15.0388.02000

FISCAL NOTE

Requested by Legislative Council
12/23/2014

Revised
Amendment to: HB 1138

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to the adoption of an interstate compact entitled "Compact for a Balanced Budget". The compact intends to ensure that the legislature's use of the power to originate a Balanced Budget Amendment under Article V of the US Constitution will be exercised. Fiscal impact can not be determined.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Pam Sharp
Agency: OMB
Telephone: 328-4606
Date Prepared: 12/23/2014

15.0388.01000

FISCAL NOTE

Requested by Legislative Council
12/23/2014

Revised
Bill/Resolution No.: HB 1138

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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Cities			
School Districts			
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FISCAL NOTE
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Bill/Resolution No.: HB 1138

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Name: Pam Sharp
Agency: OMB
Telephone: 328-4606
Date Prepared: 12/23/2014

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1138

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1138
2/5/2015
23304

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

A bill for an act providing for the adoption of an interstate compact entitled "Compact for a Balanced Budget"

Minutes: Attachments 1-7, 7a, 8-12

Chairman Kasper opened the hearing on HB 1138.

Rep. Bob Skarphol, District 2, appeared in support. Attachment 1(01:54-5:40) Due to an error on my part, the legislative council neglected to put some language in that is critical to the compact in order to insure that it is parallel with what is passed by the other states. Attachment 2 (amendments)

Rep. Steiner Where is the process is at with the compact?

Rep. Skarphol Alaska and Georgia have passed the compact. There are other states where it is pending. It is active in multiple places.

Rep. Lawrence Klemin District 47, appeared in support. Attachment 3 (07:38-10:17)

Nick Dranias, Compact for America, appeared in support. He gave a little history about his background. We have a moral obligation to stop this insane abuse of debt. The question is how? He had a power point presentation. Attachment 4. (12:54-45:38) Attachments 5, 6, 7, 7a, 8 also were handed out.

Rep. Laning The 105% absolute dollar is only able to be exceeded if the states approve it?

Nick Dranias That is correct.

Rep. Laning Who picks the delegates?

Nick Dranias The compact specifies, unless you address this and you can, the Governor is the designated delegate. There is flexibility in the compact to allow you to amend that provision to offer up to three delegates of any choice that you wish.

Rep. Karls I notice that your compact has a commission. Is there a cost for the states to belong to this compact?

Nick Dranias Only if you want there to be. I am using my law firm's escrow account exclusively to handle the disbursement of expenses, and the expenses that are being covered of the compact commission right now are grants from our charitable C3. You do have the option, however, as a state if you wish to fund the commission. We would recommend it because if you do choose to fund the commission, then you make it a forced multiplier of a scale that we have never seen in history.

Opposition

Duane Stahl, Valley City, appeared in opposition. Attachment 9 (49:07-1:01:58)

David Clemens, West Fargo, appeared in opposition. Attachment 10 (1:02:22-1:15:26)

Virginia McClure, District 28, appeared in opposition. Attachment 11 (1:16:09-1:19:00)

Andrew Bornemann, Kintyre, submitted Attachment 12 in opposition to HB 1138.

Neutral

John Lengenfelder, Bismarck, appeared in a neutral position. He is a machinist with Modern Machine Works. One of the things we try to do in this business is to have all the bills paid up. One of the things that do bother people is that they are dealing with inflated money. The high interest rates create a situation where people can't create enough wealth to pay off their debts. In order to keep this business going, we have to buy our products at the beginning of the year, and at the end of the year we sell them for more money in order to not lose money by inflation. Some of our employees lost $75,000 to $100,000 where they had their money invested.

Chairman Kasper Would you please comment on the bill?

John Lengenfelder It gives the appearance that you can't depend upon people to take oats and then carry it out(?). There is no way that you can put a bridle on this so called constitutional convention and then you are really going to end up with a mess.

The hearing was closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1138
2/5/2015
23365

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

A bill for an act providing for the adoption of an interstate compact entitled "Compact for a Balanced Budget"

Minutes: "Click to enter attachment information."

Chairman Kasper opened the meeting on HB 1138.

Rep. Schneider ...ad lock situation than we have in the past. We have had a lot of references to the founding fathers, and if the founding fathers thought that particular system was a good one, they probably would have incorporated it. Otherwise, it is a new ballgame. I agree a balanced budget situation would deem far superior to what we have now in theory at least, but there are a lot of practical ramifications to how we do that and the consequences that relate to the methods that we choose. I am not under any illusions that I am going to win this, but I would like the record to at least reflect that these are not simple issues and not always as clear as they may have been presented.

Rep. B. Koppelman moved the amendment.

Rep. Steiner seconded the motion.

Voice vote. Motion carries.

Rep. Dockter made a motion for a DO PASS AS AMENDED.

Rep. Steiner seconded the motion.

Rep. Steiner I really like the bill. We need to move in this direction. I like the compact idea.

Rep. Wallman Rep. Skarphol's testimony stated the compact congressional resolution would bring on a new fiscal regime. I don't think this is the appropriate way to do that.

Rep. Dockter I do agree we have this, but it is broken. This is a way to try to make things better because our system isn't working.

A roll call vote was taken. 10 Yeas, 4 Nays, 0 Absent.

Rep. Laning will carry the bill.

15.0388.01001
Title.02000

Prepared by the Legislative Council staff for
Representative Skarphol
January 6, 2015

2/6/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1138

Page 1, line 6, after "The" insert "state of North Dakota enacts, adopts, and agrees to be bound by the"

Page 1, line 6, remove "is enacted and entered"

Renumber accordingly

Date: 2-5-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1138

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: 15.0388.01001

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By B. Koppelman Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chair Karen Rohr			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Mary Schneider		
Rep. Mary C. Johnson			Rep. Kris Wallman		
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Jay Seibel					
Rep. Vicky Steiner					

Voice Vote
Motion Carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-5-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1138

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Dockter Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chair Karen Rohr	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Mary Schneider		X
Rep. Mary C. Johnson	X		Rep. Kris Wallman		X
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Laning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1138: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1138 was placed on the Sixth order on the calendar.

Page 1, line 6, after "The" insert "state of North Dakota enacts, adopts, and agrees to be bound by the"

Page 1, line 6, remove "is enacted and entered"

Renumber accordingly

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1138

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1138
3/19/2015
Job # 25130

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Carrie Wenings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act providing for the adoption of an interstate compact entitled "Compact for a Balanced Budget".

Minutes: Attachments 1 - 4

Chairman Dever: Opened the hearing on HB 1138.

Representative Skarphol, District 2: See Attachment #1 as sponsor and in support of the bill.

Representative Klemin, District 47: See Attachment #2 as sponsor and in support of the bill.

(3:06) Nick Dranias, Commissioners of the Compact for a Balanced Budget: Testified in support of the bill. See Attachment #3 for testimony. (Power Point Presentation)

(26:55)Curtis Olafson, National Debt Relief Amendment, Advisory Council for Compact for America: See Attachment #4 for Testimony in support of the bill. (Power Point Presentation) Think about our future generations and what we are giving them.

(37:02)Chairman Dever: I am curious if this compact would dissolve after a balanced budget amendment convention was convened?

Nick Dranias: There is a termination provision. It does provide for the self-repeal and dissolution of the compact when the balanced budget amendment is successfully ratified or if the process fails within seven years of the first enactment. That seventh year would currently be April 12th of 2021.

Chairman Dever: Is it critical that the language that is currently in the compact be the language that moves forward?

Nick Dranias: Absolutely. One of the basic principles of contract is that you have to have the mirror image of an offer to accept it.

Chairman Dever: Closed the hearing on HB 1138.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1138
3/20/2015
Job # 25162

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Carrie Winings

Minutes: No Attachments

Chairman Dever: Opened HB 1138 for committee discussion.

Senator Poolman: Moved a Do Pass.

Senator Davison: Seconded.

Chairman Dever: I understand that there is a bill in Congress to move forward with this when the states pass it.

A Roll Call Vote Was Taken: 4 yeas, 3 nays, 0 absent.

Motion Carried.

Senator Dever will carry the bill.

Date: 3/20
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1138

Senate Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Poolman Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais		✓
Vice Chairman Poolman	✓		Senator Nelson		✓
Senator Cook		✓			
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Dever

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1138, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1138 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1138

2-5-15
HB1138
#1

Mr. Chairman, Members of the Government and Veterans Affairs Committee, for the record I am Bob Skarphol, State Representative District 2, Tioga, North Dakota.

I appear in front of you today to introduce HB 1138, the Compact for a Balance Budget, which would utilize the provisions of Article V of the US Constitution to impose a more responsible fiscal policy upon the Congress of the United States. My comments are intended to be very high level as there are others much more expert than I who intend to give you the national perspective and legal expertise pertinent to the Compact.

Our national debt today is nearly $18 trillion and equal to our Gross Domestic Product. The cost of interest on our national debt severely threatens our nation's future. Imagine what would happen if interest rates elevated to the levels seen in the 1980's. The government of Greece is teetering on the brink of bankruptcy and there debt to GDP ratio is not a lot different than our own.

If 38 states pass the Compact for a Balanced Budget, and Congress is convinced to endorse the Compact through a Congressional Resolution, a new fiscal regime would be imposed on our federal government. Work is ongoing on the national level and state level to accomplish the approval of the Compact.

This new regime would limit the amount of indebtedness that Congress could approve to 105% of existing debt on the anniversary of approval. Without the endorsement of 34 states via legislative approval of the states, the federal debt ceiling could not be raised. It would also require the approval of 34 states to increase taxes with some limited exceptions. It would require that spending could not exceed revenue, as we are we required to do in North Dakota. "Statesmanship" rather than "political expediency" should become the norm as opposed to what we have at the federal level today.

The Compact does require a Constitutional Convention, but the language of the Compact as drafted is very specific in the intent of the Convention and the Convention is not able to address any additional issues other than what is specifically provided for in the Compact.

The real advantage of this Compact process is the relatively short time frame in which it can happen and the inability for a runaway Convention. The strength of the Compact is that it immediately consummates the requirement for our federal government to refrain from indenturing our children, grandchildren and great grandchildren.

I respectfully ask for your favorable consideration of HB 1138.

0.5.15
#2

15.0388.01001
Title.

Prepared by the Legislative Council staff for
Representative Skarphol
January 6, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1138

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Renumber accordingly

2-5-15
HB1138
#3

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
HOUSE BILL NO. 1138
FEBRUARY 5, 2015

Mr. Chairman and Members of the House Government and Veterans Affairs Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here today to testify in support of House Bill 1138.

The year was 1787. The place was Philadelphia. At that time and place 228 years ago, the original 13 states came together and created a Constitution to govern the relationships among the states and their citizens. One of the main things that the states did in the Constitution was to create the Congress and the federal government. There are many provisions in the Constitution, but the founders recognized that there was a need for a procedure to amend the Constitution, if it became necessary. Consequently, the Constitution includes Article V, which provides:

UNITED STATES CONSTITUTION
ARTICLE 5 Amendments

> The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Article V therefore provides for two methods to amend the Constitution. First, the Congress, by a 2/3 vote of both houses, can propose amendments, which must then be ratified by 3/4 of the legislatures of the states. This is the method that has been used for the amendments to the Constitution that we have today. Article V also contains a "safety valve" if Congress fails to act in which the legislatures of 2/3 of the states (34 states) can propose amendments to the Constitution, which become effective when ratified by 3/4 of the states (38 states).

We now are at a time in the history of this country when Congress and the federal government have demonstrated an inability for fiscal restraint. It is time for the states to come together to exercise control over the federal government to impose fiscal restraint. It is time for the states to use the "safety valve" in Article V to exercise supervisory control over the fiscal affairs of this country.

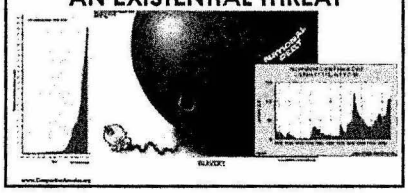
House Bill 1138 proposes a method to regain fiscal restraint in which the states can enter into an agreement, known as a compact, to provide for a balanced budget. House Bill 1138 enacts a Compact for a Balanced Budget and sets out in detail the terms of that compact, its purpose, and how it is to be implemented. It also sets out the exact wording of a balanced budget amendment to the United States Constitution.

I urge your support for House Bill 1138. I would now like to introduce Nick Dranias, a constitutional scholar and a Board member of the Compact for America, Inc., to explain House Bill 1138, the details of the Compact for a Balanced Budget, and how this will work to ensure fiscal responsibility in America.

#4 1138
2-5-15

WHO SUPPORTS THE COMPACT FOR A BALANCED BUDGET?

AN EXISTENTIAL THREAT



SOLUTION

"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 to the genuine principles of its constitution. I mean an additional article taking from the federal government the power of borrowing."

SOLUTION

- DEBT LIMIT
  - Spending restricted to cash flow and line of credit.
  - Line of credit is a specific amount.
  - Enforced by orderly and transparent impoundment.
- EXTERNAL DISCIPLINE
  - State veto/approval.
- TAX LIMIT
  - Supermajority vote of Congress required for tax rate increases . . . except for:
    - Consumption ("VAT") tax.
    - Flat[tax] tax.
    - Tariffs/fees.

WASHINGTON WON'T LEAD

STATES CAN LEAD

The Congress, whenever two thirds of both Houses shall deem it necessary; shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;

EXHIBIT A

Original text:

"The Congress . . . on the Application of two thirds of the Legislatures of the several States shall propose amendments . . ."

- THE APPLICATION WOULD SPECIFY THE AMENDMENT(S).

Final text:

"The Congress . . . on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments . . ."

- NOTHING INDICATES "APPLICATION" CHANGED MEANING.

EXHIBIT B

"If two thirds of those legislatures require it, Congress must call a general convention, even though they dislike the proposed amendments . . . Three fourths of the states concurring will ensure any amendments, after the adoption of nine or more."

EXHIBIT C

Federalist No. 43:

Article V: "equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

EXHIBIT D

June 6, 1788 (George Nicholas):

- state legislatures may apply for an Article V convention confined to a "few points"
- "it is natural to conclude that those States who will apply for calling the Convention, will concur in the ratification of the proposed amendments."

EXHIBIT E

Federalist No. 85:

- "every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point-no giving nor taking"
- "nine" states [two-thirds] would effect "alterations"
- "nine" states would effect "subsequent amendment" by setting "on foot the measure"
- "We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."

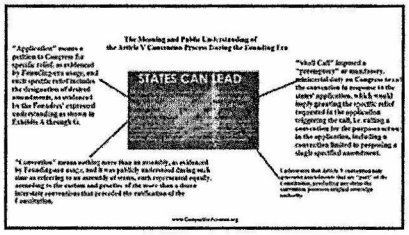
EXHIBIT F

February 7, 1799 (James Madison):

States could ask their senators to propose an "explanatory amendment" clarifying that the Alien and Sedition Acts were unconstitutional, and also that two-thirds of the Legislatures of the states "might, by an application to Congress, have obtained a Convention for the same object."

EXHIBIT G

"It should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States."



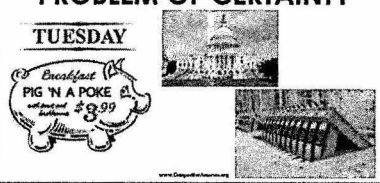
WHY "COMPACT" FOR A BALANCED BUDGET?

- CERTAINTY
- SAFETY
- SPEED

COMPACT FACTS

- Compacts are Binding Contracts
  - Exception from rule against entrenchment.
- Compacts Exist
  - 200+ exist and none has ever been struck down.
  - North Dakota is a party to 21 compacts.
  - At least 7 compacts have 35+ member states.
- Congressional Consent is Desirable but Not Required
  - Yields subject matter to state sovereignty.
  - Transforms the compact into a "law of the Nation."
  - Only required if federal supremacy threatened.
  - Can come at any time.

PROBLEM OF CERTAINTY



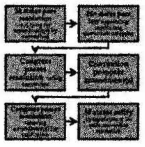
SOLUTION

PROBLEM OF SAFETY

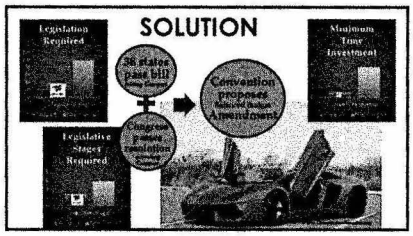
SOLUTION

- Fully Defined Process and Goal.
  - Clear boundary lines.
  - Sunset provision.
- Multiple kill-switches.
  - Automatic disqualification of rogue delegates and states.
  - Prohibition of rogue convention & ratification of rogue proposals.
- Universal enforcement.
  - 5th Circuit & Texas State Courts.

PROBLEM OF SPEED



SOLUTION

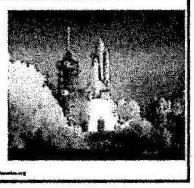


The Compact Approach to Article V

State Compact	Congressional Resolution
A2 Proposed amendment	S1 Call
A4 Compact Commission	S2 Ratification referral
A5 Application to Congress	
A6 Delegate appointment	
A7 Convention rules	
A8 Scope limitations	
A9 Ratification	

Future Payloads Will Be Launched

- Compact to End Bailouts
- Compact for Term Limits
- Compact for the Repeal Amendment
- Compact for Federal Land Reform
- Compact to Repeal the 16th Amendment
- Compact to Protect Electronic Privacy
- Compact for Regulatory Reform



WELCOME TO "ARTICLE V 2.0"

FOR AMERICA	Legacy Approach
Vetted, Poll-Tested Balanced Budget Amendment action	Currently Unknown Amendment after:
• Only 34 more legislative acts	• 70+ more legislative acts
• One 24-hour convention	• 1 indefinitely long convention
• 1 congressional resolution	• 2 congressional resolutions

LET'S GET 'R DONE.

- Certainty
- Safety
- Speed

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Compact for a Balanced Budget's "Article V 2.0" Turn-Key Approach

Using an agreement among the states called an "interstate compact," the Compact for a Balanced Budget invokes Article V of the United States Constitution to advance a powerful Balanced Budget Amendment. An interstate compact provides the vehicle to advance constitutional amendments because it **transforms the otherwise cumbersome state-initiated amendment process under Article V into a "turn-key" operation**. The Compact empowers the states to agree **in advance** to all elements of the amendment process that states control under Article V in a single enactment that can be passed in a single session. The Compact does require congressional consent to work, but such consent is achieved by simple majority passage of a resolution, which consolidates everything Congress must do in the Article V process in a single enactment and in a single session. Specifically, the Compact and the congressional resolution include:

- The text of the proposed amendment (specified in the Compact);
- The Article V application to Congress (specified in the Compact);
- An interstate commission that organizes the convention (specified in the Compact);
- The convention call (specified in the congressional resolution);
- All delegate appointments and instructions (specified in the Compact);
- The convention location and rules (specified in the Compact);
- An agenda limited to the consideration of the proposed amendment (specified in the Compact);
- The ratification referral (specified in the congressional resolution);
- The ultimate ratification of the proposed amendment (specified in the Compact).

In short, the Compact for a Balanced Budget consolidates everything Congress and the States do in the Article V process into just two overarching pieces of legislation—one congressional resolution and one interstate compact joined by thirty-eight states. It thereby dramatically **cuts the time and resources needed to achieve a state-originated constitutional amendment**. The Compact transforms the state-originated amendment process, which otherwise requires 100+ state and congressional enactments across five or more legislative sessions, into something that can get done in a single legislative session for each member state and Congress. The Compact is **like a ballot measure directed to state legislators, governors and Congress**.

The Compact's "Article V 2.0" turn-key approach also eliminates any possibility of a "runaway convention." It compels all member state delegates to follow convention rules that limit the convention agenda to an up or down vote on the amendment it proposes and to return home if those rules fail to hold. It prohibits member states from expanding the scope of the convention, violating the convention rules, or ratifying anything other than the contemplated amendment.

That's why George Will says the "Compact for America" approach to advancing a federal Balanced Budget Amendment under Article V is "innovative" and "written precisely enough to preclude evasion." And right after reports that the Georgia Assembly passed the Compact for a Balanced Budget, Judge Andrew Napolitano said: "To stop the insanity of an out-of-control federal government fueled by limitless debt spending, States must unite behind the Compact for a Balanced Budget." The American People agree—according to McLaughlin & Associates, informed popular support for a compact to advance constitutional amendments exceeds opposition **by more than two to one**.

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Compact for a Balanced Budget's Balanced Budget Amendment: Section-by-Section

"Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article."

Federal spending is limited to tax cash flow with the sole exception of borrowing under the debt limit specified in Sec. 2.

"Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3."

The federal government's currently unlimited borrowing capacity is limited to 105% of the total outstanding debt.

"Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged."

A referendum of state legislatures is required to approve any increase in the debt limit set by Sec. 2. This provides flexibility for emergencies but ensures the federal debtor will no longer have the unilateral power to set its own credit limit.

"Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void."

The President or Congress are required to enforce the debt limit set by Sec. 2 by designating necessary delays in spending months in advance of reaching that limit. If neither acts, spending will be limited to tax cash flow (per Section 1) when the debt limit is reached. The President could be impeached for failing to act. Illegal debt is deemed void.

"Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax."

Simple majority approval of taxes is limited to: 1) the replacement of all income taxes with a non-VAT sales tax; 2) the elimination of tax loopholes; and 3) new or increased tariffs and fees. Congress will be forced to run through a narrow gap defended by powerful special interests. This will cause deficits to be closed by spending cuts first.

"Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties."

These definitions maximize transparency and eliminate or strongly deter all known tactics used to circumvent constitutional debt limits.

"Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement."

This section ensures the amendment is effective as soon as it is ratified.

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Compact for a Balanced Budget
Legislative One-Page Overview

The Balanced Budget Amendment – the amendment "Payload" in Article II of the Compact

- Section 1 - balances federal budget by limiting spending to taxes except for borrowing under a constitutional debt limit.
- Section 2 – establishes a constitutional debt limit equal to 105% of outstanding debt at time of ratification
- Section 3 – requires approval of a majority of the state legislatures if Congress desires to increase the debt limit
- Section 4 – requires the President to protect the constitutional debt limit through impoundments Congress can override
- Section 5 – encourages spending and tax loophole reductions to bridge deficits, as opposed to general tax increases
- Section 6 – provides necessary definitions
- Section 7 – provides for self-enforcement of the amendment

The Compact for a Balanced Budget - the "Delivery Vehicle" for the BBA

- Purpose – to greatly simplify the amendment process by combining all the steps required of the state legislature to safely, efficiently, and effectively propose and ratify the Balanced Budget Amendment
- Article I – describes purpose of organizing the states to originate the Balanced Budget Amendment using a compact
- Article II – provides the necessary definitions, **including the actual text of the proposed Balanced Budget Amendment**
- Article III – sets compact membership and withdrawal requirements
- Article IV – establishes the Compact Commission – when 2 states join
- Article V – **applies to Congress for Balanced Budget Amendment Article V convention** – effective when 38 states join
- Article VI – appoints and instructs delegate(s) who will attend the Balanced Budget Amendment Article V convention
- Article VII – details the **convention agenda and rules**, allows first member state to designate Convention Chair
- Article VIII – prohibits participation in convention before Congress consents to Compact; prohibits runaway convention and ratification of runaway proposals by member states
- Article IX – **resolution ratifying the balanced Budget Amendment** – effective when convention proposes amendment and Congress refers amendment to the state legislatures for ratification
- Article X – provides enforcement by state attorney generals, central venue, severability and termination provisions

The Congressional Resolution – the "blessing" of the compact by Congress

- Title 1 – **resolution calling the required convention** in accordance with the terms and provisions of the Compact for a Balanced Budget – effective when 38 states join the Compact
- Title 2 – **resolution referring the Balanced Budget Amendment to the state legislatures for ratification** – effective when convention proposes amendment

COMPACT FOR AMERICA
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Why the Compact for a Balanced Budget is Far Safer than the Political Status Quo

- **The political status quo is exceedingly dangerous**.
    - The status quo is a runaway convention in Washington.
    - Keeping the locus of power in Washington will eventually destroy the Constitution.
    - Not using Article V is unilateral disarmament.
        - Not using Article V does not make it go away. It does not disable anti-constitutionalists from using it. It only hobbles constitutionalists and forces them to be reactive rather than proactive. This is a losing strategy.
        - Right now there are anywhere from 200 to 400 Article V resolutions in existence. If the states don't mass political will behind their own Article V effort, what stops Congress from simply calling a puppet Article V convention tomorrow?
- **The Compact is exceedingly safe**.
    - All of Eagle Forum's famous 20 questions about the Article V amendment process have been answered by reference to specific provisions in the Compact (including the identity of delegates, voting procedures, rules, location of convention, etc.).
    - Not a single delegate of a single member state can participate in the convention the Compact organizes unless the rules specified in the Compact requiring an up or down vote on the contemplated Balanced Budget Amendment are adopted as the first order of business.
        - If any delegate tries to violate this prohibition, all delegates of that delegate's member state are automatically recalled, attorneys general in 38 states are commanded to enforce that recall immediately (in the jurisdiction that is most favorable to constitutionalists-Texas), and that member state's legislature is immediately empowered to select and send new delegates.
    - No convention is ever convened before 38 states and simple majorities of Congress settle their differences and agree on the Compact.
        - This ensures that the federal courts would not only have to disregard their constitutional duty in tolerating a runaway convention, but also a united front among Congress and supermajorities of the states and the American people.
    - The power of nullification is used to deem "void ab initio" any runaway convention and any runaway proposal.
    - The Compact self-repeals in 7 years from its first enactment (April 12, 2021).

- **A "runaway convention" under the Compact is utterly implausible if the Nation is not already lost.** All of the following fourteen events would somehow have to happen for one to occur:

Unlikely Event #1. Delegates from 50 states show up at Convention, including at least 38 designated by the Compact to represent at least 38 compacting states. But the supermajority of delegates who are bound to the Compact for a Balanced Budget under state and federal law, as well as by the U.S. Constitution's Contracts Clause, refuse or fail to vote the Compact rules and limited agenda into place (presumably because at least 14 member states' delegates defect to join the non-member states in opposing the same).

Unlikely Event #2. Member state legislatures refrain from recalling or replacing the 14 or more rogue delegates.

Unlikely Event #3. The Chair of the Convention and the Compact Commission, which have the power to relocate the Convention as needed to ensure it proceeds under the rules and limited agenda specified in the Compact, do not exercise this power.

Unlikely Event #4. At least 14 rogue delegates join the delegates from non-member states to vote in a wide open agenda. They do this knowing that the ratification referral contained in the counterpart congressional resolution, which called the Convention in the first place, will thereby be rendered inoperative (necessitating a return to Congress for ratification referral that could have been avoided by sticking with the Compact's rules and limited BBA agenda).

Unlikely Event #5. Attorney generals (also known as "Aspiring Governors") from 38 or more compacting states, all of whom are bound to enforce the Compact's rules and limited agenda, either stand down (knowing their political rivals will seize the opportunity to embarrass them) or fail to secure an injunction as required under the Compact to nullify further proceedings.

Unlikely Event #6. Political rivals of the rogue delegates stand down and take no action to restrain them.

Unlikely Event #7. The Convention emerges with one or more proposed amendments that are different than the BBA and therefore void ab initio under the Compact as a matter of state and federal law.

Unlikely Event #8. Attorney generals from all of the compacting states again either stand down or fail to secure an injunction under the Compact to nullify ratification referral of the rogue amendment(s).

Unlikely Event #9. The same Congress that called the Convention in accordance with the Compact elects not to regard the rogue amendments as void ab initio, as required by the Compact under state and federal law, and refers the amendment(s) out for ratification.

Unlikely Event #10. All non-compacting states ratify the rogue amendment(s).

Unlikely Event #11. Fewer than 13 of compacting states stay true to the Compact's binding obligation to nullify the rogue amendments and refuse to ratify anything other than the BBA.

Unlikely Event #12. Attorney generals from all of the compacting states yet again either stand down or fail to secure an injunction to block ratification in 13 compacting states.

Unlikely Event #13. Despite the entire amendment process being void ab initio under the Compact's terms, no one succeeds in securing an injunction to nullify the subsequent enforcement of the rogue amendment(s).

Unlikely Event #14. The process and end result are somehow accepted peacefully by the American people as legitimate; and the Nation yields to an obviously lawless amendment process.

To fret about the foregoing extremely unlikely, if not politically impossible, events, while holding out hope for "nullification" or "culture change" to save our Nation is completely unrealistic and illogical. Simply put, it is absurd to think that the same elected officials who apparently will violate and ignore all manner of state and federal law set out in the Compact, together with the citizens who tolerate such behavior, will be valiant or engaged enough to find some other means of saving our Nation. No one can really believe the Compact for a Balanced Budget's numerous safeguards will be violated and the country can still be saved by other means at the same time. The Nation would already be lost.

But our Nation is not already lost. Supermajorities of the American People have been clamoring for a federal Balanced Budget Amendment for decades. There is no sign that will change in the next seven years (before the Compact self-repeals). Unprincipled elected officials will go where the votes are—and the votes are still firmly in favor of fiscal sanity.

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COMPACT FOR AMERICA
to Fix the National Debt

Key Facts about the Compact for a Balanced Budget

- Using an agreement among the states called an "interstate compact," **the Compact for a Balanced Budget invokes Article V of the United States Constitution to advance a powerful Balanced Budget Amendment** ("BBA").

- An interstate compact provides the vehicle for advancing this bipartisan national debt solution because it **transforms the state origination of a BBA into a "turn-key" operation**.

- The Compact ensures the state-initiated constitutional amendment process **efficiently, safely and exclusively** advances a specific BBA. The Compact only applies for an Article V convention when 38 states join—and once that happens, those Member States (a super-super majority) are bound to the Compact's numerous safeguards keeping a laser focus on advancing and ratifying a powerful Balanced Budget Amendment—**rendering a "runaway convention" a pure fantasy**!

- **The Compact is what the People want.** According to McLaughlin & Associates, informed popular support for a compact to advance constitutional amendments exceeds opposition **by more than two to one**. 61% agree that a majority of state legislatures should be required to approve any increase in the federal debt. 71% agree that Congress should cut spending before raising taxes. 86% agree that Congress should be required to balance its budget.

- The proposed BBA would require a majority of State legislatures to approve any increase above an initial constitutionally-fixed debt limit. **Like an active board of directors** for our wayward federal executive and legislative branch "CEOs," state legislatures would provide oversight and intervention when it comes to requested increases in the federal debt. The state debt approval requirement also creates flexibility to finance justifiable wars and to address genuine crises without easily exploited loopholes. If the case can be made to a majority of state legislatures that the federal government should borrow more money, then the BBA will allow such borrowing. The states should have a voice for the same reason that the U.S. Constitution originally gave state legislatures control over the U.S. Senate.

- Long before the midnight hour arrives, the proposed **BBA is designed to compel Washington to balance its budget or prepare a budget that can make the case for more debt**, requiring Washington's political players to propose delays in spending, and thereby showing their cards, long before hitting a hard debt limit, protecting our country's credit from being held hostage.

- The proposed BBA **neither sacrifices future generations to current generations, nor current generations to future generations**. It requires any new or increased income or sales tax to secure two-thirds approval of both houses of Congress. Recognizing that fixing the debt may require new revenues, the amendment allows for simple majority approval of revenue increases that result from replacing the income tax code with a sales tax or reducing tax exemptions, deductions and credits. Any new tax burden would only result from making our tax code flatter, fairer and far more conducive to economic growth.

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THE BALANCED BUDGET AMENDMENT

September 20, 2014

THE BALANCED BUDGET AMENDMENT

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

COMPACT FOR AMERICA
to Fix the National Debt

The Compact for Balanced Budget:
Section by Section BBA Analysis

September 20, 2014

Overview

Looking to Washington is not the solution to our fiscal crisis. There is a reason for that – it is the unchecked concentrated power to incur limitless debt in Washington that is the problem. Think about it: Washington is an outrageously bankrupt debtor and what does the Constitution allow for? It allows for that same debtor to write its own credit limit. This is a dangerous concentration of power. The exponential growth of spending that is happening in Washington should not be any surprise–how could it be any other way?

The national debt problem is a systemic problem. It is a systemic problem because debt enables unprincipled elected officials in Washington to essentially buy votes. They can buy all the political benefits of the spending (or unsustainable tax policies) that they want and then shift the costs to non-voting future generations with little or no immediate impact on their political careers. That is why 49 states currently have some form of debt limit or balanced budget requirement either in their constitutions, or by case law or statute. The states recognized long ago that the potential for abuse of unlimited borrowing capacity is too great to tolerate in a republican form of government that must protect future generations as much as the present.

Over 200 years ago, in 1798, Thomas Jefferson said that if there was just one more amendment that would take away the power of borrowing from the federal government then that would be enough to restore the Constitution to its original principles. What was true fewer than 10 years after ratification is still true today. This is exactly what is at the heart of the Compact for a Balanced Budget. It is a powerful and plausible balanced budget amendment, every policy component of which polls out with supermajority support. It is not meant to be an exercise in abstract reasoning. Time is of the essence–the future of our children is in jeopardy.

The following overview specifies the text and describes the goals and objectives of the seven sections of this powerful amendment, which is at the heart of the Compact for a Balanced Budget:

Section 1

"Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article."

Summary: Section 1 is the definition of balance. This section says that total outlays, meaning total expenditures, are limited at all points in time to total receipts, which are defined as all tax receipts and other income but excluding the proceeds from debt or the incurrence of a liability. The intention of this definition is to limit spending to only taxes and cash inflows like taxes. The only exception to this rule is the use of the line of credit described in Section 2 to handle cash flow volatility.

Commentary: Is it possible to have a "non-gameable" definition of balance that will survive attempts by Congress to undermine the amendment? Yes, in fact it is very simple – you restrict spending to cash flow at any and every point in

time. Obviously, there is cash flow volatility on a daily basis – taxes don't always come in when spending needs to occur, or tax revenues may not be enough to cover appropriated expenditures. How is this handled? Again – very simple - you provide an approved revolving line of credit that that can be tapped to handle the cash flow volatility.

Section 2

"Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3."

Summary: Section 2 is the establishment of the revolving line of credit. It is initially fixed at 105% of the total outstanding debt on the date of ratification.

Commentary: As an example, if there were $20 trillion of outstanding debt at the time of ratification, the revolving line of credit would be initially set at $21 trillion. The extra $1 trillion would provide approximately 1 to 1.5 years of borrowing capacity based on the current annual deficit rates. This is the time period that Congress will have to try and figure out what to do next.

Section 3

"Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged."

Summary: Section 3 is the referendum process whereby if Congress wants to increase that initial revolving line of credit, it would refer out a measure to the states and a majority would have to approve the debt limit increase. The significant thing about this provision is that it deems void (in combination with Section 4, discussed below) any issuance of debt that is premised on a quid-pro-quo for such approval. This means the possibility of the states being coerced or literally bribed into approving a debt limit increase is greatly minimized because it risks the soundness of the bond issuance. The issuance could be deemed void as a result of such horse-trading, which could spook the bond markets. This would keep the referendum process clean and non-coercive, more like what is seen in bond referendums at the school district level.

Commentary: The key thing to understand about this amendment is that the initial debt limit is fixed constitutionally. Unlike the current system, the debtor (the federal government) does not get to set its own credit limit. The federal government would not have any power independently or exclusively to raise its own debt limit as it has, or to eliminate it. Instead, any proposal to increase the debt limit requires a referendum of the state legislatures. In other words, a simple majority of the state legislatures have to approve a request by Congress. Keep in mind that this is the kind of system we typically entrust our school boards with. We do not trust our school boards in issuing new bonds without a referendum and yet we have the federal government doing this on a daily basis. With this oversight function, the states will begin to restore their proper role within the Constitution's balance of federalism.

Section 4

"Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent

resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void."

Summary: Section 4 regulates the impoundment process that is necessary to enforce the amendment's debt limit. Roughly six months prior to hitting the debt limit, all the parties will be required to put their cards on the table as to what they would have to impound if the debt limit is not increased or if taxes or spending are not raised or cut.

Commentary: The section deals directly with the concern about the "game of chicken" that is currently being played with the debt limit. The debate starts at the last moment and goes into the midnight hour; the credit rating of the country is threatened; and in the end, everything is ignored anyway because Congress ultimately raises the debt limit.

Built into this amendment is a very simple process to avoid these problems. As soon as the nation's borrowing is within two percent of the debt limit (another way to say this is that 98% of the current debt limit has been reached) the President would have a mandatory obligation to start delaying spending in anticipation of reaching the debt limit. This is called an "impoundment." And this is not a new power. It is actually an implied power that Presidents have always had, the only proviso being that the Supreme Court has ruled that impoundments cannot be used for political retaliation or disregarding congressional appropriations were sufficient funds exist to implement them. This is still the case law today. It would still be the case law if this amendment were in place.

Using the example where the debt limit is initially established at $21 trillion, the impoundment threshold would begin when outstanding debt reached 98% of this amount, or approximately $20.6 trillion. The 2% cushion would provide approximately six months of lead time before the debt limit would be reached at current deficit spending rates. At that point, the President would have to take the politically-risky move of designating what would have to be delayed in order to enforce the debt limit. Congress would have 30 days to override the President's proposed impoundments with alternatives of equal or greater amounts. With this amount of lead time – there will be no game of chicken. What it will do is force everyone's cards on the table and start a serious discussion that is transparent to the American People.

We will know who is responsible for any impoundment that is enforced. There will not be hands pointing to each other. It will either be the President's impoundments or it will be Congressional impoundments. And if neither one acts, spending will be limited to tax receipts as soon once the debt limit is reached. At that time, there will be an automatic sequester that limits spending to tax receipts per the language of section 1. The amendment further provides that the President could be impeached for allowing this to occur.

Section 5

"Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax."

Summary: Section 5 furnishes a constitutional tax limit. It establishes the general rule of two-thirds vote of each house of Congress is required for any increased or new taxes, with three exceptions of using simple majority votes to 1) move to a fairer tax by replacing the current income tax system with a national sales tax, 2) move to a flatter tax code by eliminating loopholes, exemptions, credits and deductions, or 3) to increase tariffs and fees. This approach is considered a compromise that is principled in nature.

Commentary: We have a moral choice here. Let's not forget that if we intend to repay our debt – then that repayment is made through taxes. So debt is taxes if we intend to repay it. The idea that somehow restraining debt is not limiting taxes is not true - restraining debt is limiting taxes. If we don't limit debt, what we are really doing is we are saying we want to tax future voiceless non-voting generations for our policy choices today. In other words, if we don't limit debt,

we would rather have taxation without representation – a violation of a basic principle our country was founded upon. Basically you are denying the voice of people impacted by this country's decisions in the political process through unlimited debt.

Nevertheless, this section avoids the possibility of a "tax-mageddon." Some are concerned that if debt is restrained too much, dangerous tax increases will occur in the short term. No doubt, there could be some really bad tax policy if we swing too far in the way of increasing revenues. Consequently, the amendment requires that 2/3 of the whole of each house (not a quorum) would have to approve any new tax or any increase in an existing tax - but with three key exceptions. There is an exception for completely replacing the current income tax with an end-user sales tax. This exception is, in fact, a limitation on the federal government's existing taxing authority. Right now, without the amendment, Congress could levy a national sales tax as a type of excise or impost with only simple majorities in both houses. Indeed, without this amendment in place, Congress could levy a new national sales tax on top of the current income tax. The balance budget amendment would prevent this – providing an improvement and a restriction on Congressional taxing power that does not currently exist. This is because the amendment would require any new national sales tax to completely replace all existing income taxes if it were to be approved with simple majorities of Congress. This would be a one-time occurrence because once all existing income taxes are replaced by a new national sales tax, the provision cannot be invoked again.

Another alternative for raising revenue would be to eliminate deductions, credits and exemptions – typically called "loopholes." That can be done with simple majorities. Estimates range up to a trillion dollars in revenue that could be obtained by flattening out the tax code that way. And finally, tariffs or fees are not touched by this amendment. They could continue to be enacted or raised by simple majority votes of Congress as is the currently the case.

Some may say this is not enough protection from taxes. That criticism must be thought through carefully in terms of the political dynamics of the amendment. If Congress wants to exercise simple majority approval of any increase in revenue, they will be forced to run through a narrow gap. They will be forced to run head-long into powerful special interests. This would not preclude new tax revenues, but it will tend to cause deficits to be closed more by spending cuts first. Thus, while the amendment provides flexibility and an opportunity for increased tax revenues, it minimizes the risk of tax-mageddon. At the same time, it also recognizes the moral fact that it is wrong to tax future generations for the policy choices of today in the name of maintaining unlimited borrowing capacity.

Section 6

"Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties."

Summary: Section 6 includes the definition for terms used throughout the amendment.

Commentary: The definitions used in Section 6 are designed to maximize transparency and eliminate all known tactics used to circumvent constitutional debt limits. The definition of debt is meant to limit available credit to ordinary full faith and credit bonding. The definition of outstanding debt is meant to ensure that the debt limit is set in relation to bonds held anywhere and by anything—rather than off-books borrowing and other exotic means of funding government. This ensures, among other things, that debt held by the Federal Reserve is still counted against the debt limit even if the Federal Reserve (like the Bank of England recently declared) decided essentially never to cash them in. The definition of "total outlays" is meant to be as broad as possible to ensure the spending limit in Section 1 reaches all spending

attributable to the federal government. The definition of "total receipts" is designed to be as narrow as possible to prevent the deposit of receipts from trust fund-raiding, money printing, or sale/lease-back schemes from directly increasing the spending limit. The definition of "impoundment" is used to conform to the current constitutional understanding of the President's inherent impoundment power to avoid any possibility that Section 4 could be construed as granting new impoundment powers, rather than regulating existing impoundment powers. The definition of "general revenue tax" is meant to restrict the two-thirds approval requirement of the tax limit to the subset of the federal government's taxing powers that are most likely to be abused (income and sales taxes).

Section 7

"Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement."

Summary: Section 7 is the "self-enforcement" provision, which means that Congress does not have to pass any further laws or legislation to make the amendment effective. As soon as it is ratified, the amendment's provisions take effect.

Conclusion

The balanced budget amendment offered by Compact for a Balanced Budget is incredibly powerful, yet plausible. Supermajority support exists for each of these components. With clear lines of accountability and powerful structural incentives, this amendment would finally force Washington's political players to show their cards before hitting a hard debt limit, protecting our country's credit from being held hostage. The prospect of real debt scarcity would force the political class to finally make the tough calls needed to save our future - and the futures of our children and grandchildren.

Now what do you think the chances are that Congress would ever propose an amendment like this without leadership from the states? We believe the answer is zero. That's why the Compact for a Balanced Budget deserves your support.

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Introducing "Article V 2.0": The Compact for a Balanced Budget

by Nick Dranias*

Introduction

The U.S. gross federal debt is approaching $18 trillion.[1] That figure is:

> What if the states could advance and ratify a powerful federal balanced budget amendment in just 12 months?

