Yankee Institute Policy Brief

Connecticut's Spending Cap: A Legal Overview

By Peter Bowman, J.D.

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YANKEE INSTITUTE
for Public Policy

Executive Summary

Connecticut's spending cap has a rocky history. This policy brief examines the legislative and legal record of the cap, including a look at what would happen if lawmakers passed a budget that exceeded the spending cap without approval of three-fifths of state lawmakers, as required under the cap.

This brief explains that if lawmakers raise taxes while also exceeding the spending cap without an emergency declaration, taxpayers may have cause to challenge their tax bills in court.

In 1992, more than 80 percent of Connecticut voters approved a constitutional amendment adopting a cap on state spending. A spending cap already existed in state statutes, passed in 1991 as part of a compromise agreement when lawmakers implemented a state income tax. The constitutional spending cap also instituted a balanced budget requirement.

Despite the clear voice of voters on the subject, lawmakers have yet to adopt language fully implementing the spending cap, as required by the constitutional amendment. As explained in this brief, the state's attorney general has ruled that until state lawmakers adopt new language, the existing state statute defining the cap is in place.

Legal attempts to compel lawmakers to define the cap have failed. There have been other legal challenges to the way the state has used the spending cap, but they have met with little success.

Lawmakers have voted to exceed the cap multiple times, by invoking an "emergency." They have also used gimmicks to move spending out from under the cap, in order to increase spending by more than the cap would allow.

The spending cap has put reasonable limits on state spending for the past 20 years and when political leaders reached a broad consensus those limits were set aside. The General Assembly should embrace this popular feature of state government by passing a budget in compliance with the spending cap and by fully implementing the 28th Amendment to the Connecticut Constitution.

- The Yankee Institute

Introduction

If the General Assembly raises income taxes while spending more than allowed under the spending cap, taxpayers would have the right to challenge their increased tax bills in court because the increases are meant to fund illegal spending.

The spending cap is not ironclad, however. The General Assembly could use a super-majority, three-fifths vote to set aside the spending cap for one year as it has done in the past. This is the legitimate method to pass spending increases necessitated by an emergency. Accounting "tricks," exemptions, or an attempt to redefine the constitutional spending cap without a three-fifths vote have raised potential legal challenges to the budget.

The Connecticut spending cap has a convoluted and politically driven history. Initially enacted as General Statutes Sec. 2-33a in 1991, the initial statutory spending cap established that state spending cannot increase from one year to the next more than the greater of a) a lagged five-year average of growth in state personal income; or b) the percentage increase in inflation during the preceding twelve months.

Certain expenses are excluded from the spending cap, including a) funds earmarked for debt service; b) grants to distressed municipalities in effect on July 1, 1991; c) first year spending to implement federal court orders or federal mandates; and d) transfers of unappropriated surplus at the end of a fiscal year to the Budget Reserve Fund or State Employees Retirement Fund, or to reduce state indebtedness. The General Assembly can exceed the cap if the governor declares an emergency or extraordinary circumstances and three-fifths of both houses of the General Assembly vote to do so.[1]

In addition, the Connecticut Constitution includes a spending cap with the same limitations. Passed by voters in 1992, this constitutional amendment has been in procedural flux. Its implementation is limited because the legislature has not passed definitions of its terms by a three-fifths vote in both houses.[2]

In the past 23 years, the legislature has failed to show the political fortitude to define these terms and implement the spending cap. This is despite the fact the legislature could use the same definitions that are currently used in the statutory spending cap.

The constitutional amendment did increase the limitations on the legislature, although only slightly. The statutory spending cap has no limitation tied to revenue, but the constitutional spending cap says state lawmakers must balance revenues with expenditures. The constitutional spending cap states: "The amount of general budget expenditures authorized for any fiscal year shall not exceed the estimated amount of revenue for such fiscal year." Further, it states that unallocated revenue shall be used "to fund a budget reserve fund or

[1] See General Statutes Sec. 2-33a.
[2] See Conn. Const. art. III, § 18.

for the reduction of bonded indebtedness; or for any other purpose authorized by at least three-fifths of the members of each house of the general assembly."

