



Testimony of Nicholas C. Dranias, JD
Representing the Compact Commission for the
Compact for a Balanced Budget
Before the House Judiciary Committee
Hearing on the Need for the Balanced Budget Amendment
July 27, 2017

Introduction

Thank you for the invitation to testify today on the *Need for the Balanced Budget Amendment*.

A Balanced Budget Amendment is needed because it is politically impossible to sustain fiscally responsible policies when the Constitution as it currently exists entrusts the federal government with an unlimited credit card. What follows is the fundamental proof of this proposition.

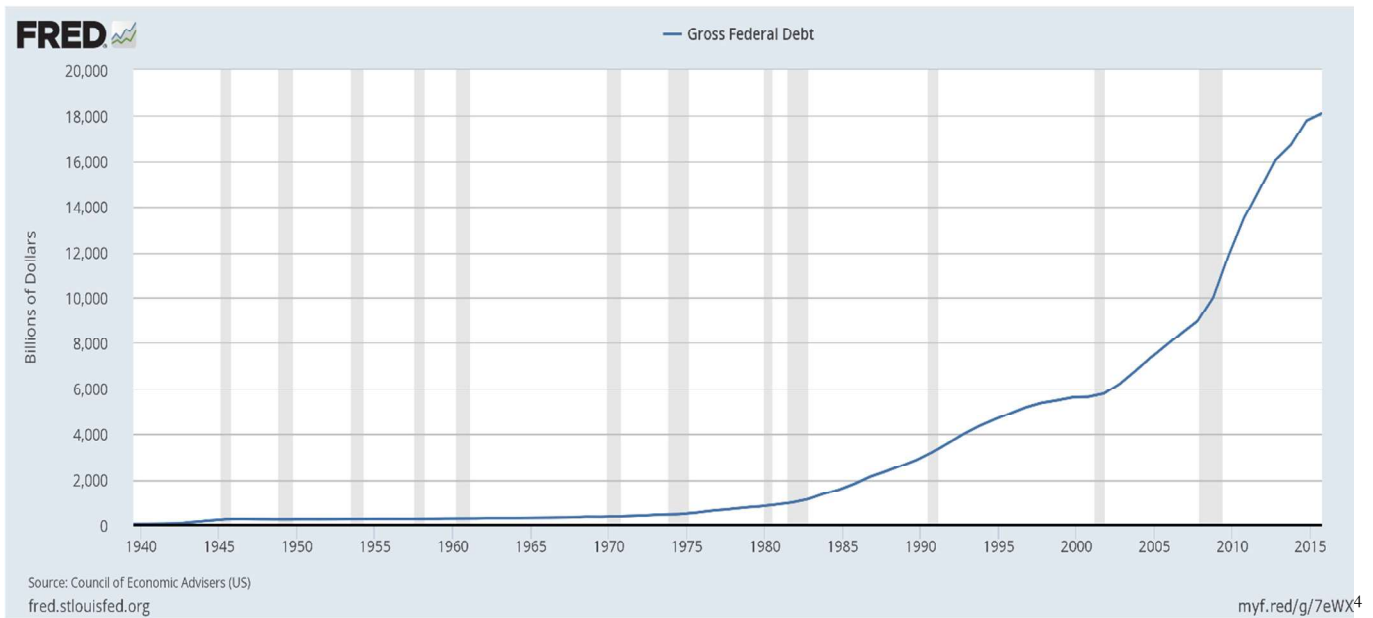
The national debt stands at \$19.8 trillion (\$19,844,968,852,152.58) as of July 20, 2017.¹ This is:

- \$61k for each person living in the U.S.;
- \$158k for each household in the U.S.;
- 104% of the U.S. gross domestic product;
- 549% of annual federal revenues.²

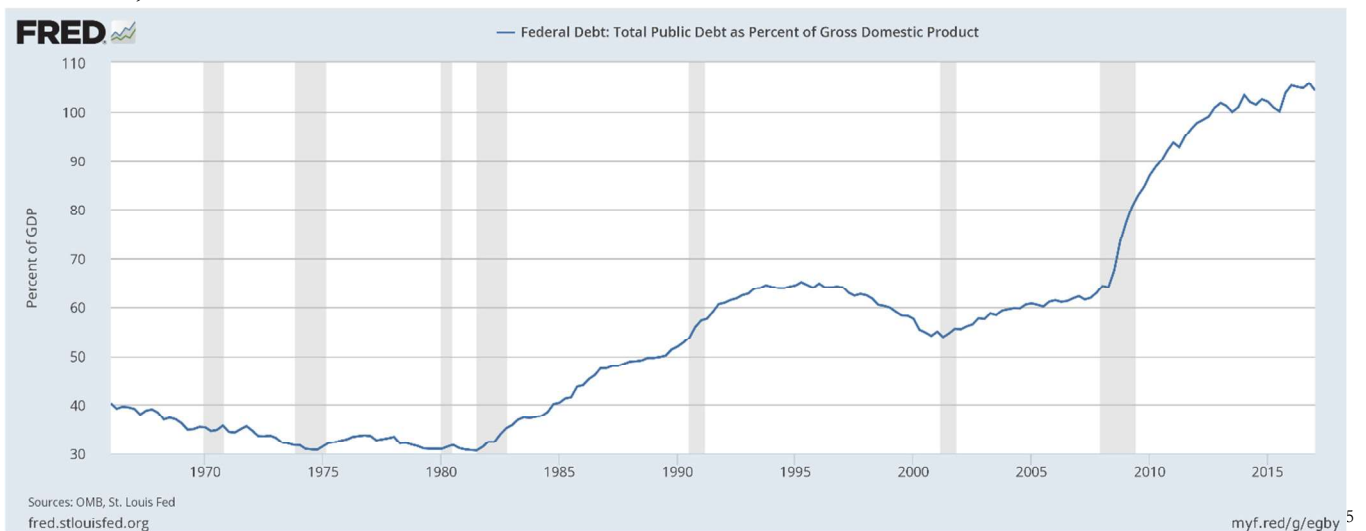
¹ See “Debt to the Penny,” Treasury Direct, available at <https://www.treasurydirect.gov/NP/debt/current>

² Dataset: “Monthly Population Estimates for the United States: April 1, 2010 to December 1, 2017.” U.S. Census Bureau, Population Division, December 2016; Dataset: “Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2016.” U.S. Census Bureau, November 2016; Dataset: “Table 1.1.5. Gross Domestic Product.” U.S. Department of Commerce, Bureau of Economic Analysis. Last revised June 29, 2017; Dataset: “Table 3.2. Federal Government Current Receipts and Expenditures.” U.S. Department of Commerce, Bureau of Economic Analysis. Last revised June 29, 2017. Hyperlinks to sources available at <http://www.justfacts.org>.

The use of debt by the federal government has increased exponentially over time.³



As a result, we are at historic levels of debt relative to GDP.



