



# **A Balanced Budget Constitutional Amendment: Background and Congressional Options**

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## Summary

One of the most persistent political issues facing Congress in recent decades is whether to require that the budget of the United States be in balance. Although a balanced federal budget has long been held as a political ideal, the accumulation of large deficits in recent years has heightened concern that some action to require a balance between revenues and expenditures may be necessary.

The debate over a balanced budget measure actually consists of several interrelated debates. Most prominently, the arguments of proponents have focused on the economy and the possible harm resulting from consistently large deficits and a growing federal debt. Another issue involves whether such a requirement should be statutory or made part of the Constitution. Some proponents of balanced budgets oppose a constitutional amendment, fearing that it would prove to be too inflexible for dealing with future circumstances.

Opponents of a constitutional amendment often focus on the difficulties of implementing or enforcing any amendment. Their concerns have been numerous and varied. How would such a requirement affect the balance of power between the President and Congress? Between the federal courts and Congress? Although most proponents would prefer to establish a balanced budget requirement as part of the Constitution, some advocates have suggested using the untried process provided under Article V of the Constitution for a constitutional convention as an alternative to a joint resolution passed by two-thirds vote in both houses of Congress. Although the inclusion of a balanced budget amendment as part of the congressional agenda has muted this debate in recent years, proposals for a convention are still possible, and raise concerns that one might open the way to an unpredictable series of reforms. The last American constitutional convention convened in May 1787 and produced the current constitution.

These are also questions that will be raised and considered by Congress concerning the provisions that should be included in such a measure as it sifts through its options. Congress ultimately will decide whether consideration should be given to a constitutional requirement for a balanced budget; and if it decides to proceed, it will need to decide whether there should be exceptions to the requirement, or if it should include provisions such as a separate capital budget or a limitation on expenditures or revenues. For example, as reported from the House Judiciary Committee, H.J.Res. 1 in the 112<sup>th</sup> Congress includes provisions that would require a super majority to allow a budget with outlays in excess of receipts, to allow outlays to exceed 18% of the “economic output” of the United States regardless of whether the budget were balanced, to increase the debt limit, or to increase revenues.

This report provides an overview of the issues and options that have been raised during prior consideration of proposals for a balanced budget constitutional amendment. It will be updated as events warrant.

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## I. Introduction

The debate over the need to establish a constitutional limit on spending or debt is nearly as old as the nation itself. Thomas Jefferson is often cited as an intellectual forefather in the current debate because of his distrust of government debt. He once wrote that the way to cure what he felt was extravagant spending by the Administration of John Adams was a constitutional amendment that took away the power of the federal government to incur debt.<sup>1</sup> Support for such an idea has waxed and waned continuously since that time. Support was echoed in the “Contract With America” advanced by Republican House candidates during the 1994 congressional campaign, and by the wide consensus on a balanced budget as a political ideal, especially since the late 1970s. The current call for a constitutional amendment to require a balanced budget reflects its status as one of the most persistent political issues of recent decades. In the current Congress, the House Judiciary Committee has reported a proposal, H.J.Res. 1, that includes provisions that would require a super majority to allow a budget with outlays in excess of receipts, to allow outlays to exceed 18% of the “economic output” of the United States regardless of whether the budget were balanced, to increase the debt limit, or to increase revenues.

Generally the term *balanced budget* simply refers to a situation wherein the annual expenditures made by the government are equal to its receipts. Disagreement about just exactly how these key components should be defined and measured has been one of the chief stumbling blocks in the consideration of balanced budget proposals. Although these sound like straightforward concepts, this definitional problem is far from trivial; any sound definition must say what is to be included and, at least by inference, who is to be responsible for insuring that its provisions are carried out. When coupled with additional provisions, as with H.J.Res. 1, the debate takes on even greater complexity.

### The Deficit as an Issue

The goal of balancing the budget was rarely controversial during the 18<sup>th</sup> and 19<sup>th</sup> centuries, and budget deficits were considered abnormalities to be tolerated only in extraordinary circumstances such as war. Prolonged deficits in the aftermath of the Civil War and the depression of 1893 had an impact on the way in which budgeting was done, but did not alter this objective. As late as the 1920s, adherence to this ideal meant congressional commitment to a policy of surpluses throughout the decade to retire some of the huge debt accumulated due to the First World War.

The unprecedented magnitude of the deficits incurred during the Great Depression of the 1930s and World War II seem a watershed in American fiscal history, but those deficits did not represent a revolution in fiscal policy. Although the New Deal and the “new economics” ascribed to John Maynard Keynes are intertwined in the minds of many, there was likely no direct and substantial influence of Keynes on President Roosevelt’s fiscal policies.<sup>2</sup> Indeed, Keynes’ *General Theory of Employment, Interest and Money*, the work that spurred the transformation of economic thought, was not published until 1936. The Roosevelt Administration’s fiscal policy in the 1930s accepted

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<sup>1</sup> Letter from Thomas Jefferson to John Taylor, November 26, 1798. *The Writings of Thomas Jefferson*, vol. 10. (Washington: The Thomas Jefferson Memorial Association, 1903), p. 63.

<sup>2</sup> Herbert Stein, *The Fiscal Revolution in America*, rev. ed. (Washington: American Enterprise Press, 1990), p. 148.

deficits as a consequence of “providing relief,” but not as part of a deliberate policy to bring about recovery or full employment.<sup>3</sup>

The transformation of economic thought that followed Keynes had a growing impact on fiscal policy after World War II, demonstrated by such legislation as the Employment Act of 1946.<sup>4</sup> Even President Dwight Eisenhower, who was sometimes criticized for making a “fetish” of balancing the budget,<sup>5</sup> had some degree of flexibility on this question. He stated that, “it has sometimes seemed a little bit odd that we have to make our whole ... economic cycle coincide with the time it takes the earth to get around the sun.”<sup>6</sup>

By the time of the Kennedy Administration, the ideal of budget balancing had lost its primacy as an influence on fiscal decisions. Advocates of Keynesian economic theories supported the concepts of counter-cyclical spending and “full employment” budgeting. These concepts implied increased government spending and tax cuts to offset downswings of the economy even if a deficit resulted, and decreased spending, tax increases, or both in order to run surpluses during upswings. This idea was based on the premise that governments should balance the economy, not simply the budget. Although there is no generally accepted Keynesian orthodoxy, even among economists,<sup>7</sup> and there is much debate on the impact of government in the economy and on the economics of budget balancing.

## **The Call for a Balanced Budget Amendment**

The declining significance of balanced budgets as the singular goal of fiscal policy prompted opposition efforts to establish formal legal underpinnings for the principle of a balanced budget. Perhaps the first example of this occurred in 1935 when Senator Millard Tydings introduced the first measure designed effectively to require the federal budget to be balanced (S.J.Res. 36, 74<sup>th</sup> Congress). This resolution unsuccessfully sought to prohibit appropriations in excess of revenues in the absence of new debt authorization, and require that any new debt be liquidated over a 15-year period.

The following year Representative Harold Knutson introduced the first proposed constitutional amendment that would have required a balanced budget (H.J.Res. 579, 74<sup>th</sup> Congress). That proposal would have allowed for the possibility of deficits, but would have established a per capita limitation on the federal public debt during peacetime. Since the limit suggested was lower than the outstanding debt at the time, it would have effectively mandated budgetary surpluses.

The first congressional action beyond the introduction and referral of proposals occurred in 1947. By special arrangement, the Senate Appropriations Committee had a balanced budget amendment jointly referred to itself as well as the Senate Judiciary Committee. The Appropriations

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<sup>3</sup> Ibid., p. 60.

<sup>4</sup> P.L. 304, 79<sup>th</sup> Congress, 60 Stat. 23.

<sup>5</sup> U.S. President, 1953-1961 (Eisenhower). The President’s News Conference of February 18, 1959. *Public Papers of the Presidents of the United States, Dwight D. Eisenhower 1959* (Washington: GPO, 1960), p. 196.

<sup>6</sup> Ibid., p. 197.

<sup>7</sup> As early as 1966 economist Milton Friedman noted that “We are all Keynesians now and nobody is any longer a Keynesian.” Quoted in Stein, *Fiscal Revolution*, p. 382, from *Time* (December 31, 1965, p. 65; and February 4, 1966, p. 13.).

Committee reported the measure on May 5, 1947.<sup>8</sup> However, the Judiciary Committee did not take any subsequent action, and no further formal consideration occurred.

Since the 1930s, dozens of proposals have been made to require a balanced budget, to limit the size or growth of the federal budget or of the public debt, or some combination of these ideas, including several notable recent efforts. These have come in the form both of bills and proposed constitutional amendments.

## The Debate in Recent Decades

Possibly reinforced by previous experience that many Members of Congress have had at the state level, where balanced operating budgets commonly are required, the issue has remained alive.<sup>9</sup> For a period, some observers feared that the goal of a balanced budget, or even the Keynesian ideal of using budget policy to balance the economy, had been totally abandoned. This was particularly so in the 1990s because until FY1999, no President had proposed a budget in balance since FY1971.<sup>10</sup> Further, before FY1998, the federal government had not ended a fiscal year in surplus since FY1969 (see **Appendix A**). During that period the size of annual deficits had increased, both in terms of dollars and as a percentage of Gross Domestic Product (GDP). The increasing level of both the federal deficit and debt (see **Table 1**) increased the popularity of the idea of mandating a balanced budget.

In particular, it generated strong interest in the idea of using constitutional change as a remedy for seemingly intractable current budgetary problems. Indeed, Presidents Ronald Reagan and George H.W. Bush supported this position. President Bill Clinton also expressed support for a balanced budget, although he opposed using a constitutional amendment to require one.

Popularity for a balanced budget amendment arguably waned during the late 1990s as the budget came into balance. Between 1985 and 2002, other statutory budget controls were in effect as part of the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Enforcement Act of 1990. Further, a combination of spending decreases, revenue increases, and a thriving economy brought the budget into balance, and a surplus existed from FY1998 through FY2001.

Concern has recently spiked once again over an increasing deficit and its potential effect on the nation's fiscal and economic health. The budget deficit each year from 2009 to 2011 has been the highest ever in dollar terms, and significantly higher as a share of GDP, than at any time since World War II. Under current policies, the federal debt is projected to grow more quickly than GDP, leading observers to term it unsustainable. While there has been no difficulty financing the

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<sup>8</sup> The report (S.Rept. 80-154) appears in the *Congressional Record*, vol. 93, May 6, 1947, at p. 4555.

<sup>9</sup> Although most states require their operating budget to be balanced they typically allow for debt financing of capital expenditures and various other exceptions to balanced budget requirements. For an examination of state balanced budget practices see U.S. General Accounting Office, *Balanced Budget Requirements: State Experiences and Implication for the Federal Government*, AFMD-93-58BR, March 1993.

<sup>10</sup> However, on several occasions Presidents have submitted proposed budgets that have included projections of balanced budgets at some point further in the future. President Carter's budget for FY1980 included projected balance for FY1982, his budget for FY1981 projected balance for FY1982 and FY1983, and his budget for FY1982 projected balance for FY1984. The amended FY1982 budget proposed by President Reagan also projected a balanced budget for FY1984 and extended the projection to include balanced budgets in FY1985 and FY1986. President Clinton's budget for FY1998 included a projected balanced budget for FY2002.

deficit to date, it has been argued that at some point, investors could refuse to continue to finance deficits that they believe are unsustainable.<sup>11</sup>

According to some observers, the deficit problem is due to a budget process that permits the government to run persistent substantial deficits and to a political system wherein deficit spending may be rewarded. The fact that responsibility for deficits cannot be indisputably assigned to any one action or actor, or even to either undertaxing or overspending alone, leaves balancing the budget as a visible, but unrealized, priority. This has meant a surge of recent support for measures guaranteeing a balanced budget, while deficits have grown to unprecedented size.

**Table 1. Federal Surplus/Deficit and Debt: FY1969-FY2010**  
(billions of current dollars)

<b>Fiscal Year</b>	<b>Surplus(+)/Deficit(-)</b>	<b>Debt Subject to Statutory Limit</b>
1969	+3.2	356.1
1970	-2.8	372.6
1971	-23.0	398.7
1972	-23.3	427.8
1973	-14.9	458.3
1974	-6.1	475.2
1975	-53.2	534.2
1976	-88.4	621.6
1977	-53.7	700.0
1978	-59.2	772.7
1979	-40.7	827.6
1980	-73.8	908.7
1981	-79.0	998.8
1982	-128.0	1,142.9
1983	-207.8	1,378.0
1984	-185.4	1,573.0
1985	-212.3	1,823.8
1986	-221.2	2,111.0
1987	-149.7	2,336.0
1988	-155.2	2,586.9
1989	-152.6	2,829.8
1990	-221.0	3,161.2
1991	-269.2	3,569.3
1992	-290.3	3,972.6

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<sup>11</sup> For more information, see CRS Report R41778, *Reducing the Budget Deficit: Policy Issues*, by Marc Labonte.



Fiscal Year	Surplus(+)/Deficit(-)	Debt Subject to Statutory Limit
1993	-255.1	4,315.6
1994	-203.2	4,605.3
1995	-164.0	4,884.6
1996	-107.4	5,137.2
1997	-21.9	5,327.6
1998	+69.3	5,439.4
1999	+125.6	5,567.7
2000	+236.2	5,591.6
2001	+128.2	5,732.8
2002	-157.8	6,161.4
2003	-377.6	6,737.6
2004	-412.7	7,333.4
2005	-318.3	7,871.0
2006	-248.2	8,420.3
2007	-160.7	8,921.3
2008	-458.6	9,959.9
2009	-1,412.7	11,853.1
2010	-1,293	13,510.8

**Source:** *Historical Tables: Budget of the United States Government F2012*. Table I.1—Summary of Receipts, Outlays, and Surpluses or Deficits: 1789-2016, and Table 7.2—Debt Subject to Statutory Limit: 1940-2015.

- a. Figures combine the amounts for FY1976 and the Transition Quarter that occurred when the start of the fiscal year was shifted from July 1 to October 1.

Despite fiscal and budgetary policies that doubled the national debt in the first five years of his Administration, President Ronald Reagan was an outspoken advocate of the ideal of a balanced budget. Even before the beginning of his tenure as President, during his 1980 campaign, he wrote “Excessive Federal spending and deficits have become so engrained in government today that a constitutional amendment is necessary to limit spending.”<sup>12</sup>

In his first inaugural address, Mr. Reagan spoke against public spending that had “piled deficit upon deficit,” and had “mortgag[ed] our future and our children’s future for the temporary convenience of the present.”<sup>13</sup> Later, during his second term, he spoke of an “economic bill of rights” with a balanced budget amendment as its centerpiece, and suggested that it was long overdue.<sup>14</sup>

<sup>12</sup> Quoted in U.S. Congress, Senate Committee on the Judiciary, *Balanced Budget Constitutional Amendment. Report on S.J.Res. 225*, S.Rprt. 99-163, 99<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1985), p. 3.

<sup>13</sup> U.S. President, 1981-1989 (Reagan), Inaugural Address, January 20, 1981, *Public Papers of the Presidents of the United States, Ronald Reagan 1981* (Washington: GPO, 1982), p. 2.

