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Bruce -

Background material to rationalize  
one more "flip" on the balanced  
budget amendment.

-Ed

P.S. We're always open to changing  
a comma or two for Presidential  
support.

## **TALKING POINTS**

### **STENHOLM-SCHAEFER BALANCED BUDGET AMENDMENT**

#### **The Stenholm-Schaefer Amendment Has a History of Bipartisan Support**

The bipartisan Stenholm-Schaefer Balanced Budget Amendment was supported by 70 Democrats in the House of Representatives.

Although the press has portrayed the Balanced Budget Amendment as a Republican issue, numerous Democrats in the House and Senate have had an instrumental role in developing the Stenholm-Schaefer amendment and working for its passage.

The Stenholm-Schaefer amendment is much more flexible and workable than the Barton Tax Limitation/Balanced Budget Amendment in the Republican Contract.

#### **Supporting a Balanced Budget Amendment Makes Sense For the Democratic Party**

A Balanced Budget Amendment provides a safeguard against a repeat of the fiscally irresponsible tax cuts of the 1980s that have left a legacy of debt for future generations.

The Democratic Party is concerned about the inequitable and regressive burdens that excessive federal indebtedness imposes on the American people -- the debt is most unfair to low income people.

Interest payments on the national debt result in a regressive transfer of wealth from middle-class and working-class taxpayers to wealthy, corporate and foreign holders of U.S. Treasury securities.

Our debt has a direct impact on inflation rates, interest rates, and exchange rates, all which directly impact low and middle families, small businesses, and other Democratic constituencies.

The concept for this amendment comes directly from the father of our party, Thomas Jefferson.

#### **We Can No Longer Hide Our Heads in the Sand About the Debt and Deficits**

This year's 1 million college graduates wouldn't be able to repay the current debt even if they sent every cent they ever earn directly to Uncle Sam.

Gross debt is nearly 70 percent of GDP; Debt held by the public now exceeds half of GDP.

Gross interest is now the largest category of federal spending.

Net interest payments are about to exceed all domestic discretionary programs.

Interest payments on the national debt now consume an amount equal to more than 60% of all personal income taxes.

## **Recent History Demonstrates the Need for a Balanced Budget Amendment**

Although the President proposed a balanced budget proposal and the overwhelming majority of Congress voted for balanced budget alternatives, Congress and the President failed to enact a balanced budget plan because there were no consequences from inaction and gridlock. A balanced budget amendment will force consensus by removing the option of continued borrowing.

All balanced budget plans are based on long-term budget estimates that are and depend on the willingness of future Congresses and President's to adhere to the constraints of the budget plan. The Balanced Budget Amendment provides a Constitutional backstop to ensure that Congress and the President take action to ensure that the budget stays on a path to balance by 2002 and remains balanced thereafter.

## **The American Public Supports a Balanced Budget Amendment**

Consistently over time, exhibited in poll after poll, the American people overwhelmingly have supported a Balanced Budget Amendment.

## **Why We Need a Balanced Budget Amendment By Rep. Charles Stenholm (D-TX)**

The American people are understandably frustrated with a budget process that can't stop record deficits, year after year. Although the President proposed and the overwhelming majority of Congress voted for balanced budget alternatives last Congress, we failed to enact a balanced budget because there were no consequences for continued gridlock. Both parties could avoid compromise by allowing the federal government to continue borrowing money.

A Balanced Budget Amendment (BBA) will force consensus by removing the option of easy borrowing. If an agreement is reached on a plan to balance the budget by 2002, the BBA will provide a Constitutional backstop to ensure that Congress and the President follow through on their promises and that the budget remains balanced thereafter.

I have never claimed that the BBA is a "magic bullet" that will solve our deficit problem by itself, but it will give us a helpful tool for fiscal responsibility. By making it more difficult to allow for deficit spending, this amendment would prevent the executive branch or in Congress from ducking responsibility.

Opponents can't decide whether they object to the amendment because they think the amendment is too strong and will place a straightjacket on the federal government or because they think that it is too weak and will be a meaningless gesture that could be circumvented. Both arguments are based on misconceptions. The amendment before Congress has been carefully constructed over the years to provide responsibility in the budget process without loopholes while preserving the flexibility to deal with recessions or

other emergencies. In the event of a serious economic downturn or other national emergency, Congress could approve deficit spending by a three-fifths vote. If Congress cannot obtain three-fifths support to respond to unbalance the budget, the situation probably is not a true emergency. What the amendment will do is protect against the temptation to spend and borrow in good times as well as bad.

Amending the Constitution is a serious step that should never be taken lightly, but a process that provided a \$5 trillion debt can not be tolerated any longer. The Constitution has always served to protect the people from the abuses of government. The BBA will protecting the rights of future generations who are not represented in our current political system but will bear the burden of the debt run up by today's political leaders. Protecting future generations in this way is the type of principal that belongs in the Constitution.

**LETTER TO THE EDITOR**  
**WASHINGTON POST**

By Representatives Charles Stenholm and Joe Kennedy

October 29, 1993

In a recent editorial, the Washington Post criticized efforts in Congress to adopt a Balanced Budget Amendment to the U.S. Constitution. As most of the Senate, 259 cosponsors in the House and the overwhelming majority of the American people realize, arguments like those the Post made are gross caricatures of the issues.

Perhaps the most inexplicable part of the editorial was the Post's needling of Democratic cosponsors. We, as Democrats, are proud to sponsor the Balanced Budget Amendment in the House of Representatives because it is fully consistent with the principles of our party: It will promote fiscal responsibility, increase the accountability of the political process, protect working Americans against inequitable transfers of wealth, and protect the unrepresented interests of future generations.

The amendment recognizes that the federal government has shown itself incapable of acting in a fiscally responsible way. For 24 straight years, and 55 out of the last 63 years, Congresses and Presidents have failed to balance the budget.

The reason is not hard to understand: Congress has no external constraint on spending beyond its means. Representatives may know full well that chronic deficits threaten the nation's long-term prosperity, but they also know that their short-term interest lies in spending more and more on the demands of various constituency groups. The national debt, which stood at less than \$1 trillion in 1980, is now over \$4 trillion. That's more than \$16,000 for every man, woman and child in America. Without a constitutional amendment, it is unlikely that we ever will find the discipline to balance our books consistently. Our amendment will make sure that deficit spending becomes the exception rather than the norm.

Until we control our deficit problem, interest payments will continue to be a Pac Man devouring money in the federal budget. Interest payments have exploded from 6% of the budget in 1960 to 14% of the budget today. GAO has estimated that interest payments could reach \$1 trillion dollars by the year 2020 if we fail to bring the deficit under control. Interest payments will cripple the ability of future generations to make necessary investments in health care education, infrastructure and other programs. While we hoard the crumbs, the whole loaf is being taken away from us. Adding insult to injury, these huge interest payments actually worsen income disparities by taking tax dollars from working- and middle-class taxpayers and giving them to large banks, stockholders, wealthy foreigners and other holders of Treasury bills.

Contrary to the Post's allegations, our Amendment will not "basically end the American system of majority rule." A minority would have leverage in exactly **one** instance: When the majority abdicates its responsibility to produce a balanced budget. In that case, a 60 percent super-majority would have to go on record to approve a deficit. The Amendment in no way affects the ability of a majority to spend on programs it deems important and to set budget priorities as it sees fit.

The Post's argument is not only hyperbole, it is self-contradictory. Survey's consistently show that the American public supports the amendment by majorities greater than 3-1. Yet the Post seeks to convince a minority of one-third plus one in either the House or Senate to block Congress from sending the amendment to the States for a national debate on ratification. Talk about gridlock!

The ability to borrow money from future generations is a power of such magnitude that it should not be left to the judgements of transient majorities of the day. Living off a giant credit card and sending the bill to the next generation is a form of taxation without representation in a very real sense.

Over two-hundred years ago, the founder of the Democratic party said, "The question of whether one generation has the right to bind another by the deficit it imposes is a question of such fundamental importance as to place it among the fundamental principles of the government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves..." President Clinton would do well to heed Thomas Jefferson's words and endorse the balanced budget amendment.

Letter to the Editor  
Wall Street Journal  
Rep. Charles Stenholm (D-TX) and Sen. Larry Craig (R-ID)  
November 1, 1993

In a recent column in the Wall Street Journal, Al Hunt trotted out several familiar arguments on why Congress should not adopt a Budget Amendment to the U.S. Constitution. Every criticism that he raised in his column has been answered many times and trillions of dollars of debt ago.

Mr. Hunt can't have it both ways: First he argues that a balanced budget amendment is a cheap and easy vote because isn't going to do anything. Then he argues that it's going to mean the ruination of every government program in America. He needs to decide what his objection is to the balanced budget amendment and then stick with that argument.

We have never claimed that the Balanced Budget Amendment is a "magic bullet" that will solve our deficit problem by itself. That is not what it is intended to do. What this amendment will do is give us a necessary tool for fiscal responsibility, a tool which obviously has been missing for the past 24 years. It will give us a constitutional reason to find the courage to make the tough choices necessary to balance the budget. By raising the threshold of difficulty for deficit spending, a balanced budget amendment is an important step in increasing the accountability of the budget process.

Mr. Hunt's assertion that our amendment would give the minority effective veto authority over all revenue and spending measures is completely unfounded. A minority would have leverage in exactly one instance: When the majority abdicates its responsibility to produce a balanced budget. In that case, a 60 percent super-majority would have to go on record to approve a deficit. The Amendment in no way affects the ability of a majority to spend on programs it deems important and to set budget priorities as it sees fit.

Although Mr. Hunt implies that the founding fathers were opposed to supermajorities for legislative action, the Constitution includes several supermajority requirements for certain actions, including overriding Presidential vetoes, approving treaties and impeachment. The question, therefore, is not whether a supermajority requirement ever has a place in the Constitution, but whether continued federal indebtedness threatens a right so fundamental to deserve Constitutional protection. After contemplating the implications of our debt on future generations, the overwhelming majority of the House and Senate have concluded that the answer clearly is yes.

The Constitution has always served to protect unrepresented minorities from the abuses of government. The framers of the Constitution were extremely concerned that the rights of the public would be trampled by the tyranny of the majority and crafted a Constitution that balanced the protection of minority rights against the principle of majority rule. Protecting the rights of future generations who are not represented in our political system but will bear the burden of our decisions today is the type of fundamental principal that should be enshrined in the Constitution, our fundamental law. The ability to borrow money from future generations is a power of such magnitude that should not be left to the judgements transient majorities, but should be required to meet a higher threshold of support.

Contrary to Mr. Hunt's allegations, a balanced budget amendment does not prohibit the federal government from using fiscal policy to respond to economic downturns. Instead, it simply increases the threshold of difficulty for spending beyond our means. The credibility of the federal budget has already been undercut by the structural bias to spend and borrow in good

times and bad, the result being a massive structural deficit. This structural deficit severely restricts the ability of the federal government to effectively utilize countercyclical fiscal policy. For example, President Clinton's economic stimulus program was defeated in 1993 largely because the federal government was already projected to run a deficit of \$290 billion in that year.

A balanced budget amendment is intended to level the playing field by restricting the use of fiscal stimulus to unusual situations instead of being used routinely. In restoring this level playing field, the amendment currently being debated by the Congress strikes a reasonable balance between requiring fiscal responsibility and allowing flexibility. If Congress and the President agree that the economic situation warrants outlay levels above the receipts ceiling, achieving a 3/5 majority to approve such spending is not an insurmountable hurdle.

