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Purple is not a Primary Color: Budget Politics in Colorado, 2012

Abstract: This paper focuses on the challenges to the Colorado state budget, in particular the potential impact that recent court decision may have for the budgetary choices available to the state in light of existing fiscal institutions. Among the most important of these fiscal institutions is Colorado’s Tax Payer Bill of Rights, commonly known as TABOR. In the second portion of the paper, I ask the question of how much the budget constraints facing the state are a function of fiscal institutions and how much is instead a function of the underlying political competition between reds and blues. This analysis involves calculation of PVI-type scores comparing Colorado to the entire country from the early 1990s through the present. This analysis provides the basis of a discussion of whether partisan composition, rather than fiscal institutions, imposes the primary constraint on the state’s budgetary choices.

Keywords: Colorado; TABOR; fiscal institutions; budget; school finance; higher education.

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1 Introduction

Purple is not a primary color. It results when red and blue are mixed together. In a color chart, the hues are thoroughly blended. In politics, the reds and blues that form a purple state rarely flow together into a homogeneous blend but are more often in fierce competition with one another, giving the purple at some points a greater tinge of red and at others a greater tinge of blue. So it is in Colorado. In this most purple of states, budgeting, taxation, and politics are all subject to the ongoing contest between reds and blues.

Indicators abound of the competition in Colorado between red and blue. Currently, registered voters in the state of Colorado (including both those classified as active and as inactive) are slightly more than 32% Republicans, slightly fewer than 32% Democrats, and 35% unaffiliated with any party (Colorado Secretary of State 2012). The Governor is a Democrat who won election in 2010 with 51% of the
vote in a race against a highly fractionalized Republican party.\footnote{The official Republican candidate was Dan Maes, who received 11\% of the vote. The unofficial Republican candidate, technically the candidate of the American Constitution Party, was former GOP congressman Tom Tancredo, who received 36\% of the vote. Tancredo entered the race as a self-announced “Republican alternative” to Maes when stories began circulating strongly suggesting that Maes had fictionalized much of his past.} Republicans, who have a one-seat majority, control the lower house in the state legislature. Democrats control the upper house with a five seat advantage.

In that same election, the congressional delegation flipped from a 5 to 2 tilt in favor of House Democrats, a majority that the Democrats had won only in 2006, to a 4 to 3 tilt in favor of the Republicans. By most accounts, the 2011 redistricting worked to the Democrats’ advantage. After the collapse of the commissions comprised of state legislators tasked with redrawing boundaries, the courts ultimately accepted the Democratic plans for redrawing boundaries of the seven US House Districts. Similarly, Democrats cheered and Republicans booed over the final shape of state legislative districts. How much of an advantage the Democrats won in these redistricting battles is unknown. More generally, whether Colorado remains purple or trends toward one of its two primary colors is unknown. What is known is that the current contest between red and blue is coloring the fiscal and budgetary politics of the state.

In this paper, I focus first on the challenges to the state budget, in particular what the potential impact of a recent court decision may be for the budgetary choices available to the state in light of existing fiscal institutions. Among the most important of these fiscal institutions is Colorado’s Tax Payer Bill of Rights, commonly known as TABOR. In the second portion of the paper, I ask how much the budget constraints facing the state are a function of TABOR and how much they are a function of the underlying political competition between reds and blues. This analysis involves calculation of PVI-type scores comparing Colorado to the entire country from the early 1990s to the present. This analysis provides the basis of a discussion of whether partisan composition or fiscal rules are the primary constraint on budgetary choices.

\subsection*{1.1 Colorado’s Budget Politics}

As of mid-summer 2011, economists on the state’s legislative council staff were painting a cautiously optimistic picture of the state fiscal situation (Colorado Legislative Council 2011a). Ironically, this optimism did not produce increased spending levels, at least not initially. The Governor’s initial requests to the legislature were
for continued cuts, though of a more modest nature than in prior years. While further
cuts in the state’s budget were still forecast to be necessary to bring the 2012–2013
budget into balance, over the course of 2011 and into 2012 tax revenues were begin-
ning to increase. Job growth in the state, though not growing at a fast pace, was
nonetheless outperforming the growth rate for the country as a whole.