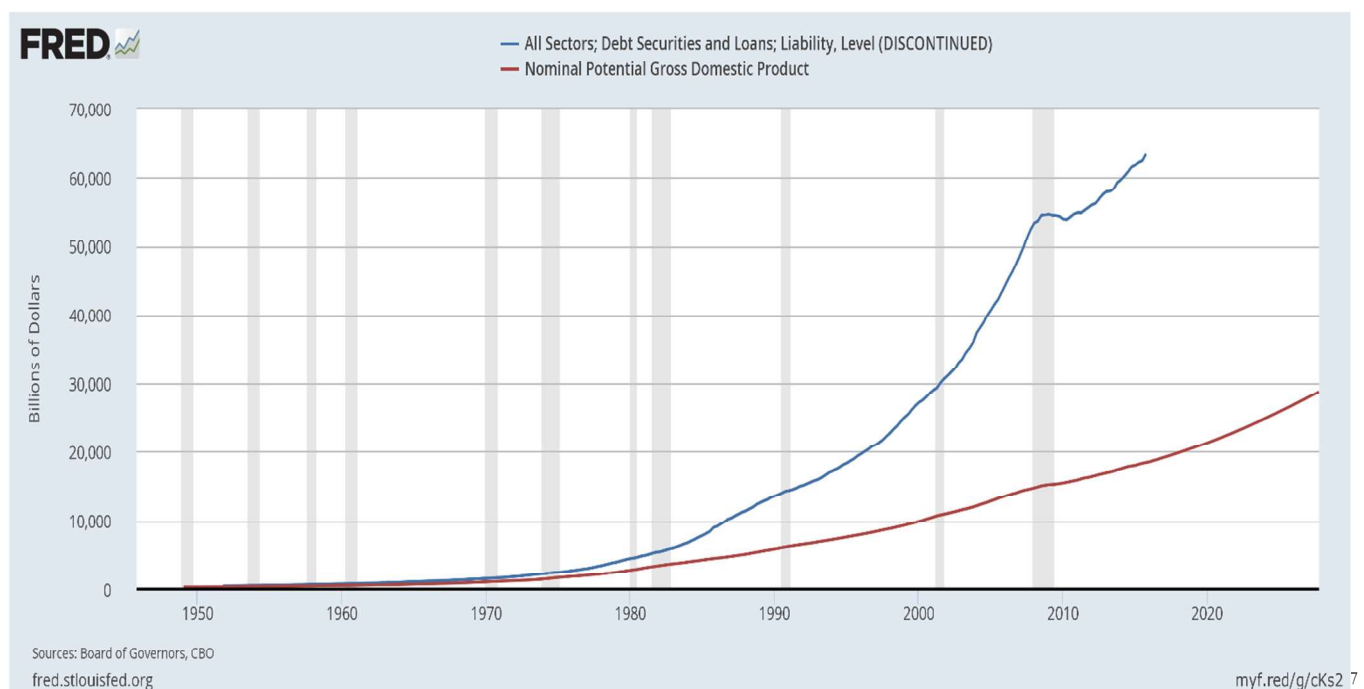
³ This is true even after adjusting for inflation—the use of debt has largely coincided with increases in the money supply, and increases in the money supply are the primary driver of inflation. Moreover, gross public debt is the correct measure of the national debt, not publicly-held debt, because the legal obligation to repay it is the same; and default on any of the national debt will likely roil bond markets and fiscal policy similarly.

⁴ Council of Economic Advisers (US), Gross Federal Debt [FYGFD], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/FYGFD>, July 23, 2017.

⁵ Federal Reserve Bank of St. Louis and U.S. Office of Management and Budget, Federal Debt: Total Public Debt as Percent of Gross Domestic Product [GFDEGDQ188S], retrieved from FRED, Federal Reserve Bank of St. Louis;

This is clear evidence of a system failure. Specifically, it is the natural and inevitable result of empowering elected officials to borrow and spend money at little or no immediate cost to current voters. Such authority both creates an overwhelming political incentive to promise anything to get elected and the perverse ability to deliver on such promises—until the system crashes.

There is a real risk of a system crash because the capacity to engage in limitless debt spending has fueled what certainly appears to be unsustainable promises of unfunded liabilities, with a present value estimated in excess of \$200 trillion.⁶ Indeed, debt levels in all sectors are out-of-control, far exceeding our gross domestic product, which strongly cautions the federal government to be preparing for the possibility of another major bubble bursting in the economy.



No parchment barrier short of a Balanced Budget Amendment that constitutionally limits the use of sovereign debt can counteract this systemic tendency. This is why the overwhelming majority of states have

<https://fred.stlouisfed.org/series/GFDEGDQ188S>, July 24, 2017. Notably, it has been suggested that the foregoing chart adjusted by applicable interest rates looks less dire. See https://fredblog.stlouisfed.org/2017/02/two-tales-of-federal-debt/?utm_source=series_page&utm_medium=related_content&utm_term=related_resources&utm_campaign=fredblog. But relying on historically (and QE-induced) low interest rates to suggest that our 100%+ debt to GDP level is sustainable is absurd. There is nowhere for interest rates to go but up. And when they do, the music will stop.

⁶ Lawrence Kotlikoff, 17 Nobel Laureates and 1200+ Economists Agree with Ben Carson re U.S. Fiscal Gap, Forbes.com (May 13, 2015), available at <https://www.forbes.com/sites/kotlikoff/2015/05/13/17-nobel-laureates-and-1200-economists-agree-with-ben-carson-re-u-s-fiscal-gap/#7f71f78f4d17>

⁷ Board of Governors of the Federal Reserve System (US), All Sectors; Debt Securities and Loans; Liability, Level (DISCONTINUED) [TCMDO], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/TCMDO>, July 24, 2017

adopted constitutional amendments or provisions requiring a balanced budget amendment or limitations on the use of sovereign debt. It is why states typically do not even allow school districts to issue bonds without a popular referendum. No debtor, especially a sovereign debtor that responds to political incentives, can be trusted to behave responsibly over time with unilateral control over unlimited borrowing capacity.

Background

I am Nick Dranias, President and Executive Director of the Compact for America Educational Foundation. I also serve as a Policy Advisor with the Heartland Institute, Expert with the Federalist Society, and Speaker with Students for Liberty. Previously, I was Constitutional Policy Director at the Goldwater Institute and later Policy Development Director, where I led the Institute's successful challenge to Arizona's system of government campaign financing to the U.S. Supreme Court, supervised the Institute's policy analysts, and helped re-ignite the Article V movement almost ten years ago. I have authored more than 70 articles in the fields of constitutional law and public policy; and have appeared as a constitutional expert on Fox News, MSN-NBC, and NPR. My curriculum vitae accompanies my testimony.

The Foundation is a Houston-based non-profit organization that represents states reclaiming their proper role in the Constitution's balance of federalism using binding agreements known as interstate compacts. The Foundation has been designated by the Compact Commission of the Compact for a Balanced Budget as the official Compact Administrator. I appear before you today in that capacity, representing the Compact Commission.

With the signing into law of the Compact for a Balanced Budget legislation by the governors of Georgia and Alaska in April of 2014, and now joined by Arizona, Mississippi, and North Dakota, an officially recognized interstate agency—the Compact Commission—is eager to partner with Congress to solve the problem of a level of national debt that will cripple future generations. The Commission is currently chaired by the former Lieutenant Governor of the State of Alaska, Mead Treadwell; Georgia State Representative Paulette Rakestraw serves as Vice Chair; and Mississippi State Speaker Pro Tem Gregory Snowden serves as Commissioner. The Commission has asked me specifically to urge **this Committee to move all balanced budget amendment proposals to a floor vote, including the concurrent resolution prime-sponsored by Representative Messer, which is needed to activate the Compact for a Balanced Budget.**

Overview of the Compact for a Balanced Budget

The “payload” of the Compact for a Balanced Budget is a powerful balanced budget/debt control amendment which should appeal to people of good will on both sides of the aisle. After all, the issue of the runaway national debt is not a political or partisan issue; **it is an economic and generational justice issue.** For the first time, a game-changing state-of-the-art balanced budget amendment has been designed that overcomes the legitimate concerns that have been expressed before this committee and other committees over the past 40 years. The amendment also provides the necessary enforcement mechanism to assure that Congress stays on track to balance the budget over a 10-year period. In short, the Balanced Budget Amendment at the heart of the Compact for a Balanced Budget provides a bi-partisan and prudent glidepath to balance.

The Compact's amendment also cannot be cheated using any known method of budgetary gamesmanship. Equally important, the amendment avoids the inherent conflict of interest involved in giving Congress control over its borrowing capacity, in which most other draft amendments have authorized Congress to decide when to increase its borrowing capacity or otherwise to deviate from a balanced budget requirement. It is important to understand that a debt limit that is controlled by the debtor is no limit at all. The consequence is that nothing is prioritized because everything can be funded with debt. This conflict of interest is eliminated by repositioning the states to exercise oversight over any increase in an otherwise fixed constitutional debt limit. Under the Compact's amendment, Congress can only increase the specified constitutional debt limit with the approval of a majority of the state legislatures. This ensures transparency and a broad national consensus must be secured before any additional borrowing capacity is obtained by Congress. No longer will there be last minute panic associated with necessary debt limit increases because the amendment provides immediate borrowing flexibility - enough to handle emergency borrowing needs associated with economic downturns, wars and natural disasters.

