



# ESSAY

OCTOBER 2016



## AMENDMENT 3: THE GOOD, THE BAD, AND THE UGLY

By Michael McShane

On November 8, 2016, Missouri residents will be asked to vote on whether or not to amend the state Constitution to increase taxes on cigarettes to create a fund for early childhood education in the state.

The official ballot language reads:

*Shall the Missouri Constitution be amended to:*

- *increase taxes on cigarettes each year through 2020, at which point this additional tax will total 60 cents per pack of 20;*
- *create a fee paid by cigarette wholesalers of 67 cents per pack of 20 on certain cigarettes, which fee shall increase annually; and*

- *deposit funds generated by these taxes and fees into a newly established Early Childhood Health and Education Trust Fund?*

*When cigarette tax increases are fully implemented, estimated additional revenue to state government is \$263 million to \$374 million annually, with limited estimated implementation costs. The revenue will fund only programs and services allowed by the proposal. The fiscal impact to local governmental entities is unknown.*

Looking through the full text, there is much to consider before deciding to cast a “yes” or “no” vote for this

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proposed amendment. This essay is designed to dig into the issues at play and help inform voters about all of the possible implications of this proposed amendment.

## **PROLOGUE, OR “WHY THE 67-CENT FEE ON SOME CIGARETTES AND NOT OTHERS?”**

Pre-K is becoming an increasingly popular policy prescription in states across the country. President Obama made it a goal in his 2013 State of the Union Address that all 4-year-olds in the nation have access to preschool.<sup>1</sup> States across the country, red and blue, have been creating new preschool programs or expanding existing ones, with enrollment in publicly funded preschool growing from 14% of 4-year-olds in 2002 to 29% in 2015.<sup>2</sup>

Here in Missouri, there are several existing preschool programs. According to the U.S. Department of education, there are appropriately 78,500 4-year-olds in the state.<sup>3</sup> Probably the best-known public pre-K program serving these students is not a state plan at all, but rather the federal Head Start program. A key piece of President Johnson’s War on Poverty, Head Start pays, on average, \$8,047 per student to educate 13,733 low-income Missouri 3- to 4-year-olds.<sup>4</sup> Another 9,624 3- to 4-year-old students who are identified as having special needs are served by schools as well.<sup>5</sup> Additionally, the Missouri Preschool Program (MPP), which began in 1998 and provides competitive grants to preschool providers, enrolled 4,259 students. Funded in large part (82.8%) from the Tobacco Settlement Fund, MPP’s total budget in 2014–15 was \$13.6 million, and MPP spent, on average, \$3,211 per child. MPP provides grants to both public and private providers, although 95% of students who participate are enrolled in public schools. MPP provides grants to 29.6% of Missouri school districts.<sup>6</sup>

Additionally, in 2014 the state passed HB 1689, which allows certain school districts to classify preschool-aged children as students for the purpose of enrollment and the state funding that comes along with it. For the 2015–16 school year, this provision was limited to unaccredited districts. However, in 2016–17 it will extend to provisionally accredited districts, and if and when the school funding formula is fully funded, it can be expanded to all other districts and charter schools.<sup>7</sup> But even today,

schools are free to offer pre-K—they simply do not receive additional funding for it. According to 2016 enrollment numbers from the Missouri Department of Elementary and Secondary Education (DESE), across the state there were 33,122 students counted in pre-K enrollment, so if one sets aside the students already counted in the three mentioned programs we see 5,506 students falling into this group.<sup>8</sup>

In response to the fact that only 4% of 4-year-olds are enrolled in a state-funded preschool program (though it should be noted that another 9% are served by Head Start and 7% are served by special education services), a group named Raise Your Hands for Kids started a ballot petition to amend the state Constitution to create a funding stream for a much more substantial pot of money for preschool education.

Under the proposed amendment, the state would raise its cigarette taxes by 60 cents per pack, which would, according to proponents, generate between \$263 million and \$374 million in revenue per year.<sup>9</sup> Even funding students at the Head Start rate of \$8,000 per student, under the proposed revenue estimates, revenue generated by the proposed cigarette tax could provide services for between 32,875 and 46,750 students.

But the amendment would also create an additional fee for cigarette wholesalers of 67 cents per pack (which would help contribute to that \$263–\$374 million revenue figure). So what is the additional charge to wholesalers all about?

