

SJR

2

STATE OF ALASKA THE LEGISLATURE

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JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1981

SUBJECT: Limits on a federal constitutional convention

TO: Senator Charles H. Parr

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

There has been substantial scholarly discussion of the question of limitations which may be placed on a federal constitutional convention. There is no case law on the federal level since the 1787 convention, called to revise the Articles of Confederation in the trade area which proceeded to write our existing constitution, is the only one held on the federal level.

You were specifically concerned with what, if anything, the state could do to prevent a convention called for a particular purpose going beyond its mandate.

The state can limit its application for a convention and provide that its application is void if the call is for a broader convention.

There appears to be general agreement among the commentators that once a sufficient number of applications have been received Congress is required to call a convention and that convention procedure, costs and selection of delegates is a federal matter. While there are substantial questions concerning the right of a state to withdraw its application before a sufficient number of applications to require a convention has been made, there seems to be general agreement that after that stage applications may not be withdrawn. The positions appear well supported by logic.

It appears that no state action subsequent to a sufficient number of applications being made and before the result is

Senator Charles H. Parr
Page 2
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placed before the state for ratification would be effective. This would, in my opinion, still be the result even if the action was from a self-executing clause included in the resolution applying for a convention.

BGB:ljb

SENATE JUDICIARY COMMITTEE

Bill Number SJR 2 Original Sponser(s) ZIEGLER

Title _____

Originally Recieved From SEN. KERTTULA

Contact _____ Date 1-13-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill REQUIRING A BALANCED BUDGET FOR THE UNITED STATES EXCEPT IN NATIONAL EMERGENCIES. ALTERNATIVELY CALLS FOR CONSTITUTIONAL CONVENTION FOR THE SOLE PURPOSE OF PROPOSING STATE AMENDMENT.

Committee Amendments _____

Fiscal Impact
NONE ON STATE GOVERNMENT

LAA Legal/Research Contact _____ Research/Information
ON FILE

Concerned Parties:	
Supporting	Opposing
<u>ZIEGLER-- BACK UP RECEIVED FROM GUY VAN DOREN</u>	
<u>ED FOSTER - AMERICAN TAXPAYERS UNION</u>	

Supporting

Opposing

Additional Remarks:

1ST HEARING HELD 1-21-81 TAPE | SIDE |

Federal
Revenues
(const. amend-
ment, U.S.)

SENATE JOINT RESOLUTION NO. 2, by Senator Zielger. Resolves that the Congress of the U.S. is requested to propose and submit to the states an amendment to the U.S. Constitution which would require that within four years after its ratification by the various states, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year. Further resolves that the legislature makes application and requests that the U.S. Congress call a convention for the sole and exclusive purpose of an amendment to the U.S. Constitution which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year.

Introduced January 13 and referred to Judiciary.

THE FOLLOWING DOCUMENTS HAVE BEEN SUBMITTED FOR THE CONSIDERATION
OF SJR2, BY THE LISTED INDIVIDUALS:

"Why a Balanced Federal Budget Amendment is Needed" - Ed Foster

"The Balance the Budget Amendment and a Constitutional Convention"
Ed Foster

"Unconstitutional Convention" The New Republic - Sen. Parr

"The Dangerous Fallacies of a Balanced-Budget Convention" The AFL-CIO
American Federationist - Sen. Parr

The Controversy Over Proposed Constitutional Amendments To Require
Balanced Federal Budgets" Congressional Digest - Sen. Parr

"Congressional Research Service" Library of Congress - Sen. Parr

The Balance the Budget Amendment and a Constitutional Convention

If you listen to the opponents of a balanced federal budget amendment, you might think that the states were calling for a constitutional convention to repeal or rewrite the constitution. In fact, the states and the National Taxpayers Union are asking for a convention to propose a balanced federal budget amendment only -- and even at that, only if Congress fails to propose the amendment first. Every resolution passed by the 30 state legislatures has asked for such a limited convention.

James N. Stansy, a congressional staff expert on constitutional conventions, has said, "To those who fear a 'runaway convention' it need only be observed that the only group threatening to run away with it so far is Congress itself." Clearly, what Mr. Stansy means is that Congress will attempt to insure its own dominance over any convention. It will employ two tactics in doing so. First, when 34 states do apply for a convention, Congress will do its best to avoid calling it. Second, should Congress finally be compelled to call a convention, it will restrict the convention as much as possible. Mr. Stansy concludes that "there is little doubt that Congress would be the final master on convention actions."

On two previous occasions (1971 and 1973), the Senate has unanimously voted to approve legislation which would have tightly restricted any constitutional convention. This legislation has again been reintroduced in 1979 and currently has over 50 co-sponsors. With a history of such strong support, there can be little doubt that similar legislation would quickly pass into law as soon as 34 states apply for a balanced budget convention. The only reason that Congress has refused to approve the legislation is the widespread feeling in the Judiciary Committees that it would completely erase any fears of a runaway convention -- and, thus, eliminate an important weapon in the fight against the balanced budget amendment.

On a recent showing of the ABC Network's "Issues and Answers" program, U.S. Attorney General Griffin B. Bell said, "I think a convention can be limited . . . that fact is that the majority of the scholars in America share my view. The view that you can't do this among scholars is a minority view . . . You certainly would not call a general convention when the states only ask for a limited thing. That is all they have asked for so far."

The view that a convention can be limited is also the official position of the American Bar Association. On the unanimous recommendation of the nine constitutional scholars that served on the ABA's Special Constitutional Convention Study Committee, the ABA adopted a resolution stating that "Congress has the power to establish procedures limiting a convention to the subject matter which is stated in the applications received from the state legislatures."

While discussing the prospect of a runaway convention before members of the California legislature, former U.S. Senator and Constitutional Law Scholar Sam J. Ervin, Jr. concluded "these scare tactics are calling up non-existent constitutional and legal ghosts." What the spectre of a runaway convention does reveal is the elitist, anti-democratic attitudes of some opponents of the balanced budget amendment. They feel the American people are incapable of electing responsible delegates to consider the issue of a balanced budget amendment at a constitutional convention.

It should also be noted that a constitutional convention cannot change the constitution by itself. Like the Congress, a convention can only propose amendments. These convention proposals are subject to two additional checks that Congressional proposals are not. If a constitutional convention proposes a different amendment, Congress could refuse to send it to the states for ratification. The extraneous amendment could also be subject to review by the Federal courts. Finally, as is the case with all proposed amendments, 38 states must ratify it before it becomes part of the Constitution. As the proponents of the Equal Rights Amendment have found, this is no easy task.

If Congress does not propose a balanced budget amendment, the convention method provides the American people with a viable and safe alternative method of obtaining the amendment.

BALANCE THE BUDGET AMENDMENT COMMITTEE

Why A Balanced Federal Budget Amendment Is Needed

A constitutional amendment is needed to curb federal spending, reduce inflation, and balance the federal budget on a regular basis. It is a needed check against the strong bias in our political system for higher spending. Many of our economic problems - inflation, unemployment, low productivity - can be traced to excessive spending by the Federal government.

The key factor in this bias for excessive spending is pressure group politics. Well organized special interest groups make strong demands for programs that benefit them greatly, but these demands are weakly opposed because costs are thinly spread over all taxpayers, each of whom stand to lose comparatively little. Deficit spending helps hide these costs in the form of borrowing, inflation, and reduced economic growth.

Because of these factors, the budget has been balanced just once in the last 20 years. Successive Congresses and Presidents have proven themselves unable to resist pressures to spend. Conventional legislative remedies and new approaches to budgeting have failed. Only a constitutional amendment will be strong enough to provide the necessary fiscal discipline.

Benefits of a Balanced Budget

A balanced budget will help reduce interest rates. When the government borrows money, it soaks up available capital, raising interest rates. Businessmen can't get needed funds for investment and consumers must pay high interest rates to finance the family home or car.

A balanced budget will reduce inflation. Deficits are financed by the hidden tax of inflation. When the government increases the money supply to pay for the deficit, each dollar becomes worth less. From 1950 to 1965 the average annual federal deficit was \$2.6 billion and the average inflation rate was under 2%. From 1965 to 1978 the average deficit was \$25.8 billion, and the average inflation rate was about 5.5%. With deficits averaging over \$50 billion in the last 3 years, the current inflation rate is over 10%. Chronic deficits also feed an inflationary psychology. In the long run, a balanced budget will reduce the rate of inflation substantially.

A balanced budget will help reduce unemployment. Deficits are being financed out of private savings, with the result that less money is available to finance private investment. This shift of resources causes a lower growth rate and an increase in unemployment.

A balanced budget will reduce wasteful spending. The costs of spending programs are not fully considered, since they are partly hidden by deficit financing. Without a check on federal spending, Congress has little incentive to stop waste.

A balanced budget will slow the growth of federal spending. Since all new programs will have to be paid for with new taxes, Congress would be far more reluctant to enact new programs, without cutting out old and unnecessary ones.

A balanced budget will increase government accountability. Chronic deficit spending is fundamentally dishonest. It's an attempt to treat spending programs as if they have no tax cost.

Public support for a balanced budget amendment is overwhelming. Gallup polls consistently find that about 75 percent of those polled favor an amendment. A 1979 Roper poll found a three to one margin in favor of a convention "called to consider an amendment to limit federal spending."

The Necessity For State Action

Congress is very reluctant to propose such an amendment which would restrain itself. Every proposed constitutional amendment to require a balanced budget has died in committee. Article V of the Constitution enables the states to amend the Constitution when Congress fails to do so. To date, 30 of the required 34 states have passed resolutions asking for a limited convention on a balanced budget amendment if Congress does not act.

As the drive for a convention nears success, Congress will probably propose the amendment on its own and no convention would be necessary. This has happened before. Congress proposed an amendment to provide for the direct election of U.S. Senators in 1912 but only after enough states had called for a convention. Congress will not propose a balanced budget amendment unless the states again call for a limited convention. Mere memorial resolutions cannot force Congressional action.

A convention would have one purpose only - to draft a balanced budget amendment. It would not have any other powers which Congress has. This convention can only propose an amendment which would become law only after it is ratified by 38 states.

The resolutions before the state legislatures plainly state that the resolution is void if a convention is not limited to this one exclusive purpose. There is strong legal authority that the States and Congress have the power to limit a convention to one subject. This is the official position of the American Bar Association. This is also the conclusion of former U.S. Attorney General Griffin B. Bell, former U.S. Senator Sam J. Ervin, Jr. the Deans of Harvard and University of Chicago Law Schools, and many others.

Besides the moral and legal safeguards which would assure a limited convention, there are three additional "checks" to limit a convention.

The mode of ratification of amendments (by either legislatures or conventions in three-fourths of the states) must be selected by Congress. By refusing to make the selection, Congress can block ratification of an amendment that went beyond the convention call. An extra-constitutional amendment could also be subject to disapproval by the Federal Courts. Finally, any proposed amendment must be ratified by at least three-fourths (38) of the states.

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IN RESPONSE TO YOUR INQUIRY, IT WOULD BE PREFERABLE TO PASS SJR2 IN
IT'S PRESENT FORM. HOWEVER, IF THE COMMITTEE DESIRES ADDITIONAL
LANGUAGE, THEN WE PROPOSE THE FOLLOWING LANGUAGE, PATTERNED AFTER A
RESOLVED WHICH APPEARS IN COLORADO RESOLUTION, BE ADDED RESOLVED.
THAT THIS APPLICATION AND REQUEST BE DEEMED NULL AND VOID, RESCINDED,
AND OF NO EFFECT IN THE EVENT THAT SUCH CONVENTION NOT BE LIMITED TO
SUCH SPECIFIC AND EXCLUSIVE PURPOSE. IF I CAN BE OF FURTHER
ASSISTANCE, PLEASE DON'T HESITATE TO CONTACT ME

DAVID KEATING RESEARCH DIRECTOR BALANCE THE BUDGET AMENDMENT
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1326 EST

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Federal amendment sought 1/22/81

Balanced budget urged

By The Associated Press

Lawmakers were urged Wednesday to add Alaska to the list of states calling for a constitutional convention to pass an amendment requiring the federal budget to be balanced each year.

The conservative voting trend that swept Alaska last fall is evidence that Alaskans would favor a balanced budget, said Ed Foster, a representative of the nationwide Balance the Budget Amendment Committee.

Foster told the Senate Judiciary Committee a balanced federal budget would lead to lower interest rates, inflation and unemployment.

Senators expressed concern, however, that a convention called to consider a balanced budget amendment might end up considering other issues.

The committee is considering a resolution (S-

JR2) introduced by Sen. Robert Ziegler, D-Ketchikan, which asks Congress to call a constitutional convention to deal only with a balanced budget amendment.

Sen. Charlie Parr, D-Fairbanks, suggested legislation be drafted that would revoke the credentials of the Alaska delegation if they tried to consider other matters during a constitutional convention.

The committee did not take any action on Ziegler's resolution, which states that "proper planning, fiscal prudence and plain good sense require" a balanced budget.

In testimony before the panel, Foster said inflation, unemployment and low productivity can be traced to excessive spending by the federal government. Only a constitutional amendment will provide the needed fiscal discipline, he said.

Done

Carter's Confidence Crisis

Osborne, TRB, The Editors

THE NEW REPUBLIC



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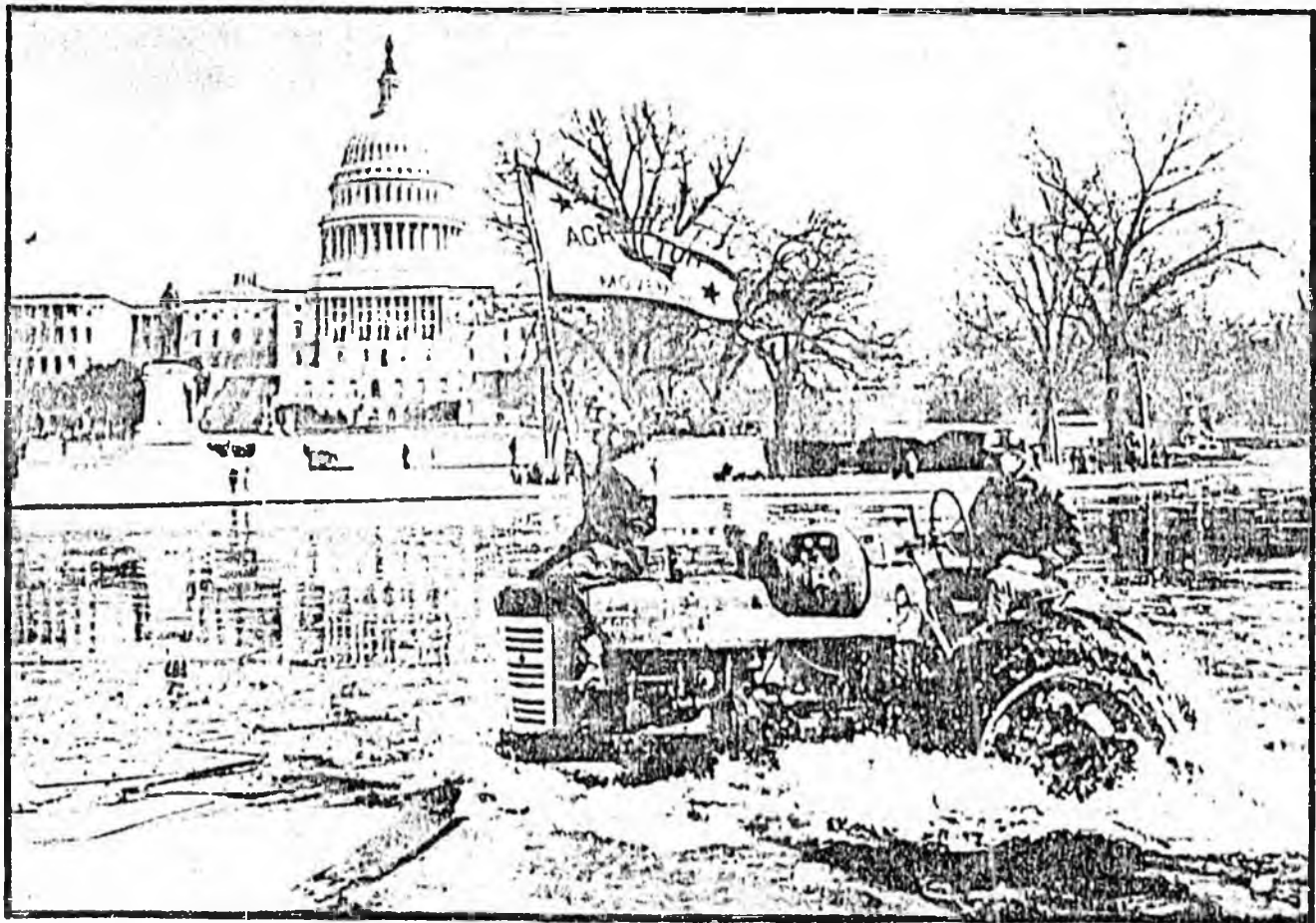
Walter Dean Burnham

John Canaday

War Memoirs

The Voter's Dilemma

Art and Circuses



Modern American Gothic

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operations. If the United States wants to protect and advance its interests, and does not want to do so with Marines, it needs spies as well as diplomats. Inevitably, diplomats work mostly with governments and in-groups. CIA agents are needed to insure that the US has contacts with out-groups, too. Having an effective CIA does not mean that the US inevitably will topple democratically elected governments. It could mean that a friendly government is saved, or that the US is well enough informed to distance itself from a local regime that's about to go under. It could provide the means to thwart a Soviet coup.

In his State of the Union address, President Carter noted with some pride that, again this year, no American soldiers were engaged in combat anywhere in the world. Maintaining the peace, however, means staying involved in the world's crisis areas, not withdrawing. And it means maintaining both US strength and the world's confidence in it.

State legislatures can't dictate
the terms of constitutional amendment.

Unconstitutional Convention

The states, or many of them, want a constitutional convention. But the one they seem to want is very different from the great Philadelphia meeting of 1787. Then the founders talked about the basis of legitimate government. Now the states are trying to limit the meeting to a single item: the issue of a balanced federal budget. But do the states have a right to restrict the meeting in this way and still call it a constitutional convention? Is such a single-issue body authorized to make fundamental changes in our basic law?

An answer must begin with the constitutional text. Article Five makes it plain that the states cannot dominate the amendment process. Even if every state legislature met today and unanimously endorsed a balanced budget amendment, this would not make it part of our supreme law. Instead, Article Five makes constitutional revision a two-stage affair. First an amendment must be *proposed* in a national forum—either the Congress or a constitutional convention. It is only then that the amendment can be *ratified* by the states—either through legislatures or state-level conventions, as Congress may direct. The states enter the first stage only in a subsidiary way: if two-thirds of them apply to Congress for one, Congress must “call a Convention for proposing Amendments.”

But it is just such a convention that the states do not want. Indeed, many state legislatures explicitly declare that they would prefer *no* convention to one that thought itself free to propose “Amendments.” The only meeting they are calling for is one that will rubber-stamp their particular proposal for a balanced federal budget. But state legislators do not have the right to dictate the terms of constitutional debate. On the contrary, they may be eliminated entirely if Congress decides that state conventions would be more appropriate vehicles for ratification. The states have the last say on amendments, but the Constitution permits them to consider only those proposals that emerge from a national institution free to consider all possible responses to an alleged constitutional deficiency.

The point goes deeper than the text of Article Five. When we confront the task of constitutional revision, our very notion of political community is at stake. Since Article Five was written, our sense of national identity has become stronger, not weaker. While we remain New Yorkers or Texans, we are more firmly Americans. If we ever required an extraordinary constitutional convention, it should not think of itself as a creature of the separate states. Instead, it must conceive of itself as a *national* institution free to consider the country's needs with as much wisdom and insight as it can muster. Anything else would distort the way Americans today understand their relationship to government. The idea that the states may predominate in our federal system did not survive the Civil War.

What should happen, then, if the budget balancers, or some other single issue groups, succeed in their lobbying campaigns among local legislators? Article Five does not permit the states to convene a “convention” on their own authority. It is up to Congress to decide whether the state applications amount to a legitimate call for a “Convention for proposing Amendments.” At this point Congress should see the call for a single issue “convention” for what it is—an effort by state legislators to usurp their rightful place in the constitutional scheme. It is not for the states to dominate both stages of the process of constitutional revision. They cannot force Congress to call a convention to consider only those issues that the states think worth discussing. The convention mechanism should be reserved for moments of real crisis—when the states are willing to assert the need for an unconditional reappraisal of constitutional foundations. If the states are dissatisfied with the constitutional diagnosis of a second Philadelphia-style convention, they may decline to ratify its proposals. It takes only 13 dissenters out of 50 to defeat a proposed amendment. But state legislatures may not use the “convention” provision as a gimmick to liberate a favored pressure group from the normal checks and balances of national politics.

Of course, if the state legislatures were convinced that they must apply for a full-fledged constitutional

convention or none at all, the present bubble would burst immediately. Nobody thinks we are now in the midst of constitutional crisis. Why, then, should we put the work of the first convention in jeopardy?

Bruce Ackerman

Bruce Ackerman is professor of law at Yale.

White House Watch Under Pressure

Near the end of this winter of discontent with Jimmy Carter, I offer an opinion, the stories of three White House meetings at which the President expressed his own frustrations and discontents, and an account of how his people handled a family problem that is painful and difficult for him.

The opinion is that the President is going to come out of the current slump in polls and commentaries and look better in a few weeks or at worst in a few months than he looks now. He will come out of it by going on being the Jimmy Carter who got himself elected in 1976, with allowances for what he's learned in the presidency. It is arguable that anybody who had to learn as much as he has had to learn about the presidency should not have been elected. He was elected; that's over. I agree with assistants and spokesmen who argue that what he's learned and acknowledges that he had to learn, especially about how to deal with Congress and get from it the essentials of what he wants, will produce an appearance of good performance and see him through to renomination and reelection in 1980. My reading of him is that he won't go for renomination and reelection unless he's sure that he can win. He has said that he has decided about 1980 but won't tell what he's decided for awhile. An assistant who is close to one of the assistants who is closest to Carter thinks that the President was kidding the press and that he has neither decided nor confided to anybody, possibly excepting Rosalynn Carter, how his thinking on 1980 goes. The same assistant admonishes his policy staff to stay in there to work for initiatives that will improve the chances of Carter's reelection in 1980, and to think about jumping ship and getting rich and famous on the strength of their White House connection only after November 1980.

The White House staff story is that Carter is concerned but not disturbed by the flood of commentary to the effect, as the Evans-Novak newspaper column put it in the context of his scheduled trip March 2 to California, that thereabouts he is among the

political "walking dead." Press Secretary Jody Powell warned Carter in a memorandum in early January that the failure to achieve the foreign policy successes expected last December—strategic arms agreement with the Soviet Union, an Israel-Egypt treaty after the Camp David summit—and the disintegration of the Shah's government and of our commitment to it in Iran, would bring on a flood of derogatory comment. So, the story goes, the President was prepared for it and is not seriously shaken by it. That is believable, considering his renowned capacity for kissing off adverse comment and for believing that his conception of what is right must eventually prevail. The following stories of what has happened recently at the White House bring some of the President's perceptions and judgments into question but do not invalidate the guess that he'll come out of it in better shape than most of us media harpies expect.

