legislation or amendments to the bill were passed.

#### Hancock Implementation

Since Hancock's passage, this Amendment has been the predominant issue in government offices, the legislature, and the courts. Although no implementing legislation or amend-



ments to the bill were passed, some unsuccessful attempts included House Bill 742, Senate Bill 256, SJR 5, HJR 21, and SJR 1.<sup>17</sup> These bills included such topics as:

- Who would be responsible for reporting whether or not the budget was run in accordance to Hancock.
- Which fund would money come out of in case of a refund.
- Definition of revenue limit and total state revenue.
- The rebate provision.
- The emergency override provision.
- The requirement for state funding of its mandates.
- The application of the amendment to local government revenues.

SB 256 died because Senator John Schneider warned that he would instigate a suit addressing the refund provision. HJR 21 was debated and passed by the House, but the full senate did not even debate the bill. All these bills were attempts to get around the Hancock Amendment; all were defeated. The amendment has since been a major issue in every legislative session since 1981.

The Hancock Amendment has also been a predominant issue in the courts. The focus was on the Supreme Court because once an amendment is ratified, having it nullified can be done only one of two ways, specifically, a court ruling or another statewide vote, an unlikely solution.

In construing the language of a constitutional provision, a court will attempt to give the words their plain meaning. In this sense, the Missouri Supreme Court has taken a very literal interpretation of the Hancock Amendment. In the Buchanon decision,<sup>18</sup> the Court's opinion

indirectly addressed the judicial role in reviewing Hancock in the following statement:

Since the Amendment has already been adopted and the people have demonstrated their will, the Court's duty is not to seek to condemn the Amendment, but to seek to uphold it if possible.

In view of all the controversy, the Missouri State Ways and Means Committee hired a consultant, Sanford Saransohn, to review all of the senate legislation to make sure there were no conflicts with the Amendment's terms.<sup>19</sup> Saransohn's credentials included:

- St. Louis University Law School Teacher, on leave.
- Bachelor's Degree in accounting from Wharton School of Finance and Commerce at the University of Pennsylvania.
- Law Degree from Washington University.
- Member of the Missouri State Tax Commission, 1965-1969.
- Author of amendments to income taxation laws, forms and schedules.
- Associate Director and General Counsel of the Revenue Department, 1977.

According to Saransohn, there are five major problems with the Hancock Amendment. These include:

1. The formula by which the revenue limit is determined.
2. The refund mechanism if the total state revenue limit was exceeded.
3. The meaning of what constitutes an increase or new service that the state would have to fund.
4. The meaning of 'tax, license, or fee.' Any increase thereof, must be approved by the voters.
5. Determining what is exempt in figuring revenue to determine the limit.

Saransohn believed the Amendment would be a continuing source of controversy and many of the issues would come under litigation. Saransohn's predictions proved to be

true as many issues have already been clarified by the Supreme Court. There are, however, many important concerns that the Court has yet to decide.

The first problem Saransohn noted was the revenue limit formula. Exceeding this revenue limit would trigger a tax refund. The problem with this was that the limiting formula is based on the year 1980, a very bad year for Missouri economically. For example, the state revenue for 1980 was one-half of what it had been for the three prior years. Thus, the total amount that could be collected was proportionately lower than it would have been if any other year had been selected. Regardless of where revenue increases came from, (i.e. inflation, economic activity, or by law), some increases could not be spent and would trigger a tax refund.

This leads to the second problem of how the refund would be made if the total state revenue limit was exceeded. The Hancock Amendment fails to specify which fund or department the refund would come out of to pay the taxpayer. Perhaps more importantly, is the question of whether the refund is constitutional. The argument is that the money that comes from such taxes as sales, income, etc., cannot be solely refunded through personal income taxes according to how much that individual paid. Accordingly, the higher income families would receive more of a refund. This appears to be a vio-

lation of due process and equal protection as provided by the Constitution.

