HB

284

<TARGET><BILL>HB 284</BILL><SUBJECT>HB
284</SUBJECT><COMM>SJUD28</COMM></TARGET>

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: HB 284
Fiscal Note Number: 1
(H) Publish Date: 2/14/14

Identifier: HB284-OOG-EO-2-10-14
Title: COMPACT FOR A BALANCED BUDGET
Sponsor: KELLER
Requester: House State Affairs

Department: Office of the Governor
Appropriation: Executive Operations
Allocation: Executive Office
OMB Component Number: 6

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial fiscal note.

Prepared By: Guy Bell, Director of Administrative Services — Phone: (907)465-3876
Division: Administrative Services — Date: 02/10/2014 09:00 AM
Approved By: Guy Bell, Director of Administrative Services — Date: 02/10/14
Agency: Office of the Governor

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA **BILL NO.** HB 284
2014 LEGISLATIVE SESSION

Analysis

Passage of HB 284 would require the State of Alaska to participate in the Compact Commission when at least one other State has likewise become a member state (Sec. 2, Page 5). The Commission would be given the authority to request funds (Sec. 1, Page 6) and the bylaws of the Commission may allow for modest salaries for Commission members and reimbursement of expenses if adequate funding exists (Sec.2, Page 6). Alaska's Commission member would be appointed by the Governor and would attend a Commission meeting at least once a year (Sec. 3, Page 7). The Commission and the Compact Administrator's activities would be funded exclusively by each Member State (Sec. 5, Page 7).

The Compact would terminate when the U.S. Constitution is amended by a Balanced Budget Amendment (Sec. 7, Page 16).

For the purposes of this fiscal note, it is assumed the cost to the State of Alaska would be limited to attendance at the annual Compact Commission meeting, and that the cost of participation would be absorbed or the participation would occur via telephone or video conference.

ALASKA STATE LEGISLATURE

Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 373-1842
Fax: (907) 373-4729

Session:
State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-2186
Fax: (907) 465-3818

REPRESENTATIVE WES KELLER
DISTRICT 7

SPONSOR STATEMENT
House Bill 284

"An Act relating to an interstate compact on a balanced federal budget."

HB 284 seeks to reverse America's rapid and damaging hurdle towards the fiscal cliff of no return by proposing an interstate compact to amend the Constitution of the United States with a Balanced Budget Amendment via the Constitution's Article V process.

The national debt of the United States recently surpassed $17.3 trillion and is on track to exceed 100% of the Gross Domestic Product. If the average American family with a yearly income of $52,000 adopted the federal government's spending habits, they would spend approximately $64,000 a year, of which $12,000 would be put on the credit card despite the family already being over $312,000 in debt. This path is unsustainable and changes must be made that while uncomfortable now, are less painful overall than if the fiscal can continues to be kicked down the road.

Congress cannot be relied upon to resolve this issue. Rather than carefully deliberating and enacting responsible budgets, Congress instead relies upon short-term continuing resolutions and exploits political outrage and misinformation regarding debt ceilings and national defaults in order to justify increased federal spending. Budgetary power is over centralized in Washington D.C. and change can only come from the outside.

States must come together to amend the Constitution of the United States and impose a Balance Budget Amendment (BBA) on the federal government. The BBA sets the debt limit to 105% of the outstanding debt upon ratification and requires Congress to seek the consent of state legislatures to approve spending increases over this amount. Federal outlays will no longer be allowed to exceed total receipts and Americans through their state legislatures will now have a more direct say in our nation's fiscal future.

The Balanced Budget Amendment is achieved via the Compact for America (CFA) proposed in House Bill 284. This interstate compact is a constitutional and proven legal framework that reduces the time and resources needed to achieve a state initiated amendment to the Constitution. The Compact requires only two pieces of legislation: 1) a single compact agreed to by 38 states

E-Mail: Representative_Wes_Keller@legis.state.ak.us
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

and 2) an omnibus Congressional resolution calling for the convention and ratification referral. All of the components necessary for the Article V process are contained in HB 284 and each procedural element is triggered only when the compact goes into effect.

HB 284 is targeted, focused, and contains the necessary legal safeguards to prevent political subterfuge as Alaska embarks with other states to reclaim its constitutional role is reestablishing clear and limited powers for the federal government. I urge you to join me in passing HB 284 and make the hard decisions about our financial future now rather than placing that burden on generations to come.

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REPRESENTATIVE WES KELLER
DISTRICT 7

HB 284 (Compact for a Balanced Budget) Sectional Analysis

Section 1, Article I: Declaration of Policy, Purpose, and Intent of Compact for a Balanced Budget Amendment. All states adopting the compact agree to be bound by its provisions.

Article II, Sections 1-6: Definition of terms.

Article II, Section 7: Provisions of Balanced Budget Amendment (BBA)

Section 1: Total government outlays cannot exceed total government receipts except for the exclusive debt financing option allowed in the BBA.

Section 2: Authorized debt of the United States cannot exceed 105% of the country's outstanding debt the date the BBA is enacted. Authorized debt cannot exceed established threshold except as provided in Section 3.

Section 3: Congress may only increase the authorized debt (Sec. 2) only upon the approval of a simple majority of the fifty states. If approval is not achieved within sixty days, the Congressional request is deemed disapproved and the authorized debt remains unchanged. Explicitly prohibits raising the debt limit by a *quid pro quo* trade of increased federal spending in the states.

Section 4: When the outstanding debt exceeds 98% of the limit established in Section 2, the President of the United States is required to enforce the 105% debt limit by designating specific expenditures for impoundment. Such cuts become effective within thirty days unless Congress designates other cuts of the same or greater amount. Failure by the President of the United States to designate the required cuts is an impeachable misdemeanor. Any incurred or issued debt exceeding the Sec. 2 105% threshold is void.

Section 5: Congress may not issue new or increased tax revenue without an affirmative two-thirds votes each from the House of Representatives and Senate. This restriction does not apply to enactment of a sales tax provided that 1) the proposed tax completely replaces all existing federal income taxes or 2) provides for the reduction or elimination of an exemption, deduction, or credit under an existing general revenue tax.

Section 6: Defines "debt," "outstanding debt," "authorized debt," "total outlays of the government of the United States," total receipts of the government of the United States," "impoundment," and "general revenue tax."

Section 7: The Balance Budget Amendment takes effect immediately upon ratification. Congress may enact legislation needed to enforce the BBA.

Article III: Compact Membership and Withdrawal

Section 1: Member states are bound to the Compact's provisions to the fullest extent of the law.

Section 2: Member states agree to perform and strictly comply with the Compact's terms and conditions. Compact is contractually binding on each member state when at least two states pass substantively similar legislation adopting the Compact for America.

Section 3: Outlines four caveats to the "substantively identical" legislation requirement.

Section 4: States may withdraw from Compact so long as the three-fourths membership threshold is not reached. States cannot withdraw from the Compact once three-fourths of the states are members.

Article IV: Compact Commission and Compact Administrator

Section 1: Outlines the powers and duties of the Compact Commission.

Section 2: Outlines the Compact Commission membership.

Section 3: Each commission member is entitled to one vote, majority membership is required in order to take action, and number of meetings to be held.

Section 4: First actions the Commission is to take.

Section 5: How the Commission is to be funded.

Section 6: Powers and duties of the Compact Administrator.

Section 7: Specific events the Compact Administrator is required to send notice to all Compact Notice Recipients (Article II, Sec. 5).

Section 8: The Commission, member states, and Compact Administrator will work together to enforce the Balanced Budget Amendment Interstate Compact.

Section 9: Article IV requires at least to member states in order to take effect.

Article V: Resolution Applying for Convention

Section 1: The legislature of each Compact member state applies (via the Compact) to Congress for an Article V Convention for the purpose of proposing for ratification the Balanced Budget Amendment.

Section 2: Requests Congress to refer the BBA to the States for ratification.

Section 3: Article V requires three-quarters of the state to join the Compact before taking effect.

Article VI: Delegate Appointment, Limitations and Instructions

Section 1: Each state is entitled to one delegate at the Convention.

Section 2: The governor of each state is that state's sole convention delegate.

Section 3: Outlines when a state's convention delegate may be recalled.

Section 4: The power and authority of each delegate is exercisable only after affirming the oath and Congress calling for the Convention.

Section 5: Convention delegate term limits.

Sections 6-8: Power and authority of convention delegates.

Section 9: The Convention's first order of business is to adopt the convention rules outlined in the Compact. Failure to do so requires an immediate vacation of the convention.

Section 10: Member states or delegates who violate the Compact's provisions forfeit participate in the Convention.

Section 11: Delegates are entitled to reimbursement for reasonable expenses incurred while attending the Convention.

Article VII: Convention Rules

Section 1: Convention is organized to exclusively represent interests of the member states.

Section 2: The Convention's sole agenda is to introduce, debate, and vote to either accept or reject the Balanced Budget Amendment. Consideration of other matters is not permitted.

Section 3: Provides the rules for how many delegates member and non-member states may have and the credentials they are required to provide while attending the Convention.

Section 4: Outlines the voting powers of states attending the Convention.

Section 5: Quorum requirements for the Convention.

Section 6: The Convention is chaired by the delegate of the first State to become a member of the Compact. Any business conducted by the Convention requires a quorum and a majority vote of those states constituting the quorum.

Section 7: Provides the guidelines for relocating or rescheduling the Convention should the need arise.

Section 8: Convention shall be conducted according to Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure.

Section 9: Rules for transmitting the Convention's approval of the Balanced Budget Amendment and requesting Congress to refer the BBA to the 50 states for ratification.

Section 10: Public record requirements for the Convention.

Section 11: Convention has twenty-hours to complete its business and is required to adjourn thereafter.

Article VIII: Prohibition on Ultra Vires Convention

Section 1: Member states are prohibited from participating in the Convention unless 1) Congress passes the omnibus resolution calling for the Convention and 2) the Convention completes Article VI, Sec. 9.

Section 2: Any proposal or action by the Convention that violates the Compact's rules, proposes a mode of ratification not permitted in Article V of the Constitution of the United States, or tries to form a new government is void ab initio (from the beginning).

Section 3: Member states are not permitted to approve any revision to the Constitution of the United States other than the Balanced Budget Amendment.

Article IX: Resolution Prospectively Ratifying the Balanced Budget Amendment

Sections 1-2: Provision in Compact whereby each member state automatically adopts and ratifies the Balanced Budget Amendment following its Article V referral to the States by the Congressional resolution--thus meeting the three-fourths ratification requirement.

Article X: Construction, Enforcement, Venue, and Severability

Section 1: Member states agree to be bound to the Compact to the fullest extend allowed by their respective constitutions.

Section 2: Date and time of the Convention.

Section 3: The Attorney General of Alaska is required to defend the Compact against any legal challenge.

Section 4: The exclusive venue for all legal actions relating to the Compact shall be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the District Court's boundaries. However, the Attorney General of Alaska may petition the Compact Commission to waive Article X, Sec. 4 if a different court venue allows for the better enforcement or defense of the Compact.

Section 5: Effective date of Compact.

Section 6: Article VIII of this Compact is non-severable prior to the Compact's termination. If a phrase, clause, sentence or provision of the Compact is ruled invalid by the courts, it may be severed without affecting the applicability of the remaining Compact. If a court rules the Compact to be contrary to a member state's constitution or otherwise held invalid, that state shall withdraw from the Compact.

If a court rules the Compact to be in violation of Article, 1 Section 10, of the Constitution of the United States, it is to be construed and enforced solely as reciprocal legislation. This language ensures that the Compact will not be stopped by a meritless adverse legal determination that it violates the Compact Clause. It is intended to authorize a court to sever from the Compact all of the language that makes the bill a "compact," leaving behind only the legislative elements, which would then be regarded as reciprocal legislation—i.e. simply identical legislation passed in the respective member state, like a sort of "Uniform Commercial Code" for an Article V convention devoted to a Balanced Budget Amendment. Mechanically, it would mean that the Court would strike from the Compact all contractual language ("offer," "accept," "agree," etc.) and all elements of the Compact that cannot exist outside of a contractual relationship, such as the Compact Commission (Article IV in its entirety), much of Article X, leaving behind the balance as purely legislative enactments which are reciprocal to the Compact enactments of other states.

Section 7: The Compact terminates when the Constitution of the United States is amended by the Balanced Budget Amendment. However, if the BBA is not adopted within seven years of the first state adopting the Compact, the Compact Commission and Compact shall be deemed terminated and void ab initio.

Revisor's Instruction

- Instructs the revisor of statutes not to edit out the use of personal pronouns in HB 284 due to the requirement that substantively similar legislation be passed by states adopting the Compact.

NFIB
The Voice of Small Business.

ALASKA

March 7, 2014

The Honorable Wes Keller
State Capitol Building
Juneau, Alaska 99801-1182

RE: Support for House Bill 284

Dear Representative Keller:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for House Bill 284. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

Runaway federal spending is a very serious threat to business in Alaska. We are among many who have waited decades for Congress to act and use its authority to require a balanced budget. Instead, Washington insiders continue to borrow and spend at unsustainable rates. Broken federal programs are consuming massive amounts of money, funded in large part by increasingly wary foreign borrowers.

We are encouraged that Alaska is considering authorizing a convention of the states, which it has the power to do so under Article V of the U.S. Constitution. We hope you will help lead and ensure Alaska becomes one of the 34 states needed for a convention call. Of note, our Founders ensured important checks and balances are in place. Importantly, 38 states must ratify any proposed constitutional amendment to force Congress to balance the budget.

Why is a limited convention of the states to propose a balanced budget so important to small businesses?

- 91% of NFIB members want Congress to propose this amendment, according to our polling, but Congress is not interested or interested in enough in acting.
- Social Security, Medicaid and Medicare consume 45% of our national budget. Non-discretionary spending is nearly an astonishing 70% and debt to GDP is soaring, setting up an inevitable economic crash if action isn't taken soon.
- Washington is adding insult to injury and borrowing against these trust funds, making the problem far worse than the oft-publicized $17 trillion. Under stricter accounting methods, long-term unfunded liabilities are in excess of $50 trillion, according to some estimates.

National Federation of Independent Business – ALASKA
P. O. Box 34761•Juneau, AK 99803-4761•907 723 6667•www.NFIB.com

- Alaska is one of the 33 states that constitutionally MUST balance its budget annually. Congress should have to do the same!

HB 284 is targeted and focused to accomplish its goal while protecting Alaskans from unintended consequences. This approach will help Alaska and other states force the federal government back to its appropriate limited powers.

We join with you in seeking the passage of House Bill 284.

Sincerely yours,

Dennis L. DeWitt
Alaska State Director

Cc: NFIB/AK Leadership Council

GOLDWATER
INSTITUTE

Where freedom wins.

Using a Compact for Article V Amendments: ***Experts Answer FAQs*** *January 24, 2014*

A joint publication by the Goldwater Institute, States United for a Balanced Budget, American Academy for Constitutional Education, Coalition of Freedom, and Compact for America, Inc.

We have two paths under Article V of the United States Constitution for amendments that can reform Washington. One path requires two-thirds of each house of Congress to originate amendments. This path has been used twenty-seven times. The problem is that Congress has not tied its own hands for over 200 years, and shows no willingness to do so in the future.

The other path to reform involves states originating constitutional amendments. This path has never been used successfully to conclusion. The problem is that everyone walking that second path has been trying to pass over one hundred legislative enactments across five or more legislative sessions. Not surprisingly, no one has succeeded. But a better approach has been developed for well-formed reform ideas that already command super majority support. It involves the states compacting—agreeing—to advance and ratify a constitutional amendment with the consent of Congress.

The Compact approach to Article V makes the second path to reform quicker, easier and more certain than ever before. It allows states to agree in advance to everything they control in the amendment process in a single bill passed once. It allows Congress to fulfill its entire role in the amendment process in a single resolution passed once. It cuts the time and resources needed to originate an amendment from the states by more than 60%. The ground-breaking nature of this approach to amending the Constitution has also raised important questions, which are answered by experts in this report.

