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States Can Fix the National Debt: Reforming Washington with the Compact for America Balanced Budget Amendment

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EXECUTIVE SUMMARY

America is at a crossroads. Unlike any prudent household, Washington simply refuses to balance its budget. Washington has become so addicted to borrowing money that the outstanding national debt exceeds \$16.5 trillion. The national debt now exceeds 100 percent of the Gross Domestic Product, a figure not seen since World War II. The 2012 federal fiscal year operating deficit was approximately \$1.1 trillion. For the fourth fiscal year running, Congress has failed to pass an annual federal budget under which to operate our country. It is now clear the solution to our national debt problem is unlikely to be found in Washington. To save the nation from bankruptcy, the American people, acting through the states, can intervene and save our future. The Compact for America gives us the vehicle to do that.

The Compact for America proposes that state legislatures use an interstate compact, which is a cooperative agreement among the states, to advance a Balanced Budget Amendment. The Balanced Budget Amendment (BBA) requires a majority of state legislatures to approve any increase above an initial debt limit. Essentially, 26 state legislatures would be required to cosign on the federal government's credit card. But unlike the status quo of national debt brinkmanship, the BBA is designed to force Washington to prepare a budget to make the case for more debt long before the midnight hour arrives. It requires the president to start designating spending cuts when spending exceeds 98 percent of the debt limit. If Congress disagrees with the cuts, it must then override those cuts within 30 days. By forcing both the executive and legislative branches to show their cards long in advance of hitting a constitutional debt limit, the BBA would ensure no game of "chicken" can hold the country's credit rating hostage.

An interstate compact provides the vehicle for this reform because it vastly simplifies the otherwise burdensome process of states originating constitutional amendments under Article V of the U.S. Constitution. In fact, the Compact for America will cut the time and resources needed for successfully advancing this crucial reform by more than 60 percent. For the first time ever, the state origination of a powerful BBA will be feasible.

Introduction

The definition of insanity is doing the same thing over again under the same circumstances and expecting different results. For decades, Americans have tried to reform the political class in Washington by replacing one candidate with another or one party's dominance with that of another. As illustrated in Charts 1 and 2, the debt crisis facing our country has only continued to grow.

The Compact for America will cut the time and resources needed for successfully advancing this crucial reform by more than 60 percent. For the first time ever, the state origination of a powerful BBA will be feasible.

Chart 1 (Actual and Projected Gross Federal Debt)¹

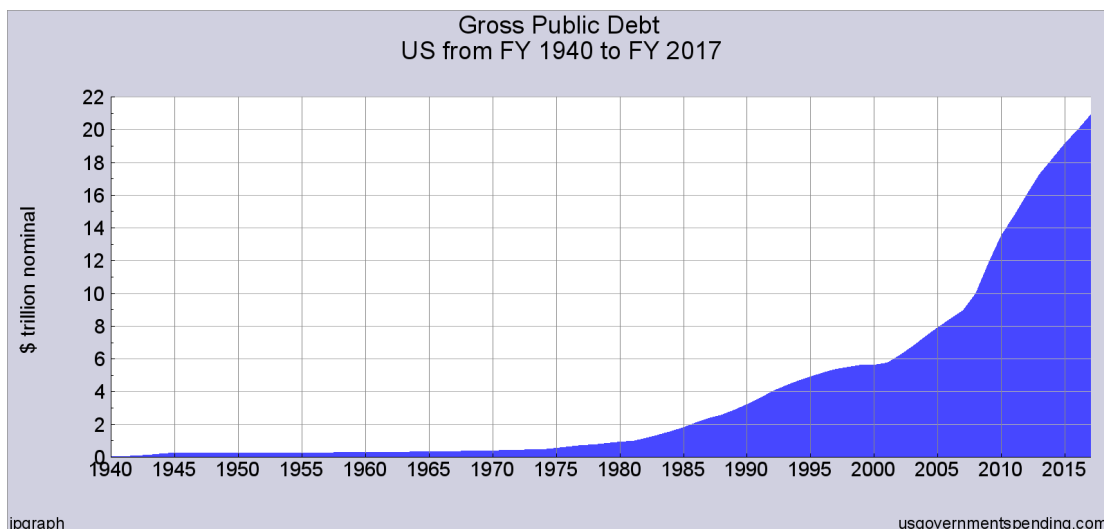
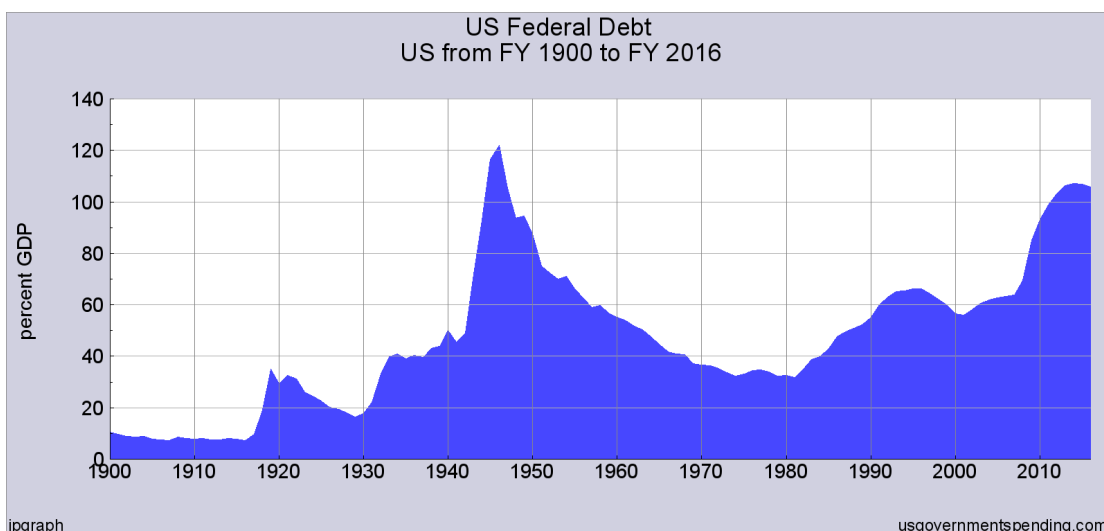


Chart 2 (Actual and Projected Gross Federal Debt compared to GDP)²



The use of debt is spiraling out of control. The fundamental problem is that the country faces an overconcentration of power in Washington, D.C. that enables limitless amounts of debt. That power is easily leveraged by special interests to enrich themselves at the expense of current and future generations. As a result, Washington has not and will never control its addiction to debt. Fortunately, the Founders gave us the power to solve the problems caused by Washington gone wild in Article V of the U.S. Constitution.

Article V empowers state legislatures to originate constitutional amendments. This power was meant to be used as a crucial failsafe to protect our liberty from an overconcentration of power in Washington, D.C. In Federalist No. 85, which was the last Federalist Paper, Alexander Hamilton urged skeptical states to ratify the Constitution because they retained ultimate authority over the federal government through this state-initiated constitutional amendment process under Article V.

Hamilton observed that Congress would be obliged to call a convention for proposing amendments upon application of two-thirds of the legislatures of the states. He further emphasized that any constitutional amendment proposed in this way would become valid upon ratification by three-fourths of the states, just like any congressionally proposed amendment. He urged the states to realize that this was a practical power to restrain the federal government if it were targeted to the “general liberty or security of the people,” rather than merely “local interests.” And he reassured the states that they could “rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority” through state-initiated constitutional amendments. Because of this “closing argument” of the Federalist Papers, the Constitution was eventually ratified. It is now time for the states and the American people to prove Hamilton right.

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Overview of the CFA Vehicle

The Compact for America (CFA) is the delivery vehicle for a powerful Balanced Budget Amendment. Understanding why the CFA is the best vehicle for advancing a BBA first requires a “50,000 foot” view of its structure and the constitutional amendment process it sets in motion. The CFA is an agreement among the states to use their sovereign power under Article V of the U.S. Constitution, which authorizes states to originate constitutional amendments by applying to Congress to call a convention for proposing amendments. In the absence of the CFA approach, the ordinary “plain vanilla” amendment-by-convention process under Article V would have no fewer than five essential state and federal legislative components—an “application” for a convention that would require passage by 34 state legislatures, a convention “call” that would require passage by Congress, convention delegate appointment and instruction legislation by at least 26 states, a “referral” of any amendment proposed by the convention that would require passage by Congress, and a “ratification” that would require passage by legislatures or conventions in at least 38 states. By contrast, the CFA has only two essential legislative components—the state compact³ and a counterpart congressional omnibus concurrent resolution.⁴

As such, the CFA is designed to greatly simplify the amendment-by-convention process. It does this by consolidating into the state compact all of the legislation involved in the Article V process that states control—from the application to Congress, to delegate appointments and instructions, to the selection of the convention location and rules, to the ultimate ratification of the BBA proposal it advances.⁵ It then consolidates all of the congressional legislation involved in the Article V process—both the call for the convention and the ratification referral—into a single omnibus concurrent resolution.⁶

This means the CFA consolidates the entire Article V process into a total of 39 enactments; specifically, 38 pieces of state legislation adopting the Compact and one piece of federal legislation (the omnibus concurrent resolution). The CFA thus has 60 percent fewer legislative “moving parts” than the ordinary “plain vanilla” Article V process, which would require at least 100 enactments, including at least 98 pieces of state legislation (34 state applications, 26 delegate appointments, 38 ratifications) and two pieces of federal legislation (congressional call and ratification referral). In contrast to the ordinary Article V legislative process, the CFA is a turn-key approach to amending the constitution by convention.

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The CFA’s Secret Ingredient

The key to consolidating so much legislation into the CFA’s two overarching legislative components (the interstate compact and the counterpart congressional resolution) is the use of contingent effective dates—also known as “conditional enactments” or “tie-barring”—to ensure that each piece of consolidated legislation only goes “live” at the right time. By using contingent effective dates, the CFA is able to embed or “nest” each legislative stage of the amendment by convention process into a single enactment for the states and a single resolution for Congress. Each nested legislative component only becomes effective upon the happening of an appropriate trigger event. For example, the CFA’s nested Article V application is designed not to go live and trigger a convention call from Congress until at least 38 states join the compact and agree to be bound by its provisions. Similarly, the prospective ratification of the CFA BBA will only go live if Congress first enacts the counterpart omnibus concurrent resolution,⁷ which prospectively refers the BBA for legislative ratification only if it is first proposed by the convention.

Such conditional enactments are common components of congressional legislation, including legislation approving interstate compacts,⁸ as well as within many existing interstate and federal-territorial compacts.⁹ In fact, the U.S. Supreme Court and courts in 44 states have recognized the viability of conditional enactments for a wide range of both state and federal legislation.¹⁰

The use of contingent effective dates to allow for prospective legislative referral and ratification of the CFA BBA, if it were to be approved by the convention, is not

categorically different than the use of contingent effective dates with respect to other legislative acts. In both cases, the effectiveness of a law is triggered by a future event. Moreover, the use of a prospective effective date to allow for the referral and ratification of a constitutional amendment upon the occurrence of an event is not unprecedented. President Abraham Lincoln reportedly suggested the prospective ratification of the Thirteenth Amendment to the southern states, allowing them five years before it would go into effect.¹¹ Ratifications of treaties have been made prospectively, subject to various contingencies.¹² Because Article V's ratification process involves a similar meeting of the minds between and among sovereign bodies, such treaty precedent should be persuasive as to the availability of prospective referral and ratification using contingent effective dates. Accordingly, the same precedent that has overwhelmingly upheld contingent effective dates should equally apply to uphold the use of contingent effective dates for prospective legislative referral and ratification of the CFA BBA.¹³ This enables the CFA to essentially transform the state-originated Article V amendment process into the rough equivalent of a ballot measure for the states.

