Budget
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CENTER ON BUDGET AND POLICY PRIORITIES

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THE NEW FISCAL AGENDA: WHAT WILL IT MEAN AND HOW WILL IT BE ACCOMPLISHED?

I. Overview

In coming months, the new Republican Congress will consider a fiscal agenda that would cause a virtual revolution in American government. The most momentous changes since the creation of the New Deal 60 years ago may be in the offing. Like the New Deal, these changes could establish a framework within which the federal government operated for decades thereafter.

This new framework would begin to change radically the purpose of government in this country — through dismantling much of the federal social safety net and redistributing substantial amounts of income from low- and middle-income households to upper-income Americans. But the way in which this would be accomplished is far from obvious or straightforward. The new fiscal agenda is made up of a number of intertwined proposals and strategies, the long-term consequences of which may not be immediately apparent. Unless the new proposals are subjected to careful analysis and widespread discussion, the public is unlikely to understand the way in which the agenda will affect them, their families, and the communities in which they live.

At the core of the new fiscal strategy is the establishment of a constitutional requirement for a balanced federal budget each year, starting in fiscal year 2002, accompanied by a series of statutory and procedural changes that "wall off" defense and Social Security from budget reductions, cut taxes heavily, and make it difficult to raise taxes in the future. Balancing the budget without raising taxes or touching Social Security or defense — and while cutting taxes as well — is a formidable undertaking. It would necessitate dismantling substantial parts of the federal government over the coming decade.

- More than $1.3 trillion in non-defense, non-Social Security program cuts would be required over the next seven years.

- All federal expenditures other than Social Security and defense (and the required interest on the national debt) would have to be *cut by more than one dollar out of every four* compared to spending projected under current law for fiscal year 2002.

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If this fiscal framework is put into place by mid-1995, it is likely to lead to four noteworthy outcomes:

- Programs that are weak politically would stand to be cut especially severely during the coming decade. Much of the federal safety net for the poor could consequently come to an end.

- The middle class, despite receiving an initial tax cut, could ultimately lose more in government benefits than it gained in tax reductions.

- State and local governments will bear a disproportionate share of the budget cutting, which likely will lead to further reductions in the safety net and increased state and local taxes on low- and middle-income households.

- High-income households, who will benefit from generous tax subsidies for investors, are the only clear beneficiaries of the new agenda.

Safety Net Programs

The first indication that the safety net is in jeopardy is found in the *Contract with America*, a platform that was signed this fall by most House Republican Members and that incoming Speaker Newt Gingrich has vowed to try to push through the House of Representatives by mid-April. The Contract calls for balancing the budget, protecting defense spending, and cutting taxes. (The less-detailed Senate Republican campaign document — *Seven More in '94: An Agenda for the Republican Majority in the 104th Congress* — also calls for balancing the budget, increasing defense spending, shielding Social Security and defense from budget cuts, lowering taxes, and providing generous tax breaks for wealthy investors.) Massive budget cuts in domestic programs would be needed as a result.

The Contract's authors shied away from endorsing specific budget cuts before the election in most areas except one — programs targeted on the poor. Virtually all of the budget savings proposed in the Contract consist of reductions in basic food, cash, housing, medical, child care and other benefits for poor families and individuals.

The cuts in low-income programs identified in the Contract also stand out for another reason — they are unprecedented in their severity. For example, if the AFDC changes were fully in effect today, more than five million *fewer* children — over half of the children now on AFDC — would be receiving this cash assistance. Overall, the benefit cuts in means-tested entitlement programs the Contract calls for are almost three times as large as the benefit cuts in such programs that were enacted in 1981 and 1982 under President Ronald Reagan.

The Contract calls for ending all federal food assistance programs as separate programs — including food stamps, WIC, and the school lunch program — and merging them into a block grant to states. The block grant would be funded at levels several billion dollars below what these programs would cost under current law and would be structured so that food stamp assistance would likely to be reduced about $4 billion a year. Other low-income programs — including Supplemental Security Income (SSI) benefits for the elderly and disabled poor, AFDC, low-income housing, the child support enforcement program, and child care support for working poor families not on welfare — would be placed under a separate cap that would require program cuts of $26 billion over four years. The entitlement status of these progams also would be ended. In addition, the Contract calls for making most *legal* immigrants ineligible for 60 different health, education, job training, nutrition, housing, cash assistance, and social service programs.

Despite the severity of these reductions, the Contract's deep cuts in poverty programs would constitute about 10 percent of the total spending cuts needed to balance the budget by fiscal year 2002 without touching Social Security or defense and while cutting taxes; these cuts would only be the "tip of the iceberg." This suggests that prospects for a significant federal safety net surviving a decade from now will be bleak if the Republican strategy is adopted, since programs for the poor are likely to remain more susceptible to cuts in the years ahead than most other programs.

The Middle Class

A second likely outcome would be that the middle class, despite receiving an initial tax cut, would ultimately lose more in benefits than it gained in tax reductions. To some extent, such a result is an inevitable outcome of most plans to eliminate the deficit. Large-scale deficit reduction essentially means that the middle class must undergo some sacrifice now in order to secure the long-term economic benefits that smaller deficits are thought to bring. The degree of middle-class sacrifice required, however, would be increased under the emerging Republican plan because budget cuts would be needed not only to balance the budget but also to finance an array of extremely generous tax cuts primarily benefiting upper-income Americans and large corporations.

The tax cuts in the Contract are presented as losing $192 billion in revenue over the first five years, but that cost explodes to over $400 billion in subsequent five-year periods.[1] That does not mean, however, that tax relief for the middle class will increase over time. The cost of the major provision that will benefit middle class households, a tax credit for children, will remain relatively constant over time — costing approximately $107 billion over the first five-years and over subsequent five year periods as well. But those tax cuts contained in the Contract that principally benefit high-income households and corporations are designed so their costs remain small — approximately $31 billion — during the first five years after enactment, and then rise to more than $260 billion in subsequent five-year periods.[2] Thus, less than one-third of the expected revenue losses from the proposed tax cuts after the initial five years will be targeted on middle-class families.

Moreover, a significant proportion of the budget cuts that will be necessary to compensate for the revenue loss are likely to fall on the middle class. To reach *and stay* at budget balance while these revenue losses continue to mount will entail steadily increasing reductions in discretionary programs important to the middle class, such as funding for education and transportation.

In addition, the large entitlement programs that will have to be reduced are primarily programs that principally benefit the middle class. If many of the poverty programs were abolished, the savings would fall short of what was needed to balance the budget and pay for the tax cuts. Significant reductions in middle-class benefits such as Medicare, student loans, school lunches, and the like would be inescapable, with such reductions growing as the revenue losses increased.

State and Local Governments

A third likely outcome is that state and local governments would be hit hard. This is true regardless of whether legislation — or even a constitutional amendment — passes that bars "unfunded mandates." Grants to state and local governments constitute about one-third of what remains in the federal budget when Social Security, defense, and interest payments on the debt are excluded. In addition, some other parts of what remains in the budget constitute essential federal functions such as protecting the borders, maintaining embassies overseas, fighting forest fires, constructing and

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[1] Under federal budget laws, the first five years' losses from a tax cut must be offset either by entitlement cuts or tax increases. This rule that has led some Members of Congress — and especially the authors of the Contract — to design tax breaks so their full revenue-losing effects are delayed until after the five-year point passes.

[2] This includes the cost of three provisions benefiting upper-income individuals or corporations: the new type of Individual Retirement Account, the capital gains tax reduction, and the more generous depreciation allowances. Other provisions, such as the increased estate and gift tax exclusion also would primarily benefit upper-income households.

operating federal prisons, operating the Internal Revenue Service and Social Security offices, and providing benefits to veterans; these programs are not likely to be cut much. As a result, grants to state and local governments will have to bear a disproportionate share of the budget-cutting.

One other factor would heighten the adverse fiscal impact on states. Most states incorporate the federal definition of adjusted gross income and corporate net income into their tax codes. Hence, the proposed tax cuts benefitting upper-income individuals and corporations would result in tax cuts — and revenue losses — in many states. State revenues would decline at the same time that federal grants to states were being cut deeply. The resulting impact on states would, in turn, likely lead to further reductions both in assistance to low-income households and in aid to local governments, as well as to some state and local tax increases.

Virtually all states have regressive tax systems. Lowering taxes at the federal level and raising them at state and local levels would tend to transfer income from the poor and the middle class to the wealthy. The Urban Institute found evidence of such a chain of events after the Reagan tax and budget cuts of the early 1980s.

Upward Redistribution of Income

Upper-income households would be the only large winners under the new agenda. While these households would receive the lion's share of the tax cuts, they secure a much smaller percentage of their income from government benefits than average families at middle- and lower-income levels do. Upper-income families would be affected the least by the required budget cuts.

These developments would come at a time when Census data show the gap between rich and poor, as well as the gap between the wealthy and the middle class, are greater than at any time since the end of World War II. The proposals in the Contract, as well as the similar provisions in the less-detailed Senate Republican campaign document, would widen these disparities further.

II. The Emerging Republican Budget Plan

The emerging plan includes four key changes in the nation's fiscal structure and procedures. Once in place, these changes would set federal budget policy on a fixed path. The four changes are:

- *A constitutional balanced budget amendment.* The House is expected to consider the amendment on January 19, while the Senate will take it up sometime after that (probably in February). At the current time, approval in both the House and Senate by the requisite two-thirds majority appears likely. If the amendment passes in Congress and three-quarters of the state legislatures approve it, it will become part of the U.S. Constitution. Neither the President nor governors can veto the amendment. Congress and state legislatures are the actors here.

- *An entitlement cap.* A new budget device whose importance cannot be overstated — an "entitlement cap" — would be established, probably in a "budget reconciliation" bill that Congress would pass in the first half of 1995. A binding cap would be placed on the total amount the federal government can spend each fiscal year on entitlements other than Social Security. The cap would be set at levels that are well below what entitlements would cost under current law. With each passing year, the amount that the cap falls below what entitlements would otherwise cost would grow. If Congress and the President failed to cut entitlements enough to fit within the cap for a given year, all entitlements except Social Security would be cut across-the-board by the amount needed to comply with the cap.

- *Tighter discretionary spending caps.* The establishment of an entitlement cap would be accompanied by a measure extending the current stringent caps on non-entitlement (or "discretionary") spending through fiscal year 2002 and lowering these caps sharply. As part of this measure, defense spending would be "walled off" so *all* of the steep cuts needed to meet the tightened discretionary caps would come from non-defense programs. Defense spending also is highly likely to be increased over time, making the required cuts in domestic discretionary programs still greater.

- *A supermajority requirement for tax increases.* Of importance as well is a new House rule that soon-to-be Speaker Newt Gingrich will establish (on a party-line vote) when Congress convenes in January. The rule will stipulate that any measure coming to the House floor which contains an increase in tax rates (and possibly increases in certain other tax measures) must secure the votes of three-fifths of the full House membership to pass. This rule is likely to drive Congress to cut domestic programs even more deeply in coming years in order to offset those new tax cuts that Congress wishes to provide.

The Contract with America even calls for writing into the forthcoming balanced budget amendment a constitutional requirement that any tax-raising measure (including measures ending special-interest tax breaks) must secure the votes of three-fifths of the membership of both houses to pass. It is less clear whether the votes are there in either the House or the Senate to make such a requirement part of the U.S. Constitution.

The two spending caps just described — the entitlement cap and the discretionary spending cap — are integral to the new fiscal structure the Republican leadership would erect. These caps would be set at levels so stringent that, by themselves, they reduce the deficit to zero by fiscal year 2002. Since Social Security would not be affected by the entitlement cap and defense spending would be walled off, the two caps would require spending on areas other than Social Security and defense to be cut sufficiently to reach budget balance.[3] A recent report prepared by the Senate Budget Committee Repbulican staff notes that "nearly 50 percent of spending programs have been removed from Republican deficit reduction — Social Security, defense, and net interest."

In any year in which a spending cap would otherwise be breached, across-the-board cuts would automatically occur. The two caps, especially if backed by a constitutional amendment requiring budget balance by 2002, would lock in the new fiscal requirements and lead to the dismantling of substantial parts of the federal government — most likely including large elements of the safety net — in the years ahead.

There are a number of probable scenarios under which this radical, sweeping agenda could be accomplished despite the countervailing power of a presidential veto. For example, the legislation that is likely to include the provisions establishing entitlement caps and tightening the discretionary caps — the budget reconciliation bill — also would contain the tax cuts the Republican leadership is proposing and some cuts in entitlement programs to help pay for the tax cuts. In addition, the bill is likely to include another important element — a provision raising the debt ceiling under which the federal government may borrow funds. If the debt ceiling is not raised by this summer, the federal government will go into default.

The likely inclusion of these elements in one bill appears to be a shrewd strategy. If President Clinton vetoes the bill, Republicans would charge him with blocking a middle-class tax cut, frustrating deficit reduction, and risking a default on the part of the U.S. Government.

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[3] Under such an arrangement, if Social Security and defense were cut or taxes were raised, those actions would have no effect on meeting the caps.

How Much Would Have to Be Cut?

Based on the latest Congressional Budget Office projections, balancing the budget by fiscal year 2002 without raising taxes would require expenditure cuts of about $1 trillion over the next seven years. This excludes savings in interest payments on the debt. It entails $1 trillion in program cuts.[4]

By fiscal year 2002, the cuts would exceed $260 billion a year. This equals between 20 percent and 25 percent of all expenditures on areas other than Social Security, defense, and interest payments on the debt. The cuts made under President Ronald Reagan were tiny compared to this.

Moreover, these figures significantly understate the degree of cutting that would be required. Cuts in programs would need to be large enough not only to balance the budget, but also to offset the costs of the tax cuts. Balancing the budget and offsetting the cost of the tax cuts proposed in the Contract with America would raise the amount of budget cuts needed over the next seven years to about $1.3 trillion. It would increase the level of budget cuts needed on an annual basis to well above $260 billion a year by fiscal year 2002 and still more in years after that.

III. The New Tax Cuts

The tax cuts being proposed by the Republican leadership — especially those included in the Contract with America — are of particular note. While the middle-class tax cut in the Contract has received the most attention, it accounts for only a minority share of the revenue loss that would occur beyond the first five-year period. Over the long-term, the tax reductions proposed for wealthy individuals and corporations are substantially larger than the middle-class tax cut. They include deep cuts in taxes on capital gains income, Individual Retirement Account tax breaks for higher-income taxpayers who lost them in the Tax Reform Act of 1986, and new depreciation provisions that will sharply reduce the taxable income of corporations.[5]

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[4] These figures assume a plan to ratchet down the deficit each year between now and fiscal year 2002.