The following answers to frequently asked questions represent the opinions and conclusions of Goldwater Institute Constitutional Policy Director Nick Dranias, Cato Institute Senior Fellow in Constitutional Studies Ilya Shapiro, American Academy for Constitutional Education Director Shane Krauser, *New York Times* Best-Selling Author and Professor of History at Western Connecticut State University, Dr. Kevin Gutzman, and Senior Judge Harold DeMoss of the United States Court of Appeals, Fifth Circuit.[1]

EXECUTIVE SUMMARY

The Compact for a Balanced Budget is an agreement among the states that quickly and safely advances a powerful federal balanced budget amendment under Article V of the United States Constitution. Without this agreement in place, Article V would otherwise require the following legislative actions to take place before the Constitution would be deemed amended by the states: 1) two-thirds of the legislatures of the states would have to pass a resolution applying for Congress to call a convention for proposing amendments; 2) Congress would then need to pass a resolution calling the convention; 3) at least a majority of states would then need to pass resolutions or bills appointing and instructing delegates to the convention; 4) the convention would then need to meet and propose the amendment for ratification; 5) Congress would then need to pass a resolution referring that amendment to the States for ratification by legislative action or in-state convention; and 6) three-fourths of the states would then be required to pass resolutions ratifying the amendment or the same number must pass bills organizing in-state conventions and those conventions must ratify the proposed amendment.

By contrast, the Compact for a Balanced Budget allows the member states to agree in advance in a *single* piece of legislation to *all* components of the constitutional amendment process that the states control—from the application to Congress, to the text of the proposed amendment, to delegate selection and instructions, to convention logistics and rules, to the ultimate ratification. The amendment process is set in motion by a single counterpart congressional resolution, which impliedly consents to the Compact and completely fulfills Congress' role under Article V—from the call for the convention, to the ultimate ratification referral of the proposed amendment.

Using this "Compact for America" approach to Article V, a federal balanced budget amendment originating from the states can be proposed and ratified within the span of a single session year and with a grand total of 39 legislative actions. This is in stark contrast to what would otherwise be required to generate a constitutional amendment from the states under Article V without a compact—namely, 100+ legislative actions across five or more legislative sessions. The compact approach thereby promises to enable states to originate many other amendments long sought outside of Washington, including term limits and tax reform.

Naturally, this ground-breaking vehicle for reform has raised a number of important legal and constitutional questions. We welcome those questions because settled law and history provide clear answers.

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[1] Judge DeMoss joins this publication in a personal capacity and should not be regarded as expressing an opinion of the United States Court of Appeals, Fifth Circuit.

FAQ Contents

1. Can the States combine into one bill all of the legislative actions that must follow the sequence set forth in Article V to generate a constitutional amendment?

Yes. The key to consolidating so much sequentially-triggered legislation into the Compact's two overarching legislative components (the interstate compact and the counterpart congressional resolution) is the use of contingent effective dates—also known as "conditional enactments" or "tie-barring"—to ensure that each piece of consolidated legislation only goes "live" at the right time.

By using contingent effective dates, the Compact is able to embed or "nest" each legislative stage of the amendment by convention process into a single enactment for the states and a single resolution for Congress. Each nested legislative component only becomes effective upon the happening of an appropriate trigger event. For example, the Compact's nested Article V application is designed not to go live and trigger a convention call from Congress until at least 38 states join the compact and agree to be bound by its provisions. Similarly, the prospective ratification of the contemplated balanced budget amendment will only go live if Congress first enacts the counterpart omnibus concurrent resolution, which prospectively refers the BBA for legislative ratification, and only if the BBA is first proposed by the convention.

Such conditional enactments are common components of congressional legislation, including legislation approving interstate compacts,[2] as well as within many existing interstate and federal-territorial compacts.[3] In fact, the U.S. Supreme Court and courts in 45 states and territories have recognized the viability of conditional enactments for a wide range of both state and federal legislation,[4] including state laws that were enacted

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[2] *See, e.g.,* Omnibus Low–Level Radioactive Waste Interstate Compact Consent Act, Pub. L. 99-240, Title II, 99 Stat. 1842, 1859 (1986), available at http://www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1842.pdf; Northeast Interstate Dairy Compact, 7 U.S.C. § 7256 (1996).

[3] *See, e.g.*, Compact of Free Association Act of 1985, Pub. L. 99-239, Title II, 99 Stat. 1770, 1800, available at http://www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1770.pdf; Jennings Randolph Lake Project Compact authorized, W. Va. Code, § 29-1J-1 (1994); Interstate Compact on Licensure of Participants in Live Racing with Parimutuel Wagering, Ky. Rev. Stat. § 230.3751 (2001); Interstate Compact on Juveniles, Wyo. Stat. § 14-6-102 (1977)

[4] *See, e.g.*, *Marshall Field & Co. v. Clark,* 143 U.S. 649 (1892); Opinion of the Justices, 287 Ala. 326 (1971); *Thalheimer v. Board of Supervisors of Maricopa County,* 11 Ariz. 430, 94 P. 1129 (Ariz. Terr. 1908); *Thomas v. Trice,* 145 Ark. 143 (1920); *Busch v. Turner*, 26 Cal. 2d 817 (1945); *People ex rel. Moore v. Perkins*, 56 Colo. 17 (1913); *Pratt v. Allen,* 13 Conn. 119 (1839); *Rice v. Foster,* 4 Harr. 479 (De. 1847); *Opinion to the Governor,* 239 So. 2d 1 (Fla. 1970); *Henson v. Georgia Industrial Realty Co.,* 220 Ga. 857 (1965); *Gillesby v. Board of Commissioners of Canyon County,* 17 Idaho 586 (1910); *Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011); *Lafayette, M&BR Co. v. Geiger,* 34 Ind. 185 (1870); *Colton v. Branstad*, 372 N.W. 2d 184 (Iowa 1985); *Phoenix Ins. Co. of N.Y. v. Welch*, 29 Kan. 672 (1883); *Walton v. Carter,* 337 S.W. 2d 674 (Ky. 1960); *City of Alexandria v. Alexandria Fire Fighters Ass'n, Local No. 540,* 220 La. 754 (1954); *Smigiel v. Franchot*, 410 Md. 302 (2009); *Howes Bros. Co. v. Mass. Unemployment Compensation*

contingent on the passage of new federal laws.[5] As explained by one typical court decision, "[l]egislation, the effectiveness of which is conditioned upon the happening of a contingency, has generally been upheld."[6] Courts defer to "broad legislative discretion"[7] when conditional enactments are used.

Because a State's authority over whether to apply for an Article V convention or to legislatively ratify an amendment is as plenary as any other form of legislation, it is therefore our finding and conclusion that the foregoing case law sustains the use of a conditional enactment in connection with Article V applications and ratifications. The novelty of this approach is no argument against the overwhelming weight and logic of centuries of case law that is directly on point.

In connection with this conclusion, it is important to emphasize that there is absolutely no textual conflict between Article V and the use of a conditional enactment to pre-ratify a desired amendment. After all, the Compact's pre-ratification is made subject to a conditional enactment that makes its effectiveness entirely contingent on: a) the convention proposing the balanced budget amendment; and b) Congress selecting

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Commission, 296 Mass. 275 (1936); *Council of Orgs. & Ors. For Educ. About Parochiaid, Inc. v. Governor*, 455 Mich. 557 (1997); *State v. Cooley,* 65 Minn. 406 (1896); *Schuller v. Bordeaux*, 64 Miss. 59 (1886); *In re O'Brien*, 29 Mont. 530 (1904); *Akin v. Director of Revenue,* 934 S.W.2d 295 (Mo. 1996); *State v. Second Judicial Dist. Ct. in & for Churchill County,* 30 Nev. 225 (1908); *State v. Liedtke,* 9 Neb. 490 (1880); *State ex rel. Pearson,* 61 N.H. 264 (1881); *In re Thaxton*, 78 N.M. 668 (1968); *People v. Fire Ass'n of Philadelphia*, 92 N.Y. 311 (1883); *Fullam v. Brock*, 271 N.C. 145 (1967); *Enderson v. Hildenbrand*, 52 N.D. 533 (1925); *Gordon v. State*, 23 N.E. 63 (Ohio 1889); *State ex rel. Murray v. Carter*, 167 Okla. 473 (1934); *Hazell v. Brown*, 242 P.3d 743 (Or. App. 2010); *Appeal of Locke*, 72 Pa. 491 (1873); *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634 (1999); *Clark v. State ex rel. Bobo*, 113 S.W.2d 374 (Tenn. 1938); *State Highway Dept. v. Gorham*, 139 Tex. 361 (1942); *Bull v. Reed*, 54 Va. 78 (1855); *State v. Baldwin,* 140 Vt. 501 (1981); *State ex rel. Zilisch v. Auer*, 197 Wis. 284 (1928); *Brower v. State*, 137 Wash. 2d 44 (1998); *Le Page v. Bailey*, 114 W. Va. 25 (1933).

[5] *See, e.g., State v. Dumler*, 559 P.2d 798 (Kan. 1977); *Bracey Advertising Co. v. North Carolina Dept. of Transportation*, 241 S.E.2d 146 (N.C. Ct. App. 1978).

[6] *Helmsley v. Borough of Ft. Lee*, 394 A.2d 65, 82 (N.J. 1978). Of course, this robust general rule is not totally without exception. In a case of first impression, the Missouri Supreme Court recently rejected the use of contingent effective dates where a legislative act was made contingent on the passage of another act on a "completely different matter" because doing so violated a state constitutional single subject rule. *Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d 348 (Mo. 2013). The Compact's contingent effective dates, however, do not pose a single subject rule violation. The contingencies are subject to the passage of legislation that obviously relates to the same purpose as the Compact; specifically, the passage of substantially identical compact language in other states and the congressional components of the Article V process the Compact invokes. Thus, the contingent effective dates in the Compact are exactly like the contingency upheld in *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 299 (Mo. 1996), in which the Missouri Supreme Court ruled the "legislature may constitutionally condition a law to take effect upon the happening of a future event."

[7] *Helmsley*, 394 A.2d at 83.

legislative ratification of that proposed amendment. Because of the foregoing conditional enactment, the ratification will go live (if it ever goes live) only in the precise sequence required by the text of Article V. Hence, there is no textual conflict between Article V and the Compact's use of a conditional enactment to pre-ratify a desired amendment.

To find a constitutional problem, one would have to resort to an argument that the Compact violates the "spirit" or purpose of Article V. But to the extent that the use of conditional enactments makes the ratification process more controllable by a legislature or the process more conducive to generating amendments from the states, the following FAQ answers demonstrate that effect is fully consistent with the public understanding and purpose of Article V at the time of the founding. Simply put, the text, original intent and purpose of Article V is fully consistent with using conditional enactments to embed multiple legislative actions within a compact to more easily originate specific constitutional amendments from the States.

2. Was it supposed to be extraordinarily difficult to originate constitutional amendments using an Article V convention?

Not really. Article V was neither supposed to be extraordinarily difficult nor extraordinarily easy. It was meant to strike a balance between these two extremes. We know this because, in Federalist No. 43, for example, James Madison emphasized that Article V "guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults."[8]

If anything, the balance struck by Article V between facility and difficulty was meant to allow for amendments to be accomplished *more easily* than was the Founder's experience in attempting to revise the Articles of Confederation. After all, Madison famously complained prior to the Philadelphia Convention that the unanimous alteration provision of the Articles of Confederation allowed Rhode Island, which had only 1/60th of the population of the country, to thwart the will of all other states in regard to delegating a tariff power to the Confederation Congress. There is no question amendments through Article V convention process are easier than that. The relative ease of amendments was also emphasized in Federalist No. 85, in which Alexander Hamilton represented there

[8] Federalist No. 43 in The Federalist (The Gideon Edition), Edited with an Introduction, Reader's Guide, Constitutional Cross-reference, Index, and Glossary by George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27

was "no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."[9]

The relative ease with which the Article V amendment process was meant to be utilized by the states was further emphasized during the ratification debates. Rebutting Patrick Henry's lengthy oration at the Virginia Ratification convention that it was too difficult for the states to use Article V, George Nicholas responded, "[i]t is natural to conclude that those States who will apply for calling the Convention, will concur in the ratification of the proposed amendments."[10] Likewise, during the New Jersey ratification debates, the New Jersey Journal wrote that the Constitution included "an easy mode for redress and amendment in case the theory should disappoint when reduced to practice."[11] Similarly, at the time of the Connecticut ratification debates, Roger Sherman wrote, "[i]f, upon experience, it should be found deficient, it [the Constitution] provides an easy and peaceable mode of making amendments."[12] No advocate of the ratification of the Constitution argued that the mode of amendment available to the States was meant to be difficult, much less extraordinarily difficult. No one intended for constitutional amendments to become an everyday occurrence, to be sure, but the Article V amendment process was never meant to be reserved only for the most extraordinary world-historical issues like ending slavery.

3. Does Article V require free-ranging legislative deliberation by different and independent legislative bodies acting as "circuit breakers" during each of its stages?

No. While free-ranging, independent legislative deliberation by distinct legislative bodies *can* take place in the course of the Article V amendment process, there is no founding era evidence that such deliberation was a *requirement* of the process. If anything, the best evidence indicates that the convention mode of proposing amendments was meant to

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[9] Federalist No. 85 in *id.*, available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108727&layout=html&Itemid=27

[10] Jonathan Elliot, The Debates in the Several State Conventions of the Adoption of the Federal Constitution, vol. 3, pp. 101-02 (Virginia) (1827), available at http://files.libertyfund.org/files/1907/1314.03_Bk.pdf

[11] Reply to George Mason's Objections to the Constitution, New Jersey Journal, (December 19, 26, 1788) in The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009, available at http://history.wisc.edu/csac/documentary_resources/ratification/attachments/nj%20a%20reply%20to%20george%20mason.pdf

[12] Letters of a Citizen of New Haven in Friends of the Constitution: Writings of the "Other" Federalists, 1787-1788, edited by Colleen A. Sheehan and Gary L. McDowell, p. 271 (Indianapolis: Liberty Fund, 1998), available at http://files.libertyfund.org/files/2069/Sheehan_0118_Bk.pdf

facilitate and streamline, not frustrate, the proposal of amendments desired by the States given the limitations of 18th Century technology. We know this by looking to the Report of Proceedings from the Philadelphia Convention on September 15, 1787 and to the understanding expressed by advocates of ratification as to how the states would coordinate and unify behind desired amendments.

The actual rationale given for the insertion of the convention mode of proposing amendments in Article V stands against any claim that the convention was meant to serve as an independently deliberative body, standing between the States and their desired amendments. As reported in Farrand, the original language of Article V as proposed by James Madison would have required Congress to propose amendments on application of two-thirds of the legislatures of the several States.[13] To the modern eye, this original formulation would seem to be a more direct route for the States to obtain desired amendments. Nevertheless, on September 15, 1787, George Mason objected to this formulation because it made the proposal of amendments desired by the States entirely dependent upon Congress, and he feared Congress would not propose amendments that would limit its own power.[14] To address Mason's objection, the congressional proposal of amendments on application of two-thirds of the State legislatures was replaced with the convention mode of proposing amendments, which Congress would call upon application of two thirds of the Legislatures of several States.

In short, the convention mode of proposing amendments was explicitly adopted in order to better guarantee that the States could obtain the proposal of desired amendments. This rationale is utterly inconsistent with the notion that an Article V convention was meant to be a freewheeling, independently deliberative body. However ironic that rationale may look to modern eyes, it makes perfect sense in light of the technological limitations of the 18th Century. After all, at the time, communications would take days, weeks or months to travel from state capitol to state capitol, traveling by horse, rather than by telegraph, telephone or email. Ensuring that the States all convened at a central location through their own representatives to propose desired amendments was simply a practical necessity to ensure unity and control over what was proposed.[15]

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[13] The Records of the Federal Convention of 1787, ed. Max Farrand, pp. 629-30 (New Haven: Yale University Press, 1911). Vol. 2, available at http://files.libertyfund.org/files/1786/0544-02_Bk.pdf

[14] *Id.*

[15] Indeed, given the technological limitations of the 18th Century, Mason's preferred formulation of Article V not only ensured state control over the formulation of proposed amendments, it actually streamlined the amendment process. After all, the states would have had to first organize an informal convention to reach consensus on their desired amendments before delivering conforming applications to Congress. Because an informal convention was a practical predicate to States making use of Madison's proposed amendment process, Mason's preferred formulation of Article V, which instead allows a formal convention of the States to directly propose amendments, actually sidestepped the additional hurdle imposed by Madison's original formulation of requiring the States to apply to Congress to propose amendments.