In 1991, it was the intention of the legislature to pass a balanced budget amendment. Rep. Shaun McNally stated on the floor of the legislature that Section A of the spending cap amendment "will require for the first time in our State Constitution a balanced budget."[3] Sen. Marie Herbst confirmed this in her remarks on the floor when she was the 18th vote to pass the balanced budget amendment, putting in place an alleged remedy to the 1991 budget crisis and 51-day budget stalemate.[4]

Attorney General's Opinion on Dueling Spending Caps

In 1993, these "dual" spending caps were interpreted by the Office of the Attorney General, under then-Attorney General Richard Blumenthal.[5] The attorney general's office found that the statutory spending cap remains in effect until the legislature repeals it or modifies it through the constitutional provision. The attorney general found that the constitutional spending cap does not affect the statutory version, it only provides the vehicle for the legislature to act and define terms related to the constitutional amendment.

Specifically, Blumenthal found that any budget or spending deficiency, under General Statutes Sec. 2-36, must "be construed within the constitutional boundaries." Further, the attorney general specifically found that the legislature may not amend the statutory spending cap or enact other definitions for the terms found in the constitutional spending cap by a simple majority vote. The attorney general states that:

> "While the legislature cannot be compelled to act in a particular fashion, Art. III, § 18(b) is now part of our Constitution. To continue to amend the statutory provision by less than a three-fifths majority would render the constitutional amendment a nullity. The statute was to be a temporary measure. 34 H.Proc., Pt. 34, June Sp. Sess., p. 805. (remarks of Rep. McNally, the House sponsor of H.J.R. 205). Amendments to § 30 of Public Act 91-3, therefore, cannot be made by a simple majority vote."

The constitutional spending cap was not self-implementing. It requires the legislature to define the terms necessary to implement the cap. Despite the legislature's pre-amendment definitions, the attorney general, as well as case law, support the position that the constitutional spending cap is an impotent, paper tiger without further legislative action. To date, the definitions have not been implemented.[6]

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[3] 34 H.Proc., Pt. 34, 1991 June Sp. Sess., p. 798.
[4] 34 S.Proc., Pt. 13, 1991 June Sp. Sess., p. 203. See also Senate to Pass Income Tax, Hartford Courant, Michele Jacklin, August 21, 1991.
[5] See Attorney General Opinion to Rep. Edward Krawiecki, Jr., April 14, 1993. "Although an opinion of the attorney general is not binding on a court, it is entitled to careful consideration and is generally regarded as highly persuasive." See Wiseman v. Armstrong, 269 Conn. 802, 825, 850 A.2d 114, 127 (2004).
[6] "Since the constitutional cap was adopted, there have been multiple efforts to define the terms in it, or otherwise alter the statutory definitions. These include, but are not limited to: in 1993, Raised Bill 1033 (repeal section 2-33a as a statutory spending cap and make it part of the constitutional cap); in 1994,

The Courts Weigh In

The courts have similarly interpreted both of Connecticut's spending caps.

In Nielsen v. State, 236 Conn. 1, 670 A.2d 1288 (1996), state Sen. Mark Nielsen, and several others, sought to compel the General Assembly to enact statutory definitions necessary to implement the constitutional spending cap. Both the Superior Court and the Supreme Court found that the timing, manner and enactment of the definitions of the constitutional spending cap fell solely upon the legislature. The court in Nielson found that this was a non-justiciable political question that must be addressed in the legislature, not the courts.

Most recently in Roger Sherman Liberty Center, Inc. v. Williams, 52 Conn. Supp. 118 (2011), the court also found that the issue raised by the plaintiffs in this case was non-justiciable, but for a different reason. In Roger Sherman, the primary challenge was not the definitions, but instead a challenge that the fiscal year 2012-2013 budget was in violation of the statutory spending cap, due to the fact that union concessions accounted for in the budget had not been voted upon by the respective unions. The court noted that: "Determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function." Roger Sherman, supra.[7] Ultimately, the court found that the suit was premature, stating "In conclusion, the plaintiffs' claims are