<sup>14</sup> U.S. President, 1981-1989 (Reagan), “Remarks Announcing America’s Economic Bill of Rights,” July 3, 1987. *Public Papers of the Presidents of the United States, Ronald Reagan 1987, v. 1* (Washington: GPO, 1987), p. 739.

In his first budget submission (FY1991) President George Bush reiterated these themes, stating that a balanced budget amendment should be adopted to “halt the steady build-up of national debt,” in order to “protect the interest of future generations.”<sup>15</sup>

President Clinton’s approach was more guarded: supportive of the idea of a balanced budget, but generally opposed to a constitutional requirement. In a 1993 letter to congressional leaders, Clinton characterized the proposed constitutional amendment approach as a “budget gimmick” whose vagueness would result in “appointed judges with life tenure” making budget decisions that he felt should be made by elected lawmakers.<sup>16</sup> On March 16, 1994, President Clinton sent a letter to Congress in which he stated his opposition to a constitutional amendment, despite his overall support for deficit reduction.<sup>17</sup> This opposition was more subdued in his 1995 State of the Union Address, when he reiterated his support for deficit reduction.<sup>18</sup> In his 1997 State of the Union Address, however, President Clinton made his opposition to a constitutional amendment plain. Balancing the budget, he stated, did not require rewriting the Constitution. He further stated that “I believe it is unnecessary and unwise to adopt a balanced budget amendment that could cripple our country in time of crisis later on and force unwanted results such as judges halting Social Security checks or increasing taxes.”<sup>19</sup>

During the 1994 congressional election campaign the Republican Party (as well as a number of Democratic candidates) continued to champion the cause of a balanced budget constitutional amendment. Included in the “Contract With America” signed by many Republican House candidates in 1994, and a central part of the agenda for the Republican majority elected to both Houses that year, was support for a balanced budget amendment. The version included in the “Contract With America” also incorporated a provision to require a three-fifths vote of both houses of Congress to increase revenues.

Viewing the prospect that Congress might adopt a balanced budget amendment, the Governors of a number of states urged caution in embracing specific amendment language, further complicating the debate. Many of those attending the 1994 Republican Governors’ Conference, while supporting the concept of a balanced budget amendment, expressed concern that it could increase the financial burden of the states by encouraging Congress to pass laws imposing mandates and requirements without providing funding to carry them out.<sup>20</sup> The chairman of the National Governors’ Association, Howard Dean characterized the proposal for a balanced budget amendment a “political show,” and said that no state legislature “in its right mind” would approve an amendment that didn’t also include safeguards against unfunded mandates.<sup>21</sup>

While lawmakers continued to introduce legislation proposing a balanced budget amendment, popularity waned until relatively recently. Just six months into the 112<sup>th</sup> Congress, more proposals

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<sup>15</sup> *Budget of the United States Government, FY1991* (Washington: GPO, 1990), p. 268.

<sup>16</sup> U.S. President, 1993- (Clinton), Letter to Congressional Leaders on the Proposed Balanced Budget Amendment, November 5, 1993, *Public Papers of the Presidents of the United States, William J. Clinton*, 1993, vol. II (Washington: GPO, 1994), p. 1916.

<sup>17</sup> H.Doc. 103-223, March 17, 1994.

<sup>18</sup> *Congressional Record*, daily edition, vol. 141( January 24, 1995), p. H586.

<sup>19</sup> “Text of President Clinton’s State of the Union Message to Congress,” *New York Times*, February 5, 1997, p. A20.

<sup>20</sup> Taylor, Andrew, “Governors: Don’t Balance Budget Without Ending Mandates,” *CQ Weekly Report*, November 26, 1994, p. 3403.

<sup>21</sup> “Budget Proposal Called ‘Political Show,’” *Washington Post*, December 9, 1994, p. A18.

have been introduced for a balanced budget amendment than in any Congress since the 105<sup>th</sup>. The House Judiciary Committee considered and reported H.J.Res. 1 (112<sup>th</sup>) on June 23, 2011. All 47 Senate Republicans have said they favor a balanced budget amendment.<sup>22</sup> Further, a Balanced Budget Amendment Caucus was founded last year by a bipartisan group of Members of Congress with a membership of over 60 Members.

On the other hand, there has also been recent objection to the idea of a balanced budget amendment. When asked in a press briefing about President Obama's support for a balanced budget amendment, Press Secretary Jay Carney stated,

What we don't think is necessary is to amend the Constitution or to pass a across-the-board spending reduction measure that will, for example, in both cases, seriously under-fund Medicare and Social Security, and does the exact opposite in many ways of what the President has said is necessary, which is take a balanced approach to our long-term deficit and debt problems.<sup>23</sup>

Prominent former lawmakers from both political parties who were present during the last significant push for a balanced budget amendment, have recently voiced objection to the idea of a balanced budget amendment, particularly if its passage is coupled with legislation to increase the federal debt limit as a way to make the debt limit increase more tolerable. Former GOP appropriator and Senate Budget Chairman, Judd Gregg stated,

Conservatives should not tolerate those who would condition their willingness to make the tough, important votes that will address our fiscal chaos on unrealistic and impractical ideas that will have no impact on the problem. They will not come to pass in time to stop the government from spending us into oblivion. It is not uncommon for representatives and senators to propose amendments to controversial legislation that have no viability. This tactic gives them the excuse to avoid the difficult votes that might actually have an impact on a critical issue. This approach is the political equivalent of "hiding in the corners." The debt ceiling is an opportunity for real action. It can be used to force immediate action to adjust the nation's present course, which is headed towards fiscal disaster.<sup>24</sup>

Former Democratic Senate Majority Leader Tom Daschle stated,

I was once a supporter of a constitutional balanced budget amendment that was proposed by my friend and former colleague Sen. Paul Simon in the early 1990s. We both believed that the gravity of a constitutional requirement coupled with lawmakers' sworn fidelity to the Constitution would be powerful enough to successfully overcome this political inertia. It won't. The answer will not come with just the constitutional requirement. It comes from members of Congress who are willing to work together to find real solutions, make difficult choices and achieve real results. It has been done before and can be done again. It was not easy to reduce spending or to raise taxes, but we did it. We made the unpopular choices in 1990, 1993 and 1997. We did not try to dodge the bullet. We bit the bullet, multiple times. We made steady progress reducing the deficit beginning in 1990 and ultimately turned it into

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<sup>22</sup> Senator Mitch McConnell stated, "Our view is a good first step is a balanced budget amendment to the Constitution. All 47 Republicans are in favor of that," quoted in "GOP Conference on Balanced Budget," *CQ Transcripts Wire*, June 29, 2011, <http://transcriptswire.cq.com/do/transcriptView?id=15591524>.

<sup>23</sup> The White House, "Press Briefing by Press Secretary Jay Carney," press release, April 26, 2011, <http://www.whitehouse.gov/the-press-office/2011/04/26/press-briefing-press-secretary-jay-carney-4262011>.

<sup>24</sup> Judd Gregg, "Don't use amendment to dodge debt-ceiling action," *The Hill*, June 13, 2011.

a budget surplus from 1998 through 2001. We did it without undermining the sanctity of our Constitution or degrading it to push an ideological agenda.<sup>25</sup>

A balanced budget has become a central objective of many recent efforts to reform the way the federal government operates, and is mentioned as a possible benefit in others. Achieving this goal is far from a simple matter however. Despite significant support for the concept of a balanced budget amendment, the failure to achieve a two-thirds vote of approval in both houses of Congress has been a reflection of the complexity of the issue, as well as unsettled questions concerning potential difficulties involved in implementing it. Historically, public opinion studies have routinely shown broad support for a balanced budget.<sup>26</sup> These same polls have also indicated that a majority of those interviewed generally favors spending increases in most policy areas and reductions in taxes. These incompatible public attitudes convey to the President and Congress contradictory policy mandates.<sup>27</sup> Such inconsistencies augment the quandary reflected by more than 50 years of congressional consideration of a balanced budget amendment.

There have often been two almost separate debates occurring simultaneously on the subject of a balanced budget requirement: whether there should be a balanced budget and whether there should be a constitutional amendment. The pros and cons of a balanced budget may be related to the pros and cons of a constitutional requirement, but they are not identical.

## II. The Constitutional Amendment Approach

Probably the most popular method advocated for ensuring that the federal budget is balanced has been a constitutional amendment. Although it would require a two-thirds vote of approval in both houses of Congress as well as ratification by three-fourths of the states before it could become effective, most of the debate has focused on the constitutional amendment approach.

### Arguments of Proponents

Arguments for and against a balanced budget amendment include economic, symbolic, and political appeals. Those advanced most prominently by proponents have focused on three things:

- the morality of balanced budgets, and the impact of current deficits on future generations of taxpayers;
- the economic benefits of reducing the deficit, particularly in the form of lower interest rates, enhanced savings rates and overall economic growth; and

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<sup>25</sup> Tom Daschle, "The Trouble With the Balanced Budget Amendment," *The Wall Street Journal*, June 4, 2011.

<sup>26</sup> For example, in its 1982 study on balancing the federal budget, CBO reported that for half a century polling organizations have found that a large majority of Americans consistently had supported the idea of a balanced federal budget. See U.S. Congressional Budget Office, *Balancing the Federal Budget and Limiting Federal Spending: Constitutional and Statutory Approaches* (Washington: GPO, 1982), p. 28. (Hereinafter cited as CBO, *Balancing the Federal Budget*.) Other studies show similar results. See Andre Modigliani and F. Modigliani, "The Growth of the Federal Deficit and the Role of Public Attitudes," *Public Opinion Quarterly*, vol. 51, fall 1987.

<sup>27</sup> For a discussion of this phenomenon, see Andre Modigliani and F. Modigliani, "The Growth of the Federal Deficit and the Role of Public Attitudes."

- the expectation of improved public attitudes towards political institutions and politicians if balanced budgets are achieved.

Proponents of a constitutional amendment also cite the failure of past statutory attempts to compel a balanced budget. In their view, a constitutional amendment would be more binding by its nature and thus act as a surer means of achieving the desired result. A constitutional amendment, unlike a statute or rule, could only be superseded by another constitutional amendment. Without this discipline, proponents believe, the goal of a balanced budget would not be attained because of the conflicting pressure to spend.

Most proposed amendments have assumed that enforcement mechanisms could be separately enacted as statutes, but that a constitutional provision would be primarily self-enforcing. For example, in a 1985 report accompanying a proposed amendment, the Senate Judiciary Committee stated that

The Committee expects the Congress and the President to carry out their responsibilities under the proposed amendment through both (a) the authority presently available to Congress and the President to affect and influence the fiscal process; and (b) any new authority created by Congress under its Article I enforcement authority, and otherwise consistent with the Constitution by which the Congress and the President can affect and influence the fiscal process.<sup>28</sup>

In 1993, the Senate Judiciary Committee stated that

Flagrant disregard of the proposed amendment's clear and simple provisions would constitute nothing less than a betrayal of the public trust. In their campaigns for reelection, elected officials who flout their responsibilities under this amendment will find that the political process will provide the ultimate enforcement mechanism.<sup>29</sup>

The question of judicial involvement has been a persistent concern of opponents, but advocates of a balanced budget amendment reject the argument that a constitutional amendment would provoke rampant judicial interference with federal budgeting. They suggest that most parties would lack the standing to bring suit, and that most issues arising under an amendment would not be justiciable because they would not present a case or controversy as mandated under Article III, and thus would likely be limited.<sup>30</sup> For example, it would appear that standing is lacking when a third-party litigant attempts to sue to contest governmental action that he claims injures him as a taxpayer. In *Frothingham v. Mellon* the Court denied standing to a taxpayer suing to restrain disbursements of federal money to those states that chose to participate in a program to reduce maternal and infant mortality; her claim was that Congress lacked power to appropriate funds for those purposes and that the appropriations would increase her taxes in future years in an unconstitutional manner. The Court, noting that a federal taxpayer's "interest in the moneys of the

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<sup>28</sup> Senate Judiciary Committee, *Report on S.J.Res. 225*, p. 57.

<sup>29</sup> U.S. Congress. Senate Committee on the Judiciary. *Balanced Budget Constitutional Amendment. Report to Accompany S.J.Res. 41*, S.Rept. 103-163, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1993), p. 6.

<sup>30</sup> For example, the Supreme Court has ruled that any alleged personal stake or injury must be direct and specific, not general. "A plaintiff must allege some particularized injury that sets him apart from the man on the street." *United States v. Richardson* 369 U.S. 186, 204 (1962). See also, *Valley Forge Christian College v. Americans United*, 454 U.S. 464, 483 (1982); *Allen v. Wright*, 468 U.S. 737, 754 (1984); *Whitmore v. Arkansas*, 495 U.S. 149 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-77 (1992); *Lance v. Coffman*, 549 U.S. 437, 441 (2007) (per curiam). Cf. *Ex parte Levitt*, 302 U.S. 633 (1937); *Laird v. Tatum*, 408 U.S. 1 (1972).

Treasury ... is comparatively minute and indeterminate” and that “the effect upon future taxation, of any payment out of the funds ... [is] remote, fluctuating and uncertain,” held that plaintiffs had failed to allege the type of “direct injury” necessary to confer standing.<sup>31</sup> They also suggest that even if the courts did hear such cases, the political question doctrine enunciated in *Baker v. Carr*<sup>32</sup> would place most cases outside the realm of judicial resolution.

Some have also proposed that the judiciary could be limited by including specific language in an amendment that would explicitly define their role (see section on judicial review in chapter VI of this report).

## Arguments of Opponents

The constitutional amendment approach is not, however, without controversy. Practical difficulties in enforcement, and the potential for judicial involvement have been among the most salient arguments of opponents.

Concern over possible judicial involvement with the power of the purse is as old as the Constitution. Alexander Hamilton in *The Federalist* (number 78) reassured his readers that the judiciary was designed to have “no influence over either the sword or the purse.”<sup>33</sup> During previous congressional consideration of balanced budget amendments, questions of standing and judicial authority have been raised and debated, but no conclusive answers have been reached.

Despite any expectation of self-enforcement, opponents argue that such an amendment would inevitably lead to involvement by federal judges, and ultimately by the Supreme Court, in the budget making process. Indeed, this possibility was what caused Robert Bork, then a federal judge and formerly Solicitor General during the Nixon Administration, to write,

The results of such an amendment would be hundreds, if not thousands, of lawsuits around the country, many of them on inconsistent theories and providing inconsistent results. By the time the Supreme Court straightened the whole matter out the budget in question would be at least four years out of date and lawsuits involving the next three fiscal years would be climbing toward the Supreme Court.<sup>34</sup>

Additionally, Senator George Mitchell stated during the debate on S.J.Res. 58 in 1982:

Although its sponsors have expressed faith that the courts would not intervene in the budget-writing operations of the Congress, it is difficult to find any justification for that faith.... I believe that it is impossible for anyone to predict, with any degree of certainty, what the courts may do at some future time.<sup>35</sup>

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<sup>31</sup> *Frothingham v. Mellon*, 262 U.S. 447 (1923).

<sup>32</sup> 369 U.S. 186 (1962). As described in *United States v. Munoz-Flores*, 495 U.S. 385 (1990), “the political question doctrine is designed to restrain the judiciary from inappropriate interference in the business of the other branches of government.” For a discussion of this doctrine, see Senate Judiciary Committee, *Report on S.J.Res. 225*, 99<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 56.

