

**“Only the States Can Save Us”:  
Why Washington Needs the Help of the States in  
Getting to a Balanced Budget Amendment**

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Balanced Budget Compact Commission  
Rayburn House Office Building  
Washington, D.C.  
May 25, 2016

Chairwoman Rakestraw, Commissioner Treadwell, Commissioner Snowden, thank you. I am honored to testify today. And thank you for your service and leadership on one of the most important public questions facing our nation today, namely: *How do we restore fiscal common sense in Washington?*

I’m Dean Clancy, a partner at Adams Auld LLC, a public policy consultancy here in Washington. I’m a former senior White House budget official and congressional aide. My expertise is in U.S. domestic policy, with an emphasis on federal budget and health care policy. I have a strong interest in constitutional reform efforts and am honored to serve as a member of the advisory board of the Compact for America Educational Foundation, Inc. I support the use of the Article V convention option to achieve necessary constitutional reforms when Congress is unwilling to do so itself, and I support the Compact for America as our best hope for fixing the federal budget.

I will focus my remarks today on the role of the *states* in securing an effective, enforceable federal balanced budget amendment.

### **Article V Records Transparency**

Before I begin, allow me to take a moment to endorse a bill, **H.R.5306, the Article V Records Transparency Act**, which was introduced this week by Congressman Luke Messer of Indiana. The bill would publish all the existing known Article V application and rescission resolutions, from 1789 to the present, in a single, searchable database. I hope you’ll agree that would be a great public resource.<sup>1</sup>

### **States Are Essential**

My message today is the states are *essential* not only to balancing the federal budget but also to keeping it balanced. My review of our current fiscal predicament and of the history of congressional reform efforts suggests that the United States government will not achieve fiscal balance without the *cooperation* and the *leadership* of the states, and will not maintain balance without ongoing *enforcement* assistance by the states. The

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<sup>1</sup> [http://messenger.house.gov/sites/messenger.house.gov/files/MESSER\\_025\\_xml.pdf](http://messenger.house.gov/sites/messenger.house.gov/files/MESSER_025_xml.pdf)

states have a powerful incentive to seek reform, and powerful reasons to want to shape reform—billions of reasons. We can't do this without you.

My assumption, based on years of Washington experience and up-close observation, is that the federal budget will never be balanced until we change the basic *incentives* of federal politicians. And I see no way to change their incentives absent an effective, enforceable amendment to the federal Constitution that fundamentally restructures the power relationships among the key actors in the system. And the only way to secure such an amendment, I believe, is to go around Congress, by way of the states. And this is why we need an Article V convention.

### **Structural Deficits Require Structural Reform**

A structural problem requires a structural solution. Today our basic fiscal problem is that our federal government follows none of the rules of fiscal common sense, which are:

1. Limit spending.
2. Tax lightly.
3. Borrow the minimum.
4. Maintain a surplus.
5. Pay down debt.

Washington, as I say, currently does none of those things. As a result, we have a public debt larger than our annual gross domestic product (GDP) and no plan for paying the debt down or even for slowing its growth. We are vulnerable to a sudden upward spike in interest rates, which would drive up the cost of debt service. On our current path, even with no such spike, our federal government will go bankrupt sometime in the next twenty to thirty years. If we let that happen, I'm sure we will undertake necessary spending reforms—but I doubt we'll like them.

The national debt is not somebody else's problem. We and our children are going to pay it, one way or another: either by taxation, or by inflation, or by repudiation, or, if we're smart, by spending limitation. Of course, in our time Uncle Sam finds the idea of spending limitation a tough pill to swallow. And understandably so. Our annual federal deficits are large, persistent, and structural, and there are no easy ways to convert them into surpluses. This is a real problem. There are simple solutions, just no easy ones.

With only a couple of exceptions, the federal budget has been in deficit every year since 1960. For those of us who were born after 1960, the only federal surpluses we have ever seen occurred in 1969 and again in the four years, 1998 through 2001. That's five surpluses in 55 years. And those surpluses were small and transitory. The deficits have mostly been large.

The fiscal year 2016 deficit is expected to exceed \$600 billion, which is an amount equivalent to about 3.5 percent of GDP and about 16 percent of federal outlays.