This refund mechanism is perhaps the most important issue concerning this law and has been debated since before the Amendment's passage. One of the first of the Hancock cases to reach the Missouri Supreme Court was Buchanon v Kirkpatrick, in April, 1981. Judge J.P. Morgan, in a dissenting opinion, addressed this issue. He wrote:

It sets the stage for collecting taxes both from the rich and the poor but refunding excesses thereof only to the rich. Even a casual inquiry as in the constitutionality of such a procedure dictates that the flagrant discriminatory classification thus created cannot stand. 20

Evidence from the ensuing Supreme Court lawsuit, Buechner, supported Morgan's opinion by showing it:

...established unequivocally that Missouri individual tax represents only 18.4% of the total revenues of the state of Missouri.<sup>21</sup>

Cole County Circuit Court Judge, Byron Kinder, accepted Judge Morgan's statement in the Buchanon dissenting opinion. In Buechner v Bond,<sup>22</sup> Judge Kinder ordered that:

Section 18(b) of the Article X of the Constitution of the State of Missouri is in violation of the Equal Protection Clause of the 14th Amendment of the Constitution of the United States and is declared unconstitutional.

In the appeal to the Missouri Supreme Court, the panel re-

versed Kinder's decision saying, "The equal protection question is not ripe for adjudication, and therefore, not justiciable."<sup>23</sup>

Legally, the Supreme Court cannot decide this issue until the refund mechanism actually goes into effect. It cannot rule on a situation that has not happened. Because the revenue limit has not been exceeded yet, this issue is still undecided.

Mel Hancock, in response, said he felt the spending lid, which has been the target of several suits, may eventually be thrown out by the courts or repealed by the legislators. Mel Hancock stated:

The people who make their living with government money are going to keep gnawing at it until the courts say 'Let's declare the whole thing unconstitutional because we're tired of hearing about it.' <sup>24</sup>

In Saransohn's opinion, the third problem was with the provision in the Amendment which says the state is required to pay for any new or increased levels of local government service it mandates. This raises the question of what constitutes an increase in service. The Court found in Boone County Court v State of Missouri that the State had to pay any increases of salaries of employees whose wages are defined by the state statutes.<sup>25</sup> Dissenting from the majority opinion, Judge John Bardgett said he interpreted it to mean The state would be required to reimburse local governments

for pay raises only when the State required local officials to perform new services. One month following this decision, the Missouri Office of Administration and State Treasurer Mel Carnahan requested a rehearing in the case. The Supreme Court rejected the request with no comment.<sup>26</sup>

Another lawsuit which clarified what the State had to pay to local municipalities was State of Missouri v Zych.<sup>27</sup> The question at hand was whether the St. Louis Board of Police Commissioners is a "state agency" subject to the Hancock limitation. The Court voided a ruling which said the city had to pay Police Board mandates. Because the Board was considered a state agency, the State was ordered to pay the increase.

The fourth problem dealt with the definition of "tax, license, or fee" where any increase thereof, must be approved by the voters. Conceivably, this would include every increase in any public agency. That is exactly what happened.

The problem stems from the fact that the Hancock Amendment is nearly a word for word copy of an amendment to the Constitution of the State of Michigan which became law in November, 1978. There it was called the Headlee Amendment. In a circuit court decision, Judge Kinder wrote that "With the exception of a few minor changes, these two documents are exactly the same."<sup>28</sup> One of these minor changes included adding the words 'license, or fees' to 'taxes'. Opponents

claimed:

This illustrates the sheer folly of governing by popular referendum. Questions of revenue budgeting and appropriations are highly complex and are properly delegated to legislators and full-time government employees. They are incapable of solution by the general public in a mood of dissatisfaction and impulse frugality. 29

This controversy was resolved by the Supreme Court decision Roberts v McNary.<sup>30</sup> A resident and taxpayer of St. Louis County filed declaratory judgment action to prevent the county from implementing increases in fees charged for various county services. Hancock testified that their original intent did not include all fees, but had been to deter legislators from labeling revenue increases as something other than taxes as a way to skirt the Amendment's provisions. Although the drafter's intent is usually considered in any court, the Missouri Court indicated that the drafter's intent carried no weight as it could not be determined what the voters intended when they approved the initiative.<sup>31</sup> Therefore, in a unanimous decision, Chief Justice Robert Donnelly wrote:

All fees require voter approval, regardless of what Hancock intended...This is consistent with the Hancock Amendment as clearly understood by voters - to rein in increases in government revenue and expenditures.