As a result, anticipated increases in revenues ultimately permitted modest
increases in several 2012–2013 budget categories rather than the proposed cuts
the Governor had initially proposed. In June of 2011, Legislative Council econo-
mists were projecting that the General Assembly would have $684.6 million more
to spend than what had been budgeted the prior year. By December, the earlier
“good” news was more tempered with expected revenue growth of $470.4 million.
Later, the outlook began to brighten once again. The growth in revenues, whether
of half a billion dollars or two-thirds of a billion or perhaps even slightly more,
meant the politics of the 2012–2013 budget cycle would involve incrementally
happier outcomes over the course of the year.

One might ask, with rising revenues, why was there initially a demand for
additional cuts. The answer appears to lie in the confluence of two key factors.
First, expected expenditure demands were outpacing revenue growth. As pro-
posed by the Governor, (see Table 1), the biggest increase, both in percentage
impact in the General Funds Budget (11.1%) and absolute dollar terms ($185.6
million), is in Health Care Policy and Financing. According to Legislative Council
staff, the main drivers of these increases were federal mandates and increasing

Table 1: Colorado 2012–2013 Budget Summary.

<table>
<thead>
<tr>
<th></th>
<th>Colorado general fund expenditures</th>
<th>Total fund expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2012–2013</td>
<td>Change (%)</td>
</tr>
<tr>
<td>Health Care Policy and Financing</td>
<td>1,854,725,846</td>
<td>11.10</td>
</tr>
<tr>
<td>K-12 education</td>
<td>2,834,894,598</td>
<td>0.00</td>
</tr>
<tr>
<td>Higher education</td>
<td>563,691,605</td>
<td>–9.70</td>
</tr>
<tr>
<td>Human services</td>
<td>633,450,270</td>
<td>3.10</td>
</tr>
<tr>
<td>Transportation</td>
<td>1,119,547,027</td>
<td>1.0</td>
</tr>
<tr>
<td>Corrections</td>
<td>658,157,093</td>
<td>3.70</td>
</tr>
<tr>
<td>Other departments</td>
<td>659,779,622</td>
<td>3.50</td>
</tr>
<tr>
<td>Subtotal department budgets</td>
<td>7,204,699,034</td>
<td>2.70</td>
</tr>
<tr>
<td>Other GF obligations/expenditures</td>
<td>167,763,585</td>
<td>12.30</td>
</tr>
<tr>
<td>Total</td>
<td>7,390,255,236</td>
<td>3.20</td>
</tr>
</tbody>
</table>

caseloads in Medicaid and the CHIPS program (Office of State Planning and Budgeting 2011, p. 22).

Other budget categories, such as Corrections and Human Services, were also experiencing expenditure growth, but at rates that approximated the rate of inflation. The second factor contributing to the cuts was the political infeasibility of higher tax rates to produce additional revenues beyond those generated by the strengthening economy. The state’s Taxpayer Bill of Rights, known commonly as TABOR, requires that all proposals within the state (including at the local level) to increase tax burdens must be put to a vote of the citizens.

There is good reason to think citizens would oppose a tax increase to close the gap between expected expenditures and available revenues. Voters had already expressed their opposition to such a proposal. On the ballot in November 2011 was Proposition 103, a proposal to raise, for a 5-year period, the state income tax from 4.63% to 5% and the state’s portion of the sales tax from 2.9% to 3%. The additional revenue would have been used to increase funding for the K-12 and higher educational systems. The proposal was soundly defeated, 63.5% opposed and 36.4% in favor (Denver Post Nov. 2, 2011). Evidence suggests that the measure was defeated by a broad coalition of Republican and unaffiliated voters.

To analyze the political factors that led to the defeat of Proposition 103, I examined the patterns of support and opposition on partisan grounds in Boulder County (Urie 2011), where 54.7% of voters supported the measure. Boulder was one of only three counties where there was majority support for the measure (the other two were Pitkin County, home to Aspen, and San Miguel County, home to Telluride) and by far the largest county to support the measure. Boulder County has 295,000 people; Pitkin County has 17,000; and San Miguel County has just over 7000. Thus Boulder County constitutes an interesting case to examine the basis of support for increasing taxes for education spending.