<sup>33</sup> Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Mentor Books, 1961), p. 465.

<sup>34</sup> Cited in Senate Judiciary Committee, *Report on S.J.Res. 225*, 99<sup>th</sup> Congress, 1<sup>st</sup> sess., p. 98.

<sup>35</sup> See remarks of Senator Mitchell in the *Congressional Record*, vol. 128, August 4, 1982, p. 19217.

Opponents respond to assertions that judicial involvement would be minimal by suggesting that standing to bring suit may well exist in numerous circumstances.<sup>36</sup> The Supreme Court has previously expressed a standard for determining standing in terms of whether the litigant has alleged injury-in-fact, that is “distinct and palpable” and not abstract, conjectural, or hypothetical, or personal injury that is “fairly traceable to the ... allegedly unlawful conduct ... likely to be redressed by the requested relief.”<sup>37</sup> Even an inability to show standing, however, would not necessarily limit the number of suits. Numerous suits could be brought (to gain publicity, for instance) without regard to their merit.

The question of what would be precluded from judicial review is not something that can be predicted with certainty. For example, the Origination Clause of the Constitution, which mandates that all bills for raising revenue shall originate in the House of Representatives, has traditionally been regarded as a matter entirely internal to Congress, and left for the House to decide as a matter of its prerogatives. However, in *United States v. Munoz-Flores*,<sup>38</sup> the Supreme Court rejected a claim that a case based on the Origination Clause was nonjusticiable. This, and other recent cases, would seem to narrow the bounds of what is nonjusticiable.

The experience of state governments indicates that concern over judicial involvement in budgeting is realistic. In some states the judiciary has become involved with the operation of various aspects of budgeting to impose budget balancing remedies (e.g., requiring tax increases, limiting expenditures generally or preventing implementation of specific spending laws). The possibility that federal courts could invoke such remedies prompts concern about the potential such actions would have for causing a significant shift in the balance of power among the branches of the federal government.<sup>39</sup>

Opponents also counter the arguments of the amendment’s advocates that such a requirement would result in benefit to the economy generally. Although most opponents do not argue that a smaller deficit would be inherently harmful to the economy, they do argue that mandating a balanced budget can produce harmful results. Specifically, they suggest that a balanced budget amendment would require Congress to counteract the budget’s automatic countercyclical stabilizers in the event of a recession. That is, such a requirement would force the government to raise taxes or cut spending (or both) at a time when it would be most likely to have a negative impact on the economy.

## **Concerns an Amendment Would Need To Address**

A number of difficult questions would be posed if a balanced budget amendment were adopted. These difficulties do not necessarily establish any inherent barrier to a constitutional amendment,

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<sup>36</sup> For a broader discussion of questions of justiciability, see Gay Aynesworth Crosthwait, “Article III Problems in Enforcing the Balanced Budget Amendment.” *Columbia Law Review*, vol. 83, no. 5. June, 1983. p. 1065.

<sup>37</sup> *Allen v. Wright*, 468 U.S. 737 (1984).

<sup>38</sup> 495 U.S. 385 (1990).

<sup>39</sup> For a detailed discussion of State experience with balanced budget requirements, see Henning Bohn and Robert P. Inman, “Balanced Budget Rules and Public Deficits: Evidence From the U.S. States,” *National Bureau of Economic Research Working Papers* no. 5533 (Cambridge, MA: National Bureau of Economic Research, 1996); Richard Briffault. *Balancing Acts: The Reality Behind State Balanced Budget Requirements* (Washington: Twentieth Century Fund Press, 1997); and Stewart E. Sterk and Elizabeth Goldman, “Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations,” *Wisconsin Law Review*, vol. 1991, no. 6. p. 1301.

but they do raise concerns about how an amendment would operate in practice. One of the chief concerns, and one that would affect a statutory approach as well, is the question of predictability. According to former Senator Howard Metzenbaum,

there is a high degree of inherent uncertainty in spending and revenue projections. It is impossible to guarantee congressional budget decisions at the beginning of a fiscal year will lead to a balanced budget at the end of the year.<sup>40</sup>

Although some proposed amendments do not explicitly require a fiscal year to end in balance, most would measure compliance against a standard of actual outlays or receipts. Because of the sensitivity of both tax receipts and many expenditures to economic conditions, achievement of a balanced budget would be dependent upon the accuracy of predictions for performance of the economy in a given year, and not solely on congressional good faith efforts to enact budgetary legislation that would result in projected compliance.

It could also be difficult to prevent policy choices at the federal level that could have the effect of circumventing or systematically evading a balanced budget requirement. The Congressional Budget Office has suggested that this would be a real possibility, or even a probability, if the advocates of the need for a constitutional amendment are correct about a bias toward increasing federal spending.<sup>41</sup> Several types of actions might in effect avoid the restraints imposed by a balanced budget amendment:

- *increased use of regulatory, rather than budgetary, action.* In applicable areas this would impose costs on state or local governments or the private sector.
- *increased use of loan guarantees.* As contingent liabilities they would not necessarily be included in the budget. Current budget rules require only the projected subsidy cost of such guarantees to be recorded as a budget item.
- *increased scope for activities by Government-Sponsored Enterprises (GSEs) or other non-governmental agents.* Because a balanced budget amendment would apply only to the government, debt issued or activities undertaken by such entities would be exempt from its requirements.

An additional concern raised by people in several state governments is that a federal balanced budget requirement would cause additional burdens to fall on state governments. Congress attempted to answer this in 1995 through the Unfunded Mandates Reform Act.<sup>42</sup> This act generally limits the ability of the federal government to consider legislation that would impose mandates on state or local officials without providing the funds to implement them. Congress may, however, waive this prohibition. There is also some concern that if a federal balanced budget requirement caused significant cuts in federal programs, that at least some states would find it necessary to make compensatory increases in their own spending, regardless of whether such expenditures were mandated by the federal government.

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<sup>40</sup> Senate Judiciary Committee, *Report on S.J.Res. 225*, 99<sup>th</sup> Cong., 1<sup>st</sup> sess. p. 96.

<sup>41</sup> CBO, *Balancing the Federal Budget*, p. 23, 103.

<sup>42</sup> P.L. 104-4, 109 Stat. 50, incorporated into the Congressional Budget Act at sections 421-428.



These problems are not beyond remedy or substantial mitigation, but experience in the states, as well as in the federal government, suggest that they are fundamental and bear careful attention.

### III. Congressional Consideration of Proposed Constitutional Amendments

For more than six decades, Congress has shown an interest in a balanced budget requirement. Because balanced budget proposals are often in the form of proposed constitutional amendments, which are under the jurisdiction of the House and Senate Judiciary Committees, these committees have been in the forefront of the debate. As indicated in **Table 2** and **Table 3** below, the Senate Committee on the Judiciary has conducted hearings on balanced budget amendments on at least 23 days extending back to the 84<sup>th</sup> Congress. It also reported nine joint resolutions between the 97<sup>th</sup> and 105<sup>th</sup> Congresses.<sup>43</sup> The House has held hearings less often, but its Members have considered balanced budget constitutional amendments on seven separate occasions: in the 97<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 103<sup>rd</sup>, 104<sup>th</sup>, 105<sup>th</sup> and 112<sup>th</sup> Congresses. This section summarizes congressional hearings and floor action in consideration of balanced budget amendments.<sup>44</sup>

**Table 2. Senate Judiciary Committee Hearings On Balanced Budget Amendments**

Congress	Measure(s)	Date	Publication Number
84 <sup>th</sup>	S.J.Res. 126, 133	June 14, 1956	printed (no doc. number)
94 <sup>th</sup>	S.J.Res. 55, 93	September 23, Oct. 7, 1975	printed (no doc. number)
96 <sup>th</sup>	S.J.Res. 2, 4, 5, 6, 7, 9, 10, 11, 13, 16, 18, 36, 38, 45, 46, 56, 76, 79, 86, 93	March 12, May 23, July 25, Oct. 4, 11, November 1, 1979	96-41
	S.J.Res. 126	January 14, <sup>a</sup> Feb. 22, <sup>b</sup> 1980	96-67
97 <sup>th</sup>	S.J.Res. 9, 43, 58	March 11, April 9, May 20, 1981	J-97-45
	S.J.Res. 58	May 29, <sup>c</sup> 1981	J-97-12

<sup>43</sup> The only previous proposed balanced budget amendment to be reported from a Committee was in 1947. A proposal introduced by Senators Millard Tydings (D-MD) and Styles Bridges (R-NH) was referred to the Senate Appropriations Committee by special arrangement. The Committee reported the proposal back to the Senate, but it was subsequently referred to the Senate Judiciary Committee and no further action was taken. (S.J.Res. 61, S.Rept. 154, 80<sup>th</sup> Congress; see *Congressional Record* v. 93, May 6, 1947. p. 4555-4557.)

<sup>44</sup> Detailed compilations of congressional committee hearings and floor actions for the 100<sup>th</sup>-103d Congresses have been prepared by the Senate Budget Committee. U.S. Congress. Senate. Committee on the Budget. *Proposed Constitutional Amendments to Balance the Federal Budget: Floor Action and Committee Hearings for the 100<sup>th</sup> Congress*. Committee Print S.Prt. 103-95, 103<sup>rd</sup> Cong., 2<sup>nd</sup> Sess. (Washington: GPO, 1994); U.S. Congress. Senate. Committee on the Budget. *Proposed Constitutional Amendments to Balance the Federal Budget: Floor Action and Committee Hearings for the 101<sup>st</sup> Congress*. Committee Print S.Prt. 103-94, 103<sup>rd</sup> Cong., 2<sup>nd</sup> Sess. (Washington:GPO, 1994); U.S. Congress. Senate. Committee on the Budget. *Proposed Constitutional Amendments to Balance the Federal Budget: Floor Action and Committee Hearings for the 102d Congress*. Committee Print S.Prt. 103-92, 103<sup>rd</sup> Cong., 2<sup>nd</sup> Sess. (Washington:GPO, 1994); U.S. Congress. Senate. Committee on the Budget. *Proposed Constitutional Amendments to Balance the Federal Budget: Floor Action and Committee Hearings for the 103d Congress*. Committee Print S.Prt. 103-112, 103<sup>rd</sup> Cong., 2<sup>nd</sup> Sess. (Washington:GPO, 1994).

Congress	Measure(s)	Date	Publication Number
98 <sup>th</sup>	S.J.Res. 5	December 12, 1983, <sup>d</sup> March 6, 1984	J-98-88 (S.Hrg. 98-1084)
99 <sup>th</sup>	S.J.Res. 13	May 7, 1985	J-99-22 (S.Hrg. 99-241)
100 <sup>th</sup>	S.J.Res. 3, 4, 8, 11, 25, 50, 112, 161	March 23, 1988	J-100-59 (S.Hrg. 100-1076)
101 <sup>st</sup>	S.J.Res. 2, 9, 12, 183	July 27, 1989	J-101-36 (S.Hrg. 101-1009)
103 <sup>rd</sup>	S.J.Res. 41	March 16, 1993	J-103-4 (S.Hrg. 103-384)
	S.J.Res. 41	February 15, 16, 17, 1994	J-103-41 (S.Hrg. 103-996)
104 <sup>th</sup>	S.J.Res. 1	January 5, 1995 <sup>e</sup>	J-104-1 (S.Hrg. 104-506)
105 <sup>th</sup>	S.J.Res. 1	January 17, 22, 1997 <sup>e</sup>	J-105-1 (S.Hrg. 105-115)

**Source:** U.S. Senate. Committee on the Judiciary. Legislative and Executive Calendar, Final Edition, 80<sup>th</sup>-104<sup>th</sup> Congress. For the 104<sup>th</sup> Congress: U.S. Senate. *Balanced Budget Constitutional Amendment. Report to Accompany S.J.Res. 1*. S.Rpt. 104-5, 104<sup>th</sup> Congress, 1<sup>st</sup> Sess. (Washington: GPO, 1995); for the 105<sup>th</sup> Congress: *Congressional Record* (daily edition). All hearings listed conducted by the Subcommittee on the Constitution or its predecessor Subcommittee on Constitutional Amendments unless otherwise noted.

- a. Field hearings conducted by the full committee in Mobile, AL.
- b. Field hearings conducted by the full committee in Salt Lake City, UT.
- c. Field hearings conducted in Phoenix, AZ.
- d. Field hearings conducted in Los Angeles, CA.
- e. Hearings conducted by the full committee.

## Hearings on a Balanced Budget Amendment

In addition to the hearings held by the Senate Judiciary Committee listed in **Table 2**, there have been hearings conducted by several other committees, including

- **House Judiciary Committee**—October 15, November 17, and 18, 1987 (serial no. 85), July 10 and 11, 1990 (serial no. 143), January 9 and 10, 1995 (serial no. 5), and February 3, 1997 (serial no. 1); March 6, 2003 (serial no.1); May 13, 2011 (not yet printed);
- **House Budget Committee**—April 28, May 6, 11, 12, 13, and 19, and June 3, 1992 (serial nos. 102-42 and 102-43), and February 5, 1997 (not printed);
- **Senate Budget Committee**—June 4 and 10, 1992 (S.Hrg. 102-693);
- **Senate Appropriations Committee**—February 15, 16, 17, and 18, 1994 (S.Hrg. 103-423);

- **Joint Economic Committee**—September 11, 1984 (S.Hrg. 98-1260), January 20 and 23, and February 16, 1995 (S.Hrg. 104-74, parts 1, 2, and 3 respectively).

Besides the hearings conducted by these committees on balanced budget proposals, a number of other hearings on budget process reform generally have touched upon balanced budget initiatives.

## Floor Consideration of Amendment Proposals

Between 1981 and 1997, the Senate Judiciary Committee has approved nine balanced budget proposals and reported them to the full Senate (see **Table 3**). Five of these measures were considered on the Senate floor, one in each of the 97<sup>th</sup>, 99<sup>th</sup>, 103<sup>rd</sup>, 104<sup>th</sup>, and 105<sup>th</sup> Congresses. Additionally, in the House proposed constitutional amendments to require a balanced federal budget have advanced to floor consideration without committee support on four occasions, in the 97<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, and 103<sup>rd</sup> Congresses. The House Judiciary Committee also reported a proposed amendment that was considered on the floor in the 104<sup>th</sup> Congress. The first floor consideration was in 1982 when both the Senate and House debated such measures. The House Judiciary recently reported a proposed amendment on January 23, 2011 which has not yet been considered on the House floor.