At his press briefing on February 8, Powell was asked whether the President had "chastised the State Department for leaking information" contrary to fact or to administration policy. Powell answered that "the President has met in the past several days with people from State, people from the NSC, and with our domestic policy people." The thrust then and at later discussions on and off the record was that the President's concern was that "those of us in responsible positions ought to be very careful about making public comments which could contribute to a misapprehension of what our policy was with regards to matters of importance." The first report of admonitions from Carter had dealt with a lecture he had given Department of State officials and Powell was suggesting that it was merely one of many such that the President had delivered. Powell's account amounts to a substantial abridgment of the facts.

January 17, two weeks before the sequence that Powell suggested, Carter had Stuart Eizenstat, the director of the domestic policy staff, assemble his principal assistants in the Roosevelt Room at the White House, mostly people whom Carter had never met or had never had extended conversation with. He had told Eizenstat that he was aware of the feeling among many of them that they needed a contact and a sense of identity with him that they had lacked. At the meeting Eizenstat mentioned the difficulty of maintaining a full discourse between White House and department officials without premature disclosures to the press of what was being proposed and considered. This led Carter into a discussion of his—any President's—problem of having full communication with federal departments and agencies without, as Carter regarded it, premature and damaging disclosure of policy options that were in discussion but not decided. It was a friendly conversation about a recognized problem and not a stern lecture of the kind that he gave 17 deliberately selected State Department officials on February 6.

Marvin Kalb, CBS's senior State Department

THE AFL-CIO AMERICAN

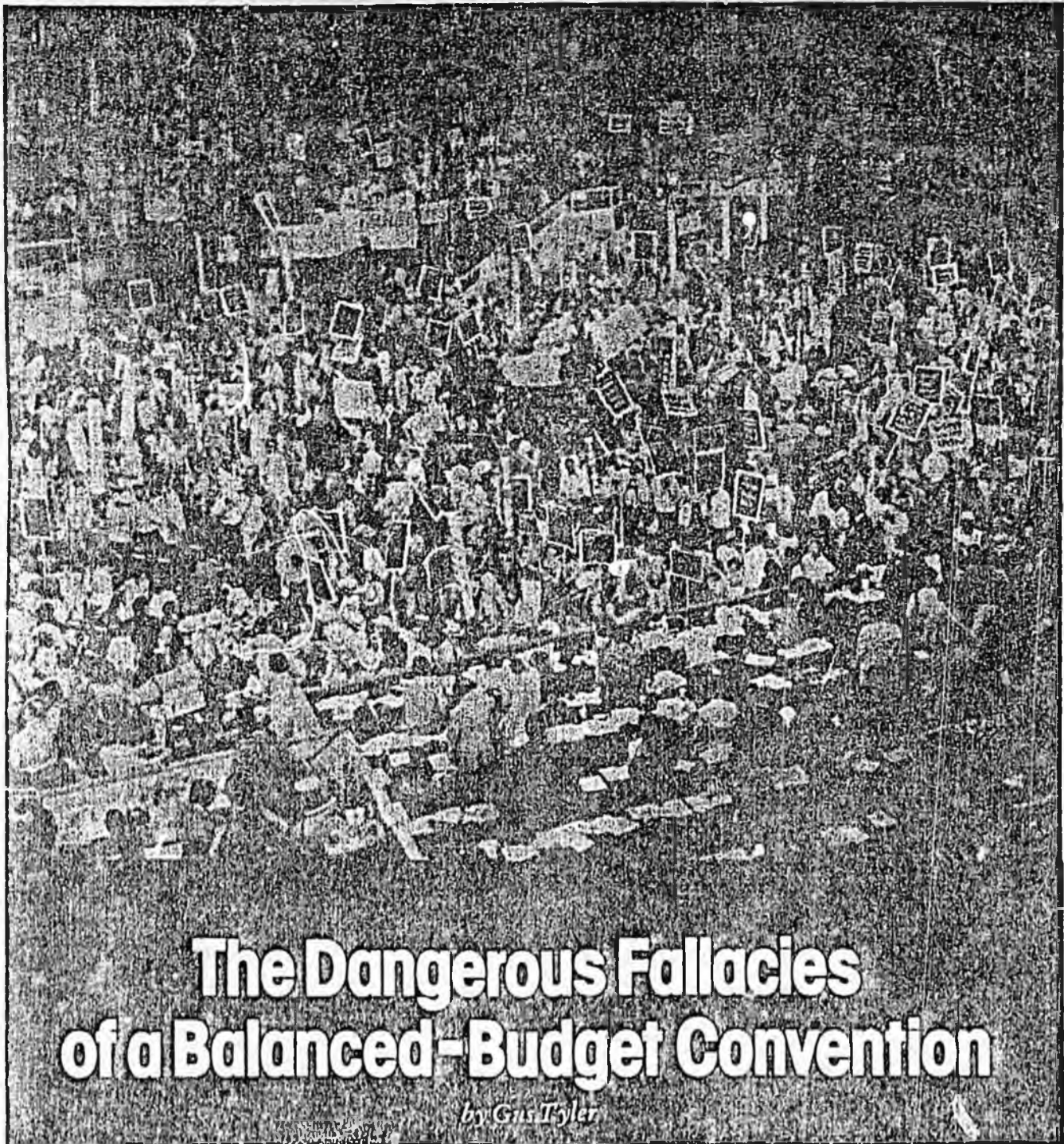
APRIL 1979

Federationist

FEAR



The Dangerous Fallacies of a Balanced-Budget Convention



The Dangerous Fallacies of a Balanced-Budget Convention

by Gus Tyler

The present push for a constitutional convention to balance the federal budget raises two questions: the desirability of constitutionally mandating a balanced budget and the desirability of convening a convention to enact such an amendment.

The mood of the country on reducing or holding down taxes is understandable. People who work for wages feel over-taxed—and they are. Those who live on "earned" income report virtually all of their earnings and pay on what they report because they don't

GUS TYLER is assistant president of the Ladies' Garment Workers, author of several books and writes a regular newspaper column.

have any loopholes. People who live on "unearned" income—stocks, bonds, properties—report about half their income and pay on only part of what they report because they enjoy many loopholes.

The problem is not that taxes are too high, but that they are too high for some because they are too low for others. A proper cure for this disorder would be tax reform that lifts some of the burden from America's middle class of wage and salaried people and imposes more of the burden on the rich who live on "unearned" income.

Fearing precisely such an eventuality, the wealthy have mounted a campaign to convince the nation that

taxes in general are too high for everyone. This myth was the basis for Proposition 13 in California and is the basis for the present proposal to have a constitutional convention for a balanced budget.

Although the emotional urge for a balanced budget is the desire to keep taxes down, the constitutional amendment will not guarantee that taxes will be reduced or kept at present levels. Indeed, the mandated balance may actually increase taxes.

A budget can be balanced in one of two ways: either by reduced spending or by increased taxes. If, at some future time, the President and Congress are not allowed to borrow they will have to raise taxes to make ends meet. Hence, a balanced budget can mean higher as well as lower taxes.

Although some favor the idea on the mistaken notion that it will automatically hold down taxes, others favor it as a way to check inflation. The logic is embedded in the argument that government deficits lead, in one way or another, to more dollars chasing too few goods, and thereby forcing up prices.

For such monetary theorists, the expanded money supply is offered as the sole reason for inflation. They do not blame high interest rates; they do not blame monopolies and oligopolies; they do not blame government fixing of prices, as in the case of numerous agricultural products; they don't even blame high wages. They are single-minded: the culprit is the government that tries to pay for deficits by "printing money."

Their statistical evidence is that in years when the federal deficit is high, inflation runs high. Actually, this seemingly irrefutable proof is no proof at all, because a tracing of U.S. budget deficits shows they are more likely the result of wars and recession. Inflation may cause a deficit, but not vice versa. In a period of inflation, the government must pay more for many things. Hence, a neatly balanced budget, drawn at the beginning of the year, may well end up as a deficit at the end of a year when prices rise either because of crop failures, an act of OPEC, monopoly action, or a jump in interest rates imposed by the Federal Reserve Board.

Most monetarists reveal their anti-government bias when they single out federal budget deficits as the sole or the primary source of an expanded money supply. There are many, many other factors at work expanding the money supply, traditionally defined as the total of all currency plus all demand deposits. Effective money supply is determined by at least two other factors: the amount of credit and the velocity with which money circulates. At present the "supply" of money generated by credit is staggering, with multi-billions of dollars outstanding on any one day on credit cards alone—just to cite one small instance. Likewise, the velocity with which money moves is decisive: one dollar spent 10 times in one day has the same impact as 10 dollars spent once. And neither the amount of credit outstanding nor the velocity with

which money moves can be traced solely or mainly to government deficits.

In sum, although the monetarist theories about how deficits make for inflation are encased in seemingly sophisticated research and reason, the arguments are shockingly unsophisticated.

Equally fallacious is the argument that the national debt is growing at a dangerous rate and that, unless we stop this piling of debt on debt, the unbearable burden will break the government's back. William Simon, Secretary of the Treasury under President Ford, sounds the alarm: "Total federal debt has increased from \$329.5 billion at the end of fiscal year 1966 to an estimated \$633.9 billion at the end of fiscal year 1976—a rise of 92 percent in only 10 years' time." Simon says, "unless the lethal pattern is changed, this nation will be destroyed."

But why should the nation be wrecked by this debt? In 1966, when the Gross National Product (the sum of all goods and services produced here in one year) was \$753 billion, the debt was 43.6 percent of the GNP. But in 1976, when the GNP was at \$1,706 billion (rushing toward the \$2 trillion mark) the debt had fallen to 37 percent of the GNP. In 10 years our debt shrunk as a portion of our total output.

This "shrinking" of the national debt is not some freakish occurrence peculiar to the years from 1966 to 1976. There has been a downward trend ever since the end of World War II: in 1946, the debt was 132.8 percent of GNP; by 1962, it was 55 percent; by 1965, 48 percent; by 1976, it was down to 37 percent; and by 1979, the debt is a mere 28.4 percent of GNP. Judged by ability to carry the burden, the debt is getting steadily lighter.

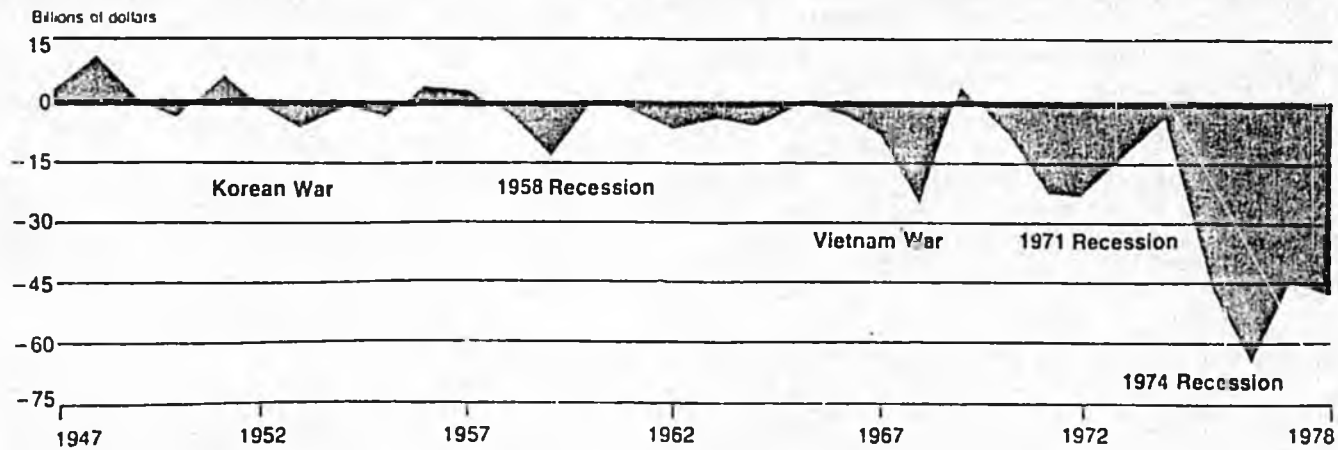
Debt—like weight—is only meaningful when measured against something. A 16-month-old infant would be crushed under a pack of 60 pounds; a 16-year-old lad would carry the load with ease. An America with a GNP of only \$100 billion would stagger under a debt load of \$100 billion; but an America with an output of \$2 trillion can carry a \$100 billion debt on its pinkie. A person with an income of \$5,000 a year would find it hard to repay a debt of \$100,000; but one with an income of \$1 million a year would find it easy to borrow the money and easy to repay.

An irksome irony about the call for budget balancing is that those who cry loudest and longest about debt are the worst offenders: the states, the corporations and the individual consumers. They are all in debt and more deeply in debt than the government that, at the end of 1978, was only responsible for 19 percent of total indebtedness in America. From 1940 to 1976, the federal debt grew at a slower pace than all other kinds of debt. State and local, corporate and private consumer debt grew far more rapidly.

In 1940, the federal debt was \$44.8 billion; by 1976, it stood at \$515 billion—a twelvefold increase in 36 years. State and local debt for the same years rose from \$16 billion to \$236 billion—a fifteenfold increase.

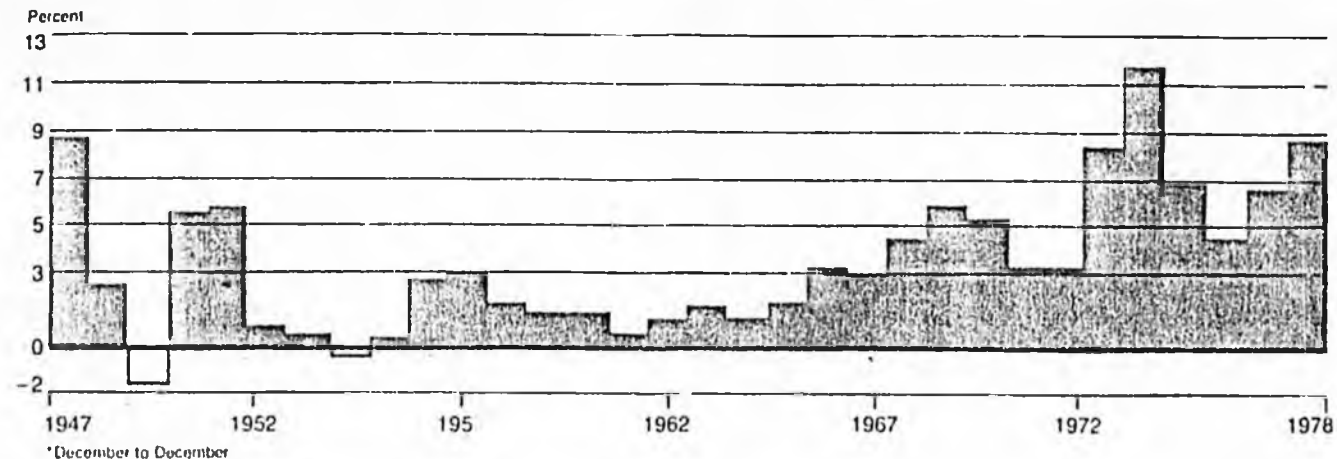
Wars and Recessions Are Major Causes of Budget Deficits

(Federal Budget Surplus or Deficit, 1947-1978)



But Deficits Are Not the Cause of Inflation

(Annual Change* in CPI, 1947-1978)



Corporate debt rose (same years) from \$75 billion to \$1,414 billion—a nineteenfold increase. And, says Simon, "At the end of World War II, corporate liquidity—a measure of cash, cash equivalents, and assets that could readily be converted into cash—stood at just under 50 percent of total liabilities. By 1960, the ratio was down to almost 30 percent. And at the end of 1970 it was on the order of 19 percent."

The biggest sinners of all—if debt is considered a sin—are Richard Roe and Jane Doe. The debt incurred by consumers rose (same years) from \$8 billion to \$217 billion—a twenty-sevenfold increase.

The truth of the matter is that debt is a way of life not only in America but in every free enterprise (capitalist) country in the world. The reasons are pragmatically obvious and theoretically understandable.

Most homeowners in America would own no home if they had to pay in cash for the purchase. A mortgage is a loan that incurs a debt. Mortgage indebtedness rose (same years) 24 times over, which is about twice as fast as the federal debt.

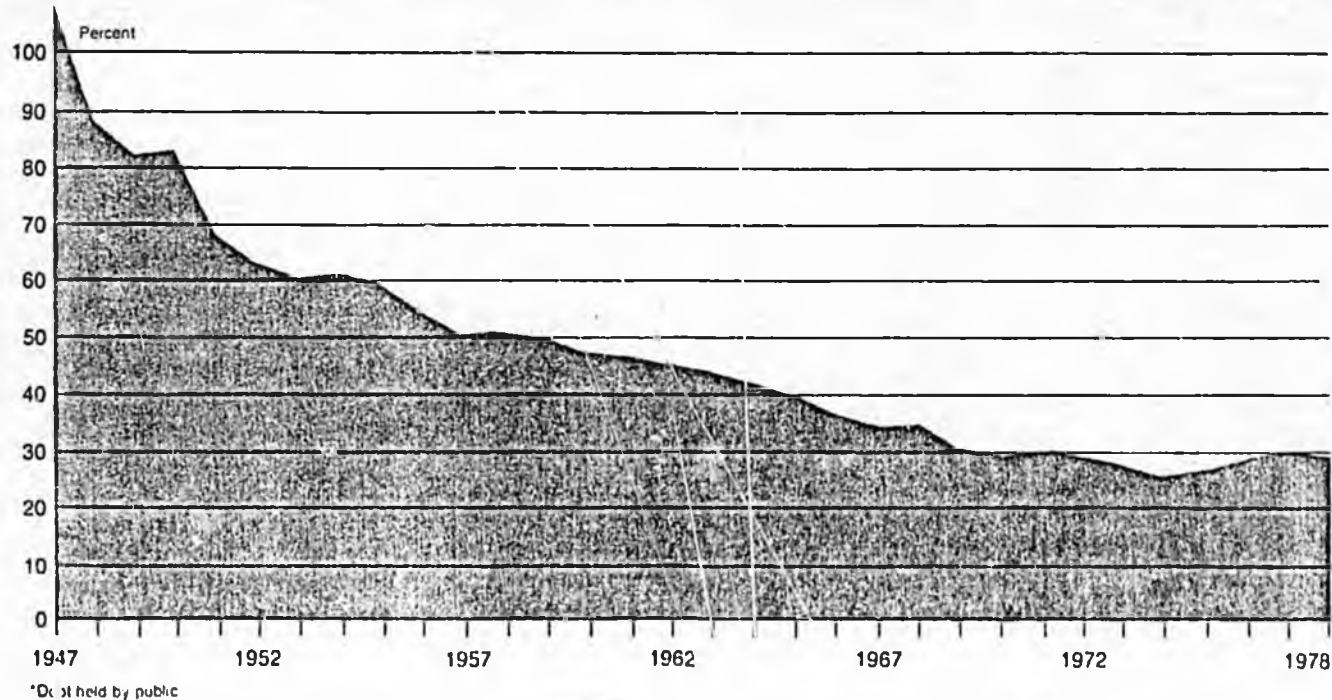
It would be useless to put money in a bank, unless it is done purely for safekeeping. The bank could pay no interest—unless there were borrowers, ready to incur debt, who would pay interest to the bank so the bank could pay interest to the depositor.

No corporation of any size could operate without going deeply into debt—as they do. They float bonds and borrow directly and invent a variety of debt instruments to finance their undertakings. Debt is the lubricant for the business machine without which the gears would grind to a halt.

You add to the debt when you take out a small loan, when you buy something on the installment plan, when you make a purchase on a credit card, when you ask your local retail store to charge it, when you borrow against your insurance policy, when you work out a financing arrangement for your car. In the one month of January 1979, installment indebtedness rose by more than \$3.5 billion.

Viewed in an overall theoretical way, debt is the foundation of a "free enterprise," modern capitalist society. The capitalist lives by providing finance to

Decline in Federal Debt as Percent of GNP, 1947-1976*



corporations, to governments, and to individuals. He lives by renting out his money and charging for it. If no one borrowed—no government, no business, no person—the finance capitalist would be finished. Although this eventuality might indeed be ethically justified, for the moment our system still depends on capital to function—and capital, like that fabled lunch, does not come free: to get it you must incur debt.

There is a strong temptation to conclude that the states, corporations and private borrowers are hypocrites about budget balancing. But that would be unfair because they know not what they say. They are repeating a common cliché. An individual gathering debt is like a camel under a growing burden threatened by the straw that breaks the back. This fearsome image has caused fools and learned men to denounce deficit financing for many centuries.

For those who think that deficit financing began with President Franklin D. Roosevelt, Senator Edward S. Muskie (D-Maine) advises in a recent speech that the "distinction belongs to General Washington—first in war, first in peace, and first in federal deficit." Actually, Washington was following a pattern set on Dec. 15, 1692, in the British House of Commons, when the Committee on Ways and Means proposed to raise \$1 million by way of a loan, at the rate of 10 percent up to year 1700 and 7 percent thereafter.

From that point on, the debt began to grow. "At every state in the growth," records Thomas Macauley in *The History of England*, "it has been seriously asserted by wise men that bankruptcy and ruin were at hand. Yet still the debt went on growing; and still bankruptcy was as remote as ever."

Several wars later, the debt multiplied several times over. The celebrated philosopher, David Hume, concluded that Britain had gone mad, the kingdom was in debt beyond its ability to raise money. "And yet," notes Macauley, "this great philosopher had only to open his eyes, and to see improvement all around him, cities increasing, cultivation extending, marts too small for the crowd of buyers and sellers. . . . His prediction remains to posterity, a memorable instance of the weakness from which the strongest minds are not exempt."

After the war with the American colonies, the debt grew again. "Again England was given over," continues Macauley, "and again the strange patient persisted in becoming stronger and more blooming in spite of all the diagnostics and prognostics of state physicians. As she had been visibly more prosperous with a debt of \$140 million, so she was visibly more prosperous with a debt of \$240 million than with a debt of \$140 million."

Concluded Macauley some 100 years ago in an analysis that is equally valid for today: "It can hardly be doubted that there must have been some great fallacy in the notions of those who uttered and of those who believed that long succession of confident predictions, so significantly falsified by a long succession of indisputable facts. . . . The prophets of evil were under a double delusion. They erroneously imagined that there was an exact analogy between the case of an individual who is in debt to another individual and the case of a society which is in debt to a part of itself; and this analogy led them into endless mistakes about the effect of the system of funding. They were under an error not less serious

touching the resources of the country. They made no allowance for the effect produced by the incessant progress of every experimental science, and by the incessant effort of every man to get on in life. They saw that the debt grew; and they forget that other things grew as well as the debt."