An interstate compact is used to advance and ratify this powerful, nonpartisan amendment because the Compact approach makes advancing constitutional amendments to the U.S. constitution from the states eminently plausible. It does this by condensing into a single enactment joined by 38 states all of the legislative acts involved in originating a constitutional amendment from the states under Article V of the U.S. Constitution. It also consolidates all the stages of the amendment process that Congress controls into a single resolution passed once with simple majorities and no presidential presentment. This cuts the time and resources needed to originate a balanced budget amendment from the states dramatically. The Compact approach allows for the specification of the text of the amendment to be advanced by the limited convention it organizes under Article V of the U.S. Constitution – avoiding the very difficult sales pitch that “we have to organize a convention to find out what it might propose.” As with anything in the field of constitutional law, there are disagreements over the Compact approach to Article V amendments. But our team of top national experts is unmatched by any other organization and the Compact Commission is confident in its mission. No one has brought litigation in any state to challenge the operations of the Compact Commission or the viability of the Compact for a Balanced Budget. Aside from myself, the constitutionality of the Compact approach is vouched for by Judge Harold R. DeMoss II (retired-U.S. Court of Appeals, Fifth Circuit), Dr. John Eastman, PhD, JD (professor and former Dean, Chapman Law School), Ilya Shapiro, JD (Cato Institute Constitutional Expert) and Dr. Kevin Gutzman, PhD, JD (Professor and past History Department Chair, Western Connecticut State University), and many other top legal scholars.⁸

⁸ Judge Harold R. DeMoss, Jr. (ret.), Nick Dranias, JD, Dr. John Eastman, JD, PhD, Dr. Kevin Gutzman, JD, PhD, Ilya Shapiro, JD, *A Guidebook for Deploying Article V as the Founders Actually Intended: The Application & Convention Mode of Proposing Amendments*, Compact for America Educ. Found. Policy Brief No. 7 (February 8, 2016), available at http://docs.wixstatic.com/ugd/e48202_8ccea8ece20741ca82c0e2640b2aa2cd.pdf; Judge Harold R. DeMoss, Jr. (ret.), Nick Dranias, JD, Dr. John Eastman, JD, PhD, Dr. Kevin Gutzman, JD, PhD, Ilya Shapiro, JD, and Hon. Gregory Snowden, JD, *Clearly Constitutional: The Article V Compact: A Vindication of the Principle of State Sovereignty Against Natelson's Attack*, Compact for America Educ. Found. Policy Brief No. 11 (August 22, 2016), available at http://docs.wixstatic.com/ugd/e48202_9b52a7f8ade7414fb04a6bde9449e2c5.pdf

A Balanced Budget Amendment is Needed

The risks of excessive sovereign debt are well-understood. They include:

- reduced “future national income and living standards”
- “reductions in spending” on “government programs”
- “higher marginal tax rates”
- “higher inflation” that increases “the size of future budget deficits” and decreases the “the purchasing power” of citizens’ savings and income”
- restricted “ability of policymakers to use fiscal policy to respond to unexpected challenges, such as economic downturns or international crises”
- “losses for mutual funds, pension funds, insurance companies, banks, and other holders of federal debt”
- increased “probability of a fiscal crisis in which investors would lose confidence in the government’s ability to manage its budget, and the government would be forced to pay much more to borrow money”⁹

In 2012 and 2013, respectively, the Journal of Economic Perspectives and the Political Economy Research Institute at the University of Massachusetts, Amherst, each published papers about the economic consequences of government debt.¹⁰ They agreed based on extensive research that countries maintaining

⁹ Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Report: “The Long-Term Budget Outlook.” Congressional Budget Office, June 2010 (Revised August 2010), p.xi; Paper: “Tempting Fate: The Federal Budget Outlook.” By Alan J. Auerbach and William G. Gale. Brookings Institution, June 30, 2011, p.16; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Carmen M. Reinhart (University of Maryland) and Kenneth S. Rogoff (Harvard University), *This Time is Different: Eight Centuries of Financial Folly*, xxvii, 77, 175, 398, 400, (Princeton University Press, 2009); Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.7; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p.1; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, p. 7; Report: “The Long-Term Budget Outlook.” Congressional Budget Office, June 2010 (Revised August 2010), pp. xi, 14; Brief: “Federal Debt and the Risk of a Fiscal Crisis.” Congressional Budget Office, July 27, 2010, pp. 4-5.

¹⁰ Public Debt Overhangs: Advanced-Economy Episodes Since 1800.” By Carmen M. Reinhart (University of Maryland), Kenneth S. Rogoff (Harvard University), and Vincent R. Reinhart (chief U.S. economist at Morgan Stanley). *Journal of Economic Perspectives*, Summer 2012. Pages 69–86; Working paper: “Does High Public Debt Consistently Stifle Economic Growth? A Critique of Reinhart and Rogoff.” By Thomas Herndon, Michael Ash, and Robert Pollin. Political Economy Research Institute, April 15, 2013. Revised 4/22/13. Controversy has arisen regarding these findings,

national debts above 90% of GDP depress real annual economic growth by more than a third (in the 2012 paper) and as much as nearly half (in the 2013 paper) as compared to countries with debt under 90% of GDP. Because of the compounding of economic growth, this calculation translates to millions of lost jobs and trillions of dollars of lost wealth over time. Many economists believe the likely driving factor is the diversion of resources from a more efficient private sector to a less efficient public sector. The national debt today stands well above 90% of GDP.

In view of these tremendous risks, in the American political context, the federal government is a radical outlier when it comes to constitutional limitations on debt. At least 44 states have constitutional balanced budget requirements or debt limits. As we have seen in the states, the political high ground such requirements establish can have very positive effects by minimizing unsustainable spending policies.¹¹

Currently, there are at least 12 balanced budget amendment resolution proposals that have been assigned to and are pending before the House Judiciary Committee in the current Congress. Chairman Goodlatte has authored two of these proposals. Proposals have come from both sides of the aisle, and several of the proposals have bipartisan support. Similarly, a number of balanced budget amendment proposals are pending before the Senate Judiciary Committee.

It is reasonable to infer that most constitutional balanced budget requirements would, at a minimum, establish political high ground that favors advocates of more prudent fiscal policy. For this reason, all of the balanced budget amendment proposals under consideration are likely to be a net positive for public policy when compared to the status quo. They are all “needed” in this sense. At the same time, some are better than others, a few could be problematic, and it is important to see if we can improve on past designs. We want the ultimate Balanced Budget Amendment to the U.S. Constitution to have more teeth than simply serving to enable advocates of fiscal responsibility to seize the political high ground.

The Compact’s Balanced Budget Amendment

The balanced budget amendment advanced by the Compact has been over 5 years in the making. The Compact’s amendment was designed from day one to address the valid concerns over potential impacts of a balanced budget amendment that have been the subject of testimony before this committee for the past 40 years. The Amendment recognizes that a balanced budget is not an end-in-itself. It is a measure of fiscal responsibility, the enforcement of which is meant to prevent the abuse of borrowing capacity. Advocates of balanced budget amendments recognize that unrepresented future generations are at great risk of bad debt

but they remain credible as per the assessment of the controversy available here: <http://www.justfactsdaily.com/dollar-national-debts-harm-economies/>

¹¹ See Bohn, Henning, and Robert Inman. “Balanced Budget Rules and Public Deficits: Evidence from the U.S. States.” Carnegie-Rochester Conference Series on Public Policy 45 (1996): 13–76; Crain, Mark. *Volatile States: Institutions, Policy, and the Performance of American State Economies*. Ann Arbor, MI: University of Michigan Press, 2003; Crain, Mark, and James C. Miller III. “Budget Process and Spending Growth.” *William and Mary Law Review* 31, no. 4 (1990): 1021–46; Crain, Mark, and Nicole Crain. “Fiscal Consequences of Budget Baselines.” *Journal of Public Economics* 67, no. 3 (1998): 421–36; Knight, Brian. “Supermajority Voting Requirements for Tax Increases: Evidence from the States.” *Journal of Public Economics* 76, no. 1 (2000); Primo, David. *Rules and Restraint: Government Spending and the Design of Institutions*. Chicago, IL: University of Chicago Press, 2007.

policy decisions under a regime that allows limitless borrowing. The real goal of a balanced budget amendment, therefore, is to impose a constitutional limit on the use of sovereign debt in order to protect future generations from unsustainable debt-fueled spending that, at best, threatens taxation without representation and, at worst, third world economic devastation. The goal is not bookkeeping symmetry.