Not surprisingly, it was also a basic assumption of Federalists arguing for ratification of the Constitution that the *same* state legislatures applying for amendments through an Article V convention would concur in *both* their proposal *and* ratification. The convention itself was simply assumed to have no independent deliberative agency whatsoever. For example, George Washington argued in a letter to John Armstrong on April 25, 1788 that the "constitutional door is open for such amendments as shall be thought necessary by nine States."[16] Similarly, referring to both the application and ratification thresholds, Alexander Hamilton wrote in Federalist No. 85, "whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place . . . [n]or however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people."[17] Likewise, the premise that the entire state-originated amendment process—from application to ratification—*could* be in the same state legislative hands is implicit in Hamilton's closing argument of Federalist No. 85 that "[w]e may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."[18] It was also clearly the premise of George Nicholas' argument at the Virginia ratification convention that "[i]t is natural to conclude that those States who will apply for calling the Convention, will concur in the ratification of the proposed amendments."[19]

None of these representations would have been truthful if the Constitution actually *required* the Article V convention to have deliberative autonomy from the states that applied for it. None of these representations would have been truthful if the Constitution *required* the ratifying state legislature to be a distinct legislative body from the state legislature that originally applied for the proposal of amendments through a convention. *All* of these representations imply that independent, freewheeling legislative deliberation by different legislative bodies acting as circuit-breakers in successive stages was not a *requirement* of the Article V process.

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[16] The Writings of George Washington, collected and edited by Worthington Chauncey Ford, Vol. XI (1785-1790), p. 249 (New York and London: G. P. Putnam's Sons, 1890), available at http://files.libertyfund.org/files/2415/Washington_1450-11_Bk.pdf

[17] Federalist No. 85 in The Federalist (The Gideon Edition), Edited with an Introduction, Reader's Guide, Constitutional Cross-reference, Index, and Glossary by George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108727&layout=html&Itemid=27

[18] *Id.*

[19] Jonathan Elliot, The Debates in the Several State Conventions of the Adoption of the Federal Constitution, vol. 3, pp. 101-02 (Virginia) (1827), available at http://files.libertyfund.org/files/1907/1314.03_Bk.pdf

In conclusion, the Framers and Ratifiers anticipated that amendments desired by the states would ordinarily be applied for, proposed through the instrumentality of a convention, and ratified in a coordinated fashion by the same state legislatures united in their desire for specific amendments. For this reason, it is entirely consistent with Article V for the states to use the device of an interstate compact to enable them to do so.

4. Does an Article V convention have to involve more legislative deliberation than just an up or down vote on a pre-drafted amendment after entertaining debate on the topic?

Yes and no. First of all, it should be recalled that the States retain full, unbridled legislative discretion in considering whether to join or propose modifications to the Compact in the first place. The decision to join the Compact occurs only after a thorough legislative vetting of the amendment process it proposes and the public policy implications of the contemplated balanced budget amendment. Likewise, Congress' decision to call the convention in accordance with the Compact necessarily follows a period of free-ranging legislative deliberation. Prior to adopting the Compact, the States and Congress necessarily retain the power and ability to engage in the same breadth and depth of legislative deliberation that would otherwise take place at the most freewheeling stage of any non-compact approach to Article V.

Secondly, even after the Compact is enacted and delegates of member states are limited to voting up or down the contemplated balanced budget amendment for ratification at the convention it organizes, sufficient legislative deliberation is involved. This is because the essence of legislative deliberation is the discretion to consider, accept or reject public policy proposals. As such, legislative deliberation does not intrinsically require more than a discretionary up or down vote. Indeed, state legislatures have long entertained special sessions limited to considering or reconsidering specific bills or laws—essentially an up or down vote—without anyone questioning the existence of legislative deliberation in doing so. There is no reason to believe that an Article V convention requires greater deliberative latitude than this. After all, Article V's ratification convention process itself recognizes that there is nothing about legislative deliberation in the context of a "convention" that requires more than an up or down vote on a specific amendment proposal.[20] Moreover, Alexander Hamilton expressly distinguished the Article V amendment process from the sort of wide-ranging legislative deliberation that characterized the Philadelphia Convention.

In Federalist No. 85, Hamilton wrote: "But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There

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[20] Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, Constitutional Commentary, Vol. 81, p. 53 (2012); Mike Stern, *Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention*, 78 Tenn. L. Rev. 765 (Spring 2011).

would then be no necessity for management or compromise, in relation to any other point no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue."[21] Significantly, Hamilton made the foregoing representation with regard to "every amendment," including those brought forward by the States through an Article V convention, which implies that an Article V convention could be limited to an up or down vote on proposing a single amendment. This conclusion is further supported by the repeated representations of Framers and Federalists, discussed above, that state legislatures could use the Article V amendment process to apply for and ratify amendments they desired—representations that would be rendered false if an Article V convention could not be constrained to consider and propose only those amendments.

The foregoing analysis is not cast into doubt by any modern case striking down state laws or ballot initiatives seeking to compel the proposal of constitutional amendments or Article V applications by congressional candidates or legislative representatives.[22] This is because the Compact does not compel anyone or anything to propose any amendment, nor does it place any power conferred by Article V to a designated body in the hands of anyone or anything that is not designated to exercise such power. The legislature of each member state has full deliberative authority to enact, amend or refuse to enact the Compact, including the Article V application, the contemplated balanced budget amendment, and prospective ratification contained therein. The delegates to the convention organized by the Compact also have deliberative authority to propose or reject proposing the constitutional amendment the Compact contemplates.

5. But can the States limit the Article V convention to considering a specific amendment?

Yes. The idea that the States cannot control the Article V convention process is entirely anachronistic. There is no evidence that anyone during the Founding era or immediately thereafter—whether Federalist or Anti-Federalist—thought that the Article V convention process was not meant to be controlled by the States. All of the available Founding-era and near-Founding-era evidence shows that it was the public understanding of the

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[21] Federalist No. 85 in The Federalist (The Gideon Edition), Edited with an Introduction, Reader's Guide, Constitutional Cross-reference, Index, and Glossary by George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108727&layout=html&Itemid=27

[22] *See, e.g.*, *Miller v. Moore*, 169 F.3d 1119 (8th Cir. 1999); *Barker v. Hazeltine*, 3 F.Supp.2d 1088 (D.S.D. 1998); *League of Women Voters of Me. v. Gwadosky*, 966 F. Supp. 52 (D.Me. 1997); *Bramberg v. Jones*, 20 Cal.4th 1045, 86 Cal.Rptr.2d 319, 978 P.2d 1240 (1999); *Morrissey v. State*, 951 P.2d 911 (Colo. 1998); *Simpson v. Cenarrusa*, 130 Idaho 609, 944 P.2d 1372 (1997); *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996); *In re Initiative Petition No. 364*, 930 P.2d 186 (Okla. 1996).

Framers and the Ratifiers that the states would target the Article V convention process to desired amendments.

For example, on January 23, 1788, Federalist No. 43 was published with James Madison's attributed observation that Article V "equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."[23] Similarly, George Washington wrote on April 25, 1788, "it should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States."[24] On June 6, 1788, George Nicholas reiterated the same points at the Virginia ratification convention, observing that state legislatures may apply for an Article V convention confined to a "few points;" and that "it is natural to conclude that those States who will apply for calling the Convention, will concur in the ratification of the proposed amendments."[25] This public understanding of Article V was further confirmed by the last of the Federalist Papers, Federalist No. 85, in which Alexander Hamilton concluded, "We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority" by using their amendment power under Article V.[26]

These representations about how the states would organize and target the Article V convention process did not occur in a vacuum. They reflected the custom and practice of more than a dozen interstate and inter-colonial conventions that were organized prior to the ratification of the U.S. Constitution. Simply put, it was usual and customary for states to set the agenda for any such convention and to instruct their delegates specifically on what to advance and address at the convention. Delegates were regarded as "servants" of the states that sent them. None of these conventions—not even the Philadelphia

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[23] Federalist No. 43 in The Federalist (The Gideon Edition), Edited with an Introduction, Reader's Guide, Constitutional Cross-reference, Index, and Glossary by George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27

[24] The Writings of George Washington, collected and edited by Worthington Chauncey Ford, Vol. XI (1785-1790), p. 249 (New York and London: G. P. Putnam's Sons, 1890), available at http://files.libertyfund.org/files/2415/Washington_1450-11_Bk.pdf

[25] Jonathan Elliot, The Debates in the Several State Conventions of the Adoption of the Federal Constitution, vol. 3, pp. 102 (Virginia) (1827), available at http://files.libertyfund.org/files/1907/1314.03_Bk.pdf

[26] Federalist No. 85 in The Federalist (The Gideon Edition), Edited with an Introduction, Reader's Guide, Constitutional Cross-reference, Index, and Glossary by George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108727&layout=html&Itemid=27

Convention[27]—strayed from their state-determined agendas.[28] Naturally, the Founders repeatedly represented to the public that an Article V convention would operate in the same way. In fact, for decades after the Constitution's ratification, it was an uncontroversial proposition that the states could organize the Article V convention process to consider desired amendment proposals.

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[27] The Philadelphia Convention stayed well within (1) the congressional resolution for the convention, and (2) the commissions of nearly all state delegates. The congressional resolution for the Philadelphia Convention contemplated a broad purpose for the meeting—to establish "in these states a firm national government ... [and] render the federal Constitution adequate to the exigencies of Government and the preservation of the Union." Resolution of Feb. 21, 1787, 32 J. Continental Cong. 1774-1789, at 74 (Roscoe R. Hill ed., reprint ed. 1968). It also contemplated "revising" the Articles with "alterations and provisions." *Id.* Equally broad language was reflected in the state-issued credentials of nearly all delegates to the convention (with New Jersey's delegates being an arguable exception). 3 Records of the Federal Convention of 1787 706-36 (M. Farrand ed., 1911). This was not an agenda contemplating only tweaks to the Articles. Indeed, contemporaneous legal usage indicates that "revision" had a broader meaning than "amendment," and indicated a total or substantial rewrite of an original document. *See, e.g.*, *Cases of Judges of Court of Appeals*, 1788 Va. LEXIS 3, *27 (1788) (using "revisal" to describe total rewrite of state laws); *Respublica v. Dallas*, 1801 Pa. LEXIS 56, **18 (Pa. 1801) (referring to a committee creating new state constitution as charged with "revising" the old constitution); *Waters v. Stewart*, 1 Cai. Cas. 47, 65-72 (N.Y. 1805) (using "revision" in the context of describing a total rewrite of state statutes); *Commonwealth v. Daniel Messenger*, 4 Mass. 462, 467, 469-70 (1808) (describing statutes as a "revision" of prior provincial laws and "revised" statute as replacing "former statute"); *Lessee of Ludlow's Heirs v. Culbertson Park*, 1829 Ohio LEXIS 36, **24-26 (Ohio 1829) (using "revision" to describe total rewrite and consolidation into one act all prior statutes); *see generally Strauss v. Horton*, 207 P.3d 48, 59 (Cal. 2009) (holding that "[w]hile both constitutional amendments and revisions require a majority of voters approval, a revision—which substantially alters the entire Constitution, the basic framework of the governmental structure or the powers held by one or more governmental branches—requires prior approval of two-thirds of each house of the California State Legislature") (citing Calf. Const. art. X (1849) ("Mode of Amending and Revising the Constitution"); Browne, Rep. of the Debates in Convention of Cal. on Formation of State Const. 354-61 (1850); *Livermore v. Waite*, 102 Cal. 113 (1894); Dodd, The Revision and Amendment of State Constitutions 118–120 (1910); Jameson, A Treatise on Constitutional Conventions: Their History, Powers, and Modes of Proceeding §§ 530–532, 550–552 (4th ed. 1887) (citing Constitutions of Maine (1820), New Jersey (1844), New York (1846), Michigan (1850)); William B. Fisch, Constitutional Referendum in the United States of America, 54 Am. J. Comp. L. 485, 493 (2006) (noting that "the preferred vehicle for major revisions of existing state constitutions and creation of new ones has been the popularly elected convention, which has often been called by a state legislature without explicit authority in the existing governing document"). Translated with the usage of the times, the legal instruments organizing the Philadelphia Convention thus essentially declared, "The convention is being organized for the 'sole' purpose of considering a total rewrite of the Articles of Confederation with such alterations and new provisions as might establish a firm national government and make it adequate to governance."

[28] *See, inter alia*, Robert Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, Goldwater Institute Policy Report No. 241 (Sept. 16, 2010).

For example, on February 7, 1799, James Madison's Report on the Virginia Resolutions observed that the states could organize an Article V convention for the "object" of declaring the Alien and Sedition Acts unconstitutional.[29] Specifically, after highlighting that "Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose," Madison wrote both that the states could ask their senators to propose an "explanatory amendment" clarifying that the Alien and Sedition Acts were unconstitutional, and also that two-thirds of the Legislatures of the states "might, by an application to Congress, have obtained a Convention for the same object." Correspondingly, more than thirty years later, the U.S. Supreme Court in *Smith v. Union Bank*, 30 U.S. 518, 528 (1831), suggested that a "convention of the states" could even be targeted to propose a different choice of law rule for assets held in one state that are allegedly owing to a plaintiff in another.

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

Even apart from explicit reliance on Tenth Amendment principles, courts have repeatedly construed the Article V process in light of historical custom and practice surrounding the Philadelphia Convention, which should further bolster the conclusion that the States have the power to target the Article V convention to the proposal of desired amendments based on the foregoing evidence of public understanding at the Founding and near-Founding era.[30] That public understanding was undoubtedly rooted in the text of Article V, which requires Congress to call an Article V convention upon "application" of state legislatures.

At the time of the framing of the Constitution, the word "application" was a legal term of art that described a written means of petitioning a court for specific relief. The historical record of "applications" to the Continental Congress confirms that this meaning extended to legislative bodies as well, with applications being addressed to

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[29] The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed, Vol. 6, pp. 403-04 (ed. Gaillard Hunt, New York: G.P. Putnam's Sons, 1900), available at http://files.libertyfund.org/files/1941/1356.06_Bk.pdf

[30] *See generally Hawke v. Smith*, 253 U.S. 221 (1920); *Idaho v. Freeman*, 529 F. Supp. 1107 (D. Idaho 1981); *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975); *Opinion of the Justices*, 132 Me. 491, 167 A. 176, 179 (1933); *Barlotti v. Lyons*, 182 Cal. 575, 189 P. 282 (1920).

Congress by various states with very specific requests on a regular basis.[31] The contemporaneous usage of "application" thus naturally supports the conclusion that state legislatures had the power to apply for an Article V convention with a specific agenda. Moreover, the usual and customary practice in response to specific applications was either to grant what was requested or to deny them.[32] Given Congress' mandatory obligation to call a convention for proposing amendments in response to the requisite number of applications, any convention called in response to applications of state legislatures seeking a convention with a specific agenda is—and was[33]—naturally understood as adopting that specific agenda.

These principles allow for laser-targeting of the Article V convention by the States through agenda limitations specified in the Article V application and delegate instructions. The also allow for numerous enforcement mechanisms to ensure delegates stay on target.

First, the Compact's limitations on delegate authority are enforced by automatic forfeiture of the appointment of all delegates for that Member State if any delegate violates such limitations (*see* Article VI, section 10). Second, the legislature of the respective member state could also immediately recall and replace the runaway delegate (*see* Article VI, sections 3 and 4). Third, if such behavior were disorderly, in addition to all other standard means of maintaining order and enforcing the rules furnished under Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure, the Chair of the Convention could suspend proceedings and the Commission could relocate the Convention as needed to resume proceedings with a quorum of states participating (*see* Article VII, Sections 2, 7 and 8). Fourth, a declaratory judgment ruling all actions of the runaway delegate "void ab initio" and an injunction or temporary restraining order forcing the delegate to cease participation and to return to his or her state capitol would be another option because attorneys general of each member state are required to seek injunctions to enforce the provisions of the Compact (compare Article X, section 3, with Articles VI, sections 6, 7, 10).

These delegate-specific direct enforcement mechanisms are in addition to the following backstop enforcement mechanisms (which every member state attorney general must also enforce): 1) the prohibition on Member States participating in the Convention unless the Compact rules are adopted as the first order of business (Article VIII, section 1(b));

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[31] *See, e.g.*, Journals of the Continental Congress, Proceedings, vol. VI, at 189 (June 1780) (application from New Hampshire); *id.* at 331 (October 1780) (application from New York), available at https://play.google.com/store/books/details?id=QmgFAAAAQAAJ&rdid=book-QmgFAAAAQAAJ&rdot=1

[32] *See, e.g., id.*

[33] Robert Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, Goldwater Institute Policy Report No. 241, at 15-18 (Sept. 16, 2010).

2) the prohibition on transmission of any amendment proposal from the Convention other than the contemplated amendment (Article VII, section 9); 3) the nullification of any Convention proposal other than the contemplated amendment (*Compare* Article VIII, section 2(a), *with* Articles VI, sections 6, 7, 10, and Article VII, section 2); and 4) the disapproval of ratification of any amendment by all Member States other than the contemplated amendment (Article VIII, section 3).

