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A Balanced Budget Constitutional Amendment: Background and Congressional Options

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Summary

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

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

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

There are also questions that will likely be raised and considered by Congress concerning the provisions that should be included in such a measure as it sifts through its options. Congress will ultimately decide whether consideration should be given to a constitutional requirement for a balanced budget, and if it decides to proceed, it will need to decide whether there should be exceptions to the requirement or if it should include provisions such as a separate capital budget or a limitation on expenditures or revenues.

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

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I. Introduction

The debate over the need to establish a constitutional limit on spending or debt is nearly as old as the nation itself. Thomas Jefferson is often cited as an intellectual forefather in the current debate because of his distrust of government debt. He once wrote that the way to cure what he felt was extravagant spending by the Administration of John Adams was a constitutional amendment that took away the power of the federal government to incur debt. "I wish it were possible," he wrote in 1798, "to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government; I mean an additional article taking from the Federal Government the power of borrowing."[1] Support for such an idea has waxed and waned since that time, sometimes expressed in terms of concern over the accumulation of debt, sometimes expressed in terms of concern regarding annual budget deficits.[2] Support for balanced budgets as a political ideal has been particularly salient since the late 1970s and has largely enjoyed wide support from the public.[3]

Generally the term *balanced budget* simply refers to a situation wherein the annual expenditures made by the government are equal to its receipts. Disagreement about how these key components should be defined and measured has been a significant stumbling block in the consideration of balanced budget proposals. Although these sound like straightforward concepts, this definitional problem is far from trivial; any sound definition must say what is to be included and, at least by inference, who is to be responsible for ensuring that its provisions are carried out. When additional provisions are added to balanced budget proposals, such as limits on debt or higher voting thresholds for Congress to enact certain legislation, the problem of developing clear definitions can take on even greater complexity.

Debt and Deficits as an Issue

The concept of whether balancing the budget should be the goal of federal fiscal policy was not a part of congressional debate during the 18th and 19th centuries. Budget practices instituted by the Founding Fathers established an expectation that deficits were only a temporary aberration. Debt was limited by the practice of enacting legislation to allow the Treasury to issue only a specific amount of debt in order to respond to a specific need. During this era, the only generally acceptable purposes for issuing debt were limited to:

- preserving the union, such as when it assumed state debts from the Revolution;
- expanding and connect the nation's borders, such as with the Louisiana Purchase and later the intercontinental railroads and the Panama Canal;
- waging war; and
- during severe economic downturns, beginning with the Panic of 1819.[4]

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

[2] For a discussion of the relationship between deficits and debt, see CRS Report R44383, *Deficits, Debt, and the Economy: An Introduction*, by Grant A. Driessen.

[3] For example, see Crosby, Andrew and Allyson L. Holbrook, "Public Support for a Balanced Budget Amendment to the U.S. Constitution: Trends and Predictors," *Public Budgeting & Finance*, vol. 39, no. 2 (February 2019), pp. 44-67.

[4] White, Bill, *America's Fiscal Constitution* (New York: Public Affairs, 2014), pp. 2-3.

The general reluctance to use debt to finance the regular operations of the federal government was expressed by Woodrow Wilson when he wrote in 1888, "Appropriation without accompanying taxation is as bad as taxation without representation."[5]

For the generation of American political leaders at the beginning of the 20th century, the federal government had not issued debt during their lifetimes except for the traditional uses of debt during the Panic of 1893, the Spanish-American War, and the Panama Canal.[6] Even in 1915, none argued that debt rather than taxes should be used to fund a military buildup prior to the United States' entry into World War I.[7]

It was during this era that Congress initiated the first steps that ultimately ushered in a significant change in the way that the federal government managed debt. The Second Liberty Bond Act of 1917[8] marked a turning point in federal debt policy by imposing an overall ceiling on new debt.[9] Overall, the debt legislation enacted between 1917 and 1919 that ultimately financed the U.S. participation in World War I, as well as legislation enacted in the 1920s and 1930s, gave the Treasury greater authority to respond to changing conditions. This change allowed the focus of fiscal policy to later shift away from the specific purpose for which issuing debt was necessary.

Although the federal government incurred deficits during the Great Depression of the 1930s, they did not represent a revolution in thinking about fiscal policy. The Roosevelt Administration's fiscal policy in the 1930s accepted deficits as a consequence of "providing relief" but not as part of a deliberate policy to bring about recovery or full employment.[10]

A transformation in economic thought over the next several decades, however, had the effect of refocusing federal fiscal policy. Economists as diverse as John Maynard Keynes with his *General Theory of Employment, Interest and Money* in 1936 and Milton Friedman with "A Monetary and Fiscal Framework for Economic Stability" in 1948 paved the way for the federal government to think about fiscal policy in terms other than just annual cash flow. Advocates of greater federal participation in the economy adapted these concepts to argue for policies geared toward balancing the business cycle with counter-cyclical spending and "full employment" budgeting. Even President Dwight Eisenhower, who was sometimes criticized during his tenure for making a "fetish" of balancing the budget,[11] adopted this new thinking to some degree. He stated that in his view, "it has sometimes seemed a little bit odd that we have to make our whole ... economic cycle coincide with the time it takes the earth to get around the sun."[12]

Even when the Kennedy Administration sought to reduce income tax rates to promote savings and investment, the historical link between taxing and spending policies remained largely intact.

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[5] Wilson, Woodrow, "Taxation and Appropriation" in Albert Shaw (ed.) *The National Revenues* (Chicago, 1888), pp. 106-111, included in Arthur S. Link (ed.) *The Papers of Woodrow Wilson, vol. 5 1885-1888* (Princeton: Princeton University Press, 1968), pp. 653-656.

[6] White, p. 151.

[7] Ibid. p. 160

[8] Public Law 43, 65th Congress, 40 Stat. 288, enacted September 24, 1917.

[9] Limits on separate bond issues were maintained, however, until Public Law 201, 76th Congress (53 Stat. 1071, enacted July 20, 1939) established an overall limit without sublimits, effectively allowing Treasury officials to decide how to manage that debt.

[10] Herbert Stein, *The Fiscal Revolution in America*, rev. ed. (Washington: American Enterprise Press, 1990), p. 60.

[11] U.S. President, 1953-1961 (Eisenhower), The President's News Conference of February 18, 1959, *Public Papers of the Presidents of the United States, Dwight D. Eisenhower 1959* (Washington: GPO, 1960), p. 196.

[12] Ibid. p. 197.

Congress deferred consideration of proposed tax cuts until the Johnson Administration's proposed budget for FY1965 included spending cuts as well.[13]

The cumulative effect of myriad economic and budgetary factors in the 1970s—including the Vietnam War, rising unemployment, and inflation—was growing concern with prolonged and persistent deficits and increasing debt. By the 1980s, this confluence made it difficult, if not impossible, to attribute deficits or debt to a specific cause, resulting in concerns that the federal government was relying on debt, rather than taxes, to fund operations.[14] One consequence of this was a rise in budget deficits as a political issue and a growing interest in legislating limits on deficits, including a balanced budget amendment to the Constitution.

The Call for a Balanced Budget Amendment

Even before fiscal policy began to shift away from asking whether balancing the budget should be a primary goal, there were efforts to establish formal legal underpinnings for the principle. Perhaps the first example of this occurred in 1935 when Senator Millard Tydings introduced a measure that would have taken away some of the flexibility Treasury had accrued with respect to debt management by proposing to prohibit appropriations in excess of revenues in the absence of a new debt authorization and require that any new debt be liquidated over a 15-year period (S.J.Res. 36, 74th Congress).

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

The first congressional action beyond the introduction and referral of proposals occurred in 1947. By special arrangement, the Senate Appropriations Committee had a balanced budget amendment jointly referred to itself as well as the Senate Judiciary Committee. The Appropriations Committee reported the measure on May 5, 1947.[15] However, the Judiciary Committee did not take any subsequent action, and no further formal consideration occurred.

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

Although most of the interest in a balanced budget requirement has been focused on the idea of a constitutional amendment, there have been two almost separate debates occurring simultaneously on the subject: first, whether there should be a balanced budget requirement, and second, whether it should be a constitutional amendment. These concerns are related, but they are not identical. The pros and cons of a balanced budget requirement are often framed in economic terms, while the pros and cons of a constitutional amendment incorporate legal, procedural, and structural concerns.

[13] White, p. 246.

[14] Ibid. pp. 247-304.

[15] The report (S.Rept. 80-154) appears in the *Congressional Record*, vol. 93, (May 6, 1947), p. 4555.

II. The Constitutional Amendment Approach

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

Arguments of Proponents

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

- the morality of balanced budgets, and the impact of current deficits on future generations of taxpayers;
- the economic benefits of lower deficits, particularly in the form of lower interest rates, enhanced savings rates and overall economic growth; and
- the expectation of improved public attitudes towards political institutions and politicians if balanced budgets are achieved.