- more than twice what was owed ($8.6 trillion) in 2006, when the junior U.S. senator from Illinois, Barack Hussein Obama, opposed lifting the federal debt limit;[2]
- nearly as big a percentage of the American economy (107+ percent of Gross Domestic Product) as during the height of World War II;[3] and
- more than $150,000 per taxpayer.[4]

And that is just the tip of the iceberg, with unfunded federal liabilities estimated at $205 trillion.[5]

The burden is daunting. But what if states could advance and ratify a powerful federal balanced budget amendment in only 12 months?

That could happen with a new approach to state-originated amendments under Article V of the United States Constitution. At the stroke of their pens on April 12 and 22, 2014, respectively, Govs. Nathan Deal[6] and Sean Parnell[7] formed the "Compact for a Balanced Budget" between Georgia and Alaska. It establishes a binding commitment to fix the national debt, spanning the nation from the Atlantic to the Pacific,[8] and that commitment means business.

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* Nick Dranias is constitutional policy director for the Goldwater Institute. For a more complete bio, see page 20. The full text of the legislation passed by Alaska to form the Compact for a Balanced Budget appears as Appendix 1 on page 29 below, and it is followed in Appendix 2 by the counterpart congressional resolution.

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A Persistent Platform for Reform

Georgia and Alaska are expected to establish the Compact's Balanced Budget Commission – an interstate agency dedicated to organizing a convention for proposing a balanced budget amendment – before the summer of 2014 ends. Gov. Deal already has appointed state Rep. Paulette Braddock to the Commission. Gov. Parnell is expected to make his appointment shortly after July 21, 2014.

Although the Commission begins operating with appointees from just two states, eventually it will include appointees from three or more states.[9] It is designed to unify the states and lead the charge for fiscal reform shoulder-to-shoulder with allied legislators, citizens, and public interest groups. It will undoubtedly lend instant credibility to and ignite support for the effort. It also could start immediate engagement with Congress on fulfilling its role in the amendment process, furnishing a national platform for the states to address the absurdity of Washington's unsustainable fiscal policies.

Think of the Compact's Balanced Budget Commission as an outside-the-beltway Erskine-Bowles Commission that can do much more than ponder hypothetical fiscal reforms: It will marshal a state-based effort to propose and ratify a powerful balanced budget amendment.

The Amendment in a Nutshell

The Compact's proposed amendment constitutionally codifies a five-point plan for fixing the national debt.[10]

First, it would put an initially fixed limit on the amount of federal debt.[11] Section 2 of the proposed amendment states, in relevant part, "Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article." In other words, if there is $20 trillion of outstanding debt at the time of ratification, the federal government's line of credit will be fixed initially at $21 trillion. The additional $1 trillion borrowing cushion would provide approximately 18 to 24 months of borrowing capacity based on current annual deficit rates ($500 to $650 billion per year). This cushion would give Congress a transition period during which to develop a proposal to address the national debt crisis.[12]

Second, the amendment would ensure Washington cannot spend more than tax revenue brought in at any point in time, with the sole exception of borrowing under the fixed debt limit.[13]

Section 1 of the proposed amendment states, "Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article." By limiting federal spending to available cash flow from taxes and authorized borrowing, all known forms of fiscal gaming would be avoided.

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For example, this strict cash-flow-based spending limit will not be circumvented by inaccurate budget projections or delays in payments of amounts due ("rollovers"). Additionally, borrowing could not supply additional funds for spending beyond the constitutional limit because the definition of "debt" in Section 6 of the proposed amendment limits approved borrowing to proceeds from full faith and credit obligations.[14] Finally, the definition of "total receipts" in Section 6 of the proposed amendment to which "total expenditures" are limited excludes "proceeds from [the federal government's] issuance or incurrence of debt or any type of liability."[15] This ensures expenditures cannot be increased by raiding trust funds, sale-leaseback schemes, or even direct deposits into the U.S. Treasury of freshly printed fiat money; these actions would constitute excluded "proceeds from [the federal government's] issuance or incurrence of debt or any type of liability."[16]

Third, by compelling spending impoundments when 98 percent of the debt limit is reached, the proposed amendment would ensure Washington is forced to reduce spending long before borrowing reaches its debt limit, preventing any default on obligations.[17] Section 4 of the proposed amendment provides, in relevant part, "Whenever the outstanding debt exceeds 98 percent of the debt limit ... the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt."

Here's how it would work: Assuming the constitutional debt limit were $21 trillion, this provision would be triggered when borrowing reached $20.58 trillion, with about $420 billion in available borrowing left under the debt limit. At current yearly deficits ranging between $500 and $650 billion, the president would be required to start designating spending delays approximately seven to ten months before reaching the constitutional debt limit. This provision would start a serious fiscal discussion with plenty of time in which to develop a plan to fix the national debt.

It is important to underscore that the foregoing provision does not increase presidential power. It *regulates* presidential power by requiring the president to use his or her existing impoundment power, under the threat of impeachment, when borrowing reaches 98 percent of a constitutional debt limit – as opposed to waiting until the midnight hour. It also checks and balances the president's ability to abuse the impoundment power by empowering simple majorities of Congress to override impoundments within 30 days without having to repeal the underlying appropriations, which is currently the only way Congress can respond to abusive presidential impoundments. Specifically, once the president puts proposed impoundments on the table, Section 4 provides, "Said impoundment shall become effective thirty (30) days thereafter, unless

Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective."[18]

With the proposed amendment in place, it would be easy to know who is responsible for any impoundment that is enforced. It will be either the president's impoundments or Congress's impoundments. And if neither the president nor Congress acts, spending will be limited to tax receipts as soon as the debt limit is reached, in effect resulting in an across-the-board sequester. The threat of a massive, automatic sequester resulting from inaction would give the president a strong incentive to designate and enforce the required impoundments. Congress otherwise would be all too happy to shift the blame for a disorderly across-the-board sequester to the president by invoking the provision of Section 4 that provides, "The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor."[19]

Fourth, if new revenue streams are needed to avoid borrowing beyond the debt limit, the amendment would ensure all possible spending cuts are considered first. It does this by requiring abusive tax measures (new or increased sales or income taxes) to secure supermajority approval from each house of Congress.[20] It reserves the current simple majority rule for new or increased taxes only for completely replacing the income tax with a non-VAT sales tax ("fair tax" reform),[21] repealing existing taxation loopholes ("flat tax" reform), and increasing tariffs or fees (the Constitution's original primary source of federal revenues). Any push for new revenue through these narrow channels would generate special-interest pushback, strongly incentivizing spending cuts before taxes are raised.

If borrowing beyond the debt limit proved truly necessary, the proposed amendment would end the absurdity of allowing a bankrupt debtor (Washington) to increase its credit unilaterally.

Fifth and finally, if borrowing beyond the debt limit proved truly necessary, the proposed amendment would end the absurdity of allowing a bankrupt debtor (Washington) to increase its credit unilaterally. Instead, the amendment would give the states and the people the power to impose outside oversight by requiring a majority of state legislatures to approve any increase in the federal debt limit within 60 days of a congressional proposal of a single-subject measure to that effect.[22]

Specifically, Section 3 provides, "From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval." Further, "If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged."[23]

Using the time-tested idea of dividing power between the states and the federal government, and balancing ambition against ambition, requiring a referendum of the states on any increase in a

fixed constitutional debt limit would minimize the abusive use of debt compared to the status quo. It would become substantially more difficult to increase debt if both Congress and simple majorities of the states were necessary to do so. Two hurdles are better than one. The fact that states rely on federal funding does not mean debt spending would increase relative to the status quo, because states are far less dependent on federal borrowing than the federal government itself is. Moreover, any *quid pro quo* trade of debt approval for appropriations would prevent any increase in the debt limit from having legal effect[24] and would render void any debt thereby incurred.[25]

By requiring a nationwide debate in 50 state capitols over any increase in the constitutional debt limit it establishes, the proposed amendment would shine more light on national debt policy and give the American people a greater chance to stop needless increases in the debt limit. And by requiring state approval within 60 days, the proposed amendment establishes a strong default position disfavoring any increase in the federal debt limit.

Congress is a debt addict and cannot be trusted with the sole power to decide whether an emergency or war justifies taking on additional debt.

It is important to underscore that the proposed amendment does not include any emergency spending or borrowing loopholes because of the flexibility made possible through this state referendum process. Congress is a debt addict and cannot be trusted with the sole power to decide whether an emergency or war justifies taking on additional debt. Once the Compact's balanced budget amendment is in place, all Congress would need to do is pay down its debt during good times, and it would enjoy a huge line of credit that could cover any war or emergency. If additional borrowing beyond the initial debt limit were somehow truly necessary, there would be plenty of time for Congress to ask the states to approve an increase in the debt limit. Current tax cash flow is adequate to allow for dramatic increases in discrete spending priorities; by redirecting available funds, Congress could double or even triple current military expenditures without additional borrowing.

A sudden demand for emergency expenditures thus could be handled through the temporary reallocation of existing cash flows while a longer-term borrowing proposal is submitted for consideration by a majority of state legislatures. If Congress ultimately could not persuade 26 state legislatures to approve such additional borrowing, that should be reason enough to stop the proposed spending. A simple majority of state legislatures can be trusted to approve any truly necessary increase in the balanced budget amendment's debt limit to handle legitimate war or emergency requests.

This powerful reform proposal, advanced by an interstate agency – the Compact Commission – would certainly jump-start fiscal discussions in Washington, especially during an election year. It has been championed by conservative columnist George Will,[26] but the amendment should have bipartisan appeal. Democrats and Republicans alike should recognize that if we want to preserve the federal spending that is truly necessary, the first thing we need to do is start treating debt as a limited resource.

Imposing scarcity on debt conforms fiscal policy to the reality of limited resources, which is necessary to ensure that meaningful fiscal planning and prioritization take place such that the

necessary borrowing capacity will exist when the states and the people actually need it. No state or person who hopes to receive any federal benefit will be in a better position if the government spends the nation over the fiscal cliff. If unsustainable borrowing crashes the system, there will be no more borrowing to fund desired programs.

With the formation of the Compact for a Balanced Budget, April 2014 could go down in history as the month the states finally took charge of federal fiscal reform.

The Next-Generation Article V Movement

Without an interstate compact the Article V convention process would require at least 100 legislative enactments, six independent legislative stages, and five or more years of legislative sessions to generate a constitutional amendment.

The Compact for a Balanced Budget uses an interstate agreement to simplify the state-originated Article V convention process. Ordinarily, without an interstate compact, the Article V convention process would require at least 100 legislative enactments, six independent legislative stages, and five or more years of legislative sessions to generate a constitutional amendment.

In particular, the non-compact Article V approach first requires two-thirds of the state legislatures to pass resolutions applying for a convention (34 enactments). Second, a majority of states must pass laws appointing and instructing delegates (26 enactments). Third, Congress must pass a resolution calling the convention. Fourth, the convention must meet and propose an amendment. Fifth, Congress must pass another resolution to select the mode of ratification (either by state legislature or in-state convention). And sixth, three-fourths of the states must pass legislative resolutions or successfully convene in-state conventions that ratify the amendment (at least 38 enactments).

By contrast, the compact approach to Article V consolidates everything states do in the Article V convention process into a single agreement among the states that is enacted once by three-fourths of the states.[27] Everything Congress does is consolidated in a single concurrent resolution passed just once with simple majorities and no presidential presentment.

The Compact includes everything in the Article V amendment process from the application to the ultimate legislative ratification.[28] The counterpart congressional resolution includes both the call for the convention and the selection of legislative ratification for the contemplated amendment.[29]

The Compact is able to pack both the front and back ends of the Article V convention process into just two overarching legislative vehicles by using the "secret sauce" of conditional enactments. For example, using a conditional enactment, the "nested" Article V application contained in the Compact goes "live" only after three-fourths of the states join the compact (three-fourths, rather than two-thirds, is the threshold for activating the Article V application because the Compact is designed to start and complete the entire amendment process).[30] The Compact also includes a nested legislative ratification of the contemplated balanced budget

amendment, which goes live only if Congress selects ratification by state legislature rather than in-state convention.[31]

Correspondingly, using conditional enactments, the nested call in the congressional counterpart resolution goes live only after three-fourths of the states join the Compact.[32] Likewise, the nested selection of legislative ratification in the congressional resolution becomes effective only if, in fact, the contemplated amendment is proposed by the Article V convention organized by the Compact.[33]

By using an interstate agreement and conditional enactments to coordinate and simplify the state-originated Article V amendment process, the Compact approach to Article V reduces the number of necessary legislative enactments, stages, and sessions from 100+ enactments to 39 (38 states joining the compact, one congressional resolution), from six legislative stages to three (passage of compact, convention proposal of amendment, congressional passage of resolution), and from five or more session years to as few as one (the current target is three years).

The Compact approach to Article V reduces the number of necessary legislative enactments, stages, and sessions from 100+ enactments to 39.

In addition, like any well-drafted contract, the Compact approach eliminates all reasonable uncertainty about the process. It identifies and specifies the authority of the delegates from its member states.[34] It specifies in advance all Article V convention ground rules, limiting the duration of the convention to 24 hours.[35] It requires all member state delegates to vote to establish rules that limit the agenda to an up-or-down vote on a specific, pre-drafted balanced budget amendment.[36] It disqualifies from participation any member state – and the vote of any member state or delegate – that deviates from that rule.[37] It further bars all member states from ratifying any other amendment that might be generated by the convention.[38]

Thus, from the vantage points of efficiency, public policy, and certainty, the Compact for a Balanced Budget is an upgrade from the non-compact approach to Article V – with one significant caveat. The requirement of such detailed and upfront agreement will probably work only for well-formed reform ideas that likely already command supermajority support among the states and the people. The list of such reform ideas is short, but sustained polling data across four decades undoubtedly put the Compact's balanced budget amendment on that short list.

During the summer of 2012, Compact for America, Inc. commissioned a nationwide poll from one of the leading pollsters in the country, McLaughlin & Associates, to assess what policy reforms could command supermajority support from the American people and whether the Compact's balanced budget amendment in particular was politically viable. McLaughlin concluded, "Six in ten voters favor a balanced budget amendment and at least 70% favor Compact for America's specific and common sense proposals to rein in the federal deficit. These survey results demonstrate that Compact for America has the potential to obtain broad support."[39]

Article V: Not Meant to Be an Insurmountable Obstacle

One would expect all supporters of Article V – "Fivers," they call themselves – to be rejoicing at this point. Indeed, many are, but some have criticized the Compact effort.

One argument is that the Compact for a Balanced Budget violates the text of Article V by avoiding a difficult, multi-staged, multigenerational amendment quest. This criticism generally focuses on the fact that the Compact includes pre-ratification of the amendment it contemplates. But this criticism is meritless. Through the operation of conditional enactments, the Compact conforms strictly to the text of Article V. Furthermore, the "spirit" of Article V in no way requires states to originate amendments in an uncoordinated, multi-staged amendment process.

There is no textual conflict between Article V and the use of a conditional enactment to pre-ratify a desired amendment. The Compact's pre-ratification is entirely contingent on Congress first effectively selecting legislative ratification of the contemplated amendment, which, in turn, presumes the prior proposal of the amendment. In other words, the pre-ratification will go live only in the precise sequence required by the text of Article V.

The U.S. Supreme Court and courts in 45 states and territories have recognized the appropriateness of conditional enactments.

There is perhaps no more universally accepted legislative provision than the conditional enactment. Conditional enactments are common components of congressional legislation, including legislation approving interstate compacts,[40] as well as within many existing interstate and federal-territorial compacts.[41] The U.S. Supreme Court and courts in 45 states and territories have recognized the appropriateness of conditional enactments for a wide range of state and federal legislation,[42] including state laws enacted contingent on the passage of new federal laws.[43] As explained in one typical court decision, "[l]egislation, the effectiveness of which is conditioned upon the happening of a contingency, has generally been upheld."[44] Courts defer to "broad legislative discretion"[45] when conditional enactments are used. Because a state's authority over whether to apply for an Article V convention or whether to legislatively ratify an amendment is as plenary as any other form of legislation, case law sustains the use of a conditional enactment in connection with Article V applications and ratifications.

Moreover, the "spirit" of Article V is not somehow violated by coordinating and consolidating the amendment process in such a way that the states applying for a convention also agree to ratify a desired amendment. To the contrary, there is strong evidence that the Founders expected the states would do just that. In rebuttal of Patrick Henry's lengthy oration at the Virginia ratification convention that it was too difficult for the states to use Article V, George Nicholas responded, "It is natural to conclude that *those States who will apply* for calling the Convention, *will concur in the ratification* of the proposed amendments" (emphasis added).[46] Nicholas clearly anticipated that states would coordinate their use of Article V from beginning to end.

The Founders never said the states had to apply for a convention without having any specific amendments in mind and without coordinating the ratification of those amendments. They never "sold" ratification of the Constitution on the basis that the Article V convention was a

mysterious, autonomous body that no one – not even the states – controlled outside of the convention. The Founders never would have succeeded with such absurdly unpersuasive arguments against opponents of ratification, such as Patrick Henry, who railed against the usefulness of the Article V convention as a means of limiting federal power from the states.

It is well-established that the amendment process under Article V was supposed to be neither extraordinarily difficult nor extraordinarily easy. It was meant to strike a balance between these two extremes. In Federalist No. 43, James Madison wrote that Article V "guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults."[47] If anything, the balance struck by Article V between facility and difficulty was meant to allow for amendments to be accomplished more easily than was the Founders' experience in attempting to revise the Articles of Confederation.

During the New Jersey ratification debates, for example, the *New Jersey Journal* wrote that the Constitution included "an easy mode for redress and amendment in case the theory should disappoint when reduced to practice."[48] Similarly, at the time of the Connecticut ratification debates, Roger Sherman wrote, "If, upon experience, it should be found deficient, [the Constitution] provides an easy and peaceable mode of making amendments."[49] Likewise, in Federalist No. 85, Alexander Hamilton stated there was "no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."[50]

These representations formed the basis of the public understanding of the Constitution as it was ratified. If anything, the targeted, streamlined, coordinated Compact approach to Article V is more consistent with the actual spirit of Article V as described by advocates of ratification than the multi-staged legislative obstacle course necessitated by a non-compact approach to Article V.

Consent of Congress Requirements

The Supreme Court has held for nearly 200 years that congressional consent to interstate compacts can be given expressly or implicitly.

Another common objection is that the Compact approach is defective because Article I, Section 10, of the U.S. Constitution provides that states may not enter into compacts without the "consent" of Congress. There is no question the Compact approach requires some form of congressional consent for the convention to be called and for legislative ratification to be selected, but such consent need not be express and it need not come in advance of the formation of an interstate compact.

The Supreme Court has held for nearly 200 years that congressional consent to interstate compacts can be given expressly or implicitly, either before or after the underlying agreement is reached.[51] Moreover, under equally longstanding precedent, a binding interstate compact can be constitutionally formed without congressional consent so long as the compact does not infringe on the federal government's delegated powers.[52]

Nothing in the Compact for a Balanced Budget infringes on any federally delegated power, because conditional enactments and express provisions ensure all requisite congressional action in the Article V amendment process would be secured before any compact provision predicated on such action became operative. For example, no member state or delegate appointed by the Compact can participate in the convention it seeks to organize before Congress calls the convention in accordance with the Compact.[53] Similarly, as discussed above, the pre-ratification of the contemplated balanced budget amendment goes live only if Congress effectively selects legislative ratification. Thus no provision of the Compact in any way invokes or implicates any power textually conferred on Congress by Article V unless implied consent is first received from Congress exercising its call and ratification referral power in conformity with the Compact.

Although it is true that the Compact Commission will operate immediately upon the membership of two states, that changes nothing in this regard. The Compact Commission serves as a unified platform for securing congressional cooperation in originating constitutional amendments by way of an Article V convention. A compact does not infringe on federal power necessitating prior congressional consent merely because it provides "strength in numbers" among the states for a more effective federal educational or lobbying campaign.[54]

To claim the Compact infringes on powers delegated to the federal government, one would have to demonstrate that the federal government has the exclusive power to direct and control an Article V convention.

To claim the Compact infringes on powers delegated to the federal government, one would have to demonstrate that the federal government has the exclusive power to direct and control an Article V convention by way of setting the convention agenda and delegate instructions. But there is no evidence that anyone during the Founding era or immediately thereafter – whether Federalist or Anti-Federalist – thought the Article V convention process was meant to be controlled exclusively by Congress in these crucial respects. On the contrary, all of the available founding-era evidence shows it was the understanding of the framers and ratifiers that the states would target the Article V convention process to desired amendments, which implies state control over the convention agenda and delegates.

For example, on January 23, 1788, Federalist No. 43 was published with James Madison's attributed observation that Article V "equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."[55] Similarly, George Washington wrote on April 25, 1788, "it should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States."[56] On June 6, 1788, as discussed above, George Nicholas reiterated the same points at the Virginia ratification convention, observing that state legislatures may apply for an Article V convention confined to a "few points."[57] This understanding of Article V was further confirmed by the last of the *Federalist Papers*, Federalist No. 85, in which Alexander Hamilton concluded, "We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority" by using their amendment power under Article V.[58] Because Congress selects the mode of ratification, we know that Hamilton

was speaking of the targeting of Article V applications originated by state legislatures, not state legislative ratification, as the source of such barriers to national encroachments.