Overview of the Compact for America Balanced Budget Amendment

The CFA BBA would require a majority of state legislatures to approve any increase above an initial debt limit.¹⁴ The initial debt limit would be equal to 105 percent of the outstanding debt upon ratification, and this limit could only be increased with the concurrence of both Congress and a majority of state legislatures.¹⁵ In other words, state legislatures would provide oversight and intervention when it comes to requested increases in the federal debt.

To ensure the debt limit is enforced, the BBA would also require the president to start designating spending cuts when spending exceeds 98 percent of the debt limit. Congress would then be required to override those cuts with proposed alternatives within 30 days if they disagreed.¹⁶ In short, the proposed BBA would force both the executive and legislative branches to show their cards long before hitting a hard debt limit, protecting our country's credit rating from being held hostage to a game of "political chicken." As such, the BBA is designed to force Washington to balance its budget or prepare a budget to make the case for more debt long before the midnight hour arrives.

The CFA BBA also recognizes that our national debt primarily represents a spending problem, but one that may nevertheless require new revenues. To protect against across-the-board tax increases, the BBA requires any new or increased income or sales tax to secure two-thirds approval of both houses of Congress.¹⁷ But the amendment preserves simple majority approval of increases in tax revenue that result from completely replacing the income tax code with an end user sales tax or reducing or eliminating tax exemptions, deductions and credits.¹⁸

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Why the CFA BBA Would Be Uniquely Effective

Of course, there is no point in having a theoretical balanced budget requirement or debt limit. A fundamental problem with the debt limits and balanced budget requirements of all 49 states is that creative legislatures and executives have found ways around them. Even so, the CFA BBA cannot be gamed using any known tactic.

With only one exception, the CFA BBA requires total federal outlays *never* to exceed total receipts at *any point in time*.¹⁹ The required balance between outlays and receipts is thus based on the federal government's actual cash flow, rather than depending on budgeting estimates that can be cooked. Moreover, to further prevent gamesmanship, the BBA narrowly defines total receipts to exclude proceeds from the incurrence of debt and all types of liability. This means that federal outlays cannot be supported by floating short-term obligations (like the IOUs and warrants recently used by California or Illinois), delaying payment of amounts due (called "rollovers"), or by merely printing or minting money (like the proposed \$1 trillion coin²⁰). Nor can federal outlays be supported by raiding trust funds, such as the Social Security trust fund. This is because these tactics all involve efforts to support outlays with proceeds from the incurrence of debt or liabilities and, therefore, they would be excluded from the BBA's definition of "total receipts" to which total federal outlays would be restricted.²¹

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There is only one exception to the BBA's strict requirement of total spending never exceeding total tax receipts. As discussed above, the CFA BBA allows for the issuance of a specific aggregate amount of full faith and credit federal debt to support outlays in excess of tax receipts in the form of an initial debt limit that can only be lifted with approval from a majority of state legislatures. The CFA BBA thus channels all financing of any gap in the balance between total outlays and total receipts to a specific amount of fully transparent borrowing. Far from deviating from the principles of a balanced budget, the CFA BBA thereby incorporates the discovery that there is no way to have a truly non-gameable definition of a "balanced budget," which requires spending never to exceed taxation, without a "debt cushion" to handle volatility and mismatches from day to day between tax revenues and spending. A revolving line of credit, so to speak, is the price of a definition of a balanced budget that cannot be gamed—and also allows for a transition period away from the status quo of total dependency on limitless borrowing. Although the CFA BBA does not completely prohibit the use of debt by the federal government, it does restrict it with a hard constitutional debt limit. In so doing, it finally imposes the reality of scarce resources on the federal government.

Why the CFA BBA is Good Policy

Unlimited debt is the problem. More than any other policy, unlimited debt is the source and enabler of an ineffective, overstretched and overreaching federal government. This is

because unlimited debt creates the illusion of limitless resources; and when the illusion of limitless resources exists, it becomes next to impossible to persuade politicians that the federal government should have a limited and sustainable role in our lives. Throttling back limitless debt spending is the only way to create a structure that forces a debate over the proper priorities and sustainable functions of the federal government that will otherwise be easily evaded.

The CFA BBA Rightly Restores Relevance to the States

While some may question whether the states should have a voice in the national debt debate, the role for the states proposed by the CFA BBA is nothing new. It is essentially the same role state legislatures had before the 17th Amendment removed their power to appoint U.S. Senators. When state legislatures controlled the U.S. Senate by proxy, that meant *all* federal policies essentially required the concurrence of a majority of state legislatures. The states should have a voice in the national debt debate for the same reasons: a centralized authority should not have a free hand in determining—or mortgaging—the future of every community in the nation. And with modern technology, the physical distance between state legislatures and the halls of Congress no longer justifies sending proxies to Washington, D.C.

By requiring state legislative approval of any increase in the federal debt above a hard constitutional debt limit, the CFA BBA restores a modest portion of the original power states had to check and balance Washington when the Constitution was originally ratified. Rather than returning the states to their original role wholesale, the BBA prudently targets the state's renewed engagement in federal policy to a clear problem area, much like we expect a board of directors to intervene in a mismanaged business.

At the same time, the CFA BBA explicitly prohibits *quid pro quo* trades of state approval of any proposed debt limit increase in exchange for new federal appropriations.²² Any attempt to do so could render void any approved increase in the debt limit.²³ This will be a powerful incentive for states not to abuse their restored role in national debt policy to demand still more debt spending—far more of an incentive to avoid bad behavior than the states had when they controlled the U.S. Senate under the Constitution's original design.

Such outside-the-beltway intervention is essential to fixing the debt. This is because state legislative approval of increases in the federal debt strikes at the root of the problem of runaway federal debt by decentralizing power. Congress will be forced to propose a budget because a specific case will have to be made for debt spending in order to navigate the logistics of securing approval for any increase in debt limit from 26 state legislatures. Moreover, the debate over any increase in the debt limit will be held in locations—state capitols—that are far more accessible to the supermajority of Americans who oppose limitless debt spending. The debate would also take place in a more abstract context—

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without an immediate connection to the appropriations process—allowing for a more principled debate. Indeed, with state legislatures having the last word over any increase in the federal debt, institutional jealousies would naturally incentivize Congress to avoid the use of debt whenever possible, if only to avoid going hat-in-hand to the states for their permission to do so. As compared to the status quo of limitless debt spending, these dynamics should diminish the abuse of debt. With the states serving as an active board of directors for our wayward federal executive and legislative branch “CEOs,” the Compact for America’s BBA would powerfully check and balance Washington’s debt addicts.

State Approval is Sufficiently Flexible

Debt is taxation in the form of inflation because debt increases the money supply when it is purchased by the Federal Reserve, generating a price level that is necessarily higher than it would otherwise be. Debt is also taxation for future generations who are stuck with the bill for our current spending—assuming the debt is repaid.

Apart from the requirement of state approval for debt limit increases, it is important to underscore that the CFA BBA contains *no express borrowing exceptions*. The same cannot be said about the balanced budget proposals that have been advanced by Congress, all of which are riddled with loopholes—most often framed as war, entitlement program or crisis exceptions.

The fundamental problem with writing such exceptions into any balanced budget amendment is that the temptation to interpret them to allow for needless borrowing is just too great for Washington. It is like telling an alcoholic to avoid liquor—except for medicinal purposes. Based on the fact that numerous wars were authorized and financed when state legislatures controlled the U.S. Senate by proxy, there should be no concern about the CFA BBA overly restricting the financing of wars or any other expenditure that commands a genuine geographic consensus.

Debt Limits are Tax Limits

Some may question whether limiting the national debt is worth the risk that taxes might be raised to balance the budget. But this concern presents a false dichotomy. Simply put, there is no genuine trade-off between holding the line on taxation and enforcing the CFA BBA. This is because debt *is taxation*. Debt is taxation in the form of inflation because debt increases the money supply when it is purchased by the Federal Reserve, generating a price level that is necessarily higher than it would otherwise be. Debt is also taxation for future generations who are stuck with the bill for our current spending—assuming the debt is repaid. Limiting debt therefore limits taxation.

At worst, the CFA BBA might force a choice between two kinds of taxation—taxation of current generations versus taxation of future generations—and an absolutist preference for the latter over the former is unwise. If we have to choose, it is better to risk new taxes today as a consequence of limiting debt instead of new taxes tomorrow as a consequence

of limitless debt. This is because there is no effective political check on shifting the costs of our policies to non-voting future generations through debt. By contrast, raising taxes too high on current voters is always politically risky.

Therefore, the CFA BBA rightly allows for the possibility of net increases in tax revenue by Congress through simple majority approval, so long as the net increase arises from abandoning the income tax code in favor of a sales tax or reducing or eliminating tax exemptions, deductions, and credits. Indeed, the CFA BBA will probably generate better tax policy than would the status quo. The requirement of supermajority approval for general tax increases, with simple majority approval retained for completely replacing the income tax code with an end-user sales tax, or eliminating exemptions, deductions and credits, will be a powerful force for reforming our tax code.

The CFA BBA Can Save the Dollar

The CFA BBA also enables Keynesians, on the Left, and Monetarists and Austrians, on the Right, to unite on saving the dollar. This is because, if it were ratified in the near future, the CFA's Balanced Budget Amendment will set a hard constitutional debt limit of around \$20 trillion dollars (105 percent of the outstanding national debt) that is subject to increase only upon approval of a majority of state legislatures acting as a board of directors for the nation. That absolute dollar debt limit will erode in value and thereby implicitly ratchet down if monetary inflation continues and state legislatures wisely throttle back congressional requests for more debt authority. This means, in turn, that ratifying the CFA BBA would strongly incentivize Keynesians to support the kind of monetary stability long desired by Monetarists and Austrians in order to preserve flexibility in fiscal policy.

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Only by working together with Monetarists and Austrians to preserve the value of the dollar would Keynesians be certain to retain what amounts to a large revolving line of credit, which could be paid down with surpluses during good times and tapped for stimulus spending during bad times. At the same time, because of the fiscal discipline imposed by a hard debt limit and external oversight of any request for future expansion of the limit, Keynesians would greatly minimize the risk of their good intentions being abused by Washington debt addicts seeking short-term political gain—which is a huge risk under the status quo of virtually limitless federal borrowing.

The CFA BBA thus holds the promise of creating a constitutional structure that will enable Keynesians, Monetarists, and Austrians to find principled common ground on monetary policy. Indeed, depending on which monetary policy best stabilizes the value of the dollar, either Monetarists or Austrians would likely win converts among open-minded Keynesians.

Presidential Impoundment is a Balanced Enforcement Measure

Finally, it is an inescapable fact that only the executive branch monitors and administers day-to-day spending. Without enforcement by the executive branch, a debt limit could easily be evaded and ultimately become meaningless. The question is not whether to empower the executive branch to enforce a BBA, but how. The buck must stop somewhere.