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Proposed Bill 5337 (re-enact section 2-33a to implement the constitutional amendment limiting expenditures), Proposed Bill 5338 (define "general budget expenditures" to exclude federal reimbursements), Proposed Bill 5339 (amend section 2-33a to treat federal reimbursements on a "net" not "gross" basis in state budgeting), Proposed Bill 5714 (exempt from "general budget expenditures" all current and increased statutory grants to municipalities, not just those to distressed municipalities or those in effect on July 1, 1991), Raised Bill 5763 (adopt section 2-33a's definitions of "increase in personal income," "increase in inflation," and "general budget expenditures" as the constitutionally-required definitions), Proposed Bill 189 (define "general budget expenditures" to exclude all state aid to municipalities, including state funding of new or expanded state mandates on cities and towns, and state spending for property tax relief), Proposed Bill 190 (define "general budget expenditures" to exclude all state aid to municipalities and federal reimbursements for state spending); in 1995, Proposed Bill 5333 (exempt all grants to local and regional boards of education from the cap); Proposed Bill 6365 (implement constitutional spending cap immediately and define "general budget expenditures" to include appropriations for federal mandates and aid to distressed municipalities); in 1996, Proposed Bill 5099 (same as Proposed Bill 6365 in 1995); in 1997, Proposed Bill 5443 (limit exceptions from "general budget expenditures" to expenditures for payment of principal and interest on indebtedness), Proposed Bill 5995 (repeal 2-33a and amend general statutes to define "increase in personal income," "increase in inflation," and "general budget expenditures"); in 1998, Proposed Bill 5377 (limit exceptions from "general budget expenditures" to expenditures for payment of principal and interest on indebtedness); in 1999, Proposed Bill 6338 (implement and enforce constitutional spending cap immediately and limit exceptions from "general budget expenditures" to expenditures for payment of principal and interest on indebtedness); in 2000, Proposed Bill 334 (amend 2-33a to limit exceptions from "general budget expenditures" to expenditures for payment of principal and interest on indebtedness)." See Coping with the Cap: A Primer on Connecticut's State Spending Cap and Its Impacts, Shelley Geballe, JD, MPH, (April 2007).

[7] See also *Lehrer v. Davis,* 214 Conn. 232, 235, 571 A.2d 691 (1990)

unripe because they present a claim contingent upon future events that have not, and may never, occur." Roger Sherman, supra.

The courts cannot proceed with challenges to any budget outside the statutory spending cap without actual injury, nor can they force the legislature to address or implement the constitutional spending cap, as the implementation mechanism for this is a three-fifths majority vote by the legislature.[8]

Moving Medicaid Out From Under the Cap

Despite the supposed restraints placed on the legislature and governor by the spending cap, Gov. Dannel Malloy excluded – for the first time – spending by the state that is funded by the federal government through the Medicaid program in his fiscal year 2014-2015 budget.

The governor proposed in his budget that federal Medicaid money, spent by the state, should not count in and toward the 2014-2015 cap, or toward the cap for future budgets. The legislature did not change the definition of the spending cap to exclude federal Medicaid dollars. Even still, the governor submitted a budget for 2014-15 that did not include the federal spending in its calculation of the spending cap. The legislature, through its implementation bill, then brought the budget to life.

Pursuant to the statutory spending cap, the budget must include all general budget expenditures. The statute defines "general budget expenditures" as those:

> "(E)xpenditures from appropriated funds authorized by public or special act of the general assembly, provided (1) general budget expenditures shall not include expenditures for payment of the principal of and interest on bonds, notes or other evidences of indebtedness, expenditures pursuant to section 4-30a, or current or increased expenditures for statutory grants to distressed municipalities, provided such grants are in effect on July 1, 1991, and (2) expenditures for the implementation of federal mandates or court orders shall not be considered general budget expenditures for the first fiscal year in which such expenditures are authorized, but shall be considered general budget expenditures for such year for

[8] Conn. Const. art. III, § 18 provides as follows:

> a. The amount of general budget expenditures authorized for any fiscal year shall not exceed the estimated amount of revenue for such fiscal year.
> b. The general assembly shall not authorize an increase in general budget expenditures for any fiscal year above the amount of general budget expenditures authorized for the previous fiscal year by a percentage which exceeds the greater of the percentage increase in personal income or the percentage increase in inflation, unless the governor declares an emergency or the existence of extraordinary circumstances and at least three-fifths of the members of each house of the general assembly vote to exceed such limit for the purposes of such emergency or extraordinary circumstances.

The definitions, however, have not been set forth. Normally, these would just be interpreted by case law, statute or common meaning. The Constitutional Amendment specifically stated that these must be defined by the legislature, which has not been done.

> the purposes of determining general budget expenditures for the ensuing fiscal year."[9]

According to this statute, the budget should have included hundreds of millions of dollars in federal Medicaid spending, but it did not.

A review of the budget implementer, statutes, legislative history and case law did not reveal any redefinition of the term "general budget expenditures."

It appears that the legislature and Gov. Malloy classified placing federal Medicaid spending outside of the cap as an "accounting maneuver" to bring it "consistent with other states."[10] It does not appear that a three-fifths vote ever took place to implement this change. In fact, the budget implementer bill that was passed, Public Act 13-184, does not contain any definitions of any of the terms necessary for implementation of the constitutional spending cap.