At the time of the Constitution's framing, the word "application" was a legal term of art that described a written means of petitioning a court for specific relief. The historical record of "applications" to the Continental Congress confirms this meaning extended to legislative bodies as well, with applications being addressed to Congress by various states with very specific requests on a regular basis.[59] The contemporaneous usage of "application" thus naturally supports the conclusion that state legislatures had the power to apply for an Article V convention with a specific agenda. Moreover, the usual and customary practice in response to specific applications was either to grant what was requested or to deny them.[60] Given Congress's obligation to call a convention for proposing amendments in response to the requisite number of applications, any convention called in response to applications of state legislatures seeking a convention with a specific agenda is – and was[61] – naturally understood as adopting that agenda.

The usual and customary practice in response to specific applications was either to grant what was requested or to deny them.

Consistent with this understanding of the specific agenda-setting power of an Article V application, Hamilton wrote in Federalist No. 85, "If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, *alterations in it may at any time be effected by nine States*" (emphasis added). The reference to alterations being "effected by nine States" was in regard to what would be put into effect by the application of two-thirds of the states for an Article V convention; nine states being two-thirds of the original 13.

That Hamilton intended to convey that the application itself would specify the desired "alteration" is evident in the immediately following sentence: "Here, then, the chances are as thirteen to nine in favor of subsequent amendment, rather than of the original adoption of an entire system." Significantly, Hamilton footnoted the number "nine," explaining: "It may rather be said TEN, for though two thirds may set on foot the measure, three fourths must ratify." The colorful phrase that "two thirds may set on foot the measure" clearly indicates the ultimately ratified amendment ("the measure") would be specified initially by the application of "two thirds" of the state legislatures. This understanding is further established later in Federalist No. 85, where Hamilton observes, "Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people." Again, in referring to both the two-thirds threshold for an Article V application and the three-fourths threshold for ratification, Hamilton clearly contemplated that the states would "unite" on the same "amendments," further illustrating his expectation that the prompting application would advance the very amendments that would be ultimately ratified.

Hamilton was not alone in his understanding of how applications would unite the states in advancing one or more particular amendments. Ten years later, on February 7, 1799, James Madison's *Report on the Virginia Resolutions* observed the states could organize an Article V convention for the "object" of declaring the Alien and Sedition Acts unconstitutional.[62] After

highlighting that "Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose," Madison wrote the states could ask their senators not only to propose an "explanatory amendment" clarifying that the Alien and Sedition Acts were unconstitutional, but also that two-thirds of the legislatures of the states "might, by an application to Congress, have obtained a Convention for the same object."

As illustrated by Madison's *Report on the Virginia Resolutions*, no one in the founding era thought the states were somehow preempted or otherwise disabled by Article V in setting the agenda of the convention for proposing amendments and securing desired amendments through the convention. An Article V convention obviously was not regarded as an autonomous body following an agenda and populated by delegates selected by Congress. An Article V convention was meant to bypass Congress and deliver the amendments desired by the states, as specified in their application. It is only logical to conclude the states have the authority to determine who will represent them at the convention, how they will represent them, how they will run the convention, what they will propose, and how the states will respond to those proposals.

This basic principle further reinforces the conclusion that the Compact for a Balanced Budget does not infringe on any power delegated to the federal government by fully occupying the space of convention logistics. Hence there is no need for congressional consent for the Compact to be validly formed, although such consent is unavoidably necessary before the Compact's contemplated convention call and ratification referral can be effective.

Presidential Presentment Not Necessary

Another concern occasionally expressed about the Compact is that the counterpart congressional concurrent resolution would require presidential presentment, as do ordinary bills.

Another concern occasionally expressed about the Compact is that the counterpart congressional concurrent resolution, which gives implied consent to the Compact by calling the convention and preselecting legislative ratification in accordance with its terms, would require presidential presentment, as do ordinary bills.[63] However, the U.S. Supreme Court has ruled in *Hollingsworth v. Virginia* that Congress's role in the Article V amendment process does not implicate presidential presentment.[64] Although this ruling was applied specifically to the congressional proposal of amendments, there is every reason to conclude that Congress's convention call and ratification referral powers would be treated the same way, even if exercised by way of a resolution giving implied consent to an interstate compact.

Even more so than the congressional proposal of amendments in *Hollingsworth*, Congress's call and ratification referral powers under Article V are purely ministerial, procedural powers of the sort not ordinarily subject to presidential presentment. The contemplated concurrent resolution's exercise of Congress's Article V call and ratification referral power is similar in legal effect to

the direct proposal of constitutional amendments. In both cases, Congress is merely channeling a legislative proposal for further action by other bodies – it is not, itself, making federal law.

If anything, the convention call component of the contemplated resolution has an even more attenuated relationship to lawmaking than does the direct congressional proposal of amendments. This is because any convention call would precede both the convention's proposal of an amendment (which is not guaranteed) and the ultimate ratification referral. The exercise of such call power is far more like an exercise of the rulemaking power conferred by the Constitution exclusively upon each house of Congress,[65] to which presidential presentment clearly does not apply, than it is like ordinary lawmaking.

A different conclusion is not warranted by the fact that a concurrent resolution exercising such powers in accordance with the Compact would be construed as giving implied congressional consent to the Compact. There is no textual difference between the role of the president in regard to the Compact Clause (Article I, Section 10, of the U.S. Constitution) and the role of the president in regard to the congressional proposal of amendments under Article V. In both provisions, the text of the Constitution articulates no role for the president whatsoever. Where the Constitution is silent, as here, the Supreme Court has ruled that presidential presentment applies only to congressional actions that are equivalent to ordinary lawmaking.[66]

In substance, the contemplated congressional resolution is no more like ordinary lawmaking than is the direct congressional proposal of amendments under Article V. Although congressional consent has been regarded as rendering an interstate compact the functional equivalent of federal law, this doctrine has been applied only in the context of such consent being furnished by federal statute.[67] In the absence of consent being furnished by statute, the legal effect of any such consent consists entirely of yielding to member states' own underlying sovereign power,[68] to which presidential presentment obviously does not apply. Thus, like the direct congressional proposal of amendments, which is meant to facilitate subsequent legislative action, the contemplated counterpart congressional resolution does not imply legislative action that is equivalent to ordinary lawmaking by exercising congressional call and ratification referral powers. Therefore, its passage does not require presidential presentment.

Status of Existing Article V Applications

The last few criticisms of the Compact for a Balanced Budget come from Lew Uhler, a key member of the Reagan-Friedman drive for a balanced budget amendment in the 1970s and '80s.

Lew Uhler criticizes the Compact for a Balanced Budget for starting the Article V application process from scratch.

Uhler criticizes the Compact for a Balanced Budget for starting the Article V application process from scratch and failing to aggregate 23 (or 24) existing Article V applications that seek a balanced budget amendment convention.[69] But the claim that 23 or 24 applications exist that can be aggregated to trigger a convention call cannot be sustained if one takes the Founders at their word that the Article V convention process was meant to allow the states to obtain the amendments they desired.

Only a handful of the supposed 23 or 24 Article V applications actually call for the same convention agenda. (See Appendix 3.) The remaining applications are a grab-bag of resolutions that differ in significant respects. For example, an application from Mississippi, passed in 1979, very clearly seeks a convention agenda that would consider only one specific amendment proposal – and the text of that amendment is even specified in the application.[70] If a convention were to be organized in accordance with the intent the respective states express, it is difficult to see how this application could be viewed as capable of being aggregated with applications that request the calling of a convention that could consider a broader array of balanced budget amendment proposals.

The same problem crops up with aggregating the applications that specifically call for a balanced budget amendment convention with a wide variety of emergency spending exceptions.[71] It is unlikely those states intended for their applications to be aggregated with others that have no such exceptions and thereby risk Congress calling a convention with an agenda that would include the possible proposal of a balanced budget amendment without exceptions.[72] A similar problem arises with the applications that coyly apply for a balanced budget amendment convention "alternatively" to Congress proposing such an amendment but without imposing on Congress a deadline to act.[73] It is unclear whether those applications will ever go or stay "live" because Congress could propose a balanced budget amendment at any time and thereby render them inactive.

The assertion that Congress must aggregate the 23 or 24 current Article V applications essentially proclaims for Congress the power to mix and match applications.

In view of these substantive differences, the assertion that Congress must aggregate the 23 or 24 current Article V applications essentially proclaims for Congress the power to mix and match applications that neither activate on the same terms nor seek the same convention agenda. Uhler appears to be arguing that the aggregation of applications would be based on Congress's sole and discretionary judgment that they are "close enough." But ascribing such discretion to Congress is contrary to the text of Article V, which references "Application" in the singular, implying that two-thirds of the state legislatures would be advancing and concurring in the same application. It is also contrary to the text and context of Article V that indicates Congress "shall call" the convention.

In view of such mandatory language, Hamilton observed in Federalist No. 85 that "whenever nine States concur" in an application, Congress's role in calling a convention would be "peremptory" because "[n]othing in this particular is left to the discretion of that body." Thus, according to Hamilton, Congress's mandatory duty to call a convention would be triggered upon receiving an application that had received the concurrence of two-thirds of the states. It seems rather inconsistent with Congress's envisioned peremptory, nondiscretionary role to claim, as does Uhler, that its duty to call a convention nevertheless could be triggered by a grab-bag of different Article V applications, not one of which actually received the concurrence of two-thirds of the states. If anything, the ministerial nature of Congress's envisioned role in the Article V process would seem to preclude exercising the kind of discretion be needed to determine whether facially different applications were "close enough" to be aggregated. Thus, Congress might rightfully balk at aggregating different Article V applications.

Even if Congress played along with the grab-bag approach to Article V, a successful aggregation of applications that do not seek the same convention agenda on the same terms would be a disaster for the wider Article V movement. It would set a precedent that Congress is entitled to cobble together applications to produce a convention agenda never actually agreed upon by the state applicants. In other words, Congress would be empowered to call a convention with an agenda largely determined by Congress. That would tend to consolidate all amendment power in Congress, rather than allowing the states to have a parallel means of obtaining the amendments they desire – hardly what Fivers or originalists should want from the process.

Getting to a convention should not be an end in itself, and any effort that relies upon aggregating distinct or mutually exclusive Article V applications is short-sighted.

Restrictions on the Convention

Uhler also contends the Compact for a Balanced Budget deviates from constitutional requirements by pre-committing member state delegates to voting up or down on the proposal of a specific balanced budget amendment.

In response, it should first be observed that the legislature of each member state has full deliberative authority to enact, amend, or refuse to enact the Compact, including the Article V application, the contemplated balanced budget amendment, and prospective ratification contained therein. The delegates to the convention organized by the Compact also have full deliberative authority to propose or reject proposing the constitutional amendment the Compact contemplates. Legislative deliberation does not intrinsically require more than this; state legislatures, for example, have long entertained special sessions limited to considering or reconsidering specific bills or laws – essentially an up-or-down vote – without anyone questioning the existence of legislative deliberation in doing so. In addition, Article V's ratification convention process recognizes there is nothing about legislative deliberation in the context of a "convention" that requires more than an up-or-down vote on a specific amendment proposal.[74]

Nothing in the history or text of Article V requires states to organize a "black box" amendment-drafting convention.

Nothing in the history or text of Article V requires states to organize a "black box" amendment-drafting convention. No Founder ever expressed the distinctly modern view that the states must first organize an Article V convention to find out what constitutional amendments it might propose. To the contrary, as discussed above, George Washington, James Madison, and Alexander Hamilton all suggested the states' power to obtain desired amendments through the Article V convention process would be equal to that of Congress to propose desired amendments. These representations, if taken as true, imply the Article V convention was meant to be an instrument of the states that could be directed by the states to proposing specific amendments, not an independent agency with a mysterious constitutional reform agenda of its

own.[75] Hamilton expressly distinguished the Article V amendment process from the sort of secretive, wide-ranging legislative deliberation that characterized the Philadelphia Convention.

In Federalist No. 85, Hamilton wrote, "But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point[:] no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue."[76] Significantly, Hamilton made the foregoing representation with regard to "every amendment," logically including those brought forward by the states through an Article V convention, which implies that an Article V convention could be limited to an up-or-down vote on proposing a single amendment.[77]

Furthermore, the Founders' expectation that the states would direct the convention to propose desired amendments is entirely consistent with the rationale given for the insertion of the convention mode of proposing amendments in Article V. As reported in *The Records of the Federal Convention of 1787*, the original language of Article V as proposed by James Madison would have required Congress to propose amendments on application of two-thirds of the legislatures of the several states.[78] To the modern eye, this original formulation would seem to be a more direct route for the states to obtain desired amendments. Nevertheless, on September 15, 1787, George Mason objected to this formulation because it made the proposal of amendments desired by the states entirely dependent upon Congress, and he feared Congress would not propose amendments that would limit its own power.[79] To address Mason's objection, the congressional proposal of amendments on application of two-thirds of the state legislatures was replaced with the convention mode of proposing amendments, which Congress would call upon application of two-thirds of the legislatures of the several states.

The convention mode of proposing amendments was explicitly adopted in order to better guarantee that the states could obtain the proposal of desired amendments.

In short, the convention mode of proposing amendments was explicitly adopted in order to better guarantee that the states could obtain the proposal of desired amendments. This rationale is inconsistent with the notion that an Article V convention was meant to be a freewheeling, independently deliberative body. However ironic that rationale may look to modern eyes, it makes perfect sense in light of the technological limitations of the eighteenth century. At the time, communications would take days, weeks, or months to travel from state capitol to state capitol, traveling by horse rather than by telegraph, telephone, or email. Ensuring the states all convened at a central location through their own representatives to propose desired amendments was simply a practical necessity to ensure unity and control over what was proposed.

Given the technological limitations of the eighteenth century, Mason's preferred formulation of Article V not only ensured state control over the formulation of proposed amendments, it streamlined the amendment process. The states would have had to first organize an informal convention to reach consensus on their desired amendments before delivering conforming applications to Congress. Because an informal convention was a practical predicate to states making use of Madison's proposed amendment process, Mason's preferred formulation of

Article V, which instead allows a formal convention of the states to propose amendments directly, sidestepped the additional hurdle imposed by Madison's original idea of requiring the states to apply to Congress to propose amendments. There is nothing in the text or history of Article V that suggests the convention mode of proposing amendments precludes states from setting a strict agenda of voting up or down on the proposal of a specific amendment.

Uhler's criticism of the Compact's laser-focused approach to advancing a specific balanced budget amendment also fails to account for the mechanism by which the Compact requires an up-or-down vote on the contemplated amendment. Although the application nested in the Compact sets the agenda, as is perfectly consistent with the meaning of "application" at the time of the founding era, it is the delegate instructions set out in the Compact that enforce the adoption of convention rules that limit the agenda to an up-or-down vote on the contemplated balanced budget amendment. As the first order of business, delegates are strictly instructed to adopt the Compact's contemplated convention rules, which require an up-or-down vote on the contemplated amendment, or else they forfeit their authority in a variety of ways.[80]

This means the scope limitations of the Compact are enforced based on the agency principle that the delegates are the agents of the states that sent them. Thus, the extent of targeting in the Compact differs only in degree, not kind, from the custom and practice of more than a dozen interstate and inter-colonial conventions organized prior to ratification of the U.S. Constitution.

At the time, it was usual and customary for states to set the agenda for any such convention and to instruct their delegates specifically on what to advance and address at the convention.[81] Although Federalists and Anti-Federalists famously disputed whether the delegates to the Philadelphia Convention had stayed within the scope of their state-specified legal authority, nobody at the time argued that the delegates were legitimately free to exceed their authority and ignore their states' instructions.[82]

The Compact's strict delegate instructions and limitations on delegate authority are entirely consistent with relevant law, custom, and practice.

In other words, the debate over the legitimacy of the scope of proceedings at the Philadelphia Convention proves only that it was generally understood at the time of the founding that delegates to a convention had no lawful authority to do anything other than what they were told to do by their state principals. It was simply taken for granted during the founding era that delegates were "servants" of the states that sent them. Even if (for the sake of argument) the delegates violated their lawful authority in the course of the Philadelphia Convention, that would not in any way legitimize their conduct or define the authority of delegates to an Article V convention. It is a complete *non sequitur* to argue that because the delegates violated their authority at the Philadelphia Convention, all future delegates at all future conventions under Article V have the right and authority to disregard their state authority.[83]

Under ordinary principles of agency law, states, as the "masters," naturally would have every right and power to circumscribe the authority of their delegates, as their "servants," as tightly as they wish. Consequently, the Compact's strict delegate instructions and limitations on delegate authority are entirely consistent with relevant law, custom, and practice. Accordingly, the limited

agenda contemplated by the Compact should win the day if for no other reason than that a supermajority of delegates from member states will form a quorum at the convention and do exactly what they are authorized and instructed to do – namely, vote to establish rules that restrict the convention to an up-or-down vote on the contemplated balanced budget amendment within 24 hours. If they do not, the Compact ensures they immediately lose all legal authority to act for their respective states and are automatically recalled.

This last point underscores the superiority of the Compact approach for advancing and ratifying a powerful balanced budget amendment. Without an agreement in advance among the states structuring the procedure and substance of an Article V convention, you have no idea what you are going to get, if anything, from the incredibly difficult process of organizing such a convention. With a compact, you have as much certainty in the process as politics can afford. But even more importantly, a compact provides a plausible vehicle for co-opting Congress before it can use its powerful political leverage to disrupt the movement, which is discussed below.

Countering Congressional Leverage

As the Congressional Research Service recently noted, Congress has never regarded its role in Article V as purely ministerial.[84] Analyst Thomas Neale has observed that Congress "has traditionally asserted broad and substantive authority over the full range of the Article V Convention's procedural and institutional aspects from start to finish."[85] Congress repeatedly has introduced bills that purport to give it a substantial role in delegate selection, convention rules, and even setting or enforcing the convention agenda.[86] All of these efforts are unconstitutional in view of the public understanding of the purpose of Article V discussed above, but they nevertheless pose a real and substantial political and litigation risk that Congress could assume control over any Article V convention.

Congress has significant leverage in the Article V amendment process. It is irresponsible to ignore this fact.

The hurdle of requiring ratification from three-fourths of the states is not a perfect defense against such an *ultra vires* "congressional convention," because just over 10 percent of constitutional amendments (for example, the 16th Amendment (income tax), 17th Amendment (popular election of senators), and 18th Amendment (Prohibition)) have been contrary to limited-government principles, and they were still ratified. Furthermore, even if Congress called a convention with no federal strings attached on the front end, there is no guarantee Congress would not set an impossibly short ratification sunset date for any proposal it disliked on the back end.

In short, whether Fivers like it or not, Congress has significant leverage in the Article V amendment process. It is irresponsible to ignore this fact. Only a compact ensures that the states lead and Congress follows. By fully occupying all logistical spaces and then deliberately seeking to co-opt Congress at the states' time of choosing – using the platform of a compact commission to unite the states and enable them to parley institution-to-institution – the compact approach

minimizes the risk that Congress will abuse its leverage. This, in turn, enables the compact effort to neutralize the principal political and litigation risk to the Article V movement: the erroneous view that Congress, not the states, controls convention logistics in significant ways.[87]

Conclusion: The Most Secure Process

Even if Congress took an uncharacteristic hands-off approach to the Article V convention process, a compact-organized Article V convention remains the superior approach for a balanced budget amendment.

The organization of a convention of indefinite duration populated by as-yet unidentified delegates governed by as-yet unidentified rules is as likely to produce deadlock or to generate something worthless as to engender something worthwhile. Even if an effective balanced budget amendment were proposed, the drafting-convention approach would require the subsequent step of ratification. And there is no guarantee that any amendment proposed by the convention would secure ratification from the requisite 38 states.

Imposing a fixed constitutional debt limit would increase transparency and be far more likely to generate a balanced budget than the status quo of limitless debt spending.

With the Compact for a Balanced Budget, by contrast, you know what you are going to get. The text of the contemplated balanced budget amendment is known in advance. The identities of convention delegates are known in advance. The convention agenda and rules are known in advance. The convention itself would be limited to 24 hours, ensuring the fiscal impact of the convention itself is minimal. The amendment would be ratified if approved by the convention, because the Compact pre-commits each member state to ratifying the contemplated amendment. Congress's willingness to call the convention in accordance with the Compact would be known in advance, because the introduction of the requisite congressional resolution could be sought whenever the political stars align. (The conditional enactments utilized in the resolution would allow the resolution to lie dormant if sought early, and later activate.)

The Compact's amendment payload would be worth the effort. Imposing a fixed constitutional debt limit, which requires a referendum of the states on any debt limit increase, would increase transparency and be far more likely to generate a balanced budget than the status quo of limitless debt spending.

With the Compact's balanced budget amendment in place, Washington would no longer have the ability to set its own credit limit and write itself a blank check. The states would become an active board of directors charged with keeping an eye on our wayward federal CEO and staff. Debt would become scarce. Priorities would have to be set. Sustainable federal programs would have to become the norm. A broad national consensus – not midnight-hour panic – would have to support any further increases in the national debt.

Before this crucial reform can become a reality, 36 more states must join the Compact (to reach the ratification threshold of three-fourths of the states) and simple majorities of Congress must approve it. This can be done in as few as 12 months, because the Compact for a Balanced Budget consolidates everything states do in the constitutional amendment process into a single agreement among the states that is enacted once by each state, and everything Congress does in a single resolution passed once. This greatly simplifies the cumbersome amendment process outlined in Article V of the Constitution, which would otherwise take more than a hundred legislative actions – a process that no one, not even Ronald Reagan, Milton Friedman, or Lew Uhler, has ever successfully navigated to its conclusion despite decades of trying.

The Compact for a Balanced Budget greatly simplifies the cumbersome amendment process outlined in Article V of the Constitution.

