

Constitutional Restraints on the Federal Budget

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Chairman Johnson, Ranking Member Scanlon, and members of the subcommittee:

Thank you for inviting me to discuss the urgent need for a constitutional amendment that restrains the federal budget.¹

I am a professor of political science and business administration at the University of Rochester, where I hold the Ani and Mark Gabrellian Professorship and serve as Associate Department Chair and Director of Graduate Studies in the Department of Political Science. In addition, I am a senior affiliated scholar with the Mercatus Center at George Mason University. I have studied fiscal policy throughout my twenty-year career and am the author of multiple publications in this area, including the book *Rules and Restraint: Government Spending and the Design of Institutions*, published by the University of Chicago Press.²

My three-part message today is this:

- First, the federal budget outlook is grim and threatens the economic future of the United States.
- Second, Congress is constitutionally incapable of tying its own hands, making it difficult for legislators to implement durable changes to the federal budget.
- Third, a constitutional amendment restraining the federal budget, if designed well, would provide the foundation for credible and sustainable fiscal policy.

¹ The views expressed here are my own and do not represent the official positions of the University of Rochester or the Mercatus Center at George Mason University.

² This testimony is based in part on arguments developed more fully in David M. Primo, “Making Budget Rules Work, 2014 Edition” (Mercatus Research, Mercatus Center at George Mason University, 2014) and *Rules and Restraint: Government Spending and the Design of Institutions* (University of Chicago Press, 2007). This testimony also incorporates material from previous testimony: David M. Primo, “Should the Constitution Be Amended to Address the Federal Deficit?” (Testimony Before the House Committee on the Judiciary, Subcommittee on the Constitution, May 13, 2011); David M. Primo, “Constitutional Solutions to Our Escalating National Debt: Examining Balanced Budget Amendments” (Testimony Before the House Committee on the Judiciary, July 24, 2014); David M. Primo, “First Principles of Congressional Budgeting” (Testimony Before the House Committee on the Budget, July 28, 2015); David M. Primo, “The Need for Constitutional Budget Reform” (Testimony Before the House Committee on the Judiciary, July 27, 2017).

THE DEBT STORM IS HERE

When I first testified on this subject in 2011, the nation's fiscal problems were receiving significant attention from Congress, the White House, credit rating agencies, and the American people.³

Regrettably, this window of opportunity shut before meaningful budget reform occurred. The result: Federal debt held by the public on the day I testified (May 13, 2011) was \$9.7 trillion—about 60% of the gross domestic product (GDP) at the time. As of September 14, 2023, the debt held by the public stood at \$26.2 trillion and nearly equaled the size of the US economy.⁴

The debt storm I and other budget experts have been predicting is here, and it's going to intensify. The Congressional Budget Office (CBO) projects that debt levels will reach 181% of GDP by 2053 if Congress fails to act.⁵ Treasury Department estimates are more dire, predicting debt levels of 248% of GDP in 30 years. Treasury's most recent report on the nation's finances states that "current fiscal policy is unsustainable," where it defines a sustainable fiscal policy as "one where the ratio of debt held by the public to GDP (the debt-to-GDP ratio) is stable or declining over the long term."⁶

The CBO's summary of the dangers of unchecked debt growth aligns with my views and those of many economists: "Debt that is high and rising as a percentage of GDP tends to slow economic growth, push up interest payments to foreign holders of US debt, heighten the risk of a fiscal crisis, and make the US fiscal position more vulnerable to an increase in interest rates."⁷

The current fiscal path threatens the well-being of Americans, especially those in future generations. In addition, the longer Congress waits to act, the more difficult reform will be, politically and economically. As the Treasury Department warns, "Delaying fiscal adjustments for too long raises the risk that growing federal debt would increase interest rates, which would, in turn, reduce investment and ultimately economic growth."⁸ In addition, if Congress waits to act, on top of facing the consequences of lower economic growth due to increasing debt levels, Americans will need to give up a bigger piece of the nation's economic pie to stabilize the country's finances.

