# A BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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# A BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

**TUESDAY, OCTOBER 4, 2011**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to call, at 10:11 a.m., in room 2141, Rayburn Office Building, the Honorable Lamar Smith (Chairman of the Committee) presiding.

Present: Representatives Smith, Coble, Gallegly, Goodlatte, Forbes, King, Franks, Gohmert, Jordan, Poe, Griffin, Marino, Gowdy, Adams, Quayle, Conyers, Nadler, Scott, Watt, Jackson Lee, Waters, Pierluisi, Quigley, Chu, and Deutch.

Staff present: (Majority) Zachary Somers, Counsel; Sarah Vance, Clerk; David Lazar, Clerk; (Minority) David Lachmann, Subcommittee Staff Director; and Veronica Eligan, Professional Staff Member.

Mr. SMITH. The Judiciary Committee will come to order.

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

We welcome you all, particularly our witnesses and those who are interested in this particular subject.

I am going to recognize myself for an opening statement and then the Ranking Member and then introduce the witnesses here today.

Americans want the Federal Government to curb excessive Government spending and erase the Federal deficit.

Since 1970, the Federal budget has only been balanced during one 4-year period when my Republican colleagues and I on the Budget Committee were able to pass the first balanced budget in over 25 years. Meanwhile, the Federal deficit has climbed from less than $400 billion in 1970 to over $14 trillion today. And the national debt has increased 34 percent under President Obama. That is the fastest increase in national debt under any U.S. President in history.

America cannot continue to run huge Federal budget deficits. Financing Federal overspending through continued borrowing threatens to drown Americans in high taxes and heavy debt. The Federal Government now borrows 42 cents on every dollar it spends. No family, no community, no business, no country can sustain that kind of excessive spending. That is the road to insolvency.

We need a constitutional mandate to limit both the President and Congress to annual budgets that spend no more than the Government takes in. Only through a balanced budget constitutional amendment will we save future generations from unending Federal deficits. Just as both parties have joint responsibility for the deficit, we must jointly take responsibility for controlling the deficit by passing a balanced budget amendment.

We came very close to passing a balanced budget amendment in 1995 falling just one vote short in the Senate of the required two-thirds majority. In that Congress, the amendment was supported by Minority Whip Hoyer, Assistant Democrat Leader Clyburn, and Vice President Biden, among others. As then Senator Biden stated in support of the balanced budget amendment, quote, in recent decades we have faced the problem that we do not seem to be able to solve. We cannot balance our budget or, more correctly, we will not. The decision to encumber future generations with financial obligations is one that can rightly be considered among the most fundamental choices addressed in the Constitution. End quote.

It is once again time for Congress to attempt to pass a balanced budget amendment. Polls show that 74 percent of Americans are in favor of a balanced budget amendment. If we want to make permanent cuts to Federal spending, cuts that cannot be undone by future Congresses, a constitutional amendment is the only solution. It is our last line of defense against Congress' unending desire to overspend and overtax.

Amending the Constitution is not easy, nor is it a task that should be taken lightly. We have only amended the Constitution 27 times, but America's continued economic prosperity depends on changing our course on Federal spending and growing deficits. Thomas Jefferson believed that, quote, the public debt is the greatest of dangers to be feared. End quote. Jefferson wished, quote, if it were possible to obtain a single amendment to our Constitution, taking from the Federal Government the power of borrowing. End quote.

It is time we listened to Thomas Jefferson and passed a constitutional amendment to end the Federal Government's continuous deficit spending. We must solve our debt crisis to save our future.

That concludes my remarks, and I will recognize the gentleman from Michigan, Mr. Conyers, the Ranking Member of the full Committee.

Mr. CONYERS. Thank you, Chairman Smith, and good morning to my colleagues.

I just want to let us all know that we are coming back to a debate that we have been in—I think it goes back to 1980 sometime.

And I welcome all of the witnesses.

Now, it is important that we address this deficit situation that has been talked about, and it is ongoing. I agree with a lot of the observations of Chairman Smith. The problem starts, though, when we look at what the financial crisis was 2 weeks before President Obama took over the debt, before he became President. Before President Obama became President, the debt was well over $1 trillion.

Now, I have my staff researching to find out what every Member of this Committee, especially the chairman of the Republican Sudy Committee, Mr. Jordan, who advises the majority of the House on this subject—I want to find out what all of you were saying about it then. And I think that will make something interesting.

I think it would be also important, Chairman Smith, for us to understand the effect of the tax cuts for the wealthy that have gone on since we are concerned about the budget debt. Is there anything wrong with taking away the tax cuts to the wealthy? And I ask everybody on the Committee. And I will yield to Mr. Lungren.

Mr. LUNGREN. If the gentleman would yield. Do you want to go all the way back to John Kennedy and take those tax cuts away?

Mr. CONYERS. No. I am talking about——

Mr. LUNGREN. He had the highest income——

Mr. CONYERS. Well, wait a minute.

Mr. LUNGREN [continuing]. More anybody else.

Mr. CONYERS. I am talking about the Bush tax cuts. You asked me do I want to go back to the Kennedy tax cuts. Do you? I am talking to you.

Mr. LUNGREN. Well, the only point I was trying to make is that both Democrat and Republican Presidents have recognized the positive impact of tax cuts on those who create jobs in this country.

Mr. CONYERS. All right. Look, Dan, do you want to go back to the Bush tax cuts for the wealthy if you are talking about getting rid of this debt. Yes or no, Dan Lungren?

Mr. LUNGREN. If the gentleman is asking me do I think we would have a positive impact on the economy——

Mr. CONYERS. Come on. Answer the question.

Mr. LUNGREN. No. Raising taxes in the midst of a recession is the dumbest idea that even Congress could come up with.

Mr. CONYERS. What about cutting spending?

Mr. LUNGREN. Oh, I am absolutely for cutting spending. Absolutely.

Mr. CONYERS. Okay. How about cutting the spending of mothers and children on assistance?

Mr. LUNGREN. If the gentleman would yield. We are going to have to make some very difficult decisions coming up, as you know. We are waiting for the Super Committee to tell us how we are going to cut $1.5 trillion between now and Christmas, and the President has even suggested we ought to go to $2.5 trillion, but he has not given us any idea how to do it.

Mr. CONYERS. Dan, I am asking you. I am not asking the Super Committee.

Mr. LUNGREN. If the gentleman would yield.

Mr. CONYERS. Of course, I yield.

Mr. LUNGREN. We have an obligation to be responsible and to stop spending where we are spending 40 cents out of every dollar——

Mr. CONYERS. Yes or no? Yes or no?

Mr. LUNGREN. We need to cut in many, many different areas.

Mr. CONYERS. Well, of course, I understand why you won't answer yes or no because you can't afford, nor can any Member of the Congress afford, to go on record saying they are for cutting assistance to poor people, women and children, who are living in poverty uncontrovertibly. And I don't blame you.

I don't yield. I would just like to conclude.

Do you know how many constitutional scholars are telling us that we are off the mark? And I will put it in the record, and I thank the Chairman for letting me speak this morning.

Mr. SMITH. Thank you, Mr. Conyers.

The gentleman from Arizona, the Chairman of the Constitution Subcommittee, Mr. Franks, is recognized for an opening statement.

Mr. FRANKS. Well, thank you, Mr. Chairman. I am going to be brief. I am going to be yielding some of my time to Mr. Goodlatte.

Mr. Chairman, now is the time for Congress to address the Federal deficit in a way that we have thus far not been able to do. The American people are awake and they realize the urgency of this issue. They understand that the deficit might eventually destroy us in a way that no military power on earth has ever been able to do. Even the recent retired Chairman of the Joint Chiefs of Staff, Admiral Mullen, has warned, "Our national debt is the biggest single threat to our national security."

The Federal Government is borrowing over 40 cents on every dollar that it spends. This massive borrowing is causing the Federal deficit to grow rapidly as a percentage of America's economic output. If we continue on our current path, in 10 years 95 percent of all Federal revenues will be consumed by payments of interest on the national debt and mandatory programs like Social Security, Medicare, and Medicaid. This will leave only 5 percent of our annual tax revenue available for funding national defense and other essential functions of Government.

Mr. Chairman, a balanced budget amendment to our Constitution would control government spending, restore capital confidence in America's future in her economy, supercharge entrepreneurship, create new taxpayers—that is spelled jobs, Mr. Chairman—increase revenue to Government, drag investment from the four corners of the earth, and in general, turn loose the most productive nation on this planet to carry its people, rich and poor alike, to their greatest collective productivity and prosperity in history.

And I am afraid that our President may have a different plan, Mr. Chairman, but I hope that we pass this balanced budget amendment.

And I would like now to yield the balance of my time to Mr. Goodlatte, the lead sponsor of the balanced budget amendment.

Mr. GOODLATTE. I thank Chairman Franks for yielding to me, and I thank Chairman Smith for holding this hearing and both of them for their leadership on this issue.

And I would say that the fact that there are tough, tough, tough, tough decisions to be made by this Congress is exactly why we need a balanced budget amendment to the Constitution because it will force future Congresses to make those tough decisions. And fiscal responsibility, in my opinion, leads to economic growth and job creation, and that is what we are about here today.

The recently enacted Budget Control Act, which received bipartisan support and was signed into law by President Obama, requires that the House and Senate vote on a balanced budget amendment to the Constitution before the end of the year in order to address the massive ongoing annual budget deficits and skyrocketing national debt. Because the Congress will have to vote on such an important piece of legislation, it is only right that the Judiciary Committee, the Committee with jurisdiction over constitutional amendments, hold this additional hearing to examine the merits of such a proposal.

The States understand the gravity of this issue and have been weighing in for decades. Already 18 State legislatures have passed active calls for constitutional conventions to pass a balanced budget amendment. Now it is time for Congress to heed the call of the States and act ourselves.

One thing that is certain is that this effort will need to be bipartisan. I am pleased to inform the Committee that one of my bills, House joint resolution 2, has the support of 243 bipartisan cosponsors, including 15 Democratic cosponsors. In addition, many other Democratic Members have indicated a willingness to support the measure if it comes to the floor for a vote.

While more work needs to be done to garner the 290 votes necessary in the House, this bipartisan effort is promising. House joint resolution 2 is the same version of the balanced budget amendment that passed the House with 300 votes back in 1995 and fell one vote short in the Senate. If this legislation had been passed in 1995 and ratified by the States, we would not be facing the skyrocketing debt we now face. Balancing the budget would have been the norm rather than the exception.

This doesn't solve the problems. It is not a panacea. But it forces Congress and Presidents to deal with this issue today rather than pass it on to our children.

The good news is that the current Congress is again at a crossroads. Our actions now will impact the next generations of Americans, our children and grandchildren. And I look forward to hearing from our expert witnesses today about this historic effort.

And I yield back.

Mr. SMITH. Thank you, Mr. Franks. I also want to thank Mr. Goodlatte for having introduced this legislation as well.

Mr. CONYERS. Mr. Chairman, could I ask Mr. Franks to have an additional minute so I could ask——

Mr. SMITH. Without objection, the gentleman from Arizona is granted an additional 1 minute.

Mr. CONYERS. Would the gentleman yield to me for one question?

Mr. FRANKS. Certainly.

Mr. CONYERS. Would the distinguished gentleman from Virginia indicate which constitutional amendment he is bringing up since we couldn't find out last night or this morning? Could I be advised which one he is using?

Mr. GOODLATTE. Well, I thank the Ranking Member for yielding. But it is not my decision. It is the decision of the leadership in the Congress what balanced budget amendment——

Mr. CONYERS. You mean the Speaker decides. Well, which one is it? Can you tell me even now?

Mr. GOODLATTE. I think there are lots of discussions going on on both sides of the aisle about that.

Mr. CONYERS. But which amendment is before us right this moment? Can't you tell that?

Mr. SMITH. If the gentleman would yield to me for a minute. Today's hearing is on the general subject of the necessity or lack thereof of a balanced budget amendment. It is not on a specific bill.

Mr. CONYERS. Oh, okay. Look, that is important to know, gentlemen, and thank you for telling me.

Mr. NADLER. Would the gentleman yield?

Mr. SMITH. The gentleman from New York, Mr. Nadler, the Ranking Member of the Constitution Subcommittee, is recognized.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, we have all been down this road before. My Republican friends love constitutional amendments. For any complaint, there is a constitutional amendment. It is not, however, a free vote. If adopted, a balanced budget amendment, especially the ones proposed, would have catastrophic consequences for the Nation, for the economy, and for the future. While it would be nice to have some easy way to force a balanced budget, the world doesn't work that way. We know how to balance the budget. We already have done it. We already have the tools we need to do it. In the not too distant past, we managed not only to balance the budget but run surpluses and begin paying down the debt.

Alan Greenspan, in testifying in favor of the Bush tax cuts in 2001, said if we don't pass these tax cuts, we will eliminate—we will entirely pay off the national debt by 2010 because of the Clinton budgets that he inherited, and that would be bad because the Federal Reserve won't have leverage on Government bonds. And that is where we were.

How did we get from there to here? Because of President Bush and a Republican Congress, we managed to turn record surpluses into record deficits in record time. How did we do it? Well, first there were the huge tax cuts for the very wealthy. Then there were the two wars fought off budget. I don't recall hearing a peep from any of my colleagues on the other side who are now born-again fiscal conservatives. In fact, Vice President Cheney said we have learned that deficits don't matter. That summed up the Republican attitude during the years of the Bush administration. Having the regulators go to sleep while financial manipulators, banks, and hedge funds crashed the economy killed off the revenues and we still haven't recovered from that.

But rather than admit to serious economic mismanagement and looking for ways to straighten things out, we get this dusted-off quack cure from the past, this coward's approach. Instead of hard work to restore the economy and then balance the budget with appropriate tax fairness for the rich and appropriate cuts to the budget in defense, for example, we get this. If we took the approach of balancing the budget properly, as I said a moment ago, some of my Republican colleagues might not have to endure another town hall meeting where angry constituents want to know why they voted to destroy Medicare.

Strangest of all, some of these balanced budget amendment bills call for balancing the budget by 2016, even though the Republican budget the House passed recently doesn't project a balanced budget until 2040.

The amendment that we voted out of Committee would require a three-fifths vote by Congress to exceed a balanced budget. That should lead to some really history-making horse trading. Can you imagine what the hold-outs will get in exchange for passing the budget? It will make anything we do now look like child's play. The pork will be incredible.

Really troubling is the proposal to require a three-fifths vote to raise the debt ceiling. Do the sponsors really want to reduce U.S. Treasury notes to junk bond status? Do you think anyone will buy our paper if this becomes law?

This amendment also treats military engagements as the only true emergencies requiring the budget to be out of balance. That shows a poor understanding of history and economics. Herbert Hoover tried that. If in the middle of a recession when tax revenues are down and unemployment is up, we begin to slash the budget in ways my Republican colleagues are now suggesting, much less the far more draconian measures that this amendment would require, we will go from the Great Recession right into another Great Depression. It has been tried before, and if we want the Constitution to enshrine Hooverism for all time, we will get what we deserve.

We should manage the budget the old-fashioned way by making hard choices, by promoting growth, by making everyone pay their fair share of taxes, including billionaires and oil companies. It isn't fun and it won't make us a lot of friends, but we have done it before. We can do it again. It does require the courage of our own convictions to face the voters with the actual budget that we are proposing.

And finally, what everyone may think of the substance of these proposed amendments, it is fundamentally wrong to bind future generations and the future Congresses they elect to a particular economic doctrine which may be popular today. The Constitution should provide procedures for Government and should protect individual rights, but should not lock in policies, especially economic policies. Whatever anyone may think of the debt or how to reduce it or the proper level of Government expenditures as a percentage of GDP, those kinds of policies are to be enacted as legislation which can be modified, amended, or repealed by future majorities, not enshrined in the Constitution to bind future generations to the opinions of this generation. That is fundamentally undemocratic and tyrannical.

With that, I yield back the balance of my time.

Mr. SMITH. Thank you, Mr. Nadler.

Our first witness today is Dick Thornburgh. From 1979 to 1987, Mr. Thornburgh served as the Governor of Pennsylvania. In addition, he served as Attorney General of the United States under two Presidents and as Under Secretary General of the United Nations from 1992 to 1993. Governor Thornburgh is currently an attorney with K&L Gates.

Our second witness is Douglas Holtz-Eakin, President of the American Action Forum. Dr. Holtz-Eakin has served as the Director of the Congressional Budget Office, 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 third witness is Philip Joyce, a professor of management, finance, and leadership at the University of Maryland School of Public Policy. He is an expert in public budgeting and is the author of more than 50 publications, including the book "The Congressional Budget Office: Honest Numbers, Power and Policymaking." In addition, Professor Joyce has 12 years of public sector work experience, including 5 years each with the Illinois Bureau of the Budget and the Congressional Budget Office.

Our final witness is Matthew Mitchell, a research fellow at the Mercatus Center at George Mason University. Dr. Mitchell also currently serves on the joint advisory board of economists for the Commonwealth of Virginia. His work has been featured in numerous national media outlets, including the New York Times, the Wall Street Journal, and the Washington Post.

We welcome you all. We encourage you to put your entire testimony in the record, and we hope you will be able to make your remarks within the 5-minute limit.

Governor Thornburgh, we will begin with you.

## TESTIMONY OF HONORABLE RICHARD THORNBURGH, K&L GATES

Mr. THORNBURGH. Mr. Chairman, Ranking Member Conyers, Members of the Committee, my advocacy of a balanced budget amendment to the United States Constitution goes back over a 30-year period, beginning during my two terms as Governor of the Commonwealth of Pennsylvania. Thus far, the results have not been encouraging, but I am comforted by the observation of President Woodrow Wilson who once said: "I would rather fail in a cause that will some day triumph than triumph in a cause that will some day fail." My hopes remain high. Recent near train wrecks in the budgeting process have brought this cause to the fore once again, and I am privileged to appear before this Committee to try once again to make the case for this proposal and urge its enactment.

From my standpoint and background, I suggest that it is particularly significant to note that all but one of the States have constitutional balanced budget requirements which, coupled with a line-item veto and separate capital budgeting requirements, requirements which differentiate between investments and current outlays, have been utilized by their Governors and State legislatures throughout their histories and they work.

I know this because of my personal experience in Pennsylvania during the 1980's when we had to cope with serious projected deficits and a national recession which threatened to obstruct our efforts to revitalize and redirect our economy without the expenditure of vast amounts of revenue which we simply did not have. The discipline of our constitutional requirement to match revenues and expenditures not only forced us to tend both these aspects of our budgets but eventually contributed to an economic recovery which saw our State produce over 500,000 new jobs and our unemployment rate plummet from one of the 10 highest in the Nation when I was elected to one of the 10 lowest when I left office. Disciplined cost-cutting measures alone reduced expenditures by over $6 billion during my 8 years in office.

While I champion this cause, I recognize that it is useful, indeed necessary, to look at and assess the arguments usually raised against a balanced budget amendment to the Federal Constitution.

First, it will be argued that the amendment would clutter up or trivialize our basic document in a way contrary to the intention of the Founding Fathers. This is clearly wrong. The Framers of the Constitution contemplated that amendments would be necessary to keep it abreast of the times. It has, in fact, already been amended on 27 occasions.

Moreover, at the time of the Constitutional Convention, one of the major preoccupations was how to liquidate the post-Revolutionary War debts of the States. Certainly it would have been unthinkable to the Framers that the Federal Government itself would systematically run at a deficit decade after decade. Indeed, the Treasury did not begin to follow such a practice until the mid-1930's.

Second, critics will argue that the adoption of a balanced budget amendment would not solve the deficit problem overnight. This is absolutely correct. But it begs the issue. Serious supporters of the amendment recognize that a phasing-in period of 5 or even 10 years would be required to reach an ultimate zero deficit. During this interim period, however, budget makers would be constitutionally disciplined to meet declining deficit targets in order to reach a final balanced budget by the established deadline.

As pointed out by former Commerce Secretary Peter G. Peterson, a leading spokesman for responsible budgeting, such "steady progress toward eliminating the deficit will maintain investor confidence, keep long-term interest rates headed down, and keep our economy growing."

Third, it will be argued that such an amendment would require vast cuts in social services and entitlements or defense expenditures. Not necessarily. True, these programs would have to be paid for on a current basis rather than heaped on the backs of the succeeding generations. Certainly difficult choices would have to be made about priorities and levels of program funding. But the very purpose of the amendment is to discipline the executive and legislative branches actually to debate these choices and not to propose or perpetuate vast spending programs without providing the revenues to fund them. The amendment would, in effect, make the President and Congress fully accountable for their spending and taxing decisions as they should be.

Fourth, critics will say that a balanced budget amendment would prevent our hinder our capacity to respond to national defense or economic emergencies. This concern is easy to counter. Clearly any sensible amendment proposal would feature a safety valve provision to exempt deficits incurred in responding to such emergencies requiring, for example, a three-fifths super majority in both houses of Congress. Such action should, of course, be based on a finding that such an emergency actually exists.

Fifth, it will be said that a balanced budget amendment would be more loophole than law and might easily be circumvented. The experience of the States suggests otherwise. The balanced budget requirements now in effect in all but one of the 50 States have served them well.

Moreover, a constitutional line-item veto, similar to that available to 43 Governors, would assure that any specific congressional overruns or loophole end runs could be dealt with by the President.

The public's outcry, the elective process, and the courts would also provide backup restraint to any tendency to simply ignore a constitutional directive.

In the final analysis, most of the excuses raised for not enacting a constitutional mandate to balance the budget rest on a stated or implied preference for solving our deficit dilemma through the political process, that is to say, through responsible action by the President and Congress. But that has been tried and found wanting again and again and again.

I pass no judgment on the specific proposals before this Congress to effect such an amendment, but surely this country is ready for a simple, direct, clear, and supreme directive that its elected officials fulfill their fiscal responsibilities. A constitutional amendment is the only instrument that will meet this need effectively. Years of experience at the State level argue persuasively in favor of such a step. Years of debate have produced no persuasive arguments against it.

And the stakes are high. Perhaps Thomas Jefferson put it best. "To preserve our independence, we must not let our rulers load us down with perpetual debt."

That is the aim of a balanced budget amendment. Reform-minded Members of Congress should choose to support such an amendment to our Constitution as a means of resolving future legislative crises and ending credit card Government once and for all.

Such action would, as well, send a powerful message worldwide that the United States is willing to take necessary steps to put its fiscal house in order and strengthen our credibility in urging others to do likewise.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Thornburgh follows:]

Testimony of Dick Thornburgh

Former Governor of Pennsylvania and Former Attorney General of the United States

Currently Counsel to K&L Gates LLP

On the Need for a Balanced Budget Amendment to the United States Constitution

Before the Judiciary Committee of

The United States House of Representatives

Tuesday, October 4, 2011

10:00 a.m.

Washington, DC

My advocacy of a balanced budget amendment to the United States Constitution goes back over a thirty-year period, beginning during my two terms as governors of Pennsylvania. Thus far, the results have not been encouraging, but I am comforted by the observation of President Woodrow Wilson that "I would rather fail in a cause that will someday triumph, than triumph in a cause that will someday fail." Recent near train wrecks in the budgeting process have brought this cause to the fore once again and I am privileged to appear before this Committee to make the case for this proposal and urge its enactment.

I have worked in the past with numerous leaders in both parties in this cause and I am particularly proud of my partnership with such congressional leaders as Senators Orrin Hatch, and the late Paul Simon and Governors Tom Carper, Evan Bayh, Mike Castle, Bill Clinton, Dick Riley and Michael Dukakis and Congressman Joseph P. Kennedy II who have provided leadership in this effort over the years.

From my stand point, I suggest that it is particularly significant to note that all but one of the states have constitutional balanced budget requirements which, coupled with a line-item veto and separate capital budgeting requirements (which differentiate investments from current outlays), have been utilized by their governors and state legislatures throughout their histories. And they work.

I know this because of my personal experience in Pennsylvania during the 1980s when we had to cope with serious projected deficits and a national recession which threatened to obstruct our efforts to revitalize and redirect our economy without the expenditure of vast amounts of revenue which we simply did not possess. The discipline of our constitutional requirement to match revenues and expenditures not only forced us to tend both these aspects of our budgets but eventually contributed to an economic recovery which saw our state produce over 500,000 new jobs and our unemployment rate plummet from one of the ten highest in the nation when I was elected to one of the ten lowest when I left office. Disciplined cost-cutting measures alone reduced expenditures by over $6 billion during my eight years in office.

While I champion this cause, I recognize that it is useful, indeed necessary, to look at and assess the arguments usually raised against a balanced-budget amendment to the federal constitution.

First, it will be argued that the amendment would "clutter up" or trivialize our basic document in a way contrary to the intention of the founding fathers. This is clearly wrong. The framers of the Constitution contemplated that amendments would be necessary to keep it abreast of the times. It has, in fact, already been amended on 27 occasions.

Moreover, at the time of the Constitutional Convention, one of the major preoccupations was how to liquidate the post-Revolutionary War debts of the states. Certainly, it would have been unthinkable to the framers that the federal government itself would systematically run at a deficit, decade after decade. Indeed, the Treasury did not begin to follow such a practice until the mid-1930s.

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During this interim period, however, budget makers would be constitutionally disciplined to meet declining deficit targets in order to reach a final balanced budget by the established deadline.

As pointed out by former Commerce Secretary Peter G. Peterson, a leading spokesman for responsible budgeting, such "steady progress toward eliminating the deficit will maintain investor confidence, keep long term interest rates headed down, and keep our economy growing."

Third, it will be argued that such an amendment would require vast cuts in social services and entitlements or defense expenditures. Not necessarily. True, these programs would have to be *paid for* on a current basis rather than heaped on the backs of succeeding generations. Certainly, difficult choices would have to be made about priorities and levels of program funding. But the very purpose of the amendment is to discipline the executive and legislative branches actually to *debate* these choices and not to propose or perpetuate vast spending programs without providing the revenues to fund them.

The amendment would, in effect, make the president and congress fully accountable for their spending and taxing decisions, as they should be.

Fourth, critics will say that a balanced budget amendment would prevent or hinder our capacity to respond to national defense or economic emergencies. This concern is easy to counter. Clearly, any sensible amendment proposal would feature a "safety valve" provision to exempt deficits incurred in responding to such emergencies, requiring, for example, a three-fifths "super majority" in both houses of congress. Such action should, of course, be based on a finding that such an emergency actually exists.

Fifth, it will be said that a balanced-budget amendment would be "more loophole than law" and might be easily circumvented. The experience of the states suggests otherwise. The balanced-budget requirements now in effect in all but one of the fifty states have served them well.

Moreover, a constitutional line-item veto, similar to that available to 43 governors, would assure that any specific congressional overruns (or loophole end-runs) could be dealt with by the president. The public's outcry, the elective process and the courts would also provide backup restraint on any tendency to simply ignore a constitutional directive.

In the final analysis, most of the excuses raised for not enacting a constitutional mandate to balance the budget rest on a stated or implied preference for solving our deficit dilemma through the "political process" – that is to say, through responsible action by the president and congress.

But that has been tried and found wanting, again and again and again.

I pass no judgment on the specific proposals before this Congress to effect such an amendment but, surely, this country is ready for a simple, clear and supreme directive that its elected officials fulfill their fiscal responsibilities. A constitutional amendment is the only instrument that will meet this need effectively. Years of experience at the state level argue persuasively in favor of such a step. Years of debate have produced no persuasive arguments against it.

And the stakes are high. Perhaps Thomas Jefferson put it best:

"To preserve our independence, we must not let our rulers load us down with perpetual debt."

That is the aim of a balanced budget amendment. Reform-minded members of Congress should choose to support such an amendment to our Constitution as a means of resolving future legislative crises and ending "credit card" government once and for all.

Such action would as well send a powerful message world-wide that the United States is willing to take necessary steps to put its house in order.



Mr. SMITH. Thank you, Governor Thornburgh.

Dr. Holtz-Eakin?

## TESTIMONY OF DOUGLAS HOLTZ-EAKIN, AMERICAN ACTION FORUM

Mr. HOLTZ-EAKIN. Thank you, Mr. Chairman, Ranking Member Conyers, and Members of the Committee. It is a privilege to be here today.

You have my written statement. Let me make five simple points about this issue.

Point number one is that the United States faces an enormous debt crisis. And I won't belabor that. It threatens our economy and our legacy to the next generations and it has to be dealt with.

A second point is that the U.S. Federal budgeting process will be radically improved by the adoption of some sort of fiscal rule, a target, whether it be a spending limit or a debt-to-GDP ratio, or something which would impose a coherence on the budget process, force the kinds of tradeoffs that have to be made among different elements of the spending and taxes. And those fiscal rules have proven to be valuable in other countries that have faced exactly the same kind of growth in debt problems the U.S. has.