For centuries nations had been using debt as a way to pay the way for governments. It was not until the first quarter of the present century, however, that government indebtedness was seen not simply as a way for the state to meet its bills but as a way to guide the total economy. This concept—the use of public debt to regulate economic growth—was the brain child of John Maynard Keynes and, unbeknownst to most Americans, became the theoretical base for the anti-recession policies of the New Deal and of every Administration that followed.

As a practical man, FDR had to resolve a practical, yet seemingly nonsensical puzzle: why wasn't the American economy running during the 1930s when all the factors for a viable economy were present—in super-abundance? There was plenty of capital, labor, raw material and entrepreneurial know-how. But they were all idle, rotting, festering. Why?

What was lacking in our market economy was the market which, in plain language, is buying power. Buying power was lacking because the big buyers—working people—were out of work. So long as they did not earn, the market would sag and sag and sag.

The private economy would not put these people to work because it could not. No business pays people to make things for which there is no market. So, to prime the pump, the government had to put people to work, so they would have buying power to put others to work.

The government could get the necessary funds to do so either by taxation or by borrowing. Taxation would not have yielded much in those depressed days; moreover, whatever taxation would yield had to come out of consumers or investors, thereby undercutting the primary purpose of increasing employment. So, the government borrowed.

In a pragmatic way, the United States had backed into its own brand of Keynesian economics. When the private economy failed to generate the necessary market—buying power to sustain the economy, the government stepped in by deficit financing, by—as the monetarists would have it—expanding the money supply. And the formula worked.

Prior to 1929, the history of the American economy was a history of economic crises: they called them business cycles and they accepted those painful and convulsive ups and downs as the natural way of things. Since the New Deal, there have been recessions, but we have not had a single major depression in this country. Crises have been warded off with the weapon of deficit financing.

The big deficits of the Roosevelt period were not rolled up during the peacetime years but in wartime.

In 1940, the deficit was only \$5 billion. In the war years of 1943-45, the deficits ran between \$47 and \$50 billion a year. But whether it was to combat recession or to combat a foreign enemy, the money borrowed was used to serve national purpose and, in no case, did the deficit impoverish the people.

If a constitutional amendment had prohibited deficit spending in the Great Depression, or during World War II, where would the money have come from? In 1933, Roosevelt would have had to raise taxes to get the funds to "prime the pump." Such taxation would have worsened the crisis by further depleting buying power and capital sources. Where would the government have gotten the funds to fight World War II? Between 1941 and 1942, federal expenditures doubled, from \$35 billion to \$70 billion. It would have been necessary to double taxes—an intolerable, undesirable and unnecessary move.

What happens in the future—assuming a budget-balancing amendment is on the books—if we are hit by some new crisis: another depression, another war, an internal insurrection, a massive earthquake from the Appalachians to the Rockies? Neither the President nor Congress could act swiftly because the funds would not be there and no new funds could be appropriated without going through the protracted process of once more amending the Constitution.

Should a constitutional convention be held, despite the undesirability of such a conclave, the hottest discussion should revolve around a point that probably won't ever be raised at the gathering; namely, what should the penalty be for the President and Congress if they should ever violate the amendment? This is no idle query—for the amendment will be violated, because there just is no way in which it can be obeyed.

A mandated balance of the budget assumes that the budget makers know, at the beginning of the year, what their income and their expenditures will be. But they have no way of knowing; they can only guess.

They do not know what their expenditures are for three simple reasons: First, they do not know what crises will arise. Second, they do not know what inflation will do to their costs in the course of the 12 months. Third, they do not know what they will have to pay out under a variety of government "entitlement" programs. Under the last, for instance, the government has an obligation under law to someone who is disabled, or is the head of a family under aid for dependent children, or is newly retired, or is eligible for a veteran benefit. Whoever meets certain criteria set down by law is "entitled" to certain government funds—and there just is no way that the government can know in advance just how big these payments will be.

The government knows even less about what its income will be. How much comes in depends on how much people earn, how corporate profits run, how sales stack up. Income through taxes is a mathematical function of the Gross National Product whose

size nobody knows when the year begins or even when the year has passed its halfway mark. For 1980, the President forecasts a growth rate in the GNP of 3.2 percent; the Congressional Budget Office sets it at a 3.9 percent; Wharton Econometrics sets it at a low 1.3 percent; and Chase Econometrics sets it at an optimistic 4.1 percent. The difference between the low and high estimate makes a difference of about \$10 billion in taxes to the government.

Being less than omniscient then, Congress and the President would unwittingly and unwillingly find themselves in violation of the amendment. Who will prosecute, try and sentence them for their transgressions?

One way for the President and Congress to obey the law—more or less—would be to allow for a margin of error, like an arbitrary \$10 billion. (Between September 1978 and January 1979, the estimated deficit rose by an unanticipated \$5 billion.) By planning for a surplus of several billion, the lawmakers might be able to stay within the law. But to do so, they would either have to cut expenditures or raise taxes or do both.

The easiest way to cut federal taxes would be to stop federal aid to the states, which currently runs about \$80 billion per year. If an Administration chose to cut grants to the states, you would hear a different tune from state politicians now so eagerly calling for a constitutional convention to balance the federal budget.

But this reduction in the federal budget would not necessarily mean a reduction in taxes for the taxpayer. Even if the government reduces taxes by virtue of the savings in grants to the states, and it is doubtful such a cut would be possible, the states would have to increase their taxes to make up for the funds they no longer get from the federal government. The end result would be higher taxes for the taxpayer.

The other alternative for the federal government would be to raise taxes to cover present and future costs. And it would have to raise taxes beyond a reasonable level because it would have to allow for that margin of safety so as to live within the mandate of the amendment.

There is a sneaky way in which the President and Congress could comply with the budget-balancing amendment without really changing anything; namely, by redefining the budget. At present, nobody really knows what "the budget" is. Many billions of dollars spent by the federal government through a variety of agencies are "off the budget." The number of agencies afforded such treatment and the sum they are allocated could be increased at will so the books will balance so far as the officially designated "budget" goes.

Barring such sneaky gimmicks, an amendment to balance the budget is a straitjacket that would paralyze the nation in time of emergency. That would raise taxes, and that would make the Constitution look as foolish as it did when the nation lifted its spirited

The Convention Method Raises Many Questions

The U.S. Constitution provides for its own amendment through two distinct and separate methods. One is for the Congress to pass an amendment and send it to the states for ratification. That method requires the ratification votes of three-fourths, or 38 state legislatures, and has been used 26 times. Two more are still pending—Equal Rights Amendment and D.C. Voting Rights, as Nos. 27 and 28.

The other method, a convention assembled on the call of two-thirds, or 34 of the 50 states, has never been used, unless you count the convention that wrote the existing U.S. Constitution. That convention was assembled in 1787 with Congress directing it to amend the Articles of Confederation. Instead the convention junked the Articles and wrote a new Constitution. Article V of that Constitution provides the two methods of amendment.

The convention method has been tried several times, but serious questions about how it would work were not answered in those episodes. Among the attempts, these got the farthest:

- In 1899, the move for direct election of senators got the support of 31 states. But the Senate, which had been fighting the idea, relented, passed an amendment, and sent it to the states. In less than a year, the 17th Amendment was ratified.

- In the early 1950s, about half the states supported a call for a convention to impose a 25 percent ceiling on the federal income tax rate. Opposed by President Eisenhower and others, this effort collapsed with several states voting to rescind their previous endorsement.

- In 1967, 33 states called for convention to overturn the Supreme Court's one-man, one-vote ruling, but this petered out in 1969 with the death of its principal promoter, Sen. Everett M. Dirksen (R-Ill.).

Congress has made some attempts to write rules for a constitutional convention. Under the guidance of Sen. Sam Ervin (D-N.C.), this measure passed the Senate in 1971 and 1973, but died in the House.

What history provides, then, is more questions than answers: For example: What constitutes a valid state petition for a convention? Is there a time limit on such petitions? Could a state rescind its convention call? Is Congress obligated to call a convention after 34 states request it? If so, what are the congressional legislative procedures for dealing with a convention? How would the convention be apportioned, delegates chosen and what rules would govern its deliberations? Who would pay its costs? Unfortunately, no one is certain.

glasses to drink a cynical toast to the Prohibition Amendment.

The mischief that such an amendment would work is compounded by the method through which it is proposed to enact the change in the Constitution; namely, by calling a constitutional convention. If this comes to pass, this will be the first time since the Constitution was enacted that this method will be used.

The Constitution provides two ways to amend the Constitution: the traditional way has been through congressional action requiring two-thirds of both houses and ratification by three-fourths of the states; the unused way is through a constitutional convention to be assembled on the call of the legislatures of two-thirds of the states with ratification still requiring three-fourths of the states.

There is no precedent, since 1789, for initiation of an amendment through a convention. The only precedent—if one may call it that—was the convention of 1787 that gathered to "amend" the Articles of Confederation and ended by writing an entirely new Constitution.

Because there has been some fear in the Congress that a constitutional convention could turn into a runaway body, similar to that of 1787, several efforts have been made in recent years to write legislation to define what a constitutional convention may or may not do and how it may do it. But no bill has yet passed both houses. So, if a convention is called, nobody really knows who shall convene the convention, what shall be the scope of its agenda (one issue or the whole works), how delegates shall be apportioned among the states, who would elect the delegates. Even if Congress should address itself to these questions, there is only questionable authority for the federal legislature to curb or contour or control a convention that was convened precisely because Congress did not wish to initiate the disputed amendment.

The constitutional route to amendment has been used by both progressive and conservative forces. In the early 1900s, progressives had state legislatures calling for direct election of senators and later for federal power to impose an income tax. For about a decade (1906-1916) there were efforts to amend the constitution to forbid polygamous marriage. In more recent decades, however, the push has come from the right: to limit federal taxes, to undo one-man, one-vote, to set up a special court to overrule the Supreme Court, to prohibit "forced busing," to disallow abortions. None of these movements ever resulted in a convention, although a couple of them came very close.

Should a constitutional convention be held it is likely that the several ideas held by conservatives will find expression at the gathering. The delegates may convene to discuss budgets but are likely to end by proposing a variety of pet proposals presently circulating among those who are unhappy with the behavior of Congress and who would like to bypass the legis-

lature. In effect, the constitutional convention route would mean that the states with their state-minded concentration would replace the Congress of the United States with its prime focus on national goals.

The final irony of the balanced budget amendment is that its greatest support comes from those politicians who have, for the last couple of decades, been presenting themselves as the true defenders of the Constitution. Should they ever add their amendment to the Constitution, they will have violated the basic spirit of our supreme law.

The Founding Fathers had three great purposes in composing the Constitution. They wanted a government that was strong, flexible and respectful of the rights of the individual.

Because they wanted a state that was strong they set up a central government to replace the feeble Articles of Confederation. Because they wanted a flexible government they wrote a brief declaration that distributed powers without prescribing what those powers should do in dealing with the special and specific problems of the changing times. To show their regard for the individual, they added the first 10 amendments—the Bill of Rights—to the Constitution as an integral part of the document at the time of original ratification.

In the subsequent amendments, of which there are 16, the prime purpose has been to expand the power of the individual citizen to influence public policy. There have been amendments for the direct election of senators, to repeal the poll tax, to allow residents of Washington, D.C., to vote in a presidential election, to extend the vote to women and to 18-year-olds. There were three amendments that liberated our black citizens and gave them the right to vote. There were four amendments that updated the manner of electing the President. There was only one restrictive amendment, the prohibition of alcohol, and that was repealed by another amendment. In short, the thrust of the amendments has been to give the citizen a greater voice in government.

A balanced budget amendment would run contrary to this spirit of the Founding Fathers in all three respects. First, the amendment would narrow the scope of government, a purpose that is the underlying motive of most of the proponents. Second, the amendment would impose a straitjacket on government, turning fitting flexibility into brittle rigidity. Third, the amendment would deprive the individual citizen of a regular say over government in the most decisive area of legislation; namely, the budget.

Although a constitutional convention would not violate the letter of the law, its predictable actions in the present moment and mood, with present motivation and movers, are likely to be in stark violation of the spirit of the U.S. Constitution over the last two centuries. Should this come to pass in 1987 the bicentennial of the Constitution might well be the burial of that revered document.

Congressional Digest



May, 1979

FOR PARR
See p. 134 ff

The Controversy Over Proposed Constitutional Amendments To Require Balanced Federal Budgets

Pro & Con

Washington D.C.



Debt Ceiling Bill And Budget-Balancing Efforts

April 15, 1979

A BILL TO RAISE the debt ceiling, H.R. 2534, became the vehicle for major debate in both the House and Senate over attempts to mandate a balanced Federal budget. On March 15, 1979, an amendment to the debt ceiling bill, sponsored by Representatives Phil Gramm, Tex., Dem. Trent Lott, Miss., Rep., and James R. Jones, Okla., Dem., became the focus of controversy in the House.

The amendment provided:

1. that for fiscal 1979, the total debt limit would be \$830 billion (the amount provided for in H.R. 2534),

2. that for fiscal 1980, the total debt limit would be \$897 billion (the amount Treasury projects is necessary to cover a \$29 billion deficit that year), and

3. that beginning in fiscal 1981, it would not be in order in either the House or Senate to consider any legislation to increase the public debt limit

A. until the second concurrent resolution on the budget for that year has been agreed to, and

B. unless

1. the second budget resolution provides for outlays equal to or less than revenues, or

2. more than two-thirds of the members voting in both the House and Senate agree to a second concurrent resolution which provides for a deficit.

This proposed budget-balancing amendment to the debt ceiling bill prompted the comment on the floor by Rep. Barber B. Conable, Jr., N.Y., Rep., that "It is no secret that the debate today is not really about the debt limit bill. This debate is being used, appropriately, to force the Congress to agree to balance the Federal budget by 1981."

After considerable debate over the question of mandating a balanced budget, the amendment was defeated on the key vote, by the narrow margin of 201-199. By a vote of 212-195, H.R. 2534, the debt ceiling bill, was passed by the House and sent to the Senate.

Senate Action

An equally intense debate took place in the Senate

over measures to compel a balanced budget, with various amendments to the debt ceiling vehicle discussed. The Senate amended the bill and it was returned to the House. Rep. Al Ullman, Ore., Dem., Chairman of the House Committee on Ways and Means, in an address to the House on April 2, summarized the complex action in the Senate, and where the matter, in his view, stood in the House, in light of the impending debt limit crisis:

"On the Senate floor, no question was raised about the provisions of the House-passed bill which dealt with the increase in the public debt limit and the two debt management changes. Instead, Senators Armstrong and Dole sought to add their version of the Gramm-Lott-Jones amendment to this bill, and this effort and the attempts by other Senators to modify that amendment was the major focus of the Senate debate. The Senate resolved the debate by accepting the Long and Packwood amendments instead of the Armstrong-Dole amendment.

"The Packwood amendment requires the President to submit alternative balanced budget proposals for fiscal years 1981 and 1982, if his budgets call for deficits.

"The Long amendment applies to the congressional budget process and requires the Budget Committees to report by April 15, 1979, budgets for fiscal years 1981 and 1982 that shall be in balance. In each of these 2 years, the Budget Committees shall also report balanced budgets for the same two fiscal years; a balanced budget for fiscal year 1981 by April 15, 1980, and a balanced budget for fiscal year 1982 by April 15, 1981.

House Action

"Since the provisions of the bill passed by the House were accepted by the Senate without question, the debate in the House today should focus on the Packwood and Long amendments to the bill and on today's financial outlook for the Government.

"The Packwood amendment instructs the President to submit alternative budget balancing proposals in his next two budgets; the administration has agreed to this amendment after accepting modifications which were accepted by Senator Packwood. Under the

Packwood amendment, for fiscal years 1981 and 1982 the President would have to submit alternative budget proposals to indicate how he would balance the budget, if his regular budget submission calls for a budget deficit. These alternative budget proposals would not have to be in the same detail as the regular budget, but they would have to be accompanied by a clear explanation of the specific differences between the President's regular budget and the alternative balanced budget.

"Under the Long amendment, the Budget Committees of both Houses would have some additional obligations, although there would be no changes to the congressional budget process itself.

"By April 15, 1979, the Budget Committee would have to make projections of how Congress could achieve a balanced budget in fiscal year 1981 and fiscal year 1982. These projections could be part of the Budget Committee's report accompanying the first budget resolution for fiscal year 1980, or they could be in a separate document. Possibly, the committee could conclude that the best way to balance the budget in 1981 or 1982 would be to require some changes in outlays or receipts in fiscal year 1980. If so, the committee would indicate these changes as part of its projections. Even though they would not be part of the Budget Committee's recommendation, as expressed in its report first budget resolution, Members could offer them as amendments to the first resolution on the House or Senate floor.

"This process should provide a better mechanism for achieving a balanced budget in 1981 and 1982 by helping Congress to make the decisions needed this year to balance the budget in the future.

"By April 15, 1980, if the Budget Committee recommends a first budget resolution for fiscal year 1981 that is not in balance, it will also be required to state, either in the report accompanying the first resolution or in some other document, how it thinks the budget might best be balanced in fiscal year 1981; that is, how the Budget Committee would go about balancing the budget if it were required to do so. These budget balancing proposals would be available to be offered as amendments to the Committee's recommended first budget resolution on the House or Senate floors. Thus, by knowing not only the Budget Committee's recommended budget resolution but also its judgment of how the budget might best be balanced, Congress would be able to make an intelligent decision about whether to balance the budget in 1981 because it would know precisely what would be involved in achieving a balanced budget.

"The budget process for the fiscal year 1982 budget would be the same as for fiscal year 1981.

"In each case in which the Budget Committees are

required to show how they would balance the budget, they would also be required to explain the effects of their balanced budget, compared to those of the reported budget which they recommend, on revenues, Federal spending, employment, inflation and national security.

"It should be emphasized that these amendments in no way change the basic congressional budget process except to require additional information from the Budget Committees. There is no change in the relationship between the Budget Committees and the authorizing committees, the appropriations committees or the tax-writing committees.

"The temporary debt limit which expired at midnight on Saturday, March 31, was not sufficient during the second half of March to permit Treasury to carry out financing programs to meet current needs. As a result, five public debt issues were postponed, and today's regular weekly auction of Treasury bills will be delayed unless this bill is passed promptly and early today.

"The Treasury Department probably can meet the Federal Government's cash obligations today.

"It will not be able to meet the demands for cash on Tuesday, even under the most favorable assumptions about payments and receipts.

"In other words, for the first time in the history of the United States of America, it will default on its obligations unless the bill with its provisions to increase the public debt limit is passed by the House today and is sent to the President for his signature.

"The Members of the House must be warned that the public debt limit issue now is more important than the sincere concerns about balancing the budget in the next fiscal year.

"Those Members who believe that action on a balanced budget is overdue must understand that we cannot make that adjustment retroactively. It must be made prospectively. And the time and place for those legislative matters is the House floor after April 15, 1979, when the first budget resolution for fiscal year 1980 will be taken up and will be followed by the appropriations bills for next year.

"I urge the House to act favorably on this public debt limit bill now."

Final Passage

On April 2, by a vote of 209-165, the House agreed to concur on the Senate amendments, not adopting stronger budget-balancing proposals sought by some House Members, and H.R. 2534 as amended, was sent to the President, who signed it that day.



Proposed Constitutional Amendments To Require Balanced Budgets

He Who Decides a Case Without Hearing the Other Side . . . Tho He Decide Justly, Cannot Be Considered Just—SENECA

FOREWORD=

THE CONTROVERSY OVER proposals to amend the U.S. Constitution to balance the Federal Budget involves a number of separate but related questions.

One is the desirability of a balanced budget itself. Another is whether a Constitutional amendment is the correct approach. If so, which proposal? In addition there is the question of a Constitutional Convention.

Fundamental to the controversy over balanced budgets is the nature and purpose of Federal financial operations. Since the 1930's Federal financial policy has been seen as a principal weapon for influencing the state of the nation's economy and for achieving certain public policies.

Federal financial policy is the product of the interaction of the President and the Congress on fiscal policy, the term generally associated with the annual budget and with the impact of the semi-independent Federal Reserve System on monetary policy. (For a brief description of how Federal financial policy is made, the operation of the Federal Reserve System, and some of the political and economic theories involved, see the background articles in "President Carter's 'Real Wage Insurance' Anti-inflation Proposal, Pro & Con, the April, 1979 issue of the *Congressional Digest*.)

Budget-balancing is seen by some to involve the fundamental role of the Federal government in two major ways. One is the relationship of government spending to the level of employment, the other is the objective of re-directing money toward certain people and programs, which is deemed to be in the national interest. The economic and political controversies involved have been central to the domestic political issues of the past half-century.

In recent years, however, there has been a shift by proponents as well as opponents of government spending programs toward an emphasis on more efficiency in government operations with the concurrent objective of reducing inflation, which in itself is now generally rec-

ognized to be a hidden tax damaging to the wage-earner and others, such programs are designed to help.

The balanced-budget issue now centers on such questions as when to balance it, and where to make the cuts. As will be seen in the article on page 129, efforts to compel a balanced budget through the Federal budget process were the subject of intense floor debate in the Senate and the House, with the votes taken carrying by thin margins. (The operation of the basic budget process itself is described in the article on page 132.)

Of the 34 required to compel a Constitutional Convention, the legislatures of 28 states have petitioned Congress concerning a balanced-budget amendment to the U.S. Constitution. This in turn has prompted a controversy as to whether a Constitutional Convention can be limited to the subject of the budget or could, if it voted to do so, propose for ratification by the states a number of amendments on various subjects. Some supporters of a budget-balancing Constitutional amendment have expressed opposition to a Constitutional Convention on the grounds of the uncertainty of its powers.

In addition to the state petitions and the legislative efforts in the Congress there are those proposing budget-balancing amendments, which if adopted by a two-thirds vote of both houses of the Congress would be sent directly to the state legislatures for ratification. Their large number and variety precluding individual summaries, the article on page 136 groups them in categories and briefly summarizes representative proposals.

The Pro & Con discussion features proponents of different proposals, all in favor of amending the Constitution relative to the Federal budget, and those with views opposing any amendment.

Action by one branch or the other of individual state legislatures on calling a Constitutional Convention, some favorable, some not, has recently been taken. The final results are expected to influence the rate of action taken on the amendment proposals initiated in the Congress, as are legislative efforts in the Congress pertaining to current budgetary matters.

The Federal Budget Process

Balanced
Budget
Amendments

THE FINANCIAL OPERATIONS of the Federal government involve the programs in the familiar annual fiscal budget, and also such multi-billion dollar activities as "government sponsored enterprises" and "off-budget Federal entities."

Government sponsored enterprises are those with completely private ownership, such as Federal land banks and Federal home loans banks, established and chartered by the Federal Government to perform specialized functions. These enterprises are not included in the budget totals, but financial information on their operations is published in a separate part of the appendix to the President's budget.

