CONSTITUTIONAL SOLUTIONS TO OUR ESCALATING NATIONAL DEBT: EXAMINING BALANCED BUDGET AMENDMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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CONSTITUTIONAL SOLUTIONS TO OUR ESCALATING NATIONAL DEBT: EXAMINING BALANCED BUDGET AMENDMENTS

THURSDAY, JULY 24, 2014

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 10:05 a.m., in room 2141, Rayburn Office Building, the Honorable Trent Franks (acting-Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Sensenbrenner, Coble, Chabot, Bachus, King, Franks, Gohmert, Jordan, Poe, Marino, Labrador, Holding, Collins, DeSantis, Conyers, Nadler, Scott, Johnson, DelBene, and Garcia.

Staff present: Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff Director & Chief Counsel; Allison Halataei, Parliamentarian & General Counsel; Zachary Somers, Counsel; Kelsey Deterding, Clerk; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian; James Park, Counsel; and Veronica Eligan, Professional Staff Member.

Mr. FRANKS [presiding]. The Judiciary Committee will come to order.

Without objection, the Chair is authorized to declare recesses of the Committee at any time.

We want to welcome everyone to this morning's hearing on constitutional solutions to our escalating national debt, examining balanced budget amendments. And I will begin by recognizing myself for an opening statement.

Chairman Goodlatte has asked me to apologize for his absence at the beginning of today's hearing. He had an unmovable scheduling conflict that is preventing him from being here at the start of today's hearing. And given his gallant leadership over the years on the balanced budget amendment, I know he truly regrets not being here to start this hearing.

In his absence, Chairman Goodlatte has asked me to give his opening statement. However, before I turn to that, I would like to make a few comments of my own on this topic, which is one of the most pressing problems facing America today.

We must change America's course on Federal spending and enormous Federal deficits. It is absolutely necessary that balanced Federal budgets once again become the norm.

Unfortunately, deficit spending has become the way of life for the Federal Government. But it always was not this way. For the first 140 years of America's history, we lived under an unwritten constitutional rule that budgets should be balanced except during times of war. According to Nobel Prize winning economist James Buchanan, "politicians prior to World War II would have considered it to be immoral to spend more money than they were willing to generate in tax revenue except during periods of extreme and temporary emergency."

We must return to those roots. The Federal Government cannot continue to spend us into oblivion. The one solution that has teeth to impose spending restraint on the Federal Government is a constitutional amendment.

Since the 1930's, there have been numerous proposed constitutional amendments to require a balanced budget. Unfortunately, none of those constitutional approaches to spending restraint have been adopted.

Over 200 years ago, Thomas Jefferson wrote to James Madison that "no generation can contract debts greater than may be paid during the course of its own existence" because, according to Jefferson, then the earth would belong to the dead and not the living generation.

Today America is contracting debts that will burden multiple future generations. It is time for Congress to put an end to this practice.

And I will now turn to Chairman Goodlatte's opening statement.

March 2, 1995 was a pivotal day in the history of our country. On that day, the U.S. Senate failed by one vote to send a balanced budget constitutional amendment to the States for ratification. The amendment had passed the House by the required two-thirds majority, and the Senate vote was the last legislative hurdle before ratification by the States.

If Congress had listened to the American people and sent that amendment to the States for ratification, we would not be facing the fiscal crisis we are today. Rather, balancing the Federal budget would have been the norm instead of the exception over the past 20 years, and we would have nothing like the annual deficits and skyrocketing debt we currently face.

In 1995, when the balanced budget amendment came within one vote of passing, the gross Federal debt stood at $4.9 trillion. Today it stands at over $17.5 trillion. The Federal debt held by the public is rising as well and it is increasing rapidly as a percentage of the country's economic output. Unlike the past, when the debt spiked to pay for wars of finite duration and then was reduced gradually after the hostilities ended, more recently the debt has risen as a result of having to pay for entitlement programs that are of indefinite duration and difficult to reduce over time.

As the nonpartisan Congressional Budget Office has observed, quote, such high and rising debt will have serious negative consequences. Interest rates increase considerably. Productivity and wages will be lower. High debt increases the risk of a financial crisis.

What is particularly troubling is that the debts we are incurring will burden multiple future generations. Indeed, a 2013 cross-national study found that the United States ranked worst among 29 advanced countries in the degree to which it imposes unfair debt burdens on future generations. It is time for Congress to stop saddling future generations with the burden of crushing debts to pay for current spending. We should not pass on to our children and our grandchildren the bleak fiscal future that our unsustainable spending is creating.

The only way to ensure that Congress acts with fiscal restraint over the long term is to pass a balanced budget amendment. Experience has proven time and again that Congress cannot for any significant length of time rein in the excessive spending. Annual deficits and the resulting debt continue to grow due to political pressures that the Constitution's structure no longer serves to restrain.

Simply raising taxes is not the answer. In order to pay for entitlement spending alone solely by raising taxes, we would have to double the marginal tax rates for all income brackets over the next 30 years. That is all income brackets over the next 30 years. Indeed, even if the Government confiscated all of the Americans' personal income for the entire year, you will could not pay off the national debt.

In order for Congress to be able to consistently make the tough decisions necessary to sustain fiscal responsibility, Congress must have the external pressure of a balanced budget requirement to force it to do so.

The Framers of the Constitution were familiar with the need for constitutional restrictions on deficit spending. When the Constitution was ratified, it was the States that had exhibited out-of-control fiscal mismanagement by issuing, quote, bills of credit to effectively print money to pay for projects and service debt. As a result of that lack of fiscal discipline, Article I, Section 10 of the Constitution specifically deprives States of the power to issue bills of credit. Over 200 years later, it is the Federal Government that has proven its inability to adopt sound fiscal policies, and thus it is now time to adopt a constitutional restraint on Federal fiscal mismanagement.

Several versions of the balanced budget amendment have been introduced this Congress, including two that Chairman Goodlatte introduced on the first day of Congress, as he has every Congress for the last 7 years. H.J. Res. 2 is nearly identical to the text that passed the House in 1995 and failed in the Senate by one vote. It requires that total annual outlays not exceed total annual receipts. It also requires a true majority of each chamber to pass tax increases and a three-fifths majority to raise the debt limit.

H.J. Res. 1, which Chairman Goodlatte also introduced, goes further. In addition to the provisions of H.J. Res. 2, it requires a three-fifths majority to raise taxes and it imposes an annual cap on Federal spending.

While the Chairman's preference is to pass the stronger version of the balanced budget amendment, the two-thirds majority requirement for passing a constitutional amendment demands that we achieve bipartisan support for any such approach.

Our extraordinary fiscal crisis demands an extraordinary solution. We must rise above partisanship and join together to send a balanced budget amendment to the States for ratification.

We are at a crossroads. We can make the tough choices to control spending and pave the way for a return to surpluses and paying down the national debt or we can continue further down the road of chronic deficits, leaving our children and grandchildren with crippling debt that is not of their own making. The choice is ours and the stakes are very high.

And I look forward to hearing from our distinguished panel of witnesses today about this important issue.

And I would now turn to Mr. Conyers, the Ranking Member of the Judiciary Committee, for his opening statement.

Mr. CONYERS. Thank you, Mr. Chairman.

And welcome to all of my colleagues. I too will have to take a temporary leave, as Chairman Goodlatte has, but I hope to get back in time to hear Bobby Scott, a distinguished senior Member of this Committee, and his testimony.

Members of the Committee, the balanced budget amendment was not a good idea when it was included in the Contract with America in 1994, and it is still not a good idea today, 20 years later.

To begin with, a balanced budget amendment could undermine critical programs such as Social Security, Medicare, and other Government programs financed through accumulated savings in trust funds. One of our distinguished witnesses, a respected economist with Brookings, has made clear a balanced budget amendment threatens the ability to pay Social Security, Medicare, and other benefits like military and civil service pensions. This is because all of the programs are financed through trust funds that build their reserves through holding Treasury securities as assets which they sell off to pay current and future benefits.

Balanced budget amendment proposals, however, would bar the Social Security, Medicare, hospital insurance, and other similar trust funds from being able to draw on prior accumulated savings to pay benefits because they all require that total outlays not exceed total receipts for each given fiscal year.

If a trust fund were to draw on its prior accumulated savings, it would count as a deficit, as deficit spending under a balanced budget amendment, which would be prohibited unless a super majority of both houses of Congress override the requirements or the rest of the Federal budget runs a surplus for the year. Not likely to happen. This would put current and future payment of Social Security, Medicare, and military pension and other benefits at risk. It would also undermine the Federal Government's absolute guarantee of up to a quarter of a million dollars for individual bank deposit accounts. And in an economic downturn, such as the one we faced in 2008, that could lead to a panic, a run on banks, and another depression.

A balanced budget amendment, I am sorry to say, is nothing but a rhetorical gimmick or worse a political charade.

Conservatives know that the only way they would actually balance the budget is to decimate Social Security and Medicare with steep funding cuts which is what they, of course, will not want to talk about publicly ahead of time. So instead, they are once again talking about the balanced budget amendment fig leaf.

I remind my friends that it was the fiscal recklessness of a former President and the Republican controlled Congress that first got us into the fiscal challenge we face. In particular, the massive tax cuts of 2001 and 2003 for the wealthiest Americans caused revenue to fall as of 2004 by more than 4 percentage points of the gross domestic product. At the same time, Federal spending rose in 2000, in 2007, and all while the economy was showing signs of weakness leading to its near collapse just a year later.

A large part of that spending increase was a result of ballooning defense spending, which jumped dramatically to fund the Iraq and Afghanistan wars. According to the Center for Budget and Policy Priorities, the Bush administration's tax cuts added $2.6 trillion to the public debt. And according to the Office of Management and Budget, OMB, these cuts accounted for nearly half of the total debt accrued during this period.

During the 1990's, Congress was able to eliminate the deficit and run surpluses without the aid of a balanced budget amendment. Remember that, please. There is no reason why greater political courage, accountability, and restraint among elected officials cannot achieve the same result while avoiding the pitfalls of a constitutional balanced budget amendment.

Finally, a balanced budget amendment would undermine the Government's ability to respond to economic slowdowns and thereby prevent the Nation a speedier economic recovery.

This is not the first time that it has been explained to this Committee the Government must have flexibility to engage in deficit spending through the use of automatic stabilizers to improve the economy. When the economy weakens, incomes of individuals and businesses fail because of job losses and declining purchases which results in reduced tax revenues. And to end this downward spiral, Social Security, unemployment, nutrition assistance, and other benefits help to stabilize the decline in purchases of goods and services resulting from the decline in incomes.

That is why essential programs such as these which, especially in the light of declining revenues, must be paid through deficit spending, and they are called automatic stabilizers. Yet, a balanced budget amendment, by requiring that total outlays not exceed total receipts every fiscal year, would effectively prohibit the government from using these critical stabilizers.

Although most amendment proposals do contain some sort of exception to this prohibition, they also require a super majority vote in both houses of the legislative body to override the balanced budget mandate. And by the time that Congress could react, potentially months after the fact, it would be too late for the stabilizers to have any effect, even assuming that a super majority in Congress agrees that there is a problem to address.

So in sum, a balanced budget amendment would result in longer, more severe recessions. It would prolong the suffering of the jobless and impede the ability of Main Street to recover in a struggling economy.

A balanced budget amendment would insert the courts into an inherently political matter, creating the potential for a litigation nightmare and upending of the principle of separation of powers.

I seldom remember ever quoting the conservative constitutional scholar, Robert Bork, but I do now, and he said scores or hundreds of suits might be filed in Federal district courts around the country. The confusion, not to mention the burden on the court system, would be enormous. Nothing would be settled, moreover, until one or more of such actions finally reached the Supreme Court. Nor is it all clear what could be done if the Court found that the amendment had been violated 5 years earlier. End quotation.

While I am not known for agreeing with Judge Bork, his warning about the potential for endless litigation in the courts over budget policy should be heeded.

In crafting a remedy for a violation, a court could direct cuts to spending or increases in taxes in order to meet the requirements of the balanced budget amendment. Courts have long recognized that such complex economic matters should be left to the elected and politically accountable branches rather than to unelected judges to decide.

And for these reasons, Mr. Chairman and Members, I oppose the concept of a constitutional balanced budget amendment.

And I thank the Chair and yield back any balance of time that may be remaining.

Mr. FRANKS. Well, thank you, Mr. Conyers.

And without objection, other Members' opening statements will be made part of the record.

We have a very distinguished Member panel today and I welcome you all. And if you would all rise, I will begin by swearing in the witnesses.[Witnesses sworn.]

Mr. FRANKS. Let the record reflect that all of the witnesses responded in the affirmative.

Our first witness is Congressman Peter DeFazio. Representative DeFazio was first elected to Congress in 1986 and currently represents Oregon's 4th Congressional District. He serves as the Ranking minority Member on the House Committee on Natural Resources. Earlier this Congress, Representative DeFazio joined me in the effort to send a balanced budget amendment to the States for ratification by agreeing to be the lead cosponsor of H.J. Res. 2.

Our second witness is Congressman Mike Coffman. Representative Coffman represents Colorado's 6th Congressional District and was fist elected to Congress in 2008. Representative Coffman serves as the Chairman of the Veterans Affairs Committee, Subcommittee on Oversight and Investigations. He is also the Chair of the Congressional Balanced Budget Amendment Caucus.

Our third witness is Congressman Justin Amash. Representative Amash is currently serving his second term in Congress and represents Michigan's 3rd Congressional District. Representative Amash is the lead sponsor of H.J. Res. 24, the Business Cycle Balanced Budget Amendment. The Business Cycle Balanced Budget Amendment requires a balanced budget over a 3-year business cycle.

Our fourth witness is Congressman Bobby Scott. Representative Scott was first elected to Congress in 1992 and currently represents Virginia's 3rd Congressional District. He is a Member of the Judiciary Committee and serves as the Ranking minority Member on the Subcommittee on Crime, Terrorism, Homeland Security and Investigations.

Our final witness on this panel is Congressman David Schweikert. Representative Schweikert represents Arizona's 6th Congressional District and is serving his second term in Congress. He is the sponsor of H.J. Res. 10, a balanced budget amendment which requires the annual Federal budget to be balanced and requires a super majority to raise taxes, the debt ceiling, and for the Federal Government to spend no more than 18 percent of GDP in any fiscal year.

I just want to welcome you all here, and we are going to begin our testimony now. And I would ask that each witness would summarize his or her testimony in 5 minutes or less. To help you stay within that time, there is a timing light on your table. Some of you have seen it before. When the light switches from green to yellow, you will have 1 minute to conclude your testimony, and when the light turns red, it signals that the witness' 5 minutes have expired.

As is customary, Members will not be asked to stay to answer questions, and I would like to thank my colleagues sincerely for participating in this hearing. And I will first recognize Representative DeFazio. And I welcome all of the Members of the House participating on this panel. Mr. DeFazio?

TESTIMONY OF THE HONORABLE PETER DeFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO. Thank you, Mr. Chairman. Mr. Chairman, I will deviate from my prepared remarks, but I have submitted them for the record.

I strongly supported the balanced budget amendment in 1995.

And we have heard criticisms of what could occur under a balanced budget amendment. Well, let us think about what would have occurred had that not failed by one vote in the Senate and had gone to the States and been ratified.

Today we would be paying off the last of our national debt.

We would have much more capability of dealing with concerns that I have regarding our crumbling infrastructure and other pressing needs of this country because we would not be burdened with high annual interest payments and concerns about ongoing and large deficits.

The world would have been different in that, yes, the 2001 tax cuts could still have passed because we were in surplus at that point in time. But the 2003 tax cuts would have required a super majority to pass because we were already in deficit spending. We were in military conflict authorized by Congress in Iraq and Afghanistan, but we had not declared war. That is one of the defects, I believe, in H.J. Res. 2, although I have supported it as the best option out there. I think that we could improve on it. I would say that if we are going to deviate from a balanced budget, it should be under only a declaration of war. Other military conflicts should be paid for within the annual process, and that I think would both give a President and the Congress a bit more opportunity to reflect before launching foreign adventures that are very expensive in terms of both lives and in terms of our Federal resources.

Secondly, I think we could improve upon it, and Ranking Member Conyers raised legitimate concerns about Social Security. We should set Social Security aside, and it should be required under a balanced budget amendment to have 75-year actuarial balance within its own resources. Those resources could neither be borrowed by nor otherwise appropriated by the Congress, and it could not be used as an offset to the rest of the budget to make it look balanced. But Social Security itself should be put on a course of 75-year actuarial balance. And I have legislation otherwise pending that would do that. It has been scored by the Social Security actuaries.

And then the debt limit. Again, I believe a defect of H.J. Res. 2 is that it requires a simple majority to deviate from a balanced budget in a time of military conflict, not war, but then goes further to require that you have a three-fifths vote to raise the debt limit. One could see a situation in which we have an urgent military situation oversees, but it is not a war. A simple majority of the House votes to break the balanced budget cap, but then later in the year, we would be confronted with the need for a three-fifths majority to deal with the debt limit. I believe that those things should be equivalent, and that is a further problem.

But, my experience is I came here opposed to a balanced budget amendment, and after I had gone through two budget cycles and watched particularly the debate over the mobile missile and the Midgetman missile, both proposed, very expensive systems. Congress in those days had real debates. We would debate the DOD bill for weeks. We had days of debate over that. We had votes on it. And in the end, Congress decided, well, it is a choice between a Midgetman and a mobile missile. We will do both because there was no concern for the cost, and people did not want to decide between the two. We need to make those tough decisions. Day in, day out, we need to make tough decisions. You cannot pretend you can balance the budget without revenues, and you cannot pretend that we can spend in deficit forever.

So I believe that we need a well thought out constitutional amendment to require a balanced budget in order to make Congress do its job.

Thank you, Mr. Chairman.

[The prepared statement of Mr. DeFazio follows:]

Testimony to the Committee on the Judiciary

Hearing on Constitutional Solutions to our Escalating National Debt: Examining Balanced Budget Amendments

Congressman Peter DeFazio (D-OR)

July 24, 2014

Chairman Goodlatte and Ranking Member Conyers:

Thank you for inviting me to testify on the necessity of a Balance Budget Amendment (BBA). My support for a balanced budget amendment came soon after I came to Congress in 1987. It didn't take me long to realize that there is an infinite capacity in Washington, DC to kick the can down the road. The problem today is that can is getting pretty heavy to kick down the road, and it's going to land on the next generation with full force--$17 trillion of debt. I believe we have to force Congress to make tough decisions about solving our ever expanding debt. A balanced budget amendment would be the most effective way to do that.

This is the same conclusion I came to when I supported the balanced budget amendment back in the mid-nineties. In 1995, with my support, the House passed a balanced budget amendment. It then failed by one vote in the Senate. Had that become the law of the land, today we would be paying down the last of the debt. Instead we have a $17 trillion debt burden and little capacity to remedy it.

In 2011, I bucked my Democratic leadership, a powerful coalition of labor unions and 270 other powerful interest groups to vote yes on a balanced budget amendment. I was the lead Democratic sponsor and worked closely with Chairman Goodlatte for months to secure broad support for the balanced budget amendment. Unfortunately, Democratic leadership and the interest groups launched a massive campaign to oppose the bill. In the end only 25 Democrats supported the balanced budget amendment and it failed to garner the necessary 2/3rds vote to pass. I think we can do better next time, but that will take some help from my Republican friends.

Some of my Democratic colleagues are opposed to a balanced budget amendment because it forces Congress to make tough decisions that could include spending cuts to programs that are important to them. I urge them to not lose sight of the fact that this amendment plays both ways. Had the 1995 balanced budget amendment passed the Senate and been ratified by ¾ of the states, the Bush tax cuts would not have lasted one year. Under the current H.J. Res 2, we would have had annual votes on both Afghanistan and Iraq exemptions for deficit spending. Every deficit-laden Bush budget would have ultimately needed a $3/5^{th}$ vote to gain a deficit exemption. If we had passed a balanced budget amendment in 1995, we would not have a $17 trillion debt today, and Social Security, Medicare, and Medicaid would not be under attack.

My Democratic colleagues also have some legitimate concerns with a BBA. They rightfully worry that a BBA will be used as a blunt force weapon to impose a rigid ideology upon the nation. Their worries stem from some of the alternative BBAs that have gained significant support amongst some of my Republican colleagues. My Democratic colleagues also remember the multiple debt limit fights that unnecessarily trashed our economy as conservative Republicans placed their ideological concerns above the U.S. economy.

I and most other Democrats have serious concerns with setting arbitrary spending caps in a BBA and treating changes to spending and revenue differently. How can this Congress pretend to know the exact spending and revenue balance of the federal government 10, 20 or 50 years in the future? A BBA should force Congress to be responsible with the taxpayers' money, but not impose a particular ideology upon a future Congress. All that these radical proposals accomplish is to push Democrats further away from supporting a reasonable, balanced BBA. I fear the radical BBAs have poisoned the well.

Recent history provides us with a roadmap of how quickly the spending and revenue balance can change. President Reagan and a Democratic Congress pushed through many tax cuts and several tax increases over Reagan's two terms. The net contribution to the federal debt was a nearly $3 trillion increase in eight years. Fiscal prudence is tough to actually accomplish, and not a partisan issue. In the late 1990s, Clinton and a Republican Congress balanced a budget from 1998 to 2001 because they compromised on both spending cuts and increased taxes. It can be done, but boxing in a future Congress on how it's done is a mistake.

If our goal here today is to unite this Congress, gain the 2/3rds necessary to pass a Constitutional Amendment, and force some fiscal responsibility upon Congress, we need to focus our efforts on H.J. Res. 2. This is the same balanced budget amendment that passed the House in 1995. This is a bipartisan resolution that has stood the test of time. Let us pass this amendment to our Constitution.

If some of my Republican colleagues want to insist on a more ideological BBA, I have some suggestions for them to consider. H.J. Res. 2 rightly allows Congress to pass an unbalanced budget if Congress declares war. But it also allows Congress to pass an unbalanced budget for any significant military action that is not a congressionally declared war, like Iraq, Libya or maybe Syria today. Closing this loophole would force each year's budget to be honestly calculated and would force the President to think twice before sending our men and women to war without the required Congressional approval. This would greatly improve the ability of H.J. Res. 2 to control deficits.

There is another change to H.J. Res. 2 that could gain additional Democratic support. I have proposed that we keep Social Security in a separate account, where it needs to remain in balance over the long term, but is not subject to arbitrary cuts because of other annual federal budgeting decisions. Social Security is not a significant driver of our deficits, and asking seniors who paid FICA taxes for decades to do more with less is wrong.

Finally, Democrats would be more likely to support H.J. Res 2 if the debt limit requirement was modified to prevent ideological troublemaking. The BBA provides two exemptions to the balanced budget requirement. By a 3/5th vote, Congress can waive the requirements for any reason, and a simple majority can waive the requirements because of a military conflict. Either of these exemptions could necessitate an increase in the debt limit. Since H.J. Res. 2 requires a separate $3/5^{th}$ vote to raise the debt limit, it is conceivable that members could approve an unbalanced budget, and then refuse to increase the debt limit. Such hostage taking is not theoretical. As recently as 2013 the Republican majority in the House of Representatives allowed the debt limit to become a crisis. Their demand for ideological intransigence unnecessarily hammered our economy. My Democratic colleagues have not forgotten.

In summary, I support H. J. Res. 2 because it has the best chance of passage and I don't believe we can afford to wait longer to pass a BBA. A balanced budget can be accomplished, and we have seen it done as recently as 13 years ago, but it took real compromise from both parties. Demands for an ideologically radical BBA are only a distraction that prevents Congress from succeeding at bringing fiscal resolve to Congress.

Mr. GOODLATTE. Thank you, Mr. DeFazio.
Congressman Coffman for 5 minutes.

TESTIMONY OF THE HONORABLE MIKE COFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. COFFMAN. Mr. Chairman, I will submit my written remarks for the record.

I think any balanced budget amendment to the United States Constitution is, I think, the greatest thing that the Congress of the United States can do to change the political culture in Washington, to improve, to reform Washington, D.C. by stripping the power away from the Congress to continually spend money that we do not have as a country. The vast majority of State and local governments throughout the United States have a requirement for a balanced budget, and I think having a requirement like that promotes bipartisanship by virtue of requiring all parties to come together at the end of the day and decide what the priorities of government are given the resources that are there.

I think we have a limited window of opportunity in which to change the trajectory of this country in terms of its growing debt and the problems that will come from that. And I think we are going to be pressed fairly soon when interest rates normalize. They are artificially low now. I think we are spending—last fiscal year, we spent $221 billion on servicing our debt. And once interest rates normalize, that amount is going to dramatically grow and crowd out other programs of Government.

I think that the cost of doing business in the United States is already very high when we talk about taxes, when we talk about the regulatory burdens. I think it has denied young people that are coming into the workforce now economic opportunities that folks like me had, and placing an additional burden of debt on them and future generations beyond that I think is very unfair.

I think a balanced budget to the Constitution has to encompass all spending, only to exclude that which is necessary in the event of a declaration of war where the country is at war. But outside of that, I think the Congress of the United States has to make tough choices in terms of spending.

I remember the President of the United States coming to House Republicans, a meeting behind closed doors, to talk about the debt situation a while back, and I remember him saying that he really did not think it was all that bad when you look at debt-to-GDP ratios historically like in 1945, that it really was not that out of line where we are today. But if you look at 1945, the last year of the Second World War, the minute that the war was over practically in August 1945, you get a very steep decline in Federal spending.

If you look at our spending right now, the vast majority of it is essentially now what we call mandatory spending, and that is entitlement spending, if you will. What Congress does is plants the seeds in terms of defining eligibility for a specific program, then whoever meets that criteria is funded. We do not argue that in annual appropriation bills. And so right now in the last fiscal year, 59 percent of all spending was in the mandatory category, 6 percent interest on the debt, 17 percent non-defense discretionary spending, 18 percent defense spending. And what we see moving forward is that mandatory spending is going to grow and it is going to crowd out the rest of the spending.

We have a limited window of opportunity in terms of time. We can make really minor changes now that will make very significant changes down the road in terms of the trajectory of spending and of debt. When we look at recent programs like the Medicaid program, the expansion of Medicaid, we could, I think, have a more effective program, cost-effective program by delegating more power to the States in terms of the administration of that program. I think Washington tries to do too much, and I think in the effort of doing that, does not do a lot of things very well. And I think we can rely more on States to do that.

I think again if we look at Greece and what has happened to them where they have had to make really draconian decisions, given their debt-to-GDP ratios, I think we are clearly not there yet. We are headed in that direction. We have got to change the trajectory of spending. And again, I think we can make modest changes now that will make dramatic changes down the road.

And with that, Mr. Chairman, I yield back.

[The prepared statement of Mr. Coffman follows:]

U.S. House of Representatives
Committee on the Judiciary

Constitutional Solutions to our Escalating National Debt:
Examining Balanced Budget Amendments

Representative Mike Coffman (CO-06)

July 24, 2014

Chairman Goodlatte, Ranking Member Conyers, Members of the Committee:

Thank you for allowing me to present my views on the need for a Balanced Budget Amendment. As some of you know, my involvement in the Balanced Budget Amendment Caucus stems from my time as a freshman Member of Congress and is predicated on my belief that the financial crisis in Greece and throughout much of Europe should serve as foreshadowing as to what could occur in this country if we do not get runaway spending under control.

A government of the people, by the people, and for the people is one that is responsible with the people's money, and a responsible government does not spend any more on necessary government than it collects through a taxation system that maximizes economic growth, jobs, wages, family income and overall prosperity for working people. The current culture of reckless borrowing and spending in Washington, perpetuated by both parties, has placed our nation's future in jeopardy. Our leaders need to be held accountable for their dangerous spending addiction.

Our national debt is more than $17 trillion, having more than doubled in the past ten years, and our current annual budget deficit is over half a trillion dollars.

If these numbers do not improve, the national debt will soon exceed 100 percent of gross domestic product (GDP), meaning the Federal government will owe more than the entire value of the American economy. According to analysts at the Congressional Budget Office, the national debt is now 74 percent of the country's GDP. And over the next two decades, every family's portion of the national debt will be $250,000. No nation can endure such reckless spending.

Balancing the Federal budget is not a wild-eyed dream. It can be done. We know because we balanced the budget in the 1990s for four straight years without raising taxes. A Democrat President and a Republican Congress came together in bipartisan fashion to do what could not be done by so many elected leaders in years past.

The key to achieving these balanced budgets in the 1990s was adhering to the principle that the budget would be balanced through spending reductions, government reforms, and the adoption of incentives that reward work, savings and investment - all without raising taxes. We can balance the budget again today if we adhere to the same principle.

Both political parties are to blame for increasing the debt. This is a bipartisan problem and it requires a bipartisan solution. And in my view, the only solution is to hold Congress' feet to the fire with a Constitutional Amendment requiring that they, like every family and nearly every state in the country, balance their budget. Without a Constitutional Amendment, this becomes an election year issue and an empty campaign promise.

I know this is a tall order. Amending the Constitution is a long, arduous task and I applaud Chairman Goodlatte, a member of the Balanced Budget Amendment Caucus, for his dedication to this issue. I believe our national debt is pushing our country off a financial cliff and it's extremely encouraging to hear that more and more of my colleagues in the House of Representatives recognize the very serious threat of Washington's reckless, out-of-control spending.

Balanced budgets, declining Federal debt, lower taxes, low interest rates, and government reform is a recipe for prosperity. It's not a secret. This is what we did to achieve prosperity in the 1990s. We can do it again.

A Constitutional Amendment requiring a balanced budget is critical because our current fiscal imbalance threatens our future prosperity, national security and even the American dream itself. Consider this: the largest foreign holder of our national debt is the People's Republic of China. It has become almost cliché to quote former Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, who said that the greatest threat to our national security is the national debt. This is because as a larger share of U.S. debt is held by foreign governments, those governments will have an increasing ability to influence U.S. policy. Arguably, we're selling our freedom, the very freedom that so many of our young men and women have paid the ultimate sacrifice to protect, in order to finance a spending addiction.

That is why I am so committed to this issue, and that is why I am so grateful to this Committee for holding this hearing.

Thank you.

Mr. FRANKS. Well, thank you, Mr. Coffman.

And we now recognize Mr. Amash.

TESTIMONY OF THE HONORABLE JUSTIN AMASH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. AMASH. Thank you, Acting Chairman Franks, Ranking Member Conyers, and Members of the Committee, for the opportunity to be here.

I would also like to thank Chairman Goodlatte, who is walking in right now, for his leadership on this issue.

We all understand the Federal Government's budget problems, but we also recognize how difficult it is to prioritize responsibly without knowing that our work will ultimately matter. Building consensus, forging compromises, and taking tough votes are difficult if they can be undone easily.

That is why I support amending the U.S. Constitution to require balanced budgets. We should be cautious about changing the Constitution, however, and a BBA in particular must be carefully drafted.

First, it must be clear, simple, concise, and general. Most of the Constitution establishes broad principles and we fill in the details with legislation.

Second, it must be narrowly tailored. A balanced budget amendment should not impose substantive policy such as requiring a super majority to raise taxes or capping spending as a percentage of GDP. A balanced budget amendment should require overall spending and revenue to match up. That is it.

Keeping it focused is good politics too. Constitutional amendments require the support of two-thirds of both houses of Congress and 38 State legislatures. They must be bipartisan to succeed.

It also has to be workable. Michigan's budget must balance every year. In the Michigan House, we had quarterly budget meetings to adjust programs as spending and revenue estimates changed. It is too much uncertainty.

In addition, we need flexibility to address emergencies. A BBA needs a safety valve that is tight enough to avoid abuse but loose enough to be usable.

Finally, a reasonable path to balance is vital. Many reforms start with small savings and build over time. Establishing the necessary trust and confidence grows gradually too.

I would like to turn to the proposal I have introduced, H.J. Res. 24. It meets the standards I have mentioned and has substantial bipartisan support.

I call H.J. Res. 24 the Business Cycle Balanced Budget Amendment because it balances over the business cycle instead of every year. Spending is based on the rolling average of revenue from the 3 prior years. Policies stay predictable not only because averaging tames revenue fluctuations but also because it does not rely on estimates that can shift.

It lets Congress choose any level of government spending and revenue. Lower taxes with a smaller government providing fewer services is possible, as is a larger government providing more services with higher taxes. I think you can guess which approach I prefer. The only non-option is perpetual deficits.

It lets fiscal policy be countercyclical. When a recession hits, spending is still based on the pre-recession boom years. This mechanism allows for temporary deficits. As the economy recovers, however, spending begins to incorporate the recession-year revenue, producing small surpluses in the good years.

Setting spending this way provides the predictability and stability I have mentioned while also letting revenue changes feed into spending quickly.

The idea is to focus Congress on structural balance and long-term prioritization instead of on constant tinkering. Deficits from recessions and emergencies are offset by surpluses in good years.

As for the safety valve, emergency spending requires a two-thirds vote in Congress, the normal constitutional super majority. Conversations I have had with Democrats and Republican Members suggest that it is the right standard.

The Business Cycle BBA allows a full decade to reach balance after ratification. As I said, setting national priorities and realizing savings takes time. It lets us phase out deficits faster, of course, but a smoother transition might be worth taking a little longer.

The Business Cycle Balanced Budget Amendment has strong bipartisan support. Republican cosponsors have included members of the Republican Study Committee and the Tuesday Group. Democratic cosponsors have been members of the Blue Dog Coalition, the New Democrat Coalition, and the Congressional Progressive Caucus.

The Business Cycle Balanced Budget Amendment may be the BBA with the broadest support. Only 6 of the 14 Democrats that cosponsored it last Congress voted for the balanced budget amendment that was brought to the floor. Additional Members told me they would vote for the Business Cycle BBA if it came to the floor.

We need to balance our budget and end the downward spiral into debt. I am convinced that it will take a constitutional amendment, and congressional support already exists for the right proposal. We need the confidence that our return to fiscal responsibility and sustainability will endure. That is why I support a well-crafted balanced budget amendment.

Thank you again for having me here today. I look forward to continuing to work with all of you.

[The prepared statement of Mr. Amash follows:]

U.S. House of Representatives
Committee on the Judiciary

Hearing on
Constitutional Solutions to Our Escalating National Debt:
Examining Balanced Budget Amendments

July 24, 2014

Written Statement

Representative Justin Amash
Michigan – Third Congressional District

Thank you, Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee for the opportunity to be here. I've enjoyed working with many of you, and I hope this is another place we can find common ground.

We all understand the federal government's budget problems. But we also recognize how difficult it is to prioritize responsibly without knowing that our work will ultimately matter. Building consensus, forging compromises, and taking tough votes are difficult if they can be undone easily.

That's why I support amending the U.S. Constitution to require balanced budgets. It's a commitment to be responsible, to set priorities, to avoid a debt crisis, and to lighten the growing burdens of indebtedness.

Not every proposed balanced budget amendment makes sense, however. We should be cautious about changing the Constitution, and a BBA in particular must be carefully drafted.

First, it must be simple, concise, and general. Most of the Constitution establishes broad principles and we fill in the details with legislation. Some areas are more specific, however, and it's appropriate to be clear with a budget balance rule.

Second, it must be narrowly tailored. A balanced budget amendment doesn't need to put the President's budget request or a debt limit in the Constitution, limit spending as a percentage of GDP, address revenue policy, or carve out certain programs. A balanced budget amendment should require overall spending and revenue to match up. That's it.

Keeping it focused is good politics too. Constitutional amendments require the support of two-thirds of both Houses of Congress and 38 State legislatures. They must be bipartisan to succeed.

And a balanced budget amendment is, at least in concept. In 2011, two-thirds of Senators split their votes between two versions. In the House, 61% voted for H.J.Res. 2 and another 16 cosponsored at least one other BBA. That's 65%. The right proposal could pass with 75%-80% support.

It also has to be workable. Michigan's budget must balance every year. In the Michigan House, we had quarterly budget meetings to adjust programs as spending and revenue estimates changed. It's too much uncertainty.

In addition, we need flexibility to address emergencies. A BBA needs a safety valve that's tight enough to avoid abuse but loose enough to be use-able.

Finally, a reasonable path to balance is vital. Many reforms start with small savings and build over time. Establishing the necessary trust and confidence grows gradually too.

I'd like to turn to the proposal I've introduced, H.J.Res. 24. It meets the standards I've mentioned and has substantial bipartisan support.

I call H.J.Res. 24 the "Business Cycle Balanced Budget Amendment" because it balances over the business cycle instead of every year. Spending is based on the rolling average of revenue from the three prior years. Policies stay predictable, not only because averaging tames revenue fluctuations but also because it doesn't rely on estimates that can shift.

It lets Congress choose any level of government spending and revenue. Lower taxes with a smaller government providing fewer services is possible, as is a larger government providing more services with higher taxes. The only non-option is perpetual deficits.

It lets fiscal policy be countercyclical. When a recession hits, spending is still based on the pre-recession boom years. This higher spending and the recession-induced revenue drop can cause deficits. And that's okay. As the economy recovers, spending begins to incorporate the recession-year revenue, producing small surpluses in the good years.

Setting spending this way provides the predictability and stability I've mentioned while also letting revenue changes feed into spending quickly.

The idea is to focus Congress on structural balance and long-term prioritization instead of on constant tinkering. Deficits from recessions and emergencies are offset by surpluses in good years, which economists recommend by an overwhelming majority.

As for the safety valve, emergency spending requires a two-thirds vote in Congress, the normal constitutional supermajority. Conversations I've had with Democratic and Republican Members suggest that it's the right standard. We should have broad agreement before we put a lot of money on the credit card.

The Business Cycle BBA allows a full decade to reach balance after ratification. As I said, setting national priorities and realizing savings takes time. It lets us phase-out deficits faster, of course, but a smoother transition might be worth taking a little longer.

The Business Cycle Balanced Budget Amendment has strong bipartisan support. Republican cosponsors have included members of the Republican Study Committee and the Tuesday Group. Democratic cosponsors have been members of the Blue Dog Coalition, the New Democrat Coalition, and the Congressional Progressive Caucus.

The Business Cycle Balanced Budget Amendment may be the BBA with the broadest support. Only 6 of the 14 Democrats that cosponsored it last Congress voted for the balanced budget amendment that was brought to the floor in 2011. Additional members told me they would vote for the Business Cycle Balanced Budget Amendment if it came to the floor.

We need to balance our budget and end the downward spiral into debt. I'm convinced that it will take a constitutional amendment, and congressional support already exists for the right proposal. We can come together to confront the challenges facing our great nation. To do so, however, we need the confidence that our return to fiscal responsibility and sustainability will endure. That's why I support a well-crafted balanced budget amendment.

Thank you again for having me here today. I look forward to continuing to work with all of you.