Table 2 reports summary findings from this analysis. Using data on support for Proposition 103 across the 234 precincts in the county and party registration data of the voters in each precinct that cast ballots in that election, there was an unmistakable relationship between the percentage of Democrats and the percentage support for the measure (regression coefficient =0.38, t ratio =4.2). The reverse pattern, even stronger, was true among Republicans. As the percentage of Republicans increased, support for the measure plummeted (regression coefficient =−0.64, t ratio =6.5).

More interesting was the pattern as the percentage of unaffiliated voters increased across precincts. They behaved much the same as Republicans, though not to the same degree (regression coefficient =−0.47, t ratio =2.4). The measure received majority support in Boulder County only because of the overwhelming numerical advantage of Democrats, relative to both Republicans and unaffiliated
voters. Consider that in Boulder County in the November 2011 election, 38,407 Democrats cast ballots, whereas only 20,007 Republicans voted, along with 23,191 unaffiliated voters. Given the partisan affiliation numbers for the state as a whole, the evidence suggests there is little taste, outside of heavily Democratic salons, for increasing taxes, rather than cutting spending as a strategy for matching expenditures to expected revenues.

The political infeasibility of increasing taxes, in conjunction with rising expenditure demands, particularly in health programs, means room has to be found elsewhere in the budget to absorb cuts. As Table 1 shows, K-12 Education spending was slated for no increase from the state’s General Funds, translating into a cut of 2.2% in total funds in K-12 spending. The primary reason for this is that one-third of total funds for K-12 education spending are generated through property taxes (Public School Finance Unit 2011). The ongoing housing slump has led to falling property values across the state, which in turn has led to falling property tax revenues (Office of State Planning and Budgeting 2011). As a result, school districts across the state were asked to internalize revenue shortfalls in 2012–2013.

In the governor’s proposed budget, higher education was initially slated to bear the largest cuts, almost 10% in General Fund support for the state’s college and university systems. In the end, it was possible to trim the magnitude of these cuts, and General Fund support for higher education fell <1%. Resolving budgetary quagmires by relying on cuts in higher education is not new in Colorado (Joint Budget Committee undated, p. 180). During the depths of the recent recession, higher education funding was tapped to the tune of several hundreds of millions of dollars to make up for shortfalls elsewhere and replaced with federal stimulus funds, apparently on the view that the education of college students is shovel ready.
In the current budget environment, federal moneys are no longer available to fill these gaps. Instead, colleges and universities across the state are turning to substantial tuition and fee increases to make up revenue shortfalls. In 2010, the legislature passed a law permitting the governing bodies of the state’s higher education institutions to increase tuition rates by up to 9% per year for resident undergraduates over a 5-year period, if they received approval from the Commission for Higher Education for plans that ensure access and affordable tuition for low- and middle-income students, permission to implement even larger tuition increases (Joint Budget Committee undated, p. 181).

As 2012 approached, the budget outlook for Colorado was improving, though hardly robust. Then, a decision by Denver Judge Sheila Rappaport in Lobato v. Colorado dropped a new and unknown concoction into the brew of budget politics. On December 12, 2011, less than 6 weeks after the voters had spoken on Proposition 103, the judge threw out the existing state system for financing K-12 education and ordered a new and more equitable system to be devised by the state legislature in an unspecified time frame. This was a victory for plaintiffs who had argued that Colorado's K-12 spending formula failed the state’s constitutional requirement for a “thorough and uniform” school system. In the opening paragraph of the Remedy section of her ruling, she wrote:

The Court finds that the Colorado public school finance system is unconstitutional. Evidence establishes that the finance system must be revised to assure that funding is rationally related to the actual costs of providing a thorough and uniform system of public (Lobato v. Colorado 2011, p. 182).

How and where this funding is to be found, she does not say. Governor Hickenlooper, a Democrat, and the State Board of Education, by a vote of 4 to 3 along straight party lines with Republicans in the majority and Democrats in the minority, are appealing the ruling to the Colorado Supreme Court. Were the Court to uphold Lobato (it is likely to be at least a year before a decision is reached), it is unclear how the legislature could design a new and more generously funded K-12 system without dealing with the fiscal and political constraints already tying their hands. New revenues would be required – presumably very substantial new revenues. At the center of any debate about how these constraints might be altered is TABOR, the Colorado Taxpayer Bill of Rights.