Perhaps the greatest concern about any Balanced Budget Amendment from a constitutional design perspective is enforcement. The reality is that state-level compliance with balanced budget requirements and debt limits has been partial and unreliable. For example, the backbone of most state constitutional balanced budget or debt limit requirements consist of a fiscal year limit based on revenue and spending estimates. Like any economic forecast by a governmental body, those estimates are subject to substantial error and political manipulation. The fairly routine discovery of the inaccuracy of budget projections in the states, in turn, creates significant political and legal pressure to find ways to evade constitutional balanced budget or debt limit requirements. Such pressure is often accommodated by members of the state judiciary in decisions that interpret key terms used in state constitutional balanced budget requirements and debt limits, such as the definition of debt itself, to exclude from any constitutional limitation: (a) the short-term nonpayment of obligations, (b) the issuance of special fund debt, (c) so-called moral obligation no-recourse bonding (which still has an implicit guarantee), and (d) the incurrence of liabilities. Over the years, these judicial decisions have enabled state governments or their special funds, instrumentalities and political subdivisions to engage in as much borrowing as the political and financial market will bear through: (a) delaying payment of obligations into the next fiscal year through budget “rollovers,” (b) the sale of state assets through sale-leaseback schemes, (c) the “floating” of warrants or outright issuance of IOUs, (d) the diversion of receipts meant for pension or other programs involving incurred liabilities or quasi-trust fund obligations; and (e) the creation of special purpose instrumentalities to handle borrowing for what would otherwise be debt-limited general fund expenditures.

There is every reason to believe the federal government itself would face similar compliance problems should it adopt a constitutional balanced budget or debt limit requirement that did not compensate for these evasion tactics. In fact, the federal government’s constitutional authority to coin money and its close relationship to the fiat money Federal Reserve banking system creates an additional evasion risk foretold by reports of officials in the previous Obama Administration proposing the minting of a trillion dollar coin to repay the federal debt. Unlike in the states, it would be possible (with a few statutory tweaks) for the federal government to simply coin the money it needs to balance the budget, or engage in other monetary policy manipulations with similar effect. A well-designed federal constitutional balanced budget amendment or debt limit requirement should counteract these possibilities.

As discussed in more detail below, the Compact’s amendment has been designed to deter the foregoing evasion tactics, which threaten the efficacy of most other amendment proposals.¹² Its core is a “pay-as-you-go” spending limit coupled to a line of credit in a specific amount. Spending is limited to tax cash flow or unencumbered cash flow (such as proceeds from mineral rights sales) plus whatever borrowing

¹² See Nick Dranias, *Introducing “Article V 2.0”: The Compact for a Balanced Budget*, Heartland Institute Policy Study No. 134 (March 30, 2016), available at <https://www.heartland.org/publications-resources/publications/introducing-article-v-20-the-compact-for-a-balanced-budget>

capacity is left in the line of credit. Unauthorized borrowing is deemed "void," which will deter bond markets from participation in the issuance or purchase of illegal debt (if any should be issued). Flexibility is provided by an initial borrowing cushion of 5% above the outstanding debt on ratification, a referendum process whereby a simple majority of state legislatures must approve additional borrowing capacity in 60 days, and an impoundment process whereby spending must be curtailed and reprioritized when 98% of available borrowing capacity is utilized. To minimize the risk of overshooting revenue increases, the amendment imposes a default rule of requiring two-thirds of each House of Congress to pass any new or increased income or sales tax, but it expressly or implicitly excepts from this default rule: 1) revenue increases from a new consumption tax that completely replaces the income tax; 2) revenue increases from closing tax loopholes; and 3) revenue increases from imposts and duties. The tax limit is designed to channel any revenue increase to the areas where it will do the least harm—i.e., with greater reliance on consumption taxes or flatter taxation. The actual text of the Compact's balanced budget amendment is presented on the following page.



THE BALANCED BUDGET AMENDMENT

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

This language codifies a five-point plan for fixing the national debt.

First, the amendment ensures the federal government cannot spend more than available cash from taxes (and proceeds not originating from the incurrence of debt and liabilities), with the sole exception of borrowing under a fixed debt limit.¹³ Section 1 of the proposed amendment states, “Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.” “Total outlays” is expressly defined as “total expenditures.”

Second, the amendment imposes a limit on the amount of federal debt.¹⁴ Section 2 of the proposed amendment states, in relevant part, “Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article.” In other words, if there were \$20 trillion of outstanding debt at the time of ratification, the federal government’s line of credit will be fixed initially at \$21 trillion. The additional \$1 trillion borrowing cushion would provide approximately 18 to 24 months of borrowing capacity based on current annual deficit rates (\$500 to \$650 billion per year). This cushion would give Congress a transition period to adjust to debt scarcity and to develop and plan for the necessary debt increase request that must be made to the state legislatures.¹⁵

Third, by requiring spending impoundments when 98 percent of the debt limit is reached, the proposed amendment would ensure spending is reduced long before borrowing reaches its debt limit, preventing any default on obligations.¹⁶ Section 4 of the proposed amendment provides, in relevant part, “Whenever the outstanding debt exceeds 98 percent of the debt limit ... the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt.” It also checks and balances the President’s ability to abuse his impoundment power by empowering simple majorities of Congress to override impoundments within 30 days without having to repeal the underlying appropriations (which is currently the only way Congress can respond to abusive presidential impoundments short of litigation). Specifically, once the President puts proposed impoundments on the table, Section 4 provides, “Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective.”¹⁷

¹³ Available at <https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/26/text> (section 202 (section 1)).

¹⁴ *Ibid.* (section 2).

¹⁵ Alternatively, Congress, preparing for the impending ratification of the amendment, may sell enough bonds to set the initial debt limit high enough upon ratification to allow for a longer-term budget to be implemented. For instance, Congress could pass legislation requiring a return to balanced budgets in 10 years. Congress could add various measures to the proposed budget to make it credible and durable enough for the bonding market to absorb an otherwise large issuance of bonding to carry the entire plan into effect. By the time the amendment was ratified, the initial debt limit would be fixed at 105 percent of whatever bonding had been sold at that point, which would then lock-in the budget plan by constitutionally limiting borrowing capacity to the sum total of bonds previously issued to implement that plan plus a 5 percent cushion to allow for unforeseen contingencies.

¹⁶ *Supra* note 13 (section 202 (section 4)).

¹⁷ It is important to underscore that the foregoing provision does not increase presidential power. It *regulates* presidential power by requiring the President to use his existing impoundment power, under the threat of impeachment, when borrowing reaches 98 percent of a constitutional debt limit – as opposed to waiting until the midnight hour. Here’s how

Fourth, if new revenue streams are needed to avoid borrowing beyond the debt limit, the amendment would ensure all possible spending cuts are considered first. It does this by requiring abusive tax measures (new or increased sales or income taxes) to secure supermajority approval from each house of Congress.¹⁸ It reserves the current simple majority rule for new or increased taxes only for completely replacing the income tax with a non-VAT sales tax (“fair tax” reform), repealing existing taxation loopholes (“flat tax” reform), and increasing tariffs (the Constitution’s original primary source of federal revenues). Any push for new revenue through these narrow channels would generate special-interest pushback, strongly incentivizing spending cuts before taxes are raised—but reasonably keeping the opportunity for targeted simple-majority revenue increases as an option.

Fifth, if borrowing beyond the debt limit proved truly necessary, the proposed amendment eliminates the conflict of interest involved in Congress having the power to increase its credit unilaterally. Instead, the amendment would give the states and the people the power to impose outside oversight by requiring a majority of state legislatures to approve any increase in the federal debt limit within 60 days of a congressional proposal of a single-subject measure to that effect.¹⁹ Specifically, Section 3 provides, “From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval.” Further, “If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.”

