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Op Ed

Transportation Lockbox Bill Needs Teeth

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Connecticut desperately needs to improve its transportation infrastructure. Recognizing this dire need, Gov. Dannel P. Malloy has rightly made garnering support for his 30-year, \$100 billion transportation funding initiative one of his top priorities. But as the governor's transportation commissioner, James Redeker, has said, Connecticut taxpayers "need a promise — a promise that the investment won't be diverted, as it has been so many times in the past."

The promise comes in the form of a proposed amendment to the state constitution, which would create a lockbox for revenue raised for transportation spending. A constitutional lockbox would prevent the General Assembly from diverting money raised for transportation purposes to other uses.

The lockbox concept is a good idea in theory. But it is only good in reality if it is enforceable.

To ensure that it is enforceable, the proposed constitutional amendment needs specific language directing the courts to enforce the amendment. Unfortunately, the lockbox resolution that was introduced during the special legislative session in December did not contain such language, and efforts to amend the resolution to include such language were rejected. The governor urged the legislature to introduce and pass a new lockbox amendment in his speech Wednesday to the joint session of the General Assembly. Unless it includes strong enforcement language, there will be no point.

Why does the proposed lockbox amendment need special language to ensure that it is enforceable? Because of something known as the "political question" doctrine. Courts do not like to be drawn into political disputes. Courts rely on the political question doctrine to refuse to hear legal disputes that they view as political fights within or between other branches of government.

Prove Lockbox Works First

There is reason to believe that the Connecticut Supreme Court would view lockbox disputes as political questions. In 1992, the Weicker administration pressed for the creation of a state income tax. To persuade voters to support that new tax, the administration also pushed for a constitutional spending cap, which was intended to limit the rate of growth of state government. As Attorney General George Jepsen wrote in a legal opinion released in November, however, the spending cap is not judicially enforceable. The 1996 Connecticut Supreme Court opinion upon which the attorney general relied for his opinion, *Nielsen v. State*, gives several reasons why the cap is not enforceable; one of those reasons is the political question doctrine.

No one can predict with certainty whether the state Supreme Court would view the proposed lockbox amendment the same way it views the spending cap. But the risk that it would is significant enough that

it should be taken into account. Fortunately, the Supreme Court's reluctance to rule on political disputes can be overcome by express language in the proposed amendment requiring the court to decide such disputes if and when they arise.

Notably, similar language already exists in our state constitution. For example, Article Third, Section 6 sets forth the procedure for reapportioning political districts following each U.S. census. The procedure requires the General Assembly to adopt a plan of redistricting, and then calls for an appointed commission to undertake that task if the General Assembly fails to do so within a certain deadline.

There is nothing more political than drawing the lines that demarcate congressional districts and state Senate and House districts. Yet Article Third, Section 6.d. expressly requires the Supreme Court to resolve reapportionment disputes when the appointed commission fails, and the court has honored that requirement.

Connecticut needs to implement a long-term transportation plan. That initiative will cost a lot of money. Putting the money in a lockbox to ensure it is spent on transportation is a good idea, but only if the constitutional amendment creating a lockbox is enforceable.

If our elected representatives decline to include judicial enforcement language in the proposed amendment, it is fair to ask whether they truly want an unpickable lockbox or, instead, only want constitutional window dressing that they can use to persuade voters of the need to raise taxes. The voters were fooled once in 1992. They should not allow history to repeat itself.

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