H.J.Res. 24, the Business Cycle Balanced Budget Amendment

Cosponsors: Reps. Amash (sponsor), Benishek, Bentivolio, Bucshon, Chabot, Culberson, Duncan (SC), Gardner, Gibson, Gosar, Gowdy, Graves (GA), Harris, Huelskamp, Hultgren, Jordan, Labrador, LaMalfa, Lamborn, *Lipinski*, *Loebsack*, Lummis, Massie, *Michaud*, Mulvaney, Palazzo, Pearce, *Quigley*, Ribble, Rokita, Sanford, A. Scott (GA), Southerland, Stockman, Stutzman, Tipton, Walberg, Young (IN)

H.J.Res. 24	**Plain English**
SECTION 1. Total outlays for a year shall not exceed the average annual revenue collected in the three prior years, adjusted in proportion to changes in population and inflation. Total outlays shall include all outlays of the United States except those for payment of debt, and revenue shall include all revenue of the United States except that derived from borrowing.	**Spending = rolling average of recent revenue** (average revenue of previous three, adjusted for population changes, inflation) "Outlays" include everything but debt reduction. Borrowing is not "revenue."
SECTION 2. Congress may by a roll call vote of two-thirds of each House declare an emergency and provide by law for specific outlays in excess of the limit in section 1. The declaration shall specify reasons for the emergency designation and may authorize outlays in excess of the limit in section 1 for up to one year.	Additional emergency outlays 1) Require two-thirds support 2) Require detailed emergency declaration 3) Only last one year at a time (can be renewed)
SECTION 3. Congress shall have power to enforce this article by appropriate legislation.	Implementing legislation is authorized.
SECTION 4. This article shall take effect in the first year beginning at least 90 days following ratification, except that outlays may exceed the limit in section 1 by the following portion of the prior year's outlays exceeding that limit (excepting emergency outlays provided for by section 2): nine-tenths in the first year, eight-ninths in the second, seven-eighths in the third, six-sevenths in the fourth, five-sixths in the fifth, four-fifths in the sixth, three-fourths in the seventh, two-thirds in the eighth, and one-half in the ninth.	Gradual ten-year transition, beginning the year (fiscal or calendar) starting 90 days after ratification to allow time to write implementing legislation & change policies. Ratification-year deficit reduced at least $1/10^{th}$ each subsequent year. Faster deficit reduction locks in that progress. Emergencies don't affect baseline.

H.J.Res. 24, the Business Cycle Balanced Budget Amendment

Rep. Justin Amash + Bipartisan Cosponsors*

Balances Spending with Rolling Average of Recent Revenue
Bases yearly spending on the average annual revenues of the three prior years. Adjusts for changes in inflation and population: about 2% and 1% per year, respectively.

- **Balance over the Business Cycle**: Allows deficits during recessions, but surpluses offset them during the good years, just as economists recommend.
- **Predictable/Smooth**: Prior-year revenue is known in advance. Basing spending on a revenue rolling average dampens year-to-year tax collection fluctuations, so the budget balances in the medium term without the uncertainty and volatility of annual balance. This avoids frequent tinkering with fiscal policy, enhancing predictability for both policymakers and the American people.
- **Countercyclical**: Allows spending to peak during recessions when revenue is down. Most recessions are short enough for the economy to recover before fiscal adjustments, if any, would be necessary.
- **Size-of-Government Neutral**: Spending is only constrained by the amount of revenue raised. A robust form of Pay-Go, it simply requires new spending and new tax cuts to be offset.
- **Encourages Prioritization**: Congress must decide whether resources are better left in the private sector or used for public purposes. Makes it easier to resist special interest demands.

Two-thirds Emergency Exception
Two-thirds of both Houses of Congress may declare and describe an emergency and provide funding to meet related needs.

- **Emergencies Can Take Many Forms**: An open-ended exemption gives Congress flexibility to meet unforeseen needs of whatever kind.
- **Consensus Required**: A supermajority requirement encourages reprioritization and creative thinking instead of more deficit spending.

Gradual Transition to Balance
Establishes a gradual ten-year transition from the ratification year deficit to balance.

- **Flexible Process**: Adapts to business cycle ups and downs, avoids creating constitutional fiscal cliff to balance. Deficit reduction can be achieved from any combination of spending and revenue adjustments. Faster deficit reduction gets locked in.
- **Time to deliberate**: Favors changes that make sense instead of those that can happen quickly.

Leaves Enforcement to Implementing Legislation

- **Constitutional Language**: Constitutions set broad, general rules. Statutes are the appropriate place for procedural details.
- **Flexibility and Process Expertise**: A constitutional amendment should be simple to explain and understand. Proper implementation and enforcement require detailed knowledge of the budget process, including congressional appropriations and agency expenditures. Provisions worth debating include restrictions on judicial review, compliance triggers, points of order, defining terms, and others. These provisions are complicated and should be relatively open to improvement.

* H.J.Res. 81 in the 112th Congress had 45 Republican and 14 Democratic cosponsors.

Mr. GOODLATTE [presiding]. Thank you, Congressman Amash. Congressman Scott, welcome to your own Committee.

TESTIMONY OF THE HONORABLE ROBERT C. "BOBBY" SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. SCOTT. Thank you, Mr. Chairman and Ranking Member Conyers. I am pleased to be here today to discuss the idea of a so-called balanced budget amendment to our Constitution.

Reducing our deficit and balancing our budget is a goal for every Member on this panel, and I worry that we get distracted by the title of these amendments without having any serious discussion about whether the proposed provisions will actually help balance the budget. If we are going to balance the budget, it is going to require some tough votes on the budget, and many of those votes will be career-ending votes.

One of the first votes I cast as a Member of Congress was on the Clinton 1993 budget. It included tax increases and spending cuts, all of which were unpopular, but that is how you get to a balance—spending cuts and tax increases. Not one Republican voted for it. Vice President Gore had to break the tie in the Senate. And when the 218th vote was cast in the House by then Congresswoman Marjorie Margolies-Mezvinsky, the Republicans did not say "way to go," but "you have got to go" and chanted "bye-bye, Marjorie." That vote was used to defeat her and 53 other House Democrats the following year. But that is what happens when you vote for a budget that actually goes into balance. Some Members are going to lose their seats.

Needless to say, the 1993 vote was a tough vote, but it created millions of jobs. The Dow Jones Industrial average more than tripled and led to the first balanced budget in a generation with surpluses on track to have paid off the entire debt held by the public by 6 years ago. That is how you balance the budget. Tough, career-ending votes, not with titles to constitutional amendments. So rather than discuss the title, we should be discussing the provisions and whether the provisions of the legislation will help pass responsible legislation or even hurt.

The fact is that many proposed constitutional amendments will make it all but impossible to pass serious deficit reduction similar to the Clinton budget. Such provisions, for example, that require a three-fifths vote of both houses or a super majority to enact new revenues. Now, let us talk arithmetic. If you are going to balance the budget, raising taxes will help balance the budget. Requiring a super majority may be good policy for some Members for some reasons, but suggesting that it will help balance the budget is absolutely absurd.

Most of the proposals require the budget not in balance can be passed by a three-fifths vote by the whole number of the House and Senate. Every budget we considered this year was not in balance the first year. So all of the budgets would have required a super majority to pass. The Ryan budget only passed with 219 votes. It should be obvious that serious deficit reduction will be harder to pass with a three-fifths super majority than a simple majority. And let us note that these constitutional amendments do not strip away

Congress' right to go into deficit. They just provide a three-fifths vote to pass what in likelihood will be any budget that we are going to consider. And so it is clear that the provisions—when we ask the question of whether the three-fifths majority is likely to pass a fiscally responsible budget or fiscally irresponsible budget, we have got to note that once you go into the budget requiring a three-fifths vote, there is no limit to how irresponsible you can be.

Now, the evidence on this is clear. The 2013 fiscal cliff deal, which permanently extended most of the 2001 and 2003 Bush tax cuts, got a three-fifths vote, notwithstanding the fact that it added $3.9 trillion to the deficit. Incredibly most of the no votes in going $3.9 trillion further in the ditch—most of the no votes were no because the tax cut was not big enough.

And so some of the proposals even require a super majority to spend more than a certain percentage of the GDP. Eighteen percent is one proposal. The GDP has not been below 18 percent since Medicare was passed. So if you pass that provision, there will be significant pressure on Social Security and Medicare, and you could cut Social Security and Medicare to shore up the program. You can cut on a simple majority, but to save it with new revenue, you need the super majority. That might make sense if your goal is to cut Social Security and Medicare, but to save them, that is not such a good idea.

Many proposals require a three-fifths vote to raise the debt ceiling. Anybody that was around the last time we raised the debt ceiling ought to know that is not a good idea.

Finally, I would note that the provisions found in these proposals are not what is in State budgets. In testimony before this Committee in 2011, one former Governor testifying on behalf of balanced budget amendments acknowledged that none of the proposals in the constitutional amendments before the Committee at that time were in his State constitution, no three-fifths required to pass a budget, no super majority to raise taxes, no three-fifths requirement to borrow money, no total balance without an exception for capital spending. He had been testifying about the title, not the provisions in any of the proposals before us. Mr. Chairman, we should not be distracted by misleading titles, but we should notice that the provisions of the proposals before us would drastically encumber an already difficult process to responsibly reduce the deficit.

Balancing the budget is a good idea, but we have got to recognize that it often requires tough, career-ending votes. The provisions in these balanced budget amendments will not make such votes more likely, will in fact make passage of responsible budgets less likely, and will make our fiscal situation even worse.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Scott follows:]

Testimony of Congressman Robert C. "Bobby" Scott
Hearing on "Constitutional Solutions to our Escalating National Debt: Examining Balanced Budget Amendments"
Committee on the Judiciary
2141 Rayburn House Office Building
Thursday, July 24, 2014
10:00 a.m.

Thank you, Mr. Chairman. I am pleased to be here today to discuss the idea of a balanced budget amendment to our Constitution. Reducing our deficit and balancing our budget is a goal of every member on this panel, but I worry that we often get distracted by the title of these amendments without having a serious discussion about whether or not the proposed provisions will actually help balance the budget. If we are going to balance the budget, it's going to require members to take some tough votes. And many of these votes will be career ending votes.

One of my first consequential votes in this body was on the 1993 Clinton Budget. That budget included tax increases and spending cuts, many of which were at the time very unpopular. Not one Republican voted for the '93 Clinton Budget and Vice President Gore even had to cast the tie breaking vote in the Senate. When the 218th vote was cast in the House by then-Congresswoman Marjorie Margolies-Mezvinsky, Republicans on the floor did not say "way to go" but instead said "you got to go" and chanted "Bye Bye Marjorie." That vote was used to defeat Congresswoman Margolies-Mezvninsky and fifty-three other House Democrats the following year. That is what happens when you cast tough votes that will actually balance the budget – some members will lose their seats. Needless to say, that 1993 vote was a tough vote, but it helped create millions of new jobs, the Dow Jones Industrial Average more than tripled and it lead to the first balanced budget in a generation with surpluses large enough to have paid off the debt held by the public by 2008.

The fact is that many of the proposed balanced budget amendments would make it all but impossible to pass a deficit reduction plan similar to the 1993 Clinton Budget. Several proposals require a two-thirds majority of both the House and the Senate to enact a revenue increase. Sometimes revenue increases are necessary in order to reduce the deficit or to shore up financing for important programs, like Social Security, Medicare or the Highway Trust Fund. A supermajority requirement would make such necessary revenue increases impossible to enact and it would obviously make it more difficult to balance the budget. Limiting revenue increases may be a desirable policy for some members but suggesting that it would actually help balance the budget is just absurd.

Almost all the proposed amendments require that a budget not in balance can only be passed by a three-fifths majority of the whole number of the House and the Senate. Every budget considered by the House earlier this year, and in fact nearly every budget considered over the last decade, was not balanced in the first fiscal year. Each of these budgets, including the Republican/Ryan budget and the Republican Study Committee budget, would have required a three-fifths majority under the provisions of many of these proposals. The Republican/Ryan budget, which purports to reduce the deficit, narrowly squeaked through the House with only 219 votes. It should be obvious then that a tough deficit reduction plan would be harder to pass with a three-fifths supermajority rather than a simple majority.

Now, proponents of these balanced budget amendments will argue that their proposals include a 5 year window from the time of ratification until the provisions of the amendment take effect. This so-called "glide path" would supposedly give Congress the necessary time to "make the tough choices" to slowly bring down outlays (or perhaps increase revenue) in order to meet the requirements of the amendment, but none of them require Congress to make that type of progress. Had a balanced budget amendment been ratified in 2014, almost every budget offered in the House this year was not balanced in the 5th fiscal year when the provisions of an amendment would have taken effect. Only one budget would have balanced within the 5 year window, the Republican Study Committee budget, which claimed to balance in the 4th fiscal year. This budget was so draconian that it only mustered the support of 133 members. And obviously it would be harder to pass such a budget if it required a three-fifths vote rather than a simple majority.

So if Congress does not take the 5 year window seriously to gradually move the budget towards balance, do we balance the budget cold turkey in the 5th year when a balanced budget amendment takes effect? Likely not because such a fiscal event would wreck havoc on the economy. Under almost all of these proposals, a three-fifths vote would then be required to pass any credible budget presented. The question then is whether a three-fifths majority is more likely to produce a fiscally responsible budget requiring career ending votes or a fiscally irresponsible budget that will help every member get reelected. And none of the proposed amendments place any limit on how far out of balance a budget can be if it gets to three-fifths. A three-fifths requirement would make an already dysfunctional budget process more so and only push the nation further into the fiscal ditch.

The evidence of such fiscal irresponsibility mustering a three-fifths vote is clear. The 2013 fiscal cliff deal, which permanently extended most of the 2001 and 2003 Bush-era tax cuts, got three-fifths despite adding $3.9 trillion to the deficit. And most of the No votes were a result of the tax cut not being large enough.

Some of the proposals even require a two-thirds vote to spend more than a certain percentage of our Gross Domestic Product. One proposal would cap total outlays at 18 percent of GDP. Total outlays of the federal government have not been below 18 percent of GDP since the passage of Medicare, so an 18 percent cap would put immediate pressure on Congress to make deep cuts to Medicare and Social Security. Under this type of provision, which is often combined with the two-thirds requirement to raise new revenue, when Congress gets around to fixing Social Security and Medicare, it could drastically cut benefits with a simple majority, but saving these same important programs with new revenues would require a two-thirds majority in the House and the Senate. Additionally, any limit on outlays as a share of economic output would severely restrict a future Congress from responding to the needs of the nation in times of recession.

Perhaps most disturbing is that many of the proposals contain language requiring a three-fifths vote to raise the debt ceiling. This provision would institutionalize the recent drama over preventing the United States from defaulting on its obligations.

Finally, I would like to note that many of the provisions found in these proposals are not in many state balanced budget amendments. In testimony before this committee in 2011, one former governor testifying on behalf of balanced budget amendments acknowledged that none of the provisions in the proposed amendment before the committee at that time were in his state's balanced budget amendment. No three-fifths requirement to pass a budget. No two-thirds requirement to raise revenue. No three-fifths requirement to borrow money. We had been debating the title and not the provisions of the proposal before the committee.

Mr. Chairman, we shouldn't be distracted by misleading titles, but we should notice that these balanced budget amendment proposals would drastically encumber an already difficult process to responsibly reduce the deficit. Balancing the budget often requires tough, career ending votes. The provisions in these balanced budget amendments will not make such votes more likely, will make passage of responsible budgets less likely, and will only make our fiscal situation worse.

Mr. GOODLATTE. Thank you, Congressman Scott.

Congressman Schweikert, welcome.

TESTIMONY OF THE HONORABLE DAVID SCHWEIKERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. SCHWEIKERT. Thank you, Chairman Goodlatte. I appreciate the opportunity to be here and actually share and actually listen to my fellow colleagues.

Fellow Members, I have only been here 3½ years, and I am growing to believe that we operate in a mathematical bubble that is filled with delusion.

In 9 fiscal years, 78 percent of our spending will be in the mandatory category. Nine fiscal years. That means what you and I get to vote on in the discretionary will be down to 22 percent in 9 fiscal years. Fourteen percent of that mandatory spending is going to be in interest. Twenty-two percent will be in discretionary. Fourteen percent will in interest, and that is assuming that interest rates stay within their historic mean.

Understand how fragile we are making our republic by what is going on right now. And if you truly, truly care about the social contracts of Social Security, Medicare, walking into that type of fragility from a financial standpoint is malfeasance if not misfeasance. This is the reality we are up against.

In my resolution, we have actually gone in H.J. Res. 10—we have actually tried to deal with some of the realities. And one of the realities we have to accept is the spending lobbies we all face. How do you move into a balanced budget world when we will have so many pressures put upon us, as actually Representative Scott even spoke to? Do we do what is easy? Do we say we will push this to the States and make that part of their burden? Do we create special categories? Do we game parts of the system? How do you design a balanced budget amendment that deals with the realities of the structures we have created around us?

In my balanced budget, I have tried to address both human nature, the structures we are in, the mandatory spending, and our entitlement obligations. How do you reach out and have the States have a voice? How do you reach out and make sure that each Member, when we start to game the definitions of what is balanced and what is not, that each one of you will have the right to have a cause of action?

One of the reasons for creating each of these layers within my balanced budget amendment is trying to think forward to what our world will look like, what our budgets will look like, what this country's fiscal situation will be when the pressures from both the spending lobbies, our entitlement obligations with the demographic curve that is ahead of us, and at the same time, trying to find a way to actually keep our promise, keep a constitutional amendment functioning.

And with that, Mr. Chairman, I will submit in writing much more detailed comments. Thank you.

[The prepared statement of Mr. Schweikert follows:]

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COMMITTEE ON
SMALL BUSINESS

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Congress of the United States
House of Representatives
Washington, DC 20515–0306

24 July 2014

Statement of Rep. David Schweikert to the House Committee on the Judiciary

For the hearing:

Constitutional Solutions to our Escalating National Debt:
Examining Balanced Budget Amendments

According to CBO's alternative scenario the United States will hit 100% of debt to GDP within the next 14 years. When facing the need to raise the federal government borrowing capacity political concerns have repeatedly outweighed future fiscal reality.

In nine budget years mandatory spending will equal 78% of the federal budget with interest representing 14% of all federal spending. This assumes interest rates will stay within historic norms. The fragility of this assumption puts the United States fiscal stability at risk.

H.J.Res. 10 includes five pillars: (1) requiring a balanced budget for each fiscal year, (2) limiting federal spending to historic level of 18 percent of GDP, (3) requiring a two-thirds vote in both Houses of Congress in order to increase taxes, raise the debt ceiling, or run a specific deficit in a particular year, (4) requiring a majority of states to approve an increase in the debt ceiling, and (5) granting any Member of Congress standing and a cause of action to seek judicial enforcement of the amendment when authorized to do so by a petition signed by one-third of the Members of either House of Congress.

The influence of spending constituencies, coupled with the cognitive abandonment of basic demographics and math, require the legislative branch to operate under a fiscal governor. H.J.Res. 10 is required to ensure our country's future stability.

The choices have never been more clear; we can continue to tax, borrow, and spend into economic despair or we can take bold, decisive action and make the difficult decisions needed to restore prosperity. Be assured that I am committed to making the hard decisions necessary to bring spending under control and will continue to find ways to make government more accountable, and put our economy back on a path to prosperity and economic freedom.

Mr. GOODLATTE. Thank you, Congressman Schweikert.

And I want to thank all the Members on the panel for their testimony. And as I indicated or Mr. Franks indicated earlier and as is customary, the Members will not be asked to stay and answer questions. So thank you all for your contribution and for your participation today. And you are excused.

And we will now welcome our distinguished second panel today. We will give the clerk a moment to reset the table.

[Pause.]

Mr. GOODLATTE. We want to welcome our panel.

If you will all rise, and as is customary, we will begin by swearing in the witnesses.

[Witnesses sworn.]

Mr. GOODLATTE. Thank you very much. Let the record reflect that all the witnesses responded in the affirmative.

And I will now introduce our witnesses. Our first witness on this panel is Douglas Holtz-Eakin, President of American Action Forum. Dr. Holtz-Eakin has served as the sixth Director of the nonpartisan Congressional Budget Office, the Chief Economist for the President's Council of Economic Advisors, and as a commissioner on the congressionally chartered Financial Crisis Inquiry Commission. Prior to his public service, he held academic positions at Princeton, Columbia, and Syracuse Universities.

Our second witness is Henry Aaron, the MacLaury Senior Fellow in Economic Studies at the Brookings Institution. Dr. Aaron served as Assistant Secretary for Planning and Evaluation at the Department of Health, Education, and Welfare during the Carter administration, and from 1967 to 1989, was a professor of economics at the University of Maryland. He is a member of the board of the Center on Budget and Policy Priorities and on the Advisory Committee of the Stanford Institute for Economic Policy Research.

Our final witness is David Primo, a professor at the University of Rochester and a senior scholar at the Mercatus Center at George Mason University. He received his doctorate in political science from Stanford University. His research focuses on American politics, Government spending, and campaign finance. Dr. Primo has authored or co-authored several journal articles and policy reports, as well as three books, including Rules and Restraint: Government Spending and the Design of Institutions.

I would ask that each witness summarize his or her testimony in 5 minutes or less. And to help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, that is it. You are done. Your time has expired. And we hope you will honor that timing.

And we will begin with Dr. Holtz-Eakin. Welcome.

TESTIMONY OF DOUGLAS HOLTZ-EAKIN, Ph.D., PRESIDENT, AMERICAN ACTION FORUM

Mr. HOLTZ-EAKIN. Thank you, Mr. Chairman and Members of the Committee. It is a privilege to be here today to discuss the balanced budget amendment.

In my written testimony, I make four points that I will summarize briefly.

Point number one is there is a real problem that needs to be addressed. The U.S. is on an unsustainable fiscal trajectory.

Point number two is that around the world, fiscal rules embedded in constitutions and other legal frameworks have been a successful strategy for dealing with such problems.

Point number three is you can think of the balanced budget amendment as one type of fiscal rule, and its characteristics are consistent with successful rules.

And then the last point is there are a number of traditional concerns about implementation of a constitutional amendment regarding military emergencies, economic distress, and recent versions of most BBAs' attempt to address those.

Let me say a little bit about each.

Point number one. You have already heard from the first panel characterizations of the U.S. fiscal outlook. You can look at the most recent Congressional Budget Office 10-year projection or the long-term budget outlook that they just put out, and what you see is a dire fiscal outlook. We have a temporary respite for a year or 2, and then we see an unending rise in mandatory spending. We see a continuous rise in the interest costs of servicing the debt. We see debt-to-GDP ratios on an unending upward spiral. And this picture overwhelms even a return to above traditional levels of revenue in the United States. The upshot is that we run tremendous economic risks with this budget outlook. We could ultimately see a sovereign debt crisis if we do not change course, and I believe we will begin to see consequences for economic growth much sooner, perhaps even now, as global investors recognize that we are on an unsustainable trajectory.

The second point is that fiscal rules have helped. There is a Pew-Peterson Commission report that I reference in my written testimony that looks around the globe and looks at places like the Netherlands and Sweden where they have adopted these kinds of rules, and they essentially solve the problem that Congress with the best of intentions often passes rules. We have seen it in the U.S. We have the sustainable growth rate mechanism in Medicare, and every year we override the rule. We have had PAYGO rules, and we override the PAYGO rules. We have had caps. And right now, we have caps again on discretionary spending. And it will be my forecast that a future Congress will break those caps. It is very difficult for Congress to tie its own hands. The fiscal rules stop that.

The features that work in fiscal rules, the things to look for is they have to directly address the problem. The second thing they have to do is they have to link between what the Members of Congress, the policymakers, do and the fiscal rule outcome, a clear connection so you can see actions and results. And the third, it has to be transparent to the public and they have to buy into this.

What does the balanced budget amendment look like from this perspective? Clearly, our previous fiscal rules have not worked. This would have the advantage of being embedded in the Constitution, much more difficult for any Congress to override. The process for getting rid of a constitutional amendment is very long. So once it was there, it would be hard to override it. There is a clear link between budgets passed in Congress and the fiscal rule. They have to balance. That is very easy to understand. It addresses the problem, which is not emergency spending that has been piling up or recessions that have been piling up. The problem is sustained rises in mandatory spending. This would focus on the long-term path in a systematic way. And it is a process of ratification whereby House, Senate, 38 States, Republicans, Democrats would generate the education that would make it transparent to the public about what this rule was. And so it has those characteristics.

The last point is simply that there are many people who express what I view as legitimate concerns about this being overly restrictive in times of national emergency, either military or economic. And there are a variety of proposals to allow super majorities in the House and the Senate to override the balance requirement in those circumstances. These strike me as good things for the Committee to think hard about because these contingencies will arise in the future. There is no way to avoid that, and you want to have anticipated them in the design of the balanced budget amendment.

So to summarize, I do not think everyone starts out thinking about economic and budgetary policy with the idea that we should amend the Constitution to have a balanced budget. But I have ended up there because it is a strategy that has been successful around the globe. The strategies we have employed in the United States have not worked, and I think we should build on what we know about other countries' success here in the United States.

I thank you and I look forward to the chance to answer your questions.

[The prepared statement of Mr. Holtz-Eakin follows:]

A Constitutional Amendment for a Balanced Budget

Testimony to the
House Judiciary Committee

Douglas Holtz-Eakin, President
American Action Forum*

July 24, 2014

* The opinions expressed herein are mine alone and do not represent the position of the American Action Forum. I am grateful to Gordon Gray and Joseph Kessler for assistance.

Introduction

Chairman Goodlatte, Ranking Member Conyers and members of the Committee, I am pleased to have the opportunity to appear today. In this testimony, I wish to make four basic points:

- The federal budget outlook is quite dire, harms economic growth, and ultimately raises the real threat of a sovereign debt crisis,

- The adoption of a "fiscal rule" would be a valuable step toward budgetary practice that would address this threat and preclude its recurrence,

- A balanced budget amendment to the U.S. Constitution is one such fiscal rule; one whose very nature would render it an effective fiscal constraint immune from the forces that have generated a history of Congresses reneging on budgetary targets, and

- Recent incarnations of a balanced budget amendment contain provisions that address some traditional concerns regarding balanced budget requirements.

I will pursue each in additional detail.

The Budgetary Threat

The federal government faces enormous budgetary difficulties, largely due to long-term pension, health, and other spending promises coupled with recent programmatic expansions. The core, long-term issue has been outlined in successive versions of the Congressional Budget Office's (CBO's) *Long-Term Budget Outlook.*[1] In broad terms, over the long term, the inexorable dynamics of current law will raise federal outlays from an historic norm of about 20 percent of Gross Domestic Product (GDP) to anywhere from 30 to approaching 40 percent of GDP. Any attempt to keep taxes at their post-war norm of 18 percent of GDP will generate an unmanageable federal debt spiral.

This depiction of the federal budgetary future and its diagnosis and prescription has all remained unchanged for at least a decade. Despite this, meaningful action (in the right direction) has yet to be seen, as the most recent budgetary projections demonstrate.

In April, the Congressional Budget Office (CBO) released its updated budget baseline for 2014-2024. The basic picture from CBO is as follows, tax revenues return to pre-recession norms, while spending progressively grows over and above currently elevated numbers. The net effect is an upward debt trajectory on an already large debt portfolio. The CBO succinctly articulates the risk this poses: "Such high and rising federal debt could have serious negative consequences…

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[1] Congressional Budget Office. 2014. *The Long-Term Budget Outlook.* Pub. No. 4933. http://www.cbo.gov/sites/default/files/cbofiles/attachments/45471-Long-TermBudgetOutlook.pdf

high debt means that lawmakers would have less flexibility than they otherwise would to use tax and spending policies to respond to unexpected challenges. Finally, high debt increases the risk of a fiscal crisis…"[2]

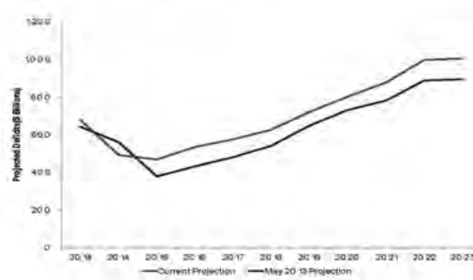
Figure 1: The Budget Outlook by the Numbers

	Unit	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015-2019	2015-2024
Revenues	$ Billions	2,775	3,032	3,305	3,475	3,621	3,764	3,927	4,099	4,284	4,486	4,696	4,918	18,092	40,574
	% of GDP	16.7	17.6	18.2	18.2	18.1	18.0	18.0	18.0	18.0	18.1	18.2	18.3	18.1	18.1
Outlays	$ Billions	3,455	3,523	3,774	4,011	4,197	4,391	4,649	4,903	5,162	5,484	5,701	5,920	21,022	48,192
	% of GDP	20.8	20.4	20.8	21.0	20.9	21.0	21.3	21.5	21.7	22.2	22.1	22.1	21.0	21.5
Deficit	$ Billions	-680	-492	-469	-536	-576	-627	-722	-804	-878	-998	-1,005	-1,003	-2,930	-7,618
	% of GDP	-4.1	-2.8	-2.6	-2.8	-2.9	-3.0	-3.3	-3.5	-3.7	-4.0	-3.9	-3.7	-2.9	-3.4
Debt Held by the Public	$ Billions	11,983	12,740	13,285	13,884	14,523	15,202	15,977	16,835	17,769	18,823	19,885	20,947	n.a.	n.a.
	% of GDP	72.1	73.8	73.3	72.6	72.4	72.5	73.1	73.8	74.8	76.1	77.2	78.1	n.a.	n.a.

According to the CBO, tax revenue will remain above 18 percent of GDP over the next ten years. This is well above the average since 1974 of 17.7 percent, not including the past six years where revenues have been depressed. The federal government is projected to spend over $48 trillion over ten years, maintaining spending levels over 1.6 percentage points above historical levels. Mandatory spending, which comprised 41 percent of the federal budget in 1974, will reach 62 percent in 2024. Interest payments on the debt comprised 8 percent of the budget in 1974 and 6 percent 2013. These payments will more than double, to almost 15 percent. Debt service payments will reach 3.3 percent of GDP by 2024 - the highest level seen in the preceding 50 years.

Over 2015-2024, projected deficits in the next 10 years will dip below half a trillion only once, and will surpass $1 trillion again by 2023. Importantly, the deficit outlook has worsened since CBO's last estimate, largely driven by a more pessimistic economic outlook. The latest estimates show deficits projected to be a cumulative $767 billion higher over 2014-2023 than were projected just last May.

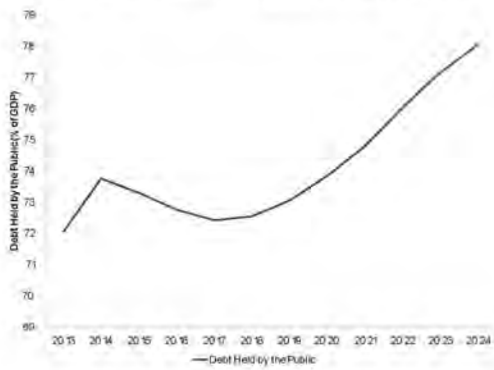
Figure 2: The Deficit Outlook has Worsened



[2] http://www.cbo.gov/publication/45069

The worsened deficit outlook will raise borrowing from the public over the coming decade. Debt held by the public will reach the highest levels since 1950 in FY 2014, reaching 73.8 percent of the economy and despite a temporary and modest improvement, will remain at levels not previously seen in over 60 years.

Figure 3: Debt Ultimately on an Upward Trajectory



The trajectory direction and the magnitude of the current debt outstanding is ultimately the most telling characteristic of the U.S. fiscal path. The widely acknowledged drivers of the long-term debt, health, and retirement programs for aging populations, and borrowing costs, will begin to overtake higher than average tax revenue and steady economic growth by the middle of the decade, and grow ever inexorably upwards until creditors effectively refuse to continue to finance our deficits by charging ever higher interest payments on an increasingly large debt portfolio. The growing risk that the United States could face such a fiscal crisis requires the serious consideration of a fiscal rule, namely a balanced budget amendment, to forestall the deleterious economic consequences that attend to sovereign debt crises.[3]

The Value of Fiscal Rules

At present, the federal government does not have a fiscal "policy." Instead, it has fiscal "outcomes". The House and Senate do not reliably agree on a budget resolution. Annual appropriations reflect the contemporaneous politics of conference committee compromise, and White House negotiation. Often, the annual appropriations process is in whole or part replaced with a continuing resolution. Annual discretionary spending is not coordinated in any way with the outlays from mandatory spending programs operating on autopilot. And nothing annually constrains overall spending to have *any* relationship to the fees and tax receipts flowing into the U.S. Treasury. The fiscal outcome is whatever it turns out to be - usually bad - and certainly not a policy choice.

[3] For more on the specific ramifications of a potential U.S. fiscal crisis, see: http://financialservices.house.gov/uploadedfiles/hhrg-113-ba00-wstate-dholtzeakin-20140325.pdf

I believe that it would be tremendously valuable for the federal government to adopt a fiscal rule. Such a rule could take the form of an overall cap on federal spending (perhaps as a share of gross domestic product (GDP)), a limit on the ratio of federal debt in the hands of the public relative to GDP, a balanced budget requirement, or many others. Committing to a fiscal rule would force the current, disjointed appropriations, mandatory spending, and tax decisions to fit coherently within the adopted fiscal rule. Accordingly, it would force lawmakers to make tough tradeoffs, especially across categories of spending.

Most importantly, it would give Congress a way to say "no." Spending proposals would not simply have to be good ideas. They would have to be *good enough* to merit cutting other spending programs or using taxes to dragoon resources from the private sector. Congress would more easily be able to say, "not good enough, sorry."

What should one look for in picking a fiscal rule? First, it should work; that is, it should help solve the problem of a threatening debt. A fiscal rule like PAYGO at best stops further deterioration of the fiscal outlook and does not help to solve the problem.

Second, it is important that there be a direct link between policymaker actions and the fiscal rule outcome.

Finally, the fiscal rule should be transparent so that the public and policymakers alike have a clear understanding of how it works. This is a strike against a rule like the ratio of debt-to-GDP. The public has only the weakest grip on the concept of federal debt in the hands of the public, certainly does not understand how GDP is produced and measured, and (God help us) may not be able to divide. Without transparency and understanding, public support for the fiscal rule will be too weak for it to survive.

As documented by the Pew-Peterson Commission on Budget Reform other countries have benefitted from adopting fiscal rules.[4] The Dutch government established separate caps on expenditures for health care, social security and the labor market. There are also subcaps within the core sectors.

Sweden reacted to a recession and fiscal crisis by adopting an expenditure ceiling and a target for the overall government surplus (averaged over the business cycle). Later (in 2000) a balanced budget requirement was introduced for local governments. Finally, in 2003 the public supported a constitutional amendment to limit annual federal government spending to avoid perennial deficits.

A lesson is that, no matter which rule is adopted, it will rise or fall based on political will to use it and the public's support for its consequences.

A Balanced Budget Amendment

How should one think of proposals to amend the Constitution of the United States to require a

[4] http://www.budgetreform.org/

balanced federal budget? It would clearly be quite significant. Despite the good intentions of the Budget Control Act of 2011, there is little indication that the resultant savings will do anything but delay the fiscal threats outlined above. Absent significant fiscal reform, these challenges will continue to evolve from pressing to irreversible. The distinguishing characteristics of a Constitutional amendment to address these challenges make it a far more robust tool in this endeavor.

First, fiscal constraints, in the form of spending caps, triggers, and other like devices are laudable, but fall short of Constitutional amendment in their efficacy as a fiscal rule similar to those pursued by nations such as the Netherlands and Sweden. A Constitutional amendment, by design, is (effectively) permanent, and therefore persistent, even if bypassed in certain exigent circumstances, in its effect on U.S. fiscal policy. Fiscal rules should allow policy figures to say "no." A Constitutional amendment will not only allow that, but given the gravity inherent in a Constitutional amendment, hopefully dissuade contemplation of legislative end-arounds that other rule might invite.

Second, there is a clear link between Congressional actions - cutting spending, raising taxes - and the adherence to a balanced budget amendment. Of course, Congressional action is not all that determines annual expenditures and receipts.

Military conflicts and other such contingencies can incur costs without advance Congressional action, while economic conditions can affect spending, such as with unemployment insurance and other assistance programs, and tax revenues. However, these fluctuations are ultimately not the driving force between the U.S. fiscal imbalance. Indeed, in a world with stable tax revenue and without the need for military contingencies, the U S. would still be headed towards fiscal crisis. Rather, enacted spending and tax policy largely set forth the U S. fiscal path that must be altered to avert a fiscal crisis. A meaningful constraint on these factors would confront policymakers with the necessity to alter those polices, and as discussed above, to make the choices and tradeoffs needed to shore up the nation's finances. Tying those choices to an immutable standard, in the form of a Constitutional amendment would facilitate that process.

A third facet of a Constitutional amendment that augurs well for its efficacy is the ratification process itself. This is a process that takes years. Successful ratification of a Constitutional amendment requires acceptance at many levels of public engagement. For the purpose of constraining federal finances, this is beneficial, as it necessarily requires public "buy-in." Without question, the changes needed to address federal spending policy will be difficult. Any process that engages the public, and by necessity, requires public complicity to be successful will ease the process of enacting otherwise difficult fiscal changes.

Lastly, the very nature of a Constitutional amendment shields it from the annual, or perhaps more frequent, vicissitudes of federal policymaking. It cannot be revised, modified, or otherwise ignored in the fashion of the many checks on fiscal policy enacted or attributable to the Congressional Budget Act of 1974 or its successors.

Congress cannot renege on its obligations with such an amendment in place. While unquestionably a constraint on Congress, as a parameter of federal policymaking it would be one by which all must abide.

Auxiliary Features of a Balanced Budget Proposal

As noted above, a balanced budget amendment to the Constitution has several unique characteristics that distinguish it as an effective fiscal rule. However, not all balanced budget amendments are created equal. Balanced budget amendments can differ significantly, with considerable variation in the consequence of their design.

While largely the result of choices by policymakers, the U.S. fiscal situation is, and will be in the future, shaped in some way by forces outside of the legislative process, such as war, calamity, of economic distress. Critical to an effective balanced budget amendment is the acknowledgment of this reality with a mechanism for adjusting to these forces without undermining the goal of the amendment to constrain fiscal policy. The abuse of emergency designations in legislation to get around budget enforcement is an example of what can happen when the goal of constraining fiscal policy is subordinated to flexibility in the face of some crisis, real or otherwise. Stringent accountability, such as the requirement of supermajority, affirmative votes can mitigate this problem.