1.2 TABOR: Symptom or Cause?

Since its adoption to the Colorado Constitution in 1992, politics in the state has frequently revolved around TABOR and the removal from legislative bodies of the
authority to adopt tax increases. There is a lawsuit moving through the courts that seeks to invalidate the measure on the grounds that it violates the promise in the US Constitution of a republican form of government (Hoover 2011). The background for this claim is that TABOR was the result of a citizen initiative. When it passed in 1992, it enjoyed support of 54% of voters.

The timing was propitious. The measure was on the ballot during the presidential contest in a state that went heavily for Ross Perot. But the adoption of TABOR was not a momentary impulse. The 1992 vote came after three prior votes over a 6-year period in which proponents sought to get an evolving version of the measure passed (Couch 2005). In its final form, TABOR had three major elements. First, it permitted revenues at every level of government in the state to rise only by the sum of population growth and the rate of inflation; second, any revenues beyond this cap had to be refunded back to taxpayers; and, third, it required any tax increase to be supported by a majority vote of the citizens in the jurisdiction seeking the increase.

TABOR has since had some of its hard edges softened. In 2005 Colorado voters were presented with a pair of referenda, Ref C and Ref D, intended to lift some of the constraints imposed under TABOR. In a split vote and by narrow margins, Ref C passed (52.1% in favor) and Ref D failed (49.4% in favor). Ref C did two main things with respect to TABOR, one temporary and one permanent. The temporary change was that for a 5-year period it ended refunds of revenues that exceeded the TABOR limit, allowing jurisdictions to keep any excess revenues. Second, it permanently ended the so-called ratchet down effect of TABOR.

A little discussed or perhaps poorly recognized feature of TABOR is that while it specified a formula to determine the rate of revenue increases, it did not deal with what happens when an economic downturn leads to a temporary decrease in revenues. In essence, it takes a year-by-year approach. As a result, when there is a recession the base on which the subsequent year’s revenue total is calculated is reset down to the amount raised in the trough of the economic downturn. This has come to be known as the ratchet down effect. Ref C ended that by permitting jurisdictions to use the highest revenue amount before the shortfall as the base for calculating revenue totals in subsequent years.

While the vote for Ref C indicated that the state’s electorate was willing to move away from strict fiscal conservatism, the vote against Ref D signaled an unwillingness to move too far in the opposite direction. Looking back, it might be said that the passage of the one and the failure of the other signaled the shift of the state away from the color red and toward the color purple. Ref D would have permitted the state to borrow $2.1 billion to be paid back over a multi-year period. Passage of Ref C was a precondition for enactment of Ref D because repayment of the bonds was premised on the additional revenue available to
the state with the 5-year suspension of refunds to taxpayers of excess revenues required by TABOR.

It is fair to say that in Colorado it is an article of faith on both the left and right, though with very different normative attachments, that TABOR is responsible for preventing tax increases. Yet much of the literature on Tax and Expenditure Limitations (TELs) is at odds with that assertion. Shadbegian (1996), for instance, concludes his study of TELs by saying that “TELs end up as little more than political cover for state legislatures” (p. 22). His bottom line finding is that “while TELs restrict government size and growth in states with below average income, in general they have no significant effect on the size or growth of government” (p. 22). Bails (1990) finds that “the existence of a TEL has had virtually no impact on the growth of statewide expenditures or revenues” (p. 223). New (2001) reaches a more nuanced conclusion, finding that strong TELs such as those passed by initiative and requiring refunds of excess payments back to taxpayers, as in the case of TABOR, reduce per capita public spending at levels that are statistically discernible. If New is right, TABOR in its original incarnation may indeed have been a genuine constraint on increasing revenues. His statistical analysis, however, does not show that most forms of TELs have any impact on government expenditures.

The frequency of non-findings and qualified findings in the literature on the impact of TELs raises an important question, which is whether such measures in fact impose constraints on spending or instead are epiphenomenal to the political preferences within jurisdictions that do (or do not) adopt them. In the context of Colorado, the question is whether TABOR restricts revenue increases or reflects an underlying set of political preferences across the state, which in the end is what determines whether revenue increases are politically feasible.

