

How Congress Can Partner with the States on a Federal Balanced Budget Amendment

By Nick Dranias

Introduction

49 states have balanced budget or debt limit requirements in their constitutions, statutes or case law. This policy looks especially prescient today, with Greece and Puerto Rico on the edge of economic collapse due to poor fiscal controls and excessive borrowing. Unfortunately, efforts to advance a federal Balanced Budget Amendment have been focused on urging Congress to deploy its direct amendment proposal power under Article V of the U.S. Constitution, which requires the support of two-thirds of each House. Of course, the problem is that Congress has never reached the necessary threshold with any of its proposed Balanced Budget Amendments. But that is not a reason to give up when it comes to championing a federal Balanced Budget Amendment. There is another way. Congress can partner with the states on the issue. Specifically, Congress could pass a concurrent resolution, such as H.Con.Res. 26 (see Appendix), to set in motion an interstate compact to advance and ratify a federal Balanced Budget Amendment, such as the Compact for a Balanced Budget.

ABOUT THE AUTHOR

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How to Partner with the States

By passing H.Con.Res. 26, Congress would yield to the states' leadership in advancing a federal Balanced Budget Amendment through the Compact for a Balanced Budget. The Compact for a Balanced Budget is an interstate agreement currently existing among Alaska, Georgia, Mississippi and North Dakota. The Compact advances and ratifies a federal Balanced Budget Amendment in one bill — a single legislative action — passed by 38 state legislatures. It is able to advance a federal Balanced Budget Amendment because it deploys the power to organize a convention for proposing amendments under Article V of the U.S. Constitution. The Compact commits its member states to the entire constitutional amendment process in advance, so that the proposal of a specific, pre-drafted federal Balanced Budget Amendment is voted up or down within 24 hours at the convention it organizes. The use of a formal agreement to define and deploy the convention mode of proposing amendments ensures that this otherwise untested process enjoys the benefit of centuries of case law enforcing interstate compacts.

Using conditional enactments to ensure that it only goes “live” at the right time, H.Con.Res. 26 simultaneously calls the Article V convention contemplated by the Compact (effective if and when at least three-fourths of the states join the Compact) and selects legislative ratification of the Compact's contemplated federal Balanced Budget Amendment (effective if and when the amendment is proposed by the Compact-organized convention).

Additionally, passing H.Con.Res. 26 gives implied consent to the Compact for a Balanced Budget; thus providing a fallback position to defend the Compact for a Balanced Budget if a court were to wrongly rule that it requires Article I, Section 10 congressional consent.

Just like any other concurrent resolution, Congress has the power to pass H.Con.Res. 26 with simple majorities and without Presidential presentment. This is because H.Con.Res. 26 simply ensures that Congress follows its own mandatory constitutional call and ratification referral duties when the requisite legal thresholds are met. Although Congress may have only a few incidental powers associated with its exclusive convention call and ratification referral duties, certainly those duties include the power to ensure Congress performs its own mandatory constitutional obligations when the time comes.

Further, passage of H.Con.Res. 26 would not implicate the need for Presidential presentment. This is because the Supreme Court has ruled the President has no role in Article V. Although this ruling was issued in connection with the direct congressional proposal of amendments, it applies with more force to H.Con.Res. 26 because the procedural act of calling a convention for proposing amendments or selecting a mode of ratification is even less like “making law,” which requires Presidential presentment, than is directly proposing an amendment. In substance, H.Con.Res. 26 merely exercises power conferred exclusively by the Constitution on Congress to usher along a state-initiated and consummated constitutional amendment process.

Conclusion

The bottom line is that the goal of achieving a federal Balanced Budget Amendment has finally been made achievable through the mechanism of passing a congressional concurrent resolution to activate a corresponding interstate compact.

Support for the necessary congressional concurrent resolution does not imply support for the substance of the amendment advanced by the Compact for a Balanced Budget, it merely affirms a commitment by Congress to following its constitutional duties when the necessary legal thresholds are met.

Of course, the federal Balanced Budget Amendment advanced by the Compact for a Balanced Budget is worthy of support on the merits. It strongly limits the borrowing capacity of the federal government and otherwise restricts spending at all times to tax-derived cash-on-hand. The amendment encourages spending reductions before tax increases to close deficits. It does this by requiring supermajority approval for new or increased income or sales taxes, while retaining the current simple majority rule for revenue measures that will cause the least harm (and generate the most political pushback), such as eliminating tax loopholes and replacing the income tax with a consumption tax. To handle national emergencies without easy evasion of fiscal restraint, the amendment includes four “release valves:” (1) a 5% cushion of additional borrowing capacity above the total national debt on ratification, allowing for an orderly transition to balanced budgets; (2) the ability to free up borrowing capacity for emergency spending by paying down the national debt; (3) a provision requiring the President to enforce the limit on borrowing capacity and reprioritize spending to address emergencies through spending impoundments that are subject to simple majority override by Congress to prevent abuse; and (4) a provision giving Congress the ability to obtain an increase in its borrowing capacity with the approval of a simple majority of state legislatures within 60 days of the request—ensuring a transparent, decentralized debate over debt policy.