It is important to underscore that the proposed amendment does not include any emergency spending or borrowing loopholes because of the flexibility made possible through the built-in line of credit. Once the Compact’s balanced budget amendment is in place, all Congress would need to do is make sure to pay down its debt during good times, and it would enjoy a huge and continuous line of credit that could cover any war or emergency. If additional borrowing beyond the initial debt limit were somehow truly necessary, there would be plenty of time for Congress to ask the states to approve an increase in the debt limit. Current tax cash flow is adequate to allow for dramatic increases in discrete spending priorities; by redirecting available funds, the President or Congress could double or even triple current military expenditures without additional borrowing. A sudden demand for emergency expenditures thus could be handled through the temporary reallocation of

it would work: Assuming the constitutional debt limit were \$21 trillion, this provision would be triggered when borrowing reached \$20.58 trillion, with about \$420 billion in available borrowing left under the debt limit. At current yearly deficits ranging between \$500 and \$650 billion, the president would be required to start designating spending delays approximately seven to ten months before reaching the constitutional debt limit. This provision would start a serious fiscal discussion with plenty of time in which to develop a plan to fix the national debt. With this proposed amendment in place, it would be easy to know who is responsible for any impoundment that is enforced. It will be either the president’s impoundments or Congress’s impoundments. And if neither the President nor Congress acts, spending will be limited to tax receipts as soon as the debt limit is reached, in effect resulting in an across-the-board sequester. The threat of an automatic sequester resulting from inaction would give the President a strong incentive to designate and enforce the required impoundments. Congress otherwise would be all too happy to shift the blame for a disorderly across-the-board sequester to the president by invoking the provision of Section 4 that provides, “The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor.”

¹⁸ *Supra* note 13 (section 202 (section 5)).

¹⁹ *Ibid.* (section 3).

existing cash flows while a longer-term borrowing proposal is submitted for consideration by a majority of state legislatures. If Congress ultimately could not persuade 26 state legislatures to approve such additional borrowing, that should be reason enough to stop the proposed spending.

The basic reason for state oversight is that we must strike at the root of our national debt problem by ensuring that the federal government debtor is not free to write itself blank checks with a line of credit it alone determines. Assigning that intervention responsibility to the states is consistent with the Constitution's original design, which gave the states control over the U.S. Senate. Moreover, securing approval from a majority of state legislatures for new borrowing above the Amendment's initial debt limit would be anticipated in advance by both the state legislatures and Congress. The Amendment authorizes states to establish by state law the specific process by which their referendum authority is exercised. We can expect that the states will use that authority to enjoy their restored oversight role in national policy making; and that means that states can be expected to establish procedures for rapidly responding to a request for more borrowing capacity in a timely manner. The states will have plenty of time to develop those procedures because the Amendment will not be advanced and ratified overnight, and because its debt limit allows for a cushion of one to two years of additional borrowing capacity at current deficit spending rates. And Congress likewise can be expected to time their requests to coincide with the annual state legislative sessions that occur in every year between January and May in 46 states in even years and 50 states in odd years,

Taken together, the Compact's Amendment imposes a cash-flow-based "pay-as-you-go" spending limit coupled to a debt limit which cannot not be circumvented by inaccurate budget projections or delays in payment of amounts due ("rollovers"). If fiscal gaming tactics – such as no-recourse borrowing, trust fund raiding, sale-leaseback schemes, and money printing – were attempted, the resulting proceeds would not count as receipts affecting the expenditure limits, and thus could not support spending in excess of the expenditure limit, neutralizing any incentive to engage in such gaming tactics. Likewise, moral obligation or non-recourse borrowing could not supply additional funds for spending beyond the constitutional limit because the definition of "debt" in Section 6 of the proposed amendment limits approved borrowing to proceeds from full faith and credit obligations.²⁰ Finally, the definition of "total receipts" in Section 6 of the proposed amendment to which "total expenditures" are limited excludes "proceeds from [the federal government's] issuance or incurrence of debt or any type of liability." This ensures the pay-as-you-go spending limit in Section 1 cannot be increased by raiding trust funds, proceeds from sale-leaseback schemes, or even direct deposits into the U.S. Treasury of \$1 trillion coins; these actions would constitute excluded "proceeds from [the federal government's] issuance or incurrence of debt or any type of liability."

Apart from enforcement advantages, there are a number of benefits and features contained in the Compact's Amendment that have never appeared in other BBA proposals. These key features include

- Actual cash flows, not budget figures, are the key drivers of the amendment
 - "Balance" is determined by actual cash flows at all times, as opposed to being calculated annually

²⁰ *Ibid.* (section 6).

- A constitutional debt limit is established for the first time
 - The new debt limit incorporates a line of credit that can be used by Congress to fund wars, military conflicts, national emergencies, business cycle downturns, trust fund obligations, and cash flow peaks and valleys
 - The line of credit can be paid down in good times to provide the necessary rainy-day funds for new wars, military conflicts, national emergencies, business cycle downturns, trust fund obligations, and cash flow peaks and valleys that can be anticipated to occur in the future
 - The new debt limit can be increased in the future with the concurrence of a majority of the state legislatures
 - The constitutional debt limit is denominated in nominal terms, like the current statutory debt limit, and, therefore, the economic impact of federal borrowing will diminish over time relative to the overall economy, as the economy grows, trending towards the functional equivalent of a strict balanced budget requirement over time (unless the states approve a request for more borrowing capacity)
 - Strong incentives exist to achieve and maintain a balanced budget but deficits are permitted as long as borrowing stays within this constitutional debt limit
- An explicit impoundment mechanism is provided to avoid current debates over the constitutionality of presidential impoundment, and to assure that the debt limit is not breached, but with Congress having the opportunity to override the President's impoundment plan with simple majority approval of an impoundment plan of their own
- Bi-partisanship and plausibility of ratification by 38+ state legislatures are enhanced by the provision that allows for revenue increases to be considered when reducing reliance on borrowing, while encouraging tax reforms consisting of eliminating tax loopholes or transitioning to a consumption tax system.

Plausibility of Cross-Partisan Support in 38 States

Any constitutional amendment, however originated, ultimately requires ratification by 38 states. Significantly, Compact's amendment is the **only** Balanced Budget Amendment which any state, let alone five states, have agreed to ratify in any respect, let alone in a solemn binding interstate compact. It has commanded the assent of the Compact's member states, in part, because it is carefully designed to instill fiscal responsibility and restraint on the part of the U.S. Congress without partisan advantage.

It is entirely plausible that at least 33 more states will join the Compact. According to McLaughlin & Associates:²¹

- Informed popular support for a compact to advance constitutional amendments exceeds opposition by more than 2 to 1.
- 61% of Americans agree that a majority of state legislatures should be required to approve any increase in the federal debt.
- 71% of Americans agree that Congress should reduce or restrain spending before raising taxes.
- 86% of Americans agree that Congress should be required to balance its budget.

These results are confirmed by more recent state-by-state polling results obtained by West-Third Group:

- 58% of Michigan voters²² overall support the Compact for a Balanced Budget, and 72% of Michigan voters overall feel more confident about the amendment process using the Compact approach to Article V. The strength of support swamps opposition. No more than 20% of Michigan voters overall oppose any of the Compact's policy elements.
- 57% of Ohio voters²³ overall support the Compact for a Balanced Budget, and 67% of Ohio voters overall feel more confident about the amendment process using the Compact approach to Article V. No more than 25% of Ohio voters overall oppose any of the Compact's policy elements.
- 59% of North Carolina voters²⁴ overall support the Compact for a Balanced Budget, and 70% of North Carolina voters overall feel more confident about the amendment process using the Compact approach to Article V. No more than 21% of North Carolina voters overall oppose any of the Compact's policy elements.
- 67% of Alabama voters²⁵ overall support the Compact for a Balanced Budget, and 72% of Alabama voters overall feel more confident about the amendment process using the Compact approach to Article V. No more than 26% of Alabama voters overall oppose any of the Compact's policy elements.

²¹ Available at http://docs.wixstatic.com/ugd/e48202_d2d89036b8934669b8dc6d37578b2719.pdf.

²² Available at http://docs.wixstatic.com/ugd/e48202_71e9aee5ee1848678c41137d4f1192ec.pdf

²³ Available at http://docs.wixstatic.com/ugd/e48202_3cc6693d20094c25b268090db3ab5eec.pdf

²⁴ Available at http://docs.wixstatic.com/ugd/e48202_9d16bedf11774443a4e4a0026f80216b.pdf

²⁵ Available at http://docs.wixstatic.com/ugd/e48202_79cb551740a14162a4dcffc2b918cfd.pdf

- 68% of Texas voters²⁶ overall support the Compact for a Balanced Budget, and 71% of Texas voters overall feel more confident about the amendment process using the Compact approach to Article V. No more than 21% of Texas voters overall oppose any of the Compact's policy elements.