**Table 3. Joint Resolutions Proposing Balanced Budget Amendments Reported by the Senate Judiciary Committee**

Congress	Measure(s)	Date	Report No.
97 <sup>th</sup>	S.J.Res. 58	July 10, 1981	S.Rept. 97-151
98 <sup>th</sup>	S.J.Res. 5	September 20, 1984	S.Rept. 98-628
99 <sup>th</sup>	S.J.Res. 13	October 23, 1985	S.Rept. 99-162
	S.J.Res. 225	October 23, 1985	S.Rept. 99-163
101 <sup>st</sup>	S.J.Res. 183	July 25, 1990	S.Rept. 101-391
102 <sup>nd</sup>	S.J.Res. 18	July 9, 1991	S.Rept. 102-103
103 <sup>rd</sup>	S.J.Res. 41	October 21, 1993	S.Rept. 103-163
104 <sup>th</sup>	S.J.Res. 1	January 24, 1995	S.Rept. 104-5
105 <sup>th</sup>	S.J.Res. 1	February 3, 1997	S.Rept. 105-3

**Source:** For 97<sup>th</sup>-103<sup>rd</sup> Congresses: U.S. Senate. Committee on the Judiciary. Legislative and Executive Calendar, Final Edition, 97<sup>th</sup>-103<sup>rd</sup> Congress. For 104<sup>th</sup> Congress: U.S. Senate. *Balanced Budget Constitutional Amendment. Report to Accompany S.J.Res. 1. S.Rpt. 104-5, 104<sup>th</sup> Congress, 1<sup>st</sup> Sess.* (Washington: GPO, 1995). For 105<sup>th</sup> Congress: U.S. Senate. *Balanced Budget Constitutional Amendment. Report to Accompany S.J.Res. 1. S.Rept. 105-3, 105<sup>th</sup> Congress, 1<sup>st</sup> Sess.* (Washington: GPO, 1997).

### 97<sup>th</sup> Congress

In the Senate, consideration of S.J.Res. 58 during the 97<sup>th</sup> Congress produced the first approval of such a measure when the Senate adopted the resolution 69-31 on August 4, 1982, following 11 days of floor deliberation.<sup>45</sup> Later that year, following a successful discharge petition effort led by

<sup>45</sup> Senate consideration occurred on July 12, 13, 19, 26, 27, 28, 29, and 30 and August 2, 3, and 4, 1982. For the final vote see vote no. 288 in the *Congressional Record*, vol. 128, August 4, 1982, p. 19229.

Representatives Barber Conable and Ed Jenkins, the House considered a similar proposal. H.J.Res. 350 was considered under the terms of a king-of-the-hill rule<sup>46</sup> (H.Res. 604) on Oct. 1, 1982. A substitute offered by Representative Bill Alexander that would have required the President to submit a balanced budget, and for Congress to adopt a statement of receipts and outlays in which “total outlays are no greater than total receipts”, but not require the year to end with the budget actually balanced was defeated 77-346<sup>47</sup> prior to the vote on final passage. Although the measure was approved by a majority, the vote provided less than the necessary two-thirds, and the effort for a balanced budget amendment failed, 236-187.<sup>48</sup>

### **99<sup>th</sup> Congress**

During the 99<sup>th</sup> Congress, the Senate Judiciary Committee reported two proposed balanced budget amendments for consideration on the floor. One of these measures, S.J.Res. 13, also included tax limitation provisions. It was placed on the Senate Legislative Calendar under General Orders, but it did not receive further consideration. The second proposal, S.J.Res. 225, was debated extensively over eight days. On March 25, 1986, the Senate rejected S.J.Res. 225, failing to achieve the necessary two-thirds majority by a single vote, 66-34.<sup>49</sup>

### **101<sup>st</sup> Congress**

In 1990, again following a successful discharge effort, this time led by Representative Charles Stenholm, the House considered a balanced budget amendment. Like its predecessor, H.J.Res. 268 was considered under the terms of a king-of-the-hill rule (H.Res. 434) on July 17, 1990. A substitute with a tax growth limitation provision offered by Representative Joe Barton was rejected 184-244,<sup>50</sup> but a modified version of the measure offered by Representative Charles Stenholm was adopted as a substitute, 276-152,<sup>51</sup> before the vote on final passage. However, the measure failed to achieve the necessary two-thirds majority, 279-150,<sup>52</sup> and was defeated.

### **102<sup>nd</sup> Congress**

Two House proposals in the 102<sup>nd</sup> Congress calling for a balanced budget constitutional amendment gathered over 100 cosponsors (H.J.Res. 290 introduced by Representative Charles Stenholm, and H.J.Res. 248 introduced by Representative Joe Barton). In response to the increased possibility that the House would consider a balanced budget measure, the House Budget Committee began a series of six days of hearings on the subject of a balanced budget on April 29, 1992. The hearings continued on May 6, 11, 12, 13, and 19. On May 20, 1992 a petition was filed to discharge the Rules Committee from further consideration of H.Res. 450, a special

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<sup>46</sup> A king-of-the-hill rule is a variety of special rule which provides for the consideration of a series of alternatives regardless of the vote on any preceding alternative. Each alternative is considered in a specified order and the last alternative agreed to is the one that is deemed finally agreed to.

<sup>47</sup> See vote no. 386 in the *Congressional Record*, daily edition, vol. 128 (October 1, 1982), p. H8336.

<sup>48</sup> See vote no. 387, *ibid.*, p. H8337.

<sup>49</sup> Senate consideration occurred on March 6, 7, 10, 11, 12, 13, 18, and 25, 1986. For the final vote see vote no. 45 in the *Congressional Record*, daily edition, vol. 132 (March 25, 1986), p. S3345.

<sup>50</sup> See vote no. 236 in the *Congressional Record*, daily edition, vol. 136 (July 17, 1990), p. H4859.

<sup>51</sup> See vote no. 237, *ibid.*, p. H4869.

<sup>52</sup> See vote no. 238, *ibid.*, p. H4870.

rule to extract H.J.Res. 290 from further consideration by the House Judiciary Committee and provide for its consideration by the House. The petition received the requisite 218 signatures the same day and was entered on the Discharge Calendar. A unanimous consent agreement was reached on June 4, 1992, to allow the resolution to be called up for consideration on June 10, under the same terms as if discharged, but modifying its provisions to increase general debate time on the proposed amendment to nine hours.

After agreeing to H.Res. 450, debate on the proposed amendment was begun on June 10. On June 11, the House considered a series of substitutes under a king-of-the-hill procedure. A substitute version offered by Representative Jon Kyl included provisions to limit expenditures to 19% of GNP and to grant item veto authority to the President, but was defeated, 170-258.<sup>53</sup> A second substitute, offered by Representative Joe Barton, consisted of the text of H.J.Res. 248 and included a provision to limit the rate of growth of federal taxes to the rate of growth of national income. It was defeated, 200-227.<sup>54</sup> The third substitute, offered by Representative Richard Gephardt, consisted of the text of H.J.Res. 496 and included a provision to exempt the Social Security trust fund from the provisions of the amendment. It was defeated, 103-327.<sup>55</sup> The final substitute was offered by Representative Charles Stenholm as a minor modification of the original text of H.J.Res. 290. It was agreed to 279-153;<sup>56</sup> however, the measure then failed to achieve the necessary two-thirds majority for final passage, 280-153,<sup>57</sup> and was defeated.

Senate consideration in the 102<sup>nd</sup> Congress was complex, but likewise did not result in passage of a balanced budget constitutional amendment. The Judiciary Committee reported a measure (S.J.Res. 18) on July 9, 1991, with an amendment (S.Rept. 102-103). This proposal gained heightened significance when the Senate adopted an amendment to the FY1993 Budget Resolution (H.Con.Res. 287) proposed by Senator Don Nickles on April 9, 1992. The Nickles amendment expressed the sense of the Senate that it should adopt a balanced budget amendment on or before June 5. The Senate agreed to an amendment to the Nickles amendment, offered by Senator Robert Byrd, which added that a balanced budget amendment should include a requirement that the President submit a balanced budget. On May 21, 1992, the House and Senate reached final agreement on H.Con.Res. 287. The resolution retained a modified version of the Nickles amendment in Section 14, expressing the sense of the Senate that it should vote by July 2 on a balanced budget amendment that included a requirement that the President submit a balanced budget, but that any amendment should be drafted or amended so as not to exacerbate any economic recession. In addition, the Senate Budget Committee held hearings on the subject of a balanced budget amendment on June 4 and 10, 1992.

After the House rejected H.J.Res. 290, Senator Paul Simon, the chief sponsor of S.J.Res. 18, announced that he would defer attempting to bring the proposed amendment to the floor of the Senate until the 103<sup>rd</sup> Congress. However, a group of Senators, led by Senators Phil Gramm, Don Nickles, and John Seymour, endeavored to keep the issue on the agenda in the Senate. On June 24, 1992, Senator Seymour (for Senator Nickles) offered an amendment to an unrelated bill (S. 2733, concerning regulation of Government Sponsored Enterprises) that would strike that measure's language and substitute the text of a balanced budget constitutional amendment. An

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<sup>53</sup> See vote no. 183 in the *Congressional Record*, daily edition, vol. 138 (June 11, 1992), p. H4605.

<sup>54</sup> See vote no. 184, *ibid.*, p. H4621.

<sup>55</sup> See vote no. 185, *ibid.*, p. H4637.

<sup>56</sup> See vote no. 186, *ibid.*, p. H4660.

<sup>57</sup> See vote no. 187, *ibid.*, p. H4670.

amendment offered by Senator Robert Kasten that would have added a tax limitation provision was rejected, 33-63, on June 30.<sup>58</sup> Senator Robert Byrd offered an amendment to replace the constitutional requirement in the Seymour amendment with a statutory requirement that the President submit a balanced budget proposal by September 2. This amendment, as amended by a second degree amendment also offered by Senator Byrd, was rejected on June 30, 39-57.<sup>59</sup> After declining to amend the language of the proposed constitutional amendment, however, supporters failed by the same 56-39 margin on both June 30 and July 1 to gather the 60 votes necessary to invoke cloture in the face of a threatened filibuster, and the amendment was withdrawn on July 1.

### **103<sup>rd</sup> Congress**

In the 103<sup>rd</sup> Congress, a balanced budget constitutional amendment was once again a significant issue on the agenda of both the House and Senate. The Senate Judiciary Committee reported S.J.Res. 41 on October 21, 1993, and the Senate began consideration of the measure on February 22, 1994, under the terms of a unanimous consent agreement. Consideration continued on February 23, and on February 24 a further unanimous consent agreement provided for Senator Simon to modify S.J.Res. 41 by incorporating language proposed by Senator John Danforth limiting the authority of the judiciary to enforce a balanced budget amendment, as well as allowing Senator Harry Reid to offer a substitute amendment. Senator Reid's amendment would have exempted Social Security and capital expenditures from the balanced budget requirement, and provided for its suspension in times of economic recession. Consideration continued on February 25, and 28, and March 1. The Senate voted first on the Reid substitute, which failed, 22-78,<sup>60</sup> and then on S.J.Res. 41, as modified, which failed to achieve the necessary two-thirds majority, 63-37.<sup>61</sup>

Meanwhile, in the House proponents of a balanced budget amendment let it be known that they would use the discharge procedure, if necessary, as they had in the past, to bring the issue to the floor. On February 24, 1994, a petition was filed to discharge the Rules Committee from further consideration of H.Res. 331, a resolution to extract H.J.Res. 103 from the Judiciary Committee and provide for its consideration. It received the requisite 218 signatures that same day, and was placed on the Discharge Calendar. Despite the failure of a balanced budget amendment in the Senate, on March 11 the House agreed to a unanimous consent request to allow H.Res. 331 to be called up on March 16 under the same terms and conditions as would govern its consideration under the discharge rule, but modifying its provisions to decrease general debate time on the proposed amendment to six hours.

On March 16, 1994, the House approved H.Res. 331 by a vote of 387-22, making it in order to consider H.J.Res. 103 as well as a series of substitute proposals under a king-of-the-hill rule. A substitute proposed by Representative Kyl, which would have limited federal outlays to 19% of GNP and provided for Presidential item veto authority, was subsequently rejected in Committee of the Whole, 179-242.<sup>62</sup> On March 17, the House also rejected in Committee of the Whole a proposed substitute offered by Representative Robert Wise that would have provided a separate

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<sup>58</sup> See vote no. 133 in the *Congressional Record* (daily edition), vol. 138, June 30, 1992, p. S9219.

<sup>59</sup> See vote no. 134, *ibid.*, p. S9243.

<sup>60</sup> See vote no. 47, in the *Congressional Record*, daily edition, vol. 140 (March 1, 1994), p. S2089.

<sup>61</sup> See vote no. 48, *ibid.*, p. S2158.

<sup>62</sup> See vote no. 60 in the *Congressional Record*, daily edition, v.ol 140 (March 16, 1994), p. H1413.

capital budget and exempted Social Security, by a vote of 111-318.<sup>63</sup> Earlier that same day, the Committee of the Whole rejected a substitute proposed by Representative Barton that would have limited the growth of federal revenues as well as required a balanced budget, by a vote of 213-215.<sup>64</sup> Because the votes of the Delegates and the Resident Commissioner had been decisive in the outcome, the vote was taken again in the House pursuant to Rule XXIII and the amendment was this time adopted, 211-204.<sup>65</sup> This substitute was later superseded, however, when the Committee of the Whole agreed by voice vote to a final substitute offered by Representative Stenholm that would have moved back the effective date of H.Res. 103 to 2001 or two years after ratification. As thus amended, H.J.Res. 103 was voted on in the House but failed to achieve the necessary two-thirds majority, 271-153.<sup>66</sup>

## 104<sup>th</sup> Congress

In the 104<sup>th</sup> Congress, the new Republican majority leadership in the House placed a balanced budget constitutional amendment on the agenda as part of its “Contract With America.” On January 4, 1995, Representative Joe Barton (and others) introduced H.J.Res. 1, a proposed balanced budget constitutional amendment with a tax limitation provision. Following two days of hearings, the House Judiciary Committee reported the measure with amendments on January 11 (H.Rept. 104-3). On January 24, the House Rules Committee reported H.Res. 44 (H.Rept. 104-4) providing consideration for H.J.Res. 1 as well as H.Con.Res. 17, outlining an understanding concerning the treatment of Social Security under any balanced budget constitutional amendment. After adopting H.Res. 44 on January 25, the House took up H.Con.Res. 17, a measure that its chief sponsor, Representative Michael Flanagan, described as requiring Congress to “leave the Federal Old Age and Survivors Insurance trust fund and the Federal Disability trust fund alone when it is forced to comply with the balanced budget amendment.” H.Con.Res. 17 was adopted by a vote of 412-18.<sup>67</sup>

In addition to H.J.Res. 1, H.Res. 44 made in order consideration of six substitutes for it. These amendments were selected from 44 amendments inserted in the *Congressional Record* between on January 13 and 20, pursuant to a notice issued by the House Rules Committee on January 11. Unlike previous years, these substitutes were not considered under a king-of-the-hill rule. Instead, H.Res. 44 provided that the House would consider and vote on each of the alternatives, and the one that received the most votes would be considered as the one that was finally adopted.<sup>68</sup>

After completing general debate on January 25, the House considered each of the six substitutes on the following day.

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<sup>63</sup> See vote no. 64 in the *Congressional Record* (daily edition), vol. 140 (March 17, 1994), p. H1473.

<sup>64</sup> See vote no. 62, *ibid.*, p. H1461.

<sup>65</sup> See vote no. 63, *ibid.*, p. H1462. In the 103<sup>rd</sup> Congress the House adopted a rule (House Rule XII) which allowed the four territorial Delegates and the Resident Commissioner from Puerto Rico to vote in Committee of the Whole. However, a clause was also added to House Rule XXIII which provided that in a circumstance where their votes affected the outcome the Committee of the Whole would then rise and a new vote be taken in the House where neither the Delegates nor Resident Commissioner could vote.

