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BALANCED BUDGET CONSTITUTIONAL AMENDMENT

JUNE 23, 2011.—Referred to the House Calendar and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS AND ADDITIONAL DISSENTING VIEWS

[To accompany H.J. Res. 1]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States, having considered the same, reports favorably thereon with an amendment and recommends that the joint resolution as amended do pass.

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99–006

The Amendment

The amendment is as follows:

Strike all after the resolving clause and insert the following:

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 within seven years after the date of its submission for ratification:

"ARTICLE —

"SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

"SECTION 2. Total outlays for any fiscal year shall not exceed 18 percent of economic output of the United States, unless two-thirds of each House of Congress shall provide for a specific increase of outlays above this amount.

"SECTION 3. The limit on the debt of the United States held by the public shall not be increased unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

"SECTION 4. 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 total outlays do not exceed total receipts.

"SECTION 5. A bill to increase revenue shall not become law unless two-thirds of the whole number of each House shall provide by law for such an increase by a rollcall vote.

"SECTION 6. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

"SECTION 7. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

"SECTION 8. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

"SECTION 9. This article shall take effect beginning with the later of the second fiscal year beginning after its ratification or the first fiscal year beginning after December 31, 2016.".

Purpose and Summary

H.J. Res. 1, proposing a balanced budget constitutional amendment, is designed to establish a balanced budget as the norm for Federal fiscal policy. To that end, the amendment requires a three-fifths majority of each House's total membership to approve a budget in which total Federal outlays exceed total receipts or to raise the limit on the public debt. Additionally, to help ensure that the budget is balanced, the amendment provides that annual outlays cannot exceed 18 percent of the country's annual economic output—a limit tied to the amount of annual revenues the Federal Government historically generates—unless two-thirds of each House of Congress votes to exceed this level. Moreover, to deter the Federal Government from consuming an increasing share of the national economy, the amendment requires a two-thirds vote of each House's total membership for a bill to increase revenue. This requirement also discourages excessive reliance on tax increases—rather than spending cuts—to achieve a balanced budget. The amendment allows Congress to waive the amendment's requirements for any fiscal year in which a declaration of war is in effect or in which Congress determines by a joint resolution signed by the

President that "an imminent and serious military threat to national security" exists.

Background and Need for the Legislation

The Federal budget deficit has become one of America's most persistent political issues and a balanced Federal budget is a bipartisan goal of many Members of Congress. Since the 1930's, dozens of proposals have called for constitutional amendments to address Federal budget deficits. In recent years, efforts to secure a constitutional rule to require a balanced Federal budget have intensified, as the Federal Government's habitual failure to balance the budget has produced a debt of over $14 trillion. In this Congress, H.J. Res. 1 proposes to amend the U.S. Constitution to require the annual Federal budget to be balanced by the later of the first fiscal year after December 31, 2016, or the second fiscal year after its ratification by the states.

Moving the Federal budget closer to balance is a long-term necessity because the national debt cannot grow as a percentage of the country's economic output indefinitely. Currently, the total national debt is over $14 trillion and deficits and spending continue to increase without regard to the burdens imposed on current and future taxpayers. Although persistent deficits threaten the country's long-term prosperity, the Federal Government has proven unwilling or unable to regularly balance the Federal budget. Statutory controls on government spending have largely proven unsuccessful in limiting deficit spending. For instance, Congress repeatedly relaxed deficit targets in the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings Act),[1] and other budget control mechanisms, such as the Budget Enforcement Act of 1990[2] and Pay-As-You-Go rules, have not offered realistic long-term prospects of continued deficit reduction.

A balanced budget amendment to the Constitution may be the only way to control Federal spending and provide the country with the long-term fiscal discipline it so desperately needs. The adoption of H.J. Res. 1 would be more than a mere symbolic act. A balanced budget constitutional amendment would establish, in the country's governing document, the basic principle that the Federal Government must not spend beyond its means. It would have a powerful impact on Federal fiscal policies by establishing a binding legal framework requiring Congress to make challenging decisions. H.J. Res. 1 is not a substitute for difficult legislative choices; rather, it is a catalyst for congressional action.

A. Constitutional Amendment Procedures

Congress may propose an amendment to the Constitution whenever two-thirds of both houses of Congress deem it necessary.[3] Alternatively, Congress must call for a constitutional convention for the purpose of proposing amendments on application of the legislatures of two-thirds of the states.[4] This alternative method has not been used to date, although at one point 32 of the requisite 34 states called for a constitutional convention in response to the bal-

[1] P.L. 99–177, 99 Stat. 1037.
[2] P.L. 101–508; 104 Stat. 1388.
[3] U.S. Const. art. V.
[4] *Id.*

anced budget issue.[5] A constitutional amendment—whether proposed by two-thirds votes in Congress or by a constitutional convention—must be ratified by the legislatures or conventions in three-fourths of the states in accordance with the mode of ratification proposed by Congress.[6] The preamble to H.J. Res. 1 proposes ratification by state legislature.

B. The Federal Deficit

The Founders and early U.S. Presidents were in almost unanimous agreement on the dangers of excessive public debt. According to Nobel Prize winning economist James Buchanan, "[p]oliticians prior to World War II would have considered it to be immoral to spend more than they were willing to generate in tax revenue, except during periods of extreme and temporary emergency."[7] Consequently, for over 140 years of this country's history—from 1789 to 1932—balanced budgets or surplus budgets were the norm. However, since 1960 the United States has run annual Federal budget deficits in all but 6 fiscal years.

Today, the United States is in the early stages of a severe fiscal crisis. The Federal debt has exceeded the Nation's economic output in only three fiscal years during U.S. history—1945 through 1947. However, President Obama's fiscal year 2011 budget estimated that beginning in 2012, the gross Federal debt will exceed gross domestic product for the foreseeable future. That budget also predicts that the Federal deficit will more than double between 2009 and 2020. Assuming that there are about 128 million U.S. households, the national debt will amount to over $200,000 per household by 2020. These figures do not even reflect the unfunded liabilities from Social Security and Medicare commitments to current and future participants in these programs. Over the next 75 years, Social Security has promised to pay $7.8 trillion more in benefits than it will receive in payroll taxes and, over that same period, Medicare faces an unfunded liability in excess of $30 trillion.[8]

The tremendous amount of Federal spending does damage to the U.S. economy. By consuming such an overwhelming part of the capital in the economy, the government crowds out private sector investment. Thus, when government spending rises unchecked by fiscal responsibility, it chokes off the primary engines of economic growth and risks our long-term security.

C. Statutory Attempts to Control Federal Spending and Deficits

Opponents of the balanced budget amendment argue that Congress does not need a constitutional amendment to balance the budget because Congress can address spending and the deficit statutorily without waiting for ratification of a constitutional amendment. However, past statutory efforts have shown that Congress simply does not have the will to balance the budget for an extended period of time. Statutory efforts to balance the budget

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[5] James K. Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process,* 30 Harv. J.L. & Pub. Pol'y 1005, 1010 (2007).

[6] U.S. Const. art. V.

[7] James M. Buchanan, "Clarifying the Confusion About the Balanced Budget Amendment," 48 *Nat'l Tax J.* 347 (1995).

[8] Heritage Foundation, *Saving the American Dream: The Heritage Plan to Fix the Debt, Cut Spending, and Restore Prosperity* 9, 13 (Stuart M. Butler et al. eds., 2011).

have failed because it is too easy for Congress simply to reverse course and rescind its previous declarations. Over the past 50 years, Congress has had a dismal history of attempting to impose fiscal discipline on itself, despite numerous statutory proposals to achieve this end.

Senses of the Congress. Congressional declarations that the budget should be balanced have had no effect of balancing the budget. For example, the Revenue Act of 1964 states that "[t]o further the objective of balanced budgets in the near future, Congress by this action recognizes the importance of taking all reasonable means to restrain government spending,"[9] and, the Humphrey-Hawkins Full Employment Act of 1978 included a provision calling for a balanced budget and declared that a balanced budget is an "important national requirement[]."[10] These and other pronouncements of the importance of balancing the budget—including the commitment codified in 31 U.S.C. § 1103 "that budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year"[11]—have done nothing to ameliorate the ever-increasing Federal deficit.

Congressional Budget and Impoundment Control Act of 1974. The Congressional Budget Act of 1974[12] requires the House and Senate to adopt a budget resolution each year, setting forth aggregate spending and revenue levels, and spending levels by major functional categories. The 1974 act includes an optional reconciliation procedure that provides for the development and consideration of revenue, spending, and debt-limit legislation. During the 1980's and much of the 1990's, reconciliation was used principally as a means of reducing the deficit. However, in recent years, the reconciliation process has been used mainly to expedite the passage of legislation that increases the deficit. Moreover, only in one 4-year period (1997–2001) after enactment of the 1974 act has the Federal budget been balanced.

Byrd Amendments. After the Congressional Budget and Impoundment Control Act failed to achieve the fiscal discipline that was envisioned, Congress enacted a series of "Byrd Amendments" in 1978, 1980, and 1982 to try to balance the budget. The first, passed as part of the Bretton Woods Agreements Act, mandated that "total budget outlays of the Federal Government shall not exceed its receipts" beginning in fiscal year 1981.[13] By 1980, the mandatory language of the 1978 amendment had been watered down to state only that "Congress reaffirms its commitment" to a balanced budget in fiscal year 1981.[14] Finally, in 1982, the reference to fiscal year 1981 was deleted, such that under current law Congress perpetually "reaffirms its commitment" to a balanced Federal budget every year.[15] Obviously, the statutory commitment of the Byrd Amendments has been ignored.

Gramm-Rudman-Hollings. The Balanced Budget and Emergency Deficit Control Act of 1985 (also known as Gramm-Rudman-Hol-

[9] P.L. 88–272, § 1, 78 Sta. 19.
[10] P.L. 95–523, 92 Stat. 1887.
[11] 31 U.S.C. § 1103.
[12] P.L. 93–344, 88 Stat. 297.
[13] P.L. 95–435, § 7, 92 Stat. 1053.
[14] P.L. 96–389, § 3, 94 Stat. 1553.
[15] 31 U.S.C. § 1103.

lings),[16] mandated a balanced budget by fiscal year 1991. To reach that goal, the Act required automatic across-the-board spending cuts if Congress and the President could not agree on a balanced budget in a given year. This legislation proved inadequate at the task of closing the gap between the Federal Government's revenue and expenditures and the national debt continued to grow. As one scholar has observed, "Gramm-Rudman-Hollings failed because the enforcement mechanism was not credible. Congress's power to change the process was unconstrained. . . . As soon as punishments became too harsh, Congress could (and did) change the rules." [17]

Debt Ceiling. The Second Liberty Bond Act of 1917 established a statutory limit on Federal debt of $11.5 billion.[18] Congress had previously approved each debt issuance separately. The statutory debt ceiling has done little to place a ceiling on the national debt. Since it was established, the debt ceiling has been raised nearly 100 times and currently stands at over $14 trillion.