[5] For additional information on the revenue provisions on the Contract, see the Center's report *The Contract with America Proposal: Assessing the Long-Term Impact*.

Capital Gains Taxes

The Contract's proposals regarding capital gains taxes are especially striking. Currently, investors who buy assets such as stocks or bonds and later sell these assets pay taxes on their profit — that is, on the amount by which their sale price exceeds their purchase price. The Contract, however, proposes adjusting the purchase price to reflect inflation between the time of purchase and the time of sale, which would substantially reduce the taxable profit in most cases. The Contract would make half of the remaining profit tax-free as well. The result would be the elimination of taxes on most capital gains profits.

While profits from stocks, bonds, real estate speculation, and the like — which accrue overwhelmingly to those at high income levels — would be largely exempt from taxation, no changes would be made in the treatment of interest income from the savings accounts that ordinary middle-class Americans hold. For interest earnings, no adjustment for inflation or exclusion from taxation would be provided.

In addition, wealthy investors would be able to borrow large sums to purchase stocks or bonds, deduct all of the interest payments on these loans when figuring their taxes, and then sell the asset and pay tax on only half the profit remaining after the purchase price is adjusted for inflation. This would create lucrative tax shelters for wealthy investors and skew investments toward investment opportunities that yield capital gains.

For example, Herbert Stein, Senior Fellow at the American Enterprise Institute and chair of the Council of Economic Advisors under President Nixon, has written that capital gains tax cuts are not likely to promote savings but will result in inefficiencies and tax-avoidance schemes:

> Unless cutting the capital gains tax increases the rate of saving, it will only divert investments to projects that can be structured to yield capital gains away from projects that cannot. I see no reason to want such a diversion. On the question whether cutting the capital gains tax would increase saving you can get as many different answers as you can find econometricians. My own view is that the effect would be extremely small, and not worth betting on... I think the only economic consequence we can confidently expect from reducing the capital gains tax is increased activity by lawyers and accountants in converting other income into capital gains.[6]

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[6] *Summary of the Statement of Herbert Stein*, Senior Fellow, American Enterprise Institute, to the House Ways and Means Committee, December 17, 1991.

In the past, Republican supply-side tax-cutters have tended to call *either* for indexing capital gains *or* for excluding 30 percent to 50 percent of capital gains profits from taxation. The Contract calls for instituting both measures, each of which constitutes a massive tax cut for wealthy investors by itself.

Past analyses by the Joint Committee on Taxation have indicated that under proposals for more modest capital gains tax cuts, more than 50 percent of the tax benefits would go to the wealthiest one percent of Americans, those with incomes exceeding $200,000 a year. About 70 percent of the benefits from the capital gains tax cuts appear to go to those with incomes exceeding $100,000, who constitute about the top five percent of households. An analysis of a more modest proposal which excluded from income a portion of capital gains income (but which did not allow indexing) found that individuals in the top one percent of the population who benefit from these tax breaks would receive tax cuts averaging more than $8,500 per year.

Individual Retirements Accounts

In addition to the capital gains tax cuts, the Contract would create a new, more generous type of Individual Retirement Account tax break that would be available to taxpayers at all income levels, including upper-income taxpayers who enjoy private pension coverage. IRA tax breaks are currently available to single individuals with incomes below $35,000 and married couples with incomes below $50,000 who are not covered by a private pension plan. The Contract would extend tax breaks to households above these income levels who already benefit from other tax-favored pension or retirement plans.

Wealthy households are more likely to have the funds to deposit in an IRA than middle-class households. In addition, IRA tax breaks are worth the most to those in the top income tax brackets. Thus an estimated 95 percent of the tax benefits from proposals such as this would accrue to the wealthiest fifth of U.S. households.

Taxation of Social Security Benefits

The Contract also would repeal the provision enacted in 1993 that raised the proportion of Social Security benefits treated as taxable income for the one-eighth of beneficiaries with the highest incomes. Repealing this provision would lose revenue and provide another tax cut tilted toward those at higher income levels. It also would weaken the Medicare program. The 1993 budget law stipulates that the revenue raised by this provision be deposited in the Medicare hospital insurance trust fund, an important step since the trust fund is in deep financial trouble and faces insolvency in 2001. Repealing this provision would make Medicare's financial hole deeper.

Business Depreciation

Finally, but hardly least important, the Contract calls for sweeping changes in the tax rules that businesses use to claim deductions for the depreciation of equipment, machinery, and buildings. These proposed changes would constitute a massive corporate tax break. Currently, if a corporation buys a building for $1 million, it can take depreciation deductions on its tax returns that total $1 million over a number of years. Under the Contract, the amount taken in depreciation deductions would *exceed* the amount the corporation paid for the building and do so by a large amount. For example, for a building purchased for $1 million, the total amount of depreciation a corporation could deduct from its taxes over time would increase from $1 million to approximately $4.2 million.[7] This proposal would have the effect of sharply reducing or eliminating taxable income for a significant number of firms.

Passage of these provisions would make something of a mockery of the widely heralded Tax Reform Act of 1986. That Act sharply lowered income tax *rates* on wealthy individuals and corporations in return for scaling back the tax breaks provided for such things as capital gains, IRAs, and depreciation. Under the Contract, the tax rates faced by those in the top brackets would remain far below the rates such taxpayers encountered prior to the 1986 Act. But capital gains, IRA, and depreciation tax breaks would not only be restored, but they would be made more generous than they were before 1986. The result would be massive windfalls for wealthy investors and large corporations. This would occur while benefits for millions of poor children were being withdrawn and much of the safety net likely was being taken down to meet the balanced budget requirement and pay for these tax cuts.

The data cited above showing that the tax cuts would heavily benefit high-income Americans come from CBO and Joint Tax Committee analyses conducted in recent years. This type of analysis may not, however, be available in the future. For more than a decade, the highly respected non-partisan Congressional Budget Office and the equally well-respected and non-partisan Joint Committee on Taxation have provided analyses of the effects of various tax proposals on different income groups. The Republican Congressional leadership plans to name a new CBO director and a new director of the Joint Tax Committee. It is widely feared that under the new regime, these institutions will cease producing analyses showing the impacts on different income groups of various tax measures under consideration. Without such distribution tables, information that has helped illuminate policy debates on these issues in the past

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[7] The exact amount that could be taken in depreciation deductions would depend in part on the inflation rate. The $4.2 million figure noted here assumes a modest inflation rate of three percent. If inflation were higher, the deductions would be still greater.

— and also has helped to prevent passage of certain tax policies skewed to the wealthy — will be gone.

The Fiscal Impact of the Tax Cuts

The tax cuts aimed at wealthy individuals and corporations will have major fiscal impacts. They are structured so their full revenue impacts do not appear until after the end of the five-year period that is used to measure the budgetary effect of proposed changes in taxes and entitlements.

The House Republican Conference has estimated that the tax cuts in the Contract will lose about $190 billion in revenue over the next five years. Past Joint Tax Committee and Congressional Research Service estimates of tax provisions similar to those in the Contract indicate that the cost of these provisions would *exceed $400 billion* over subsequent five-year periods. (See box on page 13.)

The ballooning of the revenue losses after the five-year mark is not accidental. As noted, federal budget rules require tax cuts to be "paid for" through offsetting entitlement cuts or tax increases for their first five years. This has led some Members of Congress from both parties to design provisions in recent years whose true fiscal impacts do not emerge until after the five-year point passes. Never before, however, have a set of tax provisions advanced by leaders of either party contained so many devices to postpone and camouflage so much of the full cost of the tax cuts they were proposing.

Interestingly, devices of this nature are not employed for the Contract's middle-class tax cut; its costs do not swell after the five-year period ends. The devices are used only for tax cuts heavily benefitting upper-income households and corporations. The cost of the tax credit for children that benefits middle class households will remain relatively constant over time — costing approximately $107 billion over the first five years and over subsequent five-year periods. But the capital gains, IRA, and depreciation provisions described above that principally benefit high-income households and corporations are designed so their costs remain relatively small — approximately $31 billion — during the first five years after enactment but rise to more than $260 billion in subsequent five-year periods.

The mounting revenue losses from these tax cuts would have profound ramifications. As noted, the tax cuts in the Contract would raise the total cuts needed to balance the budget by fiscal year 2002 — as the proposed constitutional amendment would require — to about $1.3 trillion over the next seven years. By fiscal year 2002, more than one-quarter of federal expenditures in areas other than Social Security and defense would have to be eliminated. In years after that, as the revenue losses

Revenue Loss From Proposed Tax Cuts Grows over Time

The Contract with America calls for federal tax changes that the House Budget Committee minority staff estimate would reduce federal revenues by about $190 billion over the next five years. The revenue proposals include a new tax credit for children, a new type of Individual Retirement Account, reductions in the rate of taxation of capital gains income for individuals and corporations, a reduction in taxes for businesses that invest in buildings, machinery, and equipment, and a reduction in the extent to which Social Security income is taxable for higher-income taxpayers.

The revenue loss from these tax proposals would rise dramatically after five years. The IRA, capital gains, business depreciation, and Social Security provisions in the Contract are designed so they lose smaller amounts or even raise revenue over the next five years — but then lose much larger amounts of revenue after the five-year budget period ends. In subsequent five-year periods, the federal revenue loss is likely to exceed $400 billion.

- The IRA proposal is said to raise $5 billion over the next five years. Short-term revenue gains come from incentives for holders of current-law IRAs to pay taxes on those holdings now, rather than at retirement, and roll over the funds to the new, more generous, and more flexible IRAs. After the rollover window expires, however, the revenue losses mount. Past analyses of similar proposals show they eventually lose as much as $50 billion over subsequent five-year periods.

- The Contract puts the cost of the capital gains proposal at $56 billion over its first five years. The proposal includes both an adjustment of the gain for inflation and an exclusion from taxation of half the remaining gain. In the years immediately after implementation, revenues are assumed to be boosted by an increase in asset sales to take advantage of the new provisions. Over time, however, asset sales level off and the cost of inflation indexing increases. The Joint Committee on Taxation has estimated that the cost of such a provision in the second five-year period after enactment would exceed $160 billion.

- The Contract lists the depreciation proposal as raising $20 billion over the first five years. This costly proposal is turned into a revenue gainer for this initial five-year period by decreasing, in the first few years, depreciation allowances for equipment that turn over frequently, such as computers and vehicles. But depreciation for longer-lived assets is made much more generous, and the long-term costs of this proposal are large. Past analyses of similar proposals suggest the revenue loss in subsequent five-year periods could reach $58 million.

Just these three proposals in the Contract, which are said to have a net cost of $31 billion in their first five years, could have a combined cost in subsequent five-year periods of more than $260 billion. As a result, even if the cost of all other tax provisions in the Contract remained constant at $159 billion, the cost in subsequent five-year periods would exceed $400 billion.

continued to mount and Social Security costs continued climbing with the aging of the population, still more of the government would have to be dismantled.

IV. Impacts on Poor Households, the Middle Class, and State and Local Governments

To grasp the type and impact of the budget cuts that are likely to occur, it is useful to understand the stringency of the entitlement cap and the discretionary spending caps needed to achieve a balanced budget. A plausible design of entitlement and discretionary caps designed to reach a balanced budget by fiscal year 2002 — while cutting taxes — could require non-Social Security entitlement spending to be cut by 20 percent and non-defense discretionary spending to be cut by 40 percent to 50 percent.

An entitlement cap is likely to be constructed in a more severe fashion than most Republican entitlement cap proposals that have been offered in the past. For example, overall non-Social Security entitlement spending could be capped permanently at the cost of entitlements in fiscal year 1995 with adjustments in the spending cap allowed only for inflation and changes in entitlement program caseloads. No adjustments would be allowed for rising health care costs, a significant omission since Medicare and Medicaid are projected to make up 65 percent of non-Social Security entitlement spending by 2002. An analysis based on Congressional Budget Office data shows that under this type of entitlement cap more than $600 billion in entitlement cuts would be required between now and fiscal year 2002. By fiscal year 2002, entitlements other than Social Security would have to be sliced about one-fifth to meet the requirements of the entitlement cap; entitlement spending in fiscal year 2002 would have to be about $165 billion less than projected under current law.

It is difficult to imagine where Congress would find $600 billion in entitlement reductions. As noted above, Medicare and Medicaid are projected to constitute about 65 percent of all non-Social Security entitlement spending by fiscal year 2002; there are limits to how severely they can be cut. Congressional Budget Office director Robert Reischauer told the bipartisan Entitlement Commission last summer that if deep cuts are made in Medicare and Medicaid but are not accompanied by major health care reforms in the private sector, substantial cost-shifting to the private sector will result, with employers affected significantly. (Other costs would be shifted to state and local government.) In the aftermath of this year's health care debates, major reform of private sector health care appears largely moribund. Instituting deep Medicare and Medicaid cuts in the absence of system-wide health care reform would likely cause premiums charged to other purchasers of health insurance — principally employers — to mount more rapidly. That, in turn, would likely induce more employers to drop coverage for their employees or drive employers to push down wages to make up for their escalating health care costs. The depth of the cuts that can be made in Medicare and Medicaid is also limited by a second factor — the strength of doctors, hospitals, and organizations representing the elderly.

This does not mean, however, that an entitlement cap of this nature would be rejected as being too severe. An entitlement cap such as this would still leave the government far short of budget balance if Social Security and defense were taken off the table and taxes could not be raised as part of the budget-balancing effort.

Even if an entitlement cap were this stringent, expenditures for non-defense discretionary programs would have to be cut nearly 30 percent below fiscal year 1994 levels, after adjusting for inflation, by 2002 to achieve a balanced budget that year. And that is if no tax cuts are instituted. When the tax cuts envisioned in the Contract are factored in, expenditures for non-defense discretionary programs would have to be cut 40 percent to 50 percent in real terms by fiscal year 2002 to produce a balanced budget, in conjunction with the stringent entitlement cap described here. (Alternatively, entitlements could be cut more severely and domestic discretionary programs reduced less than 40 percent to 50 percent, but that would likely necessitate even larger Medicare cuts.) These figures indicate why large parts of the government would have to be dismantled.