Not only is the Compact's payload worth the effort, the Compact approach is clearly a superior Article V vehicle for advancing and ratifying a balanced budget amendment.

It is time for Fivers to upgrade.

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Dranias also serves as a constitutional scholar. He has authored scholarly articles dealing with a wide spectrum of issues in constitutional and regulatory policy. His articles have been published by leading law reviews, bar journals, and think tanks across the country. Dranias's latest works are (with Byron Schlomach) *Recognizing Pension Fund Insolvency: A Catalyst for Reform* and (with Andrew Kleit) *Moving Forward: A Roadmap for Choice and Competition.*

Dranias also serves on the board of Compact for America, Inc., which is urging the states to advance a balanced budget amendment using an interstate compact.

Endnotes

1. Treasury Direct, *The Debt to the Penny and Who Holds It*, www.treasurydirect.gov/NP/debt/current.

2. Whet Moser, "Remember When Barack Obama Voted Against Raising the Debt Limit?" *Chicago Magazine*, July 14, 2011, www.chicagomag.com/Chicago-Magazine/The-312/July-2011/Remember-When-Barack-Obama-Voted-Against-Raising-the-Debt-Limit/.

3. *U.S. National Debt and Deficit History*, Chart 4.02, www.usgovernmentdebt.us/debt_deficit_history.

4. U.S. Debt Clock, www.usdebtclock.org/.

5. Laurence J. Kotlikoff, *Assessing Fiscal Sustainability*, Mercatus Institute, George Mason University, December 12, 2013, p. 4, mercatus.org/sites/default/files/Kotlikoff_FiscalSustainability_v2.pdf.

6. Enactment History of HB794, www.legis.ga.gov/legislation/en-US/Display/20132014/HB/794.

7. Enactment History of HB284, www.legis.state.ak.us/basis/get_bill.asp?bill=HB%20284&session=28.

8. Although the effective date of Alaska's HB284 is July 21, 2014, the contractually binding nature of Alaska's adoption of the compact proposed by HB794 is not tethered to that effective date. Georgia's HB794 has been effective since it was signed on April 12, 2014. By its terms, HB794 becomes contractually binding on Georgia immediately upon enactment of counterpart legislation by another state and Georgia's receipt of seasonable notice. The relevant language of the compact (Article III, section 2) provides, "in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State's Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State." HB794, www.legis.ga.gov/Legislation/20132014/144709.pdf. In essence, Georgia invited acceptance of its offer to compact through performance without specifying a deadline for acceptance. As a result, under ordinary contractual principles, upon Alaska's part performance of the terms of acceptance (enactment of HB284), Georgia became contractually obligated thereafter to keep its offer open for a reasonable period of time – and certainly that time will not expire before the effective date of Alaska's legislation. RESTATEMENT (SECOND) OF CONTRACTS, §§ 41, 45 (1981). Therefore, by enacting the counterpart compact legislation HB284 and giving seasonable notice, the State of Alaska has performed the terms of acceptance proposed by HB794 and the Compact has been formed, although its various provisions will not have the force of law in Alaska until July 21, 2014. *Oklahoma v. New Mexico*, 501 U.S. 221, 236 (1991) (holding contractual principles, as well as statutory interpretive principles, govern the interpretation of a compact).

9. See HB284/HB794, Article IV, section 9, www.legis.state.ak.us/PDF/28/Bills/HB0284Z.PDF, www.legis.ga.gov/Legislation/20132014/144709.pdf.

10. See *ibid.*, Article II, section 7.

11. *Ibid.* (section 2).

12. It is important to underscore that there is no constitutional debt ceiling right now. The Constitution, as-is, provides for unlimited borrowing power. On what otherwise would be totally unlimited borrowing authority for the federal government, the balanced budget amendment would impose a limit of 105 percent of outstanding debt on ratification. This would be a constitutional debt limit, not an increase in debt authority. The definition of debt utilized in the proposed balanced budget amendment is deliberately narrow. It is designed to encompass only full faith and credit borrowing so that spending ("total outlays") is restricted to proceeds from taxes, fees and full faith and credit borrowing ("total receipts" + authorized debt).

13. *Supra* note 9 (section 1).

14. *Ibid.* (section 6).

15. *Ibid.*

16. It is important to emphasize the mechanics of the spending limit. The limit on total expenditures would be fixed at all points in time based on available cash from taxes (or the equivalent) and approved borrowing. If fiscal gaming tactics – such as no-recourse borrowing, trust-fund raiding, sale-lease-back schemes, and money-printing – were attempted, the resulting proceeds would not count as receipts affecting the expenditure limits, and thus would not serve to increase the spending limit. This would neutralize any incentive to engage in such gaming tactics.

17. *Supra* note 9 (section 4).

18. *Ibid.*

19. *Ibid.*

20. *Ibid.* (section 5).

21. Without the proposed amendment, Congress could levy both end-user sales taxes and value-added taxes (VATs) as a type of excise tax or impost, with only simple majorities in both houses, perhaps even as an additional tax on top of the current income tax. The proposed amendment would prevent this, providing a restriction on congressional taxing power that does not currently exist. The amendment would require any new national sales tax to "completely replace all existing income taxes" if it were to be approved with simple majorities of Congress. This would be a one-time occurrence, because once all existing income taxes were completely replaced by a new end-user sales tax, the provision could not be invoked again. Instead, any new or increased sales tax would thereafter have to secure two-thirds approval of the whole number of each house of Congress.

22. *Supra* note 9 (section 3).

23. *Ibid.*

24. *Ibid.*

25. *Ibid.* (section 4).

26. George Will, "Amend the Constitution to Control Federal Spending," *Washington Post*, April 9, 2014, www.washingtonpost.com/opinions/george-will-amend-the-constitution-to-control-federal-spending/2014/04/09/00fa7df6-bf3c-11e3-bcec-b71ee10e9bc3_story.html.

27. *Supra* note 9.

28. www.legis.ga.gov/Legislation/20132014/144709.pdf.

29. Model Congressional Resolution, http://goldwaterinstitute.org/sites/default/files/CFA%20-%20Text%20-%20Cong%20Omnibus%20Resolution%20Final%282%29.pdf.

30. *Supra* note 9 (Article V, section 3).

31. *Supra* note 9 (Article IX, section 2).

32. Model Congressional Resolution, *supra* note 29, Title I, section 103.

33. *Ibid.*, Title II, section 202.

34. *Supra* note 9.

35. *Ibid.*, Article VII.

36. *Ibid.*, Article VI, section 9.

37. *Ibid.*, Article VI, section 10.

38. *Ibid.*, Article VIII, section 3.

39. McLaughlin & Associates, National Survey – Executive Summary, January 14, 2013 (copy on file with Author).

40. See, e.g., Omnibus Low–Level Radioactive Waste Interstate Compact Consent Act, Pub. L. 99-240, Title II, 99 Stat. 1842, 1859 (1986), available at www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1842.pdf; Northeast Interstate Dairy Compact, 7 U.S.C. § 7256 (1996).

41. See, e.g., Compact of Free Association Act of 1985, Pub. L. 99-239, Title II, 99 Stat. 1770, 1800, available at www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1770.pdf; Jennings Randolph Lake Project Compact authorized, W. Va. Code, § 29-1J-1 (1994); Interstate Compact on Licensure of Participants in Live Racing with Parimutuel Wagering, Ky. Rev. Stat. § 230.3751 (2001); Interstate Compact on Juveniles, Wyo. Stat. § 14-6-102 (1977).

42. See, e.g., *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892); Opinion of the Justices, 287 Ala. 326 (1971); *Thalheimer v. Board of Supervisors of Maricopa County*, 11 Ariz. 430, 94 P. 1129 (Ariz. Terr. 1908); *Thomas v. Trice*, 145 Ark. 143 (1920); *Busch v. Turner*, 26 Cal. 2d 817 (1945); *People ex rel. Moore v. Perkins*, 56 Colo. 17 (1913); *Pratt v. Allen*, 13 Conn. 119 (1839); *Rice v. Foster*, 4 Harr. 479 (De. 1847); *Opinion to the Governor*, 239 So. 2d 1 (Fla. 1970); *Henson v. Georgia Industrial Realty Co.*, 220 Ga. 857 (1965); *Gillesby v. Board of Commissioners of Canyon County*, 17 Idaho 586 (1910); *Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011); *Lafayette, M&BR Co. v. Geiger*, 34 Ind. 185 (1870); *Colton v. Branstad*, 372 N.W. 2d 184 (Iowa 1985); *Phoenix Ins. Co. of N.Y. v. Welch*, 29 Kan. 672 (1883); *Walton v. Carter*, 337 S.W. 2d 674 (Ky. 1960); *City of Alexandria v. Alexandria Fire Fighters Ass'n, Local No. 540*, 220 La. 754 (1954); *Smigiel v. Franchot*, 410 Md. 302 (2009); *Howes Bros. Co. v. Mass. Unemployment Compensation Commission*, 296 Mass. 275 (1936); *Council of Orgs. & Ors. For Educ. About Parochiaid, Inc. v. Governor*, 455 Mich. 557 (1997); *State v. Cooley*, 65 Minn. 406 (1896); *Schuller v. Bordeaux*, 64 Miss. 59 (1886); *In re O'Brien*, 29 Mont. 530 (1904); *Akin v. Director of Revenue*, 934 S.W.2d 295 (Mo. 1996); *State v. Second Judicial Dist. Ct. in & for Churchill County*, 30 Nev. 225 (1908); *State v. Liedtke*, 9 Neb. 490 (1880); *State ex rel. Pearson*, 61 N.H. 264 (1881); *In re Thaxton*, 78 N.M. 668 (1968); *People v. Fire Ass'n of Philadelphia*, 92 N.Y. 311 (1883); *Fullam v. Brock*, 271 N.C. 145 (1967); *Enderson v. Hildenbrand*, 52 N.D. 533 (1925); *Gordon v. State*, 23 N.E. 63 (Ohio 1889); *State ex rel. Murray v. Carter*, 167 Okla. 473 (1934); *Hazell v. Brown*, 242 P.3d 743 (Or. App. 2010); *Appeal of Locke*, 72 Pa. 491 (1873); *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634 (1999); *Clark v. State ex rel. Bobo*, 113 S.W.2d 374 (Tenn. 1938); *State Highway Dept. v. Gorham*, 139 Tex. 361 (1942); *Bull v. Reed*, 54 Va. 78 (1855); *State v. Baldwin*, 140 Vt. 501 (1981); *State ex rel. Zilisch v. Auer*, 197 Wis. 284 (1928); *Brower v. State*, 137 Wash. 2d 44 (1998); *Le Page v. Bailey*, 114 W. Va. 25 (1933).

43. See, e.g., *State v. Dumler*, 559 P.2d 798 (Kan. 1977); *Bracey Advertising Co. v. North Carolina Dept. of Transportation*, 241 S.E.2d 146 (N.C. Ct. App. 1978).

44. *Helmsley v. Borough of Ft. Lee*, 394 A.2d 65, 82 (N.J. 1978). Of course, this robust general rule is not without exception. In a case of first impression, the Missouri Supreme Court recently rejected the use of contingent effective dates where a legislative act was made contingent on the passage of another act on a "completely different matter" because doing so violated a state constitutional single-subject rule. *Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d 348 (Mo. 2013). The Compact's contingent effective dates, however, do not pose a single-subject rule violation. The contingencies are subject to the passage of legislation that obviously relates to the same purpose as the Compact; specifically, the passage of substantially identical compact language in other states and the congressional components of the Article V process the Compact invokes. Thus, the contingent effective dates in the Compact are exactly like the contingency upheld in *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 299 (Mo. 1996), in which the Missouri Supreme Court ruled the "legislature may constitutionally condition a law to take effect upon the

happening of a future event."

45. *Helmsley*, 394 A.2d at 83.

46. Jonathan Elliot, *The Debates in the Several State Conventions of the Adoption of the Federal Constitution*, vol. 3, pp. 101–2 (Virginia) (1827), available at files.libertyfund.org/files/1907/1314.03_Bk.pdf.

47. Federalist No. 43 in *The Federalist* (The Gideon Edition), edited with an Introduction, Reader's Guide, Constitutional Cross-reference, Index, and Glossary by George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), available at oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27.

48. "Reply to George Mason's Objections to the Constitution," *New Jersey Journal*, December 19, 26, 1788, in *The Documentary History of the Ratification of the Constitution*, Digital Edition, edited by John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber, and Margaret A. Hogan (Charlottesville: University of Virginia Press, 2009), available at history.wisc.edu/csac/documentary_resources/ratification/attachments/nj%20a%20reply%20to%20george%20mason.pdf.

49. "Letters of a Citizen of New Haven," in *Friends of the Constitution: Writings of the "Other" Federalists, 1787–1788*, edited by Colleen A. Sheehan and Gary L. McDowell (Indianapolis: Liberty Fund, 1998), p. 271, available at files.libertyfund.org/files/2069/Sheehan_0118_Bk.pdf.

50. Federalist No. 85 in *The Federalist*, *supra* note 47.

51. *Cuyler v. Adams*, 449 U.S. 433, 441 (1981); *Wharton v. Wise*, 153 U.S. 155 (1894); *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893); *Green v. Biddle*, 21 U.S. 1, 39-40 (1823).

52. *Cuyler*, 449 U.S. at 440; *U.S. Steel v. Multistate Tax Commission*, 434 U.S. 452, 459 (1978); the decision stated congressional consent is required only for an interstate compact that would enhance "states power quoad [relative to] the federal government").

53. *Supra* note 9, Article VI, section 4, Article VIII, section 1.

54. *U.S. Steel*, 434 U.S. at 479 n. 33.

55. Federalist No. 43 in *The Federalist*, *supra* note 47.

56. *The Writings of George Washington*, collected and edited by Worthington Chauncey Ford, Vol. XI (1785–1790) (New York and London: G.P. Putnam's Sons, 1890) , p. 249, available at files.libertyfund.org/files/2415/Washington_1450-11_Bk.pdf.

57. Jonathan Elliot, *The Debates in the Several State Conventions of the Adoption of the Federal Constitution*, vol. 3 (Virginia) (1827), p. 102, available at files.libertyfund.org/files/1907/1314.03_Bk.pdf.

58. Federalist No. 85 in *The Federalist*, *supra* note 47.

59. See, e.g., *Journals of the Continental Congress, Proceedings, vol. VI* (June 1780) (application from New Hampshire), p. 189; *id.* at 331 (October 1780) (application from New York), available at https://play.google.com/store/books/details?id=QmgFAAAAQAAJ&rdid=book-QmgFAAAAQAAJ&rdot=1.

60. *Ibid.*

61. Robert Natelson, "Amending the Constitution by Convention: A Complete View of the Founders' Plan," *Goldwater Institute Policy Report* No. 241, September 16, 2010, pp. 15–18.

62. *The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed*, Vol. 6, edited by Gaillard Hunt (New York: G.P. Putnam's Sons, 1900) , pp. 403–4, available at files.libertyfund.org/files/1941/1356.06_Bk.pdf.

63. U.S. Const., art. I, sec. 7 (cl. 2).

64. *Hollingsworth v. Virginia*, 3 U.S. 378 (1798); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 460 (D.C. Cir. 1982); Special Constitutional Convention Study Committee, American Bar Association, *Amendment of the Constitution by the Convention Method under Article V* 25 (1974).

65. U.S. Const., art. I, sec. 5 (cl. 2).

66. *Ins v. Chadha*, 462 U.S. 919, 951 (1983); *Myers v. United States*, 272 U.S. 52, 123 (1926).

67. See, e.g., *New Jersey v. New York*, 523 U.S. 767, 811 (1988) (holding that congressional approval "transforms an interstate compact within [the Compact Clause] into a law of the United States"); *Bryant v. Yellen*, 447 U.S. 352, 369 (1980); *McKenna v. Washington Metropolitan Area Transit Authority*, 829 F.2d 186 (D.C. Cir. 1987).

68. See, e.g., *Poole v. Fleeger's Lessee*, 36 U.S. 185, 1837 Westlaw 3559, *24 (1837) (Baldwin, J., concurring) ("The effect of such consent is, that thenceforth, the compact has the same force as if it had been made between states who are not confederated ... or as if there had been no restraining provision in the constitution. Its validity does not depend on any recognition or admission in or by the constitution, that states may make such compacts with the consent of congress; the power existed in the states, in the plenitude of their sovereignty, by original inherent right; they imposed a single restraint upon it, but did not make any surrender of their right, or consent to impair it to any greater extent. Like all other powers not granted to the United States, or prohibited to the states, by the constitution, it is reserved to them, subject only to such restraints as it imposes, leaving its exercise free and unlimited in all other respects, without any auxiliary by any implied recognition or admission of the existence of the general power, consequent upon the particular limitation").

69. Lew Uhler, "Discipline of the Federal FISC – Article V," *Human Events*, April 29, 2014, www.humanevents.com/2014/04/29/discipline-of-the-federal-fisc-article-v/.

70. 125 CR 2111 (HCR51 (MS 1979)).

71. See, e.g., HJR548 (TN 2014); SJR5 (OH 2013); 125 CR 3007 (R5 (NC 1979)); 125 CR 2112 (SJR (NM 1979)); 126 CR 1104 (SJR8 (NV 1980)); SR371 (GA 2014); 125 CR 9188 (SJR1 (IN 1979)); 125 CR 2110 (SCR1661 (KS 1979)); SJR4 (MD 1977); SJRV (MI 2013).

72. See, e.g., 129 CR 20352 (SCR3 (MO 1983)); 125 CR 15227 (SJR1 (IA 1979)).

73. See, e.g., 125 CR 2112 (LR106 (NB 1979)); 125 CR 2113 (R236 (PA 1979)); 125 CR 5223 (HCR31 (TX 1979)).

74. Michael B. Rappaport, "The Constitutionality of a Limited Convention: An Originalist Analysis," *Constitutional Commentary*, Vol. 81 (2012), p. 53; Mike Stern, "Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention," *Tennessee Law Review* 765 (Spring 2011), p. 78.

75. A similar conclusion has been reached by numerous experts. See, e.g., Michael Rappaport, *ibid.*; Mike Stern, *ibid.*; "Note, The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process," *Harvard Journal of Law and Public Policy* 30 (2007), pp. 1005, 1022.

76. Federalist No. 85 in *The Federalist*, *supra* note 47.

77. The foregoing analysis is not cast into doubt by any modern case striking down state laws or ballot initiatives seeking to compel the proposal of constitutional amendments or Article V applications by congressional candidates or legislative representatives. See, e.g., *Miller v. Moore*, 169 F.3d 1119 (8th Cir. 1999); *Barker v. Hazeltine*, 3 F.Supp.2d 1088 (D.S.D. 1998); *League of Women Voters of Me. v. Gwadosky*, 966 F. Supp. 52 (D.Me. 1997); *Bramberg v. Jones*, 20 Cal.4th 1045, 86 Cal.Rptr.2d 319, 978 P.2d 1240 (1999); *Morrissey v. State*, 951 P.2d 911 (Colo. 1998); *Simpson v. Cenarrusa*, 130 Idaho 609, 944 P.2d 1372 (1997); *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996); *In re Initiative Petition No. 364*, 930 P.2d 186 (Okla. 1996). The Compact does not compel anyone or anything to propose any

amendment, nor does it place any power conferred by Article V to a designated body in the hands of anyone or anything that is not designated to exercise such power.

78. *The Records of the Federal Convention of 1787*, Vol. 2, edited by Max Farrand (New Haven: Yale University Press, 1911), pp. 629–30, available at files.libertyfund.org/files/1786/0544-02_Bk.pdf.

79. *Ibid.*

80. The Compact's limitations on delegate authority and instructions are enforced by automatic forfeiture of the appointment of all delegates for that member state if any delegate violates such limitations and instructions (see *supra* note 9, Article VI, section 10). Second, the legislature of the respective member state also could immediately recall and replace the runaway delegate (sections 3 and 4). Third, if such behavior were disorderly, in addition to all other standard means of maintaining order and enforcing the rules furnished under Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure, the chair of the Convention could suspend proceedings and the Commission could relocate the Convention as needed to resume proceedings with a quorum of states participating (*supra* note 9, Article VII, Sections 2, 7 and 8). Fourth, a declaratory judgment ruling all actions of the runaway delegate "void ab initio" and an injunction or temporary restraining order forcing the delegate to cease participation and to return to his or her state capitol would be another option because attorneys general of each member state are required to seek injunctions to enforce the provisions of the Compact (compare *supra* note 9, Article X, section 3, with Articles VI, sections 6, 7, 10). These delegate-specific direct enforcement mechanisms are in addition to the following backstop "kill-switches" (which every member state attorney general also must enforce): (1) the prohibition on member states participating in the convention unless the Compact rules are adopted as the first order of business (*supra* note 9, Article VIII, section 1(b)); (2) the prohibition on transmission of any amendment proposal from the convention other than the contemplated amendment (Article VII, section 9); (3) the nullification of any convention proposal other than the contemplated amendment (compare Article VIII, section 2(a), with Articles VI, sections 6, 7, 10, and Article VII, section 2); and (4) the disapproval of ratification of any amendment by all member states other than the contemplated amendment (Article VIII, section 3).

