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

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

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

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

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

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

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

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

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

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

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

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

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

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

State Action Toward A Constitutional Convention

Balanced
Budget
Amendments

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

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

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

A Constitutional Convention

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

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

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

The U.S. Constitution states in Article V:

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

As Madison explained in the Federalist Papers (#43) the dual method available for proposing amendments "... equally enables the general and the state governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

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

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

The Ervin Bill

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

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

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

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

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

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

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

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

State Resolutions

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

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

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

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

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

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

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

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

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Summary Of Proposed Constitutional Amendments

Balanced
Budget
Amendments

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

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

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

Senate Resolutions

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

Income/Outlay

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

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

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

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

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

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

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

GNP Related

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

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

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

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

Surtax

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

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

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

National Debt Reduction

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

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

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

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

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

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

Percentage of National Income

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

Resolutions in the House

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

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

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

PRO

Should A Constitutional Require Balanced

by Hon. John C. Stennis

United States Senator, Mississippi, Democrat

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

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

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

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

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

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

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

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

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

Amendment Be Adopted To Federal Budget?

CON

by Hon. Edmund S. Muskie

United States Senator, Maine, Democrat

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

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

A new Constitutional Convention should be rejected out of hand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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two-thirds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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squeeze the deficit down and out.

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

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

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

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

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

by Hon. John Brademas

United States Representative, Indiana, Democrat

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Barring unforeseen domestic or international problems, there is even a possibility that we will have a balanced budget in fiscal 1981."

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

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

be met in a more realistic way.

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

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

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

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

by Hon. Harry F. Byrd, Jr.

United States Senator, Virginia, Independent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is a gamble I do not wish to take.

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

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

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

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

(Continued on page 151)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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How could we go about balancing the budget?

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

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

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

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

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

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

So what's left to cut?

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

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

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

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

There also would be these cutbacks:

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

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

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

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

"... some 76 per cent of the Federal budget is composed of uncontrollable items—\$404 billion out of \$532 billion of total outlays."

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

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

the Great Depression.

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

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

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

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

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

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

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

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

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

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

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

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

I shall conclude this brief presentation with one final observation:

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

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

The choice is ours.

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

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

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

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

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

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

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

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

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

Yet an unbalanced budget has become a symbol.

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

That is the manner in which we are proceeding.

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

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

by Hon. Walter W. Heller

Former Chairman, Council of Economic Advisers

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

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

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

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by Hon. Robert J. Dole

United States Senator, Kansas, Republican

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

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

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

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

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

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

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

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

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

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

(Continued on page 156)

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

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

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

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

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

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

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

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

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

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

(Continued on page 158)

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

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

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

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

Once again, the facts run to the contrary:

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

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

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

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

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

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

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

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

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

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

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

(Continued on page 159)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Constitutional Convention

From page 135

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

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

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

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

Two-Thirds Vote

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

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

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

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

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

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

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March 3, 1979

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

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

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

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

CIS 79 H 263-2

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

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

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

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

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

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

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

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

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

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

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

of contemplated constitutional restrictions.

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

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

Potential Impacts of Constitutional Restrictions

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

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

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

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

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

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

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

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

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

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

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

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

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

The actual impact would depend on the type of constraint placed in the Constitution. While balanced budgets might curb the growth of government, they might lapel less shrinkage than would be forced by some of the spending limitations. Some formulas could lead to a federal government more than \$100 billion smaller in 1990 than might occur if present trends were allowed to continue. Milton Friedman has estimated that the constitutional amendment offered by the National Tax Inflation Committee would have compelled a reduction in the relative size of the federal budget from 22.6 percent of GNP in 1969 to 17.7 percent in 1978. This 4.9 percent drop would have represented a greater change in the federal share of GNP than has occurred during any decade of American history except for the 1940s when the massive requirements of World War II forced a 5.9 percent rise. One cannot foretell the debilitating effects of such a steep decline, but the impacts surely would ripple beyond the budget account.