Ways to Fight For the Cap

The statutory spending cap does not have a mechanism within the law to prevent the legislature from passing a budget that exceeds the spending cap. Further, there is no direct mechanism within the statute to challenge a budget that exceeds the spending cap. Budget "tricks" such as earmarking spending and moving spending outside the budget process have allowed the governor and the legislature to pay lip service to the spending caps, while increasing spending in violation of the constitutional spending cap.

Within the legislature, prior to passage of the bill, a senator or member of the house of representatives could challenge the budget even coming to the floor for a vote under the claim that it is not within the spending cap.

If the General Assembly passes a budget that exceeds the spending cap, the next line of defense would be the veto pen of the governor. In our current political climate, the Office of the Governor is likely involved in the negotiations for the budget and a veto is unlikely. In fact, in the case of the budget for fiscal year 2014-2015, the governor made the proposal to reclassify Medicaid spending in his initial budget presentation.

Once signed by the governor, however, there appears to be only one option available to challenge a budget that exceeds the spending cap. That option is to bring a "taxpayer

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[9] General Statutes Sec. 2-33a.

[10] See CT Mirror, "CT spending cap threatens to squeeze education, other priorities in next budget, Phaneuf, Keith (2014). It could be found that Gov. Malloy and the legislature determined that the reorganization of Medicaid through the Affordable Care Act, also known as "Obamacare," was an "expenditure for the implementation of [a new] federal mandate." This, however, was only referenced in a news article and has no legal basis. See New London Day, "Lawmakers question Malloy's spending cap proposal," Somers, Johanna (2013).

lawsuit" against the state and its entities challenging the budget in court. The violation of the cap could be found as a violation of the Connecticut Constitution.

A "taxpayer lawsuit" of this nature would have to be brought by someone "injured" by the budget. Further, a challenge to the budget could be found under the revenue limitations of the constitutional spending cap, if the legislature enacted a budget in excess of expected revenue.

A party may bring a lawsuit only if it has "standing" to do so. There are two ways a party can obtain standing sufficient to bring a lawsuit. First, a party can obtain standing by suffering "actual injury," and bringing an action to remedy that injury. A challenge to a budget that exceeds the spending cap may be brought by a party or entity who suffered actual injury. Given the broad nature of the budget, this would be difficult. Any party bringing a claim must show that their "actual injury" is specific and different from that of the general taxpayer.

A challenge to the budget due to its failure to comply with the statutory spending cap is better suited for a claim of "taxpayer standing." Under Connecticut law, a taxpayer may bring a lawsuit against a governmental entity if it can demonstrate that an injury has or will result.[11]

Recently, the court summarized its position on taxpayer standing, stating the following:

> The plaintiff's status as a taxpayer does not automatically give her standing to challenge alleged improprieties in the conduct of the defendant town. The plaintiff must also allege and demonstrate that the allegedly improper municipal conduct cause[d her] to suffer some pecuniary or other great injury. It is not enough for the plaintiff to show that her tax dollars have contributed to the challenged project the plaintiff must prove that the project has directly or indirectly increased her taxes; or, in some other fashion, caused her irreparable injury in her capacity as a taxpayer. . . . [B]ecause standing is a practical concept, common sense suggests that a taxpayer who challenges a part of a particular governmental program must demonstrate his or her injury in the entire fiscal context of that program, taking into account both the burdens and benefits of the program, and not just by demonstrating that the presumably burdensome part of the program itself, divorced from the larger program of which it is a part, causes injury.[12]

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[11] See *Seymour v. Region One Board of Education,* supra, 274 Conn. at 103, 874 A.2d 742; W. Farms Mall, LLC v. Town of W. Hartford, 279 Conn. 1, 15, 901 A.2d 649, 657-58 (2006).

[12] Seymour v. Region One Bd. of Educ., 261 Conn. 475, 489-90, 803 A.2d 318, 327-28 (2002); *Alarm Applications Co. v. Simsbury Volunteer Fire Co.,* 179 Conn. 541, 549, 427 A.2d 822 (1980); *Bell v. Planning & Zoning Commission,* 174 Conn. 493, 497–98, 391 A.2d 154 (1978); *Belford v. New Haven,* 170 Conn. 46, 52–53, 364 A.2d 194 (1975).... ... *490 *Alarm Applications Co. v. Simsbury Volunteer Fire Co.,* supra at [549]; *Belford v. New Haven,* supra, at 53, 364 A.2d 194; *Atwood **328 v. Regional School District No. 15,* 169 Conn. 613, 617, 363 A.2d 1038 (1975); *Bassett v. Desmond,* 140 Conn. 426, 430, 101 A.2d 294 (1953).... *Sadloski v. Manchester,* supra, 235 Conn. at 647-8, 668 A.2d 1314.