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

Many proposed amendments have implicitly been based on an assumption that while enforcement mechanisms could be separately enacted in statute, a constitutional provision would be primarily self-enforcing. For example, in a 1985 report accompanying a proposed amendment, the Senate Judiciary Committee stated:

> The Committee expects the Congress and the President to carry out their responsibilities under the proposed amendment through both (a) the authority presently available to Congress and the President to affect and influence the fiscal process; and (b) any new authority created by Congress under its Article I enforcement authority, and otherwise consistent with the Constitution by which the Congress and the President can affect and influence the fiscal process.[16]

In 1993, the Senate Judiciary Committee stated:

> Flagrant disregard of the proposed amendment's clear and simple provisions would constitute nothing less than a betrayal of the public trust. In their campaigns for reelection, elected officials who flout their responsibilities under this amendment will find that the political process will provide the ultimate enforcement mechanism.[17]

The question of possible judicial involvement has been a persistent concern of opponents, but advocates of a balanced budget amendment reject the argument that a constitutional amendment would provoke rampant judicial interference with federal budgeting. They suggest that most parties would lack the standing to bring suit and that most issues arising under an amendment

[16] Senate Judiciary Committee, *Report on S.J.Res. 225*, p. 57.

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

would not be justiciable because they would not present a case or controversy as mandated under Article III and thus would likely be limited.[18] For example, they argue that standing would be lacking for most third-party litigants to attempt to sue in order to contest general governmental actions. They point to cases, such as *Frothingham* v. *Mellon*, in which the Court denied standing to a taxpayer suing to restrain disbursements of federal money to states that chose to participate in a program to reduce maternal and infant mortality. It rejected her claim that Congress lacked power to appropriate funds for those purposes and that the appropriations would increase her taxes in future years in an unconstitutional manner. The Court, noting that a federal taxpayer's "interest in the moneys of the Treasury ... is comparatively minute and indeterminate" and that "the effect upon future taxation, of any payment out of the funds ... [is] remote, fluctuating and uncertain," held that plaintiffs had failed to allege the type of "direct injury" necessary to confer standing.[19] Proponents also suggest that even if the courts did agree to hear such cases, the political question doctrine enunciated in *Baker* v. *Carr*[20] would place most cases outside the realm of judicial resolution.

Some proposals have also included language that would limit the judiciary by explicitly defining their role (see section on judicial review in chapter VI of this report).

Arguments of Opponents

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

Concern over possible judicial involvement with the power of the purse is as old as the Constitution. Alexander Hamilton in *The Federalist* (number 78) reassured his readers that the judiciary was designed to have "no influence over either the sword or the purse."[21] During previous congressional consideration of balanced budget amendments, questions of standing and judicial authority have been raised and debated, but no conclusive answers have been reached.

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

> The results of such an amendment would be hundreds, if not thousands, of lawsuits around the country, many of them on inconsistent theories and providing inconsistent results. By the time the Supreme Court straightened the whole matter out the budget in question would

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

[19] *Frothingham* v. *Mellon*, 262 U.S. 447 (1923).

[20] 369 U.S. 186 (1962). As described in *United States* v. *Munoz-Flores*, 495 U.S. 385 (1990), "the political question doctrine is designed to restrain the judiciary from inappropriate interference in the business of the other branches of government." For a discussion of this doctrine, see Senate Judiciary Committee. *Report on S.J.Res. 225*, 99th Cong., 1st sess., p. 56.

[21] Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Mentor Books, 1961), p. 465.

> be at least four years out of date and lawsuits involving the next three fiscal years would be climbing toward the Supreme Court.[22]

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

> Although its sponsors have expressed faith that the courts would not intervene in the budget-writing operations of the Congress, it is difficult to find any justification for that faith.... I believe that it is impossible for anyone to predict, with any degree of certainty, what the courts may do at some future time.[23]

Opponents respond to assertions that judicial involvement would be minimal by suggesting that standing to bring suit may well exist in numerous circumstances.[24] The Supreme Court has previously expressed a standard for determining standing in terms of whether the litigant has alleged injury-in-fact, that is "distinct and palpable" and not abstract, conjectural, or hypothetical, or personal injury that is "fairly traceable to the ... allegedly unlawful conduct ... likely to be redressed by the requested relief."[25] Inability to show standing, however, would not necessarily limit the number of suits, as suits could still be brought (to gain publicity, for instance) even though they might ultimately be dismissed.

In addition to issues related to standing, there are other questions for which it would be difficult to predict with certainty whether they would be precluded from judicial review. Courts might get involved in resolving questions based on definitions or applicability. For example, the Origination Clause of the Constitution, which mandates that all bills for raising revenue shall originate in the House of Representatives, has often been regarded as an internal matter for Congress to determine, particularly by the House as a matter of its prerogative. However, in *United States* v. *Munoz-Flores*,[26] the Supreme Court rejected a claim that a case based on the Origination Clause was nonjusticiable. Opponents argue that cases like this would seem to leave open the precise limits on possible court involvement concerning the boundaries of what might be justiciable.

The experience of state governments indicates that concern over judicial involvement in budgeting is realistic. In various states the judiciary has become involved with each of the aspects of budgeting mentioned above, from defining concepts related to spending, revenue, and debt to imposing budget balancing remedies (e.g., requiring tax increases, limiting expenditures generally, or preventing implementation of specific spending laws). The possibility that federal courts could also invoke such remedies prompts concern about the potential such actions would have for causing a significant shift in the balance of power among the branches of the federal government.[27]

Opponents also counter the arguments of the amendment's advocates on economic grounds and contest the idea that such a requirement would result in benefit to the economy generally.

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[22] Cited in Senate Judiciary Committee, *Report on S.J.Res. 225*, 99th Cong., 1st sess., p. 98.

[23] See remarks of Senator Mitchell in the *Congressional Record*, vol. 128, (August 4, 1982), p. 19217.

[24] For a broader discussion of questions of justiciability, see Gay Aynesworth Crosthwait, "Article III Problems in Enforcing the Balanced Budget Amendment," *Columbia Law Review*, vol. 83, no. 5, June, 1983, p. 1065.

[25] *Allen* v. *Wright*, 468 U.S. 737 (1984).

[26] 495 U.S. 385 (1990).

[27] For a detailed discussion of State experience with balanced budget requirements, see Donald B. Tobin, "The Balanced Budget Amendment: Will Judges Become Accountants? A Look at State Experiences," *Journal of Law & Politics* vol. 12, pp. 153-193; Henning Bohn and Robert P. Inman, "Balanced Budget Rules and Public Deficits: Evidence From the U.S. States," *National Bureau of Economic Research Working Papers*, no. 5533 (Cambridge, MA: National Bureau of Economic Research, 1996); Richard Briffault, *Balancing Acts: The Reality Behind State Balanced Budget Requirements* (Washington: Twentieth Century Fund Press, 1997); and Stewart E. Sterk and Elizabeth Goldman, "Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations," *Wisconsin Law Review*, vol. 1991, no. 6. p. 1301.

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

Concerns an Amendment Would Need to Address

A number of difficult questions would be posed if a balanced budget amendment were adopted. These difficulties do not necessarily establish any inherent barrier to a constitutional amendment, but they do raise concerns about how an amendment would operate in practice. One of the chief concerns, and one that would affect a statutory approach as well, is the question of predictability. According to former Senator Howard Metzenbaum,

> there is a high degree of inherent uncertainty in spending and revenue projections. It is impossible to guarantee congressional budget decisions at the beginning of a fiscal year will lead to a balanced budget at the end of the year.[28]

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

It could also be difficult to prevent policy choices at the federal level that could have the effect of circumventing or systematically evading a balanced budget requirement. The Congressional Budget Office (CBO) has suggested that this would be a real possibility, or even a probability, if the advocates of the need for a constitutional amendment are correct about a bias toward increasing federal spending.[29] Several types of actions might in effect avoid the restraints imposed by a balanced budget amendment:

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

An additional concern raised by people in several state governments is that a federal balanced budget requirement would cause additional burdens to fall on state governments. Congress attempted to answer this in 1995 through the Unfunded Mandates Reform Act.[30] This act generally limits the ability of the federal government to consider legislation that would impose mandates on state or local officials without also providing the funds to implement them. Congress

[28] Senate Judiciary Committee, *Report on S.J.Res. 225*, 99th Cong., 1st sess. p. 96.

[29] CBO, *Balancing the Federal Budget*, pp. 23, 103.

[30] P.L. 104-4, 109 Stat. 50, incorporated into the Congressional Budget Act at Sections 421-428.

may, however, waive this prohibition. There is also some concern that if a federal balanced budget requirement caused significant cuts in federal programs, at least some states would find it necessary to make compensatory increases in their own spending, regardless of whether such expenditures were mandated by the federal government.

This is not to suggest that the problems suggested by opponents are beyond remedy or substantial mitigation. Experience in the states, as well as with the federal government, however, suggest that they raise fundamental concerns and bear careful attention.