We find the argument that the amendment will result in increased mandates and regulations ironic, since this criticism relates purely to the pressures created by deficit reduction, not by a Constitutional Amendment. Congress and the President currently resort to mandates on state and local governments as a result of current budget discipline and are likely to do so as long as the federal deficit inhibits the establishment of new federal spending programs. The balanced budget amendment is not likely to increase this practice beyond already high current levels; to the contrary, helping move the budget towards a no-deficit state ultimately will relieve some of the pressure to pass off responsibilities to the state and local governments.

In stating that the amendment is unenforceable, Mr. Hunt is obviously unaware of the extensive legislative history that has been developed regarding the enforcement of the amendment. The provisions of the balanced budget amendment are self-enforcing or interactively enforcing. In addition, Congress will have several years after passage of the amendment to enact implementing and enforcing measures before the amendment is effective. This is the appropriate place to address the specific statutory mechanisms to facilitate enforcement of the amendment.

The courts would be limited to finding individual acts of Congress unconstitutional and to restraining the Executive from some action or activity. Court precedents have significantly limited a party's standing to bring cases that involve political questions or cases where there is only a generalized grievance into the federal courts. The clear language of the amendment as well as the tradition of American jurisprudence of prescribing the least intrusive remedy that the law requires will ensure that the courts involvement in enforcing the amendment will be extremely rare and would be purely prophylactic, not proactive. In the unlikely event that the Courts interject themselves into the policy aspects of budget-making, Congress can regulate the courts' enforcement of the amendment at any time by passing a statute under the authority granted to Congress by Article III, Section 2, Clause 2 of the Constitution to regulate the courts.

The courts will become involved in enforcing the amendment only if Congress and the President are irresponsible and fail to fulfill their Constitutional responsibilities. If Congress and the President ignore their Constitutional mandate and abdicate their responsibility to the courts, a firestorm will likely erupt from the public.

The idea of a Constitutional restraint on the ability of the federal government to borrow money is not new. Over two-hundred years ago, Thomas Jefferson stated, "The question of whether one generation has the right to bind another by the deficit it imposes is a question of such fundamental importance as to place it among the fundamental principals of the government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves..."

To borrow a quote from Mr. Hunt, over the next few weeks, as congress decides whether to change the Constitution, take your pick: Thomas Jefferson or Albert Hunt.

## **Balanced Budget Amendment Fact Sheet: The Flexibility to Respond to Recessions and Other Emergencies**

**The amendment preserves the ability of Congress to enact counter-cyclical policies in the event of a serious recession.**

In the event of a serious economic downturn or other national emergency, Congress would be able to muster a three-fifths majority to enact a counter-cyclical package of tax cuts or investment spending as rapidly as it does currently. If Congress cannot obtain three-fifths support to respond to unbalance the budget, the situation probably is not a true emergency. What the amendment will do is mitigate against the structural bias to spend and borrow in good times as well as bad.

**The automatic stabilizers in the budget will continue to operate under the balanced budget amendment.**

The automatic stabilizers built into the federal budget (unemployment insurance, etc.) would continue to operate under the BBA. If CBO projects that increased spending and lower tax revenues resulting from the automatic stabilizers may cause outlays to exceed receipts, or if the Treasury Department reports that the debt limit may be breached because of lower revenues and higher taxes, Congress will be able to determine the reason for the deficit and act accordingly. What the amendment will do is force Congress to acknowledge the impending deficit and decide whether the economic circumstances justify deficit spending.

**Congress would have flexibility to respond to natural disasters.**

Since 1978, Congress has passed fourteen supplemental appropriations of more than \$100 million for natural disasters. Of the fourteen disaster relief bills, all but one were supported by more than three-fifths of both Houses. The exception was an appropriations bill that many members believed did not warrant deficit spending.

**The existing deficit problem prevents Congress and the President from effectively responding to recessions emergencies.**

We currently run deficits in good times as well as bad. Large structural deficits provide a political and economic impediment to enactment of tax cuts or investment spending to stimulate the economy during economic downturns. We are already stimulating the economy through \$150 to \$200 billion in deficit spending each year. In this climate, the economic impact of any stimulus package enacted by Congress would be minimal. The political climate will continue to be hostile toward tax cuts or spending increases that are not offset until the budget is balanced.

## **Would the BBA "End Majority Rule?" No. It Would Protect Fundamental Rights.**

A common criticism of the balanced budget amendment is that it would "end majority rule." Opponents of requiring super majorities to approve deficit spending ignore one point, intentionally or otherwise: Under a balanced budget amendment simple majorities will continue to rule. A minority would have leverage in exactly one instance: When the majority abdicates its responsibility to produce a balanced budget. In that case, a 60 percent super-majority would have to go on record to approve a deficit. They would serve as a deterrent to irresponsible fiscal policy, while allowing necessary flexibility when a consensus emerges to deal with a national emergency. The Amendment in no way affects the ability of a majority to spend on programs it deems important and to set budget priorities as it sees fit.

Some opponents of the amendment write as though super majorities were a foreign concept to the framers of the constitution. One of their explicit purposes outlined in the Federalist Papers, was to put certain rights and powers beyond the reach of the "tyranny of the majority," and protect current minorities and future majorities from abuse by transient, coalescing "factions." The BBA is very much within that spirit.

Every right protected in the constitution is protected with super majority requirements. That's what is necessary to amend the explicit rights stated in the document.

Senator Byrd of West Virginia, a leading opponent of this measure, made our point best when he said, "There have come times when the protection of a minority is highly beneficial to a nation. Many of the great causes in the history of the world were at first only supported by a minority. And it has been shown time and time again that the minority can be right. So this is one of the things that's so important to the liberties of the people."

The unfettered power to deficit spend carries with it the temptation to exercise that power to the point of abuse. Incurring huge debts on behalf of our children really is a form of taxation without representation. Our children are a minority whose economic interests demand to be represented through the super majorities provided for in the balanced budget amendment.

Requiring a higher threshold of support for deficit spending will protect the rights of future generations who are not represented in our political system but will bear the burden of our decisions today. The ability to borrow money from future generations is a power of such magnitude that it should not be left to the judgements of transient majorities.

Thomas Jefferson agreed with BBA proponents that, "The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government." With what does a constitution deal, if not with "the fundamental principles of government?"

The BBA is based on exactly the same principles as the rest of the constitution: It would protect the fundamental rights of the people by restraining the federal government from abusing its powers. Morally dubious things should be difficult to do. That's the underlying principle for requiring 3/5 votes in both Houses to approve deficit spending.

Conclusion: Thousands of pages and hundreds of hours of committee testimony, floor debate, and committee reports have answered every question and concern about the BBA. The only reason left for voting against the BBA is if you believe that it's all right to leave our children a legacy of excessive -- and growing -- debt. The determination of BBA opponents shows that they fear what BBA supporters have promised all along: the amendment will work.

## *Fact Sheet & Talking Points:* **Capital Budgeting -- NOT a Capital Idea for the Constitution**

A Constitutional Amendment should reflect broad principles and should not contain narrow policy decisions such as defining a capital budget. There is wide disagreement among policymakers about what should be included in a federal capital budget. We should not place a concept such as capital budgeting in the Constitution when there is no consensus on what constitutes a capital budget.

State and local governments have a check on their use of capital budgets through bond ratings. If a state government were to abuse its capital budget, the state's bond rating would drop and the state would be unable to continue to finance new capital expenditures for borrowing. In addition, many states require that bond issues be approved by the voters. These checks on the abuse of capital budgets would not exist under a federal capital budget, making it far more likely that a federal capital budget would be abused.

The justification that most businesses and state and local governments have for capital budgeting is that they occasionally need to make one-time, extraordinary expenditures that are amortized over a long period of time. The federal budget is so huge -- \$1.5 trillion in 1994 -- that almost no conceivable, one-shot project would make even a small dent in it.

Even the Federal Interstate Highway System, which has been called the largest peacetime undertaking in all of human history, was financed on a pay-as-you-go basis. President Eisenhower initially proposed that the Interstate System be financed through borrowing. However, Congress kept it on-budget and financed it through a gas tax at the suggestion of Senator Albert Gore, Sr. We are unlikely to have another capital expenditure of this magnitude in the foreseeable future.

While state capital spending is often placed off-budget, so are trust fund surpluses. According to a Price-Waterhouse study, state budgets would be roughly in balance if both capital expenditures and trust funds were included on budget.

Exempting a capital budget from budget restraints ensures that spending on capital investments -- financed entirely by debt -- will increase. The debt incurred as a result of these expenditures will crowd out spending on items other than physical capital.

Less than four percent of federal outlays are for non-defense physical investment. Given the relatively small and constant share that capital expenditure have in the federal budget, there is no need to remove capital expenditures from the general budget.

The Stenholm-Schaefer amendment does not prevent the creation of a separate operating and capital accounts, but the total budget must remain in balance. This is consistent with the recommendations of GAO, which stated,

*"...the creation of explicit categories for government capital and investment expenditures should not be viewed as a license to run deficits to finance those categories... The choice between spending for investment and spending for consumption should be seen as setting of priorities within an overall fiscal constraint, not as a reason for relaxing that constraint and permitting a larger deficit."*

## Balanced Budget Amendment -- Promoting Honesty in Budgeting

H.J.Res.28/S.J.Res. 1, the bi-partisan consensus Balanced Budget Amendment to the Constitution, is written to foreclose loopholes or evasions in its implementation and enforcement, while allowing for necessary and beneficial flexibility. It also will have the salutary effect of providing incentives for more honest and accurate budgeting than now or in the past.

### The general self-enforcing mechanism in the BBA: The 3/5 vote on the debt limit:

No matter what accounting techniques are used to depict a balanced budget, and regardless of any "rosy scenario" economic assumptions, smoke and mirrors, or honest estimating mistakes, if actual outlays exceed actual receipts, the Treasury ultimately would need to borrow in order to meet the government's obligations. This would require 3/5 votes in both the Senate and House to raise the debt limit.

The threat of a "train wreck" on the debt limit provides a powerful incentive for truth-in-budgeting, because Congress and the President could not escape the consequences of policies that increased the debt. Opponents who focus on the difficulty of achieving a 3/5 majority miss the point. They are still focused on what's necessary to run a deficit. The possibility of a 3/5 debt vote is a deterrent. Facing it is so undesirable that Congress and the President generally would do anything to avoid it -- even balance the budget!

### H.J.Res.28/S.J.Res.1 rules out loopholes and "gimmicks;" for example:

The amendment could not be evaded by moving items off-budget. HJ Res 28 does not require that a single document, a "budget," be written in balance. It deals with how total outlays conform to total receipts. Taking an item "off-budget" in statute still could be used to give that item priority over others or give it certain protections in the budget process (as has been done with Social Security), but would not affect the operation of the BBA. The amendment would remove the current incentive to move items off-budget for the purpose of masking a deficit. The possibility of a 3/5 debt limit vote would deter moving deficit spending "off-budget."

Definitions of terms could not be manipulated to evade the BBA. Terms such as "receipts," "debt," "revenue," "whole number," and "war" already appear in the Constitution and have long-established meanings. Others, such as "outlays," "debt held by the public," "budget," and "declaratory judgment" are universally and solidly understood, having been long-defined and used in OMB, CBO, Congressional, legal, and other documents. Committee reports and floor debates since 1981 have gone to great lengths to establish a legislative history for, and preventing misinterpretation of, these and other terms.