Off-budget Federal entities are organization entities, federally owned in whole or in part, whose transactions belong in the budget under current budget accounting concepts but which have been excluded from the budget totals under provisions of law. While these transactions are not included in the budget totals, information on these entities is presented in various places in the budget documents.

Although these various programs operate under laws enacted by the Congress, the budget for the fiscal year (October 1-September 30 and designated by the year it ends) is the principal subject of annual attention.

Following are excerpts from a description of the annual budget process published by the Office of Management and Budget. (See also p. 129.)

The Budget Process

The budget sets forth the President's proposed financial plan of operation for the Federal Government for the upcoming fiscal year and planning ceilings for the two subsequent fiscal years. In raising and spending tax revenues, the Federal Government allocates resources between the private and public sectors of the economy. Within the public sector, the allocation of budget resources among individual programs reflects the priorities that are determined through the interaction of the President, the executive branch agencies, and the Congress. The budget process is thus a crucial focus for the determination of national priorities. This section describes that process, and its four interrelated phases: (1) executive formulation and transmittal, (2) congressional ac-

tion, (3) budget execution and control, and (4) review and audit.

Executive formulation and transmittal.—The President's transmittal of his budget proposals to the Congress is the result of many months of planning and analysis throughout the executive branch. Formulation of this budget, transmitted to the Congress in January 1979, began in the spring of 1978. Each spring, policy issues are identified, budget projections are made, and preliminary program plans are presented to the President. In preparing for the 1980 Budget, a zero-based review (ZBB) of the entire budget was conducted.

The President reviews the budget projections in the light of the economic outlook and establishes general budget and fiscal policy guidelines for the fiscal year, that begins over a year later, and, under the new multi-year budget planning system, for the two fiscal years beyond. Tentative policy determinations for the budget year and multi-year planning ceilings for the following two years are then given to the agencies as guidelines for the preparation of their budgets.

In the summer, agencies formulate their zero-based budget requests which are reviewed in detail in the fall by the Office of Management and Budget and presented to the President in the context of overall fiscal policy issues. The budget transmitted to Congress thus reflects the President's recommendations for existing and proposed programs, as well as total outlay and receipt levels appropriate to the state of the economy. Supplemental budget requests and amendments may be submitted later to cover unanticipated needs.

As a result of the Congressional Budget Act of 1974, the President must update this budget on or before April 10 and July 15, taking into account newly enacted legislation, new executive branch recommendations, and new economic assumptions. The act also requires him to transmit current services estimates for the upcoming fiscal year. These estimates represent the budget authority and outlays required to continue existing programs in the upcoming fiscal year without any policy changes, thereby providing a base to compare program initiatives against current spending levels. Current services estimates for fiscal year 1980 are transmitted with the President's budget.

Congressional action.—The Congress begins its formal

review of the President's budget proposals in January. Before considering appropriations for a specific program, the Congress first enacts legislation to authorize agency programs and provide guidance on funding levels.

Many programs, such as social security and interest, are authorized indefinitely or for several years; other programs, such as education, health, nuclear energy, defense procurement, and foreign affairs, require annual authorization. The granting of budget authority usually is a separate, subsequent action to program authorization. In many cases, budget authority becomes available each year only as voted by the Congress. In other cases, the Congress has voted permanent budget authority, under which funds become available annually without further congressional action.

Under procedures mandated by the Congressional Budget Act of 1974, the Congress considers budget tools prior to completing action on individual appropriations bills. The act requires that the House and Senate Budget Committees receive reports on budget estimates from the other congressional committees by March 15, and a fiscal policy report from the Congressional Budget Office by April 1. By May 15, the Congress adopts a concurrent resolution containing budget targets. By September 15, the Congress completes action on setting budget ceilings, and by September 25, the Congress completes action on any required reconciliation bill or resolution.

Congressional consideration of requests for appropriations and for changes in revenue laws are considered first in the House of Representatives, where the Ways and Means Committee reviews proposed revenue measures and the Appropriations Committee studies the proposals for appropriations. These committees then recommend the action to be taken by the House of Representatives. After the appropriation and tax bills are approved by the House, they are forwarded to the Senate, where a similar process is followed. In case of disagreement between the two Houses of Congress, a conference committee (consisting of Members of both bodies) resolves the issues and submits a report to both Houses for approval. Measures are then transmitted to the President, in the form of an enrolled bill, for his approval or veto. When appropriation action is not completed by the beginning of the fiscal year, the Congress may enact a "continuing resolution" to provide authority so that the agencies affected may continue operations until their regular appropriations are approved.

Budget execution and control.—Once approved, the budget becomes the financial plan for the operations of agencies during the fiscal year. Most budget authority

and other budgetary resources are made available by the Office of Management and Budget under an apportionment system designed to assure the effective and orderly use of available authority.

The Impoundment Control Act of 1974 provides that the executive branch, in regulating the rate of spending, must report to the Congress any deferrals or proposed rescissions of budget authority—that is, any effort through administrative action to postpone or eliminate spending authorized by law. Deferrals, which are temporary withholdings of budget authority, cannot extend beyond the end of the fiscal year, and may be overturned by either House of Congress at any time. Rescissions, which permanently cancel existing budget authority, must be enacted by the full Congress. If Congress does not approve a proposed rescission the withheld funds must be made available for obligation.

Review and audit.—Individual agencies are responsible for assuring that the obligations they incur and the resulting outlays are in accordance with the laws and regulations. The Office of Management and Budget reviews program and financial reports and the General Accounting Office, a congressional agency, regularly audits, evaluates, and reports on Federal programs. In addition, offices of Inspectors General have been established by law in 12 major departments and agencies. Essential features of the legislation creating these offices have been extended by administrative action to the rest of the executive branch. This is expected to reduce substantially the amount of fraud, waste, and inefficiency in Government, and assure that programs achieve their intended purposes.

Budget Carry-Over. Not all of the new budget authority for 1980 will be obligated or spent in that year.

Budget authority for most major trust funds is equal to receipts and is used as needed for purposes specified by law.

Budget authority for most major construction and procurement programs covers the estimated full cost of projects at the time they are started, although the outlays will occur over a number of years as work on the projects progresses.

Budget authority for many loan and guarantee (or insurance) programs also provides financing for a period of years or constitutes a contingency backup.

Budget authority for Government sponsored enterprises is provided at their origin to be used for general capital purposes over several years.

As a result of these factors, a large amount of budget authority carries over from one year to the next. Most is earmarked for specific uses and is not available for any other program.

State Action Toward A Constitutional Convention

Balanced
Budget
Amendments

THE U.S. CONSTITUTION provides for two methods of initiating amendments to it, one by a two-thirds vote of the Congress of the United States, the other by two-thirds of the legislatures of the states petitioning to call a Constitutional Convention. Proposed amendments adopted by either Congress or a Constitutional Convention require ratification by three-fourths of the states.

The legislatures of the following 28 states have passed resolutions in various forms, relative to a Constitutional Convention and a balanced Federal Budget amendment:

Alabama	Nevada
Arizona	New Mexico
Arkansas	North Carolina
Colorado	North Dakota
Delaware	Oklahoma
Florida	Oregon
Georgia	Pennsylvania
Idaho	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Louisiana	Texas
Maryland	Utah
Mississippi	Virginia
Nebraska	Wyoming

A Constitutional Convention

Although since the adoption of the Constitution numerous petitions by state legislatures covering a variety of subjects have been filed over the years, a Constitutional Convention has never been called. The necessary two-thirds of the states have not been obtained in some instances, or the Congress has submitted proposed amendments for ratification by the states.

Considerable controversy surrounds the procedures of such a convention, most notably the question of whether a Constitutional Convention can be restricted to the purpose for which it is called. There are those who maintain that a Constitutional Convention would be open to any subject for an amendment, while others state that a convention can be restricted to a designated purpose. Still others maintain that any action taken in convention would still require ratification by three-

fourths of the states. The Constitution itself does not elaborate on procedures.

The U.S. Constitution states in Article V:

"The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the Congress."

As Madison explained in the Federalist Papers (#43) the dual method available for proposing amendments "... 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."

Hamilton underscores the standing of the states, in Federalist Paper #85: "The words of this article are peremptory. 'The Congress shall call a convention.' Nothing in this particular is left to the discretion of that body."

The Congress addressed the subject when, during the 1960's, a substantial number of state legislatures petitioned for the calling of a Constitution Convention to consider the matter of how state legislatures should apportion their seats throughout their states. This move was promoted by the so-called "one man one vote" findings of the U.S. Supreme Court in the "apportionment" cases.

The Ervin Bill

This led to the introduction in Congress of bills to establish procedures for calling a Constitutional Convention, in the event of necessity. One such bill introduced by Senator Sam Ervin, N.C., Dem., was passed by the Senate in 1971, by a vote of 84-0. No action was taken in the House and the proposal was reintroduced in the next Congress, where in 1973 it was again passed by the Senate, but failed to obtain House approval.

This measure, although it failed of passage, is re-

garded as a framework for analysis of the various aspects involved in the calling of a Constitutional Convention, and by some as a model statute.

U.S. Representatives Robert McClory, Ill., Rep., Henry J. Hyde, Ill., Rep., and L. H. Fountain, N.C., Dem., are among those who have introduced bills in the current Congress based, as each comments, on the Ervin bill, although containing some alterations.

Rep. Fountain explains that his bill has "been slightly altered so as to make clear that the Congress would have the power to determine the validity not only of applications transmitted to the Congress after the enactment of the bill but also of applications transmitted before enactment. The Ervin version would appear to be applicable only to resolutions after enactment."

Rep. Hyde's bill would provide that amendments shall be proposed by majority of the convention delegates. This is similar to Senator Ervin's original proposal, but the Senate amended it after extensive floor debate in 1971, to provide for a two-thirds vote.

There are other aspects of the procedures for a Constitutional Convention that attract differing views, but the Ervin bill is generally agreed to have included the vital areas. Following is a summary of Rep. McClory's bill which, as he states, contains only a few changes to the Ervin bill passed by the Senate in 1971 and 1973:

Section 1 provides that the title of the act is the "Federal Constitution Convention Amendment Act."

State Resolutions

Section 2 provides that a State desiring to invoke article V to call a constitutional convention for the purpose of proposing an amendment to the Constitution must adopt a resolution pursuant to this act requesting such a convention and stating the nature of the amendment it wishes proposed. Pursuant to the requirements of this section, the measure is prospective and not retroactive in operation.

Section 3 provides that the procedure to be used by the State in adopting or rescinding a resolution is the same as that used for enacting State laws of general application except that the approval of the Governor is not required. Any questions arising as to the adoption or rescission of resolutions are matters for determination solely by the Congress as part of its responsibility to determine whether article V has been activated. Of course, Congress has no authority to examine the action of the legislature, except to assure itself that the State has used the procedure specified in section 3.

Section 4 provides that within 30 days of the adoption of a resolution the secretary of state or the equivalent officer of the State must send two certified copies to the

Congress, one addressed to the President of the Senate and the other to the Speaker of the House. Each copy must contain the title of the resolution, the date upon which it was adopted, and the exact text of the resolution signed by the presiding officers of each house of the State legislature. Within 10 days of receipt, the President of the Senate and the Speaker of the House must report to their respective Houses the identity of the State making application, the subject of the application and the number of States which have thus far applied with respect to that subject. If Congress is in recess or is adjourned, the announcement would be made when Congress was again in session, and as soon thereafter as possible. The two officers must cause copies of the application to be sent to the presiding officers of each of the Houses of the other States, and to each Member of Congress.

Section 5 provides that applications for the convening of a convention are effective for 7 years from date of receipt by Congress. Whenever within a 7-year period there are in effect valid applications on the same subject from two-thirds of the States all the applications remain in effect until Congress has called the convention.

States may rescind applications by adopting resolutions of rescission in accordance with the procedures of sections 3 and 4. However, attempted rescissions would not be effective after applications have been received by Congress from the requisite two-thirds of the States. Questions concerning the rescission of applications are determined solely by Congress.

Section 6 provides that the Secretary of the Senate and Clerk of the House shall maintain a record of the applications received upon each subject. Whenever applications upon the same subject have been received from two-thirds of the States, they must report in writing to the presiding officer of their respective Houses, and such officer shall report to that House the substance of the report. Periodic reports to each House on the nature and number of petitions received would be advisable, as well.

Each House then determines whether the recitation of the report is correct. Upon such determination it is the constitutional duty of each House under article V to agree to a concurrent resolution calling for the convening of a constitutional convention. The resolution shall set forth the nature of the amendment the convention is to consider and designate the time and place for the convention. Copies of the resolution are to be sent to the State Governors and to each House of each State legislature. The convention must be convened within 1 year of the adoption of the resolution.

(Continued on page 160)

Summary Of Proposed Constitutional Amendments

Balanced
Budget
Amendments

A SUBSTANTIAL NUMBER of measures have been introduced in the 96th Congress proposing a Constitutional Amendment relative to the Federal budget.

These joint resolutions are referred to the Judiciary Committees of the House and Senate, which have committee jurisdiction over proposed amendments to the Constitution. The Senate Budget Committee has held hearings on proposals relative to budget procedures and in March heard testimony from witnesses on the subject of proposed Constitutional amendments. The subcommittee on the Constitution of the Senate Judiciary Committee heard testimony on March 12, 1979 from witnesses, including U.S. Senators testifying on their proposals.

The proposed amendments are designed to circumscribe the budgetary powers of the Congress, but they vary in approach. Some would require a balanced budget each year, while others would limit government outlays, reduce the debt, or involve variations and combinations of these approaches. Most contain escape clause language pertaining to national emergencies and to the cash flow of Federal indebtedness transactions.

Senate Resolutions

Over a dozen such resolutions have been introduced so far in the Senate. For purposes of illustration, representative examples given below are informally grouped by category of approach. The names of the Senators are those of the original sponsors and do not include those who subsequently have, or expect to be included as co-sponsors.

Income/Outlay

S.J. Res. 4 (Senator Lugar) would require that concurrent resolutions setting forth levels of total budget outlays and federal revenues must be agreed to by two-thirds of both Houses of the Congress, if the level of outlays exceeds the level of revenues.

S.J. Res. 10 (Senator McClure) provides that Congress shall assure that total outlays during any fiscal year do not exceed total receipts, except when Congress shall determine to the contrary, for a period not to exceed one year, by two-thirds vote of both Houses.

S.J. Res. 11 (Senators Talmadge and Nunn) proposes

that the aggregate amount of expenditures during any fiscal year shall not exceed the net amount of revenue received during that fiscal year, except during period of war declared by Congress, or when both Houses agree to a concurrent resolution stating, in substance, that a national economic emergency requires suspension for that fiscal year.

S.J. Res. 13 (Senator Helms) provides that total outlays shall not exceed total receipts during any fiscal year except when Congress shall determine by three-fourths vote that "a grave national emergency exists".

S.J. Res. 36 (Senator Heflin) proposes that Congress shall make no appropriation for any fiscal year if the resulting total would exceed the total estimated receipts for such fiscal year, except in case of national emergency (including formally declared war), when a concurrent or joint resolution is agreed to in each House by 55 per cent of all members, providing the period of time of the suspension. Resolutions may be recommended by the President, or by 25 per cent of the members of either House, with action to be completed in both House within 60 days.

S.J. Res. 45 (Senator Harry F. Byrd) would provide that total outlays of the government during any fiscal year shall not exceed the total receipts, except in national emergency. Congress may determine by a concurrent resolution agreed to by a two-thirds vote of both Houses, that total outlays may exceed total receipts for the fiscal year designated.

GNP Related

S.J. Res. 5 (Senator Dole) proposes that aggregate amount of expenditures during any fiscal year shall not exceed net revenue received during that fiscal year.

Congress may determine by a two-thirds vote of all members of each House that outlays may exceed revenues, but not if for more than three fiscal years out of the preceding eight, total budget outlays exceed total revenues. If for any fiscal year total budget outlays exceed revenues, the succeeding four fiscal years shall set forth an aggregate amount of appropriate surplus equal to the amount of such excess.

Percentage of Gross National Product: Beginning with the third fiscal year after enactment, the appropriate

levels of outlays and revenue set forth in any concurrent resolution on the budget for a fiscal year shall not exceed 18 per cent of the Gross National Product at the close of such fiscal year, as projected by the Director of the Congressional Budget Office, except the provisions of this section shall not apply upon the affirmative vote of two-thirds of both Houses.

Surtax

S.J. Res. 6 (Senator Stennis) provides that no later than the 20th day after the close of each fiscal year the President shall ascertain total receipts and expenditures and if receipts are less than outlays, he shall determine the percentage rate of income surtax to be imposed to provide an additional amount of revenue equal to the amount by which total receipts are less than such outlays.

An income tax surtax, at the rate determined and transmitted by the President to the Congress, shall be effective for the calendar year following the fiscal year involved, or that part of it for which it is not suspended, as an additional income tax liability of each taxpayer.

In the case of a grave national emergency, declared by Congress, the income tax surtax which would otherwise be in effect may be suspended by a concurrent resolution agreed to by a three-fourths vote of both houses, with such resolution providing the period of time, if less than the whole calendar year, during which such surtax is to be suspended.

National Debt Reduction

S.J. Res. 7 (Senator Armstrong) requires that Congress make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total estimated revenues.

In time of war or national emergency declared by the Congress, by a concurrent resolution which passes by a vote of three-fourths of the membership of each House, application may be suspended only for the two-year term of the Congress which passes it.

There shall be no increase in the national debt, and such debt as it exists on the date this article is ratified shall be repaid during the one-hundred-year period beginning with the first fiscal year which begins after the date of ratification at the rate of one-tenth of such debt repaid during each ten-year interval.

S.J. Res. 18 (Senators Thurmond, Goldwater and Wallop) provides that the President shall transmit to the Congress his estimates of the receipts of the Government and his recommendations with respect to total outlays to be made, which shall not exceed the estimated receipts that will be available to defray outlays after the

application of section 2 of this article. Section 2 states: "Beginning with the fifth fiscal year after the effective date of this article, and for each of the next twenty fiscal years thereafter so long as there remains any public debt of the United States, 5 per centum of the receipts of the Government, not including receipts of trust funds, shall be available only to reduce the public debt," as necessary to eliminate the public debt.

Congress may suspend these provisions by three-fourths vote of each House, for periods not exceeding one year each, in case of war or other grave national emergency.

Percentage of National Income

S.J. Res. 9 (Senator McClure) provides that total outlays made by the United States shall not exceed 33 1/3 per cent of the average national income of the prior three calendar years, except as specified during war or national emergency.

Resolutions in the House

A substantial number of resolutions (some 50 in the first 10 days of this session alone) have been introduced in the House. A number are similar in purpose to those of the Senate resolutions, and some contain still further variations. Below are excerpts from H.J. Res. 14 introduced by Rep. Bafalis with 99 members of the House as co-sponsors, and H.J. Res. 213, introduced by Rep. White with 40 members as co-sponsors.

H.J. Res. 14 proposes an amendment to the Constitution to provide that appropriations made by the United States shall not exceed its revenues, except in time of war or national emergency, and to provide for the systematic paying back of the national debt over a one-hundred-year period at the rate of one-tenth during each ten-year interval.

H.J. Res. 213 proposes that the level of total outlays of the United States for any fiscal year shall not exceed the level of total receipts, and provides for the disposition of unanticipated deficits. It may be suspended during war declared by the Congress, or by an affirmative vote of two-thirds of both Houses. Unanticipated deficits shall be considered an expenditure for the first fiscal year following, and provision is made for corresponding increase in the total receipts of the United States if the amount exceeds two per cent of total expenditures. By majority vote of both Houses, any unanticipated deficit could be apportioned over up to four fiscal years following determination of its existence, or, by two-thirds vote of each House, included in the debts of the United States.

PRO

Should A Constitutional Require Balanced

by Hon. John C. Stennis

United States Senator, Mississippi, Democrat

From testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee, on March 12, 1979, during hearings on proposed Constitutional amendments requiring balanced Federal budgets.

"... the financial history of this nation for the past 25 years and my strong sense of fiscal responsibility compel me to propose the amendment . . ."

I AM ACUTELY CONSCIOUS of the lasting and enduring nature of our Constitution and I certainly recognize that it should not be tinkered with or amended except for most compelling reasons. However, the financial history of this nation for the past 25 years and my strong sense of fiscal responsibility compel me to propose the amendment embodied in S. J. Res. 6. I believe that it is an idea whose time has come.

Let me briefly explain the proposed amendment. Its basic purpose is to seek to assure that the total outlays of the government during any fiscal year do not exceed the total receipts available to the government during such fiscal year.

For this purpose the proposed amendment provides that no later than the twentieth day after the close of each fiscal year the President shall ascertain the total receipts of the government during such fiscal year, not including receipts derived from the issuance of bonds, notes, or other obligations of the United States. Likewise, during the same twenty day period, the President shall ascertain the total outlays of the government during such fiscal year, not including any outlays for the redemption of bonds, notes, or other obligations of the United States.

If the total receipts are determined to be less than the total outlays, then under the amendment the President would be required to determine the percentage rate of income surtax which would be necessary to raise enough additional taxes to eliminate the deficit and transmit it to the Congress by a special message. The income tax surtax would be levied and effective for the calendar year following the close of the fiscal year with respect to which the Presidential determination was made, and would be an additional income tax upon all individual and corporate incomes.

It can be seen that the proposed amendment is clear and simple. It would require that any Federal deficit be offset by a surtax to be levied in the calendar year following the year in which the deficit was incurred. No exercise of judgment or discretion on the part of anyone would be involved. If expenditures exceeded revenues during a fiscal year a surtax would have to be levied during the following calendar year to bring the budget into balance. The rate of surtax would be determined by the President purely as a mathematical calculation and, as I have said, this would not require any exercise of judgment or discretion.

There is an essential and necessary escape valve in the proposed amendment,

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"It would require that any Federal deficit be offset by a surtax . . ."

Amendment Be Adopted To Federal Budget?

CON

by Hon. Edmund S. Muskie

United States Senator, Maine, Democrat

From testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee, on March 12, 1979, during hearings on proposed Constitutional amendments requiring balanced Federal budgets.

IN ALMOST TWO HUNDRED YEARS, our nation has held just one Constitutional Convention; and the timeless brilliance of that assembly's work is enhanced with the passing of each new decade.

A new Constitutional Convention should be rejected out of hand.

But the anger and frustration which gave rise to the idea in the first place is another matter entirely. That is a very serious thing indeed. We as legislators must respond—but with leadership, poise, and responsible solutions.

The public's frustration with seemingly endless inflation is genuine. It is certainly understandable. Inflation can destroy the fruits of a lifetime's labor and undermine an entire social order.

But Federal deficits, harmful though they sometimes are, are not the root of the problem. More importantly, changing the fundamental law of the land to mandate an unworkable Federal balance in good times and bad is not the solution. On the contrary, it could provoke an even deeper dilemma. And the array of varying approaches is anything but simple.