Still, it must be acknowledged that modern legal precedent could be utilized to deny the claim that states have any power to control the Article V convention process. The fractured ruling in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 802 (1995), for example, held that the states retain no Tenth Amendment authority over federal representatives because the Tenth Amendment "could only 'reserve' that which existed before." If the delegates to an Article V convention were somehow deemed "federal representatives," or if the Article V Convention were itself deemed entirely a construct of the Constitution, rather than a codification of interstate convention custom and practice, then this ruling could be utilized by clever attorneys to deny that the states retained power under the Tenth Amendment to target an Article V convention to considering the proposal of a specific amendment.

Likewise, if the Article V application and convention process were somehow analogized to the ratification referral process under Article V, a number of court decisions would allow opponents of the Compact to deny that Tenth Amendment principles support the proposition that the States retained the power to target and control the Article V convention.[34]

Even with respect to claims of state control over the Article V process that are premised entirely on construing Article V in light of historical custom and practice, rather than Tenth Amendment principles, similar trouble could arise from *Cook v. Gralike*, 531 U.S. 510, 520-21 (2001), in which the Supreme Court observed that evidence presented in that case of the role that "instructions played in the Second Continental Congress" and "the Constitutional Convention" fell "short of demonstrating that the people or the States had a right to give legally binding, i.e. nonadvisory instructions to their representatives."

Finally, post-New Deal precedent could be utilized to support the claim that Congress has a role to play in organizing and regulating the convention, which may include the designation of delegates, the convention agenda, and convention logistics, based on Congress's power to call the convention and an expansive interpretation of the implied power authorized by the Necessary and Proper Clause.

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[34] *See, e.g.*, *United States v. Sprague*, 282 U.S. 716, 733 (1931); *United States v. Thibault*, 47 F.2d 169 (2d Cir. 1931); *Opinion of the Justices to the Senate*, 366 N.E.2d 1226 (Mass. 1977); *Dyer*, 390 F. Supp. at 1307.

This is not to say that the foregoing legal arguments should or would prevail. *Gralike*'s observation is pure dicta about the persuasiveness of evidence advanced in a particular case, which has been superseded by the latest research into the field.[35] The various cases rejecting the application of Tenth Amendment principles in the context of the ratification referral process are not controlling because, unlike the application and convention process of Article V, the ratification referral process of Article V is indeed entirely a construct of the federal constitution, over which Congress was delegated discretionary control.

Likewise, *U.S. Term Limits* is distinguishable because, unlike the process of electing congressional candidates, an Article V convention was not meant to be a mere construct of the federal constitution—it was meant to adopt, codify, and regulate the states' pre-constitutional custom and practice of utilizing interstate conventions to propose legal reforms, as exemplified by the Mount Vernon Conference and the Annapolis Convention.

Finally, the Supreme Court's repeated and recent rulings that the principle of state sovereignty, together with the "letter and spirit" of the Constitution, limit the reach of Congress' implied power under the Necessary and Proper Clause,[36] should allow the foregoing arguments to rebut expansive claims of implied congressional "call" authority to regulate the Article V convention. Indeed, it would violate the superfluity canon of construction to construe Article V as impliedly delegating to Congress essentially the same degree of control over the proposal of amendments via the state-initiated convention process as Congress enjoys through its own direct amendment proposal power.

Nevertheless, despite its lack of merit, the view that Congress, not the states, has the power to regulate an Article V convention poses a real litigation risk. Fortunately, the Compact is designed to be fully compatible with even this view. This is because all of its terms and conditions relating to the Article V convention it organizes are adopted and consented to by the counterpart congressional resolution, which bestows upon them the status of federal law under current precedent.[37] Moreover, we can take solace in the fact that the only Supreme Court authority on congressionally-set Article V logistics is a

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[35] *See, e.g.,* Robert Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, Goldwater Institute Policy Report No. 241 (Sept. 16, 2010); Robert Natelson, *Learning from Experience: How the States Used Article V Applications in America's First Century*, Goldwater Institute Policy Brief No. 10-06 (Nov. 4, 2010).

[36] *See, e.g.*, *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S.Ct. 2566, 2601-03 (2012).

[37] *See, e.g.*, *New Jersey v. New York*, 523 U.S. 767, 811 (1988) (holding that congressional approval "transforms an interstate compact within [the Compact Clause] into a law of the United States"); *Bryant v. Yellen*, 447 U.S. 352, 369 (1980); *McKenna v. Washington Metropolitan Area Transit Authority*, 829 F.2d 186 (D.C. Cir. 1987).

plurality opinion that ruled such issues raise non-justifiable political questions, which federal courts will not engage.[38] Of course, it is possible that a lawsuit would be brought before congressional consent is obtained. But it is unlikely such a lawsuit would be ripe enough for judicial resolution. This is because it would be incredibly speculative for anyone to claim a concrete injury from the limited agenda and voting rules of the Compact which do not become before Congress actually calls the convention in accordance with the Compact.

6. Are the States prohibited from joining the Compact before Congress impliedly consents to it in the counterpart congressional resolution?

No. Although Article I, Section 10, of the U.S. Constitution provides that states may not enter into compacts without the "consent" of Congress, the Supreme Court has held for nearly 200 years that congressional consent to interstate compacts can be given expressly or impliedly, both before or after the underlying agreement is reached.[39]

While it is true that the Compact Commission is meant to go live after two states join the Compact (Article IV, section 9), the Compact Commission is purely a logistical entity with no substantive powers whatsoever until Congress consents to the compact in its call. Furthermore, the compact is designed through conditional enactments and express provisions to prevent member states from taking any action in the Article V process that they do not have the inherent power to control independently of Congress, prior to receiving implied congressional consent. For example, the pre-ratification is made subject to a conditional enactment that makes its effectiveness entirely contingent on: a) the convention proposing the balanced budget amendment; and b) Congress selecting legislative ratification of that proposed amendment (see Article IX, section 2). These contingencies obviously may never occur, and if they do not occur, the pre-ratification will never be effective. If the pre-ratification is never effective, the amendment can't trench on Congress' exclusive role in the ratification process or federal budgetary powers. Indeed, because of the foregoing conditional enactment, the ratification will go live (if it ever goes live) only in the precise sequence required by the text of Article V. Moreover, member states are prohibited from participating in the convention organized by the compact before the convention is called by Congress "in accordance with the Compact" (see Article VIII, section 1(a)). Accordingly, there is no reason to conclude that States would be prohibited from joining the Compact before Congress impliedly consents to it in the counterpart congressional resolution.

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[38] *See Coleman v. Miller*, 307 U.S. 433 (1939).

[39] *Cuyler v. Adams*, 449 U.S. 433, 441 (1981); *Wharton v. Wise*, 153 U.S. 155 (1894); *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893); *Green v. Biddle*, 21 U.S. 1, 39-40 (1823).

7. Can the Compact Commission and Administrator organized by the Compact operate before Congress impliedly consents to the compact in the counterpart congressional resolution?

Yes. Prior to Congress consenting to the Compact in its convention call, the Compact Commission and Compact Administrator have only notification, lobbying and litigation defense functions that could otherwise be exercised by each member state separately without a compact. The Supreme Court ruled in *U.S. Steel v. Multistate Tax Commission*, 434 U.S. 452, 459 (1978), that congressional consent is only required for an interstate compact that attempts to enhance "states power quoad [relative to] the federal government." This means that congressional consent is not required for compacts that merely exercise the sovereign powers of the states without purporting to augment those powers relative to those of the federal government. The fact that the Compact Commission or Compact Administrator might bring "strength in numbers" and unity to the States in exercising their powers under Article V that may enhance the political chances of successfully lobbying Congress to fulfill its role in the Article V amendment process is not sufficient to render the compact a threat to federal supremacy, which would trigger the need for congressional consent for them to operate.[40] Consequently, the Compact Commission and Compact Administrator may operate so long as neither purports to exercise any authority infringing on congressional prerogatives, such as convening the Article V convention before the Congressional call is received.

In any event, if a court mistakenly believed the Compact Commission, which is purely a logistical entity exercising sovereign powers that could be independently exercised by member states, required congressional consent to become operative, it would be difficult to see how a court would be able to do more than delay the operations of the Commission until congressional consent was received. This is because, as provided in Article X, section 5, the effective date of any provision in the Compact is the latter of the specified effective date or the earliest date the provision is permitted to become effective by law. At the absolute worst, a court would only have authority to sever the Article creating the Commission, and related contractual provisions, if it followed its obligation under the severance clause of Article X, section 6, to construe the Compact as reciprocal legislation. This is because the remaining articles could all be enacted jointly or independently as free-standing legislation without a compact.

[40] *U.S. Steel*, 434 U.S. at 479 n. 33.

8. Is the President required to appoint with the advice and consent of the U.S. Senate the Compact Administrator and the members of the Compact Commission, which are organized by the Compact?

No. The Compact Commission is populated by appointees of the first three member states, and it may be expanded to include appointees of all member states. It thus constitutes an agency *of the compacting states*, not of the federal government.[41]

9. Is the President required to sign and approve the counterpart congressional resolution calling the Article V convention in accordance with the Compact?

Good question, but no. Presidential presentment is not required for the passage of the counterpart congressional resolution because the president has no role in the proposal of amendments under Article V, which exercises power textually conferred only on state legislatures, state conventions and Congress.[42] Although statutes giving consent to interstate compacts have been presented to the president for signature, this fact should not alter the foregoing conclusion. As with the exercise of power under Article V, the text of the Compact Clause (Article I, Section 10, of the U.S. Constitution) articulates no role for the president in granting consent to interstate compacts, and no case actually holds that congressional consent to an interstate compact requires presidential approval.

Significantly, the Supreme Court has long held congressional consent to interstate compacts can be implied both before and after the underlying agreement is reached.[43] This rule of law treats the consent of Congress very differently from the normal lawmaking process, insofar as laws obviously cannot be enacted by mere implication. It also compels the conclusion that presidential presentment is unnecessary to garner the requisite consent of Congress for an interstate compact. After all, if an actual vote on specific legislation approving a specific interstate compact is not necessary to secure the requisite consent of Congress, it follows that presidential presentment is not necessary.

Prevailing precedent thus justifies concluding that the Compact Clause confers an exclusive power upon Congress to approve interstate compacts that can be exercised without presidential presentment. Moreover, especially with regard to an interstate compact that solely directs and regulates the exercise of amendment powers under Article V, the structure and purpose of the Constitution does not require the president to have the power to veto congressional consent for that compact. This is because the president's role in presentment is to protect the reserved powers of the states as well as

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[41] *Seattle Master Builders v. Pacific Northwest Electric*, 786 F.2d 1359, 1371 (9th Cir. 1986).
[42] *Hollingsworth v. Virginia*, 3 U.S. 378 (1798); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 460 (D.C. Cir. 1982); Special Constitutional Convention Study Committee, American Bar Association, *Amendment of the Constitution by the Convention Method under Article V* 25 (1974).
[43] *Virginia*, 148 U.S. at 521.

to defend the executive and judicial branches from incursions by the federal legislative branch and to act as the representative of people of the nation as a whole.[44] Fulfilling this role does not require the president to have the power to veto an interstate compact originated by the States that regulates the Article V amendment proposal process.

10. Does the Compact violate the rule against entrenchment by refusing to allow the withdrawal of member states after 38 states join it?

No. After 38 states join the Compact, no member state may withdraw without unanimous consent of all member states. In effect, the membership of the compacting state will be entrenched from repeal by future legislatures until the Compact's proposed amendment is ratified. The goal of such entrenchment is to ensure the laser-focus of the Compact on advancing a specific amendment is maintained throughout the amendment process and to guarantee its safeguards remain state law during the entire Article V convention process.

Ordinarily, one legislative body may not entrench its legislation against repeal or modification by future legislative bodies in the same government. However, so long as they are entered into voluntarily and for a discrete purpose that does not substantially impair a state's sovereign power, compacts (like contracts) can and do entrench the decisions of the adopting legislative body under the supremacy of the U.S. Constitution's Contracts Clause, which guarantees contractual obligations against state legislative impairment. As a result, "a state can impose state law on a compact organization only if the compact specifically reserves its right to do so."[45] This has been the law for over 100 years.[46] In the unlikely event that such entrenchment violates a member state's constitution, the Compact's severance clause provides constructional rules that a final judgment should have the effect of severing the offensive provision or causing that member state to withdraw from the Compact.

11. Does it violate separation of powers doctrine for governors to serve as delegates to the Convention organized by the Compact?

No. An Article V convention is not a branch of government, it is a gathering point for representatives of the States—and the governor is the quintessential representative of an entire State. The Compact's default selection of governors as delegates is based on the precedent of Benjamin Franklin, William Livingston and Edmund J. Randolph attending

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[44] *Ins v. Chadha*, 462 U.S. 919, 951 (1983); *Myers v. United States*, 272 U.S. 52, 123 (1926).

[45] *Seattle Master Builders*, 786 F.2d at 1371.

[46] *Dyer v. Sims*, 341 U.S. 22, 28 (1951) ("It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between states by those who alone have political authority to speak for a state can be unilaterally nullified, or given final meaning by an organ of one of the contracting States"); *Kentucky v. Indiana*, 281 U.S. 163, 178 (1930); *Green*, 21 U.S. at 39-42.

the Philadelphia Convention while serving as governors of Pennsylvania, New Jersey, and Virginia. Significantly, governors are required to take a temporary leave of absence while attending the Convention and to not exercise any gubernatorial powers during the Convention. This limitation is intended to avoid any possible separation of powers issue with executive branch officials exercising what might be construed as legislative powers during the Convention, as well as to furnish a political safeguard of having the governor's likely political rival in charge of the state during the convention and able to direct enforcement of the Compact's provisions, which should incentivize governor-delegates to respect the Compact. With respect to governors who leave their home states to attend the convention, this provision is fully consistent with state constitutional provisions providing that when a governor leaves the state, another executive branch official (typically either the Secretary of State or Lieutenant Governor) shall exercise all gubernatorial powers. With respect to any governor who attends the convention in his or her home state, all states allow governors to take a temporary leave of absence due to temporary disability; and most states allow for other grounds for temporary leaves of absence. What constitutes disability or justification for a temporary leave of absence can be defined by state law, and the Compact's requirement that governor-delegates not exercise gubernatorial powers and take a leave of absence while attending the convention would supply an adequate legal definition of disability. As a failsafe to ensure that every member state is represented if their governor is otherwise unable to attend the convention, the Compact allows for the legislative replacement of the governor-delegate for good cause. Finally, the Compact allows member states to modify the provisions appointing governors as delegates if so desired.

12. Is the Compact a prohibited treaty, alliance or confederation?

No. The Compact cannot be classified as a prohibited treaty, alliance or confederation under Article I, Section 10, of the U.S. Constitution because it is a temporary agreement among the states organized to achieve a specific policy objective, using powers retained by or conferred upon its member states under the U.S. Constitution, without displacing or threatening to displace the federal government in any of its assigned functions.

Treaties, alliances and confederations are all types of compacts in the broadest sense of an agreement among sovereigns. But not all compacts are treaties, alliances or confederations. Although Joseph Story, in *Commentaries on the Constitution of the United States*, professed confusion over the difference between compacts and treaties, alliances and confederations in regard to what was permitted or prohibited among the states, suggesting permissible compacts deal with sovereign proprietary rights, and prohibited compacts deal with political issues, courts have subsequently rejected Story's notion that compacts are restricted to sovereign proprietary rights, and there are a number of clear

dividing lines between a permissible compact and a prohibited treaty, alliance and confederation. The Compact does not cross any of those lines.[47]

Most importantly, the Supreme Court has repeatedly emphasized that the prohibition on treaties, alliances and confederations was intended "to restrain state legislation on subjects entrusted to the government of the union, in which the citizens of all the states are interested."[48] As a result, courts have ruled that *only* those compacts "which might limit, or infringe upon a full and complete execution by the General Government, of the powers intended to be delegated by the Federal Constitution" can possibly fall within the

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[47] A compact that concerns purely internal (interstate, not international) matters, like the Compact for a Balanced Budget, is clearly not a prohibited "treaty." The Constitution delegates the power to make treaties exclusively to the President with the advice and consent of the Senate. Nothing in the prohibition on State's power to make treaties suggests a different meaning was to be ascribed to the word "treaty" in the Compact Clause. Further, it is readily apparent from a variety of founding-era sources that the word "treaty" meant and was understood exclusively as an agreement concerning external international matters with foreign nations; these sources include, but are not limited to, Farrand's and Elliot's Reports of Proceedings at the Philadelphia Convention and Federalist Nos. 15, 17, 20, 22, 64, 69, 76, and 80, all of which evidence usage of the term "treaty" to mean a compact of a very specific type—a compact among independent "nations" addressing external, international affairs, like war, peace or free trade. The Constitution's prohibition on States making treaties should therefore be construed as a corollary to the provision delegating such power exclusively to the President and the Senate. There is no case law even remotely suggesting that a compact concerning internal national and interstate matters would ever be construed as a prohibited "treaty." Furthermore, a compact that is temporary in duration, primarily aimed at a specific policy objective, and executable on its own terms upon formation is simply not what the Founders would have regarded as a prohibited "treaty," "alliance" or "confederation." This conclusion stems from the fact that the distinction between permissible and prohibited compacts, stems from Emmerich de Vattel's distinction in the Law of Nations between those sovereign agreements, which have temporary specific policy matters for their objective, "called agreements, conventions, and pactions," which are executable upon their own terms, and those sovereign agreements, called "in Latin foedus," that are indefinite or perpetual in duration and primarily aimed at securing political goals, which are prohibited. *U.S. Steel*, 434 U.S. at 462 n.12. Like a "paction" and unlike a "foedus," the Compact is not a perpetual political organization that aims at advancing the public welfare. The Compact is an agreement among the states to advance the specific policy objective of originating and ratifying a constitutional amendment. As could be replicated entirely by reciprocal legislation, it consolidates the necessary state legislation to accomplish this objective and organizes an interstate agency to handle logistics in a single bill, which is fully executable on its own terms. Any member state can withdraw from the compact at any time through appropriate legislation until 38 states join the compact; at which time, the compact is designed to quickly accomplish its goal of amending the constitution within one year. The compact commission sunsets and the Compact itself terminates when the proposed constitutional amendment is ratified. And in the event the contemplated amendment is not ratified within seven years after the first state joins the Compact, the Compact will terminate on its own terms. In short, the compact shares all of the essential features of a "paction" and none of a "foedus."