Past iterations of balanced budget amendments have legitimately raised questions as to their capacity to limit the scale of the federal government. There is nothing inherent in a balanced budget amendment to limit federal spending beyond the belief that at some point, the tax burden necessary to balance the expenditure of a large federal government ultimately reaches an intolerable level. But there is nothing about a balanced budget amendment alone that precludes reaching tax and spending levels just approaching that tipping point, which is far from desirable policy. Accordingly, recent examples of balanced budget amendments seek to staunch the accumulation of debt, which is ensured by balance, while also limiting the spending to the historical norm. Likewise, recent examples of balanced budget amendments that limit the Congress's ability to raise taxes. In each case these limitations can be waived by supermajority votes. These are sound approaches that address concerns that a requirement to be in balance will add tax policy to the share of fiscal policy already on autopilot.

The last issue of concern, but with a less obvious remedy relates to enforcement. It is not obvious in any of the extent amendments what would occur if the requirements of the amendment were violated. The enforcement mechanism for these requirements arguably may not exist, and may not exist until tested after the ratification of a balanced budget amendment. The various waivers provide Congressional allowances for specific overages as a means of establishing compliance should U.S. finances fail to balance or exceed certain limits assuming one of the proposed amendments is successfully ratified. The provision in the prevailing Senate balanced budget amendment prohibiting courts from raising revenues in the event of a "breach" entertains the possibility that the U.S. may indeed find itself in an *ex post* violation of a balanced budget amendment. That suggests that irrespective of the waiver provisions, there is nothing within the amendment itself that addresses enforcement, whether by sequestration or some other means. While many criticisms of past approaches to balanced budget amendments have been meaningfully addressed in recent efforts, the question of enforcement remains a challenge that should be thoughtfully considered.

Thank you for the opportunity to appear today. I look forward to answering any questions the Committee may have.

Mr. GOODLATTE. Thank you, Dr. Holtz-Eakin.

Dr. Aaron, welcome.

TESTIMONY OF HENRY J. AARON, Ph.D., BRUCE AND VIRGINIA MacLAURY SENIOR FELLOW, THE BROOKINGS INSTITUTION

Mr. AARON. Thank you very much, Mr. Chairman, Mr. Ranking Member, Committee Members. Thank you for inviting me to testify this morning.

Balanced budget amendments have been around for a long time because they appeal to a universally accepted virtue of fiscal responsibility. Still, I believe that Congress should not send House joint resolutions 1 or 2 to the States for ratification for at least five separate reasons.

First, deficits are sometimes beneficial, and that is not just during declared wars, but also during economic slowdowns. If either H.J. Res. 1 or 2 had been in effect during the recent financial crisis, they would have required either that taxes be increased or spending cuts in ways that would have intensified unemployment and hammered GDP. The constitutional amendments proposed in these resolutions would have become automatic destabilizers threatening perverse tax and expenditure policy that would raise unemployment and destabilize financial markets unless avoided by super majority votes. To require a super majority vote to avoid perverse policy is folly. Even if a super majority were eventually achieved, recession-fighting actions would be delayed by many months.

Second, requiring a super majority to raise the debt ceiling or to run a deficit is a veritable summons to political extortion by an intransigent minority. Two-fifths of either house could block action unless its pet plans were enacted. This threat has no political allegiance. It could be wielded on behalf of small Government or large Government, lower taxes or higher taxes, lower spending or higher spending.

Third, the deficit and debt ceiling provisions of H.J. Res. 1 and 2 would prevent access to Social Security and Medicare hospital insurance funds when needed to sustain benefits unless the rest of the budget was not just balanced but was in surplus unless, that is, three-fifths of the whole membership of both houses agreed to sustain pensions for the elderly and disabled. A similar problem could stymie important Government activities vital to combat financial panic just when they are most needed.

Fourth, a Congress constrained by the limits of H.J. Res. 1 or 2 but anxious to accomplish some agreed objective would inevitably resort to all manner of devices that would circumvent those limits in ways that led to inefficient Government. Spending could become tax credits, seeming to lower both spending and revenues, or unfunded mandates on State governments. No one who is interested in honest Government should encourage elected officials to find devious ways to accomplish objectives that are geared to them.

Finally, Mr. Goodlatte, I must note that just 3 years ago you proposed an earlier version of H.J. Res. 1 to limit Government spending to 18 percent of economic output. Now you propose a limit of 20 percent of economic output. That is $345 billion a year more than the limit you proposed just 3 years ago when you would have made such spending a violation of the Constitution. Perhaps—just maybe—at some future date, in light of new and better information, you might change your mind again. Legislation, not a constitutional amendment, should be used to implement spending limits that can change so much and so fast, as you have changed your mind on how much the Federal Government should be allowed to spend.

Thank you very much.

[The prepared statement of Mr. Aaron follows:]

Testimony of
Henry J. Aaron[1]

to
The House Judiciary Committee
24 January 2014

Mr. Chairman, Mr. Ranking Member, Committee Members:

Balanced budget amendments have been around a long time. They appeal to the universally recognized virtue of fiscal responsibility. Still, Congress has never sent one on to the states for ratification. Congress should not do so now, despite the relatively high levels of current government debt and the budget challenges that the nation faces in the future. There are at least five reasons.

First, budget deficits are sometimes beneficial. These times include not only declared wars but also economic slowdowns. Had either H.J. Res 1 or 2 been in effect during the recent financial crisis, each would have required either tax increases or spending cuts that would have greatly intensified unemployment and the fall of GDP. The constitutional amendments proposed in these resolutions would have become *automatic destabilizers* threatening perverse tax and expenditure policy that would raise unemployment and destabilize financial markets unless avoided by super-majority votes. To require super-majority votes to avoid catastrophic policy is folly.

Second, requiring a super-majority to raise the debt ceiling or to run a deficit is a veritable summons to political extortion by an intransigent minority. The consequences of a failure to raise the debt ceiling would be intrinsically catastrophic and could trigger a constitutional crisis. A mere two-fifths of either House could demand as ransom for its votes enactment of legislation on which it insists. This threat has no political allegiance. It could be wielded in the service of small government or large government, lower taxes or higher taxes, lower spending or higher spending.

Third, the deficit and debt ceiling provisions of H.J. Res. 1 and 2 would prevent access to the Social Security trust fund to sustain benefits unless the rest of the government was not just balanced but running a surplus...unless, that is, three-fifths of the whole membership of both Houses of Congress agreed to sustain pensions for the elderly and disabled. A similar problem could stymie important government activities vital to combat financial panic just when they are most needed.

Fourth, a Congress, constrained by the limits in H.J.Res.1 and 2 but anxious to accomplish some agreed objective would inevitably resort to all manner of devices that would circumvent those limits in ways that led to inefficient government. Spending could become tax credits (seeming to lower both spending and revenues) or unfunded mandates on state governments. No one interested in good and honest government should increase incentives for elected officials to find devious ways to accomplish objectives dear to them.

Finally, Mr. Goodlatte, I must note that just three years ago, the version of H.J. Res. 1 that you sponsored, proposed to limit government spending to 18 percent of economic output. Now you propose a limit of 20 percent of economic output. Just three years ago you would have made such spending a violation of the Constitution. Is it not possible that at some future date you might conclude, in light of new and better information, that a different percentage is desirable? Does not your own change of view raise questions about the wisdom of locking into the Constitution an economic variable you are willing to change based on facts and circumstances?

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[1] Bruce and Virginia MacLaury Senior Fellow, the Brookings Institution. The views expressed here are my own and do not necessarily reflect those of the trustees, officers, or other staff of the Brookings Institution.

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Balanced budget amendments are harmful because deficits are sometimes beneficial. In a democratic republic, it should not take a super-majority to do the right thing.

Successive Congresses and presidents of both parties have crafted public policies that automatically generate deficits when the economy weakens. These automatic stabilizers include all taxes, which drop when incomes fall or sales decline; Social Security, claims for which increase as labor markets soften; and unemployment insurance and nutrition assistance. They kick in as soon as the economy weakens, often long before official statistics record the slowdown and even longer before political officials react to them. The delay between the onset of an economic slowdown and the marshaling of three-fifths of the full membership of both Houses to authorize budget deficits that now occur as soon as the economy weakens would mean increased unemployment, lost output, and human suffering.

I am not saying that the automatic stabilizers are perfectly designed. To the extent that they are not, they should be revised. But they should not be turned into automatic *destabilizers*, which is just what a balanced budget amendment would do.

A requirement that the budget must be balanced at all times would prohibit deficits. Of course, one might avoid deficits during recessions by raising tax rates as the economy weakens or by cutting spending as the need for it increases. Had such measures been taken during the recent financial crisis that began in 2007, a painful slowdown would have been transmuted into a disastrous depression rivaling that of the 1930s. In 2011 Macroeconomic Advisors, a leading economic forecasting company, estimated that a constitutional amendment requiring that the 2012 budget be balanced would have required that all government spending be cut by 60 percent (assuming that Social Security and interest payments were protected). The cuts would have had to apply to national defense, veterans benefits, nutrition assistance, Medicare—everything other than Social Security and interest payments. These cuts or equivalent tax increases, it is estimated, would have put 15 million *more* people out of work, doubled unemployment from 9 percent to 18 percent, and cut GDP by 17 percent.

Make no mistake: if you endorse a balanced budget amendment, you are endorsing such spending cuts during a similar future recession. If you endorse a balanced budget amendment, you are endorsing *automatic destabilizers* that will intensify future recessions and increase unemployment. You would be endorsing devastating cuts in national defense regardless of threats to the nation. You would be favoring cuts in assistance to the unemployed just when job opportunities were drying up. You would be endorsing such untoward effects, unless....

II

....unless, of course, three-fifths super majorities of all members (not just of those present and voting) of *both* Houses of Congress agreed to sensible policies.

One hopes, of course, that they would do so. Even if they were willing to waive the amendment's constraints, it would take time for Congress to act—time during which unemployment would climb, the slowdown would deepen, and hardship would increase. But the waiver might not be granted at all or not until the majority bought off a stubborn minority by granting its demands for policies a majority opposes.

Put simply, a two-fifths minority of *either* House could hold Congress and the nation ransom. It could insist that its pet idea be included in such waiver of the balanced budget requirements. Today, support of balanced-budget proposals comes almost entirely from conservatives and is opposed mostly by progressives. But a minority of any political persuasion can withhold its support for waiving the limits imposed by balanced budget limits unless its demands are satisfied. Today the ransom might take the form of repealing the Affordable Care Act. Tomorrow it might take the form of requiring the introduction of a value-added tax after the recession ends or passage of Medicare-for-all. The automatic economic destabilization inherent in a balanced budget amendment is a political doomsday weapon that any determined minority can threaten to detonate.

III

If there is one subject on which members of both parties agree, it is that Social Security benefits for those now on the rolls and soon to retire should be protected. Republicans and Democrats have different and competing visions about how the pension system for the elderly and disabled should evolve over time. But everyone agrees that significant structural changes, if any, should be phased in gradually and that those who are now on the rolls (or soon will be) should be protected from large benefit cuts. Much the same applies to Medicare. Whatever the form of one's preferred Medicare system, members of both parties agree that health benefits for people now on the rolls should be largely protected.

The balanced budget amendments under discussion today are inconsistent with that bi-partisan commitment. Here is why. Both Medicare Hospital Insurance and Social Security are financed through trust funds. The assets in these trust funds are invested in Treasury securities. Those securities are part of the national debt subject to the debt ceiling, but these reserves are not what CBO, other analysts, and H.J. Res. 1 and 2 refer to as "debt in the hands of the public."[2] The Hospital Insurance (HI) Trust Fund is now selling off its holdings of Treasury securities in order to pay for current benefits. The Disability Insurance (DI) trust fund is now selling off its holdings in order to pay current benefits. The Old-Age and Survivors Insurance Trust Fund is still buying Treasury securities, but the 2013 Trustees Report projected that the OASI Trust Fund will start to sell assets in 2022.

When the OASI, DI, and HI trust funds sell securities, they do so by presenting them to the Treasury Department, which credits cash to the trust funds. To raise that cash, the Treasury must sell securities to the public–that is, it must borrow money from the public. Under the terms of the balanced budget amendments, such sales to the public would be barred if the total debt in the hands of the public were at the maximum set by Congress. The sales would be barred even if the budget for the rest of government operations was in balance. The sales would be barred even if the debt were below the statutory limit, because the spending would push the total budget into deficit.

Put simply, when Social Security and Medicare Hospital Insurance finance spending from accumulated reserves, they are still engaging in deficit spending which still requires Treasury borrowing to cover it. In these cases, the reserves accumulated for Social Security and Medicare Hospital Insurance would be unavailable to pay benefits.

The same principles apply to reserves accumulated to pay benefits to civil service and military retirees and to reserves accumulated in any fund that holds securities not counted as being held by the public. The bulk of these reserves were accumulated by charging workers extra taxes or contributions beyond those necessary to pay for current benefits. Those extra charges were justified on the grounds that they would be available to cover future benefits. A balanced-budget amendment would betray that promise unless the rest of government operations ran surpluses sufficient to fully offset the draw-down of these reserves.

The balanced budget amendments would also threaten financial stability. As noted in a report of the Center on Budget and Policy Priorities, the Federal Deposit Insurance Corporation (FDIC) and the Pension Benefit Guarantee Corporation (PBGC) hold a total of $57 billion in reserve to insure deposits and protect defined-benefit pensions.[3]

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[2] In April, 2014, the total federal government debt subject to the debt ceiling was $17.6 trillion. Of this total, $5 trillion was held by various government agencies, the largest single part of which is held in the Old-Age, Survivors, and Disability Insurance Trust Funds. The remaining $12.6 billion is 'debt in the hands of the pnblic' to which H.J.Res. 1 and 2 refer. Of the debt held by the public, nearly $6 trillion was held by foreign governments, people and organizations and $6.6 trillion was held by U.S. based individuals, insurance companies, banks, and other organizations.

[3] Richard Kogan, "Constitutional Balanced Budget Amendment Poses Serious Risks: Would Likely Make Recessions Longer and Deeper, Could Harm Social Security and Military and Civil Service Retirement," 16 July 2014.

> "Here, too, the balanced budget amendment would make it unconstitutional for the FDIC and the PBGC to use their assets to pay deposit or pension insurance, since doing so would generally constitute 'deficit spending.' Such payments could be made only if the rest of the budget rau an offsetting surplus that year (or if Congress achieved the necessary ... supermajorities to override the balanced budget requirement).
>
> "In general, a constitutional requirement that all spending during a given year be covered by tax revenues collected in the same year would undercut ... deposit insurance, pension insurance, FHA loans, small business loans, flood insurance, and the nuclear power industry's liability insurance under the Price-Anderson Act.
> ...
> "If banks, thrift institutions, pension funds, small businesses, and mortgagers started to fail during a recession or a financial crisis, ... panicked depositors could make runs on banks, causing a chain reaction that could turn a recession into a depression."

It is important to understand that these problems do not arise because these funds hold Treasury securities. They would arise even if they held assets other than Treasury securities. The simple fact is that spending that exceeds current revenues would be barred regardless of the size of accumulated reserves. The only way that Social Security or the FHA or the PBGC could spend more than current revenues would be if the rest of the budget ran a current, cash-flow surplus.

IV

Some people embrace balanced budget amendment proposals because they hope that the amendments will curb what they regard as harmful tendency of legislators to fiscal irresponsibility. I believe that the fiscal record of this nation does not support this fear, but supporters of balanced budget amendments clearly believe otherwise. I have argued so far that efforts to curb this alleged tendency are likely to produce seriously adverse economic effects. I have also argued that they would give minorities a dangerous and unpredictable power during crises to force majorities to accept policies that most people oppose. But balanced budget amendments suffer from a different and equally serious problem: they can be gamed and circumvented in ways that would render them ineffective in achieving their stated objective and would simultaneously degrade governmental efficiency, which is not something that any of us would wish.

The problem is that one can achieve a given impact on the private economy in any number of different ways that are recorded quite differently in budget accounts. Suppose a Congressional majority wishes to expand support for people with low earnings.

1) It can provide a direct wage subsidy financed by new taxes.

2) It can provide an earned income tax credit equal to a portion of earnings (as it has actually done). This credit can be counted as a reduction in revenues, as an expenditure, or as part one and part the other, with the decision entirely contingent on a Congressional rule, which is what Congress has done.

3) It could mandate that state governments provide such subsidies, with or without incentives that relieve states of some or all of the cost of the mandate.

4) It could mandate that employers supplement earnings, according to a stated formula backed by tax incentives to defray some or all of the added costs.

One can achieve pretty much the same results by any of these devices. Yet the impact on the budget is quite different. Method 1) raises both spending and taxes. It could run afoul of the limit in H.J.Res 1 on the share of 'economic output' that the government could spend, but methods 2), 3), and 4) would not do so. Method 2) could run afoul of the balanced budget requirement in H.J. Res. 1 or 2, as could method 1) if the new taxes were not as large as the wage subsidy, but methods 3) and 4) would go unnoticed by a balanced budget rule. The four methods I have listed above are far short of the menu that a clever advocate of wage subsidies could design to circumvent a balanced budget requirement. That menu would include loan guarantees and all manner of regulations, some of which would work through indirection.

The key point is that if members of Congress want to do something, they or their staffs are smart enough to find a way to do it. A balanced budget amendment forecloses some ways of achieving given objectives but it does not foreclose others. Confronted with a super majority requirement that sixty percent of the full membership of both Houses vote to raise taxes to pay for increased spending, the clever legislator can propose a tax credit that lowers taxes and, under H.J.Res 1 and 2, requires only a simple majority of those present and voting to achieve the same end. A tax credit may work adequately as a means of boosting net wages, but it is not so effective a way to pay for stealth bombers. Those who are reluctant to use federal power to muscle state legislatures into implementing Congressional will may change their minds when a balanced budget amendment makes direct federal action too difficult.

In plain English, members of Congress intent on achieving a pet goal will work hard to circumvent a balanced budget amendment. Those who have marveled at the capacity of private citizens to manipulate tax laws and of Congress to find room for pet initiatives within pay-go budget rules should not expect less imagination when they turn their minds to circumventing a balanced budget amendment.

V

It took just three years for the chairman of this committee to decide that the cap on the share of 'economic output' that the federal government can spend that he proposed to write into the Constitution was too low. I presume that this increase reflects his considered judgment that 20 percent is reasonable and that 18 percent was too strict. If so, it is worth noting that a 2 percentage point increase—about $345 billion in 2014, rising to $536 billion in just ten years—is not chump change. It is also worth asking whether 20 percent is a number that should be enshrined in the Constitution. I believe that legislation, not a constitutional amendment, should be used to set policies about which people hold views that change over time, just as you have changed your mind.

In thinking about this matter, looking at history is helpful. President Reagan enjoyed a well-merited reputation as a politically conservative president. But spending exceeded 20 percent of GDP during all eight years of the Reagan presidency. And spending during the Reagan presidency did not include one cent of Social Security retirement benefits for the baby-boom generation, as the oldest baby-boomer was more than a decade away from becoming eligible for Social Security retirement benefits. In addition, health care spending as a share of GDP was more than one-third lower than it is today. Social Security spending will rise a total of 1.2 percent of GDP until the baby-boom generation is fully retired. Added spending on health care through Medicare, Medicaid, and other federal health programs will add more and will also lower revenues because of the exclusion from income and payroll taxation of the portion of compensation employers spend on health insurance for their workers.

History also reveals that spending can fall below 18 percent of GDP. It did so during the last three years of the presidency of Bill Clinton. The robust economy during the Clinton years is a partial explanation. The other part of the story is that during the 1990s two presidents, one Republican and one Democratic, George Herbert Walker Bush and Bill Clinton, working with Congresses that were controlled at various times by each party, produced three deficit reduction laws. All reflected bipartisan compromise.

This experience should teach two important lessons. The first is that when members of both parties work together, they can limit spending, drastically reduce deficits, and even achieve balanced budgets. The second is that if sound fiscal policy is what one wants, one doesn't need a balanced budget amendment to get it.

Mr. GOODLATTE. Thank you, Dr. Aaron. And since you have referenced me, I will take the opportunity to correct you immediately. My position has not changed.

Mr. AARON. I have a copy of H.J. Res. 1 that was presented to the House that——

Mr. GOODLATTE. That was amended in Committee.

Mr. AARON. Okay, fine.

Mr. GOODLATTE. That was not amended by me changing the bill. It was amended by the——

Mr. AARON. I stand corrected.

Mr. GOODLATTE [continuing]. Consensus of this Committee.

Thank you, Dr. Aaron.

Dr. Primo, welcome.

TESTIMONY OF DAVID PRIMO, Ph.D., ANI AND MARK GABRELLIAN PROFESSOR, UNIVERSITY OF ROCHESTER

Mr. PRIMO. Thank you very much. Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee, thank you for inviting me here today to discuss the need for a constitutional amendment to help achieve credible and sustainable fiscal reform.

My three-part message today is simple. First, the current budgetary status quo is simply unacceptable and must change. Second, the short-run focus in politics, combined with this institution's prerogatives with respect to rules, make achieving this change in the form of durable, long-term reform an elusive goal. Third, a constitutional amendment, if properly designed, can create the pathway for Congress to do what is needed to place the United States' fiscal finances on firm ground.

So, first, why is a change in fiscal course necessary? Well, as we have already heard today, we have made promises to current and future generations that we have no hope of fulfilling given current revenue streams. Just to throw out another number, the U.S. Treasury estimates that the national debt will approach 250 percent of GDP by 2080. Now, for the record, I do not believe this estimate. Not worth the paper it is printed on. Now, it is not that I dispute the Treasury's calculations. It is just that the Government's finances, the U.S. economy, or both will implode long before we ever get to that point. This estimate and long-term projections from the Congressional Budget Office and others send a clear message: the current path is not sustainable.

So what do we do? Well, to get on a stable fiscal path and stay there, Congress needs to act quickly and credibly. The solutions, which must include some reform to entitlements, will not be easy to implement. As all of you know all too well, short-run pain for long-run gain is a difficult sell politically. What is worse, the longer Congress waits to act, the more difficult reform will be. Financial advisors tell us that the earlier we start saving for important goals like retirement or our children's education, the easier it will be to achieve those goals. Well, while the Federal Government's budget is different than a household's budget in many ways, in this case the analogy is apt.

Now, even if these political hurdles can be overcome, Congress faces still another obstacle. Itself. Congress, unlike a corporation, cannot write a contract that binds future Members. This is true with respect both to substantive reforms like changes to entitlements and process reforms like budget rules. What Congress does today a future Congress can undo tomorrow.

And this is where the Constitution comes in. A well-designed constitutional amendment would place permanent, truly enforceable limits on Congress' ability to tax and spend. Just as importantly, it would create an environment under which the question for Members would no longer be whether to fix the Nation's problems but rather how to do so.

The promise of a constitutional rule as an enforcement mechanism 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, there are certain features that all worthwhile proposals should possess.

First, a constitutional amendment needs to be flexible to account for major disruptions like war. At the same time, the amendment also needs to be precise to prevent illegitimate end runs around its provisions. It needs to clearly define spending and revenue, for example, and specify how those figures will be calculated. I do not believe these definitions should be left to implementing legislation. That is when the mischief might set in.

Finally, the amendment should account for economic ups and downs by setting targets or limits based on a multiyear period on long-term economic performance. A key advantage of this smoothing approach is fewer sudden changes to Government programs.

Of course, nothing is perfect, and as we have seen today, skeptics of constitutional budget rules criticize them in several ways.

First, they point to specific design flaws such as requirements that a budget has to be balanced year in and year out. These sorts of critiques reinforce the need for careful rule design, but they do not support outright rejection of constitutional reform.

Others worry about U.S. Supreme Court overreach if it is given the authority to adjudicate disputes over the amendment. These concerns about Court enforcement can be addressed by limiting remedies and clarifying which parties have standing. Moreover, the clearer you make the balanced budget amendment or other constitutional budget rule, the less leeway the Court will have in interpreting it.

Finally, some analysts claim that process reform cannot force a consensus where none exists. Yet, this is precisely the point of a constitutional budget rule, to force change when change makes—when politics makes change difficult.

In closing, amending the U.S. Constitution is a serious step for the country and one fraught with political and procedural challenges. We are unlikely to achieve credible, long-term budget changes, however, without such a drastic measure.

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

[The prepared statement of Mr. Primo follows:]

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TESTIMONY

CONSTITUTIONAL SOLUTIONS TO OUR ESCALATING NATIONAL DEBT: EXAMINING BALANCED BUDGET AMENDMENTS

BY DAVID M. PRIMO

House Committee on the Judiciary

July 24, 2014

INTRODUCTION

Chairman Goodlatte, Ranking Member Conyers, and members of the committee: Thank you for inviting me here today to discuss the need for a constitutional amendment to help achieve credible and sustainable fiscal reform.

I am an associate professor of political science and business administration at the University of Rochester, where I hold the Ani and Mark Gabrellian professorship. I am also a senior scholar at the Mercatus Center at George Mason University. I have written a book, *Rules and Restraint* (University of Chicago Press, 2007), and several articles regarding budget rules and fiscal policy.[1] I testified before this committee's Subcommittee on the Constitution on May 13, 2011, on the same subject, and it is an honor to be asked back to address the full committee.[2]

My three-part message today is simple.

First, the United States' current fiscal trajectory must change.

Second, the short-run focus in politics, combined with Congress's institutional prerogatives, make achieving this change—in the form of durable, long-term reform—an elusive goal.

Third, a constitutional amendment, if properly designed, can create the pathway for Congress to do what's needed to place the United States government's finances on firm fiscal ground.

1. 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, January 21, 2014), http://mercatus.org/sites/default/files/Primo_MakingBudgetRulesWork_v1.pdf. This document is included as appendix 2 to this testimony.

2. David M. Primo, "Should the Constitution Be Amended to Address the Federal Deficit?," Testimony Before Subcommittee on the Constitution, House Committee on the Judiciary, May 13, 2011, http://mercatus.org/sites/default/files/Primo.Testimony.5.13.11.pdf, included as appendix 3 to this testimony. The hearing record is available at http://judiciary.house.gov/_files/hearings/printers/112th/112-30X_66316.PDF.

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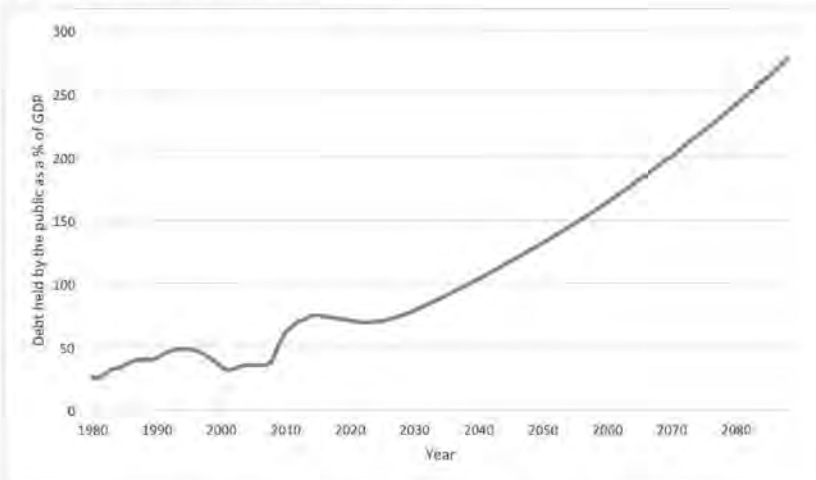
THE STATUS QUO MUST CHANGE

We have made promises to current and future generations that we have no hope of fulfilling given current revenue streams. The US Treasury estimates that the national debt will approach 250 percent of GDP by 2080 (see figure 1).[3] For the record, I do not believe this estimate. It's not that I dispute the Treasury's calculations. The problem is that the economy or the US government's finances—or both— will implode long before then. This estimate, along with long-term projections from the Congressional Budget Office (CBO) and others, sends a clear message: the current path is not sustainable.

Figure 1. US debt held by the public, 1980–2088 (projected)



Source: United States Department of the Treasury, *The Financial Report of the US Government for Fiscal Year 2013*, 2013.

FISCAL STABILITY REQUIRES QUICK AND CREDIBLE ACTION

To get on a stable fiscal path and stay there, Congress needs to act quickly and credibly. The solutions, which must include some reform to entitlements, will not be easy to implement, as short-run pain for long-run gain is a difficult sell politically.

What's worse, the longer Congress waits to act, the more difficult reform will be. Financial advisors tell us that the earlier we start saving for important goals like retirement or our children's education, the easier it will be to achieve those goals. While the federal government's budget is different than a household's budget in many ways, in this case the analogy is apt. To give you a sense of magnitude, the US Treasury reports that preventing the nation's debt from rising relative to the size of the economy over the next 75 years requires a permanent shift in expenditures and revenues of 1.7 percent of GDP. If we wait 10 years to take action, we will have to make a 20 percent larger sacrifice. If we wait 20 years, that sacrifice will be 50 percent larger.[4]

3. United States Department of the Treasury, *The Financial Report of the US Government for Fiscal Year 2013*, 2013, p. vi, http://www.fiscal.treasury.gov/fsreports/finrep/fr/13frusg/FR-Summary-2013.pdf.
4. Ibid.

Even if these political hurdles can be overcome, Congress faces still another obstacle—itself. Article I, section 5 of the Constitution reads in part, "Each House may determine the rules of its proceedings." This single line poses a major obstacle for legislators attempting to enforce budget rules. More generally, Congress, unlike a corporation, cannot write a contract that binds future members. This is true with respect both to substantive reforms—like changes to entitlements—and process reforms—like changes to budget rules. What Congress does today, a future Congress can undo tomorrow.

A CONSTITUTIONAL AMENDMENT CAN HELP

A well-designed constitutional amendment would place permanent, truly enforceable limits on Congress's ability to tax and spend. Just as importantly, it would create an environment under which the question for members 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 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, there are certain features that all worthwhile proposals should possess. (Also see appendix 1, which lists ten principles for budget rule design.)

First, a constitutional amendment should be flexible to account for major disruptions, like war. To avoid "emergencies" becoming routine, large supermajorities should be required to waive the amendment's spending or deficit limits. In addition, any funds spent under an emergency waiver should be paid back within a set amount of time—say, 10 to 15 years.

At the same time, the amendment also needs to be precise to prevent illegitimate end runs around its provisions. It needs to clearly define spending and revenue, for example, and specify how those figures will be calculated. These definitions should not be left to implementing legislation.

Finally, the amendment should account for economic ups-and-downs by setting targets or limits based on a multiyear period or on long-term economic performance. A key advantage of this smoothing approach, which has been adopted in countries like Germany and Switzerland, is fewer sudden changes to government programs.

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

WHAT THE CRITICS GET WRONG

Of course, nothing is perfect, and skeptics of constitutional budget rules criticize them in three ways. First, they point to specific design flaws, such as requirements that budgets be perfectly balanced each year.[5] These sorts of critiques reinforce the need for careful rule design, but they do not support outright rejection of constitutional reform.

Others worry about US Supreme Court overreach if it is given the authority to adjudicate disputes over the amendment.[6] These concerns about Court involvement can be addressed by limiting remedies and clarifying which parties have standing. Moreover, the clearer a rule is, the less leeway the Court will have in interpreting it.

Finally, some analysts claim that process reform cannot force a consensus where none exists. Alice Rivlin, a former director of both CBO and the Office of Management and Budget (OMB), has written, "A better budget process will not make budget decisions easy or create the will to compromise and solve problems. . . . Process can either hamper

5. See, for example, Ramesh Ponnuru, "A Balanced Budget Amendment: Still a Terrible Idea," *Bloomberg News*, February 18, 2013, http://www.bloombergview.com/articles/2013-02-18/balanced-budget-amendment-still-a-terrible-idea-ramesh-ponnuru.
6. 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).

decision-making or facilitate it, but only at the margins. . . . No process will work well unless the participants in the process want it to work."[7] Yet, this is precisely the point of a constitutional budget rule—to force change when politics makes change difficult.

CONCLUSION

In closing, amending the US Constitution is a serious step for the country, and one fraught with political and procedural challenges. We are unlikely to achieve credible, long-term budget changes, however, without such a drastic measure. While bipartisan 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 future budget agreements durable and reduce political uncertainty.

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

ABOUT THE AUTHOR

David M. Primo is the Ani and Mark Gabrellian Professor and an associate professor of political science and business administration at the University of Rochester, where he serves as the director of graduate studies in the political science department. He is an expert in American politics, campaign finance regulation, and fiscal policy, and his current research focuses on corporate strategy in political and other "nonmarket" environments. Primo is the author of three books, including the award-winning *Rules and Restraint: Government Spending and the Design of Institutions*, and numerous professional journal articles. His op-eds have been published in the *New York Times*, *Wall Street Journal*, and other national newspapers. Primo has testified before Congress on the subject of constitutional budget rules, and his campaign finance research was cited by the US Supreme Court in a 2011 case addressing the public funding of elections. Primo joined the Rochester faculty in 2002 after receiving his PhD from Stanford University.

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7. Alice Rivlin, "Rescuing the Budget Process," *Public Budgeting & Finance* 32, no. 3 (2012), 54.

See Appendix for supplemental material submitted with this statement.

Mr. GOODLATTE. Thank you all for your testimony.

I will begin with the questioning and I will begin with a quote from the person who I attribute raising the alarm bells about debt and who I think would very much agree with our concern. This is not a new idea at all. In 1798, just 9 years after our Constitution took effect, Thomas Jefferson said, "I wish it were possible to obtain a single amendment to our constitution; I would be willing to depend on that alone for the reduction of the administration of our government . . . , I mean an additional article taking from the federal government the power of borrowing."

Later in 1821, he said there does not exist an engine so corruptive of the Government and so demoralizing of the Nation as a public debt. It will bring on us more ruin at home than all the enemies from abroad against whom this army and navy are to protect us.

In a letter to James Madison at the time of the writing of our Constitution or shortly thereafter, he said, then I say the earth belongs to each of these generations during its course, fully and in its own right. The second generation receives it clear of the debts and encumbrances of the first, the third of the second, and so on. For if the first could charge it with a debt, then the earth would belong to the dead and not to the living generation. To preserve the independence of the people, we must not let our rulers load us with perpetual debt. We must make our election between economy and liberty or profusion and servitude.

Dr. Holtz-Eakin, Members of Congress have been proposing a balanced budget amendment for decades, and amendments passed the Senate in 1982 and the House in 1995. How does the Federal Government's fiscal outlook today compare to 1982 or 1995 when those balanced budget amendments passed one house of Congress? What is the danger of waiting another 30 years to adopt a balanced budget amendment?

Mr. HOLTZ-EAKIN. The fiscal picture is considerably worse in two very specific ways. The first, the level of debt is much higher even relative to GDP, and the second, the majority of spending is now in the mandatory programs not the discretionary programs. And so year-to-year changes are much harder to accomplish at this point in time. And the baby boom has now retired. The future is here in terms of the demographic shift. So I would say that our fiscal outlook is immeasurably worse than at those points in time.

Mr. GOODLATTE. You are the former head of the CBO and are a longtime observer of Federal budget policy. In your experience, have you seen any statutory caps, goals, or cuts that have had the same type of long-term effect in getting Federal deficit spending under control that a balanced budget amendment could have?

Mr. HOLTZ-EAKIN. No. As I noted in my testimony, the U.S. does not have a budget. It often does not have budget resolutions in either the House or the Senate. There is nothing that makes discretionary and mandatory spending and taxes add up in any systematic way. A balanced budget amendment would accomplish that.

Mr. GOODLATTE. Thank you.

Dr. Primo, for decades the Federal Government has run deficits during good economic times and bad, and in both Republican and Democrat administrations despite the fact that Americans overwhelmingly believe the deficit is a problem. What is the cause of this systemic deficit spending and how would a balanced budget amendment address the problem?

Mr. PRIMO. The challenge that legislators face is that going home to your district and saying that you have balanced the budget, if it means that you also have to tell your district that a program was cut or you had to make some hard choices on Medicare or Social Security, it is just a very difficult sell to make politically. So it is always much easier to say we will balance the budget tomorrow. Today let us preserve this program that my constituents care a lot about.

The deficit is this amorphous thing to most Americans. Even though they do support balancing the budget, if you start asking, you know, do you support cutting Medicare, do you support even adjusting Medicare—forget about cuts. Most people are not talking about cutting Medicare, just talking about reducing the increase in growth.

Mr. GOODLATTE. So if you are required to make the tough decisions, it is actually easier for Members to take those tough——

Mr. PRIMO. The balanced budget amendment or any sort of constitutional budget rule essentially gives politicians cover.

Mr. GOODLATTE. Is that the experience of the States? Do State experiences with balanced budget amendments offer us any insights into the feasibility of a Federal balanced budget amendment? Forty-nine out of fifty States have such a requirement.

Mr. PRIMO. Absolutely. The States are models of fiscal responsibility compared to the Federal Government, and that is due in part to the fact that they face many more constraints, including balanced budget rules. Now, things are not perfect at the State level, but the U.S. Federal Government would be in much better shape if it had the same profile that the States had in terms of fiscal responsibility.

Mr. GOODLATTE. Thank you.

Dr. Aaron, since 1960 the Federal Government has run a budget deficit in all but 6 fiscal years. That is 6 out of 54 that we balanced the budget. Obviously, previous attempts to control spending have not offered a long-term solution. Do you have a suggested enforcement mechanism to prevent the Federal Government from regularly running annual budget deficits that have led us to a $17.5 trillion national debt?

Mr. AARON. I think there is no substitute for responsible leadership and courage by Members of Congress.

Mr. GOODLATTE. Agreed, but 49 out of 50 States have this supplement to their courage.

Mr. AARON. 49 out of 50 States are beholden to Standard & Poor's and Moody's. They are the disciplines which require balance and fiscal responsibility among the States because if they fail to do so, they pay a very high price.

Mr. GOODLATTE. You do not think that same economic law applies to the Federal Government?

Mr. AARON. Not at all, as we have seen very clearly.

Mr. GOODLATTE. I have seen the——

Mr. AARON. The Federal Government is borrowing at close to a 0 interest rate today despite these deficits, many of which I share your concern about, let me emphasize. And I want to see a program to bring the budget under control over the long haul, as well as you do. But the fact of the matter——

Mr. GOODLATTE. Well, the House has passed budgets the last 3 years that lead to balance. The Senate has not done so. The President has not proposed one. What is it that will force them to look at the economic reality?

And I would agree with you that you cannot balance the budget every year, and I would agree with you that sometimes incurring debt is a good idea. The very man that I admire and cited here borrowed money to purchase the Louisiana Territory with the approval of the Congress. So there should be exceptions, obviously, but that does not mean the exceptions should swallow the rule, which is what I think is happening to us here in recent generations.

Mr. AARON. Was there a question in there?

Mr. GOODLATTE. I just want to know if you agree with that statement or not.