How the BBA Addresses the Concerns Expressed Before Congress in Prior Years

Over the past 40 years, committees in both the House and Senate have conducted a number of hearings to address whether a BBA is necessary, how a BBA would be crafted, concerns over various provisions, and how the amendment would be enforced. Among the various experts that have offered testimony, two individuals have been consistent in expressing their concerns. These two individuals are Robert Greenstein of the Center for Budget and Policy Priorities, and Alan Morrison of the George Washington University Law School. More recently, a group of economists and Nobel Laureates, including Alan Binder of Princeton University, have also expressed concerns over the impacts and ramifications that are associated with BBAs in general. Copies of prior testimony from these witnesses are readily available on the House Judiciary Committee website and other well-known websites that store records of congressional testimony. We believe many of these concerns to be valid, and it is incumbent on those proposing BBAs to show how these concerns are addressed and mitigated. The mitigation strategies that have been developed for the Compact BBA are described below.

Concerns Expressed by Robert Greenstein and the Center for Budget and Policy Priorities

Concern: Because deficits are not allowed, the impact of automatic stabilizers are not allowed to occur

Mitigation: CFA BBA Mitigation - deficits are allowed and stabilizers remain in play to the extent that spending stays within the specified constitutional debt limit; there is also flexibility to increase that constitutional debt limit by approval of a majority of state legislatures.

Concern: Folly of trying to require "balance" every year based on estimates

Mitigation: Cash flow nature of the amendment eliminates the need to rely on balance calculations to enforce the amendment

Concern: Effects on banking system and loan guarantees, Social Security, military/civil retirement and other trust funds

Mitigation: Built-in line of credit authorized by the constitutional debt limit allows trust fund and other obligations to be repaid even in deficit situations. Additionally, the risk of trust fund raiding to support additional spending is eliminated because the amendment limits spending to authorized credit, tax cash flow, and cash sources that are **not** proceeds from the incurrence of debt or liabilities.

Concern: Problems with GDP limitations

Mitigation: GDP is not a factor in the CFA BBA - if GDP limitations are desired, they should be by overlay of legislation, not by constitutional amendment

Concern: Need to stabilize debt

²⁶ Available at http://docs.wixstatic.com/ugd/e48202_f0f9f3b266c44a71b5e3575cf3fee4f0.pdf

Mitigation: Agreed and that is that is the overriding premises in the CFA BBA – to stabilize debt in a way that forces prioritization of expenditures in a responsible manner

Concerns Expressed by Alan Morrison Relating to Judicial Review

Concern: Calculation and timing of budgetary items could lead to disputes requiring judicial review

Mitigation: The CFA BBA is based on actual cash flows and not budgetary figures or estimates. You will not find any of the following words in the CFA BBA:

- Balance
- Balanced
- Budget
- Targets
- Fiscal Year
- Assumptions
- Estimates
- Annual Budget
- Appropriations

Concern: Judicial enforcement mechanisms are not necessary to assure compliance

Mitigation: Three serious institutions play an important role in outside enforcement of the CFA BBA – the executive branch (through impoundment authority), state legislatures (through state approval of increases in the debt limit), and the bond markets (because of the explicit designation of unauthorized debt as “void” which will render questionable debt issuances unmarketable)

Concern: An amendment with no teeth will invite judicial review

Mitigation: The above three institutions have plenty of teeth to take a bite out of efforts to evade enforcement

Concern: Who enforces the amendment – the President, Congress, outside institutions?

Mitigation: It is a combination of the three: 1) enforcement begins with the President with the impoundment provision, 2) Congress has a check on the Presidential impoundment plan if they so choose, 3) the state legislatures control future increases in the debt limit, and 4) the bond markets assure that new debt is issued in compliance with the amendment

Concern: Lack of standing to sue

Mitigation: The reluctance of bond markets to purchase void bonds will be the primary enforcement mechanism to deter evasion of the amendment, and it will avoid the need for litigation. If bond markets are bypassed through QE type transactions, then the breach of the debt limit will be the key issue, and the state legislatures will have standing to sue if the debt limit is breached in violation of the amendment

Concern: Ripeness of the time to sue

Mitigation: Ripeness would occur when the debt limit is actually breached, and the state legislatures will likely have standing to sue if the debt limit is breached in violation of the amendment

Concern: How the courts will define balance and what they will do to correct in imbalance

Mitigation: The “Balance” requirement is written as a spending limit; i.e. the federal government cannot spend in excess of authorized credit, tax-sourced cash, and cash which is not proceeds of the incurrence of debt or liabilities. There is no textual hook for courts to enforce that would require intervention into budgeting. At worst, courts would only have the power to prohibit spending of unauthorized sources of cash, such as illegally issued bonds. This is not the sort of legal inquiry that would require the judiciary to assume any traditionally legislative role and is analogous to the role of courts in municipal bond authorization litigation.

Concern: Differences between budget figures and actual figures will cause disputes

Mitigation: Budget figures are not used, so any difference between budget vs actual becomes irrelevant

Concern: The timing of receipts and disbursements will cause disputes

Mitigation: The timing issued is resolved by availability of the line of credit in the amendment

Concerns Expressed by Alan Blinder and Others Relating to Economic Policy Implications

Concern: BBA would mandate perverse actions in the face of recessions

Mitigation: The CFA BBA anticipates recessions and allows for deficit financing to occur in such times through the use of the revolving line of credit implicit in the constitutional debt limit. The built-in economic stabilizers would be allowed to continue.²⁷

Concern: A BBA would prevent borrowing to finance long-term expenditures and infrastructure

Mitigation: The CFA BBA contemplates borrowing for long-term expenditures and infrastructure and provides a line of credit for such investments to occur.

Concern: A BBA would invite budgetary gimmicks

Mitigation: The BBA is based on actual cash flows and debt that is subject to the full faith and credit of the U.S. governments – it would be very hard to game an amendment of this nature with accounting and definitional gimmicks

Concern: Most BBAs have escape hatches during times of emergencies

Mitigation: There are no escape hatches in the CFA BBA – the Congress is expected to anticipate that unforeseen wars, military conflicts, business cycle downturns, and other national emergencies will occur, and Congress is provided with a sufficient line of credit to fund such events.

²⁷ Notably, traditional Keynesian fiscal policy calls for government deficits in downturns, but government surpluses in booms. In fact, Congress does not run countercyclical fiscal policy; downturns are excuses for increased spending, and so are upturns. The Compact’s Amendment, if ratified, would actually make the countercyclical fiscal policy desired by Mr. Blinder more likely. But in fact, it is also important to note that many if not most economists dispute whether any good evidence exists that discretionary fiscal policy works well. There are lots of reasons for fiscal policy failure, not the least of which is that it necessarily involves diverting resources from the private sector to the government sector which is almost always less efficient. Most economists regard monetary policy as more powerful in affecting countercyclical economic change. The Compact’s Amendment does not directly prevent the utilization of traditional monetary policy for this purpose; although it does deter monetization of the national debt (which is just a hidden form of default) and the nominally fixed amount of borrowing capacity would also create a stronger incentive than the status quo to preserve the value of the dollar.

Concern: Most BBAs require supermajorities in each chamber of Congress to adopt an unbalanced budget or to raise the debt limit

Mitigation: Not true with the CFA BBA – deficits are anticipated and allowed, and a simple majority of the state legislatures is all that is required to increase the debt limit

Concern: An overall spending cap in most BBAs would limit Congress' ability to fight recessions

Mitigation: There is no overall spending cap in the CFA BBA – recessions are anticipated and the line of credit allows funding of the anticipated expenditures without necessarily requiring reductions elsewhere in the budget.

Concern: There is no need for a BBA – let the President and Congress make fiscal policies in response to national needs and priorities

Mitigation: We agree that forcing expenditures to equal revenues on an annual basis without factoring in debt is not wise – no business operates in such a fashion. However, no business has access to unlimited debt as is the case in the current Congress. Unlimited debt means that there are no priorities – everything can be funded by debt and the repayment dilemma is left to future generations that are currently unrepresented, because after all, debt is taxes if the intent is to ever repay the debt.