The court has also stated that once an increase in a tax burden has been shown, "a plaintiff has passed the threshold of standing even though the pecuniary effect upon him may be extremely small."[13]

Quo Warranto challenges, like those used in Roger Sherman Liberty Ctr., Inc. v. Williams,[14] will not work, as Connecticut courts have found that those challenges go to the right a person has to hold an office, and not the actions of that person once in office.

Specifically, the courts have found the following entities had standing to bring a taxpayer lawsuit:

- Municipal taxpayers, who will suffer increased taxes due to the reduction in the grand list due to the transfer of property ownership from a private entity to municipality.[15]
- Municipal taxpayers, who will suffer increased taxes due to the construction of a new middle school, who were denied opportunity for special referendum by the municipal government.[16]
- Municipal taxpayer, resident and voter, who alleged injury due to failure of municipality to redistrict under the municipal charter.[17]

It is more common, however, for courts to dismiss cases under the concept of standing. Courts have dismissed the following cases under "taxpayer standing" claims, finding that the plaintiff's lacked standing:

- Speculative, future increase in taxes or situation where land would be needed in the future did not provide plaintiffs with standing.[18]
- A taxpayer lacked standing to challenge a development, when two town referendums had approved the same.[19]
- A taxpayer lacked standing when the claim was based solely upon tax abatement and speculative effect.[20]

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[13] Am.-Republican, Inc. v. City of Waterbury, 183 Conn. 523, 526, 441 A.2d 23, 25 (1981) (overturned on other grounds); Bassett v. Desmond, 140 Conn. 426, 430, 101 A.2d 294 (1953); Beard's Appeal, 64 Conn. 526, 534, 30 A. 775 (1894); 18 McQuillin, Municipal Corporations s 52.13.
[14] Roger Sherman Liberty Ctr., Inc. v. Williams, 52 Conn. Supp. 118, 28 A.3d 1026 (Super. Ct. 2011).
[15] Am.-Republican, Inc. v. City of Waterbury, 183 Conn. 523, 526, 441 A.2d 23, 25 (1981) (overturned on other grounds).
[16] *Windham Taxpayers Ass'n v. Board of Selectman,* 234 Conn. 513, 662 A.2d 1281 (1995).
[17] Slane v. Town of Fairfield, No. CV136035920, 2013 WL 4046636, at *5 (Conn. Super. Ct. July 19, 2013). See also *Highgate Condominium Assn. v. Watertown Fire District,* 210 Conn. 6, 15, 553 A.2d 1126 (1989) (direct imposition of sewer service charges); *Atwood v. Regional School District No. 15,* supra, 169 Conn. at 617, 363 A.2d 1038 (appropriation of $2.5 million for purchase of land); *Higgins v. Ambrogio,* 19 Conn.App. 581, 583–84, 562 A.2d 1154 (1989) (appropriation of $22,468.80 to pay for police chief's accrued benefits).
[18] Leahy v. Town of Columbia, No. CV0073346S, 2000 WL 1658323, at *1 (Conn. Super. Ct. Sept. 29, 2000).
[19] W. Farms Mall, LLC v. Town of W. Hartford, 279 Conn. 1, 16, 901 A.2d 649, 658 (2006).
[20] *Sadloski v. Manchester,* supra, 235 Conn. at 647-8, 668 A.2d 1314.

- A taxpayer lacked standing to assert action against a city absent showing that the city's conduct would cause her irreparable injury when the taxpayer claimed construction of soccer fields would cause her injury.[21]

In addition or in the alternative, one could also claim a "Writ of Mandamus," and seek an order directing the legislature or the governor to act within the bounds of the statutory spending cap.[22] The specific legal procedural mechanism would depend upon the facts and claims, but would include a civil complaint, likely in the form of an injunction.

Conclusion

Thirty states, including Connecticut, Massachusetts, Rhode Island, Maine and New Jersey, have spending caps that are tied to either revenue or spending. Legal challenges to these spending caps have varied from challenges prior to implementation to direct challenges to the cap once it is in place.

A challenge of this type in Connecticut would face extraordinary legal hurdles and would likely have limited success. That is not to say such a challenge would not be successful. However, it is clear that the legislature and the governor should declare a state of emergency under the statutory spending cap if they choose to exceed the limits placed on the state budget by the cap.