## **H.J.Res. 28/S.J.Res. 1 would promote honesty and accuracy in budget estimates:**

Congress and the President *can not* plan for a coming fiscal year without making estimates. Section 1, requiring that *actual* outlays and receipts be in balance, and Section 6, allowing for the use of estimates, operate together as follows:

Section 6 says estimates may be used in preparing a budget plan;

Section 1 requires that such planned budgets be in balance;

Following such a budget plan, so long it is reasonable to do so, complies with Section 1. This means Congress and the President need not re-open the budget throughout the fiscal year, simply because of month-to-month fluctuations in receipts or outlays. (E.g., A wave of last-minute tax payments could cause actual receipts to fall short of estimates in one month and exceed them in the next.) Indeed, some previous versions have been criticized as inflexible because they lacked estimates language.

The threat of a 3/5 debt limit vote will enforce the accuracy of budget estimates.

The experience of our compliance with the caps on discretionary outlays enacted as part of the 1990 Budget Enforcement Act illustrates how budgetary restraints provide an incentive for sound estimates. Although Congress appropriates budget authority and must rely on estimates of outlays, it has complied with the outlay caps by taking care to ensure that the appropriations bills enacted did not pose a risk of breaching the outlay caps. A balanced budget amendment would provide a similar, but far stronger, incentive for improving *all* budget estimates.

To be safe, Congress should, and probably would, plan small surpluses in most years.

## **The BBA would promoting honesty and accuracy in dealing with contingent liabilities:**

Currently, there is no incentive for Congress and the President to tackle the politically difficult issues associated with contingent liabilities such as government pensions and savings and loan insurance. For example, Congress repeatedly postponed action on the S & L cleanup, even though that ultimately resulted in increased costs to the federal government. By restraining the government's ability to borrow, H.J.Res.28/S.J.Res. 1 will provide a powerful incentive to deal with contingent liabilities promptly -- before they result in unnecessary costs -- and honestly.

## FACT SHEET:

### Balanced Budget Requirements in the States

Debate on a proposed Balanced Budget Amendment to the U.S. Constitution highlights the status of the states as "laboratories of democracy." While the supporters of the Stenholm-Schaefer amendment do not argue that the federal Constitution should have a balanced budget requirement *because* the states have such restraints, the experiences of the states are instructive.

While they vary widely in form, *49 of the 50* states have significant balanced budget requirements.

It is also true that, while, standing alone, many the state provisions appear to be less restrictive than the Stenholm-Schaefer amendment for the federal government, there are important institutional differences which dictate the terms of the federal proposal.

In 35 of the states, balanced budget requirements are written into constitutions. In 13 others they are statutory. Nine of those have constitutional debt limits that are usually interpreted as constitutional balanced budget requirements. In one (Wyoming), the unwritten imperative is strong enough that it is regarded as having "constitutional status."

But that's only a glimpse into the rich diversity through which states control indebtedness.

In 43 or more states, balanced budget requirements are supplemented by special executive branch budget powers. Twenty-one states have spending limits, 7 have revenue limits, and 3 have both. Fifteen require more than a simple majority to pass *any* budget.

Noteworthy differences include whether capital, trust fund, or other budgets are included under state balanced budget requirements.

There's a lot we can learn from specific state balanced budget initiatives and apply to the federal proposal.

The states can afford to exempt portions of their budgets because state bond ratings -- generally applying to capital investments -- serve as the ultimate disciplinarian. There are no bond rating services for the federal government in part because foreigners and others line up to bank on the full faith and credit of the U.S. government. In addition, some bond issues are subject to public referenda.

States sometimes mislead when defining a "deficit." That led to the language before Congress now, "Total outlays for any fiscal year shall not exceed total receipts for that fiscal year..."

The processes of defining and amortizing "capital investments" can be abused. For example, New York City, prior to its financial crisis in the s, wrote off spending for school textbooks by declaring their "useful life" to be 30 years.

Some states can use revenue and borrowing to meet balanced budget requirements. Under the Stenholm-Schaefer amendment, raising the debt limit requires a 3/5 majority to counter this state-proven tendency.

The imposition of budget discipline on states whether from balanced budget requirements or bond ratings has led to establishment of "rainy day" funds. Many states now set aside excess revenues in good times requiring less indebtedness during recessions.

Despite such diversity, the experience of the states shows that balanced budget requirements have had a salutary effect.

From 1980 to 1992, the states' outstanding long-term debt rose from \$120 billion to \$369 billion, a 208% increase; total state spending growth was about 4% greater than revenue growth. During the same period, federal debt grew from \$905 billion to \$4,002 *trillion*, a 340% increase; federal spending growth was about 38% greater than revenue growth.

The similarities between state and federal budget experiences support adoption of a federal balanced budget amendment; the differences demonstrate why H.J.Res. 103 is the approach best suited to the federal level.

That variance and relative complexity of state provisions contributed to the development of the one-page simplicity of the Stenholm/Smith federal amendment. An amendment to the U.S. Constitution should state a broad, fundamental principle and provide the bare bones of process necessary to enforce that principle.

The states' experiences demonstrate that exempting any portion of federal spending from a balanced budget amendment would create potential loopholes. The "higher authorities" that generally check abuses at the state level do not exist at the federal level. "Pet programs" could easily be pushed into whatever funding category was not covered by a BBA. Debt would continue to soar, and the Constitution would be affronted.

The federal government has no line item veto and a relatively weak rescission process. The lack of such supplementary means for imposing discipline is among the reasons why the federal BBA needs to be more restrictive than state counterparts. At the same time, a BBA is the single most important mechanism, and the most constitutionally elegant, for enforcing the fundamental principle that the people should be protected from the abuses of profligate government borrowing.

**QUESTIONS AND ANSWERS ABOUT THE  
BALANCED BUDGET CONSTITUTIONAL AMENDMENT**

House co-chairs  
Representative Dan Schaefer (R-CO)  
Representative Charles Stenholm (D-TX)  
105th Congress

## CONSTITUTIONAL LANGUAGE - ECONOMIC POLICY

**Q.** Shouldn't economic policy be kept out of the Constitution?

**A.** Economics *is* politics and vice-versa. Governance inescapably involves addressing questions of economics. Moreover, our Constitution is replete with economic policy. For example, it refers to private property rights; prescribes Congressional (and Executive) roles in federal fiscal activities such as raising revenue, spending, and borrowing; provides for uniform duties, imposts, and excises; discusses the regulation of interstate commerce; discusses the coinage and value of money; and deals with counterfeiting, patents, and other economic issues. The test is not whether or not an amendment is economic policy, but whether it encompasses broad and fundamental principles, its relevance is not transitory, and its importance is far-reaching in scope and over time. The need for a BBA and the proposal of the Schaefer-Stenholm amendment in response meet this test.

## ENFORCEMENT & IMPLEMENTATION - PHASE-IN

**Q.** Of what use is a BBA in today's atmosphere of impending fiscal crisis, if it won't be in force for several years?

**A.** (1) A BBA is a long-term proposition. It should be adopted because it is a valid response to a long-term and structurally inherent problem. (2) It's long-term nature notwithstanding, even a BBA that is not in effect for several years will prompt deficit-reduction actions in anticipation of its being in place. Therefore, submission of the amendment to the states would stimulate an immediate response in federal fiscal behavior.

## ECONOMIC CONSEQUENCES - DIRE PREDICTIONS

**Q.** Why do so many economic analyses project devastating results under a BBA?

**A.** Those that do generally assume either (1) that a balanced budget would be imposed quickly or even immediately, with little or no transition, or (2) that the requirement for balance will be adhered to without exception and that Congress (and the President in his or her recommendations) will not exercise its prerogatives under a flexible amendment to enact counter-cyclical measures. This amendment will not go into effect until, at the earliest, two years after ratification. Once passed through both houses, we would hope that Congress would recognize the impending deadline and act to meet that date by which the budget must be balanced. By allowing a multi-year phase in, we believe any such "drastic" economic effects would be diminished, if not erased. This amendment has the flexibility to address economic emergencies through the 3/5 release vote on balancing the budget. This allows Congress and the President to act in response to circumstances such as a recession or some other emergency, while insuring that such a decision is made in a fiscally responsible manner.

## **ECONOMIC CONSEQUENCES - BUDGET CUTS**

**Q.** Wouldn't adopting a BBA result in cutbacks in services for the poor and needy, for senior citizens, for health and housing programs, and even possibly for defense programs?

**A.** The BBA itself would do none of these things. It would force the Executive and Legislative Branches to priorities within a balance of receipts and outlays and force into the light of day what actual decisions and trade-offs are necessary. If this does not result in cutbacks of government programs, it will ensure that we pay for all the government we want.

**Q.** Since "the BBA itself would do none of these things," isn't it just a "political free lunch," raising false hopes while diverting attention from the real and difficult budget decisions that need to be made?

**A.** Far from that, the Schaefer-Stenholm amendment would force Congress, the President, and the public to own up to the hard choices that need to be made. It is general because most provisions in the Constitution, encompassing broad principles as they do, should be broadly worded. But its result will be to make unavoidable the asking of those questions some in elective office have avoided: How much government do we want? How willing are we to pay for it? Which programs should be priorities?

## **BUDGET GIMMICKS**

**Q.** Won't a constitutional requirement of a "balanced budget" simply invite moving some items off-budget?

**A.** Schaefer-Stenholm amendment does not require that a single document, a "budget," be written in balance. Instead, it deals with actual spending and taxing bills, and how actual outlays conform to estimated receipts. Taking any item "off-budget" would have absolutely no effect on the operation of the Schaefer-Stenholm amendment.

**Q.** Wouldn't the temptation remain great to commit some other evasion, such as manipulating the definitions of terms used in the BBA?

**A.** Terms such as "outlays", "receipts," "debt held by the public", and "raising revenue" either already appear in the Constitution or are commonly understood. In the 99th Congress, Senate Reports 99-162 and 99-163 and Senate floor debate on S.J.Res 225, and in the 101st Congress, the House floor debate, went to some lengths to establish a legislative history for and preventing misinterpretation of these and other terms as used in a BBA. This year the House Budget Committee compiled a formidable amount of testimony on all sides. It also remains the appropriate role of the Members engaged in floor debate this year to build similarly clear definitions.

## **ENFORCEMENT & IMPLEMENTATION - GENERAL**

**Q. Won't the BBA be unenforceable in other ways, causing erosion of respect for other Constitutional provisions as well?**

**A. To a certain extent, the provisions of the Schaefer-Stenholm amendment are self-enforcing or interactively enforcing. Effective enforcement and orderly implementation certainly are expected in the form of enabling legislation; Members such as the former Chairman of the Budget Committee have served notice most effectively in that regard. Beyond that, enforcement either is implied by the ramifications of stalemate or inaction or, to a very limited degree, could be obtained in the courts.**

The Constitution requires Congress and the President to take the necessary steps to carry out Constitutional mandates. Congress is empowered to make all laws that are "necessary and proper to execute the mandate of the constitution." The President and Members of Congress take only one oath, promising to "preserve, protect and defend the constitution." It is assumed that Congress and the President will monitor each other and to the limits of their authority enforce the provisions of the amendment against the other.

The public will also have a significant role. A breach of the amendments' provisions would be readily apparent, and if a breach occurs a political firestorm very likely would erupt from the public. Public accountability is provided for in the provision that requires any vote to run a deficit to specify which outlays are "excess."

Finally, as a last resort, the judicial branch may act to insure that the Congress and President do not subvert the amendment. A member of Congress or an appropriate Administration official probably would have standing to file suit challenging legislation that subverted the amendment.