Concern: It is dangerous to try and balance the budget too quickly in today's economy

Mitigation: We agree that a glidepath to balance is necessary, and the 10-year path to balance in the recent Trump administration budget proposal seems prudent and reasonable

The Interaction between the CFA BBA and the Trump Administration Budget Proposal

The interaction of the CFA BBA and the Trump Administration Budget Proposal is fairly straight-forward. A one-page analysis of the projection that shows the potential interaction follows this section. If the BBA were to be ratified in 2018, a new constitutional debt limit of \$22.1 trillion would be established on the date of ratification. That limit would provide over \$1 trillion in rainy-day reserves. The budget forecast indicates that the rainy day reserve would be depleted sometime in FY 2020. Therefore, it will be incumbent upon Congress to plan for and make the request to the state legislatures to increase the debt limit prior to that time. The budget projection shows a peak debt of \$24.8 trillion in FY 2026, so it would be reasonable to expect that Congress would request a debt limit increase to \$25 trillion. Provide Congress makes its case to the state legislatures that it will stick to the 10-year path to balance, and a majority of the states agree, the debt limit would be raised to \$25 trillion in FY 2020. The debt limit would be expected to remain at that level for the foreseeable future, because the budget projections indicate that repayments of the federal debt will begin in FY 2027, and the Congress will build its rainy-day fund to an amount it believes adequate to fund wars, national emergencies, and economic downturns that may not yet be on the horizon.

OMB - Trump Administration Budget Proposal for 2018 - 2027

(all numbers in billions)

Description	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues												
Individual income taxes	1,546	1,660	1,836	1,935	2,044	2,167	2,293	2,428	2,572	2,723	2,884	3,062
Payroll taxes	1,115	1,174	1,224	1,277	1,335	1,413	1,488	1,557	1,637	1,717	1,807	1,894
Corporate income taxes	300	324	355	375	401	400	414	425	439	455	475	497
Other	307	301	239	226	203	181	193	204	216	234	251	273
Total revenues	3,268	3,459	3,654	3,813	3,983	4,161	4,388	4,614	4,864	5,129	5,417	5,726
Outlays												
Mandatory												
Social security	910	946	1,005	1,070	1,137	1,205	1,279	1,360	1,446	1,535	1,628	1,725
Medicare/Medicaid	956	971	986	1,069	1,139	1,216	1,318	1,359	1,400	1,516	1,603	1,690
Other mandatory outlays	560	656	545	598	559	542	558	518	499	502	522	503
Total	2,426	2,573	2,536	2,737	2,835	2,963	3,155	3,237	3,345	3,553	3,753	3,918
Discretionary												
Defense	585	594	643	665	670	667	662	665	679	693	708	722
Nondefense	600	619	601	567	537	506	485	464	455	446	437	429
Total	1,185	1,213	1,244	1,232	1,207	1,173	1,147	1,129	1,134	1,139	1,145	1,151
Net interest	240	276	315	371	428	481	528	567	595	613	629	639
Total outlays	3,851	4,062	4,095	4,340	4,470	4,617	4,830	4,933	5,074	5,305	5,527	5,708
Annual (deficit)/surplus	(583)	(603)	(441)	(527)	(487)	(456)	(442)	(319)	(210)	(176)	(110)	18

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027		
Debt held by public at EOY	14,168	14,824	15,353	15,957	16,509	17,024	17,517	17,887	18,150	18,379	18,541	18,573
Gross federal debt at EOY	19,539	20,355	21,095	21,844	22,510	23,123	23,658	24,084	24,425	24,656	24,799	24,696



* 105% of debt outstanding at time of ratification

** Assumes 38 states join the Compact by 2018

The likely scenario that will play out if Congress proceeds with the plan:

1. Congress proceeds with plan outlined by Trump Administration to balance the budget in FY 2027
2. 38+ state legislatures join the Compact for America by FY 2018
3. \$22.1 trillion constitutional debt limit is established when the 38th state joins in 2018 and the convention proposes the amendment
4. In FY 2019/2020, Congress submits a request to the state legislatures to increase the debt limit by \$2.9 trillion to \$25.0 trillion
5. Provided Congress is proceeding on plan, a majority of the state legislatures authorize the increase in the debt limit to \$25.0 trillion
6. Congress continues with the plan to achieve balance by FY 2027
7. \$25.0 trillion becomes the permanent line of credit available to Congress.
8. Congress pays down line of credit in good times to have funding for wars, national emergencies and business cycle downturns

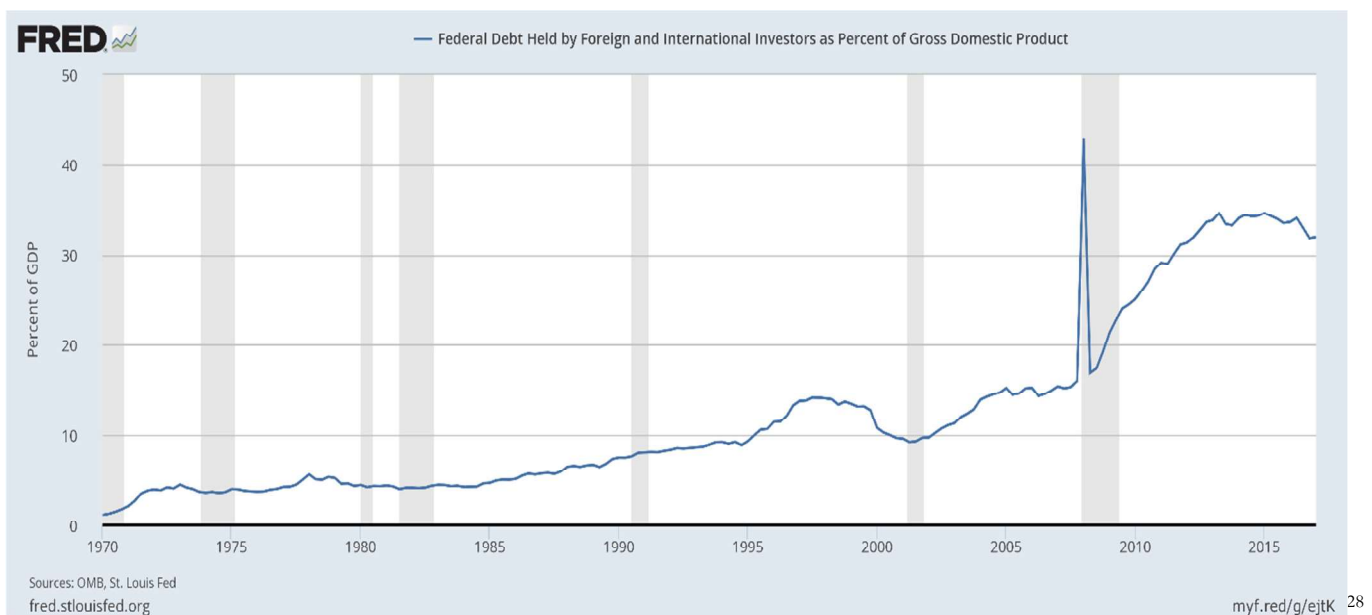
Frequently Asked Questions

Why not just enforce the Constitution instead of amending it?

Answer: The Constitution as it currently exists allows for limitless borrowing. The claim that the enumerated powers, properly understood, supply those limits is not true. We could easily have a massive, unsustainable, overtaxing, over-borrowing, and inefficient federal government if it were doing nothing but what the enumerated powers authorize. Of course, many people believe the federal government is doing much more than what the Founders thought the enumerated powers authorized. But that outcome is politically inevitable when elected officials have a constitutionally-authorized unlimited credit card with which they can promise anything to get elected at little or no immediate cost to current voters. The rules of the political game must change to limit borrowing capacity to ensure Constitutional limitations are respected, as well as to assure fiscally responsible outcomes and intergenerational justice.

Doesn't national security require a war or emergency exception to the amendment?

Answer: No. National security requires fiscal responsibility. Fiscal responsibility can only exist sustainably if the federal government has limited borrowing capacity—with any flexibility subject to outside oversight. Preserving the current system of unlimited debt spending, in which we must borrow from our actual and potential adversaries to keep the ship of state afloat, is a terrible threat to our national security. Below is a chart of foreign investment in federal debt, of which China represents approximately 20% of the total foreign investment.



²⁸ Federal Reserve Bank of St. Louis and U.S. Office of Management and Budget, Federal Debt Held by Foreign and International Investors as Percent of Gross Domestic Product [HBFIDQ188S], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/HBFIDQ188S>, July 24, 2017. China's share is likely around twenty percent per dataset "Major Foreign Holders of Treasury Securities Holdings at End of Period (in billions of dollars)." U.S. Department of the Treasury, October 18, 2016.