Mr. AARON. I am not sure which part of it, sir.

Mr. GOODLATTE. All right. Well, my time has expired.

And so we will turn to the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Thank you. Let me make a short statement and ask a couple of questions.

I take issue with the fundamental premise of this hearing.

Since 2010, deficits have been on a sharp downward path from 10 percent of GDP in the first post-Bush budget set by this Congress when Bush was still President to 4 percent of GDP in 2013. By next year, the deficit will fall to about 2 percent of GDP, less than the average of the 4 decades from 1969 to 2008, and stay there probably at least to 2018.

From my point of view, the deficit has come down too far, too fast. It has held down economic progress, and I wish our deficit were a little higher than it is now. But 2-3 percent of GDP is fine because at that level, your national debt, assuming a reasonable economic growth rate, is not increasing relative to the size of the economy at all.

We are not facing any immediate escalation of the deficit. In fact, the exact opposite is true. The deficit is reasonably under control now.

I have a number of questions for Dr. Aaron.

First, if we pass the balanced budget amendment, aside from the fact that it would prohibit us from doing anything to recover from recessions, it would have turned the 2008 recession into a depression, and so forth because you cannot take any countercyclical moves, what would the effect on Social Security and Medicare be of a balanced budget amendment?

Mr. AARON. Well, currently—let us break Social Security up into its two component pieces, disability insurance and old age and survivors' insurance.

As we speak, the disability insurance program is dipping into its trust fund, selling off securities in order to sustain current benefits. If the disability insurance fund were barred from doing that, as it would be if there were a debt ceiling because when the disability insurance fund cashes in the bonds by selling them into the Treasury, the Treasury then has to sell them to the general public, and the debt limit in this proposal applies to debt held by the public. So that transaction would be foreclosed. And unless there was a three-fifths majority of the whole membership of both houses——

Mr. NADLER. Which would mean 40 percent could blackmail the rest of the country.

Mr. AARON. I am sorry?

Mr. NADLER. Which would mean that 40 percent could blackmail the rest of the country.

Mr. AARON. Precisely. Unless that vote was forthcoming, disability insurance benefits would have to be cut by about 20 percent this year.

Currently Social Security is still running a cash flow surplus counting its interest income, but starting in 2022, it too would be——

Mr. NADLER. The balanced budget amendment, to make it short, would make it impossible under a lot of circumstances to pay Social Security as envisioned.

Mr. AARON. That is correct.

Mr. NADLER. Thank you.

Second, 49 of the 50 States have balanced budget amendments. New York passed one in 1847. I was not there to vote for it. Is it not true, though, that these balanced budget amendments all refer only to operating budgets and permit borrowing for capital budgets and that the proposed balanced budget amendment on the Federal level is completely different because it would say in effect that unless you have an extraordinary vote for an emergency, you cannot borrow money for any purpose, capital or operating?

Mr. AARON. The State balanced budget requirements differ in many respects. Some of them are only prospective. The budget has to be balanced going into the year, but in fact, it can be in deficit. As you mentioned, borrowing for capital purposes is frequently permitted. And the fact of the matter is every State of the Union has substantial debt outstanding. Their ability to service that debt as evaluated by the bond rating houses varies widely, and it is that discipline that holds them——

Mr. NADLER. But a balanced budget amendment on the Federal level would, in effect, say that except for extraordinary circumstances like a war or a three-fifths vote, you cannot borrow money for any purpose.

Mr. AARON. Beyond whatever the ceiling is set in the law.

Mr. NADLER. No. You cannot borrow money——

Mr. AARON. That is right. If it is a balanced budget, then you cannot borrow for any——

Mr. NADLER. You cannot borrow money. Does that make any economic sense at all?

Mr. AARON. I think the key point here is that the Federal Government has responsibilities that require a measure of flexibility from year to year. Embedding in the Constitution hard and fast rules, however cleverly crafted, is going to create very serious obstacles to sound policy under all kinds of different situations.

Mr. NADLER. Thank you.

Let me just make one observation before my time runs out. I agree with the Chairman when he said that Congress cannot enact laws to bind our successors. That is correct, and thank God for that. We should not bind into the Constitution things that bind our successors except for fundamental liberties and the means of getting things done, a process, how Government operates. But specific economic doctrines, which we may agree with today but we may find in 30 or 40 years that people disagree with, should not be bound into the Constitution. As one of the Justices said, the Constitution does not enact the laws of Herbert Spencer into the Constitution, for those who remember 19th economists, and we should not enact the doctrines of 20th or 21st century economists or of ourselves into the Constitution to bind our successors who may find that they disagree, and they should have the freedom—our successors 20, 30, 40, 70 years from now should have the freedom to make their own decisions.

I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from North Carolina, Mr. Coble, for 5 minutes.

Mr. COBLE. Thank you, Mr. Chairman.

Gentlemen, good to have you with us this morning.

Dr. Primo, let me ask you a question. If the Federal Government does not change its course on deficit spending, what will the effect be on discretionary spending?

Mr. PRIMO. The effect on discretionary spending will essentially be to crowd it out even more than it is already being crowded out. As already discussed, in 5-10 years, discretionary spending will comprise an even smaller share of the budget than it currently does, and if things do not change, in 30 or 40 years, there is basically going to be no room in the budget for discretionary spending.

Mr. COBLE. Anyone else want to be heard on that question?

Mr. HOLTZ-EAKIN. I think this is a very important issue in the following sense. The discussion about binding the future is a serious consideration, but the way mandatory spending is set up, we are binding the hands of future voters, future Congresses to have no flexibility to enact national priorities of their own because they will have to honor these mandatory spending commitments. And that is a serious restriction on their ability to run this country.

Mr. COBLE. Dr. Aaron?

Mr. AARON. I think it is important to recognize that we do face in all likelihood the need to take measures either to raise taxes or cut spending in order to prevent excessive deficits in the future.

But I want to emphasize the uncertainty here. The Congressional Budget Office in 2002 projected that the 2012 budget would be in surplus by $600 billion. In 2012, in fact it was in deficit by more than $1 trillion, a swing of $1.6 trillion. The Congressional Budget Office has removed from its estimates of Medicare spending in just the past 2 or 3 years a total of $1 trillion in anticipated Medicare and Medicaid spending over the next decade. We are talking here about projections as though they were hard facts. They are not. They are the product of assumptions that we are currently making. They are subject to change because of different economic circumstances and because of legislative actions that can be taken by you people who are on this Committee. They are not a binding constraint that is a reality that is going to occur with absolute certainty. These projections may turn out to be as serious as the adjectives that Mr. Holtz-Eakin and Mr. Primo have used; they may not. And as we get more information, we should react through the legislative process to respond to the reality on the ground, but we should not treat projections of spending in 2040 or 2050 or 2060 as hard realities that are already here with us.

Mr. COBLE. Thank you, Dr. Aaron.

This has been touched earlier, but let me revisit it with more detail. Some argue that Social Security and Medicare and Medicaid will be cut if we do, in fact, adopt a balanced budget amendment. What conversely will happen to these programs if we do not adopt a balanced budget amendment or some other permanent fiscal rule? Dr. Primo, do you want to start it?

Mr. PRIMO. Sure. If we do not adopt some sort of constitutional rule, eventually these programs will get fixed, and they will get fixed because Congress will not have a choice. We will face a crisis situation where the U.S. debt will be so high that creditors will lose faith in us. We take for granted right now that our dollar—our debt will always be held in good esteem by the rest of the world, but things change and crises happen overnight in the world of finance. And this idea that we should not be concerned about long-run projections because they might not come true is like saying you should not bother saving for retirement because you might not live to retire.

The fact is that if we do not do anything, we will have to make choices down the road with respect to Medicare and Social Security, but they are going to be far harder than they would be if we made them today. And that is, I think, the real central message, is that there is no pressure to act on Congress until a crisis hits in the absence of a constitutional rule.

Mr. COBLE. Thank you, Doctor.

Before my red light illuminates, anyone want to be heard further on this?

Mr. HOLTZ-EAKIN. I just want to say that as someone who directed the Congressional Budget Office, I am painfully aware of the uncertainty that comes with these projections, and I understand that. But you have to think then about what is the risk management strategy of a Congress or a nation? Do you want to error on the side of these numbers turning out to be even worse than they are? Or do you want to take measures that get them under control? Or do you want to just count on something good happening? And I worry about a strategy like that.

The second thing I will point out is the one thing that is not uncertain is that people get older 1 year at a time, and the fundamental driving force in the Federal budget for a long time has been the demographic shift, and despite the fact that there was no uncertainty, the problem was not dealt with. So I do not think uncertainty changes some of the dynamics here.

Mr. COBLE. I see my red light is illuminated. Dr. Aaron, do you want to briefly respond?

Mr. AARON. I agree completely that uncertainty does not remove the importance of taking actions in light of possibilities. But that does not argue for embedding your actions in the Constitution. It argues for the Members of this Committee and of this House and of the entire Congress of taking the farsighted steps legislatively necessary to deal with those steps.

As Mr. Nadler suggested, one can argue about whether the current budget situation if we should have a larger or smaller deficit. I tend to agree with him on that point. But I think everybody on this Committee and I am sure all three of us agree that legislative action to lower the future deficits that the Nation probably will encounter now would be desirable legislation. So passing legislation today, if the compromise is a mix of spending cuts and tax increases—I do not know what the mix would be, but taking action now to place in the laws changes in policy that will forestall the deficits we fear in the future, that is the responsibility of legislators.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. GOODLATTE. The time of the gentleman has expired.

Mr. COBLE. I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Virginia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, I think we can all agree that we are in a fiscal mess. Some of us actually cast tough votes that cost many of our colleagues their seats when they voted for the 1993 Clinton budget. Fifty-four Democrats lost their seats as a direct result. When President H.W. Bush tried to do something about the deficit, that was a major factor in his failure to win reelection. So I think we can all agree that we are in a fiscal mess.

Now, all of our witnesses seem to assume that the constitutional amendment might actually help without discussing the exact provisions in the legislation and how it will help or not, ignoring the fact that if you can actually do something, somebody is going to have to cast some career-ending votes.

Now, Mr. Holtz-Eakin, you went to great lengths to show how we can break the rules willy-nilly. In there, in all of these provisions, a three-fifths exemptions, where you get a three-fifths vote, you can ignore everything?

Mr. HOLTZ-EAKIN. There is absolutely I think in any sensible balanced budget amendment provision for emergencies.

Mr. SCOTT. Right. Three-fifths. Now, you have been around long enough. It is easier to get a three-fifths vote for a bunch of tax cuts or a simple majority to vote for a budget that will end the careers of a substantial portion of whichever caucus votes for it? It is obviously easier to get a three-fifths vote like the $3.9 trillion——

Mr. HOLTZ-EAKIN. I will leave it to the professionals on the politics of that.

Mr. SCOTT.—$3.9 trillion in the ditch we passed. And the only reason it did not get—the only reason—it got more than three-fifths. The only reason it did not get more because half the people did not think it was big enough.

Dr. Primo, you talked about the State budgets. We pointed out that the State budgets have a capital exemption. Can you point to any provisions found in H.J. Res. 1, 2, or 10 that are found in most of the State constitutional amendments called balanced budget?

Mr. PRIMO. You are asking just to clarify do any of the proposals at the Federal level include separate capital budgets?

Mr. SCOTT. You said the States—their governments have balanced budget amendments. A simple question. What in H.J. Res. 1, 2, or 10 can be found in State governments, in most of the State government constitutions? Governor Thornburgh, when he was here, could not think of one.

Mr. PRIMO. In my research on State balanced budget rules, I have found that rules that are well designed and are enforced by courts that are accountable to the people under certain conditions actually have lower spending than States with rules that are not as well designed. So there is variation in the rules, and I think that is a key message.

Mr. SCOTT. I take that as a no, you do not find any of the provisions in H.J. Res. 1, 2, or 10 that are found in most State constitutions.

Mr. PRIMO. Well, the State governments also cannot declare war, and so, you know, it stands to reason that the amendments are going to be different.

Mr. SCOTT. I think I have made my point. None.

Dr. Aaron, Social Security can be fixed. Everybody knows we are on an unsustainable trajectory on Social Security and Medicare. You can fix it using arithmetic one of two ways. You can add revenues. You could cut benefits. If these amendments are passed, is it not true that you could cut benefits on a simple majority, but to save them or shore them up with revenues, you would need a super majority?

Mr. AARON. I believe the rules in these resolutions apply to aggregate spending and to the debt level. If you wanted to raise benefits when the budget was balanced without raising taxes, that would create a deficit and would, thereby, require a three-fifths vote. You could cut benefits by a simple majority. You could not, however, cut revenues by a simple majority if it would throw the budget into deficit.

Mr. SCOTT. Yes, but you could cut taxes on a simple majority, but to raise taxes, you would need on most of these proposals a super majority.

Mr. AARON. Yes.

Mr. SCOTT. In fact, if you cut taxes 1 year and figured out that was a stupid thing to do and wanted to go back and fix it, you would need a super majority to get it back.

Mr. AARON. I believe that is correct.

Mr. SCOTT. Can you say a word about if there is a question of whether the budget is in balance or not, what the courts would do with that question?

Mr. AARON. I am not a lawyer, and I confess I have not thought about that. But if I were a Member of this House, I would be acutely concerned about the prerogatives of the legislature and very anxious to make sure that those were not impeded by the interference, if you will, of the judicial branch in what are genuinely legislative responsibilities.

Mr. SCOTT. Mr. Chairman, could I recognize a group that is in the audience? G.R.O.W. from Richmond. If you could just wave your hands. Thank you. Thank you, Mr. Chairman. They are learning all about balancing the budget today.

Mr. FRANKS [presiding]. I doubt that.

[Laughter.]

Mr. FRANKS. But we welcome you all here today very warmly.

Mr. FRANKS. Mr. Holtz-Eakin, you know, sometimes I wish engineering paradigms could be applied in these kinds of discussions. Mr. Einstein said that ethical axioms are found and tested not so differently than scientific axioms. That which stands the test of experiment or experience is the truth.

Now, we have a lot of experience with budgets, and I am always amazed that we do not look at that. If we did that in engineering where we ignored the laws of thermodynamics, we would be blowing things up every time we turned around. These things—we know that they are so consistent that over time we can put people on the moon by adhering to them and working within those parameters. And yet, throughout history, we have seen a real experiment here. The States have balanced budget amendments, and we always hear all of the terrible possibilities that might occur if the Federal Government had to do the same thing that every family in America does, that every State has to do. Somehow it is going to bring these untold disasters.

Let me ask you. Do you know in any significant instance where the requirement of States to balance their budget has brought about or manifested some of these disasters that my friends on the left have articulated?

Mr. HOLTZ-EAKIN. No. In my study of State balanced budget rules, I would echo what Dr. Primo said, which is there is a lot of difference in the rules and there are differences in outcomes, but no disasters that come from having such rules.

Mr. FRANKS. Well, again, my friends on the left seem to think that we can repeal the laws of mathematics if we all get a good enough vote here. But those are stubborn things.

Let me change to you, Dr. Primo. Again, one of the comments, again, my friends on the left suggest, is that the social network of programs that we have here, Social Security, Medicare—these things will be vitally threatened by a balanced budget amendment. I guess I have a two-part question.

What do you think threatens those programs today and in the future the most?

Mr. PRIMO. I think what threatens those programs the most is not doing anything today to fix them. The longer we wait, the harder it becomes. And the Treasury, just very quickly—if we wait 10 years to make changes on Medicare, Social Security, and other programs, we are going to have to make a sacrifice that is 20 percent bigger. If we wait 20 years, it is going to be 50 percent bigger. So the point is if we start today, we will be in a much better situation. And passing a balanced budget amendment today or another constitutional budget rule today will force Congress to start moving toward fiscal responsibility. Right now, it is very easy to say, oh, you know, the deficit is down in the last few years. Let us just wait a few years. That is always the answer in Washington.

Mr. FRANKS. Well, I could not possibly—I am in violent agreement with you.

But let me ask you then does it not stand to reason that one of the very most important things that we could do to save Social Security and some of our programs to protect the social fabric of the country as they are ostensibly put in place to do—would that not be one of the most important things we could do, to pass a balanced budget amendment?

Mr. PRIMO. A constitutional budget rule will force Congress to have an important discussion about how we can design Medicare, Social Security, and other social programs to be sustainable into the future. The problem I have been seeing in the debate over these programs is that some Members will say, you know, we will talk about Medicare and Social Security as they exist today as though they can stay like that forever. Something has got to change, and the question is are you going to let circumstances change those programs for you or are you going to act and change them proactively so that we can create programs that are sustainable over the long run. That is the choice facing the Congress.

Mr. FRANKS. Well, once again, I agree with you. But you postulated that one of the things that threatens these programs, the Social Security and other programs like it, are the fact that we are not sufficiently motivated to act now to deal with them so that they can project and actuarially come out in a way down the road that is sustainable. And you have also suggested that one of the greatest mechanisms to vitiate that problem is a balanced budget amendment. So I just would like to suggest that if we really care about things like Social Security, if we really care about the fiscal solvency of the United States, if we really do not want to end up like Greece where people were rioting in the streets because of some of the cuts that they had to do, then I would suggest that a balanced budget amendment might be something to be considered.

Dr. Holtz-Eakin, do you have any—I saw you move your head. Do you have any thoughts on that? And then I will yield back here.

Mr. HOLTZ-EAKIN. Well, I concur with the concern over the fiscal outlook.

I just want to have a point of clarification in this discussion. Social Security will be cut. When the disability fund exhausts, disability benefits will be cut down to whatever revenues are coming in. When the retirement fund exhausts, Social Security will be cut across the board. So there is nothing about a balanced budget amendment that changes the future for that program. It is going to be cut because Congress has failed to enact a sustainable Social Security program. So this notion that somehow it is only endangered by a fiscal rule that makes the rest of the budget add up is just wrong.

Mr. FRANKS. But there may be a difference in cutting it reasonably or cutting it precipitously because of a——

Mr. HOLTZ-EAKIN. I concur with that. At least cut it reasonably.

Mr. PRIMO. Just 10 seconds. Whatever changes we need to make, if we make them today, they will be less painful. I think that is the key message.

Mr. FRANKS. All right. So a balanced budget amendment is the perfect political anesthetic. All right.

So now I would turn to Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. And I want to apologize to the witnesses for not being able to be with them for the full period of this important hearing.

But Social Security taxes could be covered and not cut by merely raising the Social Security tax. Is that not correct, Dr. Aaron?

Mr. AARON. Yes. I was going to comment on the previous discussion, which seems to me to be wrong in a number of respects.

First of all, a balanced budget amendment would require no action whatsoever with respect to Social Security, which is currently running a surplus and accumulating additional reserves. The program does, indeed, face a long-term projected deficit, and I fully agree with Professor Primo that early action to close that projected deficit is desirable in order to phase in changes gradually.

But the observation you just made, Mr. Conyers, is also correct. It is not the case that benefits have to be cut. Taxes could be increased. And in that connection, I would report a survey taken and released by the National Academy of Social Insurance trying to find out what public attitudes were about Social Security. The majority view of those surveyed was that benefits should be increased and taxes raised enough not only to cover the cost of those added benefits but also to close the projected financing gap that we now confront. So if that poll is reasonably accurate—and I have no reason to impugn it—if that is the case, then the view of the American public is not that benefits must be cut, but that the program should be put on a sound financial footing and benefits should be at least sustained.

Mr. CONYERS. Thank you very much.

Dr. Primo, do you have any notion of what cuts might be required to effect a constitutional amendment such as being discussed here today?

Mr. PRIMO. The specifics of the changes that would need to be made to programs I think is properly the purview of the Congress. Without a doubt, changes need to be made, but many of those will not necessarily be cuts but rather reductions in the increases in growth of spending.

Mr. CONYERS. Well, I feel a little bit better about your response.

Let me see if Dr. Holtz-Eakin can help me here. Do you concede that there may be cuts necessary if this amendment were to be adopted, sir?

Mr. HOLTZ-EAKIN. The budget is badly out of balance. So mechanically one of two things is going to happen. Spending, projected spending in particular, will have to be lower or projected taxes and taxes will have to be higher.

I think an important feature about the reality of how this would happen, if the Congress were to pass it and send it to the States, is it would take years for ratification to occur. That is a good thing from two perspectives. Number one, it would require a lot of public education about what is going on, and it would happen as a byproduct of the ratification process. Number two, everyone in this chamber at that time would be watching the day approach when things had to add up, and they would have to anticipate that. And rather than doing it in a single year in an abrupt and, quite frankly, damaging fashion, it would be done in a smooth fashion over time. And I think that is the right way for Congress to approach the problem.

Mr. CONYERS. Thank you very much.

Let me turn again to Dr. Aaron. Proponents of a balanced budget amendment claim that because States and families are required to balance their budget, the Federal Government should be required to do so too. Is this analogy a little bit overworked or maybe inept?

Mr. AARON. Well, in response to a prior question about State balanced budget amendments, Professor Primo mentioned that the Federal Government has responsibilities that States do not have like the ability to declare war. But they have another responsibility that is different from the States and that is to combat recessions partly through fiscal policy, partly as a responsibility of the Federal Reserve system.

Mr. Holtz-Eakin's statement about the gradualism with which spending could be cut might be true in the run-up to ratification. It emphatically is incorrect with respect to the cuts that would be triggered by a balanced budget amendment during a recession. Revenues fall. Spending would have to be cut then or taxes increased unless, again, there was a three-fifths majority of the entire membership of Congress to waive those requirements. Those cuts could be very, very abrupt.

And as I said in my testimony, they create a possibility of ransom by intransigent minorities seeking enactment of their pet proposals. And I really think that is a danger that Members on both sides of the aisle should take very seriously because I think it is quite possible that one could get such efforts made either on behalf of conservative or on behalf of liberal policies that cannot command majority support but that could be weapons during a fiscal crisis.

Mr. CONYERS. I think the balanced budget amendment is still no better an idea than when Newt Gingrich brought it to our attention in 1994 in the Contract with America.

And I thank you all for your observations, and I yield back any balance of my time that may be remaining, Mr. Chairman.

Mr. BACHUS [presiding]. Thank you.

The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you. I appreciate your being here, your testimony.

I have been contemplating what one of my friends across the aisle had said earlier, that we should not be put into the Constitution things that bind our successors. And then when I contemplated every one of the amendments to the Constitution, they do exactly that. They bind our successors, and thank God they do. If those amendments did not bind our successors, we would have no right to due process. We bound the government. You cannot go after us. You cannot get our personal property, our records without due process unless, of course, you are the Consumer Financial Protection Bureau, the Federal Government getting our medical records now under Obamacare, the NSA getting all our emails and phone logs. But I digress.

I would suggest we are binding future generations right now. We are binding our successors, forcing them to pay for things they got no benefit from. We are the generation that is engorging ourselves with things we cannot pay for and the future generations will be bound to pay for.

I was one of four Republicans that voted against the balanced budget amendment not because I do not support it. I have been for it as far back as I can recall in college and high school when we had debates over it. But what I have found since I have been in Congress is if we do not put some kind of bind on ourselves, our successors are going to be bound to an extent that is untenable. We need a spending cap because to have a balanced budget amendment without a spending cap forces ever higher and higher taxes because we do not do a good job of cutting, and that higher and higher taxes gets us into the Laffer curve, which I do believe is supported by evidence in economics. If you charge a 0 percent tax, you get 0 revenue. You charge a 100 percent tax, you get 0 revenue because nobody will work if every dime goes into the Federal Treasury. So somewhere in between is a maximum effective rate. When you go over that rate, you begin to get less revenue. You kill the economy.

And it was Thomas Jefferson that said the natural progress of things is for liberty to yield and government to gain ground. As yet our spirits are free. Our jealously is only put to sleep by the unlimited confidence we all repose in the person to whom we all look to as our President. After him, inferior characters may perhaps succeed and awaken us to the danger which his merit has led us into.

Washington was selfless. We have not done so well since then. We need to bind ourselves.

So I would ask you, having just seen Obamacare now limiting seniors, as the President himself said at a town hall, we probably need to tell the senior you are better off getting a pain pill than a pacemaker that saves your life because we have got to cut costs. Why? Because we have engorged ourselves with a massive amount of government workers in health care.

So I think we have got to have a cap on spending as part of a balanced budget, and I would like to ask each of you whether you agree or—I am not asking whether you agree or disagree with the spending cap. But if you were forced to provide a mechanism for putting a cap on spending, what would it be? Dr. Holtz-Eakin?

Mr. HOLTZ-EAKIN. Well, if you were going for a spending cap, I think it would have two important characteristics. First, it would be a comprehensive spending cap. I do not think you should pick particular categories in the budget and single them out in advance. It should be applied equally. Second, it should be measured relative to the size of the economy or perhaps the economy per capita so that it adjusts to the capabilities to support the Government automatically. And I think those are the two key pieces.

Mr. GOHMERT. Like GDP?

Mr. HOLTZ-EAKIN. Yes.

Mr. GOHMERT. Sir?

Mr. AARON. I am not willing to play the game. I believe this——

Mr. GOHMERT. Sir, this is not a game to me. This is a matter of life, of freedom for my children. I do not consider it a game.

Mr. AARON. I apologize for using the wrong word. But I am not willing to——

Mr. GOHMERT. So I thank you.

Our last witness please.

Mr. AARON [continuing]. What I think would be——

Mr. GOHMERT. Sir, I had a specific question. I am looking for ideas for caps on spending.

Mr. PRIMO. I have some hesitation about putting a specific cap on spending——

Mr. GOHMERT. I understand that.

Mr. PRIMO [continuing]. Only for the reason that over time, you might want to deviate slightly from that, but there are ways to deal with that particular issue. But regardless of that point, in terms of how you design it, you need to be very specific about how you are defining terms within the context of the amendments. Let us say you want to use GDP as a metric. The amendment would need to be very clear about how we are going to define those numbers. Otherwise, I am willing to bet any amount of money, my retirement savings, that Congress will write implementing legislation that will define the cap in such a way that they can ignore the cap. And so I think the rule design there is essential.

Mr. GOHMERT. So no proposal. Just be careful. All right. Thank you.

I yield back.

Mr. BACHUS. Thank you.

Mr. Johnson from Georgia is now recognized.

Mr. JOHNSON. Thank you.

This balanced budget amendment has more to do with spending than it does with raising revenue. And so it is really an attempt to ensure that Government spending remains low. Therefore, taxes can remain low. Now, who pays taxes? Not the wealthy because they are the ones with all of the lobbyists up here in Washington, D.C. to get their tax loopholes inserted in our tax code, and that is what makes our tax code so unfair is because the middle class and the working people are the ones that are paying the taxes and the wealthy, the vulture capitalists and the like, end up paying zero taxes. I know that General Electric Corporation got tax refund checks of billions of dollars.

So we are not collecting taxes from the wealthy, those who can most afford to pay. So, therefore, without the money from the wealthy paying their fair share and the middle class paying the tax bill for things like the war in Iraq and Social Security, Medicare, Medicaid, transportation, FDA, EPA, all of the workings of Government, the IRS, these things that America has been able to provide some degree of prosperity to Americans, all Americans—these institutions, these agencies are being dismantled because of costs. And a balanced budget amendment would just usher along this period where you had less Government, Government that would only be in place—Federal Government be in place to deal with the wars that we decide we want to create and handle off the books.

Under a balanced budget amendment, we would not have been able to fund the cost of the Iraq War on these contingency operations budgets that we arrive at and they are not paid for. Is that not correct, Mr. Holtz-Eakin?

Mr. HOLTZ-EAKIN. Most of the balanced budget amendments would have required some sort of vote to declare war and have a special ability to borrow to fund operations of that type.

Mr. JOHNSON. So when it comes to war, you would be able to somehow defeat the balanced budget amendment, but not in a situation where there was a catastrophe, let us say, a drought like the dust drought back in the 1920's and 1930's and there was a need for programs to help put people back to work, help people who could not find jobs. You could not do that under the balanced budget amendment. Correct?

Mr. HOLTZ-EAKIN. You would have to cut other spending or raise taxes to do it.

Mr. JOHNSON. Yes. So you can spend it for the military, but you cannot spend it on the people.

How would we actually implement a balanced budget amendment, should we be so unfortunate that it would pass, Mr. Eakin? You are the economist, and that is why I am kind of focused on you as opposed to you, respectfully, Mr. Primo.

Mr. HOLTZ-EAKIN. It would fall to the Congress and the Administration.

Mr. JOHNSON. Yes. Practically how could you implement a balanced budget amendment in this day and time?

Mr. HOLTZ-EAKIN. I am not sure I understand what the question is, sir.

Mr. JOHNSON. Well, I mean, you vote for it. You are advocating for it. We vote for it. We pass it. It gets sent to the States. They pass it. Boom. It is the law. Now, how do we implement it?

Mr. HOLTZ-EAKIN. As I said earlier, I think the key would be if it were to pass the House, the Senate, go to the States——

Mr. JOHNSON. How do we——

Mr. HOLTZ-EAKIN. I am trying to answer, sir.

You would begin to recognize, as States ratify it, that this was in fact going to be a binding constraint on future operations of the Federal Government.

Mr. JOHNSON. Okay. How do we implement it? Now, you are filibustering me, and we do not filibuster over here in the House. They filibuster over in the Senate. I am just trying to get a straight answer.

Mr. HOLTZ-EAKIN. I may be answering it poorly, but I am answering.

[Laughter.]

Mr. JOHNSON. How do we implement the balanced budget amendment? What are we going to do? Stop some expenditures. Are we going to get rid of Social Security, Medicare, Medicaid, just cut that out and start paying for the military only? How does it work?

Mr. HOLTZ-EAKIN. I could not possibly answer that.

Mr. JOHNSON. Well, do you have any idea, Mr. Primo, how it would work? Do you have any idea whatsoever?

Mr. PRIMO. So I do have a background in economics, by the way, and it is telling that you wanted to focus on the economics and not the political science of this because it is the political science of this that is equally important.

Mr. JOHNSON. But do you not think this balanced budget amendment is rooted more in politics as opposed to economic theory?

Mr. PRIMO. A balanced budget amendment is rooted in economic theory, but the implementation would be political. And that is the key.

Mr. JOHNSON. Well, tell me how it would be implemented since you have stepped up to the plate. How would you implement a balanced budget amendment?

Mr. BACHUS. The gentleman's time has expired, but I will let him respond.

Mr. PRIMO. This is an important debate to have because I think we have been seeing——

Mr. JOHNSON. Okay. You are filibustering me now.

Mr. PRIMO. I am trying to answer your question.

Mr. BACHUS. Let him answer the question.

Mr. PRIMO. I do not have to answer the question. That is your choice.

Mr. JOHNSON. Because you all do not let Mr. Aaron speak, I am just treating you like they have treated Mr. Aaron.

Mr. BACHUS. I was going to let Mr. Primo answer that last question of yours. We are over about 10 minutes.

Mr. JOHNSON. Please do, sir. Please do.

Mr. PRIMO. So a smart way to implement any sort of constitutional rule would be gradually over time, as Dr. Holtz-Eakin has mentioned also. It is not like you say tomorrow, okay, we are going to go from a deficit of 2 to 3 percent and then all of a sudden we are going to go to 0 overnight. You do it gradually. You do it smartly.

Mr. JOHNSON. How much time? 5 years, 10 years?

Mr. PRIMO. And so what I have noticed is that those who disagree with a constitutional budget rule have a tendency to focus on specific provisions that they do not like and then use those as a way to sort of decimate the entire idea of a rule. The key is that you design the rules carefully. I have argued—and I am a supporter of a constitutional budget rule—that design matters, and I would rather see no rule than a badly designed rule. So if you have quibbles with——

Mr. JOHNSON. You have not told me anything, sir.

I yield back the balance of my time.

Mr. BACHUS. There is no time.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. AARON. Mr. Bachus, would it be out of order for me to respond or do you want to move on to the next question?

Mr. BACHUS. Go ahead.

Mr. CONYERS. You are a generous Chairman.

Mr. AARON. I think one way of posing the question of the gentleman is to ask what specifically would have been done had H.J. Res. 1 or 2 been in effect during the most recent economic slowdown.

Mr. JOHNSON. Well, that is a great question, sir.

Mr. AARON. Let us talk some specific numbers. Revenues dropped to 14 percent of GDP. Spending was over 20 percent—23 or 24 percent of GDP. Under those circumstances, H.J. Res. 1 or 2 would have required a massive tax increase or massive spending cuts. It behooves those who support this amendment to give us an illustration of which programs they would have cut under those circumstances. And unless they are prepared to do that, it is hard to take this proposal very seriously.

Mr. BACHUS. Mr. Holtz-Eakin, you are the only one that has not been able to respond. But thank you.

Mr. HOLTZ-EAKIN. This is an important issue. It comes up a lot. So let me say a couple things about it.

Number one, a sensibly designed constitutional budget rule would have the provisions that in extreme economic distress, the Congress could run deficits. And so the worst case scenarios are not the right way to think about this.

Then there is just a tradeoff. It has been the case that proponents have argued for running deficits as a way of managing business cycles. I would argue the historic record of our success in doing so has been quite poor. And the cost of attempting to avoid this kind of discipline has been chronic high deficits, chronic debt accumulation, and an endangerment of both our financial and economic futures.

On balance, I think it merits going to the constitutional rule because it is better than what we have done, and that has been an excuse to run deficits in the name of doing better economic policy. But the policy has not been that good. It is a judgment call, and that is where I would come down.

Mr. BACHUS. Thank you.

Mr. Marino, you have been very indulgent. Mr. Johnson took 10 minutes. So we have some time.

Mr. MARINO. And you know, the thing of it is I sat here to listen to Mr. Johnson, and then it is my turn and he takes off. I am going to have a discussion with him in a moment.

[Laughter.]

Mr. BACHUS. I liked the debate.

Mr. MARINO. Gentlemen, I do recognize that you are all economists and experts and very well respected in your field.

Dr. Aaron, I am not quite sure where you are coming from on an issue. You say that let us talk about right now about what we would do. There is no way that one could sit down right now and say what we could do. I have put together an economic plan concerning the balanced budget. I do support it. And that is where we, both sides and the Administration, have to take—probably it would take months, even maybe years to sit down and go through each Department, each agency because we have to talk about cutting significantly, increasing revenues, but cutting significantly in Departments and agencies would increase revenues. We have to talk about what impact creating more jobs would have on revenues coming in. So there are so many variables to this.

But you know something? I am new to Congress. I am in my second term. And so I have not been privy to a time in Congress where we have had surpluses. Now, in my reading, since the Revolutionary War, we have always accumulated debt, and some people do not know the difference between debt and deficit. And we have had two Presidents at least in my lifetime that have had some surpluses, but when they left office, they still contributed to the debt, to the overall debt.

If we cannot agree on something as simple as legislation that we are trying to pass even to create jobs, do you not think we need something to force us, to make us sit down and discuss the issues? Because if we have a constitutional amendment and we do not fulfill that, you can bet we are not going to be around in the next election because we have just forfeited our responsibility.

There are 321 bills right now sitting in the Senate on Harry Reid's desk that he refuses to take to the floor for a vote. Can you imagine trying to sit down with that kind of mentality and reach an agreement? Do you agree with me, Dr. Aaron, that there are no indicators that the debt will not continue to rise in the future?

Mr. AARON. I do expect the debt to continue to rise in the future. And in fact, recently I took a look at what the course of debt was over U.S. history. To my surprise, I discovered that we started the Nation with a sizable debt because Alexander Hamilton said that we should not defray obligations incurred during the Revolutionary War.

Mr. MARINO. I understand that, but do not use up all my time now. Please get to the point.

Mr. AARON. There was a period when we paid off the debt completely.

Mr. MARINO. That was in 1833, 1834.

Mr. AARON. Absolutely.

Mr. MARINO. And then after that, boom, it skyrocketed again.

Mr. AARON. Well, it rose a little bit. The Civil War—it rose a lot.

Mr. MARINO. But let us talk about today, Doctor. Let us talk about the debt today. It is skyrocketing at an alarming rate. You did advise President Obama, and do you still advise the President on economic issues?

Mr. AARON. No. I have not been an advisor to President Obama——

Mr. MARINO. Okay. I thought you were.

Mr. AARON. I have been nominated for an advisory board, but that is all.

Mr. MARINO. You should have been on that.

You suggest that we do rationing. Why can we not do rationing, for example, in——

Mr. AARON. No, I do not suggest that we do rationing.

Mr. MARINO. Did you not write an article which suggested——

Mr. AARON. I wrote a book. I wrote two books in fact on health care rationing.

Mr. MARINO. Well, why can we not ration in conjunction with a balanced budget and preparing a framework? Like Dr. Primo says, we cannot jump into—today we do not have a balanced budget and tomorrow we do, and now it kicks into gear. There is so much that has to be done to prepare for that.

The Constitution, Article I, Section 8, paragraph 1 says we are supposed to pay debts. And we are getting to the point where we cannot pay debts because we are approaching $18 trillion of debt. Now, every Administration and every Congress over my lifetime is responsible for this. So now I am a Congressman and I am responsible for it. But I do not see an alternative here other than something forcing us absolutely by a constitutional amendment to take this seriously. Whether that involves a combination of matters, which I think it will be, raising revenues and cutting spending, what is your alternative other than that?

Mr. AARON. My alternative is the sort of bipartisan collaboration that occurred during the 1990's.

Mr. MARINO. Have you not heard anything that I just said over the last 15 seconds about bipartisan?

Mr. AARON. May I respond to your question, sir?

Mr. MARINO. Yes, you may.

Mr. BACHUS. Yes, let him respond.

Mr. MARINO. No. I am asking questions. He will have an opportunity.

Did you not hear what I said a minute ago——

Mr. AARON. I heard you perfectly, sir. I am trying to answer.

Mr. MARINO [continuing]. About 321 pieces of legislation on the Senate's desk that they will not bring to the floor? Now, how? Tell me the secret. Tell me the secret to getting the Senate and the Democrats to agree to sit down and talk about this.

Mr. AARON. Talk about what, sir?

Mr. MARINO. Just what you said, just what you talked about. You wanted to make a response to—okay, this is the alternative to balancing the budget. We cannot even get them to sit down and talk about simple matters other than increasing the debt limit, which the President was opposed to when he was a Senator. So give me an example of how we are supposed to persuade someone like Harry Reid to sit down and talk.

Mr. AARON. I am not going to try to provide political advice.

Mr. MARINO. Well, then do not sit there and try to provide some——

Mr. AARON. I am trying to respond to you and——

Mr. MARINO. You are not responding. You are not responding to my question. You are not responding to my question.

Mr. BACHUS. Gentlemen, I am going to give you plenty of time.

Mr. MARINO. Mr. Chairman, I am aware of that, but I am not going to be two-stepped here. This gentleman sat and tried to ridicule the Chairman on a piece of legislation. He did not do his research and he was wrong on that.