[48] *Barron v. Baltimore*, 32 U.S. 243, 249 (1833).

class of prohibited treaties, alliances and confederations.[49] In other words, compacts that reach agreement on the exercise of powers that States are entitled to exercise independently from the federal government, which are neither expressly prohibited to the States nor exclusively reserved to the federal government, are definitely *not* prohibited treaties, alliances or confederations.[50] At most, such a compact might trigger the need for congressional consent if they "tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their control."[51]

Because the Constitution preserves and confirms the States' pre-existing sovereign power to organize interstate conventions, such as a convention for proposing amendments under Article V, there is nothing impermissible about the States utilizing an interstate compact to reach agreement on the exercise of such power.[52] Moreover, to the extent that the provisions of the Compact presuppose congressional action in calling the convention it organizes and referring for ratification the balanced budget amendment it contemplates, the effectiveness of those provisions is made wholly contingent on Congress first calling the convention in accordance with the Compact and prospectively referring the contemplated balanced budget amendment out for legislative ratification. The Compact for a Balanced Budget is therefore clearly differentiated from prohibited treaties, alliances and confederations in so far as the Compact does not displace the federal government in any of its assigned functions; and simply wields powers either exclusively or concurrently committed to the States under the U.S. Constitution, in precisely the manner the Founders intended, with all requisite congressional consent.

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[49] *See, e.g.*, *Union Branch R. Co. v. East Tennessee & G. R. Co.*, 14 Ga. 327, 339 (1853).

[50] *See State of Rhode Island v. Com. of Massachusetts*, 37 U.S. 657 (1838); *Poole v. Fleeger's Lessee*, 36 U.S. 185 (1837) (Baldwin, J., concurring).

[51] *Virginia*, 148 U.S. at 518.

[52] Although other states and the federal government may have an "interest" in the subject matter of the compact, such an interest does not render the compact a prohibited treaty, alliance or confederation when the compact simply effectuates powers retained by or conferred on the member states, which could be exercised in precisely the same way independently. *U.S. Steel*, 434 U.S. at 479 n. 33.

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Fact Sheet: How Compact for America's Sixteen Safeguards Safely Regulate the Origination of a Balanced Budget Amendment

The Compact for America is our best hope for safely ratifying a powerful Balanced Budget Amendment that could save us and our kids from a mortgaged future.

The Compact fully structures, codifies and regulates the state-initiated constitutional amendment process under Article V of the U.S. Constitution to ensure the process efficiently, safely and exclusively advances a specific Balanced Budget Amendment proposal—much like a ballot measure directed to state legislators, governors and Congress.

Safeguard #1: Overwhelming Political Will. The Compact for America ensures the convention for proposing the BBA will be organized **only if** 38 states join the compact, **only if** Congress calls the convention in accordance with the Compact, and **only** if the convention is organized within one year of the passage of the Congressional resolution. This ensures that nothing happens until a supermajority of states and a majority of federal representatives line up and manifest overwhelming, contemporaneous political will behind its rules and limited BBA agenda in advance. Deviating from the Compact would be political suicide for anyone who tried.

Safeguard #2: Convention Processes and Logistics are Fully Codified and Regulated. The Compact specifies the convention location, agenda, committee structure, and rules; codifying them to ensure the Initiative advances solely the BBA it specifies.

Safeguard #3: The CFA is Constitutionally-Protected Binding State and Federal Law. Because the convention is not organized until Congress calls it in accordance with the Compact, the Compact's rules and limited agenda will obtain the status of both state and federal law, the obligation of which is guaranteed under the Constitution's Contracts Clause under current U.S. Supreme Court precedent. Any deviation from the Compact will be, on its face, illegal and unconstitutional unless proponents of the deviation succeed in overturning decades and centuries-old legal precedent.

Safeguard #4: Political Ambition of Aspiring Governors. The Compact designates sitting governors as sole delegates for member states and requires governor-delegates who attend the convention to take a temporary leave of absence from their gubernatorial office while at the convention, leaving their likely political rivals in charge of the state and able to direct efforts to enforce the Compact as needed.

Safeguard #5: Convention Cannot Proceed Unless Agenda Limited to BBA. The Compact designates and instructs member state delegates from 38+ states to vote into place its rules and limited BBA agenda for the convention **as the first order of business** or else to return home without participating in the convention.

Safeguard #6: Nullification of Unauthorized Delegate and Member State Actions. The Compact deems *void ab initio* any action by any member state delegate or member state at the convention that deviates from its rules and agenda.

Safeguard #7: Automatic Recall of Rogue Delegates. The Compact automatically terminates and recalls any member state delegate who deviates from its rules and agenda.

Safeguard #8: Automatic Disqualification of Rogue States. The Compact disqualifies the vote of any member state whose delegates deviate from its rules and agenda.

Safeguard #9: State Legislatures Can Recall Rogue Delegates. The Compact empowers state legislatures to recall delegates for good cause.

Safeguard #10: Time Limited Convention. The Compact limits the convention to a single 24 hour session.

Safeguard #11: Prohibition on Advancing Unauthorized Proposals. The Compact prohibits every member state and all of its residents from materially advancing any unauthorized proposal.

Safeguard #12: Nullification of Unauthorized Convention Proposals. The Compact deems *void ab initio* any convention activity or proposal that deviates from its limited agenda and rules.

Safeguard #13: Prohibition on Ratification of Unauthorized Proposals. The Compact bars every member state from ratifying any convention proposal other than the BBA it specifies.

Safeguard #14: Mandatory Compact Enforcement by State Attorney Generals. The Compact empowers and requires attorneys general in all 38+ member states to secure an injunction to enforce its terms if the Compact is violated. Governor-delegates who violate the Compact serve up a political opportunity on a silver platter.

Safeguard #15: Competent Venue Selected for Compact Litigation. The Compact requires all litigation to take place in the U.S. Court of Appeals for the 5th Circuit or in Texas state courts.

Safeguard #16: Commission Intervention. The Compact empowers an interstate commission populated by the states to relocate the convention if it deviates from the Compact.

From any vantage point, the Compact for America Initiative is a safe and effective means of restoring our Nation and protecting our Liberty. Learn more at www.compactforamerica.org

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Fact Sheet: Why Compact for America's Balanced Budget Amendment is Our Best Hope for the Future

The Compact for America is our best hope for ratifying a Balanced Budget Amendment that could save us and our kids from a mortgaged future.

Debt is the problem. More than any other policy, unlimited debt spending is the source and enabler of an ineffective, overstretched and overreaching federal government. Throttling back limitless debt spending will create a structure that forces a debate over the proper priorities and sustainable functions of the federal government that will otherwise be easily evaded.

CFA's BBA will not be gamed. The CFA's BBA is uniquely effective because it requires total expenditures, broadly defined, never to exceed total receipts, defined narrowly to include tax receipts or their equivalent and to exclude proceeds from debt financing, trillion dollar coins, etc. This definition of "balance" cannot be gamed because its effectiveness is not dependent on budget estimates that can be cooked; likewise, cash or accrual accounting gimmicks such as delays in paying amounts due or floating checks cannot alter its hard and fast requirement of a perfect balance between spending and receipts at all times. The only exception from the BBA's strict requirement that spending not exceed receipts is that any gap must be financed exclusively by full faith and credit debt, i.e. treasury bonds, which is subject to a hard constitutional limit that can only be increased with the approval of a majority of state legislatures. Far from being a deviation from the principles of a balanced budget amendment, we have discovered that there is no way to have a truly non-gameable definition of a balanced budget without this sort of debt cushion to handle volatility and mismatches from day to day between revenues and spending. A revolving line of credit, so to speak, is the price of a definition of a balanced budget that cannot be gamed. Enforcing a balanced budget that channels any borrowing exception to transparent bonding, which is subject to a hard constitutional limit on the amount of credit available, is far better than the status quo of limitless borrowing coupled to budgetary gamesmanship.

State approval restores a missing check and balance. By requiring state legislative approval of any increase in the federal debt above a hard constitutional debt limit, the CFA's BBA restores a modest portion of the original power states had to check and balance Washington when the Constitution was originally ratified, while targeting the state's engagement to a clear problem area, much like we expect a board of directors to intervene in a mismanaged business.

State approval will help fix the debt. State legislative approval of increases in the federal debt decentralizes power and encourages a truly nationwide debate over debt policy. This will limit abusive increases in the federal debt more so than leaving debt policy in the hands of Congress, the President, and the concentrated interests that dominate Washington. Moreover, the CFA's BBA prohibits *quid pro quo* trades of state approval for federal spending or tax increases. Any attempt to do so jeopardizes the approval process and could render the approved increase in debt void. This will be a powerful incentive for states not to abuse their restored role in debt policy.

Presidential impoundment is a balanced enforcement measure. Giving the President the power to impound spending to enforce a debt limit, subject to override within 30 days by

Congress proposing alternative impoundments, is far less power than the line item veto that is already common in most states. It does not radically shift power to the President because the power to impound spending is implicated only if the nation continues to borrow money up to the BBA's debt limit. Congress is fully in charge of whether the President ever has the power to impound anything because Congress still controls the appropriations process in the first place. This is why the CFA's BBA strikes the right balance.

Fixing the debt is good public policy. There is no trade-off between holding the line on taxation and enforcing a BBA because **debt is taxation**. It is taxation in the form of inflation because debt increases the money supply, generating a price level that is necessarily higher than it would otherwise be. Debt is also taxation for future generations who are stuck with the bill for our current spending—assuming the debt is repaid. Limiting debt therefore limits taxation. At worst, a BBA forces a choice between taxes today or taxes tomorrow. And if we have to choose, it is better to choose taxes today instead of taxes tomorrow because there is no effective political check on shifting the costs of our policies to non-voting future generations. This is why the BBA's hard debt limit is good public policy.

CFA's BBA will generate better tax policy. Tax policy with the CFA's BBA in place would be far better than under the status quo. The requirement of supermajority approval for general tax increases, with simple majority approval retained for completely junking the income tax code in favor of a sales tax, or eliminating exemptions, deductions and credits, is a powerful force for reforming our tax code. It forces nearly any attempt to raise taxes to do so either in a more voluntary manner through a sales tax, or more fairly through a flatter income tax; both of which are more conducive to economic growth. This is why the CFA's BBA is far better than the status quo of class warfare tax increases under the current regime.

CFA's BBA is a spending limit. Finally, the CFA's BBA is a spending limit as much as a debt limit because spending cannot exceed tax receipts or the equivalent, and cannot be funded by proceeds of borrowing (above a hard debt limit), much less by simply minting new trillion dollar coins or printing money. The status quo affords no such protection from such limitless spending.

The Compact for America Initiative is a safe and effective means of restoring our Nation and protecting our Liberty. Learn more at www.compactforamerica.org

McLaughlin & Associates

To: Chip DeMoss: Chairman/CEO – Compact for America
From: John McLaughlin
Re: National Survey – Executive Summary
Date: January 14, 2013

Survey Summary: Six in ten voters favor a balanced budget amendment and at least 70% favor Compact for America's specific and common sense proposals to rein in the federal deficit. These survey results demonstrate that Compact for America has the potential to obtain broad support.

- ✓ After being probed about the failed leadership in Washington and the fiscal instability of the United States, 62% favor a constitutional amendment to balance the federal budget annually, while 24 oppose. Intensity is strong among those who favor the amendment, 41% strongly favor to 21% somewhat favor.

President Obama and Congress have failed to provide leadership, which is causing gridlock and partisanship in Washington and has made it impossible to pass meaningful legislation to balance the federal budget. Currently, the United States is borrowing over 40 cents on every dollar it spends and the credit of the United States has been downgraded for the first time in history. Knowing all of this, would you favor or oppose a constitutional amendment that would require the President and Congress to operate the federal government under an annual balanced budget?

	TOTAL
Favor	**62%**
Strongly Favor	41%
Somewhat Favor	21%
Oppose	**24%**
Somewhat Oppose	9%
Strongly Oppose	15%
DK/Refused	**13%**

More specifically, please tell me if you would favor or oppose each of the following provision in a balanced budget amendment.

	Favor/Oppose
Requiring a roll call vote by each member of Congress when a tax increase is proposed.	**81%/11%**
Limiting the amount of money the federal government can borrow.	**75%/20%**
Prohibiting the federal government from spending more than it takes in each year.	**72%/22%**
Requiring the President to make the appropriate spending cuts to remain within the debt limit when Congress is unable to borrow more money or raise additional taxes.	**72%/18%**
Cutting spending **FIRST** before taxes are raised or additional money is borrowed if the federal government spends more than it takes in.	**71%/21%**

Methodology: This national survey of 1,000 likely general election voters was conducted on from June 10th – June 12th, 2012. All interviews were conducted via telephone by professional interviewers. Interview selection was random within predetermined geographic units. These units were structured to correlate with actual voter distributions in a nationwide general election. This national survey of 1,000 likely general election voters has an accuracy of +/- 3.1% at a 95% confidence interval.