III. Congressional Consideration of Proposed Constitutional Amendments

For more than six decades, Congress has shown an interest in a balanced budget requirement. Because balanced budget proposals are often in the form of proposed constitutional amendments, which are under the jurisdiction of the House and Senate Judiciary Committees, these committees have been in the forefront of the debate. As indicated in **Table 1** and **Table 2** below, the Senate Committee on the Judiciary has conducted hearings on balanced budget amendments on at least 23 days extending back to the 84th Congress. It also reported nine joint resolutions between the 97th and 105th Congresses.[31] (The committee has not reported any such joint resolutions since the 105th Congress.) The House Judiciary Committee has held hearings less often, as described below. In addition, other committees have occasionally held hearings on this issue as well. This section summarizes congressional hearings and floor action in consideration of balanced budget amendments.[32]

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

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

Table 1. Senate Judiciary Committee Hearings on Balanced Budget Amendments, 84th–116th Congresses

Congress	Measure(s)	Date	Publication Number
84th	S.J.Res. 126, 133	June 14, 1956	printed (no doc. number)
94th	S.J.Res. 55, 93	September 23, Oct. 7, 1975	printed (no doc. number)
96th	S.J.Res. 2, 4, 5, 6, 7, 9, 10, 11, 13, 16,18, 36, 38, 45, 46, 56, 76, 79, 86, 93	March 12, May 23, July 25, Oct. 4, 11, November 1, 1979	96-41
	S.J.Res. 126	January 14,[a] Feb. 22[b], 1980	96-67
97th	S.J.Res. 9, 43, 58	March 11, April 9, May 20, 1981	J-97-45
	S.J.Res. 58	May 29,[c] 1981	J-97-12
98th	S.J.Res. 5	December 12, 1983,[d] March 6, 1984	J-98-88 (S.Hrg. 98-1084)
99th	S.J.Res. 13	May 7, 1985	J-99-22 (S.Hrg. 99-241)
100th	S.J.Res. 3, 4, 8, 11, 25, 50, 112, 161	March 23, 1988	J-100-59 (S.Hrg. 100-1076)
101st	S.J.Res. 2, 9, 12, 183	July 27, 1989	J-101-36 (S.Hrg. 101-1009)
103rd	S.J.Res. 41	March 16, 1993	J-103-4 (S.Hrg. 103-384)
	S.J.Res. 41	February 15, 16, 17, 1994	J-103-41 (S.Hrg. 103-996)
104th	S.J.Res. 1	January 5, 1995[e]	J-104-1 (S.Hrg. 104-506)
105th	S.J.Res. 1	January 17, 22, 1997[e]	J-105-1 (S.Hrg. 105-115)
112th	N/A	November 30, 2011	J-112 (S.Hrg. 112-512)
114th	S.J.Res. 2, S.J.Res. 6	March 16, 2016	(no document number)

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

a. Field hearings conducted by the full committee in Mobile, AL.

b. Field hearings conducted by the full committee in Salt Lake City, UT.

c. Field hearings conducted in Phoenix, AZ.

d. Field hearings conducted in Los Angeles, CA.

e. Hearings conducted by the full committee.

Hearings on a Balanced Budget Amendment

In addition to the hearings held by the Senate Judiciary Committee listed in **Table 1**, there have been hearings conducted by several other committees, including

- **House Judiciary Committee**—October 15, November 17, and 18, 1987 (serial no. 85), July 10 and 11, 1990 (serial no. 143), January 9 and 10, 1995 (serial no. 5), and February 3, 1997 (serial no. 1); March 6, 2003 (serial no.1); May 13, 2011 (serial no. 30); October 4, 2011 (serial no. 62); July 24, 2014 (serial no. 85); July 27, 2017 (no document number);
- **House Budget Committee**—April 28, May 6, 11, 12, 13, and 19, and June 3, 1992 (serial nos. 102-42 and 102-43), and February 5, 1997 (not printed);
- **Senate Budget Committee**—June 4 and 10, 1992 (S.Hrg. 102-693);
- **Senate Appropriations Committee**—February 15, 16, 17, and 18, 1994 (S.Hrg. 103-423);
- **Joint Economic Committee**—September 11, 1984 (S.Hrg. 98-1260), January 20 and 23, and February 16, 1995 (S.Hrg. 104-74, parts 1, 2, and 3, respectively, with part 3 specifically intended to address questions of enforcement).

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

Floor Consideration of Amendment Proposals

The first floor consideration was in 1982 during the 97th Congress, when both the Senate and House debated such measures. Between the 97th and 105th Congresses, the Senate Judiciary Committee approved nine balanced budget proposals and reported them to the full Senate (see **Table 2**). As described below, five of these measures were considered on the Senate floor, one in each of the 97th, 99th, 103rd, 104th, and 105th Congresses. Additionally, the Senate considered two proposed amendments on the floor in the 112th Congress that had not been reported. In the House, proposed constitutional amendments to require a balanced federal budget have advanced to floor consideration without being reported on six occasions: in the 97th, 101st, 102nd, 103rd, 112th, and 115th Congresses. The House Judiciary Committee reported a proposed amendment that was considered on the floor in the 104th Congress and also reported a proposed amendment that was considered as an amendment in the 112th Congress.

Table 2. Joint Resolutions Proposing Balanced Budget Amendments Reported by the Senate Judiciary Committee

1981-2017

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

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

97th Congress

In the Senate, consideration of S.J.Res. 58 during the 97th Congress produced the first approval of such a measure when the Senate adopted the resolution 69-31 on August 4, 1982, following 11 days of floor deliberation.[33] Later that year, following a successful discharge petition[34] effort led by Representatives Barber Conable and Ed Jenkins, the House considered a similar proposal. H.J.Res. 350 was considered under the terms of a king-of-the-hill rule[35] (H.Res. 604) on October 1, 1982. Representative Bill Alexander offered a substitute that would have required the President to submit a balanced budget and for Congress to adopt a statement of receipts and outlays in which "total outlays are no greater than total receipts" but not require the year to end with the budget actually balanced. The substitute was defeated, 77-346.[36] Although H.J.Res. 350 was subsequently approved by a majority, the vote provided less than the necessary two-thirds, and the effort for a balanced budget amendment failed, 236-187.[37]

[33] Senate consideration occurred on July 12, 13, 19, 26, 27, 28, 29, and 30 and August 2, 3, and 4, 1982. For the final vote, see vote no. 288 in the *Congressional Record*, vol. 128, (August 4, 1982), p. 19229.

[34] The discharge process is established in House Rules as a means for a majority of Members to force consideration of a measure. For details see CRS Report 97-552, *The Discharge Rule in the House: Principal Features and Uses*, by Richard S. Beth.

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

[36] See vote no. 386 in the *Congressional Record*, daily edition, vol. 128 (October 1, 1982), p. H8336.

[37] See vote no. 387, ibid. p. H8337.

99th Congress

During the 99th Congress, the Senate Judiciary Committee reported two proposed balanced budget amendments for consideration on the floor. One of these measures, S.J.Res. 13, also included tax limitation provisions. It was placed on the Senate Legislative Calendar under General Orders, but it did not receive further consideration. The second proposal, S.J.Res. 225, was debated extensively over eight days. On March 25, 1986, the Senate rejected S.J.Res. 225, failing to achieve the necessary two-thirds majority by a single vote, 66-34.[38]

101st Congress

In 1990, again following a successful discharge effort, this time led by Representative Charles Stenholm, the House considered a proposal for a balanced budget amendment. Like its predecessor, H.J.Res. 268 was considered under the terms of a king-of-the-hill rule (H.Res. 434) on July 17, 1990. A substitute with a tax growth limitation provision offered by Representative Joe Barton was rejected 184-244.[39] A modified version of the original measure offered by Representative Charles Stenholm was adopted as a substitute, 276-152,[40] before the vote on final passage. However, the amended measure failed to achieve the necessary two-thirds majority, 279-150,[41] and was defeated.

102nd Congress

Two House proposals in the 102nd Congress calling for a balanced budget constitutional amendment gathered over 100 cosponsors (H.J.Res. 290 introduced by Representative Charles Stenholm, and H.J.Res. 248 introduced by Representative Joe Barton). In response to the increased possibility that the House would consider a balanced budget measure, the House Budget Committee began a series of six days of hearings on the subject of a balanced budget on April 29, 1992. The hearings continued on May 6, 11, 12, 13, and 19. On May 20, 1992, a petition was filed to discharge the Rules Committee from further consideration of H.Res. 450. This measure was a special rule to extract H.J.Res. 290 from further consideration by the House Judiciary Committee and provide for its consideration by the House. The petition received the requisite 218 signatures the same day and was entered on the Discharge Calendar. A unanimous consent agreement was reached on June 4, 1992, to allow the resolution to be called up for consideration on June 10 under the same terms as if discharged but modifying its provisions to increase general debate time on the proposed amendment to nine hours.

The House agreed to H.Res. 450 and began debate on the proposed amendment on June 10. On June 11, the House considered a series of substitutes under a king-of-the-hill procedure. A substitute version offered by Representative Jon Kyl included provisions to limit expenditures to 19% of gross national product (GNP) and to grant item veto authority to the President. It was defeated, 170-258.[42] A second substitute, offered by Representative Joe Barton, consisted of the text of H.J.Res. 248 and included a provision to limit the rate of growth of federal taxes to the rate

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

[39] See vote no. 236 in the *Congressional Record*, daily edition, vol. 136 (July 17, 1990), p. H4859.

[40] See vote no. 237, ibid. p. H4869.

[41] See vote no. 238, ibid. p. H4870.