## **JUDICIAL REVIEW**

**Q. Wouldn't the Schaefer-Stenholm amendment dangerously and inappropriately transfer power to the courts in a whole new area by opening up to court challenge on Constitutional grounds virtually every budgetary decision made by Congress (and the President)?**

**A. The courts could make only a limited range of decisions on a limited number of issues. They could invalidate an individual appropriation or tax Act. They could rule as to whether a given Act of Congress or action by the Executive violated the requirements of this amendment. Indeed, a limited role is appropriate: In the words of Marbury v. Madison, the judiciary has a fundamental obligation to "say what the law is."**

But it would be inappropriate for the courts, and it would be inappropriate to call upon the courts, to rewrite budget priorities and fiscal law. Senate Reports 99-162 and 99-163 and the accompanying Senate debate once again provide much guidance, this time as to how the "political question" doctrine of *Baker vs. Carr*, 369 U.S. 186 (1962), the requirement to a justiciable case or controversy (see e.g., *Aetna Life Insurance Co. vs Haworth*, 300 U.S. 227 (1937), and questions of standing would prevent the floodgates of litigation from opening upon the process in place under a suitable BBA. For example, *Riegle v. Federal Open Market Committee*, 656 F.2d 873 (DC Cir. 1981), "counsel[led] the courts to refrain from hearing cases which represent the most obvious intrusion by the judiciary into the legislative arena: challenges concerning congressional action or inaction regarding legislation."

The traditional judicial doctrine of "standing" requires that a plaintiff has a direct and specific, personal stake or injury. A "generalized" or "undifferentiated" public grievance, such as would suggest "taxpayer" standing vis-a-vis macroeconomic policy decisions, is not recognized.

Most questions that will arise as to compliance or enforcement will either be resolved through enabling legislation or will arise during policy-making events that trigger the self-enforcing mechanisms in the BBA (i.e., 3/5 vote to pass an increase the debt that results from a deficit in a given year) or currently in place (i.e., threat of government shutdown if a legislative deadlock persists).

Finally, absolutely no role for the courts is foreseen beyond that of making a determination as to whether an Act of Congress or an Executive action is unconstitutional and a court order not to execute such Act or action. A purely restraining role is anticipated for the courts and could be guaranteed by Congress in appropriate legislation specifying standing, jurisdiction, and remedies.

## JUDICIAL REVIEW

**Q.** If the judiciary is involved, couldn't a case drag on for years past the fiscal year in question, making every case moot?

**A.** The courts have shown an ability and willingness to expedite their processes in an emergency. Recent examples are the reapportionment cases involving Massachusetts and Montana that went all the way to the Supreme Court and were resolved in a matter of months. Congress could further ensure expeditious handling, for example, giving the Supreme exclusive and original jurisdiction over cases arising under the BBA.

## **ENFORCEMENT & IMPLEMENTATION - CONGRESS**

**Q. What if Congress, ignoring the provisions in the Schaefer-Stenholm amendment, nevertheless passes appropriations in excess of revenues?**

**A. The general charge that actual outlays not exceed receipts creates a general obligation for Congress and the Executive to construct a statutory framework to enforce and implement the BBA, in advance of its effective date. Indeed, such legislation would be essential in managing the budget down its "glide path" to an eventual balance. The ultimate form of such legislation could include a revised Gramm-Rudman-Hollings type sequester, an enhanced Pay-as-you-go mechanism, or some other process reforms.**

The language of Section 1 also creates an ongoing obligation to monitor outlays and receipts and make sure that outlays do not breach receipts. This does not envision any sort of discretionary "impoundment" power on the part of the President or courts. However, the Executive branch would be under an obligation to estimate whether outlays will occur faster or at higher levels than expected and to notify Congress promptly. If an offsetting rescission is not enacted or other appropriate legislative action not taken, then the President would be bound, at the point at which the government "runs out of money," to stop issuing checks (unless, of course such exigencies already have been accounted for in enforcement and implementation legislation in advance).

The deterrent of a budgetary "train wreck" always exists to motivate responsible budgeting: either the possibility of a government shutdown or of the need to round up 3/5 of both Houses to pass a debt increase bill without any "blackmail amendments." (For example, Gramm-Rudman-Hollings was a "blackmail amendment" attached to a debt ceiling bill in 1985, when 51 Senators refused to pass a "clean" bill.)

## **BUDGET ESTIMATES -- "OOPS"**

**Q. What is to prevent Congress and the President from drastically over-estimating revenues and then declaring, "oops," when outlays and receipts are unbalanced at the end of the fiscal year?**

**A. If such a scenario occurred, Congress would have to pass a debt ceiling increase by a three-fifths vote. The debt provision provides a powerful incentive for truth-in-budgeting. Any such mis-estimates will catch up rapidly with its authors within a year. A transparent mis-estimate would be subject to the very public process of budget-making. Congress and the President would avoid a widely publicized "mistake" because of its political impact.**

## **CONSTITUTIONAL LANGUAGE - DEBT LIMITATION**

**Q.** Why is the Schaefer-Stenholm Amendment as introduced, different from previous BBA versions, in that it requires a 3/5 vote to raise the limit on federal "debt held by the public", rather than the "public" or "gross" debt?

**A.** When the Social Security and other trust funds run surpluses, those surpluses are invested in U.S. Treasury securities, meaning they are borrowed by the U.S. Treasury and the "public debt" (approximately the same as the "gross federal debt") is increased by that amount. Such borrowing is an intra-governmental transfer between accounts, and does NOT increase the "debt held by the public." Since the intent of the debt limit vote in the BBA is to enforce the amendment and deter deficits, the "debt held by the public" is the closest currently-used and commonly-understood measure of indebtedness that approximates the amount that indebtedness has been increased because of total deficit spending. In other words, H.J. Res. 290 was not meant to "punish" Congress by requiring a difficult 3/5 vote just because trust funds are running a surplus.

## **BUDGET ESTIMATES - REVENUES**

**Q.** What if a law enacted in the good faith belief which is revenue-neutral turns out to increase revenues?

**A.** As with other laws that may be challenged on Constitutional grounds, if it were shown that Congress and the President acted in good faith and had a reasonable basis for projecting revenue-neutrality, the law would not be struck down. What if a bill provides for both increases and decreases in revenues? the Schaefer-Stenholm amendment refers to a "bill to raise revenue." The clear intent is to look to the overall revenue effect of a bill.

## **ENFORCEMENT & IMPLEMENTATION - REVENUE INCREASES WITH SPENDING CUTS**

**Q.** What effect would the Schaefer-Stenholm amendment have if in the process of building a "consensus deficit-reduction bill," revenue increases were combined with spending reductions?

**A.** Schaefer-Stenholm amendment differs from some previous BBAs in that it does not require a "vote directed solely to that subject" in the case of increasing revenues. Certainly, most of the sponsors of the Schaefer-Stenholm amendment would not object to such language. However, as currently written, the Schaefer-Stenholm amendment simply would require the authors and managers of such a combination bill to make a strategic decision as to whether they preferred to offer separate revenue and spending-cut bills or to subject the spending-cut provisions tied to the revenue-raising provisions in a single bill, with a need to pass by a majority of the whole membership.

## **MAJORITY RULE**

**Q. Couldn't the various super-majority requirements in H.J.Res. 28 / S.J.Res 1 thwart the wills of majorities in both Houses and the President?**

A. Yes. Such is also the case with Senate filibusters, Gramm-Rudman-Hollings points of order, and other procedures today. As is the case with all super-majority requirements in the Constitution (or in law), the purpose is to protect the immediate rights of a significant minority, and arguably the long-term rights of the people, against a "tyranny of the majority," a phrase frequently invoked by the nation's Founders. In the case of the Schaefer-Stenholm amendment, a sufficient structural bias exists for deficit spending and against accountability in tax decisions that compensating super-majority protections are warranted. Moreover, it is noteworthy that the super-majority levels involved are reasonable and modest.

## **ECONOMIC CONSEQUENCES - FLEXIBILITY**

**Q. Shouldn't the federal government have the flexibility to enact counter-cyclical economic measures?**

A. Yes, and this flexibility is preserved in the Schaefer-Stenholm amendment by allowing Congress to spend in excess of revenues if three-fifths of the members agree that deficit spending is warranted. If Congress can't muster a three-fifths majority to What the amendment would do is mitigate against the structural bias to spend and borrow in good times as well as bad. In restoring this level playing field, the Schaefer-Stenholm amendment strikes a reasonable balance between requiring fiscal responsibility and allowing flexibility.

## **CONSTITUTIONAL LANGUAGE - BUDGETARY PERIOD**

**Q. Should the Constitution dictate such details as the budgetary period (fiscal year)?**

A. Some such reasonable parameters are necessary to provide for an enforceable amendment. Again, the authors are receptive to perfecting changes, although it is important that whatever parameter is used is not susceptible to subterfuge (e.g., merely including a term like "fiscal period" to be defined in statute). Senate Reports 99-162 and 99-163 suggested using "fiscal year," but allowed that a reasonable statutory re-definition could include a biennial "year."

## **ENFORCEMENT & IMPLEMENTATION - IMPOUNDMENT AUTHORITY**

**Q. Doesn't the Schaefer-Stenholm amendment imply that the President would have enhanced powers to block spending based on a pretext of unconstitutionality?**

A. A frequent criticism of previous BBA proposals has been that the President is not brought into the budget process sufficiently to share the responsibility of governing and the blame of impasse, although the President can criticize the Congress that "holds the purse strings." The Schaefer-Stenholm amendment recognizes the accepted role the President has played under statute since the 1920s, by requiring the President to submit a balanced budget. The President must also share fiscal and political responsibility with Congress for the Schaefer-Stenholm amendment's joint receipts estimate. But beyond the role in that new joint estimate, the Schaefer-Stenholm amendment does not broaden in any way the powers of the President. On the other hand, it does make the President more accountable for how the budget process proceeds.

## **SOCIAL SECURITY**

**Q. Why is the Schaefer-Stenholm amendment as introduced, different from previous BBA versions, in that it requires a 3/5 vote to raise the limit on federal "debt held by the public", rather than the "public" or "gross" debt?**

A. When the Social Security and other trust funds run surpluses, those surpluses are invested in U.S. Treasury securities, meaning they are borrowed by the U.S. Treasury and the "public debt" (approximately the same as the "gross federal debt") is increased by that amount. Such borrowing is an intra-governmental transfer between accounts, and does NOT increase the "debt held by the public." Since the intent of the debt limit vote in the BBA is to enforce the amendment and deter deficits, the "debt held by the public" is the closest currently-used and commonly-understood measure of indebtedness that approximates the amount that indebtedness has been increased because of total deficit spending. In other words, the Schaefer-Stenholm amendment was not meant to "punish" Congress by requiring a difficult 3/5 vote just because trust funds are running a surplus.

**Response to Questions and Comments  
Regarding the Balanced Budget Amendment to the Constitution  
Congressman Charles W. Stenholm  
March 14, 1994**

I did not come to the point of proposing an amendment to the Constitution lightly. Our Founding Fathers crafted a remarkable document that has served this nation extremely well. I share the view that we should be extremely judicious in proposing changes to the Constitution. That notwithstanding, I have been convinced that an amendment limiting the ability of Congresses and Presidents to borrow money is a necessary and appropriate addition to the Constitution.