[21] Murphy v. City of Stamford, 115 Conn. App. 675, 974 A.2d 68 (2009)

[22] "The requirements for the issuance of a writ of mandamus are well settled. Mandamus is an extraordinary remedy, available in limited circumstances for limited purposes ... It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law ... That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks ... The writ is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy ... Even satisfaction of this demanding [three-pronged] test does not, however, automatically compel issuance of the requested writ of mandamus ... In deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity." (Citation omitted; internal quotation marks omitted.) *AvalonBay Communities, Inc. v. Sewer Commission,* 270 Conn. 409, 416-17, 853 A.2d 497 (2004). Lanese v. Baldwin Station, LLC, No. CV094011308, 2010 WL 1885811, at *1 (Conn. Super. Ct. Apr. 9, 2010)

APPENDIX

Connecticut General Statutes Sec. 2-33a

The general assembly shall not authorize an increase in general budget expenditures for any fiscal year above the amount of general budget expenditures authorized for the previous fiscal year by a percentage which exceeds the greater of the percentage increase in personal income or the percentage increase in inflation, unless the governor declares an emergency or the existence of extraordinary circumstances and at least three-fifths of the members of each house of the general assembly vote to exceed such limit for the purposes of such emergency or extraordinary circumstances. Any such declaration shall specify the nature of such emergency or circumstances and may provide that such proposed additional expenditures shall not be considered general budget expenditures for the current fiscal year for the purposes of determining general budget expenditures for the ensuing fiscal year and any act of the general assembly authorizing such expenditures may contain such provision. As used in this section, "increase in personal income" means the average of the annual increase in personal income in the state for each of the preceding five years, according to United States Bureau of Economic Analysis data; "increase in inflation" means the increase in the consumer price index for urban consumers during the preceding twelve-month period, according to United States Bureau of Labor Statistics data; and "general budget expenditures" means expenditures from appropriated funds authorized by public or special act of the general assembly, provided (1) general budget expenditures shall not include expenditures for payment of the principal of and interest on bonds, notes or other evidences of indebtedness, expenditures pursuant to section 4-30a, or current or increased expenditures for statutory grants to distressed municipalities, provided such grants are in effect on July 1, 1991, and (2) expenditures for the implementation of federal mandates or court orders shall not be considered general budget expenditures for the first fiscal year in which such expenditures are authorized, but shall be considered general budget expenditures for such year for the purposes of determining general budget expenditures for the ensuing fiscal year. As used in this section, "federal mandates" means those programs or services in which the state must participate, or in which the state participated on July 1, 1991, and in which the state must meet federal entitlement and eligibility criteria in order to receive federal reimbursement, provided expenditures for program or service components which are optional under federal law or regulation shall be considered general budget expenditures.

Conn. Const. art. III, § 18

§ 18. Limit on state expenditures. Maximum authorized increase; "emergency or extraordinary circumstances"; definitions to be defined by general assembly. Surplus
Currentness

Sec. 18. [As added] a. The amount of general budget expenditures authorized for any fiscal year shall not exceed the estimated amount of revenue for such fiscal year.
b. The general assembly shall not authorize an increase in general budget expenditures for any fiscal year above the amount of general budget expenditures authorized for the previous fiscal year by a percentage which exceeds the greater of the percentage increase in personal income or the percentage increase in inflation, unless the governor declares an emergency or the existence of extraordinary circumstances and at least three-fifths of the members of each house of the general assembly vote to exceed such limit for the purposes of such emergency or extraordinary circumstances. The general assembly shall by law define "increase in personal income", "increase in inflation" and "general budget expenditures" for the purposes of this section and may amend such definitions, from time to time, provided general budget expenditures shall not include expenditures for the payment of bonds, notes or other evidences of indebtedness. The enactment or amendment of such definitions shall require the vote of three-fifths of the members of each house of the general assembly.
c. Any unappropriated surplus shall be used to fund a budget reserve fund or for the reduction of bonded indebtedness; or for any other purpose authorized by at least three-fifths of the members of each house of the general assembly.