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

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

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

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

From: H Rpt 96-96 Toward a balanced budget...
CIS 79 4763-2

I. SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ Id. at 559-60.

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

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

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

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

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

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

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

IV. ANSWERABLE AND UNANSWERABLE QUESTIONS ABOUT ARTICLE V CONVENTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The Application Phase

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

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

2. The Selection and Function of Delegates

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

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

3. The Convention Process

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

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

4. Ratification of Proposed Amendments

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

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

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

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

V. CONCLUSION

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

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COMMITTEE REPORT
SENATE

FURTHER: Finance

Date: MAY 1, 1981

Mr. President:

The Committee on Judiciary has had SJR 4 proposing an amendment to the Constitution of the State of Alaska relating to limitations on appropriations of state money

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- ~~do pass~~ INDIVIDUAL REC. do not pass
- do pass with attached amendments(s)
- replace with CS for SJR 4 (JUD.) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN

DISCUSSION PAPER
EXPENDITURE LIMITATIONS

Division of Policy Development and Planning

August, 1980

OUTLINE

DISCUSSION PAPER -- EXPENDITURE LIMITATIONS

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Discussion Paper
Expenditure Limitations

I. INTRODUCTION

During recent years several states have instituted expenditure limits. These actions appear to have been prompted by a public perception of onerous and/or rising tax burdens (primarily local property taxes), concern for government efficiency, and worry about growth of government as a share of gross national product.*

Alaska's case is not directly comparable to the situation in these other states. Rather than a problem of high individual taxes or declining demand for government services, we have instead windfall, non-sustainable revenues. These revenues result in "painless" spending increases, the demand for which the Legislature and the executive find difficult to resist. The absence of the traditional revenue constraint on spending has allowed us to become accustomed to levels of per capita spending which will be difficult, if not impossible, to support in the future. The results of the past legislative session have reaffirmed the concern for the State's ability to restrain growth in the face of rising revenues and public demands for expenditures, and in the absence of some binding limit.

Therefore, the purpose of this paper is to review the major issues associated with State expenditure limits. Included are the principal arguments for and against such measures; a summary of limitations imposed by other states; a discussion of the fundamental components of a limit; and, remaining questions which need to be resolved prior to legal drafting of such a limit. Examples of language used elsewhere are also attached.

*Interestingly, subsequent research has shown that realities of high tax burdens and government growth do not correlate closely with passage of limiting measures. This may argue for public perceptions of such matters as the crucial factor in passage of these limitations.

II. Pros and Cons of Expenditure Limitations

A. Arguments in Favor of Limitations

1. The growth of spending would be slowed. This is particularly important in Alaska where, because of oil revenues, expenditures appear "free" to the individual taxpayer. As a result, the Legislature and the Governor are subjected to strong demands for increased expenditures; acceding to such demands may appear to be the easiest short-term solution.
2. A limit would contribute to the long-run stability and predictability of the size of the public sector, thus reducing the seriousness of economic dislocations resulting from future declines in State revenues.
3. An expenditure "rule" offers an explanation for the level of various government programs, i.e. given constraints, the State cannot be expected to do "everything."
4. Increased competition for scarce resources among government programs might result in better priority setting, improved programmatic analysis and increased efficiency.

B. Arguments in Opposition to Limitations

1. A spending rule limits government flexibility and ability to rationally respond to changing circumstances and public input. It amounts to a determination that representative democracy cannot adequately deal with resource allocation decisions.
2. Such a rule would make government activities pro-cyclical, i.e. government spending would decrease (increase) at the same time private economic activity decreased (increased) thus exacerbating business cycles. This could be particularly serious during and following large construction projects.