[42] See vote no. 183 in the *Congressional Record*, daily edition, vol. 138 (June 11, 1992), p. H4605.

of growth of national income. It was defeated, 200-227.[43] The third substitute, offered by Representative Richard Gephardt, consisted of text identical to H.J.Res. 496 (previously introduced by Representative Gephardt) and included a provision to exempt the Social Security trust fund from the provisions of the amendment. It was defeated, 103-327.[44] The final substitute was offered by Representative Charles Stenholm as a minor modification of the original text of H.J.Res. 290. It was agreed to 279-153;[45] however, the amended measure then failed to achieve the necessary two-thirds majority for final passage, 280-153,[46] and was defeated.

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

After the House rejected H.J.Res. 290, Senator Paul Simon, the chief sponsor of S.J.Res. 18, announced that he would defer attempting to bring the proposed amendment to the floor of the Senate until the 103rd Congress. However, a group of Senators led by Senators Phil Gramm, Don Nickles, and John Seymour endeavored to keep the issue on the agenda in the Senate. On June 24, 1992, Senator Seymour (for Senator Nickles) offered an amendment to an unrelated bill (S.Amdt. 2447 to S. 2733, the Federal Housing Enterprises Regulatory Reform Act of 1992) that would strike that measure's language and substitute the text of a balanced budget constitutional amendment. An amendment offered by Senator Robert Kasten that would have added a tax limitation provision was rejected, 33-63, on June 30.[47] Senator Robert Byrd offered an amendment to replace the constitutional requirement in the Seymour amendment with a statutory requirement that the President submit a plan to balance the budget within five years by September 2. This amendment, as amended by a second degree amendment also offered by Senator Byrd,[48] was rejected on June 30, 39-57.[49] Supporters of the proposed constitutional amendment subsequently failed twice by a 56-39 margin on June 30 and July 1 to gather the 60 votes necessary to invoke cloture in the face of a threatened filibuster, and S.Amdt. 2447 was withdrawn on July 1.

[43] See vote no. 184, ibid. p. H4621.

[44] See vote no. 185, ibid. p. H4637.

[45] See vote no. 186, ibid. p. H4660.

[46] See vote no. 187, ibid. p. H4670.

[47] See vote no. 133 in the *Congressional Record*, daily edition, vol. 138 (June 30, 1992), p. S9219.

[48] The second degree amendment offered by Senator Byrd (S.Amdt. 2449) included an identical requirement for the President to submit a plan to balance the budget within five years but also retain the underlying language in S. 2733.

[49] See vote no. 134 in the *Congressional Record*, daily edition, vol. 138 (June 30, 1992), p. S9243.

103rd Congress

In the 103rd Congress, a balanced budget constitutional amendment was once again a significant issue on the agenda in both the House and Senate. The Senate began floor consideration of S.J.Res. 41 on February 22, 1994, under the terms of a unanimous consent agreement. On February 24, the Senate agreed to a further unanimous consent agreement allowing Senator Simon to modify S.J.Res. 41 by incorporating language proposed by Senator John Danforth limiting the authority of the judiciary to enforce a balanced budget amendment. The agreement also allowed Senator Harry Reid to offer a substitute amendment that would exempt Social Security and capital expenditures from the balanced budget requirement and provide for its suspension in times of economic recession. The Senate voted on the Reid substitute, which failed, 22-78,[50] and then on S.J.Res. 41, as modified, which failed to achieve the necessary two-thirds majority, 63-37.[51]

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

On March 16, 1994, the House approved H.Res. 331 by a vote of 387-22, making it in order to consider H.J.Res. 103 as well as a series of substitute proposals under a king-of-the-hill rule. A substitute proposed by Representative Kyl, which would have limited federal outlays to 19% of GNP and provided for Presidential item veto authority, was rejected in Committee of the Whole, 179-242.[52] On March 17, the House also rejected in Committee of the Whole a proposed substitute offered by Representative Robert Wise that would have provided a separate capital budget and exempted Social Security, by a vote of 111-318.[53] Earlier that same day, the Committee of the Whole rejected a substitute proposed by Representative Barton that would have limited the growth of federal revenues as well as required a balanced budget, by a vote of 213-215.[54] Because the votes of the Delegates and the Resident Commissioner had been decisive in the outcome, the vote was taken again in the House pursuant to Rule XXIII and the amendment was this time adopted, 211-204.[55] The language of the Barton substitute was later superseded, however, when the Committee of the Whole agreed by voice vote to a substitute offered by Representative Stenholm that included language to move back the effective date of H.J.Res. 103

[50] See vote no. 47 in the *Congressional Record*, daily edition, vol. 140 (March 1, 1994), p. S2089.

[51] See vote no. 48, ibid. p. S2158.

[52] See vote no. 60 in the *Congressional Record*, daily edition, vol. 140 (March 16, 1994), p. H1413.

[53] See vote no. 64 in the *Congressional Record*, daily edition, vol. 140 (March 17, 1994), p. H1473.

[54] See vote no. 62, ibid. p. H1461.

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

to 2001 or two years after ratification. As thus amended by the Stenholm substitute, H.J.Res. 103 was voted on in the House but failed to achieve the necessary two-thirds majority, 271-153.[56]

104th Congress

In the 104th Congress, the new majority leadership in the House placed a balanced budget constitutional amendment on the agenda as part of its "Contract With America." On January 4, 1995, Representative Joe Barton introduced H.J.Res. 1, a proposed balanced budget constitutional amendment with a tax limitation provision. Following two days of hearings, the House Judiciary Committee reported the measure with amendments on January 11 (H.Rept. 104-3). On January 24, the House Rules Committee reported H.Res. 44 (H.Rept. 104-4) providing consideration for H.J.Res. 1 as well as H.Con.Res. 17, outlining an understanding concerning the treatment of Social Security under any balanced budget constitutional amendment. After adopting H.Res. 44 on January 25, the House took up H.Con.Res. 17. Although as a concurrent resolution it did not have the force of law, its chief sponsor, Representative Michael Flanagan, described it as requiring Congress to "leave the Federal Old Age and Survivors Insurance trust fund and the Federal Disability trust fund alone when it is forced to comply with the balanced budget amendment." H.Con.Res. 17 was adopted by a vote of 412-18.[57]

In addition to H.J.Res. 1, H.Res. 44 made in order consideration of six substitutes. These amendments were selected from 44 amendments inserted in the *Congressional Record* between January 13 and 20, pursuant to a notice issued by the House Rules Committee on January 11. Unlike previous years, these substitutes were not considered under a king-of-the-hill rule. Instead, H.Res. 44 provided that the House would consider and vote on each of the alternatives, and the one that received the most votes would be considered as the one that was finally adopted.[58]

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

- A substitute offered by Representative Barton, identical to the version approved by the Judiciary Committee, which required a three-fifths vote to increase tax revenues. This version was adopted, 253-171.[59]
- A substitute offered by Representative Major Owens that provided for the waiver of the article when the national unemployment rate exceeds 4% and deleted the requirement for a three-fifths vote to increase revenues. This version was rejected, 64-363.[60]
- A substitute offered by Representative Robert Wise that would have placed capital investments in physical infrastructure and Social Security transactions off budget and required the operating budget to be balanced. In addition, this version did not include special vote requirements for approval of a deficit or increases in the debt limit or taxes. It was rejected 138-291.[61]

[56] See vote no. 65 in the *Congressional Record*, daily edition, vol. 140 (March 17, 1994), p. H1497.

[57] See remarks of Representative Michael Flanagan in the *Congressional* Record, daily edition, vol. 141 (January 25, 1995), p. H619; H.Con.Res. 17 approved by vote no. 40, ibid. p. H628.

[58] This type of special rule was subsequently dubbed "queen-of-the-hill" by the press.

[59] See vote no. 41 in the *Congressional Record*, daily edition, vol. 141 (January 26, 1995), p. H713.

[60] See vote no. 43, ibid. p. H722.

[61] See vote no. 44, ibid. p. H731.

- An amendment offered by Representative John Conyers that would have placed Social Security transactions off budget and required congressional action on a budget plan detailing how a balanced budget would be achieved before the article could take effect. It was rejected 112-317.[62]
- A substitute sponsored by Representative Richard Gephardt and offered by Representative David Bonior (D-MI) would have placed Social Security transactions off budget and required an absolute majority of the membership in each House of Congress for approval of a deficit. This version also deleted any special vote requirements for increases in the debt limit or taxes. It was rejected 135-296.[63]
- The final substitute, offered by Representative Dan Schaefer, was similar to the version reported by the House Judiciary Committee (and offered as an amendment by Representative Barton) except that it required a majority of the membership of each House to approve a measure to increase revenues rather than a supermajority. It was approved 293-139.[64]

Approval of the Schaefer substitute superseded the prior approval of the Barton substitute because it had more affirmative votes. H.J.Res. 1, as amended by the Shafer substitute, was adopted by the House 300-132, becoming the first proposed balanced budget constitutional amendment to be approved in the House.[65]

According to news reports, following the successful passage of H.J.Res. 1 in the House, several Democratic Senators voiced concern about passage in the Senate without also producing a detailed plan for deficit reduction. A letter sent to Majority Leader Robert Dole to that effect was signed by 42 Democratic Senators.[66]

The Senate had already begun to address some of the issues raised during House consideration prior to formal consideration of a balanced budget amendment. In particular, the subject of the treatment of Social Security under a balanced budget constitutional amendment was debated during consideration of S. 1, the Unfunded Mandates Reform Act.[67]

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

On Friday, February 3, Senator Daschle offered what was dubbed the "right-to-know" amendment. It required that a blueprint be established showing how the deficit would be eliminated prior to the proposed constitutional amendment becoming effective. After debating the amendment, the Senate voted on February 8 to table a motion by Senator Daschle to commit H.J.Res. 1 to the Judiciary Committee with instructions that the Daschle amendment (S.Amdt.

