

Background

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Considering a Balanced Budget Amendment: Lessons from History

The Honorable Ernest J. Istook, Jr.

Abstract: Attempts at passing a balanced budget amendment (BBA) date back to the 1930s, and all have been unsuccessful. Both parties carry some of the blame: The GOP too often has been neglectful of the issue, and the Democratic Left, recognizing a threat to big government, has stalled and obfuscated, attempting to water down any proposals to mandate balanced budgets. On the occasion of the July 2011 vote on a new proposed BBA, former Representative from Oklahoma Ernest Istook presents lessons from history.

A proposed balanced budget amendment (BBA) to the Constitution is set to be considered by Congress this July—the first such vote since 1997.

The BBA is a powerful proposal that attracts great vitriol from the American Left, which recognizes it as an enormous threat to its big-government ways—perhaps the greatest threat. For that reason, the history of Congress's work on a BBA is full of frustrations, high-profile defections, reversals, and betrayals.

This paper discusses that history. It also describes some of the milquetoast versions and amendments that have been offered to gut the BBA while providing political cover for those who are unwilling to support a robust version.

Brief History

Thomas Jefferson wrote in 1798, "I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government; I mean an additional article taking from

Talking Points

- A proposed balanced budget amendment (BBA) to the Constitution is set to be considered by Congress this July—the first such vote since 1997.
- Both Democrats and Republicans share blame for the past failures to pass a BBA: the Democrats through denunciation and opposition, the Republicans through neglect.
- The BBA had been the number one item on the GOP's Contract with America legislative agenda in 1994, but after a successful 1995 House vote, House GOP leaders refused all entreaties to bring it up again.
- Many Democrats have long histories of favoring a BBA in principle, only to turn their backs on it later or attempt to gut it by creating major loopholes.
- It remains to be seen who will support the new, tougher versions of a balanced budget amendment (BBA-plus). Those who do not learn the lessons of history are doomed to repeat its failures.

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the Federal Government the power of borrowing.”¹ Yet according to the Congressional Research Service,² the first balanced budget amendment was not proposed until 1936, when Representative Harold Knutson (R-MN) introduced House Joint Resolution 579, proposing a *per capita* limit on federal debt.

No BBA measure passed either body of Congress until 1982, when the Senate took 11 days to consider it and mustered the necessary two-thirds majority on the version crafted by Senator Strom Thurmond (R-SC).³ A companion measure received a vote of 236 to 187 in the House—short of the required two-thirds. Despite opposition from Speaker Thomas “Tip” O’Neill (D-MA), the floor

vote was obtained by means of a discharge petition led by Representatives Barber Conable (R-NY) and Ed Jenkins (D-GA).⁴

Subsequently, continuing opposition from Speaker O’Neill and his successor, Jim Wright (D-TX), prompted creative use of discharge petitions to circumvent leadership opposition. Several House votes were held in the early 1990s, when Representative Charles Stenholm (D-TX) led bipartisan coalitions to force Democratic leaders to permit (unsuccessful) floor votes. At the time, even prominent Democrats such as Representative Joseph Kennedy (MA) openly supported the BBA and voted for it. There were multiple House and Senate votes, but all were unsuccessful.⁵