Attorney General's Opinion
Attorney General, Richard Blumenthal
April 14, 1993

Edward C. Krawiecki, Jr.
State Representative
Minority Leader
House of Representatives
State Capitol
Hartford, CT 06106
Dear Representative Krawiecki:
On August 21, 1991, the House of Representatives (by a vote of 75 to 73) and the Senate (by a vote of 18 to 18, tie broken by the Lieutenant Governor) adopted S.B. No. 2010. This legislation, as approved that day by the Governor, became 1991 Conn.Pub.Acts. No. 91-3 of the June, 1991 Special Session. Within 1991 Conn.Pub.Acts. No. 91-3 is § 30, a cap on spending by the General Assembly.[1]
On August 21, 1991 by vote margins greater than 75%, both the House of Representatives and the Senate adopted H.J.R. No. 205 which, among other things, proposed to add Section 18(a), a balanced budget provision and Section 18(b), a spending cap, to Article III of the Connecticut Constitution.[2] This Resolution passed by sufficient margins to be placed on the ballot in the November 3, 1992, election for possible adoption as a Constitutional Amendment. On November 25, 1992, the Secretary of the State certified that the electorate had adopted H.J.R. 205 as an amendment at the November 3, 1992, election.
By letter dated January 11, 1993 you ask one question regarding the effect of Art. III, § 18(a), the balanced budget amendment, on deficiency legislation authorized by Conn.Gen.Stat. § 2-36. You also ask four questions on the relationship between the statutory and constitutional spending caps set forth in Public Act 91-3, § 30 and Article III,

§ 18. We first address your question regarding § 18(a) and then will answer each of your questions as they relate to Art. III, § 18(b).

I. Art. III, § 18(a), the Balanced Budget Amendment

A portion of H.J.R. 205 which became, on approval of the voters, Art. III, Sec. 18(a) is known as the balanced budget amendment. Seeremarks of Representative McNally "[Section a] will require for the first time in our State Constitution a balanced budget" 34 H.Proc., Pt. 34, 1991 June Sp. Sess., p. 798, and remarks of Senator Herbst: "In Section A we talk about a balanced budget amendment." 34 S.Proc., Pt. 13, 1991 June Sp. Sess., p. 203.

You ask whether this amendment requiring a balanced budget in each fiscal year prohibits the passage of deficiency legislation after the start of the fiscal year. We answer that the balanced budget amendment limits the enactment of such legislation.

Deficiency legislation is governed by Conn.Gen.Stat. § 2-36. This section was re-enacted in § 33 of Public Act 91-3, on the same day final approval was given to Art. III, § 18(a). It permits state agencies to request the Office of Policy and Management to submit to the General Assembly a bill paying "expenses of the current fiscal year." While the balanced budget amendment does not specifically prohibit deficiency appropriations, § 2-36 now must be construed within the constitutional boundaries set by the balanced budget amendment. That amendment limits "general budget expenditures" to the "estimated amount of revenue for such fiscal year." Deficiency legislation involves "expenditures" above the originally budgeted appropriations. Such legislation is, therefore, limited to the circumstance where there are additional revenues above the originally budgeted amount, through revised estimates or new enactments, to cover the expenditures.

II. Art. III, § 18(b), the Constitutional Spending Cap

1. Your first question with respect to § 18(b) asks whether the Constitutional spending cap automatically repealed the statutory spending cap. We answer that the statutory cap remains in place until the General Assembly enacts the Constitutional definitions for § 18(b).

The general rule is that "ordinarily constitutional limitations upon the legislature are prospective in their operation and not intended to affect existing legislation...." Sutherland, Statutory Construction § 23.30. See also State ex rel. Cotter v. Leipner, 138 Conn. 153, 158 (1951); Ursuline Academy of Cleveland v. Board of Tax Appeals, 141 Ohio St. 563, 49 N.E.2d 674, 677 (1943); 16 C.J.S. "Constitutional Law" § 51.

We see nothing in the language of Art. III, § 18(b) or the constitutional history to indicate an intention to repeal the statutory spending cap set forth in 1991 Conn.Pub.Acts No. 91-3 § 30. Therefore, according to the legal principle outlined above, the statutory spending cap remains in place until the General Assembly enacts the Constitutional definitions for § 18(b).

2. Your second question asks whether, on the failure of the legislature to pass the definitional provisions of § 18(b) of Article III of the Constitution, Section 30 of Public Act 91-3 "becomes" the language of the Constitutional Amendment. We conclude that § 30 may become the definitional language of § 18(b) of Article III if it is specifically enacted as such. Section 30 of Public Act 91-3 sets forth certain definitions applicable to the statutory spending cap. Conn. Const. Art. III, Section 18(b), also requires the General Assembly to define specific terms for the Constitutional spending cap which are similar to those contained in Public Act 91-3. According to the Constitutional Amendment, "[t]he enactment

or amendment of such definitions shall require the vote of three-fifths of the members of each house of the general assembly." Id.

Section 30 was not passed with a three-fifths majority. Therefore, § 30 can serve to meet the constitutional mandate only if it is specifically enacted as such in accordance with the procedures of Art. III, § 18.