The characteristics of those rules are that they should be large enough to be effective. Small rules are not going to help us in this situation. They should be easily linked to whatever actions Congress takes on tax and spending policy, and they need to be transparent and well understood by the public so that they can buy into their execution.

Point number three is that the balanced budget amendment is exactly such a rule. It is a target for fiscal policy that is linked directly to the actions of the Congress, and it is transparent and easily understood by the public.

It has one key difference from other fiscal rules, including those we have tried in the United States, and that is it precludes a future Congress from reneging on their commitment that it has made and that is the dominant characteristic of past fiscal rules, whether it is Gramm-Rudman or PAYGO rules or whatever they may be. Future Congresses have always found a way to get around them. This would impose a level of discipline even higher than those would.

The fourth point is that your typical balanced budget amendment includes more than just balancing the budget. Often it will include provisions for waivers in the event of military conflict, economic distress, or other circumstances. Often it will include provisions for limiting the size of the Government because there is nothing inherent about a balanced budget amendment that constrains Government to a size that is not economically damaging. And so in thinking about this, it is important to think about the other characteristics you want to embody in the balanced budget amendment.

And then the last point I would like to make, before we turn to the questions, is that this issue of getting from where we are now, a deficit of a trillion and a half, a gross debt-to-GDP ratio of over 90 percent, which puts us in the historic danger zone for a higher probability of sovereign debt crisis, paying a growth penalty of probably 1 percentage point per year based on the evidence, getting from that to a balanced budget is often thrown up as a hurdle. And I think that makes two mistakes.

Mistake number one is that during the period in which any such amendment would be ratified, there would be clear pressure on a Congress and Administration to start getting its budget in order so that if it were ratified, it would balance upon becoming an element of the Constitution.

And the second thing that would happen during that period is that the public would, by definition, have to buy into the idea that this is good public policy and it wishes its Government to be constrained in this way. If it does not buy in, it won't get ratified, and there is no rule that will be successful without the support broadly of the populace.

And so I am pleased to have a chance to discuss this issue today and I look forward to answering your questions.

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

# A Constitutional Amendment for a Balanced Budget

Testimony to the U.S. House of Representatives
Judiciary Committee

Douglas Holtz-Eakin, President
American Action Forum*

October 4, 2011

* 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 Cameron Smith for assistance.

**Introduction**

Chairman Smith, 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 U.S. faces a dramatic threat from the current and projected levels of federal debt,

- 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 Threat from Federal Debt**

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 next 30 years, 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 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, action (in the right direction) has yet to be seen.

Those were the good old days. In the past several years, the outlook has worsened significantly.

[1] Congressional Budget Office. 2011. *The Long-Term Budget Outlook.* Pub. No. 4277. http://www.cbo.gov/ftpdocs/122xx/doc12212/06-21-Long-Term_Budget_Outlook.pdf

Over the next ten years, according to the Congressional Budget Office's (CBO's) analysis of the President's Budgetary Proposals for Fiscal Year 2012[2], the deficit will never fall below $750 billion. Ten years from now, in 2021, the deficit will be 4.9 percent of GDP, roughly $1.2 trillion, of which over $900 billion will be devoted to servicing debt on previous borrowing. As a result of the spending binge, in 2021 debt in the hands of the public will have more than doubled from its 2008 level to 90 (87.4) percent of GDP and will continue its upward trajectory.

Clearly, the passage of the Budget Control Act of 2011, its embodied caps on discretionary spending, and the formation of the Joint Select Committee on Deficit Reduction represents a commitment to move the nation's finances in a better direction. Nothing could be more important.

*The "Bad News" Future under Massive Debt Accumulation*. A United States fiscal crisis is now a threatening reality. It wasn't always so, even though – as noted above – the Congressional Budget Office has long published a pessimistic *Long-Term Budget Outlook*. Despite these gloomy forecasts, nobody seemed to care. Bond markets were quiescent. Voters were indifferent. And politicians were positively in denial that the "spend now, worry later" era would ever end.

Those days have passed. Now Greece, Italy, Portugal, Spain, Ireland, and even Britain are under the scrutiny of skeptical financial markets. And there are signs that the U.S. is next – as witnessed by the decision of S&P to downgrade the federal credit rating. The federal government ran a fiscal 2010 deficit of $1.3 trillion – nearly 9 percent of GDP, as spending reached nearly 24 percent of GDP and receipts fell below 15 percent of GDP.

What happened? First, the U.S. frittered away its lead time. It was widely recognized that the crunch would only arrive when the baby boomers began to retire. Guess what? The very first official baby boomer already chose to retire early at age 62, and the number of retirees will rise as the years progress. Crunch time has arrived and nothing was done in the interim to solve the basic spending problem – indeed the passage of the Medicare prescription drug bill in 2003 made it worse.

Second, the events of the financial crisis and recession used up the federal government's cushion. In 2008, debt outstanding was only 40 percent of GDP. Already it is over 60 percent and rising rapidly.

Third, active steps continue to make the problem worse. The Affordable Care Act "reform" adds two new entitlement programs for insurance subsidies and long-term

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[2] Congressional Budget Office. 2011. *An Analysis of the President's Budgetary Proposals for Fiscal Year 2012*. Pub. No. 4258. http://www.cbo.gov/ftpdocs/121xx/doc12130/04-15-AnalysisPresidentsBudget.pdf

care insurance without fixing the existing problems in Social Security, Medicare, and Medicaid.

Financial markets no longer can comfort themselves with the fact that the United States has time and flexibility to get its fiscal act together. Time passed, wiggle room vanished, and the only actions taken thus far have made matters worse.

As noted above, in 2021 debt in the hands of the public will have more than doubled from its 2008 level to 90 (87.4) percent of GDP and will continue its upward trajectory. Traditionally, a debt-to-GDP ratio of 90 percent or more is associated with the risk of a sovereign debt crisis.

Indeed, there are warning signs even before the debt rises to those levels. As outlined in a report[3], the credit rating agency Moody's looks at the fraction of federal revenues dedicated to paying interest as a key metric for retaining a triple-A rating. Specifically, the large, creditworthy sovereign borrowers are expected to devote less than 10 percent of their revenues to paying interest. Moody's grants the U.S. extra wiggle room based on its judgment that the U.S. has a strong ability to repair its condition after a bad shock. The upshot: no downgrade until interest equals 14 percent of revenues.

This is small comfort as the 2012 Obama Administration budget targets 2015 as the year when the federal government crosses the threshold and reaches 14.2 percent. Moreover, the plan is not merely to flirt with a modest deterioration in credit-worthiness. In 2021, the ratio reaches 20.3 percent.

Perhaps even more troubling, much of this borrowing comes from international lending sources, including sovereign lenders like China that do not share our core values.

For Main Street America, the "bad news" version of the fiscal crisis occurs when international lenders revolt over the outlook for debt and cut off U.S. access to international credit. In an eerie reprise of the recent financial crisis, the credit freeze would drag down business activity and household spending. The resulting deep recession would be exacerbated by the inability of the federal government's automatic stabilizers – unemployment insurance, lower taxes, etc. – to operate freely.

Worse, the crisis would arrive without the U.S. having fixed the fundamental problems. Getting spending under control in a crisis will be much more painful than a thoughtful, pro-active approach. In a crisis, there will be a greater pressure to resort to damaging tax increases. The upshot will be a threat to the ability of the

[3] Moody's determines debt reversibility from a ratio of interest payments to revenue on a base of 10 percent. Wider margins are awarded to various governments to indicate the additional "benefit of the doubt" Moody's awards. The US finds itself on the upper end at 14 percent. The ratios are "illustrative and are not hard triggers for rating decisions." See: *Aaa Sovereign Monitor Quarterly Monitor No. 3*. Moody's Investor Service. March 2010.

United States to bequeath to future generations a standard of living greater than experienced at the present.

Future generations will find their freedoms diminished as well. The ability of the United States to project its values around the globe is fundamentally dependent upon its large, robust economy. Its diminished state will have security repercussions, as will the need to negotiate with less-than-friendly international lenders.

*The "Good News" Future under Massive Debt Accumulation.* Some will argue that it is unrealistic to anticipate a cataclysmic financial market upheaval for the United States. Perhaps so. But an alternative future that simply skirts the major crisis would likely entail piecemeal revenue increases and spending cuts – just enough to keep an explosion from occurring. Under this "good news" version, the debt would continue to edge northward – perhaps at times slowed by modest and ineffectual "reforms" – and borrowing costs in the United States would remain elevated.

Profitable innovation and investment will flow elsewhere in the global economy. As U.S. productivity growth suffers, wage growth stagnates, and standards of living stall. With little economic advancement prior to tax, and a very large tax burden from the debt, the next generation will inherit a standard of living inferior to that bequeathed to this one.

**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.

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[4] other countries have benefitted from adopting fiscal rules. 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**

In this consequence, how should one think of proposals to amend the Constitution of the United States to require a balanced federal budget? (See the Appendix for features of leading balanced budget proposals in the House and Senate.) 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

[4] http://budgetreform.org/

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 effect 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 frequent 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. While the two-century long ratification of the 27th amendment may be an extreme example, suffice it to say 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, including the one passed out of this committee 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 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 ciriticisms 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.

Appendix
House and Senate Balanced Budget Amendments

**HOUSE:**
H.J.RES.1
Sponsor: Rep Goodlatte, Bob
Cosponsors (133)

**Requirements:**
1.) Outlays and Receipts: Outlays must not exceed receipts.
2.) Spending Limit: Outlays must not exceed 18 percent of "economic output."
3.) President's Budget: Must submit a balanced budget.
4.) Debt Limit: The debt limit may not be raised without **3/5** of both chambers.
5.) Revenues: Bills to increase revenue cannot be enacted without **2/3** of both chambers.

**Waivers:**
1.) War: All provisions may be waived for any fiscal year if a declaration of war is in effect, or if the U.S. is in a military conflict of an imminent and serious nature and declared by a **majority** of both chambers.
2.) Spending Waiver: The balance requirement can be waived by a **3/5** vote providing a specific excess of outlays, while the 18 percent of GDP provision can be waived by a **2/3** vote providing for a specific excess of outlays.

**Timeline:**
1.) Ratification: State must ratify within 7 years after passage.
2.) Implementation: Two years after ratification prior to 2017, one year thereafter.

**SENATE:**
S.J.RES.23
Sponsor: Sen McConnell, Mitch
Cosponsors (46)

**Requirements:**
1.) Outlays and Receipts: Outlays must not exceed receipts.
2.) Spending Limit: Outlays must not exceed 18 percent of GDP for the calendar year ending before the beginning of the fiscal year. Note, this has the effect of limiting outlays below 18 percent because of the lagged periods.
3.) President's Budget: Must submit a balanced budget and outlays must not exceed 18 percent of GDP for the calendar year ending before the beginning of the fiscal year. This also has the lag issue built into it.
4.) Debt Limit: The debt limit may not be raised without **3/5** of both chambers.
5.) Revenues: Bills to increase revenue, impose a new tax, or increase the statutory rate of any tax cannot be enacted without **2/3** of both chambers.

**Waivers:**

1.) War: All requirements, except those pertaining to revenue bills, may be waived for any fiscal year if a declaration of war is in effect, and a majority provides for the specific excess by vote. These same provisions may also be waived if the U.S. is in a military conflict of an imminent and serious nature with the excess provided for by a vote of **3/5** of both chambers.
2.) Spending Waiver: The balance requirement can be waived by a **2/3** vote providing a specific excess of outlays, while the 18 percent of GDP provision can be waived by a **2/3** vote providing for a specific excess of outlays.

**Misc:**

1.) No court may order a revenue increase to enforce this amendment.

**Timeline:**

1.) Implementation: 5th fiscal year after ratification.

**Key Distinctions**

| | **House** | **Senate** |
|---|---|---|
| **Balance Requirement** | Waived with 3/5 vote | Waived with 2/3 vote |
| **Outlays** | 18 percent of GDP, waived by 2/3 | 18 percent of GDP lagged, waived by 2/3 |
| **Contingencies** | All provisions can be waived by declaration of war or designated conflict by a majority | Waivers granted for declared war, except for revenue measures, or designated conflict by 3/5 vote. |
| **Revenue** | No bills that increase revenues without a 2/3 vote. | No bills increasing revenue, adding a new tax, or increasing rates without a 2/3 vote. |
| **Courts** | No provision | Court may not increase revenue. |
| **President's Budget** | Must be balanced, no spending limit | Must be balanced, spending limit (18%) |
| **Debt Limit** | Increase with 3/5 vote | Increase with 3/5 vote |
| **Timeline** | 2 years after ratification limited to 7 years | 5th fiscal year after ratification |

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

And Professor Joyce?

## TESTIMONY OF PHILIP G. JOYCE, UNIVERSITY OF MARYLAND

Mr. JOYCE. Thank you, Chairman Smith, Ranking Member Conyers, Members of the Committee. I appreciate the opportunity to testify today.

I have to make it clear up front that I agree with any of you who say and all of my colleagues who say that the Federal debt is unsustainable and needs to be reduced. In fact, if the Super Committee decided to go much further than $1.5 trillion, I would cheer.

I am sympathetic to the frustration that leads people to believe that the balanced budget amendment will be the long-awaited silver bullet that leads to fiscally responsible budgeting. I am for fiscally responsible budgeting, but I strongly disagree with the notion that amending the Constitution will get us there.

I want to stress just a few points from my testimony.

The first one is that evidence accumulated over decades indicates that budget process rules are effective at forcing already past policy. They are not effective at enforcing future policymakers to make choices that they don't want to make. The Gramm-Rudman-Hollings legislation in the 1980's was aborted when the President and the Congress appeared to meet the projected deficit targets through optimistic forecasts. The Budget Enforcement Act process of the 1990's with caps and PAYGO worked as long as there was consensus around reducing the debt. Put simply, there never has been a budget rule that the Congress and the President could not figure out a way to get around if they wanted to.

The balanced budget amendment just puts Gramm-Rudman in different clothes by enshrining a deficit target in the Constitution. Promising balanced budgets later because the Constitution is going to make them happen will likely have little positive consequence.

Second, a balanced budget amendment would not be self-enforcing. Implementing legislation would need to address many technical details. Lots of terms in the amendment are subject to interpretation and re-interpretation, definition, and re-definition. Actually achieving a balanced budget would involve making hard choices, the kind that the Super Committee is dealing with now. These would mean increasing taxes and reducing spending. Enforcement mechanisms would need to be developed. The inability to agree on these policy changes and sanctions is the problem we have today. The balanced budget amendment is a distraction from solving that problem.

Third, analogies between the Federal budget and budgets of families, corporations, and State and local governments in my view are misguided. First, there is the very real issue of the different role that the Federal Government has to provide for economic stabilization. It is useful to ask what the States would have done if they had been left on their own and perhaps even had Federal funding reduced during the recent recession.

Beyond this, however, is the simple fact that none of these entities actually balance their budgets. State and local governments, for example, borrow lots of money financed through separate capital budgets. I have worked in State budget offices and I still study

State budgeting, and I can tell you that States do not balance their operating budgets primarily because their constitutions tell them to. Budgeting at the State and local level is much more heavily influenced by the effect that irresponsible decisions would have on bond ratings and therefore future borrowing costs.

My final point is that versions of the balanced budget amendment that attempt to limit Federal spending as a percentage of the economy are problematic for two reasons.

First, any future Congress should be able to make the choices that it wants to. A spending level such as 18 percent of GDP would establish a ceiling that is substantially below the 40-year historical average, which is almost 21 percent of GDP, and doesn't recognize the effect that demographics will have on future costs for entitlement programs. Making it substantially more difficult to raise taxes takes a very important tool for balancing the budget off of the table when we need all the tools that we could possibly get at this point given the magnitude of the problem.

Second, even attempts to live within the spending limit would invite in my view a number of strategies or gimmicks to get around that limitation. I listed a number of these in my testimony, but perhaps the clearest one is that a spending limit would increase the incentives to provide expensive and inefficient benefits through the tax code. That is, we would see an increase in tax earmarks and tax expenditures.

To conclude then a constitutional amendment will neither address the current debt problem nor keep the problem from returning. In 1992 testimony before the House Budget Committee, then CBO Director Robert Reischauer argued that it was a "cruel hoax to suggest to the American public that one more procedural promise in the form of a constitutional amendment is going to get the job done." I agree. History demonstrates that if Congress and the President want to get around any rules, even constitutional ones, they will find a way to do so. There are much more direct ways for elected officials to show commitment to deficit reduction such as returning to the kind of actions taken in the 1990's when two President, George H.W. Bush and Bill Clinton, worked with the Congress to enact spending cuts, tax increases, and enforcement mechanisms. Congress already has the tools. It just needs to use them.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Joyce follows:]

Statement of Philip G. Joyce[1]

Before the Committee on the Judiciary

U.S. House of Representatives

October 4, 2011

[1] Professor of Management, Finance, and Leadership, Maryland School of Puhlic Policy, pgjoyce@umd.edu

Chairman Smith, Ranking Member Conyers, and members of the Committee, thank you for inviting me to share my views on amending the constitution to require annually-balanced federal budgets. The views I express result from 20 years of both participating in—and studying—the budget process.

I must make clear that I do not differ with those who say that the federal debt is at unsustainable levels and needs to be reduced. If the Joint Select Committee on Deficit Reduction decided to go much further than the $1.5 trillion required by the Budget Control Act of 2011, I would join the rejoicing chorus.

Further, I am sympathetic to the frustration that leads people to believe that amending the constitution to require a balanced federal budget will be the silver bullet that leads the Congress and the President to engage in fiscally responsible budgeting. I strongly disagree, however, with the contention that amending the constitution will have any effect on either current or future deficits. I think it is more likely to be an empty promise that will be evaded in the same way budgetary control mechanisms in the past have been evaded. Even if a balanced budget amendment defied convention and did work, it would become a fiscal straightjacket that would rob the federal government of its important economic stabilization role.

I will cover five points in my testimony:

- The federal debt is too large, and growing, meaning that serious action to reduce that debt is essential to the future economic well-being of the country.
- There is little reason to believe that amending the constitution to require a balanced federal budget will actually reduce the debt, or prevent it from growing in the future. Evidence accumulated over decades indicates that budget process rules are effective for enforcing already-passed policy; they are not effective in forcing future policymakers to make choices that they do not want to make.
- A balanced budget amendment would not be self-enforcing. Many technical details would need to be worked out in legislation, spending cuts and tax increases would need to be enacted, and enforcement mechanisms would need to be developed. These important decisions face national political leadership, with or without a constitutional

amendment. There is nothing to stop the Congress and the President from solving the debt problem now, other than political will.

- Analogies between the federal budget and budgets of families, corporations, and state and local governments are misguided. To the extent that arguments in favor of a balanced budget amendment rely on these analogies, they are in error. In particular, such arguments fail to recognize the unique and extensive economic role of national governments.
- Versions of the balanced budget amendment that attempt to limit federal spending as a percentage of the economy will have unintended consequences resulting from the inevitable efforts to get around those limitations.

The Need to Reduce Federal Debt

The fiscal problems that currently face the United States are well-documented. Debt held by the public almost tripled from $3.3 trillion (34 percent of GDP) to $9 trillion (62 percent of GDP) between 2001 and 2010. Current projections by CBO indicate that, assuming that certain current policies (such as the Bush tax cuts and the Medicare payment rates for physicians' services) are continued, federal debt at a percentage of GDP will reach 82 percent by 2021. This is nothing compared to the long-term challenge. Using that same "current policy" baseline, CBO projects that debt could reach 190 percent of GDP by 2035. Much of this additional increase is driven by the growth in spending for the major entitlement programs, particularly Medicare and Medicaid.

Deficit and debt projections are not predictions, and the path that they assume is not inevitable. They are simply attempts to communicate the potential effect of failing to act. I endorse the view expressed by the President's deficit commission, the Rivlin-Domenici Commission, and the Peterson-Pew Commission on Budget Reform: serious action needs to be taken, and soon. The sooner policy actions are taken, the less draconian those actions will need to be, and the less damage rising debt will create. The question is not, in my view, whether something needs to be done about the debt. I concur with those who say that the mounting debt is a problem that needs to be taken seriously sooner rather than later. Further, the magnitude of the problem is so great that I think that no policy solution can be excluded. So far, domestic discretionary spending has taken the brunt of the cuts, but other spending, including defense and mandatory spending, will need to be reduced as well. Notably, this is not only a spending problem, and the solution is not only a spending solution. Based on my read of the numbers, I would agree with the conclusions of all of the major debt reduction commissions that it is inevitable that increases in revenue will be necessary in order to reduce the debt to sustainable levels.

Experience with Fiscal Rules Suggests that a Balanced Budget Amendment Won't Work

While few need convincing that the debt is a problem, as one absorbed by study and observation of the federal budget process, I am concerned about the apparent rush to conclude that the fiscal rule under consideration is a credible response. I am skeptical that a constitutional balanced budget requirement would have prevented the country from getting into this fiscal fix. I am relatively certain that it will neither resolve the present challenge nor prove effective in preventing future fiscal crises. Congress has experience with fiscal rules that can inform judgment on this point. Since at least the mid-1980s, Congress has experimented with different kinds of fiscal rules—as attempts to come to grips with large deficits that began emerging in the 1980s.

The Congressional Budget and Impoundment Control Act of 1974, which created the Budget Committees, the budget resolution, and CBO, was intended to force the Congress to deal comprehensively with the budget. This was all well and good, except that there was nothing about the budget process created in 1974 that necessarily forced political leadership to confront the large deficits that began to surface by the mid-1980s. The Balanced Budget and Emergency Deficit Control Act of 1985 (later revised in 1987), also known as Gramm-Rudman-Hollings (GRH), attempted to put the budget on a glide path to balance by setting fixed deficit targets, over multiple years.

The Gramm-Rudman-Hollings legislation was a watershed event, because it explicitly focused the budget process, for the first time, on attempting to get a handle on out of control budget deficits. It did not, however, achieve its goals. In fact, the fiscal year 1993 budget, which was to be balanced under the revised 1987 targets, had a deficit of $255 billion. The failure of GRH stemmed primarily from its focus on estimated, rather than actual, deficits. Policymakers tended to meet the projected deficit targets through systematically optimistic forecasts, particularly of economic growth. These optimistic forecasts were embraced by both the President and Congress, and by both Republicans and Democrats.

The failure of GRH to reduce deficits to manageable levels contributed to the search for a different approach, which ultimately culminated in the Omnibus Budget Reconciliation Act of 1990. This act combined spending cuts and tax increases to reduce 1991-1995 deficits by an estimated $500 billion. It also included a new procedure, called the Budget Enforcement Act (BEA), which combined statutory caps on discretionary programs with a new pay-as-you-go (PAYGO) system designed to prevent future policy actions from undermining deficit-reducing decisions enacted in 1990. Under PAYGO, if mandatory spending was increased or taxes decreased, compensatory action to reduce mandatory spending or increase taxes was required in order to make the overall effect "deficit neutral". Both the caps and PAYGO were enforced on a multi-year basis.

The BEA approach survived the 1990s. New five-year reconciliation bills were passed in 1993, and again in 1997. The BEA process itself was extended until 2002, but the onset of budget surpluses in fiscal year 1998 ultimately led to its downfall. Congress and the President resorted to loopholes starting in the late 1990s, such as declaring funding for the conduct of the 2000 census to be an emergency. (This seemed to many to stretch the emergency designation more than a little, since the requirement for the decennial census is in the U.S. constitution.)

Between 1997 and this year (when the discretionary spending caps in the Budget Control Act were enacted) the budget process was not used to enact any multi-year deficit reduction agreements. While there were uses of reconciliation during the 2000s, all of them (including the 2001 and 2003 Bush tax cuts) had the effect of adding to deficits rather than reducing them. While a statutory PAYGO law was enacted in 2010, it includes a number of sequestration exemptions that limit its usefulness.

I suggest that this history reveals a clear lesson about fiscal rules. Very simply, it demonstrates that the budget process is not good at forcing the Congress and the President to do things that that they do not believe is in their political interest, regardless of what the rules may require.

There has never been a budget rule that the Congress could not figure out a way around if it wanted to. The targets in Gramm-Rudman were clear. Members of Congress, and Presidents, evaded those targets by making unrealistic assumptions about future economic growth and by resorting to gimmicks. I think the main take-away from GRH is that meeting projected targets is not that hard, as long as the Congress and President are willing to cook the numbers in a way that allows them to appear to meet the goals, rather than actually meeting them. More conclusively, it's clear that setting targets without simultaneously reaching consensus on policy actions to achieve those targets is an empty promise. The major failing of GRH was that it did not require anything of political leadership, other than a promise to do something later.

The BEA approach worked, at least during the 1990s, because it was not an attempt to get policymakers to do something later, but rather it created an enforcement regime that required compliance with already-agreed policy actions. The PAYGO process, and the discretionary caps, did not CAUSE fiscal responsibility. They were a consequence or manifestation of fiscal responsibility. When the consensus around the overall budget goals fell apart, so did the effectiveness of the rules.

The bottom line is simply that <u>the budget process is better at enforcing compliance with actions already taken than generating policy agreements.</u> The balanced budget amendment is just Gramm-Rudman in different clothes. The BBA migrates the goal of a fixed target for the deficit (here annual balance) from statute and enshrines it in the constitution. However, rules cannot substitute for political will and political leadership. All successful deficit reduction efforts in the last three decades have one basic thing in common. The President and the Congress agreed on a future path for the budget, on a related set of policy actions, and then the budget process was used to enforce compliance with those actions. Promising balanced budgets later, because the constitution is going to make them happen, is a feel-good action that will likely have little consequence.

A Balanced Budget Amendment Would Require Implementing Legislation

Imagining a balanced budget amendment was passed by the necessary two-thirds vote in both houses of Congress and sent to the states for ratification, it is useful to consider what next steps would be required in order for such an amendment to deliver on its promise. Presumably, given the magnitude of the fiscal problem facing the country, the Congress would not want to wait until the states take action to begin considering the necessary legislative changes to bring the budget into balance by fiscal year 2016 (the amendment's effective date). In fact, both H.J. Res 1 and H.J. Res. 2 include a section providing explicitly for implementing and enforcement legislation. Let's pause for a moment to consider issues implementing legislation would need to address.

1. The Congress would need to resolve many definitional and other technical details that it is neither possible nor appropriate to put into the constitution. For example, most versions of the amendment (including H.J. Res. 1 and H.J. Res. 2) define balance in terms of "total outlays" and "total receipts". These, and many other, concepts in the proposed amendments are subject to interpretation. What is the "debt of the United States held by the public"? When does a bill become a "bill to increase revenue"? How does "revenue" differ from "receipts"? The implementing legislation is to rely on "estimates of outlays and receipts". Whose estimates? H.J. Res. 1 includes a spending limit of 18 percent of "economic output of the United States". How is that defined? All of these, and other, concepts would need to be spelled out in legislation. More importantly they could be redefined later in a way that made them more, or less, constraining.
2. Further, to state the obvious, the balanced budget amendment only sets out a goal. After the goal was established, it would be necessary to enact the spending cuts and revenue increases that would enable achievement of the goal. The amendment would not make these changes. The hard choices would still be necessary. Consensus on the specifics of these policy actions has eluded the Congress and the President thus far. The Joint Select Committee meets as we speak only because political leadership has failed to arrive at and act on consensus.

3. How would a balanced budget requirement, and associated subsequent policy actions, be enforced? If the balanced budget requirement relies on estimates, as the text of the amendment states, what would happen if a budget estimated to be balanced actually ran a deficit in fact? Would a future year's budget be cut to compensate? How would policy actions that might be enacted to achieve a balanced budget be enforced? What would be the role of the President and the courts in enforcing the goals of the amendment?

In raising these questions, my point is not to identify all issues that need to be resolved. I mean to suggest something more simple. It is these kinds of decisions, concerning how budget concepts are defined, what actions need to be taken, and how they will be enforced, that are at the heart of solving our current debt problem, and in preventing future fiscal crises. The balanced budget Constitutional amendment merely establishes a goal that future political leadership would have to reach. It does not tell us how to get there, and it does not establish penalties for failing to do so. The inability to agree on these policy changes, and sanctions, is the problem we already have TODAY. There is nothing about the balanced budget amendment that helps us solve that problem. In fact, it is a distraction from solving that problem.