Mr. BACHUS. I understand. And, Mr. Marino, you have got every right to ask questions.

Mr. MARINO. Just answer my question, sir. How do you propose the Democrats and the Republicans getting together and reaching agreement on legislation other than a constitutional amendment?

Mr. AARON. I do not see how a constitutional amendment does what you want.

Mr. MARINO. You did not answer my question. Answer my question of how we are supposed to do that.

Mr. AARON. Sir, if you wish to engage in the practices of a prosecuting attorney, I am not willing to respond——

Mr. MARINO. And if you wish to engage as a defendant to refuse to answer the questions, then I will.

I see my time is up. I yield back.

Mr. BACHUS. Thank you.

Now it is my turn I guess. I do not know where to start.

What Mr. Marino—maybe another way to say it—and I will maybe start with Mr. Aaron. What would be one of your suggestions as an action to take to reduce the deficit?

Mr. AARON. My response that I wanted to give before was that we have a case study of successfully dealing with the deficit. During the 1980's, we had a deficit problem that was quite serious. Two successive Presidents, one Republican and one Democrat, successive Congresses controlled alternatively by Republicans and Democrats passed three deficit reduction bills that actually produced 3 successive years of budget surpluses and spending levels that were actually below 18 percent of GDP at the end of the Clinton administration. Those surpluses occurred immediately after the failure of the balanced budget amendment to which reference has been made today. It was as if Congress was giving a real-life demonstration of the way in which responsible leaders of this Nation can and should behave and showing that it is not necessary to embed in the Constitution an amendment that is likely, in all forms that I have seen so far, to be subject to gaming or abuse and that would impose severe limits on congressional behavior during emergencies.

I want to say I disagree strongly with what Doug Holtz-Eakin said before. It is not what Congress can do gradually over time if it has time to respond to the ratification of an amendment. It is how the amendment is going to affect policy during those unanticipated events when emergencies do occur. That is the risk that I see in the current H.J. Res. 1 and 2.

Mr. BACHUS. All right. Let me ask all three of you this. You mentioned the actions that were taken actually under Carter and Reagan to try to stem expenditures and the Social Security disability fund. So I think all of you would agree that the projection is that it will bankrupt by 2016.

Mr. AARON. Disability insurance, yes. Old age and survivors, sometime after 2030. We are going to get a trustee's report I think early next week.

Mr. BACHUS. Yes. But the projection now I think is 2016. So we are talking 2 years. So we all agree on that?

Mr. AARON. For disability insurance.

Mr. BACHUS. Yes, the Social Security disability insurance fund, trust fund.

Now, that was really what Reagan and Carter addressed successfully. I mean, they did revise it. Now, there were some problems with it too.

I took Brookings Institute, which you are familiar with. You are with Brookings Institute. They did a study on Social Security disability, saying it had to be addressed. One of the things they said—and this is the Center for American Progress in the Brookings Institute. While traditional medical causes of disability, cancer, stroke, heart attacks, and the like, have stayed relatively constant—those claims—Social Security disability benefits have exploded for people with musculoskeletal or mental disorders. They talked about that an applicant can have a subjective claim that he is in pain or mentally incapacitated and that sometimes that is enough to have a claim paid. In other words, I got back pain. I am depressed.

NPR has said that—they have said that diagnoses that lend themselves to subjective manipulation—and this was in a study of disability—like back pain and mental illness have grown substantially.

So we have got a Democratic witness, two Republican witnesses. Can we all agree that Social Security disability is probably as urgent a matter that needs to be addressed by this Congress now?

Mr. HOLTZ-EAKIN. Agreed.

Mr. PRIMO. Agreed.

Mr. AARON. I think it is the central issue in Social Security that needs attention now.

Mr. BACHUS. And, you know, some people are saying, well, we might draw out of the retirement account. We might raise the Social Security tax. We have got to do something.

And what bothers me about this is people that have legitimate problems, cancer, stroke, heart attacks, Lou Gehrig's disease—if we just reduce everybody's, we are not taking care of these claims that even NPR—if you saw that on TV, it was just—and I think Mr. Marino—that is part of his frustration and mine, is that this is something that bipartisanally we seem to agree that this thing is out of control. And it is going to go bankrupt in 2 years, and we do not do anything about that.

Now, I think that is part of the reason why we are saying we cannot do the easy lifts.

And one other thing. There have been two different studies—well, three or four, National Bureau of Economic Research. But in the last 40 years, while the claims have been going up, medical advances have made people healthier. So we ought to be coming down.

Almost every study says now the aging population, but that only accounts for 13 percent of the claims due to that. The other are just an explosion, as NPR says, of disability claims on subjective evidence.

Does anybody want to comment on that?

Mr. PRIMO. I would just note that your concern about this particular aspect of Social Security—or the disability program is suggestive of why we need constitutional reform. We lurch in this country fiscally from crisis to crisis. Some of them are micro-crises, as the one you have just described. Others, as we saw a few years ago, were far more macro in nature. And in the absence of a constitutional rule, it is always easy to just do the small fixes or the temporary fixes or the fixes that might get you 10 or 15 years. But you do not fundamentally alter these programs.

And we have heard a lot today about the various times in history where—sort of like a rainbow in the sky—we reached agreement and we got a balanced budget in, say, the late 1990's. I mean, you had to hold onto that balanced budget tight because it disappeared awfully quickly. And in the absence of a constitutional rule, you can enact all the reforms you want legislatively. In the absence of constitutional reform, you might get a balanced budget for a year or 2. You might get a little bit of fiscal responsibility for a few years. And then you say, well, look, we are doing so well, we can afford to spend more. The phrase that would be used would be "invest more." We have "room to invest" was a phrase that was used last week by a Senator in response to the new budget outlook. And so in the absence of constitutional reform, fiscal responsibility becomes a justification for further spending, which leads ultimately to fiscal irresponsibility. That is why we need constitutional reform.

Mr. BACHUS. Dr. Aaron, you mentioned had we had a balanced budget amendment, we would not have been able to face the crisis we went through in 2008. And then you went on to say where we actually ramped up spending to $22 for every $14 would be a simple way. For every $14 coming in, we were spending $22. But, you know, that is pretty scary in and of itself.

Mr. AARON. It is very scary over the long run.

I would like to respond on your observations about disability insurance because I think I share with you real concern about the current structure of the program. Like you, I believe important structural reforms to the program are necessary. It is hard to find a social insurance program more complicated and more fraught with real difficulties as to how it ought to be put together than disability insurance. That does not mean that there is any excuse for neglecting it. It is, rather, a reason why we should be turning to it now and addressing it in a serious way.

But my point here is that a balanced budget amendment does not promote that discussion any more than the fact that you pointed to, which is that the trust fund is going to be depleted in 2 years. The balanced budget amendment would have, in effect, a broad brush requirement of either cutting taxes or—pardon me—raising taxes or cutting spending. But when you are dealing with a program like disability insurance, you are dealing with something where you have to look at the administrative processes by which people are determined eligible or ineligible. You have to look at the facts that you just described of a change in the medical indications for why people get on the rolls. You need to look at the fact that people who are denied eligibility have earnings history that look pretty dismal. They do not go back to work. So these are really tough calls, and that is the reason why there is a real need for bipartisan collaboration to address this program. And I do not think that is advanced in a material way by the topic we are addressing today which——

Mr. BACHUS. You know, any Government program where you can qualify simply by saying I am eligible without any medical——

Mr. AARON. You cannot do that with disability insurance.

Mr. BACHUS. Well, you know, you cannot find a job within a certain area and you have subjective back pain. Now, this is according to Brookings Institute.

Mr. AARON. I am not suggesting that this is a program without instances of abuse. It is hard to find them. The tax system has lots of instances of abuse.

Mr. BACHUS. Well, I am glad that NPR—I am just saying that would be an easy one. And I think that is why there is a general frustration here.

Let me say this. Humphrey-Hawkins. I will close with this. Ben Bernanke, appointed by two Presidents. That is the Federal Reserve. And when he comes up here, he is hammered on keeping interest rates low and doing things like that and criticized. But he has come up here for 6 years, and I have asked him the same question. What do we do? And he said you have to have long-term structural changes in the entitlement programs, and if you do it, he says it will have immediate economic advantages. And he asked us to do that. It makes his job harder because of all this money we are borrowing from foreign countries. If he goes up on the interest rate, it is a problem.

Mr. Holtz-Eakin, or Doug, do you have any comment? Do you agree with him that we have to have—and he said it needs to start yesterday with long-term structural changes to our entitlement program?

Mr. HOLTZ-EAKIN. I do not think you would find any disagreement on this panel on that fundamental problem. Everyone I think has spoken pretty clearly with the importance of moving early and getting this under control.

The disability insurance thing I think is the test of Henry Aaron's preferred model, which is bipartisan structural reforms to these mandatory spending programs. And I would be thrilled, quite frankly, if that is the way that problem got solved and if that was a successful model for dealing with the budget outlook. I have come to the conclusion that in the brief instances when that has happened, we temporarily got some progress, but it slipped away quickly. And so you end up with a balanced budget not as a first choice but as an acknowledgement of reality.

Mr. BACHUS. Almost every—American Cancer Society, all these liberal groups, conservative groups, Fox TV, CNN, MSNBC—they have all highlighted abuses in this program. And what happens, sooner or later, we are going to have to raise everybody's taxes. We are going to have to reduce people that have terminal cancer, strokes, they are disabled, to pay for it. And with unanimous—almost—you know, not on just some of the minor things, but we cannot even do that.

Mr. Schweikert said mathematical bubble of delusion. You know, Mr. Coffman was talking about entitlement spending at 59 percent of the budget.

Mr. AARON. Mr. Bachus, this Nation is 230 or 240 years old. It has gone through some rough patches in which there was pretty intense partisanship and it was difficult to get legislation enacted. I urge you to take a longer perspective. We have gotten through this period with relative fiscal responsibility averaged over that period without a balanced budget amendment, and I might add the Constitution of the United States was enacted to succeed the Articles of Confederation which failed because it required three-fifths majorities.

Mr. BACHUS. Well, let me say this. Dr. Primo said this and I agree with him, and Mr. Scott said this. The wrong kind of balanced budget amendment where it starts requiring three-fifths and two-thirds could actually work against us. So we have to consider——

Mr. PRIMO. And there are ways to protect against that sort of concern that was raised earlier. For instance, if you want to allow for waivers of the constitutional rule, you could require that that excess money—you amortize the payments over 10 or 15 years. So it is not that that just goes into the debt and then we do not worry about it again. We say we are going to commit to paying that back within 10 to 15 years. So you are hamstringing future Congresses right there by building that in as part of the waiver. And so that is going to make legislators more hesitant to engage in that waiver because it is going to force cuts very close in the future because you are going to have to start paying that debt off essentially right away.

Mr. BACHUS. Well, one of the so-called "successes"—I am using that word sarcastically—of Congress is to get around PAYGO or caps. We have been very successful in that. you know, everything can be an emergency.

I am going to recognize Mr. Marino.

Mr. MARINO. Yes. I think the Ranking Member has a comment.

Mr. CONYERS. I just have a unanimous consent request to enter into the record a letter to all the members from the Constitutional Accountability Center.

Mr. BACHUS. And without objection, all Members' extraneous material, including Mr. Conyer's offer, will be accepted into the evidence.

[The information referred to follows:]

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July 23, 2014

Hon. Bob Goodlatte
Chairman, House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte:

To assist the Committee in its consideration of the issues to be presented at its July 24, 2014 hearing on "Constitutional Solutions to Our Escalating National Debt: Examining Balanced Budget Amendments," we write to briefly chronicle why a Balanced Budget Amendment would be a stark departure from our Constitution's scheme of government created more than two centuries ago. The proposals for a Balanced Budget Amendment pending before the 113th Congress vary greatly in their particulars, but share the same general defect: they are inconsistent with the founding generation's vision of an agile, responsive, and effective federal government with broad powers to protect national security and solve national problems. Out of sync with the fundamental principles underlying our constitutional order for the last 224 years, a Balanced Budget Amendment would tie Congress' hands and disable our national government from properly responding to serious national problems. We face a high duty when amending the Constitution: to match the Framers' maturity and foresight. A Balanced Budget Amendment flunks this test.

Congress's express powers to raise and spend money for the general welfare are at the heart of our Constitution. It is no accident that the first two enumerated powers that Article I, Section 8 of the Constitution vests in Congress – even before the commerce power – are "[t]o lay and collect Taxes . . . to pay the Debts and provide for the common Defense and general Welfare of the United States" and "[t]o borrow money on the credit of the United States."[1] The Constitution's broad textual grant of power was a direct response to the failed Articles of Confederation, which imposed crippling restrictions on Congress' power to borrow and tax. These restrictions had plagued the Revolutionary War effort and made a deep and lasting impression on George Washington and other war veterans. As General Washington wrote to Alexander Hamilton in 1783, if broad powers were not conferred on the federal government, "the blood we have spilt, in the course of an eight years' war, will avail us nothing."[2]

Although Congress under the Articles could nominally borrow money to serve the common good, it was entirely reliant on the states to finance these efforts. Congress could not borrow or appropriate funds without nine votes from the states – a two-thirds supermajority. Centralized revenue was necessary, but revenue-raising measures had to pass the even higher

[1] U.S. CONST., ART. I, § 8.
[2] *See* 1 WORKS OF ALEXANDER HAMILTON 342 (John Hamilton ed. 1850).

threshold of unanimity. Indeed, as Professor Akhil Amar writes, New York's veto of the revenue plan to pay the war debts in 1786 was "the last straw, confirming the imbecility of the Confederation and the practical impossibility of reforming the Articles from within." [3] In response to the failure of the Articles, our Constitution "form[s] a more perfect Union,"[4] predicated upon the promise of effective government, including the express powers to borrow and tax for the general welfare.

History vindicates the Founders' wisdom in giving Congress ample tools to respond to national crises and problems, including by borrowing money and contracting a debt. Debt helped fund the War for Independence, complete the Louisiana Purchase, and preserve the Union during the Civil War. Debt not only helped us weather the Great Depression, but it also gave us the tools we needed to emerge victorious from two world wars. In short, because of the Founders' wisdom in giving Congress broad, express constitutional powers to borrow and tax, our country has grown, prospered, and survived to become the great nation it is today. Proposals to amend the Constitution to require a balanced budget fly in the face of both the Framers' carefully crafted constitutional design and our experience of living under the Constitution for more than two centuries.

Moreover, in creating a supermajority requirement, existing Balanced Budget Amendment proposals do violence to another central tenet of the Framers' project: the need for majority rule. The Framers of the Constitution made majority rule the default rule for our democratic government. As Thomas Jefferson wrote, majority rule "is the natural law of every assembly of men, whose numbers are not fixed by another law."[5] The Constitution specifies a handful of departures from this default rule, but each exception warrants a particular justification that is consistent with the Constitution's democratic structure. Nowhere does our Constitution burden a substantive enumerated congressional power with the leaden weight of a supermajority.

Finally, in a Constitution filled with broad principles of governance, a Balanced Budget Amendment would be fundamentally out of place and could not be enforced without a massive transfer of budgetary authority from Congress to the courts. Lawsuits would abound, and courts would be forced into an activist, political role. As Robert Bork noted in opposing a Balanced Budget Amendment more than three decades ago, "[b]y the time the Supreme Court straightened the whole matter out, the budget in question would be at least four years out of date and lawsuits involving the next three fiscal years would be slowly climbing towards the Supreme Court."[6] The nation's budget would be in a perpetual state of doubt, and the courts would be thrust into the task of formulating budgetary policy in the process of devising a remedy for an unconstitutional budget, activity far outside the judicial ken. The result would be judicial activism run amok.

We thank the Committee for providing a forum to discuss these significant issues, which are of great consequence to every American and particularly to those of us who work to secure the Constitution's promise of effective government of, by, and for the people.

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[3] *See* AKHIL REED AMAR, AMERICA'S CONSTITUTION: A BIOGRAPHY 312 n.* (2005)

[4] U.S. CONST., preamble.

[5] *See* THE JEFFERSON CYCLOPEDIA: A COMPREHENSIVE COLLECTION OF THE VIEWS OF THOMAS JEFFERSON 525, 735 (John P. Foley ed. 1900).

[6] Robert Bork, *On Constitutional Economics*, AM. ENT. INST. J. ON GOV'T & SOC'Y 14, 18 (Sept-Oct 1983).

Sincerely,

David H. Gans
Director of the Human Rights, Civil Rights and Citizenship Program

Douglas Kendall
Founder and President
CONSTITUTIONAL ACCOUNTABILITY CENTER

cc: Members of the House Judiciary Committee

Mr. BACHUS. Did you have a final comment, Mr. Marino?
Mr. MARINO. Would you allow me a minute?

Mr. BACHUS. Yes.

Mr. MARINO. To just make a statement.

I had a telephone town hall last night and we took a little poll, certainly not scientific. But 80 percent of the people in my district, after I explained a little bit very briefly, support a constitutional amendment to balance the budget because they say we are not doing anything.

And I have done a lot of work with children over my lifetime. I still believe with all my heart—and that is why I am here—that this is the greatest country in the world. Great people on both sides of this Committee and both sides of the aisle. But it just breaks my heart to see my constituents and hear of others—people are sick, physically sick, mentally ill. They do not want to get out of bed in the morning because of the shape this country is in. We have kids killing kids in Chicago and in Los Angeles and other big cities. We have children that are hungry. We have a lack of education in this country. We better get our act together because we are better than that.

I am a member of the NATO Parliamentary Alliance, and I travel the world and talk to the other 27 NATO members. What they say to me constantly is what is happening in the United States. We look to the United States for leadership. There is a void. And when I say leadership, I mean all of us. I mean the White House. I mean the Senate. I mean the House. All of us.

So I apologize for my Sicilian temper getting the best of me, Dr. Aaron. There was no malice intent. You are a brilliant man. But it strikes a chord. I am frustrated and I get a bit passionate about where I want my children to be and my grandchildren to be and all other children in this country.

Thank you and I yield back.

Mr. BACHUS. And I think what we hear from our constituents—they are all scared. They are all frustrated, and they do not think this is going to end well. Like I think one of our congressional panelists pointed out, we did—you know, Mr. Aaron, you mentioned World War II. But we started paying that back as soon as the war——

Mr. AARON. Actually what happened was there was inflation and rapid economic growth. The debt did not go down. It shrank relative to GDP, but it continued to grow.

Mr. BACHUS. Well, we need rapid economic growth now.

Mr. HOLTZ-EAKIN. Yes, we do.

Mr. BACHUS. Thank you very much to all our panelists. We appreciate your testimony. We are frustrated and we need a few Sicilians when we get frustrated. We are going to have to have some Members of Congress that are very upset. So thank you for your testimony.

This concludes today's hearing. Thanks to all our witnesses for attending.

Without objection, all Members will have 5 days with which to submit additional written questions or additional materials for the record.

This hearing is adjourned.

[Whereupon, at 12:35 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

**Supplemental Material submitted by David Primo, Ph.D.,
Ani and Mark Gabrellian Professor, University of Rochester**

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APPENDIX I

TEN PRINCIPLES OF BUDGET RULE DESIGN

BY DAVID M. PRIMO

1. **Use budget rules to change the terms of the debate.** Budget battles will be fought differently if fiscal responsibility is a requirement, not an option.
2. **Apply rules permanently and to the entire federal budget.** Temporary rules or rules exempting certain programs won't help in the long run.
3. **Focus on spending.** Washington cannot address the looming budget crisis without gaining control of the unsustainable spending growth that drives it.
4. **Build flexibility into rules by "smoothing."** Tie budget rule targets or limits to a multiyear period or long-term economic performance to accommodate economic downturns or other transitory events.
5. **Build flexibility into rules by incorporating limited, carefully constructed emergency provisions.** Account for major disruptions like war.
6. **Be precise to prevent loopholes and gimmicks.** History proves that if there is a way around a rule, a legislator will find it.
7. **Pay careful attention to "starting points."** Consider cutting inflated spending levels (e.g., from stimulus) prior to pegging permissible increases to the current budget.
8. **Fight against faux fiscal discipline and resist the temptation to compromise on rule design.** You are better off with no rule than a badly designed one.
9. **Use a commission as a supplement to, not a replacement for, a budget rule.** Commissions are great for specifics, but they can't produce change without some other external pressure.
10. **Incorporate well-designed rules into the US Constitution.** While there are pros and cons to constitutional rules, without this external enforcement, budget rules will always be vulnerable to legislators' propensity to break them.

These principles are drawn from Primo, "Making Budget Rules Work," 2014.

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APPENDIX 2

MAKING BUDGET RULES WORK

BY DAVID M. PRIMO

MERCATUS
RESEARCH

MAKING BUDGET RULES WORK

David M. Primo

2014 Edition

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The original version of this paper was released as David M. Primo, "Making Budget Rules Work" (Working Paper No. 10-62, Mercatus Center at George Mason University, Arlington, VA, September 2010), http://mercatus.org/sites/default/files/publication/Making%20Budget%20Rules%20Work.Primo_.9.28.10.pdf. Portions of this revised paper draw from David M. Primo, "Pro: Resolved, the United States Should Adopt a Balanced Budget Amendment," in *Debating Reform: Conflicting Perspectives on How to Fix the American Political System*, ed. Richard J. Ellis and Michael Nelson, 2nd ed. (Washington, DC: CQ Press, 2013), 333–43.

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David M. Primo is the Ani and Mark Gabrellian Professor and an associate professor of political science and business administration at the University of Rochester, where he serves as the director of graduate studies in the political science department. He is an expert in American politics, campaign finance regulation, and fiscal policy, and his current research focuses on corporate strategy in political and other "nonmarket" environments. Primo is the author of three books, including the award-winning *Rules and Restraint: Government Spending and the Design of Institutions*, and numerous professional journal articles. His op-eds have been published in the *New York Times*, *Wall Street Journal*, and other national newspapers. Primo has testified before Congress on the subject of constitutional budget rules, and his campaign finance research was cited by the US Supreme Court in a 2011 case addressing the public funding of elections. Primo joined the Rochester faculty in 2002 after receiving his PhD from Stanford University.

ABSTRACT

THE UNITED STATES faces severe fiscal challenges that can no longer be ignored. Entitlement spending, especially Medicare, is a ticking time bomb that must be defused. A growing debt burden raises concerns about the government's ability to pay back debt without strangling economic growth. These threats reflect the inability of legislators and presidents to make the hard choices needed to restore fiscal responsibility to the US system. Legislators face two problems—commitment and enforcement. Legislators cannot make promises today that are credible tomorrow, in part because temptations to spend are always present and electoral considerations tend to favor spending over fiscal discipline. Even worse, attempts to enforce any promises they make are subject to the same credibility problems. In this paper, I argue that well-designed budget rules can help solve these commitment and enforcement problems to create credible and sustainable changes to the federal budget.

JEL codes: H1, H6

Keywords: balanced budgets, government spending, legislatures, budget rules, constitutional amendments, taxation, fiscal policy, debt, deficits

THE US CONGRESS has the constitutionally granted authority to determine its own rules. Members of Congress, even if they are inclined to be fiscally responsible, therefore are hamstrung by their inability to bind future legislators. This flexibility is a curse in fiscal policymaking, because it means promises made *today* to be fiscally responsible *tomorrow* are not credible, and that rules constructed to enforce those promises can easily be undone.

Meanwhile, the United States faces severe fiscal challenges that can no longer be ignored. Entitlement spending, especially Medicare, is a ticking time bomb that policymakers must defuse. A growing debt burden raises concerns about the government's ability to pay back debt without strangling economic growth. These threats reflect the inability of legislators and presidents to make the hard choices needed to restore fiscal responsibility to the US system.

Standard & Poor's, an agency that rates the likelihood that governments will be able to pay back their debt, downgraded US debt in 2011 in part because Congress and the president lacked a "credible solution to the rising US government debt burden and are not likely to achieve one in the foreseeable future." The key word here is *credible*, which, as S&P notes, requires an agreement that is *sustainable* over the long run.[1]

Legislators on both sides of the aisle have acknowledged the problem. House Minority Whip Steny Hoyer (D-MD) has written, "The course we're on will lead to public debt that will exceed the size of our entire economy, and a government that will eventually exist to do only two things: fund entitlement programs and make interest payments."[2] House Budget Committee Chairman Paul Ryan, who since 2008 has authored long-term budget-reform plans with the titles "Roadmap for America's Future" and "The Path to Prosperity," has noted, "By refusing to tackle the drivers of the nation's debt. . . . Washington lurches from crisis to crisis."[3] Many

1. 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.
2. Steny Hoyer, "Shared Sacrifices Will Solve the Debt Crisis," *Wall Street Journal*, April 28, 2010.
3. Paul Ryan, "The GOP Plan to Balance the Budget by 2023," *Wall Street Journal*, March 12, 2013.

others, including Rep. Justin Amash (R-MI), have proposed constitutional limits on government outlays.[4]

Meanwhile, President Barack Obama has pledged to put the country "on a fiscally sustainable path."[5] In 2010, he created a National Commission on Fiscal Responsibility and Reform to develop a plan "to improve the fiscal situation in the medium term and to achieve fiscal sustainability over the long run."[6] The commission's recommendations, which included significant spending and tax reforms, have languished.

Making matters worse, many prominent voices argue that now is not the time to get the United States' fiscal house in order, and some academics, such as Nobel Prize–winning economists Robert Solow and Paul Krugman, incorrectly deny that the national debt imposes a serious burden on future generations.[7] Others, like former Federal Reserve vice chairman Alan Blinder, advocate that lawmakers match long-term budget reforms with short-term *increases* in spending.[8] Declining deficits are also lessening any pressure to act, even though the long-term budget picture is still bleak.[9]

It is not surprising, then, that no major reforms to address long-term problems are on the immediate horizon. It seems that there is never a good time to be fiscally responsible. During the recent recession, many politicians and economists told Americans that stimulus spending was necessary to keep the economy afloat, and that this justified large deficits. Now that the economy is improving, many of them say that the deficit is not a problem. Both of these claims, however, reflect *short-term* thinking that ignores the need for *long-term* solutions. This short-term thinking, as I show in this paper, is a function of the incentives facing elected officials.

In this paper, I explain that Congress faces two problems—commitment and enforcement—which prevent well-meaning legislators from effecting change. I then argue that budget rules are one mechanism for addressing both of these problems, but not all rules are created equal. Some, like giving the president a line-item veto, will do little and may even be counterproductive. Others, like a rule limiting increases in spending, are excellent starting points for reform.

This paper proceeds as follows. First I describe the nature of the looming fiscal crisis facing the country. Then I discuss why Congress is having such difficulty

4. H.J.Res. 73, 112th Cong. (2011).

5. Office of Management and Budget (OMB), *Budget of the US Government, Fiscal Year 2014* (Washington, DC: Government Printing Office, 2013), 34.

6. Exec. Order 13531, 3 C.F.R. 192 (2011).

7. Robert M. Solow, "Our Debt, Ourselves," *New York Times*, February 28, 2013; Paul Krugman, "Debt Is (Mostly) Money We Owe to Ourselves," *Conscience of a Liberal, New York Times*, December 28, 2011, http://krugman.blogs.nytimes.com/2011/12/28/debt-is-mostly-money-we-owe-to-ourselves.

8. Alan S. Blinder, "The Economic Silly Season Is upon Us," *Wall Street Journal*, February 25, 2011; Blinder, "The Economy Needs More Spending Now," *Wall Street Journal*, July 8, 2013.

9. Mike Dorning, "Deficit Shrinks to 5.7% of GDP as Debt Ceiling No Vote Risks All," *Bloomberg.com*, August 6, 2013, http://www.bloomberg.com/news/2013-08-06/deficit-shrinks-to-5-7-of-gdp-as-debt-ceiling-no-vote-risks-all.html.

implementing meaningful budget reform. Next I show why budget rules offer the best prospect for credible, sustainable budget reform. I also propose a set of principles that should guide rule designers at the federal level. I conclude by discussing the potential risks of implementing rules that satisfy these principles.

THE COUNTRY'S LOOMING FISCAL CRISIS

A MEANINGFUL DISCUSSION about rules cannot occur unless rule designers—typically legislators—acknowledge that current policies are unsustainable. If too few legislators share this perspective, there can be no progress made on rule design. It is useful, therefore, to begin by specifying the nature of the problem that should concern all legislators.

The United States is on a fiscal course toward economic crisis. In all US history up until 2012, the gross federal debt, which includes debt held by the public as well as debt owed internally within the government through accounts like the Social Security Trust Fund, exceeded the nation's economic output in only three fiscal years—1945 through 1947. In 2012, the gross federal debt hit 103.2 percent of that year's Gross Domestic Product (GDP) of about \$15 trillion.[10] President Obama's Fiscal Year 2014 budget estimates that the gross federal debt will exceed GDP through 2020.[11] The budget also predicts that the nation's debt will increase by nearly 60 percent in nominal dollars between FY 2012 and FY 2023, reaching an astonishing \$25 trillion.[12] To further place these numbers into context, consider that US federal debt and deficit levels today exceed the targets required by the European Union's Maastricht Treaty before an EU member can adopt the euro. (Those targets are a gross debt of no more than 60 percent of GDP and a deficit of no more than 3 percent of GDP.)

These high levels of debt carry with them serious consequences. Although there is disagreement about the precise point at which debt begins to stifle growth, the recent European experience demonstrates what happens when creditors lose faith in a country's ability to make good on its obligations. As the Congressional Budget Office notes, an interest-rate hike would place severe strain on the US government due to increases in interest payments.[13] As the debt outstanding grows, it will of course magnify this effect. Moreover, these figures do not reflect the unfunded

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10. Data from 1940 on come from OMB, table 7.1, "Federal Debt at the End of the Year: 1940–2018," and table 10.1, "Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2018," in *Historical Tables, Budget of the US Government, Fiscal Year 2014*. Data before 1940 come from Christopher Chantrill, "Federal Debt," accessed August 7, 2013, http://www.usgovernmentspending.com/federal_debt_chart.html.
11. OMB, "Summary Tables," in *Budget of the US Government, Fiscal Year 2014*, 183, 227.
12. Ibid., 227.
13. Congressional Budget Office (CBO), "Federal Debt and the Risk of a Fiscal Crisis," *Economic and Budget Issue Brief*, July 27, 2010, http://www.cbo.gov/publication/21625.

liabilities from Social Security and Medicare commitments to current and future participants in these programs.[14] According to the trustees charged with overseeing these programs, these liabilities exceed $50 trillion in today's dollars and represent about 4 percent of future GDP.[15] (By way of comparison, *total* federal spending today is approximately 23 percent of GDP.)[16] In other words, it would take $50 trillion right now, given assumptions about the future, to fund these programs into perpetuity (after accounting for the dedicated taxes that would be collected for them under current law).

The situation is even worse if we consider the government's *total* liabilities. Economist Laurence J. Kotlikoff and investment strategist Scott Burns estimate that the total unfunded liabilities facing the country are $211 trillion in today's dollars, or about 14 times the size of GDP. This figure does not include state and local unfunded obligations, such as pensions, which Kotlikoff and Burns estimate to be $38 trillion.[17]

Kotlikoff and Burns's estimate is based on the Congressional Budget Office's alternative fiscal scenario (which accounts for political and other factors in forecasting the likely trajectory of government policy).[18] The CBO at one time projected that by 2085, federal spending would consume 75 percent of the entire US economy.[19] In one sense, both the CBO and the Kotlikoff and Burns figures are fantasies, as the United States will never reach this level of debt—the economy would implode long before that happened. Perhaps realizing this, the CBO no longer estimates net debt and associated interest payments once expected net debt exceeds 250 percent of

14. Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, *Annual Report* (Washington, DC: Government Printing Office, 2013); Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, *Annual Report* (Washington, DC: Government Printing Office, 2013). There are several parts to the Medicare program, including hospital insurance (Part A), medical insurance (Part B), and prescription drug coverage (Part D). The Medicare Trustees set unfunded obligations for Parts B and D at 0 because they are guaranteed funding from general revenues. However, the portion of Parts B and D that comes out of general revenues can reasonably be construed as an unfunded liability, since payroll taxes are not allocated for this spending (as opposed to Social Security and Medicare's hospital insurance component, which are funded through dedicated payroll taxes). The data in the current paper treat anticipated funding from general revenues as an unfunded liability.

15. These numbers reflect the net present value of unfunded obligations through the infinite horizon, and therefore include current as well as future participants in Medicare and Social Security. Social Security obligations represent 1.4 percent of GDP, and Medicare obligations (treating anticipated funding from general revenues as unfunded liabilities) are 2.7 percent of GDP. For details on Social Security, see p. 17 of the first report referenced in footnote 14, and for details on Medicare, see tables V.G1, V.G3, and V.G5 of the second report referenced in footnote 14.

16. OMB, "Summary Tables," 183.

17. Laurence J. Kotlikoff and Scott Burns, *The Clash of Generations: Saving Ourselves, Our Kids, and Our Economy* (Cambridge, MA: MIT Press, 2012), 30, 33.

18. Ibid., 238.

19. CBO, *CBO's 2011 Long-Term Budget Outlook*, pub. no. 4277 (Congressional Budget Office, June 2011), http://www.cbo.gov/publication/41486.

GDP; the CBO expects the debt to reach this "milestone" by 2050.[20] It is the fantastical aspects of these figures that prove their value, however, as a wake-up call that "politics as usual" is no longer viable.

Moreover, the longer we wait, the harder the choices will be. The CBO estimates a figure called the "fiscal gap," which reflects how much in spending cuts or tax hikes are needed today to maintain current debt-to-GDP ratios. In 2012, the CBO estimated that if action began immediately, the government would have to close a fiscal gap of about 4 percent of GDP under the alternative fiscal scenario. If the country waits until 2025, that gap grows to 10 percent.[21] Kotlikoff and Burns paint an even starker picture by taking into account total federal liabilities. They estimate that taxes would need to increase by 64 percent or spending would need to decrease by 40 percent today to fully incorporate these liabilities into the budget. Waiting 20 years drives these figures up to 77 percent and 46 percent, respectively.[22]

To close this fiscal gap, reforms to entitlement programs are a must, and adjustments to tax policy and discretionary-spending programs are also necessary. Otherwise, the federal government will face the grim choice of drowning in interest payments, defaulting on the debt, or "monetizing the debt" (i.e., printing money to pay off a portion of the debt, which would create significant inflation).[23] It will be difficult to implement the necessary changes to avoid these outcomes—and it will also be difficult to make any substantive reforms stick.

As the next section will show, budget rules can help members of Congress create durable changes to the federal budget.

CONGRESS'S COMMITMENT PROBLEM

TO UNDERSTAND HOW rules can help Congress fix the nation's fiscal problems, we must first identify why Congress struggles with spending, even as many members understand the nature of the problems facing the federal government: Congress's commitments to responsible budgeting lack credibility. Even legislators who want to reduce the size of the government's budget, the debt, or the deficit will find it difficult to take actions toward those ends. There is often talk—especially from CEOs—about how politicians just need to get in the same room and work out budget reforms. This

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20. See supplementary data (table 6) for CBO, *CBO's 2013 Long-Term Budget Outlook*, pub. no. 4713 (Congressional Budget Office, September 2013), http://www.cbo.gov/publication/44521.
21. CBO, *CBO's 2012 Long-Term Budget Outlook*, pub. no. 4507 (Congressional Budget Office, June 2012), figure 1-3, http://www.cbo.gov/publication/43288. The CBO does not estimate a fiscal gap using the alternative fiscal scenario in its *2013 Long-Term Budget Outlook*.
22. Kotlikoff and Burns, *Clash of Generations*, 31.
23. However, inflating away the debt by printing money may not be a viable solution for many reasons, including the short-term maturities of current government debt. For a very clear explanation of why bond maturities are important, see John P. Hussman, "Simple Arithmetic," *Weekly Market Comment*, July 25, 2011, http://www.hussmanfunds.com/wmc/wmc110725.htm.

reflects a fundamental misunderstanding about government. Government is not like a business in which a CEO can unilaterally make decisions in the best interests of the shareholders after receiving input from senior management. Instead, the authorization for any government reform depends on collective decision-making, which typically involves veto players who can stifle reform to protect their own interests. To put this in perspective, imagine a firm that has 535 CEOs who each get a vote on the company's strategy. That is reality for the US government as it attempts to implement a major reform.

The nature of American democracy intersects with the nature of the nation's fiscal problems to stack the deck against reform in three ways:

- The growing federal budget and associated increases in deficit and debt levels are "creeping risks."
- Reelection-motivated politicians are concerned with the short run, not the long run.
- Congress and the president cannot control the actions of future legislators and presidents (including themselves).

Creeping risks, also referred to as slow failures, develop gradually over time, with any single event having a small but real effect on risk severity.[24] As enough events occur, the risk ultimately manifests itself in catastrophic ways. For example, one day of unhealthy eating will have a minimal long-term effect on an individual's health, but years of unhealthy eating may lead to a serious health problem. A broken leg presents an immediate risk; unhealthy eating habits represent a creeping risk. Because of the incentives they face, legislators are much more likely to respond, effectively or not, to the fiscal equivalent of a broken leg than to less immediate concerns.

The World Economic Forum in 2010 identified fiscal crises as one of the major creeping risks facing the world, and the recent debt crisis in Europe is an excellent example of a creeping risk manifesting itself suddenly.[25] The US fiscal situation, though perhaps not as dire as Europe's recent experience, is headed in the same direction. Because the risks associated with US government debt and spending are developing gradually over time, the short-term costs of ignoring those risks at any given point are minimal—the United States is unlikely to default on its debt by the end of 2014—while the short-term costs, both fiscal and political, of addressing the risks are large.

Factoring in the long run changes the calculus. Unless a sudden debt crisis emerges, the United States may be able to wait a decade to reform entitlement pro-

24. Global Risk Network of the World Economic Forum, *Global Risks 2010: A Global Risk Network Report* (Geneva, Switzerland: World Economic Forum, 2010).
25. Ibid.

grams, eliminate deficits, and bring down the nation's debt, but it will be far cheaper and more effective to start now. Moreover, each year of increased spending creates a new baseline for the size of government, increasing expectations about the services the federal government will provide and making reform that much harder to achieve. If one adopts a short-run perspective, then doing nothing may be the most beneficial course of action. But if one considers a long-run perspective, immediate action is necessary.

Unfortunately, short-run considerations tend to dominate in Washington due to the realities of electoral politics. Legislators are ill-equipped to handle creeping risks because the fixes require short-term pain for long-term gain. This trade-off is a difficult sell politically, especially when some politicians and pundits refuse to acknowledge the severity of the risk.[26] If the choice is between a big deficit and lots of perks for their districts or a small deficit and sizeable cuts to popular programs, legislators will be hard-pressed to choose the latter. Tough budget votes are difficult to explain to constituents, especially for amorphous goals like reduced government debt.