<sup>66</sup> See vote no. 65 in the *Congressional Record*, daily edition, vol. 140 (March 17, 1994), p. H1497.

<sup>67</sup> See remarks of Representative Michael Flanagan in the *Congressional Record* (daily edition), v. 141, Jan. 25, 1995, p. H619; H.Con.Res. 17 approved by vote no. 40, *ibid.*, p. H628.

<sup>68</sup> This type of special rule was subsequently dubbed “queen-of-the-hill” by the press.

- A substitute offered by Representative Barton, identical to the version approved by the Judiciary Committee, which required a three-fifths vote to increase tax revenues. This version was adopted, 253-171.<sup>69</sup>
- A substitute offered by Representative Major Owens that provided for the waiver of the Article when the national unemployment rate exceeds 4%, and deleted the requirement for a three-fifths vote to increase revenues. This version was rejected, 64-363.<sup>70</sup>
- A substitute offered by Representative Robert Wise that would have placed capital investments in physical infrastructure and Social Security transactions off budget, and required the operating budget to be balanced. In addition, this version did not include special vote requirements for approval of a deficit or increases in the debt limit or taxes. It was rejected 138-291.<sup>71</sup>
- An amendment offered by Representative John Conyers that would have placed Social Security transactions off budget and required congressional action on a budget plan detailing how a balanced budget would be achieved before the Article could take effect. It was rejected 112-317.<sup>72</sup>
- A substitute sponsored by Representative Richard Gephardt and offered by Representative David Bonior (D-MI) would have placed Social Security transactions off budget and required an absolute majority of the membership in each House of Congress for approval of a deficit. This version also deleted any special vote requirements for increases in the debt limit or taxes. It was rejected 135-296.<sup>73</sup>
- The final substitute, offered by Representative Dan Schaefer, was similar to the version reported by the House Judiciary Committee (and offered as an amendment by Representative Barton) except that it required a majority of the membership of each House to approve a measure to increase revenues rather than a super-majority. It was approved 293-139.<sup>74</sup>

Approval of the Schaefer substitute superseded the prior approval of the Barton substitute because it had more affirmative votes. As thus amended, H.J.Res. 1 was adopted by the House 300-132, becoming the first proposed balanced budget constitutional amendment to be approved in the House.<sup>75</sup>

According to news reports, following the successful passage of H.J.Res. 1 in the House, several Democratic Senators voiced concern about passage in the Senate without also producing a detailed plan for deficit reduction. A letter sent to Majority Leader Robert Dole to that effect was signed by 42 Democratic Senators.<sup>76</sup>

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<sup>69</sup> See vote no. 41 in the *Congressional Record*, daily edition, vol. 141 (January 26, 1995), p. H713.

<sup>70</sup> See vote no. 43, *ibid.*, p. H722.

<sup>71</sup> See vote no. 44, *ibid.*, p. H731.

<sup>72</sup> See vote no. 46, *ibid.*, p. H740.

<sup>73</sup> See vote no. 48, *ibid.*, p. H753.

<sup>74</sup> See vote no. 49, *ibid.*, p. H770.

<sup>75</sup> See vote no. 51, *ibid.*, p. H772.

<sup>76</sup> "Amendment Vote Could Signal New Alliance." *Washington Post*. Jan. 28, 1995. p. A4.



The Senate had already begun to address some of the issues raised during House consideration prior to formal consideration of a balanced budget amendment. In particular, the subject of the treatment of Social Security under a balanced budget constitutional amendment was debated during consideration of S. 1, the Unfunded Mandates Reform Act.<sup>77</sup>

The Senate version of the balanced budget amendment, S.J.Res. 1, was introduced by Majority Leader Dole and others on January 4 and referred to the Senate Judiciary Committee. The committee held one day of hearings on January 5 and then reported S.J.Res. 1 without amendment on January 23 (S.Rept. 104-5). On January 27, the Senate agreed by unanimous consent to begin consideration of H.J.Res. 1 the following Monday, January 30. The Senate considered the proposal for four days (January 30, 31, February 1, 2) before the first amendments were offered.

On Friday, February 3, the so-called “right-to-know” amendment was offered by Senator Daschle. It would have required that a blueprint be established showing how the deficit would be reduced and eliminated prior to the proposed constitutional amendment becoming effective. After debating the amendment on February 3, 6, and 7, the Senate voted on February 8 to table a motion by Senator Daschle to commit H.J.Res. 1 to the Judiciary Committee with instructions that the Daschle amendment (231) be incorporated into the resolution and reported back. The Daschle motion and amendment were effectively killed when the motion to table was agreed to by the Senate, 56-44.<sup>78</sup>

The second major issue to be addressed by the Senate was the budgetary status and treatment of Social Security under a balanced budget amendment. The issue was formally raised when Senator Reid offered an amendment on February 8 to exclude the receipts and outlays of Social Security from a balanced budget requirement. The Reid amendment (236) was debated on February 8, 9, 10, 13, and 14, before being tabled by the Senate, 57-41.<sup>79</sup> Previously, the Senate had agreed by voice vote to a motion by Majority Leader Dole to commit the measure to the Budget Committee with instructions that the Committee report back the resolution forthwith, and to report to the Senate as soon as possible a plan for achieving a balanced budget without affecting Social Security receipts or payments. A Dole amendment to that motion (238) that established its final language was agreed to, 87-10.<sup>80</sup>

After the Reid amendment was disposed of, the Senate considered and rejected several other amendments on February 14 and 15. On February 16, the Senate voted on a motion entered by Majority Leader Dole to invoke cloture and limit further consideration of the resolution. That motion failed to achieve the necessary three-fifths majority, 57-42.<sup>81</sup> Later that same day, however, the Senate did agree by unanimous consent to limit further consideration and provide for a final vote on the measure on February 28.<sup>82</sup> In addition, two cloture votes scheduled for February 22 were vitiated. Consideration of amendments and motions to refer with instructions continued on February 22, 23, 24, 27 and 28. On February 28 the Senate agreed to an amendment

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<sup>77</sup> See the debate on the Harkin amendment (90) in the *Congressional Record*, daily edition, vol. 141 (January 26, 1995), p. S1557, 1583-1599.

<sup>78</sup> See vote no. 62 in the *Congressional Record*, daily edition, vol. 141 (February 8, 1995), p. S2307.

<sup>79</sup> See vote no. 65 in the *Congressional Record*, daily edition, vol. 141 (February 14, 1995), p. S2592.

<sup>80</sup> See vote no. 63 in the *Congressional Record*, daily edition, vol. 141 (February 10, 1995), p. S2453.

<sup>81</sup> See vote no. 74 in the *Congressional Record*, daily edition, vol. 141 (February 16, 1995), p. S2778.

<sup>82</sup> The remaining amendments and motions to be in order were enumerated, *ibid.*, p. S2820.

offered by Senator Nunn. The Nunn amendment (300, as modified) added language limiting judicial authority to interpret or enforce the proposed constitutional amendment to situations specifically authorized by law. The provision was agreed to, 92-8.<sup>83</sup> After finishing consideration of all amendments and motions, the Senate recessed on February 28 and March 1 without taking a final vote on adopting the proposed constitutional amendment. On March 2 the Senate fell short of achieving the necessary two-thirds majority, 65-35.<sup>84</sup> Majority Leader Dole changed his vote to the prevailing side (against the amendment) for the final tally in order to take advantage of Senate Rule XIII and enter a motion to reconsider the vote at a later time.

On June 4, 1996, the Senate agreed by unanimous consent to the motion to reconsider its earlier vote. After debating the proposal on June 5 and 6, H.J.Res. 1 again failed to achieve the necessary two-thirds majority 64-35.<sup>85</sup>

### **105<sup>th</sup> Congress**

On January 17, 1997, the Senate Judiciary Committee held a hearing addressing the balanced budget constitutional amendment issue. Four days later, on January 21, Senator Orrin G. Hatch introduced S.J.Res. 1, a proposed amendment to the Constitution to require a balanced budget beginning with FY2002. A second hearing was held on January 22 and the measure was reported without amendment on January 30 (S.Rept. 105-3). Six amendments, including two substitutes, were offered during the Committee's deliberations, but all were rejected.

On February 4, a unanimous consent agreement was propounded to begin consideration of S.J.Res. 1 on the Senate floor beginning the following day. On February 5, the Senate began debate on the measure and began consideration of amendments on February 6. As in the 104<sup>th</sup> Congress, the issue of the budgetary treatment of Social Security proved to be pivotal, and no fewer than three of the amendments considered would have excluded it from the amendment's provisions. Other issues raised included allowing waivers of the amendment's provisions for national emergencies other than actual armed conflict (such as economic emergencies or natural disasters), and provision for excluding a capital budget from the amendment's requirements. In all, 15 amendments (plus one motion to refer with instructions) were considered during deliberation on the floor, but all were rejected, tabled, or withdrawn.

On February 27, a unanimous consent agreement was reached to provide for a final vote on March 4. On that day, the measure was defeated by a vote of 66-34, having failed to achieve the necessary two-thirds.<sup>86</sup>

A House companion measure, H.J.Res. 1, was considered by the House Judiciary Committee at a hearing on February 3. The committee began a markup of the measure on February 5 but recessed without reaching any conclusion. Also on February 5, the House Budget Committee held a hearing on the issue of a balanced budget amendment.

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<sup>83</sup> See vote no. 87 in the *Congressional Record*, daily edition, vol. 141 (February 28, 1995), p. S3276.

<sup>84</sup> See vote no. 98 in the *Congressional Record*, daily edition, vol. 141 (March 2, 1995), p. S3314.

<sup>85</sup> See vote no. 158 in the *Congressional Record*, daily edition, vol. 142 (June 6, 1996), p. S5903.

<sup>86</sup> Senate consideration occurred on February 5, 6, 7, 10, 11, 12, 13, 24, 25, 26, 27, and March 4. For the final vote see vote no. 24 in the *Congressional Record*, daily edition, vol. 143 (March 4, 1997), p. S1920.

## 108<sup>th</sup> Congress

In February of 2003, H.J.Res. 22 was introduced by Representative Earnest J. Istook with 133 cosponsors. It was referred to the House Committee on the Judiciary and then to the Subcommittee on the Constitution. On March 6, 2003, the subcommittee held a hearing and on May 1, 2003, a subcommittee mark-up was held and the measure was subsequently forwarded to the full committee by a vote of 5-3. On September 22, 2004, the full committee considered the measure, but it was not reported to the House.

## 112<sup>th</sup> Congress

In January of 2011, Representative Bob Goodlatte introduced H.J.Res. 1, which was referred to the House Committee on the Judiciary and then to the Subcommittee on the Constitution. On May 13, the subcommittee held one day of hearings on proposed amendments to the Constitution to control the federal budget deficit. On June 15, a full committee mark-up was held and the committee voted to report the bill with an amendment by a vote of 20-12. As reported by the committee, H.J.Res. 1 includes provisions that would require a super majority to allow a budget with outlays in excess of receipts, to allow outlays to exceed 18% of the “economic output” of the United States regardless of whether the budget were balanced, to increase the debt limit, or to increase revenues.

## IV. A Constitutional Convention

Article V of the Constitution describes two methods by which the Constitution can be changed.<sup>87</sup> To date, constitutional amendments have always been proposed to the states by congressional action, but Article V of Constitution also provides that “on the application of two-thirds of the several states Congress shall call a convention for proposing amendments.” Because this method for proposing a constitutional amendment is untried, there are many unanswered questions about such a convention.<sup>88</sup> A convention would not have the power to amend the Constitution directly, only to propose an amendment, and any proposed amendment would subsequently need to be ratified by three-fourths of the states in the same manner as an amendment proposed by Congress.

Between the mid-1970s and early 1980s, various interest groups lobbied state legislatures to petition Congress to call a constitutional convention to propose an amendment to limit the power of the federal government to incur budget deficits. The National Taxpayers Union and the National Tax Limitation Committee, for example, were active in these efforts to lobby for the proposal in the state legislatures. A number of other groups, including Citizens to Protect the Constitution (formerly known as Citizens for the Constitution), the Committee to Preserve the Constitution, and People for the Constitution, have been active in their opposition to a convention.

These petitions have typically requested that Congress convene a constitutional convention for the purpose of considering a balanced budget amendment and proposing it to the states for

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<sup>87</sup> For a general discussion, see CRS Report 95-589, *Amending the U.S. Constitution: by Congress or by Constitutional Convention*, by Thomas M. Durbin (out of print; available from the author upon request).

<sup>88</sup> Laurence H. Tribe, “Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment.” *Pacific Law Journal*, vol. 10, July 1979, p. 627.

ratification. Frequently such requests have sought a convention for the “specific and exclusive” purpose of considering a balanced budget amendment, although some constitutional scholars suggest that the work of a constitutional convention could not be limited to specific subjects.<sup>89</sup> As a consequence, some opposition to a constitutional convention is based on concern regarding the scope of other possible amendments that might also be proposed for ratification as well as opposition to a balanced budget amendment in particular.

Other related questions have been raised regarding state applications or petitions for a constitutional convention. Some of these include (1) whether there is a specific procedure that states must follow for enacting and submitting petitions, (2) whether all the petitions must be in the same form, and (3) whether they must all be contemporaneous.<sup>90</sup> The Senate has on two occasions passed constitutional convention procedures bills, in 1971 (S. 215, 92<sup>nd</sup> Congress, S.Rept. 92-336), and 1973 (S. 1272, 93<sup>rd</sup> Congress, S.Rept. 93-293). Neither bill was considered in the House. The Senate Judiciary Committee also reported a bill in 1985 (S. 40, 99<sup>th</sup> Congress, S.Rept. 99-135), but it was not considered further. Although the House has not considered a similar measure, the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee held hearings on the issue in 1985.<sup>91</sup>

In 1983, at the beginning of the 100<sup>th</sup> Congress, 32 of the required 34 states had passed resolutions requesting a constitutional convention for proposing a balanced budget amendment. In addition to those states listed in **Table 4**, at least four states (California, Illinois, Kentucky, and Montana) had adopted resolutions requesting that Congress propose a deficit spending amendment, but had not asked for a constitutional convention to do so. By the end of the 100<sup>th</sup> Congress, however, two states had rescinded their applications for a constitutional convention, at least in part due to the influence of the Balanced Budget and Emergency Deficit Control Act in late 1985. Coupled with the possibility that other states would follow suit, this made the prospect of such a convention less imminent. Left unresolved, however, was the legal standing of rescissions, and the question of whether or not a state has the power to rescind such an application once it has been made.<sup>92</sup>

Although Alabama and Florida were the only states to rescind their applications for a constitutional convention in the 100<sup>th</sup> Congress, similar measures were subsequently passed in Nevada (1989), Louisiana (1991), Colorado (1992), Oregon (1999), Idaho (2000), Utah, (2001), North Dakota (2001) Wyoming (2001), Arizona (2003) and Georgia (2004).<sup>93</sup>

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<sup>89</sup> See, for example, Charles L. Black. “Amending the Constitution: A Letter to a Congressman,” *Yale Law Journal*, v. 82, no. 2, December 1972. p. 189; William W. Van Alstyne, “Does Article V Restrict the States to Calling Unlimited Conventions Only?—A Letter to a Colleague,” *Duke Law Journal*, vol. 1978, no. 6., December 1978. p. 1295; Walter E. Dellinger, “The Recurring Question of the ‘Limited’ Constitutional Convention,” *Yale Law Journal*, vol. 88, no. 8, December 1979. p. 1623; and Michael Stokes Paulsen, “A General Theory of Article V: The Constitutional Lessons of the Twenty-seventh Amendment,” *Yale Law Journal*, vol. 103, no. 8, December 1993. p. 677.