919 Prince Street * Alexandria, Virginia 22314 * Phone: 703-518-4445 * FAX: 703-518-4447
566 South Route 303 * Blauvelt, NY 10913 * Phone: 845-365-2000 * FAX: 845-365-2008
www.mclaughlinonline.com

Originating a BBA via Article V - Key Decision Point Matrix

Decision Point	Drafting Convention Approach (COS & BBATF)	Specific Amendment Approach (CFA)	Risk-Minimized Approach
1 Method used to organize the states	None	An interstate compact agreement	CFA
2 Has the approach been successfully completed before?	No	Article V - no Interstate compacts - yes, over 200 compacts are currently in existence and most states are members of 20+ compacts	CFA
3 What is the timeframe to complete the process?	7-10 years	12-24 months	CFA
4 Who controls the process?	It is unclear	The states instruct the delegates through the compact, the delegates vote in the rules, and Congress consents to the process	CFA
5 What is the envisioned convention duration?	6-12 months	24 hours	CFA
6 Is the amendment language known in advance?	No - only convention scope limitation is addressed	Yes - amendment language is pre-drafted at the start of the process and known to all	CFA
7 How many committees/subcommittees will be required?	Possibly 50 or more	1	CFA
8 How many legislative actions are required?	83-150+ (low-end assumes barebones approach & 17 BBA apps; high-end replicates CFA features)	39 (38 state actions and 1 Congressional action)	CFA
9 Will approach address the objectives of COS, BBATF, CFA, and NDRA?	Unknown	Yes	CFA
10 Can the approach be easily repeated in the future?	No	Yes	CFA
11 Is there a binding agreement among the states?	No	Yes	CFA
12 Do convention rules favor the several states?	Unknown	Yes	CFA
13 Are the concerns of the Eagle Forum resolved?	No	Yes	CFA
14 Are there gaps left to be filled by Congress?	Yes	No	CFA
15 Are new applications required?	Yes	Yes	Both
16 Will state supervision of the federal debt limit be proposed?	Unknown	Yes	CFA
17 Who votes, each state or a Congress-sized delegation?	Unknown	Each state gets one vote	CFA
18 What are the funding requirements?	$100 million	$25 million	CFA
19 Is the entire process approved by Congress upfront?	No	Yes	CFA
20 What is the risk of opponents derailing the process?	Very high due to the number of legislative actions required and the extended timeframe	Moderate	CFA
21 Is the delegate selection process known upfront?	Maybe	Yes	CFA
22 Are the delegates known in advance?	Maybe	Yes	CFA
23 Are the delegates' actions restricted upfront?	Maybe	Yes	CFA
24 Does the approach reciprocally obligate the states to each other?	No	Yes	CFA

Article V:
One Amendment Power, Initiated Two Ways

- 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 the one or the other Mode of Ratification may be proposed by the Congress;

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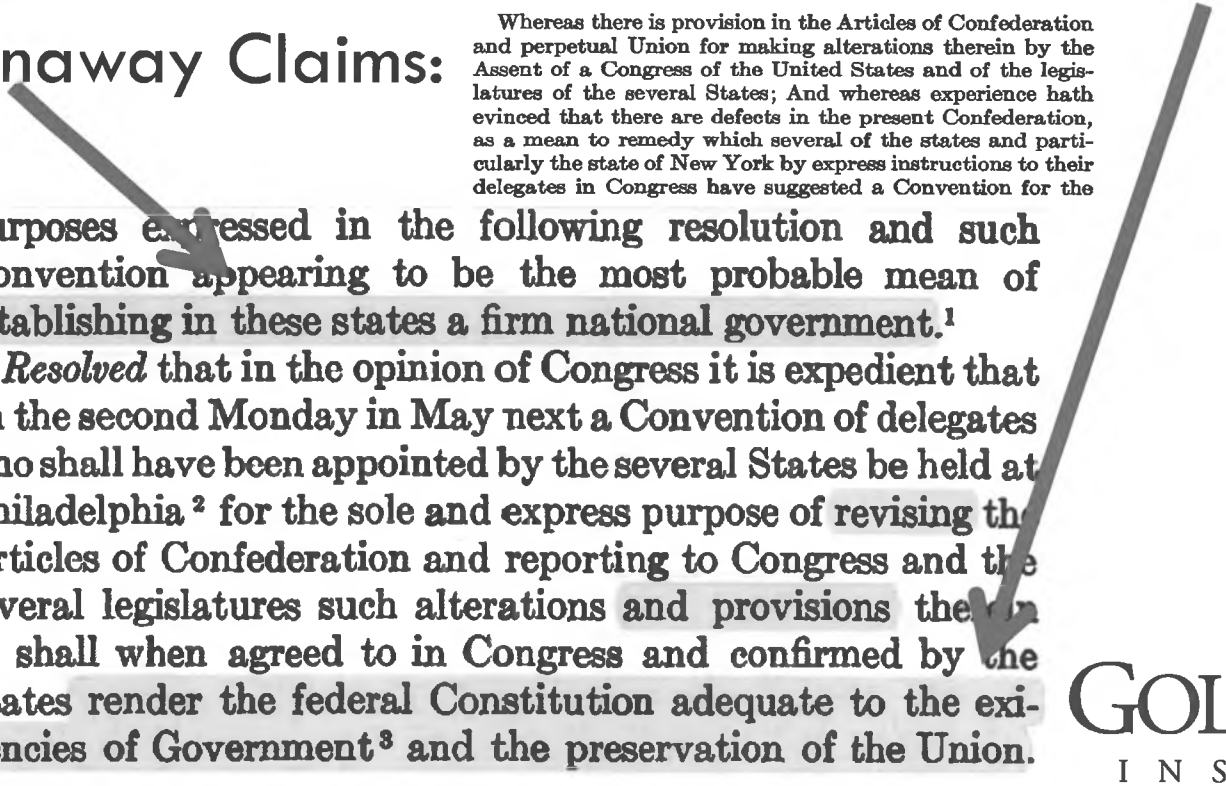
Busting the Myth of the Runaway Philadelphia Convention

- Articles of Confederation were already breached and non-binding on the States.
- James Madison in Federalist No. 40 Refutes Runaway Claims:



Whereas there is provision in the Articles of Confederation and perpetual Union for making alterations therein by the Assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the states and particularly the state of New York by express instructions to their delegates in Congress have suggested a Convention for the purposes expressed in the following resolution and such Convention appearing to be the most probable mean of establishing in these states a firm national government.[1]

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several States be held at Philadelphia[2] for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government[3] and the preservation of the Union.

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George Washington's Promise 1788

- "It should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States."
- George Washington did not tell a lie.

Nick Dranias, Goldwater Institute Constitutional Policy Director,
ndranias@goldwaterinstitute.org

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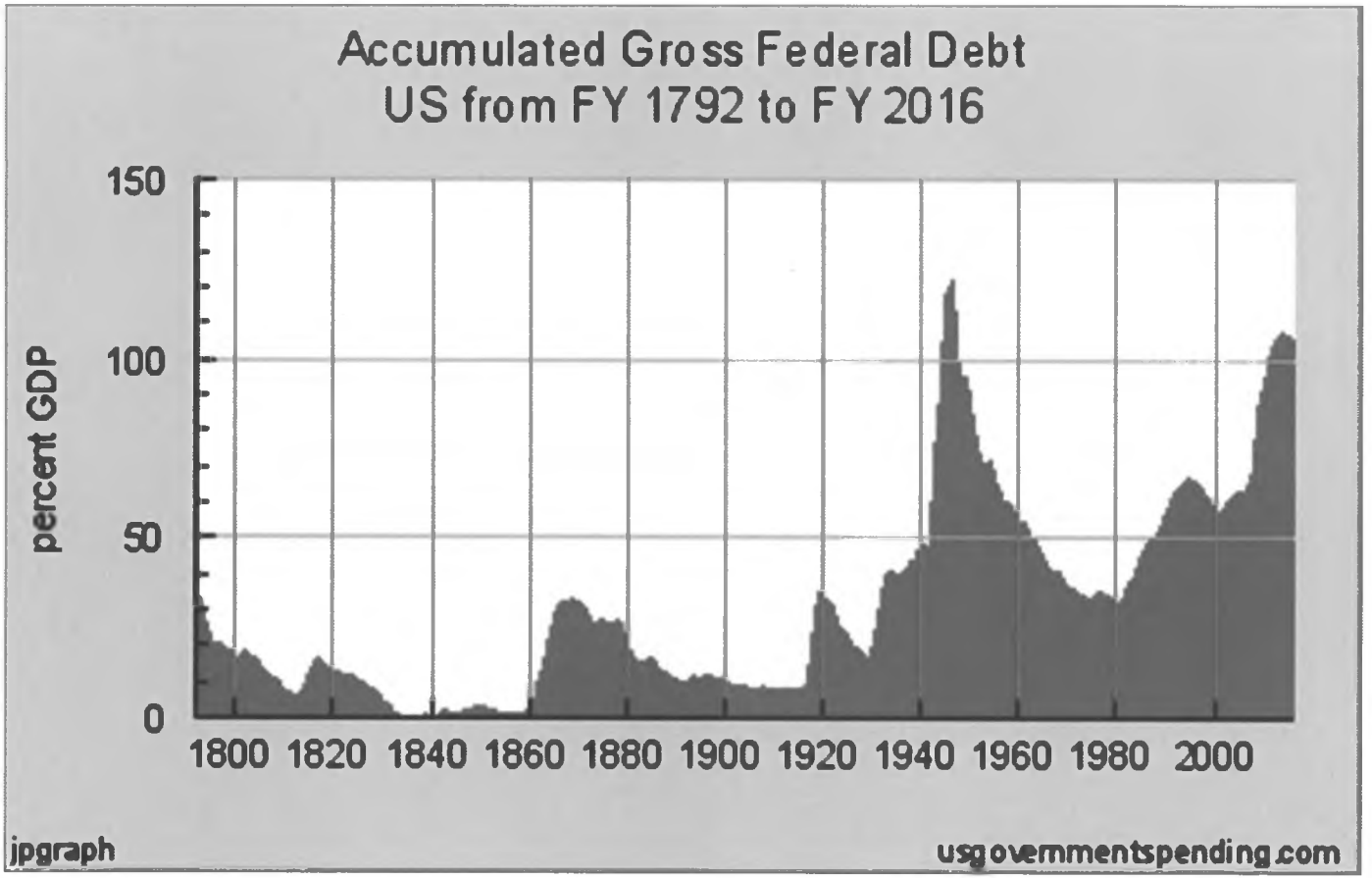
Your Future is at Stake



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What Would TJ do?

- "I wish it were possible to obtain a single amendment to our constitution; I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its constitution. I mean an additional article taking from the federal government the power of borrowing."

Nick Dranias, Goldwater Institute Constitutional Policy Director,
ndranias@goldwaterinstitute.org

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The **Plausible** Solution to our National Debt Problem

McLaughlin & Associates: "Six in ten voters favor a balanced budget amendment and at least 70% favor Compact for America's specific and common sense proposals to rein in the federal deficit. These survey results demonstrate that Compact for America has the potential to obtain broad support."

THE BALANCED BUDGET AMENDMENT

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

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

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

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

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

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

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

- Section 1: Federal spending is limited to tax cash flow with the sole exception of borrowing under the debt limit specified in Section 2.
- Section 2: The federal government's currently unlimited borrowing capacity is limited to 105% of the total outstanding debt.
- Section 3: A referendum of state legislatures is required to approve any increase in the debt limit set by Section 2. This provides flexibility for emergencies but ensures the federal debtor will no longer have the unilateral power to set its own credit limit.
- Section 4. The President or Congress are required to enforce the debt limit set by Section 2 by designating necessary delays in spending months in advance of reaching that limit. If neither acts, spending will be limited to tax cash flow (per Section 1) when the debt limit is reached. The President could be impeached for failing to act. Illegal debt is deemed void.
- Section 5. Simple majority approval of taxes is limited to: 1) the replacement of all income taxes with a non-VAT sales tax; 2) the elimination of tax loopholes; and 3) new or increased tariffs and fees. Congress will be forced to run through a narrow gap defended by powerful special interests. This will cause deficits to be closed by spending cuts first.
- Section 6. Definitions are carefully crafted to maximize transparency and eliminate all known tactics used to circumvent constitutional debt limits.

Nick Dranias, Goldwater Institute Constitutional Policy Director,
ndranias@goldwaterinstitute.org

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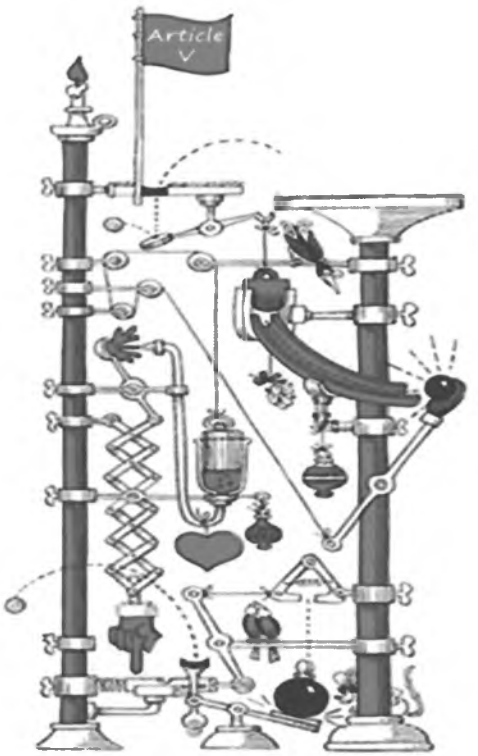
Patrick Henry had a point…

- 100+ legislative acts required
  - 34 state applications
  - 1 congressional call
  - >26 delegate appointments
  - 1 congressional referral
  - 38 ratifications



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The Compact Approach to Article V

State Compact

- A2 Proposed amendment
- A4 Compact Commission
- A5 Application to Congress
- A6 Delegate appointment
- A7 Convention rules
- A8 Scope limitations
- A9 Ratification

COMPACT FOR AMERICA

Congressional Resolution

- S1 Call
- S2 Ratification referral

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The **Complete** Risk Analysis

Extreme Danger of Status Quo

- The status quo is a runaway convention in Washington.
- Keeping the locus of power in Washington will eventually destroy the Constitution.
- Not using Article V is unilateral disarmament.

Extreme Safety of Compact

- No convention is ever convened before 38 states and simple majorities of Congress settle their differences and agree on the Compact.
- All of Eagle Forum's famous 20 questions about the Article V amendment process have been answered.
- Not a single delegate of a single member state can participate in the convention the Compact organizes unless the rules specified in the Compact are adopted as the **first** order of business.
- The power of nullification is used to deem "void ab initio" any runaway convention and any runaway proposal.
- Compact self-repeals in seven years.

Nick Dranias, Goldwater Institute Constitutional Policy Director,
ndranias@goldwaterinstitute.org

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POLICY report

Goldwater Institute

No. 257 | April 23, 2013

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

By Nick Dranias, esq., Director of Policy Development and Constitutional Government

EXECUTIVE SUMMARY

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

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

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

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Introduction

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

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

Chart 1 (Actual and Projected Gross Federal Debt)[1]

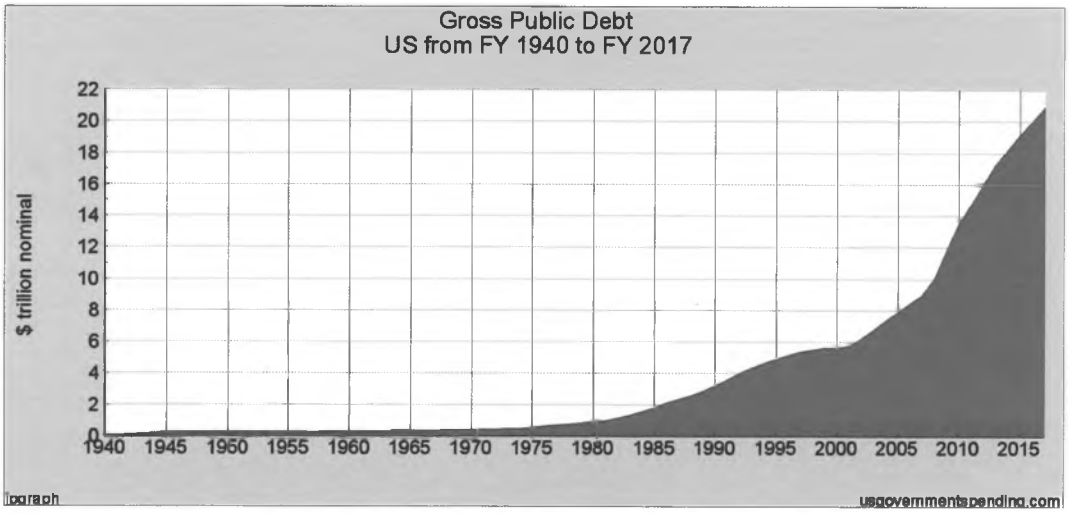
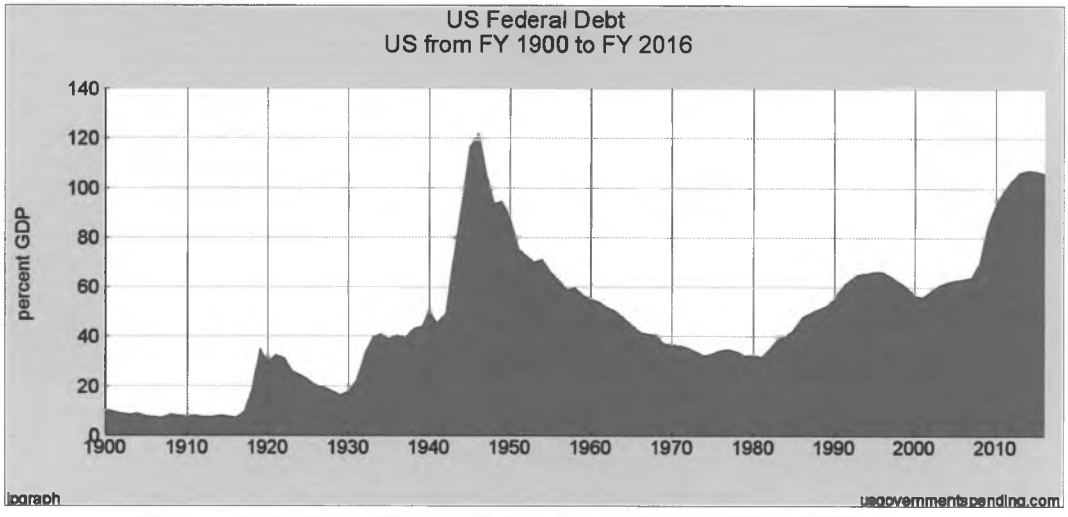


Chart 2 (Actual and Projected Gross Federal Debt compared to GDP)[2]



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

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

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

The fundamental problem is that the country faces an overconcentration of power in Washington, D.C. that enables limitless amounts of debt. That power is easily leveraged by special interests to enrich themselves at the expense of current and future generations.