Some examples of the fee increases ruled unconstitutional in that suit were:<sup>32</sup>

- Swimming admissions for children and senior citizens, 75¢ to \$1.

- Swimming pool rental for groups, \$25 per hour to \$40 per hour.
- Copies of tax statement, \$1 to \$2.50.
- Ballpark lighting per game, \$25 to \$27.
- Reserving Grant Shelter in South County, \$100 to \$150.

After the ruling, the respondent, Wilhelmina Roberts, said, "That is such a relief." She said the suit was designed to show how poorly conceived the Hancock Amendment was. "People should not be so willing to put everything that comes along in the State Constitution."<sup>33</sup> Gary Markenson, Executive Director of the Missouri Municipal League, called this landmark decision "representative of all our worst fears."<sup>34</sup>

This broad construction requires a city to hold a costly election every time a service charge is raised or a new regulatory ordinance is enacted which imposes a fee. In many instances, the cost of the election might exceed the estimated amount of revenue to be collected. Legally, this freezes all government programs, activities, and regulations. Elections are costly, time consuming, and cumbersome. The direct cost of a municipal election in a Missouri city with a population of 65,000 is approximately \$8,000. Calling an election takes approximately sixty days, and elections may be called only six times a year under state election laws.<sup>35</sup>

Mel Hancock said that "in my judgment, the taxpayers won the case. Even though we made a drafting error possibly,



it is a plus for the taxpayer."<sup>36</sup>

After the November elections, Hancock said, "Missouri voters got a free lesson in civics by being forced to vote on dozens of municipal fee increases. People have told me it was the first time they felt they had something to say."<sup>37</sup> In fact, the voters overwhelmingly defeated measures in two municipalities that would have allowed officials to raise fees for various services without conducting individual elections. In the other elections, almost all increases were approved. For example, among thirteen county municipalities where 98 propositions were on the ballot, only 3 were defeated.<sup>38</sup>

In contrast, Senator John Schneider said of Hancock, "He's made a shambles out of state government."<sup>39</sup> Schneider said the Hancock Amendment was poorly written and had not been an effective control on state spending. He also said that he thought the next suit would hopefully result in the entire Amendment being declared invalid.

The fifth major problem with the Amendment suggested by Saransohn, is the matter of what is exempt in figuring revenues. The major topic of concern in this area is whether the last year's surplus budget is included in figuring the revenues for the next fiscal year. Buechner/Goode v Bond, previously mentioned, was initiated by two St. Louis area legislators, John Buechner and Wayne Goode, who were

critical of the Amendment. The legislators alleged that Governor Bond and state officials improperly took into account the previous year's unspent money in adding up the revenues. They claimed some \$500 million in unspent money was included to artificially raise the spending limit. Goode said that the allowable spending increase would be \$103 million without the unspent money. By including the unspent money, Goode claimed an increase of \$362 million was allowed.<sup>40</sup>

The conflicting opinions came from accountants and budget officials. State Auditor James Antonio stated the 1980 unexpended funds should not have been included in the total budget for fiscal 1981. He said it was leftover money and not revenue, as defined by standard accounting procedures.<sup>41</sup> Clark T. Stevens, Georgia State Budget Director and head of a national group of state fiscal officers, disagreed with Antonio.<sup>42</sup> He testified that budgeting standards allow several steps different from accounting principles.

Judge Bryon Kinder, in the Circuit Court decision, found that:

The Governor's Budget Message for fiscal year 1980-1981 defines general revenue as including unspent revenue from the preceding year or opening balance, and that this definition is totally consistent with traditional and long accepted budget practices of Missouri.<sup>43</sup>

Accordingly, Kinder declared that unspent revenue from fiscal year 1979-1980, is a component portion of general

revenue to be included in "total state revenue." Kinder also declared the refund mechanism unconstitutional in this ruling.