In 1998, the four major cigarette companies (Brown and Williamson, Lorillard, Phillip Morris, and R.J. Reynolds) entered into a historic settlement with the attorneys general of 46 states across the country (including Missouri). In exchange for having lawsuits dropped that had been initiated against the tobacco companies and providing greater protection against future lawsuits, the companies agreed to pay, in perpetuity, a percentage of the money they made from the sale of cigarettes into state funds.<sup>10</sup> In Missouri, these costs usually work out to just over 60 cents per pack of cigarettes.<sup>11</sup>

If that number sounds familiar, it should. The 67 cents that the proponents of the constitutional amendment

want to add to “wholesalers” is designed to eliminate the advantage that tobacco companies that were not part of the settlement have over those that were. Today, so-called “little tobacco” (as opposed to “big tobacco”) companies are able to sell their cigarettes for much less because they are not burdened with the same obligations to the government. The pricing advantage enjoyed by the smaller companies helps explain why the parent company of R.J. Reynolds has donated (at the time of writing) \$2.6 million to an effort to raise cigarette taxes.<sup>12</sup> The potential benefits the amendment could bring to big tobacco may also help explain why a number of health advocacy groups, including the American Cancer Society Cancer Action Network, American Heart Association, American Lung Association in Missouri, Campaign for Tobacco-Free Kids, Health Care Foundation of Greater Kansas City, and Tobacco-Free Missouri, came out against the proposal, calling it “alarming and deceitful.”<sup>13</sup>

But setting aside the dubious origins of the proposal, it is worth evaluating on its merits. In the next three sections, I’ll take a dive into what I think the positive aspects of the plan are, as well as some of its shortcomings.

## **SECTION 1-THE GOOD**

There are many things to admire in the Amendment 3 proposal. In fact, it appears that in several places, the authors have specifically included provisions to win the support of more conservative Missourians. For example, and what has become one of the more hotly debated provisions within the proposal, there is explicit language forbidding any funding generated from these taxes from funding abortions, cloning, or stem cell research. This prohibition has led to pushback from Kansas City’s Stowers Institute and Missouri Cures, a stem-cell research advocacy organization.

More importantly, one of the strongest provisions in the proposal is that it makes funds available to both public and private schools. There is a vibrant market for pre-K options in Missouri today, and programs that include both public and private providers, not destroy them, would do the most to expand opportunity for students. If the goal is to expand the number of seats available to children, excluding private providers (or running them out of business with a newly free government-funded option)

would be counterproductive. What’s more, there are specific provisions within the proposal that would allow dollars to flow to religious schools, many of which already offer pre-K. Again, if the goal is to expand the number of children receiving a pre-K education, it is shortsighted to exclude religious providers from the mix.

Similarly, the plan creates a new pot of money to fund pre-K, not a pre-K program—an important distinction. If, for example, the Missouri general assembly were to create a pre-K program that relied on an appropriation from the general fund every year, this program would for all intents and purposes become an entitlement to families across the state. It would risk centralizing and bureaucratizing pre-K education in many of the ways that we lament the K-12 system has experienced over the last 50 years. By simply creating a fund that gives grants to autonomous providers, pre-K would be delivered in a decentralized fashion by providers that have a better understanding of local context and needs.

Because the program exists outside of the traditional channels of influence and control, it would be harder for organized interest groups to control it. Not impossible, but harder. With the pot of money created by Amendment 3, or any other pre-K program for that matter, it is essential that we do not recreate the problems that we have identified in the K-12 system. At the worst, a pre-K program would simply append another grade onto a system that we don’t think is doing as well as it could. Only slightly better would be an independent system that suffers from the same bureaucratic creep and intransigence. If the state of Missouri is going to have a pre-K program, vigilance on this front is of utmost importance.

## **SECTION 2-THE BAD**

Anytime we talk about pre-K, some big caveats are in order. First, advocates tend to tout some eye-popping results from pre-K research and make herculean promises as to what pre-K is capable of doing for kids.

The impressive results from pre-K generally come from two research projects: the Perry Preschool and the Abecedarian experiments that were conducted in the 1970s. And it is true, even followed into adulthood, the children who participated in these program saw some

amazing gains in learning and better life outcomes than the control group of children who were demographically similar but didn't receive the treatment. That said, most preschool programs don't look like Perry or Abecedarian, and would be prohibitively expensive if they did.

One of the most notable voices tamping down the exuberant rhetoric around the effects of pre-K is the Brookings Institute's Russ Whitehurst. Whitehurst is by training a child psychologist, and was tapped during the Bush Administration to lead the Institute for Education Sciences, the federal government's education research department. His basic arguments about the research base of preschool are important, and worth fleshing out in full.