³ In my May 13, 2011 prepared testimony, I wrote, "The recent bipartisan attention to the challenges we face is heartening. The dangers of our debt and deficit levels are no longer the province of commissions whose reports gather dust. Instead, we have elected officials taking a stand and proposing bold changes to the status quo. . . . Voters are also paying attention. In a poll conducted by Pew Research Center and *The Washington Post* in April 2011, an astonishing 95% of respondents agreed that the federal budget deficit was a problem, and 81% agreed that action was needed now." Soon after my testimony, in August 2011, Standard & Poor's downgraded US federal debt in part because of the inability of the federal government to provide a "credible solution to the rising US government debt burden." See Standard & Poor's, "Research Update: United States of America 'AAA/A-1+' Ratings Placed on CreditWatch Negative on Rising Risk of Policy Stalemate" (RatingsDirect report, July 14, 2011), 2.

⁴ National debt data: US Treasury; GDP data: Bureau of Economic Analysis.

⁵ Congressional Budget Office, *The 2023 Long-Term Budget Outlook* (June 2023).

⁶ US Treasury, *Financial Report of the United States Government, Fiscal Year 2022* (February 2023), 7, 8.

⁷ Congressional Budget Office, *The Budget and Economic Outlook: 2023 to 2033* (February 2023), 28.

⁸ US Treasury, *Financial Report of the United States*, 28.

POLITICAL AND PROCEDURAL HURDLES TO BUDGET REFORM

Congress must act quickly and credibly to move the country's finances onto a sustainable fiscal path, but political and procedural challenges stand in the way of meaningful reform. Congressional reelection motivations make it tempting for lawmakers to leave difficult decisions about programs like Medicare and Social Security for tomorrow.⁹ These electoral incentives are exacerbated by “the erosion of governance” in the United States, as the credit rating agency Fitch put it when downgrading the rating of US debt in August 2023.¹⁰

There never seems to be a good time to address the nation's fiscal problems. In a strong economy, the federal government can borrow at low interest rates and economic growth masks debt growth, reducing the political will to act. In a challenging economic period like we are in today—featuring high inflation, high interest rates, slow economic growth, and fears of a recession—tough budget choices become a nonstarter politically.

Even if these political hurdles could be overcome, Congress faces yet another problem—itself. Article I, section 5 of the Constitution reads, in part, “Each House may determine the rules of its proceedings.” This single line constitutes a major obstacle for legislators attempting to enforce budget rules. More generally, Congress cannot write a contract (i.e., law or internal rule) that binds itself to a future course of action. This is true with respect to both substantive reforms—such as changes to entitlements—and process reforms—such as changes to budget rules. Congressional budget rules are routinely gamed, ignored, or changed, which is not surprising given the lack of strong enforcement mechanisms available to legislators. What Congress does today, a future Congress can undo tomorrow.

A WELL-DESIGNED CONSTITUTIONAL AMENDMENT WOULD PROVIDE THE FOUNDATION FOR CREDIBLE AND SUSTAINABLE FISCAL POLICY

I propose a well-designed amendment to the US Constitution as a solution to this quandary. Such an amendment would place permanent, truly enforceable limits on Congress's ability to tax and spend. It would counteract the temptation to circumvent rules, and it would provide a foundation on which a new budget process could be built. An amendment would also create an environment under which the question for legislators would no longer be whether to fix the nation's fiscal problems, but, rather, how to do so.

The promise of a constitutional amendment as an enforcement mechanism binding Congress lies in its durability, but this durability is also a peril: bad rules can be locked in just as good rules can be. While there are many ways to structure a constitutional amendment restraining the federal budget, all proposals should possess certain features.¹¹

⁹ For more details on how reelection motivations affect the prospects for budget reform, see Primo, “Making Budget Rules Work, 2014 Edition.”