PAYGO. Statutory Pay-As-You-Go (PAYGO)[19] and House and Senate PAYGO rules are supposed to help reduce spending and deficits by preventing tax cuts and new direct spending that is not deficit neutral. However, PAYGO does nothing to deal with the costs of existing direct spending programs. Moreover, there are loopholes in PAYGO that allow its caps on new direct spending to be avoided. Indeed, the Congressional Research Service has even prepared a report entitled "Techniques for Preventing a Budget Sequester," explaining ways around the PAYGO requirements.

Line-item Veto. Because the President must approve or veto a spending or revenue act in its entirety, many advocates of greater budget discipline have proposed the President be granted a line-item veto as a means of controlling Federal spending. In 1996, President Clinton signed into law the Line Item Veto Act.[20] Under the Act, the President was authorized to strike individual items of discretionary spending, direct spending, and certain limited tax benefits in any law.[21] While this law may have provided some measure of budget control, especially control over earmarks and other targeted spending, the law was declared unconstitutional by the Supreme Court in 1998.[22]

In one way or another, each of the statutory attempts to control Federal spending has failed to constrain Congress from spending beyond annual Federal revenues. This is in large part because no Congress can bind a succeeding Congress by a simple statute. Any statute Congress passes to reduce Federal spending or require balanced Federal budgets can be repealed by the simple expedient of adopting a new statute that conflicts with the earlier measure.

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[16] P.L. 99–177, 99 Stat. 1037.
[17] David Primo, *Rules and Restraint* 112 (2007).
[18] P.L. 65–43, 40 Stat. 288.
[19] Part of the Budget Enforcement Act of 1990 and the Statutory PAYGO Act of 2010.
[20] P.L. 104–130, 110 Stat. 1200.
[21] The President was only to exercise the cancellation authority if he determined that such cancellation would reduce the Federal budget deficit and would not impair essential government functions or harm the national interest; and then notified the Congress in a special message of any such cancellation within five calendar days after enactment of the law providing such amount, item, or benefit. The act provided 30 days for the expedited congressional consideration of disapproval bills to reverse the cancellations contained in the special messages received from the President.
[22] Clinton v. City of New York, 524 U.S. 417 (1998).

D. Legislative History of the Balanced Budget Amendment

During the nineteenth and early twentieth centuries, when a balanced Federal budget was the norm and part of the "unwritten constitution," there was little need for Congress to focus on a balanced budget amendment. However, as the Federal Government has run regular budget deficits of an increasingly large magnitude, efforts to adopt a balanced budget constitutional amendment have become more intense. In 1936, Representative Harold Knutson of Minnesota proposed the first constitutional amendment to balance the Federal budget.[23] His proposal would have established a per capita limitation on the Federal public debt. Under the proposed amendment Congress could run budget deficits, but only to the extent that the per capita ceiling was not breached.

Since Representative Knutson's proposed amendment, numerous constitutional amendments have been proposed to require a balanced budget. In the 78th Congress, Senator Millard Tydings and Representative Wesley Disney introduced constitutional amendments to prohibit government appropriations from exceeding receipts.[24] Balanced budget constitutional amendments were introduced regularly in the 1950's. Amendments were first proposed by Senators Styles Bridges and Harry Byrd and later by Senators Strom Thurman and Carl Curtis, to require the submission by the President of an annual balanced budget and to prevent Congress from adjourning without having enacted such a budget.

More recent efforts for a balanced budget amendment commenced in 1975 when states began petitioning Congress for a constitutional convention under Article V of the Constitution for the purpose of considering a balanced budget constitutional amendment. As part of this effort, thirty-two states petitioned for a constitutional convention.

The first real shot at Congress passing a balanced budget constitutional amendment did not come until the 1980's. A balanced budget amendment passed the Senate by a 69-to-31 vote in 1982,[25] but, although a substantial majority of the House voted in favor of the House version of the amendment, the 236-to-187 margin fell short of the required two-thirds threshold.[26] After the 1982 failure to garner a two-thirds majority, successful discharge petition efforts in the House led to consideration of balanced budget proposals that passed by wide margins on three more occasions but failed to reach the two-thirds threshold—279-to-150 in 1990, 280-to-153 in 1992, and 271-to-153 in 1994. Additionally, in the Senate, in 1986, a balanced budget amendment failed by one vote (66 to 34)[27] and again, in 1994, by four votes (63 to 37).[28]

The balanced budget amendment came to the forefront in 1995 as part of the Contract with America. In 1995, a balanced budget amendment, for the first time ever, passed the House by the required two-thirds margin (300 to 132)[29] but fell one vote short in

[23] H.J. Res. 579, 74th Cong.
[24] S.J. Res. 97 (78th Cong.); H.J. Res. 195 (78th Cong.).
[25] S.J. Res. 58 (97th Cong.).
[26] H.J. Res. 350 (97th Cong.).
[27] S.J. Res. 225 (99th Cong.).
[28] S.J. Res. 41 (103d Cong.).
[29] H.J. Res. 1 (104th Cong.).

the Senate of being sent to the states for ratification.[30] And, in 1997, the balanced budget amendment once again failed by to meet the two-thirds threshold in the Senate by one vote.[31]

E. The Current Proposal

On January 5, 2011, Representative Goodlatte introduced H.J. Res. 1 to propose a balanced budget amendment to the Constitution and re-establish the formal and informal constitutional limitations on Federal spending and deficits that previously existed. The proposal has over 130 co-sponsors. H.J. Res. 1 is designed to discourage the Federal Government from engaging in deficit spending, increasing taxes, and raising the ceiling on debt held by the public.

The basic provision in H.J. Res. 1 is that the Federal Government's outlays cannot exceed receipts unless approved by a three-fifths majority of both Houses of Congress. Additionally, the proposed balanced budget amendment requires a three-fifths vote in both Houses to increase the debt limit and a two-thirds vote to pass a bill to increase revenue. H.J. Res. 1 further provides that total outlays for any fiscal year shall not exceed eighteen percent of economic output of the United States, unless approved by two-thirds of each House of Congress.

Governmental flexibility is not compromised by the supermajority votes required by H.J. Res. 1 to overcome balanced budget requirements. Three-fifths vote provisions (with war and national security related exceptions) do not preclude deficit spending, tax increases, and increases in the debt ceiling but rather discourage such action from being taken lightly. The two-thirds vote required for legislation to increase tax revenue is an important feature of this constitutional amendment to discourage excessive reliance on tax increases rather than spending cuts to balance the budget. And, the supermajority vote requirement to increase the debt ceiling is to discourage government borrowing to pay for additional spending.

F. H.J. Res. 1 is Consistent with the Constitution

The balanced budget amendment proposed by H.J. Res. 1 is consistent with the nature and purpose of the U.S. Constitution, which already addresses economic issues in various contexts. Congressional powers delineated in the Constitution include laying and collecting taxes, imposing customs duties and tariffs, paying debts of the United States, borrowing money, regulating interstate commerce and commerce with foreign nations, and coining money. The Fifth and Fourteenth Amendments include protections of property rights, and the Sixteenth Amendment authorizes the income tax. According to Professor Kenneth Dam, "[w]hen one contemplates the Constitution as a whole, considering provisions not specifically directed to fiscal matters and taking into account the Federal structure created by the Constitution, an imposing edifice of fiscal powers and limitations can be perceived. The result is what I call the 'fiscal Constitution.'"[32] Because of the substantial attention the

[30] S.J. Res. 1 (104th Cong.). The actual vote total was 65 to 35, but Senator Dole switched his vote to "no" in order to preserve his right to call the balanced budget amendment up for reconsideration.

[31] S.J. Res. 1 (105th Cong.).

[32] Kenneth W. Dam, *The American Fiscal Constitution,* 44 U Chi. L Rev 271, 272 (1977).

Constitution already gives to economics, arguments that fiscal policy does not belong in the Constitution are unconvincing.

Indeed, the Constitution was born out of the fiscal problems caused by the Articles of Confederation. As historian Sidney Homer put it, "[i]n spite of the great potential economic strength of the new country, its financial and political system broke down completely in 1786. Credit at home and abroad was no longer available. The impossibility of government without money, credit, or power led to the Constitutional Convention of 1787 and a new nation in 1789."[33] In other words, the need to balance the budget and restore the good credit of the government led directly to the drafting of the Constitution in the first place.

Moreover, the Framers and leaders of the U.S. government during most of this Nation's history accepted balanced budget principles; accordingly, for approximately the first 150 years of this Nation's history—from 1789 to 1932—balanced budgets or surplus budgets were the norm. When deficits did occur they generally were insignificant, usually related to wartime circumstances, and generally were compensated for by subsequent surpluses. Thus, for much for the Nation's history, the requirement of budget balancing under normal economic circumstances was considered an unwritten constitutional rule. For this reason, mandating a balanced budget would have been superfluous in earlier times. According to Professor William Breit,

> [t]he balanced-budget rule which served as part of the Constitution was, of course, not in the form of a written statement that every expenditure had to be balanced by a tax. But it nevertheless had constitutional status. For expenditures in excess of receipts were considered to be in violation of moral principles. The imperative of the balanced budget was an extra-legal rule or custom that grew up around the formal document. It existed outside the precise letter of the Constitution on all fours with the system of political parties, the presidential cabinet, the actual operation of the electoral college system, and the doctrine of judicial review.[34]

But the country's early political leaders were aware of the dangers of a Federal deficit. As Thomas Jefferson stated, "I place economy among the first and most important of republican virtues, public debt as the greatest of dangers to be feared."[35] Thus, Jefferson wished "it were possible to obtain a single amendment to our Constitution . . . taking from the Federal Government the power of borrowing."[36] In fact, early U.S. Presidents were in virtually unanimous agreement on the dangers of excessive public debt. In his first annual address to Congress, President John Adams stated

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[33] *Whether the Constitution Should be Amended to Address the Federal Deficit?: Hearing Before Subcomm. on the Constitution of the House Comm. on the Judiciary,* 112th Cong. (2011) (testimony of Andrew Moylan, National Taxpayers Union); *see also* Aaron Wildavsky, *How to Limit Government Spending* 74 (1980) ("Dissatisfaction with monetary and debt policy under the Articles of Confederation spurred the devising of an entirely new document.").