Cutting spending by 16 percent in one year, or raising \$600 billion in taxes in one year, is currently considered politically unthinkable and would undoubtedly be economically disruptive. Closing the fiscal gap smoothly over a period of years is our best hope. But guess what? Every year, Congress pushes off the tough choices one more year into the future. It's an ever-receding horizon. We never get there. We never even start. Congress procrastinates. Why? I think the answer is because more than half the budget goes to income-transfer programs that voters like and depend on, so those programs are deemed to be off the table, politically speaking. Another 15 percent of the budget goes to defense, which also tends to be politically sacrosanct. And then you've got interest on the debt, which you can't do anything about. So in total, about two-thirds of federal spending is untouchable. Meanwhile spending is growing faster than receipts. The result is we cannot grow our way out of the deficit, although growth undoubtedly helps. Nor can we eliminate the deficit by reducing waste, fraud, and abuse, which is difficult to identify and isolate. Nor can we eliminate the deficit by reducing foreign aid or welfare for illegal immigrants, both of which are minuscule. Nor can we do it by freezing or shrinking the one-third of the budget that is annually appropriated.

The *only* way to eliminate the deficit in any permanent way is to shrink the two-thirds of the budget that is on auto-pilot—so-called “mandatory” spending, which consists mostly of those income transfers I mentioned—and to reduce the growth rate of auto-pilot spending permanently. That means necessary reforms and reductions of future promised outlays in such popular programs as Social Security and Medicare. This is not avoidable. Job one for restructuring the budget to produce routine surpluses is to reduce the amount we spend on welfare and income support programs for American citizens. In short, what policy wonks call entitlement reform. And yet, again, as I said, that is considered politically infeasible. So what do we do?

A simple spending freeze could help a lot just now. Assuming receipts keep growing along with the economy, a spending freeze would produce balance automatically and relatively gently and probably fairly quickly—perhaps fewer than five years. By “spending freeze,” I mean a hard cap on outlays, in absolute dollar terms, rather than just a freeze as a share of GDP, although a GDP cap would be better than nothing. But there's a problem. A freeze is politically impossible to maintain, given the budget's current structure. The two-thirds of the budget that's on auto-pilot and growing faster than receipts will always be bumping up against the ceiling. So once again we see that fundamental *restructuring* of entitlements is both essential and unavoidable.

The natural inclination of politicians is to spread the wealth around, or else to spread the pain around. If they must cut spending, they prefer across-the-board cuts, rather than specific program eliminations. But in the present situation, across-the-board cuts won't work. The federal government must eliminate whole programs and get out of whole lines of business. For example, health, education, and welfare are functions that have traditionally been the responsibility of the states and naturally make more sense being handled by states, local communities, businesses, charities, families, and individuals. In a time of chronic deficits, welfare programs are a luxury at the federal level.

## **Why States Are Essential**

The conundrum we face is that, while we really have no choice but to shift large amounts of money and responsibility from Washington back to the states, Washington cannot bring itself to do it. And that's why I think we need the states to get involved. As I suggested earlier, states are essential to balancing the federal budget for at least three reasons.

First, the *cooperation* of the states is necessary because only the states can ratify the constitutional amendment we need to change federal politicians' incentives, and because the states are powerful enough to block any proposed amendment they don't like, and are also powerful enough to block any spending cuts they *really* don't like. When the states united on an issue, Congress listens.

Second, the *leadership* of the states is necessary because Congress will not reform itself voluntarily. Absent significant external pressure, Congress won't pass the needed amendment, and it won't reform major income-transfer programs. Realistically that external pressure can only come from the states. Neither the president, nor the Supreme Court, nor global bond vigilantes, nor foreign countries or organizations can supply the needed pressure, nor should we expect them to. But the states can and should.

Third and finally, ongoing *enforcement* by the states is necessary to keep Congress from backsliding on any debt-control scheme. An effective BBA needs a strong enforcement mechanism. In our constitutional system the states offer an ideal enforcement mechanism. As independent "sovereigns," they're perfectly positioned to serve as a co-signer, as it were, on any future increases in the national debt. And in the role of co-signers, they will naturally want to serve as a sort of fiscal oversight or control board, making sure Congress maintains discipline. People these days talk about Puerto Rico needing a control board or the District of Columbia needing a control board, and that may be true, but I would suggest that the institution most in need of a control board is Congress! And who else can supply that function but the states?