State Representatives John Buechner and Wayne Goode filed an appeal on the grounds that total state revenue did not include unspent funds. The plaintiffs contended that the miscalculated budget made it impossible for plaintiffs and others in the General Assembly to vote rationally and accurately on revenue and appropriation bills, and that the issue required resolution by the court.<sup>44</sup> Supreme Court Judge Andrew J. Higgins declared that "the Missouri Constitution does define 'total state revenues' but not so as to include the opening balance. Reversed."<sup>45</sup>

Governor Christopher Bond objected strongly to the decision and referred to the Supreme Court as a "lame duck" court.<sup>46</sup> Bond said the decision could wreck his budget and perhaps force the State to refund \$125 million to taxpayers.<sup>47</sup> To this date, the refund mechanism has not been triggered.

After a rehearing was refused, Governor Bond had the opportunity to appoint a new judge. This gave Bond a majority of appointees, four out of seven. In fact, it was the first time since 1940 that a Missouri governor had a majority of the appointees.<sup>48</sup> Because of this new development, critics of the Amendment wanted to get the issue back in

court.

The General Assembly responded to the Supreme Court decisions by formulating a new bill. This bill excluded revenues of a voter authorized 1¢ sales tax for education from the conditions of Hancock. The bill was passed and signed by the Governor and went promptly into the notorious circuit court of Judge Byron Kinder. The issue presented was that if the 1¢ tax was included in revenues, the collected revenue limit would be passed and a refund would be in order. Judge Kinder with yet another innovative interpretation of the law, decided the issue using his own logic. Kinder found that not only was the 1¢ tax excluded from the tax lid restriction, but he also excluded the total sales tax of 4¢. Kinder explained that the voters, in approving the 1¢ sales tax, had first repealed a section of law containing the original 3¢ tax and replaced it with the new 4¢ tax law. In reality, Kinder said, the people enacted an entirely new sales tax.<sup>49</sup>

Attorney General John Ashcroft filed an appeal with the Supreme Court. He stated in a news conference that "Judge Kinder's ruling 'guts' the Hancock Amendment by creating a \$1.2 billion cushion in the revenue ceiling, allowing the General Assembly to totally disregard the people's will when they overwhelmingly approved tax and spending limits for Missouri."<sup>50</sup> In May, 1983, the Supreme Court ruled that the

\$272 million in revenue from the 1¢ sales tax increase should not be subject to the lid. The Court said the voters were not voting on the other 3¢ tax and merely vacated Judge Kinder's order. The one-page decision said:

The court having considered the briefs and arguments of the parties finds there is no justiciable controversy between the parties, ripe for adjudication. It is therefore ordered that the judgment of the trial court be and hereby is vacated and cause dismissed. 51

Mel Hancock, trying to defend the Amendment, filed a lawsuit in hopes of getting the litigation stopped. Hancock charged the Senate Accounts Committee of improperly authorizing the use of \$15,000 in state funds to pay attorneys to challenge the Constitution.<sup>52</sup> The lawsuit named Senators Edwin Dirch (D - St. Ann), John Schneider (D - St. Louis) and Richard Webster (R - Carthage). The Senate Committee asked Attorney General Ashcroft if he would defend them in the suit. Ashcroft refused, saying it was improper to do so when they are already defending the Constitution against some of those same senators.<sup>53</sup>

The General Assembly, in September, 1983, tried yet another way to circumvent the Hancock lids. The chairman of the Missouri House Budget Committee asked Governor Bond to declare a financial emergency.<sup>54</sup> This would have enabled the state to skirt the state tax collection and spending lid to raise revenue. The Hancock Amendment

contains a provision which allows the governor to declare a one-year financial emergency during which the state can collect revenues above the limit without triggering a refund. In an emergency period, any revenues raised over the lid are placed in the state's operating reserve fund, which would be used to pay future bills. Looking to other solutions, Governor Bond rejected the suggestion. Bond was looking at proposals to raise corporate taxes.