[34] William Breit, "Starving the Leviathan: Balanced Budget Prescriptions Before Keynes," *in Fiscal Responsibility in Constitutional Democracy* (James M. Buchanan and Richard E. Wagner eds., 1978).

[35] Letter from Thomas Jefferson to Governor William Plumer of New Hampshire (July 21, 1816) *in* 7 *The Writings of Thomas Jefferson* 19 (H. A. Washington ed. 1855).

[36] Letter from Thomas Jefferson to John Taylor (Nov. 26, 1798) *in* 4 *The Writings of Thomas Jefferson* 259 (1869).

that, "[t]he consequences arising from the continual accumulation of public debts in other countries ought to admonish us to be careful to prevent their growth in our own."[37] President James Madison stated that one of the primary goals of his Administration would be "to liberate the public resources by an honorable discharge of public debts."[38] President James Monroe held a similar position observing that, after the elimination of the public debt, the government "would be left at liberty . . . to apply such portions of the revenue as may not be necessary for current expenses to such other objects as may be most conducive to the public security and welfare."[39] President John Quincy Adams also found a balanced budget to be a sound maxim: "among the maxims of political economy which the stewards of the public money should never suffer without urgent necessity to be transcended is that of keeping the expenditures of the year within the limits of its receipts."[40]

Today, in an era of deficit spending, the balanced budget constitutional amendment is needed to give expression to a practice accepted widely for so many years—namely, spending within the country's means. The balanced budget amendment is a major step toward securing an environment in which fiscally responsible policies are more easily attainable. The current environment is biased in favor of ever-increasing levels of Federal Government spending.

Consistent with the Constitution's framework, H.J. Res. 1 is needed to overcome the current bias in favor of increasing government spending by restoring the balanced budget principles that existed for much of the Nation's history. The purpose of the amendment is not to write economic policy into the Constitution, nor does it propose to intrude the Constitution into Congress's day-to-day spending and taxing decisions. Rather, the balanced budget amendment merely proposes to create a fiscal environment in which spending decisions will once again be constrained by available revenues.

G. The Supermajority Voting Requirements in H.J. Res. 1 Are Consistent with the Constitution

Opponents of the balanced budget constitutional amendment have asserted that the amendment's supermajority voting requirements should not be placed into Constitution. This argument, of course, ignores the nine other supermajority voting requirements already included in the Constitution.[41] But more fundamentally it

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[37] President John Adams, First Annual Address to Congress (Nov. 23, 1797).

[38] President James Madison, First Inaugural Address (March 4, 1809).

[39] 2 *Messages and Papers of the Presidents* 823 (J. Richardson ed. 1897).

[40] President John Quincy Adams, Third Annual Message to Congress (Dec. 4, 1827).

[41] U.S. Cont. art. I, § 3 ("No person shall be convicted without the concurrence of two thirds of the Members present."); U.S. Cont. art. I, § 5 ("Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member."); U.S. Cont. art. I, § 7 ("If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law."); U.S. Cont. art. II, § 2 ("[The President] shall have Power . . . to make Treaties, provided two thirds of the Senators present concur."); U.S. Cont. art. V ("The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution.)"; U.S. Cont. art. II, § 1 ("[When choosing the President in the House,] a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice."); U.S. Const. art. VII ("The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."); U.S. Const. amend. XIV, § 3 ("No person shall . . . hold any [US] office . . . who, having previously taken an oath . . . to support the Constitution . . . shall have engaged in insurrection or rebellion. . . . But Congress may by a vote

fails to acknowledge the structure of the government created by the Constitution with its system of checks and balances and separation of powers designed to impose restraints on the actions of the people's elected representatives. Over the years, Americans have suffered from the removal of written and unwritten constraints that were intended by the framers to limit the authority of Congress. Rather than being contrary to the Constitution, the balanced budget constitutional amendment's supermajority voting requirements aim to restore necessary structural constraints on the Congress.

One of the fundamental problems of with any democratic form of government is "that concentrated interest groups have more influence with legislators than diffuse groups, even if the diffuse groups represent a numerical majority. Our present budget crisis is in large measure a reflection of repeated instances of this dynamic."[42] The taxes and borrowing required to pay for expenditures do not impose a substantial constraint on Congress because the true cost of taxes and borrowing by the Federal Government is diffused over the entire population and, in many cases, future generations. As Professor E. Donald Elliott has explained,

> Most government spending programs provide significant benefits to relatively concentrated, and, therefore, relatively well-organized and politically effective constituencies. On the other hand, the costs of government spending are spread over a large and diffuse group—taxpayers. Because the incremental cost of each government spending decision is relatively insignificant to individual taxpayers, and because the benefits from organizing to oppose government spending are speculative and difficult to appropriate, . . . it will be difficult, if not impossible, to organize the broad mass of taxpayers, as such, into an effective counterweight to spending that benefits "special interest groups" with more narrowly focused interests. Thus, . . . there is an inherent bias built into the political system in favor of spending to benefit organized constituencies, even when the total costs of a program exceed its benefits. . . .
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> The basic institutional checks designed by the framers of the Constitution to limit the power of interest groups have long since eroded. First, the seventeenth amendment provided direct popular election of Senators. Second, the electoral college has now become largely vestigial, so that as a practical matter, the President is also popularly elected. Third, a vast "administrative state" with broad delegated powers has arisen that lies largely outside the system of checks and balances crafted so carefully by the framers. Finally, as both the country and the nature of government have changed, the principle of geographic diversity of interests, upon which the framers placed primary reliance, is no longer as potent a check on the power of special interest groups as it may once have been. Today there are many

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of two-thirds of each House, remove such disability."); U.S. Const. amend. XXV, § 4 ("If Congress . . . determines by two thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President.").

[42] John O. McGinnis and Michael B. Rappaport, *The Constitutionality of Legislative Supermajority Requirements: A Defense,* 105 Yale L.J. 483, 509 (2005).

> interest groups that are more or less evenly distributed throughout the country (Social Security recipients, for example), and they can bring potent electoral pressures to bear on Representatives, Senators, and Presidents alike.
>
> The cumulative effect of these changes is to render our political institutions systematically vulnerable to the influence of well-organized, narrowly-focused groups seeking subsidies or other forms of preferential treatment from the Federal Government. The current deficit is merely the outward symptom of these more fundamental problems, resulting from the way in which our political institutions have evolved.[43]

In other words, the concept of "limited government" or "enumerated powers" that was at the root of the Constitution and that served to check the growth of the public sector during most of the Nation's history has been altered drastically by the evolution of public policy and constitutional interpretation during the 20th century in a manner that never could have been predicted by the framers of the Constitution. As Milton Friedman observed, constraints in the Constitution and originally envisioned by the framers "to limit Federal action in the economic area . . . have now been swept away."[44] According to Professor Friedman, these constraints "cannot be restored in their initial form. But some replacement is desperately needed."[45] The supermajority voting requirements in H.J. Res. 1 provide that restraint.

As James Madison wrote in the *Federalist Papers,* "[g]overnment is the greatest of all reflections on human nature. If men were angels no government would be necessary. If angels were to govern man, neither external nor internal controls on government would be necessary."[46] The supermajority rules H.J. Res. 1 proposes are necessary "controls on government" spending and budget deficits. Madison emphasized the paramount responsibility of the new Government to "break and control the violence of faction."[47] According to Madison, the causes of "factions" are "sown in the nature of man" and must be controlled by the institutions created by the Constitution.

The Federal Government's present financial crisis, in part, is the creation of, and continues because of, the role of factions within the political process. The supermajority voting requirements proposed by H.J. Res. 1 should be understood as an attempt to counteract those interests and restore the original constitutional balance on deficits and spending and are entirely consistent with the framers understanding of a constitutional republic.

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[43] E. Donald Elliott, *Constitutional Conventions and the Deficit,* 1985 Duke L.J. 1077, 1090–91, 1095 (1985).

[44] *Proposed Balanced Budget/Tax Limitation Constitutional Amendment: Hearing on S.J. Res. 5 Before the Subcomm. on the Constitution of the Sen. Comm. on the Judiciary,* 98th Cong. (1984) (statement of Professor Milton Friedman).

[45] *Id.*

[46] *The Federalist* No. 51 (James Madison).

[47] *The Federalist* No. 10 (James Madison). Madison defined "faction" as a "majority or minority of the whole, who are united and actuated by some common impulse or passion, or of interest adverse to the rights of other citizens, or to the permanent and aggregate interests of the whole."

H. The Balanced Budget Amendment and Social Security and Medicare

A continuation of deficit spending poses the greatest long-term threat to the integrity of Social Security, Medicare, and other government benefit programs. Yet, during committee consideration of the balanced budget, members of the minority offered five amendments to in some way limit the application of balanced budget principles to Social Security, Medicare, or other government benefit programs. But the balanced budget amendment is exactly what these programs need if they are to continue providing benefits into the future. The balanced budget amendment will help save these worthy government programs by strengthening the economy, reducing interest rates and inflation (which helps senior citizens living on fixed incomes), and ensuring that the Federal Government has the funds available to meet its Social Security and Medicare obligations when they become due.

The best way to ensure that Social Security, Medicare, and other programs will have enduring value is for the Federal Government to get its fiscal house in order. As Robert Myers, Social Security's former chief actuary and deputy commissioner, wrote, in support of a balanced budget amendment,

> If we continue to run Federal deficits year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our prolificacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security Trust Funds. Regaining control of our fiscal affairs is the most important step that we can take to protect the soundness of the Social Security trust funds.[48]

It appears that the motivation of those offering amendments to exempt or otherwise limit the balanced budget amendment's application to government benefit programs is to attempt to prevent the benefits those programs provide from being reduced. This concern is misplaced. Adoption of a balanced budget constitutional amendment will not in any way mean that government benefits, such as Social Security benefits, will be reduced. There is no reason to believe that the balanced budget amendment will cause the Federal Government to abandon its commitment to older Americans; Social Security and Medicare enjoy broad congressional support. The balanced budget amendment should enhance, not detract from the protection these programs enjoy in the future.