A 2010 Bloomberg News poll illustrates the nature of the problem. Nearly half the respondents believed that the budget deficit is "dangerously out of control and threatens our economic future," yet 82 percent were opposed to reductions in Medicare to deal with the problem.[27] For politicians who are "single-minded seekers of reelection," to use political scientist David Mayhew's famous phrase, numbers like this send a clear message about the rational course of action.[28]

The politics of deficit reduction and spending cuts, then, are stacked in favor of beneficiaries over taxpayers. Typically, beneficiaries will be the winners, and taxpayers the losers. Curiously, though, economists have found that at the ballot box, voters do not normally punish elected officials who spearhead fiscal adjustments (sustained decreases in deficit-to-GDP or debt-to-GDP ratios).[29] This is a puzzle until one realizes that fiscal adjustments are "endogenous"—that is, politicians strategically choose if and when to pursue them. Researchers have also shown that economic crises, in which the public may be willing to accept tough medicine, spur fiscal adjustments.[30] So, in the face of an active crisis (or the perception that a crisis is imminent), the political calculus preventing reform may change in favor of taxpayers.

Even if the opportunity for fiscal belt-tightening presents itself, the reforms needed to bring spending and debt in line will require years of sustained changes to

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26. See, for example, Paul Krugman, "Fiscal Scare Tactics," *New York Times*, February 5, 2010.
27. "Bloomberg News National Poll," December 4–7, 2010, *Bloomberg.com*, http://media.bloomberg.com/bb/avfile/rkmindQ1MWFk.
28. David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).
29. Alberto Alesina, Roberto Perotti, and Jose Tavares, "The Political Economy of Fiscal Adjustments," *Brookings Papers on Economic Activity* 29, no. 1 (1998).
30. Alberto Alesina, Silvia Ardagna, and Francesco Trebbi, "Who Adjusts and When? The Political Economy of Reforms," *IMF Staff Papers* 53, special issue (2006).

government programs, necessitating long-term commitments to fiscal responsibility. Suppose, though, that enough legislators join forces to create a long-term solution to the country's fiscal problems. While a representative may want to commit today to limiting spending next year (and the following year, and so on), when next year comes, the representative (and his or her constituents) may hesitate to act. In other words, the same pain the legislator is trying to avoid today will manifest itself next year, forcing the same difficult choice.[31] It is possible that the agreement could be made self-enforcing by putting the reforms on "autopilot"—making cuts or tax increases the default option—or by structuring a reform so that future change is difficult. Neither of these approaches, however, would prevent legislators from undoing major reforms piecemeal or turning off the autopilot, as they have done with the "doc fix" that was supposed to limit (or even cut) government payments to physicians to stem the growth of Medicare spending.[32] Meanwhile, some commentators portray the 2013 sequester as evidence that automatic cuts can be effective at cutting spending.[33] While this may be true in the near term, it strains credulity to believe that long-term fiscal reform can occur through automatic budgeting.

CONGRESS'S ENFORCEMENT PROBLEM

Congress finds it difficult to commit to fiscal responsibility, then, because the risks of inaction are creeping, tough budget votes are hard to explain to constituents, and a pledge made today will be hard to keep tomorrow. One way to manage Congress's commitment problem is to specify a rule requiring or prohibiting particular actions. Congress could, for instance, enact a spending cap requiring that spending increase at a rate no greater than inflation or that budgets be balanced each year (or both). In Congress's case, however, this solution introduces a new problem, constitutional in nature. Article I, section 5 of the US Constitution reads in part, "Each House may determine the rules of its proceedings." This single line poses a major obstacle for a legislator attempting to manage the commitment problem outlined earlier. It means, in essence, that Congress has extraordinary leeway to write budget rules, even statutory ones, and then choose to change or ignore them. It is the proverbial judge, jury, and executioner.

31. The inability of members of Congress to bind future members in the absence of a constitutional rule magnifies this time-consistency problem. The legislators making decisions five years from now may have very different preferences than the members making decisions today. Nobel Prize–winners Finn Kydland and Edward Prescott describe this concern in the context of monetary policy. See Kydland and Prescott, "Rules Rather Than Discretion: The Inconsistency of Optimal Plans," *Journal of Political Economy* 85 (1977).

32. For a very clear explanation of the doc fix, see "FAQ on Medicare Doctor Pay: Why Is It So Hard to Fix?," *Kaiser Health News*, February 27, 2013, http://www.kaiserhealthnews.org/Stories/2011/December/15/FAQ-Doc-Fix.aspx.

33. See, for example, Stephen Moore, "The Budget Sequester Is a Success," *Wall Street Journal*, August 12, 2013.

There are good reasons for granting the House and Senate so much leeway. One would not want judges or presidents intervening in every legislative dispute over parliamentary procedure, after all. But Article I, section 5 also makes it difficult to construct rules addressing commitment problems, because a determined majority can undo those rules. If the purpose of a rule is to help solve a commitment problem, members must not be able to change or ignore the rule very easily. As Rep. Alcee Hastings (D-FL) bluntly put it, "I wish that I had been there when Thomas Edison made the remark that I think applies here: 'There ain't no rules around here—we're trying to accomplish something.' And therefore, when the deal goes down, all of this talk about rules, we make 'em up as we go along."[34]

Due to this constitutionally granted freedom, Congress will typically need to rely on external rule enforcement. This might occur informally through public opinion and associated electoral threats. If legislators ignore a balanced budget requirement, for instance, public outrage could be so significant that electorally secure incumbents become vulnerable. It may also come from the markets, which could react by driving up interest rates on US debt.

This sort of enforcement is not always reliable, though. Recall the Bloomberg poll referenced earlier, demonstrating the disconnect between attitudes toward overall spending and those toward specific programs. Meanwhile, market punishments tend to be unpredictable and sudden.

A different approach is needed. Specifically, Congress has to relinquish some control over the enforcement of its rules to a third party that can restrain Congress when it refuses to engage in self-restraint. The problem is, just as Congress controls the rules of its proceedings, it controls the enforcement of its rules. So, even if Congress hired an external enforcer, it would have the ability to fire this enforcer. The legislature faces the same commitment problem with regard to rule enforcement as it does with regard to spending restraint. The best way to achieve some measure of external enforcement is via the Constitution. A constitutional rule would be difficult for later Congresses to change, and if the rule were designed properly, other branches of the government could intervene if Congress violated it. This solution is not without risks, though, and in the guidelines that follow, I address both the pros and cons of constitutional rules.

There is an additional advantage to external enforcement. Nobel Prize–winner Thomas Schelling, writing about bargaining power, advocates for binding rules that amount to external enforcement.[35] Schelling famously gives the example of an army burning bridges to signal to opponents that surrender is not an option. Externally enforced budget rules, following the same logic, can transmit information, acting

34. Alcee Hastings, statement made during US House Rules Committee Meeting, March 20, 2010, transcribed from http://www.c-spanvideo.org/event/182857, session 2 (the quoted comment begins approximately 12 minutes into the video).

35. Thomas C. Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1960).

as a signal to outsiders (such as financial markets) that the United States is serious about budget reform. To sum up, a carefully constructed budget rule can help solve Congress's commitment problem, and external oversight of that rule can help solve its enforcement problem.

PRINCIPLES FOR EFFECTIVE BUDGET-RULE DESIGN

THUS FAR, I have described two interrelated problems facing Congress: a commitment problem and an enforcement problem. Well-constructed rules that are enforced externally can help alleviate both of these problems. So, how should Congress create these rules? Following are 10 actionable principles, tailored to the current fiscal situation, to guide budget-rule design.[36]

1. Use Budget Rules to Change the Terms of the Debate

It has long been easy for Washington to defer—or simply to avoid—difficult budget decisions. For reasons already discussed, members of Congress have both the incentive and the power to avoid hard budget choices. A budget rule should alter the mindset in Congress away from *whether* to control the budget and toward *how* to control the budget. For instance, if a budget rule requires spending cuts for the next decade followed by spending increases at no greater than the rate of inflation, then waiting to act, or debating whether to act, will be off the table. Of course, many members who are unwilling to make hard budgetary decisions will also be unwilling to vote for rules forcing them to make these same hard decisions. However, once enacted, rules can be liberating. If enough electorally secure members had the will to enact a tough rule, that rule could then serve as political cover for other members.

A bargaining process that begins with both parties knowing that some change to government programs is necessary is very different than one in which keeping the status quo in place is an option. A budget rule like pay-as-you-go (PAYGO), which in theory limits new government programs by requiring them to be offset by equivalent cuts or tax increases, or the line-item veto, which allows the president to eliminate small items in the budget, are not useful for large-scale reform because they do not change the terms of the debate. A member wanting to add new spending to the budget can circumvent PAYGO by finding another budget line to cut or a

36. I have previously delineated three principles for rule design—broad scope, few and high-hurdle escape clauses, and limited accounting discretion—as well as three principles for rule enforcement—a credible enforcer, limited enforcement discretion, and embedding the rule in a Constitution. See David M. Primo, "Making Budget Rules Bite" (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, March 2010), http://mercatus.org/sites/default/files/publication/MOP72_Making%20Budget%20Rules%20Bite_web.pdf. While the current paper is organized differently, it reflects all six of these principles.

tax to increase (or simply declaring the spending an "emergency"). In this way, the federal budget can continue to increase dramatically under PAYGO.[37] Similarly, the line-item veto will not change the upward trajectory of Medicare or Social Security outlays, since the president can only use it on nonentitlement spending, and any cuts are subject to the approval of Congress. A budget rule that required certain deficit-reduction targets to be met by 2020, on the other hand, would alter how the legislators view the budget process. With such a rule, members would have no choice but to make changes to government programs.

2. Apply Rules Permanently and to the Entire Federal Budget

A temporary budget rule, or one that applies to small parts of the budget, is unlikely to address the nation's long-run fiscal problems. For decades, Congress has been doing a poor patching job with rules that tinker at the margins (e.g., PAYGO) or that it created to achieve a (relatively) short-term goal (e.g., the Gramm-Rudman-Hollings deficit-reduction legislation of the 1980s). Solutions that have proven effective in small domains for one-time decisions (e.g., the Defense Base Closure and Realignment Commission)[38] cannot fix the structural problems in the budget, because future politicians have to be committed to the same structural reforms. Even if Congress does make changes in the short run, the risk of limited reform is that a future Congress will simply revert back to old ways (creating new government programs and running large deficits) once the economy improves. If, instead, Congress creates permanent rules that focus on the entire budget, no spending categories will be off-limits, as they have been in the past.

3. Focus on Spending

One of the most popular budget reforms is a balanced budget rule. It is simple and has intuitive appeal: "My family has to live within its means; why shouldn't the government?" And it undoubtedly helps prevent massive deficits (though, as the states have learned, not all balanced budget rules are created equal). The problem is, a budget that comprises 40 percent of GDP can be as balanced as a budget that consumes 10 percent of GDP, so long as sufficient revenues are raised. In other words, if a legislator's goal is to bring spending levels down, a balanced budget rule

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37. For an introduction to the problems with PAYGO, see Veronique de Rugy and David Bieler, "Is PAYGO a No-Go?" (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, June 2010), http://mercatus.org/sites/default/files/publication/MOP73_PAYGO_web.pdf.
38. For a discussion of this reform, see Jerry Brito, "Running for Cover: The BRAC Commission as a Model for Federal Spending Reform" (Working Paper No. 10-23, Mercatus Center at George Mason University, Arlington, VA, May 2010), http://mercatus.org/sites/default/files/Brito-BRAC.pdf. Note, however, that in the case of base closings, Congress always had the option to reject the recommendations of the commission.

may not be enough. Budget balance (over a multiyear period, at least) is important, but a budget rule should specifically privilege spending restraint over tax increases.

To be sure, tax increases are politically unpopular, so balanced budget rules tend to have a downward effect on spending. My research on state governments has found that states with effectively enforced balanced budget rules spend about 4 percent less than states with balanced budget rules that are not as effectively enforced.[39]

A balanced budget rule would probably have a larger effect at the federal level, where no restrictions are currently in place regarding deficit spending. Still, given the size of deficits at the federal level, a balanced budget rule in isolation would probably lead to hefty tax increases alongside spending cuts, and in the long run, spending reductions are more beneficial than tax increases for two reasons.[40]

First, compared to a spending cut, a tax increase has a greater potential to produce permanent increases in government spending. To see why, suppose that a government closes its deficit by increasing taxes. Those taxes pay for government programs that typically have narrow constituencies willing to lobby for them. Any attempt to reduce the scope of government will have to overcome this lobbying. Moreover, legislators will be unable to use the budget rule to justify cuts, because the tax increases will already have balanced the budget.

Now suppose that a rule is structured to focus on spending. Surely, there will be a fierce lobbying battle over what gets cut, but *something* will have to be cut. The spending cut serves two purposes: it reduces both the scope of government and the deficit, assuming taxes are held constant. If the budget rule requires spending cuts that are deep enough, eventually the government will run surpluses, which will justify either tax cuts or a reduction of the national debt. In contrast, a focus on tax increases as an instrument for budgetary responsibility works only on the deficit side, not on the spending side.

The second reason for focusing on spending cuts over tax increases is that they are very likely better for the economy. Economists have shown that spending cuts are associated with higher levels of economic growth, while tax increases are associated with lower levels of economic growth.[41] Though the precise mechanism explaining this relationship is difficult to discern statistically, the following logic is compelling: governments that face the need for fiscal adjustment typically are spending and taxing at excessive levels. A reduction in spending helps bring outlays back to a level that

39. See David M. Primo, *Rules and Restraint: Government Spending and the Design of Institutions* (Chicago: University of Chicago Press, 2007). I equated a spending limit with a state-level balanced budget rule in *Rules and Restraint* because of empirical evidence showing that states handle budget shortfalls on the expenditure side rather than the revenue side. In the current paper, I use the term "spending limit" in the more traditional sense, and I treat balanced budget rules separately.

40. I use the term "cut" here following its (unfortunate) usage in budget debates to refer to both absolute reductions in government spending and reductions in government spending relative to expectations.

41. Alberto Alesina and Silvia Ardagna, "Large Changes in Fiscal Policy: Taxes versus Spending," in *Tax Policy and the Economy*, ed. Jeffrey R. Brown, volume 24 (Chicago: University of Chicago Press, 2010).

reduces the crowding out of private-sector activity without preventing a government from performing tasks that are beneficial for economic growth (e.g., providing for the rule of law, national defense, and basic infrastructure), while tax increases have just the opposite effect.

4. Build Flexibility into Rules by "Smoothing"

Rules that require that yearly targets be met—that a budget be balanced each year or that spending be equal to no more than some percentage of GDP—are inflexible and do not account for the reality that economic downturns or other transitory events may lead to reduced receipts and increased outlays, or that revenue or outlay estimates may be incorrect by small amounts. During a recession, tax receipts typically drop, but many economists would not support the significant tax increases or spending cuts during a recession that a balanced budget rule may require.

One way to deal with this problem (as noted in principle 5, below) is an emergency provision that permits Congress to waive the rule under certain circumstances. This may be necessary in the case of a significant recession or a major war, but for an emergency provision to be taken seriously, it should be used sparingly, not routinely.[42] In many cases, the size of a deficit or the excess spending that occurs in a given year will be small enough that legislators should avoid the use of an emergency provision.

A simple way to avoid overuse of emergency provisions is to tie budget balance or a spending limit to a multiyear period or to long-term economic performance. There are any number of ways to do this. The approach taken in the Amash proposal mentioned in the introduction is to tie spending today to average revenues over the past three years. Rep. Kevin Brady (R-TX) has introduced the Maximizing America's Prosperity Act, which ties spending caps to potential GDP (a figure that accounts for booms and recessions) as a way to smooth spending over time.[43]

Many European budget rules, including those in Switzerland and, more recently, Germany (which adopted changes to its Constitution that require near-balanced budgets by 2016), permit transitory deficits during recessions but place an upper bound on accumulated deficits.[44] These countries limit "structural" spending based

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42. For a discussion of how legislators use declarations of "emergency" spending to skirt existing budget rules, see Veronique de Rugy and Allison Kasic, "The Never-Ending Emergency: Trends in Supplemental Spending" (Policy Comment No. 18, Mercatus Center at George Mason University, Arlington, VA, April 2008), http://mercatus.org/sites/default/files/publication/The_Never-Ending_Emergency.pdf. In a particularly egregious abuse of the "emergency" designation, congressional appropriators have classified the US Census as "emergency" spending. See Eric Pianin and Juliet Eilperin, "'Emergency' Funds Bypass Budget Cap," *Washington Post*, July 27, 1999.
43. H.R. 2319, 112th Cong. (2011).
44. Frank Bodmer, "The Swiss Debt Brake: How It Works and What Can Go Wrong," *Schweizerische Zeitschrift für Volkswirtschaft und Statistik* 142 (2006); Axel Tschentscher, "The Basic Law (Grundgesetz) 2012: The Constitution of the Federal Republic of Germany (May 23rd, 1949)" (working paper, Social Science Research Network, 2013), 95, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1501131.

on estimates regarding the state of the economy, taking into account past economic conditions using complicated formulas.

A smoothing approach has many benefits, including flexibility and reduced uncertainty about government budgets. It also prevents sudden changes to government programs, which may produce political backlash. Finally, it increases the rule's credibility by creating fewer situations where calls for invocation of "emergency" provisions are possible.

5. Build Flexibility into Rules by Incorporating Limited, Carefully Constructed Emergency Provisions

Even as legislators create flexibility in rules by "smoothing," they must also build in some sort of emergency provisions. If the United States were to face a new war, for example, exceeding a spending cap might be justifiable; similarly, if a flu pandemic swept the nation, a widespread government response might be needed.

The risk inherent in this principle is that each year, legislators will come together and find spending they nearly all can agree on. For this reason, Congress should only be able to declare an emergency with a very large supermajority—say, 90 percent. The emergency designation would be good for only one fiscal year, and Congress would have to renew it each year.

To further dissuade overuse of this provision, the government could create a special "emergencies" account which would be the only "off-budget" account permitted under the budget rule. In addition, the funds spent out of that account would have to be paid back using funds taken from general revenues over a fixed time period—say, 10 to 15 years—with revenues necessary for paying down this debt not factoring into budget-rule calculations.[45] Having this distinct account would make the specific items legislators are calling emergencies transparent to the public.[46]

There are several advantages to this approach. First, it requires that emergency spending ultimately fall under the auspices of the budget rule, but at a gradual pace so as not to cause major disruptions. Second, it avoids this account becoming a piggy bank for legislators by setting an extraordinarily high bar for its use and requiring new authorizations each year. Third, it allows the government to pay for emergencies gradually, but forces it to do so in a reasonable amount of time. Fourth, it does not force legislators to mandate significant tax increases or draconian budget cuts when major recessions occur.

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45. This prevents the increased revenues needed to pay off the rule from resulting in a permanent rise in government spending.

46. Germany and Switzerland have similar amortization plans. See Alan Geier, "The Debt Brake—The Swiss Fiscal Rule at the Federal Level" (Working Paper of the FFA No 15, February 2011), 19, http://www.efv.admin.ch/e/downloads/publikationen/arbeiten_oekonomenteam/workingpapers/Working_Paper_15_e.pdf; Tschentscher, "Basic Law (Grundgesetz) 2012."

6. Be Precise to Prevent Loopholes and Gimmicks

Budget rules ostensibly designed to accomplish the same goal, perhaps even with the same name, can have very different effects depending on how they are implemented. Yet budget rules are often (intentionally) written in vague terms, with the details left to be worked out, thereby creating opportunities for subsequent evasion. The details can make or break a rule's effectiveness, because the entire purpose of rules is to encourage elected officials to take actions that they have incentives not to take. If a group of legislators can find ways to avoid a rule, they are likely to do so. Mercatus scholar Eileen Norcross places these sorts of behaviors into a larger class of activities she refers to as "fiscal evasion."[47]

Definitions are crucial in this regard, as some real-world and hypothetical examples will demonstrate. Let's first consider actual rules: Congress allowed a simple majority of legislators to determine on a case-by-case basis what constituted an "emergency" that permitted caps on spending or PAYGO laws to be waived.[48] This is but one of many loopholes and gimmicks in federal budgeting; others include the Social Security "trust fund," the timing of spending, and the strategic use of budget forecasts.[49]

States act in a similar fashion. For instance, California's 1979 Proposition 4 (known as the Gann limit) set a cap on expenditures of revenues from taxation. Unfortunately for supporters of the proposition, it defined taxation in such a way that legislators could implement user fees and other "nontax" taxes to skirt the rule.[50] Second, states that wish to get around limitations on "full faith and credit" debt have the option of issuing nonguaranteed debt. More generally, to get around a budget rule, governments can create "off-budget entities," which are usually not subject to the same debt

47. Eileen Norcross, "Fiscal Evasion in State Budgeting" (Working Paper No. 10-39, Mercatus Center at George Mason University, Arlington, VA, July 2010), http://mercatus.org/sites/default/files/publication/Norcross.Fiscall%20Evasion.%20State%20Budget%20Gimmicks.%20Updated%208.23.10.pdf.

48. James V. Saturno, *Emergency Spending: Statutory and Congressional Rules*, report RS21035 (Congressional Research Service, July 24, 2007).

49. Veronique de Rugy, "Budget Gimmicks or the Destructive Art of Creative Accounting" (Working Paper No. 10-30, Mercatus Center at George Mason University, Arlington, VA, June 2010), http://mercatus.org/publication/budget-gimmicks-or-destructive-art-creative-accounting.

50. Specifically, the limit defines "proceeds of taxes" as follows: "'Proceeds of taxes' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues." California Constitution, Article XIII(B), § 8(c). The upshot: governments can create user fees for distinct government services and not have them count as taxes, so long as they do not exceed the costs of providing the service. California did just that, and research by Thad Kousser and his colleagues finds that 15 of 23 states that enacted similar tax-and-expenditure limits also saw increases in charges and fees following their enactment. Thad Kousser, Mathew D. McCubbins, and Ellen Moule, "For Whom the TEL Tolls: Can State Tax and Expenditure Limits Effectively Reduce Spending?," *State Politics and Policy Quarterly* 8, no. 4 (2008).

and budgeting rules as the creating government.[51] In other words, to get around a limit on government spending, governments classify the spending as something else.

In light of the accounting creativity of elected officials, definitions matter. Yet current proposals suffer from the same problems as actual rules. The Amash proposal mentioned in the introduction defines "total outlays" as "all outlays of the United States except for those for payment of debt."[52] This definition begs the question, What is an "outlay" of the United States government? For this proposal to have any teeth, it has to define "outlay" very carefully. Yet it leaves the definition up to Congress, so there is nothing to stop legislators from either finding a way to define certain sorts of spending as belonging to a category other than "outlays" or attributing them to some other entity besides the United States government.[53] Such loose language in rules is a serious problem, because it creates opportunities to not only weaken the rules but render them virtually meaningless.

Another fear is that, in reforms that focus directly on limiting spending, legislators will use "tax expenditures" to skirt the caps. A tax expenditure is a deduction, credit, or other tax benefit that directs funds to particular groups. So, if Congress cuts a subsidy to group X from the budget in order to satisfy a spending cap, Congress can still create a tax deduction of an equivalent amount for members of group X. In this way, Congress can satisfy a spending cap while continuing to provide benefits to that group. Tax expenditures are very common already,[54] and their use would likely increase under a typically constructed spending limit. A spending cap tied to long-run budget balance would address this problem.

As these examples demonstrate, wording matters. Because legislators have strong incentives to circumvent the rules, it is important to work out the details at the time of enactment. Leaving these types of decisions for later creates an opportunity to weaken a rule. Important legislation often delegates definitional matters to regulatory agencies and, by extension, courts that rule on challenges to agency rulemaking. There are often legitimate justifications for delegation—expertise of agencies being

51. James T. Bennett and Thomas J. DiLorenzo called this "underground government." See Bennett and DiLorenzo, *Underground Government: The Off-Budget Public Sector* (Washington, DC: Cato Institute, 1983). As these authors note, off-budget entities are all around us; just witness the raft of commissions, boards, authorities, and other quasi-governmental groups in most any state.

52. H.J.Res. 73, 112th Cong. (2011).

53. Outlays are currently defined in the U.S. Code (2 U.S.C. § 622) as "expenditures and net lending of funds under budget authority during such year," with "budget authority" defined at length. New legislation could, of course, change these definitions.

54. For a critique of tax-expenditure practices in Congress from a budgeting perspective, see Edward Kleinbard, "The Congress within a Congress: How Tax Expenditures Distort Our Budget and Our Political Process," *Ohio Northern University Law Review* 36, no. 1 (2010). For a discussion of the consequences of tax expenditures more broadly, see Jeremy Horpedahl and Brandon M. Pizzola, "A Trillion Little Subsidies: The Economic Impact of Tax Expenditures in the Federal Income Tax Code" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, October 25, 2012), http://mercatus.org/sites/default/files/TaxExpenditures_Horpedahl_v1-0.pdf.

one reason—but in the case of budget rules, delegation to a future Congress is not justifiable.

7. Pay Careful Attention to "Starting Points"

Budget rules related to spending often peg permissible increases to values such as inflation, GDP growth, or population growth. This construction, however, is problematic if at the time of enactment budgets are already at unsustainable levels. For instance, a spending cap for the federal government that permits increases pegged to GDP growth but uses the 2014 budget as a starting point will not be very useful for bringing spending down to pre-stimulus-era levels (assuming this is the goal).

There are two drawbacks to pegging spending to GDP. First, economic growth may not justify an increase in the scope of government. If the economy grows by 10 percent, for instance, it is not clear that defense spending needs to grow by 10 percent. Second, GDP growth fluctuates, leading to problems if spending has to be cut considerably in a year (or multiple years) due to a drop in GDP, or providing opportunities for budget increases if the economy booms over multiple years. For these reasons, a spending cap that initially requires a reduction in spending levels to a prespecified target, and then pegs future increases to inflation with some allowance for population growth, may be more appealing. At a minimum, a cap tied to GDP should have a smoothing mechanism to allow for year-to-year fluctuations in the economy, following principle 4.

8. Fight against Faux Fiscal Discipline and Resist the Temptation to Compromise on Rule Design

Since he took office, President Obama has attempted to claim the mantle of fiscal responsibility in several ways, including by promising to freeze certain kinds of spending for a limited amount of time, imposing PAYGO rules to make it more difficult to create new spending programs, and proposing a line-item veto.[55] These are just three ideas, none of which is unique to this president, that represent faux fiscal discipline. Another stimulus-era proposal would have placed caps on discretionary spending for the next five years.[56] This bipartisan proposal, which did not make it through the legislative process, capped nondefense discretionary spending at over $500 billion for the fiscal years 2010 through 2014, reflecting the then-stimulus-laden budget as a baseline.

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55. OMB, "President's Budget Message," in *Budget of the U.S. Government, Fiscal Year 2011*, 4; Public Debt Limit Increase, Pub. L. No. 111-139, 124 Stat 8 (2010); Reduce Unnecessary Spending Act of 2010, H.R. 5454, 111th Cong. (2010).
56. Senate Amendment 3308 to H.J.Res. 45, 111th Cong. (2010).

Proposals like these may alleviate budgetary stress at the margin, but they fail to address the structural problems in the budget. By claiming that these proposals are steps in the direction of real reform, politicians contribute to the public's misunderstanding of budget issues. Legislators who are serious about dealing with the federal government's enormous fiscal problems, then, should make it clear that the United States needs stronger fiscal medicine.

More importantly, legislators should also resist the temptation to compromise on rule design. Many practitioners will question this prescription, noting that politics is about compromise and "the art of the possible." In some cases, this may be true. But in the area of budget rules, a compromise has dangerous consequences for several reasons. First, one reason a legislator requests a compromise on the design of a rule is to weaken the rule or create loopholes, and such a compromise can be enough to render a rule ineffective. A compromise of the form "let's cut spending by 20 percent instead of 25 percent" is one thing. But a compromise that exempts certain spending from a rule should be rejected, for the reason discussed earlier. Second, an ineffective budget rule may hamper the efforts of legislators who wish to enact tougher rules in the future, as opponents could point to the existing rule and argue that no further reform is needed. Third, if a budget rule that is ineffective due to political compromise enters into the Constitution, it will be difficult to change.

9. Use a Commission as a Supplement to, Not a Replacement for, a Budget Rule

The budget rules I have discussed do not help Congress decide where to cut the budget. This is where a commission may prove useful. A typical view of commissions is that they, along with committees, are where issues go to die. Bills languish in committee, and commission reports gather dust in an archive. Typically, though, commissions are not dealing with issues on which immediate action is required. So, when commissions come back to the president or Congress with politically unpopular proposals, they can safely be ignored. Suppose, however, that some action is required on an issue. In this case, the commission's proposals can serve as a starting point for negotiation. A budget rule can require action on spending or deficits, and in this way give a commission's proposals some heft.

Consider the recent, failed "Simpson-Bowles Commission" addressing the deficit. Erskine Bowles and Alan Simpson have attracted attention and been effective advocates for their approach, but while members of Congress have used their report as a template for proposals, not much has come of it.[57] Lawmakers might have viewed the commission's work very differently, however, if an existing budget rule

57. Jackie Calmes, "Now Touring, the Debt Duo, Simpson-Bowles," *New York Times*, November 28, 2012.

required some spending cuts or deficit reduction. If members of Congress must make cuts, a commission may provide them with the political cover to do so, and also may help them prioritize among government programs.[58]

10. Incorporate Well-Designed Budget Rules into the US Constitution

In this paper, the focus is on the US Constitution. Amending the US Constitution is a serious matter that should not be undertaken as a substitute for legislation. Because budget rules relate to a fundamental, constitutionally granted congressional prerogative—the power of the purse—and because self-enforcing rules face special challenges in Congress due to the constitutional leeway provided to legislators with regard to rules, constitutional budget rules deserve careful consideration.

If members are able to agree on a rule that requires them to take tough actions, they still need to give the rule bite. Unlike a statute, which a determined Congress can easily change, a constitutional budget rule would require years to change. Members who wished to evade a constitutional rule would not have the luxury of altering it on the fly.

This relative inflexibility is both a blessing and a curse. If well designed, the rule will have an important positive impact. If poorly designed, however, it may negatively influence the budget process for many years, as mentioned earlier. For this reason, it is better to have no constitutional amendment than an easily evaded or poorly constructed one.[59]

Suppose members can agree on a robust budget rule that helps solve Congress's commitment problem. Will the same rule help Congress solve its enforcement problem? A constitutional rule would raise the specter of Supreme Court (and even presidential) intervention in budgets unless those interventions are specifically prohibited in its text. One also has to wonder whether the enforcer can be trusted. Will the Supreme Court, for instance, overstep its bounds on budgetary matters? This is always a risk.

Robert Bork, in criticizing proposals to enshrine budget rules in the Constitution, writes,

> Since economists are in the forefront of those advocating constitutional economics, it may be thought ironic that so little attention has apparently been paid to the institutional problems involved, including the incentive structure that judges face and how that structure may influence their interpretations of law.

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58. See Brito, "Running for Cover."

59. Because past congressional attempts at constitutional budget rules were typically filled with loopholes, I propose in my book *Rules and Restraint* that the states call for a constitutional convention to create a constitutional budget rule. This approach would not be necessary, of course, if pressure on Congress led it to create a well-designed budget rule.

> Having identified the incentive structure confronting legislators as the source of the problem, it is odd that economists should advocate moving the policy into the courts without a similar inquiry. The defects of the legislative process do not of themselves render the judicial process perfect or even preferable.[60]

Another issue is more practical. Namely, will the budget process devolve into chaos, with lawsuit after lawsuit stymieing the legislative process?[61] On this issue, Bork writes,

> Also troubling is the problem of enforcing such a constitutional provision. In the early stages of discussion, a lot of people, including most economists, apparently thought this was no problem: if Congress exceeded the constitutional limits on spending, someone would sue. That much is true. The result, however, would likely be hundreds, if not thousands, of lawsuits around the country, many of them on inconsistent theories and providing inconsistent results. By the time the Supreme Court straightened the whole matter out, the budget in question would be at least four years out of date and lawsuits involving the next three fiscal years would be slowly climbing toward the Supreme Court. It is quite possible that it would be necessary to narrow the class of possible plaintiffs significantly and to create a special, and final, court to handle this litigation. Unless attention is paid to the institutional problems involved, a constitutional amendment would become in practice a nullity—either that, or the budgetary process would pass into the hands of the courts, an outcome desired by no one.[62]

While Bork is correct that one ought to treat judges as strategic actors and that court enforcement would not be perfect, the experience in the US states, nearly all of which have constitutional balanced budget rules, does not suggest gridlock each year due to a rash of lawsuits. Moreover, state constitutions are much more likely to read like statute books, with state constitutions averaging well over 100 amendments. The more detailed a constitution, the more likely its provisions are to conflict, and therefore to admit judicial interpretation. For instance, a Nevada court set aside a supermajority budget rule because it was delaying the passage of

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60. Robert H. Bork, "On Constitutional Economics," *Regulation* 7, no. 5 (1983): 18.
61. Others have raised the concern that *nobody* will, in fact, have standing to sue if the rule is violated. See, for example, *Hearing Before the Subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary*, 112th Cong. (2011) ("A Balanced Budget Amendment: The Perils of Constitutionalizing the Budget Debate," testimony of Alan B. Morrison).
62. Bork, "On Constitutional Economics," 18.

education funding, which the court ruled violated another provision in the constitution regarding a guaranteed education.[63]

Fortunately, rule designers can be proactive in limiting judicial overreach. The rule could authorize courts to require only certain sorts of remedies—for instance, a court could mandate only spending cuts, not tax increases, to satisfy a balanced budget rule. The rule could also limit standing, in order to avoid frivolous lawsuits. And the clearer a rule is, the less leeway the courts will have in interpreting it.

Constitutional scholar Kathleen Sullivan, a skeptic of amending the US Constitution, notes that the Constitution's strength lies in its generality. A rule that is too specific, Sullivan points out, is unlikely to capture all contingencies, and it is better to let judges and legislators address issues with an amendment as unanticipated events arise. On the other hand, Sullivan points out, a general budget rule may lead to constitutional conflicts, with the president or the courts arrogating authority over budgetary matters, using the amendment as justification.[64]

We should consider implementation issues in any constitutional budget rule, but we should also balance the hypothetical dangers that critics of constitutional reform outline against the very real danger that Congress will not be able to abide by the rules it sets out for itself, or will change them when the going gets tough.[65] There is ample evidence historically that Congress will do just that.[66] For instance, when it became clear that Congress would not be able to meet the deficit-reduction targets set out in the 1985 Gramm-Rudman-Hollings legislation, it scuttled the law rather than make the required spending cuts.

While constitutional rules are far from perfect, the alternative—self-enforcement—is a proven failure. Constitutional rules, on the other hand, can help Congress address both its commitment problem and its enforcement problem. The fears of overzealous courts or messy legal battles may in fact serve as a further incentive for adherence to budget rules.

Some scholars argue that such constitutional rules are destined to fail, because rules can really only enforce an existing consensus and cannot create one where it does not exist.[67] These scholars, of course, must give examples of nonconstitutional rules, because the federal government does not have constitutional budget rules.

It is the weakness of nonconstitutional process reform that makes constitutional rules all the more important. Alice Rivlin, a budget director for President

63. Guinn v. Legislature, 71 P.3d 1269 (Nev. 2003); and Guinn v. Legislature, 76 P.3d 22 (Nev. 2003).
64. Kathleen Sullivan, "Constitutional Amendmentitis," *American Prospect Magazine* 6, no. 23 (1995).
65. For recent, well-articulated critiques of constitutional budget rules, including concerns about enforcement, see Philip Wallach, "The Perils of Automatic Budgeting," *National Affairs* 15 (Spring 2013); John Gilmour, "Resolved, the United States Should Adopt a Balanced Budget Amendment (Con)," in *Debating Reform: Conflicting Perspectives on How to Fix the American Political System*, ed. Richard J. Ellis and Michael Nelson, 2nd ed. (Washington, DC: CQ Press, 2013); Morrison, "Testimony."
66. For further details about enforcement challenges, see Primo, *Rules and Restraint*.
67. See, for example, Wallach, "The Perils of Automatic Budgeting."

Bill Clinton, while not advocating constitutional reform, is skeptical that standard process reform can force agreement: "A better budget process will not make budget decisions easy or create the will to compromise and solve problems. . . . Process can either hamper decision-making or facilitate it, but only at the margins. . . . No process will work well unless the participants in the process want it to work."[68] And this is *precisely the point* of constitutional rules—to force change when politics makes change difficult. Just ask state and local governments, which ultimately come far closer to budget balance than the federal government.

PRINCIPLES SUMMARY

To summarize, then, budget-rule designers should adhere to the following principles:

1. Use budget rules to change the terms of the debate.
2. Apply rules permanently and to the entire federal budget.
3. Focus on spending.
4. Build flexibility into rules by "smoothing."
5. Build flexibility into rules by incorporating limited, carefully constructed emergency provisions.
6. Be precise to prevent loopholes and gimmicks.
7. Pay careful attention to "starting points."
8. Fight against faux fiscal discipline and resist the temptation to compromise on rule design.
9. Use a commission as a supplement to, not a replacement for, a budget rule.
10. Incorporate well-designed budget rules into the US Constitution.

Rule designers should use the guidelines provided in this paper to design and improve budget-rule proposals. To show how this might be done, the table on page 29 presents a constructive critique of a proposal by Rep. Justin Amash on the dimensions I laid out.[69] Rep. Amash's proposal has evolved over time, and I focus on his initial proposal (H.J.Res. 73, 112th Congress). Subsequent proposals have, among other changes, reduced the supermajority for rule waiver from three-fourths to two-thirds,

68. Alice Rivlin, "Rescuing the Budget Process," *Public Budgeting & Finance* 32, no. 3 (2012).
69. A version of this analysis originally appeared in David M. Primo, "Pro: Resolved, the United States Should Adopt a Balanced Budget Amendment," in *Debating Reform: Conflicting Perspectives on How to Fix the American Political System*, ed. Richard J. Ellis and Michael Nelson, 2nd ed. (Washington, DC: CQ Press, 2013).

which treats waivers like an ordinary piece of legislation. The initial proposal is therefore preferable.[70]

One aspect of the rule necessitates discussion beyond the analysis in the table, and that is how the rule satisfies the principle of focusing on spending. Section 1 of the proposal satisfies this principle by tying spending today to revenues in the past. In other words, tax policy in *previous* years determines the maximum size of spending *today*. So, if spending on government programs threatens to exceed the cap, tax increases will not help, because the cap is based on previous revenues; instead, spending must be cut. Similarly, a legislator who wants to create a new government program or fund a new project today cannot do so by raising taxes, because those additional revenues will not factor into the spending-limit calculation until the following fiscal year.