[62] See vote no. 46, ibid. p. H740.

[63] See vote no. 48, ibid. p. H753.

[64] See vote no. 49, ibid. p. H770.

[65] See vote no. 51, ibid. p. H772.

[66] "Amendment Vote Could Signal New Alliance," *Washington Post*. Jan. 28, 1995, p. A4.

[67] See the debate on the Harkin amendment (90) in the *Congressional Record*, daily edition, vol. 141 (January 26, 1995), pp. S1557, 1583-1599.

231) be incorporated into the resolution and reported back. The Daschle motion and amendment were effectively killed when the motion to table was agreed to by the Senate, 56-44.[68]

The second major issue to be addressed by the Senate was the budgetary status and treatment of Social Security under a balanced budget amendment. The issue was formally raised when Senator Reid offered an amendment on February 8 to exclude the receipts and outlays of Social Security from a balanced budget requirement. The Reid amendment (S.Amdt. 236) was debated for five days before being tabled by the Senate, 57-41.[69] Separately, the Senate agreed by voice vote to a motion by Majority Leader Dole to commit the measure to the Budget Committee with instructions that the committee report back the resolution forthwith unchanged and also to report to the Senate as soon as possible a plan for achieving a balanced budget without affecting Social Security receipts or payments.[70]

After the Reid amendment was disposed of, the Senate considered and rejected several other amendments on February 14 and 15. On February 16, the Senate voted on a motion entered by Majority Leader Dole to invoke cloture and limit further consideration of the resolution. That motion received a 57-42 vote and failed to achieve the necessary three-fifths majority.[71] Later that same day, the Senate agreed by unanimous consent to limit further consideration and provide for a final vote on the measure on February 28.[72] Consideration of amendments and motions to refer with instructions continued for five days. On February 28 the Senate agreed to an amendment offered by Senator Nunn. The Nunn amendment (S.Amdt. 300, as modified) added language limiting judicial authority to interpret or enforce the proposed constitutional amendment to situations specifically authorized by law. The provision was agreed to, 92-8.[73] After finishing consideration of all amendments and motions, the Senate recessed on February 28 and March 1 without taking a final vote on adopting the proposed constitutional amendment. On March 2 the Senate fell short of achieving the necessary two-thirds majority, 65-35.[74] Majority Leader Dole changed his vote to the prevailing side (against the amendment) for the final tally in order to take advantage of Senate Rule XIII and enter a motion to reconsider the vote at a later time.

On June 4, 1996, the Senate agreed by unanimous consent to the motion to reconsider its earlier vote. After debating the proposal on June 5 and 6, H.J.Res. 1 again failed to achieve the necessary two-thirds majority 64-35.[75]

105th Congress

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

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[68] See vote no. 62 in the *Congressional Record*, daily edition, vol. 141 (February 8, 1995), p. S2307.

[69] See vote no. 65 in the *Congressional Record*, daily edition, vol. 141 (February 14, 1995), p. S2592.

[70] The Senate had adopted an amendment offered by Senator Dole (S.Amdt. 238) to the motion, by a vote of 87-10. See vote no. 63 in the *Congressional Record*, daily edition, vol. 141 (February 10, 1995), p. S2453.

[71] See vote no. 74 in the *Congressional Record*, daily edition, vol. 141 (February 16, 1995), p. S2778.

[72] The remaining amendments and motions to be in order were enumerated, ibid. p. S2820.

[73] See vote no. 87 in the *Congressional Record*, daily edition, vol. 141 (February 28, 1995), p. S3276.

[74] See vote no. 98 in the *Congressional Record*, daily edition, vol. 141 (March 2, 1995), p. S3314.

[75] See vote no. 158 in the *Congressional Record*, daily edition, vol. 142 (June 6, 1996), p. S5903.

On February 4, a unanimous consent agreement was propounded to begin consideration of S.J.Res. 1 on the Senate floor. On February 5, the Senate began debate on the measure and began consideration of amendments on February 6. As in the 104th Congress, the issue of the budgetary treatment of Social Security proved to be pivotal, and three of the amendments considered would have excluded it. Other issues raised included allowing waivers of the amendment's provisions for national emergencies other than actual armed conflict (such as economic emergencies or natural disasters) and for the possibility of excluding a capital budget from the amendment's requirements. In all, 15 amendments (plus one motion to refer with instructions) were considered, but all were rejected, tabled, or withdrawn.

On February 27, a unanimous consent agreement was reached to provide for a final vote on March 4. On that day, the measure was defeated by a vote of 66-34, having failed to achieve the necessary two-thirds.[76]

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

108th Congress

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

112th Congress

In January of 2011, Representative Bob Goodlatte introduced H.J.Res. 1, which was referred to the House Committee on the Judiciary. On June 15, the committee voted to report the bill with an amendment by a vote of 20-12.[77] As reported by the committee, H.J.Res. 1 included provisions that would allow a budget with outlays in excess of receipts or an increase in the debt limit only if three-fifths of each chamber voted in favor. The measure also required a two-thirds vote of each chamber in order to agree to increases in revenue or to allow outlays to exceed 18% of the "economic output" of the United States regardless of whether the budget were balanced.

On July 19, 2011, the House passed H.R. 2560, titled Cut, Cap, and Balance, by a vote of 234-190. Although the bill itself was not a balanced budget amendment, it included a provision stating that the public debt limit could be raised from $14.29 trillion to $16.7 trillion only if Congress agreed to a balanced budget amendment. It stated that the Secretary of the Treasury could not exercise additional borrowing authority as specified elsewhere in the measure until one of the following joint resolutions were agreed to by Congress and submitted to the states for ratification: H.J.Res. 1, S.J.Res. 10, H.J.Res. 56, or another balanced budget amendment that "requires that total outlays not exceed total receipts, contains a spending limitation as a percentage of gross domestic product (GDP), and requires that tax increases be approved by a two-thirds vote" in

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

[77] See vote no. 606 in the *Congressional Record*, daily edition, vol. 157 (July 19, 2011), p. H5227.

each chamber. In the Senate a motion was made to proceed to the consideration of the measure was made on July 21, 2011, but the motion was tabled the following day by a vote of 51-46.[78]

After extended negotiations between Congress and President Obama, a different bill to increase the public debt limit, S. 365, the Budget Control Act of 2011 (P.L. 112-25), was enacted on August 2, 2011. Title II of the bill provided that the House and Senate vote on passage of a "Joint resolution proposing a balanced budget amendment to the Constitution of the United States" between September 20, 2011, and December 31, 2011. Title II also included expedited procedures for House and Senate consideration of a balanced budget amendment.

On November 15, 2011, the House agreed to H.Res. 466, a special rule authorizing the Speaker to entertain motions to suspend the rules through the legislative day of Friday, November 18, 2011, relating to the consideration of H.J.Res. 2, *Proposing a balanced budget amendment to the Constitution of the United States*, sponsored by Representative Bob Goodlatte. Under the suspension of the rules procedure, no floor amendments are permitted, and debate time is limited to 40 minutes. The special rule, however, provided for debate time for H.J.Res. 2 to be lengthened to five hours.

Unlike several other proposed balanced budget amendments (including H.J.Res. 1), H.J.Res. 2 required only a majority of each chamber to agree to a revenue increase, and it did not include a provision creating a specified limit on spending. H.J.Res. 2 would have required three-fifths of each chamber to agree to increase the debt limit or to allow outlays to exceed receipts. On November 17, 2011, Representative Lamar Smith moved to suspend the rules and pass H.J.Res. 2. On November 18, 2011, the House concluded the specified five hours of debate and voted on H.J.Res. 2. By a vote of 261-165, the House failed to achieve the two-thirds vote required for passage.[79]

On December 14, 2011, the Senate voted on S.J.Res. 10 and S.J.Res. 24 under the terms of a unanimous consent agreement discharging the Senate Judiciary from further consideration of the measures, and providing for a total of eight hours of floor debate for the two measures.

S.J.Res. 24, introduced by Senator Mark Udall, included provisions requiring three-fifths of each chamber to allow outlays in excess of receipts but included no such requirements on debt limit or revenue increases. The measure included a provision excluding all receipts and outlays related to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund and stated that no court of the United States or any state could enforce the article by ordering any reduction in Social Security benefits. In addition, the measure included a provision that would have prohibited Congress from passing any measure that would provide a net reduction in income taxes for those individuals with annual incomes over $1 million if the measures' enactment would result in a deficit in the years affected by the bill. The Senate rejected S.J.Res. 24 by a vote of 21-79.[80]

S.J.Res. 10, introduced by Senator Orrin Hatch, included provisions that would have required three-fifths of each chamber to agree to increase the debt limit. The measure also included provisions that would have required two-thirds of each chamber to agree to increases in revenue, to allow outlays to exceed 18% of the "economic output" of the United States, or to allow outlays in excess of receipts. The measure also included a provision stating that no court of the United

[78] See vote no. 116 in the *Congressional Record*, daily edition, vol. 157 (July 22, 2011), p. S4825.