On the latter view, TABOR is irrelevant. Were it struck down by the courts, state legislators would still be inhibited from raising taxes precisely because their constituents do not favor increased taxes. When the underlying partisan distribution is strongly to the right, legislators would fear that their constituents would be likely to remove them from office were they to support revenue increasing measures. Likewise, when the underlying partisan distribution is more to the left, legislators would be willing to enact the same types of revenue measures as those that their constituents would support at the ballot box. This suggests two hypotheses that are orthogonal to one another. On one view, TABOR is a root cause of the fiscal constraints in the state. On the other, TABOR is merely symptomatic of political preferences that would exist even if TABOR did not.

To examine which of these hypotheses may better describe the role of TABOR in Colorado what I ask below is whether the configuration of political preferences in the state was unusual at the time of the enactment of TABOR in 1992 and, later, Ref C. If so, then we might conclude that these TEL measures, once adopted, have
had institutional stickiness. On this finding, we might reasonably conclude that they have had an independent affect as constraining devices. The alternative is that these measures reflect a relatively stable configuration of preferences. If underlying preferences at the time of adoption are much the same as preferences over a sustained period thereafter, we would have evidence that it is less the TEL measures and more the configuration of preferences that are the fundamental constraint within the budgetary process.

To get a handle on the configuration of political preferences in the state over a two-decade period, I have created a version of the measure first introduced by Charlie Cook of the Cook Political Report: the Cook Partisan Voting Index, more commonly known as the PVI. As developed by Cook, the PVI measures the amount that a given congressional district or state leans toward or away from the nation as a whole. It is calculated by comparing the presidential vote in the district or state to the national presidential vote. A district that is R +4 is one where the vote for the Republican presidential candidate was four points higher than it was across the country as a whole. In such a district, it would be relatively easier for a generic Republican congressional candidate to win, compared to a generic Democratic candidate.

The choice of a PVI-like measure was driven in part because it is simple to understand and easy to calculate. It was also driven by the lack of other good alternatives. Party registration data for Colorado are always problematic, given the large proportion of unaffiliated voters, many of whom have partisan leanings despite the lack of official affiliation. Likewise, polling data within a single state are problematic, especially for studies across long periods of time given the lack of polls with consistent question wording, sampling techniques, and polling technologies. With polls, it is difficult to focus specifically on voters, as opposed to a general adult population. For this analysis, the question turns on voters and the configuration of their ideological preferences.

The Cook PVI averages across two presidential elections in order to remove the idiosyncrasies of voter attitudes toward particular candidates running for the office. I have tried to do something similar but in a way that provides the ability to focus on finer slices of time. I have averaged across PVI-type indices for several categories of offices, including Presidential, Gubernatorial, US Senate, State Senate, and State House, for each 2-year period from 1990 through 2010.²

² The source of the partisan composition of state legislative bodies was the Council of State Governments, Lexington, KY, for the early years in the series and the National Conference of State Legislatures, Denver, CO for later years. The data used here were accessed from www.NCSL.org on March 7, 2012. Data for presidential, gubernatorial and US Senate races are from Dave Leip’s www.USElectionAtlas.org, and were accessed on March 7, 2012.
Conveniently for this measure, Colorado’s gubernatorial elections are off-cycle from presidential elections. Senate elections occur in two out of every three 2-year periods. Half the state senate races are on the ballot each 2-year period, as are all of the state house races. In the presidential, gubernatorial, and US Senate races, I measure the difference between the percentage of the vote for the candidates of party in Colorado and the equivalent percentage for that party in the country as a whole in that same election cycle. For the state senate and state house races, I measure the difference between the percentage share of seats won by one party in Colorado and the percentage of state senate and state house seats won by that party across the US in states holding partisan elections for equivalent state legislative bodies. At each election, this produces four or five sets of offices over which I am able to calculate overall PVI-type scores for the state of Colorado. The result is a measure of the extent to which Colorado, across all of these types of offices and thus across lots of specific candidates, leans more in the direction of one party than the nation as a whole. Here, I have opted to measure the tilt in the direction of the GOP.

Figure 1 displays this PVI-type measure for each 2-year period beginning in 1990 across all five types of offices. Figure 2 displays the PVI type measure for just the state legislative offices in the state, relative to those across the nation. A hypothetical line drawn horizontally that crosses the vertical axis at its zero point would reflect a situation where the state’s partisan configuration lies exactly at the national average at that particular point in time. Plotted onto both figures is a pair of vertical line segments indicating the year in which TABOR was enacted by the state’s voters and another line indicating the year of the passage of Ref C. Both figures tell essentially the same story: the story is that each of these enactments marked periods of relative stability of partisan configurations in the state.