Impact on Poor Families and Individuals

The implications of this budget strategy for poor families are profound. By fiscal year 2002, Medicare alone will constitute more than 40 percent of all non-Social Security entitlement spending. While the Republican budget framework ultimately would lead to major Medicare cuts, there are — as just noted — limits to the depth that such reductions could reach. In fact, Rep. Bill Archer, who will be the new chairman of the House Ways and Means Committee, recently expressed a desire to make Medicare as well as Social Security off-limits to cuts this year.

Certain other entitlements not targeted on the poor are unlikely to be cut much either. Benefits for disabled veterans are one such example.

This leads to an inescapable conclusion — to meet the stringent entitlement caps likely to be imposed, benefits for low-income families and individuals are likely to be slashed severely.

Developments to date point strongly in this direction. Of the more than $1.3 trillion in spending reductions needed to balance the budget by fiscal year 2002 and pay for the tax cuts they propose, the authors of the Contract found it prudent to identify only about $59 billion in specific reductions (measured over four years) before the elections.[8] Nearly all of the cuts they identified would come in means-tested benefits for low-income families.

The cuts in low-income programs identified in the Contract are unprecedented in their severity. Overall, the benefit cuts the Contract calls for in means-tested entitlement programs are three times as large as the benefit cuts in such programs that were enacted in 1981 and 1982 under President Ronald Reagan.[9] For example, if the AFDC changes were fully in effect today, more than five million fewer children — over half of the children now on AFDC — would not be receiving this cash assistance. (See box on p. 17.)

The Contract also calls for ending all federal food assistance programs as separate programs — including food stamps, the school lunch program, and WIC — and merging them into a block grant. The block grant would be funded at levels several billion dollars a year below what these programs would cost under current law. The block grant is constructed in such a manner that food stamp assistance would likely be reduced about $4 billion a year. Furthermore, programs like food stamps and school lunches would lose their entitlement status.

Loss of entitlement status would be particularly problematic when recessions hit and the number of poor families needing food stamps and the number of poor children needing free school lunches increased. For example, from June 1990 to June 1992, civilian unemployment rose from 5.1 percent to 7.7 percent. During this time, food stamp participation rose from 20.3 million to 25.7 million people. The average number of children receiving free school lunches rose from 9.9 million in fiscal year 1990 school year to 11.1 million in fiscal year 1992. Under the Contract plan, increased additional federal resources to meet the mounting needs would no longer be forthcoming. States would have to cut benefits across-the-board, eliminate benefits for categories of poor households, or put needy applicants on waiting lists unless they were willing to cut other programs or raise state taxes in a recession.

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[8] The authors of the Contract (the House Republican Conference) estimated that the provisions in the Contract's Personal Responsibility Act would save $40 billion over fiscal years 1995 through 1999 (although the provisions do not take effect until 1996). The Center on Budget and Policy Priorities finds that the effect of the PRA would be a net reduction of about $59 billion over the four-year period from 1996 to 1999, with the cuts escalating over time. For additional information, see the Center's report *The Personal Responsibility Act: An Analysis.*

[9] The spending on the proposed new work program for AFDC recipients is not considered in this calculation. This spending is for administrtative and child care costs for those in the new mandatory work slots, while this calculation attempts to measure changes in benefits to low-income people that affect their standard-of-living. If the spending on the work program was included, then the cuts identified in the Contract would still be twice the size of the cuts in the early 1980s.

PRA Would Begin to Dismantle Key Features of the Safety Net, and Deny AFDC to Five Million Children

A new proposal affecting low-income programs, the Personal Responsibility Act (PRA), is part of the "Contract with America" unveiled in September 1994 by Republican members of the House of Representatives and congressional candidates. The PRA differs in important ways from recent welfare reform plans. Key elements of the bill include the following:

- The PRA proposes deep cuts in a broad range of programs for low-income households and eliminates the entitlement status of most major low-income benefit programs, including the Supplemental Security Income program for the elderly and disabled poor and the food stamp program. The effect would be a net reduction in low-income programs of about $59 billion over the four-year period from 1996 to 1999, with the cuts escalating over time.

- The bill would deny Aid to Families with Dependent Children and housing benefits to many poor children born to young unmarried mothers for their entire childhood, diverting these funds to support programs such as orphanages for poor children. In addition, the "child portion" of AFDC benefits would be denied for children whose paternity has not been established — 29 percent of all children currently receiving AFDC — even if their mothers were fully cooperating with state efforts to track down absent fathers and establish paternity.

- The bill would establish extremely stringent time limits and work requirements. States would be required to terminate both cash assistance and work opportunities for families who had received AFDC for a total of five years; regardless of their circumstances, these families could never receive assistance again. States would have the option of ending welfare assistance for families after they receive aid for a total of two years. The PRA would *not* provide work opportunities for parents who reach these time limits and are unable to find jobs even if the parents fully complied with work requirements while on assistance and made faithful efforts to find employment. During the period in which they would receive aid, a large fraction of recipients would be required to work their AFDC benefits off at "wages" that would equal $2.42 an hour for a family of three in the typical state.

- In combination, PRA provisions that would bar certain categories of children from receiving AFDC benefits and the PRA's mandatory time limit would ultimately deny assistance to *a substantial majority* of the children who would be eligible for AFDC under current law. If the provisions were fully in effect today, more than five million children would be denied AFDC. At least 2.5 million fewer families would receive AFDC benefits.

Still another provision in the Contract would place a cap on total annual expenditures for an array of low-income programs, including Supplemental Security Income (SSI) benefits for the elderly and disabled poor, AFDC, low-income housing, the child support enforcement program, and child care support for working poor families not on welfare. The cap would require that these programs be cut more than $26 billion over four years. Here, also, entitlement status would be ended for all programs that are now entitlements. This would mean that additional federal AFDC funds would no longer become available automatically if a recession temporarily increased the numbers applying for assistance. Nor would additional SSI resources automatically become available if the number of elderly poor applying for benefits rose as the number of elderly people climbed.

Still another provision of the Contract would make most *legal* immigrants ineligible for 60 different health, education, job training, housing, cash aid, and social service programs. Legal immigrant children could not be screened for lead poisoning and would be barred from immunization programs. Pregnant women who are legal immigrants would be barred from WIC. Legal immigrants who became disabled on the job in the United States would be shut out of SSI.

As noted, these low-income benefit cuts would be much larger than those in low-income entitlements secured by President Reagan in his first two years in office, when nearly all of the cuts in low-income benefits during his term were passed. Yet if all of the low-income cuts listed in the Contract were enacted, only about 10 percent of the cuts needed to balance the budget and pay for the tax cuts would have been secured. Severe as the Contract's proposed cuts in benefits for the poor are, they would be but the tip of the iceberg, just the first installment of much deeper cuts in programs for the poor that would follow.

There also is another lesson in the low-income cuts included in the Contract. The fact that the specific cuts House Republicans felt comfortable endorsing before the election consisted overwhelmingly of reductions in benefits for the poor speaks volumes about the weakness of programs for the less fortunate in the current political atmosphere.

In short, the chances are high that the new budget structures and tax cuts that seem likely to be put in place in the first half of 1995 would lead to the dismantling of much of the safety net in the decade ahead.

Impact on the Middle Class

Eviscerating the safety net would not, by itself, provide the level of cuts needed to balance the budget and pay for the tax cuts. Hundreds of billions of dollars in additional cuts would still be needed. *Non*-means-tested entitlements also would have to be reduced to meet the requirements of the entitlement cap, and appropriations for many discretionary programs primarily serving the middle class would have to be sliced to comply with the discretionary caps. To be sure, various special interest expenditures can and should be targeted, although the extent to which such expenditures can actually be reduced (due to the power of the interests that protect them) remains to be seen. But the arithmetic dictates that programs providing benefits and services for the middle class be cut substantially as well.

A scaling back of various programs benefitting the middle class is, of course, a likely result of any effort to eliminate most or all of the deficit. To reach budget balance will entail steadily increasing reductions in discretionary programs important to the middle class, such as funding for education and transportation. In addition, the large entitlement programs that ultimately will have to be reduced are primarily programs that principally benefit the middle class. If many of the poverty programs were abolished, the savings would fall short of what was needed to balance the budget and pay for the tax cuts. While reductions in middle-class benefits such as Medicare might not be as deep as 20 percent (because of concern for cost-shifting, as noted above), substantial cuts would be inescapable.

The budget reductions affecting the middle class will be larger than otherwise would be the case, due to the need to pay for the upper-income and corporate tax cuts. In the absence of tax cuts, it is likely that low-income programs would be cut to the maximum extent politically possible and then budget cuts affecting the middle class would make up much of the remainder of the cuts necessary to achieve budget balance. Few additional low-income cuts would be available to pay for tax cuts on top of budget balancing, so additional cuts in middle-income programs in a sense will have to pay for the tax provisions that primarily benefit upper-income households and corporations.

The losses in benefits and services borne by middle-class households are likely to outweigh by a significant margin the tax cuts these households would receive. As noted above, the middle-class tax cut in the Contract accounts for less than one-third of the revenue loss generated by the Contract's tax reductions when their full revenue losses are felt. From reductions in student aid for middle-class college students to hikes in school lunch prices to sizeable increases in the out-of-pocket health care costs that elderly Medicare beneficiaries are required to pay, middle-class households would be likely to have their incomes reduced or their expenses raised in various ways.

Middle-class households also would likely face sizeable increases in state and local taxes to help fill the hole created by large-scale retrenchment in federal aid to state and local governments (see below). Virtually every state has a regressive tax system, under which poor and middle-class households pay a larger share of their incomes in taxes than higher-income households do. The process of shifting tax burdens from the federal to state and local levels would tend to redistribute disposable income from low- and moderate-income families to those at higher income levels.

Effects on State and Local Governments

The arithmetic of achieving a balanced budget without cutting Social Security or defense or raising revenues — and while cutting taxes — virtually assures that states and localities will absorb large hits. Grants to state and local governments make up one-third of what remains in the federal budget when Social Security, defense, and interest payments on the debt are excluded.

If overall expenditures other than those for Social Security and defense must be cut sufficiently both to balance the budget and pay for the Contract's tax cuts, between one-quarter and one-third of non-Social Security, non-defense costs must be eliminated by fiscal year 2002. Grants to state and local governments, however, almost certainly will be cut by a larger percentage than this. Significant parts of the budget that would remain "on the table" after Social Security and defense were removed consist of programs that either cannot or will not be cut very much, which would make the cuts in other areas such as grants to state and local governments still deeper.

For example, funds for federal functions such as protecting the borders, maintaining embassies overseas, fighting forest fires, constructing and operating federal prisons, operating the Internal Revenue Service and Social Security offices, and making pension and disability payments to veterans are unlikely to suffer more than modest cuts. These and other tasks tend to be viewed as essential federal functions. As discussed, Medicare is likely to be reduced less than its proportionate share. To the extent that large portions of the budget other than Social Security and defense spending are reduced significantly less than one dollar in four, the likelihood increases that grants to states and localities will be cut by a substantially larger proportion.

This problem will be aggravated because most of the tax cuts called for in the Contract would generate revenue losses for many states as well. Most states conform the definition of individual adjusted gross income and corporate net income used in their income tax codes to the federal definitions of such income. Several of the major tax cuts proposed by the Republican leadership — such as the cuts in capital gains tax, the expansion of Individual Retirement Accounts, and the much more generous depreciation schedules — would be incorporated into many state tax codes if these measures were enacted at the federal level. The result would be narrower state tax bases and some loss of state revenue. The revenue loss would occur at the same time that the federal government was sharply scaling back grants to states and localities, placing state and local governments in a double bind.

An Unfunded Mandate Ban Does Not Address These Problems

Some state and local officials believe passage of either legislation or a constitutional amendment barring unfunded mandates would address these problems. Such a belief is mistaken. Unfunded mandate protection would affect only those situations where the federal government *requires* other levels of government to perform certain tasks without paying the cost of those tasks. Unfunded mandate measures do not prevent highly disproportionate cuts in aid to states and local governments that result from large parts of the federal budget being placed off-limits while the budget is being balanced and taxes are cut. Nor would an unfunded mandate measure forestall federal decisions to shed functions that some level of government must perform, thereby leaving other levels of government little choice but to pick up the pieces without any federal funds to undertake the work.

An unfunded mandate ban would not, for example, protect against increases in Medicare cost-sharing requirements that drive up state Medicaid costs under "medically needy" programs. It would not protect against cuts in child care programs that increase the load on public schools which operate pre-school programs with state or local funds. Nor would unfunded mandate protection replace lost federal funding for primarily state-local functions, such as mass transit, education, or economic development.

Local governments could be hit particularly hard. In addition to large cuts in federal aid, they would likely be saddled with deep reductions in state aid as states passed on part of the pain caused by the withdrawal of billions of dollars in federal grants. The consequent reduction in both federal and state support for cities would occur at the same time the safety net was being severely weakened, a mix that could spell deep trouble for some cities.

V. Can This Really Occur?

Some who read this paper may think such radical changes will never occur. But if the Republican budget strategy is passed essentially intact in the next few months, such changes will be difficult to avoid.

If the balanced budget amendment is enshrined in the Constitution and the entitlement cap and stricter discretionary caps are enacted, along with large tax cuts, the die will essentially have been cast. Most developments described here are logical outgrowths of such events.

This raises the question of whether the balanced budget amendment, the two caps, and the tax cuts can pass? At the present time, all of them seem *likely* to pass, with the details of the tax cuts to be worked out. Indeed, the balanced budget amendment and the two caps share a common characteristic that facilitates their passage — they come without specifics, so their consequences are largely hidden from view at the time they are voted on. Most of the blanks would get filled in later, *after* the amendment is in the Constitution and the caps are in law. Similarly, the full extent of the revenue losses caused by the tax cuts will not become apparent until five years down the road. And if the Congressional Budget Office and Joint Tax Committee cease conducting analyses of the impacts of policy changes on different groups, as is likely under the new Republican leadership, the extent to which these proposals would transfer income up the income scale — from low- and moderate-income families to the well-to-do — will be obscured as well.

The changes described here would represent the most radical changes in federal policy and in the role of the federal government in more than half a century. They warrant careful, thoughtful debate and thorough examination of their implications. Policymakers, journalists, foundations, non-profit organizations, and ordinary citizens ought to endeavor to ensure that a full debate takes place.