Hearings

The Committee's Subcommittee on the Constitution held 1 day of hearings on proposed amendments to the Constitution to control the Federal budget deficit on May 13, 2011. Testimony was received from the Honorable Bob Goodlatte; David Primo, Associate Professor of Political Science, University of Rochester, and Senior Scholar, Mercatus Center, George Mason University; Robert Greenstein, Founder and President, Center on Budget and Policy Priorities; and Andrew Moylan, Vice President of Government Affairs,

[48] 143 Cong. Rec. S1865 (daily ed. March 4, 1997).

National Taxpayers Union. Additional material was submitted by Pass the Balanced Budget Amendment, Renewing American Leadership Action, National Tax Limitation Committee, and the 60 Plus Association.

Committee Consideration

On June 15, 2011, the Committee met in open session and ordered the joint resolution H.J. Res. 1 favorably reported with an amendment, by a rollcall vote of 20 to 12, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.J. Res. 1.

1. An amendment by Mr. Conyers: (1) exempting from the calculation of total receipts all receipts derived from the Federal Hospital Insurance Trust Fund, and (2) exempting from the calculation of total outlays all outlays of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. Defeated 9 to 17.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz			
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Ms. Sánchez			
Total	9	17	

2. An amendment by Mr. Gohmert to lower the annual cap on Federal outlays from 20 percent of the economic output of the United States to 18 percent of economic output. Approved 13 to 11.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Smith, Chairman	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Lungren		X	
Mr. Chabot			
Mr. Issa			
Mr. Pence			
Mr. Forbes		X	
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz			
Mr. Griffin	X		
Mr. Marino	X		
Mr. Gowdy	X		
Mr. Ross	X		
Ms. Adams	X		
Mr. Quayle	X		
Mr. Conyers, Jr., Ranking Member		X	
Mr. Berman			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu		X	
Mr. Deutch		X	
Ms. Sánchez			
Total	13	11	

3. An amendment by Mr. Watt to strike the balanced budget constitutional amendment's requirements that: (1) the public debt limit shall not be increased unless three-fifths of each House votes to provide for such an increase, and (2) a bill to increase revenue shall not become law unless three-fifths of each House votes to provides for such an increase. Defeated 7 to 17.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble			
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
Total	7	17	

4. An amendment by Mr. Nadler to exclude oil and natural gas companies with annual gross receipts in excess of $10 billion from the balanced budget constitutional amendment's requirement that a bill to raise revenue must be approved by three-fifths of each House. Defeated 7 to 12.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren			
Mr. Chabot			
Mr. Issa			
Mr. Pence			
Mr. Forbes		X	
Mr. King			
Mr. Franks		X	
Mr. Gohmert			

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Jordan		X	
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin			
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson			
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez.			
Total	7	12	

5. An amendment by Mr. Nadler to allow Congress to waive the requirements of the balanced budget constitutional amendment for up to 2 fiscal years if real economic growth is or will be negative for two consecutive quarters. Defeated 9 to 17.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
Total	9	17	

6. An amendment by Mr. Scott to strike the balanced budget constitutional amendment's requirement that a bill to increase revenue shall not become law unless three-fifths of each House votes to provide for such an increase. Defeated 7 to 16.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz			
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
Total	7	16	

7. An amendment by Mr. Scott to strike the balanced budget constitutional amendment's requirement that the public debt limit

shall not be increased unless three-fifths of each House votes to provide for such an increase. Defeated 7 to 17.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz			
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
Total	7	17	

8. An amendment by Ms. Jackson Lee to allow Congress to waive the requirements of the balanced budget constitutional amendment for any fiscal year in which the United States is engaged in the use of military force. Defeated 5 to 18.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz			
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch			
Ms. Sánchez			
Total	5	18	

9. An amendment by Mr. Conyers: (1) exempting from the calculation of total receipts all receipts derived from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and (2) exempting from the calculation of total outlays all outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund. Defeated 8 to 19.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
Total	8	19	

10. An amendment by Mr. Jordan to require a two-thirds, rather than a three-fifths, majority of each House of Congress to pass a bill to increase revenue. Approved 17 to 8.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Smith, Chairman	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Chabot	X		
Mr. Issa			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Mr. Poe			
Mr. Chaffetz	X		
Mr. Griffin	X		
Mr. Marino	X		
Mr. Gowdy	X		
Mr. Ross	X		
Ms. Adams	X		
Mr. Quayle	X		
Mr. Conyers, Jr., Ranking Member		X	
Mr. Berman			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Cohen			
Mr. Johnson		X	
Mr. Pierluisi			
Mr. Quigley			
Ms. Chu		X	
Mr. Deutch		X	
Ms. Sánchez			

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Total	17	8	

11. Two amendments by Ms. Jackson Lee considered en bloc to: (1) require a three-fifths majority of each House to pass a bill to limit funding for or privatize Social Security or Medicare, and (2) require a three-fifths majority of each House to pass a bill to limit funding for Medicaid. Defeated 7 to 21.

ROLLCALL NO. 11

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi			
Mr. Quigley		X	
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
Total	7	21	

12. An amendment by Mr. Deutch to exempt from the balanced budget constitutional amendment's calculation of total outlays, outlays authorized under section 215(i) of the Social Security Act. Defeated 12 to 15.

ROLLCALL NO. 12

	Ayes	Nays	Present
Mr. Smith, Chairman		X	

ROLLCALL NO. 12—Continued

	Ayes	Nays	Present
Mr. Sensenbrenner, Jr.			
Mr. Coble			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot			
Mr. Issa			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe			
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams		X	
Mr. Quayle		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
Total	12	15	

13. Motion to report H.J. Res. 1 favorably, as amended. Passed 20 to 12.

ROLLCALL NO. 13

	Ayes	Nays	Present
Mr. Smith, Chairman	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Chabot			
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Griffin	X		
Mr. Marino	X		

ROLLCALL NO. 13—Continued

	Ayes	Nays	Present
Mr. Gowdy	X		
Mr. Ross	X		
Ms. Adams	X		
Mr. Quayle	X		
Mr. Conyers, Jr., Ranking Member		X	
Mr. Berman		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Pierluisi		X	
Mr. Quigley			
Ms. Chu		X	
Mr. Deutch		X	
Ms. Sánchez			
Total	20	12	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the joint resolution, H.J. Res. 1, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 2011.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res 1, a joint resolution proposing a balanced budget amendment to the Constitution of the United States.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Barry Blom.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.J. Res. 1—A joint resolution proposing a balanced budget amendment to the Constitution of the United States.

H.J. Res. 1 would propose an amendment to the Constitution that would prohibit total outlays of the United States from exceeding total receipts in a fiscal year; such a requirement could be overridden by a three-fifths vote in each House. The amendment also would require that:

- Total outlays in any fiscal year not exceed 18 percent of gross domestic product (GDP), unless the Congress approves a specific increase over that amount by a two-thirds vote;
- A three-fifths vote be taken in each House to raise the limit on federal debt held by the public and a two-thirds vote to approve any bill that increases revenue; and
- The proposed budget submitted by the President be in balance.

Such provisions could be waived for any fiscal year in which a declaration of war is in effect or if a majority of each House determines that the United States is engaged in a military conflict that poses an imminent and serious military threat to national security.

The amendment would have to be ratified by three-fourths of the states within 7 years of its submission for ratification, although no state would be required to take action on the resolution, either to reject or approve it. If ratified by the required number of states, the amendment would take effect beginning with fiscal year 2018 or the second fiscal year after its ratification, whichever is later.

The budgetary impact of adopting this amendment to the Constitution is very uncertain because it depends on when it would take effect and the extent to which the Congress would exercise the discretion provided by the amendment to approve budget deficits. Ultimately, changes in budgetary outcomes would depend on what future legislation was adopted to meet the requirements set by the amendment and how effective that legislation would be in meeting those targets.

Under the assumptions governing CBO's latest baseline projections (namely that current laws remain unchanged), the budget deficit in 2018—the first year the amendment could potentially take effect—would total $585 billion (2.8 percent of GDP). Under those assumptions, outlays in 2018 would equal 23.2 percent of GDP, while revenues would total 20.4 percent. Outlays have averaged close to 21 percent of GDP over the past 40 years.

By itself, enacting H.J. Res. 1 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.J. Res. 1 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Barry Blom. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.J. Res. 1 proposes an amendment to the U.S. Constitution to require the annual Federal budget to be balanced (unless three-fifths of each House votes to pass a budget in which total outlays exceed total receipts) to restore fiscal discipline over Federal spending and protect the country's future economic strength and national standard of living.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.J. Res. 1 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. This section provides that total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress provide by law for a specific excess of outlays over receipts by a rollcall vote. This provision forces Congress to commit itself each year to implementing a balanced budget, but recognizes the need for congressional flexibility to respond appropriately to unforeseen circumstances.

Section 2. This section provides that total outlays for any fiscal year cannot exceed eighteen percent of annual economic output of the United States, unless two-thirds of each House of Congress approves a specific increase in outlays above this amount. This limit reflects the share of economic output that Federal revenues have typically represented since World War II. Because spending should be linked to the average and customary revenues of the Federal Government if the annual budget is to be balanced, capping total outlays at eighteen percent of economic output furthers the overall purpose of the balanced budget amendment.

Section 3. This section provides that the limit on the public debt of the United States cannot be increased unless three-fifths of both Houses of Congress provide for an increase by law. Section 3 is designed to ensure that increases in the ceiling on debt held by the public require greater consensus than ordinary legislation. Such a requirement reflects sensitivity to the impact debt increases have on the interest burden imposed on future generations.

Section 4. This section requires the President to transmit a balanced budget to Congress prior to each fiscal year. It imposes a responsibility on the Executive Branch to make difficult choices among competing national priorities rather than permitting the President to distance himself (or herself) from the hard work of proposing spending cuts. The goal of bringing outlays into line with

receipts is important enough to provide roles for both the Executive and Legislative Branches.

Section 5. This section imposes a supermajority voting requirement to increase Federal revenues. A bill increasing the Federal revenues must have the support of two-thirds of each House's total membership. The objective is to discourage excessive reliance on tax increases—rather than spending cuts—to achieve a balanced budget. Tax increases can depress economic activity and prove counterproductive to deficit reduction efforts.