<u>The Balanced Budget Amendment Relies on Erroneous Analogies to Families and State and Local Governments</u>

Of no less concern, the amendments on the table rely on a faulty premise. Senator Orrin Hatch, the main sponsor of the amendment in the Senate, argued that the federal government should balance its budget because "(h)ard-working families across the country have tightened their belts, balanced their budgets, and lived within their means." He also pointed out, as have many other BBA supporters, that states are required to balance their budgets.

This might be a compelling argument, if only it were true. Families have mortgages; they have car payments; they have student loans; they have large balances on their credit cards. Equally, businesses carry debt in order to invest in the plant and equipment that will support future growth. State and local governments balance their operating budgets, but they borrow to build highways, or dormitories, or prisons. Borrowing is a fundamental part of the financial model for families, corporations, and governments. Used correctly it can be very productive and result in measurable gains. The problem is not that the U.S. government has debt: it is rather that the fiscal imbalance is too large, and is too heavily weighted towards debt that does not make us better off in the long-run. That is the problem that should be addressed.

The analogies to state and local budgeting are particularly misleading, in my view. Proponents of a federal balanced budget requirement often point out that 49 of the 50 states have such requirements. States and local governments, however, only balance their operating budgets. They have separate capital budgets, and borrow large amounts of money by issuing debt, which for the most part is borrowed in the bond markets. In fact, a recent estimate put total state and local borrowing at $2.4 trillion. The federal government does not have a separate capital budget. Moreover, the broad consensus among experts who study state and local budgeting practices is that state and local governments do not balance their operating budgets primarily because their constitutions force them to. Fiscal responsibility at the state and local level is much more heavily influenced by the effect that irresponsible decisions would have on bond ratings, and future borrowing costs. Even the political fallout associated with lowered bond ratings, I would argue, is much greater than the negative consequences of unbalanced budgets.

Finally, as many others have noted, an annual balanced budget requirement for the federal government fails to recognize the particular economic stabilization role played by national governments. The failure to account for this reality is particularly ironic at this time, since actions taken by the federal government demonstrably lessened the impact of the recent recession on both state and local governments, and ordinary citizens. When the deficit rises because of the deterioration of the economy, it is important that this not require spending cuts and tax increases, at precisely the time that they would be most difficult, and economically and politically harmful, to enact. This is not only about discretionary fiscal policies, such as the stimulus. This is primarily about the effect of the so-called "automatic stabilizers" which reduce revenue collections and increase spending on programs such as unemployment insurance, food stamps, and Medicaid. If it had been imperative that the government balance its budget during the recent recession, tax increases and spending cuts would have been required at the very time that such measures would have made state and local governments and individual citizens much more vulnerable to the effects of the economic downturn.

Versions of the Balanced Budget Amendment with Spending Limits Will Have Unintended Consequences

Some versions of the balanced budget amendment, including H.J. Res. 1, attempt not only to require a balanced budget, but limit federal spending as a percentage of the economy. H.J. Res. 1 includes a particularly strict spending limitation that would limit spending to 18 percent of the "economic output of the United States" (which presumably means GDP, but could be defined in a different way).

Aside from the problems (already noted) associated with attempting to limit spending during recessions there are two main problems with such a limitation, in my view. First, a limitation of 18 percent of GDP is substantially below the 40 year historical average spending level. Federal outlays, between fiscal year 1971 and 2010 averaged 20.8 percent of GDP. Taking out fiscal years 2009 and 2010, during which spending spiked due to the effects of the recession, only reduces that average slightly, to 20.6 percent of GDP. Moreover, future demands for spending are projected to rise because of factors related to the growth of the major entitlement programs, which are heavily influenced by demographics (in the case of Social Security and Medicare) and health care inflation (in the case of Medicare and Medicaid). Thus, even keeping to the historical average would require substantial spending reductions from the current policy level. Cutting spending to 18 percent of GDP would require major reductions, especially in these three large entitlement programs.

Second, attempts to live within that 18 percent limitation would invite, in my view, a number of strategies or gimmicks to get around the limitation. These would include, but not be limited to: moving costs from one fiscal year to another; redefining outlays to exclude particular programs; enacting more user fees that count as offsets to spending; passing on costs to state or local governments, or the private sector, through unfunded mandates; and expanding the use of the tax code to confer benefits. This latter case is perhaps particularly likely. So-called "tax expenditures", which normally permit taxpayers to exclude certain income from taxation, have proliferated in recent years. The deficit, however, is affected as much by a reduction of $1000 in taxes paid as a $1000 increase in spending. If there is a ceiling for spending, but not a floor for taxes, this will increase the incentives to provide benefits through the tax code, even in cases where these tax benefits are a less efficient way to achieve particular policy objectives.

Conclusion

A constitutional amendment, in my view, is a distraction from the challenging task of forging policy consensus that national political leadership currently faces, and will neither address the current debt problem, nor keep the problem from returning. Amending the Constitution is not necessary in order to balance the budget—and won't actually move us any distance towards a balanced budget in the short run. In the longer run, it will only be as good as the political consensus around achieving its goals. Further, there is a real risk that this short-run feel-good action will undermine market confidence in Congress' ability to do its job, while justifying public cynicism about Washington—thus making it harder for future legislators to work the country out of the fiscal corner it's in.

The only way to address the current problem is to take timely action to reduce the debt. But not by imposing an arbitrary rule that says that revenues should match spending in every year. There are much more direct ways for elected legislators to show commitment to deficit reduction. In 1992 testimony before the House Budget Committee, then Congressional Budget Office director Robert Reischauer argued that it was a "cruel hoax to suggest to the American public that one more procedural promise in the form of a constitutional amendment is going to get the job done." He went on to state what should be (but apparently is not) obvious, which is that "(t)he deficit cannot be brought down without making painful decisions to cut specific programs and raise particular taxes." In the 1990s, two presidents (George H.W. Bush and Bill Clinton) worked with the Congress to do just that, and this helped to move the country from deficit to surplus by the end of the decade. Only a similar willingness to make hard choices will lead the country out of the current crisis, and promote greater fiscal responsibility.

If the goal is reducing the current level of debt in the medium-term and enacting budgets that maintain budget discipline in the longer term, it is my view that the Congress already has the major tools that it needs. The budget resolution itself is designed to set targets for multiple years, and those targets can (and should) reflect the desire to reduce deficits to a manageable level of GDP. Moreover, the budget resolution's reconciliation process has been most successful in the past in assisting the country to deal with deficits. Particularly during the decade of the 1990s (with separate reconciliation bills passed in 1990, 1993, and 1997) reconciliation was used to enact policies that reduced the deficit over multiple years. This would seem to be an appropriate model for the Congress and the President to follow now.

The budget process is appropriately a vehicle to enact policies, but it cannot force a particular set of policies to be enacted, or a particular economic or fiscal path to be followed. In the 1980s, it was manipulated to make promises that were not kept. In the 1990s, it was used to promote fiscally responsible policies, because there was a political consensus around that fiscal direction. In the 2000s, there was a consensus around lower taxes and more spending, and the process was used to promote these outcomes. We are living with the results. If the Joint Select Committee is successful in coming up with policies to reduce future deficits, then accompanying that with BEA-like enforcement mechanisms to dissuade future Presidents and Congresses from undoing those policy actions will be essential. Even there, however, history demonstrates that if a future national political leadership wants to get around those rules, they will find a way to do so. The same is true, sadly, for constitutionally-imposed balanced budget requirements.



Mr. SMITH. Thank you, Professor Joyce.
Dr. Mitchell?

**TESTIMONY OF MATTHEW MITCHELL, MERCATUS CENTER**

Mr. MITCHELL. Thank you very much, Chairman Smith, Ranking Member Conyers, and fellow Members of the Committee. It is an honor to address you.

On its current course, U.S. fiscal policy poses a grave threat to our prosperity. Theory suggests that an important source of the problem is the Government's ability to purchase services for current voters without going to the trouble of actually taxing them. A balanced budget requirement, by internalizing both the costs and benefits of Government services, would therefore seem to be a natural solution.

In today's testimony, I summarize the scope of the fiscal problem and then review State-level evidence to consider the ways that a Federal balanced budget amendment might address it.

CBO projects that, absent policy change, the Nation's public debt will exceed 90 percent of GDP within 7 years. If we could please bring up figure 1, please.

The 90 percent figure is important. It is at that point, according to economists Reinhart and Rogoff, that debt begins to hamper economic growth. Using data from 44 countries spanning 200 years, they find that when debt reaches 90 percent of GDP, growth slows by 1 percentage point and may even be cut in half.

This may not sound like much, but to put these numbers in perspective, consider this figure. What would have happened if in 1975 the country had accumulated the sort of debt that we are about to accumulate and growth had slowed by 1 percentage point? This is shown by the middle graph. Today's national income would be about 30 percent smaller than it actually is. And what would happen if growth had been cut in half? Well, then today's income would be about 45 percent smaller than it actually is.

Now, look at the blip in the top right of the graph. That is the Great Recession that began in 2008. Note that this most calamitous economic contraction in decades pales in comparison to the lost income associated with persistently anemic economic growth as a result of too much debt.

These crippling debt projections are the result of two distinct problems. First is the long-running systematic bias toward deficit spending. Depending on your measure of the deficit, the Federal Government has spent most of the last 4 decades between 66 and 90 percent of the time in fiscal deficit. The bias toward deficit spending is systematic in that it is evident in both good times and bad times and in both Democratic and Republican administrations.

The second problem is entitlement spending. Absent policy change, spending on the autopilot programs, particularly Medicare, will consume an ever larger share of our Nation's output. The end result is that total Federal spending as a share of GDP will be twice its historical average within just a few decades.

Ultimately the problem is one of political incentives. We have known about these issues for decades. But politicians in neither party have an incentive to fix them. This is because the costs of the status quo are borne by those too young to vote, while the costs of reform would be borne by today's median voter.

The solution is to make the generation that benefits from Government services pay for the costs of producing them. This is what a balanced budget amendment would do.

Fortunately, Federal policymakers are not flying blind. There is much to learn from the States. Every State but Vermont has a balanced budget requirement, but the stringency of these requirements varies. For example, State balanced budget requirements can be weaker if they only apply to the proposed budget, if they only apply to estimates of the enacted budget, if they permit the legislature to carry over a deficit from 1 year to the next, or if the legislatively appointed supreme court is the ultimate enforcer rather than an independently elected judiciary.

A number of studies have found that the more strict the balanced budget requirement at the State level, the better the fiscal outcome. For example, studies find that States with strict balanced budget requirements spend about $190 less per capita. If the difference between a weak and a strong balanced budget requirement saves State taxpayers $200, I would imagine that moving from a nonexistent to an existent balanced budget requirement would save the Federal taxpayer even more.

Furthermore, States with strict balanced budget requirements also have larger rainy day funds. They have larger surpluses. They tend to balance their books through spending reductions rather than revenue increases and they tend not to suffer from a political business cycle in which spending grows just prior to an election only to be cut back precipitously afterwards.

There are, of course, some objections. The strongest objection to a balanced budget requirement in my view may be that it would force governments to cut back on spending at the worst time. Though this is a fair critique, it is easily addressed. One answer is a rainy day fund. Another is to require a balance over some period longer than a year.

Another objection may be in the transition. The Government currently borrows 45 cents for every dollar it spends. So if we were to achieve balance tomorrow, it could be pretty painful. But this too can be easily addressed in the language of the amendment by giving Congress a few years to come into compliance.

So why do we look to the States? Well, in almost every conceivable measure, the U.S. States are more fiscally fit than the Federal Government. On a per capita basis, they spend about half of what the Federal Government spends. Their debt loads are one-seventh of the Federal Government. Their unfunded liabilities are one-third that of the Federal Government's, and States manage to balance their operating expenses, some gimmickry aside, on an annual or biannual basis while the Federal Government spends most of its time out of balance. Much of the difference owes to the simple fact that each generation of State taxpayers must pay for the services that it receives. As long as we can foist the Federal bill on to the next generation, I believe we will continue to spend beyond our means.

Thank you for your time, and I look forward to questions.

[The prepared statement of Mr. Mitchell follows:]

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BRIDGING THE GAP BETWEEN ACADEMIC IDEAS AND REAL WORLD PROBLEMS

TESTIMONY

# A BALANCED BUDGET AMENDMENT: WHAT CAN WE LEARN FROM STATE EXPERIENCE?

Testimony Prepared for

"A Balanced Budget Amendment to the Constitution"

United States House of Representatives, Committee on the Judiciary

October 4, 2011

Matthew Mitchell, PhD

Research Fellow

Mercatus Center at George Mason University

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**A BALANCED BUDGET AMENDMENT: WHAT CAN WE LEARN FROM STAT E EXPERIENCE? OCTOBER 4, 2011**

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## INTRODUCTION

On its current course, United States fiscal policy threatens to hobble the nation's prospects for economic growth. Economic theory suggests that an important source of the problem is the government's ability to purchase services for current voters with taxes levied on future generations. A balanced budget requirement, by ―internalizing" both the costs and benefits of government services, would therefore seem to be a natural solution.

In this testimony, I summarize the scope of the fiscal problem and then review state-level evidence to consider the ways that a federal balanced budget amendment might impact the nation's fiscal and economic future.

## THE SCOPE OF THE PROBLEM

The Congressional Budget Office (CBO) projects that, absent policy change, the nation's public debt will exceed 90 percent of Gross Domestic Product (GDP) within seven years.[1] The ninety percent figure is important. At that point, according to economists Carmen Reinhart and Kenneth Rogoff, debt begins to hamper economic growth. Using data from forty-four countries spanning 200 years, they find that when a nation's debt level exceeds 90 percent of GDP, its growth rate slows. In the median case, real growth slows by about 1 percentage point; in the mean case, growth is cut in half.[2]

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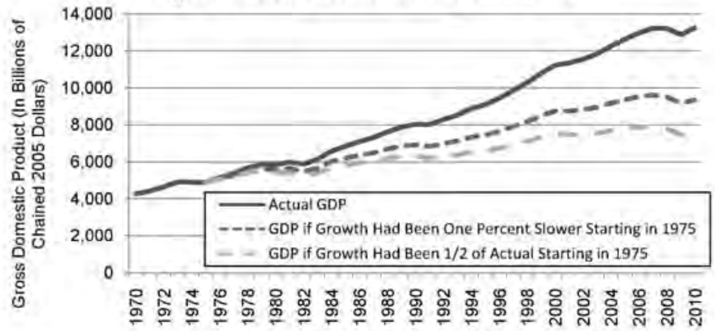
[1] Congressional Budget Office, *2011 Long-Term Budget Outlook*, Alternative Fiscal Scenario, June 2011. The ―Baseline Scenario" assumes no change in *law*, while the ―Alternative Fiscal Scenario" assumes no change in *policy*. Current law calls for a number of policy changes that are unlikely to materialize. For example, under current law, physician reimbursements will be cut by about 30 percent. Since Congress has repeatedly intervened to ensure that such reductions do not take place, most experts believe the ―Alternative Fiscal Scenario" is a more realistic projection of future policy.

[2] Carmen Reinhart and Kenneth Rogoff, ―Growth in a Time of Debt," *NBER Working Paper*, No. 15639, 2010, http://www.nber.org/papers/w15639. See Table 1. These figures are from advanced economies.

Figure 1: Actual and Alternative Growth Paths




Sources: Bureau of Economic Analysis, author's calculations.

To put these numbers in perspective, consider Figure 1. The top line shows the actual growth of United States GDP over the last four decades. Below that are two hypothetical paths: GDP if the country had grown 1 percentage point slower and GDP if it had grown at half its actual pace. Note that the most calamitous economic contraction in decades—the Great Recession that began in 2008—is just a blip compared with the lost income associated with persistently anemic economic growth.

As the operator of the world's reserve currency, the United States enjoys what has been called an ―exorbitant privilege."[3] Because the world's central banks and international traders conduct their business in the dollar, the United States may be able to accumulate debt levels in excess of 90 percent before experiencing the type of slowdown that other nations have experienced. That said, CBO expects debt to reach 100 percent of GDP within 10 years, and nearly 200 percent within 25 years. Not even a reserve currency nation can withstand these debt levels without experiencing a significant slowing of economic growth. Moreover, the economic pain will be more pronounced if our debt levels threaten the dollar's status as the world currency or if they trigger a precipitous flight of capital.

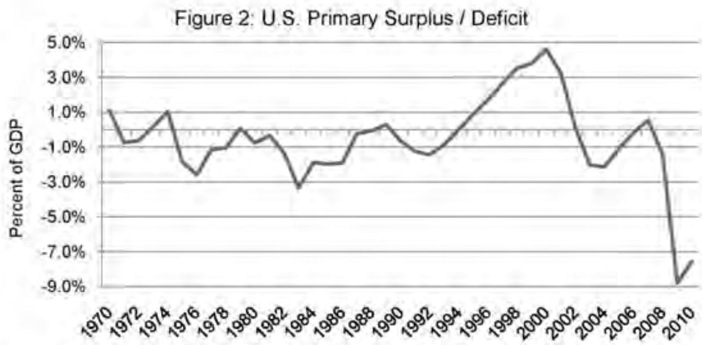
These crippling debt projections are the result of two distinct problems.

The first problem is a long-running, systematic bias toward deficit spending. This is evident when one looks at the historical record. The most conservative measure of the deficit does not count interest payments as expenses and is called the ―primary deficit." Figure 2 shows the United States' federal primary deficit from 1970 through 2010. Positive values indicate a surplus while negative values indicate a deficit. For most of this period—83 percent of the time—the United States economy was expanding.[4] Therefore one would

[3] The term is often attributed to Charles De Gaulle, though it appears that it was actually coined by his lieutenant, Valery Giscard d'Estaing. Barry Eichengreen, *Exorbitant Privilege: The Rise and Fall of the Dollar and the Future of the International Monetary System*. (New York: Oxford University Press, 2011).

[4] US Business Cycle Expansions and Contractions, National Bureau of Economic Research. http://nber.org/cycles/cyclesmain.html

expect that the federal government would have run a primary surplus for most of these years.[5] Instead, the federal government ran a primary deficit 66 percent of the time. When one uses a less-conservative measure of the deficit and counts interest payments as expenses, the government ran a deficit 90 percent of the time.[6] The bias toward deficit spending is systematic in that it is evident in both good and bad economic times and in both Republican and Democratic administrations.




Sources: White House Office of Management and Budget, Historical Tables, 2.1 and 3.1; Bureau of Economic Analysis, National Income and Product Accounts; author's calculations.

The second problem threatening to push the debt to dangerous heights is an explosion in entitlement spending. As indicated in Figure 3, CBO projects that, absent policy change, noninterest spending on entitlement programs, particularly Medicare, will consume an ever-larger share of national output. As these programs consume more of the nation's resources, they will also consume more of the federal government's resources, crowding out spending on national defense, domestic security, education, energy and all other discretionary programs.[7]

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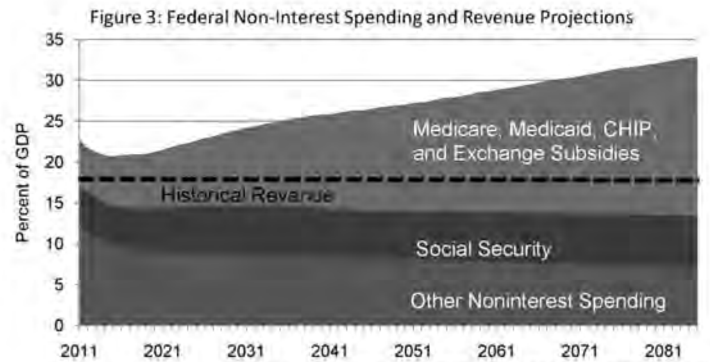
[5] If the government were to attempt to run a sustainable Keynesian counter-cyclical fiscal policy, it would need to run deficits when the economy was in recession and surpluses when it was expanding. The surpluses are needed to pay off the debt accumulated during the recessions. See Paul Krugman, ―Hard Keynesianism,‖ *The Conscience of a Liberal* (May 2, 2011), http://krugman.blogs.nytimes.com/2011/05/02/hard-keynesianism/.

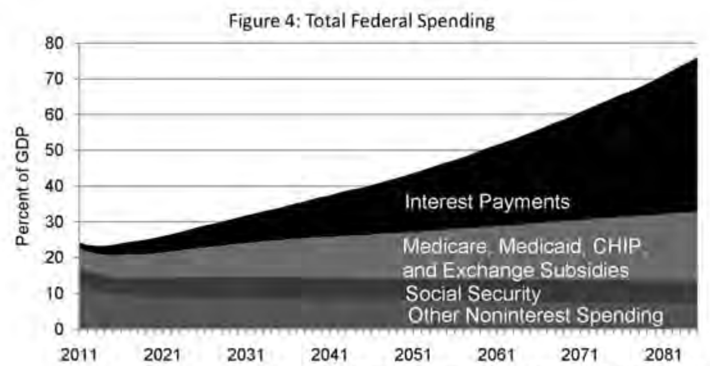
[6] Office of Management and Budget, Historical Tables, Table 1.2.

[7] Within three years, the federal government will spend more on entitlement programs than on all other discretionary programs combined.




Source: Congressional Budget Office, Long Term Budget Outlook, Alternative Fiscal Scenario, June 2011.

Because noninterest spending is projected to exceed revenue, the difference must be financed by ever-larger deficits. As borrowing increases, the debt grows. And as the debt grows, payments on the debt grow. These payments on the debt then become part of the problem, adding to the government's spending. As shown in Figure 4, total federal spending as a share of GDP will be twice its historical average within just a few decades. Note, also, that interest on the debt will soon become the single largest line item in the budget, dominating all other programs. In other words, the debt and payments on the debt make it ever more difficult for government to perform its core functions.




Source: Congressional Budget Office, Long Term Budget Outlook, Alternative Fiscal Scenario, June 2011.

Ultimately, the problem is one of incentives. The federal government's bias toward deficit spending has been evident for decades. And the long-run fiscal problems with the entitlement programs have been known for just as long. But politicians of neither party have an incentive to fix these problems. This is because the costs of the status quo are mostly borne by those who are too young to vote (or not yet born), while the costs of reform would be borne by today's median voter.

The problem is akin to the simple externality problem familiar to environmental economists. If, in the process of producing goods for consumers, a factory owner is allowed to bilge smoke into the sky without accounting for the costs it imposes on others, he will inefficiently produce too much of his product. Similarly, if in the process of providing services to current voters, government is allowed to push off the cost onto future generations, it will produce an inefficiently large quantity of services. This problem was identified by Nobel-Prize-Winning economist James Buchanan and his fellow economist, Richard Wagner, over thirty years ago:

> This bias toward deficits produces, in turn, a bias toward growth in the provision of services and transfers through government. Deficit financing creates signals for taxpayers that public services have become relatively cheaper. Because of these signals, voters will demand a shift in the composition of real output toward publicly provided services (including transfers).[8]

The solution to both problems is to ~~"~~internalize the externality" by making those who benefit from the good or service pay for all the costs involved in producing it. At the federal level, a balanced budget requirement would internalize the fiscal externality imposed on future generations. Buchanan and Wagner argue that a cultural balanced budget requirement existed for most of the history of the American republic and that that cultural requirement was weakened by the advent of Keynesian theory.[9] In its place, policy makers have contemplated a legal balanced budget requirement for the better part of a century.[10] How might such a requirement work and what would be its effect?

LESSONS FROM THE STATES[11]

Fortunately, federal policy makers are not flying blind. Nearly every state in the Union has a balanced budget requirement, and there is much to be learned from their experience.

Justice Brandeis famously referred to the federal system as a ~~"~~laboratory" in which each state was free to implement novel social and economic experiments.[12] For the social scientist interested in understanding how a balanced budget amendment might affect policy outcomes, the metaphor is apt. While every state but Vermont has a balanced budget requirement, the stringency of these requirements varies widely, allowing researchers to exploit the variation to understand the impact of more or less-stringent requirements. At the same time, many other factors that might influence fiscal outcomes are invariant across the states. In other words, cross-state studies effectively control for factors such as macroeconomic conditions, culture, and the

[8] James Buchanan and Richard Wagner, *Democracy in Deficit: The Political Legacy of Lord Keynes* (Indianapolis: Liberty Fund, [1977] 1999), Chapter 7.
[9] In their words, ~~"~~Keynesian economics has turned the politicians loose; it has destroyed the effective constraint on politicians' ordinary appetites. Armed with the Keynesian message, politicians can spend and spend without the apparent necessity to tax." Ibid, Chapter 1.
[10] The first such proposal appears to have been made by Harold Knutson (R-MN), in May of 1936.
[11] Parts of this section are drawn from Matthew Mitchell, ~~"~~Institutions and State Spending: An Overview" (working paper, Mercatus Center at George Mason University, Arlington, VA, 2011).
[12] *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932), http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=285&invol=262

broad legal/constitutional setting in which each state operates. Furthermore, researchers are able to employ various econometric techniques to control for the influence of those factors that *are* different across states, such as climate or demography. In sum, the setting provides a rich laboratory in which to test the effect of different balanced budget rules on budgetary outcomes.

How do balanced budget requirements vary across the states? In some states, the ―requirement" of balance only applies to the governor's proposed budget. In other words, the governor must submit a balanced budget, but the legislature need not pass one. In other states, *estimates* of the enacted budget need to show balance, but there are no consequences if these estimates prove wrong at the end of the fiscal year and the actual budget is out of balance. In some states, the legislature may carry-over a deficit from one year to the next, while in others they may not. Lastly, in some states an independently elected Supreme Court is the ultimate enforcer of the requirement, while in others the legislature appoints the members of the Supreme Court.

A number of studies have found that states with stricter balanced budget requirements tend to tax and spend less than other states. Henning Bohn of U.C. Santa Barbara and Robert Inman of the University of Pennsylvania, for example, find that per-capita spending is about $189 less in states with strict balanced budget requirements relative to those with weak requirements.[13] David Primo of the University of Rochester arrives at a remarkably similar result, finding that strict balanced budget requirements reduce spending by about $184 per capita.[14] If this is the impact of moving from a weak to a strict balanced budget requirement at the state level, it is possible that if the federal government were to adopt a balanced budget requirement where none now exists, the impact would be even greater.

Strict balanced budget requirements have other beneficial effects. Bohn and Inman find that states with strict requirements tend to have larger rainy day funds and larger surpluses. They also find that states with these requirements tend to balance their books through spending reductions rather than revenue increases. This is helpful given the fact that most recent evidence suggests that tax increases are a more economically damaging way to close deficits than spending reductions.[15]

Shanna Rose of New York University finds that states without strict balanced budget requirements are more likely to suffer from a ―political business cycle" whereby policy makers increase spending just prior to an election, only to cut back following the election.[16]

But there may be some unintended consequences of a strict balanced budget requirement. Economists Noel Johnson, Steven Yamarik, and I recently examined the impact of rules that make it difficult to carry a deficit over from one year to the next. On the one hand, we found that these rules limit the likelihood of

[13] This estimate, and all others in this paper, has been converted into 2008 dollars for ease of comparison. When authors report a range of estimates, I take the average and then convert that average into 2008 dollars. Henning Bohn and Robert Inman, ―Balanced Budget Rules and Public Deficits: Evidence from the U.S. States," (working paper No. 5533, National Bureau of Economic Research, 1996).

[14] David Primo, *Rules and Restraint: Government Spending and The Design of Institutions* (Chicago: University of Chicago Press, 2003). Mark Crain has also corroborated this result. See Mark Crain, *Volatile States: Institutions, Policy and the Performance of American State Economies* (Ann Arbor: University of Michigan Press, 2003).

[15] See, for example, Alberto Alesina and Silvia Ardagna, ―Large Changes in Fiscal Policy: Taxes Versus Spending," *Tax Policy and the Economy*, Vol. 24 (2010): 35-68. See, also, Daniel Leigh, Pete Devries, Charles Freedman, Jaime Guajardo, Douglas Laxton, and Andrea Pescatori, ―Will It Hurt? Macroeconomic Effects of Fiscal Consolidation," in *World Economic Outlook: Recovery, Risk, and Rebalancing* (Washington, D.C.: International Monetary Fund, 2010).