The genius of our Constitution is its timelessness and ability to adapt to changing circumstances. However, the Framers recognized that there could be unforeseen circumstances or changes that would necessitate amendments and provided not one but two ways of proposing amendments to the Constitution. While the Constitution should not be amended frivolously, amendments may be appropriate if there has been a fundamental change in the circumstances of society or the government to justify a change in our fundamental document of government. If such a change has occurred, Congress must decide whether the proposed amendment enforces a timeless principle. I believe that the balanced budget amendment meets this test.

There has been a fundamental change in the understanding of the role and responsibilities of the federal government under the Constitution since the Constitution was first adopted. As Dr. William Niskanen of the CATO Institute noted in testimony before the House Budget Committee in 1992, Article I, Section 8 of the Constitution grants to Congress relatively few powers (establish Post Offices, raise and maintain armies, etc.) that involve the potential for significant expenditures. The Framers clearly believed that this would serve as a check on the size of government. For example, President James Madison vetoed legislation authorizing federal funds for the construction of highways and canals because he believed it to exceed Congress' Constitutional authority. This "fiscal Constitution" limiting the activities of the federal government made an explicit limitation on the ability of the government to borrow money unnecessarily.

The advent of the New Deal and Supreme Court decisions finding that "the power of Congress to authorize appropriations of public money for public purposes is not limited by the direct grants of legislative power found in the Constitution," effectively eliminated the fiscal Constitution that had limited federal expenditures. This change in the understanding of the role of the government was a revolution in Constitutional as well as economic policy. This opened the door to numerous government spending programs, most significantly entitlement programs. Without the check on government spending provided by a strict interpretation of the enumerated powers, Congress created numerous benefit programs with significant constituencies that have placed tremendous pressure on the federal budget. As the costs of these programs have risen exponentially, public officials have become increasingly unwilling to impose the level of taxation necessary to meet these costs and have instead resorted to borrowing. The framers of the Constitution could not have foreseen these circumstances, since they believed that the Constitution explicitly limited the scope of the federal government.

I do not advocate the return to the narrow interpretation of the power of Congress that existed prior to the New Deal. I do believe, however, that a Constitutional amendment restricting the ability of the government to borrow money is an appropriate response to the practical repeal of the restraint on government spending envisioned by the Framers. This evolutionary repeal of restraint has resulted in a fundamental change in the operation of our government.

The threat of economic and political harm from continued deficit spending is the type of governmental abuse appropriately proscribed by the Constitution. Thomas Jefferson agreed with BBA proponents that, "The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government."

Even Professor Laurence Tribe of Harvard, a leading opponent of the amendment, told the Senate Budget Committee in 1992 that "The Jeffersonian notion that today's populace should not be able to burden future generations with excessive debt, does seem to be the kind of fundamental value that is worthy of enshrinement in the Constitution. In a sense, it represents a structural protection for the rights of our children and grandchildren."

The BBA is based on exactly the same principle as the rest of the Constitution: It would protect the fundamental rights of the people by restraining the federal government from abusing its powers.

One of the explicit purposes the Framers had in writing the Constitution was to put certain rights and powers beyond the reach of the tyranny of the majority," and protect current minorities and future majorities from abuse by transient coalescing "factions." The BBA is very much within that spirit. Because future generations lack input into the electoral process, their interests are undervalued in the budget process. Requiring a higher threshold of support for deficit spending will protect the rights of future generations who are not represented in our political system but will bear the burden of our decisions today. The fundamental premise of the amendment can be described by a single sentence: The ability to borrow money from future generations is a power of such magnitude that should not be left to the judgements of transient majorities.

Senator Byrd recently made an eloquent statement on behalf of this principle in defense of the supermajority requirement necessary to end a Senate filibuster, stating that "There have come times when the protection of a minority is highly beneficial to a nation. Many of the great causes in the history of the world were at first only supported by a minority. And it has been shown time and time again that the minority can be right. So this is one of the things that's so important to the liberties of the people."

Writing on behalf of the BBA George Will expressed a perspective very much consistent with the Framers in a column published in late 1993:

*A system that selectively enhances the leverage of intense minorities is not inherently violative of the morality of democracy. And morally dubious things should be difficult to do. Given the tendency of our democracy to impose taxation without representation -- deficit spending, which saddles the unborn with debts, amounts to that -- it is proper to empower a minority to inhibit abuses by the majority.*

The requirement in Section 2 for a three-fifths vote to increase the debt limit provides strong enforcement of the amendment. When the government runs a deficit, that necessitates additional borrowing to meet its obligations. Failure to authorize that level of borrowing could, in a worst-case scenario, result in a default by the government of the United States. Treasury securities might not be redeemed. Government services could be threatened with a shutdown, subject to the availability of receipts. It is not my intent that a default or shutdown should happen. However, the threat of such consequences is analogous to the deterrence effect of fines or legal damages in other situations.

It is extremely difficult to obtain three-fifths vote to do anything in Congress. That is the point of the amendment. By lowering the "blackmail threshold" associated with passage of the regular debt limit bill from 50% plus one in either body to 40% + one, Section 2 increases the motivation of the Administration and the Leadership, including the Chairs of the relevant committees, to do whatever is necessary, legislatively and cooperatively, even to the point of balancing the budget, to avoid facing such a difficult debt vote.

Focusing on the difficulty of achieving a 3/5 majority misses the point. Those who do so are still focused on what's necessary to run a deficit. Concerns raise about how the BBA would "undermine majority rule" imply two presumptions which I reject: (1) That running a deficits and imposing debts on future generations is just another ordinary policy decision like every other appropriately made by a simple majority; and (2) That a real threat of minority rule looms because 3/5 majorities that will have

to be marshalled in order to maintain the status quo of deficit spending. The possibility of a 3/5 debt vote is a deterrent. Facing it is so undesirable that Congress and the President generally would do anything to avoid it.

The amendment does not represent the end of majority rule. A minority would have leverage in exactly one instance: When the majority abdicates its responsibility to produce a balanced budget. In that case, a 60 percent super-majority would have to go on record to approve a deficit. The Amendment in no way affects the ability of a majority to spend on programs it deems important and to set budget priorities as it sees fit.

I would add that it is my firm belief that it would not be difficult to obtain a three-fifths vote to borrow money in the event of a clear national emergency that necessitated deficit spending. I do not share the view that 40% of Congress would explicitly vote to put their narrow personal interests above the national good in time of national crisis. A minority that attempted to use its power under this amendment to prevent a response to a national emergency in order to "extort unreasonable indulgences" would face swift political consequences.

The purpose of Section 4 (dealing with the enactment of tax legislation) is to increase the accountability of Members of Congress when they consider legislation to increase revenue, in light of the amendment's requirement to balance receipts and outlays. The increased pressure the amendment will create for fiscal discipline may increase temptation to shield a certain amount of legislative decision-making from public view. Tax bills have been known to pass, occasionally, by voice vote.

The enhanced "tax accountability" provided by the unvarying requirement for a rollcall vote, is supplemented by the requirement that such bills also shall not become law unless passed by a slight supermajority, in this case a majority of the whole number of each House. The term "whole number" is derived from, and intended to be consistent with, the use of the phrase in the 12th Amendment to the Constitution, "two-thirds of the whole number of Senators" (which is set as the quorum necessary for the purpose of electing the Vice President in case no candidate receives an Electoral College majority).

The rollcall vote and Constitutional majority requirements for tax legislation will serve to maintain a level playing field between the public's more general and diffuse interest in restraining the government's appetite for revenues and the more focused pressure that special interest groups can apply for individual spending programs. It therefore represents a balance between the need to raise revenues to fund the operations of the government and the public interest in accountability in the exercise of the power of taxation, which arguably is the most profound power of the government.

The provisions of H.J.Res. 103 are self-enforcing through the 3/5 majority required in Section 1 to authorize outlays in excess of receipts and the requirement in Section 2 for a 3/5 vote to raise the limit on the debt held by the public. The amendment would essentially place an additional limitation on the ability of funds to be drawn from the Treasury beyond that already provided in the Constitution. The check on the government's ability to borrow money by creating immediate political and economic consequences for running a deficit will ensure compliance through accountability. For the first time ever, a deficit would be accompanied by Members of Congress explicitly voting for one.

The President's obligation to uphold and enforce the Constitution would extend to proposing a balanced budget and the same type of ministerial bookkeeping functions as exist under current law. Unless Congress enacts implementing legislation which gives the President broader authority, the President's role in enforcing the amendment would be limited to a non-discretionary duty to order that no funds be spent at the point in which outlays would exceed receipts, unless a deficit was specifically authorized by a 3/5 vote of Congress. This duty is no different than the current duty of the President to prohibit funds from being spent if an appropriations bill has not been enacted by the beginning of a fiscal year. The amendment does not broaden the current powers of the President over the purse in any way. The President would not have discretionary authority to impound funds for certain programs while allowing funding for other programs to continue.

As an absolute last resort, the courts will have a limited role in enforcing this amendment if both Congress and the President abdicate their responsibilities. Assuming that Congress does not address this issue in implementing legislation, which is extremely unlikely, the courts would be limited to finding individual acts of Congress (such as passing legislation that would result in outlays exceeding receipts without the required 3/5 vote) unconstitutional and to restraining the Executive from some action that would violate the amendment. The courts would state whether a budget is in excess and would simply strike down any action unbalancing the budget, leaving the cure to the political branches. The involvement of the courts would be severely limited by legal precedents limiting the ability of parties to bring cases in "political cases" or in cases in which there is only a "generalized grievance."

Members of Congress and the President do take seriously our vow to uphold the Constitution. Once the fundamental principle that current generations should not be able to burden future generations with excessive debt is enshrined in the Constitution, it will be clear whether or not Congress and the President have met their obligation established by this Amendment. The public will hold accountable any official who ignores this Constitutional mandate. This accountability will provide the ultimate enforcement of the amendment.

*Paul Weinstein*  
*Balanced Budget Amnt*

THE WHITE HOUSE  
WASHINGTON

November 1, 1993

MEMORANDUM FOR THE VICE PRESIDENT  
SECRETARY BENTSEN  
SECRETARY REICH  
SECRETARY BROWN  
LEON PANETTA  
LAURA TYSON  
MACK MCLARTY  
DAVID GERGEN  
GEORGE STEPHANOPOULOS  
HOWARD PASTER  
CAROL RASCO  
ROGER ALTMAN  
ALAN BLINDER  
ALICE RIVLIN  
BO CUTTER  
GENE SPERLING  
BILL GALSTON  
JOE STIGLITZ  
JOHN PODESTA

FROM: BOB RUBIN

SUBJECT: NEC Meeting Regarding the Balanced Budget  
Amendment

This is to confirm that there will be an NEC meeting today at 6:30 p.m. in the Roosevelt Room to discuss the Balanced Budget Amendment.

Attached are the papers relevant to this discussion.

Attachments

not yet distribute  
11/1/93

THE WHITE HOUSE  
WASHINGTON  
November 1, 1993

**MEMORANDUM FOR THE PRESIDENT**

**FROM:** BILL GALSTON <sup>WAG</sup>  
DAVID GERGEN <sup>DG</sup>  
JODY GREENSTONE <sup>JG</sup>

**SUBJECT:** BALANCED BUDGET AMENDMENT

**Introduction**

We concur with the unanimous recommendation of your economic advisers that the Administration should oppose the Simon-Stenholm Balanced Budget Amendment. As drafted, the Amendment is not only legally questionable, but also requires such rapid and stringent reductions in the deficit that it could significantly damage the economy. However, to oppose the Amendment effectively, we believe it is important that the Administration:

- \* provide sound, believable reasons to a skeptical public why your opposition to a Balanced Budget Amendment does not mean you are abandoning a commitment to continuing fiscal restraint. Having worked so hard to gain the high ground on budget discipline, you clearly want to keep it.