Section 6. This section delineates circumstances that permit a waiver of the balanced budget amendment's provisions. Congressional authority to exercise a waiver "for any fiscal year in which a declaration of war is in effect" provides a very limited remedy because declarations of war are anachronistic in modern times. United States military actions since World War II have not involved declarations of war. The waiver based on an "imminent and serious military threat to national security" is more likely to be utilized. Under the language of Section 6, Congress may declare such a threat by enacting a joint resolution, supported by a majority of each House's total membership and signed into law by the President. The need for congressional action on a joint resolution and presidential assent (or a veto override) helps to ensure that this waiver mechanism will not be abused.

Section 7. This section provides for Congress to "enforce and implement this article by appropriate legislation." This mandate for continued congressional involvement recognizes that the broad language of the constitutional amendment cannot be effectuated without an active congressional role in delineating the details of implementation.

Section 8. This section defines "total outlays" and "total receipts"—terms that appear in Section 1. All monies received by the Treasury except borrowed funds are embraced by the term "total receipts," and all disbursements from the Treasury except funds for repayment of principal on the Federal debt are embraced by the term "total outlays."

Section 9. This section delineates the effective date of the constitutional amendment. It will take effect at the beginning of the first fiscal year after December 31, 2016, or on the second fiscal year beginning after its ratification, whichever is later. Since the Article's preamble requires ratification by three-fourths of the states "within 7 years after the date of its submission for ratification," Section 9's effective date provision is not open-ended. If Congress submits the balanced budget constitutional amendment to the states for ratification this year, the 7-year deadline will expire in the year 2018 and the amendment will take effect—if at all—not later than the beginning of fiscal year 2021.

Section 9 contemplates a transition period of sufficient duration to permit the United States to move from deficit spending to a balanced budget without major economic disruption. Although substantial spending cuts will require many adjustments, the implementation date provided for in section 9 is sufficiently long to facilitate an orderly transition.

Dissenting Views

I. INTRODUCTION

The Balanced Budget Amendment to the U.S. Constitution (BBA or Amendment) ostensibly mandates a balanced budget in each fiscal year beginning as soon as 2018. In reality, however, this Amendment does a great deal more, much of which is inimical to the fundamental tenets of a republican form of government. It may, in fact, actually undermine the goal of a balanced budget. The BBA threatens the survival of such critical programs as Social Security and Medicare, which serve as fundamental safety nets for millions of hardworking Americans. It undermines other important priorities including national security, veterans' health care, aid to education and the poor, support for family farmers, a vital national infrastructure, and all manner of government functions that are necessary to the needs of a western industrialized democracy. The Amendment skews all future budget debates in favor of deep spending cuts while virtually taking any additional revenues, or tax reforms, off the table. Its shortsighted restrictions threaten the standing of the dollar as a stable, reliable global reserve currency by undermining confidence in the full faith and credit of the United States in a manner unprecedented in the Nation's history.

And, the BBA could hobble the ability of the Federal Government to promote growth during economic downturns and to invest in future needs, thereby threatening to condemn America to permanent status as a second rate economy.

The BBA is opposed by numerous organizations committed to the economic well being of the United States as well as organizations concerned with the needs of the elderly, the middle class, our children, and other basic needs of national importance. These groups include a coalition of 123 religious, labor, education, civil rights, child advocacy, and other organizations;[1] a coalition of six national

[1] Letter from 9to5 National Association of Working Women, AFL-CIO; All Education Matters; Alliance for Retired Americans; American Association of People with Disabilities; American Association of University Women; American Federation of Government Employees; American Federation of State, County, and Municipal Employees; American Federation of Teachers; American Network of Community Options and Resources; The Arc of the United States; Asian American Justice Center; Association of Women's Health, Obstetric and Neonatal Nurses; Bazelon Center for Mental Health Law; Campaign for America's Future; Campaign for Community Change; CenterLink: The Community of LGBT Centers; Central Conference of American Rabbis; Corporation for Enterprise Development; Children Now; Children's Defense Fund; Cities for Progress, Institute for Policy Studies; the City Project, CLASP; Coalition on Human Needs; Commission on Social Action of Reform Judaism; Committee for Education Funding; Communications Workers of America; Community Action Partnership; Demos; Direct Care Alliance; Disability Rights and Education and Defense Fund; Easter Seals; Equal Justice Society; Families USA, Family Equality Council; Farmworker Justice; Food Research and Action Center; Friends of the Earth; Gay, Lesbian and Straight Education Network; Health & Disability Advocates; Health Care for America Now; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW); Japanese American Citizens League; Jewish Funds for Justice; Jewish Labor Committee; Latinos for a Secure Retirement; Lawyers' Committee for Civil Rights Under Law; Leadership Conference on Civil and Human Rights; League of Women Voters of the U.S.; Legal Momentum; Mental Health America; Minority Business Enterprise Legal Defense and Education Fund; NAACP; NAACP Legal Defense and Educational Fund; National Advocacy Center of the Sisters of the Good Shepherd; National African American Drug Policy Coalition; National AIDS Housing Coalition; National Alliance on Mental Illness; National Asian Pacific American Women's Forum; National Association for Children's Behavioral Health; National Association for Hispanic Elderly; National Association of Colored Women's Clubs; National Assocation of Human Rights Workers; National Association of Social Workers; National Center for Lesbian Rights; National Center for Transgeder Equality; National Coalition for Asian Pacific Americans Community Development; National/Community Reinvestment Coalition; National Congress of American Indians; National Congress of Black Women; National Council of Jewish Women; National Council on Independent Living; National Disability Rights Network; National Education Association; National Employment Law Project; National

environmental organizations representing more than one million members and activists;[2] OMB Watch;[3] AFL-CIO;[4] Service Employees International Union;[5] the American Federation of State, County, and Municipal Employees;[6] the National Education Association;[7] the National Women's Law Center;[8] Committee for Education Funding;[9] and the Coalition on Human Needs.[10]

For these reasons, and those discussed below, we respectfully dissent and urge our colleagues to reject this dangerous and destructive constitutional amendment.

II. THERE IS NO NEED FOR A CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET

During the 1990's, Congress was able to eliminate the deficit and run surpluses without the aid of a balanced budget amendment. It took the reckless fiscal policies of President George W. Bush and a Republican Congress to turn that record surplus into record deficits in record time. That "accomplishment" is not evidence that our Constitution is in need of amendment. Rather, it demonstrates the result of disastrous choices made by those in power. The record calls not for a constitutional amendment, but for greater political

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Fair Housing Alliance; National Focus on Gender Education; National Gay and Lesbian Task Force Action Fund; National Health Law Program; National Immigrration Law Center; National Korean American Service & Education Consortium; National Latina Institutue for Reproductive Health; National Legal Aid & Defender Association; National Low Income Housing Coalition; National Organization for Women; National Partnership for Women & Families; National Priorities Project; National Senior Citizens Law Center; National Skills Coalition; National Urban League; National Women's Law Center; NETWOR, A National Catholic Social Justice Lobby; Not Dead Yet; Office of Gender and Racial Justice, RE&WM, GAMC, Presbyterian Church (USA); OMB Watch; Paralyzed Veterans of America; PHI—Quality Care Through Quality Jobs; Physicians for Social Responsibility; PolicyLink; Poverty & Race Research Action Council; ProgressNow; Racial and Ethnic Health Disparities Coalition; RESULTS: The Power to End Poverty; SER—Jobs for Progress National; Service Employees International Union; Sexuality Information and Education Council of the U.S.; Sisters of Mercey Institute Justice Team; Social Security Works; South Asian Americans Leading Together; Southeast Asia Resource Action Center; Southern Poverty Law Center; Unitarian Universalist Association of Congregations; United Church of Christ, Justice and Witness Ministries; United Food and Commercial Workers International Union; United for a Fair Economy; United States Student Association; United Steelworkers; U.S. Psychiatric Rehabilitation Association; USAction; Voices for Progress; Wider Opportunities for Women; Women's Missionary Society of the African Methodist Episcopal Church to Members of the House Judiciary Committee (June 1, 2011) (on file with the Subcommittee on the Constitution).

[2] Letter from Defenders of Wildlife, Friends of the Earth; National Resources Defense Council, Population Action International, Public Citizen, Wilderness Society, Voices for Progress to House Judiciary Committee Chairman Lamar Smith and Ranking Member John Conyers, Jr. (June 15, 2011) (on file with the Subcommittee on the Constitution).

[3] Letter from Craig Jennings, Director, Federal Fiscal Policy, OMB Watch, to House Judiciary Committee Chairman Lamar Smith and Ranking Member John Conyers, Jr. (June 1, 2011) (on file with the Subcommittee on the Constitution).

[4] Letter from William Samuel, Director, Government Affairs Department, AFL-CIO, to House Judiciary Committee Chairman Lamar Smith and Ranking Member John Conyers, Jr. (June 2, 2011) (on file with the Subcommittee on the Constitution).

[5] Letter from Michelle Nawar, Director of Legislation, Service Employees International Union, to House Judiciary Committee Chairman Lamar Smith and Ranking Member John Conyers, Jr. (June 3, 2011) (on file with the Subcommittee on the Constitution).

[6] Letter from Charles M. Loveless, Director of Legislation, AFSCME, to Members of the U.S. House of Representative (June 1, 2011) (on file with the Subcommittee on the Constitution).

[7] Letter from Kim Anderson, Director of Government Relations, and Mary Kusler, Manager of Federal Advocacy, National Education Association, to Members of the U.S. House of Representatives (June 2, 2011) (on file with the Subcommittee on the Constitution).

[8] Letter from Nancy Duff Campbell, Co-President, and Joan Entmacher, Vice President for Family Economic Security, National Women's Law Center, to House Judiciary Committee Chairman Lamar Smith and Ranking Member John Conyers, Jr. (June 1, 2011) (on file with the Subcommittee on the Constitution).

[9] Letter from Abigail Evans, President, and Joel Packer, Executive Director, Committee for Education Funding, to Members of the House Judiciary Committee (June 14, 2011) (on file with the Subcommittee on the Constitution).

[10] Letter from Deborah Weinstein, Executive Director, Coalition on Human Needs, to House Judiciary Committee Chairman Lamar Smith and Ranking Member John Conyers, Jr. (June 3, 2011) (on file with the Subcommittee on the Constitution).

courage, accountability, prudence, foresight, and restraint by our elected officials, including some of those who now support this Amendment.