3. Such limits are not consistent with the "pay its own way" philosophy or approach toward certain government activities. For example, spending limits could restrict front-end expenditures necessary to obtain long-term development benefits. Likewise it would not be possible to increase spending for programs, even though people were willing to pay for them with user fees.
4. Federally mandated expenditures (for example, bilingual education programs or criminal detention facility requirements) could force damaging service cuts in other areas.
5. Such limits give decision makers an incentive to put off certain types of expenditures which have long run implications (e.g., building maintenance) in favor of spending for items where cuts would have more immediately obvious (but possibly less harmful) effects.
6. Once a spending limit is in place and if general fund surpluses increase, the corporate and federal government position that the State doesn't need the revenues becomes more persuasive.
7. Spending limits usually exclude federal receipts. This can result in program emphasis on federal rather than state priorities.

Additional incentive and impact questions are addressed in a section below on limit formulae.

III. Limits in Other States

During the last four years 13 states have instituted expenditure limitations and three additional states have limited growth in state revenues on which spending is dependent. Many have instituted

local restrictions as well. The spending limits range in strength from those restricting budget requests to those which apply to general fund appropriations. The most common limit basis (12 states) is personal income, or growth in the economy. Spending is held at some proportion of this measure of economic activity. Two states (California and Nevada) adjust their spending requests according to changes in population and inflation; while the remaining two states use a flat percentage calculation (Colorado - 7%; Rhode Island - 8%). Appendix A contains a summary chart of these state measures, including the formulae used, provisions for emergency override, and treatment of surpluses.

Very little analytical work has been done in evaluating the impacts of these limitations. This primarily results from the recentness of the limit experience. In fact, several limits have effective dates between 1980 and 1982. The experience with local limitations is somewhat longer. The Advisory Commission on Intergovernmental Relations has developed an estimate of the effects of local property tax controls adopted before 1976. Their results indicate that local governments with such property tax limits have expenditure levels six to eight percent less than local governments in other states. This estimate does not adjust for the amount of shifting of responsibility among the various levels of government.

In speaking with state budget officials in a few of the states with limits, the impression gained is that drastic program disruptions have not occurred. Adjustments have been made by adjusting funding sources (i.e. refinancing programs from non-limited sources); some small across the board cuts; and the exempting from limits of certain categories of expenditures. Some concern is voiced regarding the impact of the current recession which is increasing social welfare demands at the same time that expenditure limits based on economic activity begin to put on the squeeze. Another area of concern is the depreciation of the State government physical plant as fewer resources are put into building repair and maintenance. It is generally agreed that the next few years will be a crucial testing period for the spending limits.

IV. Limitation Components

There are several fundamental components of an amendment to limit State spending. The major components are the spending formula--the way in which allowable expenditures are calculated; an escape clause--conditions and procedures under which the limit can be exceeded; and, the treatment of revenues in excess of current spending.

A. Spending Formula

A spending limitation is composed of an expenditure base and an adjustment factor. The base is essentially the budget starting point while the adjustment factor is the means of calculating any year-to-year changes in expenditure levels. The base is usually some function of past budget levels. Most of the controversy centers on which portions of expenditures should be covered by the formula. The formulae generally apply to expenditure of general fund revenues, after exempting federal funds, and occasionally exempting certain capital expenditures and/or local government aid. In general, the more inclusive the base the more effective the limit and the fewer distortions expected in expenditure patterns. The major modifications which are made in response to such limits tend to be a redefinition of activities to fit into the allowable expenditure categories. Since in Alaska the limit impetus comes from a need to reduce rather than redirect spending, a broad limit would appear most applicable. The federal funds exemption seems to be the least damaging, although as noted earlier this might lead to an increased emphasis on federal as opposed to state priorities.

The most common adjustment factors are a function of personal income or of price and population changes. The use of growth in personal income to determine the growth rate of spending is based on the rationale that personal income is a proxy for

ability and willingness to pay for government services; or, alternatively, on the belief that government spending should not become a greater proportion of total economic activity.