1. Thomas Jefferson, *Letter to John Taylor of Caroline*, November 26, 1798, in *The Writings of Thomas Jefferson*, Memorial Edition, Vol. 10, ed. Andrew A. Lipscomb and Albert Ellery Bergh (Washington, D.C.: Thomas Jefferson Memorial Association of the United States, 1903–1904).
2. James V. Saturno, “A Balanced Budget Amendment Constitutional Amendment: Procedural Issues and Legislative History,” *Congressional Research Service Report for Congress* No. 98-671, August 5, 1998.
3. Senate Joint Resolution 58, authored by Senator Strom Thurmond (R-SC), was passed by a vote of 69 to 31 in the Senate but died in committee in the House. Section 1 reads: “Prior to each fiscal year, the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts. The Congress may amend such statement provided revised outlays are no greater than revised receipts. Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipts by a vote directed solely to that subject. The Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth in such statement.” See Congressional Budget Office, “Balancing the Federal Budget and Limiting Federal Spending: Constitutional and Statutory Approaches,” September 1982, at <http://www.cbo.gov/doc.cfm?index=5125&type=0> (July 13, 2011).
4. James V. Saturno, “A Balanced Budget Constitutional Amendment: Background and Congressional Options,” *Congressional Research Service Report for Congress* No. 97-379, March 20, 1997.
5. As compiled in U.S. Senate Republican Policy Committee, “S.J. Res. 1—Balanced Budget Constitutional Amendment,” *Legislative Notice* No. 1, February 4, 1997, at <http://rpc.senate.gov/releases/1997/v5.htm> (July 12, 2011):
 - “**103rd Congress.** On **March 1, 1994**, the **Senate** failed by four votes to adopt a balanced budget constitutional amendment (S.J. Res. 41). Forty-one Republicans and 22 Democrats voted for the proposal; 3 Republicans and 34 Democrats voted against it. On **March 17, 1994**, the **House** again failed to obtain the two-thirds majority necessary for passage (H.J. Res. 103).
 - “**102nd Congress.** On **June 9, 1992**, the **House** again narrowly failed to reach the necessary two-thirds majority. The **Senate** failed to obtain cloture on a balanced budget amendment on **June 30, 1992**, and again on **July 1, 1992**. In each case, the vote was 56 (41 Republicans and 15 Democrats) to 39 (no Republicans and 39 Democrats).
 - “**101st Congress.** On **July 17, 1990**, the **House** voted on a balanced budget constitutional amendment, but the House fell a few votes short of the necessary two-thirds (H.J. Res. 268).
 - “**99th Congress.** On **March 25, 1986**, the **Senate** failed by one vote to adopt a balanced budget constitutional amendment (S.J. Res. 225). Forty-three Republicans and 23 Democrats voted for the proposal; 10 Republicans and 24 Democrats voted against it.
 - “**97th Congress.** The **Senate adopted** a balanced budget constitutional amendment on **August 4, 1982**, by a vote of 69-to-31 (S.J. Res. 58). Forty-seven Republicans and 22 Democrats voted for the amendment; seven Republicans and 24 Democrats voted against it. The Senate proposal was not voted on in the House, but the **House** did vote on H.J. Res. 350 on **October 1, 1982**, failing to obtain the necessary two-thirds majority.”

The first and only time the House gave two-thirds approval to a balanced budget amendment was in 1995, when Members voted for the “Contract with America” that helped Republicans win major congressional majorities. That was the last time the House held a floor or committee vote. Since then, the Senate has failed twice—each time by a single vote—to gather the two-thirds needed.⁶

Defections Block BBA Approval

Three Senators were the key defectors who prevented Congress from approving a balanced budget amendment in the 1990s. One actually had never supported it and bucked his party to oppose it. The other two flip-flopped in order to go along with their party in opposing the BBA.

First, in 1995, Senator Mark Hatfield (R–OR) took the heat when he would not join his party in support of a BBA. But Hatfield’s vote would have been unnecessary had Senator Tom Daschle (D–SD) not reversed years of prior support to oppose the BBA at President Bill Clinton’s urging.

Then, in 1997, the measure again failed by a single vote in the Senate when newly elected Senator Robert Torricelli (D–NJ) broke his campaign pledge and refused to support the same BBA that he had supported as a House member.⁷

More recently, many House Democrats who voted for the BBA in 1995 are now saying they will vote no in 2011. Most notable among these is House Democratic Whip Steny Hoyer (D–MD).

Senate Defections

Senator Hatfield called the BBA a “political gimmick,” and his high-profile defection broke GOP party unity. Less noticed was that his opposition could have been a moot point. Then-Senate Majority Leader Bob Dole (R–KS) told *The New York Times*

that Hatfield offered to resign before the vote—a resignation that would have produced a 66-to-33 victory for the BBA—but Dole refused to accept the resignation offer.⁸

Still, with or without Hatfield’s vote or resignation, the BBA would have prevailed in the 1995 Senate vote were it not for Senator Daschle’s reversal. That flip-flop is described in a book about his later ousting from office by the voters:

Although the balanced budget amendment had not been a major issue nationally for several years, it provided a striking contrast between Daschle’s first campaign in 1978 and his early career in Congress, when he consistently promoted the amendment, and his later years in the Senate. During his last competitive Senate bid in 1986, Daschle ran a television ad saying that “in 1979, Tom Daschle saw the damage these deficits could do to our country. His *first official act* was to sponsor a Constitutional amendment to balance the budget.” In 1992, Daschle’s campaign literature touted the “Daschle Plan,” which included the balanced budget amendment: “In 1979, before it became popular, I was pushing a balanced budget amendment to the Constitution. It was my first official action, and I’ve authored or coauthored one every year.” In 1995, the amendment had the support of sixty-six of the sixty-seven senators needed for passage, but Daschle voted against it because of opposition from the Clinton administration.... When pressed on the amendment in the last [2004] television debate, Daschle said that he had opposed the bill in the 1990s because there were no provisions in the amendment allowing for emergencies such as war. But the record showed that there was an emergency clause.⁹