While waging war on two fronts, the Bush Administration championed tax cuts for the wealthy and increases in defense spending as well as new expenditures for such salutary programs as Medicare Part D. These were among the significant contributors to the resulting deficit in the Federal budget. In particular, tax cuts in 2001 and 2003 caused revenue to fall as of 2004 by more than 4 percentage points of GDP. At the same time, Federal spending rose from 18.2 percent of GDP in 2000 to 19.6 percent of GDP in 2007, all while the economy was showing signs of weakness, leading to its near collapse just a year later.[11]

From 2001 to 2010, the Bush Administration's tax cuts added $2.6 trillion to the public debt,[12] nearly fifty percent of the total debt accrued during this period.[13] Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) projections estimate that maintaining the tax cuts of 2001 and 2003 (which were to sunset in 2010) for the wealthiest 2 percent of Americans will reduce revenues by about $690 billion over the next 10 years.[14] When the interest payments are factored in to these numbers, the true price of maintaining the tax cuts for the wealthy jumps by almost $140 billion.[15] In total, keeping the cuts for the richest 2 percent of Americans will cost almost $830 billion over the next 10 years.[16]

While revenues were decreasing as a result of the Bush tax cuts, defense spending jumped dramatically to fund both the Iraq and Afghanistan Wars. There were also substantial spending increases for enhanced security measures necessitated by the Global War on Terror, including the creation of the Department of Homeland Security. During the 7 years President Bush was in office after the terrorist attacks of September 11, 2001, nearly $800 billion was spent on these two wars and enhanced security measures.[17]

Among the Bush Administration's other initiatives was the creation of Medicare Part D in 2003. This worthwhile program, unfor-

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[11] Mindy R. Levit, *The Federal Debt: An Analysis of Movements from World War II to the Present, Congressional Research Service,* Congressional Research Service Report RL34712 (Sept. 17, 2010).

[12] James Horney & Kathy Ruffing, *Economic Downturn and Bush Policies Continue to Drive Large Projected Deficits,* Center on Budget and Policy Priorities, (May 10, 2011), *available at* http://www.cbpp.org/cms/index.cfm?fa=view&id=3490.

[13] OMB, *Historical Tables: Table 7.1—Federal Debt at the End of the Year: 1940–2016,* (2011), *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/hist07zl1.xls (last visited June 20, 2011).

[14] In a January 2010 report, "The Budget and Economic Outlook: Fiscal Years 2010 to 2020," the CBO projects that a full extension of Pres. Bush's tax cuts, plus a permanent fix to the alternative minimum tax, will cost $3.7 trillion over 10 years, not including debt service costs. The JCT estimated in a March 2010 report, "Present Law and The President's Fiscal Year 2011 Budget Proposals Related to Selected Individual Income Tax Provisions Scheduled to Expire Under the Sunset Provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001," that the cost of extending just those cuts that affect people making less than $250,000 and permanently fixing the alternative minimum tax will cost $3 trillion. The difference—a bit less than $700 billion—is the cost of extending just those cuts for the wealthiest. *See* Michael Linden & Michael Ettlinger, *Three Good Reasons to Let the High-End Bush Tax Cuts Disappear This Year,* (July, 29, 2010) *available at* http://www.americanprogress.org/issues/2010/07/let_cuts_expire.html.

[15] The interest rates implied in the CBO's baseline budget projection used in the March 2010 report entitled, "An Analysis of the President's Budgetary Proposals for Fiscal Year 2011," were used to calculate the additional debt service cost. *Id.*

[16] *Id.*

[17] Amy Belasco, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11,* Congressional Research Service Report RL33110, at 3 Table 1: Estimated War Funding by Operations: FY2001-FY2012 War Request (Mar. 29, 2011).

tunately, was unfunded. Its cost has been estimated by the Congressional Budget Office at $395 billion over its first 10 years.[18]

III. THE BALANCED BUDGET AMENDMENT IS ANTI-DEMOCRATIC

Apart from its economic weaknesses, the proposed BBA undercuts the very principle upon which our Nation was founded, namely, majority rule. By requiring a supermajority to pass certain legislation, the Amendment would shift power away from the majority of the American people to a determined minority.

The framers of the Constitution wisely rejected the principle of requiring a supermajority for basic government functions.[19] James Madison vehemently argued against supermajorities. He stated:

> That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies to extort unreasonable indulgences.[20]

At a Constitution Subcommittee hearing during the 104th Congress, Rep. Henry J. Hyde (R–IL), then-Chair of the House Committee on the Judiciary, echoed similar concerns:

> I am troubled by the concept of divesting a Member of the full import of his or her vote. You are diluting the vote of Members by requiring a supermajority of them to do something as basic to government as acquire the revenue to run government. It is a diminution. It is a disparagement. It is a reduction of the impact, the import, of one man, one vote.[21]

Supporters of the BBA have sought to justify the departure from majority rule by pointing to other provisions in the Constitution that require a two-thirds vote, such as approving a treaty or obtaining a conviction in a congressional impeachment trial.[22] This

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[18] Marc Labonte & Margot L. Crandall-Hollick, *The Impact of Major Legislation on Budget Deficits: 2001 to 2010,* CRS Report R41134 (May 20, 2011).

[19] It is significant to note that, because of population patterns, Senators representing some 7.5 percent of the population could prevent a bill from obtaining a two-thirds majority. U.S. Census Bureau, *available at* http://2010.census.gov/2010census/data/apportionment-pop-text.php (last visited June 20, 2011).

[20] THE FEDERALIST NO. 58, at 361 (James Madison).

[21] *Proposing An Amendment to the Constitution of the United States to Require Two-Thirds Majorities for Bills Increasing Taxes: Hearing on H.J. Res. 159, Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 104th Cong., 2d Sess. 107 (1996).

[22] There are 9 matters for which a supermajority vote is required under the Constitution: art. I, § 3, cl. 6 (conviction in impeachment trials); art. I, § 5, cl. 2 (expulsion of a Member of Congress); art. 1, § 7, cl. 2 (override a Presidential veto); art. II, § 1, cl. 3 (quorum shall consist of one or more members from two-thirds of the States to elect the President); art. II, § 2, cl. 2 (consent to a treaty); art. V (proposing amendments to the Constitution); amend. XII (quorum of

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argument, however, overlooks the fact that not one of these supermajority requirements pertain to the day-to-day operations of the government. Limiting such congressional authority is an invitation to gridlock.

Rep. Melvin L. Watt (D–NC) offered an amendment that would have struck the supermajority requirements to increase revenues and to raise the debt limit. The amendment was rejected on a party line vote.[23]

The BBA would also open the possibility of life-tenured Federal judges making decisions on taxing and spending policy instead of directly-elected and accountable Members of Congress and the President. This concern has long-dogged proposals that would place budgetary decisions in the Constitution, but which has consistently been dismissed by proponents as not worthy of consideration. For example, when the BBA was being considered by Congress in 1990, former U.S. Court of Appeals Judge Robert Bork issued the following warning:

> Scores or hundreds of suits might be filed in Federal district courts around the country. Many of these suits would be founded on different theories of how the amendment had been violated. The confusion, not to mention the burden on the court system, would be enormous. Nothing would be settled, moreover, until one or more of such actions finally reached the Supreme Court. That means we could expect a decision [about a given fiscal year 5 years after it has passed]. Nor is it at all clear what could be done if the Court found that the amendment had been violated 5 years earlier.[24]

The BBA clearly presents the possibility that courts would be asked to determine whether legislation did in fact increase revenues, whether outlays did in fact exceed receipts, and any number of other complex budgetary issues that would acquire a constitutional dimension. It also begs the question whether a court, in crafting a remedy for a violation, could order cuts to spending or increases in taxes in order to meet the requirements of the BBA.

IV. THE AMENDMENT IS NOT LIMITED TO A BALANCED BUDGET REQUIREMENT

While the BBA purports to require a balanced budget and to provide the tools necessary to facilitate and enforce that requirement, several provisions are either unrelated to that goal, or would make a balanced budget more difficult to attain.

A. Supermajority Requirements Will Promote Greater Deficits.

While the ostensible purpose of the supermajority requirements in the Amendment are intended to make it more difficult for Congress to exceed the balanced budget requirement, as Rep. Robert C. "Bobby" Scott (D–VA) argues, the need to obtain a three-fifths

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members representing two-thirds of the States to elect the President and the Vice President); amend. XIV, § 3 (to remove disability); and amend. XXV, § 4 (removal of President for disability).

[23] Unofficial Tr. of Markup of H.J. Res. 1, Proposing a Balanced Budget Amendment to the Constitution of the United States, Before the H. Comm. on the Judiciary, 112th Cong. at 6–39 (June 3, 2011).

[24] Letter from Robert H. Bork to Thomas S. Foley, Speaker of the House, (July 10, 1990), reprinted in Op. Ed., Robert H. Bork, *A Seasoned Argument,* Wash. Post, at A23 (June 10, 1992).

vote to run a deficit may require a great deal more legislative "horse-trading" in order to secure the necessary number of votes.[25] We have all been involved in the legislative process generally, and the budgetary process in particular, long enough to have witnessed the extent to which legislative leaders have had to accede to individual members' demands for specific pork-barrel projects, in order to gather the needed votes to pass legislation, raising the overall cost.

The need to obtain supermajorities—especially in times of economic distress when revenues decline, demands for government services increase, and deficits grow—would likely increase the power of individual holdouts, resulting in increased, rather than decreased spending. Thus, the multiple supermajority requirements in the Amendment would have the tendency to increase, rather than decrease the deficit.

B. Tax Limitation Amendment Would Promote Deficits

Section 5 of the BBA provides that a "bill to increase revenue shall not become law unless three-fifths of the whole number of each House shall provide by law for such an increase by a roll-call vote." An amendment offered by Rep. Jim Jordan (R–OH) and passed by the Committee further exacerbated this requirement by raising the threshold to two-thirds.[26] It should be noted, however that during past Republican-controlled Congresses, beginning with the Republican "Contract with America," a separate tax limitation constitutional amendment was routinely considered, and just as routinely rejected.[27]

Adopting a supermajority tax requirement would repeat the very mistakes made in the 1780's under the Articles of Confederation, which required a vote of nine of the 13 States to raise revenue. It is because this system worked so poorly that the founding fathers

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[25] During the markup of H.J. Res. 1, Rep. Scott made the following remarks:

> The fact of the matter is the core provision of this underlying constitutional amendment will make it impossible to ever balance the budget from a practical point of view. If you need 60 percent to pass the budget—and you are going to need 60 percent. Any budget on the table requires 60 percent. Now, are you more likely to pass the Republican Study Group and explain to your constituents 70 percent cuts or, since you need 60 percent anyway, are you more likely to have more tax cuts and more spending increases? When you get to the last couple of votes to pass a tough bill like a tough budget, the last couple of votes you pick up are not—and I am not going to vote for it unless you increase some more taxes or unless you do some more spending cuts. The last few votes are bought with spending increases and tax cuts. And so the core provision of the bill will make it less likely that we can achieve the goals that my colleagues from Virginia have spoken of.