So to summarize, the states are essential to restoring fiscal common sense, because Washington will not bring itself to do the right thing without significant external pressure. That pressure can only come from the states in the form of their cooperation, their leadership, and their ongoing oversight and enforcement of fiscal balance. And the best available tool for making these things happen, in my view, is the Compact for America, a plan that, appropriately, originates from, and hinges on, the states.

## **Washington Will Not Reform Itself**

I want to talk a bit more about why I think Washington won't reform itself. This city has powerful incentives to maintain the status quo. Nowadays our financial and political systems depend a great deal on borrowing and inflation—on easy money and chronic debt. Washington and Wall Street are so dependent on debt and inflation, in fact,

that they're a bit like a drunkard who needs serious help. They'll continue to engage in self-destructive behavior until we undertake a crisis intervention. The question is who can provide that intervention?

Can the Tea Party movement provide it? I don't think so. The grassroots tried, in 2011, to secure reforms that went by the slogan of "cut, cap, and balance." But they were blocked by the bipartisan establishment and what I call the Washington-Wall Street Axis. Instead of debt control, we got the so-called Budget Control Act, which, sadly, has not lived up to its name.

Can a new president save us? I don't think so. Past presidents have talked about balancing the budget, but then they've signed all the appropriations and entitlement expansions that got us into our present predicament. Here's a stunning fact. Both of this year's presumptive major party nominees for president are opposed to entitlement reform. Not just indifferent or silent, but opposed. Salvation, it would seem, does not come from the White House.

Could the Supreme Court do it? God forbid! The federal judiciary has thankfully never tried to usurp or control Congress's power of the purse, and if it ever did, the proper response would be to disregard them.

Could international bond vigilantes force reforms? Some argue that bond markets will eventually *force* Washington to get its fiscal house in order, by demanding higher interest rates, much as they've done with Greece in recent years. Maybe. But it won't happen soon. Yes, our extremely high debt-to-GDP ratio is troubling to global bond markets. And yes, those markets would go ape if we ever missed a scheduled bond payment, which would force up interest rates and force us to make tough choices we are currently not willing to make. But we're not going to miss a bond payment. It's not going to happen. There is more than enough tax money coming in at all times to make a bond default both avoidable and unnecessary. And despite its claims to the contrary, the Treasury Department can reprogram its computers to prioritize payments to avert a needless default. It has had decades to figure out how to do so, and believe me, in the event of a real crisis, it will do so. Therefore, because we're not in any danger of default, bond holders are indifferent to our fiscal woes. My guess is they will keep buying up our debt as fast as we can issue it for as long as U.S. treasuries are perceived as the world's safest investment.

So if none of these various entities will force action, who will?

The states.

## **A History of Congressional BBA Efforts**

Congress has voted on a BBA on a number of occasions over the years, and may do so again this year. But it has never sent a BBA to the states for consideration. In order to get a sense of what Congress really thinks of this idea, and where it might go in the

future, I looked at the history of votes on this issue over the past 35 years. As a reminder, a constitutional amendment requires 67 votes to pass in the 100-member Senate and 290 votes to pass in the 435-member House.

In 1982, the **Senate passed** a BBA, 69 to 31.<sup>2</sup>

In 1986, the Senate rejected a BBA, 66 to 34.<sup>3</sup>

In 1992, the House rejected a BBA, 280 to 153.<sup>4</sup>

In 1994, the Senate rejected a BBA, 63 to 37.<sup>5</sup>

In 1994, the House rejected a BBA, 271 to 153.<sup>6</sup>

In 1995, the **House passed** a BBA, 300 to 132.<sup>7</sup>

In 1996, the Senate rejected the House-passed BBA, 64 to 35.<sup>8</sup>

In 2011, the House rejected a BBA, 261 to 165.<sup>9</sup>

In 2011, the Senate rejected a BBA, 47 to 53, on a straight party-line vote.<sup>10</sup>

In retrospect, the 1995 and 1996 BBA votes are the high-water mark. It's remarkable to think that in June 1996 just three human beings, three federal senators, were all that stood between a BBA and the states. After 1996, we see a long period of inactivity, followed by votes in 2011, which show a marked dropoff in support.