<sup>90</sup> For a broader discussion, see Durbin, *Amending the U.S. Constitution: by Congress or by Constitutional Convention*.

<sup>91</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, *Constitutional Convention Procedures*, hearings, 99<sup>th</sup> Cong. 1<sup>st</sup> sess., July 31, September 23, 1985, serial no. 116.

<sup>92</sup> *Ibid.*, p. 9.

<sup>93</sup> Information on state actions documented by Friends of the Article V Convention on their website at <http://foavc.org/file.php/1/Amendments>.

**Table 4. States That Have Petitioned Congress for a Constitutional Convention to Propose a Balanced Budget Amendment**

State	Year	State	Year
Alabama <sup>a</sup>	1976, 1975	Nebraska	1976
Alaska	1982	Nevada <sup>a</sup>	1979, 1977
Arizona <sup>a</sup>	1979, 1977	New Hampshire	1979
Arkansas	1979	New Mexico	1976
Colorado	1978	North Carolina	1979
Delaware	1975	North Dakota <sup>a</sup>	1975
Florida <sup>a</sup>	1976	Oklahoma	1976
Georgia <sup>a</sup>	1976	Oregon <sup>a</sup>	1977
Idaho <sup>a</sup>	1979	Pennsylvania	1976
Indiana	1979, 1957	South Carolina	1978, 1976
Iowa	1979	South Dakota	1979
Kansas	1978	Tennessee	1977
Louisiana <sup>a</sup>	1979, 1978, 1975	Texas	1978, 1977
Maryland	1975	Utah <sup>a</sup>	1979
Mississippi	1975	Virginia	1976, 1975, 1973
Missouri	1983	Wyoming <sup>a</sup>	1977, 1961

**Source:** U.S. Library of Congress. Congressional Research Service. *State Applications for a Constitutional Convention to Propose a Balanced Budget Amendment: Analysis and Legislative History*. CRS Report by David Huckabee. (Washington, 1984). p. 26, 27. Updated as applicable.

a. These states have rescinded their applications for a constitutional convention.

## V. The Statutory Approach

An alternative for regulating the government’s spending and taxing policies is the enactment of a statute requiring a balanced budget. Proponents of a statutory approach argue that it would be more flexible than a constitutional amendment, since the law itself could be modified more easily by enacting amendments to deal with changing circumstances. Advocates also argue that it could become effective quickly, in contrast to a constitutional amendment that would require a lengthy and ultimately uncertain ratification process.

Significant opposition to the statutory approach has come from those who consider it a poor substitute for a constitutional amendment. These critics contend that the adoption of a law offers no binding constraint on the actions of future Congresses; in their view the very flexibility of the approach destroys its utility. They argue that Congress can always waive or reject the rules of a previous Congress, or can overturn or supersede a statute. Critics offer the past decade’s experience with attempts to mandate balanced budgets by statutory means as evidence that the political context makes circumvention virtually certain.

## Previous Legislation

There have been many attempts to employ a statutory approach. The first such example is the amendment proposed by Senator Harry F. Byrd, Jr., in 1978, which became Section 7 of P.L. 95-435, a measure otherwise dealing with U.S. participation in the International Monetary Fund. The amendment stated simply that, “Beginning with fiscal year 1981, the total budget outlays of the federal government shall not exceed its receipts.”<sup>94</sup> With almost no debate the amendment was adopted by the Senate by a vote of 58-28.<sup>95</sup> Without any mechanism for enforcement this commitment proved to be ineffectual, and FY1981 ended with a deficit of \$79 billion. Subsequent modifications of this law have changed it from a specific commitment for FY1981 to a general affirmation of balanced budgets as a goal.<sup>96</sup>

A similar provision was included in P.L. 96-5, a measure to provide an increase in the debt limit. Like the Byrd amendment, the law was superseded by subsequent legislation.

Late in the 98<sup>th</sup> Congress, the House considered H.R. 6300, a bill to require the President to submit a balanced budget proposal or, alternately, to explain the reasons why one would be inappropriate. Although the measure passed under suspension of the rules, 411-11,<sup>97</sup> support was qualified for the measure’s statutory approach because, as Representative Barber Conable said, “Until we elevate this issue to a constitutional level and create a procedure whereby this Congress will have to face up to its fiscal responsibilities, things are not going to change.”<sup>98</sup> Because the Congress adjourned shortly thereafter, the Senate did not consider this proposal on the floor.

After it failed to achieve the two-thirds vote necessary for a constitutional amendment in 1990, the House considered H.R. 5258, a bill to require the President to submit a balanced budget to Congress each year, for the Budget Committees to report, and for Congress to consider, a budget resolution that was balanced. However, it did not require Congress to adopt a budget resolution in balance, nor did it require the fiscal year to end in balance. This measure was criticized by some as less than a serious attempt to attain balance and one that would merely provide “one more set of rules to waive.”<sup>99</sup> Nevertheless, a majority of the House agreed with Representative Leon Panetta who said that the measure would require the President and Congress to “lay out in specific terms how ... to [achieve] a balanced budget” rather than simply establish a balanced budget as a general goal.<sup>100</sup> After a vote to recommit the bill to the Government Operations Committee with instructions that it hold hearings on its implications failed 181-244, the bill was passed by a vote of 282-144.<sup>101</sup> The Senate took no subsequent action on the measure.

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<sup>94</sup> P.L. 95-435, 92 *Stat.* 1053.

<sup>95</sup> See vote no. 270 in the *Congressional Record*, vol. 124, July 31, 1978, p. 23411.

<sup>96</sup> The “Byrd amendment” originally appeared at 92 *Stat.* 1053 and was restated in 1980 in P.L. 96-389, 94 *Stat.* 1553. The most recent revision occurred in 1982 in P.L. 97-258, 96 *Stat.* 908. The text of these provisions appear in **Appendix B**.

<sup>97</sup> See vote no. 433 in the *Congressional Record*, daily edition, vol. 130 (October 2, 1984), p. H10858.

<sup>98</sup> See remarks of Representative Conable, *ibid.*, p. H10662.

<sup>99</sup> See remarks of Representative Robert Walker (R-PA) in the *Congressional Record*, daily edition, vol. 136 (July 18, 1990), p. H4953.

<sup>100</sup> See remarks of Representative Panetta in the *Congressional Record*, daily edition, vol. 136 (July 18, 1990), p. H4950.

<sup>101</sup> See vote no. 246 in the *Congressional Record* (daily edition), v. 136, July 18, 1990, p. H4961.

## Gramm-Rudman-Hollings

The most prominent attempt by Congress in to use the statutory approach as a means of achieving a balanced budget was the Balanced Budget and Emergency Deficit Control Act of 1985 (also known as the Gramm-Rudman-Hollings Act) and its 1987 Reaffirmation.<sup>102</sup> At the heart of this law was a timetable with mandated annual reductions in budget deficits intended to produce a balanced budget.

**Table 5. Deficit Targets as Provided by the Balanced Budget and Emergency Deficit Control Act of 1985 and 1987 Reaffirmation**

(amounts in billions of dollars)

Fiscal Year	Original Target	1987 Revision	Actual Deficit
1986	171.9		221.2
1987	144		149.8
1988	108	144	155.2
1989	72	136	152.5
1990	36	100	221.2
1991	0	64	269.4
1992		28	290.4
1993		0	255.0

**Source:** For original target amounts: P.L. 99-177, 99 Stat. 1038-1101; for revised target amounts: P.L. 100-119, 101 Stat. 754-784; for actual amounts: *Budget of the United States Government FY2012. Historical Tables. Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits: 1789-2016.*

In addition to the specific deficit targets included in the text of the law, the act differed from the earlier Byrd amendment because it included a specific enforcement mechanism. Based on the assumption that institutional forces made it difficult, if not impossible, to achieve a balanced budget, the new law established the sequestration process. This process required the President to issue an order canceling budget authority to reduce the projected deficit to the level mandated by law. Although the original automatic sequestration mechanism was struck down by the Supreme Court in *Bowsher v. Synar*,<sup>103</sup> the 1985 law contained a fallback procedure that, lacking the automatic provision, was felt to be inadequate by Congress. The subsequent enactment of an amendment to the law in 1987 reinstated a modified procedure for an automatic trigger for the sequestration process and reaffirmed the desire of Congress to come to grips with the budget deficit.

The act was amended, and effectively supplanted, in 1990 by the Budget Enforcement Act of 1990 (P.L. 101-508, 104 Stat. 1388-573 through 1388-630). These changes shifted the focus of

<sup>102</sup> P.L. 99-177, 99 Stat. 1038-1101, also known as the Gramm-Rudman-Hollings Law. The Balanced Budget and Emergency Deficit Reduction Reaffirmation Act was contained in P.L. 100-119, 101 Stat. 754-784. For a description of these measures, see CRS Report R41901, *Statutory Budget Controls in Effect Between 1985 and 2002*, by Megan Suzanne Lynch.

<sup>103</sup> 106 S.Ct. 3181 (1986). A detailed analysis is in CRS Report 86-788, *Summary and Analysis of the Ramifications of Bowsher v. Synar, the Gramm-Rudman-Hollings Deficit Reduction Act Case*, by Morton Rosenberg and Richard Ehlke (out of print; available from the author upon request.)

congressional budgetary control from achieving a specific deficit target to limiting congressional actions that would increase the deficit.<sup>104</sup> The new Act retained a series of deficit targets, but these targets would be adjusted for changing economic and other conditions rather than fixed as they had been under the 1985 and 1987 Acts. The 1990 Act established deficit targets through FY1995, but these did not require or project a balanced budget at that time. In 1993, the enforcement provisions of the Budget Enforcement Act were extended through FY1998 (P.L. 103-66, 107 *Stat.* 683-685), and in 1997, the enforcement provisions were extended through 2002 (P.L. 105-33) but again a balanced budget was not required.

## **VI. Analysis of Typical Provisions of Proposed Balanced Budget Amendments**

What follows is a general discussion of language commonly used in proposals for a balanced budget amendment. In particular, the discussion addresses provisions that have been included in balanced budget proposals, and how some of these provisions could be subject to varying interpretations. Many of the points addressed in this analysis have been raised during previous consideration of balanced budget amendments, particularly on the floor of the House in 1982, 1990, 1992, 1994, and 1995, and in the Senate in 1982, 1986, 1994, 1995, and 1997.

A number of these interpretations might have achieved some measure of consensus among Members of Congress concerning their general meaning. However, no determinative judgments have yet been made on the vast majority of the issues discussed here, and parts of a proposed amendments' language may well be subject to interpretation. Especially in the absence of any extensive legislative history, these unresolved issues would presumably need to be treated by statute, or interpreted by the courts, or both. Because it would be by its nature new to the federal government with far reaching consequences, even in its most basic form, a balanced budget amendment would raise some questions concerning its meaning and enforcement.

All of the proposed amendments have as their central purpose a limitation on the budgetary freedom of Congress, although they pursue this objective in a number of different ways. Each of the measures proposes to require a balanced budget, but they display great variety regarding how to achieve this end and about the nature of the budgetary process and the roles that should be played in it by the President and Congress.

### **Use of Estimates**

In their most direct form, balanced budget proposals require that "total outlays shall not exceed total receipts for a fiscal year." This is most often coupled with a proviso to allow an excess of outlays if they are approved by a vote of three-fifths in each chamber. Most proposals, either explicitly or implicitly, would allow any enforcing or implementing legislation to be based on estimates, but these would generally not supersede the requirement that actual balance at the end of a fiscal year be measured in absolute terms.

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<sup>104</sup> For a discussion of the Budget Enforcement Act, see Lynch, *Statutory Budget Controls in Effect Between 1985 and 2002*.



A common alternative approach would permit estimates to be used to measure compliance with the amendment's requirements. One common formulation of this is to require that Congress adopt a statement of receipts and outlays prior to a fiscal year, in which total outlays are not greater than total receipts. This is sometimes coupled with a provision that "Congress and the President shall ensure that actual outlays do not exceed the outlays set forth in such statement." This type of amendment would thus not require that at the end of the fiscal year the budget be in balance. Actual outlays could not exceed projected outlays, but the relation between projected and actual receipts is not explicitly addressed. Receipts less than the projected level would produce a deficit, but not be a violation of this type of amendment language.

Using estimates to measure compliance could also be applied to both outlays and receipts. This approach would prohibit estimated outlays from exceeding estimated receipts, but not prohibit end of the year actual outlays from exceeding end of the year actual receipts. In one form that has previously been introduced this would simply require a two-thirds vote to approve a budget resolution that recommends an excess of outlays. Because the amounts in budget resolutions are projections, such a proposal would not impose any requirement for actual end-of-year balances. Such an approach is not inconsistent with the practices of some states. According to a General Accounting Office report (now called the Government Accountability Office), at least nine states with balanced budget requirements do not require a year-end balance, and several others allow a deficit to be carried over to the next fiscal year if necessary.<sup>105</sup>

The reliability of estimates is crucial, especially in cases where the proposed amendment would require adherence to a standard of balance based on actual outlays rather than projected outlays. Under a variety of circumstances either the President, or Congress, or both would have an incentive to skew estimates of receipts in the same or opposite directions. If one branch favored spending cuts, it would have an incentive to estimate receipts at a relatively lower level (and thus restrain spending). Alternately, if one branch favored relatively higher spending, it would have an incentive to estimate receipts at a correspondingly higher level. These incentives could have profound implications for enforcement.

The prohibition on excess outlays in the absence of a three-fifths vote would in most cases be absolute and require adjustments to compensate for inaccurate estimates of outlays. The inability to estimate accurately the outlays that will result from entitlements is demonstrated with regularity. In recent years, supplemental appropriations have been necessary to cover the mandatory outlays associated with such programs as veterans' benefits and agricultural subsidies. There are a number of open questions about the impact of this type of provision on mandatory spending, especially that which is provided in annual appropriations and supplemental appropriations acts. Would it have the effect of requiring supplemental appropriations to achieve three-fifths support in each chamber to provide necessary funds for entitlement programs? Would it require three-fifths support to allow the release of funds already appropriated but not yet converted to outlays? If spending must be cut or deferred to keep actual outlays in balance with receipts during a fiscal year, how would such restrictions be applied to entitlements? Would this amendment implicitly establish a constitutional power to delay outlays for entitlements, or even to cancel such payments?

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<sup>105</sup> California, Connecticut, Delaware, Illinois, Iowa, Nebraska, New Hampshire, Pennsylvania, and Texas all have balanced budget requirements, but do not require end-of-year balance. In addition, Arizona, Georgia, Louisiana, Maryland, Massachusetts, New York, Utah, Virginia, Washington, and Wisconsin allow carryover and/or borrowing to finance a deficit if necessary. *Balanced Budget Requirements: State Experiences and Implications for the Federal Government*, GAO Report AFMD-93-58BR, p. 17.