Use of an adjustment factor involving population growth and inflation (both of which are also reflected in changes in personal income) allows spending to expand in response to these direct cost pressures. Such a real per capita limit would over time reduce state spending as a percentage of personal income. This would occur to the extent that private economic growth exceeded population changes and inflation. It is to be expected that this formula would be more restrictive than would one depending upon changes in personal income.

Appendix C contains some sample formulae. Appendix B summarizes growth rates in spending, personal income, population and prices over the last ten years. A comparison can thus be made between actual growth in expenditures and the rates which a formula approach would have implied.

B. Escape Clauses

There are a variety of emergency override provisions contained in existing spending limits. Over half the limits are statutory and thus may be amended through the usual legislative process. The constitutionally established limits require approval of specific excess amounts by a simple, or a strong majority (3/5 or 2/3); or, by voter approval.

Some provision must be made for unforeseen circumstances. One approach is to include two overrides: one procedure for natural disaster or other similar emergencies and another (perhaps more rigorous) procedure for simply exceeding the formula amount.

Appendix A contains a description of escape clauses in effect in other states.

C. Treatment of Surplus

Any effort to limit state spending must include provisions for the general fund surplus.

This is probably the most crucial component of an Alaska spending limit and also that area where we can obtain the least guidance from the experience of other states. Those states which address this question provide for tax rebates or reductions with some allowing for a budget stabilization or rainy day fund. Since the Alaska limit intent is to enhance the long-term fiscal security and stability of the state, it would be inappropriate to return the total unspent windfall oil revenue to individuals. The standard used in presenting the possibilities listed below is that in order to assure future fiscal integrity it will be necessary to have market rates of return on "non-spent" funds, and that some portion of the principal or corpus of these funds will also be needed to finance state government in the future. This issue will require careful consideration and resolution prior to the proposal of any such limitation. Here are some possibilities:

1. Increased contribution to the Permanent Fund. The Permanent Fund was conceived and established as one mechanism for preserving this surplus (our oil wealth) in income producing investments. Depending on the size of the principal and the return on investments, the income from the permanent fund could provide an important source of recurring revenues in the future as our non-recurring mineral revenues decline. One approach would be to provide for an additional contribution to the Permanent Fund of some fixed percentage of the general fund surplus, say 75%. The remainder could be allocated to a budget stabilization fund, emergency fund, or other use.

2. Establishment of a not quite so permanent Permanent Fund. This would involve design of a semi-permanent fund which would be styled after the existing Permanent Fund, but from which expenditures could be made once oil revenues and permanent fund interest earnings are insufficient to support even the "limited" State expenditure levels. This would, in essence, be a long-term budget stabilization fund, which would be invested in assets earning market rates of return.

3. Loans. Direct loans or investments (as opposed to loans through some fund as in (1) or (2) above) are another possibility. It is assumed that appropriation of funds to increase the capitalization of loan funds (existing or new) and appropriation of loan subsidies would both be covered by the expenditure limit. If this were not the case, the State would be in a situation similar to the recently resolved problem of the general fund balance automatically funneling into loan programs. Most of the existing loan programs are revolving funds, where repayments return to the fund to be reloaned for a similar purpose. It would be possible to make direct loans from the general fund (e.g., as was done for the Green Lake hydro project). Such loans, which could be used for industrial development or other purposes, could be designed to repay the general fund on schedules which would help offset declining oil revenues. Another possibility would be to make general fund loans to existing loan programs. This money could then be leveraged, loaned, and repaid to the general fund (i.e. would not be part of the revolving accounts). For a loan approach to be logical, the past practice of lending below market rates would have to be abandoned.