[16] Shanna Rose, ―Do Fiscal Rules Dampen the Political Business Cycle?" *Public Choice* 128, no. ¾ (September 2006): 407–431.

partisan fiscal outcomes. On the other, they may increase the likelihood of partisan regulatory outcomes. When Democratic-controlled states were unable to carry a deficit forward to the next fiscal cycle, they were more likely to raise the minimum wage, less likely to adopt a right-to-work statute, and more likely to regulate personal freedoms (as measured by an index of personal freedom).[17]

## WAYS TO IMPROVE ON A BALANCED BUDGET REQUIREMENT

### *Rainy Day Fund*

Some commentators worry that a balanced budget requirement exacerbates the ups and downs of the business cycle. Since budgets tend to be the tightest at the bottom of an economic downturn, this argument goes, strict balanced budget requirements force governments to cut back on spending at the worst time.[18] I think this is a fair critique. One institutional answer to it is a ―budget stabilization fund," better known as a rainy day fund. States contribute to these funds during good years and then draw on them when the budget is strained due to a downturn or some other event such as a natural disaster. Forty-seven states currently maintain such funds, but like many institutions, their design varies on a state-by-state basis.[19]

Studies of rainy day funds suggest that they can smooth out the spending-cycle, but the details matter. Gary Wagner of Duquesne University and Erick Elder of the University of Arkansas conducted the most-comprehensive recent study of rainy day funds. They find that states whose rainy day funds have strict rules governing deposits and withdrawals tend to experience a $14 per-capita reduction in spending volatility (as measured by the cyclical variability of per capita spending over time).[20]

### *Balance Over the Business Cycle*

Alternatively, the pro-cyclicality of a balanced budget requirement may be avoided with a stipulation that the budget be balanced over some period longer than a year. This would allow the government to run a deficit during contractions, but would force a surplus during the next expansion. As Alex Tabarrok, an economist at George Mason University, has recently reported, Sweden has had such a rule for over a decade now and it has met with success.[21] Economists Glenn Hubbard and Tim Kane recently made a similar point.[22]

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[17] Noel Johnson, Matthew Mitchell, and Steven Yamarik, ―Pick Your Poison: Do Politicians Regulate When They Can't Spend?" (working paper, Mercatus Center at George Mason University, Arlington, VA, 2011), http://mercatus.org/sites/default/files/publication/Partisan_Policies_Johnson_Mitchell_Yamarik_WP1128_0.pdf.

[18] Norman Ornstein, ―Why a Balanced-Budget Amendment Is Too Risky," *Washington Post*, July 29, 2011, http://www.aei.org/article/103883.

[19] Kim Rueben and Carol Rosenberg, ―State and Local Tax Policy: What Are Rainy Day Funds and How Do They Work?" in *The Tax Policy Briefing Book*, Tax Policy Center, August 12, 2009, http://www.taxpolicycenter.org/briefing-book/state-local/fiscal/rainy-day.cfm.

[20] Gary Wagner and Erick Elder, ―The Role of Budget Stabilization Funds in Smoothing Government Expenditures over the Business Cycle," *Public Finance Review*, Vol. 33, No. 4 (July 2005): 439–465.

[21] Alex Tabarrok, ―The Virtues of an Unbalanced-Budget Amendment," *Time*, http://www.time.com/time/specials/packages/article/0,28804,2086781_2086783_2086788,00.html. For a review of international experiences with budget rules see Manmohan Kumar, et al., ―Fiscal Rules: Anchoring Expectations for Sustainable Public Finances," *International Monetary Fund*, December 2009, http://www.imf.org/external/np/pp/eng/2009/121609.pdf.

[22] Glenn Hubbard and Tim Kane, ―In pursuit of a balanced budget," *Politico*, July 28, 2011, http://dyn.politico.com/printstory.cfm?uuid=61211C7E-4B46-45FB-B4AE-FE6FF30DEADD

*A Transition Period*

Another concern with a balanced budget amendment has to do with the transition. Given that the nation currently borrows 45 cents for every dollar spent, a requirement to immediately achieve balance would require either draconian spending cuts or dramatic tax increases.[23] This can easily be remedied, however, with a smooth glide-path to achieve balance.

## CONCLUSION

On almost every conceivable measure, the U.S. states are more fiscally fit than the federal government. On a per-capita basis, states spend about one half of what the federal government spends. Their debt loads are about one seventh that of the federal government.[24] And state unfunded liabilities are about one third as large as federal unfunded liabilities (taking the most conservative estimate of the latter).[25] Furthermore, states manage to balance their operating expenses (some gimmickry aside) on an annual or biennial basis while the federal government is out-of-balance more years than not. When states do borrow, it is typically for long-term capital projects, so that future generations end up paying for roads and bridges that they themselves will use. In contrast, much of the federal bill that my daughter's generation will inherit is to pay for my generation's consumption.

This is all the more surprising given the fact that, constitutionally, states essentially have a blank check whereas the federal government does not. As Madison put it in Federalist No. 45:

> The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.[26]

In my view, the relative probity of the state governments owes much to the simple fact that each generation of state taxpayers must bear both the costs and the benefits of government services. As long as the federal government is allowed to vote benefits for the current generation while passing the costs onto future generations, I believe the national debt will continue to grow.

Thank you for your time. It has been an honor to speak with you today, and I welcome any questions.

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[23] Office of Management and Budget, Historical Tables, Table 1.1.

[24] Author's calculation, based on data from U.S. Census Bureau, State Government Finances Page, http://www.census.gov/govs/state/; and Office of Management and Budget, op. cit.

[25] For state unfunded liabilities, see *State and Local Governments: Fiscal Pressures Could Have Implications for Future Delivery of Intergovernmental Programs*, Government Accountability Office, No. 10-899 (July 2010), http://www.gao.gov/new.items/d10899.pdf. For Social Security's unfunded liabilities, see *2011 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds*, (Washington, D.C.: U.S. Government Printing Office, May 13, 2011), http://www.ssa.gov/oact/tr/2011/tr2011.pdf. For Medicare unfunded liabilities, see *2011 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds*, (Washington, D.C., U.S. Government Printing Office, May 13, 2011), https://www.cms.gov/ReportsTrustFunds/downloads/tr2011.pdf.

[26] James Madison, ―No. 45," in *The Federalist*, by Alexander Hamilton, James Madison, and John Jay, ed. Clinton Rossiter (New York: Signet Classics, [1787] 1961).



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Mr. SMITH. Thank you, Dr. Mitchell.

Let me recognize myself for a couple of questions and, on the way there, thank all the panelists for dispelling a couple of myths about the balanced budget amendment. I sometimes hear that if we were to pass a balanced budget amendment, suddenly next year we are going to have to freeze all spending. That is wrong on two counts. One, it is not going to happen immediately, as Governor

Thornburgh pointed out. And two, we are not going to have to freeze spending to get to a balanced budget. In fact, spending can actually increase but not just increase as fast as it has in the past. So to me the balanced budget amendment is probably the only practical solution to the almost endless deficits and the accruing debt that we face every day.

Somebody said that the balanced budget amendment is the worst alternative except for all the others. And that leads to my question that I would like to ask Governor Thornburgh and Dr. Holtz-Eakin and Dr. Mitchell, and that is, is there any other better, more realistic alternative to a balanced budget amendment that would impose the necessary discipline so that we would not continue to increase our deficit and debt every year? And, Governor Thornburgh, could we start with you? And if not, why not?

Mr. THORNBURGH. Not in my view or based on my experience, Mr. Chairman. I don't think that we are very good at self-discipline, those of us in public life. We want to do good. We want to help our constituents. We want to devise and execute grand and glorious projects. That is our natural instinct. And it is a good one when it is disciplined, and the only way to bring that discipline is by constitutional directive. All the other palliatives that have been tried fall to the salutary rule that one Congress cannot bind the actions of a following Congress. A constitutional amendment, however, would put that on a permanent basis.

Mr. SMITH. A good point. Thank you, Governor Thornburgh.

Dr. Holtz-Eakin?

Mr. HOLTZ-EAKIN. I agree. While imperfect, it is the best of the alternatives. I mean, as I said in my testimony, the Federal Government doesn't have fiscal policy. It has fiscal outcomes that are the result of disjointed actions by Houses, Senates, and Administrations, and the track record of that is quite bad. We need to impose on that process a genuine fiscal rule, something which drives tradeoffs and brings some coherence to the outcomes.

If you look at those rules, first of all, I think they have to be constitutional to be effective. I think Professor Joyce—you know, his testimony is quite eloquent in the failure and ability of Congresses to renege on a regular basis. And if you look at alternatives to the balanced budget amendments, they are either too complicated for the public to understand and thus support or too small to be effective. So it is not perfect. There are issues that will arise in the design, but it is the best of the alternatives.

Mr. SMITH. Okay, thank you.

And Dr. Mitchell?

Mr. MITCHELL. Well, there are actually a number of institutions that have been shown at both the State level and the international level to improve fiscal outcomes. So I actually wouldn't say that this is the silver bullet or that it is the only option. There are things like line-item vetoes, which fellow members on the panel have actually studied. There are special kinds of vetoes, item-reduction vetoes. There are reforms in the committee system. Of course, the committee system of Congress has not always been the way it is structured the way it is now.

Nevertheless, I do view that given all of the options, this probably is the strongest. And one of the reasons is one of the ones that

I think one of the Members of the Committee brought up which is that we don't want to enshrine today's current ideological preferences in the Constitution. And so one of the nice things about a balanced budget amendment is that it would not do that. And the reason it wouldn't is it doesn't say how you balance the budget. It doesn't say that you have to raise taxes. It doesn't say you have to cut spending. It just says that you have to balance the budget and you have to do it by the old-fashioned way of prioritizing. Not everything that Government does can be priority number one. And so just the simple mechanics of balancing a budget require you to have to figure out what it is important to spend on and what it is not important to spend on.

Mr. SMITH. Thank you, Dr. Mitchell.

The gentleman from Michigan, Mr. Conyers, the Ranking Member of the Committee.

Mr. CONYERS. Thank you, Chairman Smith.

Since we overlooked Professor Joyce, could you help your fellow witnesses in terms of the question that was posed by Chairman Smith?

Mr. JOYCE. Thank you, Mr. Conyers.

What I would say is that the fact that—and I think we all do agree that most of, although I would not say all of, the prior things that have been tried have not worked, it does not necessarily follow that that means that a balanced budget amendment to the Constitution will work. And I think that is where I sort of separate myself from my colleagues.

I actually think we have a good example of something that worked, which is in the 1990's, we reduced the deficit the old-fashioned way. The old-fashioned way is that you cut spending and you raise taxes and then you try to enforce those actions. And that worked. It worked until the consensus around that broke down. Why did the consensus around that break down? Because the budget went into surplus. Surpluses sort of killed that process.

But my general point that I made in my testimony is that I don't care if it is a constitutional rule or another kind of rule. It is only as good as long as the consensus remains to stick to the rule.

Mr. CONYERS. Thank you very much.

It is a pleasure to have you here, General Thornburgh, as always.

Is there any particular constitutional amendment that you support?

Mr. THORNBURGH. Of the ones that have been introduced or——

Mr. CONYERS. And the ones you would like to see introduced.

Mr. THORNBURGH. I don't want to give an off-the-cuff judgment on the particular type of language.

Mr. CONYERS. Well, it isn't off-the-cuff. You have been here before on the very same subject.

Mr. THORNBURGH. I am talking about specifics.

Mr. CONYERS. Yes, specific.

Mr. THORNBURGH. My specific is that the norm be established that expenditures match revenues.

Mr. CONYERS. But what bill? This is great general conversation, but somewhere along the line, we are going to have to land on something. And what would you like us—prefer that the Judiciary Committee land on?

Mr. THORNBURGH. My own preference would be one as simple as possible, just as I stated, that in every year——

Mr. CONYERS. But it isn't in existence yet.

Mr. THORNBURGH. No. I am not a member of this body——

Mr. CONYERS. No.

Mr. THORNBURGH [continuing]. For its own good.

Mr. CONYERS. But you advise us.

Mr. THORNBURGH. Yes.

Mr. CONYERS. That is why we keep bringing you forward here all the time.

Mr. THORNBURGH. That is what I am advising.

Mr. CONYERS. Well, you are advising that we do a simple constitutional amendment, none of which meet that degree of simplicity that you would advocate.

Mr. THORNBURGH. You asked my personal preference, and that would be it. Yes, sir.

Mr. CONYERS. All right. Well, could I draft one for you and send it back for your approval or criticism?

Mr. THORNBURGH. If you want me to draft one for you, I will do that. But I didn't come here to discuss drafting techniques.

Mr. CONYERS. Okay. Then I want you to draft one. Could I invite you to draft one?

Mr. THORNBURGH. Making a balanced budget the norm rather than an occasional exception.

Mr. CONYERS. All right. Will you accept my invitation?

Mr. THORNBURGH. Sure.

Mr. CONYERS. Okay. Thank you.

Now, let me turn to the doctor here. Which amendment do you favor?

Mr. HOLTZ-EAKIN. I have not studied the——

Mr. CONYERS. You don't know either. Okay. Will you find out and get back to me?

Mr. HOLTZ-EAKIN. Absolutely.

Mr. CONYERS. All right. Thank you.

And now, Dr. Mitchell, I appreciate your observation that this is not the only choice. And I would like to ask you where do you think we ought to end up in this process.

Mr. MITCHELL. Well, I guess what I would say is that there are a number of characteristics of the balanced budget amendment that make it better. So, for example, I would like to see one that was as comprehensive as possible, addressed as much of the budget as possible. I would like to see one that was balanced over the business cycle so that you can deal with what I think is—and Professor Joyce brought this up—one of the strongest challenges to a balanced budget amendment, which is that it would be pro-cyclical. But if you had one that was balanced over the business cycle or that had a rainy day fund, then you could, in my view, largely take care of that problem. And then finally, one that did not require a balance tomorrow but that gave Congress some time to come into compliance.

Mr. CONYERS. Would you help me and General Thornburgh by drafting one that follows along those lines?

Mr. MITCHELL. I would be happy to answer any, yes, specific questions or——

Mr. CONYERS. No. I am talking about drafting one.

Mr. MITCHELL [continuing]. About specific language. You know, I don't write——

Mr. CONYERS. You don't draft. You don't do drafting.

Mr. MITCHELL. No.

Mr. CONYERS. Okay, all right.

Thank you, Mr. Chairman.

Mr. GOODLATTE [presiding]. I thank the gentleman.

Professor Joyce, in your written testimony, you argue that all we need to solve our current problem is, quote, to take timely action to reduce the deficit, but all previous actions taken to reduce the deficit have been short-lived. If you don't support a balanced budget amendment, can you name any fiscal rule to balance the budget that you support and which has not already been tried since every other rule tried so far hasn't worked over the long term since in the last 60 years we balanced the budget just six times?

Mr. JOYCE. I think you could create a rule that said that you were trying to put the debt on a glide path to a certain percentage of GDP and if the majority of the Congress agreed to that and it became law, that could be your guiding principle.

My point is not that rules are bad. I agree. I think one of the problems that we had in the 2000's is that the consensus around any kind of a norm for fiscal responsibility broke down. My point is that any rule that you have is only as good as the willingness of the current Congress and the President to abide by——

Mr. GOODLATTE. Well, that is my point too. If in 60 years we have only balanced the budget six times and we have had lots of rules—we have statutes that say the Congress must balance the budget. We waived those. We have the Gramm-Rudman Deficit Reduction Act. Every year we have 10-year budgeting, and the Republican Study Committee this year offered a budget that balances in 9 years. It got about 120 Members of the House, including myself, to vote for it. But it does not have the force of a constitutional amendment which cannot be waived by Congresses.

Dr. Eakin, do you want to respond to that too?

Mr. HOLTZ-EAKIN. I, as I mentioned in my opening remarks, think that the history of Congress reneging on commitments to bringing the budget into alignment is a real indictment of all other approaches and that you need something stronger to be effective.

I guess with regard to the specifics of picking a debt-to-GDP ratio and having Congress aim for that, that is an economist's dream, and I am thrilled at the prospect. But I don't think you can sell that to the American public. It is too complicated. The steps between what Congress votes on and does and the debt-to-GDP ratio are just too distant, and I think that for that reason it would fail to have enduring support.

Mr. GOODLATTE. And can always be waived.

Mr. HOLTZ-EAKIN. And it can always be waived. So you need something that can't be waived and it has got to be simple and transparent for the public.

Mr. GOODLATTE. Governor Thornburgh, as a former Governor of a State with a balanced budget requirement, what lessons could the Federal Government learn about Pennsylvania's experience with a balanced budget requirement?

Mr. THORNBURGH. Let me say I am somewhat puzzled by the description of the proposal to amend the Federal Constitution to provide for a balanced budget, describing it as useless if not pernicious. I wonder how many Members who hold to that view would be willing to go back and tell the current occupants of their State how is it that they ought to repeal the balanced budget requirements currently in effect in their States. I suspect very few. And my argument this morning is based on experience as a Governor of my own State and working with other Governors to urge that that module be replicated at the Federal level. It does provide discipline and it doesn't lend itself to end-arounds or gimmicks to avoid it.

One of the key things—and I mentioned this briefly, and I don't want to dwell on it necessarily—is the separation of capital expenditures into a separate capital budget. A dollar spent on welfare is not the same as a dollar invested in a new highway or bridge, and State budgets all take that into account. The Federal Government does not, and I think it is the poorer for it. And I think to adopt a separate capital budget procedure would clarify a lot of the problems about where cuts are to be made or where expenditures can be justified. So I would urge that that, in addition to what has been mentioned as a line-item veto authority in the President, capable of being overridden, of course, be considered along with——

Mr. GOODLATTE. My time is running short. I wanted to ask Dr. Mitchell. The Federal budget, as I noted, has been balanced only six times since 1960. That is 50 years, not 60 years. Even under Keynesian economic theories, do these annual budget deficits make sense?

Mr. MITCHELL. No, they don't. If you look at what Keynes said and what Keynes' followers say—there is a great post, by the way, by Paul Krugman. Look up "hard Keynesian." There are two goals. One is you run a deficit when things are bad, and two, you run a surplus when things are good to try to pay off the deficit.

Now, there is an enormous amount of debate among academic economists about Keynesian economics, but let's just put that all aside and assume that Keynesian economics is right. If that is the case, we have spent most of the last several decades, the last 4 decades—we spent about 80 percent of the time in growth. So we would expect for the vast majority of that—if we were actually to implement a Keynesian policy, we would expect the Federal Government to have run surpluses for most of that time. Instead, as I mentioned, we have run systematic deficits. This isn't just bad by market-oriented economic policy. This is bad by Keynesian economic policy. It completely undermines the Keynesian goal.

So in my view, we are not really achieving the goals either of market-oriented policy or Keynesian policy because of this systematic bias toward deficit spending.

Mr. GOODLATTE. Thank you.

The Chair recognizes the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Thank you.

Let me begin by clarifying the record. Professor Joyce said that the rules worked until the consensus broke down. Well, we had PAYGO rules in the 1990's. They did work. Consensus didn't break down. We elected George Bush and a Republican Congress. They repealed the rules, passed huge tax increases, and engaged in two unfunded wars—passed huge tax cuts, engaged in two unfunded wars, eliminated the surpluses, and exploded the deficits. If we restored PAYGO rules intelligently and started behaving the way we did in the 1990's, we may have a different situation.

Governor, you did mention the capital budget. If we pass any of the balanced budget amendments that have been introduced, they don't recognize capital budgets. They don't recognize any kind of entities to issue bonds whatsoever. They would require that the Federal Government always run a surplus, which means you would never borrow money for any purpose whatsoever. Now, if a family did that, they couldn't afford the house or the car. No corporation would run that way. If a State did that, you would never build anything. Does that make any sense to you?

Mr. THORNBURGH. No. My suggestion that separate capital budgeting be provided——

Mr. NADLER. I heard that. So in other words——

Mr. THORNBURGH. Representative Conyers——

Mr. NADLER. In other words, the balanced budget amendment—your testimony is that a balanced budget amendment without providing for borrowing under a capital budget is economically wrong.

Mr. THORNBURGH. I don't think it is as sound as it might be. I am just taking up Mr. Conyers on his——

Mr. NADLER. I didn't ask if it is as sound as it might be. Does it make sense economically to pass a balanced budget amendment without a capital budget, which means we can never borrow money under any circumstances for any purpose without a three-fifths vote in Congress?

Mr. THORNBURGH. I think it would be wiser to include a capital budgeting provision.

Mr. NADLER. But we have to vote on the—we have never been able to get the supporters of a balanced budget amendment to make the distinction between a capital budget and an operating budget or an expense budget and exclude the capital budget from that. They always come in with one unified budget and say it has got to be balanced every single year, which means we can never borrow money. That is what the amendment requires. Would you support that if that is the way it is?

Mr. THORNBURGH. I have already stated that I feel a separate capital budget is wise.

Mr. NADLER. Thank you. Thank you very much. I don't want to be so short, but I have a bunch of questions to ask of different witnesses.

Now, also still Governor Thornburgh, the balanced budget amendments before us require super majority votes, three-fifths or two-thirds, to increase taxes, to raise the debt ceiling, to exceed spending as a percentage of GDP. Those are ideological choices which may make sense conceivably in one set of circumstances but not in another. Do you think such provisions, in addition to the requirements for a balanced budget, should be in the Constitution?

Mr. THORNBURGH. No.

Mr. NADLER. Thank you.

Third, and again getting back to what Dr. Mitchell said, it is true Keynesian economics basically says that budgets ought to be balanced over time. You ought to run surpluses in good times, deficits in bad times in order to prime the pump, not annually as required by this amendment. One of my problems with this, Dr. Mitchell, is that requiring an annual balanced budget is an ideological choice as opposed to a balanced budget over the business cycle or whatever, and we shouldn't put ideological choices into the Constitution. It has been said that the purpose of this amendment is to bind future Congresses. It is another way of saying that we are going to make our judgments or the judgments of the voters now bind the judgments of the voters 50 years from now. Is that right?

Mr. MITCHELL. Well, I would say the problem is that right now current policy binds the choices of future generations and future taxpayers.

Mr. NADLER. Yes, but how do you take into account——

Mr. MITCHELL. Absent change——

Mr. NADLER. I heard what you said before. You made that point. But on that point, you said that we are binding future taxpayers to pay the debts incurred by this generation. True. But future taxpayers get the benefits of the investments made by this generation in roads, bridges, infrastructure, et cetera. A balanced budget amendment says you can't make those investments unless you can pay for it out of current revenues. You can't borrow money. Does that make sense?

Mr. MITCHELL. I think it would be the case that future generations would be benefitting from investments if in fact the 45 cents out of every dollar that we borrow right now goes toward investments. I think that is definitely not true. Much of what my daughter's generation will pay for is my consumption.

Mr. NADLER. Should we preclude those investments by a balanced budget amendment that says you can't borrow money for any purposes?

Mr. MITCHELL. Yes.

Mr. NADLER. We should preclude any investment.

Mr. MITCHELL. And here is the reason why. I would be more concerned about this capital/noncapital distinction if it were the case that we were starting from scratch and we were having to build every single road right from scratch. But we don't have to do that. Right now, all we need to do is to replace investments as they depreciate. That happens on a——

Mr. NADLER. Wait a minute. You are saying that this country needs no new investments. All we need is to replace the current roads?

Mr. MITCHELL. No. I said——

Mr. NADLER. We don't need new investments in high-speed rail or in Internet or whatever the next scientific breakthrough is. We can compete with the Chinese and everybody else based only on replacing our depreciating existing assets?

Mr. MITCHELL. I think you might have misunderstood me. No. I was just——

Mr. NADLER. I hope I misunderstood you.

Mr. MITCHELL. I am sorry?

Mr. NADLER. I said I hope I misunderstood you.

Mr. MITCHELL. What I was saying is all we need to do is maintain the investments. And by the way, of course, investments are something that can happen at any level of government. Economic theory says that it should be a public good. If it meets the characteristics of a public good, it is not excludable, but most importantly, it should be provided at the level of government where it makes the most sense. It is very hard to make the case from much of what people call investments that they actually are national public investments.

Mr. NADLER. Let me ask one last question.

Mr. GOODLATTE. The time of the gentleman has expired. Without objection, I yield the gentleman an additional minute if he will first yield to me for a question of him.

Mr. NADLER. I will first yield, but that is not on my minute. Is it?

Mr. GOODLATTE. That is on your minute.

Mr. NADLER. I will yield.

Mr. GOODLATTE. It will be a quick question. If you are saying that the Congress and, by the way, 38 State legislatures, because that is what it takes to amend the Constitution, shouldn't bind future Congresses, are you arguing that we shouldn't have a written Constitution?

Mr. NADLER. No. I am arguing, as I said in my opening statement, that a written Constitution should provide procedures for decision-making, procedures for governance, and protection of individual rights. A written Constitution should not enact policies which the next generation might differ from this generation. It may be the opinion of the majority of this generation—I hope it is not—but it may be the opinion of the majority of this generation that we shouldn't ever spend more than 18 percent of GDP on Federal expenditures. That may not be the judgment of some future generation, and we have no right to bind them on those kinds of policy questions. Why 18 percent? Maybe it should be 22 percent or 19. That is a policy question.

Sorry. Now can I ask Governor Thornburgh my last question if I can now remember what it was? Oh, yes.

My last question is, Governor, you have stated that you wouldn't support or you don't think it is advisable I think is what you said or it is not a good idea to have specific limits on spending limits and on tax increases in a constitutional amendment. If they were in such a constitutional amendment, enshrining a policy preference, for example, for spending cuts over tax increases, which is a policy preference, and people agree or disagree and future generations may change their mind, that would limit the States.

And my real question is if you as Governor had a State constitution that said you could never borrow money, you couldn't have a debt-issuing agency, housing finance agency, or road—State dormitory authority or whatever, and you couldn't have a capital budget, you could only operate by spending in this year what comes in in tax revenues this year, you could only make investments that way, and there is no Federal aid, could you have run a State that way?

Mr. THORNBURGH. I wouldn't want to try.

Mr. NADLER. Thank you.

Mr. GOODLATTE. The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I want to thank all the witnesses for your testimony.

Listening to this discussion that we have here, it occurs to me that I have a little granddaughter that just turned a year old the other day and she was born into this world with $44,000 worth of debt, her share of the national debt. It will be $88,000 for her when she is in fifth grade, just our budget window, birth to 10 years down the road. I have sat in this Congress and listened to the lament about people graduating from college with a degree and an opportunity to engage in this free market economy with a student loan of perhaps $40,000 as opposed to their share of the national debt that is greater on the day that a baby is born than it is—that baby that is born on the day of the graduation has more debt than the student with a degree.

We have got our priorities in the wrong place here, and these young people don't have a choice. And maybe we are investing in some of the infrastructure that is good and right for them, but that offsets the burden of the debt in a negative way in my view.

I just look back at where we sit today, and I think I would direct my first question to Mr. Mitchell, but it could go to anybody, and it is this. As I roll this thing back and I look at American history, there was a time in American history when you had to be a male property owner in order to vote. The reason for that was because they wanted the people that voted that set the public policy, that decided on the taxes and the spending to have some skin in the game.

Now we have data out there that shows that 47 percent of American households don't pay taxes, 51 percent of American wage earners don't have an income tax liability, and it is pretty clear that there are a lot of people that aren't in the workforce at all. In fact, of our unemployment numbers that run in the 13 million or 14 million category, when you go to the Department of Labor statistics and look at that data, you can add up those that are simply not in the workforce, the different age groups but of working age, add that number to the number of those who are on unemployment, and you come up with a number that was just a few months ago 80 million Americans. Just as of less than a month ago, that number went over 100 million Americans that aren't working. Now I don't think they are paying taxes, but many of them are voting, and when they vote, they vote for more Government benefits because that is what comes into their mailbox or into their debit card.

Mr. CONYERS. Could I ask the distinguished gentleman a question?

Mr. KING. I think I have set the stage for the question just fine, Mr. Ranking Member, who has never done this in his entire career.

So I would direct my question then to Mr. Mitchell and ask do you believe that a balanced budget amendment is a means by which it can offset the disadvantage that the workers, the taxpayers, those who actually fund this Government, have? Does a balanced budget help set some of that back in order that was sought to be put in order when it was property owners that voted?

Mr. MITCHELL. Yes. I mean, the basic problem here is one of externalities. So this is a problem that is familiar to environmental economists. If a factory is allowed to—in the process of making a product for consumers is allowed to bilge smoke into the air, that is an externality, and they will make too much of the product unless it is internalized.

So here what is happening is that this current generation is allowed to externalize the costs of Government on to the next generation. The median voter, as I said before—the costs of reform, the costs of avoiding this kind of economic contraction that we are staring at—those are going to be borne by people like me, the median voter. But the costs of the status quo are going to be borne by my daughter. She cannot vote. And until we can internalize that externality, I think we are going to continue to make the wrong choice because none of you have the incentive to make the right choice. It is not your fault. You are all good people. You are servants of the public and you are listening to what your constituents and your median voters are saying. And the incentives that they offer you are not right.

Mr. KING. That is a very cerebral answer, and I agree with it.

