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WILL A BALANCED BUDGET AMENDMENT WORK?

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Will a Balanced Budget Amendment Work?

Beginning with the administration of Herbert Hoover, peacetime deficit spending has been the rule rather than the exception. This is a sharp contrast to the first 140 years of government under the Constitution, during which the Federal government usually had peacetime surpluses and used them to pay down the debt acquired during war or depression.

The inability of the President and Congress to overcome deficit spending has led many to see a balanced budget amendment to the Constitution as the only solution. Many such amendments have been introduced in the 112th Congress. Those of Rep. Robert Goodlatte (HJ Res 2) and Sen. Orrin Hatch (SJ Res 10) each have the support of about half the members of their house of Congress. Sen. Mike Lee, a leader of the Tea Party movement, has introduced SJ Res 5, which is intended as an even more strict version.

However, we cannot accurately evaluate whether a balanced budget amendment will accomplish its goal until we first identify the source of the problem. What change took place in 1930, and has persisted ever since, causing one president and congress after another to act so differently from those who came before?

Understanding the Cause of the Deficit

Herbert Hoover was the first President to respond to a depression by promoting massive Federal activity in an attempt to turn around the economy. Huge stimulus appropriations plus bailouts of banks and other corporations increased Federal spending by more than 50% from 1929 to 1932, matched by a ballooning deficit. Hoover was followed in the White House by Franklin Delano Roosevelt, who not only continued but expanded the spending programs in an unsuccessful effort to bring the economy back to its pre-Depression status.

The Hoover-FDR policies changed the way that Americans looked at the Federal government. Programs such as the Works Progress Administration, Social Security, Aid to Families with Dependent Children, farm subsidies, unemployment insurance, housing subsidies, and even the GI bill made the Federal government appear to be an inexhaustible source of financial assistance. The potential for this attitude had always been there (as Union veterans and their widows demonstrated after 1865, when the push to grant military pensions made that the largest portion of the Federal budget), but never before had the floodgates opened so generously to so many.

This fundamental change in attitude – a common feeling that one was entitled to some degree of financial support from the Federal government – changed the political culture. Although Americans continued to oppose higher taxes (and tax aversion may even have increased in recent decades), the demand for spending programs was felt in Washington and nearly all elected officials responded vigorously to satisfy the desires of their constituents. One reason that politicians talk about a balanced budget amendment is

that it allows them to put off discussion of the huge sacrifices many Americans will have to make in order to reduce spending to a sustainable level.

Deficit spending has been caused by the American people, many of whom demand ever more spending on Federal programs while insisting that they not be taxed at the levels of the European welfare state. With wealthy and upper-middle class Americans already paying most of what is collected through the personal income tax, major revenue increases would have to come from the middle and lower-middle class, who have the votes to say no and make it stick.

Only when this predisposition toward more spending without more taxes has been recognized can we approach the question of a balanced budget amendment realistically. No matter what an amendment may say, and no matter how popular it seems in public opinion polls, the overwhelmingly powerful incentive for politicians will be to protect and even increase spending programs which benefit their constituents. Therefore, they will seek out and exploit every loophole that may be offered, just as surely as water will find and flow through even the smallest leak.

Weaknesses in the Balanced Budget Amendments

Such loopholes are available in the proposed amendments, and necessarily so. Most balanced budget amendments (including those of Goodlatte and Hatch) include an exception for wartime, even for undeclared wars. (No American war has been funded without borrowing, and not since Vietnam has there been a significant tax increase to fund even part of the cost of a war.) Since the United States now seems to be in a state of perpetual undeclared war (the Korean War has been in a state of cease-fire without actually ending since 1953, and the first Gulf War continued in cease-fire status from 1991 until fighting resumed in 2003), Congress would have no problem invoking this exception as a means avoiding painful spending cuts.

Furthermore, the Goodlatte, Hatch, and Lee amendments all allow Congress to suspend the amendment at any time, for whatever reason Congress considers justifiable, as long as it is done by a supermajority (three-fifths or two-thirds). Anyone who understands the pressure on members of Congress to protect spending programs will understand that lining up two-thirds to “temporarily” suspend the amendment would be far easier than getting a majority to vote for the massive spending cuts needed to achieve a balanced budget.

There is also the fact that all budgets approved by Congress and signed into law by the President must depend on estimates. No one really knows how much money will be collected in taxes, nor what open-ended spending programs such as Social Security, Medicare, and Medicaid will cost. Economic growth, inflation, unemployment, rising or falling energy prices, interest rates and a host of other unknowns can cause these estimates to be off by a significant factor.

There is also the fact that Congress and the President will have every incentive to prepare a budget based on unrealistically optimistic estimates. They have the authority to enact a budget which they know to be balanced only in their imagination, but allowing them to claim that they have done what the amendment requires.