These numerous lawsuits, pending and decided, the questions, and the controversies have yet to cease. It is predicted that the Amendment could trigger as many court cases as the estimated 2,000 in Michigan.<sup>55</sup>

#### Budget Impact

The Missouri four billion dollar budget is divided into three major categories. About one-third is federal funds exempted from the Hancock revenue limit. Close to 17% comprise revenues deposited into specific funds which may be used for designated purposes only, including highways, conservation, and employee retirement. The remaining half comprises the General Revenue Fund, made up of receipts from which money may be appropriated by the general assembly for any state purpose.<sup>56</sup> Growth in the general revenue fund averaged about 13% per year in recent history. Before the 1980-1981 fiscal year, the first budget year the Amend-

ment went into effect, there was about \$300 million in unspent, unappropriated funds. Revenues for the 1979-1980 fiscal year were expected to increase by 12%. Instead general revenue increased only 3.5%. As a result, the cash balance dwindled to only \$40 million. With the new Hancock provision of a revenue limit, the recovery process was slow. A combination of circumstances, however, has propelled the state surplus back to being close to the refund limit.

The Hancock Amendment limits government spending, in a complex formula, by tying the growth of state revenue to the growth of Missourians' personal income. The Amendment specifically says the key figure for total state revenue is defined in the governor's 1980 budget message. One trouble was that the governor did not define the total state revenue in his budget message that year. The cause of this dilemma also stems from the Michigan law which Hancock copied. Michigan law requires the governor to define state revenue each year; Missouri law does not.

Another problem with the formula is that personal income figures are revised periodically, and furthermore, the first reliable figure is not released until after the Missouri legislature adjourns.<sup>57</sup>

The major complaint, previously mentioned, was the fact that the calculations were based on a very bad economic

year, 1980, for Missouri. The second implication was that the revenues received during 1980-1981 would determine the factor which would be used to calculate the limit in subsequent years. Because revenues were unusually low in fiscal year 1981, the limit will be permanently tighter than it would have been if some other base year had been chosen.

State Auditor James Antonio has struggled with these and other questions for 3½ years. Antonio said, "I could not disagree with the people who say it's badly written."<sup>58</sup> Despite the language problem, Antonio favors keeping the Amendment.

Antonio explained in a review of the Hancock Amendment that:

Because the Amendment did not clearly define who was responsible for interpreting the Amendment, developing the revenue limit formula, or determining the specific items that should be included in the formula, the Office of Administration, Division of Budget and Planning, has assumed these responsibilities. 59

The Division translated the Amendment's revenue limit into the following formula:<sup>60</sup>

$$\text{Revenue Limit for FY 19XX} = \frac{\text{TSR in FY 1981}}{\text{CY 1979 MPI}} \times \begin{array}{l} \text{the greater of:} \\ \text{MPI in the CY} \\ \text{prior to the CY} \\ \text{in which appropri-} \\ \text{ations are made} \\ \text{for FY 19XX} \\ \text{or} \\ \text{average MPI for} \\ \text{three CY (preced-} \\ \text{ing FY 19XX)} \end{array}$$

Abbreviations key:  
 FY - fiscal year  
 CY - calendar year  
 TSR - total state revenue  
 MPI - Missouri personal income