FAX MESSAGE COVER SHEET

CENTER ON BUDGET AND POLICY PRIORITIES
777 North Capitol Street, NE, Suite 705
Washington, DC 20002

Telephone: 202/408-1080
Fax: 202/408-1056

TO	Melanne Verveer	DATE	Wed.
FAX	456 6244		
FROM	Ellen Nissenbaum		

Number of Pages Transmitted Including ~~This Cover Sheet~~ Is 4

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Info on Democratic freshmen + balanced budget amendment, + their position on Clinton bill

Do you have new letter w/ Bork et al vs. the Simon/Stenholm proposal? We need to get a copy. Can someone FAX to me at 408-1056? Thanx — EN

DEMOCRATIC FRESHMEN - BALANCED BUDGET AMENDMENT

	Position on BBA	Supported Penny-Kasich?	Campaign Position	Cosponsor of Clinton Health Bill?
Scotty Baesler-KY	sponsor	YES		
Peter Barca-WI	leaning no	YES		
James Barcia-MI	sponsor	NO		
Tom Barlow-KY	opposed	YES	supports BB ##	
Tom Barrett-WI	leaning no	YES	opposes BBA #	YES
Xavier Becerra-CA	leaning no	NO		
Sanford Bishop-GA	undecided	NO		
Corrine Brown-FL	opposed	NO	opposes BBA	YES
Sherrod Brown-OH	no response	NO		
Leslie Byrne-VA	opposed	NO	supports BBA	
Maria Cantwell-WA	undecided	YES		
Eva Clayton-NC	opposed	NO		
James Clyburn-SC	leaning no	NO		YES
Sam Coppersmith-AZ	sponsor	YES		
Pat Danner-MO	sponsor	NO		
Nathan Deal-GA	sponsor	YES	supports BBA	
Peter Deutsch-FL	sponsor	NO		YES
Karan English-AZ	undecided	NO	supports BBA	YES
Anna Eshoo-CA	leaning yes	NO		YES
Sam Farr-CA	against	NO		
Cleo Fields-LA	leaning no	NO		
Bob Filner-CA	against	NO		YES
Eric Fingerhut-OH	opposed	YES		
Elizabeth Furse-OR	undecided	NO		
Gene Green-TX	no response	NO		
Luis Gutierrez-IL	leaning no	NO		
Dan Hamburg-CA	opposed	NO		
Jane Harmon-CA	sponsor	YES	supports BB	
Alcee Hastings-FL	opposed	NO	opposes BBA	YES
Earl Hilliard-AL	leaning no	NO		YES
Maurice Hinchey-NY	against	NO		YES
Tim Holden-PA	no response	YES		
Jay Inslee-WA	undecided	YES		
Don Johnson-GA	sponsor	YES		
Eddie Bernice Johnson-TX	opposed	NO	opposes BBA	YES
Herbert Klein-NJ	undecided	NO		
Ron Klink-PA	undecided	YES		
Mike Kreidler-WA	opposed	NO		YES
Blanche Lambert-AR	sponsor	YES		

italicized names: cosponsors of H.J. Res. 103
\# BBA: Balanced Budget Constitutional Amendment
\## BB: balanced federal budget
\### only if other efforts to reduce the deficit fail

HOUSE DEMOCRATIC FRESHMEN

Balanced Budget Amendment

Against (27)	Leaning Against (9)	Undecided (9)	Leaning Yes (2)	Supports (15)
Barlow	Barca	Cantwell	Maloney	
Brown (FL)	Barrett	English	Eshoo	McHale
Byrne	Becerra			
Clayton	Clyburn	Furse		
Fingerhut	Hilliard	Inslee		
Hamburg		Klein		
Hastings	Stupak	Klink		
Johnson (TX)	Thurman	Pomeroy		Baesler*
Kreidler	Fields	Reynolds		Barcia*
M-Mezvinsky	Gutierrez	Bishop		Coppersmith*
Meek				Danner*
Menendez				Deal*
Nadler				Deutsch*
Roybal-Allard				Harmon*
Rush				Johnson*
Strickland				Lambert*
Tejeda				Mann*
Woolsey				Meehan*
Wynn				Minge*
Watt				Schenk*
Thompson				Shepherd*
Velazquez				
McKinney				
Farr				
Hinchey				
Filner				
Tucker				

* cosponsor of Stenholm bill

No Response (4)

Brown (OH)
Green
Holden
Scott

February 8, 1994

Dear Senator Byrd:

The undersigned join in urging the Congress to reject the proposed Balanced Budget Amendment. Some of us support the present Administration, others do not. We disagree about the nature, causes and cures of our present budgetary situation. We share the conviction that the Balanced Budget Amendment now before the Congress is a serious mistake. We have different reasons for this conviction. They include:

- The Amendment would deprive the Congress and the President of needed flexibility.

- It would rigidly and permanently bias decisions against spending on social programs.

- It would seriously distort the balance between federal, state, and private institutions by creating a permanent incentive to accomplish national objectives indirectly through the imposition of mandates and regulatory burdens on state and local governments and the private sector.

- It would inappropriately involve the judiciary in intractable questions of fiscal and budgetary policy.

- It would be unenforceable and thus use the Constitution as a billboard for failed slogans.

Sincerely,

Boris I. Bittker, Professor Emeritus, Yale Law School

Robert Bork, Esq., American Enterprise Institute; Washington, DC

Haywood Burns, Dean, CUNY Law School at Queens College

Archibald Cox, Professor Emeritus, Harvard Law School

William A. Fletcher, Professor, University of California at Berkeley Law School

Charles Fried, Professor, Harvard Law School

Lawrence M. Friedman, Professor, Stanford Law School

Walter Gellhorn, Professor Emeritus, Columbia Law School

Gerald Gunther, Professor, Stanford Law School

Louis Henkin, Professor Emeritus, Columbia Law School

Burke Marshall, Professor, Yale Law School

Norman Redlich, Dean Emeritus, New York University Law School

Peter M. Shane, Professor, University of Iowa College of Law

Geoffrey R. Stone, Dean, Chicago Law School

Kathleen Sullivan, Professor, Stanford Law School

Laurence Tribe, Professor, Harvard Law School

Harry Wellington, Dean, New York Law School

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Hamburg		Klein		
Hastings	Stupak	Klink		
Johnson (TX)	Thurman	Pomeroy		Baesler*
Kreidler	Fields	Reynolds		Barcia*
M-Mezvinsky	Gutierrez	Bishop		Coppersmith*
Meek				Danner*
Menendez				Deal*
Nadler				Deutsch*
Roybal-Allard				Harmon*
Rush				Johnson*
Strickland				Lambert*
Tejeda				Mann*
Woolsey				Meehan*
Wynn				Minge*
Watt				Schenk*
Thompson				Shepherd*
Velazquez				
McKinney				
Farr				
Hinchey				
Filner				
Tucker				

* cosponsor of Stenholm bill

No Response (4)

- Brown (OH)
- Green
- Holden
- Scott

DEMOCRATIC FRESHMEN - BALANCED BUDGET AMENDMENT

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Peter Barca-WI	leaning no	YES		
James Barcia-MI	sponsor	NO		
Tom Barlow-KY	opposed	YES	supports BB ##	
Tom Barrett-WI	leaning no	YES	opposes BBA #	YES
Xavier Becerra-CA	leaning no	NO		
Sanford Bishop CA	undecided	NO		
Corrine Brown-FL	opposed	NO	opposes BBA	YES
Sherrod Brown-OH	no response	NO		
Leslie Byrne-VA	opposed	NO	supports BBA	
Maria Cantwell-WA	undecided	YES		
Eva Clayton-NC	opposed	NO		
James Clyburn-SC	leaning no	NO		YES
Sam Coppersmith-AZ	sponsor	YES		
Pat Danner-MO	sponsor	NO		
Nathan Deal-GA	sponsor	YES	supports BBA	
Peter Deutsch-FL	sponsor	NO		YES
Karan English-AZ	undecided	NO	supports BBA	YES
Anna Eshoo-CA	leaning yes	NO		YES
Sam Farr-CA	against	NO		
Cleo Fields-LA	leaning no	NO		
Bob Filner-CA	against	NO		YES
Eric Fingerhut-OH	opposed	YES		
Elizabeth Furse-OR	undecided	NO		
Gene Green-TX	no response	NO		
Luis Gutierrez-IL	leaning no	NO		
Dan Hamburg-CA	opposed	NO		
Jane Harmon-CA	sponsor	YES	supports BB	
Alcee Hastings-FL	opposed	NO	opposes BBA	YES
Earl Hilliard-AL	leaning no	NO		YES
Maurice Hinchey-NY	against	NO		YES
Tim Holden-PA	no response	YES		
Jay Inslee-WA	undecided	YES		
Don Johnson-GA	sponsor	YES		
Eddie Bernice Johnson-TX	opposed	NO	opposes BBA	YES
Herbert Klein-NJ	undecided	NO		
Ron Klink-PA	undecided	YES		
Mike Kreidler-WA	opposed	NO		YES
Blanche Lambert-AR	sponsor	YES		

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DEMOCRATIC FRESHMEN - BALANCED BUDGET AMENDMENT

	Position on BBA	Supported Penny-Kasich?	Campaign Position	Cosponsor of Clinton Health Bill?
Paul McHale-PA	for	NO	for phased-in BB	
Cynthia McKinney-GA	against	NO		YES
Carolyn Maloney-NY	leaning yes	NO	supports BBA	
David Mann-OH	sponsor	YES	supports BBA	
Marjorie Margolies-Mezvinsky-PA	opposed	YES		
Martin Meehan-MA	sponsor	YES	supports BB	
Carrie Meek-FL	opposed	NO		YES
Robert Menendez-NJ	opposed	NO		
David Minge-MN	sponsor	YES	supports BBA	YES
Jerrold Nadler-NY	opposed	NO		
Earl Pomeroy-ND	undecided	YES		
Mel Reynolds-IL	undecided	NO		YES
Lucille Roybal-Allard-CA	opposed	NO		
Bobby Rush-IL	opposed	NO		
Lynn Schenk-CA	sponsor	YES		
Robert Scott-VA	no response	NO		YES
Karen Shepherd-UT	sponsor	NO	supports BBA	YES
Ted Strickland-OH	opposed	NO		YES
Bart Stupak-MI	leaning no	NO	favors BBA ###	
Frank Tejeda-TX	opposed	NO		
Bennie Thompson-MS	opposed	NO		
Karen Thurman-FL	leaning no	NO		YES
Walter Tucker-CA	no response	NO		
Nydia Velazquez-NY	opposed	NO		
Melvin Watt-NC	opposed	NO		YES
Lynn Woolsey-CA	opposed	NO		
Albert Wynn-MD	opposed	NO		

italicized names: cosponsors of H.J. Res. 103
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Sources of campaign positions:
Democratic Study Group
Congressional Quarterly Special Report: The New Congress - January 16, 1993

February 3, 1994

IMPLICATIONS OF A BALANCED BUDGET AMENDMENT

Spending in Fiscal Year 1999

	OMB	CBO
Discretionary:		
Defense	258	301
Other	290	263
Mandatory:		
Social Security	411	408
Medicare	215	264
Other	425	337
Net Interest:	254	261
TOTAL:	1,854	1,834

Necessary Spending Cuts to Balance the Budget

	OMB	CBO
Deficit:	201	204
Interest Savings:	25	25
Spending Cuts:	176	179

Possible Universe for Spending Cuts:

	OMB	CBO
Total Spending:	1,854	1,834
Net Interest:	(254)	(261)
Defense:	(258)	(258)
Social Security:	(411)	(408)
Medicare:	(215)	(264)
Veterans:	(42)	(42)
Law Enforcement:	(24)	(24)
Possible Universe:	650	577
Implied Percentage Cut:	27.1%	31.0%

> Melanne Verveer

U. S. Department of Justice

Office of Legal Counsel

DRAFT

Office of the
Assistant Attorney General

Washington, D.C. 20530

February 1, 1994

**MEMORANDUM FOR JANET RENO, ATTORNEY GENERAL
AND BERNARD NUSSBAUM, COUNSEL TO THE PRESIDENT**

From: Walter Dellinger

Re: The Potential Impact of the Proposed Balanced Budget Amendment on the Structure of the American Constitution

The House and Senate currently are considering a number of proposed constitutional amendments to require annual balanced budgets or to require a vote of 60% of the Congress to approve an unbalanced budget. On July 22, 1993, the Senate Judiciary Committee, by vote of 15-3, ordered one such proposal, S.J. Res. 41, reported favorably to the full Senate. Fifty Senators have sponsored or cosponsored the proposed amendment, and recent reports suggest that the Senate is likely to consider Senate Joint Resolution 41[1] in the next few weeks. The President has publicly stated his opposition to this proposed amendment.[2]

This memorandum examines the implications of such an amendment for the constitutional structure of our government and for the status of the Constitution as positive law. Should the measure be enforced by the President or the Judiciary, it would produce an unprecedented restructuring of the balance of power between the branches of government. If it proves unenforceable, it would create an even greater hazard: by writing an empty promise into the fundamental charter of our government, it would breed cynicism about our government and diminish respect for the Constitution of the United States and for the rule of law.

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[1] Representative Charles Stenholm, one of the original modern proponents of the balanced budget amendment concept, has introduced an identical proposal in the House. H.J. Res. 103.

[2] President's Letter to Congressional Leaders on the Proposed Balanced Budget Amendment, 29 Weekly Comp. Pres. Doc. 2283 (Nov. 5, 1993).