[79] See vote no. 858 in the *Congressional Record*, daily edition, vol. 157 (November 18, 2011), p. H7874.

[80] See vote no. 228 in the *Congressional Record*, daily edition, vol. 157 (December 14, 2011), p. S8566.

States or any state could increase revenue to enforce the amendment. The Senate rejected S.J.Res. 10 by a vote of 47-53.[81]

115th Congress

On January 3, 2017, H.J.Res. 2 was introduced by Representative Bob Goodlatte. The proposal would have required three-fifths of each chamber to agree to increase the debt limit or to allow outlays to exceed receipts. On April 12, 2018, Representative Goodlatte made a motion to suspend the rules and pass the measure pursuant to H.Res. 811, which provided for four hours of debate. By a vote of 233-184, the House failed to achieve the two-thirds vote required for passage.[82]

IV. A Constitutional Convention

Article V of the Constitution describes two methods by which the Constitution can be changed.[83] To date, constitutional amendments have always been proposed to the states by congressional action, but Article V of Constitution also provides that "on the application of two-thirds of the several states Congress shall call a convention for proposing amendments." Because this method for proposing a constitutional amendment is untried, there are many unanswered questions about such a convention.[84] A convention would not have the power to amend the Constitution directly but only to propose amendments, and any proposed amendments would subsequently need to be ratified by three-fourths of the states in the same manner as an amendment proposed by Congress.

Between the mid-1970s and early 1980s, various interest groups lobbied state legislatures to petition Congress to call a constitutional convention to propose an amendment to limit the power of the federal government to incur budget deficits.[85] The National Taxpayers Union and the National Tax Limitation Committee, for example, were active in these efforts to lobby for the proposal in the state legislatures. A number of other groups, including Citizens to Protect the Constitution (formerly known as Citizens for the Constitution), the Committee to Preserve the Constitution, and People for the Constitution, have been active in their opposition to a convention.

These petitions have typically requested that Congress convene a constitutional convention for the purpose of considering a balanced budget amendment and proposing it to the states for ratification. Frequently such requests have sought a convention for the "specific and exclusive" purpose of considering a balanced budget amendment, although some constitutional scholars suggest that the work of a constitutional convention could not be limited to specific subjects.[86] As

[81] See vote no. 229 in the *Congressional Record*, daily edition, vol. 157 (December 14, 2011), p. S8566.

[82] See vote no. 138 in the *Congressional Record*, daily edition, vol. 164 (April 12, 2018), p. H3193.

[83] For a general discussion, see CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress*, by Thomas H. Neale.

[84] Laurence H. Tribe, "Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment," *Pacific Law Journal*, vol. 10, July 1979, p. 627.

[85] For information, including current status of these efforts, see CRS Report R44435, *The Article V Convention to Propose Constitutional Amendments: Current Developments*, by Thomas H. Neale.

[86] See, for example, Charles L. Black, "Amending the Constitution: A Letter to a Congressman," *Yale Law Journal*, vol. 82, no. 2, December 1972, p. 189; William W. Van Alstyne, "Does Article V Restrict the States to Calling Unlimited Conventions Only?—A Letter to a Colleague," *Duke Law Journal*, vol. 1978, no. 6, December 1978, p. 1295; Walter E. Dellinger, "The Recurring Question of the 'Limited' Constitutional Convention," *Yale Law Journal*, vol. 88, no. 8, December 1979. p. 1623; and Michael Stokes Paulsen, "A General Theory of Article V: The

a consequence, some opposition to a constitutional convention is based on concern regarding the scope of other possible amendments that might also be proposed for ratification as well as opposition to a balanced budget amendment in particular.

Other related questions have been raised regarding state applications or petitions for a constitutional convention. Some of these include (1) whether there is a specific procedure that states must follow for enacting and submitting petitions, (2) whether all the petitions must be in the same form, and (3) whether they must all be contemporaneous.[87] The Senate has on two occasions passed constitutional convention procedures bills: in 1971 (S. 215, 92nd Congress, S.Rept. 92-336) and 1973 (S. 1272, 93rd Congress, S.Rept. 93-293). Neither bill was considered in the House. The Senate Judiciary Committee also reported a bill in 1985 (S. 40, 99th Congress, S.Rept. 99-135), but it was not considered further. Although the House has not considered a similar measure, the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee held hearings on the issue in 1985.[88]

V. The Statutory Approach

One alternative to a constitutional requirement would be the enactment of a statute regulating federal spending and tax legislation to produce a balanced budget. Although most proponents of a balanced budget requirement have largely eschewed a statutory approach in recent decades, previously some argued that it would be more flexible than a constitutional amendment, since the law itself could be amended or modified to meet changing needs or circumstances. Advocates also argued that it could become effective more quickly than a constitutional amendment that could require a lengthy and ultimately uncertain ratification process.

Frequently, opposition to the statutory approach comes not only from those opposed to a balanced budget requirement but also from those who considered it a poor substitute for a constitutional amendment. These critics echo the viewpoint of Representative Barber Conable, who stated in 1984, "Until we elevate this issue to a constitutional level and create a procedure whereby this Congress will have to face up to its fiscal responsibilities, things are not going to change."[89] They contend that the adoption of a statutory requirement offers no binding constraint on the actions of future Congresses. In their view, the very flexibility of the approach undermines its utility. They argue that Congress could always waive or reject the rules adopted by a previous Congress or overturn or supersede a statute. Furthermore, critics have pointed out that there has not been a good track record under budgetary control statutes that have mandated specific budgetary outcomes, such as the Balanced Budget and Emergency Deficit Control Act of 1985 (discussed below).

Constitutional Lessons of the Twenty-seventh Amendment," *Yale Law Journal*, vol. 103, no. 8, December 1993, p. 677.

[87] For a broader discussion, see CRS Report R42589, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, by Thomas H. Neale.

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

[89] See remarks of Representative Conable in the *Congressional Record*, daily edition, vol. 130 (October 2, 1984), p. H10662.

Previous Legislation

There have been many attempts to employ a statutory approach. The first such example is the amendment proposed by Senator Harry F. Byrd Jr. in 1978, which became Section 7 of P.L. 95-435, a measure otherwise dealing with U.S. participation in the International Monetary Fund. The amendment stated simply, "Beginning with fiscal year 1981, the total budget outlays of the federal government shall not exceed its receipts."[90] With almost no debate the amendment was adopted by the Senate by a vote of 58-28.[91] Without any mechanism for enforcement this commitment proved to be ineffectual, and FY1981 ended with a deficit of $79 billion. Subsequent modifications of this law have changed it from a specific commitment for FY1981 to a general affirmation of balanced budgets as a goal.[92]

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

Late in the 98th Congress, the House considered H.R. 6300, a bill to require the President to submit a balanced budget proposal or, alternatively, to explain the reasons why one would be inappropriate. The measure passed under suspension of the rules, 411-11,[93] however, because the Congress adjourned shortly thereafter, the Senate did not consider this proposal on the floor.

After it failed to achieve the two-thirds vote necessary for a constitutional amendment in 1990, the House considered H.R. 5258, a bill to require the President to submit a balanced budget to Congress each year and for the Budget Committees to report, and Congress consider, a budget resolution that was balanced. It did not, however, require Congress to adopt a budget resolution in balance, nor did it require the fiscal year to end in balance. This measure was criticized by some as less than a serious attempt to attain balance and one that would merely provide "one more set of rules to waive."[94] Nevertheless, a majority of the House agreed with Representative Leon Panetta, who said that the measure would require the President and Congress to "lay out in specific terms how ... to [achieve] a balanced budget" rather than simply establish a balanced budget as a general goal.[95] The bill passed the House by a vote of 282-144,[96] but the Senate took no subsequent action on the measure.

Gramm-Rudman-Hollings

The most prominent attempt by Congress to use the statutory approach as a means for mandating specific budgetary outcomes and, ultimately, to achieve a balanced budget was the Balanced Budget and Emergency Deficit Control Act of 1985 (also known as the Gramm-Rudman-Hollings

[90] P.L. 95-435, 92 Stat. 1053.

[91] See vote no. 270 in the *Congressional Record*, vol. 124, (July 31, 1978), p. 23411.

[92] The "Byrd amendment" originally appeared at 92 Stat. 1053 and was restated in 1980 in P.L. 96-389, 94 Stat. 1553. The most recent revision occurred in 1982 in P.L. 97-258, 96 Stat. 908. The text of these provisions appear in **Appendix**.

[93] See vote no. 433 in the *Congressional Record*, daily edition, vol. 130 (October 2, 1984), p. H10858.

[94] See remarks of Representative Robert Walker (R-PA) in the *Congressional Record*, daily edition, vol. 136 (July 18, 1990), p. H4953.

[95] See remarks of Representative Panetta in the *Congressional Record*, daily edition, vol. 136 (July 18, 1990), p. H4950.

[96] See vote no. 246 in the *Congressional Record*, daily edition, vol. 136, (July 18, 1990), p. H4961.

Act) and its 1987 Reaffirmation.[97] At the heart of this law was a timetable with mandated annual reductions in budget deficits intended to produce a balanced budget.