Almost 50 bills, resolutions, and state petitions regarding a balanced Federal budget are now under consideration by Senate committees. For analytical purposes, we have broken all the proposals into several basic categories.

The first category encompasses what might be called the basic formula—a simple requirement that the Federal budget be in balance except in unspecified emergencies.

The defects of this approach are as simple as its language. It limits or even eliminates the Federal government's ability to respond quickly and flexibly to changing economic conditions.

Moreover, a balanced Federal budget may be flatly impossible to achieve in times of severe recession.

Finally, since we are given no definition of a state of "emergency," we could anticipate prolonged debate and confusion just when prompt, effective action might be most necessary. And the end of that debate might well come too late to allow for meaningful responses to economic conditions.

Of course, since most of these proposals require a two-thirds vote of Congress to open the escape hatch, we might never have to concern ourselves with responding at all. A two-thirds vote is difficult to obtain on any issue. That's why the cloture rule now calls for a three-fifths vote instead of the traditional

"... changing the fundamental law of the land to mandate an unworkable Federal balance in good times and bad is not the solution."

"... A balanced Federal budget may be flatly impossible to achieve in times of severe recession."

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"I believe that the Congress should make a start now . . . to advance towards a pay-as-you-go constitutional amendment."

" . . . we need a strong, mandatory constitutional amendment with real teeth and action-forcing provisions."

however. Under this safety valve the requirement for a balanced budget could be waived and set aside by a three-fourths vote of all members of each House in the case of a grave national emergency such as a war or serious depression. This would be the sole exception to the requirement that the budget be balanced.

I believe that the Congress should make a start now—at this very moment—to advance towards a pay-as-you-go constitutional amendment. At best it will take several years to get the constitutionally-required two-thirds vote in each House and have the amendment ratified by three-fourths of the States. This means that even if the Senate passes the amendment at this session, its effective date would still be several years down the road, so that the Congress would have the time to bring the budget in balance. In addition, as a further protection, the amendment itself provides that it should not become operative until the first fiscal year beginning after the amendment is ratified.

I do think it is pertinent to refer to the unhappy fiscal history which makes this amendment so necessary. I will recapitulate it briefly at this point.

It took us 173 years—from 1789 to fiscal year 1962—before the Federal budget reached \$100 billion. In the 18 years since fiscal year 1962 the budget has skyrocketed to \$531 billion. Thus, even with anticipated receipts of \$502 billion, the estimated deficit for fiscal 1980 is \$29 billion.

In fiscal year 1970 the national debt was \$382 billion. The estimated national debt at the end of fiscal year 1980 is \$898 billion. Therefore, we find that in ten years the national debt will have increased by \$516 billion, an average of more than \$51 billion a year. The estimated interest on the national debt for fiscal year 1980 of \$57 billion is more than the entire Federal budget for fiscal year 1951.

Given the record of the Federal deficits over the past quarter of a century, it is clear that the Executive and Legislative branches, acting in a permissive legislative situation without constitutional compulsion or restriction have utterly failed to bring Federal spending under control. This is why I believe we need a strong, mandatory constitutional amendment with real teeth and action-forcing provisions.

The Constitution is the supreme law of the land. If we add to it a budget balancing amendment which has mandatory provisions and is self-enforcing—and that is the type of amendment proposed by S. J. Res. 6—this will bind both the Executive and Legislative Departments to a balanced budget as long as that amendment is on the books. It will put an element of unequivocal control and discipline into the matter which will be applicable to all three branches of the government.

I endorsed the Congressional Budget Act of 1974. It was a great step forward and it has worked well. I applaud it. With it the Congress at last broke into the clear in reasserting its constitutional control of the purse strings and entering the field of Federal fiscal policymaking in a really meaningful way. However, it is apparent from recent history that the budget act alone will not stop deficit spending. We need the discipline and even the compulsion which this constitutional amendment would provide if we are to reach that goal. This, in my opinion, is the only way to proceed if we are to bring about the fiscal responsibility and budgetary control which is absolutely indispensable to the economic well-being of our country.

(Continued on page 142)

two-thirds.

Another category of mandated balance approaches might be called the appropriations/revenue formula. It would require that all appropriations for any fiscal year would not exceed all estimated revenues for that fiscal year.

This concept is subject to the same criticisms which apply to the first approach. Additionally, it would eliminate full funding of multi-year projects. It would end the practice of appropriating the full costs of such projects at the outset, so that it is clear to Congress and the public that a long-term commitment has been made—and it is understood just how much that commitment will cost.

This approach would actually require large budget surpluses. Appropriations have recently run 10 per cent higher than outlays and are likely to continue to do so. A change would severely slow economic growth.

The next option would not only balance the budget but eliminate the debt as well. Along with the standard defects of rigidity, that proposal would impose a much heavier drag on the economy and violate every standard of investment management.

Other proposals would limit the number of deficits which the Federal government could carry in a specified number of years. But the economy might demand five deficits in five years, or none. There is no way to tell in advance.

The surtax formula is the next approach. Any deficit would have to be erased by the end of the next fiscal year by imposition of a proportionate surtax.

Apart from promoting a spend now, pay later mentality, that idea would impose a terrible economic burden in times of recession. A deficit year followed by a subsequent balance and a surtax might plunge us into a raging depression.

Herbert Hoover tried to tax us into balance once. The year was 1932. It was not a good year for the economy.

Still another option would hold the growth of Federal spending in any year to the rate at which the GNP grew the year before.

But—at best—the GNP is only an estimate. And whose guess would we respect? We should not give guesses any rigid authority for determining our budgets—and a bad guess could severely restrain hopes for recovery.

A half dozen further variations on the theme become more complicated and even less enlightened.

We confront a confused and confusing jumble of misinformation. Some of the structures proposed are more rickety and dangerous than others. But none will stand up under pressure. None can improve on the structure we have already laid out.

Dr. Walter Heller recently added his name to the growing consensus of experts who oppose the mandatory balance concept.

He identified six fundamental misconceptions which lie at the heart of wide popular support for the mandatory balance. I believe he has captured the essence of the fallacies as well as the appropriate responses.

A nightmare of semantics, administration, accounting, potential evasion, and inherent incentives for poor management and misleading bookkeeping would be sure to accompany any of the sweeping proposals which have been advanced.

Under most conditions of economic health, a Federal deficit is unacceptable. This Congress must take prompt, aggressive, and sometimes painful steps to

"Appropriations have recently run 10 per cent higher than outlays and are likely to continue to do so. A change would severely slow economic growth."

"We confront a confused and confusing jumble of misinformation."

(Continued on page 143)

"My amendment involves no disruption of established and recognized constitutional procedures."

". . . elimination of deficits and the reduction in Federal spending would have the very desirable effect of slowing or reducing inflation."

My amendment involves no disruption of established and recognized constitutional procedures. It would not deprive the Congress of its constitutional power to appropriate funds as it deems appropriate. The power of the Congress to make appropriations is whatever amounts and for whatever purposes it sees fit is not restricted by the proposed amendment. It does provide, however, that if Congress should appropriate a total amount for any fiscal year which exceeds the available revenue then it would be mandatory that a surtax be levied in the succeeding calendar year in an amount necessary to overcome the deficit. In short, any Member of Congress who voted to spend more money than was available would, at the same time, automatically be voting to impose an additional income tax. Thus when a tax is levied the taxpayers could readily see who imposed it on them.

Neither is it true that my amendment, if adopted, would put the country in an economic straitjacket. It would not require a balanced budget even in the face of an economic depression. Section 4 of the proposed amendment provides that in case of a grave national emergency declared by Congress the required income tax surtax may be suspended. This escape clause could be invoked by a vote of three-fourths of all members of each House of Congress. Possibly a two-thirds vote would be better. In any event, the details of the escape provision can be worked out as the concept is defined and developed.

Let me stress that this proposed constitutional amendment would have a clear, obvious, and almost immediate beneficial result. It would eliminate, or at least reduce, the extravagant waste of the financial resources of the government. It would absolutely force the Congress to make hard and difficult fiscal choices during each and every session. No longer would the Congress have the liberty and the leeway to appropriate large sums of money for so many programs that have some real or imaginary social, economic or political appeal and to fund such programs by deficit financing. A constitutional amendment requiring a balanced budget would serve as a check and constraint on Federal expenditures by compelling the Congress to select and fund only those programs which are the most necessary and desirable from the standpoint of good government and the best interests and welfare of the taxpayers. If the Congress recognizes that it will be compelled to levy added taxes to pay for questionable and excessive programs, there is a much greater likelihood that the proposed expenditures will be carefully scrutinized and restricted.

Beyond all other considerations is the generally recognized fact that elimination of deficits and the reduction in Federal spending would have the very desirable effect of slowing or reducing inflation. This is something that must be accomplished if this nation is to continue to exist in the form we know it now. We simply cannot maintain our democratic and free enterprise system of government if the existing raging inflation continues over an extended period. The history of other countries which have seen their economic and governmental systems collapse under the weight and burden of uncontrolled inflation should be evidence enough of this.

I know that there are those who say that a \$30-billion deficit can have little impact on inflation in a nation with a two-trillion dollar economy. These are the same people, however, who also say that pump-priming by deficit spending will

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squeeze the deficit down and out.

But we must retain the resources and flexibility to cope with a wide variety of economic circumstances. No respected economist will come before this committee or any other and tell the Senate that deficits must not be tolerated in times of recession and other forms of severe economic distress.

But beyond the persuasive realities of economics and fiscal theory, there is a deeper issue here. The rush is on to impose a poorly thought-through and badly constructed restraint on the Congress of the United States. That is disturbing enough. But to insist on writing such a blunder into the American Constitution is another level of folly.

I would not want to develop economic policy for the 1980's on the basis of fiscal concepts which were popular in the 1780's. We have no business imposing such restraints on those who will come after us. And our Constitution is a timeless document to be reserved for timeless principles.

The Constitution of the United States is the most eloquent and elegant document in the political history of the world. There is no room in it for algebraic equations that don't make sense. There is no place there for simplistic schemes or transient whims. There is no excuse for cheapening its simple dignity and marring its fundamental wisdom—not for short-term political points—not as a consequence of misperception and misunderstanding.

The framers of our Constitution have left us a remarkable legacy—a model for republics which followed and for those which are hopefully yet to be born. We owe the founders more than patchwork addenda to the elegant structure they built. We owe more than that to ourselves.

by Hon. John Brademas

United States Representative, Indiana, Democrat

From an address delivered in Washington, D.C. before the annual meeting of the National League of Cities, on March 5, 1979.

BEFORE GETTING INTO this specific question, I'd like to make some general observations about the budget, the economy and the idea of adding such limitations to the Constitution.

Let me say first that I want the Federal budget to be balanced. I know of few advocates of continuous deficit spending; I know of no one who is opposed to the objective of balancing the Federal budget.

In fact, Congress has taken major steps in recent years toward getting Federal expenditures under control with a view to achieving a balanced budget.

These steps began with the adoption of the Budget Act of 1974, which created Budget Committees in both the House and the Senate and established new and rigorous procedures to monitor and control Federal spending.

Under these procedures, which have been in full effect for only three years, Congress, for the first time, has been able to study the national budget as a

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"It seems more than a little contradictory and inconsistent to maintain that deficit spending is so overwhelmingly effective in combating economic downturns . . ."

" . . . I am convinced that the best answer lies in the adoption of a direct constitutional amendment . . ."

work wonders in curing a recession or depression. It seems more than a little contradictory and inconsistent to maintain that deficit spending is so overwhelmingly effective in combating economic downturns and, at the same time, to assert that a balanced budget and prudent economic restraint has little or no impact on soaring inflation.

Let me mention one other matter. I understand that almost 30 of the required 34 States have taken some form of action asking for the calling of a constitutional convention to consider a mandatory balanced budget amendment. As strongly as I favor a pay-as-you-go constitutional amendment, I cannot support this drive for a constitutional convention. As a matter of fact, I am both alarmed and frightened by the very prospect.

I have researched the precedents and guidance for a constitutional convention and have found very little. That fact alone warns me against marching off into this legal no-man's land.

A constitutional convention, if called, would present us with new and dangerous legal questions. There are few, if any clear and unequivocal answers to these questions and the myriad problems which would inevitably arise. The legal guidance on both procedural and substantive matters is virtually nonexistent, as I have already indicated.

The most debated question surrounding the calling of a constitutional convention is whether Congress has the power to define and limit the scope of a constitutional convention called by the States. It is also the most dangerous question and the one having the greatest potential for mischief and legal confusion.

I know that there are respected legal scholars who assert that Congress has the power to place limits and restrictions on the matters to be considered at a constitutional convention. There is also a respected body of legal opinion on the other side. Even assuming, as an abstract legal question, that Congress has this power, the question is: How is it to be enforced? What is there to insure that the convention would not become a "runaway" assembly which would try to rewrite our basic law in numerous particulars? There are too many unanswered and unanswerable legal questions and problems involved to make the convention procedure worthy of the risk involved.

The result could be confusion and chaos, or, at the very least, legal doubt and question as to the status of some of our most cherished constitutional precedents. I do not know of anyone who has a ready answer for the numerous and vexing legal questions that would inevitably arise if such a convention was called. The drive for a constitutional convention to balance the budget threatens a constitutional crisis. It should be avoided at almost any cost.

While I realize that there is no easy answer to the problem, I am convinced that the best answer lies in the adoption of a direct constitutional amendment such as I am advocating today. I know that other proposed amendments are pending which have merit. I have no pride of authorship and will certainly be glad to support any amendment which is reported to the Senate floor which will provide an effective answer and remedy. I hope this Subcommittee will act expeditiously and effectively to prevent the Congress from continuing to mortgage the nation's future so extravagantly.

One of the most cogent arguments in favor of a balanced budget constitu-

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whole and to establish national priorities. No longer is the White House the only institution in our national government that has this capacity.

For the first time, Congress has been able not only to indicate sources of revenue but also to set firm ceilings on the amount of money to be spent.

If this is the case, you ask, why do we still have deficits in the Federal budget? Why has there been a Federal deficit in every year since 1969?

The main reason for the deficit over the 1969-1974 period is obvious—the war in Vietnam. Unless we increase taxes, there is simply no way to fight a war without borrow-money to finance it.

In fiscal 1974, as that war ended, the deficit dropped to \$4.6 billion and it appeared as though the era of deficit spending caused by the war was at an end.

But during 1974 there began what developed into the worst economic decline America had experienced since the Great Depression of the 1930s and, under President Ford, the deficit ballooned in fiscal 1975 to more than \$45 billion. That figure was 4.6 per cent of the Gross National Product.

A year later, 1976, the first stage of the new Congressional budget process came into effect. The same year also marked the start of an attack by the Federal government on unacceptably high unemployment. The deficit rose to \$66.4 billion. But because the economy was beginning its recovery, that huge deficit in fiscal 1976 was only 3.2 per cent of the Gross National Product, 1.4 per cent less than the year earlier.

Since President Carter was inaugurated, the deficit has dropped from that \$66.4 billion figure in President Ford's last year to \$37.3 billion this year, the lowest deficit in five years. Our hope is that it will drop still further, to under \$30 billion next year.

Moreover, as a percentage of the Gross National Product, which is the figure the economists tell us is the most important, the Federal deficit declined from the 4.6 per cent of GNP in President Ford's final year to 1.6 per cent this year. That, I suggest, is a considerable decline.

Equally significant, and still more dramatic, has been the steady decline in the national debt as a proportion of the Gross National Product.

In 1950, the national debt equalled more than 75 per cent of GNP; by 1970 this had dropped to 30 per cent. This year, the national debt as a percentage of GNP is estimated to be 28.4.

Contrast this record with that of private individuals and private corporations. Over the same period, while the national debt declined from 75 per cent of GNP to less than 30 per cent, the debt of private individuals rose from about 33 per cent of GNP to almost 60 per cent and corporate debt jumped from 50 to 84 per cent of GNP.

Let us look at another measure, the totality of indebtedness in the economy. By this calculation, the Federal government debt amounted to less than 20 per cent in 1978 while private debt accounted for 70 per cent of the total. The other 10 per cent is debt run up by state and municipal governments.

The recent recession was expensive, even more expensive than the war. In Federal budget terms, the recession costs the Treasury about \$20 billion in unemployment assistance and lost revenues for each one per cent of the work force (over 4 per cent) that is unemployed.

"The main reason for the deficit over the 1969-1974 period is obvious—the war in Vietnam."

"... the Federal government debt amounted to less than 20 per cent in 1978 while private debt accounted for 70 per cent of the total."

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"... since last October I have been urged to vote for increased appropriations for new and existing programs above the proposed budget of at least \$100 billion on an annual basis."

"I have seen a projection that estimates that the annual cost of military retired pay under this system could reach over \$36 billion by the year 2000."

tional amendment is the tremendous pressure put on Members of the Congress by special interest groups and others to increase appropriations for existing programs and to fund new programs. My conservative estimate is that since last October I have been urged to vote for increased appropriations for new and existing programs above the proposed budget of at least \$100 billion on an annual basis. In view of this, and as a gauge for the future, I believe it would be helpful to look at the past growth of a few of the existing programs.

The food stamp program was started as a pilot or experiment in 1961. The cost was less than \$6 million. The estimated cost for fiscal year 1980 is \$6.9 billion, in spite of repeated attempts to curb and hold down the program.

Medicare and Medicaid combined expenditures in fiscal year 1970 were about \$10 billion. This is an area of need, but the growth is too rapid. The budget for fiscal year 1980 calls for \$32.1 billion for Medicare and \$12.5 billion for Medicaid, for a combined cost of almost \$45 billion.

Youth training and employment programs have grown from slightly more than \$1 billion in fiscal year 1970 to about \$4.5 billion in fiscal year 1980. This includes Summer Youth Employment, Jobs Corps, Youth Employment and Demonstration Act, and other programs for the training and employment of youths.

Outlays for veterans benefits and services have increased from about \$9-billion in fiscal year 1970 to an estimated \$20.5-billion in fiscal year 1980. This category includes such services and benefits as education, pension and other income security, compensation and hospital and medical care.

Expenditures for all forms of transportation systems was about \$7-billion in fiscal year 1970. The budget calls for \$17.6-billion in fiscal year 1980.

Outlays for natural resources and environment, including pollution control, water resources, conservation, recreation and other programs, were approximately \$3-billion in fiscal year 1970. The budget estimate for fiscal year 1980 is \$11.5-billion.

In fiscal year 1970 our outlays for energy were about \$1-billion. The estimated expenditure for fiscal year 1980 is \$7.9-billion. This total includes emergency preparedness, conservation, energy information, policy and regulation, energy supply and other energy programs.

General purpose fiscal assistance to states and local jurisdictions, including general revenue sharing and antirecession financial assistance, involved expenditures of less than \$1-billion in fiscal year 1970. The amount budgeted for fiscal year 1980 is \$8.8-billion.

In fiscal year 1956, the Defense budget included payments of \$477 million to some 192,000 retired military personnel. For fiscal year 1980, the budget includes \$11.4 billion for an estimated 1.3 million recipients. I have seen a projection that estimates that the annual cost of military retired pay under this system could reach over \$36 billion by the year 2000. I have proposed that we put in an additional system, but I merely point to the problem now.

Outlays for training, employment and social services were less than \$4 billion in fiscal year 1970. The amount budgeted for fiscal year 1980 is about \$17 billion. This includes CETA and other public service employment and training, social services, and a number of other programs. This problem will continue but it must

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Meanwhile, as Federal policies stimulated the economy and reduced the deficit, unemployment dropped from about 8 per cent in December 1976 to its current rate of just under 6 per cent.

In the last two years, in fact, in large part as a consequence of policies deliberately undertaken and enacted by President Carter and Congress, 7.2 million new jobs were created in our economy—more than in any two-year period in our history. And those jobs were in addition to the millions of men and women who returned to work as the unemployment rate dropped from 8 to less than 6 per cent.

That is economic progress . . . progress in ending a recession . . . progress in reducing the deficit . . . progress in handling the debt . . . progress in getting control of the Federal budget.

Despite this progress, there is a concern in the country—and it is a legitimate concern—over the fact that a deficit still exists. It is a concern we in Congress share.

Barring unforeseen domestic or international problems, there is even a possibility that we will have a balanced budget in fiscal 1981. That is my goal, it is the goal of the leaders of Congress, it is the President's goal.

We are not, however, simply sitting back, waiting for things to happen. We are taking steps to make a balanced budget a reality.

The proposals that President Carter has been sending to Congress provide for little in the way of new spending programs, and I foresee Congress approving few new programs that would increase the projected deficit.

Most of our work this year will instead be in the nature of oversight. We shall be examining the effectiveness of Federal programs and determining whether Federal funds are being spent wisely and in accord with the intent of Congress.

A great deal of attention will be directed to ferreting out expenditures that may be wasteful. We will be seeking to reduce fraud. We believe that taxpayers should have confidence in the way their money is being used.

I have tried to touch on some of the aspects of the national budget and the economy as a whole which seem to me help explain the reasons for our recent deficits, and I have suggested that President Carter and most of us in Congress are determined to act in a fiscally responsible manner. Let me turn now to proposals for a constitutional amendment to require a balanced budget and the effect such an amendment would have.

Here are just a few observations that I believe we must have in mind.

First, amendments to the Constitution must always be approached with great caution. They must not be impulsive; they must not be rushed; they must not be thought of as a quick and simple solution to whatever problem is thought to exist.

In 1848, speaking about "the general proposition of amending the Constitution," Abraham Lincoln said:

"As a general rule, I think we would much better let it alone. No slight occasion should tempt us to touch it. Better not take the first step, which may lead to a habit of altering it. . . ."

There are today, clearly just such temptations to amend the Constitution as those of which Lincoln warned. But as Lincoln suggested, we should resist such

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"We believe that taxpayers should have confidence in the way their money is being used."

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"I actually believe that we are putting in jeopardy the basic principle of the popular election of our legislative bodies."

be met in a more realistic way.

I do not mean to imply or suggest that I am opposed to all of the programs I have mentioned. Indeed I am not. I cite them only to show the tremendous escalation of cost in the past few years and as evidence of what we can expect in the future unless we adopt some strict and binding fiscal restraint such as would be provided by the constitutional amendment I am advocating.

My principal point is that the demand and the political pressure will not only continue but will increase. I actually believe that we are putting in jeopardy the basic principle of the popular election of our legislative bodies. We must not let this happen. Before it is too late, we must put restraints and limits, with proper escape clauses of course, in the form of a ceiling on the power to tax. This is what the amendment I propose is designed to do. This will bring about a definite establishment of priorities, and the entire question will come under review from time to time.

As I view conditions among our people today there is another challenge to our system of self-government. Joe Doak and his wife have too many obstacles thrown in front of them and are thus unable to get ahead. They are representative of that group in America who have tried hard and made ends meet. They have paid their bills. They have saved for a rainy day; they paid their taxes and supported all worthy causes. They kept their children in school and made special savings to educate the children beyond high school and also, perhaps, give them a start as they started on their own. In addition, they saved for their own future. Thus, Joe and Mary Doak have been a major part of the hard core strength of America.