I would just take us to another step along this way, and that would be—remember now, this is not a proposal. This is an historical observation of property owners only voting. What if that were transferred into a society like today and it were taxpayers that were voting? What do you expect, Mr. Mitchell, would be the result of the public policy that would emanate from such a thing?

Mr. MITCHELL. Well, I think that when more people had skin in the game and when people have to pay for the services that they consume, they tend to consume fewer services.

Mr. KING. And then I will take you to another step of this, and that is something that I have been for, the national sales tax, for a long time because everybody becomes a taxpayer. And it is another means to get everybody with skin in the game and every little boy that grows up in America would have to put a couple dimes up on the counter to buy their Skittles or every little girl that bought her Barbie Doll clothes would have to do the same. Have you contemplated what that might do to the body politic here and the American culture and what the results might be if everybody were paying taxes on a national sales tax?

Mr. MITCHELL. I mean, I would say it is sort of the same thing is that again when everybody pays, I think when you internalize both the costs and the benefits, you would expect people to consume less. There would probably be smaller Government.

I would add a note of caution on something like a national sales tax. In my view, if step one isn't repealed, the Sixteenth Amendment, you are likely to get two taxes.

Mr. KING. And I reclaim my time, and I am thanking the gentleman for his comment and adding my comment to this, that I believe the momentum to repeal the Sixteenth Amendment would come directly out of the passage of the fair tax. I don't think that people would ever re-establish an IRS.

Thanks very much. I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman, could I ask an additional minute for my dear friend, Mr. King?

Mr. GOODLATTE. Without objection, the gentleman from Iowa is recognized for an additional minute.

Mr. CONYERS. Could I just ask the previous speaker as a successful businessman himself, did he ever——

Mr. KING. Would the gentleman from Michigan care that I would be happy to yield to the gentleman from Michigan?

Mr. CONYERS. Yes, I would care. I appreciate it.

Mr. KING. I would yield to the gentleman from Michigan even without a request.

Mr. CONYERS. Did you ever have to borrow money as a successful businessman yourself?

Mr. KING. Is that directed to me? And I would reclaim my time. I would say certainly, yes, and I had to pay it back with interest, 22 percent at one point in my life. Should we open up that can of worms?

Mr. CONYERS. Well, it is not a can of worms. It is just real life. Governments have to do that too, Mr. King.

Mr. KING. I think the point that was made that is most significant with regard to the witness' testimony was that Governor Thornburgh doesn't believe that many States would want to repeal our balanced budget amendment requirement. I know of no State that has done so and I know of no State that has initiated that. I think that tells you they like having the comfort of having to live within a balanced budget. I would like to see this country have the comfort of living within a balanced budget.

Mr. CONYERS. Sure. It is okay for you to borrow, but it is not okay for Governors to borrow.

Mr. KING. It doesn't make me a hypocrite. It makes me a businessman, and the United States of America prints the money, sets the policy for the country, and we will be in perpetual debt, and we will be Greece if we don't get this under control. This Congress does not have the will to do so. We need to ask the American people to impose that upon us, and I will be grateful for the day that comes so we can see it become——

Mr. CONYERS. Look, if you would impose it on little kids, I know you would impose it on the Government.

Mr. KING. I would recognize that the time has expired, and I will take care of my little kids and I hope you take care of yours too, Mr. Conyers. I yield back.

Mr. GOODLATTE. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, there is a serious question as to whether this legislation will help or hurt actually balancing the budget. At some point, we have got to stop talking about process and actually get to balancing the budget. But unfortunately many people have run on platforms that violate fundamental principles of arithmetic. They are promising all these tax cuts and not sufficient spending cuts to come anywhere close.

Now, my suggestion has been that we let all the Bush era tax cuts expire. That will give us as much deficit reduction as anything on the table. I recognize that is unpopular, but when we start cutting Social Security and Medicare in order to preserve those tax cuts, I believe that position is going to get a lot more popular.

Now, we have been talking about this balanced budget amendment and talking about all these States that have balanced budget amendments. The gentleman from Arizona has acknowledged that his State Arizona received $6.4 billion in stimulus money, $1,000 for every man, woman, and child, $4,000 for a family of four. Even after that, they had to sell the State capital building, sell the State capital building for $735 million, then sold the supreme court building for another $300 million in order to help balance their budget.

We keep talking about some kind of restraint and some kind of balanced budget or a balanced budget amendment. As the gentleman from Michigan has indicated, we don't vote on "some kind." We have to vote on H.J.Res. 1 and ascertain whether that is going to help or hurt.

Now, Governor Thornburgh, you indicated that you need some glide path to balance, and you recognize that H.J.Res. 1 doesn't have any glide path. You recognize that. You talked about your balanced budget. You recognize that even the Republican Study Group budget that balances in 2020 requires a three-fifths vote because it is not balanced this year. An irresponsible budget requires a three-fifths vote. Does your Pennsylvania legislature require a three-fifths vote to pass a budget?

Mr. THORNBURGH. No.

Mr. SCOTT. You can cut taxes on a simple majority under this amendment, but it would take a two-thirds vote to repeal a tax cut or to raise taxes. Does your constitutional amendment require a two-thirds vote to raise taxes?

Mr. THORNBURGH. I don't have a constitutional amendment.

Mr. SCOTT. In Pennsylvania.

Mr. THORNBURGH. Oh, the Constitution? No.

Mr. SCOTT. In Pennsylvania, it doesn't.

This legislation has a war exception. If you were Governor and called out the National Guard, could you run an unbalanced budget?

Mr. THORNBURGH. No.

Mr. SCOTT. There is no war exception in your constitutional amendment. Is there not?

Mr. THORNBURGH. We have no power to declare war.

Mr. SCOTT. Okay.

You have indicated you have a capital budget so you can, in fact, borrow money.

Mr. THORNBURGH. Yes.

Mr. SCOTT. Exactly what provision in H.J.Res. 1 do you think would be helpful to actually balance the budget other than the title?

Mr. THORNBURGH. As I indicated, I have not studied the details of this. My message——

Mr. SCOTT. Provision. What provision in H.J.Res. 1—can you name one—that actually helps balance the budget, other than the title?

Mr. THORNBURGH. The provision that I would strongly support is one that requires a matching of revenues and expenditures, also has a separate capital budgeting requirement, also has——

Mr. SCOTT. But that is not in H.J.Res. 1. You are talking about things that are not in H.J.Res. 1.

Mr. THORNBURGH. I didn't understand that I was asked here to talk about a specific piece of legislation.

Mr. SCOTT. Okay.

Mr. THORNBURGH. This was more——

Mr. SCOTT. We are just getting your testimony straight.

Professor Joyce, there are provisions in the bill, a three-fifths vote which would cover the Republican Study Group and an irresponsible budget. Would that provision help or hurt balance the budget?

Mr. JOYCE. It would hurt.

Mr. SCOTT. The two-thirds vote to raise taxes. Would that help or hurt balance the budget?

Mr. JOYCE. It would hurt.

Mr. SCOTT. The two-thirds vote to spend more than 18 percent of GDP. You will notice you can cut Social Security and Medicare with a simple majority, but to save it with taxes would require a two-thirds vote. What effect would that have on Social Security and Medicare?

Mr. JOYCE. Well, the obvious effect it would have on Social Security and Medicare, because of demographics and because of health care inflation, those programs are projected to continue to rise. 18 percent of GDP is 3 percent lower than the 40-year historical average. The 40-year historical average is not going to be sufficient to allow for that growth. So it would clearly have an effect of requiring cuts in those programs.

Mr. SCOTT. Let me ask Dr. Holtz-Eakin. In 2001, when your Administration came in, you weren't there, but when that Administration came in, the fiscal challenge was that we were running so much of a surplus and we are paying off the national debt too quickly, what happened?

Mr. HOLTZ-EAKIN. I think it is pretty clear that in retrospect a big part of the revenue surge in the late 1990's was driven by the dot com bubble. We had a bubble burst. We know the economic consequences were a recession. We know the budgetary consequences were enormous drop-offs in revenues. It was also the case that we benefitted in the 1990's from the decline of the Soviet Union and we had a peace dividend that everyone acknowledged made it much easier to hit spending caps which were imposed. That reversed with the advent of the events of September 11th, 2001. Everything——

Mr. SCOTT. From 2001——

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

Mr. SCOTT. Can I have 30 more seconds, Mr. Chairman?

Mr. GOODLATTE. Without objection, the gentleman is recognized for 30 additional seconds.

Mr. SCOTT. From the 2001 projection of a $5.5 trillion surplus to what it ended up, a $3 trillion or $4 trillion deficit, a swing of about $9 trillion, how much of that was attributable to the war? $1 trillion.

I yield back, Mr. Chairman.

Mr. HOLTZ-EAKIN. The war in Iraq cost well over $1 trillion. I don't know the numbers for Afghanistan.

Mr. SCOTT. $1 trillion. A $9 trillion deterioration, $1 trillion attributable to the war.

Thank you, Mr. Chairman.

Mr. GOODLATTE. The Chair recognizes the gentleman from Arizona, the Chairman of the Constitution Subcommittee, Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, I wanted to just say a word of thanks to you for pointing out the importance of a written Constitution.

It is also probably important in the context of this discussion to remind ourselves that, indeed, some of the Founding Fathers, those who put the Constitution together, made some pretty dramatic choices and that, indeed, did have some binding effects on us today. In fact, most of the constitutional provisions, Mr. Chairman, are those that bind down Government, that require Government or restrain Government, and that certainly is the thing that we are trying to do here today.

I am always reminded, Mr. Chairman, that every budget, whether it be a person's budget or a business budget or a State budget or a Federal budget, every budget eventually balances. It happens. Either someone balances it by wise policy or someone else has to pay the price for someone failing to do so, but it ultimately balances one way or the other.

The challenge here that we are trying to deal with is: are we as a country going to balance our budget by wise policy or are we going to allow cataclysmic financial failure to balance it for us, and that is, indeed, the question.

Let me, if I could, address the gentleman that suggested that Arizona had to go through some difficult machinations to balance their budget. He is correct. We did. But let me also suggest to you that if had not been for Federal meddling and for Federal policy related to Fannie Mae and Freddie Mac, there wouldn't have been a real estate bubble in Arizona. Arizona would have been fine without it. But the fact remains that Arizona did, in fact, balance our budget, and if we hadn't had a balanced budget amendment, it certainly would not have occurred.

Mr. Joyce has pointed out and I think absolutely correctly and eruditely that Congresses have the tendency to ignore budget rules. I believe he is correct. That is why we are here today because the Congress has ignored every other mechanism, and the most powerful mechanism we have is a constitutional amendment. And it may not work. Mr. Joyce may be correct. It may not work. But if it doesn't, then at least I will be able to look back many years from now when my 3-year-old today at that time says, well, Dad, where were you when the country was going to pieces economically. I will say to him that I was trying to pass a balanced budget amendment. I did the best I could. And that will help me a great deal.

Mr. Nadler pointed out that Mr. Joyce's comments related to a breakdown in the consensus or as long as the consensus remains—that that was his main point. And he pointed out that PAYGO rules were changed. And I would just say, Mr. Chairman, I think that is prima facie evidence that the consensus did, in fact, change and that is why we are dealing with this challenge today, is because the consensus goes up and down, up and down. But the mathematics remain the same. Unless we can repeal the laws of mathematics, we must do something to balance our budget.

With that, I would like to address a question to Mr. Thornburgh. Mr. Thornburgh, you know, there are a lot of cataclysmic, end-of-day scenarios that are put forward by this notion of balancing the Federal budget. Let me ask you. Did Pennsylvania—has your society broken down completely because you have a balanced budget amendment in your constitution?

Mr. THORNBURGH. No, it hasn't.

Mr. FRANKS. Has the balanced budget amendment—did it at the time you were Governor give you any leverage or additional assistance in trying to make those decisions that you had to within State government to balance the tax structure with the spending architecture?

Mr. THORNBURGH. Yes.

Mr. FRANKS. What do you think would be the result in Pennsylvania if you, in fact, did repeal your balanced budget amendment?

Mr. THORNBURGH. I can only speculate, but as I stated earlier, the temptation to undertake big projects and provide increased benefits would be very strong, and my guess would be that Pennsylvania or any other State without a balanced budget amendment would find themselves in the same pickle that you folks are in.

Mr. FRANKS. That was kind of the answer I was looking for. I was leading the witness there.

But thank you, Mr. Thornburgh, for your service to the country.

Mr. Mitchell, one argument that is raised against the balanced budget amendment is that it will prevent the Federal Government from intervening in the economy during recessions. Now, we have attempted to do that recently without a lot of success. It occurs to me that if we continue on the path that we are going on, we are not going to have the ability to intervene in anything except our own economic obituary.

Let me ask you what do you think the down sides of a balanced budget amendment would be in terms of our ability to intervene with related recessions?

Mr. MITCHELL. So as I mentioned before, there is a wide degree of disagreement among economists about the efficacy of countercyclical fiscal policy. You can find estimates of the multiplier that are very, very large and you can find estimates that are very, very small.

One thing I would point out is there are some interesting studies that look at the differences across countries to see in what circumstances fiscal multipliers—what makes them larger or smaller, so multipliers, the bang you get for the buck of stimulus. An interesting thing happens is that countries that have huge debts—they are the ones that actually have the smallest multipliers.

So again, I am not necessarily a Keynesian—I don't necessarily subscribe to Keynesian economics. I think that there are a lot of problems there. But let's just assume Keynesian economics. Keynesian models show that you are going to be much less able to implement Keynesian fiscal policy in a scenario where debt-to-GDP ratios are 90, 100 percent of GDP. So in my view, if you are a strong Keynesian, if you are a progressive, then the status quo should be pretty alarming to you.

Mr. FRANKS. Mr. Chairman, will the Committee indulge me for 30 more seconds for one very quick comment?

Mr. GOODLATTE. Without objection, the gentleman is recognized for 30 additional seconds.

Mr. FRANKS. For 1 minute.

Mr. GOODLATTE. For 1 minute.

Mr. FRANKS. Mr. Mitchell, let me just direct the question to you. A lot of people are concerned that a balanced budget amendment will hurt the poor. A lot of us believe that if we balance this budget, that it will create an incentive for Government to try to broaden the tax base to increase its own revenue and it will help everyone. Can you address that?

Mr. MITCHELL. So if we have a balanced budget amendment, it would broaden the tax base likely?

Mr. FRANKS. Well, I am asking you would it broaden our economic success and would it be a boon or a disaster for the poor?

Mr. MITCHELL. In my view, the biggest disaster would be to lure generations into believing that these programs are going to be there and then have them cut out from under them precipitously and sharply, and that is, again, what the status quo calls for. So unless we take measures right now to start, again, internalizing the externality and saying that each generation pays for what it receives, then we are going to face that situation which I think is going to fall hardest on those who are least able to deal with it.

Mr. FRANKS. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman, could I just have 30 seconds, please, to ask the distinguished gentleman a question?

Mr. GOODLATTE. I think the proper protocol, since his time has already expired, would be yield to Ms. Chu who is next in line. If she wants to yield to you, that would be perfectly fine.

The gentlewoman from California is recognized for 5 minutes.

Ms. CHU. Thank you, Mr. Chair.

Mr. Mitchell, in the Senate version of this bill, S.J. Resolution 10, the CBO estimated that the balanced budget amendment would translate to an average effective cap of 16.6 percent of GDP over the years 2016 to 2021. When was the last time that Federal expenditures equaled less than 17 percent of GDP?

Mr. MITCHELL. I don't know offhand. They generally have been around in the neighborhood of around 20 or 21 percent in the last several decades.

Ms. CHU. Right. In fact, I believe it is 1957 that it was 17 percent. And in that year of 1957, how many seniors could afford health care coverage because they were covered by Medicare?

Mr. MITCHELL. I am not sure.

Ms. CHU. I believe the answer is that it is none because Medicare wasn't a Federal program at that time.

And in that year of 1957, how many children were able to see a doctor because their parents could afford it with Medicaid?

Mr. MITCHELL. Were able to see a doctor or able to see a doctor through Medicaid?

Ms. CHU. Through Medicaid.

Mr. MITCHELL. I would assume it be again zero.

Ms. CHU. Yes. The answer is none because Medicaid wasn't a Federal program at the time.

And in 1964, before the introduction of Medicare, how many seniors were uninsured?

Mr. MITCHELL. I don't know. I am not a historian on that. I would assume that the answer again is different. The answer of how many people are uninsured is very different from the answer of how many people are covered by Medicare.

Ms. CHU. Yes.

Mr. MITCHELL. There is a good amount of evidence that public provision of services like these do crowd out private provision.

Ms. CHU. Well, nearly half of all seniors were uninsured, making the elderly the least likely Americans to have health insurance, and today with Medicare, 97 percent of seniors are, indeed, covered and the elderly are now the most likely to have insurance.

Mr. MITCHELL. I presume you are saying today meaning those who are on Medicare, not those who are counting on it in the next several decades. Right?

Ms. CHU. Yes.

Mr. MITCHELL. Because that is very different.

So again, I just want to stress under current policy—so my generation is conservatively going to inherit an unfunded liability that is $60 trillion. $1 trillion is a million million, and we are talking about 60 of those. And this is the conservative end of the estimate. It could get up to $104 trillion depending on how you measure it.

So in my view, Government is not going to fulfill that promise because in order to actually live up to the promise of making $60 trillion funded, it would have to impose hugely, enormously costly taxes. In my view, the most likely scenario is that someone from my generation will be lured into expecting Medicare and then have it precipitously cut right when we are eligible.

I would call for a change to the status quo, get us off that course so that we can actually live up to the promises that we have made.

Ms. CHU. Mr. Joyce, could you comment on this?

Mr. JOYCE. Any constitutional amendment which attempts to limit the amount of spending is, as Mr. Nadler suggested earlier, trying to tie the hands of future Congresses, future Presidents. It is particularly problematic in my view to have a spending limitation that is as low as something like 18 percent because it doesn't account for what is going on in terms of Federal programs right now. Moreover, I think the problem of having an imbalance between cutting spending and raising taxes gets in the way of our ability to actually do what is necessary.

I think just for 1 second—I think that a lot of what is going on in this conversation is that I think a lot of people are agreeing that the debt is too large and something needs to be done about it, but it does not necessarily follow that that means that amending the Constitution to require a balanced Federal budget is that thing. You can agree that balancing the budget, even over the business cycle, would be a good thing to do without necessarily believing that amending the Constitution is going to get us there.

Ms. CHU. Thank you for that. In fact, because of Medicare, the life expectancy of the elderly is 20 percent longer than in 1960, and because of Medicare, the numbers of seniors that are living in poverty has decreased by half. So what this indicates is that Medicare and Medicaid are important programs that improve the lives of millions of American citizens and that a balanced budget amendment like H.J. Resolution 1, which passed this Committee in June and would impose an expenditure cap of 18 percent, doesn't adequately capture the current or future needs of the country. And in fact, Federal spending hasn't been at 18 percent—well, it wasn't during a single year of the Bush administration nor a single year of the Reagan administration.

Thank you. I yield back.

Mr. GOODLATTE. Would the gentlewoman like me to yield her an additional minute so she can yield to the gentleman?

Ms. CHU. Oh, yes, absolutely.

Mr. GOODLATTE. I yield to the gentleman for an additional minute.

Mr. CONYERS. I thank the gentlelady.

I just wanted to make sure I understood Dr. Mitchell when I thought that he said that a balanced budget would be more beneficial to women, infants, and children than not.

Mr. MITCHELL. Well, I didn't women, infants, and children, but what I would say is that the status quo is particularly harmful to those who are going to be lured into expecting these programs and have that expectation ripped out from under them.

Mr. CONYERS. So they should never have gotten it in the first place.

Mr. MITCHELL. In my view a balanced budget amendment is the much better course for those who are least well off among us, yes.

Mr. CONYERS. Okay. I will discuss this with you by letter. I mean, the whole idea is astounding to me that if you are implying that they are better off getting cuts rather than ever having received them in the first place——

Mr. MITCHELL. Well, no. What I am——

Mr. CONYERS. That isn't what you meant.

Mr. MITCHELL. No. What I am implying is that the Medicare actuaries and the Social Security actuaries are telling us that we have a $60 trillion unfunded liability. And what I am implying is that the CBO has said that in order to make that unfunded liability funded, it would require all taxes to be doubled. And what I am implying is that the estimates of Christina Romer, a very respected economist, the President's former economic advisor, shows that every 1 percentage increase in taxes decreases GDP——

Mr. CONYERS. What you are saying is that it is better that they don't ever get any help to begin with as opposed to having gotten help and maybe not getting it in the future.

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

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

Mr. COBLE. Thank you, Mr. Chairman. I apologize for my belated arrival. I was tied up at a Coast Guard hearing.

Good to have you all with us.

Mr. Thornburgh, you have been a longtime advocate for a balanced budget amendment, I think probably over 3 decades. Let me put a question to you, a layman-like question. Let's assume the Congress does, in fact, adopt a balanced budget amendment and it is approved, and then we fail to balance the budget. What would be the realistic result in that situation?

Mr. THORNBURGH. It is rather hard to envisage that happening in terms of experience at the State level, Congressman Coble. The question has not really been presented because representatives of the people honor their constitutional obligations.

Mr. COBLE. It has always been a moot point I presume.

Mr. THORNBURGH. Yes.

Mr. COBLE. Thank you, sir.

Mr. THORNBURGH. If you have a rogue Congress or a rogue President, then there are other legal remedies available, but I have a hard time looking forward to elected representatives behaving that way.

Mr. COBLE. Thank you, sir.

Doctor, let me ask you a question, if I may. In your written testimony, you note that if the Federal spending and deficits are not brought under control, keeping taxes at their norm of 18 percent would generate an unimaginable debt spiral. If the Federal Government does not adopt a long-term fix like a balanced budget amendment, how high will taxes need to be raised to cover the increasing debt burden?

Mr. HOLTZ-EAKIN. It is literally not possible to calculate. I mean, if you look at the growth of Medicare in particular, it has been growing at 7 and 8 percent a year. You could easily double taxes over the next 20 to 30 years and have the spending continue to increase and accumulate additional debt. There is no realistic scenario in which the Federal Government can tax its way out of its deficit and debt problems.

Mr. COBLE. Some will argue that Social Security, Medicare, and Medicaid will be cut if we do, in fact, adopt a balanced budget amendment. What will happen to these programs if we don't adopt a balanced budget amendment or some other permanent fiscal rule?

Mr. HOLTZ-EAKIN. They will, in the end, implode. Social Security right now is running red ink, left on autopilot. Future retirees will get a 23 percent across the board cut in a couple of decades. That is a disgrace as a social program. Medicare right now—the difference between taxes and premiums paid and spending by the Medicare program is $280 billion right now, and if left unchanged, it will continue to get larger. Medicaid is entirely deficit financed. Those programs are broken and they will not survive to the next generation of old and low-income, and they will face cuts either at the hands of international bankers or Congresses. They simply cannot continue as they are.

Mr. COBLE. I thank you.

The final question to Mr. Thornburgh. Dick, what do you say to critics of the balanced budget amendment who say it is not necessary. Congress and the President simply should make tough legislative choices.

Mr. THORNBURGH. Well, I think my answer would be to read the testimony that has been given this morning by the experts to my left who have chronicled the effort after effort made through legislative enactments to establish a model for enacting a balanced budget only to see them crash and burn in every respect. So history is the best lesson on that.

Mr. COBLE. Thank you. Thank you all for being with us.

I yield back, Mr. Chairman.

Mr. GOODLATTE. I thank the gentleman.

The Chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and I have enjoyed the opportunity to serve with you on this Committee. I think we have been on this Committee for a period of time together, a long number of years, and I know my Ranking Member, former Chairman of the Committee, Mr. Conyers, is probably seeing the remnants of deja vu. I am trying to see whether I am in 2011 or 1995. This is almost like Groundhog Day for many of us. And we take it seriously.

I consider Attorney General Thornburgh, Governor Thornburgh as a colleague. I think we were in the Government at the same time when he was then Attorney General. You were Attorney General, Mr. Thornburgh—forgive me. Forgive my memory, but I know that we must have overlapped. And I want to thank you for your service as I do others. But we have a philosophical difference of opinion and I think it is a philosophical difference in reality.

Let me speak to Mr. Mitchell, and I know they gave your bio. Forgive me. I was in a Homeland Security hearing. You graduated from where, sir? I am so sorry.

Mr. MITCHELL. George Mason University, Arlington, Virginia. Actually I was in the Fairfax campus.

Ms. JACKSON LEE. A great campus. I am a University of Virginia graduate. So we were down the road from you. Undergraduate. Is that what you are saying?

Mr. MITCHELL. No. That was graduate Ph.D. undergraduate was Arizona State.

Ms. JACKSON LEE. All right. We are delighted.

I quarrel a little bit. I understand your center is funded. How are you funded, sir?

Mr. MITCHELL. We are entirely privately funded. So thousands of funders from around the world.

Ms. JACKSON LEE. But are your major funders the Cook brothers?

Mr. MITCHELL. I don't know much about what our funding structure is. One of the nice things is that we have a real strict policy that keeps people like me ignorant of that so that none of our funders can influence research one way or the other.

Ms. JACKSON LEE. We thank you for that.

First of all, let me just suggest that the Federal Government is not a State government. And I respect the testimony of any person who wants to use a State government. But I would say this. If we were the Federal Government—and this is not condescending. This is real—then no one would complain as to how Brownie performed during Hurricane Katrina. No one would complain of how slow we might have been moving on—and I am not suggesting we are. But no one would put a call out for us in Vermont or upstate New York or the Carolinas or the fires in Texas or the earthquakes that occur on occasion in California and elsewhere. No one would call the Federal Government.

If we were, in fact, a State government, no ally such as our NATO alliance, such as the folks who were engaged in the Communist domino theory during the Vietnam War, no one in the Gulf War where President Bush decided that Kuwait needed our assistance or where President Bush decided independently that he needed to go into Iraq—that is not the challenge and the charge of State governments.

And so I query you with the backdrop of the different responsibilities, the emergency calls that the Federal Government has to maintain. I query you.

And then let me secondly get to my professor and ask the question. So I need you to be very brief, Mr. Mitchell. And I want the professor from Maryland—excuse me—Professor Joyce—how in the heck is there any rationale to the balanced budget amendment? Can you just quickly comment, sir?

Mr. MITCHELL. Sure. So with respect to the first question, all the important things that Government does, I would argue that we won't be calling on those things if debt-to-GDP ratios reach 100 or 200 percent as they are projected to do. So that is the greatest threat to Government solving problems.

Ms. JACKSON LEE. Okay. I am going to stop you there.

Mr. MITCHELL. I would say there is good international evidence of countries having balanced budget amendments.

Ms. JACKSON LEE. All right.

Professor Joyce, the way I frame my question—but you answer. How in the world does this make any sense at all—the balanced budget amendment?

Mr. JOYCE. The balanced budget amendment? I don't think it makes a lot of sense for the Federal Government. I think the analogies to States are misguided, and I think the reason they are misguided is partially because of what you pointed out, which is the different responsibilities of the Federal Government, but also, as has been pointed out earlier, States have separate capital budgets. It is not true that States do not borrow. States borrow all the time. There are $2.4 trillion in outstanding debt at the State and local level right now.

And the answer I would give to the question that was asked Governor Thornburgh earlier, which is what would happen at the Sate level if you didn't comply with the balanced budget requirement, is that the markets would discipline the States because the State governments have to go into the markets and borrow money and the bond rating agencies won't put up with irresponsible fiscal practices. That is not a sort of unseen hand that we have at the Federal level. So we would have to determine in legislation what the sanction would be.

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

Ms. JACKSON LEE. The gentleman was trying to finish a point that I had asked, Mr. Chairman. If I could just let him finish.

Mr. GOODLATTE. Without objection, the gentleman will be allowed to finish his testimony.

Mr. JOYCE. My only point is that all of the devil is in the details in terms of how we get from a balanced budget requirement, whatever it is, to actually complying with that, and that involves technical considerations, it involves actually increasing taxes and cutting spending, and it also involves enforcement procedures. The amendment is silent on all of those things. That is the heavy lifting that would need to occur.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

We can be fiscally responsible without a balanced budget.

Mr. GOODLATTE. I thank the gentlewoman.

The Chair recognizes the very patient gentleman from Ohio who is a leader on this issue, Mr. Jordan, for 5 minutes.

Mr. JORDAN. I would just point out to the professor the market is disciplining the United States. Maybe you haven't noticed, but Standard & Poor's just downgraded the bond rating of this country for the first time in 70 years. It does apply to the Federal Government just like it would to the States.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. JORDAN. No. I want to ask Dr. Holtz-Eakin a question here.