Unofficial Tr. of Markup of H.J. Res. 1, Proposing a Balanced Budget Amendment to the Constitution of the United States, Before the H. Comm. on the Judiciary, 112th Cong. at 53 (June 2, 2011) (statement of Rep. Robert C. "Bobby" Scott (D–VA)).

[26] Unofficial Tr. of Markup of H.J. Res. 1, Proposing a Balanced Budget Amendment to the Constitution of the United States, Before the H. Comm. on the Judiciary, 112th Cong. at 157–67 (June 3, 2011).

[27] In 2001, a similar measure, H.J.Res. 41, failed by a vote of 232–189. 147 CONG. REC. H1582 (daily ed. Apr. 25, 2001) (Roll no. 87). Its predecessor, H.J. Res. 94, was taken straight to the floor and failed by a vote of 234–192 in 2000. 146 CONG. REC. H2146 (daily ed. Apr. 12, 2000) (Roll no. 119). In 1999, H.J. Res. 37 was taken straight to the floor and failed by a vote of 229–199. 145 CONG. REC. H2097 (daily ed. Apr. 15, 1999) (Roll no. 90). In 1998, H.J. Res. 111 was taken straight to the floor and failed by a vote of 238–186. 144 CONG. REC. H2170 (daily ed. Apr. 22, 1998) (Roll no. 102). In 1997, H.J. Res. 62 passed the Committee by a vote of 18–10, but failed in the full House by a vote of 233–190. 143 CONG. REC. H1506 (daily ed. Apr. 15, 1997) (Roll no. 78). In 1996, H.J. Res. 159 was taken straight to the floor and failed by a vote of 243–177. 142 CONG. REC. H3304 (daily ed. Apr. 15, 1996) (Roll no. 117).

sought to fashion a national government that could operate through majority rule.[28]

While some may believe that a tax limitation is a desirable policy, this requirement will make it more difficult to balance the budget by making increased revenues difficult, if not impossible, to obtain. Although the imposition of new taxes or increased taxes may be a policy some would prefer to reject, it is by no means the case that the Constitution should place the option beyond reach for all time.

In addition, the language of the BBA is not clear and could present difficult implementation problems, possibly placing tax policy, in the final analysis, in the hands of Federal judges. For example, it is unclear from the text what a "bill to increase revenue" would include. While it would likely apply to a new tax or an increase in a tax rate, it could also include a repeal of a special interest tax loophole. As a result, the BBA could allow a special interest tax loophole, even one that was the result of clear corruption, to pass by a simple majority, or even a voice vote, but would impose a constitutional requirement of a two-thirds roll call vote of each house to repeal it. The BBA would essentially enshrine in the Constitution some of the most unfair and—in some circumstances—corrupt features of our tax code and thereby undermine the widely accepted goal of removing such special interest provisions from law and simplifying compliance.

As the National Commission on Fiscal Responsibility and Reform recently observed:

> In the quarter century since the last comprehensive tax reform, Washington has riddled the system with countless tax expenditures, which are simply sending by another name. These tax earmarks—amounting to $1.1 *trillion* a year of spending in the tax code—not only increase the deficit, but cause tax rates to be too high. Instead of promoting economic growth and competitiveness, our current code drives up health care costs and provided special treatment to special interests. The code presents individuals and businesses with perverse economic incentives instead of a level playing field.[29]

Rep. Scott offered an amendment to strike this section.[30] Rep. Jerrold Nadler (D–NY) offered an amendment that would allow special interest tax breaks for large producers of oil or natural gas to be repealed by a simple majority vote.[31] Both amendments were rejected on a party line vote.

The BBA presents various questions of interpretation. Would the Amendment's restriction apply to a 1, 5, or 10-year budget window? Would a bill resulting in increased revenues in years 1 and 2, but lower revenues thereafter require a two-thirds vote? The Amend-

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[28] *Proposing An Amendment to the Constitution with Respect to Tax Limitations on H. J. Res. 62, Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary,* 105th Cong. 1st Sess. (1997) [hereinafter 1997 Judiciary Committee Hearing] (statement of Robert Greenstein, Executive Director, Center on Budget and Policy Priorities).

[29] National Commission on Fiscal Responsibility and Reform, The Moment of Truth, at 28 (Dec. 2010) (emphasis in original).

[30] Unofficial Tr. of Markup of H.J. Res. 1, Proposing a Balanced Budget Amendment to the Constitution of the United States, Before the H. Comm. on the Judiciary, 112th Cong. at 77–109; 39–49 (June 3, 2011).

[31] *Id.* at 39–49.

ment is also silent on when the revenue impact would be assessed. Would it, as provided in section 7, rely solely on estimates of outlays and receipts, or would an error in an estimate of the impact of the tax measure that in fact resulted in an increase in revenues require a retroactive change—and court ordered refunds—based on actual receipts? If this is not the case, could estimates be used to circumvent the two-thirds requirement? If an adjustment and tax refund were necessary, would the loss in revenues and existing assets trigger the other requirements of the Amendment, necessitating either offsetting budget cuts or a three-fifths vote to permit the resulting imbalance?

C. A Cap on Outlays Is a New and Dangerous Innovation

The BBA includes a provision that would cap total Federal outlays at 18 percent of "economic output of the United States, unless two-thirds of each House of Congress shall provide for a specific increase of outlays above this amount."[32] We assume that by "economic output of the United States" the resolution's authors mean "gross domestic product," which is defined as the "market value of goods and services produced by labor and property in the United States, regardless of nationality."[33]

This cap, however, appears to be arbitrary. No arguments supporting the idea that 18 percent is an economically ideal rate have been put forward any more than for the 20 percent cap in the bill as introduced, or the 19 percent cap in an amendment filed by Rep. Louie Gohmert (R–TX), but not considered by the Committee. The sole argument was to appeal to historical experience which by no means supports the 18 percent figure. It is, as with other parts of the BBA, merely a policy preference posing as a constitutional principle. In reality, the historical record indicates that outlays, as a percentage of GDP, have varied significantly.

Federal outlays have not dropped below 18 percent since FY 1967, and have not dropped below 17 percent since FY 1957.[34] According to the Congressional Budget Office:

> Spending by the Federal Government grew from approximately 3 percent of GDP in 1925 to 15.6 percent in 1950. Following the Depression, World War II abruptly boosted Federal spending to approximately 42 percent of GDP, but afterward it dropped and resumed a less volatile trend."[35]

D. BBA's Debt Ceiling Is Arbitrary

The Amendment would impose a three-fifths vote requirement in order to increase the debt ceiling.[36] Recent experience demonstrates, however, that even obtaining a simple majority vote can

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[32] H.J.Res 1, 112th Cong. §2 (2011). The bill, as introduced capped outlays at "one-fifth." An amendment offered by Rep. Louie Gohmert (R–TX) changed this to 18 percent.

[33] Bureau of Economic Analysis, U.S. Department of Commerce, Glossary, *available at* http://www.bea.gov/glossary/glossary_g.htm (Last visited: June 20, 2011).

[34] Office of Management and Budget, Table 15.3 Total Government Expenditures as Percentages of GDP: 1948–2010, at 344–5, Fiscal Year 2012 Historical Tables Budget of the United States (2010).

[35] Congressional Budget Office, A 125-Year Picture of the Federal Government's Share of the Economy, 1950–2075, at 2 (July 3, 2002).

[36] H.J. Res. 1, 112th Cong. §3 (2011).

be elusive.[37] The current budgetary deadlock has placed the creditworthiness of the United States in question for the first time since the adoption of the 14th Amendment to the Constitution.[38]

The consequences of a default by the United States on its obligations, or even the growing concern in the world markets about the risk of such a default, could be catastrophic. Recently, Moody's Investors Service warned that it might soon downgrade the credit rating of the United States because of mounting concerns that the government will default on its obligations.[39] Moody's stated, "The heightened polarization over the debt limit has increased the odds of a short-lived default."[40] In April, Standard & Poor's, citing continued gridlock in budget negotiations, lowered its outlook on the Federal debt position from "stable" to "negative."[41] Similarly, Fitch Ratings warned of a downgrading of our national debt obligations in the event of a technical default.[42]

Regrettably, Republican leaders seem to be unaware of, or indifferent to, the dangers of this brinkmanship over the debt ceiling. Republican Budget Committee Chairman Paul Ryan appears not to grasp the gravity of the situation. For example, he recently opined, "If a bondholder misses a payment for a day or two or three or four—what is more important is you are putting the government in a materially better position to better pay its bills going forward."[43] This is precisely the "technical default" about which Fitch has recently warned. When an individual goes into technical default, as described by Rep. Ryan, he or she pays substantial penalties in the form of penalties and in ballooning interest rates. The same fate does befall nations, and the consequences are uniformly catastrophic.

The debt, while a substantial problem, is not the cause of our current precarious position in the eyes of the bond market. As Bloomberg News reports, "For all the debate about the deficit in Washington, bond market yields in the U.S. are lower now than

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[37] *See, e.g.,* 157 Cong. Rec. H 3783 (daily ed. May 31, 2011) (vote on A Bill to Implement the President's Request to Increase the Statutory Limit on the Public Debt, H.R. 1954, 112th Cong. (2011)).

[38] Section 4 of the 14th Amendment states, "The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void." Although section 4 "was undoubtedly inspired by the desire to put beyond question the obligations of the Government issued during the Civil War, its language indicates a broader connotation. . . . '[T]he validity of the public debt'. . . [embraces] whatever concerns the integrity of the public obligations," and applies to government bonds issued after as well as before adoption of the Amendment. Perry v. United States, 294 U.S. 330, 354 (1935). In *Perry,* the Court concluded that the Joint Resolution of June 5, 1933, insofar as it attempted to override the gold-clause obligation in a Fourth Liberty Loan Gold Bond "went beyond the congressional power." *Id.* On a Confederate bond problem, *see* Branch v. Haas, 16 F. 53 (C.C.M.D. Ala. 1883) (citing Hanauer v. Woodruff, 82 U.S. (15 Wall.) 439 (1873), and Thorington v. Smith, 75 U.S. (8 Wall.) 1 (1869)); s*ee also* The Pietro Campanella, 73 F. Supp. 18 (D. Md. 1947).