The CFA BBA's authorization of presidential impoundment of expenditures that might exceed the debt limit is a balanced enforcement measure. Giving the president the power to impound spending to enforce a debt limit, subject to override within 30 days by Congress proposing alternative cuts, is far less power than the line item veto that is already common in the states. It does not radically shift power to the president because the power to impound spending is implicated only if the nation continues to borrow money up to the BBA's debt limit. Congress is fully in charge of whether the president ever has the power to impound anything because Congress still controls the appropriations process in the first place. This is why the CFA BBA strikes the right balance on enforcement.

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The CFA Safely Wields Article V to Advance a BBA

The CFA is designed to organize an Article V convention that stays laser-focused on the limited agenda of advancing the foregoing BBA. This is because the CFA leaves no gaps in the convention process. It appoints all delegates for at least 38 member states (their sitting governors²⁴) and strictly instructs them to follow convention rules that limit the agenda of the convention to an up or down vote on a specific BBA proposal within 24 hours of convening. It also prohibits member states from expanding the scope of the convention or ratifying any amendment other than the BBA, deeming “ultra vires” and nullifying as “void ab initio” any action or proposal that deviates from the CFA. Finally, the Compact Commission, which the CFA establishes to enforce the CFA and manage its logistics, is empowered to relocate the convention from its default location of Dallas,²⁵ Texas, if necessary, to ensure it proceeds in accordance with the CFA.²⁶

These safeguards, and others discussed later, are binding on all member states both as a matter of state law and as contractual obligations under the U.S. Constitution's Contracts Clause, which entrenches them from being altered by future state legislatures.²⁷ Moreover, the CFA's safeguards will also have the status of the “Law of the United States” under current precedent interpreting the effect of congressional approval of interstate compacts. This is because no member state may attend the convention until Congress adopts the counterpart omnibus concurrent resolution, which calls the convention in accordance with the CFA.²⁸ As is common in many existing interstate compacts,²⁹ to ensure a reputable jurisdiction entertains any enforcement proceeding, the CFA even

includes a forum selection clause designating the federal and state courts located with the Northern District of Texas as the default choice of venue for all member states.

In total, the CFA has 16 mutually reinforcing safeguards, consisting of both direct legislation and carefully calibrated political incentives, to keep the convention laser-focused.

- **Safeguard #1:** Overwhelming Political Will. The Compact for America ensures the convention for proposing the BBA will be organized only if 38 states join the compact,³⁰ only if Congress calls the convention in accordance with the Compact,³¹ and only if the convention is organized within one year of the passage of the Congressional resolution.³² This ensures that nothing happens until a supermajority of states and a majority of federal representatives line up and manifest overwhelming, contemporaneous political will behind its rules and limited BBA agenda. Deviating from the Compact would be political suicide for anyone who tried.
- **Safeguard #2:** Convention Processes and Logistics are Fully Codified and Regulated. The Compact specifies the convention location, agenda, committee structure, and rules, codifying them to ensure the Initiative advances solely the BBA it specifies.³³
- **Safeguard #3:** The CFA is Constitutionally Protected, Binding State and Federal Law. Because the convention is not organized until Congress calls it in accordance with the Compact, the Compact's rules and limited agenda will obtain the status of both state and federal law, the obligation of which is guaranteed under the Constitution's Contracts Clause under current U.S. Supreme Court precedent. Any deviation from the Compact will be, on its face, illegal and unconstitutional unless proponents of the deviation succeed in overturning decades- and centuries-old legal precedent.
- **Safeguard #4:** Political Ambition of Aspiring Governors. The Compact designates sitting governors as sole delegates for member states and requires governor-delegates who attend the convention to take a temporary leave of absence from their gubernatorial office while at the convention, leaving their likely political rivals in charge of the state and able to direct efforts to enforce the Compact as needed.³⁴
- **Safeguard #5:** Convention Cannot Proceed Unless Agenda Limited to BBA. The Compact designates and instructs member-state delegates from 38+ states to vote into place its rules and limited BBA agenda for the convention as the first order of business, or else return home without participating in the convention.³⁵
- **Safeguard #6:** Nullification of Unauthorized Delegate and Member State Actions. The Compact deems void ab initio any action by any member-state delegate or member state at the convention that deviates from its rules and agenda.³⁶
- **Safeguard #7:** Automatic Recall of Rogue Delegates. The Compact automatically terminates and recalls any member-state delegate who deviates from its rules and agenda.³⁷

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The Compact bars every member state from ratifying any convention proposal other than the BBA it specifies.

- **Safeguard #8:** Automatic Disqualification of Rogue States. The Compact disqualifies the vote of any member state whose delegates deviate from its rules and agenda.³⁸
- **Safeguard #9:** State Legislatures Can Recall Rogue Delegates. The Compact empowers state legislatures to recall delegates for good cause.³⁹
- **Safeguard #10:** Time-Limited Convention. The Compact limits the convention to a single 24-hour session.⁴⁰
- **Safeguard #11:** Prohibition on Advancing Unauthorized Proposals. The Compact prohibits every member state and all of its residents from materially advancing any unauthorized proposal.⁴¹
- **Safeguard #12:** Nullification of Unauthorized Convention Proposals. The Compact deems void ab initio any convention activity or proposal that deviates from its limited agenda and rules.⁴²
- **Safeguard #13:** Prohibition on Ratification of Unauthorized Proposals. The Compact bars every member state from ratifying any convention proposal other than the BBA it specifies.⁴³
- **Safeguard #14:** Mandatory Compact Enforcement by State Attorneys General. The Compact empowers and requires attorneys general in all 38+ member states to secure an injunction to enforce its terms if the Compact is violated.⁴⁴ Governor-delegates who violate the Compact serve up a political opportunity on a silver platter.
- **Safeguard #15:** Competent Venue Selected for Compact Litigation. The Compact requires all litigation to take place in the U.S. Court of Appeals for the 5th Circuit or in Texas state courts.⁴⁵
- **Safeguard #16:** Commission Intervention. The Compact empowers an interstate commission populated by the states to relocate the convention if it deviates from the Compact.⁴⁶

Why the CFA's Laser Focus is Clearly Constitutional

The following legal analysis deals with the most frequent issue surrounding the CFA: whether the Article V convention process can be limited—i.e. directed and regulated—by an interstate compact. This analysis is not meant to be exhaustive of supporting precedent or legal theories. It highlights the key points showing that the CFA's limitations on the Article V convention process are entirely constitutional and legally effective.

It is important to first emphasize that whatever special legal significance attaches to it under the U.S. Constitution, an Article V convention is, in the most concrete terms,

simply a gathering of people. Thus, in asking whether the CFA can constitutionally limit the Article V convention process, one is essentially asking whether states have the power to regulate the organization of a particular, albeit very special, gathering of people through an interstate compact. Viewed in this light, it is important to recall that the states do not have the burden of affirmatively proving their general governing authority by reference to specific provisions in the U.S. Constitution. The default assumption of the Constitution, as evidenced by the Tenth Amendment, is that all powers not delegated to the federal government are reserved to the states or the people. The states retain general and indefinite powers of governance, subject only to such limitations as required by the Constitution's language and structure.⁴⁷

Accordingly, absent a clash with one or more affirmative provisions of the U.S. Constitution, if a gathering of individuals that happens to be an "Article V convention" is organized from or is located within the boundaries of the states, it follows that each such state will respectively have governing authority over so much of that gathering and its organization as fall within its jurisdiction. In other words, based on the Constitution's design, the states should be assumed to have the power to direct and regulate the Article V convention process under their reserved general powers of governance with or without an interstate compact—*unless* there is a cogent reason to believe that such power was exclusively delegated to some other body or is otherwise limited by the Constitution's language or structure.

In view of this basic assumption about the relationship between states and the Constitution, the burden of proving that states lack constitutional authority to direct and regulate an Article V convention through an interstate compact should more properly be placed on the person advancing that proposition. To demand, instead, that the states shoulder that burden of proof inverts the Constitution's power structure. Nevertheless, by process of elimination we can say with certainty that there is no question the states have the power to direct and regulate the Article V convention process through the CFA. This is because there are only three possible repositories of sovereign power in our federal republic that could direct and regulate the Article V convention process: the people; Congress, as agent of the people as a whole; and the states, as agents of the people within their respective boundaries. As discussed below, we can exclude the possibilities that the people or Congress were meant to direct and regulate the Article V convention process, which necessarily leaves such power in the hands of the states as a reserved power under the Tenth Amendment, the exercise of which can be coordinated collectively through an interstate compact.

The default assumption of the Constitution, as evidenced by the Tenth Amendment, is that all powers not delegated to the federal government are reserved to the states or the people.

Article V Does Not Authorize a Revolutionary People's Convention

The text of Article V articulates no role for the people in advancing constitutional amendments whatsoever. In view of this fact, the U.S. Supreme Court specifically

observed in *Dodge v. Woolsey*, 59 U.S. 331, 348 (1855), that the people of the United States, aggregately and in their separate sovereignties “have excluded themselves from any direct or immediate agency in making amendments.” For this reason, an Article V convention is not analogous to a state constitutional convention, which directly exercises the people’s sovereignty as a convention of the people.

But even if one were to analogize an Article V convention to a state constitutional convention, it is important to emphasize that, with respect to such conventions, state courts have long distinguished between conventions that are “revolutionary” in nature and those that are not. If a state constitution expressly authorizes the abolition or replacement of the existing state government, then the constitutional convention process it outlines has been deemed “revolutionary” and intended to directly represent the people as an independent sovereign body, which cannot be constrained by a limited agenda set by the state legislature.⁴⁸ In contrast, if the state constitution *does not* expressly authorize the abolition or replacement of the existing state government *or* if the state constitution imposes legislative call or ratification requirements, then the state constitutional convention process is *not* “revolutionary” and a limited agenda *can be imposed* on the convention by bodies that only indirectly represent the people, such as the legislature.⁴⁹

The proposals of an Article V convention are subject to specific application, call, and ratification requirements, all of which imply that the convention operates with the strictures of the Constitution as an extension of existing governmental bodies.

In view of this distinction between revolutionary and non-revolutionary state constitutional conventions, it is clear that an Article V convention cannot possibly be regarded as a “revolutionary” convention of the people, even if it were somehow considered analogous to a state “constitutional convention.” This is because: 1) there is no textual authority given to an Article V convention to “abolish” or “replace” the U.S. Constitution, as is found in many state constitutions; and 2) the proposals of an Article V convention are subject to specific application, call, and ratification requirements, all of which imply that the convention operates with the strictures of the Constitution as an extension of existing governmental bodies.

Indeed, there is abundant direct evidence that the Article V convention process was intended to operate within the strictures of the Constitution in proposing amendments, rather than directly invoke the people’s revolutionary sovereignty in establishing a new form of government. This evidence includes: 1) the Report of Proceedings from the Philadelphia Convention on September 15, 1787, in which authority to hold a general convention—which could make any constitutional proposal without any ratification requirement whatsoever, like a revolutionary convention—was considered and repeatedly rejected; and 2) the textual fact that an Article V convention’s amendment power is defined and limited by the same constitutional provisions as Congress’s amendment process, which indicates that both processes wield the same *non-revolutionary* amendment power.