Some proposals, while considered as proposed balanced budget amendments, would not actually prohibit deficit spending. For example, they could simply require that either the President's budget or Congress' concurrent budget resolution be balanced, but not necessarily bar appropriations or outlays in excess of revenues. Another possibility would mandate that the budget be balanced only with respect to expected revenues or outlays so that an economic downturn that decreased revenues and increased outlays would not put the government in violation of the Constitution. These proposals could pose problems because they contain an obvious incentive favoring "rosy" forecasting of the economy and of revenues. Many proposals also provide that the requirement for balance could be waived in certain circumstances. Various proposals allow for these waivers in the case of a national emergency, low economic growth, a declaration of war or by congressional passage of a resolution by a super-majority, such as three-fifths or two-thirds.

Conversely, some proposals seek to prohibit Congress from making appropriations in excess of anticipated revenues for a fiscal year. These could be narrowly construed so that, to the extent that deficits result from actions other than those taken by Congress in the appropriations process itself, the amendment would not be an obstacle to deficits. If this interpretation were to prevail, the executive departments might be permitted to spend in excess of revenues, provided they had the budget authority to do so.<sup>106</sup>

## Super-Majority Requirements

The requirement for a super-majority to approve a "specific excess" of outlays over receipts, while seemingly straightforward, could present issues in implementation. It could simply apply to a concurrent or joint resolution encompassing the entire budget, but there are other possibilities. Because no mechanism is provided for identifying the "specific excess" it is not clear what this means. Conceivably it could be applied to either the amount of money, to the recipient program or agency, or to both. It is unsettled how the provision would be applied in four different scenarios that could arise.

- Could the requirement be applied so that each specific program or agency would need to have a separate three-fifths majority to receive a specific amount of funds in excess of the overall ceiling?
- Could the three-fifths requirement be applied to a specific total to fund program shortfalls, which could subsequently be distributed through some mechanism that did not require a further three-fifths vote?
- Could the three-fifths requirement be applied to the release of funds for mandatory spending programs or interest on the debt in circumstances where outlays threaten to exceed receipts *after* all budgetary legislation has been enacted?
- Could the requirement be applied to a *specific program or agency* rather than a specific dollar amount, so that the agency or program could later receive some unspecified amount of funding above the outlay ceiling?

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<sup>106</sup> For example, such budget authority could be in the form of contract or entitlement authority for indefinite amounts of funds ("such sums as are necessary ...").

This ambiguity might give the majority party in either chamber of Congress, through their power to control the legislative agenda, power to subject the programs least popular with its leadership to the super-majority threshold. Considering such programs as separate matters could increase the likelihood of their being unfunded or discontinued. Conversely, the application of this requirement could also allow the majority leadership to circumvent the amendment and ensure deficit spending, excluding the most popular programs from any balanced budget regimen. Some programs might be popular enough to secure funding regardless of the deficit. If such programs were left unfunded until the ceiling was reached, they could then be funded subject to the requirement that they have three-fifths support in each chamber. Such a provision also leaves it unclear of the claims of mandatory outlays, including interest on the debt, in relation to other outlays in the absence of a balanced budget or a super-majority waiver.

## **Presidential Responsibility**

More basic questions regarding the ultimate responsibility for maintaining a balanced budget are raised by proposals that establish the seemingly simple mandate that “total outlays of Government funds during any fiscal year shall not exceed the total revenue of the Government.” Since outlays (that is, the actual expenditure of funds) are primarily an executive function, such language could be interpreted as a qualification on presidential spending powers, but not on Congress’s ability to appropriate funds in excess of revenues. If the President’s spending powers were thus the primary focus for enforcement, how would this be accomplished? Would it be necessary to statutorily increase presidential rescission or deferral powers? More significantly, would an amendment assigning responsibility to the President, either solely or jointly with Congress, to “ensure that outlays not exceed receipts” imply enhanced impoundment authority? This possibility suggests that any workable constitutional prohibition on deficit spending take into account the workings of the federal budget process and expenditure practices, as well as the division of responsibility between the executive and legislative branches.

Most measures requiring a balanced budget also include a requirement that the President submit a proposed budget with total outlays not in excess of total receipts. In addition to the requirement that his budget proposal balance estimated outlays and receipts, such a provision would also effectively make the President’s role in the budget process a part of the Constitution. The President’s formal involvement in the budget process currently has a statutory, rather than constitutional, basis. It stems from the Budget and Accounting Act of 1921 (codified at 31 U.S.C. 1105(a)). Historically, the budget-making process has been the constitutional preserve of Congress, requiring only the President’s concurrence or passage over his veto.

Although such presidential requirements are generally included in proposals as a way to preserve symmetry between the executive and legislative branches, this is not precisely the same requirement that Congress would have to adhere to. Because of the timing of the President’s budget submission<sup>107</sup>, the estimates of receipts and outlays used in this proposal would not necessarily be the same as those used by Congress. This could mean that the President would be able to use a unilateral estimate to fashion his proposal, while Congress might have to base its spending actions on an estimate more agreeable to both branches. Also, the President’s proposal would have to balance estimated outlays against estimated receipts, while under most proposed

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<sup>107</sup> Under current law (established in Section 13112(a)(4) of the Budget Enforcement Act) the President is required to submit the budget “On or after the first Monday in January but not later than the first Monday in February of each year.”

amendments Congress would ultimately have to balance actual outlays against actual receipts. This distinction is likely to revive a problem highlighted during the Reagan Administration and especially under the Balanced Budget and Emergency Deficit Reduction Act. Differing estimates and projections of the economy and the budget by Congress and the President could make it difficult to achieve budgetary goals.

## **Coverage and Exemptions**

A concern addressed in many proposals is the issue of coverage. Lengthy debates on which activities or agencies (if any) should be exempted from the effects of sequestration under the Balanced Budget and Emergency Deficit Control Act have amply demonstrated the difficulty in reaching agreement on the issue, as well as the problems associated with exempting certain activities.

## **Off-Budget Activities**

It is not clear whether the term “off-budget” would continue to have any meaning if a balanced budget proposal were added to the Constitution. Would the federal government be able to exclude specific entities from its presentation of the budget? Would an amendment have the effect of nullifying the current off-budget status of the Postal Service and Social Security? If the terms “all receipts” and “all outlays” used in many such proposals removed the option to create off-budget entities, it would also remove the option to consider such entities without regard to their impact on the remainder of the budget. The debate on the budgetary status of Social Security, for example, would become moot, and surplus Social Security receipts would constitutionally be treated in the same way as other government receipts as they are today. Conversely, if federal agencies or programs could be excluded from the amendment’s coverage by statute, it might open a channel for manipulating the scope of the “budget” to insure that it was balanced.

Various proposals have sought to anticipate problems that could be brought about by attempts at circumvention, and have either included or excluded a variety of specific expenses or activities. These have sought to exempt such things as net interest on the public debt, Social Security, or federal credit programs. Other measures would be coupled with a capital budget, which would separate federal expenditures into one budget for current operating expenses and a second one for net investment in assets that have a useful life of several years. Even so, the question of what would be included or excluded would have to be addressed. Generally, the more inclusive the coverage, the more restrictive will be any constitutional limitation (although the reverse is true for the case of Social Security during the period from now until about 2010).

In contrast to the experiences of states, most proposals at the federal level are planned as inclusive. They are almost always defined as applying to “all receipts of the United States Government except those derived from borrowing” and “all outlays of the United States Government except those for repayment of debt principal.” State governments are typically required to balance their operating, or general fund, budget, but other major fund groups (such as capital, enterprise, trust, and other special funds) may not necessarily be required to balance on an annual basis.<sup>108</sup>

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<sup>108</sup> *Balanced Budget Requirements: State Experiences and Implications for the Federal Government*, GAO Report AFMD-93-58BR, p. 19.

The Senate Judiciary Committee's 1993 report accompanying S.J.Res. 41 expressed the intent of the Committee that "total receipts" and "total outlays" include "all moneys received by the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress."<sup>109</sup> The report further stated that some programs, such as the electric power program of the Tennessee Valley Authority (TVA), are not intended to be covered by this definition. The only explanation given is that the program is self-financing. It is unclear to what extent this interpretation by the Judiciary Committee would be binding. If it were, it could potentially allow the federal government to follow the state example and create other special authorities that would not be covered by the amendment's definitions of outlays and receipts.

In 1995, one of the chief sources of public opposition to a balanced budget amendment was the status of Social Security funds. Proposals to exclude the receipts and outlays of the Social Security Trust Funds (specifically the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund) from the requirement for a balanced budget were among the chief topics for debate. Supporters of such an exemption argued that because Social Security operates with funds that are counted separate from the general fund of the federal government, and currently operates at a surplus, it should not be subjected to potential benefit reductions resulting from a deficit in the general fund. Further, they argue, because the accumulated surplus of the Social Security Trust Funds is held in the form of government securities, under a balanced budget amendment redemption of these securities, and thus any expenditure of these funds, would effectively require a budgetary surplus. Opponents counter that removing such a massive portion of federal transactions, whatever the source, from the discipline of a balanced budget amendment would undercut the amendment's effectiveness. In addition, they believe that an exemption for a specific trust fund could establish a channel for broad circumvention of an amendment, because it would not necessarily limit the activities that could be encompassed within the trust fund's budget.

### **Non-Budgetary Activities**

Government-Sponsored Enterprises (GSEs) are not now considered to be a part of the federal government, and their transactions are considered to be non-budgetary rather than off-budget. These are entities established and chartered by the federal government and typically act as financial intermediaries to influence the allocation of credit in large sectors of the economy. Examples include the Student Loan Marketing Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. They are not included in the federal budget totals because they are classified as private, although most derive special benefits from their sponsorship by the federal government. Their budgetary treatment and the range of their activities are not specifically addressed in the language or legislative history of balanced budget amendments, and it may well be assumed that they would not be included.

### **Waivers**

The most common exception to the requirement for a balanced budget is a waiver in cases of declared war. Some proposals would also allow a waiver for military emergencies declared by law. Other provisions in proposed amendments would trigger exemptions or allow waivers. A

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<sup>109</sup> Senate Judiciary Committee, *Report to Accompany S.J.Res. 41*, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess., p. 12.

proposal considered by the Senate in 1994 would have suspended the requirement for a balanced budget for any fiscal year, and the following fiscal year as well, if the Congressional Budget Office (CBO) estimates that real economic growth has been or will be less than one percent for two consecutive quarters during the period of those two fiscal years. Other proposals would allow a waiver of the balanced budget requirement for any fiscal year in which a declaration of national emergency were in effect. With the term “national emergency” left undefined, such a provision might well be applicable to economic as well as military emergencies. It should be noted that the duration of such a national emergency, or how its end should be determined, is left unstated.

## **Debt**

An issue closely related to balanced budgets is federal debt and the debt limit.<sup>110</sup> Indeed, a number of proposed balanced budget amendments have included provisions that would make it more difficult to increase the public debt of the United States by requiring a super majority in each House to enact legislation to do so. The apparent intent is to reinforce the balanced budget requirement by making it difficult for the amount of federal debt to be increased. Without the authority to borrow funds, the government could not operate with a deficit. Indeed, some proposals deal only with debt and require a balanced budget solely by implication. At least one proposal made in the House would go further and require surpluses in order to pay down the debt.

Of particular importance is the debt to be included in such a limitation. Some proposals would apply a limitation to increases in the debt “held by the public.” Others would apply the limitation to the gross public debt (e.g., all federal government debt including that held by the government’s own trust funds). Another approach has been to apply a limitation to public debt with certain specified exceptions, such as for trust funds or debt for capital expenditures. These are more than minor semantic differences, and such provisions could affect aspects of federal finances beyond the balance of the annual budget. H.J.Res. 1 in the 112<sup>th</sup> Congress would require a super majority of three-fifths to increase the limit on the debt held by the public.

As defined in current law and practice, the debt subject to statutory limit includes more than just the debt held by the public. Debt held by the public involves only money borrowed by the Treasury from the public, including domestic and foreign individuals and institutions. The debt subject to statutory limit, however, includes both the debt held by the public and debt held by the federal government (or intragovernmental debt). Intragovernmental debt includes primarily debt held by trust funds.

Debt held by the public represents a financial claim by the public on the federal government in the form of bonds and other debt instruments, and is the measure of debt used in most economic analyses. The intragovernmental debt held by trust funds does not result in borrowing from world credit markets or represent a direct financial claim of the public on the government. A trust fund program itself may entitle recipients to claim present or future program benefits, and securities are held by the funds as a reserve against future benefits in excess of receipts expected in the future, but beneficiaries do not have any direct claim on the accumulated debt held by trust funds.

An increase in trust fund holdings also increases the reported gross public debt of the federal government. Generally such an increase is generated when receipts into trust funds exceed

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<sup>110</sup> For more on federal debt see CRS Report R41815, *Overview of the Federal Debt*, by D. Andrew Austin and CRS Report RL34712, *The Federal Debt: An Analysis of Movements from World War II to the Present*, by Mindy R. Levit.

payments. Excess trust fund receipts are invested in federal government debt instruments. The portion of the gross public debt held by trust funds or other intragovernmental accounts in 2010 was approximately 33%.<sup>111</sup>

The distinction between gross public debt and debt held by the public could have significant implications, particularly with regard to the budgetary status of Social Security. Because it is currently accumulating a surplus for future use, the Social Security trust funds increase the amount of gross debt. Accordingly, a balanced budget amendment that requires a three-fifths vote in order to increase the gross public debt could mean that a super-majority was necessary to allow the surplus held by a trust fund to increase. Even in cases where the trust fund was in balance, the accumulation of interest on outstanding debt held by the trust fund could itself have the effect of requiring an increase in the gross public debt. On the other hand, a balanced budget amendment requiring action to increase the amount of “publically held federal debt” could make it difficult for Social Security to liquidate its accumulated reserves to pay benefits after about 2020.

Distinctions between classes of federal debt could cause the federal government to operate with separate statutory debt limits for intragovernmental debt (requiring only a majority vote for increases) and for debt held by the public.

The division of federal debt instruments into a number of different classes to secure technical compliance with an amendment could have wider implications as well. Such a phenomenon would be roughly analogous to state experience, where different debt instruments, including some not backed by the “full faith and credit” of the government,<sup>112</sup> are routinely issued and separately rated by financial markets.

By many accounts, state experience suggests that constitutional limitations on debt have been less than wholly effective. State legislatures have devised a wide variety of financing techniques to comply technically with constitutional limitations on the issuance of debt, including special fund financing, creation of public authorities and lease arrangements.<sup>113</sup> It is not implausible that the federal government would have occasion to resort to one or more of these devices if limits were placed on its issuance of new debt.

## **Tax or Expenditure Limitations**

Another broad category of proposals includes those that place a limit on the ability of the federal government to tax or spend. Some would hold total outlays to a set percentage of some economic indicator, such as Gross Domestic Product (GDP) or Gross National Product (GNP), while others would limit increases in spending to a percentage of the growth of a particular economic indicator. Support for such provisions is derived from two chief premises: (1) the part played by the federal government in the economy has grown too large in recent decades, and (2) efforts to balance the budget should be biased in favor of spending cuts rather than tax increases. H.J.Res. 1 in the 112<sup>th</sup> Congress, for example, would limit the level of outlays to 18% of the “economic

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<sup>111</sup> U.S. Congressional Budget Office. *The Economic and Budget Outlook: Fiscal Years 2011-2021* (Washington: GPO, 2011), Table C-2, p. 125.