Doctor, how much time do we have? You know, in your testimony, you talked about the dangerous ratio we have now of GDP-to-debt. Frankly, it is 1-to-1, a $15 trillion economy, almost a $15 trillion debt. For 3 years in a row, we have run deficits over $1 trillion.

The one I always point to is we are spending this year $235 billion in interest. And what are interest rates like right now? Record low, historic low. They are going to go up. And if they go up just modestly over the next 10 years, we go to where we are spending $235 billion on interest to we are spending more in interest than we currently spend on national defense. So someone tell me how you can sustain that model where you spend more to service debt than you do to defend your country.

I think what Americans are asking is when is it all going to collapse. This is why 80-some percent of the American people want a balanced budget amendment because they see Congress can't do it. Let's at least try something else that will save us from the crisis that is coming.

So my question to you is how much time do you think we have?

Mr. HOLTZ-EAKIN. The honest answer is neither I nor anyone else knows for sure, but you should pretend you have no time. The United States has all of the characteristics of countries that get into sovereign debt problems. It has a high debt-to-GDP ratio, above 90 percent gross debt-to-GDP. It has an inordinate reliance on short-term finance. If you look at countries that get in trouble, they borrow a shorter and shorter term. If and when interest rates go up, they are stuck and they can't roll that debt over. It has a lot of nontransparent and hard-to-value liabilities. We are still finding out about housing liabilities. We are worried about the State and local pensions. We have all of the characteristics of countries that get in trouble. And so we cannot pretend we are immune from either the laws of arithmetic or economics. We need to set a different course.

Mr. JORDAN. And what does it look like when it really starts to get—I mean, I would argue it is pretty ugly out there right now. What does it start to look like when things really head bad like we are seeing in Europe today?

Mr. HOLTZ-EAKIN. You will see a sudden and inexplicable at the time increase in U.S. borrowing costs. You will see capital flight, and people will be running around asking—you know, people like me—why is this happening. And it will be like I don't know. It just seems odd at this time. Investors lose confidence and confidence isn't a number. Confidence isn't a point in time. It is a judgment about the future and the capacity of both the economy to deliver the resources and the Government to use them effectively. When they lose that confidence, it is gone.

Mr. JORDAN. Dr. Mitchell, your thoughts.

Mr. MITCHELL. Yes. So, I mean, the old saying here is that if you are camping, you don't need to outrun the bear. You need to outrun the other campers. And that is exactly the situation in the bond markets.

The reason this is very difficult to predict is that we don't know at what point lenders will see Sweden as a better investment than the United States or Germany as a better to the United States. But on our current course, there is going to be some point when that happens, and it can happen extraordinarily fast as a number of other countries have experienced. A few months ago, I read the Treasury Secretary say, you know, we are not Greece. Well, I guarantee you that there was an official in Greece at some point that said we are not Argentina. Countries don't expect this to happen, but it happens and it happens very quickly. And my worry is, again, particularly for those who are interested in the progressive side of what Government can do effectively, that the rug is going to be pulled out so quickly that your programs are the ones that are going to be harmed the most.

Mr. JORDAN. Let me ask you a related question. In my mind there is no question we need a balanced budget requirement. The discipline that that would hopefully bring to Congress, which they have just failed to show over the last 4 or 5 decades, I think is just absolutely required. But you can't just get there with reducing spending alone. You have got to have economic growth. I mean, you look at the mathematics of this and you have got to have a growing economy.

So there has been much made by the other side about the restrictions placed on making it more difficult for Congress to raise taxes and how that may—give me your thoughts on those super majority requirements making it more difficult for the elected officials to increase the tax burden on Americans and how that relates to growth. Mr. Mitchell, then Dr. Holtz-Eakin?

Mr. MITCHELL. Well, I started to allude to this earlier. Christina Romer and her husband, David Romer, very extremely respected, well respected economists—she, of course, served in the Obama administration—they have, as far as I know, the most comprehensive assessment of the impact of taxes on an economy. A very, very carefully, well-designed study. And they find that every 1 percentage point increases in taxes as a share of GDP, GDP falls by 3 percentage points.

Now, by 2035, spending will be 15 percentage points higher than it is today. Of course, we can pay for this with taxes. Right? Imagine if we increase taxes as a share of GDP 15 percentage points higher than its historical average. Under that scenario, by the

Romers' estimates, that would be a 45 percent reduction in economic output. It is just not feasible that we could pay for it that way.

So in my view anything that says that you live within your means is a good policy, and anything that says that we are going to reduce debt and reduce taxes on the economy is going to be beneficial. And I think the 1990's are an excellent illustration of that.

Mr. FRANKS [presiding]. Mr. Deutch, you are recognized for 5 minutes, sir.

Mr. DEUTCH. Thank you, Mr. Chairman.

Dr. Holtz-Eakin, I think you said Social Security is broken. You said the program will implode. It is a disgrace, I think, as a social program. I would like to understand what a balanced budget amendment will do for Social Security, a program which you acknowledged will pay full benefits if we do nothing until 2037. So tell me what the balanced budget amendment does to secure Social Security for our retirees.

Mr. HOLTZ-EAKIN. The balanced budget amendment doesn't have anything to do with Congress' policy priorities. It is simply a restriction on how they are financed and should be seen just as that. It is 2011. We have a debt-to-GDP ratio that is dangerously high. We have a proven track record of having a bias toward deficit and debt finance, and a balanced budget amendment would be a palliative against that clear and demonstrated bias.

Mr. DEUTCH. Except the funding—I would like to focus on Social Security, though, and the funding stream for Social Security which you have acknowledged is the payroll tax, right, which is the funding stream for Social Security that President Roosevelt put in——

Mr. HOLTZ-EAKIN. It used to be true for payroll tax holidays. That no longer appears to be the case.

Mr. DEUTCH. I am sorry?

Mr. HOLTZ-EAKIN. I said that used to be true but since we now have payroll tax holidays, so on a regular basis I don't know.

Mr. DEUTCH. It is true. And you and I are in agreement that we shouldn't touch the funding stream for Social Security, and I am thrilled to hear you say that.

I would like to understand, though, at a time when 50 percent of American households have no retirement savings, zero, and for close to 40 percent of American retirees, Social Security's $1,100 a month payment or so is the only income that they receive, how is it that you call into question a system that by all accounts is the most successful retirement program and the most successful Government program that exists, domestic program that exists?

Mr. HOLTZ-EAKIN. I call into question the desirability of leaving it as it is when it is right now running red ink, when it is right now promising future retirees a benefit cut during their retirement across the board in a mechanical and not well thought-out fashion. I would prefer—and this is my only point—that this Congress immediately reform Social Security to be durable over the long term and to not run red ink. That will be my preference.

Mr. DEUTCH. First of all, the Social Security system, as you know, functions now the way that it has functioned from the very beginning which is workers pay in in order to fund the system, and as you point out, there is no red ink. There will not be any shortfall until 2037.

Mr. HOLTZ-EAKIN. No, that is not true. There is red ink right now.

Mr. DEUTCH. If we don't do anything——

Mr. HOLTZ-EAKIN. That is a matter of fact.

Mr. DEUTCH. Let me just finish. Dr. Holtz-Eakin, let me finish. You acknowledge if we do nothing, Social Security will pay out until 2037. My question is why do we continue to lump Social Security in as a contributor to the deficit when the dollars that go into Social Security through the payroll tax are dedicated for Social Security.

Mr. HOLTZ-EAKIN. It is contributing to the deficit right now. It is in cash flow deficit. It will contribute even more in the years to come. That is simply arithmetic. Payroll taxes in will not be as large as the benefits going out.

Mr. DEUTCH. Right, but the dollars—but I need to correct you. This idea that it is running a deficit when the fact is the Social Security Administration buys bonds just like anyone else buys bonds with the dollars that are paid in. There is a surplus in Social Security now. That surplus happens to be held in Government securities. And why is it that when it comes to Social Security, you view that, you characterize that as a deficit and so many who are critical of Social Security as a program characterize that as a deficit when, in fact, the dollars are sitting there in the form of Government bonds just as Government bonds are sitting in retirement accounts and in other accounts of Americans all throughout this country?

Mr. HOLTZ-EAKIN. I, first and foremost, am not a critic of the Social Security program. I am not arguing for its abolition. I am desiring to put it on the sound financial footing, number one. Number two, I do include it with the other social safety net programs, Medicare, Medicaid, the forthcoming Affordable Care Act that I don't believe we can afford, because it like those programs will force the U.S. Treasury to go into public markets and borrow to make good on the bonds that they have in a trust fund somewhere in West Virginia. But all of those programs are driving the accumulation of Federal debt and they should properly be debated on the same financial terms and let Congress decide priorities. That is it.

Mr. DEUTCH. Well, the funding for Social Security, though—it needs to be restated—isn't being paid for with deficit spending. The funding——

Mr. HOLTZ-EAKIN. It is.

Mr. DEUTCH. The funding for Social Security comes from the payroll tax.

And my last question to you is this. If we are going to be serious about reforming Social Security at a time when, since 1980, 80 percent of the growth in income has gone to the top 1 percent, shouldn't we also be looking at the contribution limits of the payroll tax? Is it appropriate that the Social Security tax rate for someone earning $50,000 a year is 6 percent. The Social Security tax rate for someone earning $500,000 and $1 million a year is less than 1 percent. And if we are going to be serious about reforming Social Security, why wouldn't we also consider phasing out that cap, paying more out, retaining the system the way that it has always functioned? The progressivity of the system, you pay more in, you get more out. Why wouldn't that be part of this discussion? And aren't we eliminating that discussion if we are going to include Social Security in a balanced budget amendment?

Mr. HOLTZ-EAKIN. Certainly there is nothing about putting a balanced budget amendment in that changes the fundamental policy choices you face.

Number two, there have been lots and lots of Social Security reform plans, bipartisan in nature, partisan in nature, and the cap and the rate are always part of the policy discussion. So I think that remains true today.

But mostly I would say to you and I would ask that you please be honest with the American people. The reality is that right now Social Security is running a cash flow deficit. So what are the rest of these social——

Mr. DEUTCH. Dr. Holtz-Eakin, my time is up. No, no, no. Please. Please.

Mr. HOLTZ-EAKIN. It is not——

Mr. DEUTCH. Dr. Holtz-Eakin, please. Let me finish.

Mr. HOLTZ-EAKIN. I am a subject matter expert——

Mr. DEUTCH. Mr. Chairman? Mr. Chairman, can I reclaim my time, please?

Mr. FRANKS. The gentleman's time has expired, but without objection, we will grant the gentleman an additional minute, and I hope you allow the witness to answer.

Mr. DEUTCH. I will. Listen, I appreciate, Dr. Holtz-Eakin, this exchange. But please don't sit there and lecture me to be honest with the American people when Social Security—the honest point that is missing too often from the Social Security debate is that without doing a thing, Social Security will pay full benefits until 2037 if we do nothing. This idea that Social Security is going to be bankrupt tomorrow, that we should scare my constituents that somehow their payments that they rely upon—those payments are in jeopardy unless we pass a balanced budget amendment, unless we slash benefits to seniors, it is just——

Mr. NADLER. Would the gentleman yield for a second?

Mr. DEUTCH. I will.

Mr. NADLER. I would also point out something that is never pointed out publicly that if you read the Social Security trustee's reports, Social Security is flush—flush—for at least 75 years if you assume that the annual growth rate, the economic growth rate of the United States, will be 2.4 percent or more. In order to get a problem in 30 years, you have to assume it is going to be much less. They assume 1.6 percent. The growth rate of the United States has averaged over 3 percent since the Civil War. Right now we got a depression. It is less than that, but over any long period of time, if you assume a growth rate of over 2.4 percent, then Social Security is flush. The intermediate projection of Social Security, which is what is always quoted for 2037, assumes a growth rate over a long period of time. The last time I looked it was 1.6 percent, but that was 5 years ago. So it may be up to 1.8 percent now. A highly unrealistic assumption.

Mr. FRANKS. The gentleman's time has expired.

Dr. Holtz-Eakin, if you would like to respond.

Mr. HOLTZ-EAKIN. Briefly. I think that speaks volumes to the importance of having sound economic growth policies in the United States. Growth is an essential element. I said this earlier. I agree.

With regard to Social Security, the legal authority to pay benefits is exactly as you described. The financial mechanism by which the benefits would be paid is that payroll taxes would be insufficient and the U.S. Treasury would have to either go borrow the money or this Congress would have to cut some other spending program or raise taxes. So it is, in fact, going to meet its ability to pay those benefits only by contributing to the problem we are discussing today, which is the enormous current and projected debt, and that is a fact I believe is important for Americans to know so they can make a good decision about it and the rest of our spending priorities.

Mr. FRANKS. And the gentleman from Texas, Mr. Gohmert, is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

I realize that you don't get paid to come be a witness and you worry that somebody might ask something very personal, and I am about to do that. If you don't want to answer, you don't have to. But is there anybody here who has ever gone to a bank or credit union and borrowed money that you did not intend to pay back but pledged that your children or grandchildren would pay back? Anybody?

[No response.]

Mr. GOHMERT. That is what we are doing.

I really don't know the answer to this question. But the Seventeenth Amendment was ratified in 1913, and that changed the way in which Senators were selected. Some publications have said, because I bring this up, I must be in favor of doing away with the general election of Senators, and I am not, but I am in favor of giving States control again like they had before the ratification of the Seventeenth Amendment whether it is, as someone at the Heritage Foundation proposed, giving States a veto, an amendment to give them a veto over bills like the President has. A certain number of States do so within a certain period of time.

But does anybody know how many times the budget was balanced by the Federal Government before 1913 when the Seventeenth Amendment took away the leverage of States to force Senators to live within their means at the Federal level?

Mr. JOYCE. The only thing I would say to you—I don't have a number, but the only thing I would say to you is that historically until we got to World War II, the sort of pattern was that we ran surpluses when we were in peacetime and we ran deficits when we were in wartime. Now, how many years ago—that is sort of a different question.

Mr. GOHMERT. Most of the time, the budget was balanced, and as I am sure you are aware historically—well, the State legislators selected the Senators which gave States control where if you came up as a U.S. Senator and passed some unfunded mandates that you sent back and slapped the States with, then there was a good chance you were never coming back to the Senate again. So it did give the States great leverage there in ensuring that the Federal

Government didn't do what particularly since World War II we have done a great deal of.

I know just to eliminate one of the misconceptions, I constantly hear people say we can't keep printing money and they don't have to worry. I found out this summer, when I visited with Treasury, that most of our money is not printed. They just create it in a computer. So you don't have to worry about us printing too much money. They just create the numbers. It is not even on paper anymore.

This past week, one of the great things about not being in session is, if you take your job seriously, you go home and you visit with your constituents. I was getting gas at a gas station at a place where they have a table where some of our seniors like to gather. And they came up and asked if I would sit down with them and I did. And one of them pointed out I can hardly make it on my $800 Social Security check each month. I am really not making it.

I also happen to know—we ran a check when I first got here to Congress in 2005 and took arbitrary numbers and said if an employee worked this long and paid into Social Security, how much would the monthly payment be and did the same with the State of Texas employment retirement system and Galveston that opted out of Social Security. What would your check be? And it turned out that if you were in Social Security, they said it would be somewhere between $600 and $900. If you were with the employment retirement system of Texas, it was going to be right at $2,800. If you were with Galveston, it was going to be around $2,600-$2,700.

I don't know of anybody over here that wants to hurt our seniors, but I would sure like to have those seniors living on more than $800 a month. And that is what they can get but they have to keep begging to their master, the Federal Government. And I think it is time we did something about that.

I also want to point out that, Dr. Mitchell, the Washington Post apparently took some of your research and it seemed like they came to the wrong conclusion that we shouldn't have a balanced budget amendment. I don't think they fully appreciated your research. But I just want you to understand they also at one time basically sang the praises of Al Awlaki who was just killed recently because he was an enemy of the United States. So if they were a fan at one time of Al Awlaki and they were not a fan of yours, you may be in really good company.

Did you have a comment on their take on your research?

Mr. MITCHELL. They actually did not mischaracterize it. So with a couple of professors——

Mr. GOHMERT. They used it to support the notion we didn't need a balanced budget amendment.

Mr. MITCHELL. Yes. So I have conducted a study with a couple of professors, Noel Johnson and Steve Yamarik, and we look at the impact of these types of rules, and we find what many other people have found, which is that they do lead to less spending and they do seem to lead to less partisan fiscal outcomes.

But we also found something that was kind of curious which is, I think, something we should put on the—just keep aware of. Partisan regulatory outcomes seemed more likely in some States that had these rules. So, for example, Democrat-controlled States seemed to regulate more when bound by a balanced budget requirement, a strict balanced budget requirement.

In my view, the fact that I look at this and count that as a negative and still come to the conclusion that weighing carefully the pluses and minuses and keeping your eyes wide open and I still stand here before you saying that a balanced budget amendment makes sense, I think tells you where I stand on it. I think that the pluses clearly outweigh the minuses even if they might lead to more regulating.

Mr. GOHMERT. Thank you. Well, my time has expired. But it seems like since a constitutional amendment dramatically changed how often we balance the budget, maybe we need another one to make sure that we do that again.

I yield back.

Mr. FRANKS. I thank the gentleman.

The gentleman from South Carolina, Mr. Gowdy, is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, could I ask unanimous consent to get an additional minute for Judge Gohmert so I might ask him a question?

Mr. FRANKS. Mr. Gowdy, would that be all right if I did that?

Mr. GOWDY. Certainly, Mr. Chairman.

Mr. FRANKS. All right. We will back up here. Mr. Gohmert, you are yielded an additional minute and perhaps you might want to yield to——

Mr. GOHMERT. I didn't know the former Chairman had a question.

Mr. CONYERS. I do.

Mr. GOHMERT. Okay. Yes, I would yield.

Mr. CONYERS. Thank you.

Is it your impression that seniors would benefit by a balanced budget constitutional amendment?

Mr. GOHMERT. It is my impression if we followed that by getting more bang for our buck, yes, I absolutely do. Actually in September of 2005 after President Bush had expended all of his political capital pushing for changes to Social Security, I went to some of our leaders in that area and said, look, obviously President Bush is not going to get what he wanted. But I really think—I have talked to some Democrats and Republicans. I think we could pass a bill that would amend Social Security to say for the first time in the history of Social Security, all Social Security tax money would go into the Social Security trust fund and draw interest and not just be invested in the stock market but it could be in revenue-generating Treasury notes and people would have a whole lot more than $800 under the same circumstances. But I was told actually we couldn't do that because the Government might buy bonds and that would potentially make them the biggest bondholder.

And so imagine my surprise 3 years later when we were told by some of the same people that the Federal Government has to buy these mortgage-backed securities because they are the only ones that can spend that kind of money and buy bonds. So I am still hopeful we can have a correction like that, put some real money in the account that earns interest instead of being squandered—not necessarily squandered but spent on other programs. It ought to be spent on Social Security.

Thank you, Chairman Franks.

Mr. FRANKS. I thank the gentleman from South Carolina for his patience, and I recognize him for 20—I started to say 20 minutes. That would be a good payoff, wouldn't it? For 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman. You just scared everyone when you said 20 minutes.

General Thornburgh, I want to thank you for your service to our country, particularly in the field of law enforcement.

Dr. Holtz-Eakin, I am going to ask you a series of, I hope, short, precise questions in hopes of kind of a fill-in-the-blank answer because I want to ask you some longer ones later.

What is our annual deficit?

Mr. HOLTZ-EAKIN. $1.5 trillion right now.

Mr. GOWDY. What is our cumulative debt?

Mr. HOLTZ-EAKIN. Roughly $14.5 trillion.

Mr. GOWDY. Are they any spending outlays that are not on the books? Are there any unfunded liabilities?

Mr. HOLTZ-EAKIN. There is nothing that is genuinely off the books in the Federal budget. The definition of an "unfunded liability" is a bit slipperier. I don't think it is actually appropriate in the Federal context.

Mr. GOWDY. Well, let me ask you this. In present-day dollars, what do we owe our seniors in terms of Medicare?

Mr. HOLTZ-EAKIN. The truth is conventional estimates are something like $60 trillion, but the reality is that assumes that at some point we have a miracle in the future and Medicare grows more slowly. An honest calculation never converges. It is infinitely large.

Mr. GOWDY. Infinitely large.

Mr. HOLTZ-EAKIN. Yes.

Mr. GOWDY. So the computers can't even figure out how far we will be in debt.

Mr. HOLTZ-EAKIN. In the absence of some change that we have not yet seen, yes.

Mr. GOWDY. All right. When I look at a pie chart of the budget for this year or last year, if you zeroed out the Department of Defense, would you balance the books?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. If you zeroed out all discretionary spending, would you balance the books?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. I think you testified that the wars cost $1 trillion?

Mr. HOLTZ-EAKIN. The Iraq war has cumulatively cost about $1 trillion as of about a year ago.

Mr. GOWDY. So laying aside any cost-benefit analysis of actually thwarting any attacks on our land since 9/11, our cumulative debt would only be $14 trillion if we had not had the war. Right?

Mr. HOLTZ-EAKIN. Roughly, yes.

Mr. GOWDY. Mr. Marino, my colleague, and I were prosecutors in a former life. So we didn't follow politics and economics perhaps, obviously, as closely as somebody as learned as you did. The 111th Congress—the budget that they passed—was it balanced? Not the 112th. The 111th.

Mr. HOLTZ-EAKIN. The 111th, no.

Mr. GOWDY. Actually I don't think they passed a budget.

Mr. HOLTZ-EAKIN. It was not a budget resolution.

Mr. GOWDY. Assuming arguendo, was there any discussion of actually balancing that budget?

Mr. HOLTZ-EAKIN. Not to my knowledge.

Mr. GOWDY. The budget proposed by the President—was it balanced?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. The budget not proposed nor voted on by the Senate—is there any discussion of it being balanced?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. In the 1990's, the glory days when a Republican Congress forced President Clinton to have a balanced budget and generated a surplus, was that money used to pay down the debt?

Mr. HOLTZ-EAKIN. During the periods of surplus, we reduced Federal debt outstanding.

Mr. GOWDY. We paid down the debt.

Mr. HOLTZ-EAKIN. Yes.

Mr. GOWDY. How much? How far did we get it down?

Mr. HOLTZ-EAKIN. I don't know. Phil might know.

Mr. JOYCE. Probably in the neighborhood of $500 billion or $600 billion over 4 years of surpluses I would say.

Mr. GOWDY. That is billion with a B?

Mr. JOYCE. That is correct.

Mr. GOWDY. In the past 50 years, how many surpluses have we had?

Mr. JOYCE. Five.

Mr. HOLTZ-EAKIN. Six.

Mr. JOYCE. Well, I will give you a sixth if you can find it.

Mr. GOWDY. We have a constitutional amendment that provides for the generation of revenue, but yet you argue we should not have one for capping spending. Is that a fair assessment?

Mr. JOYCE. I don't think you should have a balanced budget amendment that takes any of the tools to reduce the debt off the table. That would be my position.

Mr. GOWDY. We do have a constitutional amendment that provides for revenue production. Correct?

Mr. JOYCE. If you are talking about the amendment that allowed for the income tax?

Mr. GOWDY. That one.

Mr. JOYCE. That is correct.

Mr. GOWDY. We have two that relate to alcohol. Right?

Mr. JOYCE. Yes.

Mr. GOWDY. We have one that even limits congressional salaries and how they can be impacted.

Mr. JOYCE. Yes.

Mr. GOWDY. And in 50 years, we have managed to produce a surplus either five or six times, and you think we have the self-restraint to balance our budget.

Mr. JOYCE. I didn't say I think you have the self-restraint to balance your budget. I said that the restraint is not going to be provided by amending the Constitution. You have demonstrated the restraint to reduce the Federal deficit at times when there was a consensus around doing that. That is what happened in the 1990's.

Mr. GOWDY. We also are $15 trillion in debt. Agreed?

Mr. JOYCE. The gross debt, yes, is $15 trillion.

Mr. GOWDY. Mr. Chairman, could I have an additional 30 seconds to ask Dr. Holtz-Eakin two more questions?

Mr. FRANKS. Without objection.

Mr. GOWDY. If we were to take our colleagues on the other side of the aisle up on their idea of punishing the people who had the unmitigated temerity to be successful, let's tax the billionaires at, say, 50 percent, would that solve our fiscal woes?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. Let's say that we took them up on their idea to do away with the subsidies for so-called "big oil" and while we are at it, let's do away with the subsidies for the entire green industry as well. Will that balance the budget?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. What about those dreadful corporate jet owners? If we just did away with that, would that balance the budget?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. Can you balance the budget without taking on entitlements?

Mr. HOLTZ-EAKIN. No.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. FRANKS. These prosecutors get pretty good at asking questions, don't they?

With that, I would recognize Mr. Marino for 5 minutes, another prosecutor.

Mr. MARINO. Thank you, sir.

Gentlemen, thank you for being here. General, it is always a pleasure. And gentlemen, I appreciate your candor and your politeness. Thank you so much for that, and I will reciprocate that.

Mr. Mitchell, I think that then Senator Obama did agree with you—then Senator Obama—that raising taxes during a recession is dangerous and not advisable. Do you recall that?

Mr. MITCHELL. I do recall that, yes.

Mr. MARINO. I am going to switch gears a little bit. Professor Joyce, would you be so kind—rules have always been waived particularly for our budgets. Is that correct? I mean, we all realize——

Mr. JOYCE. I wouldn't say always, but I would say——

Mr. MARINO. For the most part.

Mr. JOYCE. I would say when the rules got too tight that they wouldn't allow for whatever policies wanted to be pursued, they were waived.

Mr. MARINO. Right. And I have been told it has been done many times, maybe even hundreds of times. What do we do when Congress reneges on that without having a balanced budget, or in addition to the balanced budget, more legislation that prevents that?

Mr. JOYCE. I think again, you pass a balanced budget amendment and the States ratify it, and I will tell you that I think that even though 18 States might have called for that to occur, there might be some States out there that would figure out it is not in their interest to ratify the balanced budget amendment and for the Federal Government to balance its budget.

But I think you would have to follow it up with some kind of enforcement legislation. That is, the balanced budget amendment is not self-enforcing and you would have to determine what the consequences of failing to enact balanced budgets.

The amendments that are under consideration say that the budget should be balanced and that should rely on estimates of revenues and outlays. And so the obvious question is if the actual budget is unbalanced but the estimated one is balanced, what do you do in order to account for that. That is the problem we ran into in Gramm-Rudman. It wasn't that we couldn't estimate that budgets were balanced. It is that we didn't get there in fact.

Mr. MARINO. Then are you suggesting—and I don't want to put words into your mouth—that we do strengthen a balanced budget amendment to address what happens?

Mr. JOYCE. No. I am suggesting that you can't put those kinds of details into a balanced budget amendment, and I am suggesting that what it would be far preferable to do would be to enact the tax increases and spending cuts that were necessary in order to reduce the debt, put the enforcement mechanisms in place that would attempt to enforce those——

Mr. MARINO. How about a combination? How about a combination of what you just recited with a balanced budget amendment? More strength?

Mr. JOYCE. I would differ with Dr. Mitchell in the following respect. He thinks the balanced budget amendment does more good than harm, and I think the balanced budget amendment does more harm than good.

Mr. MARINO. Let me ask you this. Are you still at the University of Maryland?

Mr. JOYCE. I am.

Mr. MARINO. And you have a budget personally like we all have a budget.

Mr. JOYCE. You mean at the University of Maryland?

Mr. MARINO. University of Maryland and you personally.

Mr. JOYCE. I do.

Mr. MARINO. Would you recommend that the university and you and I spend like the Federal Government is spending, keep borrowing money without any indication of paying it back and passing it on to a generation? Mr. Gohmert stole my thunder a little bit there.

Mr. JOYCE. No. I am sorry to——

Mr. MARINO. No, go ahead, please.

Mr. JOYCE. If this hearing was called "should the Federal debt be reduced," then I would say, yes, the Federal debt should be reduced. This hearing is about should we amend the Constitution to require an annually balanced budget.

Mr. MARINO. But would you agree with me that if you or I went to the bank or the University of Maryland went to the bank and, let's say, just to put it in perspective, we owed a quarter a million dollars, we give an IOU, we are going to pay interest, but we wanted another quarter million and we haven't paid anything on the principal in 50 years, do you think they would lend us any money?

Mr. JOYCE. I do not think so.

Mr. MARINO. Okay. Thank you, sir.