In short, even if one were to attempt to analogize the Article V convention process to a state-level constitutional convention, no precedent deems a convention that shares the characteristics of an Article V convention to be an independently sovereign popular body that is revolutionary in nature and capable of forming a new government. Notably, both

Congress's amendment power and the Article V convention's amendment power refer to proposing "amendments." In view of the fact that Congress has proposed singular amendments, it is clear that the plural use of "amendments" was not meant or understood to signify that only more than one amendment can be proposed. Rather, the plural form was used to include the singular, which is a style utilized throughout the Constitution.

The understanding that an Article V convention may propose a single amendment and is not comparable to revolutionary state constitutional convention is confirmed by Federalist No. 85, which was published in book form collecting earlier publications on May 28, 1788 and again as a newspaper column on August 16, 1788. There, Alexander Hamilton observed:

But every Amendment to the Constitution, if once established, *would be a single proposition, and might be brought forward singly*. There would then be no necessity for management or compromise, in relation to any other point; no giving, nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be *no comparison between the facility of effecting an amendment, and that of establishing in the first instance a complete Constitution*.⁵⁰

For this reason, there is no merit to the theory that an Article V convention is a convention of the people that cannot be directed or regulated by the states.

Article V Does Not Authorize a Congressional Convention

There is also no merit to any contention that the Article V convention process was meant to be directed and regulated by the federal government as a Convention of Congress. Investing Congress with a substantive role in directing or regulating the Article V convention process would render it redundant of Congress's existing amendment power, which is contrary to standard rules of constitutional interpretation.⁵¹ Moreover, it would also contradict contemporaneous understandings of Article V at the time the Constitution was ratified. As discussed below, the central arguments of Federalists Nos. 43 and 85 (which were repeated by George Washington in his personal correspondence and by others at the Virginia ratification convention) underscore that the Article V convention process was meant to furnish the states with an independent and parallel means of amending the Constitution alongside Congress's amendment power.

At the time the U.S. Constitution was proposed for ratification, the Founders repeatedly represented to the public that any future Article V convention would be constituted by the states as a gathering point for their respective delegates to advance a specific state-selected constitutional amendment agenda.

An Article V Convention is a "Convention of the States"

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the states as a gathering point for their respective delegates to advance a specific state-selected constitutional amendment agenda. In particular, on January 23, 1788, Federalist No. 43 was published with James Madison’s attributed observation that Article V “equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other.” Similarly, George Washington wrote on April 25, 1788, “it should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States.” On June 6, 1788, George Nicholas reiterated the same points at the Virginia ratification convention, observing that state legislatures may apply for an Article V convention confined to a “few points;” and that “it is natural to conclude that those States who will apply for calling the Convention, will concur in the ratification of the proposed amendments.” Finally, this public understanding of Article V was confirmed by the last of the Federalist Papers, Federalist No. 85, in which Alexander Hamilton concluded, “We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority” by using their amendment power under Article V.

For decades after the Constitution’s ratification, it was an uncontroversial proposition that the states could organize the Article V convention process to consider desired amendment proposals.

These representations about how the states would organize and target the Article V convention process did not occur in a vacuum. They reflected the custom and practice of more than a dozen interstate and intercolonial conventions that were organized prior to the ratification of the U.S. Constitution.⁵² Simply put, it was usual and customary for states to set the agenda for any such convention and to instruct their delegates specifically on what to advance and address at the convention.⁵³ Delegates were regarded as “servants” of the states that sent them.⁵⁴ None of these conventions—not even the Philadelphia Convention—strayed from their state-determined agendas.⁵⁵ Naturally, the Founders repeatedly represented to the public that an Article V convention would operate in the same way. In fact, for decades after the Constitution’s ratification, it was an uncontroversial proposition that the states could organize the Article V convention process to consider desired amendment proposals.⁵⁶ For example, James Madison’s Report on the Virginia Resolutions observed in January 1800 that the states could organize an Article V convention for the specific “object” of repealing the Alien and Sedition Acts. Correspondingly, the U.S. Supreme Court in *Smith v. Union Bank*, 30 U.S. 518, 528 (1831), specifically referenced the Article V process as authorizing a “convention of the states” that could be directed to propose amendments to overturn authority for specific laws.

As the Article V convention process was meant to be a “convention of the states”—not of the people or of Congress—it follows that states are not somehow preempted or otherwise disabled in exercising their reserved sovereign power under the Tenth Amendment to determine who will represent them at the convention, how they will represent them, how they will run the convention, what they will propose, and how the states will respond to those proposals.

Even if an Article V convention must retain some deliberative authority, there is nothing intrinsic to the deliberative process that requires it to be an unlimited drafting convention. After all, special sessions of the legislature can be called in most states to address specific

subject matters or even to consider or reconsider specific bills. These common limitations do not somehow render the resulting debate non-deliberative. Moreover, the fact that Article V expressly contemplates state-based conventions being utilized to ratify proposed constitutional amendments shows that the convention mode of deliberation is not intrinsically incompatible with an up-or-down vote. Not surprisingly, the most recent scholarship on Article V shows that restricting delegates to voting on a particular constitutional amendment proposal does not unduly interfere with convention deliberations.⁵⁷ Accordingly, states that adopt the CFA properly limit the Article V convention process *as a logical extension of the Constitution's default assumption that they retain general and indefinite powers of governance.*⁵⁸

An Article V Convention is Properly Organized by an Interstate Compact

Notwithstanding the textual requirement of congressional consent to interstate compacts in Article I, section 19, clause 3 of the U.S. Constitution, the CFA properly utilizes an interstate compact to coordinate the states in the exercise of their powers under Article V and the Tenth Amendment. This is because congressional consent is not required for compacts that merely exercise the sovereign powers of the states without purporting to augment those powers relative to those of the federal government.⁵⁹ Moreover, the portion of the CFA that directly organizes the Article V convention itself will not take effect until Congress calls the convention;⁶⁰ member states may not attend the convention unless Congress first consents to the CFA by passing the contemplated counterpart omnibus concurrent resolution;⁶¹ and the CFA's prospective ratification only becomes effective if Congress first refers out the CFA BBA out for legislative ratification, and only if the convention proposes it for ratification.⁶² Therefore, even if the CFA were adopted by the states before Congress consented to it, the CFA cannot possibly trench on the federal government's role in the Article V convention process.

States that adopt the CFA properly limit the Article V convention process as a logical extension of the Constitution's default assumption that they retain general and indefinite powers of governance.

Why the CFA is our Best Hope

Of course, as intimated above, there are many competing ideas about how best to amend our Constitution to achieve a BBA. Some prefer going the direct route—somehow getting Congress to propose a BBA directly. Others prefer going the “plain vanilla” standard Article V route—somehow using the power states have to originate constitutional amendments without a compact. But the CFA remains the best option for securing a BBA for at least six reasons.

First, the fact that the CFA will only “go live” once it is joined by 38 states imposes no greater burden on securing ultimate success than any other method of amending the Constitution. This is because ratification by 38 states is required for any constitutional amendment, no matter how it is proposed.

Second, although congressional passage of the omnibus concurrent resolution is necessary for the Compact to work as designed, such passage requires fewer votes than the two-thirds of each house of Congress otherwise required for a direct proposal of a constitutional amendment. In fact, it requires no more votes than the passage of a convention call triggered by the standard Article V approach—a majority in the House and, at most, 60 votes in the Senate.

Third, although the Compact’s omnibus concurrent resolution must be passed free from substantial modifications by Congress to work as designed, it is far more difficult for the standard approach to keep the congressional call and ratification referral similarly “clean” from congressional meddling. This is because the Compact’s omnibus concurrent resolution needs only to be passed once and it can be passed at any time to fulfill Congress’s entire role in the Article V process. Efforts to keep the resolution free from congressional tinkering can be entirely focused on a singular lobbying effort and only when the potential votes in Congress align most favorably. This greatly enhances the chances of success as compared to the inflexible standard approach.

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Furthermore, there is clearly a far greater risk of institutional resistance from Congress to the standard approach as compared to the Compact approach. After all, the standard Article V approach engages Congress only after the threat to Washington’s power is fully manifested and imminent, which is when the number of state participants approaches 34. Rather than the organized political will of three-fourths of the states, who are represented by an interstate commission and whose governors can face down a recalcitrant Congress if necessary under the Compact, the “plain vanilla” approach confronts Congress with a mere stack of paper, which may not even represent the policy choices of current state legislatures. Moreover, if congressional tinkering becomes unavoidable, only the Compact’s omnibus concurrent resolution brings something substantive and specific to the table regarding the structure and outcome of the Article V process. The standard approach offers only a gaping void, which Congress could try to fill in order to game the ultimate outcome. No matter what congressional contingency its advocates may face, the Compact is clearly a superior political vehicle for originating a BBA that will meaningfully restrain congressional power.

Fourth, although the CFA is clearly constitutional under current case law and from an originalist jurisprudential perspective, it is important to emphasize that the Compact is actually designed to be operationally agnostic when it comes to legal theories about the nature of the state-initiated amendment power under Article V. One could believe and advocate just about anything about the underlying constitutional law, and the Compact would still come out on top. If despite the legal analysis presented above, one believes Congress controls the Article V process substantively through its call and ratification referral power, or that the Article V process involves a blend of state and congressional power, the Compact agrees because all of its terms and conditions are adopted and consented to by the congressional omnibus concurrent resolution, which bestows upon them the status of federal law under current precedent. Even if one contends that

(despite history and precedent) an Article V convention were somehow meant to be a revolutionary sovereign body directly representing the people, completely unbound by Congress or the states, the CFA can even accommodate that view too.

The CFA's 16 safeguards, discussed above, interpose a comprehensive series of significant political hurdles in the way of any convention that tried to deviate from the Compact. Wholly apart from their legal effect, the interlocking incentives created by these hurdles will cause all but the most unreasonable participants to follow the agenda set by the Compact. Most important, the Compact's Commission can relocate the convention as needed to ensure it follows the limited agenda and rules set by the Compact. This is a powerful safeguard against any risk that mob action could undermine the orderliness of the convention, that delegates might disregard the rules of the convention, or that a minority of non-member states might try to dominate the convention and override its one-state-one-vote requirement by sending excessive delegates. In any of these events, the Commission could easily re-organize the convention elsewhere, ensure a quorum of states exists and votes on the BBA, and trigger the preloaded ratification process before a would-be revolutionary convention would ever have a chance to run wild. Because the Commission does not sunset until the BBA is ratified, it could exercise this power before or after any of these events took place. Any convention that tried to deviate from the Compact would, in all likelihood, either be sidestepped by the CFA's Commission, implode for lack of participation or ultimately achieve nothing that could command a wide national consensus. This would be a powerful incentive for anyone to stick with the Compact's rules and limited agenda.

