

TEL as the Supreme Clause of the Ohio Constitution.

The TAX Expenditure Limit (TEL), scheduled for a statewide vote in November as State Issue 1, sees itself as a class apart from other Constitutional provisions like the Bill of Rights and Home Rule.

According to the TEL, in the case of any conflict between the TEL and any other provision of the Constitution, the provisions of the TEL shall be supreme. For instance, should the provisions of the Constitution requiring the state to provide for a “thorough and adequate” education for young Ohioans require more money be spent than the TEL’s spending caps, the TEL would win out and those young Ohioans would just have to stay uneducated. Under the TEL, the state’s obligations to Ohio’s school children and school construction clearly take a back seat to the dictates of the TEL. So do Home Rule, the Right to Bear Arms and the Right to Free Speech, among other Constitutional things.

While not all of these provisions of the Ohio Constitution may come in conflict with the TEL, this seems an oddly arrogant declaration for any Constitutional Amendment to make. The supporters of the TEL say this is just the usual declaration made in many legal documents, like the small print on your last car loan. They also say that this declaration can be fixed by the General Assembly if “supreme” proves to be a little much. Neither of these statements is true.

Casting the TEL as supreme to all other clauses of the Constitution is a little more than a small legalism. Further, the General Assembly, through statute, does not have the power to make changes, willy-nilly, to the Ohio Constitution. That power is reserved to the people of Ohio. Supremacy for the TEL is supremacy for the TEL, no matter what the General Assembly thinks.

And putting in the Ohio Constitution an amendment that declares its own untested ideas as superior to all other rights, freedoms and state obligations to the people of Ohio may not be the best idea for any of us.

Oddly, the TEL is so certain of its virtues that it contains its own little poison pill should anyone ever try to tinker with the amendment. The TEL says that any future amendments to the Constitution that, in the judgment of the Secretary of State, would or might change any key provision of the TEL must include a note. That note, in all capital letters, must say that if you vote for this amendment that would or might change the TEL, the entire TEL is repealed.

This strikes us as a little paranoid. Freedom of Speech is a clause in both the U.S. and Ohio Constitutions for a couple of hundred years. However, that freedom is not a clause that needed an additional clause that said if someone thinks another amendment **might** change the right to freedom of speech, then voting for that future amendment would automatically be a vote to repeal freedom of speech.

The TEL being proposed is an amendment full of muddle that does not appear to be superior to much of the thinking Ohioans have placed in their Constitution over the past 200 years. There may a TEL that proves itself superior to the protection offered by democratic elections and good public leadership. This TEL is not it.