POTENTIAL PROBLEMS WITH STRICT BUDGET RULES

THE DISCUSSION ABOUT constitutional reform points to a more general issue: even if legislators take into account all the suggestions in this paper, problems are still likely to arise as a result of strict budget rules being enacted. First, there will undoubtedly be some loophole or gimmick that legislators will construct in response to the rule. However, if the rule's designers have followed the principles above, that will minimize the effect of these loopholes.

Second, if a budget rule forces dramatic cuts at the federal level, legislators may simply impose more responsibilities on the states—for instance, by cutting a politically popular program and placing pressure on the states to fund it, or by changing a "matching" agreement to reduce the federal component. There may be a silver lining to any action of this sort. Specifically, shifting expenses to the states internalizes costs to a greater degree, which inhibits the overspending induced when legislators can impose the costs of spending benefitting their jurisdiction on others.

Third, legislators could choose to shift spending burdens to the private sector with increased regulations.[71] This is certainly true, but recent reforms to the healthcare system, and any number of other current regulations, demonstrate that this already occurs in significant ways even without such a rule. Moreover, political realities will place limits on the ability of the government to shift burdens further onto the private sector.

Fourth, severe disruptions could result from dramatic and sudden cuts made to satisfy a budget rule. This potential problem reinforces the need to bring new budget rules into force immediately but gradually, thereby preventing an artificial crisis caused by a sudden change in policy, but at the same time giving policymakers

70. See H.J.Res. 81, 112th Cong. (2011); H.J.Res. 24, 113th Cong. (2013).
71. Wallach, "The Perils of Automatic Budgeting."

a chance to make changes before a market-driven crisis hits. The alternative—waiting until that market-driven crisis hits—would have far more severe consequences, such as hyperinflation and the potential collapse of the market for US debt.

CONCLUSION

MAJOR ADJUSTMENTS TO the federal budget are necessary to stanch the increase in the federal debt and reduce the deficit without hurting the economy. Incremental steps in the budgetary arena have achieved little, and the United States needs more dramatic action. By implementing new budget rules today, legislators can help force hard decisions tomorrow. No budget rule will be perfect, and problems will undoubtedly arise from any rule enacted through the legislative process. Inaction, though, is simply not a reasonable option any longer.

As recent debates have shown, meaningful budget reform faces an uphill battle in Washington. That said, few believed that a Republican president would usher in prescription drug coverage under Medicare, as President Bush did in 2003, or that a Democratic president and a Republican House speaker with vigorous differences would work together to balance the federal budget, as Bill Clinton and Newt Gingrich did in the 1990s. When the next political window of opportunity opens, this paper can help guide policymakers as they design budget rules that will help restore fiscal responsibility to the federal budget process.

ANALYSIS OF AMASH CONSTITUTIONAL BUDGET RULE

RESOLUTION TEXT (AMASH)	PLAIN ENGLISH (AMASH)	ANALYSIS (PRIMO)
SECTION 1. Total outlays for a year shall not exceed the average annual revenue collected in the three prior years, adjusted in proportion to changes in population and inflation. Total outlays shall include all outlays of the United States except those for payment of debt, and revenue shall include all revenue of the United States except that derived from borrowing.	Spending = average of prior years' revenues (average revenue of previous three years, adjusted for population changes and inflation) "Outlays" includes everything but debt reduction. "Revenue" does not include borrowing.	**Pro** Focus on spending (see main text of the paper for explanation) Flexible by "smoothing" Focus on entire federal budget Permanent **Con** Terms like "outlays" are not defined
SECTION 2. Three-fourths of the whole number of each House of Congress may by roll call vote to declare an emergency and provide by law for specific outlays in excess of the limit in section 1. The declaration shall specify reasons for the emergency designation and shall limit the period in which outlays may exceed the limit in section 1 to no longer than one year.	Emergency outlays beyond the spending limit (1) require three-fourths support, (2) require a detailed emergency declaration, and (3) only last one year at a time.	**Pro** High threshold for waiving rule Limits on length of emergency designation **Con** Payoff timetable not specified
SECTION 3. All revenue in excess of outlays shall reduce the debt of the United States. Upon the retirement of such debt, revenue in excess of outlays shall be held by the Treasury to be used as specified in section 2.	Surpluses pay off the debt. When the debt is gone, surpluses go into a "rainy day" fund for emergencies.	**Pro** Clarifies what happens to surpluses
SECTION 4. The Congress shall have power to enforce and implement this article by appropriate legislation.	Reasonable implementing legislation is authorized.	**Con** Leaves too many enforcement details to Congress
SECTION 5. This article shall take effect in the first year beginning at least 90 days following ratification, except that outlays shall not surpass the sum of the limit described in section 1 and the following portion of the prior year's outlays exceeding that limit (excepting emergency outlays as provided for in section 2): nine-tenths in the first year, eight-ninths in the second, seven-eighths in the third, six-sevenths in the fourth, five-sixths in the fifth, four-fifths in the sixth, three-fourths in the seventh, two-thirds in the eighth, one-half in the ninth, and the limit shall bind in the tenth year and thereafter.	Gradual ten-year transition. Begins the year (fiscal or calendar) starting 90 days after ratification: provides time for [drafting] implementing legislation . . . & deliberation on policy changes. Initial gap between ratification-year spending and limit reduced at least 1/10th each year. Faster convergence allowed; progress locked in. Emergency spending doesn't affect baseline.	**Pro** Transition rule pays careful attention to starting points

Source: Justin Amash, "Business Cycle Balanced Budget Amendment, H.J. Res. 73," accessed November 13, 2013, http://amash.house.gov/sites/amash.house.gov/files/BCBBA%20-%20legislative%20and%20plain%20text.pdf.

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APPENDIX 3

SHOULD THE CONSTITUTION BE AMENDED TO ADDRESS THE FEDERAL DEFICIT?

BY DAVID M. PRIMO

MERCATUS CENTER
George Mason University

TESTIMONY

BRIDGING THE GAP BETWEEN ACADEMIC IDEAS AND REAL WORLD PROBLEMS

SHOULD THE CONSTITUTION BE AMENDED TO ADDRESS THE FEDERAL DEFICIT?

MAY 13, 2011

David M. Primo
Associate Professor of Political Science, University of Rochester
Senior Scholar, Mercatus Center at George Mason University

House Committee on the Judiciary
Subcommittee on the Constitution

Good Morning Chairman Franks, Ranking Member Nadler, and members of the subcommittee. Thank you for inviting me here this morning to discuss whether the U.S. Constitution should be amended to address the nation's fiscal problems.

I am an associate professor of political science at the University of Rochester and a senior scholar at the Mercatus Center at George Mason University.[1] My research focuses on legislative politics and fiscal policy. I have written papers and a book on the subject of budget rules, and I have been following the debate over our nation's future fiscal course with great interest.[2] In my testimony, I will show why attempts to create long-term fiscal reform, stabilize the debt, and reduce the deficit are likely to fail in the absence of Constitutional budget rules.

The United States faces severe fiscal challenges that can no longer be ignored. Our current $14 trillion national debt is just the tip of the iceberg. Entitlement spending threatens to bankrupt the nation. The unfunded liabilities from Social Security and Medicare are three to seven times the size of our current debt, depending on how one calculates these figures.[3]

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[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] See, for example, Primo, David M. 2007. *Rules and Restraint: Government Spending and the Design of Institutions.* American Politics and Political Economy Series. Chicago, IL: University of Chicago Press. Some passages and ideas in this testimony appear in Primo, David M. 2010. "Making Budget Rules Work." Working Paper No. 10-62. Mercatus Center at George Mason University, available at http://mercatus.org/sites/default/files/publication/Making%20Budget%20Rules%20Work.Primo_.9.28.10.pdf.

[3] Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds. 2009. *Annual Report.* Washington, DC: Government Printing Office; Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. 2009. *Annual Report.* Washington, DC: Government Printing Office. The Medicare Trustees set unfunded obligations for Part B and D at 0 because they are guaranteed funding from general revenues. However, the portion of Part B and D that comes out of general revenues can reasonably be construed as an unfunded liability, since specific revenues are not allocated for this spending (as opposed to Social Security, for which there is a dedicated fund); if these costs are accounted for, unfunded liabilities exceed $100 trillion dollars.

Any solution to this crisis must accomplish three things: First, Social Security and Medicare expenses have to be stabilized and future promises have to be limited. Second, discretionary spending has to be pared down. Third, future politicians must be prevented from undoing any reforms that are implemented. The focus of my testimony today will be the third of these requirements.

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. The President's National Commission on Fiscal Responsibility and Reform proposed a serious plan, and legislators from both parties endorsed it. House Budget Committee Chairman Paul Ryan proposed an ambitious plan to control federal spending, and President Barack Obama responded to Chairman Ryan's plan with one of his own. 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.[4]

This, in short, is a rare opportunity for meaningful long-term change. I believe that a Constitutional amendment can help us avoid making this a wasted opportunity. In my testimony, I will first establish that opportunities for long-term fiscal reforms rarely emerge. I will then show why long-term reforms are unlikely to be robust without Constitutional change. The next part of my testimony will focus on why it is important to get the rules right and offer some principles that I hope members will follow as they work toward achieving fiscal discipline. I will close my testimony by rebutting arguments against a Constitutional amendment.

THE CHALLENGES OF FISCAL REFORM

The enactment of real fiscal reform is always an uphill battle. Three factors stack the deck against reform:

- Fiscal problems are "creeping" risks.
- The electoral benefits of additional spending typically exceed the electoral benefits of fiscal discipline.
- Pledges made by legislators today will be hard to keep tomorrow.

Creeping Risks

Creeping risks, also referred to as slow failures, develop gradually over time, with any single event having a small but real effect on risk severity.[5] As enough events occur, the risk ultimately manifests itself in catastrophic ways. The World Economic Forum identifies fiscal crises as one of the major creeping risks facing the world today, and the recent debt crisis in Greece is an excellent example of a creeping risk manifesting itself suddenly.[6] The U.S. fiscal situation, though perhaps not as dire as Greece's right now, is headed in the same direction.

The temptation when dealing with creeping risks, as opposed to immediate risks, is to postpone action. A bullet to the chest is an immediate risk for which delayed action is not an option. A poor diet, which could eventually lead to heart disease, is a creeping risk. It's easy to avoid action on a diet. It's not so easy to avoid dealing with a bullet wound. The same is true of the federal budget. Many of the most severe risks we face, including the trajectory of Medicare spending, will not manifest themselves in dramatic fashion for years.

[4] See http://people-press.org/files/legacy-questionnaires/4-26-11%20Topline%20for%20release%20with%20joint%20WaPo%20deficit%20questions.pdf.
[5] Global Risk Network of the World Economic Forum. 2010. *Global Risks 2010: A Global Risk Network Report.* Geneva, Switzerland: World Economic Forum.
[6] Ibid.

prompting many legislators and pundits to argue that tough decisions should be postponed, as well. Unfortunately, the longer we wait to address creeping risks, the bigger the costs will be.

Fortunately, recent statements from legislators in both parties, as well as the president, acknowledge that we ought to take on long-term fiscal problems. To be sure, there are passionate disagreements about how to address these problems. But even agreement that a problem exists is progress.

Electoral Benefits of Spending

The nature of government spending makes it important to take advantage of the current realization that budget reform is needed. The benefits of government programs are typically much more concentrated than the costs of those programs.[7] If spending and taxes are reduced by $1 billion through cuts to construction projects, each citizen receives about $3 in benefits through lower taxes, but the beneficiaries of the construction projects lose far more per capita. It is much easier for a member of Congress to claim credit for preserving the construction project than to claim credit for the savings from eliminating such a project. The politics of fiscal reform, then, are stacked in favor of beneficiaries over taxpayers. Typically, beneficiaries will be the winners, and taxpayers the losers. Curiously, though, economists have found that elected officials who spearhead fiscal adjustments (a sustained decrease in deficit-to-GDP or debt-to-GDP ratio) are not typically punished at the ballot box.[8] This is a puzzle until one realizes that fiscal adjustments are "endogenous," or chosen strategically by politicians. Researchers have also shown that fiscal adjustments are often spurred on by crises, when the public may be willing to accept tough medicine.[9] So, in the face of an active crisis (or the perception that a crisis is imminent), the political calculi that prevent reform may be adjusted in favor of taxpayers. As I noted earlier, elected officials may have more leeway today than in most years. The public is paying attention to the deficit and believes some action is needed, though just as in Congress, there is disagreement among voters regarding how to achieve fiscal reform.

Keeping Promises

Acknowledgment by Congress and President Obama that creeping fiscal risks have to be addressed, and public agreement in this regard, creates a rare opportunity for change. Without an enforcement mechanism to accompany any reform agreements, there is a significant risk that any promises made today will not be kept tomorrow. Legislators may commit today to cutting spending next year (and the following year, and so on), but when next year comes, legislators and their constituents may value spending over the cut, especially if the cut is painful. In other words, the same pain the legislator is trying to avoid today will manifest itself next year, forcing the same difficult choice. The political reality is that the hard cuts in any plan are usually deferred until well into the future, so the likelihood of long-term agreements having durability in the absence of some external enforcement mechanism is very small.

We can make an analogy to somebody trying to lose ten pounds. This person could write out a plan for doing so, but without some enforcement mechanism, the temptation each day would be to skip a workout or eat that extra piece of dessert. Just as somebody trying to lose weight needs some sort of enforcement mechanism to achieve his or her goal, any agreement on budget reform requires a similar enforcement mechanism.

THE CASE FOR CONSTITUTIONAL CHANGE

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[7] Wilson, James Q. 1980. *The Politics of Regulation*. New York: Basic Books; Lowi, Theodore J. 1964. "American Business, Public Policy, Case-Studies, and Political Theory." *World Politics* 16:677-693.

[8] Alesina, Alberto. 2010. "Fiscal Adjustments: What Do We Know and What Are We Doing?" Working Paper No. 10-61, Mercatus Center at George Mason University, available at http://mercatus.org/sites/default/files/publication/Fiscal%20Adjustments.%20What%20Do..Corrected%20Table.Alesina.pdf; Alesina, Alberto, Roberto Perotti, and Jose Tavares. 1998. "The Political Economy of Fiscal Adjustments." *Brookings Papers on Economic Activity* 1998(1):197-266.

[9] Alesina, Alberto, Silvia Ardagna, and Francesco Trebbi. 2006. "Who Adjusts and When? The Political Economy of Reforms." *IMF Staff Papers* 53(Special Issue):1-29.

There are many ways to create enforcement mechanisms to ensure that agreements reached today are enforced tomorrow. The House and the Senate can create internal enforcement rules, such as the PAYGO rules passed in 2007. Congress and the president can reach agreement on a statute with enforcement mechanisms, as with Gramm-Rudman-Hollings legislation in the 1980s. Or, these rules can be codified in the Constitution. Constitutional rules are the only ones, however, that are "sticky" in the short-run and therefore immune to the problems that plague internal or statutory rules.

Article I, Section V of the U.S. Constitution establishes why chamber-based and even statutory rules are inferior to Constitutional rules. It states plainly, "Each House may determine the rules of its proceedings." The implications of this simple statement are profound. Members of Congress can construct their own rules, meaning that they can change their own rules, or even ignore them, as they see fit. The current Congress cannot bind future Congresses. If the goal of a rule is to ensure that deals are kept, some external enforcement mechanism is needed.

Statutes may provide slightly more durability than internal rules, but these can be changed with a simple majority vote if the president chooses not to veto a change. And when Congress is feeling enough pressure from constituents that they want to abrogate a budget agreement, it will be difficult for the president to stand in its way. Historically, we have observed Congress and the president evade or undo rules that proved to be inconvenient. Gramm-Rudman-Hollings and PAYGO are two examples.[10]

Constitutional rules are different. Unlike internal or statutory rules, Constitutional rules can only be changed after several significant hurdles are overcome, including either a two-thirds majority in the House and the Senate or a Constitutional convention, either of which would have to be followed by ratification of the change by three-fourths of the states. By contrast, internal or statutory rules can be changed in days, minutes even, if the political will exists. Constitutional rules typically take years to change, and changes are rare, as evidenced by the small number of amendments—27—to the U.S. Constitution. Moreover, the U.S. Supreme Court would be able to intervene if Congress flouted Constitutional budget rules.

Constitutional rules, therefore, provide the means to help keep Congress in check and ensure that fiscal discipline is maintained even when the temptation to abrogate agreements is hard to resist. Statutory rules and internal rules simply do not provide the same level of stability. If Congress is committed to long-term fiscal reform, it ought to propose to the states a Constitutional amendment that creates a framework for fiscal discipline.

GETTING THE RULES RIGHT

The promise of Constitutional rules as enforcement mechanisms lies in their durability. But this durability is also a peril: bad rules can be locked-in just as good rules can be. I will discuss three principles of rule design that will help mitigate this problem.

1. Legislators should design budget rules that are general and apply to the entire federal budget.

A Constitutional rule is meant to be permanent, and as a consequence, it should focus on total federal spending or revenues rather than specific government programs. A Constitutional amendment regarding the Medicare program, for instance, is ill-advised. An amendment that limits the outlays or the revenues of the federal government speaks to a general principle of fiscal responsibility, and it provides the structure for subsequent debates in Congress about how to achieve that principle. Moreover, it prevents legislators from

[10] For a description of the pitfalls of PAYGO, see de Rugy, Veronique, and David Bieler. 2010. "Is PAYGO a No-Go?" Mercatus on Policy No. 73, Mercatus Center at George Mason University, available at http://mercatus.org/sites/default/files/publication/MOP73_PAYGO_web.pdf.

carving out certain programs from this general principle, as is often done today with entitlements like Medicare and Social Security.

2. Legislators should design rules that are precise and prevent the use of loopholes or gimmicks.

Budget rules ostensibly designed to accomplish the same goal, perhaps even with the same name, can have very different effects depending on how they are implemented. Yet, budget rules are often (intentionally) written in vague terms, with the details left to be worked out. Or, the wording of the rule permits evasion relatively easily. The details can make-or-break a rule's effectiveness, since the entire purpose of rules is to encourage elected officials to take actions that they have incentives not to take. Definitions are crucial in this regard. For instance, Congress allowed itself to determine on a case-by-case basis what constituted an emergency that permitted caps on spending or PAYGO laws to be waived.[11] Constitutional rules that leave implementation details up to Congress may be eviscerated once the details are worked out.

3. Legislators should design rules with limited, carefully constructed exit options.

While the point of a Constitutional rule is durability, unexpected events require that Congress has the flexibility to, say, fund a war or handle a major emergency. To address such emergencies, most Constitutional budget rule proposals permit waiver of the rule with either a majority, three-fifths, or two-thirds supermajority. These thresholds are problematic because they are no more difficult than passing regular legislation, circumventing a filibuster, or overriding a presidential veto, respectively.

In order to send a signal that Constitutional rules ought to be waived only in extraordinary circumstances, the threshold for waiving the rules should be very high—say, 90% of both chambers. In true emergencies, the Congress would undoubtedly provide needed funds. In order to make the declaration of an emergency transparent, spending made under this provision could be segregated from other spending and be paid back during a set time period—for instance, 10 or 15 years. This would further discourage inappropriate use of waiver provisions.[12]

ARGUMENTS AGAINST CONSTITUTIONAL BUDGET RULES, AND MY REPLIES

Amending the Constitution is a serious—some might even say drastic—step for the country, and there is strong opposition to taking this action on budgetary matters. I will now consider three important arguments against reform and rebut them.

1. **Claim:** A Constitutional amendment is unnecessary since all we need to do to restore fiscal discipline is pass the right kinds of bills.

Reply: In a perfect world, this claim would be absolutely correct. Legislators and the president would come together and agree to binding limits on spending, and then they would live by those agreements. Voters would understand when significant cuts to local projects were required or when Medicare benefits were scaled back. In the real world, however, such agreements are unlikely to survive for more than a few years before elected officials succumb to spending temptations.

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[11] Saturno, James V. 2007. "Emergency Spending: Statutory and Congressional Rules." CRS Report for Congress, RS21035, July 24.

[12] For several examples of questionable emergency designations, see de Rugy, Veronique. 2008. "The Never-Ending Emergency: Trends in Supplemental Spending." Mercatus Policy Series Policy Comment No. 18, Mercatus Center at George Mason University, available at http://mercatus.org/sites/default/files/publication/The_Never-Ending_Emergency.pdf.

2. **Claim:** A Constitutional amendment gives too much power to the U.S. Supreme Court over budgetary matters.

Reply: Unless an amendment explicitly rules this out (as some versions of Constitutional budget rules do), the U.S. Supreme Court may adjudicate disputes regarding Constitutional budget rules, and lawsuits challenging Congressional budgets may be commonplace. The end result, some fear, is a budget process that ends each year with the decision of nine unelected justices. This fear is unwarranted, as rule designers can be proactive in limiting judicial overreach. The Supreme Court could be authorized to require only certain sorts of remedies—for instance, the Court could only mandate spending cuts to satisfy a balanced budget rule, not tax increases. Standing of citizens could be limited to avoid frivolous lawsuits. And, the clearer the rule, the less leeway the justices will have in interpreting it. This fear of judicial intervention, in fact, will motivate Congress to take all possible actions to avoid Court involvement in the budget process. Moreover, the Court will be loath to micromanage the budget process, and would most likely simply request that a problematic budget be revised. The hypothetical dangers outlined by critics of Constitutional reform have to be balanced against the very real danger that Congress will not be able to abide by the rules it sets out for itself, or will change them when the going gets tough.

3. **Claim:** A Constitutional budget rule won't solve our fiscal problems, but will merely shift burdens to the states.

Reply: A Constitutional budget rule will certainly force the states to reevaluate their spending habits, but this is a benefit, not a drawback, of such a rule. By placing spending decisions closer to the people who have to bear the costs of those decisions, policy outcomes will tend to be more efficient. Limits on federal spending, and especially aid to the states, will also eliminate incentives for states to overspend. There is extensive evidence in the economics literature for a "flypaper effect," meaning that federal aid tends to "stick where it hits" and create upward pressure on state spending.[13] Though there is dispute about the precise size of this flypaper effect, there is little doubt that federal aid creates perverse incentives for the states.

CLOSING

In closing, Congress and the president have a rare opportunity to enact meaningful budget reforms. My fear is that those agreements will ultimately dissolve in the absence of a Constitutional amendment that provides a framework for enforcing those agreements. Constitutional rules, unlike statutory or internal rules, are difficult to change. If written to cover the entire budget, avoid loopholes, and make waivers difficult to obtain, Constitutional rules can provide the enforcement mechanism that will help ensure that specific reforms to entitlements, defense, and other spending areas will not be undone by future Congresses.

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

[13] For an overview, see Hines, Jr., James R., and Richard H. Thaler. 1995. "Anomalies: The Flypaper Effect." *Journal of Economic Perspectives* 9(4):217–26; Inman, Robert P. 2008. "The Flypaper Effect." NBER Working Paper No. 14579.

Revision to the Prepared Statement of Henry J. Aaron, Ph.D., Bruce and Virginia MacLaury Senior Fellow, The Brookings Institution

July 31, 2014

Mr. Chairman,

Thank you for pointing out my error in attributing to you a change of views on the proper limit on federal spending. I have revised my remarks to correct that error and am writing now to request that you substitute this corrected version for my original statement. If that is not possible, then I ask that this corrected version be included in addition to the previous version which I submitted on Tuesday of this week.

The final paragraph on page 1, and the first paragraph at the bottom of page 6 and top of page 7, the correct versions of both of which are reproduced below:

Finally, Mr. Goodlatte, I must note that just three years ago, the version of H.J. Res. 1 reported out of committee, which you sponsored, proposed to limit government spending to 18 percent of economic output. Now you propose a limit of 20 percent of economic output. Just three years ago you endorsed a bill that would have made such spending a violation of the Constitution. Is it not possible that at some future date you might conclude, in light of new and better information, that a different percentage is desirable? Does not this change in what would be a cap written into the Constitution raise questions about the wisdom of locking into the Constitution an economic variable you are willing to change based on facts and circumstances?

...

Three years ago the chairman of this committee was the lead sponsor of a bill to cap the share of 'economic output' that the federal government can spend at 18 percent. H.J. Res. 1 proposes a limit of 20 percent, presumably because the sponsors now believe that 18 percent was too strict. If so, it is worth noting that a 2 percentage point increase—about $345 billion in 2014, rising to $536 billion in just ten years—is not chump change. It is also worth asking whether 20 percent is a number that should be enshrined in the Constitution. I believe that legislation, not a constitutional amendment, should be used to set policies about which people hold views that change over time.

Sincerely yours,

Henry J. Aaron

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July 16, 2014

Constitutional Balanced Budget Amendment Poses Serious Risks

Would Likely Make Recessions Longer and Deeper, Could Harm Social Security and Military and Civil Service Retirement

By Richard Kogan

A balanced budget amendment to the U.S. Constitution would be a highly ill-advised way to address the nation's long-term fiscal problems. It would threaten significant economic harm while raising a host of problems for the operation of Social Security and other vital federal functions.

The economic problems are the most serious. By requiring a balanced budget every year, no matter the state of the economy, such an amendment would raise serious risks of tipping weak economies into recession and making recessions longer and deeper, causing very large job losses. That's because the amendment would force policymakers to cut spending, raise taxes, or both just when the economy is weak or already in recession — the exact opposite of what good economic policy would advise.

When the economy slows, federal revenues decline or grow more slowly and spending on unemployment insurance and other social programs increases, causing deficits to rise. Rather than allowing the "automatic stabilizers" of lower tax collections and higher unemployment and other benefits to cushion a weak economy, the amendment would force policymakers to cut spending, raise taxes, or both. That would launch a vicious spiral of bad economic and fiscal policy: a weaker economy would lead to higher deficits, which would force policymakers to cut spending or raise taxes more, which would weaken the economy further.

As Macroeconomic Advisers, one of the nation's preeminent private economic forecasting firms, concluded in 2011, "recessions would be deeper and longer" under a constitutional balanced budget amendment, and uncertainty would be cast over the economy that could retard economic growth even in normal economic times.1 The analysis found that if a constitutional balanced budget amendment had been ratified in 2011 and were being enforced for fiscal year 2012, "the effect on the economy would be catastrophic" and would cause the unemployment rate to double.

[1] See Richard Kogan, "Economic Forecasting Firm Harshly Criticizes Proposed Constitutional Balanced Budget Amendment," Center on Budget and Policy Priorities, November 8, 2011, http://www.cbpp.org/cms/?fa=view&id=3611.

The fact that states must balance their budgets every year — no matter how the economy is performing — makes it even more important that the federal government not also face this requirement and thus further impair a faltering economy. And, while most recent constitutional balanced budget amendments introduced in Congress would allow Congress to waive the balanced budget requirement with a supermajority vote in both chambers, that hardly solves the problem. Recent experience shows the difficulty of securing a supermajority vote in both chambers for almost any major legislation. Moreover, data showing that the economy is in recession do not become available until the economy has already begun to weaken; it could well take many months before sufficient data are available to convince a congressional supermajority to waive the balanced budget requirement, if it were possible to do so at all. In the meantime, substantial economic damage — and larger job losses — would have occurred.

Beyond the economy, a balanced budget amendment would raise other problems. That's due to its requirement that federal spending in any year must be offset by revenues collected in that same year. Social Security could not draw down its reserves from previous years to pay benefits in a later year but, instead, could be forced to cut benefits even if it had ample balances in its trust funds, as it does today. The same would be true for military retirement and civil service retirement programs. Nor could the Federal Deposit Insurance Corporation or the Pension Benefit Guaranty Corporation respond quickly to bank or pension fund failures by using their assets to pay deposit or pension insurance, unless they could do so without causing the budget to slip out of balance.

Amendment proponents often argue that, because states and families must balance their budgets each year, the federal government also should do so. Yet this is a false analogy. While states must balance their operating budgets, they can — and do — borrow for capital projects. Families often borrow, as well, such as when they take out mortgages to buy homes or loans to send children to college. The proposed constitutional amendment would bar the federal government from making worthy investments in the same way.

This paper outlines the risks of a constitutional balanced budget amendment. In addition, Box 1 explains why policymakers should be skeptical of claims that the states could control a constitutional convention called to propose a balanced budget amendment or similar amendments, as some are now advocating.2

Potential for Serious Economic Harm

The nation faces serious, though manageable, long-term fiscal problems, but a balanced budget amendment to the U.S. Constitution is an ill-advised way to address them. It would require a balanced budget every year regardless of the state of the economy, unless a supermajority of both houses overrode that requirement. This is an unwise stricture that many mainstream economists have long counseled against because it would require the largest budget cuts or tax increases precisely when the economy is weakest. It holds substantial risk of tipping faltering economies into recessions, making recessions longer and deeper, and precipitating very large additional job losses. When the economy weakens, revenue growth drops and revenues may even contract. And as

[2] For more on the risks of a constitutional convention, see Michael Leachman and David A. Super, "States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment or Other Issues," Center on Budget and Policy Priorities, July 16, 2014.

Box 1: Problems With Constitutional Convention on Balanced Budget

Not only does a balanced budget amendment itself pose serious risks, but the idea of convening a *constitutional convention* to propose it or similar amendments raises other grave problems. A number of states have passed resolutions calling for such a convention, and proponents of a constitutional convention are targeting more states in an effort to obtain the 34 states needed to call one. A number of legal experts across the political spectrum have warned that a convention could open up the Constitution to radical and harmful changes. As former Chief Justice of the United States Warren Burger wrote in 1988:

> [T]here is no way to effectively limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda.

Such serious concerns are justified, for several reasons:

- **A convention could write its own rules.** No constitutional convention has been called since the 1787 meeting that wrote the Constitution, and the Constitution provides no guidance whatsoever on what a convention's ground rules would be. This leaves wide open to political considerations and pressures such fundamental questions as how delegates would be chosen, how many delegates each state would have, and whether a supermajority vote would be required to approve amendments. To show the importance of these issues, consider that if every state had one vote in a convention and the convention could approve amendments with a simple majority vote, the 26 least populous states, with less than 18 percent of the nation's people, could approve constitutional amendments for ratification.
- **A convention could set its own agenda, possibly influenced by powerful interest groups.** The only constitutional convention in U.S. history, in 1787, went *far* beyond its mandate. Charged with amending the Articles of Confederation to promote trade among the states, the convention instead wrote an entirely new governing document. A convention held today could set its own agenda, too. There is no guarantee that a convention could be limited to a given set of issues, such as balancing the budget.
- **A convention could choose a new ratification process.** The 1787 convention ignored the ratification process under which it was established and created a new process, reducing the number of states needed to approve the new Constitution and removing Congress from the approval process. The country then ignored the pre-existing ratification procedures and adopted the Constitution under the new ratification procedures that the convention proposed. Given these facts, it would be unwise to assume that ratification of the convention's proposals would require the subsequent approval of 38 states, as the Constitution specifies. For example, a convention might remove the states from the approval process and propose a national referendum instead, or approval by a simple majority of states.
- **No other body, including the courts, has clear authority over a convention.** The Constitution provides for no authority above a constitutional convention, so it isn't clear that the courts, Congress, state legislatures, or a President could intervene if a convention went beyond the language of the state resolutions calling for a convention or the congressional resolution establishing it. Likewise, there may be no recourse if the convention altered the process for ratifying its own proposed amendments. The Constitution has virtually no restrictions on the operations of a constitutional convention or the scope of the amendments that it could produce, and the courts would likely regard legal challenges to a convention as "political questions" that the judiciary does not wade into.

unemployment rises, expenditures for programs like unemployment insurance (UI) — and to a lesser but significant degree, SNAP (food stamps) and Medicaid — increase. These revenue declines and expenditure increases are temporary; they largely or entirely disappear as the economy recovers. But they are critical for helping struggling economies avoid falling into recessions and for moderating the depth and length of recessions that do occur.

During economic downturns, consumers and businesses spend less, which in turn causes further job loss. The drop in tax collections and increases in UI and other benefits that occur automatically cushion the blow, by keeping purchases of goods and services from falling more. That is why economists use the term "automatic stabilizers" to describe the automatic declines in revenues and automatic increases in UI and other benefits that help to stabilize the economy when it turns down.

A constitutional balanced budget amendment, however, effectively suspends the automatic stabilizers. It requires that federal spending be cut or taxes increased to offset the automatic stabilizers and prevent a deficit from occurring — the opposite course from sound economic policy.

Over the years, leading economists have warned of the adverse effects of a constitutional balanced budget amendment. For example, in congressional testimony in 1992, Robert Reischauer — one of the nation's most respected experts on fiscal policy and then director of the Congressional Budget Office — explained: "[I]f it worked [a constitutional balanced budget amendment] would undermine the stabilizing role of the federal government." Reischauer noted that the automatic stabilizing that occurs when the economy is weak "temporarily lowers revenues and increases spending on unemployment insurance and welfare programs. This automatic stabilizing occurs quickly and is self-limiting — it goes away as the economy revives — but it temporarily increases the deficit. It is an important factor that dampens the amplitude of our economic cycles." Under a constitutional amendment, he explained, these stabilizers would no longer operate automatically.[3]

Similarly, when Congress considered a constitutional balanced budget amendment in 1997, more than 1,000 economists, including 11 Nobel laureates, issued a joint statement that said, "We condemn the proposed 'balanced-budget' amendment to the federal Constitution. It is unsound and unnecessary. . . . The proposed amendment mandates perverse actions in the face of recessions. In economic downturns, tax revenues fall and some outlays, such as unemployment benefits, rise. These so-called 'built-in stabilizers' limit declines of after-tax income and purchasing power. To keep the budget balanced every year would aggravate recessions."[4]

At a Senate Budget Committee hearing in January 2011, CBO director Douglas Elmendorf sounded a similar warning when asked about a constitutional balanced budget amendment:

> Amending the Constitution to require this sort of balance raises risks. . . . The fact that taxes fall when the economy weakens and spending and benefit programs

[3] Statement of Robert D. Reischauer before the House Budget Committee, May 6, 1992.

[4] This statement was issued on January, 30, 1997. In 2011, when Congress was again considering a constitutional balanced budget amendment, five winners of the Nobel Prize for Economics issued a statement opposing a constitutional balanced budget amendment for these reasons. See "Nobel Laureates and Leading Economists Oppose Constitutional Balanced Budget Amendment," Center on Budget and Policy Priorities, updated July 28, 2011, http://www.centeronbudget.org/cms/index.cfm?fa=view&id=3543.

> increase when the economy weakens, in an automatic way, under existing law, is an important stabilizing force for the aggregate economy. The fact that state governments need to work … against these effects in their own budgets — need to take action to raise taxes or cut spending in recessions — undoes the automatic stabilizers, essentially, at the state level. Taking those away at the federal level risks making the economy less stable, risks exacerbating the swings in business cycles.[5]

Finally, Macroeconomic Advisers (MA), one of the nation's preeminent private economic forecasting firms, concluded in 2011 that if a constitutional balanced budget amendment had been ratified and were being enforced for fiscal year 2012, "the effect on the economy would be catastrophic."[6] If the 2012 budget were balanced through spending cuts, MA found, those cuts would total about $1.5 trillion in 2012 alone — and would throw about 15 million more people out of work, double the unemployment rate from 9 percent to approximately 18 percent, and cause the economy to shrink by about 17 percent instead of growing by an expected 2 percent. Such a budget cut would be radical in every sense; for example, it could entail cutting all budget programs excluding Social Security by more than six of every ten dollars in 2012 alone: Medicare, veterans' benefits, cancer research, national defense, and school lunches, to name just a few.

Even if a balanced budget amendment were implemented when the budget was already in balance, MA concluded, it would still put "new and powerful uncertainties in play. The economy's 'automatic stabilizers' would be eviscerated [and] discretionary counter-cyclical fiscal policy would be unconstitutional…. Recessions would be deeper and longer."

MA also warned that "The pall of uncertainty cast over the economy if it appeared a [balanced budget amendment] could be ratified and enforced in the middle of recession or when the deficit was still large would have a chilling effect on near-term economic growth." MA concluded that a balanced budget amendment would have detrimental effects on economic growth in both good times and bad.

Proponents of a constitutional amendment often respond to these admonitions by noting that most recent proposals would allow a vote of three-fifths (or two-thirds) of the House and the Senate to waive the balanced budget requirement. However, it is difficult to secure three-fifths votes for any major legislation, much less a two-thirds vote. Moreover, much of the hard data on the economy comes with a lag of several months, and it could well take a number of months after the economy has begun to weaken before sufficient data are available to convince three-fifths of both houses of Congress that economic conditions warrant waiving the balanced budget requirement, if three-fifths were willing to waive the requirement at all. Furthermore, it is all too likely that even after the evidence for a downturn is clear, a minority in the House or Senate would hold a waiver vote hostage to demands for concessions on other matters (such as new, permanent tax cuts).

By the time a recession is recognized *and* the required votes are secured in *both* chambers, extensive economic damage could have occurred and hundreds of thousands — or millions — of additional jobs unnecessarily lost.

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[5] Federal Service, Transcript of Senate Budget Committee hearing, January 27, 2011.

[6] Kogan, 2011.

The fact that states must balance their operating budgets even in recessions — which causes the economy to contract further — makes it even more important that the federal government *not* be subject to the same stricture. As Norman Ornstein of the American Enterprise Institute has written:

> Few ideas are more seductive on the surface and more destructive in reality than a balanced budget amendment. Here is why: Nearly all our states have balanced budget requirements. That means when the economy slows, states are forced to raise taxes or slash spending at just the wrong time, providing a fiscal drag when what is needed is countercyclical policy to stimulate the economy. In fact, the fiscal drag from the states in 2009-2010 was barely countered by the federal stimulus plan. That meant the federal stimulus provided was nowhere near what was needed but far better than doing nothing. Now imagine that scenario with a federal drag instead.[7]

The bottom line is this: the automatic stabilizers need to continue to protect U.S. businesses and workers. A balanced budget amendment would preclude them from doing so.

Nor is a recession the only concern. Consider the savings and loan crisis of the 1980s, or the financial meltdown of the fall of 2008. A constitutional balanced budget amendment would have hindered swift federal action to rescue the savings and loan industry or to rapidly put the Troubled Assets Relief Program in place. In both cases, history indicates that federal action helped save the economy from what likely would have been far more dire problems.

Moreover, the federal government provides deposit insurance for accounts of up to $250,000; this insurance — and the confidence it engenders among depositors — is critical to the sound functioning of our financial system so that we avoid panics involving a run on financial institutions, as occurred in the early 1930s. A constitutional prohibition of any deficit spending (unless and until a supermajority of both houses of Congress voted to authorize it) could seriously weaken the guarantee that federal deposit insurance provides. That is a risk we should not take.