Fifth, the CFA contains two provisions that should shield its process from being upset by just about any conceivable court challenge. Its effective date provision ensures that no provision in the Compact can take effect before it is legally triggered.⁶³ This provision provides a crucial defense to any objection to the sequencing or prepackaging of multiple pieces of legislation in the Compact. For example, this provision furnishes a complete defense to any objection that the CFA improperly dictates the rules and agenda of an Article V convention from outside of the convention before they are actually voted into place by the member states' delegates at the convention. Additionally, the CFA's severance clause allows for the interpretive modification or elimination of just about any provision deemed unconstitutional in a final judgment—except those that guard against member states participating in or ratifying the proposals of an Article V convention that deviate from the agenda and rules set by the Compact.⁶⁴

The Sixth and final reason why the CFA is our best vehicle for advancing a BBA is essentially a restatement of the observations that opened this article. Simply put, when it comes to making structural changes to Congress, it is totally unreasonable to believe that the direct route of having Congress propose limitations on itself will result in any meaningful balanced budget amendment. One only need look at the balanced budget amendments that Congress has proposed to see that they are filled with loopholes, waivers, and definitions that allow Congress to game the entire process to the point of total ineffectiveness. Congress presently enjoys unlimited power to engage in debt spending, and

The CFA's 16 safeguards, discussed above, interpose a comprehensive series of significant political hurdles in the way of any convention that tried to deviate from the Compact.

this creates a nearly intractable conflict of interest for the ambitious souls that populate that representative body. Two-thirds of each House will never agree to meaningfully tie their own hands and give up the unlimited power they hold.

Taken together, the Compact's ability to stand on just about any conceivable legal theory of Article V, while minimizing congressional resistance to the process, renders it far more likely to succeed than any other effort.

Conclusion

Taken together, the Compact's ability to stand on just about any conceivable legal theory of Article V, while minimizing congressional resistance to the process, renders it far more likely to succeed than any other effort.

As unusual as the CFA may seem, there are more than 200 interstate compacts, many of which make the CFA appear rather mundane by comparison. For example, there are interstate compacts for military alliances to repel invasions, to bypass the Electoral College, and to impose cap-and-trade greenhouse gas regulation. Despite the range of novel approaches to coordinating state action found in the hundreds of interstate compacts that currently exist and that have existed in the past, *no state or federal court has ever struck down a single interstate compact*. Against this backdrop of longstanding judicial tolerance of the use of interstate compacts to enable states to solve problems of collective action, there is every reason to believe the CFA will survive any legal challenge. If anything, the problems of collective action surrounding the use of Article V to advance a BBA make it a natural candidate for an interstate compact solution. In the final analysis, not only is there a solid originalist and precedential basis for recognizing the constitutionality of the CFA's limitations on the Article V convention process, but there is a powerful pragmatic and public policy case as well. Simply put, time is not on our side when it comes to stopping Washington's abuse of limitless debt spending. Only the CFA BBA offers a viable chance at imposing reform from the states in the near future.

Nick Dranias led the Goldwater Institute's successful challenge to Arizona's system of government campaign financing to the U.S. Supreme Court. Even before the case was accepted for review, Dranias was able to persuade the Court to block campaign subsidies from being paid to government-funded candidates during the 2010 election cycle. Dranias also manages the Institute's analysts and serves as a constitutional scholar. He has authored scholarly articles dealing with a wide spectrum of issues in constitutional and regulatory policy. His articles have been published by leading law reviews, bar journals and think tanks across the country. Dranias' latest work is *Airing Out the Smoke-Filled Rooms: Bringing Transparency to Public Union Collective Bargaining*. Dranias also serves on the board of Compact for America, Inc., which is urging the states to advance a Balanced Budget Amendment using an interstate compact.

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1. Christopher Chantrell, http://www.usgovernmentdebt.us/spending_chart_1940_2017USr_14s1li011mcn_H0f (last visited April 12, 2013).
2. Christopher Chantrell, http://www.usgovernmentdebt.us/spending_chart_1900_2016USp_XXs1li111mcn_H0f_US_Federal_Debt#usgs302 (last visited April 12, 2013)
3. App. A.
4. App. B.
5. *Id.*, art. V, VI, VII, IX.
6. App. B, tit. I, II.
7. Presidential presentment is not required for the passage of the omnibus concurrent resolution because the president has no role in the proposal of amendments under Article V, which exercises power textually conferred only on state legislatures, state conventions and Congress. *Hollingsworth v. Virginia*, 3 U.S. 378 (1798); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 460 (D.C. Cir. 1982); Special Constitutional Convention Study Committee, American Bar Association, *Amendment of the Constitution by the Convention Method under Article V* 25 (1974). Although statutes giving consent to interstate compacts have been presented to the president for signature, this fact should not alter the foregoing conclusion. As with the exercise of power under Article V, the text of the Compact Clause articulates no role for the president in granting consent to interstate compacts, and no case actually holds that congressional consent to an interstate compact requires presidential approval. Significantly, the Supreme Court has long held congressional consent to interstate compacts can be implied both before and after the underlying agreement is reached. *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893). This rule of law treats the consent of Congress very differently from the normal lawmaking process, insofar as laws obviously cannot be enacted by mere implication. It also compels the conclusion that presidential presentment is unnecessary to garner the requisite consent of Congress for an interstate compact. After all, if an actual vote on specific legislation approving a specific interstate compact is not necessary to secure the requisite consent of Congress, it follows that presidential presentment is not necessary. Prevailing precedent thus justifies concluding that the Compact Clause confers an exclusive power upon Congress to approve interstate compacts that can be exercised without presidential presentment. Moreover, especially with regard to an interstate compact that solely directs and regulates the exercise of amendment powers under Article V, the structure and purpose of the Constitution does not require the president to have the power to veto congressional consent for that compact. This is because the president's role in presentment is to defend the executive branch from incursions by the federal legislative branch and to act as the representative of people of the nation as a whole. *Ins v. Chadha*, 462 U.S. 919, 951 (1983); *Myers v. United States*, 272 U.S. 52, 123 (1926); Federalist No. 73 (Alexander Hamilton) (Gideon ed., 1818). Fulfilling this role does not require the president to have the power to veto an interstate compact that regulates the Article V amendment proposal process, in which neither the executive branch of the federal government nor the people have any textual role.

8. See, e.g., Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act; Northeast Interstate Dairy Compact.
9. See, e.g., Micronesia, Marshall and Palau Implementation of Compact of Free Association Between the United States and Palau; Jennings Randolph Lake Project Compact; Interstate Compact on Licensure of Participants in Live Racing with Parimutuel Wagering; Interstate Compact on Juveniles.
10. See, e.g., *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892); *Opinion of the Justices*, 287 Ala. 326 (1971); *Thalheimer v. Board of Supervisors of Maricopa County*, 11 Ariz. 430, 94 P. 1129 (Ariz. Terr. 1908); *Thomas v. Trice*, 145 Ark. 143 (1920); *Busch v. Turner*, 26 Cal. 2d 817 (1945); *People ex rel. Moore v. Perkins*, 56 Colo. 17 (1913); *Pratt v. Allen*, 13 Conn. 119 (1839); *Rice v. Foster*, 4 Harr. 479 (De. 1847); *Opinion to the Governor*, 239 So. 2d 1 (Fla. 1970); *Henson v. Georgia Industrial Realty Co.*, 220 Ga. 857 (1965); *Gillesby v. Board of Commissioners of Canyon County*, 17 Idaho 586 (1910); *Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011); *Lafayette, McBR Co. v. Geiger*, 34 Ind. 185 (1870); *Colton v. Branstad*, 372 N.W. 2d 184 (Iowa 1985); *Phoenix Ins. Co. of N.Y. v. Welch*, 29 Kan. 672 (1883); *Walton v. Carter*, 337 S.W. 2d 674 (Ky. 1960); *City of Alexandria v. Alexandria Fire Fighters Ass'n, Local No. 540*, 220 La. 754 (1954); *Smigiel v. Franchot*, 410 Md. 302 (2009); *Howes Bros. Co. v. Mass. Unemployment Compensation Commission*, 296 Mass. 275 (1936); *Council of Orgs. & Ors. For Educ. About Parochiaid, Inc. v. Governor*, 455 Mich. 557 (1997); *State v. Cooley*, 65 Minn. 406 (1896); *Schuller v. Bordeaux*, 64 Miss. 59 (1886); *In re O'Brien*, 29 Mont. 530 (1904); *Akin v. Director of Revenue*, 934 S.W.2d 295 (Mo. 1996); *State v. Second Judicial Dist. Ct. in & for Churchill County*, 30 Nev. 225 (1908); *State v. Liedtke*, 9 Neb. 490 (1880); *State ex rel. Pearson*, 61 N.H. 264 (1881); *In re Thaxton*, 78 N.M. 668 (1968); *People v. Fire Ass'n of Philadelphia*, 92 N.Y. 311 (1883); *Fullam v. Brock*, 271 N.C. 145 (1967); *Enderson v. Hildenbrand*, 52 N.D. 533 (1925); *Gordon v. State*, 23 N.E. 63 (Ohio 1889); *State ex rel. Murray v. Carter*, 167 Okla. 473 (1934); *Hazell v. Brown*, 242 P.3d 743 (Or. App. 2010); *Appeal of Locke*, 72 Pa. 491 (1873); *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634 (1999); *Clark v. State ex rel. Bobo*, 113 S.W.2d 374 (Tenn. 1938); *State Highway Dept. v. Gorham*, 139 Tex. 361 (1942); *Bull v. Reed*, 54 Va. 78 (1855); *State v. Baldwin*, 140 Vt. 501 (1981); *State ex rel. Zilisch v. Auer*, 197 Wis. 284 (1928); *Brower v. State*, 137 Wash. 2d 44 (1998); *Le Page v. Bailey*, 114 W. Va. 25 (1933).
11. Howard Newcomb Morse, *A Study in the Problems Presented by the Integration into the Constitution of Certain Articles Amendatory Thereto*, 11 U. Det. L.J. 1 (1947-1948).
12. See, e.g., U.S. reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990).
13. In any event, the risk of litigation successfully challenging the foregoing referral and ratification provisions as unconstitutional is minimal under current precedent. One of the few Supreme Court cases addressing the sufficiency of an amendment ratification refused to reach the question of its constitutionality, with a plurality deeming it a question exclusively for Congress to answer. See *Coleman v. Miller*, 307 U.S. 433 (1939). Even if such a challenge were to succeed, severance of the prospective legislative referral and ratification provisions would be the most likely final outcome.
14. App. A, art. II, sec. 7 ("section 3").

15. *Id.* (“section 3”).
16. *Id.* (“section 4”).
17. *Id.* (“section 5”).
18. *Id.*
19. *Id.* (“section 1”).
20. CBS News Report: What’s Up with the \$1 Trillion Coin, [http://www.cbsnews.com/8301-250_162-57563428/whats-up-with-the-\\$1-trillion-coin/](http://www.cbsnews.com/8301-250_162-57563428/whats-up-with-the-$1-trillion-coin/) (last visited April 4, 2013).
21. App. A., art. II, sec. 7 (“section 6”).
22. *Id.* (“section 3”).
23. *Id.*
24. The selection of governors as delegates is based on the precedent of Benjamin Franklin attending the Philadelphia Convention while serving as the equivalent of the governor of Pennsylvania. Significantly, governors are required to take a temporary leave of absence while attending the Convention and to not exercise any gubernatorial powers during the Convention. This limitation is intended to avoid any possible separation of powers issue with executive branch officials exercising what might be construed as legislative powers during the Convention, as well as to furnish a political safeguard of having the governor’s likely political rival in charge of the state during the convention and able to direct enforcement of the CFA’s provisions, which should incentivize governor-delegates to respect the CFA. With respect to governors who leave their home states to attend the convention, this provision is fully consistent with state constitutional provisions providing that when a governor leaves the state, another executive branch official (typically either the Secretary of State or Lieutenant Governor) shall exercise all gubernatorial powers. With respect to any governor who attends the convention in his or her home state, all states allow governors to take a temporary leave of absence due to temporary disability; and most states allow for other grounds for temporary leaves of absence. What constitutes disability or justification for a temporary leave of absence can be defined by state law, and the Compact’s requirement that governor-delegates not exercise gubernatorial powers and take a leave of absence while attending the convention would supply an adequate legal definition of disability. As a failsafe to ensure that every member state is represented if their governor is otherwise unable to attend the convention, the Compact allows for the legislative replacement of the governor-delegate for good cause.
25. Dallas was chosen as the default location of the convention because of its central location and reputable state and federal court systems.
26. The Compact Commission is populated by appointees of the governors of the first three member states, and it may be expanded to include appointees by the governors of all member states. As such, it constitutes an agency of the compacting states, not the federal government. *Seattle Master Builders v. Pacific Northwest Electric*, 786 F.2d 1359, 1371 (9th Cir. 1986).