6. The author sponsored BBA legislation for many years until he left Congress in 2006 but was unsuccessful in persuading the then-GOP majority leadership to bring the measure to the floor for votes.
7. In a news conference announcing his reversal, Torricelli said that henceforth he would support Democratic versions of a BBA, but not Republican versions. See “Balanced Budget Amendment,” C-SPAN video, February 26, 1997, at <http://www.c-spanarchives.com/program/BalancedBudgetAmendment78> (July 12, 2011).
8. John H. Cushman, Jr., “Dole Says Hatfield Offered to Quit over Balanced-Budget Vote,” *The New York Times*, March 6, 1995, at <http://www.nytimes.com/1995/03/06/us/dole-says-hatfield-offered-to-quit-over-balanced-budget-vote.html> (July 12, 2011).
9. Jon K. Lauck, *Daschle vs. Thune: Anatomy of a High-Plains Senate Race* (Norman: University of Oklahoma Press, 2007), pp. 171–172.

In 2011, Daschle has penned several articles denouncing the BBA, complaining that it would make the country's fiscal crisis even worse and would tie lawmakers' hands.¹⁰

The 1997 effort to approve the BBA failed in the Senate by a single vote, just as it had in 1995. This time it was Senator Torricelli doing the political acrobatics. As the *New York Daily News* described it:

Sen. Robert Torricelli (D–N.J.) yesterday announced he will vote against the balanced budget amendment to the Constitution giving Democrats the one-vote margin they need to kill it. The freshman senator flipped on his campaign pledge to support the amendment and on his own past voting record in the House in favor of similar proposals. “I have struggled with this decision more than any I have ever made in my life,” Torricelli said....

Torricelli acknowledged that he had campaigned in support of the amendment to win his Senate seat last year and had voted three times in favor of similar amendments as a House member. But he said President Clinton's efforts in bringing down annual budget deficits from \$300 billion to \$100 billion, and the President's commitment to a balanced budget by 2002, had relieved the pressure for a constitutional amendment.¹¹

Trying to give himself political cover, Torricelli tried but failed to get the Senate to support a loophole-riddled version.

House Reversals

Chief among Representatives who supported a BBA in 1995 but say they will actively oppose it in 2011 is Representative Hoyer. In 1995, he even helped to garner votes for the BBA. As the *Baltimore*

Sun reported at the time, “The issue of a balanced budget is not a conservative one or a liberal one, and it is not an easy one,” said Mr. Hoyer, who said he fears the consequences of a national debt that is headed toward \$5 trillion. “But it is an essential one.”¹² Arguing for the BBA on the House floor in 1995, Hoyer said:

[T]his country confronts a critical threat caused by the continuation of large annual deficits.... I am absolutely convinced that the long term consequences of refusing to come to grips with the necessity to balance our budget will be catastrophic.... [T]hose who will pay the highest price for our fiscal irresponsibility, should we fail, will be those least able to protect themselves, and the children of today and the generations of tomorrow.¹³

Hoyer reversed course after rising to high leadership within his party, as did Daschle. Daschle did a turnaround against the same language he previously had supported. Hoyer, however, argued that the latest 2011 version (with tax limitation and size-of-government limits) had gone beyond what he originally supported in 1995:

It would require drastic and harmful cuts to programs like Medicare, Medicaid, and Social Security, programs that form the heart of America's social compact.... Unlike previous balanced budget amendments, this amendment would mean great pain for ordinary Americans, even as it shielded the most privileged from any comparable sacrifice. It is not a solution to our nation's pressing fiscal challenges.¹⁴

It is an open question how other Democrats who supported the 1995 version of the BBA will vote on

10. Tom Daschle, “The Trouble with the Balanced Budget Amendment,” *The Wall Street Journal*, June 4, 2011.

11. Richard Sisk, “Torricelli Says No To Balanced Budget,” *New York Daily News*, February 27, 1997, at http://articles.nydailynews.com/1997-02-27/news/18043424_1_torricelli-amendment-balanced-budget (July 14, 2011).

12. Karen Hosler, “Balanced Budget Amendment Appears Headed for House Approval,” *The Baltimore Sun*, January 26, 1995, at http://articles.baltimoresun.com/1995-01-26/news/1995026096_1_balanced-budget-budget-amendment-constitutional-amendment (July 12, 2011).