When it becomes obvious that taxes are lower and spending higher than provided for in the official budget, will having an amendment somehow force Congress to respond by making mid-year spending cuts that it was unwilling to make during the budget process? The Constitution is not a self-enforcing document. Even though it clearly requires Congress to reapportion House seats after each census, the Congress elected in 1920 refused to do so, and no reapportionment occurred until after the census of 1930. No one could make Congress obey the Constitution during the 1920's. Who would force them to act under a future balanced budget amendment?

The Problem of Enforcement

Enforcement is the true Achilles heel of the Balanced Budget Amendment. The Constitution gives Congress primary authority over Federal spending, but Congress itself cannot be forced to balance the budget. Therefore, any effective enforcement must be assigned elsewhere, and probably to a single person whose responsibility is clear and undiluted. If the legislative branch will not do the job, then either the executive or judicial branch must be given the task.

Giving such enforcement power to the President would turn the existing Constitution on its head. The President would be empowered to, in effect, amend the budget and appropriations laws. His only limitation would be that he could not increase spending on any program above the level approved by Congress (and he might even claim the power to increase spending on one program as long as he reduced spending by a greater amount elsewhere). The President would gain the power of political life and death over many members of Congress by threatening to withhold appropriations considered vital to their state or district. This power would make the President the master of Congress, threatening to cut off funding unless members voted for other legislation on his agenda. The Constitution was supposed to prevent any President from manipulating Congress in the way that King George III used appointments and pensions to control Parliament, but giving the President so much control of Federal spending would thoroughly overturn such protection.

Even worse, it is unlikely that such power would produce a balanced budget. The President would face the same political considerations as members of Congress. Even in his second term, he would be reluctant to take steps that seemed likely to make his party greatly unpopular in the next election. The most probable outcome would be a President who abused this newly-granted "power of the purse" to punish his political enemies, while failing to make the larger cuts required to bring the budget into balance.

Enforcement by the President would create new problems without achieving the goal of a balanced budget. That leaves the Federal judiciary as the only remaining possibility.

While the Goodlatte and Hatch amendments rely entirely on Congress for enforcement, the Lee Amendment specifically declares that “Any member of Congress shall have standing and a cause of action to seek judicial enforcement of this article, when authorized to do so by a petition signed by one-third of the Members of either House of Congress.”

The actual procedure for this “judicial enforcement” is not spelled out, and nothing is said about an expedited process, so it must be presumed that it would follow the usual course of Federal lawsuits. The suit would first be heard in a Federal district court, and could then be appealed to the Circuit Court of Appeals, and from there to the U.S. Supreme Court. Unless the courts moved at a pace much faster than usual, the fiscal year would be over long before any decision was reached. At best, many months would have passed without action, therefore requiring deep cuts even in such essential programs as defense in order to save enough money during the last few months of the year. Furthermore, since the ultimate authority would lie in the hands of the nine members of the Supreme Court, balancing the budget would occur only if at least five of them could agree on a single plan. It is entirely possible, and perhaps even likely, that they would deadlock without a majority for any one plan.

Even if there were reason to believe that the Federal courts would resolve the matter promptly, are judges to be trusted with such power? They are appointed for what is usually, in effect, a life term (serving during good behavior), rather than being elected and accountable to the people. Furthermore, judges are not likely to have the knowledge or skills required for setting national spending priorities. As Nathaniel Ghorum said during the Constitutional Convention, “As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures”. Can anyone honestly claim that Justice Sotomayor is as well qualified to prepare a Federal budget as the members of the House and Senate Budget Committees?

A balanced budget amendment is not an effective way of balancing the budget, and would almost surely do more harm than good. That does not mean that the amendments fail to offer some useful guidance. In fact, they point the way toward useful legislation, which could be passed by a simple majority and take effect right away, instead of struggling for the two-thirds majority required to send an amendment to the states, then waiting for years to see if three-fourths of the states will ratify. (The answer is that they would not, since a balanced budget would require eliminating or greatly reducing the Federal grants which allow states to appear to balance their own budgets, while actually passing their deficits on to the Federal government.)

Both the Goodlatte and Hatch amendments include a section requiring the President to send Congress a balanced budget each year. That could be enacted with one additional provision, requiring the President to use the Congressional Budget Office

(CBO) estimates rather than those of the Office of Management and Budget (whose leaders are appointed by the President and subject to his influence). This would at least mean that the President would be working with numbers from an independent source. (President Clinton, as part of his compromise with the Republican Congress, agreed to use CBO estimates while negotiating a balanced budget.) The bill might also require a supermajority to amend the President's budget in such a way as to increase total spending. That would provide a useful test of whether such supermajorities really provide any meaningful barrier to out-of-control spending.

Congress might also consider adopting a measure similar to one included in each budget approved by the General Assembly of Virginia. This budget language instructs the Governor on where he may cut spending if state revenue is insufficient to keep the budget in balance. This allows the governor to react quickly, but protects the legislature's role in setting priorities.

Balancing the budget is an essential goal for the Federal government. However, the real need is to begin the debate over actual spending cuts now. It would be a waste of time to argue about an amendment which is unlikely to pass Congress, would not be ratified by the states, and would not bring about a balanced budget even if it became part of the Constitution.