Now, they have greatly increased cost of food, of clothing, of medical care, of utilities, of total taxes, of all living expenses. Often they are having to spend their savings to pay current bills. There is nothing left for savings. Tersely, they cannot get ahead; instead they fall behind. Thus, America is losing a major inner strength of our system that cannot be readily replaced.

by Hon. Harry F. Byrd, Jr.

United States Senator, Virginia, Independent

From testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee, on March 12, 1979.

"... I see no other way to achieve fiscal responsibility in the Federal Government."

SENATE JOINT RESOLUTION 45 requires a balanced budget—but provides that this requirement may be set aside by a two-thirds vote of both Houses declaring a national emergency to exist.

Always in the history of our nation has a genuine emergency produced overwhelming votes from both Houses, approaching unanimity. So the two-thirds provision does, in my judgement, give adequate flexibility.

I have become an advocate of a balanced budget constitutional amendment for one simple reason: I see no other way to achieve fiscal responsibility in the Federal Government.

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temptations, until such time as all of the ramifications have been considered and debated. At least we should not reach decisions until we are aware of all of the consequences.

I would remind you that we have amended the Constitution only 16 times in our national history—26 times if you count the Bill of Rights, which was adopted concurrently with the Constitution itself. On most of those occasions, we have acted only in response to great historic issues, such as slavery, votes for women and limiting the terms of Presidents.

On the one occasion when the Constitution was amended to address a more mundane concern—consumption of alcoholic beverages—the experiment, however noble in intent, was a failure and had to be rescinded through yet another resort to the complicated amendment process.

Now let me say that as a Hoosier Methodist, I grew up aware of the dangers of drink.

But as a politician and a political scientist, I must add that prohibition was not exactly, to be euphemistic about it, an unqualified success. In my judgment, a balanced budget amendment—no matter how well-intentioned are its supporters—would be equally foolhardy.

In addition to being foolhardy, an amendment requiring a balanced budget would be dangerous.

It would be dangerous because it could so shackle the Federal government as to make it impotent in times of disaster or crisis.

It would destroy the flexibility needed by the government to meet unforeseen circumstances.

It would blunt the government's major weapon—its budget—in the fight to maintain the national economy on an even keel.

Perhaps even more dangerous than the concept of the amendment itself is the proposal to achieve that result through the use of a constitutional convention.

Only once in our history has there been such a convention. Almost 200 years ago its delegates met to consider modifications in the Articles of Confederation, the document which then served as the glue keeping the 13 former colonies united.

The result was a totally new document, the Constitution, which scrapped the system then in existence.

Today there are many causes in which some Americans are passionately interested and would like to see enshrined in a new Constitution. The weight of scholarly opinion is that a convention to amend the Constitution could not be limited easily—if at all—to the single issue of a balanced budget.

The chance that our Constitution might be scrapped by a convention is a dangerous gamble to take.

It is a gamble I do not wish to take.

Despite the sentiment against such an amendment, let us suppose, however, that the movement for a constitutionally required balanced Federal budget is successful.

Let us further suppose that such a mandate is in effect for a year like this one, when the budget proposed by the President simply maintains existing programs, yet projects a deficit of some \$29 billion.

"I would remind you that we have amended the Constitution only 16 times in our national history . . ."

"It would destroy the flexibility needed by the government to meet unforeseen circumstances."

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"Recent years have shown that there is a total lack of fiscal discipline in Washington."

"... if the government is spending like a drunken sailor, why should labor, business, or consumers show restraint?"

Recent years have shown that there is a total lack of fiscal discipline in Washington. For example, during the last 15 quarters, the economy has been in a period of strong recovery. Yet huge deficits in the Federal budget have continued, contrary to the teachings of nearly every school economic thought, including the writings of Keynes himself.

During the past five years, the government has accumulated \$242 billion in deficits, with at least \$29 billion—probably more—to be added in the forthcoming Fiscal Year.

Accumulated deficits have pushed the national debt close to \$800 billion, and Treasury Secretary Blumenthal says it will rise by another \$98 billion in the next 18 months.

The interest charges on this debt—just the interest—will cost taxpayers \$67 billion next year. That amounts to 22 per cent of all individual and corporate income tax payments to the U.S. Treasury.

As I see it, it is the accelerated spending and the accumulated deficits which comprise a major cause—if not the chief cause—of the chronic high inflation which is eroding the value of the paycheck of every American working man and woman.

Those who oppose a balanced budget requirement in the Constitution, of course, deny the central role of deficit financing in fueling inflation. They also maintain that a balanced budget amendment won't work because it cannot be administered. I deal at some length with these objections in the full statement I am submitting, but let me just touch briefly upon them now.

First, what do big deficits, with the resultant large public debt and heavy government borrowing, have to do with inflation?

I believe a good answer can be found by looking at some of the other causes for inflation which are cited by many analysts. Among the leading ones are excessive growth of the money supply; lack of capital investment and low productivity; and "inflationary psychology."

I don't for a moment deny that these factors exist and contribute to inflation. But as I see it, continued deficit spending contributes to all of them:

—It faces the Federal Reserve Board with a severe policy dilemma which usually results in a rapid boost in the money stock.

—It reduces capital investment both by the heavy government borrowing which competes for funds with the requirements of private firms, and by confronting investors with the discouraging prospect of devalued returns on their investments. This discouragement of investment in turn holds down productivity gains.

—And finally, it contributes heavily to inflationary psychology by convincing businessmen, workers and consumers that they must act to shield themselves against coming price increases: if the government is spending like a drunken sailor, why should labor, business or consumers show restraint?

Now as to the second objection: the claim that a balanced budget requirement won't work.

This argument overlooks the fact that during most of the nearly 200 years of our national existence, the Federal Government operated with its budget in balance. Until quite recently, the only significant exceptions were years of war and

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How could we go about balancing the budget?

One option would be to maintain existing programs by increasing taxes to make up the \$29 billion deficit in the President's budget.

But that option simply wouldn't be realistic. The politics of 1979 wouldn't allow it. The still fragile economy of 1979 wouldn't allow a \$29 billion tax increase.

So we would have to cut expenditures. What would be cut?

Well, some 76 per cent of the Federal budget is composed of uncontrollable items—\$404 billion out of \$532 billion of total outlays. These are expenditures mandated for certain Federal activities, including Social Security, revenue sharing and interest on the debt. Payments for public assistance, veterans programs, commodity support programs and other so-called "entitlement" benefits also are mandatory under existing laws.

Payments in fiscal 1980 for contracts negotiated in past years also are considered relatively uncontrollable, since halting them would require the rescission of already enacted budget authority and the renegotiation of contracts.

Now we could revise the law and reduce some of those payments, but that would be virtually impossible to accomplish in the short time allotted to balance the budget.

So what's left to cut?

The answer is, for the most part, programs of the Defense Department, whose expenditures comprise over half the remaining 24 per cent of controllable Federal expenditures in fiscal 1980.

Discretionary domestic programs account for the balance of fiscal 1980 expenditures, about 10.5 per cent of the total Federal budget.

If, to achieve the balanced budget, the hypothetical cutback of \$29 billion were spread evenly over those discretionary programs, it would mean a 22.5 per cent cut in funding these programs.

If the reduction were spread evenly, the Defense Department budget would have to be cut by \$20 billion. This would mean substantial reductions in both civilian and military personnel and widespread closing of military bases.

There also would be these cutbacks:

Community and Regional Development; \$1 billion. There would be major reductions in community development block grants, and economic and rural development assistance.

Education; a reduction of \$2.5 billion. This would end funds now used to help the education of 1,225,000 disadvantaged children; it would end the support of one-third of the 300 state agencies now caring for handicapped and neglected children; it would substantially reduce assistance given to students seeking higher education.

Employment and Training. The major reductions in employment program levels would result in the loss of 134,000 countercyclical and structural public service jobs. There would be 162,000 fewer youth jobs; 250,000 fewer summer youth jobs; cutbacks of 340,000 people now receiving on-the-job and classroom work training.

Social Services. The elderly would receive 207,000 fewer meals; services in community centers for the elderly would be reduced by 50 per cent, thus

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"It has been too easy for us in the Congress to plunge into new spending programs . . . without considering the real consequences."

". . . I urge that the Congress submit to the states for ratification an amendment to the Constitution requiring a balanced budget."

the Great Depression.

What has been lacking in the Federal Government in recent years has been the will—the discipline—to keep our government's finances on a sound basis.

It has been too easy for us in the Congress to plunge into new spending programs, and to expand existing programs, without considering the real consequences. The tendency has been to say: "Don't worry about the deficit. We'll just add it to the debt."

As a result of this philosophy, the budget has been balanced only once since President Eisenhower left office nearly 20 years ago.

Looking at this long string of deficits, we find that they have accelerated in this decade. Well over half of our entire national debt has been accumulated since 1970.

This imposes a heavy burden in interest payments. The interest on the debt exceeds one-half of the defense budget.

The laws of economics dictate that Federal spending must be paid for by the working men and women and businesses of our Nation. Either it is paid for by direct taxation—which many citizens feel is already burdensome—or by an indirect tax, the cruel and hidden tax of inflation, which hits hardest those on fixed incomes and those in the lower and middle economic brackets.

Actually, today Federal spending is being paid for by a combination of high direct taxes and high inflation.

The Congress and five successive administrations, of both political parties, have shown themselves unwilling to do what is necessary to put the government's financial house in order.

As a result of this failure to exercise fiscal discipline, we now find ourselves in a situation where there are no easy solutions to our economic problems. Yet some firm action must be taken.

And so—reluctantly, as I have said—I urge that the Congress submit to the states for ratification an amendment to the Constitution requiring a balanced budget.

Let me remind the subcommittee that my proposal contains an emergency escape clause, providing that a deficit may be voted by two-thirds of both Houses of the Congress. This would cover any situations in which genuinely uncontrollable forces pushed spending up unexpectedly: for example, the outbreak of war, or a severe and unpredictable economic reversal.

Thus there is sufficient flexibility in my proposal to allow for deficits when they are truly warranted by disastrous developments.

I shall conclude this brief presentation with one final observation:

I am convinced that the Congress now stands at an historic crossroad.

Either we put in place a mechanism to achieve fiscal responsibility, or we acquiesce in the continuation of the chronic and demoralizing cycle of inflation and recession which threatens to undermine our whole economic system.

The choice is ours.

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eliminating services for 1.6 million persons; state grants for the developmentally disabled would be discontinued entirely.

Health. Half of all community and migrant health centers would have to be closed; there would be a 50 per cent decrease in funds for grants to the states for maternal and child health care, for family planning and for comprehensive health services.

Veterans. One-third of all VA hospital and health service personnel would lose their jobs and thousands of VA hospital beds would be eliminated.

Energy. The programs enacted in the past two years to move to lessen our dependence on foreign sources of fuel would be absolutely gutted.

International Affairs. Aid to Egypt and Israel would be reduced by 25 per cent; our Food and Peace shipments would be cut by 15 per cent and support would be reduced for multilateral development agencies and for refugee assistance.

Before closing, let me make one brief comment about inflation, the major problem area in our economy and the primary reason for the movement toward enacting a balanced budget amendment.

It is illusory to think that a balanced budget itself will have much of an effect on that problem—if any at all.

Inflation is the result of many public and private actions. Most of those actions actually are out of the control of the Federal Government.

The price of energy and the effect of the weather on the food producing areas of the world may have more effect on prices than any policy carried out by the Federal Government.

Yet an unbalanced budget has become a symbol.

The best way to get a balanced budget is not by a constitutional amendment, but by a balanced economy.

That is the manner in which we are proceeding.

"The programs enacted in the past two years to move to lessen our dependence on foreign sources of fuel would be absolutely gutted."

"The best way to get a balanced budget is not by a constitutional amendment, but by a balanced economy."

by Hon. Walter W. Heller

Former Chairman, Council of Economic Advisers

From a statement before the Senate Budget Committee on March 5, 1979, during hearings on proposals to require balanced Federal budgets.

SINCE THE MAJOR THRUST for the balanced-budget amendment comes from a misinformed public, it may be worth while to examine some of the fallacies that seem to underlie public thinking on this subject.

Fallacy Number One: "Individuals, families, and households have to run a balanced-budget—so why shouldn't Uncle Sam?" People fail to realize that typically when they buy a car or a boat, or most obviously, a house, they are doing anything but running a balanced-budget. At times, they run deficits—often huge deficits—relative to current income. So they are asking Uncle Sam to adhere to a rigid and austere standard that they don't observe themselves.

(Continued on page 155)

by Hon. Robert J. Dole

United States Senator, Kansas, Republican

From testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee, on March 12, 1979.

"... I have reluctantly reached the conclusion that a Constitutional amendment offers the only realistic prospect for restoring fiscal responsibility to Washington."

I SUBSCRIBE TO THE PROPOSITION that changes in the Constitution should be infrequent and carefully considered. However, I believe that the fundamental changes that have occurred in our national fiscal policy warrant an equally fundamental change in the basic document of our Government. For a number of decades, the country has been charted on a disaster course of uncontrolled growth in Federal spending, of ever more oppressive taxation and of burgeoning budget deficits. A succession of past Presidents and Congresses have been simply unwilling or unable to reverse this course.

After years of observing and participating in fruitless efforts to stem the growth of Government, I have reluctantly reached the conclusion that a Constitutional amendment offers the only realistic prospect for restoring fiscal responsibility to Washington. Accordingly, I have introduced a proposed Constitutional amendment which is a three-prong attack on the fiscal ills that beset us. My proposal not only requires a balanced budget, but it also directly limits Federal spending and taxation. The proposal is drafted to provide the flexibility needed to manage the economy and to respond to any financial or political crisis, yet it still requires reasonable fiscal restraint.

There is broad and vigorous public support for adoption of a balanced-budget Constitutional amendment. Already 28 States have passed resolutions which direct Congress to convene a Constitutional convention to draft a balanced-budget amendment.

Those who would scoff at the States' efforts to restore fiscal responsibility to Washington ignore the Constitutional role of the States as the ultimate check against the Federal Government's abuse of authority. The message the States are trying to deliver to Congress should be met with sober reflection, rather than threats of cuts in State aid to bring the States into line. Those in Congress must sometimes be reminded that all wisdom in this country does not reside on Capitol Hill.

"Federal outlays have increased from slightly over \$100 billion in 1962 to approximately \$500 billion this year."

Over the past 50 years, governmental spending has skyrocketed. In 1929, total governmental expenditures—Federal, State and local—amounted to 10 per cent of our gross national product, the sum of all goods and services produced in the country. Since 1929, governmental spending has dramatically increased as a percentage of gross national product so that by last year it reached nearly 38 per cent of GNP. Obviously, government spending has increased without any relation to increases in the nation's productivity.

Federal spending, of course, accounts for the largest part of total government expenditures. Accordingly, it has played a dominant role in the explosion of overall governmental spending. In absolute terms, Federal outlays have increased from slightly over \$100 billion in 1962 to approximately \$500 billion this year. This represents a remarkable 400 per cent increase in just 17 years.

Recent history has proven that in a political world it is nearly impossible to

(Continued on page 156)

"The explosion of Government spending has resulted in a growing tax burden on the American people."

"The Federal Government itself is largely responsible for the problem since substantial and persistent Federal deficit spending is one of the root causes of inflation."

get a majority of the legislature to make the hard decisions necessary to reduce Federal spending. It is elemental that each new Federal spending program gives birth to a new constituency that begins to rely on Government support. Today's Federal largesse is tomorrow's inalienable right. The result is that constituencies organize themselves and lobby Congress both to prevent any spending cuts and to increase the funding for their programs.

This is not a criticism of political activity—it is merely a statement of a fact of life. The most recent example of this phenomenon is the banding together of welfare and social security groups to oppose the cuts in their programs proposed by the President's budget. This axiom is equally true for business. They fight just as vehemently as any group to protect their particular Federal benefits.

The only way to break this spending cycle is through a Constitutional balanced-budget amendment. Such an amendment will at last allow Congress to say "no," and it will force Congress to make the necessary hard decisions.

The explosion of Government spending has resulted in a growing tax burden on the American people. Currently, Federal taxes drain more than 20 per cent of our gross national product. In addition, Federal taxes are consuming an ever-increasing percentage of taxpayer's personal income. As the tax system is now structured, inflation propels taxpayers into higher and higher tax brackets, even if their real income remains the same. Many respected economists believe that high taxation is the single greatest impediment to investment and increased productivity.

Despite repeated increases in taxation, Federal spending has persistently outstripped available revenues. Since 1950, the Federal budget has been balanced in only five years. Even more alarming is the fact that the budget has not been balanced at all during this decade. Deficit spending seems to have become the norm for Federal fiscal policy. Thus, deficits are incurred regardless of whether business conditions are poor or whether the economy is booming.

At the same time, Federal budget deficits have been increasing in size. This has brought about a dramatic growth in the already staggering national debt. In 1970, the national debt stood at \$383 billion. However, by 1978, the national debt has more than doubled to \$780 billion. The Administration is currently seeking authorization to increase the total national debt by another \$38 billion to \$836 billion just to finance our debt needs through the end of this fiscal year.

The President has correctly identified inflation as our most serious domestic problem. Inflation has been called the cruelest tax of all because it hits the poor and elderly the hardest. The Federal Government itself is largely responsible for the problem since substantial and persistent Federal deficit spending is one of the root causes of inflation. When the Government runs a deficit, it pumps more money into the pocketbooks of its citizens than it collects from them in taxes. Since more money is "chasing" the same number of goods, in the long run the price of goods must increase.

Another way to view the inflationary impact of deficit spending is to examine the dilemma faced by the Federal Reserve System. Government borrowing to finance the Federal deficit forces the Federal Reserve either to increase the supply of money or to watch interest rates rise to unreasonable levels. When the money supply is increased, this naturally fuels inflation.

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Fallacy Number Four: "But unlike private and state-local deficit financing, Federal deficits are a major, perhaps even the major, source of inflation." Both analysis and evidence fail to support this proposition.

Except where Federal deficits pump more purchasing power into an already prosperous or overheated economy, they simply are not inflationary. When the economy is slack or in a recession, when there are idle workers and idle plants and machinery to be activated by additional demand for goods and services, the deficit will help the economy get back on its feet. In those cases, tax cuts or spending hikes that enlarge the deficit serve to overcome the waste of human and material resources associated with economic slack or recession.

In other words, there are both destructive Federal deficits and constructive deficits, depending on the state of the private economy. What we should seek is fiscal discipline—the avoidance of waste, inefficiency, boondoggling, and unnecessary government programs—but not at the cost of strangling the Federal Government in its attempts to serve as a balance wheel for the national economy and an instrument for avoiding that greatest of wastes, namely, the idling of millions of human beings and machines and factories in recession and slack.

Fallacy Number Five: "Well, even if deficits aren't as bad as we thought, the Federal budget is out of control, and the only way to get it under control is to slap some kind of a Constitutional lid on it."

Once again, the facts run to the contrary:

As a proportion of the Gross National Product, the budget is being reduced from 22.6 per cent in 1976 to 21.2 per cent in 1980.

As against 12.2 per cent annual increases in spending for 1973-78, the rise from 1979 to 1980 will be only 7.7 per cent.

According to the Congressional Budget Office staff, President Carter's proposed \$531 billion budget for 1980 falls \$20 billion short of the amount that it would cost simply to maintain current services under current law.

The trend growth in revenues from 1978 to 1980 will be 12 per cent, well ahead of the trend growth of 8½ per cent in expenditures. (These are the comparative growth rates in an economy that is growing at a steady trend rate.)

Quite apart from the numbers, the popular clamor for "getting the budget under control" seems to ignore two important facts:

For the past four years, the Congress has been operating under a new budget procedure that has brought vastly more discipline and responsibility into the budget process. In other words, the mechanism for getting the budget under control is already in place and is working.

Fallacy Number Six: "The balanced-budget mandate is a simple and workable way to force the White House and Congress at long last to match spending and tax revenues."

The simple truth is that this simplistic approach is beset with simply prohibitive difficulties of definition, administration, evasion, and incentives for bad government practice:

A mandate to balance taxes and expenditures first has to define them. Does spending include outlays for social security and high trust funds? (It didn't until 1968.) Does it include lending activities? If not, moving things from expenditures into loan programs would be an inviting loophole. Imagine the Founding Fathers

"Except where Federal deficits pump more purchasing power into an already prosperous and overheated economy, they simply are not inflationary."

"As a proportion of the Gross National Product, the budget is being reduced from 22.6 per cent in 1976 to 21.2 per cent in 1980."

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"... Federal deficit spending diverts capital from more productive investment in the private sector, further aggravating the serious shortage of private investment capital."

"If Congress fails to heed the message now being delivered . . . the States will have no choice but to impose their own solution through the Constitutional convention procedure."

This process is exacerbated by the fact that inflation tends to feed on itself. It makes businessmen leery of economic expansion; it tends to depress the stock market; and, it encourages labor to demand extremely high wage settlements.

In order to finance its deficit spending, the Federal Government must borrow enormous amounts of additional capital each year. Last year the Government borrowed \$12 billion to finance deficits and this year it will borrow another \$67 billion. This heavy governmental borrowing has a significant adverse effect on the money markets by creating an upward pressure on interest rates and by displacing investment that would otherwise be made in the private sector. Thus, Federal deficit spending diverts capital from more productive investment in the private sector, further aggravating the serious shortage of private investment capital.

S. J. Res. 5 would impose three new limitations on the Federal Government. First, Federal spending would be limited to 18 per cent of gross national product. It is projected that in the next fiscal year Federal spending will be approximately 22 per cent of gross national product. This level is simply too high. S. J. Res. 5 would require that Federal spending be decreased to its historic level of 18 per cent within 3 years. In order to maintain some flexibility to deal with unknown contingencies, spending would be permitted to rise above the limitation if the increase is approved by two-thirds of both houses of Congress.

Secondly, S. J. Res. 5 would limit Federal taxation to 18 per cent of gross national product. This limit will insure potential tax relief to the overburdened taxpayer. The present level of taxation creates a disincentive to investment and stifles economic growth. Again, there is flexibility built into the limitation on taxation since the limit can be exceeded with the concurrence of two-thirds of both houses of Congress.

Finally, S. J. Res. 5 would require a balanced budget, unless both houses of Congress approve a deficit by a two-thirds vote. This balanced budget provision has two innovative features. First, deficits in the Federal budget can be run only four out of nine years. This will give Congress ample flexibility to manage the economy and to respond to economic emergencies. Second, any deficit must be repaid within four years. This feature should eliminate any additional long-run growth of the national debt.

The proposed Constitutional amendment is no "gimmick" or "quick-fix" as some critics have charged. Rather, it represents a fundamental philosophical shift toward greater fiscal discipline and towards a smaller and necessarily more efficient Federal Government. By its terms, S. J. Res. 5 would permit a brief transition period to permit compliance with its dictates. The proposal is also drafted to include enough flexibility to permit an effective response to any unforeseen contingencies or to special economic circumstances. The net result is a flexible and workable system that requires reasonable fiscal restraint.