I guess this is a little bit of a rhetorical question, and I am going to throw it out to each of you to respond to it. It has been suggested that the Federal Government is supposed to come to the aid of the States. And I do agree with that. But who is to come to the aid of the American people, the 80 percent of the people who are looking at this deficit and this debt and saying it is having an impact on me now at this level? Dr. Mitchell?

Mr. MITCHELL. No one.

Mr. MARINO. Professor Joyce?

Mr. JOYCE. I think only the Congress and the President can come to the aid of the people.

Mr. MARINO. Dr. Eakin?

Mr. HOLTZ-EAKIN. I would concur with Professor Joyce. Only the Congress and the President can.

Mr. MARINO. And General? And we can't seem to do that without a balanced budget.

Professor Joyce, do you know how long it would take for us to even put a dent—a dent—in the debt if we were to eliminate the tax cuts?

Mr. JOYCE. I believe that the CBO has estimated that the effect of eliminating the tax cuts is something like $2.1 trillion over 10 years, and so if you eliminated the tax cuts, that would decrease the debt by that amount, sort of all other things being equal.

Mr. MARINO. And if we continue to borrow and spend money on the same path that we are doing now, would you be surprised if even the experts were saying 60 years to put a dent?

Mr. JOYCE. No, that wouldn't surprise me.

Mr. MARINO. We talked about—you were asked—and I would not put you in this position, but you are not here to draft legislation. Would you agree with me, though, that every time we draft legislation—and everyone sitting here are ladies and gentlemen of honor and want this country in the same direction. It is just how we go about it. Can you just give me, each of you, a one line on what you would put in a piece of legislation, not the whole thing, what you think would be important to put in a piece of legislation that would help, in conjunction with a balanced budget and legislation, that we in Congress have the responsibility to pass? Dr. Mitchell?

Mr. MITCHELL. Well, I would say that it should balance the budget over a time period that allows you to still deal with the business cycle.

Mr. MARINO. Professor Joyce?

Mr. JOYCE. I would say that what you need to put in a piece of legislation are the spending cuts particularly related to the entitlement programs and the revenue increases that would be necessary in order to get to a balanced budget or reduce the debt.

Mr. MARINO. Dr. Eakin?

Mr. HOLTZ-EAKIN. I would have roughly the same answer. I think the legislative route should be focused on entitlement reforms and spending limits going forward.

Mr. MARINO. And General?

Mr. THORNBURGH. A workable balanced budget amendment would include a mandate to match expenditures and revenues, number one. Secondly, to provide for a glide path for the reaching of zero deficit over a, say, 10-year period. Third, a super majority exception to make expenditures for military or defense purposes, for natural disaster emergency aid, and in times of economic crisis, each of which would have to be certified by the President and the Congress to actually be the case so that it couldn't be done on a whim. And finally, to add to that package a requirement for separate capital budgeting so that expenditures for entitlements are not treated the same as expenditures for highways and bridges, a line-item veto which would empower the President, subject to override, to deal with unwise or unlawful expenditures. And I think that would pretty well wrap it up.

Mr. MARINO. In conclusion, gentlemen, if you ever have the time, you find the spare time, please don't hesitate, if you would like to send those suggestions and others to me because apparently we are not able to do it in and of our right and we need the input from experts like each and every one of you. And I thank you.

And I yield back.

Mr. FRANKS. The gentleman's time has expired.

Mr. CONYERS. Mr. Chairman, could I ask that the distinguished gentleman, Mr. Marino, have 2 additional minutes so that we could yield to the gentlelady from Houston, Texas?

Mr. MARINO. Yes, of course.

Mr. FRANKS. The gentlelady is recognized.

Ms. JACKSON LEE. The Chairman is very kind. Thank you, Mr. Ranking Member, and thank you, Mr. Marino.

Dr. Joyce, I am pointedly going to ask you—I need some bionic and immediate quick questions. A comment was made about S&P and the S&P, if you will, assessment. Wasn't part of that discussion the actions of Congress' seeming inability to come to a resolution on the debt ceiling?

Mr. JOYCE. Yes.

Ms. JACKSON LEE. One comment was made that a senior was complaining about $800. Wouldn't there be jeopardy in terms of some approaches to Social Security that the $800 would turn to $0 and that most seniors are complaining because we have not been able to give a cost-of-living increase as opposed to getting Social Security?

Mr. JOYCE. I am not an expert on Social Security. The only thing that I would say is that any effort to substantially reduce the debt and the deficit would have to deal with all the major entitlement programs in addition to taxes in my view.

Ms. JACKSON LEE. But it is important to preserve a lifeline for seniors. Is that not correct?

Mr. JOYCE. I would say that is true.

Ms. JACKSON LEE. All right. And with respect to the cap that Mr. Deutch was discussing, isn't it reasonable to look at whether that cap should be the same on everybody's income as it relates to investment in Social Security or returning the money back?

Mr. JOYCE. Yes. I think one of the things that should clearly be on the table is looking at the cap.

Ms. JACKSON LEE. And do you realize, having traveled up from Houston, sitting next to a seat mate who is part of a venture capital that indicates that new starts are alive and that many people are investing in those markets? In this instance, it was satellite. Is that not still going on and is not a component of improving our economy is to create jobs? Should we not be focused on job creation? And isn't the Government part of job creation, as well as the private sector?

Mr. JOYCE. Yes.

Ms. JACKSON LEE. And finally, is it not a moral compass that we should utilize, in addition to our own fiscal responsibilities, in terms of looking at how we make cuts? The 1997 budget that you said was very helpful—and that was the budget that I was very engaged in. President Clinton signed it. We established the CHIPS program—had a morality compass to it. Did it not in your opinion?

Mr. JOYCE. I think it is always something that should be considered, not only what is the fiscal effect of something, but it is also what is the human effect of whatever actions you are taking.

Mr. FRANKS. Thank you.

Ms. JACKSON LEE. I thank the gentleman and yield back.

Mr. FRANKS. The gentleman's time has expired.

You know, I am just an old roughneck, but we learned in the field that certain realities always have the last word. I don't think there is anybody on this panel who doesn't want very much for every American to be productive and to do well in life. And it is incumbent upon all of us to remember that only the productivity of the people has the opportunity to meet those needs. And so every policy should be bent toward that direction.

Just for the record, I want to make sure everyone understands that my support for a balanced budget amendment is not just one of fiscal sanity. It is one that I believe will result in the most prosperity for rich and poor alike in this country. That is the motivation.

And I thank all of you as witnesses here for contributing to the discussion.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses.

And without objection, all Members will also have 5 legislative days to submit any additional materials for the record.

And with that, this hearing is adjourned. Thank you.

[Whereupon, at 12:43 p.m., the Committee was adjourned.]

# APPENDIX

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Material Submitted for the Hearing Record

**Letter submitted by the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary**

July 28, 2011

President Barack Obama
The White House
Washington, D.C.

The Honorable John Boehner
United States House of Representatives
Washington, D.C.

The Honorable Nancy Pelosi
United States House of Representatives
Washington, D.C.

The Honorable Harry Reid
United States Senate
Washington, D.C.

The Honorable Mitch McConnell
United States Senate
Washington, D.C.

Dear President Obama, Speaker Boehner, Minority Leader Pelosi, Majority Leader Reid, and Minority Leader McConnell,

We, the undersigned economists, urge the rejection of proposals to add a balanced-budget amendment to the U.S. Constitution. While the nation faces significant fiscal problems that need to be addressed through measures that start to take effect after the economy is strong enough to absorb them, writing a requirement into the Constitution that the budget be balanced each year would represent very unsound policy. Adding additional restrictions, as some balanced budget amendment proposals would do, such as an arbitrary cap on total federal expenditures, would make the balanced budget amendment even worse.

**1.** A balanced budget amendment would mandate 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 increase the deficit but limit declines of after-tax income and purchasing power. To keep the budget balanced every year would aggravate recessions.

**2.** Unlike many state constitutions, which permit borrowing to finance capital expenditures, the federal budget makes no distinction between capital investments and current outlays. Private businesses and households borrow all the time to finance capital spending. A balanced budget amendment would prevent federal borrowing to finance expenditures for infrastructure, education, research and development, environmental protection, and other investment vital to the nation's future well being.

**3.** A balanced budget amendment would invite Congress to enact unfunded mandates, requiring states, localities, and private businesses to do what it cannot finance itself. It also invites dubious accounting maneuvers (such as selling more public lands and other assets and counting the proceeds as deficit-reducing revenues), and other budgetary gimmicks. Disputes on the meaning of budget balance would likely end up in the courts, resulting in judge-made economic policy. So would disputes about how to balance an unbalanced budget when Congress lacks the votes to inflict painful cuts.

**4.** Balanced budget amendment proposals typically contain escape hatches, but in peacetime they require super-majorities of each House to adopt an unbalanced budget or to raise the debt limit. These provisions are recipes for gridlock.

**5.** An overall spending cap, which is part of some proposed amendments, would further limit Congress's ability to fight recessions through either the built-in automatic stabilizers or deliberate changes in fiscal policy. Even during expansions, a binding spending cap could harm economic growth because increases in high-return investments — even those fully paid for with additional revenue — would be deemed unconstitutional if not offset by other spending reductions. A binding spending cap also would mean that emergency spending (for example on natural disasters) would necessitate reductions elsewhere, leading to increased volatility in the funding for non-emergency programs.

**6.** A Constitutional amendment is not needed to balance the budget. The budget not only attained balance, but actually recorded surpluses and reduced debt, for four consecutive years after Congress enacted budget plans in the 1990s that reduced spending growth and raised revenues. This was done under the existing Constitution, and it can be done again. No other major nation hobbles its economy with a balanced-budget mandate. There is no need to put the nation in an economic straitjacket. Let the President and Congress make fiscal policies in response to national needs and priorities as the authors of our Constitution wisely provided.

**7.** It is dangerous to try to balance the budget too quickly in today's economy. The large spending cuts and/or tax increases that would be needed to do so would greatly damage an already-weak recovery.

Signed,

**Kenneth Arrow**
Stanford University
Winner of the Nobel Prize in Economics and the John Bates Clark Medal, and Past President of the American Economic Assn.

**Peter Diamond**
Massachusetts Institute of Technology
Winner of the Nobel Prize and Past President of the American Economic Association

**William Sharpe**
Emeritus, Stanford University
Winner of the Nobel Prize in Economics

**Charles Schultze**
Emeritus, Brookings Institution
former Chairman of the Council of Economic Advisers and Past President of the American Economic Assn.

**Alan Blinder**
Princeton University
Former Vice Chairman of the Board of Govern of the Federal Reserve System and former member of the Council of Economic Advisers

**Eric Maskin**
Princeton University
Winner of the Nobel Prize in Economics

**Robert Solow**
Massachusetts Institute of Technology
Winner of Nobel Prize in Economics and the John Bates Clark Medal, and Past President the American Economic Assn.

**Laura Tyson**
University of California, Berkeley
Former Chair of the Council of Economic Advisers and former Director of the National Economic Council

**Article submitted by the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary**

AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY

Issue Brief

# The Balanced Budget Amendment: A Threat to the Constitutional Order

By Neil Kinkopf

November 2011



American Constitution Society | 1333 H Street, NW, 11th Floor | Washington, DC 20005

# The Balanced Budget Amendment: A Threat to the Constitutional Order

**Neil Kinkopf***

At the heart of the balanced budget debate is a disagreement over economic policy. Many economists believe that fiscal policy (increasing spending and/or cutting taxes to promote growth in the private economy or decreasing spending and/or raising taxes to mollify inflationary pressures) is an important tool for promoting the nation's economic goals. Others believe that fiscal policy either cannot or should not be employed to promote economic growth. I am a constitutional law professor, not an economist. As such, I have no special expertise to offer on this dispute and, in fact, take no position on which economic school of thought has the better of the argument.

Over the last few years, there have been renewed calls not only to resolve this policy dispute, but to place its resolution effectively beyond question or revision by amending the Constitution to require a balanced budget.[1] This suggestion raises constitutional questions of the highest order. Below, I offer my analysis of these questions and the extremely serious threats that a balanced budget amendment would pose for our constitutional order.

## I. The Balanced Budget Amendment Contradicts Our Constitutional Design

The Constitution does not bind the nation or future generations to adhere to any particular conception of the public good or of appropriate social or economic policy. Rather, the Constitution recognizes that our vast nation will encompass groups and individuals with starkly contrasting and sharply conflicting notions of the public good and sound policy. Instead of trying to resolve these disagreements, the Constitution focuses on structuring governmental power and establishing decision-making processes that will promote deliberation and public-interested measures over oppressive or special-interested ones.

Our foundational law goes on to supplement these procedural and structural protections by enshrining individual rights. Together these structures and rights allow us to resolve policy disagreements in a manner that we all can agree is fair, even if we disagree with specific outcomes. It is precisely because of this basic design that we regard ourselves as a free and self-

* Professor, Georgia State University College of Law

[1] The leading proposals to amend the Constitution refer to the provision as a "balanced budget amendment" and virtually all public rhetoric employs this phrase. For this reason, I adopt it as well to refer to the proposals collectively, even though the phrase is an inaccurate expression of what the amendment would require. The so-called balanced budget amendment would forbid federal spending to exceed federal revenues for any fiscal year. Thus, the amendment would forbid the federal government to run a deficit. The amendment, however, would not require that expenditures *equal* revenues. The amendment thus would not forbid the federal government to run a surplus, and thereby to employ fiscal policy as a means of contracting economic activity in order, for example, to restrain inflation.

governing people. This may also explain why ours is the world's longest enduring written Constitution.[2]

It is no accident that our Constitution does not dictate outcomes. The founding generation faced divisive controversies that were every bit as momentous as the present-day budget crisis. Yet they consciously designed the Constitution not to resolve these issues, instead leaving them to be resolved through the constitutionally ordained process of legislation in accordance with constitutionally guaranteed individual rights. For example, the founding generation was deeply divided over whether to allow the federal government to establish and maintain a standing army.[3] Rather than resolving this issue, the Constitution authorized Congress to provide and maintain an army and navy, and designated the President as commander in chief, without requiring that Congress deploy this power and establish a standing military force.[4] Thus, the first Congress could decide whether to create a standing army and subsequent Congresses, and subsequent generations, could decide for themselves whether to follow suit.

There was broad public agreement at the time of the Constitution's adoption regarding the need to provide for a judicial power and a Supreme Court to exercise that power. There was no consensus regarding the need for, much less the structure and powers of, a system of lower federal courts. The Constitution expressly left this contentious and significant issue to be resolved by Congress.[5]

One final example, not from the period of the Constitution's original ratification, is the controversy over the adoption of a federal income tax. In 1895, the Supreme Court held that the Constitution as originally ratified did not allow the federal government to impose an income tax.[6] The Constitution was amended not to establish an income tax, but to authorize the federal government to create one.[7] As a result, Congress remains free to abolish the income tax if it chooses to do so. When the public determined in the late-nineteenth century that the best way to

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[2] *See* TOM GINSBURG & ROSALIND DIXON, COMPARATIVE CONSTITUTIONAL LAW (2011).

[3] *Compare* George Washington, Sentiments of a Peace Establishment (May 2, 1783), *reprinted in* 3 PHILIP KURLAND, THE FOUNDER'S CONSTITUTION 128 (1987) (favoring a standing military force) and Alexander Hamilton, *id.* at 130 (same) *with* Richard Henry Lee, Letter to James Monroe (Jan. 5, 1784), *reprinted in id.* at 131 (opposing the establishment of a standing army), Federal Farmer No. 3 (Oct. 10, 1787), *reprinted in id.* at 132 (same), and A Democratic Federalist (Oct. 17, 1787), *reprinted in id.* at 133 (same). The records of the drafting convention show that the delegates held conflicting views on the subject. *See id.* at 132.

[4] *See* U.S. CONST. art I, sec. 8, cl. 12; U.S. CONST. art. II, § 2, cl. 1. In advocating for the ratification of the Constitution, Alexander Hamilton urged the public to recognize that the Constitution would neither require nor forbid the establishment of a standing army, but would leave the matter in the discretion of Congress, which could then exercise its judgment as circumstances might dictate. *See* THE FEDERALIST No. 24 (Alexander Hamilton).

[5] *See* U.S. CONST. art. I, § 8, cl. 9 (authorizing Congress to "constitute Tribunals inferior to the supreme Court"); U.S. CONST. art. III, § 1 ("The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."). At the drafting convention, for example, John Rutledge moved to strike from the initial draft of the Constitution the provision establishing lower federal courts on the ground that this function should be left to state courts. After Rutledge's motion passed, James Madison and James Wilson moved to authorize Congress to create lower federal tribunals. "They observed that there was a distinction between establishing such tribunals absolutely, and giving a discretion to the Legislature to establish or not establish them." This motion passed overwhelmingly. *See* Records of the Federal Convention (June 5, 1787), *reprinted in* 3 PHILIP KURLAND, THE FOUNDER'S CONSTITUTION 61 (1987).

[6] Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (1895).

[7] *See* U.S. CONST. amend. XVI ("The Congress shall have power to lay and collect taxes on incomes . . . .").

raise revenue for the federal government was through an income tax, they did not impose that judgment in the Constitution, but left ensuing generations free to select for themselves the most appropriate means of raising federal revenue.

There is one counter example, but it ultimately reinforces the general constitutional design outlined above. Effective in 1920, the Constitution was amended to prohibit "the manufacture, sale, or transportation of intoxicating liquors" in the United States.[8] The amendment clearly did not involve the structure of governmental power or the processes of governmental decisionmaking, nor did it protect an individual right. Rather, it sought to enshrine in the Constitution a resolution of general social policy. Such a failure was this deviation from the Constitution's design that it stands as the only amendment ever to be repealed.[9] The repealing amendment is instructive in this regard. It does not, so to speak, prohibit prohibition. Rather, it leaves the question of whether to permit the sale and possession of alcoholic beverages (and if so under what regulations) to be determined by each state through its own democratic process.[10]

It may seem that these observations about the Constitution's design operate at too high a level of abstraction to have any practical relevance to the debate over the balanced budget amendment. These concerns, however, play out in very practical ways that raise insuperable objections to the proposed amendment. In particular, the Framers understood fully well that attempts to define and resolve disputes in the Constitution itself would render the Constitution a charter of useless "parchment barriers" that could not be enforced.[11] This concern informs the following analysis of the balanced budget amendment.[12]

II. The Disastrous Consequences of Enforcing the Proposed Amendment

The proposed balanced budget amendment provides no express enforcement mechanism.[13] The leading proposals simply declare that total outlays shall not exceed total receipts, without explaining how this balanced budget is to be achieved. Merely imposing a mandate does not mean Congress will be able to fulfill it. One Member of Congress might vote to raise taxes, another to reduce entitlement benefits, a third to cut military spending, and a fourth to adopt a combination of each. No single measure may gain a majority in the House or Senate, with each individual legislator honestly claiming to have fulfilled the new constitutional

[8] U.S. CONST. amend. XVIII.

[9] *See* OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES 247 (Kermit Hall ed., 1992). To be sure, some amendments, such as those dealing with the process of presidential succession, have been refined and improved by successive amendments. Nonetheless, the Prohibition amendment stands as the only amendment actually to have been repudiated.

[10] U.S. CONST. amend. XXI, § 2.

[11] THE FEDERALIST NO. 48, at 308 (James Madison) (Clinton Rossiter ed., 1961).

[12] In referring to the balanced budget amendment, I refer principally to H.J. Res. 2, which I understand to be the version that Congress is presently focused on. The problems with H.J. Res. 2, however, inhere in the very concept of a balanced budget amendment, and so apply to varying degrees to any proposal to adopt such a constitutional amendment.

[13] I use the term "enforcement mechanism," as distinguished from an "enforcement clause." While some balanced budget amendment proposals do include clauses providing that Congress shall enforce the amendment through appropriate legislation, they do not articulate how the amendment would be implemented and, rather, leave the matter to future legislation and/or judicial decision.

duty to support a budget that is balanced.

It is also possible for Congress and the President to fully comply with their constitutional obligations and nevertheless enact outlays in excess of receipts. Congressional budgeting depends on forecasting of both receipts and outlays. If these forecasts turn out to be in error – for example, because a subsequent economic downturn substantially reduces government receipts and significantly increases outlays due to a greater than foreseen number of individuals becoming eligible for various forms of government assistance – then the federal budget enacted it would be out of balance even though it appeared to be balanced when Congress and the President.

The omission of an enforcement mechanism is not likely an oversight, as this same problem plagued the last several significant efforts to ratify a balanced budget amendment.[14] This problem, moreover, is insurmountable. Every conceivable enforcement mechanism would do serious violence to the fundamental structure of our government and of our Constitution.

There is little doubt that the sponsors of the amendment intend for it to be an enforceable legal requirement. In advocating the amendment's ratification, sponsors repeatedly speak of what the amendment would require or mandate. For example, Senator Orrin Hatch, the measure's principal sponsor in the Senate, states that a balanced budget amendment "is the only way to *force* Washington to act."[15] Senator Mike Lee asserts that "a balanced-budget *requirement* will *ensure* we do not continue to drive our country further into debt . . . ."[16] Representative Bob Goodlatte introduced the measure in the House, declaring "Mr. Speaker, I rise to re-introduce legislation that will amend the United States Constitution to *force* Congress to rein in spending by balancing the federal budget.... Unless Congress is *forced* to make the decisions necessary to create a balanced budget, it will always have the all-too-tempting option of shirking this responsibility. A Constitutional balanced budget *requirement* ... will set our nation's fiscal policies on the right path. This is a common sense approach to *ensure* that Congress is *bound* by the same fiscal principles that guide America's families each day"[17]

In the absence of an express enforcement mechanism, this role will fall to the judiciary and so I will focus on this prospect. After examining the consequences of assigning this power to the judiciary, I will consider alternative enforcement mechanisms.

A. The Perils of Judicial Enforcement

[14] Robert H. Bork, *On Constitutional Economics*, AM. ENT. INST. J. ON GOV'T AND SOC'Y 14, 18 (1983), *reprinted in Proposed Balanced Budget Constitutional Amendments: Hearings Before the Subcomm. on Monopolies and Commercial Law of the H. Comm. on the Judiciary*, 100th Cong. (1989) 645, 649; *The Balanced Budget Amendment: Hearing Before the Joint Economic Committee*, 104th Cong. (1995) (statement of Walter E. Dellinger), *available at* http://www.justice.gov/olc/jtecon.95.8.htm#N_26_.

[15] *See* Orrin Hatch, *Balanced Budget Amendment Needed to Fix National Debt Crisis*, U.S. NEWS, Apr. 25, 2011 (emphasis added), *available at* http://www.usnews.com/opinion/articles/2011/04/25/balanced-budget-amendment-needed-to-fix-national-debt-crisis.

[16] Mike Lee, *Why We Need a Balanced Budget Amendment*, WASH. POST, Mar. 4, 2011 (emphasis added), *available at* http://www.washingtonpost.com/wp-dyn/content/article/2011/03/03/AR2011030304714.html.

[17] *See* Balanced Budget Amendment Introduced in House (emphases added), http://bbanow.org/news/2011-01-07/bba-introduced-congress (last visited Nov. 11, 2011).

If a balanced budget amendment were ratified, it would in all likelihood empower the courts to make appropriate remedial orders for any violation of the newly enacted provision. Indeed, the Supreme Court jealously guards its authority to interpret the Constitution and to provide remedy for its violation.[18] This is not a recent development, but one that extends back to *Marbury v. Madison* and Chief Justice Marshall's famous declaration that "it is emphatically the province and duty of the judicial department to say what the law is."[19] Perversely, many supporters of the balanced budget amendment have criticized the judiciary's lack of self-restraint in interpreting the Constitution in other contexts. Why, then, would they expect reticence and restraint with respect to a balanced budget amendment?

If the courts were to play their usual role as constitutional interpreter and enforcer with respect to the balanced budget amendment, however, it would threaten not merely to alter but to eviscerate the fundamental character of the judiciary. Our judiciary is able to perform its function because it is independent of politics, and because the public trusts that independence. This character stems from the Constitution's specific design.[20] Federal judges do not depend on politics to maintain office and do not participate in the political functions of government. In advocating for the Constitution's ratification, Alexander Hamilton wrote, in *The Federalist* No. 78, that "The judiciary [has] no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment."[21] The Constitution's framers understood that the judicial role was to decide cases according to law and completely independent of political considerations or influence.

Our independent federal judiciary is highly skilled at deciding legal questions. It is not at all competent to make decisions of a political or policy nature. Judges are not, generally speaking, trained in matters of economics or finance. They have no special competency that would recommend committing such decisions to them. Moreover, the processes of litigation are not well adapted to resolving disputes over sound economic policy. Judges can hear and weigh evidence from witnesses, witnesses who are chosen and called by the parties and not by the judge. But they do not hold hearings of a legislative sort. Legislators can call any witness they like and ask whatever questions they like. Legislative hearings allow the legislature to call all interested parties, not just the parties to a lawsuit, and allow legislators to pursue any line of inquiry they believe to be worthwhile. Finally, legislators are politically accountable for their decisions. Judges are not and should not be. Decisions regarding how to achieve a balanced budget are precisely the type of decisions that involve will and not judgment, to use Hamilton's phrase, and so should be made by accountable officials rather than judges.

If the balanced budget amendment were ratified and Congress were to fail to enact a balanced budget, the judiciary would be pressed into declaring the constitutional violation. In a

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[18] *See, e.g.*, Dickerson v. United States, 530 U.S. 428 (2000); Boerne v. Flores, 521 U.S. 507 (1997); Cooper v. Aaron, 358 U.S. 1 (1958).
[19] 5 U.S. (1 Cranch) 137, 177 (1803).
[20] The Constitution allows judges to retain office during "good behavior," which effectively guarantees life tenure subject to removal through impeachment and conviction. The Constitution further secures the independence of the judiciary by forbidding their compensation to be reduced. U.S. CONST. art. III, § 1.
[21] THE FEDERALIST NO. 78, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

prospective suit[22] for relief, however, there would be no way of ordering a remedy without making decisions that would be inextricably political. Such a decision inevitably would involve a judgment about tradeoffs between spending reduction and revenue raising and, within each of these categories, between types of spending reductions (national defense spending or entitlement spending, for example) and between types of revenue raising (income tax, capital gains tax, estate tax, etc.).

For these reasons, one might expect the courts to regard questions raised regarding the balanced budget amendment to be non-justiciable political questions. In fact, there is no reason to expect that this is the road the courts would follow. Indeed, there is a consensus that the courts will become embroiled in controversies over balancing the budget. As Judge Robert Bork declared in opposing a balanced budget constitutional amendment,, "[t]he result . . . would likely be hundreds, if not thousands, of lawsuits around the country, many of them on inconsistent theories and providing inconsistent results."[23]

Professor Charles Fried of Harvard Law School, has observed that neither the political question doctrine nor limitations on standing would necessarily preclude litigation that would ensnare the judiciary in the thicket of budgetary politics.[24] To be sure, "the political question doctrine . . . is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government,"[25] but many Supreme Court decisions indicate the Court is prepared (wisely or unwisely) to resolve questions that might once have been considered "political." For example, in *United States v. Munoz-Flores*,[26] the Court adjudicated a claim that an assessment was unconstitutional because Congress had failed to comply with the Origination Clause, which mandates that "[a]ll Bills for raising Revenue shall originate in the House of Representatives." U.S. Const. art. I, § 7, cl. 1. The Court rejected the argument that this issue was a nonjusticiable political question. And in 1992, the Court held that congressional selection of a method for apportionment of congressional elections is not a "political question" and is therefore subject to judicial review.[27]

Following these cases, the Supreme Court decided a case, *Clinton v. Jones*, in which a sitting President was sued personally. The Court did not see lawsuits involving a sitting President as inherently political and authorized a federal trial court to exercise jurisdiction over the claim and over the President personally.[28] Most blatantly, the Supreme Court decided a case, *Bush v. Gore*, where the political nature of the question presented was evident from the caption itself. In that case, of course, the Supreme Court actually decided the outcome of a presidential

[22] By "prospective suit," I mean a suit brought before outlays actually exceed receipts.
[23] *See* Bork, *supra* note 14, at 14, 18.
[24] *Balanced Budget Amendment -- S.J. Res. 41: Hearings Before the Senate Comm. on Appropriations*, 103d Cong. 82-83, 86-87 (1994) [hereinafter *1994 Senate Hearings*].
[25] United States v. Munoz-Flores, 495 U.S. 385, 394 (1990); *see also* Baker v. Carr, 369 U.S. 186, 217 (1962) ("Prominent on the surface of any case held to involve a political question is . . . a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government.").
[26] 495 U.S. 385 (1990).
[27] Department of Commerce v. Montana, 503 U.S. 442 (1992).
[28] 520 U.S. 681 (1997).

election.[29]

The judiciary has not shied away from disputes over the budget or the budgeting process. The Supreme Court struck down Congress's first attempt to impose a structure that would yield a balanced budget – the Gramm-Rudman-Hollings Act.[30] It has also struck down the so-called Line Item Veto Act.[31] The Court also heard a case involving President Richard Nixon's assertion of constitutional authority to impound funds.[32] Lastly, some of the legislative history surrounding previous versions of the balanced budget amendment suggests that at least limited judicial review is contemplated. In light of this background, it is doubtful that courts would refuse to hear balanced budget claims on political question grounds.[33]

In the end, there is a range of views as to the extent to which courts would involve themselves in issues arising under the balanced budget amendment. Judge Bork believes that there "would likely be hundreds, if not thousands, of lawsuits around the country" challenging various aspects of the amendment.[34] Similarly, the late Professor Archibald Cox of Harvard Law School predicted that "there is a substantial chance, even a strong probability, that . . . federal courts all over the country would be drawn into its interpretation and enforcement,"[35] and Professor Charles Fried has testified that "the amendment would surely precipitate us into subtle and intricate legal questions, and the litigation that would ensue would be gruesome, intrusive, and not at all edifying."[36] Other commentators, such as former Attorney General William Barr, believe that the political question and standing doctrines likely would persuade courts to intervene in relatively few situations, and that there will not be an "avalanche" of litigation, but that, "[w]here the judicial power can properly be invoked, it will most likely be reserved to address serious and clearcut violations."