<sup>112</sup> The term *full faith and credit* is used to denote an explicit pledge to use the government’s taxing authority to liquidate the debt.

<sup>113</sup> Sterk and Goldman, “Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations.”

output” of the United States, regardless of whether the budget is balanced, unless there were a two-thirds super majority to support the increase.

One significant question is how a provision to limit increases in revenues might be interpreted. The term “revenue” appears in the Constitution, in this context, in Article I, section 7, the so-called origination clause. As interpreted by the Supreme Court, the phrase “all bills raising revenue” has typically meant measures raising revenue to support government generally, but not those that raise funds to support a specific governmental program.<sup>114</sup> This constitutional understanding of the term “revenue” therefore may differ from that used, for example, in relation to the jurisdiction of congressional committees or under budgetary statutes (such as the Congressional Budget Act of 1974). Also it could restrict the application of a tax limitation to measures that affect money raised for the general fund of the federal government, but exclude funds raised for specific programs. Another potential difficulty with the definition of revenue is that not all receipts to the federal government are currently treated equally in the budget process. Collections from the public based on the government’s exercise of its sovereign powers are treated as revenues (e.g., personal income taxes). Collections by the government as a result of business-type or market oriented activities are generally treated as offsets to outlays (e.g., various royalties and licensing fees). Offsetting collections can be applied either to the outlays of a specific agency or program or to the government generally. Without further direction, through more explicit language in a proposed amendment, it is unclear how it might be interpreted.

Conversely, the phrase “increasing revenue” as used in these proposals could be interpreted to apply these requirements broadly to a wide variety of measures. Such a provision might apply not only to measures that would increase revenues by increasing the rate of taxation, but also to those that would increase revenues by lowering the rate of taxation while increasing either the taxable base or the volume of taxable activity, or both. This interpretation could have an impact on a large portion of the legislation considered by Congress. Indeed, any legislation that has the direct or indirect, effect of stimulating economic (hence taxable) activity and thereby increasing revenues might be covered by a tax limitation provision. One example of increasing revenues by increasing taxable activity would be a reduction in the tax rate on capital gains income. Although estimates differ sharply as to the longer-term effect of reducing the capital gains tax rate, the short-term effect is generally projected to increase revenues as a result of increased realization of capital gains.

It is not clear whether a limitation on increasing revenues could also be applied to measures, such as an excise tax on tobacco products, which increase tax rates to a level intended to inhibit a taxable activity. The intended effect in such a case would be a reduction in revenues, due to the inhibitory effect, rather than an increase in revenues due to the higher rate. The question remains as to whether the provision would be interpreted such that the intended effect would exempt such

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<sup>114</sup> The Supreme Court, in *United States v. Munoz-Flores*, 495 U.S. 385 (1990), held that a requirement on federal Courts to impose a monetary “special assessment” on any person convicted of a federal misdemeanor was not a “bill for raising revenue.”

Justice Story, in *Commentaries on the Constitution* (Boston, 1833, §880) wrote that only bills to raise taxes in the strict sense of the word are “bills for raising revenue;” bills for other purposes, which may incidently create revenue, are not included. The Supreme Court later held, in *Twin City Bank v. Nebeker*, 167 U.S. 196 (1897) and *Millard v. Roberts*, 202 U.S. 429 (1906), that a bill that creates, and raises revenues to support, a particular governmental program, as opposed to a bill that raises revenue to support government generally, is not a “bill for raising revenue.”



a measure from the restrictions of a tax limitation provision or such that the increased rate would be sufficient to place the measure in contravention of the provision.

Typically, these provisions would limit the rate of increase in revenues to “the rate of increase in national income in the second prior fiscal year, unless a three-fifths majority of the whole number of each House of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.” This form of limitation is the most common in recent proposals. Variations have previously been considered in both the Senate and the House. National income (or any other measure or index) is dependent on a meaning defined either in a statute or in practice. Proponents argue that such a provision would preserve the current ratio of federal revenues to the economy as a whole. Detractors of this approach suggest that the definition of any index would be subject to manipulation, and tax policies would thus hinge on who controlled the definition. For example, in 1980 the Commerce Department revised the definition of national income to include most forms of overseas earnings, resulting in a significant increase in national income. In this case, the action taken did not directly affect the size of the economy, but did have a significant impact on the calculation of national income. Under a formula limitation, such actions could make it permissible to increase revenues regardless of the state of the economy.

In theory, this type of provision could require the government to reduce taxes if revenues were to increase at a rate faster than the economy because of changing economic conditions. For example, inflation in the late 1970s caused personal incomes to increase at a greater rate than the economy as a whole. This resulted in increased federal revenues due to higher income taxes (“bracket creep”). Although the income tax rate structure is now indexed for inflation, its progressive structure means that increases in personal income due to economic growth can still result in revenues increasing at a more rapid rate than the economy. Such a provision could also require a tax cut following a recession because of an associated downturn in national income.

More importantly, there is a two year lag between when change in national income is measured and when fiscal policy is enacted. This delay could force the federal government to adopt a counter-productive fiscal policy.

Another approach would require that measures to increase revenues be passed by a super-majority of three-fifths or two-thirds of the total membership of each House. This would allow increases in taxes beyond the rate of growth of national income, but only under one of two circumstances. First, tax revenues could increase under existing tax laws as a result of economic upturns. Alternately, they could increase as a result of any new law, if it were passed by super-majority. This type of tax limitation was endorsed in the “Contract with America” signed by many Republican candidates for the House of Representatives during the 1994 congressional election. H.J.Res. 1 in the 112<sup>th</sup> Congress includes such a provision to require a two-thirds super majority.

Alternately, some proposals might limit taxes indirectly by limiting the level of expenditures. While this method would not actually prohibit the federal government from taking action to increase revenues, it would inhibit such increases by removing the primary incentive for doing so. Even in the 19<sup>th</sup> century, the federal government did not historically operate with a sustained budgetary surplus, and it seems unlikely that a mandatory balanced budget would create an incentive to do so.<sup>115</sup> If expenditures were limited, any increases in revenues beyond the level

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<sup>115</sup> Most periods of sustained surpluses were a result of a deliberate policy to buy down the debt. Examples of this (continued...)

necessary for balance could be applied only towards repayment of debt principal. Because the repayment of debt principal, and particularly its scheduling, is dependent on the terms under which such funds were originally borrowed, it seems unlikely that this would provide a significant incentive for the federal government to operate at a sustained surplus. Without such an incentive, the indirect effect of an expenditure limit would be to limit taxation.

The levels of the expenditure limits commonly associated with such proposals generally has been in the range of 18% to 20% of Gross Domestic Product. However, as shown in **Table 6**, the current level of expenditures is higher than that. Therefore, such a limitation would require significant cuts in spending as well as an overall balance of expenditures and revenues.

In any form, a limitation on revenues or outlays could create a bias in favor of tax expenditures.<sup>116</sup> Because in most cases these are receipts foregone by the government, rather than actual outlays, they would likely be largely exempt from any limitations on spending. Proposals to limit the growth or level of federal taxation would also favor tax expenditures over outlays. Although increasing receipts and reducing outlays are budgetarily equivalent, a limitation on increases in receipts would limit Congress's ability to eliminate tax expenditures to achieve a balanced budget. This is because eliminating tax expenditures would increase receipts rather than reduce outlays, and thus increase the risk of running afoul of such a limitation.

**Table 6. Federal Outlays and Receipts as a Percentage of GDP**

Fiscal Year	Outlays as a Percentage of GDP	Receipts as a Percentage of GDP
1950	15.6	14.4
1960	17.8	17.8
1970	19.3	19.0
1980	21.7	19.0
1990	21.9	18.0
2000	18.2	20.6
2010	23.8	14.9

**Source:** *Budget of the United States Government, FY2012. Historical Tables*, Table 1.2—Summary of Receipts, Outlays, and Surpluses or Deficits as Percentages of GDP: 1930-2016

(...continued)

occurred after federal assumption of state debts associated with the Revolution, and repayment of debts associated with the Civil War. Sustained surpluses in the absence of such specific aims were politically difficult. For example, surpluses generated by tariff policy of the late 19<sup>th</sup> century provoked debates about whether tariff rates should be lowered or expenditures increased in order to eliminate the surplus. For more on this period see John F. Cogan. "The Evolution of Congressional Budget Decisionmaking and the Emergence of Federal Deficits." *Working Papers in Political Science* no. P-88-6 (Palo Alto: The Hoover Institution, 1988); and Charles Haines Stewart. *Budget Reform Politics: The Design of the Appropriations Process in the House of Representatives, 1865-1921* (Cambridge [U.K.]: Cambridge University Press, 1989).

<sup>116</sup> For more on tax expenditures generally, see CRS Report RL34622, *Tax Expenditures and the Federal Budget*, by Thomas L. Hungerford.

## Judicial Review

Although H.J.Res. 1 in the 112<sup>th</sup> Congress does not include such a provision, when the Senate considered a balanced budget amendment during the 103<sup>rd</sup> Congress, the issue of judicial review was prominently debated. In particular, the Senate considered a provision to establish that the power of “any court to order relief pursuant to any case or controversy arising under this article shall not extend to ordering any remedies other than declaratory judgment or such remedies as are specifically authorized in implementing legislation.” Such a provision would leave the judiciary with the authority to issue decisions concerning the meaning of the amendment or any implementing legislation, but judicial remedies of violations could only be ordered in circumstances specifically provided by law. Although such declaratory judgments<sup>117</sup> would be binding, courts would lack the enforcement remedies of injunctive relief or writs of mandamus. Enforcement would be left to the elected branches unless the Courts were specifically provided with authority to use these or other remedies. Limiting the judiciary to declaratory judgments might not be an entirely empty authority, but its effectiveness would depend on the parties involved respecting and following the terms of the judgment. Such a limitation on judicial remedies would represent a significant shift in the balance of power among the three branches of the federal government, and a departure from the accepted practice that allows courts to interpret constitutional disputes and determine the appropriate remedy.<sup>118</sup>

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<sup>117</sup> Federal courts do not issue opinions which are merely advisory. Declaratory judgments, according to *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937), are issued in cases of “real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.”

<sup>118</sup> In *Marbury v. Madison*, 1 Cr. (5 U.S.) 137 (1803) Chief Justice John Marshall asserted the Supreme Court’s power of judicial review, stating that it was “too extravagant to be maintained that the Framers had intended that a case arising under the constitution should be decided without examining the instrument under which it arises.” For more on judicial review see Louis Fisher and Katy J. Harrieger. *American Constitutional Law* (9<sup>th</sup> ed.) (Durham: Carolina Academic Press, 2011), chapter 2.

## Appendix A. Comparison of Deficit Projected in Presidential Budget Submissions and Actual Amounts, FY1965-FY2010

**Table A-1. Comparison of Deficit Projected in Presidential Budget Submissions and Actual Amounts, FY1965-FY2010**

(billions of current dollars)

President	Fiscal Year	Projected Surplus (+)/Deficit(-) <sup>a</sup>	Actual Surplus(+)/Deficit(-) <sup>a</sup>
Lyndon B. Johnson	1965	-2.9	-0.2
	1966	-3.9	-0.5
	1967	+0.5	1.1
	1968	-4.3	-3.0
	1969	+8.0	+3.2
Richard M. Nixon	1970	+3.4	2.8
	1971	+1.3	23.0
	1972	-11.6	-23.4
	1973	-25.5	-14.9
	1974	-12.7	-6.1
	1975	-9.4	-53.2
Gerald R. Ford <sup>b</sup>	1976	61.7	-88.4
	1977	-43.0	-53.7
Jimmy Carter	1978	-56.1	-59.2
	1979	-60.6	-40.7
	1980	-29.0	-73.8
	1981	-15.8	-79.0
Ronald Reagan	1982	-27.5	-128.0
	1983	-91.5	-207.8
	1984	-188.8	-185.4
	1985	-180.4	-212.3
	1986	-180.0	-221.2
	1987	-143.6	-149.8
	1988	-107.8	-155.2
	1989	-129.5	-152.6
George H. W. Bush	1990	-92.5	-221.0
	1991	-63.1	-269.2
	1992	-280.9	-290.3

<b>President</b>	<b>Fiscal Year</b>	<b>Projected Surplus (+)/Deficit(-)<sup>a</sup></b>	<b>Actual Surplus(+)/Deficit(-)<sup>a</sup></b>
	1993	-351.9	-255.0
William J. Clinton	1994	-254.7	-203.2
	1995	-176.1	-164.0
	1996	-196.7	-107.4
	1997	-168.8	-21.9
	1998	-120.6	69.3
	1999	9.5	125.6
	2000	117.3	236.2
	2001	184.0	128.2
	George W. Bush	2002	231.2
2003		-80.2	-377.6
2004		-307.4	-412.7
2005		-363.6	-318.2
2006		-390.1	-248.2
2007		-354.2	-160.7
2008		-239.4	-458.6
2009		-407.4	-1,412.7
Barack Obama		2010	-1,258.4

**Source:** Figures for projected deficit are obtained from the budget message of the President in the Budget of the United States Government for each fiscal year as submitted in January of the previous calendar year. Figures for actual deficit are obtained from Budget of the United States Government FY2012, Historical Tables, Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits: 1789-2016. Figures for FY1965-1968 are for the consolidated administrative and trust fund budgets. The figures for FY1969-1991 are for the unified budget. Figures for FY1992-2010 are for the total budget including Social Security, which was placed “off-budget” by the Budget Enforcement Act of 1990.

- a. Surpluses are represented by a plus (+) sign.
- b. Figures combine the amounts for FY1976 and the Transition Quarter that occurred when the start of the fiscal year was shifted from July 1 to October 1.

## **Appendix B. Legislative History of the Balanced Budget Provision in 31 U.S.C. 1103**

(formerly 31 U.S.C. 27)

“Byrd Amendment” (named after its sponsor Senator Harry F. Byrd, Jr. (D-VA))

Passed Senate 58-28 (vote no. 270, July 31, 1978), as an amendment to a bill to amend the Bretton Woods Agreement pertaining to the International Monetary Fund. The House adopted nonbinding instructions to its conferees on the bill that included agreeing to this provision, by a vote of 286-91 (roll no. 778, September 14, 1978). It was subsequently incorporated in the final version of the measure during conference.

The provision has been amended twice although there has been no separate vote in either chamber on these changes.

**P.L. 95-435**, 92 Stat. 1051, October 10, 1978

To amend the Bretton Woods Agreement (IMF).

(92 Stat. 1053) “*Section 7. Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.*”

**P.L. 96-389**, 94 Stat. 1551, October 7, 1980

To amend the Bretton Woods Agreement (IMF).

(94 Stat. 1553) “*Section 3. Strike section 7 of P.L. 95-435, the Bretton Woods Agreements Act Amendments of 1978, which reads: ‘Beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.’, and insert in lieu thereof: ‘The Congress reaffirms its commitment that beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.’.*”

**P.L. 97-258**, 96 Stat. 877, September 13, 1982

To revise, codify and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, “Money and Finance.”

(96 Stat. 908) “*Section 1103. Budget ceiling.*

*Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may not be more than the receipts of the Government for that year.*”

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