If Congress fails to heed the message now being delivered by the States by moving forward on a reasonable measure such as S. J. Res. 5, the States will have no choice but to impose their own solution through the Constitutional convention procedure.

two centuries ago trying to draw a dividing line between "on-budget" and "off-budget" expenditures. No less an authority than House Minority Leader Rhodes has noted that "it would be so easy to end-run it."

Administering the mandate would be a nightmare. In January each year, the President submits a budget for a fiscal year that ends eighteen months later. Given the unexpected twists and turns of the economy, revenues may well fall below the forecast path. Imagine the scramble to adjust and readjust the budget as revenues misbehaved or unexpected shifts occurred in the costs of farm programs, Medicare, costs-of-living adjustments in social security benefits, and so on.

So many exceptions, exclusions, and special emergency provisions would be necessary to make the amendment workable that it would no longer be meaningful. The drafters of the amendment would find that they were writing a prescription for Congressional action, not a Constitutional mandate. A meaningful amendment would not be workable, and a workable amendment would not be meaningful.

Even if some magic formula could be found to hold the government's nose to the balanced budget grindstone, it would be an affront to responsible democratic government to do so. The essence of that government is to adapt economic, social, and other policies to the changing needs of the times and the changing wills of the majority. It is the job of the Constitution to protect basic human rights and define the framework of our self-governance. Taking the very stuff of democratic self-determination out of the hands of legislative bodies and freezing them into the Constitution would not only hobble our ability to govern ourselves but dilute and cheapen the fundamental law of the land.

Time and space do not permit assessment of the many other proposals that now dot the budgetary landscape. But I should like to comment quickly:

One proposal would imbed in the Constitution a provision that all "money bills"—that is, all those having to do with budget authorizations, appropriations, outlays, off-budget credits, and so on—would require a two-thirds vote by both Houses of Congress. Even leaving aside the problems of definition (and possible end runs via tax preferences), one wonders how this can be reconciled with the basic principle of majority rule that is so fundamental to American democracy. To give one-third of either House a veto power over all government programs and appropriations is to redefine the whole American concept of "the rule of the people."

Let me, in closing, come back to the public pressure and clamor to do something to cut back spending, taxes, waste, and inflation. In the face of this irresistible force, the Federal budget cannot be an immovable object. Wrong-headed as the move for a rigidly balanced budget may be, it reflects a mood that demands a response.

Part of that response has already been forthcoming: both in the Congressional process and in the growing move toward budgetary pruning and restraint, one sees that response. One is even entitled to ask whether it may be pushed too far. But given that the Constitutional approach is unwise, unworkable, and unworthy of democratic self-government, one hopes that Congress will work out a statutory solution that will be responsive to the public will without imposing destructive shackles on itself.

"The simple truth is that this simplistic approach is beset with simply prohibitive difficulties . . ."

" . . . one hopes that Congress will work out a statutory solution that will be responsive to the public will without imposing destructive shackles on itself."

Constitutional Convention

From page 135

Section 7 provides that each State shall elect two delegates-at-large and one additional delegate from each congressional district in the State, in accordance with its usual procedures for the election of Senators and Representatives. Vacancies are filled by appointment of the State Governor. The secretary of state of each State or equivalent officer shall certify to the Vice President of the United States the name of each delegate. Delegates will enjoy the same privileges as do members of Congress under article I, section 6. Delegates are to be compensated for service and travel and related expenses as provided for in the convening resolution.

Section 8 provides that the Vice President of the United States is to convene the convention and administer the oath of office. Each delegate is required to take an oath not to propose or vote in favor of any proposed amendment relating to a subject other than that named or described in the concurrent resolution. This is consistent with the position that the convention's authority is limited by the States' conferral of authority.

Names of the officers of the convention are to be transmitted to the Speaker of the House and President of the Senate. The convention may adopt rules of procedure not inconsistent with this act. Congress is authorized to appropriate funds for the expense of the convention; the Administrator of the General Services Administration is directed to provide the required facilities; and Congress, executive departments, and agencies are required to provide information required by the convention, except as otherwise provided by law.

Section 9 provides that each delegate to the convention has one vote. A daily verbatim record of proceedings must be kept, and the vote of each delegate must be recorded. The convention shall terminate within 1 year of the first meeting unless extended by resolution of Congress. Records of the convention's proceedings are to be transmitted to the Archives within 30 days of the termination of the convention.

Two-Thirds Vote

Section 10 provides that amendments may be proposed by a vote of two-thirds of the total number of delegates to the convention. No amendments with respect to a subject different from that stated or described in the resolution calling the convention may be proposed and any questions relating to this point are to be determined solely by Congress.

Section 11 provides that within 30 days of the end of the convention the exact text of any amendments pro-

posed by the Convention must be transmitted to Congress. Upon receipt of a valid proposed amendment, Congress must adopt a concurrent resolution directing the Speaker of the House and the President of the Senate to send the proposed amendment to the Administrator of the General Services Administration. The resolution shall also prescribe the time and manner of ratification by the States. Congress may adopt a concurrent resolution disapproving the submission of the proposed amendment to the States, but only on the grounds (1) that it relates to or includes a subject different from that stated or described in the resolution calling the convention, or (2) that the procedures used by the convention were not in substantial conformity with the provisions of this act. This conforms to the fact that, under article V, Congress has no power to review or veto any action of the convention because of doubts or disapproval on the grounds of policy. Congress' sole function is ministerial. Of course, Congress is under no obligation to transmit an amendment if the convention has exceeded its authority by proposing amendments on subjects other than those designated, or if there were procedural irregularities at the convention of a substantial nature so as to make the actions of the convention ineffective.

If Congress has not adopted a concurrent resolution either transmitting or disapproving the transmission of the proposed amendment within 90 days of continuous session following its receipt, the President of the Senate and Speaker of the House nonetheless are obligated to transmit the proposed amendment to the Administrator of the General Services Administration.

This is to assure that Congress may not impede or block the transmittal to the States for the reasons of disapproval of the wisdom of the proposal. The Administrator of the General Services Administration must submit to the States a certified copy of the proposed amendment and any concurrent resolution adopted by Congress setting forth the time and manner for ratification along with a copy of this act.

Section 12 provides that amendments submitted in accordance with this act are valid as a part of the Constitution when ratified by three-fourths of the States within the time and according to the manner, by State legislature or State convention, as Congress directs by concurrent resolution. If the transmittal is made in the absence of a concurrent resolution, ratification is by State legislature and within 7 years of transmittal. Ratification by a State legislature shall be according to its own rules for such actions, but does not require the approval of the Governor. Certified copies of State ratifications must be sent promptly to the Administrator of the General Services Administration.

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March 5, 1979

To: Hon. Robert M. Cisimo, Chairman, House Committee on the Budget
From: Allen Schick, Senior Specialist
Subject: Proposed Constitutional Limitations on the Federal Budget.

In accord with your inquiry of February 12, this memorandum considers certain problems and possible adverse impacts of constitutional limitations on the budget deficit of federal expenditures. Rather than a detailed examination of the more than 50 constitutional amendments introduced thus far in the 96th Congress, this memorandum examines the two main approaches, a bar against spending in excess of revenues, and a ceiling on the total amount that may be spent in a fiscal year.

Enforcing the Constitutional Limitations. In order to enforce a constitutional restriction, it would be necessary to determine what would be covered. In the case of the federal budget, this is likely to be a difficult, contentious task. The question of what ought to be in the budget is by no means settled; current practice is a compound of written and unwritten rules, many of which were established by the executive branch without the explicit concurrence of Congress. While some of the "boundary" problems arise out of statutory efforts to exclude certain transactions from the budget, most result from the plain fact that the public and private sectors in the United States are not clearly delineated and that any airtight delineation between the two would be impossible of achievement. Public and private are entangled in so many ways, not only by contrivance but because so many public objectives now are pursued through private or "quasi" governmental means.

From: H Rpt 96-96 Toward a balanced budget ...

CIS 79 H 263-2

In terms of prevailing practice, the easiest issues to resolve involve the \$12 billion outlayed each year by the half dozen "off-budget" agencies. The transactions of these agencies have been excluded from the budget totals by Congress; they can (as others have) be returned to full budget status by statute. Arguably, it would be a clear violation of constitutional intent if monies were taken off-budget merely to contravene a binding limitation of deficits or outlays. Other issues, however, are more difficult to resolve. Seven privately-owned but federally-sponsored corporations are excluded from the budget along with their massive (amounting to about \$20 billion per year) credit operations. The private ownership test was developed by the President's Commission on Budget Concepts in 1967, but it has been challenged by the House Budget Committee which (in a 1976 report) noted that investors do not consider "the Government-sponsored enterprises to be completely private nor, in most cases, would a member of the general public draw this distinction. Each of the Government-sponsored enterprises is subject to some greater or lesser measure of federal direction, and some implicit subsidy may be presumed to arise whenever borrowing from the public is undertaken." While these enterprises have not been established as means of evading budget control, stringent constitutional restrictions would generate strong incentives for the creation of private organizations which perform public purposes but whose transactions are beyond the budget's pale. Such enterprises could be vested with "quasi-taxing" powers which would finance their operations outside the budget.

A third problem area relates to guaranteed loans which are contingent (rather than direct) liabilities of the United States and for this reason are not counted in the budget. When the budgetary status of lease loans was considered by the 1967 Budget Concepts Commission, Arthur Okun predicted that the different budgetary treatment accorded to direct and guaranteed loans "would lead to a strong preference

in the budget process for guarantees over direct loans". This is exactly what has happened. Guaranteed loans have been among the fastest growing financial activities of the federal government, with the total outstanding estimated to exceed \$400 billion in fiscal 1980, an increase of almost \$100 billion in the course of only three years. The increased use of guarantees is especially significant because proponents of balanced budgets want to lessen the federal government's claim on the capital markets as well as the Federal Reserve Board's need to accommodate the money supply to the government's borrowing plans. But in terms of the demand for capital, it doesn't make much difference whether the borrowing is generated by a budget deficit or by loan guarantees.

In assessing the constitutional and budgetary status of the categories currently excluded from the budget, two points are of utmost importance. First, the placement of a budgetary restriction in the Constitution is likely to stimulate attempts at the creation of new off-budget devices. This has occurred on a broad scale in some state governments with constitutional debt limitations. New York State, for example, constructed a billion dollar complex of office buildings without going through its constitutionally-required process for authorizing such financial commitments. Some states have established numerous public corporations, quasi-governmental entities which issue revenue—"moral obligation"—bonds outside the constitutional limit. One cannot be certain of the methods which might be contrived to escape U.S. constitutional constraints, but it is likely that a premium would be placed on irregular institutional forms which enable the government to borrow (or spend) in excess of the limits without technically violating the rules.

The second point is that the question of budgetary coverage can be definitively settled only by statute. No matter how detailed a constitutional limitation might be, it could not possibly cover or envision all of the circumstances and circum-

ventions which might arise in the future. The meaning of any constitutional restriction will be the meaning given it by law. Arguably, therefore, the whole issue ought to be left for statutory determination, where it would be decided anyway. Whether a constitutional or statutory route were taken, the issue of which transactions are covered by budgetary restriction might have to be settled by the courts.

The same consideration applies to another enforcement question: what constitutes an outlay? The issue is of critical importance for all proposed spending limitations, but not as pressing for the balanced budget proposals. At first glance, the definition of outlays seems to be straightforward and without complication: an outlay occurs whenever the federal government makes a payment of funds. The issue, however, is not whether payments are outlays, but how outlays are computed for budgetary purposes. It is in the counting of outlays that difficulties abound.

One problem arises because outlays are reported on a net basis. Direct loans (which are included in the budget) are counted on a net basis, that is, total new loans issued minus repayments. This method is consistent with the definition of outlays in the Congressional budget act as "expenditures and net lending of funds." The financial activities of public enterprises such as TVA also are netted in the budget. These revolving funds conduct business-type operations for which they levy user charges. Their receipts, however, are not computed in the budget as federal revenues, but offset the gross expenditures of the public enterprises. In fiscal 1980, the outlays of the public enterprise funds will total about \$46 billion, but with \$38 billion in receipts, the budget will show only about \$8 billion in outlays. In a 1977 report, the Comptroller General recommended that these funds be budgeted on a gross rather than a net basis. He argued that changes in accounting procedures and budgetary definition can mask the true magnitude of federal expenditures and impair control of the purse.

Variants of the netting versus grossing problem occur when receipts are counted as negative expenditures and expenditures are deemed to be negative receipts. Thus, certain types of revenue (such as billions of dollars from offshore oil and gas leases) reduce the total amount of outlays reported in the budget. There appears to be no legal underpinning for this practice; it is defended on the argument that the United States is exchanging one asset for another. The sale of loan assets—debentures held by the United States or special issues known as participation certificates or certificates of beneficial ownership are also treated as offsets to expenditures. It is thus possible to show lower outlays merely by selling some "paper" to the public.

If receipts are sometimes counted as negative expenditures, the opposite also is true: expenditures are sometimes treated as negative receipts rather than as the outlays of the United States. Some of the \$2.5 billion "wage insurance" scheme proposed in the 1980 budget is accounted for as refunds of taxes rather than as outlays. Several years ago, the House and Senate Budget Committees wrangled over whether "earned income credits"—cash payments to low-income workers—should be reckoned as offsets to receipts or as outlays. For fiscal year 1978, the committees decided to treat them as negative receipts, but for the 1979 budget, they counted them as outlays, thus demonstrating the lack of hard and fast rules for these types of budgetary transactions.

The grossing versus netting argument and the existence of offsetting receipts and expenditure arise out of the complexity and sprawl of the federal budget. Even if no attempt were made to circumvent budgetary controls, there would be a great number of contentious accounting issues. But with constitutional restrictions in force, there would be substantial incentive for manmade contrivances to evade the controls. Careful analysis of these issues would be warranted in the consideration

of contemplated constitutional restrictions.

In order to be enforceable, a balanced budget requirement or a spending limitation would have to be accompanied by statutory controls over annual outlays. The outlay totals set in the first and second resolutions on the budget do not now have this effect. They guide Congress in its action on appropriation and other spending bills, but have no legal force. The 1973 Joint Study Committee proposed that outlay limits be enacted for each appropriation bill, but this idea was dropped during subsequent development of budget reform legislation as unworkable.

The main problem in establishing statutory controls on outlays is that outlays are sensitive to the performance of the economy and estimates for them change even in the absence of congressional action. The recent rise in interest rates, for example, added billions of dollars to the fiscal 1979 budget during months that Congress was out of session.

Potential Impacts of Constitutional Restrictions

Those who seek constitutional restrictions on the budget or on spending reason that a balanced budget or a ceiling on expenditures would force changes in federal practices. This section considers some of the intended--and possible unintended--effects of constitutional restraints.

Tax Policy. At least in the short run, balanced budget requirements could exert upward pressure on taxes; spending limitations probably would have the opposite effect. In the short run (within the confines of a single fiscal year) the easiest and sometimes only way to secure a balance would be to raise taxes or at least not lower them to the level that might otherwise be preferred. Over the long run, one would expect a balance budget to generate lower tax and expenditure levels. In recent years, Congress has used the "dividends" from economic growth and inflation to lower nominal tax rates, but it might not be able to do so under

pressure to produce revenues equal to outlays. Indeed, some balanced budget proposals are coupled with automatic surtax features which would compel Congress to raise taxes in response to a deficit. On the other hand, if stringent spending limitations were imposed--at a level below the current relative size of the federal budget--the government would accumulate massive surpluses in the absence of periodic tax cuts. The tougher the spending limitation, the greater the margin available for such reductions without unbalancing the budget.

But it is by no means certain that spending limitations would lead to general tax cuts. Inasmuch as these limitations would constrain the ability of Congress to provide benefits via direct outlays, pressure might build up for benefits through tax preferences. Congress might be tempted to enact new "tax expenditures" for favored interests.

Another possible outcome derives from the accounting problems discussed earlier. To the extent that an outlay can be defined as an offset to receipts, a spending limitation would tempt Congress to devise transactions that escape being tagged as outlays.

Fiscal Policy. Even with an override feature for national emergencies, any requirement that outlays not exceed receipts could have a dampening effect on the federal government's ability to respond to economic crises. It is not that a balanced budget would be preserved--that would be a budgetary impossibility during truly severe economic downturns. President Hoover was compelled to run deficits in 1931 and 1932 despite his commitment to balance the books. Economic crises causes such severe reductions in receipts--each one percent rise in unemployment lowers federal revenues by an estimated \$20 billion--that maintenance of a balanced budget becomes impossible.

Although Congress probably would relax the requirement if it had override discretion, the deficit could be significantly smaller than might occur in the absence of a constitutional limitation. Especially if extraordinary majorities (two-thirds or three-quarters) of the House and Senate were required to suspend the requirement, opponents might be able to withhold approval until the deficit is whittled down to acceptable size. It bears noting that the budget resolutions--with the size of the deficit as the principal issue) have squeaked through the House with only a few votes to spare.

A spending limitation would not have these adverse impacts on the federal government's capacity to stimulate the economy. But the bulk of the stimulation would have to be provided through tax relief. Such actions would have different distributive impacts (in terms of the groups and individuals who benefit) than might economic stimulation provided through spending programs. One can conjecture that the lowest-income groups (with little or no tax liability)--often those hardest hit by a recession--could be most disadvantaged by constitutional restrictions which bias fiscal policy in this manner.

Multiyear Impacts. Except for those proposed provisions dealing with repayment of the public debt, the constitutional limitations take a one-year-at-a-time approach. Within the bounds of a single fiscal year, income must at least equal outgo, or spending cannot exceed a formula-based ceiling. Congress might try to wriggle out of these confines by targeting both its tax and spending actions to future budgets. Congress, for example, could have its tax cuts and balanced budgets by scheduling the cuts to become effective in the "outyears." Some variant of Kemp-Roth would not be ruled out by an annual budget limitation. Of course, this type of behavior could complicate the task of maintaining balanced budgets in future years.

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A spending limitation would not have these adverse impacts on the federal government's capacity to stimulate the economy. But the bulk of the stimulation would have to be provided through tax relief. Such actions would have different distributive impacts (in terms of the groups and individuals who benefit) than might economic stimulation provided through spending programs. One can conjecture that the lowest-income groups (with little or no tax liability)--often those hardest hit by a recession--could be most disadvantaged by constitutional restrictions which bias fiscal policy in this manner.

Multiyear Impacts. Except for those proposed provisions dealing with repayment of the public debt, the constitutional limitations take a one-year-at-a-time approach. Within the bounds of a single fiscal year, income must at least equal outgo, or spending cannot exceed a formula-based ceiling. Congress might try to wriggle out of these confines by targeting both its tax and spending actions to future budgets. Congress, for example, could have its tax cuts and balanced budgets by scheduling the cuts to become effective in the "outyears." Some part of Kemp-Roth would not be ruled out by an annual budget limitation. Of course, this type of behavior could complicate the task of maintaining balanced budgets in future years.

In view of the fact that much of a single year's spending decisions are "outlayed" in future years, Congress might be tempted to establish programs with low first-year costs but with incremental growth locked into future budgets. If this were to happen, the focus of budgetary debate in Congress might shift from the current to future budgets, with congressmen maneuvering to stake their claims for future increments. The net result could be a worsening of the ability of Congress to control outyear expenditures. A constraint intended to strengthen control over the budget might have an opposite effect unless it is accompanied by multiyear budget controls.

Executive-Legislative Relationships. In at least two ways, the constitutional proposals might affect the budgetary relationships of the executive branches. First, on the assumption that the President's budget would consume just about all of the spending room available under a limitation, Congress would be left with the option of redistributing expenditures rather than adding to total outlays. The already sharp split between defense and domestic claims on the budget might be exacerbated, also, budgetary conflict between the two branches might escalate.

A second possible impact might be to bolster the President's claim of power to impound funds appropriated by Congress. In the past, Presidents claimed an inherent power to impound; with a constitutional limitation, they might predicate their claim on constitutional power. In any case, the congressional review and veto procedures established in the 1974 Impoundment Control Act might have to give way to more presidential discretion.

The Future Role and Size of the Federal Government. All of the proposed amendments deal with deficit or total expenditures; they do not speak to the implications of these constraints on the scope and purposes of the United States Government. Yet it could be that budgetary discipline would be only one of the consequences wrought by constitutional change. The role of the United States on the world scene might be impacted; Federal relationships with state and local governments and the division of public responsibility among the various layers would surely undergo strain and change; there would probably be greater reliance on market mechanisms to distribute social goods and services, as well as improvisation of new government forms to circumvent the limits.

The actual impact would depend on the type of constraint placed in the Constitution. While balanced budgets might curb the growth of government, they might imply less shrinkage than would be forced by some of the spending limitations. Some formulas could lead to a federal government more than \$100 billion smaller in 1990 than might occur if present trends were allowed to continue. Milton Friedman has calculated that the constitutional amendment offered by the National Tax Limitation Committee would have compelled a reduction in the relative size of the federal budget from 22.6 percent of GNP in 1949 to 17.7 percent in 1978. This 4.9 percent drop would have represented a greater change in the federal share of GNP than has occurred during any decade of American history except for the 1940s when the massive requirements of World War II forced a 5.9 percent rise. One cannot foretell the destabilizing effects of such a steep decline, but the impacts surely would ripple beyond the budget accounts.

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ISSUES RAISED BY REQUESTING CONGRESS
TO CALL A CONSTITUTIONAL CONVENTION TO
PROPOSE A BALANCED BUDGET AMENDMENT

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Statement before the Committee on Ways and Means
of the California State Assembly*
February 1, 1979

Article V of the Constitution provides that Congress, on the application of the legislatures of two-thirds of the states, shall call a convention for the purpose of proposing amendments. As of Monday of this week, twenty-four states had asked Congress to call an Article V Convention to propose a balanced budget amendment. I welcome this opportunity to explore with the Committee the dangers that a convention called for that purpose could pose.

* This Statement is a revised version of a Memorandum on the same subject prepared in response to an inquiry by the White House.

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I. SUMMARY

Holding an Article V Convention to write a balanced budget amendment into the Constitution would be unwise for at least two sets of reasons.

First, the Constitution embodies fundamental law and should not be made the instrument of specific social or economic policies -- particularly when those policies could be effected more sensitively and realistically through congressional or executive action, within the existing constitutional framework.

Second, it would be a mistake to take the uncharted course of an Article V Convention while the well traveled route of amendment by congressional initiative remains open -- particularly when the nation badly needs to recover from an era of division, uncertainty, and unrest.

Undeniably, the calls for a balanced federal budget and a limited rate of growth in federal spending reflect at least some sound aspirations and are widely supported. Many Americans desire from government at all levels a reaffirmation of commitment to fiscal austerity as a policy objective. And, at least in theory, the convention device is itself preeminently democratic.