What does this history tell us? First, it tells us that popular support for a BBA has been sufficiently high to prod Congress to vote on the idea at least nine times since 1980. Second, it tells us that support is persistent, since it goes back at least 35 years. Third, it tells us that congressional support is half-hearted and sporadic. In most years Congress does not vote on a BBA. When it does vote, it does so in an election year, suggesting it's a symbolic gesture, although there are two exceptions, 1995 and 2011, which were both right after a national wave election in which Republicans took control of at least one house of Congress. Almost always a BBA fails to secure the required two-thirds, although it usually does secure a simple majority. But if it does manage to get two-thirds in one chamber, it always fails to do so in the second, sometimes, as we've seen, by just a few votes. In light of all these airballs and near-misses, I am convinced that, **if Congress really wanted a BBA, it would have found a way to pass one by now.** Fourth, the history of BBA votes tells us that congressional support for this reform peaked in the mid-1990s and has declined, especially in the Senate, where it fell below 50 percent for the first time in 2011. Fifth and finally, and this may explain the vote dropoff, congressional support has become more partisan. To be certain, there has always been a partisan divide on this issue, with Republicans mostly favoring and Democrats mostly

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<sup>2</sup> <https://www.congress.gov/bill/97th-congress/senate-joint-resolution/58/actions>

<sup>3</sup> <https://www.congress.gov/bill/99th-congress/senate-joint-resolution/225/actions>

<sup>4</sup> <https://www.congress.gov/bill/102nd-congress/house-joint-resolution/290/actions>

<sup>5</sup> <https://www.congress.gov/bill/103rd-congress/senate-joint-resolution/41/all-actions>

<sup>6</sup> <https://www.congress.gov/bill/103rd-congress/house-joint-resolution/103/all-actions>

<sup>7</sup> <https://www.congress.gov/bill/104th-congress/house-joint-resolution/1/actions>

<sup>8</sup> <https://www.congress.gov/bill/104th-congress/house-joint-resolution/1/actions>

<sup>9</sup> <https://www.congress.gov/bill/112th-congress/house-joint-resolution/2/actions>

<sup>10</sup> <https://www.congress.gov/bill/112th-congress/senate-joint-resolution/10/actions>

opposing a BBA. But there used to be some overlap.

In 1986, 12 Senate Democrats voted yes.

In 1994, 19 Senate Democrats voted yes, as did 99 House Democrats.

In 1996, 12 Senate Democrats, voted yes, as did 72 House Democrats.

In 2011, zero Senate Democrats voted yes, as did just 25 House Democrats.

Throughout the period under review, a stray Republican or two has occasionally voted no, but the GOP as a party has been remarkably unified in support of a BBA. The dramatic dropoff of Democratic support in 2011 may be due to the addition of a provision requiring congressional supermajorities to raise taxes. Prior BBAs had not tried to limit tax hikes. (The Compact BBA, too, has a supermajority-to-raise-taxes requirement, but it is thoughtfully crafted to allow certain targeted tax hikes, by way of eliminating loopholes, special-interest credits, deductions, etc.)

This year, there is talk of once again holding a vote on a traditional BBA in the House. And based on past history, it seems safe to assume that, even if votes are held, once again the idea is unlikely to pass either the House or the Senate. And so one may fairly ask, *Why bother?* Well, there's a good reason to bother. **There's a new idea on the table: the Compact for America.** H.Con.Res.26, Congressman Paul Gosar's resolution to give congressional blessing to the Compact for America, only requires a simple majority to pass in each chamber, not two-thirds. That's a big change. But like other resolutions touching on amending the Constitution, this one does not have to be presented to the president for approval. Basically, the Gosar Resolution is a streamlined way for Congress to say to the states: "Hey, guys, we're stuck here. If you want to give it a try, by all means, you have our blessing."<sup>11</sup>

I think it's fair to predict that the Gosar resolution would attract no more than a handful of Democratic votes, consistent with recent patterns, but that should not be regarded as a serious problem, since it only requires a simple majority to prevail and Republicans currently have more than a simple majority in both houses. Therefore, in my opinion, **fiscal conservatives should demand House and Senate votes on the Gosar Resolution in 2016 as their top legislative priority.** Gosar offers the kind of change that's needed to shake up a stale debate. I will predict that if Gosar is voted on in both chambers this year, it will pass in both, sending a powerful signal to the states. Of course, the resolution could theoretically be stopped by a Senate filibuster. But why not put every member on record, to help voters see where their representatives stand on this bold new idea?