Table 3. Deficit Targets as Provided by the Balanced Budget and Emergency Deficit Control Act of 1985 and 1987 Reaffirmation

(amounts in billions of dollars)

Fiscal Year	Original Target	1987 Revision	Actual Deficit
1986	171.9		221.2
1987	144		149.7
1988	108	144	155.2
1989	72	136	152.6
1990	36	100	221.0
1991	0	64	269.2
1992		28	290.3
1993		0	255.1

Source: For original target amounts: P.L. 99-177, 99 Stat. 1038-1101; for revised target amounts: P.L. 100-119, 101 Stat. 754-784; for actual amounts: *Budget of the United States Government FY2019. Historical Tables.* Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits: 1789-2023.

In addition to the specific deficit targets included in the text of the law, the act differed from the earlier Byrd amendment because it included a specific enforcement mechanism. Reflecting the view that institutional forces made it difficult, if not impossible, to achieve a balanced budget, the new law established a sequestration process. This process required the President to issue an order canceling budget authority to reduce the projected deficit to the level mandated by law. Although the original automatic sequestration mechanism was struck down by the Supreme Court in *Bowsher* v. *Synar*,[98] the 1985 law contained a fallback procedure that, lacking the automatic provision, was felt to be inadequate by Congress. The subsequent enactment of an amendment to the law in 1987 reinstated a modified procedure for an automatic trigger for the sequestration process and reaffirmed the desire of Congress to come to grips with the budget deficit.

The act was effectively supplanted in 1990 by the Budget Enforcement Act of 1990 (P.L. 101-508, 104 Stat. 1388-573 through 1388-630). The new law shifted the focus of congressional budgetary control from achieving a specific deficit target to limiting congressional actions that would increase the deficit.[99] It retained a series of deficit targets, but these targets would be adjusted for changing economic and other conditions rather than fixed as they had been under the 1985 and 1987 acts. The 1990 act established deficit targets through FY1995, but these did not require or project a balanced budget at that time. In 1993, the enforcement provisions of the Budget Enforcement Act were extended through FY1998 (P.L. 103-66, 107 Stat. 683-685), and in 1997, the enforcement provisions were extended through 2002 (P.L. 105-33), but again a balanced budget was not required.

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

[98] 106 S.Ct. 3181 (1986).

[99] For a discussion of the Budget Enforcement Act, see Lynch, *Statutory Budget Controls in Effect Between 1985 and 2002*.

VI. Analysis of Typical Provisions of Proposed Balanced Budget Amendments

What follows is a general discussion of language commonly used in proposals for a balanced budget amendment. In particular, the discussion addresses provisions that have been included in balanced budget proposals and how some of these provisions could be subject to varying interpretations. Many of the points addressed in this analysis have been raised during previous consideration of balanced budget amendments.

A number of these interpretations might have achieved some measure of consensus among Members of Congress concerning their general meaning. However, no determinative judgments have yet been made on the vast majority of the issues discussed here, and parts of a proposed amendments' language may well be subject to interpretation. Especially in the absence of any extensive legislative history, these unresolved issues would presumably need to be treated by statute, interpreted by the courts, or both.

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

Use of Estimates

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

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

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

with balanced budget requirements do not require a year-end balance, and several others allow a deficit to be carried over to the next fiscal year if necessary.[100]

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

An absolute prohibition on excess outlays in the absence of a three-fifths vote could create technical issues especially related to mandatory spending. For most mandatory spending, the total amount of budget authority available is controlled by formula based on eligibility, not by a specific funding level. Estimating the precise level of funding that will be used to fulfill the requirements imposed by that formula and the timing of when budget authority would actually be outlayed are both highly technical. Could such a provision effectively require three-fifths support to allow the release of funds otherwise provided by law but not yet converted to outlays? How would Congress (or an agency) know when action was required or even whether a particular program had triggered the necessity?

Some proposals, while discussed in the context of balanced budget requirements, would not prohibit actual deficits. For example, proposals have been made that would require either the President's budget or Congress's concurrent budget resolution be balanced, but they would not necessarily bar actual appropriations or outlays in excess of revenues. Another possibility would mandate that the budget be balanced only with respect to expected revenues or outlays so that an economic downturn that decreased revenues and increased outlays during a given fiscal year would not put the government in violation of the Constitution. Opponents of these proposals have often suggested that without a requirement based on actual budgetary outcomes, their effectiveness could be undercut because by "rosy" forecasting of the economy and projected revenues. Many proposals also provide that the requirement for balance could be waived in certain circumstances. Various proposals allow for these waivers in the case of a national emergency, low economic growth, or a declaration of war or by congressional passage of a resolution by a supermajority, such as three-fifths or two-thirds.

Conversely, some proposals seek to prohibit Congress from making appropriations in excess of anticipated revenues for a fiscal year. These could be narrowly construed so that, to the extent that deficits result from actions other than those taken by Congress in the appropriations process itself, the amendment would not be an obstacle to deficits. If this interpretation were to prevail, the executive departments might be permitted to spend in excess of revenues, provided they had the budget authority to do so.[101]

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

[101] For example, such budget authority could be in the form of contract or entitlement authority for indefinite amounts of funds ("such sums as are necessary ...").

Supermajority Requirements

The requirement for a supermajority to approve a "specific excess" of outlays over receipts, while seemingly straightforward, could present issues in implementation. It could simply apply to a concurrent or joint resolution encompassing the entire budget, but there are other possibilities. Because no mechanism is provided for identifying the "specific excess" it is not clear what this means. Conceivably it could be applied to either the amount of money, to the recipient program or agency, or to both. Some programs might be popular enough to secure funding regardless of the deficit. If such programs were left unfunded until the ceiling was reached, they might then be funded despite the requirement that they have three-fifths support in each chamber. Such a provision also leaves unclear how outlays due to claims made by beneficiaries for mandatory spending programs or interest on the debt would be treated in the absence of either a balanced budget or a supermajority waiver.

Presidential Responsibility

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

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

Although such presidential requirements are generally included in proposals as a way to preserve symmetry between the executive and legislative branches, this is not precisely the same requirement that Congress would have to adhere to. Because of the timing of the President's budget submission,[102] the estimates of receipts and outlays used in this proposal would not necessarily be the same as those used by Congress. This could mean that the President would be able to unilaterally determine the estimates used to fashion his proposal, while Congress might have to base its actions on estimates agreeable to both branches. Also, the President's proposal

[102] Under current law (established in Section 13112(a)(4) of the Budget Enforcement Act) the President is required to submit the budget "On or after the first Monday in January but not later than the first Monday in February of each year."

would have to balance estimated outlays against estimated receipts, while under most proposed amendments Congress would ultimately have to balance actual outlays against actual receipts.

Coverage and Exemptions

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

Off-Budget Activities

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

Various proposals have sought to anticipate problems that could be brought about by attempts at circumvention and have either included or excluded a variety of specific expenses or activities. These have sought to exempt such things as net interest on the public debt, Social Security, or federal credit programs. Other measures would be coupled with a capital budget, which would separate federal expenditures into one budget for current operating expenses and a second one for net investment in assets that have a useful life of several years. Even so, the question of what would be included or excluded would have to be addressed.

In contrast to the experiences of states, most proposals at the federal level are planned as inclusive. They are almost always defined as applying to "all receipts of the United States Government except those derived from borrowing" and "all outlays of the United States Government except those for repayment of debt principal." State governments are typically required to balance their operating, or general fund, budget, but other major fund groups (such as capital, enterprise, trust, and other special funds) may not necessarily be required to balance on an annual basis.[103]

The Senate Judiciary Committee's 1993 report accompanying S.J.Res. 41 expressed the intent of the committee that *total receipts* and *total outlays* include "all moneys received by the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress."[104] The report further stated that some programs, such as the electric power program of the Tennessee Valley Authority, are not intended to be covered by this definition. The only explanation given is that the program is self-financing. It is unclear to what extent this interpretation by the Judiciary Committee would be binding. If it were, it could

[103] *Balanced Budget Requirements: State Experiences and Implications for the Federal Government*, GAO Report AFMD-93-58BR, p. 19.

[104] Senate Judiciary Committee, *Report to Accompany S.J.Res. 41*, 103rd Cong., 1st sess., p. 12.

potentially allow the federal government to follow the state example and create other special authorities that would not be covered by the amendment's definitions of *outlays* and *receipts*.

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

Non-Budgetary Activities

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

Waivers

The most common exception to the requirement for a balanced budget is a waiver in cases of declared war. Some proposals would also allow a waiver for military emergencies declared by law. Other provisions in proposed amendments would trigger exemptions or allow waivers. A proposal considered by the Senate in 1994 would have suspended the requirement for a balanced budget for any fiscal year, and the following fiscal year as well, if CBO estimates that real economic growth has been or will be less than 1% for two consecutive quarters during the period of those two fiscal years. Other proposals would allow a waiver of the balanced budget requirement for any fiscal year in which a declaration of national emergency were in effect. With the term *national emergency* left undefined, such a provision might well be applicable to economic as well as military emergencies. It should be noted that the duration of such a national emergency, or how its end should be determined, is left unstated.