Members of Congress are understandably frustrated by the difficulty of balancing our nation's budget -- a task that many believe to be crucial to our nation's long-term stability and prosperity. The drive to amend the Constitution to require a balanced budget has been joined by some of the most thoughtful members of the House and the Senate. S.J. Res. 41 represents the culmination of more than a decade of congressional consideration of such proposals,[3] and as such resolves some of the technical difficulties presented by earlier versions.[4] Nonetheless, as I have suggested in the past,[5] and as, after careful

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[3] See Constitutional Amendment to Balance the Budget: Hearings Before the Senate Comm. on the Budget, 102d Cong., 2d Sess. (1992); The Balanced Budget Amendment: Hearings Before the House Comm. on the Budget, 102d Cong., 2d Sess. (1992); Proposed Constitutional Amendments to Balance the Budget: Hearings Before the Subcomm. on Economic and Commercial Law of the House Comm. on the Judiciary, 101st Cong., 2d Sess. (1990); Balanced Budget Amendments: Hearing Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 101st Cong., 1st Sess. (1989); Balanced Budget Amendments: Hearing Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 100th Cong., 2d Sess. (1988); Proposed Balanced Budget Constitutional Amendments: Hearings Before the Subcomm. on Monopolies and Commercial Law of the House Comm. on the Judiciary, 100th Cong., 1st Sess. (1987); Balanced Budget Constitutional Amendment: Hearing Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 99th Cong., 1st Sess. (1985); Proposed Balanced Budget/Tax Limitation Constitutional Amendment: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 98th Cong, 1st and 2d Sess. (1983 and 1984); Constitutional Amendments Seeking to Balance the Budget and Limit Federal Spending: Hearings Before the Subcomm. on Monopolies and Commercial Law of the House Comm. on the Judiciary, 97th Cong., 1st and 2d Sess. (1981 and 1982); Balanced Budget-Tax Limitation Constitutional Amendment: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 1st Sess. (1981); Balancing the Budget: Hearing Before the Subcomm. on the Constitution of the Senate Judiciary Comm., 97th Cong., 1st Sess. (1981); Constitutional Amendment to Balance the Federal Budget: Hearings Before the Senate Comm. on the Judiciary, 96th Cong., 2d Sess. (1980); Constitutional Amendments to Balance the Federal Budget: Hearings Before the Subcomm. on Monopolies and Commercial Law of the House Comm. on the Judiciary, 96th Cong., 1st and 2d Sess. (1979 and 1980); Proposed Constitutional Amendment to Balance the Budget: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 96th Cong., 1st Sess. (1979); Balancing the Budget: Hearing Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. (1975) (all subsequent citations to any of the hearings shall be in the following form: 19xx [House/Senate] [committee name if more than one committee in that chamber held hearings that year] Hearing); S. Rep. No. 163, 103d Cong., 1st Sess. (1993); S. Rep. No. 103, 102d Cong., 1st Sess. (1991); S. Rep. No. 391, 101st Cong., 2d Sess. (1990); S. Rep. No. 162, 99th Cong., 1st Sess. (1985); S. Rep. No. 163, 99th Cong., 1st Sess. (1985); S. Rep. No. 628, 98th Cong., 2d Sess. (1984); S. Rep. No. 151, 97th Cong., 1st Sess. (1981); H.R. Rep. No. 96, 96th Cong., 1st Sess. (1979).

[4] As proponents often point out, the founders shared their conviction that public debts are to be avoided where possible. See, e.g., S. Rep. No. 151, 97th Cong., 1st Sess. 19-20 (1981). This was no abstract concern: the Revolutionary War debt was substantial and led to something of a currency crisis. Thomas Jefferson wrote John Taylor in 1798 that

> I wish it were possible to obtain a single amendment to our Constitution. . . . I mean an additional article, taking from the federal government the power of borrowing.

Letter from Thomas Jefferson to John Taylor (Nov. 26, 1798), in X The Writings of Thomas Jefferson (Thomas Jefferson Memorial Association, ed., 1903) 63, 64-65.

reconsideration, I have once again concluded, the effort to resolve the budget crisis by Constitutional amendment appears both unlikely to produce balanced budgets and likely to alter radically the Constitutional structure so carefully constructed by the framers of our Constitution.

I. The structure of S.J. Res. 41.

Senate Joint Resolution 41 would propose a constitutional amendment mandating that "[t]otal outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote."[6] S.J. Res. 41 § 1. In addition,

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Whatever one thinks of Jefferson's proposal -- which he acknowledged was designed to limit radically the reach of government power -- it has a key virtue that the current proposals do not share: it is eminently enforceable.

Jefferson also argued, in a famous letter to James Madison dated September 6, 1789, that previous generations ("the dead") should have no power to bind present generations ("the living") by saddling them with debt or obligating them to any law or constitution. Letter from Thomas Jefferson to James Madison (Sept. 6, 1789), reprinted in 1 The Founders' Constitution 70 (Phillip B. Kurland and Ralph Lerner, eds., 1987). Madison responded -- and must be said to have won the day -- that this would produce chaos, that debts often redounded to the benefit of future generations (citing the Revolutionary War debt as just such an example), and that while the present generation had no greater claim to the benefits of land than did future generations, future generations could not make an equal claim as to improvements added by current generations. Letter from James Madison to Thomas Jefferson (Feb. 4, 1790), reprinted in 1 The Founders Constitution 70. Jefferson, writing from France, seems to have been arguing in large measure for land reform in France. See Letter of September 6, 1789; see also Letter from Thomas Jefferson to James Madison (Oct. 28, 1785), reprinted in The Portable Thomas Jefferson 395-98 (Merrill D. Peterson, ed., 1981).

[5] See 1992 Senate Hearings 73-102 (statement and testimony of Walter E. Dellinger, Professor of Law, Duke University); 1990 House Hearings 109-12, 167-73 (statement and testimony of Walter E. Dellinger, Professor of Law, Duke University).

[6] Rather than actually requiring the Congress to pass a balanced budget, the amendment would thus shift power from a majority to 41% of the members of a single House of Congress. Even if fifty-nine percent of the members of both Houses of Congress believed that a serious nonmilitary threat, such as an out-and-out economic depression or devastating environmental or public health crisis, required temporary deficit spending, or felt the need to respond, before hostilities, to a prelude to a military threat, such as the rise of an aggressive expansionist government, by investing in defensive measures, the nation could not increase the budget to account for these temporary emergencies without either making drastic cuts in other needed services or bowing to the demands of the minority. Cf. The Federalist No. 58, at 361 (James Madison) (Clinton Rossiter ed., 1961). In Number 58, Madison argued against suggestions for supermajorities and for quorums larger than a majority as tending to produce a tyranny by the minority:

> In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the

the amendment would require a three-fifths rollcall vote of the whole number of each House for any increase on the public debt, id. § 2; would require the President to submit a balanced budget prior to each fiscal year, id. § 3; and would require a majority rollcall vote of the whole number of each House for any bill to increase revenue, id. § 4. Congress would be allowed to waive these requirements "for any fiscal year in which a declaration of war is in effect . . . [or] for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by joint resolution . . . which becomes law." Id. § 5. Additional sections provide for implementing legislation; define receipts and outlays in broad general terms; and provide that the amendment shall take effect no earlier than 1999.

II. The Critical Issue: How Would the Amendment Be Enforced?

The one aspect of this proposal that should be of greatest concern to the United States Department of Justice is that the amendment provides no mechanism for its enforcement. No explanation has been offered as to how the mandated congressional agreement shall be brought about.[7]

The central problem is that the proposed amendment promises a balanced budget without providing any mechanism for accomplishing that goal. The proposal simply declares that outlays shall not exceed expenditures without explaining how this desirable state of affairs shall come about or specifying who shall be empowered to ensure that it happens. Consequently, in the absence of any specific mechanism for achieving a balanced budget, this amendment, once part of the Constitution, may be read to authorize -- indeed to mandate -- presidential impoundment of funds or extensive judicial involvement in the budgeting process, either of which would constitute a serious distortion of our constitutional system. If these enforcement mechanisms are not inferred, then the amendment would constitute an empty promise in the very charter of our government.

Either of these alternatives would work a fundamental alteration in the nature of our constitutional system.

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minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.

[7] For other expressions of concern about the enforceability of similar balanced budget amendment proposals, see, e.g., 1992 Senate Hearings 171-80 (testimony and prepared statement of Rudolph Penner, Director of Economic Studies, KPMG Peat Marwick); 1981-82 House Hearings 86-103 (testimony, prepared statement, and articles submitted by Rudolph Penner, then of the American Enterprise Institute); Letter from Robert H. Bort to Thomas F. Foley (July 10, 1990), reprinted in Robert H. Bork, A Seasoned Argument, Wash. Post, June 10, 1992, at A23; 1987 House Hearings 606, 609-11 (Letter from Jonathan Varat, Professor of Law, U.C.L.A.).

A. Executive or Judicial Enforcement.

The first problem is that simply mandating that Congress "shall agree" does nothing to assist Members of Congress to reach such an agreement. Even though each Member of Congress would properly consider herself or himself individually bound to comply with the amendment, it does not follow that a balanced budget would result. One Senator might vote to cut military spending; another to reduce retirement or other entitlement benefits; and a third to raise taxes. Each would have been faithful to her or his oath of office. But each of these measures may fail to gain a majority in one or the other House of Congress.

Even assuming that Congress is able to agree on a balanced budget, or a sixty-percent-majority agrees to a particular unbalanced budget, the amendment may be violated later in the year. Let us suppose that, as the year wears on, it becomes apparent that an enacted budget was overly optimistic, that revenues are not as high as expected, and that sixty percent of at least one House of the Congress cannot agree on a resolution to exceed the spending limit. In that situation, all members of Congress might be acting in the utmost good faith, and yet the Constitution would be violated.

By contrast, the President would be in a position to see that outlays do not in fact exceed estimated expenditures -- by impounding funds appropriated by Congress. While the proposed amendment does not explicitly grant the President such powers, the constitutional command that "[t]otal outlays for any fiscal year shall not exceed total receipts" might well be regarded as taking precedence over mere statutes, including appropriations bills, entitlement packages, and the Impoundment Act of 1974.

A critical question posed by this and other recent constitutional amendment proposals, then, is whether they would in fact empower the President to impound funds that had been appropriated by law. The structure of S.J. Res. 41 suggests that the President would have such power, but it neither makes that power explicit nor places any limits upon the manner of its exercise.

Assuming that the President concludes that his duty to comply with the constitutional amendment implicitly includes the impoundment power necessary to ensure that the budget is in fact balanced, nothing in the amendment directs how the President should exercise this authority. Must all programs be cut by proportional amounts? Or would the President have discretion to impound only those funds he or she deems least important to the national welfare? If it appeared during a fiscal year that federal outlays would exceed estimated receipts, could the President order the Social Security Administrator to reduce Social Security benefit payments by 9% below the amounts stated by the Social Security law? Or could the President unilaterally order the Department of Defense to cut military pay by 11%, even though a higher rate had been established by statute?

If a presidential decision to order a reduction in pension payments were challenged in court by beneficiaries, how should a federal court rule? This would be a very difficult question under a balanced budget amendment as the proposals, including S.J. Res. 41, are now worded. The President could argue in defense of his action that there was a conflict between the statutes requiring these outlays and the constitutional provision commanding that "[t]otal outlays . . . shall not exceed total receipts." To execute the spending statutes would result in the Constitution being violated. It would take a bold court to overrule this executive interpretation of the constitutional command.[8]

It would, however, be an extraordinary step to confer such a novel and sweeping power on the executive branch when none of the proposals state explicitly that such a power is being conferred and all fail to define any limits on the manner of its exercise. At the very heart of constitutional government is the proposition that power over the budget rests with the people's representatives in Congress. The shift to unrestrained presidential impoundment would effectively take from Congress the "power over the purse" and confer that power on the President. This would constitute a drastic restructuring of our constitutional framework.

There may be a societal consensus that the budget should be balanced, but there has been little debate over, and there certainly is no consensus on, the proposition that we should institute such a dramatic reform of the basic structure of our government.[9] The framers certainly contemplated that amendments would be necessary from time to time as flaws in the Constitution were discovered[10] and I do not question that the amendment process could be used to reform the basic structure of the government on discovery of such flaws. We should, however, be alert to the full consequences of proposed reforms of the constitutional structure.

Adopting an amendment that would allow the President to make his own selective budget decisions would do far more than simply transfer budgeting authority to the executive branch. A President with the power to withhold expenditures selectively is a President with the power to influence the actions of Members of Congress on the whole array of legislative issues by holding hostage legally mandated expenditures critical to a Member's particular

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[8] One academic colleague, a leading Constitutional scholar, has suggested to me that the amendment would require and empower the President unilaterally to bring a budget into balance, but would limit the President to exactly proportionate cuts in all federal programs and entitlements. I would not read to amendment to cabin the President's discretion in that manner. If the amendment does indeed require and empower the president to bring the budget into balance, I would assume that it would leave him or her with the authority to decide which programs or entitlements to cut and by how much (and possibly which taxes to raise by unilateral executive action and by how much).

[9] See Harry T. Edwards, Goals in Life Worth Pursuing, 10 Fla. St. U. L. Rev. 517, 524-26 (1983) (budget amendment would work radical alteration to structure of government by "seriously impair[ing] Congress' ability to respond rapidly and flexibly to currently unforeseen crises," at 525).

[10] The Federalist No. 43, at 278-79 (James Madison) (Clinton Rossiter ed., 1961); 1979-80 House Hearings 1 (Statement of Rep. Peter Rodino, quoting President Abraham Lincoln as saying: "As a general rule, I think we would much better let it alone. No slight occasion should tempt us to touch it. Better not take the first step, which may lead to a habit of altering it.").

district. If Congress means by this amendment to transform representative government in such a fundamental manner, the proposal should expressly state the nature (and the limits) of the power being transferred to the executive. The proposed amendment, like its predecessors, does not address this profoundly important issue.

The potential alteration in the role of the judiciary would be even more dramatic. Perhaps most alarming of all aspects of the proposed amendment is that by constitutionalizing the budgeting process, the proposal appears to mandate an extraordinary expansion of judicial authority: state and federal judges may well be required to make fundamental decisions about taxing and spending, issues that judges lack the institutional capacity to decide in any remotely satisfactory manner.[11] The result could only be harmful both to democratic government and to the judicial branch itself. Neither the political question doctrine nor limitations on standing would necessarily preclude litigation that would ensnare the judiciary in the thicket of budgetary politics. In Baker v. Carr[12] the Court identified the features that characterize a case raising a nonjusticiable political question.[13] Simply put, "the political question doctrine . . . is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government."[14]

On its face, such a statement would seem to constrain the courts' review of a balanced budget amendment. The most recent decisions of the Supreme Court, however, suggest that the Court is prepared to resolve questions that might once have been considered "political." Three terms ago, for example, in United States v. Munoz-Flores,[15] the Court adjudicated a claim that an assessment was unconstitutional because Congress had failed to comply with the Origination Clause, which mandates that "all Bills for raising Revenue shall originate in the House of Representatives." The Court rejected the argument that this issue was a non-justiciable political question. And in 1992, the Court held that congressional selection of a method for apportionment of congressional elections is not a "political

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[11] For expressions of this view, see, e.g., 1982 House Hearings 340-45 (testimony and prepared statement of Phillip B. Kurland, Professor of Law, University of Chicago); id. 542-50 (testimony and prepared statement of Archibald Cox, Chairman, Common Cause).

[12] 369 U.S. 186 (1962).