4. "Altruistic" Major Investment. Although the increasing price of oil has meant a windfall revenue gain to the State, consumers of petroleum products here and elsewhere are the source of much of that revenue. The national perception seems to be one of Alaska reaping enormous benefits at the expense of the rest of the United States. Although the complete validity of that perception is arguable, it does raise a question as to whether some portion of currently surplus revenues should not be used in a way to furnish long-term, national benefits. There might, for example, be potential projects in fusion research, cancer or some other medical research, social welfare experiments, or synfuels development. The important elements of such an expenditure would be potential benefits to a national as opposed to a strictly local constituency. In considering such an approach it must be remembered that this is basically a spending option which would contribute to long-term fiscal security only in so far as to prevented State revenues from being garnisheed by the federal government.

Possibly some combination of these and other uses might be a preferable approach to dealing with revenues in excess of current spending. The main point is that whatever the uses are, they should be planned and designed prior to the limitation of spending and the resulting existence of substantial cash balances.

V. OTHER ISSUES

In addition to the questions discussed above, there are several other issues that need to be addressed in the design of a spending limit. These are outlined briefly below.

A. Constitutional or Statutory

Constitutional provisions are generally reserved for statements of fundamental principles, while details are taken care of statutorily. This would argue for establishment of a statutory formula, perhaps accompanied by a general statement regarding growth as a constitutional amendment. The disadvantage of a statutory formula is the ease with which it can be changed, making a statutory limit less secure than a constitutional one. Seven of the seventeen states discussed above have constitutional limits. Of these, four were referenda approved by voters, two were initiatives approved by voters, and one was legislatively instituted.

B. Impact on State Credit Rating

If bond buyers become concerned about a spending limit affecting the ability of the State to pay its debts, this could negatively influence the State's credit rating, thus increasing the cost of borrowing. Bond repayment can be guaranteed either by granting such payments first claim on State spending (priority status) or by exempting such payments from the limit. The former method appears preferable, in that a limit exclusion would encourage bonding and discourage the careful evaluation of the impact of debt service on the State's future fiscal health.

C. Unfunded Obligations

Legislation is sometimes passed which creates programs without provisions for funding these activities. A spending limit might create an incentive to design programs without concurrent funding, thus disguising, at least temporarily, the fiscal impact of government actions. An example of such action might be the incremental funding of a large project, or the raising of unemployment benefits. Another aspect of this problem is programs which represent obligations to make future payments. Difficulties arise if these obligations (e.g.,

STATE SPENDING AND REVENUE LIMITS: GENERAL PROVISIONS

STATE	(C OR S)*	METHOD AND DATE OF APPROVAL	LIMIT APPLIES TO	BASIS OF LIMIT	EMERGENCY OVERRIDE PROVISIONS	TREATMENT OF SURPLUSES
Arizona	C	Legislative Referendum: approved by voters 11/78.	Expenditure of state tax revenues.	7% of total personal income of the state, determined by 3-member Economic Estimates Commission. (Legislature shall consider these funds in prescribing growth rates.)	2/3 vote of legislature on specific additional amount.	no provision.
California	C	Initiative: approved by voters 11/79.	State and local tax revenues appropriations.	Rate of growth of state and local tax revenues appropriations is limited to percentage increase in cost of living and the percentage increase in the state and local government's population.	Limit can be exceeded by voter approval (to be reapproved after 4 years); and, "in the event of an emergency," the limit can be exceeded for 1 year. (The amendment does not specify how and by whom an emergency is determined.)	"To be returned by a revision of tax rates or fee schedules within the next subsequent years."
Colorado	S	Legislative vote; July 1, 1977.	State general fund spending.	7% increase over previous fiscal year's expenditures.	(Statutory: may be amended.)	4% of revenues in excess of 7% limit retained as surplus; additional revenues to be utilized for property tax relief.
Delaware	C	A 2/3 vote of each house in 2 consecutive sessions is required to pass a constitutional amendment. This received by majority vote first in the 1979 session and enacted in April 1980.	State general fund appropriations.	Aggregate state general fund appropriations, for any given fiscal year, may not exceed 98% of estimated general fund revenue for that fiscal year. The estimate is to be determined by "the most recent Joint Resolution" and signed by the Governor.	In the event of emergencies, with a 3/5 vote in each house, the legislature may appropriate any portion of the amount between 98% and 100% of the estimated general fund revenue for any fiscal year."	Excess revenue paid into Budget Reserve Account, as long as that payment does not increase the Account's total to more than 5% of the estimated general fund. Legislature may, by a 3/5 vote in each house, appropriate funds from the BRA to funds "any unanticipated deficit...or to provide funds required as a result of any revenue reduction...."
Hawaii	C	Constitutional Convention Referendum approved by voters 11/78.	State general fund appropriations.	Estimated rate of growth of state's economy, determined "as provided by law."	2/3 vote of "members to which each house of the Legislature is entitled," on specific amount.	If state general fund balance in 2 succeed-years exceeds 5% of general fund revenues for each of the 2 fiscal years, legislature shall provide tax refund or credit.