- \* develop a long-term strategy on budget deficits that builds upon your success this past year, while also giving you greater freedom to pursue the nation's investment needs. It is our sense that the Administration has not fully agreed where we are now trying to go in fiscal policy, nor have we communicated a clear strategy to the public.

**The Need for More Fiscal Discipline**

Many members of the Administration are wary of further deficit reductions relying on additional cuts in spending on the grounds that such cuts would imperil your investment program. We share their -- and your -- commitment to intelligent public investment. But from the public's point of view, our right to "invest" their money depends upon our overall prudence and restraint, so that funding for new investments must come primarily from spending reductions, not revenue increases. For these reasons, among others, further deficit reduction is not the enemy of public investment, but rather its precondition.

Moreover, some of your advisers fear that renewed emphasis on fiscal discipline could come at the expense of health care reform. We believe just the reverse. In spite of the unprecedented care with which your health care budget was prepared, many inside and outside the Congress fear -- based on past experience -- that health care reform could increase rather than decrease the budget deficit. By emphasizing fiscal discipline in a clear and believable way, you can help relieve these doubts and build support for your health care plan.

It must be extremely frustrating for you that it is so difficult to fund such modest programs as an extension of unemployment compensation or an increase in your crime bill. The books are so tight that you wind up feeling like an accountant. But we can't solve the problem with more user fees or other indirect charges. The only way to free up real money is to reduce or eliminate less essential discretionary programs and slow the growth of entitlements.

Another reason for more fiscal discipline is the need for much greater private investment. As you have pointed out, the economy in the 1970's and increasingly in the 1980's moved from a path of high investment to high consumption. This shift contributed significantly to the decline in productivity growth, and family income. To regain vigorous long-term growth, we must return to the levels of investment -- private and public -- that characterized the economy in the 1950's and 1960's. As a number of analysts have argued, further deficit reduction, focused on slowing the growth of federal consumption spending, is a key to such increased private investment. In our judgment, the positive, long-term economic benefits of such a program, appropriately phased in, would greatly outweigh the short-term costs. We are not ready for such a fight in 1994, but we should consider it for 1995-96.

### **Political and Fiscal Landscape for the Balanced Budget Amendment**

Despite the enactment of your five-year budget plan and the enthusiastic response to NPR, the public remains distinctly uneasy about Washington's fiscal habits. In August, some 66% of respondents told pollsters from the *Washington Post* that our economic plan raised taxes too much and cut spending too little. Polls this fall also showed that the public still believes the government wastes 37 to 47 cents of every dollar spent. Stan Greenberg's September polling found that only 51% approved of your handling of the deficit while 42% disapproved. And, on Friday, a *Wall Street Journal/NBC* poll reported that nearly half of those polled said that the Administration is doing a poor job of reducing red ink. All of this suggests the need to keep pressing on fiscal discipline.

The public has also been strongly supportive of a Balanced Budget Amendment. A *Washington Post-ABC* poll this June found that 77% support the Amendment. That helps explain why nearly two-thirds of both the House and Senate supported an Amendment last year, and support continues to grow.

Fortunately, there has been very encouraging progress on the deficit in the short-term, but it is still unclear whether health care reform will bring as much reduction in long-term deficits as we had hoped. Without further action beyond health care reform, there is a risk that the underlying trends you inherited could bring us to the fall of 1996 with a deficit for FY 1996 not appreciably lower than the deficit for FY 1993. Put another way: under the current plan, we are projected to borrow \$1.37 trillion during your first term, versus \$1.53 trillion for President Bush. Should we experience modest underperformance in growth, spending or revenue, the Administration and the Democratic Congress could be exposed to the charge of adding more to the national debt in a single term than any other President. Recent articles in the *National Journal*, *The Atlantic* and *The Washington Monthly* have raised that specter.

Finally, we believe that when you oppose the Balanced Budget Amendment, the threshold question from the press and your political opponents is likely to center on your position concerning the desirability, timing, and method for achieving budget balance.

For all these reasons, your opposition to the Balanced Budget Amendment should be coupled with credible proposals to address the budget deficit over the long-term. (Indeed, this past summer, you told *USA Today* that you believed that the budget could be more or less in balance over 8-10 years without raising taxes.)

#### **Short-Term Response to the Balanced Budget Amendment**

In addition to a clear and credible public rationale against the Amendment (focusing on the Amendment's failure to distinguish between cyclical and structural deficits and the concerns raised by its implementation and enforcement), there are a few positive short-term steps that could be taken:

- \* Insist again that Congress give you a line-item veto or a meaningful version of enhanced rescission authority. (We need to develop background information to show how much can be saved.)
- \* Appoint the Kerrey Commission.
- \* Push hard on the October package.
- \* Ask the Vice President to undertake Round 2 of NPR, even as we work to implement Round I.
- \* Use the conference for Rep. Margolies-Mezvinsky as an opportunity for serious exploration of entitlements.

## **A Systematic Strategy for the Long-Term**

The harder question is what approach we should take to the longer-term. One option is to revisit your theme of the campaign that consumption spending (or all spending) by the federal government should not grow faster than the general economy. As you know, the Progressive Policy Institute has developed this approach and we believe that it deserves serious exploration within the Administration. Following is an outline:

1. Divide the budget into an investment budget and a consumption budget, with a tight definition of what counts as "investment" (e.g. education, training, civilian-related research and development and civilian-related infrastructure).

2. Require a balanced consumption budget by the year 2000, so that deficit spending would be allowed only for investments that pay off in long-term economic growth. (Mechanisms similar to those in the Simon-Stenholm proposal could be used to enforce the consumption balance.)

In practice, CBO currently projects a \$251 billion deficit for FY 2000. Assuming an investment budget of \$176 billion (your 1994 investment budget of approximately \$100 billion increased by 10% each year), this would mean reducing the deficit by an additional \$75 billion in FY 2000. Even with health care reform's projected budget savings of as much as \$37 billion in FY 2000, this level of deficit reduction, assuming no new taxes, would more than likely require middle-class entitlement reforms.

Moreover, this scenario is likely to continue into the foreseeable future. According to CBO, the deficit is slated to rise to \$359 billion in FY 2003. Even the most optimistic health care reform scenario is still likely to leave us with a deficit of over \$200 billion in FY 2003. Again, assuming no new taxes, consumption balance would more than likely mean middle class entitlement reform.

3. Limit the rate of increase in consumption spending (or overall spending) to no more than the rate of growth of the economy. (The budget you passed in August meets this standard, and you should get credit for it.) This would allow you to make the case that federal spending will increase no more than the average family's ability to pay for it.

4. Fashion and employ a base closing-type mechanism to get further cuts adopted.

5. Establish a comprehensive sunset process for programs and tax expenditures. (This would address a structural problem: under current procedures we find it very difficult to get rid of outdated laws that would not be enacted if they were freshly proposed.)

Note that this proposal would not require a balanced budget and, in fact, could leave us, for the foreseeable future, with annual deficits (albeit for investment) in the range of \$150 to \$200 billion. Therefore, you would still be vulnerable if the public continues to embrace balance as its preferred goal.

## **Increasing the Fairness of the Entitlement System**

As indicated above, any attempt to shift the balance of federal spending from consumption to investment, or to balance the consumption budget without new taxes, will require you to slow the growth of entitlement spending. Since the current system favors consumption over investment, and rich over poor, while stinting on the needs of children and youth, making room for public and private investment through entitlement reform also fits well with many of your longstanding concerns.

If you choose to pursue entitlement reform, there are a number of options available, including at least two that have gained public attention. Pete Peterson and the Concord Coalition are promoting separate but similar versions of "affluence testing," which progressively reduces (but never completely eliminates) entitlement benefits based on recipient income for the 42% of Americans earning \$40,000 or more. (The important difference between the overall Peterson and Concord plans is that Peterson calls for an \$85 billion increase or a full 1% increase of Gross Domestic Product in public investment by the year 2000, financed partially through increased taxes.) Under both the Concord Coalition plan and the Peterson plan, affluence testing alone saves approximately \$70 billion in the year 2000. The Progressive Policy Institute has also identified a series of more targeted reforms that remove some of the greatest inequities and excesses in the current system.

We believe that such entitlement reform deserves serious consideration by the Administration as a means for achieving continuing fiscal restraint and freeing up revenue for intelligent investment. It is for this reason that we recommend that the rhetoric you use in opposing the Amendment be carefully constructed to leave you the flexibility to pursue entitlement reform in the future.

November 1, 1993

MEMORANDUM TO BOB RUBIN

From: Gene Sperling  
Subject: Balanced Budget Amendment Overview

We must quickly formulate our strategy for defeating the Simon/Stenholm balanced budget Amendment. Clearly, we need a message for fighting it, and a strategy for mobilizing support against the BBA. Another vital question, is whether or not we will highlight or push an alternative budget discipline proposal as part of our message and to give others an alternative to support in place of supporting the BBA.

**I. BASIC MESSAGE AND STRATEGY:**

The main message we should start with is the following: 1) We stand rock solid behind our deficit reduction plan, and will resist any efforts to soften it, and that only through health care reform can we take on the long-term deficit in a rational but effective way. But that we oppose the current BBA would lead to 2) massive middle class tax increases, 3) massive Social Security cuts for the middle class, and 4) kill any chance for health care reform, and challenge -- in a very public way, Senator Simon -- or other supporters -- to show that he is wrong. The President should say that if people want to support Social Security cuts and middle class tax increases, they should say so and not disguise it under a balanced budget.

There are at least four issues to consider in this message. One, including health care will be effective with members of Congress but may be a mixed message to the public. It will seem that we are saying that health care is vital to deficit reduction, but a balanced budget will hurt it because health care cost money. Two, should we use jobs and economic growth in our basic message. The Simon/Stenholm BBA will clearly be judged to have a terrible job effect by economic modelers. Should we use this as a main part of the message. Three, should we point out that a BBA could create a momentum that could lead to defense cuts unrelated to national security. Four -- and the main issue -- is whether our initial message will be an alternative budget discipline vehicle, which is discussed below.

*Message and Strategy Issues:*

- **The Health Care Hook for Switching Votes:** Some members may have signed on to the balanced budget amendment in the midst of campaigns and may not have realized how draconian a course that might be setting the nation on, but may not have a hook to switch positions. Health care may not only be a good argument for opposing the balanced budget -- it may be a hook for someone switch positions. Clearly, a balanced budget amendment would kill any chance of longterm care or prescription drug benefits, and ensure that most Medicare and Medicaid savings that would have gone to health care reform, would instead be targeted toward deficit reduction. These

fiscal and political realities would seriously impair the chances for health care reform. Because of this, a Senator could say that they supported a balanced budget amendment but now that there is a serious health care plan that can bring down the deficit in the long-run, it does not make sense to pass an Amendment that would destroy any chance for health care reform. It would be especially powerful if we could get even one Senator to change their position based on health care and to write an op-ed explaining their position.