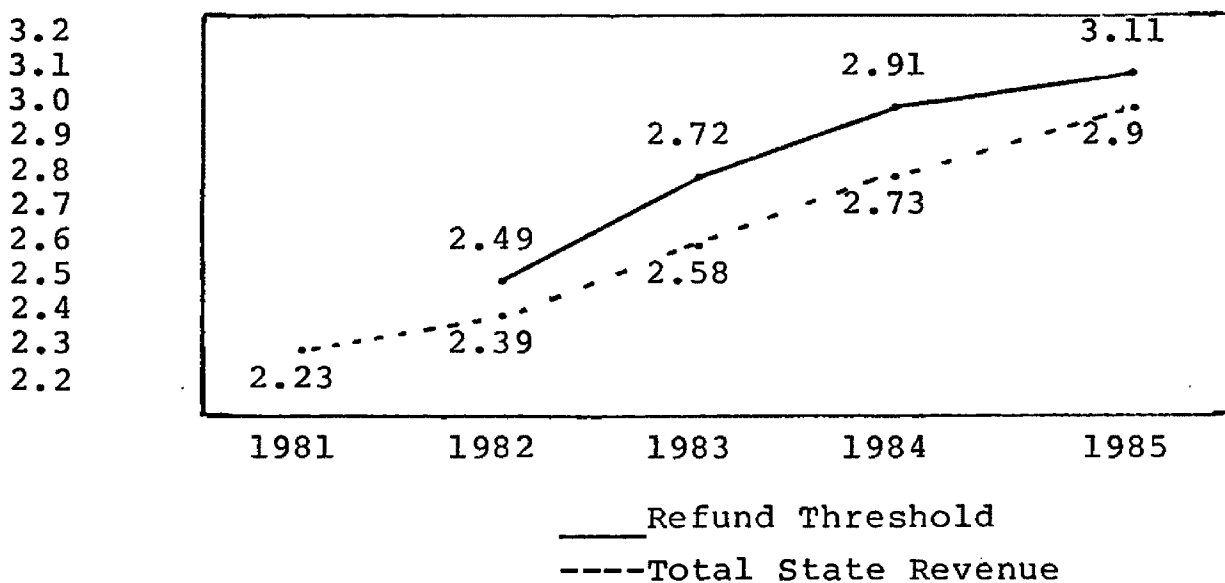
The legislative research staff analyzed each section in the Amendment and found this formula was defined in the second sentence of Section 18(a) in language which is somewhat vague. The apparent sense was that the moving personal income figure would be for the second calendar year before the fiscal year for which the revenue limit is being calculated. For example, calendar year 1980 personal income would be used to figure the fiscal year 1982 limit, calendar year 1981 personal income would be used to figure the fiscal year 1983 limit, etc. The fixed ratio is the total state revenues in fiscal year 1981 divided by Missouri personal income in calendar year 1979. Thus, a simplified interpretation would be that the fiscal year 1984 revenue limit will equal the fixed ratio times calendar year 1982 personal income. Nowhere in the Amendment did it identify accounting procedures, cutoff dates, or other administrative details.<sup>61</sup>

In reviewing this formula, it is important to clarify the following components. First, the Missouri Personal Income amounts used in the formula are provided by the U.S. Department of Commerce, as required in Article X, Section 17(2) of the Missouri Constitution. Secondly, in determining the refund line, the revenue limit is adjusted upward by one percent. The Amendment allows the state to exceed the revenue limit by one percent before a refund is due.

The other consideration is what components are included in the total state revenue figure. Clarified by Supreme Court decisions, the state's opening balance, the monies received from federal funds, and the revenue from the 1¢ Proposition C sales tax are not included in the formula.

Therefore, when the formula was calculated, comparisons may be drawn between the refund threshold and state revenues. Table I shows figures stemming from 1981 and projected to 1985. (For a more detailed account of the formula's calculations, refer to Appendixes A, B, and C.)

TABLE I: Total State Revenue Versus Refund Threshold.  
(dollars in billions)



After these figures were compiled, the Senate Research Staff further studied how a refund would affect Missouri Department budgets. These estimates are shown in Table II. Senate officials declared that public schools, mental

health services, and higher education would bear the heaviest burden.<sup>62</sup>

TABLE II: How a refund might affect Missouri Departments

<u>Department</u>	<u>Governor's recommended budget for 1984 in millions of dollars</u>	<u>Budget cut</u>
Elementary and Secondary Education	\$701.8	\$47.7
Higher Education	341.4	23.2
Revenue	16.2	1.1
Office of Administration	35.4	2.4
Natural Resources	12.0	0.8
Consumer Affairs	14.8	1.0
Labor	1.1	0.1
Public Safety	10.9	0.7
Probation and Parole	11.9	0.8
Mental Health	109.2	7.4
Social Service	203.4	13.8
Agriculture	6.1	0.4
Highways and Transportation	4.2	0.3