13. *Congressional Record*, U.S. House of Representatives, January 26, 1995, p. H761.

14. Mike Lillis, “Hoyer to Whip Dems Against Balanced Budget Amendment,” *The Hill*, July 13, 2011, at <http://thehill.com/homenews/house/171389-hoyer-to-whip-dems-against-balanced-budget-amendment> (July 14, 2011).

the tougher 2011 version.¹⁵ They include another member of the current Democratic House leadership, James Clyburn (SC).

The GOP was also guilty of abandoning the BBA—by neglect. The BBA had been the number one item on its Contract with America legislative agenda in 1994, but after the single (and successful) 1995 House vote, House GOP leaders refused all entreaties to bring it up again. No House or Senate vote has been held since Torricelli's dramatic about-face in 1997.

For part of the time while Republican leaders were dormant on a BBA, the budget was balanced. Rather than spotting an opportunity to cement that condition into a permanent requirement, however, some saw it as proving that a BBA is not needed.

During that time when the federal budget was balanced without a BBA requirement (fiscal years 1998–2001),¹⁶ Congress had political incentives to maintain that balance. However, after 9/11, Washington not only ramped up national security spending, but also let other spending rise significantly. The prevailing notion seemed to be that if the budget was not balanced, then it mattered little just how far out of balance it was.

That experience illustrates not only the need for a proper BBA, but also the need for any national security exceptions to be drafted narrowly, to permit deficits only to the extent necessary to provide for non-routine defense circumstances and not to justify unrelated deficit spending.

Watering Down the BBA

The versions of the BBA to be voted on in 2011 are improvements over the Contract with America. Because of this strengthening, the current versions are described herein as “BBA-plus.”¹⁷

Simply put, the additional features require a supermajority to raise taxes; create limits on the level of federal spending (as a percentage of the national economy); tighten the permitted and limited exceptions to a balanced budget; and limit the potential for judicially imposed tax increases as a means of enforcement.

According to their strictness, different variations in proposed texts could be considered good, better, and best, with a full-featured BBA-plus being the best. But the greater the strictures, the more difficult passage becomes. Many pro-BBA lawmakers have therefore introduced and supported versions that were not as strong as they prefer but have greater likelihood of adoption.

These variations also create potential for mischief. Because they recognize the huge popular support for the BBA, many opponents have attempted to offer amendments and variations that would water down or emasculate the provisions of the BBA so that they could posture as supporters while justifying their “no” votes. The following is a historical synopsis of those tactics.

Taking Social Security Off-Budget. The most prominently advanced effort to weaken a BBA is a provision to separate Social Security payments and receipts from the requirements for a balanced budget. Amendments to do so were offered in both the House and Senate from 1995 to 1997. Senator Harry Reid (D–NV) was a principal leader of that effort in 1997.

Reid and others argued that removing Social Security from a BBA would protect the program from spending cuts. They argued that its funds do not actually constitute government spending since the program involves a trust fund. This ignored the fact that the entirety of the trust fund has been

15. The remaining House Democrats who voted for the 1995 version are Robert Andrews (NJ), Jim Clyburn (SC), Jerry Costello (IL), Peter DeFazio (OR), Michael Doyle (PA), Steny Hoyer (MD), Marcy Kaptur (OH), James Moran (VA), Frank Pallone (NJ), Collin Peterson (MN), and Peter Viscoskey (IN).

16. Congressional Budget Office, *Budget and Economic Outlook: Historical Budget Data*, January 2010, Table F-1, “Revenues, Outlays, Deficits, Surpluses, and Debt Held by the Public, 1970 to 2009, in Billions of Dollars,” at <http://www.cbo.gov/ftpdocs/108xx/doc10871/HistoryTables.pdf> (July 13, 2011).

17. The details of the current versions are described in Brian Darling, “The House and Senate Balanced Budget Amendments: Not All Balanced Budget Amendments Are Created Equal,” Heritage Foundation *Background* No. 2580, July 14, 2011, at <http://www.heritage.org/Research/Reports/2011/07/The-House-and-Senate-Balanced-Budget-Amendments-Not-All-Balanced-Budget-Amendments-Are-Created-Equal>.

invested in federal bonds and that all of the borrowed money has been spent. Furthermore, during the 1990s, the Social Security program was producing annual surpluses ranging from \$60 billion to \$65 billion, which disguised deficit spending elsewhere. Today, Social Security runs an annual deficit.