The Amendment would eventually become useless if it included any exception that Congress unilaterally applied. Even if Congress regained its fiscal composure for a few years with the “right” people in charge, the structural flaw that originally caused our national debt problem would remain; namely, allowing the debtor to have the unilateral power to write its own credit limit. Faced with the ability to spend with the costs shifted to future non-voting generations, we can reasonably predict that Congress would eventually yield to the pressure placed on them by special interests to invoke any debt limit exception. If the Amendment’s restrictions on borrowing capacity did not apply during declared wars or emergencies, Congress would not need to officially declare micro-wars and mini-emergencies (although that would be possible); insiders could simply reference any of the approximate 53 states of emergency that have been declared by previous Presidents that are still in effect today and instantly Washington would again be able to borrow without limit or outside oversight.²⁹ Very soon the federal government would be back in the same position of near-bankruptcy in which we find it today. An amendment that retains Washington’s unilateral power to engage in unlimited debt spending in any form is designed to fail. But that doesn’t mean there should not be flexibility for emergency or war borrowing. The Compact’s Amendment already allows for flexibility to borrow for wars and emergencies—as much flexibility as is consistent with fiscal responsibility.

First, as mentioned previously, tax cash flow even in today’s fiscal world allows for doubling or tripling military spending before borrowing becomes necessary.

Second, the Amendment allows for a line of credit for borrowing by Congress—which is initially fixed at 105% of the outstanding debt on ratification. If the amendment were ratified in the near future, that means as much as \$21 trillion in borrowing capacity would be available under the Amendment. That would be six times as much borrowing capacity as annual tax revenue: think of it as like a home equity line of credit that was six times your income. This is plenty of borrowing capacity for a fiscally responsible federal government to manage all of its affairs, including the need to finance declared wars and emergency actions. **All the federal government needs to do is get into the habit of paying down the debt during good times, and conserve adequate borrowing capacity for bad times.** Once borrowing reaches 98% of the debt limit, the President can use his impoundment power under the Amendment to redirect spending to the military, subject to Congressional override by simple majority.

Third, the Amendment provides for even more borrowing capacity if a simple majority of Congress and a simple majority of state legislatures can be persuaded respectively to refer and approve an increase in the Amendment’s debt limit. This state referendum process could very well be deemed the “war” or “emergency” exception to the Amendment’s debt limit. But the interpretation of the exception is wisely not placed in Washington’s sole hands. The redirection of available tax cash flow to military spending (or any other emergency) will give Congress and the states plenty of time to propose and approve respectively any increase in the Amendment’s debt limit that truly commanded a national consensus.

Before undertaking any war that requires massive new borrowing, Washington should ensure that it has the backing of the nation, not just the denizens of Washington. The Amendment ensures that this exact consensus will happen. And if we need to undertake massive new borrowing for an emergency, Washington should ensure that a national consensus stands behind that purpose, especially when emergency spending tends to benefit only certain regions, communities, and special interests directly. Requiring Washington to

²⁹ See <https://www.usatoday.com/story/news/politics/2014/10/22/president-obama-states-of-emergency/16851775/>

secure a consensus from the representative bodies that are closest to the people is nothing more than what a wise statesman would do.

Conclusion

In order to be able to establish national priorities, there must be some limits on governmental spending. Access to unlimited debt will never result in fiscal responsibility – there is just too much pressure exerted on members of Congress by outside groups (and no countervailing pressure from future generations who are stuck with the bill). Reasonable limits must be placed on borrowing by the federal government and control of those limits must be by forces outside of Washington DC. It is imperative that the authors of any amendment to impose a balanced budget requirement on Congress must be able to address and mitigate concerns that have been brought forth by recognized economists, Nobel Laureates, and legal scholars. The Balanced Budget Amendment contained the Compact for a Balance Budget was designed specifically to mitigate these concerns, and still provide the opportunity for the President and Congress to fund unforeseen, yet non-unexpected, wars, military conflicts, natural disasters, economic downturns, or recessions. And it does so while still maintaining the nation's commitment to the retirement trust funds and other key governmental functions. It is the state-of-the-art, game-changing BBA that both sides of the political spectrum can support. Key endorsements of the Compact Initiative follow.

Further, we recommend that prior to the consideration of any legislation to raise the debt ceiling, the House take up and vote on the various proposals for BBAs that have been introduced into the new Congress. We also recommend that the House take up and vote on the concurrent resolution championed by Rep. Luke Messer that activates the Compact for a Balanced Budget. With the regrettable knowledge that achieving the necessary 2/3 support in each house of Congress to propose any of the Congressional BBA proposals may be implausible at the current time, then the **House at a minimum should take up and vote on the Messer resolution, which only requires simple majorities in each house for passage.** Doing so would encourage the states to act quickly to help bring fiscal responsibility and prioritization back to our federal government.

Respectfully submitted:



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WHAT THEY'RE SAYING

"The Compact for a Balanced Budget is the best vehicle for the most powerful, yet politically plausible federal Balanced Budget Amendment I have seen. I endorse it without hesitation."

GROVER NORQUIST, AMERICANS FOR TAX REFORM

"(T)he Compact's amendment is remarkably resistant to evasion. It would use the Constitution's Article V to move the nation back toward the limited government the Constitution's Framers thought their document guaranteed."

GEORGE WILL, OPINION WRITER, WASHINGTON POST

"I encourage the states to join the Compact for America's interstate compact without delay, and send ... enabling resolution to Congress."

THE HON. LAMAR SMITH, MEMBER OF CONGRESS

"With the states serving as an active board of directors for our wayward federal executive and legislative 'CEOs' and the buck stopping at the President' desk, the Compact for a Balanced Budget would powerfully check and balance Washington's debt addicts."

ILYA SHAPIRO, JD, SENIOR FELLOW IN CONSTITUTIONAL STUDIES AND EDITOR, CATO SUPREME COURT REVIEW, CATO INSTITUTE

"The Compact for a Balanced Budget is a viable approach to rein in excessive and unprioritized federal government spending that threatens the legacy of liberty we pass on to subsequent generations of Americans."

**LT. COL. ALLEN B. WEST (RET.)
NATIONAL CENTER FOR POLICY ANALYSIS**

"To stop the insanity of an out-of-control federal government fueled by limitless debt spending, States must unite behind the Compact for a Balanced Budget."

JUDGE ANDREW NAPOLITANO, FOX NEWS CHANNEL

"I support the tenets of the balanced budget amendment drafted by the Compact for America as well as the vehicle it has devised to initiate such an amendment - an interstate compact. It is time to rein in federal spending, and one of the most effective ways to do that would be with the adoption of a balanced budget amendment."

**THE HON. JOHN CULBERSON
MEMBER OF CONGRESS FROM THE STATE OF TEXAS**

"Neither party has shown the courage or backbone to do anything about federal spending and borrowing. They won't - and the institution is inherently incapable of doing so. I now believe a new fiscal constitution is necessary for America. And it will only happen when the people rise up and demand it!"

**STEPHEN MOORE
ECONOMIST, POLICY ANALYST AND HERITAGE FOUNDATION
DISTINGUISHED VISITING FELLOW**

"I am now even more confident in the ability of the states to use the Compact approach to making the Article V process safe and certain so that necessary structural constitutional reforms can be achieved on a timely basis."

**JUDGE HAROLD R. DEMOSS, JR. (RET.)
U.S. COURT OF APPEALS, FIFTH CIRCUIT**

"I am honored to be part of this significant effort to reign in, by constitutional means, the abuses and excesses of our federal government that has for far too long simply ignored the Constitution's express limits on its power."

**JOHN C. EASTMAN, JD, PHD
HENRY SALVATORI PROFESSOR OF LAW
& COMMUNITY SERVICE, CHAPMAN UNIVERSITY**

"Having fought for Tenth Amendment principles nearly all of my life, I am utterly convinced that the states must unite behind the Compact for a Balanced Budget to check the uncontrolled spending that has been going on in Washington DC for the past three decades."

**FRED KELLY GRANT, FORMER FEDERAL PROSECUTOR
GOLDWATER INSTITUTE SENIOR FELLOW**