3. Your third question asks whether the legislature might amend § 30 of Public Act 91-3 by a majority vote. In keeping with our previous answers, we conclude that the General Assembly may not so act.

We have concluded that the statutory provision (§ 30) remains in place, and will so remain until replaced by the requisite Constitutional definitions. While the legislature cannot be compelled to act in a particular fashion (Ursuline Academy, supra), Art. III, § 18(b) is now part of our Constitution. To continue to amend the statutory provision by less than a three-fifths majority would render the constitutional amendment a nullity. The statute was to be a temporary measure. 34 H.Proc., Pt. 34, June Sp. Sess., p. 805. (remarks of Rep. McNally, the House sponsor of H.J.R. 205). Amendments to § 30 of Public Act 91-3, therefore, cannot be made by a simple majority vote.

4. Your fourth question seeks to ascertain the effect of the General Assembly's amending § 30 of Public Act 91-3 by a vote in excess of three-fifths. You ask whether this amended language "becomes" the definitional language for Art. III, § 18(b). We conclude that such legislation would satisfy the procedural requirements of § 18(b). The Supreme Court has stated that "[W]here a new provision is to be substituted for an existing one, whether the new takes the form of a direct enactment, with repeal of the old, or of an amendment substituting the new for the old is ordinarily wholly immaterial, depending upon the preference of the draftsman of the act." Simborski v. Wheeler, 121 Conn. 195, 200 (1937).

We hope that we have sufficiently answered your questions.

Very truly yours,

Richard Blumenthal

Attorney General

Henry S. Cohn

Assistant Attorney General

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[1] This section provides as follows:

Sec. 30 (NEW) The general assembly shall not authorize an increase in general budget expenditures for any fiscal year above the amount of general budget expenditures authorized for the previous fiscal year by a percentage which exceeds the greater of the percentage increase in personal income or the percentage increase in inflation, unless the governor declares an emergency or the existence of extraordinary circumstances and at least three-fifths of the members of each house of the general assembly vote to exceed such limit for the purposes of such emergency or extraordinary circumstances. Any such declaration shall specify the nature of such emergency or circumstances and may provide that such proposed additional expenditures shall not be considered general budget expenditures for the current fiscal year for the purposes of determining general budget expenditures for the ensuing fiscal year and any act of the general assembly authorizing such expenditures may contain such provision. As used in this section, "increase in

personal income" means the average of the annual increase in personal income in the state for each of the preceding five years according to United States Bureau of Economic Analysis data; "increase in inflation" means the increase in the consumer price index for urban consumers during the preceding twelve-month period, according to United States Bureau of Labor Statistics data; and "general budget expenditures" means expenditures from appropriated funds authorized by public or special act of the general assembly, provided (1) general budget expenditures shall not include expenditures for payment of the principal of and interest on bonds, notes or other evidences of indebtedness, expenditures pursuant to section 4-30a of the general statutes, or current or increased expenditures for statutory grants to distressed municipalities, provided such grants are in effect on July 1, 1991, and (2) expenditures for the implementation of federal mandates or court orders shall not be considered general budget expenditures for the first fiscal year in which such expenditures are authorized, but shall be considered general budget expenditures for such year for the purposes of determining general budget expenditures for the ensuing fiscal year. As used in this section "federal mandates" means those programs or services in which the state must participate, or in which the state participated on July 1, 1991, and in which the state must meet federal entitlement and eligibility criteria in order to receive federal reimbursement, provided expenditures for program or service components which are optional under federal law or regulation shall be considered general budget expenditures. (This section is now codified as Conn.Gen.Stat. § 2-33a).

[2] HJR 205(b), now Article III, Sections 18(a) and 18(b), provide as follows:

Sec. 18(a) provides: "The amount of general budget expenditures authorized for any fiscal year shall not exceed the estimated amount of revenue for such fiscal year."

(b) The general assembly shall not authorize an increase in general budget expenditures for any fiscal year above the amount of general budget expenditures authorized for the previous fiscal year by a percentage which exceeds the greater of the percentage increase in personal income or the percentage increase in inflation, unless the governor declares an emergency or the existence of extraordinary circumstances and at least three-fifths of the members of each house of the general assembly vote to exceed such limit for the purposes of such emergency or extraordinary circumstances. The general assembly shall by law define "increase in personal income", "increase in inflation" and "general budget expenditures" for the purposes of this section and may amend such definitions, from time to time, provided general budget expenditures shall not include expenditures for the payment of bonds, notes or other evidences of indebtedness. The enactment or amendment of such definitions shall require the vote of three-fifths of the members of each house of the general assembly.