27. After 38 states join the Compact, no member state may withdraw without unanimous consent of all member states. In effect, the membership of the compacting state will be entrenched from repeal by future legislatures until the CFA BBA is ratified. The goal of such entrenchment is to ensure the laser-focus of the CFA on advancing a specific BBA is maintained throughout the amendment process and to guarantee its safeguards remain state law during the entire Article V convention process. Ordinarily, one legislative body may not entrench its legislation against repeal or modification by future legislative bodies in the same government. However, so long as they are entered into voluntarily and for a discrete purpose that does not substantially impair a state's sovereign power, compacts (like contracts) can and do entrench the decisions of the adopting legislative body under the supremacy of the U.S. Constitution. As a result, "a state can impose state law on a compact organization only if the compact specifically reserves its right to do so." *Seattle Master Builders*, 786 F.2d at 1371 (9th Cir. 1986). This has been the law for over 100 years. *Dyer v. Sims*, 341 U.S. 22, 28 (1951) ("It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between states by those who alone have political authority to speak for a state can be unilaterally nullified, or given final meaning by an organ of one of the contracting States"); *Kentucky v. Indiana*, 281 U.S. 163, 178 (1930); *Green v. Biddle*, 21 U.S. 1, 39-42 (1823). In the unlikely event that such entrenchment violates a member state's constitution, the CFA's severance clause provides constructional rules that a final judgment should have the effect of severing the offensive provision or causing that member state to withdraw from the Compact.
28. See, e.g., *New Jersey v. New York*, 523 U.S. 767, 811 (1988) (holding that congressional approval "transforms an interstate compact within [the Compact Clause] into a law of the United States"); *Bryant v. Yellen*, 447 U.S. 352, 369 (1980); *McKenna v. Washington Metropolitan Area Transit Authority*, 829 F.2d 186 (D.C. Cir. 1987). Of course, by consenting to an interstate compact, Congress is not literally enacting a new federal law; instead, it is affirmatively yielding to the compact's subject matter, and allowing the compacting states' exercise of sovereignty to occupy the relevant field of law. Such conduct is properly binding on Congress as the functional equivalent of federal law under the doctrine of estoppel by acquiescence, or "quasi estoppel." Cf. *Simmons v. Burlington, Cedar Rapids & Northern Ry. Co.*, 159 U.S. 278, 290 (1895); *Ritter v. Ulman*, 78 F. 222, 224 (4th Cir. 1897).
29. See, e.g., Washington Metropolitan Area Transit Regulation Compact; The Texas Low-Level Radioactive Waste Disposal Compact; Central Interstate Low-level Radioactive Waste Compact. The CFA allows the Commission to waive this venue provision upon request by member states and provides that the Commission's decision is final, much like the alternative dispute resolution provisions in the Alabama-Coosa-Tallapoosa River Basin Compact and the Interstate Compact on the Placement of Children.
30. App. A, art. V, sec. 4.
31. *Id.*, art. VIII, sec. 2.
32. *Id.*, art. VIII, sec. 2; App. B, tit. I, sec. 104.
33. App. A, art. VII.
34. *Id.*, art. VI, sec. 2, 6.

35. *Id.*, art. VI, sec. 6, 7, art. VII, sec. 3.
36. *Id.*, art VI, sec. 6, art. VIII, sec. 1, 2.
37. *Id.*, art. VI, sec. 5, 8.
38. *Id.*, art. VI, sec. 7, 8, art. VIII, sec. 1, 2.
39. *Id.*, art. VI, sec. 3.
40. *Id.*, art VII, sec. 11.
41. *Id.*, art. VII, sec. 6, art. VIII, sec. 1.
42. *Id.*
43. *Id.*, art. VIII, sec. 3.
44. *Id.*, art. X, sec. 2.
45. *Id.*, art. X, sec. 3.
46. *Id.*, art. IV, sec. 1(d), art. VII, sec. 2.
47. *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991) (citing Federalist No. 45).
48. *See, e.g., Snow v. City of Memphis*, 527 S.W.2d 55 (Tenn. 1975).
49. *See, e.g., State ex rel. Kvaalen v. Graybill*, 159 Mont. 190, 496 P.2d 1127 (Mont. 1972) (“There is some authoritative support for the doctrine of inherent, plenary, and sovereign power of a constitutional convention; however it is derived from early cases during the American Revolution and in the reconstruction era following the Civil War where there was no effective or established government to supervise the work of the convention. In our view, this doctrine is not applicable to present conditions where, as here, the constitutional convention is called pursuant to the provisions of an existing constitution, and by enabling legislation enacted thereunder. Even in situations where the existing constitution provided no means for calling a constitutional convention, the Pennsylvania court refused to apply this doctrine of inherent plenary power.”) (citing *Woods’s Appeal*, 75 Pa. 59 (1874); *Wells v. Bain*, 75 Pa. 39 (1874)); *accord Gaines v. O’Connell*, 305 Ky. 397, 204 S.W.2d 425 (Ky. 1947) (citing *Staples v. Gilmer*, 183 Va. 613, 33 S.E.2d 49 (1945)).
50. Likewise, in his famous April 1830 letter on nullification, James Madison observed: “final resort within the purview of the Constitution, lies in an *amendment* of the Constitution, according to a process applicable by the states.”

51. Nevertheless, an argument under post-New Deal case law could be made that Congress has a significant role to play in organizing and regulating the convention, which may include the designation of delegates, the convention agenda, and convention logistics, because of Congress's power to call the convention and the implied power authorized by the Necessary and Proper Clause. Despite its lack of merit from an originalist perspective, the view that Congress has a significant role in organizing and regulating an Article V convention thus poses a real litigation risk. Fortunately, the CFA is designed to be fully compatible with even this view because of the fact that it is designed to be blessed by Congress in the counterpart omnibus concurrent resolution, which under current case law transforms the CFA into the functional equivalent of federal law. *See, e.g., New Jersey*, 523 U.S. at 811; *Bryant*, 447 U.S. at 369. Therefore, whether one views the CFA as dealing in a subject matter that is fully controlled by the states or controlled in significant ways by Congress, the CFA will fully lock down the Article V convention as advancing solely an up or down vote on a powerful BBA as a matter of state and federal law, both under current case law and also consistently with an originalist understanding of the Constitution.
52. Robert Natelson, *Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers*, Goldwater Institute Policy Brief No. 11-02, 4 n.15 (Feb. 22, 2011)
53. Roger Sherman Hoar, *Constitutional Conventions: The Nature, Powers, and Limitations* 127-29 (1917).
54. 3 Op. Off. Legal Counsel 390 (1979).
55. As argued by James Madison in Federalist No. 40, it is a myth that the Philadelphia Convention disregarded its state-set agenda. The resolution of the Continental Congress calling the Philadelphia Convention of 1787 contemplated "revising" the Articles with new "provisions" for the broad purpose of establishing "in these states a firm national government ... [and] render the federal Constitution adequate to the exigencies of Government and the preservation of the Union." Resolution of Feb. 21, 1787, 32 J. Continental Cong. 1774-1789, at 74 (Roscoe R. Hill ed., reprint ed. 1968). Contemporaneous legal usage indicates that "revision" had a broader meaning than "amendment," encompassing both narrow amendments and total or substantial rewrites of an original document. Nick Dranias, *Federalism DIY: 10 Ways for States to Check and Balance Washington*, Goldwater Institute Policy Report, 63 n.385 (June 1, 2011). Equally broad language was reflected in the state-issued commissions of nearly all delegates to the convention. 3 Records of the Federal Convention of 1787, 706-36 (M. Farrand ed., 1911), available at <http://oll.libertyfund.org/title/1787> (last visited Dec. 14, 2010). Thus, in proposing the Constitution, the 1787 convention stayed well within the wide agenda set by the states both indirectly through their Continental Congress representatives and directly through their delegate commissions.
56. *See inter alia* Robert Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, Goldwater Institute Policy Report No. 241 (Sept. 16, 2010); Robert Natelson, *Learning from Experience: How the States Used Article V Applications in America's First Century*, Goldwater Institute Policy Brief No. 10-06 (Nov. 4, 2010).

57. Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, Constitutional Commentary, Vol. 81, p. 53 (2012); Mike Stern, *Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention*, 78 Tenn. L. Rev. 765 (Spring 2011). In any event, the CFA's severance clause is designed to ensure that courts construe its deliberative limitations to be as flexible as may be constitutionally required.
58. The fractured ruling in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), that states may not layer additional qualification requirements (specifically, term limits) on federal elected representatives under their Tenth Amendment authority is distinguishable because the Article V convention process was meant to adopt, codify, and regulate the states' pre-constitutional custom and practice of utilizing interstate conventions to propose legal reforms. This is confirmed by Farrand's report of proceedings at the Philadelphia Convention on September 15, 1787, in which the text of Article V was modified to its ultimate form explicitly to include the same convention process that was then underway. Unlike the electoral qualifications of federal elected officials, an Article V convention was not meant to be a mere construct of the federal constitution. Furthermore, *U.S. Term Limits* is also distinguishable because the Article V convention organized by the CFA may not be attended by member states before the CFA is approved by Congress in its counterpart omnibus concurrent resolution. By consenting to the CFA, Congress would waive any possible conflict between the Supremacy Clause and the exertion of state sovereignty in question, and affirmatively yield to the exclusive sovereignty of the states over the CFA's subject matter. Therefore, even if an Article V convention were somehow regarded as entirely a creation of the U.S. Constitution, there is no clash between the CFA and any power delegated to Congress.
59. *U.S. Steel v. Multistate Tax Comm'n*, 434 U.S. 452, 459, 472 (1978).
60. App. A, art. VII, sec. 2.
61. *Id.*, art. VIII, sec. 2(b).
62. *Id.*, art. IX, sec. 2.
63. *Id.*, art. X, sec. 4.
64. *Id.*, sec. 5.

