

WebMemo



Published by The Heritage Foundation

No. 3323
July 21, 2011

Balanced Budget Amendment: Instrument to Force Spending Cuts, Not Tax Hikes

Edwin Meese III

As Congress considers what to do about federal overspending and overborrowing, conservatives must maintain focus. We must pursue the path that drives down federal spending and borrowing and gets to a balanced budget, while preserving our ability to protect America and without raising taxes. An important part of that conservative agenda is adoption of a sound—repeat, a sound—Balanced Budget Amendment.¹ A Balanced Budget Amendment is not sound if it leads to balancing the federal budget by tax hikes instead of spending cuts. Thus, a sound Balanced Budget Amendment must prohibit raising taxes unless a two-thirds majority of the membership of both Houses of Congress votes to raise them. Without the two-thirds majority requirement, the Balanced Budget Amendment becomes the means for big spenders to raise taxes.

A sound Balanced Budget Amendment must prohibit raising taxes unless a two-thirds majority of the membership of both Houses of Congress votes to raise them.

Supporters of the Balanced Budget Amendment rightly want to force the federal government to live within its means—to spend no more than it takes in. Because the government has failed for decades to follow that balanced budget principle, America is now \$14.294 trillion in debt, a debt of more than \$45,000 for every person in the United States.²

President Obama is making things worse. In discussions with congressional leaders, he has pushed hard to get authority to borrow yet more trillions of dollars and hike taxes. And the White House reiterated this week that President Obama opposes amending the Constitution to require the federal government to balance its budget.³

A Sound Balanced Budget Amendment Must Require Two-Thirds Majorities to Raise Federal Taxes. Like 72 percent of the American people, The Heritage Foundation favors passage by the requisite two-thirds of both Houses of Congress and ratification by the requisite 38 states of an effective Balanced Budget Amendment to become part of our Constitution.⁴ Heritage has made clear that an effective Balanced Budget Amendment must control spending, taxation, and borrowing; ensure the defense of America; and enforce, through the legislative process and without interference by the judicial branch, the requirement to balance the budget.⁵ A sound Balanced Budget Amendment will drive down federal spending and end federal borrowing.

To date, Congress has proposed one largely sound Balanced Budget Amendment for consideration—Senate Joint Resolution 10, often called the

This paper, in its entirety, can be found at:
<http://report.heritage.org/wm3323>

Produced by the Center for Legal & Judicial Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Hatch-Lee Amendment after its main proponents.⁶ It has a number of important features, such as an annual federal spending cap of not to exceed 18 percent of the economy's annual output of goods and services (called the gross domestic product, or GDP) that Congress cannot exceed, except by a law passed with two-thirds majorities in both Houses of Congress or in specified circumstances involving military necessity.

A crucial feature is included in section 4 of the Balanced Budget Amendment proposed by Senate Joint Resolution 10: "Any bill that imposes a new tax or increases the statutory rate of any tax or the aggregate amount of revenue may pass only by a two-thirds majority of the duly chosen and sworn Members of each House of Congress by a roll call vote." The requirement that no tax hikes occur without the approval of 290 Representatives

Without the requirement for two-thirds majorities for any tax increase, the Balanced Budget Amendment becomes a sword for big spenders to use to raise taxes, instead of a shield to protect Americans from tax hikes.

and 67 Senators is essential in a sound Balanced Budget Amendment. Without the requirement for two-thirds majorities for any tax increase, the Balanced Budget Amendment becomes a sword for big spenders to use to raise taxes, instead of a shield to protect Americans from tax hikes. Those who seek to anchor into our Constitution a requirement to balance the budget must always remember that, if the only requirement is "balance," that can be achieved two ways—cut spending or hike taxes. A sound Balanced Budget Amendment will balance

1. The Balanced Budget Amendment advances the conservative principles of limited government, free enterprise, and individual freedom cherished by Americans. The Amendment is the long-term element of the conservative agenda to get federal overspending and overborrowing under control. The nearer term elements include immediate substantial cuts in non-security federal spending and enforceable maximum limits, or caps, on future federal spending. Action now on the cuts and caps is essential, because, even if Congress adopts right now a joint resolution proposing to the states the Balanced Budget Amendment, it will be some time before the Amendment takes effect. The fastest ratification of an amendment to the Constitution took place in less than four months (the 26th Amendment, giving 18-year-olds the vote). The slowest ratification of an amendment to the Constitution took 202 years (the 27th Amendment, requiring an intervening election before a pay raise Congress votes for itself can take effect).
2. As of July 20, 2011, the U.S. public debt was \$14.294 trillion and the U.S. population was 311,808,161. Division of the debt by the population yields a debt-per-person figure of \$45,842.
3. Jason Furman, Deputy Director of the National Economic Council, "Unbalanced Approach to Deficit Reduction," <http://www.whitehouse.gov/blog/2011/07/19/unbalanced-approach-deficit-reduction> (posted July 19, 2011) ("The President has frequently made clear why he thinks a Balanced Budget Amendment is a misguided effort to absolve leaders in Washington of their responsibility for making tough choices.").
4. Fox News Poll, June 30, 2011, at <http://www.foxnews.com/interactive/us/2011/06/30/fox-news-poll-economy-and-debt-limit-negotiations/> (72% responded "Favor" to the question "Would you favor or oppose a balanced budget amendment—that is, an amendment to the U.S. Constitution that would require the federal government to produce a balanced budget?"). See also Mason-Dixon Poll, May 27, 2011, at <http://dailycaller.com/wp-content/uploads/2011/05/balanced-budget-poll.pdf> (65% responded "Support" to the question "Currently, nearly every state in the nation has a balanced budget amendment, prohibiting states from spending more than they have. The U.S. Congress, however, is not currently required to balance the federal budget. Do you support or oppose an amendment to the U.S. Constitution requiring Congress to pass a balanced budget every year?").
5. David Addington and J. D. Foster, "Balanced Budget Amendment: Cut Spending Later, Cut Spending Now," Heritage Foundation *WebMemo* No. 3208, March 31, 2011.
6. Senate Joint Resolution 10 was introduced on March 31, 2011, and was referred to the Committee on the Judiciary. As of this writing, 47 Senators have cosponsored the legislation. If the opportunity presents itself in the legislative process, Congress may wish to improve one aspect of the proposed amendment to the Constitution. Section 8 provides: "No court of the United States or of any State shall order any increase in revenue to enforce this article." Congress should strengthen the provision so that it prohibits all courts from having jurisdiction of any kind to take any action, by way of enforcement or otherwise, with respect to the Amendment. Enforcement of the Amendment should be left to the elected branches of the government—the Congress and the President—who are accountable to the American people at the ballot box.