- **Mobilize the Unfunded Mandate Crowd:** All of the mayors and governors who are mobilized to fight unfunded mandates must realize what a terrible position they will be put in if the Amendment passes. First, tremendous funds that currently go to states and cities in terms of investments will be cut. Second, taxes will inevitably have to be raised making it all the more difficult for states to raise revenues to make up for a degree of retrenchment that will create nostalgia for the Reagan cut backs. Third, with the federal government under so much pressure to balance the budget in the least painful ways, there will be a tremendous potential for shifting burden -- read, unfunded mandates -- to the states. Governors and mayors have to realize that this amendment will be the ones on the front lines when the police and support is cut and will be forced to make the tough choices or take the blame.

- **The National Security/National Defense Argument:** If we have to balance the budget, there is no question that the major pools of funds available will be middle class taxes, Social Security and Medicare. When the political reality of those requirements hits, there is no question that there will be a move to find a new pool of funds and that this pool will be defense spending. This may be why Sam Nunn has traditionally supported entitlement caps as opposed to balanced budget amendments. It might even add an interesting twist if we hit on this point: the President would be seen as opposing a balanced budget amendment not only because it hurts the middle class and economic growth but because he is afraid it will lead to imprudent decisions that will hurt our national security.

- **Job/Growth Impact:** An economic analysis of the balanced budget amendment -- of taking out \$600 billion over the next five years -- is likely to show substantial job loss and reduction in economic growth forecasts. Currently some of the groups opposing the BBA are having Wharton update a 1992 study they did. An outside group like DRI could also be asked to do just a study. This could also -- and should also -- be state by state. A state-by-state could allow for some analysis of what voting for the BBA would do for defense conversion and California specifically. For California and other large states, it would mean billions less in education, defense conversion while costing hundreds of thousands of jobs. If major members of our cabinet go to the right states and make that message -- especially if those Administration officials go to their home states -- we could start to break through.

● **Budgets By Courts:** Another argument that has been used often in the balanced budget debates is the strong likelihood that any of these issues will likely be vague enough that courts will end up making major budgetary decisions and that we should not pass laws or amendments that would thrust the courts into making these type of overall budgetary decisions. Scholars from Tribe to Bork have publicly opposed balanced amendments for such reasons.

## II. ALTERNATIVE BUDGET DISCIPLINE:

We left the balanced budget discussion with the understanding that we should consider vehicles that would be options to the Simon/Stenholm BBA.

**1. Capital Balanced Budget:** The President, as well as people like Bob Reich and others have long called for a capital budget, in which borrowing for investment would be given a different status than borrowing for consumption. When asked about the balanced budget in June of 1992, candidate Clinton would state that every family knew the difference between investing in a home and investing in a meal (planting corn and eating your seedcorn.)

A capital balanced budget could be a vehicle to focus the attention on the distinctions between investments and consumption, and provide a deficit reduction context that would make it easier for members of Congress to oppose the Simon/Stenholm bill.

The problem with a capital balanced budget is that it create an incentive for everything to be labeled "capital" or an "investment." This is no small problem. If the political process is given permission to spend anything that can be labeled an investment, this could be nothing but a loophole for spending without accountability. There are ways to address this, but all of them are problematic.

**A) Physical Infrastructure:** One of the most logical ways to limit the slippery slope problem is to limit the classification of investment to physical infrastructure. This is what states do and it is capable of some limits. Yet, the notion that the main investment role of the federal government is infrastructure -- as opposed to education, training, technology -- is counter to our economic philosophy. Indeed, to the extent that we would be supporting a balanced budget for the non-capital part of the budget, we would be relegating education and training to the part of the budget that would be have to be seriously squeezed to be in balance. And most likely, it would be hard to keep many mainly defense spending and office buildings off the capital budget.

**B) Including Investment in People:** The answer to the problems mentioned above would be to include human capital in the capital side of the budget. Yet, we would have to have some sense of what the limits of this are. Most people, for example, would think that WIC was an investment, yet the same people would feel that certainly most health care must be seen as consumption. In the 1970s when New York

City tried to put some welfare costs on the capital side of the budget, it was considered a budgetary scandal. One thought would be to limit the definition purely to education or training. In that case the training component of welfare reform would be on the capital side of the budget, while the portion that went to general support would not be. But how about in the comprehensive training proposal where the support is seen as the foundation that allows for long-term training?

**C) Independent Commission:** One answer that is likely to be heard is to have an independent, Federal Reserve-like, investment commission that would be independent and would set the standards on what should be on what side of the budget. This could take care of the most crude political problems (deals where non-investments are included as investments as part of compromises and logrolling). Yet, it would be a incredible delegation of a profound political decision to a non-accountable, non-democratic body. A new commission philosophy that there was no proof that elementary school education had serious social returns would dictate a tremendous amount of our national priorities. Still a good case could be made that this is still better than the status quo.

**D) Counter-cyclical Concerns:** Clearly a Clinton proposal must be consistent with sensible macroeconomic policies. A recent outside memo calls for limiting the non-investment part of the budget to growth in real GDP. The problem here is that this has the same flaw as the Simon and Stenholm balanced budget amendment: it would call for cutting entitlements that serve as counter-cyclical cushions just at the time when the economy is weak and they are needed. Thus, we must devise a proposal that allows for growth in entitlements when they are driven by more people being eligible for benefits because of a downturn in the economy. This could be done by making a sliding scale where increases are allowed in proportion to declines in GDP and unemployment or by making specific allowances for increases in the beneficiary population or benefits that are driven by economic slowdown.

**E) Political Concerns:** The concerns about limiting the capital balanced budget are both substantive and political. Even if we are able to devise a balanced budget Amendment that allows for a capital budget, the idea will not go far if it portrayed and perceived as nothing more than a vehicle for politicians to use the words "investment" as a hook for a new era of fiscal irresponsibility. If it was portrayed and perceived that way, it would also be hard for the capital balanced budget to be used to peel of current supporters of the Simon/Stenholm balanced budget proposal.

**F) Best Possible Capital Balanced Budget:** This is worth trying on the same principle on the principle that in many ways anything might be better than the status quo -- which is a budget in which no distinctions are made at all between investment and consumption. At least, an investment budget would focus national debate where it should be: what is consumption that must be dealt within a budget, and what is a good investment that we is worth borrowing for because of the high returns. Yet, if we

cannot do anything to answer the questions, "how do we decide what is on the 'capital' side" and "how do prevent unlimited spending on the capital side?" than such an idea may not get anywhere. We should see what our best proposal is and test it internally.

**2. A Better Balanced Budget Alternative to Simon/Stenholm:** Another option is to put forth a better balanced budget amendment, but one that is not simply a capital balanced budget amendment. This would be the most successful strategy for peeling off some of the 60 Senators who are currently supporting the Simon amendment. If a serious balanced budget proposal was put forward that did not have supermajority requirements for raising the debt limit, and had better cushions for economic downturns, it could give cover for some of the Democratic supporters of Simon to switch to the new amendment and destroy the coalition Simon is putting together. The downside here is serious. It must be considered that if the President puts forth a non-capital balanced budget Amendment, those supporting it might do just what we are trying to do on universal coverage -- highlight that we have all agreed on the principle and say the debate is now only on the means to achieving it. Simon and others might even decide to come over if it means having the President behind him. In which case, we would have created a monster that would still destroy health care and our other basic investment priorities.

**3. Entitlement Cap:** Currently, we are close to having a post-health care reform entitlement cap. Any entitlement cap is largely a health care cap, as Social Security is generally tied to inflation and most other entitlements do not rise much above inflation. Under our current health care proposals, we are therefore close to a de facto entitlement cap. Most Medicaid recipients are being put into the alliance, whose premium costs are capped. The new discounts funds are capped. Medicare is not capped, but we have the types of savings (\$124 billion) that bring the growth rate down significantly. If we were willing to cap Medicare in the Nunn-Domenici style (CPI+pop+1), we could construct our own entitlement cap that we would propose.

A Clinton entitlement cap would be that following the passage of health care reform, there would be an entitlement cap that would be limited to inflation, plus beneficiary population, plus 2% or less. A Clinton entitlement cap would also make much better provisions for preserving the counter-cyclical function of entitlement spending -- such as a sliding scale that allows greater spending proportionally to the degree that growth falls under 2.0% or unemployment rises to a certain level. The key here is that the cap must have built into the baseline the additional spending we are planning for the discounts, long-term care, and prescription drugs. Thus, once we have both the cuts from Medicare and Medicaid and the new programs needed for health care reform, that post-health care reform baseline would be limited to inflation plus other relevant factors.

The key here is that if this is inevitable -- if health care is not going to be passed without a Medicare cap -- we could put this together and make an entitlement cap that we could propose (perhaps with Nunn). The advantage of this is twofold: one, it would allow us

to get the fiscal responsibility bang for affirmatively leading with a Clinton entitlement cap, and two, by designing it ourselves, we could ensure that there are protections for the poor and for economic downturns. The downside is also two-fold: First, it is not clear that an overall entitlement cap is good policy, as it could lead to cuts to the most needy Americans and it could take away needed savings we need to fund initiatives on the PAYGO side of the ledger, such as comprehensive worker training and welfare reform. Second, it might send the senior groups over the edge if we were to propose a cap on Medicare -- although they might feel differently if they thought that this was necessary for defeating a balanced budget amendment.

**4. Means Testing Entitlements:** The Concord Coalition is calling for a massive means testing proposal, that would save as much as \$68 billion a year by means testing every entitlement including Social Security for everyone making over \$40,000. Clearly, this is not a proposal we want to support. *On the other hand, I believe that we can not afford to be against any means testing for those at higher incomes. How can we as progressive, new Democrats oppose proposals by others who call for limiting the amount of entitlement spending going to the most well-off Americans?* If we support limited means testing, we will face significant opposition from our base, and we would have to deal with Social Security with sensitivity (and consultation with the senior Senator from New York). Nonetheless, if this train is going to gain momentum, I don't believe that we should let ourselves get run over by it. We should start considering a means testing internally for upper income Americans, with savings going to welfare reform, training and some deficit reduction by the fifth year of the plan.

**5. Line-item Veto/Enhanced Recission:** Since we have supported such proposals on a policy basis, this would be a good proposal message and policy-wise. Yet, we should check on this carefully with Paster as to how it would affect the Congressional coalition we need to defeat the balanced budget amendment.

November 3, 1993

NOTE TO GENE SPERLING

FROM: Jody Greenstone *JAG*

RE: Letter to Leadership on the Balanced Budget Amendment

In the context of fighting to defeat the Balanced Budget Amendment, I believe there are two potential political pitfalls which should be considered.

First, it is important that the President not diminish his hard-earned credibility on continued fiscal restraint. If the press and the public perceive that the President is opposed to the amendment because of the "painful choices" balance would require or because of our desire to spend more money on investments, the seriousness of his underlying concern for cutting spending and maintaining true fiscal restraint would be questioned. Moreover, this risk will be intensified because credible, bipartisan voices like Pete Peterson and Paul Tsongas will concurrently be calling for precisely these "painful choices" as the only path to restore economic prosperity and the American dream. Finally, the decision to avoid committing to a balanced budget by a date certain -- even a date after a second term -- (a point which is sure to be repeatedly raised) will only exacerbate our credibility problem on this issue.

While I understand the overriding importance of defeating this amendment, we should not underestimate the importance of keeping the President on the high ground on budget discipline. The momentum of the Balanced Budget Amendment itself coupled with consistent poll data attests to the public's concern for this issue and their belief that we have not done enough. Moreover, as David, Bill and I argued in our memo, the President's ability to increase investment (and gain the confidence of skeptics on the budgetary impact of health care) would be enhanced by reinforcing his genuine concern for fiscal discipline.