[13] "Prominent on the surface of any case held to involve a political question is . . . a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government." Id. at 217. Concerns about the ability of a court to fashion remedies for a violation of the balanced budget requirement could be expected to give judges pause; simply declaring that the Constitution has been violated would not serve to remedy the violation, and any other attempt would involve a judicial restructuring of the essentially political balancing of budgetary priorities.

[14] United States v. Munoz-Flores, 495 U.S. 385, 394 (1990).

[15] 495 U.S. 385 (1990).

question" and is therefore subject to judicial review.[16] We must allow for the possibility that the Court -- perhaps unwisely -- may view disputes arising under the balanced budget amendment as justiciable.[17]

It is likely, moreover, that there will be taxpayers or other litigants who would have standing to adjudicate various aspects of the budget amendment process under the Constitution. In Flast v. Cohen,[18] the Court held that a taxpayer may challenge congressional action under the Taxing and Spending Clause that violates a limitation on the exercise of that power. Although later cases have narrowed the doctrine of taxpayer standing,[19] the reasoning of Flast might well permit litigation to be brought to prohibit outlays in excess of revenues, or outlays in excess of the "statement of outlays" adopted prior to the fiscal year in question. Taxpayers might also seek to litigate any alteration in revenues, including the closing of tax loopholes, by arguing that the provisions mandating special requirements such as absolute majorities of all members were not followed.

Even if taxpayers were not granted standing, the amendment, if enforced, could lead to litigation by recipients whose benefits, mandated by law, were curtailed by the President

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[16] Department of Commerce v. Montana, 112 S.Ct. 1415, 60 U.S.L.W. 1415 (1992).

[17] Some proponents of the amendment have suggested that this concern is exaggerated and that the better view is that courts would conclude that the political question doctrine barred their intervention in budget disputes. E.g., 1992 House Hearings 502-10 (Statement of Joseph A. Morris, President and General Counsel, Lincoln Legal Foundation). Even if this were a correct reading of the inclination of the current Supreme Court, it would be foolhardy to count on courts thirty or one hundred years from now to agree, when the amendment itself is silent about the availability of judicial enforcement. Furthermore, at least some of the legislative history suggests that at least limited judicial review is contemplated. See, e.g., 138 Cong. Rec. S 9352 (July 1, 1992) (statement of Sen. Byrd, noting that "the sponsor of the leading proposal for a balanced budget amendment has said that if the President and the Congress could not agree on a balanced budget, a district court could enforce the amendment through a tax increase"); 1992 House Budget Comm. Hearings, supra note 3, at 97, 99 (statement of Sen. Paul Simon, sponsor of leading Senate proposal, indicating that judicial review would be available "in unusual circumstances" and "if Congress and President . . . ignore their constitutional duties"); id., 461, 465-66 (statement of Rep. Charles Stenholm, sponsor of leading House proposal, to similar effect). See also id. 37, 39-40 (statement of Rep. Joe Barton); S. Rep. 162, 99th Cong., 1st Sess. 66-71 (1985); S. Rep. No. 627, 98th Cong., 2d Sess. 66-71 (1984); S. Rep. No. 151, 97th Cong., 1st Sess. 62-66 (1981) (all indicating that judicial review is contemplated); Note: The Balanced Budget Amendment: An Inquiry into Appropriateness, 96 Harv. L. Rev. 1600 (1983) (discussing problem of justiciability of cases arising under the balanced budget amendment); Gay Aynesworth Crosthwait, Comment: Article III Problems in Enforcing the Balanced Budget Amendment, 83 Col. L. Rev. 1065 (1983) (same); Peter W. Rodino, Jr., The Proposed Balanced Budget/Tax Limitation Constitutional Amendment: No Balance, No Limits, 10 Hastings Const. L. Q. 785, 800-03 (1983) (same).

[18] 392 U.S. 83 (1968).

[19] See, e.g., Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464 (1982).

in reliance upon the amendment.[20] Whether a state or federal court could order a tax increase in order to comply with the provisions of the amendment is uncertain. (See Missouri v. Jenkins,[21] in which the Supreme Court held that a federal district court abused its discretion in imposing a tax increase to ensure funding for school desegregation, but that the modifications made by the Court of Appeals satisfied equitable and constitutional principles.) Judge Robert Bork wrote of earlier versions of the proposal to adopt a balanced budget constitutional amendment that

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

Transfer of power over fundamental political questions of taxing and spending to the executive branch or to the courts would represent a fundamental and deeply problematic reordering of our basic constitutional structure. The placing of the "power of the purse" in the hands of the legislature -- and not in the hands of the executive or judicial branches -- was not a decision lightly made by the framers of the Constitution. James Madison wrote in the 58th Federalist that the "power of the purse may, in fact, be regarded as the most effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."[23] The framers explicitly rejected the notion that such a crucial power

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[20] Some have also suggested that a Member of Congress who voted against an unbalanced budget would have standing to sue to prevent its adoption. There is some case support for such a view. See, e.g., Coleman v. Miller, 307 U.S. 433, 438 (1939) (Kansas state senators had standing to protest lack of effect of votes for ratification of proposed Child Labor Amendment, which ratification had been rescinded by subsequent act of the legislature); Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974) (legislators have standing to challenge constitutionality of pocket veto). But see Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977 (legislators do not have standing to challenge executive failure to act in compliance with statute). At the least, this case law suggests that there is some possibility that a court would accord legislators standing to challenge a congressional failure to comply with the terms of the balanced budget amendment; while proponents of the amendment may well be right that according legislators standing would be unwise, they cannot, in the face of these cases, confidently assert that such a view would never be adopted by a court.

[21] 495 U.S. 33 (1990).

[22] Robert H. Bork, On Constitutional Economics, AEI J. on Gov't and Soc'y (Sept.-Oct. 1983), reprinted in 1987 House Hearings 645, 649.

[23] The Federalist No. 58, at 359 (James Madison) (Clinton Rossiter ed., 1961).

should rest with either the executive[24] or with the judiciary.[25] The courts lack not only the resources, but also the close link to the general public needed for responsible budgetary decisions. It could be a terrible mistake for Congress to propose an amendment that could transfer such a vital legislative power to the executive or to an unelected judiciary.

B. The Prospect of an Unenforceable Amendment.

I would hope that a balanced budget amendment would not be read to authorize or require the President to override congressional appropriations by impoundment, and I would hope that the judiciary would avoid becoming entangled in extraordinarily complex budgetary disputes. In the absence of these implied enforcement mechanisms, however, I fail to see how the amendment is to be made effective.

Because it is highly likely that an amendment would not bring about a balanced budget,[26] its adoption could be truly harmful to the Constitution. To have the Constitution declare that the budget shall be balanced, while providing no mechanism to make that happen, would place an empty promise in the fundamental charter of our government. To have a provision of the Constitution routinely violated would inevitably make all other provisions of the Constitution seem far less inviolable. As Alexander Hamilton noted,

> Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of

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[24] See, e.g., 3 Annals of Cong. 938-39, in which Madison quotes Rep. Findley as having concluded that "appropriations of money were . . . the bulwark which our Constitution had carefully and jealously established against Executive usurpations," in context of congressional debate over propriety of President's using funds appropriated to satisfy the foreign debt for another purpose; Madison appears to be of the view that this would be acceptable provided that a careful accounting was kept and the funds repaid to the account against which they had been drawn; see also 3 Joseph Story, Commentaries on the Constitution § 1342 (1833) (Noting that "[i]f [the power of the purse were not placed in congressional hands], the executive would possess an unbounded power over the public purse of the nation," and that "[t]he power to control, and direct the appropriations, constitutes a most useful and salutary check upon profusion and extravagance, as well as upon corrupt influence and public peculation.").

[25] The Federalist No. 78, at 465 (Alexander Hamilton) (Clinton Rossiter, ed., 1961) (noting that the judicial branch did not pose as great a danger to liberty as opponents feared because it "has no influence over either the sword or the purse; no direction either of the strength or the wealth of society").

[26] Moreover, even if "total outlays" were effectively limited by presidential and judicial action to the amount of total receipts, that would not functionally balance the national public expenditure budget. Congress could still effectively provide for more spending on public goods beyond that raised in tax revenues by (1) mandating that state and local governments incur obligations, such as Medicaid, without receiving federal reimbursements; (2) mandating that private employers provide certain benefits; or (3), setting up "off-budget" quasi-public entities that could borrow and spend amounts greater than receipts, while being insured or backed by the full faith and credit of the United States.

> the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers toward the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.[27]

Some have suggested that the amendment would be helpful because it would nonetheless increase public pressure to reduce the budget deficit, and thus have a salutary effect on public finances even if the deficit was not eliminated. Our concern should be at what cost this salutary effect would be produced. Even supposing that the deficit could be reduced to a quarter or a tenth of its current size, we could annually face a multi-billion-dollar constitutional violation.

It would be wonderful if we could simply declare by constitutional amendment that from this day forward the air would be clean, the streets free of drugs, and the budget forever in balance. But merely saying those things in the Constitution does not make them happen. As countries around the world have discovered, placing a statement of principle in a constitution does not mean that that principle, however laudatory, will be obeyed. Many constitutions "guarantee" freedom from poverty or environmental purity; the only accomplishment is that the constitution is not taken seriously as positive law, the kind of law that is invocable in court by litigants. The framers of the American Constitution, on the contrary, understood that constitutional provisions must be enforceable, in order for the rule of law to be respected. We should hesitate long before placing in the document that binds our nation together an empty and unenforceable promise.

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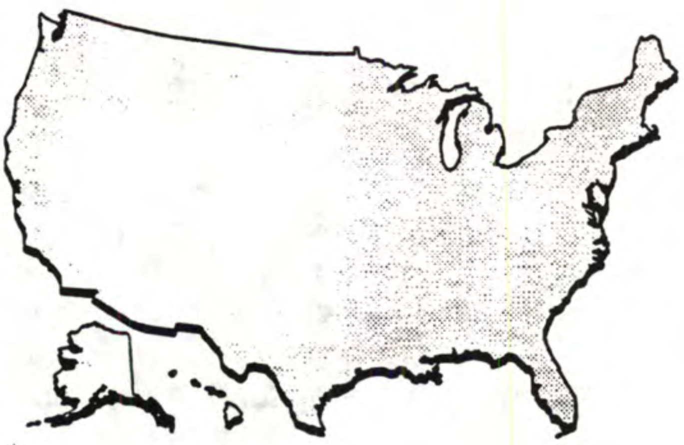
[27] The Federalist No. 25, at 167 (Alexander Hamilton) (Clinton Rossiter ed., 1961). For further expression of this concern, as it relates to proposed balanced budget amendments quite similar to this one, see, e.g., Peter W. Rodino, The Proposed Balanced Budget/Tax Limitation Constitutional Amendment: No Balance, No Limits, 10 Hastings Const. L.Q. 785, 800 (1983); 1987 House Hearings 614-15 (Letter of William Van Alstyne, Professor of Law, Duke University, to Mr. Warren Grimes, Counsel, House Committee on the Judiciary); id. 606-13 (Letter of Jonathan Varat, Professor of Law, U.C.L.A., to the Hon. Peter Rodino, Chairman of the House Comm. on the Judiciary); and 1979-80 House Hearings 22 (statement of Paul A. Samuelson, Nobel-prize-winning economist) ("If the adopted amendment provides escape valves so easy to invoke that the harm of the amendment can be avoided, the amendment degenerates into little more than a pious resolution, a rhetorical appendage to clutter up our magnificent historical Constitution. . . . There is no substitute for disciplined and informed choice by a democratic people of their basic economic policies.").

The United States and the Balanced Budget Amendment



What does a Balanced Budget Amendment mean to the United States? While supporters offer a lot of tough talk, few proponents spell out the details of how they would achieve this laudable goal. The Director of the CBO, Robert Reischauer, has indicated -- and this administration agrees -- that any discussion of a balanced budget amendment must be in the context of an honest discussion about the program cuts and tax increases necessary to achieve such a balance. According to Reischauer, "it would be a particular folly to pass a balanced budget amendment and ignore the need to expeditiously enact legislation that would offer some hope of complying with it." Make no mistake, balancing the budget would require tough choices and cost the United States billions.

In order to encourage a more realistic, responsible debate, the Treasury Department has analyzed five possible routes to a balanced budget in 2000. These projections do not include the contractionary impact on the economy that might accompany a sharp rise in taxes or reduction in spending over such a short period of time. In this sense, these are very conservative estimates of the cost of such an amendment to the people of the United States.

The Balanced Budget Amendment: Nationwide Impact

Option 1: Tax increase and across-the-board spending cut[1]

Increases in taxes -- $90 billion a year ($728 per taxpayer)

Cuts in Benefits, Services, and Defense -- $110 billion a year

- $605 cut per year for the average Social Security recipient
- $480 less for each person enrolled in Medicare
- $254 less for each Medicaid recipient
- $34.4 billion in reduced funding for fighting crime, building highways and bridges, protecting the environment, providing education, and other federally funded programs
- $16.8 billion additional cut in annual defense spending

Option 2: Across-the-board spending cut

Cuts in Benefits, Services, and Defense -- $200 billion a year

- $1,100 cut per year for the average Social Security recipient
- $873 less for each person enrolled in Medicare
- $462 less for each Medicaid recipient
- $62.6 billion in reduced funding for fighting crime, building highways and bridges, protecting the environment, providing education, and other federally funded programs
- $30.6 billion additional cut in annual defense spending

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[1]Tax increase comprises 45% of national deficit reduction package (percentage varies by state), equal to the average revenue component of the last two deficit reduction packages. Spending cuts are proportional across programs.

Note: Budget numbers based on CBO projections for FY 2000. Allocations based on 1992 data. The potential contractionary impact of tax increases and/or spending cuts is not included.

Option 3: Across-the-board spending cut, excluding defense

Cuts in Benefits and Services -- $200 billion a year

- $1,298 cut per year for the average Social Security recipient
- $1,031 less for each person enrolled in Medicare
- $545 less for each Medicaid recipient
- $73.9 billion in reduced funding for fighting crime, building highways and bridges, protecting the environment, providing education, and other federally funded programs

Option 4: Across-the-board spending cut, excluding Social Security

Cuts in Benefits and Services -- $200 billion a year

- $1,177 less for each person enrolled in Medicare
- $623 less for each Medicaid recipient
- $84.4 billion in reduced funding for fighting crime, building highways and bridges, protecting the environment, providing education, and other federally funded programs
- $41.2 billion additional cut in annual defense spending

Option 5: Across-the-board spending cut, excluding defense and Social Security

Cuts in Benefits and Services -- $200 billion a year

- $1,483 less for each person enrolled in Medicare
- $784 less for each Medicaid recipient
- $106.3 billion in reduced funding for fighting crime, building highways and bridges, protecting the environment, providing education, and other federally funded programs

Families USA FOUNDATION

February 16, 1994

Melanne Verveer
Deputy Chief of Staff to the First Lady
The White House
Old Executive Office Building
Room 100
Washington, DC 20500

Dear Melanne:

Enclosed is our analysis of the Balanced Budget amendment's impact on Medicare, Medicaid and health reform. We released this analysis immediately prior to the hearings conducted by Senator Byrd this morning.