the budget by driving down federal spending and not by driving up federal taxes.

Balanced-Budget States that Allow Simple Majorities for Tax Hikes Face Situations Very Different from that of the Federal Government. Some look at the experience of states that have requirements in their constitutions for a balanced state budget and draw the wrong conclusion about the need for two-thirds majorities for taxation. They mistakenly conclude that a requirement merely for simple majorities in state legislatures to raise taxes suffices to keep state taxation under control and therefore that a federal Balanced Budget Amendment should require only simple majorities in Congress to raise taxes. But the balanced budget requirement at the state level occurs in a very different context from such a requirement at the federal level.

As a practical matter, state legislators regularly work and live among the people they represent, often do their legislative work face-to-face with their constituents, and often depend upon direct contact with voters to persuade voters to keep the legislators in office. As a result, state legislators tend to be closely attuned and responsive to the need of their constituents for reasonableness in taxation. In contrast, U.S. Senators and Representatives spend much of their time distant from the people they represent, often deal with their constituents through the insulation of large staffs, and amass large campaign funds through political fundraising that allow them to depend more upon expensive mass communications than upon direct contact with voters to persuade the voters to keep them in office. As a result, U.S. Senators and Representatives tend to be less directly attuned and responsive to the need of their constituents for reasonableness in taxation than state legislators are. Accordingly, while a requirement for merely simple majorities in state legislatures to raise taxes may suffice to keep taxes under control in that state, simple majorities are not likely to keep taxes under control at the federal level—as the experience of federal tax increases in the last 50 years proves.

Some who recognize the need for taxpayer protection by requiring supermajorities, rather than just simple majorities, of the two Houses of Congress to raise taxes think a supermajority of three-fifths of both Houses would suffice. While three-fifths would add a modicum of taxpayer protection in the House, three-fifths would add little if anything in the way of taxpayer protection in the Senate, which already often requires a three-fifths majority to proceed to consideration of legislation. The existing three-fifths rule in the Senate has often failed to protect taxpayers from federal tax increases in the past. A sound Balanced Budget Amendment would add protection for taxpayers in both Houses of Congress by a requirement for two-thirds majorities of the membership of both Houses to raise taxes.

Conclusion: Adopt the Two-Thirds Majority Requirement for Tax Hikes, to Make the Balanced Budget Amendment the Instrument of Spending Cuts and Not Tax Hikes. America's soon-to-be New Minority—people who pay federal income tax—need protection from unreasonable taxation.⁷ When all Americans have the right to vote, but only a minority has the duty to pay the federal income taxes from which all Americans benefit, the risk is high that a non-taxpaying majority will elect a Congress pledged to adopt taxation that oppresses the taxpaying minority. The impulse to seek something for nothing has regrettably taken root in the American body politic in the past century. The requirement in the Balanced Budget Amendment of a two-thirds majority of the membership of both Houses of Congress to raise taxes will protect a taxpaying minority against oppressive taxation.

As Congress continues on the path toward adopting a joint resolution to recommend a Balanced Budget Amendment to the states for ratification, Congress should ensure that the Amendment includes a requirement for approval by two-thirds of the membership of the two Houses of Congress for tax hikes. Absent such a requirement, the Balanced Budget Amendment will encourage tax hikes instead of spending cuts as the means to balance the

7. Robertson Williams, "Who Pays No Income Tax?" *Tax Notes*, Tax Policy Center, June 29, 2009 ("About 47 percent of single filers will owe no tax, compared with 38 percent of joint filers and 72 percent of heads of household. More than half of elderly tax units and tax units with children will pay no income tax this year.").

budget, making the Amendment the friend of the tax, spend and borrow crowd, instead of the friend of those who believe in limited government, free enterprise, and individual freedom.

—*Edwin Meese III is the Ronald Reagan Distinguished Fellow in Public Policy and Chairman of the Center for Legal & Judicial Studies at The Heritage Foundation.*