

Testimony of former State Senator Mark Nielsen April 18, 2016

Thank you for this opportunity to provide testimony to the Spending Cap Commission. My name is Mark Nielsen. From 1993 to 1995, I served as the 138th District State Representative, and from 1995 to 1999, I served as the 24th District State Senator. I am currently a resident of Ridgefield and General Counsel of Frontier Communications Corporation, working at the company's headquarters in Norwalk.

As a legislator back in the 1990s, I advocated in favor of the Legislature passing the implementing legislation necessary to effectuate the Constitutional Cap passed by 81% of the voters on Election Day 1992. In 1993, I went so far as to file a lawsuit seeking to force implementation. My case was ultimately decided by the Connecticut Supreme Court, and the Court's ruling in my case is cited in several parts of Attorney General Jepsen's recent advisory opinion, which concludes that the Constitutional Cap is without legal effect.

As the members of the Commission know, the Constitutional Cap was originated on August 21, 1991, the tumultuous day on which narrow majorities in the Connecticut House of Representatives and Senate enacted the state income tax. Gov. Lowell P. Weicker, Jr. and legislative leaders had both agreed, in an attempt to gather the final votes necessary to pass the tax, to support a constitutional limitation on spending.

To many, this approach seemed like an appropriate accommodation of competing objectives. The powerful new tax would raise needed revenues, but would also be subject to a firm check against over-spending. The clear wording of the cap appeared to ensure this: "the General Assembly shall not . . . increase . . . general budget expenditures . . . by a percentage which exceeds the percentage increase in personal income or the percentage increase in inflation . . ."

As a result of the 81% vote for the Cap, the Cap Amendment became part of the State Constitution (Article XXVII, Section 18 (b)). The provision, however, was not self-executing, and this has proven to be its Achilles heel.

The Cap Amendment commanded that, to be given effect, super-majorities in the House and Senate should adopt definitions of terms, including "general budget expenditure," the measure of spending that would be capped. But the House and Senate have never passed the implementing definitions, leaving the State to operate under a fallback statutory cap adopted in 1991, and relegating the Constitutional Cap to legal limbo, where it has remained ever since its origination.

In 1996, the State Supreme Court ruled that it could not grant the relief that my lawsuit sought – that the Court give the Legislature a firm deadline to adopt the implementing definitions, or that the Court provide the definitions itself – because the case had raised "a political question not amenable to judicial resolution."

(As an aside, I do wonder whether the Court's opinion would be the same today. The Court's 1996 ruling did contain some suggestion that my case was not beyond judicial intervention but merely premature ... that I had not waited long enough to file it.)

The main idea behind my lawsuit was that the Constitutional Cap needed to be binding ... needed to reflect the relinquishment of some amount of the Legislature's pre-existing power to increase state spending. Otherwise, passing the Constitutional Spending Cap was a pointless exercise.

This is the main point of my testimony today. To be faithful to the expressed will of the voters, the Legislature should go back and pass the implementing definitions necessary to effectuate the Constitutional Cap. The task is overdue, but absolutely should be done.

Of course, the exact content of the implementing legislation will be subject to legitimate debate. For instance, I do not necessarily object to continuing the practice of allowing a super-majority to override the Constitutional Cap based upon emergency circumstances. In my view, it is consistent with the concept of a binding spending cap to allow a super-majority, based on the declaration of an emergency by the Governor, to retain the power to override the Constitutional Cap in a given year.

What the implementing legislation should *not* do is continue the practice of exempting from the cap whole categories of spending. Every major category of spending has a cohort of staunch defenders. What exactly is the point of capping all categories of state spending except those categories that are especially favored? If the Legislature decides to accelerate spending in one area, the Cap's effect should be to force cutbacks in other areas. Connecticut can no longer afford to have budgetary "sacred cows."

As was the case in 1991, Connecticut is at a fiscal crossroads today. While the task of implementing Connecticut's Constitutional Spending Cap is long overdue, it can and should be done.

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