¹⁰ Fitch Ratings, “Fitch Downgrades the United States' Long-Term Ratings to 'AA+' from 'AAA'; Outlook Stable” (Rating Action Commentary, August 1, 2023).

¹¹ See Primo, “Making Budget Rules Work, 2014 Edition,” for further details.

First, an amendment should be precise enough to prevent end runs around its provisions. It should clearly define spending and revenue, for example, and specify how each will be calculated. These definitions should not be left to implementing legislation.

Second, an amendment should be flexible enough to account for major disruptions, like a war or a pandemic. To avoid allowing “emergencies” to become an end run around the rules, Congress should be permitted to waive an amendment’s limits only with the agreement of a large supermajority. In addition, any funds borrowed under an emergency waiver should be paid back within a set amount of time—say, 10 to 15 years.

To see why the structure of the waiver process is so important, consider the COVID-19 pandemic. A waiver provision with a large supermajority requirement would have resulted in the initial \$2.2 trillion CARES Act easily passing in March 2020—a time of true national emergency. On the other hand, the \$1.9 trillion American Rescue Plan Act, criticized by many well-respected economists when it was enacted in March 2021, would have failed if a supermajority vote were required. In other words, true emergency spending would still bring legislators together, but Congress would be forced to carefully consider whether bills like the American Rescue Plan are advisable.¹² In addition, because a constitutional budget rule would put the country on a stable financial footing, the federal budget would more easily bounce back from emergency spending.

Finally, yearly budget balance is not necessary to achieve long-run fiscal discipline. Instead, an amendment should set limits based on a multiyear period, thereby accounting for fluctuations in economic performance. A key advantage of this smoothing approach, which has been adopted by countries like Germany and Switzerland, is that it necessitates fewer sudden changes to government programs.

An amendment that has economic shock absorbers and is hard to evade, but is possible to waive temporarily in the case of a true emergency like the early days of the pandemic, would help make fiscal stability, not political uncertainty, the new norm in American politics.

WHAT THE CRITICS GET WRONG

There is disagreement about the benefits of constitutional budget rules, so it is important to account for two common criticisms as an amendment is drafted.

First, skeptics point to specific design flaws, such as a requirement that budgets be exactly balanced each year.¹³ These critiques reinforce the need for careful rule design, but they do not justify the outright rejection of a constitutional amendment. Instead of requiring zero deficits yearly, for instance, an amendment could mandate a multiyear smoothing approach, as discussed earlier.

¹² The CARES Act passed the House 419-6 and the Senate 96-0. The American Rescue Plan Act of 2021 passed the House 219-212 and the Senate 50-49.

¹³ See, for example, Richard Kogan, “Constitutional Balanced Budget Amendment Poses Serious Risks” (Center on Budget and Policy Priorities, March 16, 2018).

Others worry about US Supreme Court overreach if the court is given the authority to adjudicate disputes about the amendment.¹⁴ These concerns about judicial involvement can be addressed by limiting remedies and clarifying which parties have standing. Moreover, the clearer a rule is, the less leeway justices will have in interpreting it.

CONCLUSION

In closing, the United States is in precarious fiscal health, necessitating the serious step of amending the US Constitution. The amendment process is fraught with political and procedural challenges, but a well-designed constitutional amendment will help the country achieve credible, sustainable budget reform. While successes in budgeting do occur on occasion—for instance, when President Bill Clinton and House Speaker Newt Gingrich worked together to balance the budget in the 1990s—these successes have typically been short-lived (just like that balanced budget). A constitutional amendment can help make budget agreements durable and reduce political uncertainty. In the absence of a constitutional amendment, I fear it will take a fiscal crisis before Congress acts. Nobody wants that.

Thank you again for inviting me to testify today. I welcome your questions.

¹⁴ See, for example, Robert H. Bork, “On Constitutional Economics,” *Regulation* 7, no. 5 (1983); Kathleen Sullivan, “Constitutional Amendmentitis,” *American Prospect Magazine* 6, no. 23 (1995).