In February, 1984, most officials interviewed stated there were not any pressing financial problems for this session of the General Assembly. Writing another tight-fisted budget appears to be their top priority.<sup>63</sup> Perry McGuinis, the State Budget Director said calculations show the State is \$150.6 million below the lid this year and

would be \$185.6 million below in the budget year that begins on July 1.<sup>64</sup>

Senator Richard Webster (R - Carthage), however, said that by his calculations the State has already collected more than the permissible amount under the lid.<sup>65</sup> The current argument is that there have been funds excluded, such as, the unemployment compensation fund, that should have been included in the revenue lid calculation. Nevertheless, McGuinis said that he did not foresee any problem with Governor Bond's proposed \$4.9 billion dollar budget.<sup>66</sup>

### Conclusion

The main issues in the Hancock Amendment have yet to be resolved. The drafters stated that their main goal was to put a halt to the growth of government at the state level, and ultimately, to cause Missouri to ratify a constitutional tax limitation amendment on the Federal Constitution. It is unclear at this point if that goal has ever been met, and whether it has been a positive experience for the state.

The irony in this situation is that all the litigation, budget confusion, and mandatory elections may be costing taxpayers more than if the initiative had been defeated. The 1984 fiscal year could be a crucial year. One government figure estimated the state's economic growth for 1984 at 8.5%. Even the brightest estimate from the Senate says

this increase allows for only 55 million dollars for discretionary spending. Also, the threatening rebate provisions could force 125 million dollars worth of budget cuts.<sup>67</sup>

Many legislators are still ready to repeal the Amendment but they do not believe the people are willing. Senate President Pro Tem, John Scott, said that the people probably won't repeal Hancock until they are hurt bad enough.<sup>68</sup>

The problems and complexities of this law are evident. The complexity of the situation stems from the political stances, the courts' literal interpretation of the law, and the inexperience of the drafters in wording the Amendment. It is still conceivable that the Supreme Court may yet rule the Amendment unconstitutional.

At the beginning, one political stance was to ignore the proposed tax-reduction measures called for by the public. Supposedly, opponents thought the bill was unneeded and unwanted. As a result, they ended up with a law in which they had no input in drafting. This created several administrative difficulties. The next stance some officials took was that of legally attacking the Amendment in court. In this effort, opposition is still in hopes of having the Amendment declared unconstitutional. These opponents have raised some serious concerns. These concerns addressed the question of whether priorities and effectiveness of govern-

ment programs would be adversely affected by this law.

The Missouri Supreme Court has made it very clear that they will uphold the literal meaning of this law. In its decisions, it has supported the Amendment in its strictest sense. As a result, there are major constraints now imposed on the activities of public agencies. The climax of the litigation will probably be at a point when the Supreme Court will rule on the questioned constitutionality of the refund.

Finally, the wording of this Amendment has made it extremely difficult for administrators to run Missouri government. Having an initiative made into a constitutional amendment makes the situation complex to begin with. Then there is the consideration that the Amendment was copied from another state with different variables to evaluate. One study sent to the members of the Missouri General Assembly stated:

The Hancock Amendment was so hastily written and carelessly drawn up that you can walk through State Capitol hallways and hear a dozen different interpretations of the Amendment's language. The bottom line is the Hancock Amendment is costing taxpayers thousands of dollars to be properly interpreted in the courts. In the meantime, the Amendment is constricting the business of running a state government already hamstrung by economic downturn. Hancock Amendment language is so confusing, experts can't even agree on how many unanswered questions are contained in the three-page measure. 69

This problem and the appearance that the refund is unconstitutional are major concerns. Furthermore, there are

numerous other problems such as 1) the wording of the refund, 2) the definitions of revenue, license, and fees, 3) the equation components, and other important topics.

The National Tax Limitation Committee, after the Proposition 13 victory, published an article about what it saw as essential ingredients in designing a tax limitation amendment.<sup>70</sup> The committee separated the ingredients into three groups: critical elements, support elements, and optional provisions.