*Constitutional (C) or Statutory (S).

pensions or other benefits) are not adequately funded between the commitment time and the time payment is due. This problem can be avoided by the requirement that actuarially sound current appropriations be made for pensions and other future obligations. How such a provision could be designed and enforced requires further discussion.

D. Treatment of Dedicated Funds and User Charges

Alaska has certain dedicated funds, and the inclusion or exclusion of expenditures from these funds in a limit calculation must be decided. For example, it may be desirable to count expenditures from the Fish and Game Fund and Renewable Resources Funds under the limit. If these expenditures do not "count," there would be a great incentive to refinance programs from these sources rather than from the general fund.

Another consideration of this nature is the treatment of user charges. Some have argued that spending financed from such sources should be excluded from the general limit, where the purchase of such goods or services by the user is discretionary. It would be important to define carefully program receipts, since there would be pressure to inflate and extend user charges as a means of circumventing a limit. Also, since dedication of funds is constitutionally limited, such an exclusion might pose legal difficulties.

E. Mandated or Shifted Costs

Limiting the expenditures of one level of government results in an incentive to transfer expenditures to another (unlimited) government, or to mandate new functions without providing new funding. Some limits, therefore, provide that the current proportion of state expenditures going to municipalities is not to be reduced unless there is a shift of program responsibility; and, if such a shift is made, provide that the expenditure base be appropriately adjusted.

Wording to deal with these problems is suggested in Appendix C.

STATE	(C OR S)*	METHOD AND DATE OF APPROVAL	LIMIT APPLIES TO	BASIS OF LIMIT	EMERGENCY OVERRIDE PROVISIONS	TREATMENT OF SURPLUSES
Idaho	S	Legislative vote; 1980 session.	State general fund expenditures.	State general fund expenditures may not exceed 5-1/3% of the total state personal income for the ensuing fiscal year. The Economic Estimates Commission determines the estimated total personal income prior to January 1 of each year.	(Statutory: may be amended.)	no provision.
Louisiana	S	Legislative vote; July 1979.	Increase in state tax revenue.	The revenue limit is the percentage determined by dividing state tax revenue for the 1978-79 fiscal year by state personal income for 1977.	(Statutory: may be amended).	Excess revenue, and all interest, is deposited "immediately" in the Tax Surplus Fund; excess revenue may only be appropriated for tax refunds.
Michigan	C	Initiative; approved by voters 11/78.	"Total amount of taxes."**	$\frac{\text{Total State Revenues } 1978-79}{\text{Personal Income } 1977} \times \text{Personal Income } * \text{previous calendar year}$ <p>*or averaged over 3 previous years, whichever is greater.</p>	Governor first specifies emergency; 2/3 of members in each house concur.	If revenue, exceed limit by more than 1%, excess refunded pro rata based on income tax liability. (1% excess may go to Budget Stabilization Fund.)
Nevada	S	Legislative vote; 1979 session.	State budget bill requests.	Level of general fund expenditures for the 1975-77 biennium budget plus the percent equal to the increase in population plus, a percentage equal to the rate of inflation.	(Statutory: may be amended.)	no provision.
New Jersey	S	Legislative vote; August 18, 1976.	"expenditures of the state"	$\frac{\text{State Per Capita Personal Income Current Fiscal Year}}{\text{State Per Capita Personal Income Base Year}}$ $\frac{\text{Base Year Expenditures}}{\text{Maximum Expenditures}}$	Proposed increase submitted to people as referendum and approved by majority of legally qualified voters who vote.	no provision.