These are illustrations of why fiscal policy should not be written into the Constitution.

A parallel problem is that most versions of the proposed constitutional amendment would make it even harder to raise the debt limit by requiring a three-fifths vote for that in both the House and Senate. This is playing with fire. Congress has found it extremely difficult in recent years to raise the debt limit even by simple majority vote; only four of the 14 debt-limit increases enacted over the last dozen years received a three-fifths vote in both houses. Imposing a supermajority requirement would heighten the risk of a federal government default, which would raise our interest costs and could damage the U.S. economy for years to come.

Effects on Social Security and Military and Civil Retirement

Consider how this requirement would affect Social Security. By design, the Social Security trust fund is building up reserves — in the form of Treasury securities backed by the full faith and credit of the United States — which will be drawn down to help pay benefits when the number of retired "baby boomers" peaks in the late 2020's and early 2030s. Currently, Social Security holds $2.8 trillion in Treasury securities. But under the balanced budget amendment, it would essentially be

[7] Norman Ornstein, "Four Really Dumb Ideas That Should Be Avoided," *Roll Call*, January 26, 2011.

unconstitutional for Social Security to draw down these savings to pay promised benefits. Instead, benefits could have to be cut, because all spending would have to be covered by tax revenues collected during that same year. More precisely, Social Security would be allowed to use its accumulated Treasury securities to help pay benefits only if the rest of the federal budget ran an offsetting surplus (or if the House and Senate each mustered three-fifths or two-thirds votes to permit deficit spending).

The military retirement and civil service retirement systems, which have their own trust funds, would be affected in the same way. Because all expenditures would have to be covered by taxes collected in the same year — and the use of accumulated savings thus would be unconstitutional — these trust funds would not be able to draw down their accumulated balances unless the rest of the budget ran offsetting surpluses.

Effects on the Banking System

The potential effects on the banking system also are cause for concern. The Federal Deposit Insurance Corporation (FDIC) holds more than $40 billion of reserves, in the form of Treasury securities, to insure depositors' savings. These reserves are called upon when banks fail. Similarly, the Pension Benefit Guarantee Corporation (PBGC) has $17 billion of reserves to draw upon if a corporation's defined-benefit pension plan goes bankrupt.

Here, too, the balanced budget amendment would make it unconstitutional for the FDIC and the PBGC to use their assets to pay deposit or pension insurance, since doing so would generally constitute "deficit spending." Such payments could be made only if the rest of the budget ran an offsetting surplus that year (or if Congress achieved the necessary three-fifth or two-thirds supermajorities to override the balanced budget requirement).

In general, a constitutional requirement that all spending during a given year be covered by tax revenues collected in the same year would undercut all U.S. government insurance and loan guarantees. Those range from the "full faith" backing by the U.S. government to pay interest on Treasury securities to deposit insurance, pension insurance, FHA loans, small business loans, flood insurance, and the nuclear power industry's liability insurance under the Price-Anderson Act.

Henceforth, the U.S. government would only be able to fulfill its legal commitments if their cost did not cause a deficit, or if both houses of Congress voted by a three-fifths or two-thirds supermajority to waive the balanced budget requirement.

The entire purpose of deposit insurance and other U.S. financial commitments is to *guarantee* financing in case of calamity. How reliable is the "guarantee" if the balanced budget requirement places it at risk or forces it to be withdrawn just when it is needed most?

If banks, thrift institutions, pension funds, small businesses, and mortgagers started to fail during a recession or a financial crisis, the large costs of paying federal insurance and guarantee claims probably could *not* be met within the confines of the balanced budget amendment. And if deposit insurance were no longer effective, panicked depositors could make runs on banks, causing a chain reaction that could turn a recession into a depression. That is what happened from 1929 to

1933. Indeed, federal deposit insurance was enacted in 1933 — after a four-year run by depositors on their banks — to halt that collapse.[8]

In sum, even if programs have built up substantial reserves to pay benefits and claims — such as in deposit insurance and Social Security — those reserves could fail to provide protection under a constitutional balanced budget requirement because the reserves would *not* count as revenues in the current fiscal year while spending from the reserves *would* count as spending in the current fiscal year. In general, a balanced budget requirement in the U.S. Constitution would trump any and all government guarantees and promises written into law: the guarantee to pay interest on the debt; or to pay insurance and guarantee claims for bank deposits, floods, loan defaults, and nuclear accidents; or to pay program benefits for Social Security, Medicare, Medicaid, unemployment benefits, or veterans' benefits. The availability of reserves and legal guarantees would be trumped by the constitutional bar against any deficit spending on an annual basis.

Analogies to States and Families Are Mistaken

Proponents of a constitutional amendment sometimes argue that states and families must balance their budgets every year, and the federal government should do so, too. But statements that the constitutional amendment would align federal budgeting practices with those of states and families are not accurate.

While states must balance their operating budgets, they can borrow to finance their capital budgets — to finance roads, schools, and other projects. Most states do so. Currently, state debt amounts to more than $1 trillion. States also can build reserves during good times and draw on them in bad times without counting the drawdown as new spending that unbalances a budget.

Families follow similar practices. They borrow — they take out mortgages to buy a home or student loans to send a child to college. They also draw down savings to make down-payments on mortgages or pay for college tuition and, when times are tight, to cover expenses that exceed their current incomes. In short, families borrow to make various investments. They also save for the future and draw down those savings when appropriate.

But the proposed constitutional amendment would bar such practices at the federal level. The total federal budget — including capital investments — would have to be balanced every year; no borrowing to finance infrastructure or other investments to boost future economic growth would be allowed. And if the federal government ran a surplus one year, it could not draw it down the next year to help balance the budget — saving for the future would be nearly pointless.

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[8] Even when the budget is balanced, the Treasury's ability to borrow can play an important role in protecting the U.S. financial system. For example, when a collapse of the U.S. financial system threatened in the fall of 2008, one important action taken to avert that collapse occurred when the Treasury, on its own initiative, borrowed an additional $300 billion in September of that year and deposited the funds in the Federal Reserve. Although that action did not constitute "spending" and thus would not unbalance a budget otherwise in balance, it did constitute borrowing and hence would breach the debt limit, unless the debt limit happened to be far enough above the actual level of debt. The $300 billion that was deposited in the Federal Reserve in September 2008 enhanced the Fed's ability to promise liquidity to a panicky financial system and to mitigate the meltdown that had begun to occur. Almost all versions of the constitutional balanced budget amendment proposed in recent years would, however, have made it more difficult for the Treasury to take such action, because they would have barred any increases in the Treasury's borrowing limit except when authorized by three-fifths votes of the House and the Senate.

The Right Budget Target

To address the nation's long-term budget problems, policymakers should seek to stabilize the debt as a share of GDP in the coming decade and to reduce it, or at least keep it stable after that, (allowing for some fluctuation over the business cycle).[9] This can be done without balancing the budget or running surpluses as long as the debt grows more slowly than the economy.

For example, over the 33 years from 1946 through 1979, the nation ran balanced budgets or surpluses in only eight years. Yet over those 33 years, the debt fell from 106.1 percent of the economy (gross domestic product) to 24.9 percent because the economy grew faster than the debt. Here, the analogy with families is accurate; if your income grows faster than your debts, you are in better financial shape and more creditworthy. Avoiding all debt at all costs is unnecessary.

Box 2: Who Would Enforce a Balanced Budget Requirement — And How?

Supporters of the balanced budget amendment tend to sidestep questions about how the constitutional mandate would be enforced. But there are serious questions about this, and no clear answers. For example:

- Suppose the budget falls out of balance. What happens? Would the President have the unilateral power to impose balance? Suppose, for example, that a reconciliation bill designed to balance the budget is defeated at the end of the congressional session. Can the President unilaterally declare that it is law nonetheless? Can he instead make across-the-board cuts in all spending, including Social Security, Medicare, and defense, without congressional action? Can he select which programs to cut unilaterally? Can he impose across-the-board, or selected, increases in tax rates? How about across-the-board or selected reductions in tax expenditures?
- What about the Supreme Court? If the budget is not balanced, can the Court declare a defeated reconciliation bill to be law? Can it override a presidential veto of a reconciliation bill? If it cannot enact a defeated or vetoed law, can it declare that a bill waiving the balanced budget requirement has been enacted if it received a majority vote but not a three-fifths vote? Alternatively, can it invalidate appropriation bills, in reverse chronological order? If that seems arbitrary and unworkable, can it order across-the-board cuts in all appropriations, or entitlement programs, or tax expenditures? Can it impose across-the-board surtaxes? Can it hold Congress or the President in contempt and possibly jail them if they ultimately do not act?
- If federal courts award claims or judgments against the United States, as they often do, but the costs would unbalance the budget and require an increase in the debt limit, what action would the courts take?

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[9] Richard Kogan *et al.*, "CBPP's Updated Projections Show Long-Term Budget Outlook Is Significantly Improved but Remains Challenging," Center on Budget and Policy Priorities, May 5, 2014, http://www.cbpp.org/cms/index.cfm?fa=view&id=4130.

Conclusion

Establishing a balanced budget amendment in the Constitution would be exceedingly unwise. It would likely exact a heavy toll on the economy and on American businesses and workers in the years ahead and would likely make recessions more frequent and more severe. It involves far more fiscal restraint than is necessary for prudent budgeting. It also would undercut the design of Social Security, deposit insurance, and all other government guarantees. It is notably more restrictive than the behavior of the most prudent states or families. And it raises troubling questions about enforcement, including the risk that the courts or the President might be empowered to make major, unilateral budget decisions, undermining the checks and balances that have been a hallmark of our nation since its founding. It is not a course the nation should follow.

National Taxpayers Union

Statement of Pete Sepp, Executive Vice President, National Taxpayers Union

Prepared for the
Judiciary Committee, U.S. House of Representatives

Regarding the Committee's Hearing
"Constitutional Solutions to our Escalating National Debt: Examining Balanced Budget Amendments"

July 24, 2014

Introduction

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee, my name is Pete Sepp; I am Executive Vice President of National Taxpayers Union (NTU), a non-profit, non-partisan citizen group founded in 1969 to work for lower taxes and limited, efficient government. On behalf of NTU's 362,000 members, I write to offer this written testimony for the record in regard to the hearing you are holding today, which is designed to explore the merits of particular proposals offered in Congress for a Balanced Budget Amendment (BBA) to the United States Constitution.*

As you know, National Taxpayers Union has served as America's premier advocate on behalf of a BBA for nearly all of its 45-year history. NTU was a leading organization in the drive to propose such an amendment for ratification through a convention of states under Article V of the Constitution, a campaign which began in 1975. Our members have also participated in every major effort to enact a BBA through both chambers of Congress, including Senate passage in 1982 and House passage in 1995 (the latter year also bringing the measure to within one vote of success in the Senate).

In the 112th Congress, NTU worked in conjunction with friends and allies as part of the "BBA Now Coalition." The result of these deliberations was a "Common Sense Balanced Budget Amendment" proposal that attracted the support of more than 90 grassroots and campus groups across the country. Along with NTU, our coalition included such national groups as the American Civil Rights Union, Americans for a Balanced Budget Amendment, Americans for Tax Reform, American Solutions, Balanced Budget Amendment Now, Contract from America, Institute for Liberty, Let Freedom Ring, National Tax Limitation Committee, ReAL Action, Regular Folks United, 60 Plus Association, Tea Party Express, Young Americans for Freedom, and Young Conservatives Coalition.

**As a matter of organizational policy National Taxpayers Union neither seeks nor accepts any kind of grant, contract, or other funding from any level of government.*

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Today, we remain actively and passionately committed to ensuring that a BBA becomes the law of the land as expeditiously as possible.

My colleagues and I at NTU, along with distinguished scholars enlisted by our research arm, have compiled a vast body of analysis and commentary on BBAs that is available to the Committee in current and future deliberations. My testimony contains many of these tracts, reproduced verbatim, not as some litany of "we told you so" or as some exercise in recalling "happier times." Rather, they demonstrate that the principles surrounding the debate over designing "constitutional solutions to our escalating national debt" can and should be as timeless as our nation's foundational document itself is.

Why Enact a Balanced Budget Amendment?

The reasons for supporting constitutional fiscal discipline in the form of an amendment are, in our judgment, as numerous as they are persuasive.

In May of 2011, NTU was invited to testify before the Subcommittee on the Constitution on the need for a BBA. At that point, the annual federal deficit was projected to be $1.6 trillion. For the current fiscal year the shortfall is estimated to be less than one-third this amount. Some would say this is proof that a BBA is an unnecessary response to chronic deficits. After all, the Budget Control Act of 2011 resulted in the first multi-year decline of federal expenditures since the Korean conflict, even as federal revenues have risen over the near-term for several reasons.

Yet, this optimism would quickly prove to be misplaced. Less than two years after the Budget Control Act was passed, lawmakers concluded a bipartisan pact that modified its spending caps to permit $63 billion of additional expenditures over two years. This year a movement is underway to further undermine the caps for another year or two, while offering savings to "pay for" the extra outlays over yawning (and improbable) time periods. Meanwhile, both the Legislative and Executive Branches have fallen under criticism for tapping the "Overseas Contingency Operations" portion of the Pentagon budget for projects with a questionable linkage to war-related priorities.

These kinds of budgetary tactics only reinforce the point we made in 2011, when we noted that fiscal history shows:

> … how prescient the arguments of BBA advocates have proven to be, and how specious those of opponents have been. For the better part of 40 years, we were told that fiscal discipline would evolve simply by 'electing the right people,' all while Republican and Democratic Presidents and Congresses abused the nation's good credit. We were told that statutory measures would bring outlays under control, even as laws such as the Gramm-Rudman-Hollings Act [and more recently the Budget Control Act] were trampled underfoot. We were told that our foundational document shouldn't be 'cluttered' with mundane matters of budgeting, even as the tax-and-spend culture in Washington eroded the foundations of prosperity for current and future generations.

A Congressional Budget Office (CBO) update of the long-term budget outlook released just last week ought to further disabuse lawmakers of the notion that the imperative to act on a BBA has somehow diminished. By the year 2039, federal revenues are projected to reach 19.5 percent of Gross Domestic Product (GDP), two percentage points higher than the historical average for the past four decades. Federal expenditures will, over that same period, rise much faster: to 26 percent of GDP, or 5.5 percentage points above the historical norm. The resulting overspending will accumulate to the point where *public* debt, exclusive of liabilities owed to the so-called trust funds, could reach 180 percent of GDP in 25 years under CBO's "alternative" (i.e., realistic) fiscal scenario. The feedback loop from this borrowing binge would likely doom the American economy long before 2039.

Entitlement spending – the so-called "Third Rail" of American politics – remains the primary culprit in this ultimately unsustainable calculus. While rhetoric abounds over the need to reverse this situation, Congress has in the past decade acted to exacerbate the problem with the creation of new benefit programs.

NTU's Founder and Chairman Emeritus James Davidson has observed that in politics as well as economics:

> … there are always those who say the obvious is untrue and the inevitable will never happen. So it is with the federal deficit. For … decades, advocates of fiscal reform have engaged in a futile argument about the future with those whose thoughts are not with the future, but with the past. At every stage of the debate, opponents of the Balanced Budget Amendment have underestimated the costs and consequences of runaway deficits and dismissed the one decisive measure that might have brought them under control.

When Davidson wrote those words, for remarks before the Senate Judiciary Committee in 1995, the national debt had yet to reach $5 trillion. Today that figure exceeds $15 trillion. Congress, and the nation, cannot afford to ignore Davidson's warning from the past or CBO's warning about the future.

Why Would a Balanced Budget Amendment Work?

One obvious argument for any constitutional amendment over a statutory remedy is that such a proposal is more permanent and less easily overridden. This is demonstrably true with budgetary restraint laws, long before the Budget Control Act debacle. In 1984, Professor Alvin Rabushka authored a monograph for NTU's research arm entitled "A Compelling Case for a Constitutional Amendment to Balance the Budget and Limit Taxes," where he noted the following attempts at limiting expenditures statutorily:

- The Revenue Act of 1964 called for furthering "the objective of balanced budgets in the near future" and "recognizing the importance of taking all reasonable means to restrain government spending."
- The Humphrey-Hawkins Full Employment Act declared a balanced budget to be "a national public policy priority."
- The 95th Congress enacted an amendment sponsored by Senators Grassley and Harry F. Byrd requiring that from FY 1981 and beyond, total outlays of the federal government "shall not" exceed its receipts.
- In the 96th Congress, a measure to increase the public debt stipulated that Congressional budget committees were to produce balanced budgets each year from FY 1981 onward.

Some would say that the Balanced Budget Act of 1997 was an example of statutory success in eliminating deficits. Yet, many other factors were at work besides this law, including welfare reform, a revenue boom from a reduction in the capital gains tax rate, and a multi-year slowdown in military expenditures dating back to the end of the Cold War. These trends were overwhelmed by other circumstances, and the budget went back into the red by 2001.

Beyond helping to surmount the statutory hurdle that no Congress may bind another, a properly-drafted BBA would reestablish boundaries that functioned effectively for some 175 years to make deficits rare rather than commonplace. Besides moral compunctions and institutions such as a gold standard, those boundaries once included delegation of powers protections and per capita distribution among the states of taxes on incomes. Without these, a new policymaking paradigm has been sought. Professor Aaron Wildavsky captured the essence of how a BBA would construct this paradigm in a 1986 monograph for NTU's educational affiliate. He first outlined the problem, which he described as "budgeting by addition." He explained:

> Congress makes its most important choices by choosing what not to consider. Uncontrollability is a biased form of control. Terms like 'guarantees,' 'entitlements,' and 'open-ended' commitments are not part of the traditional language of budgeting. They are about resource addition, not resource allocation. …
>
> Addition is easier than subtraction. Whenever there is a crunch, administrative agencies will add on the costs of their programmatic proposals; they will not, unless compelled, subtract one from the other. Subtraction suggests competition in which there have to be losers; addition is about cooperation in which there are only winners. Each budgetary dish is tasty; it is only the total intake that is troublesome. …
>
> *The lack of a global limit on expenditure means that items need not compete with one another.* Comparison of increments at the margins might indeed be sensible if it ever happened. But what really happens is that each item is not compared with but added to the others; and what we want is to substitute some subtraction for all the addition.

NTU supported the short-lived sequestration mechanism in the Budget Control Act of 2011 because it offered at least some prospect of spending restraint in a major portion of federal outlays. The results were uneven, but hardly as catastrophic as opponents predicted. Gimmicks and high-profile scare tactics aside, many agency managers actually practiced what their job titles indicated – they *managed* to conduct the most vital programs with fewer resources than they expected.

Still, this episode illustrated in several ways why a Balanced Budget Amendment is a preferable remedy. Most obviously, enshrining a BBA in the U.S. Constitution would place the beneficial process of "subtraction" further out of harm's way than any statute. Also, a properly-drafted BBA would be truly "global" in its impact, requiring a frank needs-based assessment across all government activities, not just those covered by sequestration. Finally, a BBA would not mandate any particular approach to budget reduction. Indeed, the most vocal critics of the so-called (but overwrought) "meat-axe" approach of sequestration should actually be the most supportive of an effective BBA. Such an amendment would establish solid guidelines for fiscal restraint while leaving elected officials and their constituents the maximum discretion in deriving acceptable policies to reflect them.

As Wildavsky noted, an elegantly drafted BBA will balance the general with the specific to bring about budgeting by subtraction:

> Placed in wide perspective, the purpose of constitutional revenue and expenditure limitation is to increase cooperation in society and conflict in government. As things stand, the purveyors of public policy within government have every incentive to raise their spending income while reducing their internal differences. How? By increasing their total share of national income at the expense of the private sector. … Once limits are enacted, however, the direction of incentives would be reversed. … This change in the pattern of perceiving interests would come about

> because society would be united on increasing productivity, and government would be divided over the relative shares of each sector within a fixed limit.

The reality of fiscal policy under a Balanced Budget Amendment might not be as clean or easy as the preceding paragraph suggests. Nonetheless, it would be a far more transparent, democratic, and sustainable condition than the current delusional state in which we find the nation's finances.

How Should a Balanced Budget Amendment Be Drafted?

These remarks have often qualified the term "BBA" with words such as "proper" and "effective" and "elegantly drafted." How can Congress achieve this elegance, one that respects the brevity and clarity of the Constitution while doing justice to the cause of fiscal discipline? Although there are several proposals NTU would support, I will focus here on three that have been mentioned in the course of today's hearings. The following commentary builds liberally on remarks we have made surrounding versions introduced in previous Congresses.

H.J. Res. 2, introduced by Chairman Goodlatte, is closest to the BBA that passed the House in 1995 and fell just one vote short of adoption in the Senate. NTU has always supported this measure, which has considerable bipartisan appeal. We commend Representative DeFazio for his eloquent advocacy of this BBA, often in the face of skepticism from colleagues within his caucus.

NTU would prefer that additional, stronger tax and expenditure limitations be a part of this proposed BBA. However, this fact does not blunt the powerful and positive impact that H.J. Res. 2 can have in reducing irresponsible spending and ensuring more accountable tax policy. It certainly provides the correct, fundamental basis for any discussion over balancing the budget by including all outlays and revenues of the United States Government within its constraints. A budget, once adopted, would be binding on *all* expenditures, including those now characterized as "off-budget."

The Amendment also proposes that any increases in taxes must be approved by a constitutional majority of each house of Congress – a "yes" vote by a majority of all Members in a recorded roll call vote. Currently a tax increase may be passed by a majority of those present, without a recorded vote.

NTU certainly shares many Members' opposition to higher taxes, and would vigorously continue to defend the right of taxpayers to keep more of what they earned if H.J. Res. 2 were ratified. At the very least, however, this tax accountability clause would help to defend against dishonest tax-hike tactics in Congress, allowing citizens to more easily hold their leaders responsible for tax policy choices. In the end, surely all Members would acknowledge the importance of limiting federal borrowing as well as taxes. Otherwise, Congress could simply choose to finance 100 percent of the annual federal budget with debt – an absurd proposition.

H.J. Res. 10, sponsored by Representative Schweikert, contains elements from past proposals NTU has supported, along with some recent refinements. It incorporates a balanced budget requirement, a revenue-raising safeguard, a spending limitation, and a debt limitation all tied to an override mechanism involving a two-thirds supermajority vote of both chambers. Notably, there is no specific exception for suspending the amendment's restrictions in military conflict or other national emergency, the presumption being (correctly in our view) that a two-thirds consensus should exist anyway to suspend the amendment during such exigencies.

By including a strong expenditure limitation, this version of a BBA would provide a vital check on irresponsible budgeting. Although several types of mechanisms could answer to the purpose of controlling growth in expenditures, any such protection incorporating Gross Domestic Product must pay careful heed to historical experience. In this case, NTU believes that an annual spending cap at 18 percent of GDP is clearly the most prudent choice. Such a level reflects the share of economic output that federal revenues have typically represented since World War II. Given that constitutional amendments should be designed with a long nod to the past and an equally farsighted view to the future, 18 percent is a most stable and logical benchmark.

In addition, setting the expenditure limit at 18 percent would make a valuable contribution toward harmonizing all parts of the amendment so that the whole functions as intended. An assumption that spending should normally be linked to the average and customary federal revenue proportion would, by its very nature, give Congress and the President a starting point that is closer to balance. Indeed, the limit helps to remedy Washington's increasingly metastasized affliction of tax-spend-and-borrow, by elevating the concept of expenditure restraint to its rightful place in policymaking. While the two-thirds "supermajority" override requirement is essential to ensuring this place, so is the 18 percent cap on expenditures. If set too high, the spending limit would merely institutionalize, rather than minimize, deficits. Recent spending-to-GDP ratios in excess of 20 percent – and the resulting pressures to borrow or tax even more – ought to convince fiscal disciplinarians of the need for a carefully-designed limit, given that Washington has only collected more than 20 percent of GDP in revenues three times since 1940.

For those who believe that there should be alternatives to introducing economic measurements such as GDP into the Constitution, H.J. Res. 24, authored by Representative Amash, offers intriguing concepts.

Instead of requiring annual balance, this "Business Cycle BBA," or BCBBA, establishes an expenditure level based on a three-year average of prior revenues plus adjustments for inflation and population growth. Unlike restrictions that are based on measurements of the size of the economy, the BCBBA's main aspect is tied to previous revenue. This has the benefit of being a "knowable" number rather than an estimate, while utilizing a three-year average ensures that temporary fluctuations do not translate into wild swings in federal spending.

The BCBBA combines this common-sense spending rule with a simple provision allowing for a robust supermajority of Congress to waive the amendment's restrictions in the case of an emergency. This fail-safe would afford Congress the ability to budget for true national security or economic emergencies without opening a large loophole through which massive amounts of non-urgent spending could be driven.

Because H.J. res. 24's structure provides for long-term balance while allowing for short-term fluctuations, there would be no justification for rushing to enact tax hikes in order to meet any annual requirements. The result would be a federal budget that is much more stable and predictable in its growth while still encouraging fiscal responsibility and affordability for taxpayers.

In order to maintain some measure of brevity to these remarks, I have omitted a plethora of NTU's materials examining worthy (and unworthy) BBAs from this and other Congresses, along with background on aspects of BBAs such as enforceability and flexibility. I would invite you to examine these important matters through NTU's website at www.ntu.org. Moreover, NTU's staff is at your service at all times to provide prompt analysis of any BBA proposals.

Why Congress Should Welcome – Rather than Fear – State Participation

One interesting feature of H.J. Res. 10 would require consent from a majority of state legislatures in order to effect an increase in the federal debt. Such a provision has naturally invited questions of the states' role in limiting federal excesses, and specifically whether the Article V convention of the states process is a valid, safe alternative for proposing amendments. NTU's near-40-year history of involvement in this issue can help to provide some perspective, which I will outline as briefly as possible from recent testimony we have provided before state lawmakers.

To the framers of the Constitution, Article V was not some mere ornament or afterthought. According to James Madison in Federalist #43, it was drafted so that it "equally enables the general and state governments to originate the amendment of errors as they may be pointed out by the experience on one side or the other."

It is also clear that the Founders judged a state-led assembly for drafting an amendment would remain focused, limited, and productive in nature. Though it was well-known to researchers for many years, recent historical overviews have provided us with even more encouraging evidence. Professor Robert Natelson and Nick Dranias, for example, have conducted painstaking research to show that the Founders certainly did not construct Article V as an accident. Natelson and Dranias have cogently demonstrated that Article V is a fundamental element in our constitutional system of checks and balances, one whose exercise is both necessary and safe. I invite you to read more about their copiously annotated findings at http://www.bba4usa.org/Article_V_Resources.html.

One of the most important contributions from these scholars has been the realization that the framers understood not only why, but how, an Article V convention would operate and respect its limitations. The era just before and during which they drafted the Constitution was often marked by assemblies of states for the purpose of working through a specific issue. Furthermore, the definitions of limited (Annapolis, 1786) versus plenary (Philadelphia, 1787) conventions were already well-established.

The latter assembly deserves commentary, since it has been raised by opponents of the process as a cautionary tale of how an Article V convention could "run away." Yet, as Natelson explained, 10 of the 12 states participating in the convention that gave birth to our modern Constitution granted wide powers to their delegates to recommend revisions in the Articles of Confederation. Virginia, for example, empowered its delegates to propose "all such Alterations as may be necessary ... to the Exigencies of the Union." In this context, then, the 1787 convention bears little resemblance to the far more narrowly defined convention that is delineated under Article V.

Finally, as Natelson and Dranias note, the Article V convention process, while not triggered in its entirety, has throughout the history of the Republic exerted a pressure on Congress to pass certain amendments on its own. The most recent example was the 17th Amendment, providing for the direct election of Senators.

Should such pressure be resented or feared by Members of Congress? Certainly not among the dozens of Members who have previously served in state legislative bodies, and who understand that sound policy can and often does originate from outside Washington, DC. Moreover, Article V is a useful way of upholding a vital partnership by allowing the 50 states to clarify and codify genuine public sentiments as expressed to their state legislatures. Such a dynamic strengthens our federal model.

But what of fears that an Article V convention would present danger to the rest of the Constitution by "running away" and proposing to rewrite the entire document? NTU has devoted a great deal of intellectual weight to this question over the years.

In 1994, NTU Chairman David Stanley authored a seminal document for state lawmakers entitled, "How to Restore Fiscal Sanity: The State Legislatures Hold the Key." As a former Majority Leader of the Iowa Senate, Mr. Stanley cogently spoke to your colleagues in state capitals around the country about the need for states to keep the pressure on for a BBA. Much has changed since then … the national debt, for example, has nearly quadrupled. However, the numerous reasons he outlined that safeguarded the Article V convention process are still relevant today, among them:

- The states have the power to limit a convention to only one subject, and the states' BBA resolutions have done so.
- Congress can limit the convention to one subject – the Constitution stipulates that while Congress must call a convention upon application of two-thirds of the states, it also can set the time, place, and other details of the assembly.
- The people may elect convention delegates pledged to consider only a BBA. Working with the BBA Task Force and the American Legislative Exchange Council, NTU has further helped to clarify this question by drafting model legislation known as the Delegate Limitation Act. States can adopt this legislation concurrently with BBA convention calls, so as to outline oaths, legal penalties for delegates who violate their charges, and delegate recall procedures that further secure the convention process.
- According to the Constitution, Congress chooses the mode of ratification, and in so doing could refuse to send an unauthorized amendment to the states.
- Article III, Section 2 of the Constitution gives the Supreme Court jurisdiction in all cases in which a state is a party. This acts not only as a check on Congress, should it be unwilling to send lawful amendments for ratification, but as a way for states to bring suit against any amendment that exceeded a convention's authority.
- No amendment could become part of the Constitution until it is ratified by three-fourths of the states. Just one chamber in 13 states could doom an undesirable proposal.

Stanley thoroughly dispatched the fear-mongering of Article V opponents by offering the following summary:

> Proclaiming a new Constitution in violation of our present Constitution would amount to overthrowing our government. But any such attempt by a convention would surely be the most toothless, ineffective revolution in world history.
>
> Would the President, Congress, Supreme Court, millions of federal employees, and the world's most powerful armed forces simply bow down and obey an illegal decision by a roomful of unarmed delegates? The idea is silly.
>
> A convention has no power to levy taxes or raise armed forces to help it take over the nation. The Constitution gives Congress at least 20 specific powers that a convention lacks. Congress can raise taxes, spend money, impeach Presidents, and much more. …
>
> Even this imaginary situation would not endanger our Constitution, because of the ratification requirement. …Ask those who sow panic about the convention process: can you name even one State Legislature, let alone 38, that would ratify repeal of the Bill of Rights, or a communist government, or any of the other horrors and hobgoblins you pretend to fear?

In the years before and since 1994, the naysayers have failed to muster any credible evidence for their case, preferring instead to conjure up the "nonexistent constitutional ghosts" that the late Senator Sam Ervin, an Article V advocate, warned about more than 20 years ago. Lawmakers who believe in the strength of our federal system should applaud the fact that once again the Article V BBA movement, stalled for many years due to fear-mongering, has enjoyed a resurgence. States that previously rescinded their Article V BBA resolutions, such as New Hampshire and Alabama, have since renewed their calls. Others, such as Michigan and Ohio, have recently passed resolutions for the first time.

This movement has gathered strength because of activists at the grassroots who believe that they have an important role in ensuring the survival of our republic. Many are part of the BBATask Force, of which NTU is also a proud founding member. Today 24 of the requisite 32 states have registered their support for convening a BBA drafting assembly. Their efforts should be welcomed as a positive affirmation of support for the urgency of the proposals to which this hearing has given its attention today.

Conclusion

Many testimonies on behalf of a BBA (including some of NTU's) have cited Thomas Jefferson, who wrote, "I wish it were possible to obtain a single amendment to our Constitution …; I mean an additional article, taking from the federal government the power of borrowing." NTU has also been fond of recalling Franklin D. Roosevelt, a hero to many liberals, who once said, "Let us have the courage to stop borrowing to meet continuing deficits. Revenues must cover expenditures by one means or another. Any government, like any family, can, for a year, spend a little more than it earns. But you and I know that a continuation of that habit means the poorhouse."

Yet there is another echo from history that can conclude this testimony, which concerns itself more with the mechanics of constitutional fiscal discipline. Professor Rabushka's monograph for NTU's research affiliate contained a highly relevant passage in which he recalled recorded debate proceedings debate over legislation known as the Budget and Accounting Act. Those proceedings stated:

> Our present system cannot be conducive to economic administration, as it invited increased expenditures through the perfectly natural rivalry of numerous committees and the inevitable expansion of departments. …Our present system is designed to increase expenditure rather than reduce it. … Appropriations from the several committees become a race between or among rivals to secure funds from the Treasury rather than safeguard them. … The pressure is for outlay.

Those words were recorded in the year 1921. Obviously the size and expectations of government have changed radically since that time, but the elusive search for institutional mechanisms that will promote thoughtful, rational choices over federal finances has never abated.

Some 93 years later, after failed statutes, missed opportunities, hollow assurances to "let the political process work," disingenuous denials, and dire warnings, our nation's financial footing is at its most precarious point in recent memory. Unless we utilize the Constitution's wisdom, protections, and capabilities for reform to embrace a BBA now, little else in that precious document will matter.

Please feel free to call upon us in your future deliberations over these and other matters that come before your Committee. Our members are most grateful for your consideration of these comments, as well as your decision to hold this heariug.

Questions for the record from Representative Conyers to Henry J. Aaron:

1. Why are deficits sometimes not only necessary but desirable?

As I have answered this question at length in a blogpost for the New Republic, I ask that the following portion of that post be included as my response. The full blogpost is available at http://www.brookings.edu/research/opinions/2014/07/16-ultimate-definitive-guide-budget-deficit-aaron

"There is no particular reason to worry about one year's budget deficit. We might decide, as a country, to run temporary deficits for any number of good reasons—to finance a war or deal with a natural disaster, for example. Sometimes short-lived events, like serious economic slowdowns, will cause revenues to fall for a while. But if the government runs consistently high deficits, even when the economy is strong, there are two very real dangers.

"One is financial. The government, like any borrower, must pay interest on all outstanding debt. If debt is growing faster than the economy as a whole or if interest rates are rising, and especially if both things are happening at the same time, then interest payments will grow faster than the nation's total income. To keep up with those payments, the government will have to raise taxes, cut spending, or borrow still more just to cover the interest.

"The other danger is that deficits can slow economic growth. Private saving can be used to pay for private investments or to cover government deficits; it can't be used for both at the same time. When the government borrows more, it makes it harder for companies and individuals to finance new investments. Without those new investments, businesses can expand as quickly as market conditions would support or provide workers with more or better tools, like faster computers or the newest machinery, to boost their productivity. Higher deficits in one year don't hurt productivity much. But higher deficits over a long period of time will have a real impact.

"Are deficits ever good things?

"Absolutely. In fact, during recessions, temporary deficits are very good things.

"Recessions occur when demand for goods and services by consumers, investors, the government, and net demand from abroad is insufficient to pay for all of the output that workers are capable of producing. In that situation, factories go idle, and offices and businesses shutter, people are laid off or let go. When that occurs, demand can fall still more, creating a vicious cycle. During recessions, increased government spending can boost demand for the goods and services that workers produce, until consumers once again have the resources—and the confidence—to start buying more on their own again.

"For example, during the most recent recession, when 10 percent of workers seeking employment could not find jobs, the federal government started spending a lot more—on unemployment insurance, grants to state and local governments, and other purposes. In addition it cut taxes to leave private consumers with higher after-tax incomes so that they could sustain or increase their own spending. These measures added to the government's budget deficit. But they also increased demand and kept people at work; and they helped maintain incomes of those who lost jobs. That meant in turn that people could keep up payments on their home mortgages and pay other bills. They got to keep their homes and put food on their tables. Meanwhile, businesses that might otherwise have failed, were able to stay in business. Other federal government spending—such as that on roads, national defense, food stamps, and aid to state and local governments—provided direct benefits to people and businesses.

"As private confidence increases and private spending grows, it becomes increasingly important to curb deficits so that debt does not indefinitely grow faster than income. But during bad times, federal budget deficits can help shore up the economy."

2. Is it not true that budget prospects over the uext decade or so have improved dramatically?

Budget deficits have fallen sharply for several reasons. The most important reason is that the U.S. economy is recovering from the worst economic slowdown since the Great Depression. A second reason is that not all of the tax cuts enacted early in the last decade were made permanent. The third major reason is that the growth of health care spending has slowed dramatically, cutting roughly $1 trillion from public health care spending projected over the next decade. The fourth reason is that public spending was cut below levels that would have occurred under prior law. As a result of all four of these developments, the ratio of debt to GDP is projected to be approximately stable over the next decade.

3. The federal budget was in surplus during the late 1990s, only to go back into deficit in the early 2000s. What were some of the reasons for this.

This question has two parts: why did surpluses emerge in the late 1990s? and why did deficit reemerge in the early 2000s?

Surpluses emerged in the late 1990s because of presidents of both parties and Congresses controlled by both parties worked together to make tough budget decisions and because of a rather extraordinary internet boom. Beginning with the budget deal negotiated between President George H. W. Bush and a Democratic Congress, continuing with the budget President Bill Clinton and a Democratic Congress passed early in the first Clinton administration, and culminating with the budget deal struck between President Clinton and a Republican controlled Congress during the president's second administration, the two parties established disciplined budget policy. The economy responded, generating high earnings and profits that, in turn, raised revenues. The result was a period of extraordinary prosperity, with rising wages, a stock market boom and budget surpluses.

After 2000, all of these elements changed. Rash tax cuts drastically reduced federal revenues. The stock market collapsed. Unemployment rose. And spending increased, in significant measure because of the need to boost military and home-defense spending after 9/11.

4. In your view, would it be fair to characterize the various balanced budget amendment proposals, and especially those containing supermajority requirements to increase taxes, raise the debt ceiling, exceed spending as a percentage of GDP, as ideological choices rather than neutral budgetary 'ground rules'?

I am loathe to characterize the motives behind the various balanced budget proposals. I am sure that those advancing them believe that they would help the nation. I disagree and explained why in my testimony. I believe that the proposals on which the hearings were organized and other similar proposals that I have seen threaten to do serious damage to the capacity of federal policy makers to respond to future economic, military, and other contingencies, which no current member of Congress is smart enough or far-sighted enough to anticipate. House Res. 1 and 2 are inherently biased because they establish different rules for changing taxes or spending *in either direction*. Future Congresses should have the flexibility that current and past Congresses have and had to respond to such contingencies. I realize that many members are very disturbed that current budget deficits are not going down fast enough. But over the life of this nation, we have done pretty well fiscally, and I have confidence that our nation will deal with our current and future budget challenges under current rules. Hobbling Congress with non-neutral rules will obstruct rather than facilitate such action.

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