Overview of the CFA Vehicle

The Compact for America (CFA) is the delivery vehicle for a powerful Balanced Budget Amendment. Understanding why the CFA is the best vehicle for advancing a BBA first requires a "50,000 foot" view of its structure and the constitutional amendment process it sets in motion. The CFA is an agreement among the states to use their sovereign power under Article V of the U.S. Constitution, which authorizes states to originate constitutional amendments by applying to Congress to call a convention for proposing amendments. In the absence of the CFA approach, the ordinary "plain vanilla" amendment-by-convention process under Article V would have no fewer than five essential state and federal legislative components—an "application" for a convention that would require passage by 34 state legislatures, a convention "call" that would require passage by Congress, convention delegate appointment and instruction legislation by at least 26 states, a "referral" of any amendment proposed by the convention that would require passage by Congress, and a "ratification" that would require passage by legislatures or conventions in at least 38 states. By contrast, the CFA has only two essential legislative components—the state compact[3] and a counterpart congressional omnibus concurrent resolution.[4]

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

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

In contrast to the ordinary Article V legislative process, the CFA is a turn-key approach to amending the constitution by convention.

The CFA's Secret Ingredient

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

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

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

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

Overview of the Compact for America Balanced Budget Amendment

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

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

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

The CFA BBA also recognizes that our national debt primarily represents a spending problem, but one that may nevertheless require new revenues. To protect against across-the-board tax increases, the BBA requires any new or increased income or sales tax to secure two-thirds approval of both houses of Congress.

Why the CFA BBA Would Be Uniquely Effective

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

With only one exception, the CFA BBA requires total federal outlays *never* to exceed total receipts at *any point in time*.[19] The required balance between outlays and receipts is thus based on the federal government's actual cash flow, rather than depending on budgeting estimates that can be cooked. Moreover, to further prevent gamesmanship, the BBA narrowly defines total receipts to exclude proceeds from the incurrence of debt and all types of liability. This means that federal outlays cannot be supported by floating short-term obligations (like the IOUs and warrants recently used by California or Illinois), delaying payment of amounts due (called "rollovers"), or by merely printing or minting money (like the proposed $1 trillion coin[20]). Nor can federal outlays be supported by raiding trust funds, such as the Social Security trust fund. This is because these tactics all involve efforts to support outlays with proceeds from the incurrence of debt or liabilities and, therefore, they would be excluded from the BBA's definition of "total receipts" to which total federal outlays would be restricted.[21]

There is no point in having a theoretical balanced budget requirement or debt limit. A fundamental problem with the debt limits and balanced budget requirements of all 49 states is that creative legislatures and executives have found ways around them.

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

Why the CFA BBA is Good Policy

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

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

The CFA BBA Rightly Restores Relevance to the States

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

Rather than returning the states to their original role wholesale, the BBA prudently targets the state's renewed engagement in federal policy to a clear problem area, much like we expect a board of directors to intervene in a mismanaged business.

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

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

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

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

State Approval is Sufficiently Flexible

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

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

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

Debt Limits are Tax Limits

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

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

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

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

The CFA BBA Can Save the Dollar

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

The CFA BBA also enables Keynesians, on the Left, and Monetarists and Austrians, on the Right, to unite on saving the dollar.

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

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

Presidential Impoundment is a Balanced Enforcement Measure

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

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

The CFA is designed to organize an Article V convention that stays laser-focused on the limited agenda of advancing the foregoing BBA.

The CFA Safely Wields Article V to Advance a BBA

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

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

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

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

- **Safeguard #1:** Overwhelming Political Will. The Compact for America ensures the convention for proposing the BBA will be organized only if 38 states join the compact,[30] only if Congress calls the convention in accordance with the Compact,[31] and only if the convention is organized within one year of the passage of the Congressional resolution.[32] This ensures that nothing happens until a supermajority of states and a majority of federal representatives line up and manifest overwhelming, contemporaneous political will behind its rules and limited BBA agenda. Deviating from the Compact would be political suicide for anyone who tried.

- **Safeguard #2:** Convention Processes and Logistics are Fully Codified and Regulated. The Compact specifies the convention location, agenda, committee structure, and rules, codifying them to ensure the Initiative advances solely the BBA it specifies.[33]

- **Safeguard #3:** The CFA is Constitutionally Protected, Binding State and Federal Law. Because the convention is not organized until Congress calls it in accordance with the Compact, the Compact's rules and limited agenda will obtain the status of both state and federal law, the obligation of which is guaranteed under the Constitution's Contracts Clause under current U.S. Supreme Court precedent. Any deviation from the Compact will be, on its face, illegal and unconstitutional unless proponents of the deviation succeed in overturning decades- and centuries-old legal precedent.

- **Safeguard #4:** Political Ambition of Aspiring Governors. The Compact designates sitting governors as sole delegates for member states and requires governor-delegates who attend the convention to take a temporary leave of absence from their gubernatorial office while at the convention, leaving their likely political rivals in charge of the state and able to direct efforts to enforce the Compact as needed.[34]

- **Safeguard #5:** Convention Cannot Proceed Unless Agenda Limited to BBA. The Compact designates and instructs member-state delegates from 38+ states to vote into place its rules and limited BBA agenda for the convention as the first order of business, or else return home without participating in the convention.[35]

- **Safeguard #6:** Nullification of Unauthorized Delegate and Member State Actions. The Compact deems void ab initio any action by any member-state delegate or member state at the convention that deviates from its rules and agenda.[36]

- **Safeguard #7:** Automatic Recall of Rogue Delegates. The Compact automatically terminates and recalls any member-state delegate who deviates from its rules and agenda.[37]

In total, the CFA has 16 mutually reinforcing safeguards, consisting of both direct legislation and carefully calibrated political incentives.

- **Safeguard #8:** Automatic Disqualification of Rogue States. The Compact disqualifies the vote of any member state whose delegates deviate from its rules and agenda.[38]

- **Safeguard #9:** State Legislatures Can Recall Rogue Delegates. The Compact empowers state legislatures to recall delegates for good cause.[39]

- **Safeguard #10:** Time-Limited Convention. The Compact limits the convention to a single 24-hour session.[40]

- **Safeguard #11:** Prohibition on Advancing Unauthorized Proposals. The Compact prohibits every member state and all of its residents from materially advancing any unauthorized proposal.[41]

- **Safeguard #12:** Nullification of Unauthorized Convention Proposals. The Compact deems void ab initio any convention activity or proposal that deviates from its limited agenda and rules.[42]

- **Safeguard #13:** Prohibition on Ratification of Unauthorized Proposals. The Compact bars every member state from ratifying any convention proposal other than the BBA it specifies.[43]

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

- **Safeguard #14:** Mandatory Compact Enforcement by State Attorneys General. The Compact empowers and requires attorneys general in all 38+ member states to secure an injunction to enforce its terms if the Compact is violated.[44] Governor-delegates who violate the Compact serve up a political opportunity on a silver platter.

- **Safeguard #15:** Competent Venue Selected for Compact Litigation. The Compact requires all litigation to take place in the U.S. Court of Appeals for the 5th Circuit or in Texas state courts.[45]

- **Safeguard #16:** Commission Intervention. The Compact empowers an interstate commission populated by the states to relocate the convention if it deviates from the Compact.[46]

Why the CFA's Laser Focus is Clearly Constitutional

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

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

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

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

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

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

Article V Does Not Authorize a Revolutionary People's Convention

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

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

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

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

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

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

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

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

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

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

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

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

Article V Does Not Authorize a Congressional Convention

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

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

At the time the U.S. Constitution was proposed for ratification, the Founders repeatedly represented to the public that any future Article V convention would be constituted by

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

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

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

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

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

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

An Article V Convention is Properly Organized by an Interstate Compact

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

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

Why the CFA is our Best Hope

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

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

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

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

Although congressional passage of the omnibus concurrent resolution is necessary for the Compact to work as designed, such passage requires fewer votes than the two-thirds of each house of Congress otherwise required for a direct proposal of a constitutional amendment.

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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3. App. A.

4. App. B.

5. *Id.,* art. V, VI, VII, IX.

6. App. B, tit. I, II.

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

8. *See, e.g.,* Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act; Northeast Interstate Dairy Compact.

9. *See, e.g.,* Micronesia, Marshall and Palau Implementation of Compact of Free Association Between the United States and Palau; Jennings Randolph Lake Project Compact; Interstate Compact on Licensure of Participants in Live Racing with Parimutuel Wagering; Interstate Compact on Juveniles.

10. *See, e.g., Marshall Field & Co. v. Clark,* 143 U.S. 649 (1892); Opinion of the Justices, 287 Ala. 326 (1971); *Thalheimer v. Board of Supervisors of Maricopa County,* 11 Ariz. 430, 94 P. 1129 (Ariz. Terr. 1908); *Thomas v. Trice,* 145 Ark. 143 (1920); *Busch v. Turner,* 26 Cal. 2d 817 (1945); *People ex rel. Moore v. Perkins,* 56 Colo. 17 (1913); *Pratt v. Allen,* 13 Conn. 119 (1839); *Rice v. Foster,* 4 Harr. 479 (De. 1847); *Opinion to the Governor,* 239 So. 2d 1 (Fla. 1970); *Henson v. Georgia Industrial Realty Co.,* 220 Ga. 857 (1965); *Gillesby v. Board of Commissioners of Canyon County,* 17 Idaho 586 (1910); *Wirtz v. Quinn,* 953 N.E.2d 899 (Ill. 2011); *Lafayette, M&BR Co. v. Geiger,* 34 Ind. 185 (1870); *Colton v. Branstad,* 372 N.W. 2d 184 (Iowa 1985); P*hoenix Ins. Co. of N.Y. v. Welch,* 29 Kan. 672 (1883); *Walton v. Carter,* 337 S.W. 2d 674 (Ky. 1960); *City of Alexandria v. Alexandria Fire Fighters Ass'n, Local No. 540,* 220 La. 754 (1954); *Smigiel v. Franchot,* 410 Md. 302 (2009); *Howes Bros. Co. v. Mass. Unemployment Compensation Commission,* 296 Mass. 275 (1936); *Council of Orgs. & Ors. For Educ. About Parochiaid, Inc. v. Governor,* 455 Mich. 557 (1997); *State v. Cooley,* 65 Minn. 406 (1896); *Schuller v. Bordeaux,* 64 Miss. 59 (1886); *In re O'Brien,* 29 Mont. 530 (1904); A*kin v. Director of Revenue,* 934 S.W.2d 295 (Mo. 1996); *State v. Second Judicial Dist.* Ct. *in & for Churchill County,* 30 Nev. 225 (1908); *State v. Liedtke,* 9 Neb. 490 (1880); *State ex rel. Pearson,* 61 N.H. 264 (1881); *In re Thaxton,* 78 N.M. 668 (1968); *People v. Fire Ass'n of Philadelphia,* 92 N.Y. 311 (1883); *Fullam v. Brock,* 271 N.C. 145 (1967); *Enderson v. Hildenbrand,* 52 N.D. 533 (1925); *Gordon v. State,* 23 N.E. 63 (Ohio 1889); *State ex rel. Murray v. Carter,* 167 Okla. 473 (1934); *Hazell v. Brown,* 242 P.3d 743 (Or. App. 2010); *Appeal of Locke,* 72 Pa. 491 (1873); *Joytime Distributors & Amusement Co. v. State,* 338 S.C. 634 (1999); *Clark v. State ex rel. Bobo,* 113 S.W.2d 374 (Tenn. 1938); *State Highway Dept. v. Gorham,* 139 Tex. 361 (1942); *Bull v. Reed,* 54 Va. 78 (1855); *State v. Baldwin,* 140 Vt. 501 (1981); S*tate ex rel. Zilisch v. Auer,* 197 Wis. 284 (1928); *Brower v. State,* 137 Wash. 2d 44 (1998); *Le Page v. Bailey,* 114 W. Va. 25 (1933).

11. Howard Newcomb Morse, *A Study in the Problems Presented by the Integration into the Constitution of Certain Articles Amendatory Thereto,* 11 U. Det. L.J. 1 (1947-1948).

12. *See, e.g.,* U.S. reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990).

13. In any event, the risk of litigation successfully challenging the foregoing referral and ratification provisions as unconstitutional is minimal under current precedent. One of the few Supreme Court cases addressing the sufficiency of an amendment ratification refused to reach the question of its constitutionality, with a plurality deeming it a question exclusively for Congress to answer. See *Coleman v. Miller*, 307 U.S. 433 (1939). Even if such a challenge were to succeed, severance of the prospective legislative referral and ratification provisions would be the most likely final outcome.

14. App. A, art. II, sec. 7 ("section 3").

15. *Id.* ("section 3").

16. *Id.* ("section 4").

17. *Id.* ("section 5").

18. *Id.*

19. *Id.* ("section 1").

20. CBS News Report: What's Up with the $1 Trillion Coin, http://www.cbsnews.com/8301-250_162-57563428/whats-up-with-the-$1-trillion-coin/ (last visited April 4, 2013).

21. App. A., art. II, sec. 7 ("section 6")

22. *Id.* ("section 3").

23. *Id.*

24. The selection of governors as delegates is based on the precedent of Benjamin Franklin attending the Philadelphia Convention while serving as the equivalent of the governor of Pennsylvania. Significantly, governors are required to take a temporary leave of absence while attending the Convention and to not exercise any gubernatorial powers during the Convention. This limitation is intended to avoid any possible separation of powers issue with executive branch officials exercising what might be construed as legislative powers during the Convention, as well as to furnish a political safeguard of having the governor's likely political rival in charge of the state during the convention and able to direct enforcement of the CFA's provisions, which should incentivize governor-delegates to respect the CFA. With respect to governors who leave their home states to attend the convention, this provision is fully consistent with state constitutional provisions providing that when a governor leaves the state, another executive branch official (typically either the Secretary of State or Lieutenant Governor) shall exercise all gubernatorial powers. With respect to any governor who attends the convention in his or her home state, all states allow governors to take a temporary leave of absence due to temporary disability; and most states allow for other grounds for temporary leaves of absence. What constitutes disability or justification for a temporary leave of absence can be defined by state law, and the Compact's requirement that governor-delegates not exercise gubernatorial powers and take a leave of absence while attending the convention would supply an adequate legal definition of disability. As a failsafe to ensure that every member state is represented if their governor is otherwise unable to attend the convention, the Compact allows for the legislative replacement of the governor-delegate for good cause.

25. Dallas was chosen as the default location of the convention because of its central location and reputable state and federal court systems.

26. The Compact Commission is populated by appointees of the governors of the first three member states, and it may be expanded to include appointees by the governors of all member states. As such, it constitutes an agency of the compacting states, not the federal government. *Seattle Master Builders v. Pacific Northwest Electric*, 786 F.2d 1359, 1371 (9th Cir. 1986).

27. After 38 states join the Compact, no member state may withdraw without unanimous consent of all member states. In effect, the membership of the compacting state will be entrenched from repeal by future legislatures until the CFA BBA is ratified. The goal of such entrenchment is to ensure the laser-focus of the CFA on advancing a specific BBA is maintained throughout the amendment process and to guarantee its safeguards remain state law during the entire Article V convention process. Ordinarily, one legislative body may not entrench its legislation against repeal or modification by future legislative bodies in the same government. However, so long as they are entered into voluntarily and for a discrete purpose that does not substantially impair a state's sovereign power, compacts (like contracts) can and do entrench the decisions of the adopting legislative body under the supremacy of the U.S. Constitution. As a result, "a state can impose state law on a compact organization only if the compact specifically reserves its right to do so." *Seattle Master Builders*, 786 F.2d at 1371 (9th Cir. 1986). This has been the law for over 100 years. *Dyer v. Sims*, 341 U.S. 22, 28 (1951) ("It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between states by those who alone have political authority to speak for a state can be unilaterally nullified, or given final meaning by an organ of one of the contracting States"); *Kentucky v. Indiana*, 281 U.S. 163, 178 (1930); *Green v. Biddle*, 21 U.S. 1, 39-42 (1823). In the unlikely event that such entrenchment violates a member state's constitution, the CFA's severance clause provides constructional rules that a final judgment should have the effect of severing the offensive provision or causing that member state to withdraw from the Compact.