81. See, *inter alia*, Robert Natelson, *supra* note 61.

82. See, e.g., Federalist No. 40, in *The Federalist*, *supra* 47.

83. The truth is that the delegates to the Philadelphia Convention stayed well within the scope of their authority. Translated with the usage of the times, the legal instruments organizing the Philadelphia Convention essentially declared, "The convention is being organized for the 'sole' purpose of considering a total rewrite of the Articles of Confederation with such alterations and new provisions as might establish a firm national government and make it adequate to governance." It does not take a legal genius to fit the proposal of the Constitution within the scope of such authority. The breadth of the foregoing authority is evident from the fact that the congressional resolution for the Philadelphia Convention contemplated a broad purpose for the meeting – to establish "in these states a firm national government ... [and] render the federal Constitution adequate to the exigencies of Government and the preservation of the Union" (*Resolution of Feb. 21, 1787, 32 J. Continental Cong. 1774–1789* (edited by Roscoe R. Hill, reprint ed. 1968), p. 74. It also contemplated "revising" the Articles with "alterations and provisions." *Id.* Equally broad language was reflected in the state-issued credentials of nearly all delegates to the convention (with New Jersey's delegates being an arguable exception). (*Records of the Federal Convention of 1787*, edited by M. Farrand, 1911, pp. 706–36. Contemporaneous legal usage indicates the word "revision" had a broader meaning than "amendment" and indicated the possibility of a total or substantial rewrite of an original document. See, e.g., *Cases of Judges of Court of Appeals*, 1788 Va. LEXIS 3, *27 (1788) (using "revisal" to describe total rewrite of state laws); *Respublica v. Dallas*, 1801 Pa. LEXIS 56, **18 (Pa. 1801) (referring to a committee creating a new state constitution as charged with "revising" the old constitution); *Waters v. Stewart*, 1 Cai. Cas. 47, 65-72 (N.Y. 1805) (using "revision" in the context of describing a total rewrite of state statutes); *Commonwealth v. Daniel Messenger*, 4 Mass. 462, 467, 469-70 (1808) (describing statutes as a "revision" of prior provincial laws and a "revised" statute as replacing a "former statute"); *Lessee of Ludlow's Heirs v. Culbertson Park*, 1829 Ohio LEXIS 36, **24-26 (Ohio 1829) (using "revision" to describe a total rewrite and consolidation into one act all prior statutes); see generally *Strauss v. Horton*, 207 P.3d 48, 59 (Cal. 2009) (holding that "[w]hile both constitutional amendments and revisions

require a majority of voters approval, a revision – which substantially alters the entire Constitution, the basic framework of the governmental structure or the powers held by one or more governmental branches – requires prior approval of two-thirds of each house of the California State Legislature") (citing Calf. Const. art. X (1849) ("Mode of Amending and Revising the Constitution"); Browne, *Rep. of the Debates in Convention of Cal. on Formation of State Const.* 354-61 (1850); *Livermore v. Waite*, 102 Cal. 113 (1894); Dodd, *The Revision and Amendment of State Constitutions* (1910), 118–20; Jameson, *A Treatise on Constitutional Conventions: Their History, Powers, and Modes of Proceeding* (4th ed. 1887), §§ 530–2, 550–2 (citing the Constitutions of Maine (1820), New Jersey (1844), New York (1846), and Michigan (1850)); William B. Fisch, "Constitutional Referendum in the United States of America," *American Journal of Comparative Law* 54 (2006), pp. 485, 493 (noting "the preferred vehicle for major revisions of existing state constitutions and creation of new ones has been the popularly elected convention, which has often been called by a state legislature without explicit authority in the existing governing document").

84. Thomas H. Neale, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, R42589, 18 (C.R.S., April 11, 2014), www.fas.org/sgp/crs/misc/R42589.pdf.

85. *Ibid.*

86. *Ibid.* at 36 ("Between 1973 and 1992, 22 bills were introduced in the House and 19 in the Senate that sought to establish a procedural framework that would apply to an Article V Convention. Proponents argued that constitutional convention procedures legislation would eliminate many of the uncertainties inherent in first-time consideration of such an event and would also facilitate contingency planning, thus enabling Congress to respond in an orderly fashion to a call for an Article V Convention. The Senate, in fact, passed constitutional convention procedures bills, the "Federal Constitutional Convention Procedures Act," on two separate occasions: as S. 215 in 1971 in the 92nd Congress, and as S. 1272 in 1983, in the 98th Congress").

87. Congressional implied consent could be construed as transforming the Compact's terms and conditions relating to the Article V convention it organizes into the functional equivalent of federal law for procedural purposes under current precedent if Congress's call power were wrongly regarded as entailing such power. See, e.g., *New Jersey*, 523 U.S. at 811; *Bryant*, 447 U.S. at 369; *McKenna*, 829 F.2d 186.

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APPENDIX 1

LAWS OF ALASKA

2014

Source
HB 284

Chapter No.
_____

AN ACT

Relating to an interstate compact on a balanced federal budget.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

Relating to an interstate compact on a balanced federal budget.

*** Section 1.** AS 44.99 is amended by adding new sections to read:

Article 6. Compact for a Balanced Budget.

Sec. 44.99.600. Entry into agreement. The Compact for a Balanced Budget is hereby enacted into law and entered into with all jurisdictions legally joining it in a form substantially as contained in AS 44.99.610.

Sec. 44.99.610. Compact terms. The terms and provisions of the compact referred to in AS 44.99.600 are as follows:

COMPACT FOR A BALANCED BUDGET

ARTICLE I

DECLARATION OF POLICY, PURPOSE AND INTENT

Whereas, every State enacting, adopting and agreeing to be bound by this Compact intends to ensure that their respective Legislature's use of the power to originate a Balanced Budget Amendment under Article V of the Constitution of the

United States will be exercised conveniently and with reasonable certainty as to the consequences thereof.

Now, therefore, in consideration of their expressed mutual promises and obligations, be it enacted by every State enacting, adopting and agreeing to be bound by this Compact, and resolved by each of their respective Legislatures, as the case may be, to exercise herewith all of their respective powers as set forth herein notwithstanding any law to the contrary.

ARTICLE II

DEFINITIONS

Section 1. "Compact" means this "Compact for a Balanced Budget."

Section 2. "Convention" means the convention for proposing amendments organized by this Compact under Article V of the Constitution of the United States and, where contextually appropriate to ensure the terms of this Compact are not evaded, any other similar gathering or body, which might be organized as a consequence of Congress receiving the application set out in this Compact and claim authority to propose or effectuate any amendment, alteration or revision to the Constitution of the United States. This term does not encompass a convention for proposing amendments under Article V of the Constitution of the United States that is organized independently of this Compact based on the separate and distinct application of any State.

Section 3. "State" means one of the several States of the United States. Where contextually appropriate, the term "State" shall be construed to include all of its branches, departments, agencies, political subdivisions, and officers and representatives acting in their official capacity.

Section 4. "Member State" means a State that has enacted, adopted and agreed to be bound to this Compact. For any State to qualify as a Member State with respect to any other State under this Compact, each such State must have enacted, adopted and agreed to be bound by substantively identical compact legislation.

Section 5. "Compact Notice Recipients" means the Archivist of the United States, the President of the United States, the President of the United States Senate, the Office of the Secretary of the United States Senate, the Speaker of the United States

House of Representatives, the Office of the Clerk of the United States House of Representatives, the chief executive officer of each State, and the presiding officer(s) of each house of the Legislatures of the several States.

Section 6. Notice. All notices required by this Compact shall be by U.S. Certified Mail, return receipt requested, or an equivalent or superior form of notice, such as personal delivery documented by evidence of actual receipt.

Section 7. "Balanced Budget Amendment" means the following:

"Article __

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30)

days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement."

ARTICLE III

COMPACT MEMBERSHIP AND WITHDRAWAL

Section 1. This Compact governs each Member State to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting

or contrary law.

Section 2. By becoming a Member State, each such State offers, promises and agrees to perform and comply strictly in accordance with the terms and conditions of this Compact, and has made such offer, promise and agreement in anticipation and consideration of, and in substantial reliance upon, such mutual and reciprocal performance and compliance by each other current and future Member State, if any. Accordingly, in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State's Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State.

Section 3. For purposes of determining Member State status under this Compact, as long as all other provisions of the Compact remain identical and operative on the same terms, legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed and regarded as "substantively identical" with respect to such other legislation enacted by another State notwithstanding: (a) any difference in section 2 of Article IV with specific regard to the respectively enacting State's own method of appointing its member to the Commission; (b) any difference in section 5 of Article IV with specific regard to the respectively enacting State's own obligation to fund the Commission; (c) any difference in section 1 and 2 of Article VI with specific regard to the number and identity of each delegate respectively appointed on behalf of the enacting State, provided that no more than three delegates may attend and participate in the Convention on behalf of any State; or (d) any difference in section 7 of Article X with specific regard to the respectively enacting State as to whether section 1 of Article V of this Compact shall survive termination of this Compact, and thereafter become a continuing resolution of the Legislature of such State applying to Congress for the calling of a convention of the states under Article V of the Constitution of the United States, under such terms and limitations as may be

specified by such State.

Section 4. When fewer than three-fourths of the States are Member States, any Member State may withdraw from this Compact by enacting appropriate legislation, as determined by state law, and giving notice of such withdrawal to the Compact Administrator, if any, or otherwise to the chief executive officer of each other Member State. A withdrawal shall not affect the validity or applicability of the compact with respect to remaining Member States, provided that there remain at least two such States. However, once at least three-fourths of the States are Member States, then no Member State may withdraw from the Compact prior to its termination absent unanimous consent of all Member States.

ARTICLE IV

COMPACT COMMISSION AND COMPACT ADMINISTRATOR

Section 1. Nature of the Compact Commission. The Compact Commission ("Commission") is hereby established. It has the power and duty: (a) to appoint and oversee a Compact Administrator; (b) to encourage States to join the Compact and Congress to call the Convention in accordance with this Compact; (c) to coordinate the performance of obligations under the Compact; (d) to oversee the Convention's logistical operations as appropriate to ensure this Compact governs its proceedings; (e) to oversee the defense and enforcement of the Compact in appropriate legal venues; (f) to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and (g) to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact. The Commission shall only have such implied powers as are essential to carrying out these express powers and duties. It shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. It may adopt and publish corresponding bylaws and policies.

Section 2. Commission Membership. The Commission initially consists of three unpaid members. Each Member State may appoint one member to the Commission through an appointment process to be determined by their respective chief executive officer until all positions on the Commission are filled. Positions shall

be assigned to appointees in the order in which their respective appointing States became Member States. The bylaws of the Commission may expand its membership to include representatives of additional Member States and to allow for modest salaries and reimbursement of expenses if adequate funding exists.

Section 3. Commission Action. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of its appointed membership is present, and no action shall be binding unless approved by a majority of the Commission's appointed membership. The Commission shall meet at least once a year, and may meet more frequently.

Section 4. First Order of Business. The Commission shall at the earliest possible time elect from among its membership a Chairperson, determine a primary place of doing business, and appoint a Compact Administrator.

Section 5. Funding. The Commission and the Compact Administrator's activities shall be funded exclusively by each Member State, as determined by their respective state law, or by voluntary donations.

Section 6. Compact Administrator. The Compact Administrator has the power and duty: (a) to timely notify the States of the date, time and location of the Convention; (b) to organize and direct the logistical operations of the Convention; (c) to maintain an accurate list of all Member States, their appointed delegates, including contact information; and (d) to formulate, transmit, and maintain all official notices, records, and communications relating to this Compact. The Compact Administrator shall only have such implied powers as are essential to carrying out these express powers and duties; and shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. The Compact Administrator serves at the pleasure of the Commission and must keep the Commission seasonably apprised of the performance or nonperformance of the terms and conditions of this Compact. Any notice sent by a Member State to the Compact Administrator concerning this Compact shall be adequate notice to each other Member State provided that a copy of said notice is seasonably delivered by the Compact Administrator to each other Member State's respective chief executive officer.

Section 7. Notice of Key Events. Upon the occurrence of each of the following

described events, or otherwise as soon as possible, the Compact Administrator shall immediately send the following notices to all Compact Notice Recipients, together with certified conforming copies of the chaptered version of this Compact as maintained in the statutes of each Member State: (a) whenever any State becomes a Member State, notice of that fact shall be given; (b) once at least three-fourths of the States are Member States, notice of that fact shall be given together with a statement declaring that the Legislatures of at least two-thirds of the several States have applied for a convention for proposing amendments under Article V of the Constitution of the United States, petitioning Congress to call the Convention contemplated by this Compact, and further requesting cooperation in organizing the same in accordance with this Compact; (c) once Congress has called the Convention contemplated by this Compact, and whenever the date, time and location of the Convention has been determined, notice of that fact shall be given together with the date, time and location of the Convention and other essential logistical matters; (d) upon approval of the Balanced Budget Amendment by the Convention, notice of that fact shall be given together with the transmission of certified copies of such approved proposed amendment and a statement requesting Congress to refer the same for ratification by three-fourths of the Legislatures of the several States under Article V of the Constitution of the United States (however, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted); and (e) when any Article of this Compact prospectively ratifying the Balanced Budget Amendment is effective in any Member State, notice of the same shall be given together with a statement declaring such ratification and further requesting cooperation in ensuring that the official record confirms and reflects the effective corresponding amendment to the Constitution of the United States. However, whenever any Member State enacts appropriate legislation, as determined by the laws of the respective state, withdrawing from this Compact, the Compact Administrator shall immediately send certified conforming copies of the chaptered version of such withdrawal legislation as maintained in the statutes of each such withdrawing Member State, solely to each chief executive officer of each remaining Member State, giving notice of such withdrawal.

Section 8. Cooperation. The Commission, Member States and Compact Administrator shall cooperate with each other and give each other mutual assistance in enforcing this Compact and shall give the chief law enforcement officer of each other Member State any information or documents that are reasonably necessary to facilitate the enforcement of this Compact.

Section 9. This Article does not take effect until there are at least two Member States.

ARTICLE V

RESOLUTION APPLYING FOR CONVENTION

Section 1. Be it resolved, as provided for in Article V of the Constitution of the United States, the Legislature of each Member State herewith applies to Congress for the calling of a convention for proposing amendments limited to the subject matter of proposing for ratification the Balanced Budget Amendment.

Section 2. Congress is further petitioned to refer the Balanced Budget Amendment to the States for ratification by three-fourths of their respective Legislatures.

Section 3. This Article does not take effect until at least three-fourths of the several States are Member States.

ARTICLE VI

DELEGATE APPOINTMENT, LIMITATIONS AND INSTRUCTIONS

Section 1. Number of Delegates. Each Member State shall be entitled to one delegate as its sole and exclusive representative at the Convention as set forth in this Article.

Section 2. Identity of Delegates. Each Member State's chief executive officer, who is serving on the enactment date of this Compact, is appointed in an individual capacity to represent his or her respective State at the Convention as its sole and exclusive delegate.

Section 3. Replacement or Recall of Delegates. A delegate appointed hereunder may be replaced or recalled by the Legislature of his or her respective State at any time for good cause, such as criminal misconduct or the violation of this Compact. If replaced or recalled, any delegate previously appointed hereunder must

immediately vacate the Convention and return to delegate's respective State's capitol.

Section 4. Oath. The power and authority of a delegate under this Article may only be exercised after the Convention is first called by Congress in accordance with this Compact and such appointment is duly accepted by such appointee publicly taking the following oath or affirmation: "I do solemnly swear (or affirm) that I accept this appointment and will act strictly in accordance with the terms and conditions of the Compact for a Balanced Budget, the Constitution of the State I represent, and the Constitution of the United States. I understand that violating this oath (or affirmation) forfeits my appointment and may subject me to other penalties as provided by law."

Section 5. Term. The term of a delegate hereunder commences upon acceptance of appointment and terminates upon the permanent adjournment of the Convention, unless shortened by recall, replacement or forfeiture under this Article. Upon expiration of such term, any person formerly serving as a delegate must immediately withdraw from and cease participation at the Convention, if any is proceeding.

Section 6. Delegate Authority. The power and authority of any delegate appointed hereunder is strictly limited: (a) to introducing, debating, voting upon, proposing and enforcing the Convention Rules specified in this Compact, as needed to ensure those rules govern the Convention; and (b) to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment. All actions taken by any delegate in violation of this section are void ab initio.

Section 7. Delegate Authority. No delegate of any Member State may introduce, debate, vote upon, reject or propose for ratification any constitutional amendment at the Convention unless: (a) the Convention Rules specified in this Compact govern the Convention and their actions; and (b) the constitutional amendment is the Balanced Budget Amendment.

Section 8. Delegate Authority. The power and authority of any delegate at the Convention does not include any power or authority associated with any other public office held by the delegate. Any person appointed to serve as a delegate shall take a temporary leave of absence, or otherwise shall be deemed temporarily disabled, from any other public office held by the delegate while attending the Convention, and may

not exercise any power or authority associated with any other public office held by the delegate while attending the Convention. All actions taken by any delegate in violation of this section are void ab initio.

Section 9. Order of Business. Before introducing, debating, voting upon, rejecting or proposing for ratification any constitutional amendment at the Convention, each delegate of every Member State must first ensure the Convention Rules in this Compact govern the Convention and their actions. Every delegate and each Member State must immediately vacate the Convention and notify the Compact Administrator by the most effective and expeditious means if the Convention Rules in this Compact are not adopted to govern the Convention and their actions.

Section 10. Forfeiture of Appointment. If any Member State or delegate violates any provision of this Compact, then every delegate of that Member State immediately forfeits his or her appointment, and shall immediately cease participation at the Convention, vacate the Convention, and return to his or her respective State's capitol.

Section 11. Expenses. A delegate appointed hereunder is entitled to reimbursement of reasonable expenses for attending the Convention from his or her respective Member State. No delegate may accept any other form of remuneration or compensation for service under this Compact.

ARTICLE VII

CONVENTION RULES

Section 1. Nature of the Convention. The Convention shall be organized, construed and conducted as a body exclusively representing and constituted by the several States.

Section 2. Agenda of the Convention. The agenda of the Convention shall be entirely focused upon and exclusively limited to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment under the Convention Rules specified in this Article and in accordance with the Compact. It shall not be in order for the Convention to consider any matter that is outside the scope of this agenda.

Section 3. Delegate Identity and Procedure. States shall be represented at the

Convention through duly appointed delegates. The number, identity and authority of delegates assigned to each State shall be determined by this Compact in the case of Member States or, in the case of States that are not Member States, by their respective state laws. However, to prevent disruption of proceedings, no more than three delegates may attend and participate in the Convention on behalf of any State. A certified chaptered conforming copy of this Compact, together with government-issued photographic proof of identification, shall suffice as credentials for delegates of Member States. Any commission for delegates of States that are not Member States shall be based on their respective state laws, but it shall furnish credentials that are at least as reliable as those required of Member States.

Section 4. Voting. Each State represented at the Convention shall have one vote, exercised by the vote of that State's delegate in the case of States represented by one delegate, or, in the case of any State that is represented by more than one delegate, by the majority vote of that State's respective delegates.

Section 5. Quorum. A majority of the several States of the United States, each present through its respective delegate in the case of any State that is represented by one delegate, or through a majority of its respective delegates, in the case of any State that is represented by more than one delegate, shall constitute a quorum for the transaction of any business on behalf of the Convention.

Section 6. Action by the Convention. The Convention shall only act as a committee of the whole chaired by the delegate representing the first State to have become a Member State, if that State is represented by one delegate, or otherwise by the delegate chosen by the majority vote of that State's respective delegates. The transaction of any business on behalf of the Convention, including the designation of a Secretary, the adoption of parliamentary procedures and the rejection or proposal of any constitutional amendment, requires a quorum to be present and a majority affirmative vote of those States constituting the quorum.

Section 7. Emergency Suspension and Relocation of the Convention. In the event that the Chair of the Convention declares an emergency due to disorder or an imminent threat to public health and safety prior to the completion of the business on the Agenda, and a majority of the States present at the Convention do not object to

such declaration, further Convention proceedings shall be temporarily suspended, and the Commission shall subsequently relocate or reschedule the Convention to resume proceedings in an orderly fashion in accordance with the terms and conditions of this Compact with prior notice given to the Compact Notice Recipients.

Section 8. Parliamentary Procedure. In adopting, applying and formulating parliamentary procedure, the Convention shall exclusively adopt, apply or appropriately adapt provisions of the most recent editions of Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure. In adopting, applying or adapting parliamentary procedure, the Convention shall exclusively consider analogous precedent arising within the jurisdiction of the United States. Parliamentary procedures adopted, applied or adapted pursuant to this section shall not obstruct, override, or otherwise conflict with this Compact.

Section 9. Transmittal. Upon approval of the Balanced Budget Amendment by the Convention to propose for ratification, the Chair of the Convention shall immediately transmit certified copies of such approved proposed amendment to the Compact Administrator and all Compact Notice Recipients, notifying them respectively of such approval and requesting Congress to refer the same for ratification by the States under Article V of the Constitution of the United States. However, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted as aforesaid.

Section 10. Transparency. Records of the Convention, including the identities of all attendees and detailed minutes of all proceedings, shall be kept by the Chair of the Convention or Secretary designated by the Convention. All proceedings and records of the Convention shall be open to the public upon request subject to reasonable regulations adopted by the Convention that are closely tailored to preventing disruption of proceedings under this Article.

Section 11. Adjournment of the Convention. The Convention shall permanently adjourn upon the earlier of twenty-four (24) hours after commencing proceedings under this Article or the completion of the business on its Agenda.

ARTICLE VIII

PROHIBITION ON ULTRA VIRES CONVENTION

Section 1. Member States shall not participate in the Convention unless: (a) Congress first calls the Convention in accordance with this Compact; and (b) the Convention Rules of this Compact are adopted by the Convention as its first order of business.