Best regards,

Ronny

Ronald F. Pollack
Executive Director

RFP/gj
Encls.

1334 G STREET, NW • WASHINGTON, DC 20005 • 202-628-3030 • FAX 202-347-2417

Families USA FOUNDATION

PRESS RELEASE

FOR RELEASE:
TUESDAY, FEBRUARY 15, 1994

BALANCED BUDGET AMENDMENT WOULD SLASH MEDICARE, MEDICAID, SET BACK HEALTH REFORM

The Balanced Budget Amendment would slash Medicare and Medicaid, according to a report released today by the health consumer group Families USA.

Passage of the Balanced Budget Amendment would also seriously damage prospects of comprehensive health reform, according to the report. Implementing the Balanced Budget Amendment would require more than a doubling of the Medicare and Medicaid cuts proposed in the Clinton health reform proposal, thereby weakening the opportunity to pass health reform. At the very least, it would cause drastic cuts in Medicare and Medicaid, and elimination of significant benefits in the reform package.

"The backers of the so-called Balanced Budget Amendment are playing politics with the future of Medicare, Medicaid and comprehensive health reform. We can't let them slip this one past us. Our future health security depends on it," said Ron Pollack, executive director of Families USA.

All health reform proposals, not just the Clinton reform, would be devastated by the Balanced Budget Amendment, as all rely on savings in Medicare and Medicaid, in part, to finance reform.

If the Balanced Budget Amendment took effect in 1999, Medicare would likely be cut by $32 billion and Medicaid would be cut by $35 billion that year, according to the analysis. If the Amendment took effect in 2001, as recently proposed, Medicare would be cut by $43 billion and Medicaid would be cut by $48 billion that year.

The Families USA report was released today to coincide with testimony on the Amendment's impact by Donna Shalala, Secretary of Health and Human Services, before the Senate Appropriations Committee, chaired by Sen. Robert Byrd.

Families USA is the consumer group fighting for health and long term care reform.

- 30 -

CONTACT: ARNOLD BENNETT OR AVIVA SHLENSKY (202) 628-3030
1334 G STREET NW • WASHINGTON DC 20005 • FAX (202) 347-2417

Clinton Presidential Records
Digital Records Marker

Balanced Budget Damages Medicare, Medicaid, Health Reform

This month the Congress will be voting on a Constitutional amendment requiring a balanced federal budget. The proposed amendment, Senate Joint Resolution 41 sponsored by Senator Paul Simon (D-Illinois) and House Joint Resolution 103 sponsored by Representative Charles Stenholm (D-Texas), would require the Congress to eliminate the federal budget deficit unless three-fifths of both houses of Congress approve deficit spending. The amendment would take effect in federal fiscal year 1999, or the second federal fiscal year following ratification by three-fourths of the states, whichever is later. Some sponsors of the amendment have stated that they will change the effective date of the amendment to federal fiscal year 2001, or the second federal fiscal year following ratification by three-fourths of the states, whichever is later.

The proposed amendment is likely to result in large federal spending cuts since it requires the approval of a majority of all members of both the House and the Senate by a rollcall vote in order to raise taxes. The proposed amendment protects no federal programs from the impact of the Constitutional amendment.

Enactment of the Balanced Budget amendment would require large cuts in the Medicare and Medicaid programs. This Families USA Special Report looks at the impact of the proposed Constitutional amendment on these important health programs and on the prospects for comprehensive health reform, as proposed by President Clinton. This analysis assumes that the Balanced Budget amendment would take effect either in 1999 or 2001; that the Congress would choose to balance the federal budget through spending cuts and without a tax increase; and that cuts in federal programs would be proportional to the amount each program comprises of the federal budget.

Slashing Medicare and Medicaid

The Medicare program provides health insurance to the nation's elderly and persons with disabilities and the Medicaid program provides health insurance to persons eligible for Aid to Families with Dependent Children; Supplemental Security Income; and certain other categories of needy persons. Over the last decade, the costs of Medicare and Medicaid have skyrocketed along with all health care costs.

The federal government has taken many steps to control the cost increases in these programs. These cuts have resulted primarily in reduced payments to providers. As the federal and state governments have reduced Medicare and Medicaid payments to providers, beneficiaries' access to providers has become increasingly threatened. This is because private insurance payments are relatively more generous and providers

Families USA FOUNDATION **PRESS RELEASE**

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"The backers of the so-called Balanced Budget Amendment are playing politics with the future of Medicare, Medicaid and comprehensive health reform. We can't let them slip this one past us. Our future health security depends on it," said Ron Pollack, executive director of Families USA.

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- 30 -

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Families USA FOUNDATION

February 4, 1994

Melanne Verveer
Deputy Chief of Staff to the First Lady
The White House
Old Executive Office Building
Room 100
Washington, DC 20500

Dear Melanne:

Enclosed you will find our press release and report criticizing the Balanced Budget Amendment's impact on Social Security. Joining us at the press conference were Senator Robert Byrd and representatives of the AARP, the Save Our Security Coalition (Dr. Arthur Flemming, Chairman), the National Council of Senior Citizens, the National Center and Caucus on the Black Aged, the Older Women's League, the National Committee for the Preservation of Social Security and Medicare, and the People With Disabilities Coalition.

Since Senator Simon indicated that he may change the effective date of the proposed amendment from 1999 to 2001, we offered impact data for both years. In 1999, if federal spending were cut on a pro rata basis, the average annual Social Security cut would be $1,081 per beneficiary, and in 2001 it would be $1,306. These are based on CBO data and reflect benefit cuts of 12 percent and 14 percent, respectively.

The state-by-state data are being disseminated through state-specific radio actualities and satellite tv interviews.

Best regards,

Ronny

Ronald F. Pollack
Executive Director

RFP/gj
Encls.

As usual, I'm enclosing an extra copy for the First Lady!
Thanks for your guidance and help on this!

Families USA FOUNDATION

PRESS RELEASE

FOR RELEASE 11 AM
FRIDAY, FEBRUARY 4, 1994

NEW REPORT: BALANCED BUDGET AMENDMENT WOULD CUT MORE THAN $1,000 A YEAR OUT OF SOCIAL SECURITY CHECKS

AARP, OTHER NATIONAL AGING GROUPS ATTACK "RAID ON SOCIAL SECURITY"

The Balanced Budget Amendment would cut Social Security checks by more than $1,000 a year on average, according to a report released today by the consumer group Families USA.

"The politicians are trying to slip this one past us, but here's the truth: the so-called Balanced Budget Amendment is a raid on Social Security," said Ron Pollack, executive director of Families USA.

Senator Robert Byrd (D-WV), chairman of the Senate Appropriations Committee, joined Families USA, the American Association of Retired Persons and other national seniors' organizations at a press conference today in Washington. The groups vowed an all out fight against the Balanced Budget Amendment.

"Many Americans, especially the elderly, depend on their monthly Social Security checks to buy food and medicine. How are you going to tell them you're going to cut $1,000 a year from their checks? Senators need to know that this is the kind of real pain the Balanced Budget Amendment will cause if they decide to vote for it," Byrd said.

Under the Balanced Budget Amendment, Social Security checks would be cut by an average of $1,081 a year, according to the report. This would amount to a 12 percent cut in benefits, and a $50 billion dollar Social Security cut overall.

Also participating in the press conference were Dr. Arthur Flemming of the Save Our Security coalition and leaders of the National Council of Senior Citizens, the Older Women's League, the National Committee to Preserve Social Security and Medicare, the National Caucus and Center on Black Aged.

Families USA is the national consumer group working for health and long term care reform and income security for older Americans.

- 30 -

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The proposed amendment is likely to result in large federal spending cuts since it would be very difficult to convince three-fifths of both the Senate and the House of Representatives to vote for a tax increase. The proposed amendment protects no federal programs from the impact of the Constitutional amendment.

This Families USA Special Report looks at the impact of the proposed Constitutional amendment on Social Security beneficiaries. This analysis assumes that the amendment would take effect in 1999; that the Congress would choose to balance the federal budget through spending cuts and without a tax increase; and that cuts in federal programs would be proportional to the amount each program comprises of the federal budget.

The Social Security Safety Net

Many elderly persons and persons with disabilities depend on Social Security benefits to meet their daily living expenses. Elderly persons with low and moderate incomes are far more dependent on Social Security benefits than those with higher incomes. Elderly units with incomes between the poverty line and 150 percent of the poverty line, for example, depend on Social Security benefits for over three-fourths of their income, on average. By contrast, elderly units with incomes over $50,000 receive less than 20 percent of their income from Social Security benefits.[1] As of 1992, half of all elderly families had incomes of $17,160 or less.[2]

Impact of the Balanced Budget Amendment

The nation's 46 million Social Security beneficiaries would lose $1,081 in annual Social Security benefits, on average, in 1999 under the Balanced Budget Constitutional amendment. This amounts to a 12 percent cut in benefits. Nationwide, the Social Security cuts would total $50 billion. *(See Table 1.)*

Families USA FOUNDATION

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- 30 -

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Families USA FOUNDATION

February 4, 1994

Melanne Verveer
Deputy Chief of Staff to the First Lady
The White House
Old Executive Office Building
Room 100
Washington, DC 20500

Dear Melanne:

Earlier today I sent you a copy of our report on Social Security and the Balanced Budget Amendment. That report contained an error concerning the amendment's procedure for approving a tax increase. The enclosed document corrects that error.

Best regards,

Ronny

Ronald F. Pollack
Executive Director

RFP/gj
Encl.

1334 G STREET, NW • WASHINGTON, DC 20005 • 202-628-3030 • FAX 202-347-2417

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MEMORANDUM

TO: Pat Griffin
Steve Ricchetti
Gene Sperling
Melanne Verveer
Rahm Emmanuel

FROM: Barbara Chow

RE: Balanced Budget Amendment

DATE: February 4, 1994

More good news:

Senator Johnston told me yesterday that he is unequivocally opposed to the balanced budget amendment and will work with us to defeat it.

File Simon
Bolan

PAUL SIMON
ILLINOIS

CC: Steve K
Melanne

United States Senate

WASHINGTON, DC 20510-1302

COMMITTEES:
LABOR AND HUMAN RESOURCES
JUDICIARY
FOREIGN RELATIONS
BUDGET
INDIAN AFFAIRS

November 9, 1993
Dictated 11-8-93

PAM NOV 18 1993

Mrs. Hillary Clinton
The White House
Washington, DC 20500

Dear Hillary:

Just a note to say I think you're making a mistake in using the health argument against the Balanced Budget Amendment.

First of all, I believe the argument is invalid, but that is not my reason for this letter.

A second reason is that there is apparently massive inconsistency to say that having the health program will save money and, at the same time, say that you can't have that and the Balanced Budget Amendment. Clearly, we can have the Balanced Budget Amendment and have the health care program, too. I strongly favor and am a cosponsor of the Health Security Act of 1993.

My prime reason for writing is that two Republican members of the Senate have told me that their arguments against the health care program have been buttressed because they, too, say you can't have a balanced budget and have a health care program.

The reality is, we have to avoid that.

My best wishes.

Cordially,

Paul Simon
U. S. Senator

PS/jw

462 Dirksen Building
Washington, DC 20510-1302
202/224-2152
TDD: 202/224-5469

230 S. Dearborn
Kluczynski Bldg., 38th Floor
Chicago, IL 60604
312/353-4952
TDD: 312/786-0308

3 West Old Capitol Plaza
Suite 1
Springfield, IL 62701
217/492-4960
TDD: 217/544-7524

250 West Cherry
Room 115-B
Carbondale, IL 62901
618/457-3653

Paul Simon

DRAFT

Dear Paul:

It is entirely consistent and indeed compelling to say that health care reform will reduce the deficit in an economically sound manners, but that the Balanced Budget would be harmful to that effort.

What the Clinton Administration has already shown in its first year is that it is possible to bring down the deficit without broadbased taxes on the middle class or efforts that would weaken economic recovery. We did this by passing a balanced plan to end 12 years of spiraling deficits with a $500 billion deficit reduction plan. We are now putting the deficit on a downward path for the first time in years, with a hard freeze on all discretionary spending -- an actual 12% real cut.

Despite this strong progress on the deficit, all of us agree that the number one remaining problem for our longterm budget prospects is the rising costs of health care. The Health Security Act directly confronts this longterm deficit challenge by controlling the rising costs of <u>all</u> health care through a system of increased competition with back-up premium increase limits. This is critical because Medicare cuts in the absence of health care reform will simply mean more benefits will be cut and more costs will be shifted to the private sector, amounting to hidden tax in the form of a premium increase and allowing the current waste and inefficiencies to continue.

The balanced budget amendment would create a dynamic that would make it nearly impossible to pass a health care reform. Currently, one of the driving forces for a major health care reform that would tame rising health prices and bring down the federal deficit is that nearly every major proposal is able to finance much of the costs by redirecting Medicare and Medicaid saving -- instead of relying on increases in broadbased middle class taxes. Yet, the same Medicare and Medicaid savings can't be used twice. Your balanced budget would almost certainly require using these major health care savings for deficit reduction. When one considers the large-scale deficit reduction your Amendment calls for on top of the $500 billion recently passed, it goes without saying that it could only meet these stringent targets with some combination of middle-income tax increases, major reductions in Social Security benefits or national defense, or extremely large reductions in federal Medicare and Medicaid costs. With the intense political opposition to cuts in Social Security and increases in middle class taxes -- and the irresponsibility of threatening our national security -- nearly all would agree that Medicare and Medicaid savings would likely be cut significantly to balance the budget.

Thus, by taking away the financing mechanism that nearly every plan relies on for passage of health care, the balanced budget amendment would create a dynamic that would make it nearly impossible to pass a health care reform.

We believe that this would not only be bad in terms of denying the historic hope of every American to have full health care security, but by making it nearly impossible to pass universal coverage, we will also destroy the chances for bringing down the deficit in an economically sound means that seeks to fix our health care cost problem, and not simply shift more of the waste and excessive costs to the private sector.