In short, the federal Balanced Budget Amendment advanced by the Compact for a Balanced Budget would provide a glide path to balanced budgets, stop intergenerational injustice, and prevent unsustainable spending and taxes. That’s a great reason for Congress to commit to doing its constitutional duty under Article V.

Appendix

114TH CONGRESS
1ST SESSION

H. CON. RES. 26

Effectuating the Compact for a Balanced Budget.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2015

Mr. GOSAR (for himself, Mr. DUNCAN of South Carolina, Mr. SALMON, Mr. ZINKE, Mr. JONES, Mr. CRAMER, Mr. YOUNG of Alaska, Mr. CULBERSON, Mr. BROOKS of Alabama, Mr. SCHWEIKERT, Mr. WILSON of South Carolina, Mr. NEWHOUSE, Mrs. LUMMIS, Mr. LOUDERMILK, and Mr. BRIDENSTINE) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

CONCURRENT RESOLUTION

Effectuating the Compact for a Balanced Budget.

1 *Resolved by the House of Representatives (the Senate*
2 *concurring),*

3 **SEC. 1. CONCURRENT RESOLUTION TO EFFECTUATE THE**
4 **COMPACT FOR A BALANCED BUDGET.**

5 (a) DECLARATION.—The Congress determines and
6 declares that this concurrent resolution calls the Conven-
7 tion contemplated by the Compact for a Balanced Budget
8 under article V of the United States Constitution, and re-
9 fers for ratification the Balanced Budget Amendment con-
10 templated by the Compact for a Balanced Budget.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this resolution is as follows:

Sec. 1. Concurrent Resolution to Effectuate the Compact for a Balanced Budget.
 et.

TITLE I—CONCURRENT RESOLUTION PROSPECTIVELY CALLING
 CONVENTION CONTEMPLATED BY COMPACT FOR A BALANCED
 BUDGET

Sec. 101. Effective date.

Sec. 102. Convention call.

Sec. 103. Termination date.

TITLE II—CONCURRENT RESOLUTION PROSPECTIVELY REFER-
 RING THE BALANCED BUDGET AMENDMENT TO STATE LEGIS-
 LATURES FOR RATIFICATION

Sec. 201. Effective date.

Sec. 202. Referral to legislatures of the several States for ratification.

3 **TITLE I—CONCURRENT RESOLU-**
 4 **TION PROSPECTIVELY CALL-**
 5 **ING CONVENTION CON-**
 6 **TEMPLATED BY COMPACT**
 7 **FOR A BALANCED BUDGET**

8 **SEC. 101. EFFECTIVE DATE.**

9 This title does not take effect until Congress receives
 10 sufficient certified conforming copies of the chaptered
 11 version of the Compact for a Balanced Budget formed ini-
 12 tially by the State of Georgia and the State of Alaska pur-
 13 suant to 2014 Georgia Laws Act 475 (H.B. 794) and
 14 2014 Alaska Laws Ch. 12 (H.B. 284), respectively, as it
 15 may be joined by additional States and amended from
 16 time to time (“Compact for a Balanced Budget”), evidenc-
 17 ing that at least three-fourths of the several States are
 18 Member States of the Compact for a Balanced Budget and

1 have made application thereunder for a convention for
2 proposing amendments under article V of the United
3 States Constitution.

4 **SEC. 102. CONVENTION CALL.**

5 Upon the effective date of this title, be it resolved
6 by the House of Representatives of the United States (the
7 Senate Concurring), Congress hereby calls a convention
8 for proposing amendments under article V of the United
9 States Constitution in accordance with the Compact for
10 a Balanced Budget.

11 **SEC. 103. TERMINATION DATE.**

12 If for any reason the convention for proposing
13 amendments under article V of the United States Con-
14 stitution contemplated herein has not permanently ad-
15 journed within one year from the effective date of this
16 title, all titles of this resolution shall become null and void
17 ab initio and shall be deemed repealed in its entirety.