The critical elements included a state limit, accrued obligation protection, local government limit, and protection for local governments from program costs mandated by state. The support elements included provisions for excess revenues, emergency protection of credit rating, and authority for voters to change the limits and definitions. Optional provisions included rollback, indexing, and provisions for program shifts, but only if they were deemed essential to the amendment.

The authors of Hancock must have thought all elements essential because all ingredients are present in the Missouri law. Specifically, the Missouri Amendment provides for a state spending limit, a state taxing limit, obligation protection, a local limit by requiring voter approval on all increases, local government protection from state mandating new spending or shifting current program expenses,

an emergency provision, and a refund provision for taxpayers through their income tax if the revenue limit is exceeded. All these constraints have made it extremely difficult to run Missouri government.

It is apparent that no one involved in authoring the Hancock Amendment considered adequately the implementation process for this law. Pressman and Wildavsky, in their study of implementation, note that a number of policy problems are due to the complexity of the policy involved.<sup>71</sup> Where a large number of implementing agencies were involved, where administration involved multiple decision points, each of which is contingent on a prior decision, and where the policy design requires joint action among agencies that may not have developed institutional patterns of cooperation, the dissolution of goals was found to be a more likely outcome than clarification. In other words, they saw complexity as leading to dissolution. This appears to be the outcome of Missouri's implementation of the Hancock Amendment.

It appears that other states with a tax-limitation law are having the same difficulties. California's State Chamber President, Shirley Chilton, says there is a message in their situation for the tax-revolt movement nationally: "Eternal vigilance is the price of continued liberty from overtaxation."<sup>72</sup> The final outcome of this issue will affect



every government official and budget in the state of Missouri. This in itself makes the Hancock Amendment the number one item, again, on the agenda for the 1984 session and calendar year.

## APPENDIX A

Operating formula for calculating  
limited total state revenue.

$$\text{Limited FY 1982 TSR} = \frac{\text{FY 1981 TSR}}{\text{CY 1979 MPI}} \times \text{CY 1980 MPI}$$

$$\text{Limited FY 1983 TSR} = \frac{\text{FY 1981 TSR}}{\text{CY 1979 MPI}} \times \text{CY 1981 MPI}$$

$$\text{Limited FY 1984 TSR} = \frac{\text{FY 1981 TSR}}{\text{CY 1979 MPI}} \times \text{CY 1982 MPI}$$

$$\text{Limited FY 1985 TSR} = \frac{\text{FY 1981 TSR}}{\text{CY 1979 MPI}} \times \text{CY 1983 MPI}$$

MPI = Missouri Personal Income

FY = Fiscal Year

CY = Calendar Year

TSR = Total State Revenue

## APPENDIX B

Base ratio used in calculations.

$$\begin{aligned}\text{Base ratio} &= \frac{\text{FY 1981 TSR}}{\text{CY 1979 MPI}} \\ &= \frac{2,249,063,864}{39,581,000,000} \\ &= 0.05682\end{aligned}$$

APPENDIX C

Calculations of limited total state revenues.

	1982	1983	1984	1985
MPI	43,698,000,000	47,682,000,000	50,927,000,000	54,600,000,000
Base Ratio	<u>x 0.05682</u>	<u>x 0.05682</u>	<u>x 0.05682</u>	<u>x 0.05682</u>
	2,482,920,360	2,709,291,240	2,893,672,140	3,102,372,000
Retainable 1%	<u>x 1.01</u>	<u>x 1.01</u>	<u>x 1.01</u>	<u>x 1.01</u>
Base Limit	2,507,749,562	2,736,384,152	2,922,608,861	3,150,395,720
Judicial Article Adjustment	<u>+ 16,000,000</u>	<u>+ 16,000,000</u>	<u>+ 17,000,000</u>	<u>+ 17,000,000</u>
Overall Limited TSR	2,523,749,563	2,752,384,152	2,939,608,861	3,150,395,720
TSR	2,395,632,912	2,580,000,000	2,728,000,000	2,901,000,000
Difference	128,116,651	172,384,152	211,608,861	249,395,720
Refunds	0	0	0	0

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