Appendix A: Interstate Compact Model Legislation

REFERENCE TITLE: _____

State of _____

(Introducing _____)

_____ Legislature

_____ Session

20____

____. B. _____

Be it enacted by the Legislature of the State of _____:

Section 1. Title _____, _____, is amended by adding chapter _____, to read:

CHAPTER _____

Compact for America

_____. Adoption of compact; text of compact

THE STATE OF _____ ENACTS, ADOPTS AND AGREES TO BE BOUND BY THE FOLLOWING COMPACT:

ARTICLE I

DECLARATION OF POLICY, PURPOSE AND INTENT

Whereas, every State enacting, adopting and agreeing to be bound by this Compact intends to ensure that their respective Legislature's use of the power to originate a Balanced Budget Amendment under Article V of the United States Constitution will be exercised conveniently and with reasonable certainty as to the consequences thereof.

Now, therefore, in consideration of their expressed mutual promises and obligations, be it enacted by every State enacting, adopting and agreeing to be bound by this Compact, and resolved by each of their respective Legislatures, as the case may be, to exercise herewith all of their respective powers as set forth herein, notwithstanding any law to the contrary.

ARTICLE II

DEFINITIONS

Section 1. “Compact” means this “Compact for America.”

Section 2. “Convention” means the convention for proposing amendments organized by this Compact under Article V of the United States Constitution and, where contextually appropriate to ensure the terms of this Compact are not evaded, any other similar gathering or body, which might be organized as a consequence of Congress receiving the application set out in this Compact and claim authority to propose or effectuate any amendment, alteration or revision to the United States Constitution.

Section 3. “State” means a state of the United States. Where contextually appropriate, the term “State” shall be construed to include all of its branches, departments, agencies, political subdivisions, and officers and representatives acting in their official capacity.

Section 4. “Member State” means a State that has enacted, adopted and agreed to be bound to this Compact. For any State to qualify as a Member State with respect to any other State under this Compact, each such State must have enacted, adopted and agreed to be bound by substantively identical compact legislation.

Section 5. “Compact Notice Recipients” means the Archivist of the United States, the President of the United States, the President of the United States Senate, the Office of the Secretary of the United States Senate, the Speaker of the United States House of Representatives, the Office of the Clerk of the United States House of Representatives, the chief executive officer of each State, and the presiding officer(s) of each house of the Legislatures of the several States.

Section 6. Notice. All notices required by this Compact shall be by U.S. Certified Mail, return receipt requested, or an equivalent or superior form of notice, such as personal delivery documented by evidence of actual receipt.

Section 7. “Balanced Budget Amendment” means the following model legislation:

“Article __

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

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

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

(60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

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

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

Section 6. For purposes of this article, “debt” means any obligation backed by the full faith and credit of the government of the United States; “outstanding debt” means all debt held in any account and by any entity at a given point in time; “authorized debt” means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; “total outlays of the government of the United States” means all expenditures of the government of the United States from any source; “total receipts of the government of the United States” means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; and “general revenue tax” means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

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

ARTICLE III

COMPACT MEMBERSHIP AND WITHDRAWAL

Section 1. This Compact governs each Member State to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting or contrary law.

Section 2. By becoming a Member State, each such State offers, promises and agrees to perform and comply strictly in accordance with the terms and conditions of this Compact, and has made such offer, promise and agreement in anticipation and consideration of, and in substantial reliance upon, such mutual and reciprocal performance and compliance by each other current and future Member State, if any. Accordingly, in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a

Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State's Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State.

Section 3. When fewer than three-fourths of the states are Member States, any Member State may withdraw from this Compact by enacting appropriate legislation, as determined by state law, and giving notice of such withdrawal to the Compact Administrator, if any, or otherwise to the chief executive officer of each other Member State. A withdrawal shall not affect the validity or applicability of the compact with respect to remaining Member States, provided that there remain at least two such states. However, once at least three-fourths of the states are Member States, then no Member State may withdraw from the Compact absent unanimous consent of all Member States.

ARTICLE IV

COMPACT COMMISSION AND COMPACT ADMINISTRATOR

Section 1. Nature of the Compact Commission. The Compact Commission ("Commission") is hereby established. It has the power and duty: (a) to appoint and oversee a Compact Administrator; (b) to encourage states to join the Compact and Congress to consent to the Compact through educational efforts; (c) to coordinate the performance of obligations under the Compact; (d) to determine the date, time and location of the Convention and oversee its logistical operations, as appropriate to ensure this Compact governs its proceedings; (e) to oversee the defense and enforcement of the Compact in appropriate legal venues; (f) to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and (g) to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact. The Commission shall only have such implied powers as are essential to carrying out these express powers and duties. It shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. It may adopt and publish corresponding bylaws and policies.

Section 2. Commission Membership. The Commission initially consists of three unpaid members. Each Member State may appoint one member to the Commission through an appointment process to be determined by their respective chief executive officer until all positions on the Commission are filled. Positions shall be assigned to appointees in the order in which their respective appointing states became Member States. The bylaws of the Commission may expand its membership to include representatives of additional Member States and to allow for modest salaries and reimbursement of expenses if adequate funding exists.

Section 3. Commission Action. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of its appointed membership is present, and no action shall be binding unless approved by a majority of the Commission's appointed membership. The Commission shall meet at least once a year, and may meet more frequently.

Section 4. First Order of Business. The Commission shall at the earliest possible time elect from among its membership a Chairperson, determine a primary place of doing business, and appoint a Compact Administrator.

Section 5. Funding. The Commission and the Compact Administrator's activities shall be funded exclusively by each Member State, as determined by their respective state law, or by voluntary donations

Section 6. Compact Administrator. The Compact Administrator has the power and duty: (a) to timely notify the States of the date, time and location of the Convention; (b) to organize and direct the logistical operations of the Convention; (c) to maintain an accurate list of all Member States, their appointed delegates, including contact information; and (d) to formulate, transmit, and maintain all official notices, records, and communications relating to this Compact. The Compact Administrator shall only have such implied powers as are essential to carrying out these express powers and duties; and shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. The Compact Administrator serves at the pleasure of the Commission and must keep the Commission seasonably apprised of the performance or nonperformance of the terms and conditions of this Compact. Any notice sent by a Member State to the Compact Administrator concerning this Compact shall be adequate notice to each other Member State provided that a copy of said notice is seasonably delivered by the Compact Administrator to each other Member State's respective chief executive officer.

Section 7. Notice of Key Events. Upon the occurrence of each of the following described events, or otherwise as soon as possible, the Compact Administrator shall immediately send the following notices to all Compact Notice Recipients, together with certified conforming copies of the chaptered version of this Compact as maintained in the statutes of each Member State: (a) whenever any State becomes a Member State, notice of that fact shall be given; (b) once at least three-fourths of the states are Member States, notice of that fact shall be given together with a statement declaring that the Legislatures of at least two-thirds of the several states have applied for a convention for proposing amendments under Article V of the United States Constitution, petitioning Congress to call the Convention contemplated by this Compact, and further requesting cooperation in organizing the same in accordance with this Compact; (c) once Congress has called the Convention contemplated by this Compact, and whenever the date, time and location of the Convention has been determined, notice of that fact shall be given together with the date, time and location of the Convention and other essential logistical matters; (d) upon approval of the Balanced Budget Amendment by the Convention, notice of that fact shall be given together with the transmission of certified copies of such approved proposed amendment and a statement requesting Congress to refer the same for ratification by three-fourths of the legislatures of the several states under Article V of the United States Constitution (however, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted); and (e) when any Article of this Compact prospectively ratifying the Balanced Budget Amendment is effective in any Member State, notice of the same shall be given together with a statement declaring such ratification and further requesting cooperation in ensuring that the official record confirms and reflects the effective corresponding amendment to the United States Constitution. However, whenever any Member State enacts appropriate legislation, as determined by the laws of the respective state, withdrawing from this Compact, the Compact Administrator shall immediately send certified conforming copies of the chaptered version of such withdrawal legislation as maintained in the statutes of each such withdrawing Member State, solely to each chief executive officer of each remaining Member State, giving notice of such withdrawal.

Section 8. Cooperation. The Commission, Member States and Compact Administrator shall cooperate with each other and give each other mutual assistance in enforcing this Compact and shall give the chief law enforcement officer of each other Member State any information or documents that are reasonably necessary to facilitate the enforcement of this Compact.

Section 9. Dissolution. The Commission shall be deemed dissolved, all of its members and the Compact Administrator shall be discharged, and all rights and obligations of Member States under this Article shall be deemed null and void, when the United States Constitution is amended by the Balanced Budget Amendment.

Section 10. This Article does not take effect until there are at least two Member States.

ARTICLE V

RESOLUTION APPLYING FOR CONVENTION

Section 1. Be it resolved, as provided for in Article V of the Constitution of the United States, the Legislature of each Member State herewith applies to Congress for a convention for proposing amendments.

Section 2. To the furthest extent permitted by law, the Convention shall be entirely focused upon and exclusively limited to the subject matter of introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment.

Section 3. Congress is further petitioned to refer the Balanced Budget Amendment to the states for ratification by three-fourths of their respective Legislatures.

Section 4. This Article does not take effect until at least three-fourths of the several states are Member States.

ARTICLE VI

DELEGATE APPOINTMENT, LIMITATIONS AND INSTRUCTIONS

Section 1. Number of Delegates. Each Member State shall be entitled to one delegate as its sole and exclusive representative at the Convention as set forth in this Article.

Section 2. Identity of Delegates. Each Member State's chief executive officer, who is serving on the enactment date of this Compact, is appointed in an individual capacity to represent his or her respective State at the Convention as its sole and exclusive delegate.

Section 3. Replacement or Recall of Delegates. A delegate appointed hereunder may be replaced or recalled by the Legislature of his or her respective State at any time for good cause, such as criminal misconduct or the violation of this Compact. If replaced or recalled, any delegate previously appointed hereunder must immediately vacate the Convention and return to their respective State's capitol.

Section 4. Oath. The power and authority of a delegate under this Article may only be exercised after appointment is duly accepted by such appointee publicly taking the following oath or affirmation: "I do solemnly swear (or affirm) that I accept this appointment and will act strictly in accordance with the terms and conditions of the Compact for America, the Constitution of the State I represent, and the United States Constitution. I understand that violating this oath (or affirmation) forfeits my appointment and may subject me to other penalties as provided by law."

Section 5. Term. The term of a delegate hereunder terminates upon the earlier of either one (1) calendar year from the date of accepting the appointment or the adjournment of the Convention, unless shortened by recall, replacement or forfeiture under this Article. Upon expiration of such term, any person formerly serving as a delegate must immediately withdraw from and cease participation at the Convention, if any is proceeding.

Section 6. Delegate Authority. The power and authority of any delegate appointed hereunder is strictly limited: (a) to introducing, debating, voting upon, proposing and enforcing the Convention Rules specified in this Compact, as needed to ensure those rules govern the Convention; and (b) to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment. No delegate of any Member State may introduce, debate, vote upon, reject or propose for ratification any constitutional amendment at the Convention unless: (a) the Convention Rules specified in this Compact govern the Convention and their actions; and (b) the constitutional amendment is the Balanced Budget Amendment. Furthermore, the power and authority of any delegate at the Convention does not include any power or authority associated with any other public office held by the delegate. Any person appointed to serve as a delegate shall take a temporary leave of absence from any other public office held by the delegate while attending the Convention, and may not exercise any power or authority associated with any other public office held by the delegate while attending the Convention. All actions taken by any delegate in violation of this section are void ab initio.