**1. Perry and Abecedarian did show gains, but most programs do not, and will not, look like them.** As Whitehurst wrote in a 2013 blog post:

“In my view, generalizations to state pre-K programs from research findings on Perry and Abecedarian are prodigious leaps of faith. Perry and Abecedarian were multi-year intensive interventions whereas state pre-K programs are overwhelmingly one year programs for 4-year-olds. Costs per participant for Perry and Abecedarian were multiples of the levels of investment in present-day state preschool programs, e.g., \$90,000 per child for Abecedarian. Both Perry and Abecedarian were small hothouse programs (less than 100 participants) run by very experienced, committed teams, whereas widely deployed present day preschool programs are, well, widely deployed. The circumstances of the very poor families of the Black children who were served by these model programs 30 to 40 years ago are very different from those faced by the families that are presently served by publicly funded preschool programs. For example, nearly half of the 4-year-olds in Head Start today are Hispanics, whereas there were no Hispanic children in Abecedarian or Perry. And 40 years ago other government supports for low-income families were at much lower levels and pre-K was not widely available for anyone, much less the poor.”<sup>14</sup>

**2. Research on Head Start, which is much closer to what most pre-K programs would look like, is not promising.** In another 2013 blog post, Whitehurst wrote:

“The Head Start Impact Study is one of the most ambitious, methodologically rigorous, and expensive federal program evaluations carried out in the last quarter century. It was planned during the Clinton administration, implemented during the Bush administration, and reported during the Obama administration. . . . The findings, in brief, are that there were effects favoring Head Start children on some outcome variables at the end of the Head Start year. However, these impacts did not persist. Both in the kindergarten and first grade follow-up data, released just short of three years ago, and the third grade follow-up data, released in December of 2012, there were no reliable differences in outcomes for children who won the lottery to attend Head Start vs. those who lost that lottery and served as the control group. In the words of the authors of the report, ‘by the end of 3rd grade there were very few impacts . . . in any of the four domains of cognitive, social-emotional, health and parenting practices. The few impacts that were found did not show a clear pattern of favorable or unfavorable impacts for children.’”<sup>15</sup>

**3. The other sources of research that are most highly touted are less convincing than advocates might make you think.** After thoroughly dissecting three studies (in Georgia, Texas, and Oklahoma) that are frequently cited by advocates of pre-K programs, Whitehurst concludes:

“These three studies fall far short of providing a convincing case for investment in universal pre-K: The Georgia study finds impacts that are at best very small and do not pass a cost-benefit test. The Texas study provides evidence for value in a targeted program and is silent on the effectiveness of a universal program. The Tulsa study and other studies that use a design that compares children who just meet or just miss the age cut-off for pre-K can't estimate the impact of state pre-K because they are comparing children that may differ in many experiences in addition to their participation in state pre-K.”<sup>16</sup>

**4. There is disagreement about how many students are already enrolled in some form of pre-K.** In a 2015 research report titled “Do we already have universal preschool?” Whitehurst and Ellie Klein argue:

“We find based on our new analysis of data from the National Center of Education Statistics that 69 percent of the nation’s children who entered kindergarten in the 2010–2011 school year regularly attended a preschool program in the preceding year. This rate is 14 percent higher than the rate of attendance for this age group reported elsewhere, and provides a very different impression of unmet need than other reports, including those produced by the White House, that aggregate attendance rates for three- and 4-year-olds. We also find, consistent with other reports, that rates of attendance vary considerably by the socio-economic status of parents. But our attendance rates are higher for all groups than sometimes reported elsewhere.”<sup>17</sup>

**And where will the teachers come from?** It isn't just Whitehurst: Other organizations have raised red flags with respect to preparing and recruiting the large number of qualified teachers that will be necessary for a high-quality pre-K program. This raises some important questions, particularly in light of the fact that low teacher quality is frequently used as an explanation for poor pre-K results.<sup>18</sup> Just this summer, the National Center on Teacher Quality collected data on existing pre-K teacher preparation programs and found many troubling deficiencies. For example:

- *Only 20 percent of programs teach about and expect candidates to practice reading aloud to children.*
- *Only 40 percent of programs require a math course that clearly addresses teaching preschool.*
- *Only one in five programs (19 percent) ensure that student teachers know what to do when a child acts out or disrupts the classroom.*
- *Only a quarter of programs (26 percent) evaluate student teachers on using positive reinforcement—even though this strategy is backed by a wealth of evidence.*
- *Preschool children often learn through play or activity centers—but only 36 percent of programs evaluate student teachers on managing these activities.*<sup>19</sup>

In short, if we want to have an effective pre-K program, finding enough good teachers will present a serious challenge.

Taken together, these findings cast doubt on both the nature of the problem and the viability of the solution.<sup>20</sup> In addition, there are concerns with the structure of the particular arrangement proposed in Amendment 3.