### **History Shows Article V Can Work**

Assuming that Congress will not reform itself, we really have little choice but to turn to the states to prove the necessary leverage to move Congress to act, because only the states can both propose and ratify a constitutional amendment *limiting congressional*

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<sup>11</sup> <https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/26>

*power.* Congress can propose an amendment, but it can't ratify one. Only the states can ratify an amendment, and only the states can both propose *and* ratify one. At least on paper, the states are more powerful than Congress—or rather, they are more powerful *when they choose to be.*

**In my view, the only external force that can make Congress alter its current fiscal trajectory is the threat of a state-initiated constitutional amendment that imposes effective, enforceable limits on Congress's ability to spend and borrow.** To be an effective threat, such a constitutional amendment must of course have the support of at least two-thirds of the states, the number needed to force Congress to call a convention. That's a high bar, but not too high. We know Article V can work, based on two historical precedents.

*1. Seventeenth Amendment.* The Seventeenth Amendment, which provides for the direct popular election of senators, is the result of a drive for an Article V convention. At the beginning of 1912, the number of states required to force Congress to call a convention was 31, or two-thirds of the then 46 states in the Union. By the end of that year, the requisite number had risen to 32, because two new states, Arizona and New Mexico, were admitted, bringing the total number of states to 48. By mid-1912, 31 states had passed resolutions calling for the amendment. Of these, 25 were applications for a convention, and six were requests that Congress propose the amendment. (Two of those six, Alabama and Wyoming, had passed resolutions approving the idea of a convention without formally calling for one.) Meanwhile, the two newly admitted states were expected to support the amendment as well. So, to sum up, 31 states had spoken up in favor of the amendment, at a time when 32 states were needed to force a convention, and the number was expected to possibly rise to 33. Congress could do the math. It could see the writing on the wall. So it decided to write the amendment itself. The amendment was soon passed, sent to the states, and ratified by 36 states, the constitutionally required three-quarters, and duly made part of the Constitution. It all happened very swiftly. Given these facts, it seems reasonable to assume that, if Congress had not jumped in when it did, the states would very likely have forced a convention.

*2. 1980s BBA Drive.* In the 1980s, the states came within a few votes of forcing a convention on the issue of a balanced budget amendment. The exact number of states applying for a convention is debated, because of the unclear wording of some state resolutions. But it was possibly in the high twenties (34 is the number currently required to force a convention). The movement lost steam, however, after the failure of the BBA by one vote in the Senate in 1986, and was overshadowed by the term-limits movement that erupted in the late '80s and crested in the mid-'90s. Since the 1980s, a number of states have formally rescinded their BBA convention calls. Today the pendulum seems to be swinging back in the other direction, however. There are encouraging signs of renewed interest across the country.

What are the lessons of these efforts? I would say the lesson of the successful Seventeenth Amendment drive is that when the states can put Congress in a corner, forcing it to choose between methods of amending rather than whether to amend,

Congress will opt for drafting the amendment itself. As for the stalled 1980s BBA convention drive, I would say the lesson is that a popular amendment drive can be deflected or lose steam, if the opposition is effective or if public enthusiasm shifts to other ideas. But there's always hope. The revival of the BBA convention drive in the past five years suggests that a popular demand for an important, necessary reform cannot be deflected or denied forever. The very existence of this Commission is a proof of this fact.

### **Are States Neutralized by Dependence on Federal Funding?**

As I've said, the states can block federal legislation they don't like. They have significant leverage. But then again, so do the feds. Congress has significant budgetary leverage over the states, thanks to significant state dependence on federal largess. Does this fact mean the states are neutralized? I don't think so. But let's consider.