Section 7. Order of Business. Before introducing, debating, voting upon, rejecting or proposing for ratification any constitutional amendment at the Convention, each delegate of every Member State must first ensure the Convention Rules in this Compact govern the Convention and their actions. Every delegate and each Member State must immediately vacate the Convention and notify the Compact Administrator by the most effective and expeditious means if the Convention Rules in this Compact are not adopted to govern the Convention and their actions.

Section 8. Forfeiture of Appointment. If any Member State or delegate violates any provision of this Compact, then every delegate of that Member State immediately forfeits his or her appointment, and shall immediately cease participation at the Convention, vacate the Convention, and return to his or her respective State's capitol.

Section 9. Expenses. A delegate appointed hereunder is entitled to reimbursement of reasonable expenses for attending the Convention from his or her respective Member State. No delegate may accept any other form of remuneration or compensation for service under this Compact.

ARTICLE VII

CONVENTION RULES

Section 1. Nature of the Convention. The Convention shall be organized, construed and conducted as a body exclusively representing and constituted by the several states.

Section 2. Date and Location of the Convention. The Convention shall be held in Dallas, Texas and commence proceedings within 60 days of the effective date of the Congressional resolution calling the Convention, on a specific date and a time to be determined by the Commission. With prior notice given to all Compact Notice Recipients, the Commission may subsequently relocate and reschedule the Convention to ensure it proceeds in an orderly manner in accordance with the terms and conditions of this Compact.

Section 3. Agenda of the Convention. The agenda of the Convention shall be entirely focused upon and exclusively limited to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment under the Convention Rules specified in this Article and in accordance with the Compact. It shall not be in order for the Convention to consider any matter that is outside the scope of this agenda.

Section 4. Delegate Identity and Procedure. States shall be represented at the Convention through duly appointed delegates. The number, identity and authority of delegates assigned to each State shall be determined by this Compact in the case of Member States or, in the case of states that are not Member States, by their respective state laws. However, to prevent disruption of proceedings, no more than three delegates may attend and participate in the Convention on behalf of any State that is not a Member State. A certified chaptered conforming copy of this Compact, together with government-issued photographic proof of identification, shall suffice as credentials for delegates of Member States. Any commission for delegates of states that are not Member States shall be based on their respective state laws, but it shall furnish credentials that are at least as reliable as those required of Member States.

Section 5. Voting. Each State represented at the Convention shall have one vote, exercised by the vote of that State's delegate in the case of states represented by one delegate, or, in the case of any State that is not a Member State and that is represented by more than one delegate, by the majority vote of that State's respective delegates.

Section 6. Quorum. A majority of the several states of the United States, each present through their respective delegate in the case of states represented by one delegate, or through a majority of their respective delegates, in the case of any State that is not a Member State and that is represented by more than one delegate, shall constitute a quorum for the transaction of any business on behalf of the Convention.

Section 7. Action by the Convention. The Convention shall only act as a committee of the whole chaired by the delegate representing the first State to have become a Member State. The transaction of any business on behalf of the Convention, including the designation of a Secretary, the adoption of parliamentary procedures and the rejection or proposal of constitutional amendments, requires a quorum to be present and a majority affirmative vote of those states constituting the quorum.

Section 8. Parliamentary Procedure. In adopting, applying and formulating parliamentary procedure, the Convention shall exclusively adopt, apply or appropriately adapt provisions of the most recent editions of Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure. In adopting, applying or adapting parliamentary procedure, the Convention shall exclusively consider analogous precedent arising within the jurisdiction of the United States. Parliamentary procedures adopted, applied or adapted pursuant to this section shall not override or otherwise conflict with this Compact.

Section 9. Transmittal. Upon approval of the Balanced Budget Amendment by the Convention to propose for ratification, the Chair of the Convention shall immediately transmit certified copies of such approved proposed amendment to the Compact Administrator and all Compact Notice Recipients, notifying them respectively of such approval and requesting Congress to refer the same for ratification by the States under Article V of the United States Constitution. However, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted as aforesaid.

Section 10. Transparency. Records of the Convention, including the identities of all attendees and detailed minutes of all proceedings, shall be kept by the Chair of the Convention or Secretary designated by the Convention. All proceedings and records of the Convention shall be open to the public upon request subject to reasonable regulations adopted by the Convention that are closely tailored to preventing disruption of proceedings under this Article.

Section 11. Adjournment of the Convention. The Convention shall permanently adjourn upon the earlier of twenty-four (24) hours after commencing proceedings under this Article or the completion of the business on its Agenda.

ARTICLE VIII

PROHIBITION ON ULTRA VIRES CONVENTION

Section 1. Any proposal or action of the Convention is void ab initio and issued by a body that is conducting itself in an unlawful and ultra vires fashion if that proposal or action: (a) violates or was approved in violation of the Convention Rules or the limitations on delegate authority specified in this Compact; (b) purports to propose or effectuate a mode of ratification that is not specified in Article V of the United States Constitution; or (c) purports to propose or effectuate the formation of a new government. All Member States and their residents are prohibited from advancing or materially assisting in the advancement of any such proposal or action.

Section 2. Member States shall not attend or participate in the Convention unless: (a) its agenda is governed by the Convention Rules of this Compact; and (b) Congress first calls the Convention in accordance with this Compact and prospectively designates the method of ratification for the Balanced Budget Amendment as being by three-fourths of the Legislatures of the several States.

Section 3. Member States shall not ratify or otherwise approve any proposed amendment, alteration or revision to the United States Constitution, which originates from the Convention, other than the Balanced Budget Amendment.

ARTICLE IX

RESOLUTION PROSPECTIVELY RATIFYING THE BALANCED BUDGET AMENDMENT

Section 1. Each Member State, by and through its respective Legislature, hereby adopts and ratifies the Balanced Budget Amendment.

Section 2. This Article does not take effect until Congress effectively refers the Balanced Budget Amendment to the States for ratification by three-fourths of the Legislatures of the several States under Article V of the Constitution of the United States.

ARTICLE X

CONSTRUCTION, ENFORCEMENT, VENUE, AND SEVERABILITY

Section 1. To the extent that the effectiveness of this Compact or any of its Articles or provisions requires the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed to waive, repeal, supersede, or otherwise amend and conform all such rules, policies or procedures to allow for the effectiveness of this Compact to the fullest extent permitted by the constitution of any affected Member State.

Section 2. In addition to all other powers and duties conferred by state law which are consistent with the terms and conditions of this Compact, the chief law enforcement officer of each Member State is empowered to defend the Compact from any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief to enforce this Compact; and shall take such action whenever the Compact is challenged or violated.

Section 3. The exclusive venue for all actions in any way arising under this Compact shall be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of the foregoing district court. Each Member State shall submit to the jurisdiction of said courts with respect to such actions. However, upon written request by the chief law enforcement officer of any Member State, the Compact Commission may elect to waive this provision for the purpose of ensuring an action proceeds in the venue that allows for the most convenient and effective enforcement or defense of this Compact. Any such waiver shall be limited to the particular action to which it is applied and not construed or relied upon as a general waiver of this provision. The waiver decisions of the Compact Commission under this provision shall be final and binding on each Member State.

Section 4. The effective date of this Compact and any of its Articles is the latter of: (a) the date of any event rendering the same effective according to its respective terms and conditions; or (b) the earliest date otherwise permitted by law.

Section 5. Article VIII of this Compact is hereby deemed non-severable. However, if any other phrase, clause, sentence or provision of this Compact, or the applicability of any other phrase, clause, sentence or provision of this Compact to any government, agency, person or circumstance, is declared in a final judgment to be contrary to the United States Constitution, contrary to the state constitution of any Member State, or is otherwise held invalid by a court of competent jurisdiction, such phrase, clause, sentence or provision shall be severed and held for naught, and the validity of the remainder of this Compact and the applicability of the remainder of this Compact to any government, agency, person or circumstance shall not be affected. Furthermore, if this Compact is declared in a final judgment by a court of competent jurisdiction to be entirely contrary to the state constitution of any Member State or otherwise entirely invalid as to any Member State, such Member State shall be deemed to have withdrawn from the Compact, and the Compact shall remain in full force and effect as to any remaining Member State. Finally, if this Compact is declared in a final judgment by a court of competent jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the United States Constitution, then it shall be construed and enforced solely as reciprocal legislation enacted by the affected Member State(s).

Appendix B: Omnibus Concurrent Resolution Model Legislation

____ Congress

__ Session

__.Con.Res.____

OMNIBUS CONCURRENT RESOLUTION

Be it resolved by the _____ of the United States of America (the ____ Concurring) in Congress Assembled,

Section 1. Omnibus Concurrent Resolution to Effectuate the Compact for America

(a) DECLARATION—The Congress determines and declares that this omnibus concurrent resolution calls the Convention contemplated by the Compact for America under Article V of the United States Constitution, and refers for ratification the Balanced Budget Amendment contemplated by the Compact for America.

(b) TABLE OF CONTENTS—The Table of Contents for this Resolution is as follows:

Sec. 1. Concurrent Resolution to Effectuate the Compact for America

Title I—Concurrent Resolution Calling Convention Contemplated by Compact for America with Prospective Effective Date.

Sec. 101. Convention Call.

Sec. 102. Terms and Conditions of the Compact for America

Sec. 103. Effective Date.

Sec. 104. Termination Date.

Title II—Concurrent Resolution Referring the Balanced Budget Amendment to State Legislatures for Ratification with Prospective Effective Date.

Sec. 201. Referral to Legislatures of the Several States for Ratification.

Sec. 202. Effective Date.

Title I

Concurrent Resolution Calling Convention

Contemplated by Compact for America with Prospective Effective Date.

Sec. 101. CONVENTION CALL— Be it resolved by the _____ of the United States of America (the _____ Concurring) in Congress Assembled, Congress hereby calls a convention for proposing amendments under Article V of the United States Constitution in accordance with the terms and conditions of the Compact for America.

Sec. 102. TERMS AND CONDITIONS OF THE COMPACT FOR AMERICA—The Compact for America is substantially as follows:

“[INSERT COMPACT TEXT FROM APPENDIX A]”

Sec. 103. EFFECTIVE DATE—This Title does not take effect until Congress receives sufficient certified conforming copies of the chaptered version of the Compact for America evidencing that application for a convention for proposing amendments under Article V of the United States Constitution has been made thereunder by the legislatures of at least three-fourths of the several states.

Sec. 104. TERMINATION DATE—If for any reason the Convention contemplated herein has not concluded within one year from the Effective Date, all titles of the Omnibus Concurrent Resolution shall become null and void as to all intents and purposes and shall be deemed repealed in its entirety.

Title II

Concurrent Resolution Referring the Balanced Budget Amendment to State Legislatures for Ratification with Prospective Effective Date.

Sec. 201. REFERRAL TO LEGISLATURES OF THE SEVERAL STATES FOR RATIFICATION. Be it resolved by the _____ of the United States of America (the _____ Concurring) in Congress Assembled, that the following article is proposed as an amendment to the Constitution of the United States (hereinafter the “Balanced Budget Amendment”), which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

“[INSERT BALANCED BUDGET AMENDMENT TEXT FROM APPENDIX A]”

Sec. 202. EFFECTIVE DATE—This Title does not take effect until Congress receives a certified conforming copy of the Balanced Budget Amendment from the Chair of the Convention organized under the Compact for America or the Compact Administrator of the Compact for America evidencing that the Convention has approved and proposed the same for ratification.

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