Former Attorney General Barr may well be right that courts would be reluctant to get involved in most balanced budget cases -- and it would be proper for them to be so reluctant. However, none of the commentators, including former Attorney General Barr himself, believes

[29] 531 U.S. 98 (2000). For a discussion of the justiciability of the case, *see* Erwin Chemerinsky, Bush v. Gore *Was Not Justiciable*, 76 NOTRE DAME L. REV. 1093 (2001).
[30] *See* Bowsher v. Synar, 478 U.S. 714 (1986).
[31] Clinton v. New York, 524 U.S. 417 (1998).
[32] Train v. New York, 420 U.S. 35 (1975) (holding that the president must spend funds if a statute requires that they be spent).
[33] It might also be thought that the requirement that a plaintiff have standing could serve as a barrier to litigation involving the balanced budget amendment. This is doubtful as well. *See The Balanced Budget Amendment: Hearing Before the Joint Economic Committee*, 104th Cong. (1995) (statement of Walter E. Dellinger), *available at* http://www.justice.gov/olc/jtecon.95.8.htm#N_26_. Since that testimony, the Court has narrowed both congressional standing, *see* Raines v. Byrd, 521 U.S. 811 (1997), and taxpayer standing, Hein v. Freedom from Religion Found., 551 U.S. 587 (2007). The Court has not, however, closed off these bases of standing entirely. The Court, for example, quite emphatically refused to abolish the doctrine of taxpayer standing in *Hein*. *See id.* (Scalia, J., concurring). Aside from these specialized categories of potential plaintiffs, any party who is adversely affected by government spending in excess of revenues would appear to suffer an injury-in-fact for standing purposes and so would have a strong claim to hold standing to litigate.
[34] *See* Bork, *supra* note 14, at 14, 18.
[35] *1994 Senate Hearings*, at 157 (statement of Archibald Cox, Professor of Law, Harvard University).
[36] *Id.* at 83 (testimony of Charles Fried, Professor of Law, Harvard University).

that the amendment would bar courts from at least occasional intrusion into the budget process.[37] Accordingly, whether we would face an "avalanche" of litigation or fewer cases alleging "serious and clearcut violations," there is a consensus that the amendment creates the potential for the involvement of courts in issues arising under the balanced budget amendment, and that while judicial review of alleged constitutional violations is appropriate, judicial resolution of budget disputes is not. In the end, it matters little whether the number of cases brought under a balanced budget amendment would be large or small. A single case could easily represent an avalanche of litigation in terms of its far-reaching consequences.

There is also a set of cases, unnoticed in previous commentary on balanced budget amendment proposals, over which the Court would seem to have undeniable authority to exercise review. Prior commentary has considered litigation brought at a time when a budget is passed but before it has actually taken effect and so before outlays have actually exceeded receipts. In this setting, as discussed above, there are very significant problems relating to the sort of prospective remedy a court might order and to what parties might satisfy the constitutional and prudential requirements of standing. None of these problems is present if the litigation is brought *after* the fiscal year's receipts have been exhausted. If outlays exceed receipts for a given year, the federal government would be in violation of the balanced budget amendment for every expenditure it makes from that point through the end of the fiscal year. The Constitution already contains a separate provision that would render such spending illegal: "no money shall be drawn from the Treasury but in consequence of appropriations made by law."[38] The balanced budget amendment would establish the invalidity of any outlay, or appropriation of funds, in excess of receipts, and therefore such an appropriation would not be "made by law."

A single lawsuit could be sufficient to have government operations declared invalid once the year's revenues have been exhausted and this, in turn, could require the entire federal government to shut down, because everything the federal government does involves an expenditure of funds to pay the official or officials that undertake the government action. Thus, for example, any individual who is subject to a criminal prosecution on the day after federal receipts have been exhausted would have standing to assert that the prosecutor is illegally in court, because his salary for that day represents an outlay in excess of receipts. Or, a coal mine operator who is subject to a mine safety inspection could seek an injunction to prohibit federal officials from carrying out the inspection on the same grounds.

While a prospective suit would raise serious concerns with respect to remedy, requiring federal judges to determine which spending to cut or how to raise revenues, a lawsuit brought after federal outlays exceed receipts would not. For such a suit, the remedy would be quite simple and judicially manageable: an order prohibiting further outlays. This remedy is judicially manageable in that it does not require a judge to make any inappropriate determination of economic policy, but the consequences of such a remedy would be catastrophic. This remedy would require a complete government shutdown, unlike the much more limited statutory

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[37] Attorney General Barr has stated that "I would be the last to say that the standing doctrine is an ironclad shield against judicial activism. The doctrine is malleable and it has been manipulated by the courts in the past." *The Balanced-Budget Amendment: Hearing on S.J. Res. 1 Before the Senate Comm. on the Judiciary*, 104th Cong. 126 (1996) (statement of former Attorney General William Barr).

[38] U.S. CONST. art. I, § 9, cl. 7.

shutdowns that have occurred from time to time.[39]

There are several illuminating distinctions between a constitutionally compelled complete shutdown and a statutory shutdown. First, unlike a statutory shutdown, Congress could not solve the problem through the simple expedient of passing a continuing resolution. Congress would have to actually raise the revenue to pay for the continuance of federal operations. Second, the relevant statutes have been interpreted to allow for exceptions where the obligation of funds in advance of an appropriation is necessary to protect life or property and in other "emergency" situations.[40] The balanced budget amendment contains no such exceptions[41] and thus, on its face, could require the federal government to cease all operations, including the operation of federal prisons, air traffic control facilities, food and workplace safety inspections, border control, military operations, and other critical functions.[42]

There would be an alternative judicial route to enforcing compliance with the balanced budget amendment: federal courts might impose taxes or other revenue raising measures to fund the continuing operations of the federal government. In *Missouri v. Jenkins*, the Supreme Court held that a federal district court could mandate that a state increase taxes in order to fund a school desegregation program. This would avoid the seriously harmful consequences of requiring a cessation of federal operations, but at the expense of the judiciary taking on a role that, in our constitutional system, is properly assigned to the politically accountable branches.

Thus, once federal expenditures equal federal revenues in a given year, a small number of cases or even a single lawsuit would do lasting damage to the judiciary and to our constitutional structure. To put it differently, a single case could represent an avalanche of litigation. And, should it turn out that courts do not become involved, we would be faced with the prospect of an

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[39] I refer to these as statutory government shutdowns because the requirement that the government cease operations and the scope of the cessation are defined by statute, particularly the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1342 (2006).

[40] *See* Memorandum from Walter Dellinger, Assistant Attorney Gen., Office of Legal Counsel, to Alice Rivlin, Dir., Office of Mgmt. and Budget (Aug. 16, 1995), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/m95-18.pdf; Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations, 4A Op. O.L.C. 16 (1980).

[41] It is true that many proposals, such as H.J. Res. 2, include an exception for times when the nation is at war or is engaged in military conflict. But none of the leading proposals includes an exception for emergencies generally. Presumably, this is because such an exception could be made to render the amendment meaningless, since Congress would then be free to declare an emergency whenever it lacks the political will to balance the budget. While understandable, the result is that the amendment, if ratified, would not allow deficit spending for such non-military emergencies as the need to keep federal prisons or air traffic control systems operating.

[42] It is possible that, under the guise of constitutional interpretation, the Supreme Court would create exceptions to make the balanced budget amendment workable and to avoid the serious dislocation that would attend a literal application of its terms. I am not confident that the Court would do so. The Court has been willing, for example, to accept dramatic dislocation of the criminal justice system as the consequence of the literal application of other constitutional guarantees. *See, e.g.*, Apprendi v. New Jersey, 530 U.S. 466 (2000). In another instance, the Supreme Court ruled the entire system of federal bankruptcy courts to be constitutionally defective. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982). The Court employed its equitable powers to toll the effective date of its ruling and give Congress time comply with its ruling. Since that case, the Court has disavowed such an exercise of equitable power and ruled that its constitutional decisions must be applied retroactively. *See* Harper v. Va. Dep't of Revenue, 509 U.S. 86 (1993). Even if the Court were to accept the invitation to eviscerate the balanced budget amendment through interpretation, it is difficult to see how this counts in the amendment's favor. If we are not serious about forcing compliance with the amendment, why pass it in the first place?

amendment that includes no enforcement mechanism, and of constitutional violations for which there is no judicial remedy. As discussed below, this prospect also would be deeply troubling.

B. Alternative Enforcement Mechanisms Offer No Solution

1. Executive Enforcement

It is possible that, in the alternative, the power to enforce balance in the federal budget would devolve upon the president.[43] The president could plausibly[44] interpret the constitutional command of the balanced budget amendment that expenditures not exceed revenues to take precedence over mere statutes, including appropriations bills, entitlement packages, and the Congressional Budget and Impoundment Control Act of 1974.[45] Although the president might interpret that command to authorize him to impound funds, nothing in the amendment would guide the exercise of such a power. For example, the proposal does not say whether the President may select particular areas of his choosing for impoundment, or whether certain areas -- such as Social Security and other entitlement programs -- would be beyond the purview of his impoundment authority. Under this potentiality, it would be up to the President and the President alone to make fundamentally important policy choices about what spending should continue and what spending should be cut. This prospect is in deep tension with the existing Constitution. The framers assigned the power of the purse in no uncertain terms to Congress. This was an intentional decision. In our constitutional system, Congress is most directly accountable to the public.[46] Moreover, Congress is structured in a way that facilitates debate and deliberation, allows for a wide range of interests and viewpoints to be heard, and permits the public to follow and participate in the deliberation.[47] The President and the executive cabinet are not similarly constructed and are, in fact, designed to operate with greater dispatch and secrecy. Those who wrote and ratified our Constitution thought that decisions about how to fund the operations of the government and what operations to continue funding were the sort of decisions that should be committed to the open and deliberate process of the legislative branch rather than

[43] I do not mean to suggest that this would be the best reading of the balanced budget amendment.
[44] Such an interpretation would be plausible not only because the Constitution vests the President with the executive power, but also because it imposes on the President the duty to take care that the laws be faithfully executed. U.S. CONST. art. II, § 3, cl. 4. This duty includes the obligation that the President take care that the Constitution be faithfully executed. *See generally* Dawn E. Johnsen, *Presidential Non-Enforcement of Constitutionally Objectionable Statutes*, 63 LAW & CONTEMP. PROBS. 7 (2000); CHRISTOPHER N. MAY, PRESIDENTIAL DEFIANCE OF "UNCONSTITUTIONAL" LAWS: REVIVING THE ROYAL PREROGATIVE (1998).
[45] 2 U.S.C. §§ 601-692 (2006).
[46] Congress's direct popular election stands in contrast to the President's, which is mediated through the Electoral College. Moreover, the House of Representatives stands for election every two years, leaving it most closely connected to current public sentiment. It is for this very reason that the Constitution requires that all bills for raising revenue originate in the House of Representatives.
[47] *See, e.g.*, U.S. CONST. amend. 1 (securing the right to petition); *id.* art. I, § 5 (authorizing Congress to establish its own internal structures and anticipating that these would foster deliberation through mechanisms such as the committee structure and, in the Senate, the filibuster); *id.* ("Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.").

closed and unitary action of the executive. To reassign this power to the President would represent a fundamental break with the original design of the Constitution.[48]

The assignment of this power to the President would undermine the Constitution's structure in an additional way. It would upset the balance of power between the President and Congress. The framers of the Constitution understood that allocating the power of the purse to Congress would serve to make it "the most dangerous branch."[49] Indeed, the framers thought it inevitable that, in a representative republic, the legislative branch would predominate. To check against the potential for abuse of its relatively vast powers, the Constitution imposes a range of internal checks on Congress, such as dividing the legislature into two chambers of notably different character. There are no corresponding internal checks on the operations of the executive branch. Thus, the reallocation of Congress's power of the purse to the President would significantly alter the balance of power between Congress and the President and would leave that power unconstrained by the constitutional structures that promote deliberation and that deter Congress from exercising its powers oppressively. Uniting these powers to formulate fiscal policy and to then enforce that policy in the hands of the President alone would represent what the framers considered to be the paradigmatic violation of the principle of separation of powers.[50]

2. Independent Enforcement

Given that either judicial or executive enforcement of the balanced budget amendment would subvert our constitutional framework and possibly lead to substantial practical harm, it might be tempting to revise the amendment to provide for enforcement by an independent agency on the model of the Federal Reserve. Such a model would not only repeat but exacerbate the problems that inhere in executive enforcement. Because an independent agency is, by definition and design, insulated from political accountability, the fundamental fiscal policy choices involved in balancing the budget would be even more effectively removed from public input and accountability. The insulation of monetary policy, which the Federal Reserve presently sets, from immediate political control and accountability can be justified by the peculiar dangers of allowing political manipulation of the money supply. Whatever the merits of this justification with respect to monetary policy,[51] it does not apply to fiscal policy.

3. No Enforcement: The Balanced Budget Amendment as Empty Platitude

In the absence of enforcement mechanisms such as presidential impoundment of funds or judicial involvement in the budgeting process, a balanced budget amendment is unlikely to bring about a balanced budget. To have the Constitution declare that the budget shall be balanced,

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[48] This argument derives from the position of the Department of Justice set forth by then-Assistant Attorney General Walter Dellinger. *See The Balanced Budget Amendment: Hearing Before the Joint Economic Committee*, 104th Cong. (1995) (statement of Walter E. Dellinger), *available at* http://www.justice.gov/olc/jtecon.95.8.htm#N_26_.
[49] THE FEDERALIST NOS. 47, 48, 51 (James Madison). *Cf.* McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 431 (1819) ("the power to tax involves the power to destroy").
[50] THE FEDERALIST NO. 47 (James Madison) (uniting the power of one branch with the power of another "may justly be pronounced the very definition of tyranny.").
[51] This judgment finds affirmation from the nearly universal practice of economically developed democracies in committing decisions over monetary policy to independent central banks.

while providing no mechanism to make that happen, would place an empty promise in the fundamental charter of our government and lead to countless constitutional violations. Moreover, to have a provision of the Constitution routinely violated would inevitably make all other provisions of the Constitution seem far less inviolable. As Alexander Hamilton noted:

> Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.[52]

Some have suggested that even if the amendment failed to eliminate the deficit, it would nonetheless have the salutary effect of creating pressure to reduce the deficit. While this might be true, the effect would come at considerable cost. Even supposing that the amendment brought about a reduction in the size of the deficit, the remaining excess of expenditures over receipts would constitute a continuing multi-billion-dollar violation of the Constitution, every day that the budget is not in balance. For how long would we as a people continue to make difficult decisions to comply with the First Amendment or with the Due Process or Takings Clauses of the Fifth Amendment if we had routinely failed, for lack of an enforcement mechanism, to come within billions of dollars of complying with the most recent amendment to our Constitution?

If only we could declare by constitutional amendment that from this day forward justice would prevail and sound economic policy would be followed. But merely saying those things in the Constitution does not make them happen. As nations around the world have discovered, placing a statement of principle in a constitution does not mean the principle will be obeyed. Many constitutions "guarantee" a clean environment or freedom from poverty; the only effect when such promises fail is that the constitution is not taken seriously as positive law, the kind of law that may be invoked in court by litigants. The framers of our Constitution, on the contrary, understood that its provisions must be enforceable if the rule of law is to be respected. We

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[52] THE FEDERALIST NO. 25, at 167 (Alexander Hamilton) (Clinton Rossiter ed., 1961). For further expression of this concern, as it relates to proposed balanced budget amendments quite similar to this one, *see, e.g.*, Peter W. Rodino, *The Proposed Balanced Budget/Tax Limitation Constitutional Amendment: No Balance, No Limits*, 10 HASTINGS CONST. L.Q. 785, 800 (1983); *Proposed Balanced Budget Constitutional Amendments: Hearings Before the Subcomm. on Monopolies and Commercial Law of the H. Comm. on the Judiciary*, 100th Cong. 614-15 (1989) (letter from William Van Alstyne, Professor of Law, Duke University to Warren Grimes, Counsel, House Judiciary Committee); *id.* (letter from Jonathan Varrat, Professor of Law, U.C.L.A. to the Honorable Peter W. Rodino, Jr., Chairman, House Judiciary Committee); and *Constitutional Amendments to Balance the Federal Budget: Hearings Before the Subcomm. on Monopolies and Commercial Law of the H. Comm. on the Judiciary*, 96th Cong. 22 (1980) (testimony of Paul A. Samuelson, Nobel-prize-winning economist) ("If the adopted amendment provides escape valves so easy to invoke that the harm of the amendment can be avoided, the amendment degenerates into little more than a pious resolution, a rhetorical appendage to clutter up our magnificent historical Constitution. . . . There is no substitute for disciplined and informed choice by a democratic people of their basic economic policies.").

should hesitate long before placing an unenforceable promise in the fundamental document that binds our nation together.[53]

III. Conclusion

A balanced budget amendment would threaten to tear irrevocably the fabric of our constitutional structure. First, amending the Constitution to require a balanced budget would be a unique and dangerous experiment. It is fundamentally inconsistent with the bedrock constitutional value of democratic self-government. A balanced budget amendment would be the only constitutional provision, other than the failed attempt to mandate prohibition, that dictates the outcome of a policy dispute rather than governing the process by which decisions are made or protecting individual rights.

Second, as a practical matter, enforcing a balanced budget amendment would have catastrophic consequences. Previous commentary on balanced budget amendment proposals has focused on whether the courts would find the failure to enact a budget that is balanced to present the sort of controversy that judges can resolve. There appears to be a broad consensus that in at least some, and perhaps in many, instances, judges would resolve balanced budget controversies. In such instances, this would mean judges would be required to order either spending cuts or tax increases. This prospect is so troubling that it has justly alarmed commentators across the political spectrum.

In this Issue Brief, I have identified an additional type of lawsuit – one brought not before, but rather, after the year's outlays exceed receipts – where there can be no question that the courts would have authority to make a ruling and where there would be no issue as to what the proper remedy would be. In this setting, a balanced budget amendment operating in tandem with the Appropriations Clause would compel all government functions to cease immediately and for the remainder of the fiscal year. There is no hyperbole in calling this result catastrophic. It would mean that the balanced budget requirement would force the federal government to close prisons, to stop air traffic control, to end border patrol and other national security enforcement, to withdraw criminal prosecutions, to abandon all military activities not involving actual conflict or the prosecution of a declared war, to close Veterans Administration hospitals, and to withhold Social Security payments. These, of course, are only a few examples of what a balanced budget amendment would inflict on the nation.

In light of these dramatic consequences, attention has understandably shifted to the possibility of alternatives. As shown above, there are no viable options. If the power to enforce the requirement of balance were vested in the President, it would undo the constitutional separation of powers. The Constitution quite intentionally located the power of the purse in Congress. To join that power with the executive power would create the very threat of tyranny the framers specifically designed the Constitution to safeguard against. Allocating enforcement power to an independent agency modeled on the Federal Reserve would only heighten this threat.

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[53] This argument also derives from the position of the Department of Justice. *See The Balanced Budget Amendment: Hearing Before the Joint Economic Committee*, 104th Cong. (1995) (statement of Walter E. Dellinger), *available at* http://www.justice.gov/olc/jtecon.95.8.htm#N_26_.

Finally, it may be tempting to treat a balanced budget amendment as a symbolic and aspirational statement that is not legally enforceable; that, indeed, is not law at all. This is clearly not how the advocates of an amendment see it. Moreover, even a purely hortatory declaration would be far from harmless. There is no reason to expect that Congress, even a Congress composed of members in good faith committed to the principle of a balanced budget, would agree on how to balance the budget. The result would be an open and notorious constitutional violation. This would undermine in previously unknown ways the binding force of the Constitution's otherwise binding legal norms. I do not mean to suggest that this would lead straightaway to anarchy, but it would almost certainly water down the force of other constitutional guarantees. Over time this erosion could leave some constitutional provisions as empty as the illusory promise of a balanced budget.

The threat a balanced budget amendment would pose to our constitutional order is unavoidable. Congress, of course, remains free to enact a balanced budget if it believes this is sound economic policy. It also remains fully equipped to institute effective controls to ensure restraint and balance in the budgeting process. Therefore, there is no sufficient reason to incur the dramatic risks that the balanced budget amendment would entail for our Constitution and our nation.

**Letter from Gary R. Herbert, Governor, State of Utah; Rebecca Lockhart, Speaker, Utah House of Representatives; and Michael Waddoups, President, Utah State Senate**

September 21, 2011

Dear Congressional Leaders, Governors and State Legislative Leaders:

Attached is a copy of a concurrent resolution, passed by the Utah State Senate and House Representatives and signed by the Governor, which expresses support for an amendment to the United States Constitution to balance the federal budget and restrict tax increases, introduced on March 31st of this year, by Utah's United States Senators Orrin Hatch and Mike Lee.

Like you, we recognize that the United States is experiencing a crippling debt and deficit crisis that erodes our standing as a financial and world power. Left unchecked, our debt and deficit will have devastating impacts on American families now and in the future. It is a fact, clearly demonstrated, that the United States Government, absent restraints on its authority to spend, will continue spending.

We urge the United States Senate and House of Representatives to pass a balance budget amendment and send it to the states for ratification. Additionally, we urge Congress to make Utah's concurrent resolution part of the Congressional Record.

Not only for our own sake, but for future generations as well, the states must now combine in an unwavering resolve with convincing action to put the nation's financial house in order. Passage of your own state's resolution urging the support for a balance budget amendment can help make this happen. Please join with Utah to call upon Congress to immediately pass a balance budget amendment. We respectfully encourage you to urge your congressional delegation to act in your behalf.

Sincerely,

Gary R. Herbert
Governor
State of Utah

Rebecca Lockhart
Speaker
Utah House of Representatives

Michael Waddoups
President
Utah State Senate

**Enrolled Copy** **S.C.R. 201**

# CONCURRENT RESOLUTION SUPPORTING UNITED STATES' BALANCED BUDGET CONSTITUTIONAL AMENDMENT

2011 SECOND SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Stuart C. Reid**

House Sponsor: Wayne A. Harper

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**LONG TITLE**

**General Description:**

This concurrent resolution of the Legislature and the Governor expresses support for a proposed amendment to the Constitution of the United States that requires the United States Congress to balance the federal budget and to restrict tax increases.

**Highlighted Provisions:**

This resolution:

- urges that the United States Congress pass a balanced budget amendment and submit it to the states for ratification;
- urges that the balanced budget amendment require that total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless a two-thirds vote of both houses of Congress approves an increase;
- urges that the balanced budget amendment require that total outlays for any fiscal year shall not exceed 18% of the gross domestic product of the United States for the calendar year ending before the beginning of that fiscal year, unless two-thirds of both houses of Congress approve an increase;
- urges that the balanced budget amendment require that each fiscal year the President of the United States shall transmit to Congress a proposed budget for the United States Government that complies with the requirements listed above;
- urges that the balanced budget amendment require that any bill that imposes a new tax or increases the statutory rate of any tax or the aggregate amount of revenue may

pass only by a two-thirds majority of both houses of Congress;

- urges that the balanced budget amendment require that the nation's debt limit on the national debt shall not be increased unless three-fifths of both houses of Congress approve it;
- urges that the balanced budget amendment permit Congress to waive the provisions previously described for any fiscal year in which a declaration of war against a nation-state is in effect if a majority of both houses of Congress approve it;
- urges that the balanced budget amendment permit Congress to waive the provisions previously described for any fiscal year in which the United States is engaged in a military conflict that causes an imminent and serious military threat to national security and is so declared by three-fifths of both houses of Congress;
- urges that the balanced budget amendment prohibit any court of the United States or of any state to order any increase in revenue to enforce this article; and
- urges that the balanced budget amendment require that total receipts shall include all receipts of the United States Government except those derived from borrowing, or from penalties or fines and that total outlays shall include all outlays of the United States Government except those for repayment of debt principal.

**Special Clauses:**

None

*Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

WHEREAS, the Legislature of the state of Utah acknowledges that the United States of America is facing a crippling debt crisis because of unrestrained spending and irresponsible fiscal policies;

WHEREAS, a majority of sitting United States Senators--including all 47 Republicans, 10 Democrats, and one Independent--have specifically expressed support for a requirement to balance the federal budget; and

WHEREAS, the 112th Congress is currently considering the following Constitutional

Amendment, Senate Joint Resolution 10, which was introduced on March 31, 2011, by United States Senators Orrin Hatch and Mike Lee, both from Utah:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

Article--

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless two-thirds of the duly chosen and sworn Members of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll call vote.

Section 2. Total outlays for any fiscal year shall not exceed 18 percent of the gross domestic product of the United States for the calendar year ending before the beginning of such fiscal year, unless two-thirds of the duly chosen and sworn Members of each House of Congress shall provide by law for a specific amount in excess of such 18 percent by a roll call vote.

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which--

(1) total outlays do not exceed total receipts; and

(2) total outlays do not exceed 18 percent of the gross domestic product of the United States for the calendar year ending before the beginning of such fiscal year.

Section 4. Any bill that imposes a new tax or increases the statutory rate of any tax or the aggregate amount of revenue may pass only by a two-thirds majority of the duly chosen and sworn Members of each House of Congress by a roll call vote. For the purpose of determining any increase in revenue under this section, there shall be excluded any increase resulting from the lowering of the statutory rate of any tax.

Section 5. The limit on the debt of the United States shall not be increased, unless three-fifths of the duly chosen and sworn Members of each House of Congress shall provide for such an increase by a roll call vote.

Section 6. The Congress may waive the provisions of sections 1, 2, 3, and 5 of this article for any fiscal year in which a declaration of war against a nation-state is in effect and in which a majority of the duly chosen and sworn Members of each House of Congress shall provide for a specific excess by a roll call vote.

Section 7. The Congress may waive the provisions of sections 1, 2, 3, and 5 of this article in any fiscal year in which the United States is engaged in a military conflict that causes an imminent and serious military threat to national security and is so declared by three-fifths of the duly chosen and sworn Members of each House of Congress by a roll call vote. Such suspension must identify and be limited to the specific excess of outlays for that fiscal year made necessary by the identified military conflict.

Section 8. No court of the United States or of any State shall order any increase in revenue to enforce this article.

Section 9. Total receipts shall include all receipts of the United States Government except those derived from borrowing or from penalties or fines. Total outlays shall include all outlays of the United States Government except those for repayment of debt principal.

Section 10. The Congress shall have power to enforce and implement this article by appropriate legislation, which may rely on estimates of outlays, receipts, and gross domestic product.

Section 11. This article shall take effect beginning with the fifth fiscal year beginning after its ratification.":

NOW, THEREFORE, BE IT RESOLVED, that the Legislature of the state of Utah, the Governor concurring therein, pursuant to Article V of the United States Constitution, would hereby support a Balanced Budget Amendment to the Constitution of the United States proposed by resolution of the 112th Congress of the United States in Washington, D.C., described herein, on March 31, 2011.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the legislatures of all 49 other states, all members of Utah's congressional delegation, the majority and minority leaders in the United States Senate and House of Representatives, the Vice President of the United States, and the Speaker of the United States House of Representatives, with a request that it be printed in the Congressional Record.