In short, opposition to the Balanced Budget Amendment which rejects the measures that would be required to bring the budget even close to balance -- even over a long period of time -- will erode our credibility on the essential political issue of fiscal restraint.

Second, there are a number of reasons why the President may choose in the future to consider some of these "painful choices." For example, if things do not go as we now forecast, the President could find himself on the verge of being the biggest borrowing President in history on the eve of the 1996 election. Or he may decide that some of the "painful choices" are the only way to free up real money to fund the investments he believes this country needs. If we discredit these "painful choices," we limit our flexibility to rely on them in the future.

I believe we can make a compelling public case against the amendment without resting our case on the undesirability of "painful choices" and exposing the President to these two risks. (Note, that using a "painful choice" strategy in private legislative meetings would not pose the same concerns.) Laura's draft letter makes all of the right arguments. I have attached her

draft with some minor language changes I would propose to strengthen the rhetoric on commitment to fiscal restraint and to clarify the impact of our current initiatives (i.e. make certain we don't overpromise).

However, I am most concerned about paragraphs 3 and 4. My preference would be that they be deleted for the reasons described above. Alternatively, I would propose minimizing the specifics and tying our concerns to the required pace of balance. I have edited the attached letter in this manner. I recognize that emphasizing the pace of balance exposes us to greater pressure to state our preferred pace and, thus, commit to a date of our own to balance the budget. However, I believe we will face this pressure anyway and this strategy allows us, at a minimum, to maintain more credibility and flexibility on the key issue of fiscal responsibility.

cc: David Gergen

JAG 11/2/93

DRAFT LETTER TO THE LEADERSHIP CONCERNING THE BALANCED BUDGET AMENDMENT

10/27/93

Dear:

*am firmly committed*

I write to express my firm opposition to the proposed balanced-budget amendment to the Constitution of the United States (S.J. Res. 41 and H.J. Res. 103). While I ~~applaud the goal of further~~ deficit reduction, and look forward to working with the Congress toward that end, a balanced-budget amendment--which is more slogan than solution--is not the right vehicle. More important, the proposed amendment endangers both the economy and the Constitution.

The balanced-budget amendment is, in the first place, bad economics. As you know, the Federal deficit depends not just on Congressional decisions, but also on the state of the economy. In particular, the deficit increases automatically whenever the economy weakens. If we try to break this automatic linkage by a Constitutional amendment, we will have to raise taxes and cut expenditures whenever the economy is weak. That not only risks turning minor downturns into serious recessions, but would make recovery from recession far more difficult. Contractionary fiscal policy in the 1930s turned an economic slowdown into a Great Depression.

*This*  
Let's be clear: This is not a matter of abstract economic theory. A balanced-budget amendment would threaten the livelihoods of millions of Americans. I cannot put them in such peril.

*It is a gimmick that allows public officials to hide the tough choices that must be made to help reduce the deficit.*  
The amendment by itself would not reduce the deficit by a single penny. Programmatic changes would have to be made. Given the current outlook for the FY99 budget, the amendment would require ~~one of these painful choices: a huge increase in taxes on the middle class, a dramatic reduction in Social Security, or debilitating cuts in Medicare and Medicaid that would make a mockery of health security for millions of Americans and might kill the prospects for meaningful health care reform.~~ I am firmly opposed to all three of these alternatives, and I believe that most members of Congress are equally opposed.

*The pace at which this amendment requires balance is not*

What would happen if the balanced-budget amendment were passed and easy political rhetoric gave way to tough political choices? The most likely outcomes are gridlock and accounting subterfuge. Where economic policy is concerned, the amendment virtually changes the definition of a democratic majority to 60%, and it is virtually impossible to imagine a 60% vote in favor of the unpalatable choices that would be required to balance the budget by the end of this decade. A gridlocked Congress would encourage members to look for an easy way out--for example, by

moving more federal programs off budget or by imposing more unfunded mandates on the states. Ironically, the amendment might easily encourage less rather than more fiscal responsibility.

Enforcement of the balanced budget amendment would be problematic at best and nightmarish at worst--possibly even precipitating a Constitutional crisis. Economic policy would wind up being made in the Courts rather than in the Congress, threatening the very integrity of our Constitution.

There are far better ways to reduce the deficit. As you know, I worked tirelessly with the Congress to gain passage of the largest deficit reduction package in the nation's history. I am now working to ensure that my health-care plan is a deficit-reducer rather than a deficit-increaser for I continue to believe that controlling health-care costs ~~is~~ key to long-term deficit reduction. Enacting the savings proposed in the National Performance Review would also go a long way toward <sup>contributing</sup> to resolving our deficit problem. So would procedural innovations such as enhanced rescission authority or a line-item veto. We might also follow the lead of many states and other nations by developing a separate capital budget distinguishing between the current operating expenses and the investment programs financed by the federal government. The Kerrey commission will come forward with suggestions on controlling entitlement costs. Finally, I have just submitted an additional deficit-reduction package to the Congress. While I am open to these and other possibilities, I am not open to a rigid Constitutional amendment that would create more problems than it solved.

I remain firmly committed to the <sup>the</sup> goal of deficit reduction. But I am just as firmly opposed to ~~the~~ balanced budget amendment. Not only does it do nothing to realize this goal but it is both bad law and bad economics. It would threaten the Constitution and imperil the macroeconomic stability of the nation.

Yours truly,

William J. Clinton

TO DAC Sta

### Clinton Balanced Budget With Tax Cut January 18, 1996

*Balanced Budget*

Medicare	124
Medicaid	59
Discretionary	297
Welfare	41
EITC	5
Other Mandatory	67
BLS Adjustment	19
Corporate Loophole Subsidies	46
Tax Compliance	10
Misc. Revenues	8
Net Interest	83
<b>Gross Deficit Savings</b>	<b>740</b>
Tax Cut	-130
Trigger Savings	29
<b>Net Savings With Tax Cut</b>	<b>639</b>
<b>Deficit in Year 2002</b>	<b>+4 Surplus</b>

\*\* All number are in billions of dollars over 7 years.

## Clinton Balanced Budget With Tax Cut

### Title I: Consensus Balanced Budget Plan

	7 Year Savings	2002
Non-Defense Discretionary	297	98
Medicare	124	38
Medicaid	59	19
EITC	5	1
Poverty	41	8
Other Mandatory	87	26
CPI	10	6
IRS Compliance	10	2
Interest Savings	73	28
<b>TOTAL</b>	<b>895</b>	<b>226</b>

### Title II: Choice of Two Tax Cut Proposals

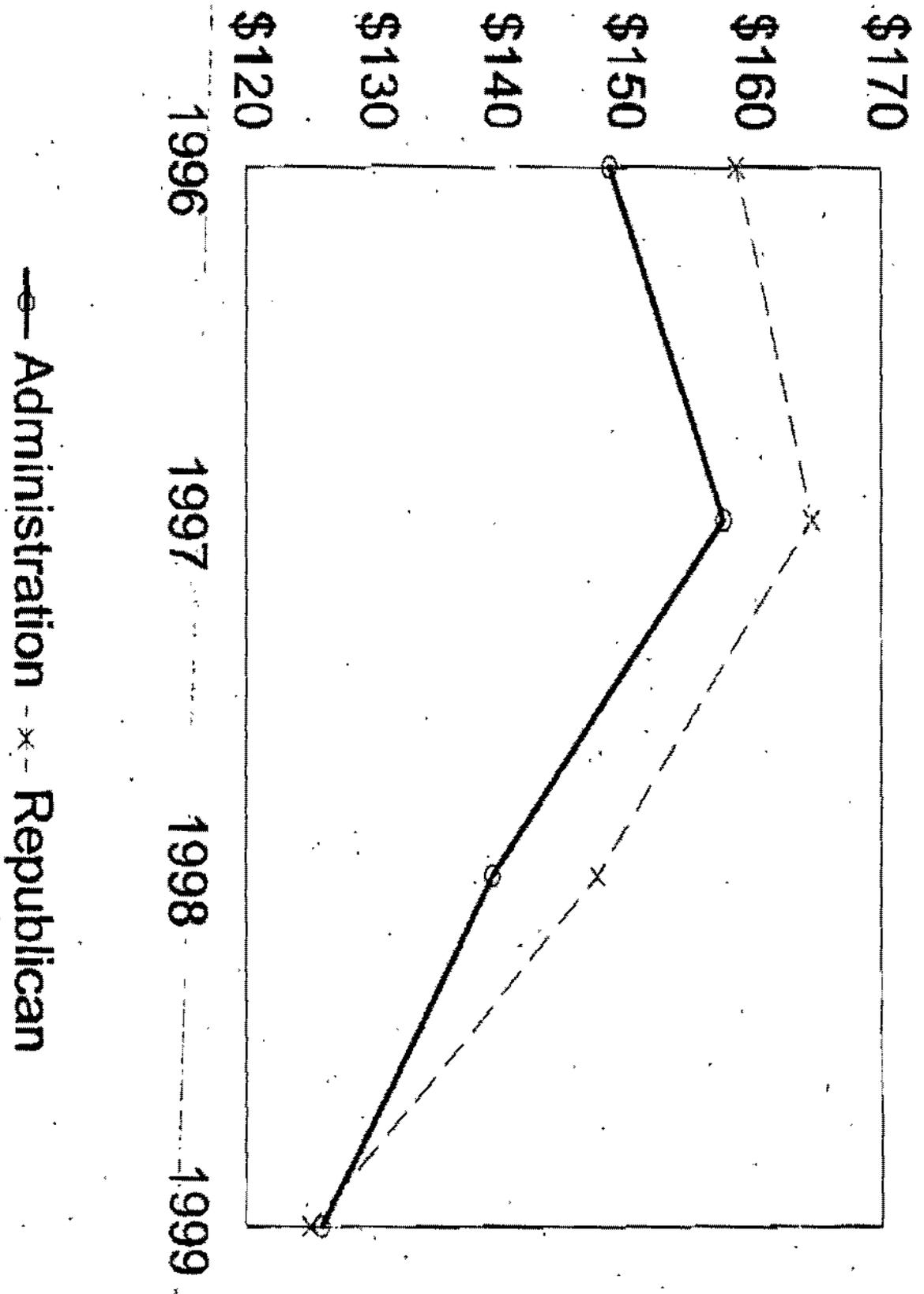
	Clinton Tax Cut	Republican Tax Plan
Gross Tax Cut -- [w/o trigger]	-130	-245
Gross Tax Cut -- [CBO w/trigger]	-101	-203
Corporate Subsidies	46	28
Misc. Revenues	9	2
<b>Extra Cuts To Pay For Tax Cut</b>		
Medicare	0	44
Medicaid	0	26
Discretionary	0	52
Welfare	0	18
EITC	0	10
<b>Deficit in 2002</b>	<b>+4 Surplus</b>	

**Common Ground Balanced Budget Savings**  
January 18, 1998

	<u>Democrats Latest Offer</u>	<u>Republicans Latest Offer</u>	<u>Minimum Agreed To By Both Sides</u>
Medicare	124	168	124
Medicaid	59	85	59
Corporate Subsidies And Tax Compliance	56	26	26
Discretionary	297	349	297
Welfare	41	60	41
EITC	5	15	5
Other Mandatory	67	69	67
BLS Adjustment	19	19	19
Net Interest	73	73	73
<b>TOTAL DEFICIT REDUCTION</b>			<b>711</b>

# Administration and Republican Deficits

## CBO Assumptions (Billions)



—○— Administration —×— Republican