* Ompuit
- St Louis Post Dispatch
Reid + Marshall

1993
BALANCED BUDGET AMENDMENT
SENATE

WRONG (52) *Cosponsor or publicly committed to Simon			LEANING WRONG (12)	UNDECIDED (9)	LEANING RIGHT (3)	RIGHT (24)	
Bennett*	Gorton*	**Nunn***	**Bingaman***	**Conrad**	**Dodd**	**Akaka**	**Moynihan**
Bond*	**Graham***	Packwood*	**Bryan***	**Ford**	Hatfield no jails	**Baucus**	**Murray**
Boren*	Gramm*	Pressler*	Chafee* health care?	**Glenn**	**Kerrey**	**Biden**	**Riegle**
Breaux*	Grassley*	**Reid***	Cohen*	**Harkin** – W.H.		**Boxer**	**Rockefeller**
Brown*	Gregg*	**Robb***	Durenberger* hc?	**Johnston** mach		**Bradley**	**Sarbanes**
Burns*	Hatch*	Roth*	**Exon***	**Lieberman**		**Bumpers**	**Wellstone**
Campbell*	**Heflin***	Shelby*	**Feinstein***	**Pryor** mach		**Byrd**	
Coats*	Helms*	**Simon***	Jeffords* hc?	**Sasser** alternative		**Feingold**	
Cochran*	**Hollings***	Simpson*	**Kohl***	**Wofford** alternative		**Inouye**	
Coverdell*	**Hutchinson***	Smith*	* **Moseley-Braun*** Marian Wr Edelman*			Kassebaum	
Craig*	Kempthorne*	Stevens*	**Pell***			**Kennedy**	
D'Amato*	Lott*	Thurmond*	Specter			**Kerry**	
Danforth*	Lugar*	Wallop*				**Lautenberg** ? Begala	
Daschle*	Mack*	Warner*				**Leahy**	
DeConcini*	**Mathews***					**Levin**	
Dole*	McCain*					**Metzenbaum**	
Domenici*	McConnell*					**Mikulski**	
Dorgan*	Murkowski*					**Mitchell**	
Faircloth*	Nickles*						

cloture sill

Democrat Republican

January 10, 1994

BALANCED BUDGET AMENDMENT (BBA)

CATEGORY 1 (61)		CATEGORY 2 (7)	CATEGORY 3 (3)	CATEGORY 4 (2)	CATEGORY 5 (27)
Bennett	Heflin	Breaux ? Bentsen · For	Glenn	Kerry OK	Akaka
Bingaman	Helms	Cohen Armed Services	Lieberman	Pryor - will oppose	Baucus
Bond	Hollings	Conrad	Wofford		Biden
Boren	Hutchinson	Ford			Boxer
Brown	Jeffords	Harkin			Bradley
Bryan	Kempthorne	Sasser - Cooper + Mathews.			Bumpers
Burns	Kohl	Specter			Byrd
Campbell	Lott				Dodd
Chafee	Lugar				Feingold
Coats	Mack				Hatfield - work Cohen
Cochran	· Mathews - Cooper outspoken for				Inouye
Coverdell	McCain				Johnston
Craig	McConnell				Kassenbaum
D'Amato	Moseley-Braun				Kennedy
DeConcini	Murkowski				Kerrey
Danforth	Nickles				Lautenberg
• Daschle cosponsor.	• Nunn				Leahy
Dole	Packwood				Levin
Domenici	Pell				Metzenbaum
Dorgan	Pressler				Mikulski
Durenberger	· Reid				Mitchell
Exon	Robb				Moynihan
Faircloth	Roth				Murray
• Feinstein	Shelby				Riegle
Gorton	Simon				Rockefeller
Graham	Simpson				Sarbanes
Gramm	Smith				Wellstone
Grassley	Stevens				
Gregg	Thurmond				
Hatch	Wallop				
	Warner				

Some of the Senators in categories 2 and 3 may be willing to oppose Simon if they can vote for an alternative

1 = official cosponsor or publicly committed to Simon's BBA

2 = has supported in the past or staff indicates Senator will probably vote for it this year

3 = Senator is undecided or no solid report

4 = has voted against BBA in the past or staff indicates Senator will probably oppose

5 = has voted against BBA in the past or has publicly announced his/her opposition

November 29, 1993

FAX MESSAGE COVER SHEET

CENTER ON BUDGET AND POLICY PRIORITIES
777 North Capitol Street, NE, Suite 705
Washington, DC 20002

Telephone: 202/408-1080

Fax: 202/408-1056

If there are any problems with the transmission of this document, please call 202/408-1080.

TO:	Melanne
FAX NUMBER:	456 6244
FROM:	Ellen
NUMBER OF PAGES: (including cover)	

urgent

BALANCED BUDGET AMENDMENT (BBA)

CATEGORY 1 (62)		CATEGORY 2 (6)	CATEGORY 3 (3)	CATEGORY 4 (2)	CATEGORY 5 (27)
Bennett	Heflin	Cohen	Glenn	Kerry	Akaka
Bingaman	Helms	Conrad	Lieberman	Pryor	Baucus
Bond	Hollings	Ford	Wofford		Biden
Boren	Hutchinson	Harkin			Boxer
* Breaux	Jeffords	Sasser			Bradley
Brown	Kempthorne	Specter			Bumpers
Bryan	Kohl				Byrd
Burns	Lott				Dodd
Campbell	Lugar				Feingold
Chafee	Mack				Hatfield
Coats	* Mathews				Inouye
Cochran	McCain				Johnston
Coverdell	McConnell				Kassenbaum
Craig	Moseley-Braun				Kennedy
D'Amato	Murkowski				Kerrey
DeConcini	Nickles				Lautenberg
Danforth	* Nunn				Leahy
* Daschle	Packwood				Levin
Dole	Pell				Metzenbaum
Domenici	Pressler				Mikulski
Dorgan	* Reid				Mitchell
Durenberger	Robb				Moynihan
Exon	Roth				Murray
Faircloth	Shelby				Riegle
* Feinstein	Simon				Rockefeller
Gorton	Simpson				Sarbanes
Graham	Smith				Wellstone
Gramm	Stevens				
Grassley	Thurmond				
Gregg	Wallop				
Hatch	Warner				

Some of the Senators in categories 2 and 3 may be willing to oppose Simon if they can vote for an alternative

1 = official cosponsor or publicly committed to Simon's BBA

2 = has supported in the past or staff indicates Senator will probably vote for it this year

3 = Senator is undecided or no solid report

4 = has voted against BBA in the past or staff indicates Senator will probably oppose

5 = has voted against BBA in the past or has publicly announced his/her opposition

January 11, 1994

* W. House working on gettable ???

DEFENSE BUDGET PROJECT

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January 10, 1994

DEFENSE LIKELY TO BE HIT HARD BY BALANCED BUDGET AMENDMENT

Early this year, Congress is expected to vote on an amendment to the Constitution which would require that the federal budget be balanced within five years and kept in balance thereafter. The amendment does not specify any particular policy actions by which the Administration and Congress are to meet this target. However, simple math and recent history suggest that further cuts in the defense budget are almost certain to result from adoption of the amendment (assuming it is effectively enforced). Under the Administration's current plan, defense spending is projected to fall about 15 percent in real (inflation-adjusted) terms[1] between FY 1994 and FY 1999.[2] With the added pressure of a balanced budget amendment, it is easy to envision cuts in defense spending over this period of 35 percent or more, and difficult to imagine cuts of less than perhaps 20 percent.

The leading Senate and House proposals for a balanced budget amendment — introduced, respectively, by Sen. Paul Simon and Rep. Charles Stenholm — are identical. The measures would require a balanced budget beginning in FY 1999, or the second fiscal year after ratification, if that is later. The proposed constitutional amendment must be passed by a two-thirds majority of both houses of Congress and subsequently ratified by three-fourths of the states.[3]

Potential Effects on Defense Spending: Four Illustrative Scenarios

It is impossible to predict precisely how the Administration and Congress would manage the deficit reduction mandated by a balanced budget amendment. It is possible, however, to estimate the effects on defense spending of a range of options, suggesting the boundaries of the potential problem. None of these scenarios paints a pretty picture for the defense budget.

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[1] All percentage changes referred to in this analysis are expressed in real (inflation-adjusted) terms.

[2] All figures cited in this analysis refer to outlays — which represent the actual cash *expenditures* made by the Defense Department and other federal agencies — rather than Budget Authority (BA) -- which represents the amount of funding the government may *obligate* through, for example, signing contracts for goods and services. The Administration has not yet released an estimate of projected FY 1999 defense outlays. This analysis assumes that FY 1999 defense outlays would be the same in real (inflation adjusted) terms as the Administration's March 1993 projection of FY 1998 defense outlays.

[3] This analysis is based on the amendment as proposed last fall. It is unclear whether or how its sponsors will modify the amendment before it is presented to Congress for a vote this year.

Half of Savings through Defense Cuts: One possible approach would be for Congress to get half of the savings needed to achieve a balanced budget through cuts in defense spending. This is probably the worst-case scenario for the Defense Department. However, given the strong reluctance of Congress to enact another major tax increase or cut entitlement spending, this option cannot be entirely discounted. Moreover, the Gramm-Rudmann-Hollings Balanced Budget and Emergency Control Act's sequestration formula, which required that defense and domestic programs each absorb half of any cuts necessary to meet its annual deficit targets, provides something of a precedent for this approach. The most recent Congressional Budget Office estimate projects a deficit of $223 billion in FY 1999. To generate half the savings needed to balance the budget in FY 1999, the Administration and Congress would have to cut defense spending by 48 percent over the next five years. In this case, rather than declining — as projected under the Administration's current plan — from $274 billion in FY 1994 to about $233 billion (FY 1994 dollars) in FY 1999, defense spending would fall to about $143 billion.[4]

1993 OBRA Approach: Another option would be to eliminate the deficit through a combination of large tax increases and cuts in domestic and defense spending similar to — though necessarily greater than — those adopted by Congress in the Omnibus Budget Reconciliation Act (OBRA) of 1993 (which is expected to reduce annual deficits between FY 1994 and FY 1998 by a total of some $477 billion). If Congress were to take the same share of cuts from the Defense Department to *eliminate* the deficit as it took to *reduce* the deficit under the 1993 OBRA, defense spending would be cut by 37 percent by FY 1999.[5] Under this approach, defense spending would be reduced to about $173 billion (FY 1994 dollars) in FY 1999.

Across-the-Board Spending Cuts Only: Like the first option above, this option assumes that Congress would achieve all of the deficit reduction required to balance the budget through spending cuts. However, in contrast to the first option, this approach makes the more favorable

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[4] The reluctance of Congress to raise taxes is also likely to be reinforced by a provision of the proposed amendment that would make a historic change in Congressional voting procedures, making it more difficult to raise taxes than to cut programs. The amendment would require that all revenue-raising bills be approved on a roll call vote by a majority of the full membership of both houses, rather than a majority of those present and voting. Spending cuts, by contrast, could still be passed by a majority vote of those present and voting and could still be passed on "voice votes" where there is no record of how individual members voted.

[5] The 1993 OBRA reduced federal spending by $564 billion below what would be required assuming the continuation of current law for mandatory spending and the maintenance of discretionary spending at its FY 1993 appropriated level — increased only enough to keep pace with inflation — between FY 1994 and FY 1998 (an "uncapped baseline"). Cuts in defense spending accounted for roughly one-third of that reduction. This option assumes that defense cuts would similarly account for 33 percent of the savings required to eliminate the deficit by FY 1999. (Note: The discrepancy between this $564 billion deficit reduction estimate and the more commonly cited figure of $477 billion stems from the fact that, while the former is derived by subtracting the 1993 OBRA spending plan from an uncapped baseline, the latter is derived by subtracting the 1993 OBRA plan from a baseline which assumes that discretionary defense spending would follow the course set in the Bush Administration's January 1992 long-term defense plan — which would not have increased defense spending enough to keep pace with inflation).

assumption that those cuts would be made at the same rate across the entire federal budget — rather than focused disproportionately within the defense budget. But even if the Administration and Congress were to cut major entitlements (e.g., Social Security and Medicare) and other domestic programs at the same rate as the defense budget, defense spending would suffer a 26 percent decline over the next five years, dropping to $203 billion (FY 1994 dollars) in FY 1999.[6]

New Taxes plus Across-the-Board Spending Cuts: Perhaps the best-case scenario for the Defense Department would be if the Administration and Congress were to combine across-the-board spending cuts with a tax increase. However, even if across-the-board cuts were combined with a large tax increase which pushed federal revenue to 20.2 percent of Gross Domestic Product (GDP) — the highest rate on record in over 30 years[7] — defense spending would have to be cut by some 22 percent by FY 1999 to achieve a balanced budget.[8] In this case, defense spending would fall to $214 billion (FY 1994 dollars) in FY 1999.

Potential Impact of Balanced Budget Amendment on Defense Spending

Option	FY 1999 Outlays (Billions of FY1994 dollars)	Decline from FY 1994
Current Administration Plan	$233	15%
Half of Savings from Defense Cuts	$143	48%
Approach Similar to 1993 OBRA	$173	37%
Across-the-Board Cuts Only	$203	26%
Taxes and Across-the-Board Cuts	$214	22%

[6] This estimate was derived using the same methodology employed in the fourth option, except that it assumes no revenue increase.

[7] CBO, *The Economic and Budget Outlook: Fiscal Years 1994–1998*, January 1993, p. 127.

[8] CBO currently projects federal revenues of $1,617 billion and outlays of $1,840 billion in FY 1999, resulting in a deficit of $223 billion. If the portion of GDP going to the federal government were increased (from the currently projected rate of 19.3 percent in FY 1993) to 20.2 percent in FY 1999, total revenues would rise to $1,692 billion, and the deficit would fall to $148 billion. Of this total, perhaps $22 billion would be eliminated due to lower debt service costs. (In January 1993, CBO estimated that a deficit reduction plan which involved savings of $1,005 over five years, would include $105 million in debt-service savings. This analysis similarly assumes that debt-service savings would account for 10 percent of the deficit reduction. See, CBO, *Reducing the Deficit: Spending and Revenue Options*, February 1993, p. 13.) Eliminating the remaining $126 billion deficit would require across-the-board cuts in federal *program* spending (which excludes debt-service spending) of eight percent ($126 billion/$1,575 billion).