Debt

An issue closely related to deficits is federal debt and the debt limit.[105] Indeed, a number of proposed balanced budget amendments have included provisions that would make it more difficult to increase the public debt of the United States by requiring a supermajority in each House to enact legislation to do so. The apparent intent is to reinforce the balanced budget requirement by making it difficult for the amount of federal debt to be increased. Without the authority to borrow funds, the government could not operate with a deficit. Indeed, some proposals deal only with debt and require a balanced budget solely by implication. At least one proposal made in the House would go further and require surpluses in order to pay down the debt.

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

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

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

An increase in trust fund holdings also increases the reported gross public debt of the federal government. Generally such an increase is generated when receipts into trust funds exceed payments. Excess trust fund receipts are invested in federal government debt instruments. The portion of the gross public debt held by trust funds or other intragovernmental accounts is projected to be approximately 15% by 2028.[106]

The distinction between gross public debt and debt held by the public could have significant implications, particularly with regard to the budgetary status of Social Security. Because it is currently accumulating a surplus for future use, the Social Security trust funds increase the amount of gross debt. Accordingly, a balanced budget amendment that requires a three-fifths vote in order to increase the gross public debt could mean that a supermajority was necessary to allow a surplus held by a trust fund to increase. Even in cases where the trust fund was in balance, the accumulation of interest on outstanding debt held by the trust fund could itself have the effect of requiring an increase in the gross public debt. On the other hand, a balanced budget amendment

[105] For more on federal debt, see CRS Report R44383, *Deficits, Debt, and the Economy: An Introduction*, by Grant A. Driessen.

[106] CBO, *The Economic and Budget Outlook: Fiscal Years 2018-2028* (Washington: GPO, 2018), p. 88.

requiring action to increase the amount of "publicly held federal debt" could make it difficult for Social Security to liquidate its accumulated reserves to pay benefits.

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

The division of federal debt instruments into a number of different classes to secure technical compliance with an amendment could have wider implications as well. Such a phenomenon would be roughly analogous to state experience, where different debt instruments, including some not backed by the "full faith and credit" of the government,[107] are routinely issued and separately rated by financial markets.

By many accounts, state experience suggests that constitutional limitations on debt have been less than wholly effective. State legislatures have devised a wide variety of financing techniques to comply technically with constitutional limitations on the issuance of debt, including special fund financing, creation of public authorities, and lease arrangements.[108] It is not implausible that the federal government would have occasion to resort to one or more of these devices if limits were placed on its issuance of new debt.

Tax or Expenditure Limitations

Another broad category of proposals includes those that place a limit on the ability of the federal government to tax or spend. Some would hold total outlays to a set percentage of some economic indicator, such as GDP or GNP, while others would limit increases in spending to a percentage of the growth of a particular economic indicator. Support for such provisions is derived from two chief premises: (1) the part played by the federal government in the economy has grown too large in recent decades, and (2) efforts to balance the budget should be biased in favor of spending cuts rather than tax increases. H.J.Res. 1 in the 112th Congress, for example, would have limited the level of outlays to 18% of the "economic output" of the United States, regardless of whether the budget is balanced, unless there were a two-thirds supermajority to support the increase.

One significant question is how a provision to limit increases in revenues might be interpreted. The term *revenue* appears in the Constitution, in this context, in Article I, Section 7, the so-called Origination Clause. As interpreted by the Supreme Court, the phrase *all bills raising revenue* has typically meant measures raising revenue to support government generally but not those that raise funds to support a specific governmental program.[109] This constitutional understanding of the term *revenue* therefore may differ from that used, for example, in relation to the jurisdiction of congressional committees or under budgetary statutes (such as the Congressional Budget Act of 1974). Also it could restrict the application of a tax limitation to measures that affect money

[107] The term *full faith and credit* is used to denote an explicit pledge to use the government's taxing authority to liquidate the debt.

[108] Sterk and Goldman, "Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations," *Wisconsin Law Review*, 1991, pp. 1301-1368.

[109] The Supreme Court, in *United States* v. *Munoz-Flores*, 495 U.S. 385 (1990), held that a requirement on federal Courts to impose a monetary "special assessment" on any person convicted of a federal misdemeanor was not a "bill for raising revenue." Justice Story, in *Commentaries on the Constitution* (Boston, 1833. §880) wrote that only bills to raise taxes in the strict sense of the word are "bills for raising revenue;" bills for other purposes, which may incidentally create revenue, are not included. The Supreme Court later held, in *Twin City Bank* v. *Nebeker*, 167 U.S. 196 (1897) and *Millard* v. *Roberts*, 202 U.S. 429 (1906), that a bill that creates, and raises revenues to support, a particular governmental program, as opposed to a bill that raises revenue to support government generally, is not a "bill for raising revenue." For more on what constitutes revenue in the constitutional sense see CRS Report RL31399, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

raised for the general fund of the federal government but exclude funds raised for specific programs. Another potential difficulty with the definition of *revenue* is that not all receipts to the federal government are currently treated equally in the budget process. Collections from the public based on the government's exercise of its sovereign powers are treated as revenues (e.g., personal income taxes). Collections by the government as a result of business-type or market oriented activities are generally treated as offsets to outlays (e.g., various royalties and licensing fees). Offsetting collections can be applied either to the outlays of a specific agency or program or to the government generally. Without further direction, through more explicit language in a proposed amendment, it is unclear how it might be interpreted.

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

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

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

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

revenues increasing at a more rapid rate than the economy. Such a provision could also require a tax cut following a recession because of an associated downturn in national income.

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

Another approach would require that measures to increase revenues be passed by a supermajority of three-fifths or two-thirds of the total membership of each House. This would allow increases in taxes beyond the rate of growth of national income but only under one of two circumstances: First, tax revenues could increase under existing tax laws as a result of economic upturns. Second, they could also increase as a result of any new law if it were passed by supermajority.

Alternatively, some proposals might limit taxes indirectly by limiting the level of expenditures. While this method would not actually prohibit the federal government from taking action to increase revenues, it would inhibit such increases by removing the primary incentive for doing so. Even in the 19th century, the federal government did not historically operate with a sustained budgetary surplus, and it seems unlikely that a mandatory balanced budget would create an incentive to do so.[110] If expenditures were limited, any increases in revenues beyond the level necessary for balance could be applied only toward repayment of debt principal. Because the repayment of debt principal, and particularly its scheduling, is dependent on the terms under which such funds were originally borrowed, it seems unlikely that this would provide a significant incentive for the federal government to operate at a sustained surplus. Without such an incentive, the indirect effect of an expenditure limit would be to limit taxation.

The levels of the expenditure limits commonly associated with such proposals has generally been in the range of 18% to 20% of GDP. However, as shown in **Table 4**, the level of expenditures has been higher than that. Therefore, such a limitation would likely require that specific cuts be made in federal spending as well as mandating an overall balance of expenditures and revenues.

In any form, a limitation on revenues or outlays could create a bias in favor of tax expenditures.[111] Because in most cases these are receipts foregone by the government, rather than actual outlays, they would likely be largely exempt from any limitations on spending. Proposals to limit the growth or level of federal taxation would also favor tax expenditures over outlays. Although increasing receipts and reducing outlays are budgetarily equivalent, a limitation on increases in receipts would limit Congress's ability to eliminate tax expenditures to achieve a balanced budget. This is because eliminating tax expenditures would increase receipts rather than reduce outlays and thus increase the risk of running afoul of such a limitation.

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

[111] For more on tax expenditures generally, see CRS Report R44530, *Spending and Tax Expenditures: Distinctions and Major Programs*, by Grant A. Driessen.

Table 4. Federal Outlays and Receipts as a Percentage of GDP

Fiscal Year	Outlays as a Percentage of GDP	Receipts as a Percentage of GDP
1950	15.3	14.2
1960	17.3	17.3
1970	18.7	18.4
1980	21.2	18.5
1990	21.2	17.5
2000	17.7	20.0
2010	23.3	14.6
2018	20.3	16.5

Source: *Budget of the United States Government, FY2020. Historical Tables*, Table 1.2—Summary of Receipts, Outlays, and Surpluses or Deficits as Percentages of GDP: 1930-2024.

Judicial Review

When the Senate considered a balanced budget amendment during the 103rd Congress, the issue of judicial review was prominently debated. In particular, the Senate considered a provision to establish that the power of "any court to order relief pursuant to any case or controversy arising under this article shall not extend to ordering any remedies other than declaratory judgment or such remedies as are specifically authorized in implementing legislation." Such a provision would leave the judiciary with the authority to issue decisions concerning the meaning of the amendment or any implementing legislation, but judicial remedies of violations could be ordered only in circumstances specifically provided by law. Although such declaratory judgments[112] would be binding, courts would lack the enforcement remedies of injunctive relief or writs of mandamus. Enforcement would be left to the elected branches unless the courts were specifically provided with authority to use these or other remedies. Limiting the judiciary to declaratory judgments might not be an entirely empty authority, but its effectiveness would depend on the parties involved respecting and following the terms of the judgment. Such a limitation on judicial remedies would represent a significant shift in the balance of power among the three branches of the federal government and a departure from the accepted practice that allows courts to interpret constitutional disputes and determine the appropriate remedy.[113]

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

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

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

(formerly 31 U.S.C. §27)

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

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

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

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

To amend the Bretton Woods Agreement (IMF).

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

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

To amend the Bretton Woods Agreement (IMF).

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

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

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

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

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

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