If Social Security were removed from a BBA's requirements, Congress would be approving major deficit spending while not counting it as a deficit. Politicians would only be pretending to have balanced the budget. As the Congressional Budget Office reported this past January, "Excluding interest, surpluses for Social Security become deficits of \$45 billion in 2011 and \$547 billion over the 2012–2021 period."¹⁸

The Torricelli Ploy. As previously mentioned, the most transparent ploy to create an excuse for opposing the BBA came in 1997 from newly elected Senator Robert Torricelli. As a House member, he had voted for a substitute version and also voted "yea" on final passage of the Contract with America BBA in 1995. He campaigned for the Senate in 1996 as a BBA supporter.

As heads were counted for the 1997 Senate vote, it was apparent that Torricelli and Senator Mary Landrieu (D–LA), both previous BBA supporters, were the swing votes. If both voted "yea," the necessary two-thirds would be achieved in the Senate. President Clinton lobbied both Senators to vote "nay." Landrieu announced that she would vote yes, and Torricelli announced that he would vote no. Reporters openly asked him whether "he drew the short straw."

In a move that was publicly derided, Torricelli offered an amendment to the BBA on the Senate floor and then announced he would vote no because the amendment failed. Then, minutes later in a news conference, he undercut his own explanation by stating that in the future, he would vote no on all Republican versions of a BBA and yes on all Democratic versions.

Torricelli's unsuccessful amendment would have waived the balanced budget requirement whenever a simple majority in Congress declared "an imminent and serious military threat" or "a period of economic recession or significant economic hardship" or when Congress chose to approve deficit spending for "investments in major public physical capital that provides long-term economic benefits."¹⁹ The three-pronged nature of Torricelli's effort was a lumping together of provisions that were also offered separately in both the House and Senate by others.

Other Diluting Amendments. The following is a sampling of other proposals offered on the House or Senate floors during the 1995–1997 considerations:²⁰

- Representative Robert Wise (D–WV) offered a multifaceted substitute that would have provided for separate federal capital and operating budgets; would have required that only the operating budget be balanced; would have exempted Social Security from balanced budget calculations; and would have permitted Congress to waive the balanced budget provisions in times of war, military conflict, or recession.
- Senator Richard Durbin (D–IL) tried to insert the following language into the BBA: "The provisions of this article may be waived for any fiscal year in which there is an economic recession or serious economic emergency in the United States as declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law."
- Senator Barbara Boxer (D–CA) proposed, "The provisions of this article may be waived for any fiscal year in which there is a declaration made by the President (and a designation by the Congress) that a major disaster or emergency exists, adopted by a majority vote in each House of those present and voting."
- Representative Major Owens (D–NY) wanted "to allow a majority of Congress to waive the bal-

18. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, January 2011, p. 122.

19. All quotes from the Torricelli amendment are from the *Congressional Record*.

20. All direct quotes from these amendments are from the *Congressional Record*.

anced budget provisions contained in the joint resolution in any fiscal year that the national unemployment rate exceeds 4 percent.”

- Representative John Conyers (D–MI) wanted to require a detailed plan of spending cuts before balance could be required, proposing “to exempt Social Security from balanced budget calculations; and provide that before the constitutional amendment could take effect, Congress would be required to pass legislation showing what the budget will be for the fiscal years 1996 through 2002, containing aggregate levels of new budget authority, outlays, reserves, and the deficit and surplus, as well as new budget authority and outlays on an account-by-account basis.”
- Representative David Bonior (D–MI) tried not only to exempt Social Security from the calculations, but also to require only a simple constitutional majority vote (218 in the House, 51 in the Senate) to allow deficit spending.
- Additional amendments were more straightforward, such as whether a supermajority would or would not be required to raise taxes under the BBA. The House Rules Committee screened out 38 proposed floor amendments; only six were permitted.

Conclusion

History shows that the potency of a balanced budget amendment attracts fervent efforts to confuse the issues, especially by creating counterfeit versions and exceptions to provide political cover. Proponents of a BBA should prepare accordingly.

If not for high-profile political defections in the mid-1990s, the BBA would have been approved by Congress. Had it then been ratified by the requisite three-fourths of the states, today’s debates over borrowing limits, entitlements, and spending levels would be greatly different, if not absent.

However, the versions considered in the ’90s were notably weaker than both the House and Senate versions of the BBA-plus now being considered. Had an earlier version been adopted, today’s debate might be about efforts by Congress to evade the spirit of the BBA by exploiting loopholes in that earlier version. This is why vigilance is necessary to prevent the insertion of loopholes into the language of a BBA-plus.

Those who do not learn from the failures of history are doomed to repeat them.

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