First, while better insulated than many other preschool programs from bureaucratic creep, the program is not immune, and some of the regulations around the Missouri Preschool Program give cause for alarm. For example, for public schools that participate in the MPP, lead preschool teachers have to be part of the same salary schedule as K-3 teachers in that district. For private schools they have to be paid a “commensurate” salary.<sup>21</sup> While this requirement might seem reasonable at first glance, there are reasons why a district or school might want to pay a pre-K teacher differently than a K-3 teacher. There might be more competition for great pre-K teachers because of the large number of public and private options. It might take more money to get a great teacher in the classroom. There might also be a glut in the market, and many qualified teachers who would be willing to work for less. Schools might want to differentiate salaries based on effectiveness or staff their schools in new and different ways, and yoking them to a salary schedule can prevent this experimentation. If the program created by Amendment 3 stifled innovation rather than promoting it, it could do real harm.

To date, it simply isn't clear what the regulations for participating schools will be. In one sense, this uncertainty means we should probably reserve judgement, but in another it makes it hard to support a program when we don't know what that program will ultimately look like.

Second, a lot hinges on language of “the commission shall ensure a fair and equitable distribution of funds.” Will funds be fairly distributed between public and private providers? Does *equitable* speak to income of students or poverty in communities? Is it referring to race, ethnicity, or English language learner status? So many of our contemporary debates in education hinge on what it means to create an equitable and fair system of funding schools. It isn't clear where this program is situated within that broader context.

Third, it would have been better to design the program as a voucher, rather than a competitive grant distributed via a centralized commission. An example of a popular program that provides pre-K services to low-income families is Minnesota's Early Learning Scholarship Program. That program provides scholarships of up to \$7,500 directly to low-income families to take to the school of their choosing.<sup>22</sup> Rather than have complicated debates at the administrative level over what schools to fund, they let families direct the spending. While there has been rancor and controversy over other efforts in Minnesota to expand pre-K, the scholarships remain popular and have strong, bipartisan support.<sup>23</sup> Funding via parent-directed voucher, rather than commission-directed grant, would most likely better align the provision of pre-K with the needs of children and families.

### SECTION 3-THE UGLY

Outside of the merits of pre-K and the structure and makeup of the funding streams created by Amendment 3, how Amendment 3 derives its revenue is worth discussing. All of this revenue comes from taxes on cigarettes, and that is extremely problematic. Frankly, funding anything with cigarette taxes (pre-K, college scholarships, transportation—anything) other than smoking cessation or smoking-related healthcare expenditures creates serious problems. They are, in no particular order:

- 1. Smoking taxes are extremely regressive.** We know that smokers, on average, are poorer than nonsmokers. According to the Campaign for Tobacco-Free Kids, 26.3 percent of adults who are below the poverty level smoke, while only 15.2 percent of adults at or above the poverty level do. At the same time 29.1 percent of Medicaid enrollees and 27.9 percent of uninsured individuals (another measure of poverty) smoke, while only 12.9 percent of insured people do. What's more, wealthier people are quitting smoking at higher rates. From 1965 to 1999, wealthy families saw a 62% decline in smoking while smoking among low-income families declined by only 9%.<sup>22</sup> If cigarette taxes are to fund preschool primarily for lower-income children, it will be lower-income families who pay for it.
- 3. Smoking rates are going down, endangering the viability of funding streams.** According to the Center for Disease Control, from 1965 to 2014, the

percentage of adults who smoke has dropped from 42.4% to 16.8%. In just the last decade the rate has dropped from 20.9% to 16.8%.<sup>25</sup> Cigarette smoking is on the decline, and as a result, the funding stream for this program will shrink over time. What happens then? What's more, the imposition of the tax itself will lead people to smoke less, so paradoxically, increasing tax rates on cigarettes risks expediting the decrease in smoking, which would only further diminish the funds.

- 4. Like it or not, low cigarette taxes help Missouri's economy.** I don't smoke. Some of my family members' lives have been cut short by smoking. If I had my druthers, I'd try to make sure that no one in Missouri smoked. The problem is that we live in a free country, and people are able to make decisions about how they live that might not be the same decisions that I would make. What's more, huge swathes of Missouri's population live within a stone's throw of other states, making Missouri particularly vulnerable to changes in excise taxes. There are numerous stories of businesses (like gas stations) moving just across state lines in order to enjoy the advantages of lower taxes on gas, alcohol, and cigarettes.<sup>26</sup> Those businesses employ people, provide goods and services, and contribute to the state's bottom line. Raising excise taxes could very easily drive them out of the state.

All in all, smoking taxes are a deeply problematic way to fund even worthwhile government programs.

### CONCLUSION

As the previous 3,000-plus words have shown, there is nothing cut and dried about the issues at play in the Amendment 3 vote. From the program that is being funded to the way those funds are being generated, there are numerous pros and cons that must be weighed. I hope this document can help clarify those issues and inform voters of what is at stake and what the most likely outcome of Amendment 3 might be should it pass.

### NOTES

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