28. *See, e.g.*, *New Jersey v. New York*, 523 U.S. 767, 811 (1988) (holding that congressional approval "transforms an interstate compact within [the Compact Clause] into a law of the United States"); *Bryant v. Yellen*, 447 U.S. 352, 369 (1980); *McKenna v. Washington Metropolitan Area Transit Authority*, 829 F.2d 186 (D.C. Cir. 1987). Of course, by consenting to an interstate compact, Congress is not literally enacting a new federal law; instead, it is affirmatively yielding to the compact's subject matter, and allowing the compacting states' exercise of sovereignty to occupy the relevant field of law. Such conduct is properly binding on Congress as the functional equivalent of federal law under the doctrine of estoppel by acquiescence, or "quasi estoppel." *Cf. Simmons v. Burlington, Cedar Rapids & Northern Ry. Co.*, 159 U.S. 278, 290 (1895); *Ritter v. Ulman*, 78 F. 222, 224 (4th Cir. 1897).

29. *See, e.g.*, Washington Metropolitan Area Transit Regulation Compact; The Texas Low-Level Radioactive Waste Disposal Compact; Central Interstate Low-level Radioactive Waste Compact. The CFA allows the Commission to waive this venue provision upon request by member states and provides that the Commission's decision is final, much like the alternative dispute resolution provisions in the Alabama-Coosa-Tallapoosa River Basin Compact and the Interstate Compact on the Placement of Children.

30. App. A, art. V, sec. 4.

31. *Id.*, art. VIII, sec. 2.

32. *Id.*, art. VIII, sec. 2; App. B, tit. I, sec. 104.

33. App. A, art. VII.

34. *Id.*, art. VI, sec. 2, 6.

35. *Id.,* art. VI, sec. 6, 7, art. VII, sec. 3.

36. *Id.,* art VI, sec. 6, art. VIII, sec. 1, 2.

37. *Id.,* art. VI, sec. 5, 8.

38. *Id.,* art. VI, sec. 7, 8, art. VIII, sec. 1, 2.

39. *Id.,* art. VI, sec. 3.

40. *Id.,* art VII, sec. 11.

41. *Id.,* art. VII, sec. 6, art. VIII, sec. 1.

42. *Id.*

43. *Id.,* art. VIII, sec. 3.

44. *Id.,* art. X, sec. 2.

45. *Id.,* art. X, sec. 3.

46. *Id.,* art. IV, sec. 1(d), art. VII, sec. 2.

47. *Gregory v. Ashcroft,* 501 U.S. 452, 457 (1991) (citing Federalist No. 45).

48. *See, e.g., Snow v. City of Memphis,* 527 S.W.2d 55 (Tenn. 1975).

49. *See, e.g., State ex rel. Kvaalen v. Graybill,* 159 Mont. 190, 496 P.2d 1127 (Mont. 1972) ("There is some authoritative support for the doctrine of inherent, plenary, and sovereign power of a constitutional convention; however it is derived from early cases during the American Revolution and in the reconstruction era following the Civil War where there was no effective or established government to supervise the work of the convention. In our view, this doctrine is not applicable to present conditions where, as here, the constitutional convention is called pursuant to the provisions of an existing constitution, and by enabling legislation enacted thereunder. Even in situations where the existing constitution provided no means for calling a constitutional convention, the Pennsylvania court refused to apply this doctrine of inherent plenary power.") (citing *Woods's Appeal,* 75 Pa. 59 (1874); *Wells v. Bain,* 75 Pa. 39 (1874)); *accord Gaines v. O'Connell,* 305 Ky. 397, 204 S.W.2d 425 (Ky. 1947) (citing *Staples v. Gilmer,* 183 Va. 613, 33 S.E.2d 49 (1945)).

50. Likewise, in his famous April 1830 letter on nullification, James Madison observed: "final resort within the purview of the Constitution, lies in an *amendment* of the Constitution, according to a process applicable by the states."

51. Nevertheless, an argument under post-New Deal case law could be made that Congress has a significant role to play in organizing and regulating the convention, which may include the designation of delegates, the convention agenda, and convention logistics, because of Congress's power to call the convention and the implied power authorized by the Necessary and Proper Clause. Despite its lack of merit from an originalist perspective, the view that Congress has a significant role in organizing and regulating an Article V convention thus poses a real litigation risk. Fortunately, the CFA is designed to be fully compatible with even this view because of the fact that it is designed to be blessed by Congress in the counterpart omnibus concurrent resolution, which under current case law transforms the CFA into the functional equivalent of federal law. *See, e.g., New Jersey*, 523 U.S. at 811; *Bryant*, 447 U.S. at 369. Therefore, whether one views the CFA as dealing in a subject matter that is fully controlled by the states or controlled in significant ways by Congress, the CFA will fully lock down the Article V convention as advancing solely an up or down vote on a powerful BBA as a matter of state and federal law, both under current case law and also consistently with an originalist understanding of the Constitution.

52. Robert Natelson, *Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers,* Goldwater Institute Policy Brief No. 11-02, 4 n.15 (Feb. 22, 2011)

53. Roger Sherman Hoar, *Constitutional Conventions: The Nature, Powers, and Limitations* 127-29 (1917).

54. 3 Op. Off. Legal Counsel 390 (1979).

55. As argued by James Madison in Federalist No. 40, it is a myth that the Philadelphia Convention disregarded its state-set agenda. The resolution of the Continental Congress calling the Philadelphia Convention of 1787 contemplated "revising" the Articles with new "provisions" for the broad purpose of establishing "in these states a firm national government ... [and] render the federal Constitution adequate to the exigencies of Government and the preservation of the Union." Resolution of Feb. 21, 1787, 32 J. Continental Cong. 1774-1789, at 74 (Roscoe R. Hill ed., reprint ed. 1968). Contemporaneous legal usage indicates that "revision" had a broader meaning than "amendment," encompassing both narrow amendments and total or substantial rewrites of an original document. Nick Dranias, *Federalism DIY: 10 Ways for States to Check and Balance Washington,* Goldwater Institute Policy Report, 63 n.385 (June 1, 2011). Equally broad language was reflected in the state-issued commissions of nearly all delegates to the convention. 3 Records of the Federal Convention of 1787, 706-36 (M. Farrand ed., 1911), available at http://oll.libertyfund.org/title/1787 (last visited Dec. 14, 2010). Thus, in proposing the Constitution, the 1787 convention stayed well within the wide agenda set by the states both indirectly through their Continental Congress representatives and directly through their delegate commissions.

56. *See inter alia* Robert Natelson, *Amending the Constitution by Convention: A Complete View of the Founders' Plan,* Goldwater Institute Policy Report No. 241 (Sept. 16, 2010); Robert Natelson, *Learning from Experience: How the States Used Article V Applications in America's First Century,* Goldwater Institute Policy Brief No. 10-06 (Nov. 4, 2010).

57. Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis,* Constitutional Commentary, Vol. 81, p. 53 (2012); Mike Stern, *Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention*, 78 Tenn. L. Rev. 765 (Spring 2011). In any event, the CFA's severance clause is designed to ensure that courts construe its deliberative limitations to be as flexible as may be constitutionally required.

58. The fractured ruling in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), that states may not layer additional qualification requirements (specifically, term limits) on federal elected representatives under their Tenth Amendment authority is distinguishable because the Article V convention process was meant to adopt, codify, and regulate the states' pre-constitutional custom and practice of utilizing interstate conventions to propose legal reforms. This is confirmed by Farrand's report of proceedings at the Philadelphia Convention on September 15, 1787, in which the text of Article V was modified to its ultimate form explicitly to include the same convention process that was then underway. Unlike the electoral qualifications of federal elected officials, an Article V convention was not meant to be a mere construct of the federal constitution. Furthermore, *U.S. Term Limits* is also distinguishable because the Article V convention organized by the CFA may not be attended by member states before the CFA is approved by Congress in its counterpart omnibus concurrent resolution. By consenting to the CFA, Congress would waive any possible conflict between the Supremacy Clause and the exertion of state sovereignty in question, and affirmatively yield to the exclusive sovereignty of the states over the CFA's subject matter. Therefore, even if an Article V convention were somehow regarded as entirely a creation of the U.S. Constitution, there is no clash between the CFA and any power delegated to Congress.

59. *U.S. Steel v. Multistate Tax Comm'n,* 434 U.S. 452, 459, 472 (1978).

60. App. A, art. VII, sec. 2.

61. *Id.,* art. VIII, sec. 2(b).

62. *Id.,* art. IX, sec. 2.

63. *Id.,* art. X, sec. 4.

64. *Id.,* sec. 5.

Appendix A: Interstate Compact Model Legislation

REFERENCE TITLE: _____

State of _____

(Introducing _____)

_____ Legislature

_____ Session

20___

__. B. ____

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

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

CHAPTER ___

Compact for America

_____. Adoption of compact; text of compact

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

ARTICLE I

DECLARATION OF POLICY, PURPOSE AND INTENT

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

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

ARTICLE II

DEFINITIONS

Section 1. "Compact" means this "Compact for America."

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

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

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

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

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

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

"Article __

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

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

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

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

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

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

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

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

ARTICLE III

COMPACT MEMBERSHIP AND WITHDRAWAL

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

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

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

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

ARTICLE IV

COMPACT COMMISSION AND COMPACT ADMINISTRATOR

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

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

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

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

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

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

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

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

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

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

ARTICLE V

RESOLUTION APPLYING FOR CONVENTION

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

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

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

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

ARTICLE VI

DELEGATE APPOINTMENT, LIMITATIONS AND INSTRUCTIONS

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

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

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

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

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

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

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

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

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

ARTICLE VII

CONVENTION RULES

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII

PROHIBITION ON ULTRA VIRES CONVENTION

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

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

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

ARTICLE IX

RESOLUTION PROSPECTIVELY RATIFYING THE BALANCED BUDGET AMENDMENT

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

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

ARTICLE X

CONSTRUCTION, ENFORCEMENT, VENUE, AND SEVERABILITY

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

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

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

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

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

Appendix B: Omnibus Concurrent Resolution Model Legislation

____ Congress

__ Session

__.Con.Res.___

OMNIBUS CONCURRENT RESOLUTION

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

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

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

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

Title I

Concurrent Resolution Calling Convention

Contemplated by Compact for America with Prospective Effective Date.

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

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

"[INSERT COMPACT TEXT FROM APPENDIX A]"

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

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

Title II

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

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

"[INSERT BALANCED BUDGET AMENDMENT TEXT FROM APPENDIX A]"

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

The Goldwater Institute

The Goldwater Institute was established in 1988 as an independent, non-partisan public policy research organization. Through policy studies and community outreach, the Goldwater Institute broadens public policy discussions to allow consideration of policies consistent with the founding principles Senator Barry Goldwater championed—limited government, economic freedom, and individual responsibility. Consistent with a belief in limited government, the Goldwater Institute is supported entirely by the generosity of its members.

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COMPACT FOR AMERICA

Alaska Legislature

HB 284 – Compact for a Balanced Budget

Summary of Key Legislative Provisions

The Balanced Budget Amendment – the amendment "Payload" in Article II of HB 284

- Section 1 - balances federal budget by limiting spending to taxes except for borrowing under a constitutional debt limit.
- Section 2 – establishes a constitutional debt limit equal to 105% of outstanding debt at time of ratification
- Section 3 – requires approval of a majority of the state legislatures if Congress desires to increase the debt limit
- Section 4 – requires the President to protect the constitutional debt limit through impoundments Congress can override
- Section 5 – encourages spending and tax loophole reductions to bridge deficits, as opposed to general tax increases
- Section 6 – provides necessary definitions
- Section 7 – provides for self-enforcement of the amendment

The Compact for a Balanced Budget - the "Delivery Vehicle" at the core of HB 284

- Purpose – to greatly simplify the amendment process by combining all the steps required of the Georgia General Assembly to safely, efficiently, and effectively propose and ratify the Balanced Budget Amendment
- Article I – describes purpose of organizing the states to originate the Balanced Budget Amendment using a compact
- Article II – provides the necessary definitions, **including the actual text of the proposed Balanced Budget Amendment**
- Article III – sets compact membership and withdrawal requirements
- Article IV – establishes the Compact Commission – when 2 states join
- Article V – **applies to Congress for Balanced Budget Amendment Article V convention** – effective when 38 states join
- Article VI – appoints and instructs delegate(s) who will attend the Balanced Budget Amendment Article V convention
- Article VII – details the **convention agenda and rules**, allows first member state to designate Convention Chair
- Article VIII – prohibits participation in convention before Congress consents to Compact; prohibits runaway convention and ratification of runaway proposals by member states
- Article IX – **resolution ratifying the balanced Budget Amendment** – effective when convention proposes amendment and Congress refers amendment to the state legislatures for ratification
- Article X – provides enforcement by state attorney generals, central venue, severability and termination provisions

The Congressional Resolution – the "blessing" of the compact by Congress (Not HB 284)

- Title 1 – **resolution calling the required convention** in accordance with the terms and provisions of the Compact for a Balanced Budget – effective when 38 states join the Compact
- Title 2 – **resolution referring the Balanced Budget Amendment to the state legislatures for ratification** – effective when convention proposes amendment

2650 Fountain View Drive ● Suite 110 ● Houston, Texas 77059 ● (713) 808-1900 Ext 206
www.CompactforAmerica.org

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Compact for America's "Article V 2.0" Turn-Key Approach is Our Best Shot

Using an agreement among the states called an "interstate compact," the Compact for America invokes Article V of the United States Constitution to advance one or more specific constitutional amendments. An interstate compact provides the vehicle to advance constitutional amendments because it **transforms the otherwise cumbersome state-initiated amendment process under Article V into a "turn-key" operation**.

The Compact for America empowers the states to agree **in advance** to all elements of the amendment process that states control under Article V in a single enactment that can be passed in a single session. The Compact does require congressional consent to work, but such consent is achieved by simple majority passage of a congressional resolution, which consolidates everything Congress must do in the Article V process in a single enactment and in a single session. Specifically, the Compact and the counterpart congressional resolution include:

- The text of the proposed amendment (specified in the Compact);
- The Article V application to Congress (specified in the Compact);
- An interstate commission that organizes the convention (specified in the Compact);
- The convention call (specified in the congressional resolution);
- All delegate appointments and instructions (specified in the Compact);
- The convention location and rules (specified in the Compact);
- An agenda limited to the consideration of the proposed amendment (specified in the Compact);
- The ratification referral (specified in the congressional resolution);
- The ultimate ratification of the proposed amendment (specified in the Compact).

In short, the Compact for America consolidates everything Congress and the States do in the Article V process into just two overarching pieces of legislation—one congressional resolution and one interstate compact joined by thirty-eight states. It thereby dramatically **cuts the time and resources needed to achieve a state-originated constitutional amendment**. The Compact transforms the state-originated amendment process, which otherwise requires more than 100 state and congressional enactments across five or more legislative sessions, into something that can get done in a single legislative session for each member state and Congress. Rather than a legislative quest that will take ten to twenty years, the Compact can generate a constitutional amendment in as little as **one year**.

The Compact's "Article V 2.0" turn-key approach also eliminates any possibility of a "runaway convention." It compels all member state delegates to follow convention rules that limit the convention agenda to an up or down vote on the amendment it proposes and to return home if those rules fail to hold. It prohibits member states from expanding the scope of the convention, violating the convention rules, or ratifying anything other than the contemplated amendment. The Compact is **like a ballot measure directed to state legislators, governors and Congress**.

That's why Compact for America has garnered support from Congressmen David Schweikert (AZ), Paul Gosar (AZ), Lamar Smith (TX), John Culberson (TX), State Legislators Adam Kwasman (AZ), Yvette Herrell (NM), Tommy Williams (TX), Lieutenant Governor David Dewhurst (TX), the Republican Liberty Caucus, Ohioans for the Liberty Amendments, States United Balanced Budget Initiative, Idaho Freedom Foundation, Kansas Policy Institute, Pelican Institute for Public Policy (LA), Wyoming Liberty Group, Hon. Judge Harold DeMoss (U.S. Court of Appeals for 5th Circuit), Kevin Gutzman, Ph.D., J.D. (Western CT State University Professor of History), Ilya Shapiro, J.D. (Cato Institute), Nick Dranias, J.D., Sven Larson, Ph.D. (Wyoming Liberty Group Economist), Byron Schlomach, Ph.D., Kyle McAlister (Questor Pipeline Company), Ron Hicks (HerdX, Inc.), Robert C. Reinarz (R.C. Reinarz & Company), Mark McKinnon (Maverick Media), and John McLaughlin (McLaughlin & Associates).

Compact for America is also what the People want. According to McLaughlin & Associates, popular support for a compact to advance constitutional amendments exceeds opposition **by more than two to one**.