But I strongly believe that, as a practical matter, holding an Article V Convention to propose an amendment prescribing a fiscal policy would be a needless and perilous undertaking -- one likely to generate uncertainties where confidence is indispensable.

one likely to invite division and confrontation where unity and cooperation are critical, one likely to thwart rather than vindicate the will of the American people and damage rather than mend the Constitution.

II. THE IMPROPRIETY OF WRITING A BALANCED BUDGET
POLICY INTO THE CONSTITUTION

A. The Constitution Embodies Fundamental Law and
Should Not Be Trivialized as the Instrument of
Specific Social or Economic Policies.

To endure as a source of unity rather than division, the Constitution must embody only our most fundamental and lasting values -- those that define the structures by which we govern ourselves, those proclaiming the human rights government must respect. As Justice Holmes wrote at the turn of the century, "a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire."^{*}

But unlike the ideals embodied in our Constitution, fiscal austerity -- however sound as a current goal -- speaks neither to the structure of government nor to the rights of the people. The

* Lochner v. New York, 198 U.S. 45, 75 (1904) (dissenting opinion).

language of the Constitution expressing the values that infuse the structures of our fundamental rights is majestic in its force and simplicity. By contrast, the goal of a balanced budget would have to be couched either in such flexible and general terms as to be meaninglessly lax, or in such rigid terms as to be unthinkably harsh.

Consider, for example, what it would mean if the Constitution currently required a balanced federal budget. The implications of such a mandate for national security, for vital domestic programs, for economic growth, and for the burdens of federal taxation are staggering to contemplate. To avoid truly disastrous consequences, surely the mandate would have to incorporate loopholes large enough to drive the federal budget through -- which would defeat the very purpose of an amendment. This very fact underscores the folly of engraving fiscal austerity in the Constitution, of freezing a balanced budget into our fundamental law.*

Experience, no less than intuition, counsels against the incorporation of particular social or economic programs into the Constitution -- even assuming that a balanced budget policy could be expressed in terms that would make sense in that document.

* For contrary views, see, e.g., "Brown Stresses Conservatism in Inaugural," N.Y. Times, Jan. 10, 1979, at A1, col. 3 (calling for California to become next state to apply for balanced budget convention); "Friedman Urges Amendment to Set a Limit on Government Spending," N.Y. Times, Oct. 25, 1976, at 44, col. 6.

Slavery is the only economic arrangement our Constitution has ever specifically endorsed, and prohibition the only social policy it has ever expressly sought to implement. It demeaned our Constitution to embrace slavery and prohibition not only because one was evil and the other intolerant, but also because neither arrangement expressed the sorts of broad and enduring ideals to which the Constitution and the country can be committed -- not just over a decade or two, but for centuries. The goal of fiscal austerity expresses no such ideals -- notwithstanding its immediate popular appeal or the long-term soundness of at least some of its premises.

Because the Constitution is meant to express fundamental law rather than particular policies, it should be amended only to modify fundamental law -- not to accomplish policy goals. Thus Madison described the amendment process not as a mere alternative to the legislative mode, but as a means of correcting the "discovered faults" and "errors" in the Constitution.* That was plainly true of the first fifteen amendments. And, of the eleven amendments ratified since Reconstruction, all but two have served the purpose envisioned by Madison. Five have extended the franchise, three have involved presidential eligibility and succession, and one -- permitting a federal income tax -- gave to the federal government a power previously held unconstitutional by the Supreme Court. Of

* The Federalist No. 43, at 296 (J. Cooke ed. 1961).

the two exceptional amendments, one attempted to enact a social policy -- prohibition. The other amendment repealed the first. Thus a balanced budget amendment would be an anomaly not only in view of the Constitution's mission, but also in light of its history.

B. The Amendment Process Should Not Be Used To Achieve Aims That May Be Better Realized Through Congressional or Executive Action.

Even prohibition was a more appropriate subject for the amendment process than a balanced budget would be. For unlike fiscal policy, which lies at the heart of the congressional mandate, temperance could not be legislated for the nation by Congress without express constitutional authorization. A balanced budget amendment would therefore be objectionable not only because it would transform a specific economic policy into fundamental law, but also because there is no need to amend the Constitution to make the pursuit of that policy the law of the land.

Legislation has in fact been introduced in the last three Congresses promoting the objectives of the balanced budget amendment, and a tide of similar proposals is already surging into the session that has just opened. President Carter has worked to serve the objectives of fiscal restraint as well -- and he has stressed to the public his continuing commitment to them. The

people of California have already sent a message to Washington that has not been ignored and will not go unheeded. But the proper response to that message is not a constitutional amendment -- fiscal policy is simply too complex to execute through the sorts of generalities that belong in a constitution. Fiscal policy involves the sorts of nuances and distinctions that can best be expressed in statutes, regulations, and executive programs.

Needlessly amending the Constitution injures our political system at its core. If the amendment device is transformed into a fuzzy substitute for the more focused legislative process, not only will the lawmaking function of Congress be eroded, but the Constitution itself will lose its unique significance as the ultimate expression of fundamental and enduring national values. By demanding, instead, that their representatives in Congress press for responsible fiscal policy while resisting the abuse of the amendment device threatened by the current convention campaign, the people of California will visibly serve the national interest in a sound economy, and help prevent the Constitution's devaluation.

To be sure, the devaluation of the Constitution would not occur overnight. In fact, until the Constitution had been effectively reduced to a shifting package of legislative commitments, each policy enshrined as an amendment would bind the government far more tightly than ordinary law. Obviously the proponents of the balanced budget amendment desire this very result, but responsible opinion must resist any such constitutional straitjacket for the

nation. In few areas are flexibility and rapid responsiveness to changing circumstances more vital than in the realms of fiscal and monetary policy. For just this reason, even those sympathetic to the goals of a balanced budget amendment have warned that such an amendment would be a "blunt weapon" that "would be flawed with a certain troubling rigidity" if ratified.* Thus, so long as the Constitution is not made easier to alter than it ever has been or should ever become, it will remain the least appropriate instrument for American economic policy.

Perhaps infused with a deeper understanding of the purpose of the amendment process than today's proponents of the balanced budget amendment have displayed, advocates of most earlier Article V Conventions have not sought to achieve through amendment what congressional and executive action by themselves could accomplish at least as well. Earlier convention drives pursued goals that simply could not have been achieved without revising the Constitution -- for example, the direct election of senators; the prohibition of polygamy; the repeal of the eighteenth amendment; the limitation of presidential tenure; the modification of presidential treaty-making power; the reversal of Supreme Court holdings involving reapportionment, school prayer, abortion, and busing; and the general revision of the Constitution. Whatever one may think of these proposals, one cannot fault their advocates for aiming

* Editorial, "The New, New Federalism," Wall St. J., Jan. 10, 1979, at 22, col. 1.

needlessly to circumvent the ordinary channels of change offered by Congress and the Executive Branch, or for tampering with the Constitution when less drastic remedies not only would have sufficed but would have been more focused and effective.

III. THE ARTICLE V CONVENTION: A RELUCTANT COMPROMISE OF DOUBIOUS PRESENT VALUE

Even if it were wise to amend the Constitution in order to mandate a balanced federal budget, calling an Article V Convention would be an exceedingly unsound means of achieving the desired end. Understanding why this is so requires a brief excursion into the history of the convention mechanism.

The Article V Convention device was a compromise between those at the 1787 Constitutional Convention who believed that the states should have unchecked power to amend the Constitution, and those who considered congressional involvement an essential safeguard for groups and interests that might otherwise be sacrificed to the majority's will. The plan of union originally submitted to the Federal Convention by Edmund Randolph of the Virginia delegation stated that "provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and . . . the assent of the National Legislature ought not to be required thereto."* The underscored clause was rejected by the Com-

* I J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 120 (2d ed. 1836) (emphasis added).

mittee on the Whole; as Hamilton explained, if the convention process were entirely free of control by Congress, "the State legislatures will not apply for alterations but with a view to increase their own powers."² The Article V Convention provision as it was finally accepted marks the compromise, offered by Madison, between those Framers who supported Randolph's view and those who shared Hamilton's.³

Like many compromises among conflicting interests, the Article V Convention provision is strikingly vague. It provides only that "[t]he Congress . . . on the Application of the Legislatures of two-thirds of the several states, shall call a Convention for proposing amendments" One of the few points on which authorities generally agree is that the Article V Convention device is appropriately utilized only in extraordinary circumstances -- when a determined Congress rides roughshod over the interests of the states, or stubbornly refuses to submit for possible ratification an amendment widely desired by the states. Neither is the case today.

As for the hundreds of state applications that have been made to Congress since 1789,⁴ "[t]here can be no doubt that many

² II Farrand, The Records of the Federal Constitutional Convention of 1787, at 558 (rev. ed. 1937).

³ Id. at 559-60.

⁴ A list of such applications made through 1974 is set out in ABA Special Constitutional Convention Study Committee, "Amendment of the Constitution by the Convention Method Under Article V," at 59-59 (1974).

[of those] petitions . . . were initiated not in the belief that Congress would convene a Constitutional Convention, but in the hope that the petitions would spur Congress to adopt a suggested proposal^{as} its own and submit it to the States for ratification under the [congressional initiative] method of amending the Constitution.** If the current convention drive were meant simply to spur Congress to draft and submit to the states a balanced budget amendment of its own, the nation might not have to face the risks and resolve the riddles of the Article V Convention device. But twenty-four states have already applied to Congress for a convention, and if ten more apply we indeed may face the prospect of an Article V Convention, for it cannot be said with any assurance that Congress could then avoid its duty to call a convention simply by proposing the desired amendment itself.

It is hard to imagine a less opportune moment for the potentially tumultuous step of a constitutional convention -- no matter how limited its official purpose. The past decade has been among the most turbulent in the nation's history. The Vietnam War, the near-impeachment of a President, political assassinations, economic upheavals -- it is hardly necessary to enumerate the many storms we have weathered. If, as a result of those bitter experiences, it is now time for self-healing and consolidation, for a

* Brickfield, Problems Relating to a Federal Constitutional Convention 8 (Staff Report for the House Comm. on the Judiciary, 85th Cong., 1st sess.) (Comm. Print 1957).

return to basic concerns and a turning away from confrontation and division, little could be worse for the country than to risk the possible trauma of our first Constitutional Convention since 1787.

Indeed Jefferson, who considered the lack of a Bill of Rights in the Constitution a major defect in the draft originally submitted to the states, told Madison that he would not oppose the Constitution's adoption -- in order to avoid a second Convention. In calmer times, when national wounds have not been so recently inflicted, and when single-issue disagreements did not run so deep, the risk of another Convention might be worth running -- if the need were sufficiently great, and if other avenues of constitutional change had been exhausted. That is a time in which we do not yet live.

Particularly in a period of recovery from an era of unrest, it is vital that the means we choose for amending the Constitution be generally understood and, above all, widely accepted as legitimate. An Article V Convention, however, would today provoke controversy and debate unparalleled in recent constitutional history. For the device is shrouded in legal mystery of the most fundamental sort, as the following section will explain.

IV. ANSWERABLE AND UNANSWERABLE QUESTIONS ABOUT ARTICLE V CONVENTIONS

In fairness, one must concede that a few of the questions

periodically raised about Article V Conventions do in fact have clear answers. Thus, although questions have from time to time been raised about Congress' duty to call an Article V Convention after two-thirds of the state legislatures have duly petitioned Congress to do so, neither the text nor the history of Article V leaves any reasonable doubt as to the answer: "The Congress, . . . on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments" In this context, "shall" clearly means "must."* It is equally clear that amendments proposed by any such convention are to become part of the Constitution "when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as one or the other Mode of Ratification may be proposed by the Congress" Unless three-fourths of the states ratify in accord with the method Congress specifies, no amendment proposed by an Article V Convention can become the law of the land. Finally, although the text of Article V is silent on the point, it is settled that the President has no role to play in the amendment process.

As to amendments initiated in the familiar way -- by a two-thirds vote of both Houses -- a good deal more could be said. But as to the untried convention route, the preceding paragraph says all that is known or knowable. Nor should one suppose that

* See The Federalist No. 85, at 593 (J. Cooke ed. 1961) (Hamilton).

the interstitial matters involve minor technical questions that could easily be settled by Congress or the courts. On the contrary, the process of amending the Constitution by convention is characterized by fundamental uncertainties that yield to no ready mechanism of resolution. In an era demanding confidence and certainty, those difficulties stand as overwhelming obstacles to both.

The objection to calling an Article V Convention is based not on misgivings at the prospect of unchecked democracy, nor on any vague apprehension about unssaling a Pandora's box, nor on a reflexive preference for the familiar over the unknown. Inherent in the Article V Convention device is the focused danger of three distinct confrontations of nightmarish dimension -- confrontations between Congress and the Convention, between Congress and the Supreme Court, and between the Supreme Court and the states. However democratic an Article V Convention might be in theory, such a convention would inevitably pose enormous risks of constitutional dislocation -- risks that are unacceptable while recourse may be had to an alternative amendment process (the congressional initiative) that can accomplish the same goals without running such serious risks.

A. Holding a Convention Would Risk a Confrontation
Between Congress and the Convention.

The primary threat posed by an Article V Convention is that of a confrontation between Congress and the Convention. Upon

Congress devolves the duty of calling a convention on application of the legislatures of two-thirds of the states, and approving and transmitting to the states for ratification the text of any amendment or amendments agreed upon by the convention. The discretion with which Congress may discharge this duty is pregnant with danger even under the most salutary conditions.

Specifically, consider the incidental yet critical disagreements that could arise as Congress endeavored in good faith to discharge its duties under the convention clause. With no purpose whatsoever of avoiding its duties, Congress might nevertheless decide procedural questions arguably within its discretion in a manner that frustrated the desire of the states to call and conduct a convention -- by treating some applications as invalid, or by withholding appropriations until the Convention adopted certain internal reforms, or by refusing to treat certain amendments as within the Convention's scope.

As a result of any of these decisions, the nation might well be subjected to the spectacle of a struggle between Congress and a Convention it refused to recognize -- a struggle that would extend from the Convention's own claim of legitimacy to disputes over the legitimacy of proposed amendments. Such a struggle would undoubtedly be judicial as well as political, and thus draw the Supreme Court into the fray. See Sections B and C infra. Considering the seriousness with which Congress and the Convention would take each other's challenge in light of the monumental stakes

-- constitutional power -- it is unlikely that either side would surrender before the contest had deeply bruised the nation. Such a contest between Congress and the Convention, which could flare from a single procedural dispute in the balance of which hung the Convention's fate, the nation could ill afford.

B. Holding a Convention Would Risk a Confrontation
Between Congress and the Supreme Court.

In the event of a dispute between Congress and the Convention over the congressional role in permitting the convention to proceed, the Supreme Court would almost certainly be asked to serve as referee. Because the Court would be obliged to protect the interests of the states in the amendment process, it cannot be assumed that the Court would automatically decline to become involved on the ground that the dispute raised a non-justiciable political question. In any event, depending upon the political strength of the parties to the dispute, a decision to abstain would amount to a judgment for one side or the other. Like an official judgment on the merits, such a practical resolution of the controversy would leave the Court an enemy either of Congress or of the Convention and the states that brought it into being.

Even in the absence of such a dispute over the Convention's initiation and completion, the Court could become embroiled in a confrontation with Congress over the limits of congressional power under

Article V. For example, a bill introduced in the last Congress by Senators Helms, Goldwater, and Schweiker, entitled the "Federal Constitutional Procedures Act," S. 1880, 95th Cong., 1st sess. (1977), § 7(a), provided, in part:

A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by law.

One may readily guess that, were Congress to apply such a provision in the exercise of its Article V powers, the Supreme Court would be asked to decide whether the one-person, one-vote rule applies to the election of delegates to a national constitutional convention.*

Similarly, a rule prescribed by Congress providing that "a convention called under this Act may propose amendments to the Constitution by a vote of the majority of the total number of delegates to the Convention," S. 1880, supra, § 10(a), might well be challenged as an unconstitutional attempt by Congress to regulate the internal procedures of an Article V Convention.**

Whether the Court, once called upon to vindicate the one-person, one-vote principle or the autonomy of a convention, would

* See ABA Special Constitutional Convention Study Committee, "Amendment of the Constitution by the Convention Method Under Article V," at 34 (1974) (concluding that the rule is applicable).

** See id. at 19-20 (characterizing such an attempt as unwise and of questionable validity).

invalidate an act of Congress passed pursuant to its Article V powers is no doubt an open question. But the stress that a decision either way would place upon our system is another unwelcome possibility inherent in the Article V Convention device. Like the risk of confrontation between Congress and the states that have called a Convention, the possibility of conflict between Congress and the Supreme Court is, of course, not peculiar to the Article V Convention device. But this device, which carries the potential for such grave clashes of power, should be utilized only if no alternative process is at hand.

C. Holding a Convention Would Risk a Confrontation
Between the Supreme Court and the States.

A decision upholding against challenge by one or more states an action taken by Congress pursuant to Article V would, needless to say, be poorly received by the states involved. Truly disastrous, however, would be any result of a confrontation between the Supreme Court and the states over the validity of an amendment proposed by their Convention. Yet the convention process could, quite imaginably, give rise to judicial challenges that would cast the states into just such a conflict with the Supreme Court.

It is true that such conflicts are theoretically possible even when the more familiar amendment route -- the congressional initiative -- is followed. But in that context it has been settled

for over half a century that Congress exercises exclusive control over the mode of an amendment's proposal and ratification, and thus has the last word on such matters as attempted rescission and the timeliness of ratification.¹⁰ When the familiar route is taken, therefore, the established preeminence of Congress militates against divisiveness arising from a conflict involving the states -- although even along this familiar route passions may sometimes run high, as the recent debates over extension and rescission in the case of the Equal Rights Amendment demonstrated. But when the alternative course of an Article V Convention is chosen, soothing assertions of congressional supremacy are bound to be undercut by reminders that the convention device was, after all, meant to evade control by Congress. And, once such battle lines are drawn where the authority of Congress is not widely recognized, the ensuing debate is sure to be vehement.

D. Many Critical Questions Threatening the Confrontations Described Above Lack Authoritative Answers.

Having already indicated that a few questions about the Article V Convention device do indeed have clear answers, see pp. 12-13 supra, I must reiterate here that many critical questions are completely open. There are questions that could well trigger one

* See Dillon v. Gloss, 256 U.S. 368 (1921); Coleman v. Miller, 307 U.S. 433 (1939).

or more of the confrontations sketched above. As to each of these questions, one can find a smattering of expert opinion and some occasional speculation. But for none of them may any authoritative answer be offered. To make the point forcefully, one need only present a catalogue of basic matters on which genuine answers simply do not exist -- matters as to many of which protracted dispute can surely be expected:

1. The Application Phase

- a. Must both houses of each state legislature take part in making application for a convention to Congress?
- b. By what vote in each house of a state legislature must application to Congress be made? Simple majority? Two-thirds?
- c. May a state governor veto an application to Congress?
- d. When, if ever, does a state's application lapse?
- e. May a state insist in its application that Congress limit the Convention's mandate to a specific amendment?
- f. Must a state's application propose a specific amendment, or may a state apply to revise the Constitution generally?
- g. By what criteria are applications proposing related but slightly different subjects or amendments to be aggregated or set apart?
- h. May a state rescind its application? If so, within what period and by what vote?
- i. What role, if any, could a statewide referendum have in mandating or forbidding an application or a rescission?

MAY CONGRESS AUTHORITATIVELY ANSWER ANY OR ALL OF THESE QUESTIONS? MAY THE STATES? COULD SUCH ANSWERS APPLY TO APPLICATIONS ALREADY MADE? WHAT ROLE, IF ANY, WOULD THE COURTS PLAY IN ANSWERING SUCH QUESTIONS? EVEN THESE QUESTIONS -- ABOUT WHO HAS THE POWER TO DECIDE -- MUST BE DESCRIBED AS UNANSWERABLE.

2. The Selection and Function of Delegates

- a. Who would be eligible to serve as a delegate?
- b. Must delegates be specially elected? Could Congress simply appoint its own members?
- c. Are the states to be equally represented, as they were in the 1787 Convention, or must the one-person, one-vote rule apply, as it does, in elections for all legislative bodies except the U.S. Senate?
- d. Would delegates be committed to cast a vote one way or the other on a proposed amendment? Could they be forbidden to propose certain amendments?
- e. Would delegates at a Convention enjoy immunity parallel to that of members of Congress?
- f. Are delegates to be paid? If so, by whom?
- g. Could delegates be recalled? Could the Convention expel delegates? On what grounds?

WHICH OF THESE QUESTIONS, IF ANY, MAY CONGRESS AUTHORITATIVELY ANSWER? HOW MUCH SUPERVISION MAY CONGRESS EXERCISE OVER THE SELECTION AND FUNCTION OF DELEGATES? WHAT SUPERVISORY ROLE WOULD THE COURTS PLAY?

3. The Convention Process

- a. May Congress prescribe any rules for the Convention or limit its amending powers in any way?*
- b. How is the Convention to be funded? Could the power to withhold appropriations be used by Congress to control the Convention?
- c. May the Convention remain in session indefinitely? May it agree to reconvene as the need arises? May it choose not to propose the amendment for the purpose of which it was convened?

AGAIN UNKNOWN ARE THE RESPECTIVE ROLES OF CONGRESS, THE STATES, AND THE COURTS IN RESOLVING THESE MATTERS.

4. Ratification of Proposed Amendments

- a. To what degree may Congress -- under its Article V power to propose a "Mode of Ratification," or ancillary to its Article V power to "call a Convention," or pursuant to its Article I power under the Necessary and Proper Clause -- either refuse to submit to the states a proposed amendment for ratification or decide to submit such an amendment under a severe time limit? What if Congress and the Convention disagree on these matters?
- b. May Congress permit or prohibit rescission of a state's

* In 1911, Senator Heyburn opined that, "[w]hen the people of the United States meet in a constitutional convention there is no power to limit their action. They are greater than the Constitution, and they can repeal the provision that limits the right of amendment. They can repeal every section of it, because they are the peers of the people who made it." 46 Cong. Rec. 2769 (Feb. 17, 1911). Was Senator Heyburn right or wrong? If right, then a constitutional convention could propose any imaginable amendment, no matter how limited the official scope of the Convention. Although opinions contrary to those of the Senator may be found, the undeniable fact is that no definitive answer exists.

ratification vote? May the Convention? What if Congress and the Convention disagree?

UNKNOWNABLE ONCE AGAIN ARE THE RESPECTIVE ROLES OF CONGRESS, THE STATES, AND THE COURTS IN PROVIDING A DEFINITIVE RESOLUTION IN THE EVENT OF DISAGREEMENT.

V. CONCLUSION

The call for an Article V Convention to write a balanced budget policy into the Constitution reflects profoundly misguided views of how national fiscal goals should be pursued and how the nation's fundamental law should be amended. Of doubtful wisdom at any time, such a call especially misreads the needs of the country today. I would hope it also misreads the country's mood -- a mood that California, by rejecting the call for an Article V Convention, can help to shape.

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