Section 2. Any proposal or action of the Convention is void ab initio and issued by a body that is conducting itself in an unlawful and ultra vires fashion if that proposal or action: (a) violates or was approved in violation of the Convention Rules or the delegate instructions and limitations on delegate authority specified in this Compact; (b) purports to propose or effectuate a mode of ratification that is not specified in Article V of the Constitution of the United States; or (c) purports to propose or effectuate the formation of a new government. All Member States are prohibited from advancing or assisting in the advancement of any such proposal or action.

Section 3. Member States shall not ratify or otherwise approve any proposed amendment, alteration or revision to the Constitution of the United States, which originates from the Convention, other than the Balanced Budget Amendment.

ARTICLE IX

RESOLUTION PROSPECTIVELY RATIFYING THE BALANCED BUDGET AMENDMENT

Section 1. Each Member State, by and through its respective Legislature, hereby adopts and ratifies the Balanced Budget Amendment.

Section 2. This Article does not take effect until Congress effectively refers the Balanced Budget Amendment to the States for ratification by three-fourths of the Legislatures of the several States under Article V of the Constitution of the United States.

ARTICLE X

CONSTRUCTION, ENFORCEMENT, VENUE, AND SEVERABILITY

Section 1. To the extent that the effectiveness of this Compact or any of its Articles or provisions requires the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed to waive, repeal, supersede, or

otherwise amend and conform all such rules, policies or procedures to allow for the effectiveness of this Compact to the fullest extent permitted by the constitution of any affected Member State.

Section 2. Date and Location of the Convention. Unless otherwise specified by Congress in its call, the Convention shall be held in Dallas, Texas and commence proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the latter of the effective date of Article V of this Compact or the enactment date of the Congressional resolution calling the Convention.

Section 3. In addition to all other powers and duties conferred by state law which are consistent with the terms and conditions of this Compact, the chief law enforcement officer of each Member State is empowered to defend the Compact from any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief to enforce this Compact; and shall take such action whenever the Compact is challenged or violated.

Section 4. The exclusive venue for all actions in any way arising under this Compact shall be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of the foregoing district court. Each Member State shall submit to the jurisdiction of said courts with respect to such actions. However, upon written request by the chief law enforcement officer of any Member State, the Commission may elect to waive this provision for the purpose of ensuring an action proceeds in the venue that allows for the most convenient and effective enforcement or defense of this Compact. Any such waiver shall be limited to the particular action to which it is applied and not construed or relied upon as a general waiver of this provision. The waiver decisions of the Commission under this provision shall be final and binding on each Member State.

Section 5. The effective date of this Compact and any of its Articles is the latter of: (a) the date of any event rendering the same effective according to its respective terms and conditions; or (b) the earliest date otherwise permitted by law.

Section 6. Article VIII of this Compact is hereby deemed non-severable prior to termination of the Compact. However, if any other phrase, clause, sentence or provision of this Compact, or the applicability of any other phrase, clause, sentence or

provision of this Compact to any government, agency, person or circumstance, is declared in a final judgment to be contrary to the Constitution of the United States, contrary to the state constitution of any Member State, or is otherwise held invalid by a court of competent jurisdiction, such phrase, clause, sentence or provision shall be severed and held for naught, and the validity of the remainder of this Compact and the applicability of the remainder of this Compact to any government, agency, person or circumstance shall not be affected. Furthermore, if this Compact is declared in a final judgment by a court of competent jurisdiction to be entirely contrary to the state constitution of any Member State or otherwise entirely invalid as to any Member State, such Member State shall be deemed to have withdrawn from the Compact, and the Compact shall remain in full force and effect as to any remaining Member State. Finally, if this Compact is declared in a final judgment by a court of competent jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the Constitution of the United States, then it shall be construed and enforced solely as reciprocal legislation enacted by the affected Member State(s).

Section 7. Termination. This Compact shall terminate and be held for naught when the Compact is fully performed and the Constitution of the United States is amended by the Balanced Budget Amendment. However, notwithstanding anything to the contrary set forth in this Compact, in the event such amendment does not occur within seven (7) years after the first State passes legislation enacting, adopting and agreeing to be bound to this Compact, the Compact shall terminate as follows: (a) the Commission shall dissolve and wind up its operations within ninety (90) days thereafter, with the Compact Administrator giving notice of such dissolution and the operative effect of this section to the Compact Notice Recipients; and (b) upon the completed dissolution of the Commission, this Compact shall be deemed terminated, repealed, void ab initio, and held for naught.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. Notwithstanding AS 01.05.031(c), the revisor of statutes is instructed not to edit or revise the text of the compact in AS 44.99.610, enacted by sec. 1 of this Act, so as to avoid the use of pronouns denoting masculine or feminine gender.

APPENDIX 2

____ Congress
__ Session
__.Con.Res.___

OMNIBUS CONCURRENT RESOLUTION

Be it resolved by the _____ of the United States of America (the ____ Concurring) in Congress Assembled,

Section 1. Omnibus Concurrent Resolution to Effectuate the Compact for a Balanced Budget

(a) DECLARATION—The Congress determines and declares that this omnibus concurrent resolution calls the Convention contemplated by the Compact for a Balanced Budget under Article V of the United States Constitution, and refers for ratification the Balanced Budget Amendment contemplated by the Compact for a Balanced Budget.

(b) TABLE OF CONTENTS—The Table of Contents for this Resolution is as follows:

Title I

Concurrent Resolution Prospectively Calling Convention Contemplated by Compact for a Balanced Budget.

Sec. 101. EFFECTIVE DATE—This Title does not take effect until Congress receives sufficient certified conforming copies of the chaptered version of the Compact for a Balanced Budget formed initially by the State of Georgia and the State of Alaska pursuant to 2014 Georgia Laws Act 475 (H.B. 794) and 2014 Alaska Laws Ch. 12 (H.B. 284), respectively, as it may be joined by additional states and amended from time to time ("Compact for a Balanced Budget"), evidencing that at least three-fourths of the several States are Member States of the Compact for a Balanced Budget and have made application thereunder for a convention for proposing amendments under Article V of the United States Constitution.

Sec. 102. CONVENTION CALL— Upon the effective date of this Title, be it resolved by the _____ of the United States of America (the ____ Concurring) in Congress Assembled, Congress hereby calls a convention for proposing amendments under Article V of the United States Constitution in accordance with the Compact for a Balanced Budget.

Sec. 103. TERMINATION DATE—If for any reason the convention for proposing amendments under Article V of the United States Constitution contemplated herein has not permanently adjourned within one year from the Effective Date of this Title, all titles of this resolution shall become null and void ab initio and shall be deemed repealed in its entirety.

Title II

Concurrent Resolution Prospectively Referring the Balanced Budget Amendment to State Legislatures for Ratification.

Sec. 201. EFFECTIVE DATE—This Title does not take effect until Congress receives a certified conforming copy of the Balanced Budget Amendment, as defined by the Compact for a Balanced Budget and described herein, evidencing that the convention for proposing amendments under Article V of the United States Constitution organized thereunder has approved and proposed the same for ratification.

Sec. 202. REFERRAL TO LEGISLATURES OF THE SEVERAL STATES FOR RATIFICATION. Upon the effective date of this Title, be it resolved by the _____ of the United States of America (the ____ Concurring) in Congress Assembled, that the following article has been proposed as an amendment to the Constitution of the United States by a convention for proposing amendments under Article V of the United States Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"Article __

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and

unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement."

APPENDIX 3
Balanced Budget Amendment Task Force
Approach to Article V

One of the three major Article V efforts claims 24 Article V applications exist that aggregate toward the two-thirds threshold for Congress calling a convention limited to proposing a Balanced Budget Amendment. Sadly, this claim is considerably oversold.

As shown in the tables below, there are not 24 Article V applications that evidence 24 states agreeing on the same agenda for a Balanced Budget Amendment convention on the same terms. There are only nine such applications. If different, non-contingent applications that seek convention agendas that are not mutually exclusive are aggregated, there might be 10 applications. If substantively different applications, which are non-contingent (or subject to a contingency that does not logically preclude a convention call), which propose both consistent and mutually exclusive convention agendas while nevertheless stating an intention to be aggregated together, are aggregated, then there might be 11 applications.

Table 1
Summary of State Article V Applications
(* refer to caveats in Table 2)

Bucket A Balanced federal budget required in absence of a national emergency	**Bucket B** Outlays cannot exceed federal revenue; subject to defined national emergency exception	**Bucket C** Outlays cannot exceed "estimated" federal revenue; subject to undefined national emergency exception	**Bucket D** Outlays cannot exceed income except during a declared "war"	**Bucket E** Requirement of adoption of balanced federal budget or prohibiting deficit spending with undefined "exceptions"	**Bucket F** Convention limited to proposal of specific BBA
IA (1979)	AL (2011)	AK (1982)	DE (1976)	CO (1978)	MD (1977)
NC (1979) ***	IN (1979)	AR (1979) *		MO (1983) *	MS (1979)
		FL (2014) +		NH (2012) **	
		GA (2014) +			
		KS (1979)			
		LA (2014) +			
		MI (2013) +			
		NE (1979) *			
		NV (1980)			
		NM (1979) *			
		OH (2013) +			
		PA (1979) *			
		TN (2014) +			
		TX (1979) *			
2 (1 w/o caveats)	**2**	**14 (9 w/o caveats)**	**1**	**3 (1 w/o caveats)**	**2**

Table 2 Caveats in State Article V Applications				
	* Article V application made "alternatively" to direct congressional proposal of BBA (without deadline)	** Application made void on direct congressional proposal of BBA (with deadline)	*** "Memorial" for either Congress "or" a convention to propose a BBA	+ Includes intent to aggregate with all BBA applications
	AR (1979)	NH (2012)	NC (1979)	FL (2014)
	MO (1983)			GA (2014)
	NE (1979)			LA (2014)
	NM (1979)			MI (2013))
	PA (1979)			OH (2013
	TX (1979)			TN (2014)
Total	**6**	**1**	**1**	**6**

There is no way to aggregate existing Article V applications toward a Balanced Budget Amendment convention beyond 11 applications without counting applications that on their face: (a) seek mutually exclusive different convention agendas; and (b) may never become effective because of contingencies on Congress first proposing a balanced budget amendment.

The BBA Task Force approach, which asserts 24 Article V applications can be aggregated toward a Balanced Budget Amendment convention call, is premised on the idea that the two-thirds application threshold required for a Congressional call permits Congress to mix and match substantively different and mutually exclusive Article V applications.

This approach plainly violates the text and original understanding of Article V. The text of Article V talks about two-thirds of the state legislatures making an "Application" in the singular. This implies the congressional call requires two-thirds of the states to advance substantively identical, not mutually exclusive, applications. Not surprisingly, the Founders themselves repeatedly expressed the expectation that the states would "concur" in the same application agenda.

Hamilton observed in Federalist No. 85 that "whenever nine States concur" in an application, Congress's role in calling a convention would be "peremptory" because "[n]othing in this particular is left to the discretion of that body." Thus, according to Hamilton, Congress's mandatory duty to call a convention would be triggered upon receiving an application that actually received the concurrence of two-thirds of the states.

Similarly, ten years later, on February 7, 1799, James Madison's *Report on the Virginia Resolutions* further observed the states could organize an Article V convention for the "object" of declaring the Alien and Sedition Acts unconstitutional. Specifically, after highlighting that "Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose,"

Madison wrote that the states could not only ask their senators to propose an "explanatory amendment" clarifying that the Alien and Sedition Acts were unconstitutional, but also that two-thirds of the legislatures of the states "might, by an application to Congress, have obtained a Convention for the same object."

Madison and Hamilton clearly understood and argued that Article V applications must reflect a concurrence of two-thirds of the state legislatures on the same application and the same Article V agenda.

This makes perfect sense insofar as Congress's role in calling the convention is mandatory and "peremptory" (according to Federalist No. 85); hence, Congress has no constitutional discretion or judgment that would allow it to aggregate substantively different and mutually exclusive applications. Congress has only the power and duty to yield automatically to the agenda sought by the "Application" of the States. That cannot happen if different and mutually exclusive agendas are sought by the states.

For this reason, to the extent that it claims more than 11 applications exist that can trigger Congress's Article V call duty for a Balanced Budget Amendment convention, the BBA Task Force is advancing a clearly unconstitutional approach to Article V from an originalist perspective. Any aggregation of Article V applications above nine toward triggering such a convention is entirely debatable and unlikely to sustain a litigation effort to compel Congress to call a convention under Article V.

That does not mean the BBA Task Force approach will not succeed as a political movement. But Fivers considering whether to advance the approach should do so with their eyes open.

About the Publisher

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- **In a world of growing polarization, we reach both political parties:** According to a survey of elected officials conducted by Victory Enterprises in 2014, 68 percent of state Democratic legislators and 77 percent of Republicans recognize The Heartland Institute. Fifty percent of Democrats and 48 percent of Republicans say they read *Environment & Climate News*, one of Heartland's flagship publications, sometimes or always.

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1138
2-5-15
#8

COMPACT FOR AMERICA
to Fix the National Debt

Compact for a Balanced Budget

Legislative One-Page Overview

The Balanced Budget Amendment – the amendment "Payload" in Article II of the Compact

- Section 1 - balances federal budget by limiting spending to taxes except for borrowing under a constitutional debt limit.
- Section 2 – establishes a constitutional debt limit equal to 105% of outstanding debt at time of ratification
- Section 3 – requires approval of a majority of the state legislatures if Congress desires to increase the debt limit
- Section 4 – requires the President to protect the constitutional debt limit through impoundments Congress can override
- Section 5 – encourages spending and tax loophole reductions to bridge deficits, as opposed to general tax increases
- Section 6 – provides necessary definitions
- Section 7 – provides for self-enforcement of the amendment

The Compact for a Balanced Budget - the "Delivery Vehicle" for the BBA

- Purpose – to greatly simplify the amendment process by combining all the steps required of the state legislature to safely, efficiently, and effectively propose and ratify the Balanced Budget Amendment
- Article I – describes purpose of organizing the states to originate the Balanced Budget Amendment using a compact
- Article II – provides the necessary definitions, **including the actual text of the proposed Balanced Budget Amendment**
- Article III – sets compact membership and withdrawal requirements
- Article IV – establishes the Compact Commission – when 2 states join
- Article V – **applies to Congress for Balanced Budget Amendment Article V convention** – effective when 38 states join
- Article VI – appoints and instructs delegate(s) who will attend the Balanced Budget Amendment Article V convention
- Article VII – details the **convention agenda and rules**, allows first member state to designate Convention Chair
- Article VIII – prohibits participation in convention before Congress consents to Compact; prohibits runaway convention and ratification of runaway proposals by member states
- Article IX – **resolution ratifying the balanced Budget Amendment** – effective when convention proposes amendment and Congress refers amendment to the state legislatures for ratification
- Article X – provides enforcement by state attorney generals, central venue, severability and termination provisions

The Congressional Resolution – the "activation" of the compact by Congress

- Title 1 – **resolution calling the required convention** in accordance with the terms and provisions of the Compact for a Balanced Budget – effective when 38 states join the Compact
- Title 2 – **resolution referring the Balanced Budget Amendment to the state legislatures for ratification** – effective when convention proposes amendment

COMPACT FOR AMERICA
to Fix the National Debt

Why the Compact for a Balanced Budget is Far Safer than the Political Status Quo

- **The political status quo is exceedingly dangerous**.
    - The status quo is a runaway convention in Washington.
    - Keeping the locus of power in Washington will eventually destroy the Constitution.
    - Not using Article V is unilateral disarmament.
        - Not using Article V does not make it go away. It does not disable anti-constitutionalists from using it. It only hobbles constitutionalists and forces them to be reactive rather than proactive. This is a losing strategy.
        - Right now there are anywhere from 200 to 400 Article V resolutions in existence. If the states don't mass political will behind their own Article V effort, what stops Congress from simply calling a puppet Article V convention tomorrow?
- **The Compact is exceedingly safe**.
    - All of Eagle Forum's famous 20 questions about the Article V amendment process have been answered by reference to specific provisions in the Compact (including the identity of delegates, voting procedures, rules, location of convention, etc.).
    - Not a single delegate of a single member state can participate in the convention the Compact organizes unless the rules specified in the Compact requiring an up or down vote on the contemplated Balanced Budget Amendment are adopted as the first order of business.
        - If any delegate tries to violate this prohibition, all delegates of that delegate's member state are automatically recalled, attorneys general in 38 states are commanded to enforce that recall immediately (in the jurisdiction that is most favorable to constitutionalists-Texas), and that member state's legislature is immediately empowered to select and send new delegates.
    - No convention is ever convened before 38 states and simple majorities of Congress settle their differences and agree on the Compact.
        - This ensures that the federal courts would not only have to disregard their constitutional duty in tolerating a runaway convention, but also a united front among Congress and supermajorities of the states and the American people.
    - The power of nullification is used to deem "void ab initio" any runaway convention and any runaway proposal.
    - The Compact self-repeals in 7 years from its first enactment (April 12, 2021).

2-5-15
HB1138
#9

Testimony

In Opposition to HB 1138

(and other legislation calling for an Article V Convention)

by Duane Stahl

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In Opposition to an Article V Convention

Millions of Americans now rightfully believe we must limit the federal government's powers and spending. Some good people feel that can be accomplished by calling on Congress to convene an Article V convention of the states to propose a balanced budget amendment. This ignores the fact that our biggest problem is that our elected officials already pay little attention to the Constitution's limitations. Why would they pay attention to a new amendment?

Why is there opposition to such a convention? I for one am very jittery when I think of the various groups who would like to tinker with our Constitution. There are those who would love to change parts of the Bill of Rights—free speech, right to bear arms, search and seizure, etc. Some attacks would come from the right (perhaps because of the war on terrorism), others from the left.

Conservatives insist that if a new convention isn't held, the growth of the federal government will go on forever until all power is consolidated in Washington, D.C. Some progressives, however, would favor an Article V convention as a means of finally changing all the things they believe are wrong about our form of government.

I understand that this bill's proponents want to limit such a convention to proposing one amendment only. When I read Article V of the U.S. Constitution, though, I see that the applicable part states that Congress "...on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments...." I can't help but fear that that means amendments—not AN AMENDMENT—could be proposed no matter what is passed by state legislatures.

Those in favor of this effort say a safeguard is that any amendment would have to be ratified by three-fourths of the states. However, Article V states that amendments "...shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three

fourths thereof, as the one or the other mode of ratification may be proposed by the congress." Therefore, Congress could be a powerful force in the ratification process. (Besides, there are a few amendments in the present Constitution that some argue were not the best to ratify.)

Some don't believe a convention could turn into a "runaway" convention that exceeded its authorized mandate. If that were the case, Article V supporters would now be calling for amendments to the Articles of Confederation because that would still exist, although in amended form.

Once the doors are closed at the convention, what is there to keep delegates from proposing whatever amendments they wish? I can't help but be certain there will be delegates committed to less-than-conservative causes who will bend any proposal into something that likely will bear little resemblance to proposals backers of this legislation want. I can't believe there are ways to get George Soros-funded delegates to change their goals.

Under Article V, state legislatures apply to Congress to "call" a convention, so Congress "calls" the convention—not the states. Will Congress determine the number of delegates for each state? What if it decides it should be the same as the makeup of the U.S. House of Representatives, that North Dakota would have one delegate and California, fifty-three?

How can we be sure we can control such a convention? There's more than a fifty-fifty certainty that a convention could exceed any mandate placed on it, no matter what oaths or agreements might be used. And so what if a state recalled its one delegate for breaching the agreement? California and New York would probably not even notice that delegate's absence.

Another point. Let's assume a balanced budget amendment has become part of the Constitution. Now, who will decide what "balanced" means? Does it include

entitlements? Off-budget spending? The trillions created by the Federal Reserve out of thin air?

Would Congress say it is "forced" to raise taxes to extremes to balance the budget? Would wars (even undeclared wars or "limited military responses") interfere with the aim of the amendment? What about "national security threats" or high unemployment or a very poor economy? Could politicians find even other loopholes to get around a balanced budget?

I recall one time when spending cuts were proposed, President Obama announced that any budget cuts would not apply to the Affordable Health Care Act. (This is not meant to be an attack on Democrats; budgets haven't fared well in recent Republican administrations either.)

How could the budget be balanced? Words won't do it. There isn't any chance any part of government will follow a revised Constitution if it is not in their interest to do so. They do not follow the Law of the Land now. If we keep voting for those who do not desire to follow the Law, the Law will be violated.

The only solution is to elect people who will balance the budget because that is the right thing to do. Thomas Jefferson said: *"I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education. This is the true corrective of the abuses of constitutional power."*

As an aside, the states could refuse money from the federal government, thus starting to sever the arms of the federal monster. If state legislators want to force the monster back inside its constitutional cage, shouldn't they oppose the acceptance of even a

single cent of federal money? I have read that most states receive at least one-third of their budget funds from the federal government. Is it right to shake our fists at Washington with one hand and to cash checks with the other?

How many states have balanced budget amendments (or statutes) and still have deficits or carry debt? From what I have found, there are not many states like North Dakota. I recall once hearing that a Supreme Court in one state once redefined the term "debt" to open a loophole for spending. Could something similar happen on the federal level?

Finally, there are the names of those who promote the effort to call a convention: Mark Levin, Robert Natelson, Nick Dranias, Michael Farris, David Barton, Glenn Beck, Sean Hannity, Rush Limbaugh, etc. And I do admire some of these individuals for much of what they believe and propose.