**Michigan state spending cannot exceed this limit according to a provision of the amendment. A limit is also placed on local governments.

STATE	(C OR S)*	METHOD AND DATE OF APPROVAL	LIMIT APPLIES TO	BASIS OF LIMIT	EMERGENCY OVERRIDE PROVISIONS	TREATMENT OF SURPLUSES
Oregon	S	Voter approval; April 1980.	Growth of state appropriations.	Each biennium, rate of growth of state appropriations shall not exceed the rate of growth of personal income in the 2 preceding calendar years. After session adjournment, Executive Department reports to the Emergency Board the estimate as of July 1 of the first year of the biennium of general fund revenues that will be received.	(Statutory: may be amended.)	If the revenue received during the biennium exceeds the estimate by 2% or more, the excess shall be credited "in a percentage amount of income tax liability."
Rhode Island	S	Legislative vote; 1977 session.	State budget request submitted by Governor.	8% increase over current year's general fund appropriation.	(Statutory: may be amended.)	no provision.
South Carolina	S	Legislative vote; June 1980	Growth in state expenditures.	Expenditures are limited to the previous year's expenditures multiplied by the average state personal income ratio for the 3 previous years.	(Statutory: may be amended.)	no provision.
Tennessee	C	Constitutional Convention Referendum; approved by voters 3/78.	Appropriations from state tax revenues.	Estimated rate of growth of state's economy.	Specific excess amount can be approved by majority vote of General Assembly.	no provision.
Texas	C	Legislative Referendum; approved by voters 3/78.	Appropriations from state tax revenues	Estimated rate of growth of state's economy, determined by law (use personal income increase).	Record vote of majority of legislature finds emergency and specifies amount.	no provision.
Utah	S	Legislative vote; 1979.	State appropriations and revenue.	85% of growth in personal income.	A 2/3 vote of the legislative body "may declare a fiscal emergency in order to exceed the appropriations of revenue limit for any fiscal year."	Excess revenues are rebated or returned in the form of reduced taxes the following year; legislature may limit surpluses to 2% of the state's appropriations for the prior fiscal year.
Washington	S	Initiative; approved by voters 11/79.	Growth in state tax revenues.	Revenues are limited to the previous fiscal year's state tax revenue limit multiplied by the average state personal income ratio for the 3 previous years. The legislature shall establish tax rates so the limit will not be exceeded.	The limit may be exceeded "to meet an emergency as declared by the Legislature" by a 2/3 vote of each house. The legislature, by a 2/3 vote of each house, appropriates the additional revenue requested.	Excess revenue becomes part of the state tax revenue for the succeeding fiscal year.

*Source: National Conference of State Legislatures.

APPENDIX B

Rates of Growth of Formula Components.

The two most commonly used expenditure formula are based on (1) changes in personal income; and (2) inflation plus population changes. Given below is the history of these indicators over the past few years, and for purposes of comparison, the rate of growth in general fund appropriations.