1 **TITLE II—CONCURRENT RESO-**
 2 **LUTION PROSPECTIVELY RE-**
 3 **FERRING THE BALANCED**
 4 **BUDGET AMENDMENT TO**
 5 **STATE LEGISLATURES FOR**
 6 **RATIFICATION**

7 **SEC. 201. EFFECTIVE DATE.**

8 This title does not take effect until Congress receives
 9 a certified conforming copy of the Balanced Budget
 10 Amendment, as defined by the Compact for a Balanced
 11 Budget and described herein, evidencing that the conven-
 12 tion for proposing amendments under article V of the
 13 United States Constitution organized thereunder has ap-
 14 proved and proposed the same for ratification.

15 **SEC. 202. REFERRAL TO LEGISLATURES OF THE SEVERAL**
 16 **STATES FOR RATIFICATION.**

17 Upon the effective date of this title, be it resolved
 18 by the House of Representatives of the United States (the
 19 Senate Concurring), that the following article has been
 20 proposed as an amendment to the Constitution of the
 21 United States by a convention for proposing amendments
 22 under article V of the United States Constitution, which
 23 shall be valid to all intents and purposes as part of the
 24 Constitution when ratified by the legislatures of three-

1 fourths of the several States within seven years after the
2 date of its submission for ratification:

3 “ARTICLE —

4 “SECTION 1. Total outlays of the Government of the
5 United States shall not exceed total receipts of the Gov-
6 ernment of the United States at any point in time unless
7 the excess of outlays over receipts is financed exclusively
8 by debt issued in strict conformity with this article.

9 “SECTION 2. Outstanding debt shall not exceed au-
10 thorized debt, which initially shall be an amount equal to
11 105 percent of the outstanding debt on the effective date
12 of this article. Authorized debt shall not be increased
13 above its aforesaid initial amount unless such increase is
14 first approved by the legislatures of the several States as
15 provided in section 3.

16 “SECTION 3. From time to time, Congress may in-
17 crease authorized debt to an amount in excess of its initial
18 amount set by section 2 only if it first publicly refers to
19 the legislatures of the several States an unconditional, sin-
20 gle subject measure proposing the amount of such in-
21 crease, in such form as provided by law, and the measure
22 is thereafter publicly and unconditionally approved by a
23 simple majority of the legislatures of the several States,
24 in such form as provided respectively by State law; pro-
25 vided that no inducement requiring an expenditure or tax

1 levy shall be demanded, offered or accepted as a quid pro
2 quo for such approval. If such approval is not obtained
3 within 60 calendar days after referral then the measure
4 shall be deemed disapproved and the authorized debt shall
5 thereby remain unchanged.

6 “SECTION 4. Whenever the outstanding debt exceeds
7 98 percent of the debt limit set by section 2, the President
8 shall enforce said limit by publicly designating specific ex-
9 penditures for impoundment in an amount sufficient to
10 ensure outstanding debt shall not exceed the authorized
11 debt. Said impoundment shall become effective 30 days
12 thereafter, unless Congress first designates an alternate
13 impoundment of the same or greater amount by concur-
14 rent resolution, which shall become immediately effective.
15 The failure of the President to designate or enforce the
16 required impoundment is an impeachable misdemeanor.
17 Any purported issuance or incurrence of any debt in excess
18 of the debt limit set by section 2 is void.

19 “SECTION 5. No bill that provides for a new or in-
20 creased general revenue tax shall become law unless ap-
21 proved by a two-thirds roll call vote of the whole number
22 of each House of Congress. However, this requirement
23 shall not apply to any bill that provides for a new end
24 user sales tax which would completely replace every exist-
25 ing income tax levied by the Government of the United

1 States; or for the reduction or elimination of an exemp-
 2 tion, deduction, or credit allowed under an existing general
 3 revenue tax.

4 “SECTION 6. For purposes of this article, ‘debt’
 5 means any obligation backed by the full faith and credit
 6 of the Government of the United States; ‘outstanding
 7 debt’ means all debt held in any account and by any entity
 8 at a given point in time; ‘authorized debt’ means the max-
 9 imum total amount of debt that may be lawfully issued
 10 and outstanding at any single point in time under this
 11 article; ‘total outlays of the Government of the United
 12 States’ means all expenditures of the Government of the
 13 United States from any source; ‘total receipts of the Gov-
 14 ernment of the United States’ means all tax receipts and
 15 other income of the Government of the United States, ex-
 16 cluding proceeds from its issuance or incurrence of debt
 17 or any type of liability; ‘impoundment’ means a proposal
 18 not to spend all or part of a sum of money appropriated
 19 by Congress; and ‘general revenue tax’ means any income
 20 tax, sales tax, or value-added tax levied by the Government
 21 of the United States excluding imposts and duties.

22 “SECTION 7. This article is immediately operative
 23 upon ratification, self-enforcing, and Congress may enact
 24 conforming legislation to facilitate enforcement.”.

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