Consider Figure 1, which displays the average PVI across all five types of offices. At the time TABOR was adopted, Colorado was solidly red. Two years before its passage, the state had a PVI-type rating of almost R +11. In 1992 when TABOR passed, the value was over R +5. The rating dropped to just above R +2

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3 With one exception, I used two party percentages. I excluded votes for independent and third-party candidates, as if they had not been in the races at all. As a result, the Republican PVI is the mirror image of a measure of Democratic PVI. The one exception was the 2010 governor’s race in Colorado. The official Republican candidate that year was Dan Maes. Tom Tancredo entered the race technically as the American Constitution Party nominee, but ran as a “Republican alternative.” Here, I have combined the Maes and Tancredo percentages as an aggregate measure of the Republican vote in that election.
in 1994 but moved higher again until dropping again to R +2 in 2004. The situation changed markedly between 2004 and 2006. Ref C was adopted in 2005. From that point until the present, the state’s hue has shifted to the blue side of
purple. In 2006, 2008, and 2010, the value for the state hovered between \( R^{-3} \) and \( R^{-4} \).

The question motivating this analysis is whether TABOR itself constrains choices or merely reflects a set of underlying political preferences. Figure 1 provides support for the latter. It is hard to imagine a state legislature, given the redness of the state that existed up to 2004, opting to make policy choices that were very divergent from those that would have passed anyway under TABOR. Beginning in 2006, things changed. And Ref C reflects that change. Ref C permitted tax revenues to be retained by governments and signaled a willingness of the public to consider at least some types of revenue raising measures. Figure 1 indicates this may have been the case in the years beginning in 2006, whether or not Ref C had passed.

How state legislators might have behaved in the absence of the TELs is precisely the central question. We can focus more directly on this by observing the PVIs for each of the two chambers. These scores are displayed in Figure 2.

One quirk of these data is that the organizations reporting the results of state legislative races sometimes reported the numbers for the year in which the elections occurred and other times for the years in which state legislators took office. Whereas in Figure 1, I averaged all of the results for each 2-year period, here I have plotted the data based on the reporting practices of the organizations providing the information. What is visible in this figure is that both chambers of the Colorado legislature were solidly red through 1998.

At the time TABOR was adopted, and for several years thereafter, neither chamber was ever less than \( R^+5 \). In 2000, something began to change. The upper chamber’s PVI dropped down to \( R^0 \) and stayed there for a number of election cycles. The lower chamber continued to be on the GOP side of the PVI index, though not to the same extent as it had been in earlier years. The lower chamber PVI fell into the \( R^+7 \) to \( R^+9 \) range during the latter half of the 1990 decade, whereas it had been in the \( R^+11 \) to \( R^+18 \) range in the early portion of the decade.

By the time Ref C was adopted, both chambers had dropped to the Democratic side of the index with values ranging from \( R^-2 \) to \( R^-6 \). This means that Colorado’s legislative bodies in recent years have been somewhat more Democratic than their corresponding peer legislative bodies in the other states of the union. These recent levels, while trending blue, have been generally closer to the zero mark than when the chambers were on the Republican side of the index. Figure 2, like Figure 1, tends to support the hypothesis that the TEL measures adopted in Colorado reflected underlying partisan trends. Both TABOR and Ref C captured the partisan configurations of the periods in which they were adopted.
2 Conclusion

Over the next year and more, the state will be contending with difficult budgetary issues. Under the best of circumstances it will be difficult to find dollars to fund expensive new mandates from the federal government relating to health care, as well as reverse the downward trend in funding for the state’s Higher Education system. Floating over these allocation choices are questions moving through the courts about the system used to structure and finance the state’s K-12 system and whether or not TABOR will be found unconstitutional. If there is an enduring conclusion, however, it is that the contest between Red and Blue in the state of Colorado colors every aspect of its politics. The budget, the future of revenues, the fate of its fiscal institutions, including TABOR – all of these are intrinsically tied to the underlying partisan preferences in the state.

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