<u>FY</u>	<u>General Fund Appropriations (\$000)</u>	<u>% Increase in Appropriations</u>	<u>% Change in Personal Income Residency Base</u>	<u>Percentage Change in Personal Income 3-year running avg.</u>	<u>Percentage Change Population</u>	<u>CPI</u>	<u>Pop + CPI</u>
1969	\$ 127,849.5	10.85					
1970	172,814.6	35.17	13.414%		3.02	4.58	7.60
1971	298,627.3	72.80	10.269%	11.83	3.08	3.91	6.99
1972	314,110.4	5.18	9.056%	9.66	3.56	2.51	6.07
1973	364,007.5	15.89	17.903%	13.39	2.74	2.27	5.01
1974	374,176.0	2.79	21.728%	19.80	4.11	5.90	10.01
1975	528,260.1	41.18	44.768%	32.75	10.90	13.09	23.99
1976	627,274.5	18.74	18.906%	31.20	8.22	12.43	20.65
1977	734,626.0	17.11	2.813%	10.57	.33	6.86	7.19
1978	833,794.7	13.50	1.298%	2.05	-.61	5.95	5.34
1979	1,066,266.8	27.88	4.555%	2.91	-.22	9.32	9.10
Rate of increase over the period	23.63%		13.88%		3.45%	5.62%	10.07%

Summary of Statistics Used in Limits

PERSONAL INCOME

Total personal income in Alaska is estimated on a quarterly basis by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce.

Personal income is defined as the sum of all money and non-money income received from any source. Money income includes wages and salaries, proprietor income, rents, dividends, interest, and money gained from the sale of property, plus transfer payments such as welfare, unemployment insurance benefits, or retirement income. Non-money income includes the value of free or reduced-price housing and food, such as Alaskan construction workers often receive at remote construction sites. The concept of non-money income also includes the net value of food obtained by subsistence agriculture, hunting, or fishing -- although the accuracy of the estimates for income in the form of food obtained from subsistence activities is extremely questionable. Somewhat arbitrary procedures are used to convert total income to income on a residency basis.

Quarterly estimates of the annual rate of total personal income received by Alaskan residents are published by BEA during the first month of each quarter, with a lag of one full quarter. For example, in July 1980 BEA published an estimate of the annual rate of total personal income received by Alaskan residents during the first quarter of calendar year 1980 (January, February, and March).

During the legislative session in the spring of 1981, Alaskan legislators could expect to receive BEA estimates of annual rates of Alaska's total personal income during the third and fourth quarters of calendar year 1980. During this session, the legislators would be considering the budget for the twelve-month period beginning July 1, 1981 and ending June 30, 1982.

It should be noted that in Alaska total personal income is very much a function of the level of State government spending. Thus, as spending slows, one can expect the rate of growth of personal income to likewise slow, thus causing spending to slow again. This is mentioned in the body of the paper in discussing the procyclical nature of spending limitations. Another problem is reflected in the large amount of variance reflected in this statistic. Over the last ten years the percentage increase ranged from 1.3% to 44.8%. Possibly these difficulties can be mitigated somewhat through lagging the indicator (which would reduce the procyclical elements) and by using a 3 or 5 year running averages (to reduce the year-to-year variations).

CONSTANT "REAL" EXPENDITURES PER CAPITA

Another suggested limiter for State government spending is constant real (i.e., inflation adjusted) expenditures per capita.

A computation of real expenditures per capita involves use of a price index and an estimate of total population. Consumer price indices are published by the U.S. Bureau of Labor Statistics with a lag of one to two months. That is, the index for June 1980 was published around August 1. Consequently, during the spring 1981 session of the Alaska legislature, indices would be available approximately through April of 1981. Legislators at that time would be considering the budget for the twelve month period ending June 30, 1982. Estimates of total resident population in Alaska on July 1 of each year are published in January of the following year by the U.S. Census Bureau. Thus, when the Alaska legislators were considering the budget for the twelve month period ending June 30, 1982, the latest population estimate available would be for July 1, 1980. The July 1, 1980 estimate would be preliminary, and subject to revision.

Population estimating techniques used by the U.S. Census Bureau are not always appropriate for Alaska - particularly during periods of rapid economic growth or decline such as those during and after construction of a pipeline. The Census Bureau is believed to have underestimated