About one-fifth of federal outlays, or roughly 4 percent of GDP, goes directly from Washington to the states in the form of grants-in-aid. The states have clearly become dependent on federal funding, so much so that that in most states today, federal highway, education, and Medicaid funds together represent a quarter or even a third of the state budget. Any serious federal reforms will touch states where they live, and particularly anything that cuts Medicaid, which, in addition to being the third largest and fastest-growing federal program, is also the largest item in most state budgets. Today state and federal budgets are so intertwined that neither side can realistically make big changes without the consent and cooperation of the other. In a real sense, federal budget problems are state budget problems, and vice versa.

And yet, I would *not* say the states are effectively neutralized. Federal debt threatens states as much as it threatens the rest of us. States are not immune from the negative effects of a debt collapse or of higher interest rates or of stunted economic growth. If anything the states have a bigger stake in fixing Washington than ever before, as they face the same kinds of pressures as Washington does. They have plenty of reasons to seek federal spending reforms. Increasingly, the choice they face is not whether to seek federal fiscal reforms, but how best to shape and direct them.

I believe we can avert federal bankruptcy, but I don't think we can do it without the states. In my view, we will not be able to harness the power of the states without something like the Compact for America with its special interstate Commission, which is needed to coordinate the states' implementation of the compact.

### **A Tale of Two Virginians**

I will end on a historical note. At the Philadelphia Convention of 1787, the idea of Article V conventions was the brainchild of Virginian George Mason, who pointed out that if, in the future, the Congress were to become corrupt and a danger to the common good, it could not be counted on to reform itself and indeed would actively thwart necessary reforms. It would not prove sufficient, he said, to let Congress have a monopoly on proposing constitutional amendments. An alternate route would be needed.

And so Mason suggested the idea of a convention of states to propose amendments.

Later, another Virginian, Patrick Henry, at his state's ratifying convention, argued against the proposed Constitution, citing, among other alleged flaws, what he described as the utter unworkability of Mason's convention-of-states option. The process of getting the states on the same page would prove too cumbersome, Henry argued. There were too many steps required, too many choke-points, too much need for cooperation and coordination. It will never happen. And therefore, he concluded, the states will not be able to stop a runaway Congress under the proposed Constitution.

Patrick Henry lost that debate, of course. The Constitution was ratified. But he does seem to have been right about the difficulty of using Mason's convention option. Meanwhile, Mason's fears of a corrupt or recalcitrant Congress appear to have come true. But does that mean all hope is lost? No. Article V, as we've seen, clearly worked in 1912 as an action-forcing mechanism, and came close to doing so again in the 1980s. We may not have had an Article V convention to date, but the threat of one has proved an effective tool for forcing action or at least discussion.

And now, **thanks to the Compact with America, the states have figured out how to make Article V operable by streamlining the process.** What you've come up with is really quite remarkable. Each house of Congress and each chamber in 38 states has merely to take a single, up-or-down one vote on an airtight, pre-negotiated resolution, and the rest is automatic. There are no surprises. It's turn-key. You, the states, have figured out how to overcome Patrick Henry's complaints about the unworkability of George Mason's Article V convention option. That is awesome.

So far, as you know, four states—Georgia, Alaska, Mississippi, and North Dakota—have turned the key. If we can persuade thirty-four more states, and Congress, to turn the same key, within the next five years, the federal debt problem will be solved.

## **Recommendations**

Going forward, then, here is my advice and earnest wish:

- 1. All states should join the Compact with America.**
- 2. Congress should pass H.Con.Res.26, Rep. Gosar's Compact with America enabling legislation—this year.**
- 3. Congress should pass H.R.5306, Rep. Messer's Article V Records Transparency Act.**
- 4. This Commission should continue to educate lawmakers and the public about this historic opportunity to save our country.**

## **Conclusion**

To sum up: the states are essential to balancing the federal budget and averting a debt collapse. To save the country, we need the states' leadership, cooperation, and

ongoing enforcement assistance. In the Compact for America, you have hit on a practical, patriotic plan to harness the power of the states to achieve this important goal.

Praise and congratulations are in order. Thank you, states, for leading the way!

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