[39] Zachary A. Goldfarb & Felicia Sonmez, *Moody's Warns of Downgrade,* WALL ST. J. (June 3, 2011), at A11.

[40] *Id.*

[41] Clifford Marks & Humberto Sanchez, S&P Lowers U.S. Debt Outlook from 'Stable' to 'Negative'—Ratings Agency Reaffirms 'AAA' Rating, but Worries Policymakers Will Fail to Agree on Deficit Reduction, National Journal.com (Apr. 19, 2011), *available at* http://nationaljournal.com/economy/s-amp-p-lowers-u-s-debt-outlook-from-stable-to-negative-20110418.

[42] Peter Schroeder, *Fitch Warns US Would eEdanger AAA Rating With Even 'Technical' Default,* The Hill (June 8, 2011), *available at* http://thehill.com/blogs/on-the-money/budget/165365-fitch-warns-against-default-of-any-length.

[43] Amy Scott, Some Republicans OK with short-lived debt default, Marketplace Morning Report (June 8, 2011), *available at* http://marketplace.publicradio.org/display/web/2011/06/08/am-some-republicans-ok-with-shortlived-debt-default/?refid=0.

when the government was running a budget surplus a decade ago, even though Treasury Department data show that the amount of marketable debt outstanding has risen to $9.13 trillion from $4.34 trillion in mid-2007." [44]

E. The Amendment recognizes only military emergencies

Although there are many reasons why a nation might need to run a deficit, section 6 of the BBA permits such to occur only during "any fiscal year in which the United States is engaged in a military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law."

Interestingly, while the BBA's waiver only applies if the United States is at war, any military necessity that might require a build-up in preparation for hostilities is not recognized. It is also not clear whether the Global War on Terror would be covered by the waiver. If the waiver does apply, then—at least for the foreseeable future—it could be argued that the United States will always be in a conflict "which causes an imminent and serious military threat to the national security," and therefore render this proposed constitutional amendment a nullity. Rep. Sheila Jackson Lee (D–TX) offered an amendment that would have clarified that the exception applied to all military conflicts. The amendment was rejected.[45]

There are, however, other types of emergencies in which deficit spending may be needed. Periods of depression or serious recession sometimes call for deficit spending. It would be a mistake for the Constitution—as proposed to be amended by the BBA—to prohibit, categorically, this type of stimulus spending absent the concurrence of a supermajority.

For example, the CBO, in its most recent periodic report, estimates that in the first quarter of calendar year 2011, the American Recovery and Reinvestment Act of 2009 raised real GDP by between 1.1 and 3.1 percent, lowered the unemployment rate by between .06 and 1.8 percent, increased the number of people employed by between 1.2 million and 3.3 million, and increased the number of full time equivalent jobs by 1.6 million to 4.6 million compared with what would have occurred otherwise. CBO estimates that the effects of ARRA on output peaked in the first half of 2010 and have since diminished.[46] Rep. Nadler offered an amendment that would have allowed Congress, by a majority vote of both Houses, to suspend the application of the BBA if economic growth has been, or will be, negative for 2 consecutive quarters. While there is disagreement among members of the Committee on the utility of deficit spending during a recession or a depression, it is a matter of economic policy, and the people's elected represent-

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[44] David Lerman, Ryan, Geithner Offer Different Views on Agreement to increase Debt Ceiling, Bloomberg News (Apr. 18,2011). http://www.bloomberg.com/news/2011–04–17/ryan-geithner-offer-different-views-of-agreement-to-increase-debt-ceiling.html.

[45] Unofficial Tr. of Markup of H.J. Res. 1, Proposing a Balanced Budget Amendment to the Constitution of the United States, Before the H. Comm. on the Judiciary, 112th Cong. at 125–138 (June 3, 2011).

[46] Congressional Budget Office, Estimated Impact of ARRA on Employment and Economic Output from January 2011 through March 2011 at 3 (May 2011).

atives, not the Constitution, should make that judgment. The Nadler amendment was rejected on a party line vote.[47]

V. THE AMENDMENT WOULD DESTROY MEDICARE AND SOCIAL SECURITY

The BBA requires a balanced budget by as soon as fiscal year 2018. Given the current deficit, it is fair to ask how the proponents foresee this objective being attained. Rep. Nadler asked the sponsor, Rep. Bob Goodlatte (R–VA) that precise question. And, Rep. Nadler pointed out that the recently passed Republican Budget projected balance only by fiscal year 2040. Rep. Goodlatte responded, "I would direct to you the House Republican Study Committee Budget which balances it in 9 years."[48]

It should be noted that what the Republican Study Committee (RSC) proposed in its budget was rejected by House. It is also important to understand what the consequences of meeting this deadline would be. Under the RSC plan, which would require the Nation's budget to achieve balance in 2020, Federal expenditures would be cut by more than $9 trillion over the coming decade, compared with current amounts. And, it would cut total non-defense discretionary programs by approximately 70 percent by 2021, and by more than $3 trillion over the next 10 years. It contains deeper Medicare cuts than the Ryan budget, which recently passed the House. The RSC budget includes the Ryan budget proposal to convert Medicare to vouchers and raise its eligibility age from 65 to 67, but it raises the eligibility age sooner than the Ryan budget would. It would raise the Social Security retirement age to 70. In 2021, Medicaid, the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps), and Supplemental Security Income would be cut in half.[49] Given the size of projected shortfalls, and the proposed constitutional impediment to increasing revenues, these cuts, or ones very much like them, would be necessitated by the BBA.

Ranking Member John Conyers, Jr. (D–MI), Rep. Ted Deutch (D–FL), and Rep. Jackson Lee offered amendments that would have protected Medicare and Social Security, by removing them from the budget calculations. The amendments were rejected on party line votes.[50]

VI. CONCLUSION

Never before, with the exception of the disastrous experiment of Prohibition, has this Nation written specific policy preferences into

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[47] Unofficial Tr. of Markup of H.J. Res. 1, Proposing a Balanced Budget Amendment to the Constitution of the United States, Before the H. Comm. on the Judiciary, 112th Cong. at 49–75 (June 3, 2011).

[48] *Whether the Constitution Should be Amended to Address the Federal Deficit?: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary,* 112th Cong. (2011) (statement of Rep. Bob Goodlatte (R–VA)).

[49] Robert Greenstein, James R. Horney & Kelsey Merrick, Balanced Budget Amendment Would Require More Extreme Cuts than Ryan Plan: Chief Sponsor Cites Republican Study Committee Budget, Which Would Cut $9 Trillion Over Next Decade, as Model, Center for Budget and Policy Priorities (June 6, 2011), *available at* http://www.cbpp.org/files/6–6–11bud.pdf (Last visited: June 21, 2011).

[50] Unofficial Tr. of Markup of H.J. Res. 1, Proposing a Balanced Budget Amendment to the Constitution of the United States, Before the H. Comm. on the Judiciary, 112th Cong. at 36–79 (June 2, 2011); 138–157 (June 3, 2011); 41–51 (June 15, 2011).

the Constitution.[51] The Constitution is a document intended to lay out policies to allow Americans to express their preferences in a political system that safeguards the rights of all, and to permit the popular will to find expression in law. Amending the Constitution to settle certain economic and policy questions for all time not only violates the underlying purpose of that document, but risks economic catastrophe and hardship for the middle class, the poor, the very young, and the elderly. It would forever consign the concept of one person one vote to the dustbin of history. It would represent a catastrophic historic turning point for this country, and we urge our colleagues to reject it.

JOHN CONYERS, JR.
HOWARD L. BERMAN.
JERROLD NADLER.
ROBERT C. "BOBBY" SCOTT.
SHEILA JACKSON LEE.
MAXINE WATERS.
STEVE COHEN.
HENRY C. "HANK" JOHNSON, JR.
PEDRO R. PIERLUISI.
MIKE QUIGLEY.
JUDY CHU.
TED DEUTCH.
LINDA T. SÁNCHEZ.

Additional Dissenting Views

The discussion about this proposed amendment to the Constitution has totally been about the title of the amendment and not about its provisions. Incredibly, the provisions of this amendment do not require a balanced budget and actually will make it more difficult for future Congresses to balance the budget.

Every budget considered by the House earlier this year, and in fact nearly every budget over the last decade, was not balanced in the first fiscal year. Each of these budgets would have required a three-fifths majority to pass the House and the Senate under the provisions of this amendment. Commonsense would suggest that a meaningful deficit reduction plan would be more difficult to pass with a supermajority rather than a simple majority, and therefore the enactment of the Balanced Budget Amendment would make it more difficult to the balance budget. Other than the title, there is nothing in this amendment which makes it more likely that Congress will pass a fiscally responsible budget instead of a fiscally irresponsible budget. In fact the supermajority requirement to raise revenues will obviously make it more difficult to balance the budget. The December 2010 extension of the Bush-era tax cuts added $800 billion to the deficit and easily passed both houses of Congress. If this amendment had been in effect, its provisions would not have prevented Congress from adding $800 billion to our deficit, because tax cuts could be passed with a simple majority.

Furthermore, a two-thirds requirement to pass a spending plan over 18% of our nation's Gross Domestic Product (GDP) would jeop-

[51] Justice Holmes, in his famous dissent, warned against using the Constitution as a tool of economic policy. He wrote, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statistics." Lochner v. People of the State of New York, 198 U.S. 45, 75 (1905).

ardize Social Security and Medicare. Total outlays of the federal government have not been below 18% of GDP since the passage of Medicare. An 18% spending cap would put immediate pressure on Congress to make significant cuts to Medicare and Social Security. Under the provisions of the amendment, Congress could drastically cut Medicare and Social Security by a simple majority to meet the 18% of GDP threshold but in order to save these important programs with either new taxes or spending above 18% of GDP would require a two-thirds majority in the House and the Senate.

In conclusion, we should be debating the provisions of the amendment, not just the title. The amendment does not require a balanced budget, and in fact will make it more difficult to balance the budget. Furthermore, the amendment jeopardizes Medicare and Social Security by allowing cuts in these programs with a simple majority while requiring a supermajority to save these programs with new taxes. Balancing the budget requires tough choices; the Balanced Budget Amendment will make it less likely that those tough choices will be made.

ROBERT C. "BOBBY" SCOTT.