However, what about those who strongly feel otherwise? Among them are Eagle Forum's Phyllis Schlafly; former U.S. Supreme Court Justice Warren Burger; Professor Charles E. Rice, Professor of Law at Notre Dame Law School; Robert H. Bork, former Professor of Yale Law School, former judge for the U.S. Court of Appeals for the District of Columbia, and U.S. Supreme Court nominee; Laurence H. Tribe, Professor of Constitutional Law; Gerald Gunther, Harvard University Professor; William Nelson Cromwell, Professor of Law at Stanford Law School; Charles Alan Wright, professor at the School of Law at the University of Texas at Austin; Dr. Scott Bradley, whose degree is in Constitutional studies and who has studied the Constitution, the history of the founding era and the writings of the era for over 40 years; the late Rex E. Lee, former President of Brigham Young University; and Professor Christopher Brown, University of Maryland School of Law. (I have read what some of these have written, not all.)

The last thing that bothers me about such a proposed amendment is that I feel it would be akin to saying all the unconstitutional legislation that has passed or may be passed by Congress is just fine—as long as the budget is balanced.

Although it will take time, I believe the only solution is a revolution in the thinking of enough of the American people back to the original ideas that created the United States—enough to tip the balance so that a majority of legislators who will strictly follow the Constitution are elected.

#10
1138
2-5-15

DAVID A. CLEMENS

TESTIMONY ON

HB1138

Personal Introduction

My name is David Clemens from West Fargo, ND, reside in District 16. I am a common citizen of North Dakota and claim no expert knowledge on this subject and I am sure you a committee could offer questions I may not be familiar with. However, I will do my best to answer your questions.

I believe as most of you do that we need a Balanced Budget but I differ with HB1138 in that there is a better way to create a Balanced Budget than called for in a Convention. Our Founding Fathers offered ways to balance a budget through honest and practical legislation or offering amendments for ratification.

I also know there will be many people pushing for an Article V Convention that will not be of the conservative spirit as those wishing for a Balanced Budget. We will see attacks coming from those that wish to change the Country, Culture and Constitution to a level none of us would wish for.

Following earlier testimony this morning in regards to a Balanced Budget Amendment to our Constitution, I have the following comments.

- On a Balanced Budget, who will be setting the budget and how much?
- How does a Balanced Budget Amendment pay National Debt?
- It was stated that Patrick Henry believed Article V in the Constitution did not work; it must work since we have 27 Amendments ratified by the people.
- No matter how many Amendments we pass, we are seeing how Rulings from the Bench are over-riding the Constitution.

In a letter from James Madison to G.L. Turberville, Nov 2, 1788

You wish to know my sentiments on the project of [an Article V] Convention as suggested by New York. I shall give them to you with great frankness. If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partisans [sic] on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations

popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. James Madison

(New York applied for a Article V convention on February 5, 1789.)

Lawrence Lessig

Lawrence is an American academic and political activist. He was born in Rapid City, SD and began his career as a Conservative. However, after studies abroad at Cambridge he stayed an additional two years to continue studies and developed changed political values. He traveled in the Eastern Bloc where he acquired a lifelong interest in Eastern European law and politics. While he remains skeptical of government intervention, he favors regulation by calling himself "a Constitutionalist". Lessig came out in favor of then Democratic primary candidate Barack Obama, citing the transformative nature of the Obama campaign.

Lessig has called for state governments to call for a national constitutional convention and the convention be populated by a "random proportional selection of citizens" which he suggested would work effectively.

Personal note: Lessig is an example of those working for a convention to promote there own agendas, not for a balanced budget.

Professor Stanford Levinson

Professor Stanford Levinson was this year's (2008) invited guest speaker at Colorado Law's 51st John R. Coen Lecture, titled "Is it a Criticism or a Compliment to Describe the U.S. Constitution as "Undemocratic?". Professor Levinson discussed the need for a new constitutional convention in an effort to bring forth a better charter, as well as citizen's need to treat the constitution as the revisable product of fallible humans beings. Levinson is at the University of Texas School of Law and Professor in the Department of Government at the University of Texas. He is the author of four books, including Our Undemocratic Constitution; Where the Constitution Goes Wrong (and How We the People Can Correct it) and Wrestling with Diversity. He also has posted on U-tube the following videos:

- Constitutional Contradictions
- Constitution and American Culture
- Renewing Democracy
- How a Parliament System would resolve congress gridlock
- What is "well regulated" Militia
- What is democracy

Levinson has stated that America needs gun control, but a political brick wall stands in the way.

Personal note: This is another example of forces that would like a convention to advance there own radical agendas.

George Soros

George Soros sponsored a conference called "The Constitution in 2020" on April 8-10, 2005. It is a progressive vision of what the Constitution ought to be. The American Constitution Society, of which Hillary Clinton is or has been a contributor, has received funding from Soros' "Open Society Institute".

Personal note: Another example of those interested in a convention other than Balanced Budget Amendment.

Center on Budget and Policy Priorities (July 16, 2014)

- Justice Antonin Scalia recently said, "I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?
- Former Chief Justice of the United Sates Warren Burger wrote in 1988: There is no way to effectively limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda.
- A convention could write its own rules. The Constitution provides no guidance whatsoever on the ground rules for a convention. This leaves wide open the political considerations and pressures such fundamental questions as how the delegates would be chosen, how many delegates each state would have, and whether a supermajority vote would be required to approve amendments. To illustrate the importance of these issues, consider that if every state had one vote in the convention and the convention could approve amendments with a simple majority vote, the 26 least populous states-----which contain less than 18 percent of the nation's people---could approve an amendment for ratification.
- A convention could set its own agenda, possibly influenced by powerful interest groups.

In closing, I strongly urge you as a committee to recommend a "do not pass" on the bills before us that would encourage a Convention of States.

#11 1138
2-5-15

Thank you Mr. Chairman and members of this committee. My name is Virginia McClure. I'm not a constitutional scholar and I'm not accustomed to speaking before legislative committees so forgive me if I stumble through this. I'm a simple business owner who loves our Constitution. Our founders bequeathed to us and at such great cost a form of Government that is eloquently simple and delicately balanced. So we must ask ourselves who would want to change that and why.

There are many reasons people are proposing a Constitutional Convention. Some include Right to life, Right to choice, term limits, amnesty, setting English as the only language, abolish capital punishment and of course the balanced budget. As you can see the reasons are as varied as congress itself. Others say that Congress isn't following the Constitution so we need to change it. Well that's just ludicrous.

This bill HB1138 wants to call a convention of the states for the purpose of a balanced budget amendment. Well that sounds nice. But do you really need a law that says don't spend more than you make? What happens if the law is violated? How will this law be enforced? If Congress already doesn't follow the Constitution what will adding a new law change? The Constitution isn't the problem.

Article 1 Section 8 already gives Congress the power to borrow money and pay debts. It's already the job of Congress to make sound financial decisions. Our Country depends upon it. And if Congress isn't doing its job then it's the duty of the people to elect those who will.

HB 1138 states that the delegates will be bound to this compact but there is no way to actually enforce that. True, HB1441 establishes a Class C Felony for violations but how will that truly be enforced. Do we wait until the delegates return home and then arrest them? What if the President likes what the delegates are doing and pardons the lot? Can we arrest delegates while they are performing their duties? Article 1, Section 6 states that members of Congress are exempt from being arrested while in session to prevent them from being detained by someone in opposition to their views.

The last time that we had a Convention of the States, the delegates were bound to the topics agreed upon. Yet the result was an entirely new form of government. During this convention, the ratification process was also changed. We were fortunate that the delegates then were conscious of personal liberties and the dangers of tyranny. Are you confident that men today would be equal to the task?

If we pass the balanced budget amendment, what prevents Congress from raising taxes or printing more money instead of cutting spending? The dangers of an Article V Convention are simply not worth the risk.

1138 #12
2-5-15

Members of the committee,

My name is Andrew Bornemann, and I have been a lifetime resident of our great state of North Dakota, currently farming near Kintyre, ND.

I am standing before you today to state my opposition to HB 1138, and resolutions HCR 3014, HCR 3015, and HCR 3017, which are simple variations of the same bill, and to raise some questions for your consideration.

First though, let us take a moment and read Article V of the US Constitution to which this resolution appeals:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

I would like to point out that the wording of Article V leaves a lot of questions unanswered. Those in support of an Article V convention like to refer to it as a "Convention of the States", but that language is simply not in the constitution. Granted, that may have been the original intent of our founding fathers, but is that how a proposed convention would work out today? As the wording of Article V does not include specifics such as what is the scope of a convention, who forms the convention, are the delegates apportioned by states or by population, may the delegates be bound by the states sending them to certain topics, who will make those decisions? While I would like to believe that those powers would be reserved to the states, I find it hard to believe that the US congress would not take it upon themselves to make such rules, as they expressly have the responsibility to "Call" the convention, *and they have been told it is their responsibility and have tried to in the past!*

According to a briefing sent to congress April 11th, 2014, by the Congressional Research Service entitled "The article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress" (Extremely informative of the views of the National government on this topic, available at https://www.fas.org/sgp/crs/misc/R42589.pdf),

"Second, while the Constitution is silent on the mechanics of an Article V convention, Congress
has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a
convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures,

including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states."

Farther, it goes on to say regarding limiting the convention to a certain topic:

"One point on which most observers appear to agree is that an Article V Convention, either limited
or general, could not be restricted to consider a specific amendment. During the 1980s campaign
for a convention to consider a balanced budget amendment, a number of state legislatures proposed specific amendment language. Some would have accepted a "substantially similar"
amendment, while others attempted to limit the convention solely to consideration of their particular amendments. In its 1993 study, the House Judiciary Committee indicated the former
might be qualified, but:
'... an application requesting an up-or-down vote on a specifically worded amendment cannot be considered valid. Such an approach robs the Convention of its deliberative function which is inherent in article V language stating that the Convention's purpose is to "propose amendments." If the State legislatures were permitted to propose the exact wording of an amendment and stipulate that the language not be altered, the Convention would be deprived of this function and would become instead part of the ratification process.' "

As can be readily seen, there are grave concerns as to the likelihood of either the states being able to set the rules for a convention, or for the scope of a convention being limited to certain topics. Do we really want to open up the doors to a convention where ANY topic may be discussed, or potentially the delegates be apportioned by population or electoral votes? I do not think this is in the best interest of North Dakota.

And besides, is the constitution we have flawed, or just ignored?

I submit that though there is reason for concern at the blatant disregard for the constitution plainly visible in Washington, I believe that changing the constitution is not going to fix the problem, and that a constitutional convention is NOT the right way to address the problem. It would be ineffective at best, and downright dangerous to the very fabric of our society at worst. A much better option would be to start holding our national government accountable to their oaths to uphold the constitution, be it through voting them out, legal proceedings, or even impeachment for their crimes. The problem we face today is not one of an inadequate constitution, but one of an immoral and corrupt government.

In the words of John Adams:

"Gentleman,

While our country remains untainted with the principles and manners which are now producing desolation in so many parts of the world; while she continues sincere, and incapable of insidious and impious policy, we shall have the strongest reason to rejoice in the local destination assigned us by Providence. But should the people of America once become capable

of that deep simulation towards one another, and towards foreign nations, which assumes the language of justice and moderation while it is practicing iniquity and extravagance, ... expressing in the most captivating manner the charming pictures of candor, frankness, and sincerity, while it is rioting in rapine and insolence, this country will be the most miserable habitation in the world; because we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other. " (October 11th, 1798, letter to the officers of the First Brigade of Militia of Massachusetts)

These almost prophetic words, spoken over 200 years ago, are I believe coming true today. The problem is not the constitution, but the people responsible for the carrying out of it. Changing the constitution is not the answer, education of the people on the responsibilities of freedom, and the responsibilities and limits imposed on governments by our constitution is I believe the only answer to the problems we now face.

Thank you for your time, and if there are any questions I will do my best to answer them now.

3/19 HB 1138 Attachment #1
Pg 1

Mr. Chairman, Members of the Senate Government and Veterans Affairs Committee, for the record I am Bob Skarphol, State Representative District 2, Tioga, North Dakota.

I appear in front of you today to introduce HB 1138, the Compact for a Balance Budget, which would utilize the provisions of Article V of the US Constitution to impose a more responsible fiscal policy upon the Congress of the United States. My comments are intended to be very high level as there are others much more expert than I who intend to give you the national perspective and legal expertise pertinent to the Compact.

Our national debt today is more than $18 trillion and greater than our Gross Domestic Product. The cost of interest on our national debt severely threatens our nation's future. Imagine what would happen if interest rates elevated to the levels seen in the 1980's. The government of Greece is teetering on the brink of bankruptcy and there debt to GDP ratio is not a lot different than our own.

If 38 states pass the Compact for a Balanced Budget, and Congress is convinced to endorse the Compact through a Congressional Resolution, a new fiscal regime would be imposed on our federal government. Work is ongoing on the national and state level to accomplish the approval of the Compact.

This new regime would limit the amount of indebtedness that Congress could approve to 105% of existing debt on the anniversary of approval. Without the endorsement of 34 states via legislative approval of the states, the federal debt ceiling could not be raised. It would also require the approval of 34 states to increase taxes with some limited exceptions. It would require that spending could not exceed revenue, as we are we required to do in North Dakota. "Statesmanship" rather than "political expediency" should become the norm as opposed to what we have at the federal level today.

The Compact does require a Constitutional Convention, but the language of the Compact as drafted is very specific in the intent of the Convention and the Convention is not able to address any additional issues other than what is specifically provided for in the Compact.

The real advantage of this Compact process is the relatively short time frame in which it can happen and the inability for a runaway Convention. The strength of the Compact is that it immediately consummates the requirement for our federal government to refrain from indenturing our children, grandchildren and great grandchildren.

I respectfully ask for your favorable consideration of HB 1138.

COMPACT FOR AMERICA

to Fix the National Debt

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COMPACT FOR AMERICA
to Fix the National Debt

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- **The political status quo is exceedingly dangerous**.
    - The status quo is a runaway convention in Washington.
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    - Not using Article V is unilateral disarmament.
        - Not using Article V does not make it go away. It does not disable anti-constitutionalists from using it. It only hobbles constitutionalists and forces them to be reactive rather than proactive. This is a losing strategy.
        - Right now there are anywhere from 200 to 400 Article V resolutions in existence. If the states don't mass political will behind their own Article V effort, what stops Congress from simply calling a puppet Article V convention tomorrow?
- **The Compact is exceedingly safe**.
    - All of Eagle Forum's famous 20 questions about the Article V amendment process have been answered by reference to specific provisions in the Compact (including the identity of delegates, voting procedures, rules, location of convention, etc.).
    - Not a single delegate of a single member state can participate in the convention the Compact organizes unless the rules specified in the Compact requiring an up or down vote on the contemplated Balanced Budget Amendment are adopted as the first order of business.
        - If any delegate tries to violate this prohibition, all delegates of that delegate's member state are automatically recalled, attorneys general in 38 states are commanded to enforce that recall immediately (in the jurisdiction that is most favorable to constitutionalists-Texas), and that member state's legislature is immediately empowered to select and send new delegates.
    - No convention is ever convened before 38 states and simple majorities of Congress settle their differences and agree on the Compact.
        - This ensures that the federal courts would not only have to disregard their constitutional duty in tolerating a runaway convention, but also a united front among Congress and supermajorities of the states and the American people.
    - The power of nullification is used to deem "void ab initio" any runaway convention and any runaway proposal.
    - The Compact self-repeals in 7 years from its first enactment (April 12, 2021).

#2 pg 1

NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Lawrence R. Klemin
District 47
1709 Montego Drive
Bismarck, ND 58503-0856

Residence: 701-222-2577
lklemin@nd.gov

COMMITTEES:
Judiciary
Political Subdivisions, Chairman

TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
HOUSE BILL NO. 1138
MARCH 19, 2015

Mr. Chairman and Members of the Senate Government and Veterans Affairs Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill 1138.

The year was 1787. The place was Philadelphia. At that time and place 228 years ago, the original 13 states came together and created a Constitution to govern the relationships among the states and their citizens. One of the main things that the states did in the Constitution was to create the Congress and the federal government. There are many provisions in the Constitution, but the founders recognized that there was a need for a procedure to amend the Constitution, if it became necessary. Consequently, the Constitution includes Article V, which provides:

UNITED STATES CONSTITUTION
ARTICLE 5 Amendments

> The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Article V therefore provides for two methods to amend the Constitution. First, the Congress, by a 2/3 vote of both houses, can propose amendments, which must then be

ratified by 3/4 of the legislatures of the states. This is the method that has been used for the amendments to the Constitution that we have today. Article V also contains a "safety valve" if Congress fails to act, in which case the legislatures of 2/3 of the states (34 states) can propose amendments to the Constitution, which become effective when ratified by 3/4 of the states (38 states).

We now are at a time in the history of this country when Congress and the federal government have demonstrated an inability for fiscal restraint. It is time for the states to come together to exercise control over the federal government to impose fiscal restraint. It is time for the states to use the "safety valve" in Article V to exercise supervisory control over the fiscal affairs of this country.

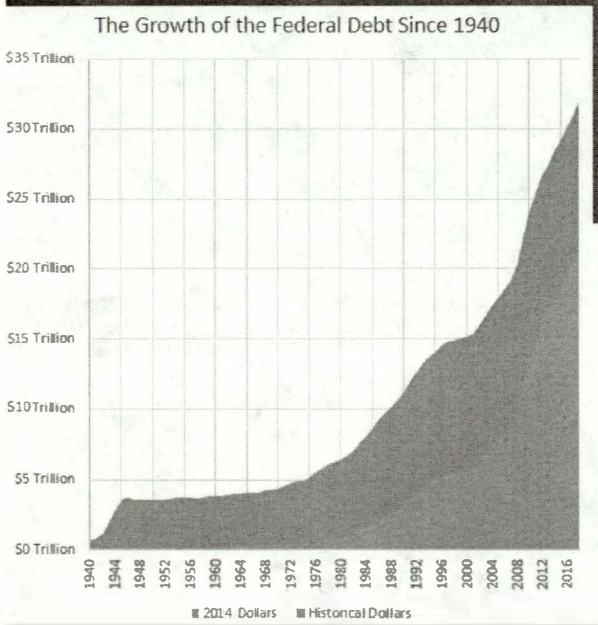
House Bill 1138 proposes a method to regain fiscal restraint in which the states can enter into an agreement, known as a compact, to provide for a balanced budget. House Bill 1138 enacts a Compact for a Balanced Budget and sets out in detail the terms of that compact, its purpose, and how it is to be implemented. It also sets out the exact wording of a balanced budget amendment to the United States Constitution.

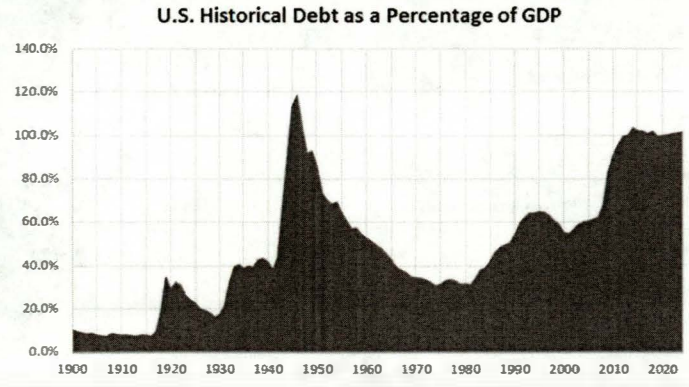
I urge your support for House Bill 1138. I would now like to introduce Nick Dranias, a constitutional scholar and a Board member of the Compact for America, Inc., to explain House Bill 1138, the details of the Compact for a Balanced Budget, and how this will work to ensure fiscal responsibility in America.

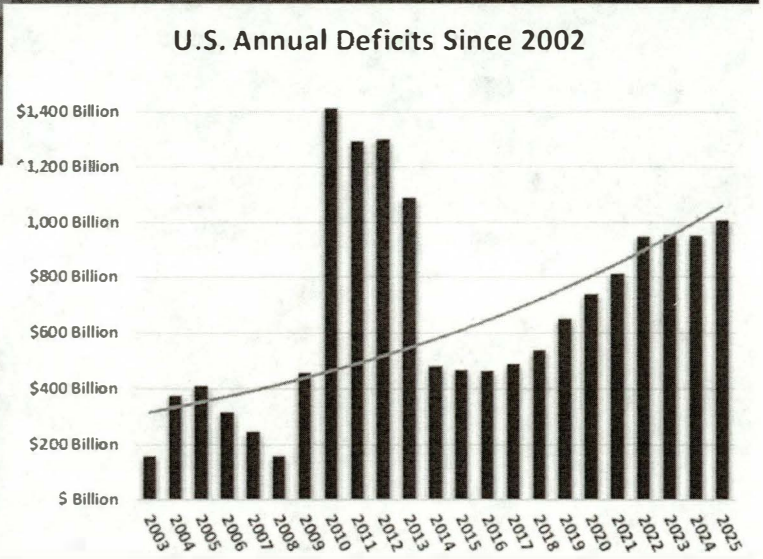
3/19 HB 1138 #3 pg 1

WHY "COMPACT" FOR A BALANCED BUDGET?

- CERTAINTY
- SAFETY
- SPEED







#3
Pg 2

PROBLEM OF CERTAINTY

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#3 pg 3

THE BALANCED BUDGET AMENDMENT

- **DEBT LIMIT**
  - Spending restricted to cash flow and line of credit.
  - Line of credit is a specific amount.
  - Enforced by orderly and transparent impoundment.
- **EXTERNAL DISCIPLINE**
  - **State veto/approval.**
- **TAX LIMIT**
  - Supermajority vote of Congress required for tax rate increases . . . except for:
    - Consumption ("Fair") tax (w/no income tax).
    - Flat(ter) tax.
    - Tariffs (other).

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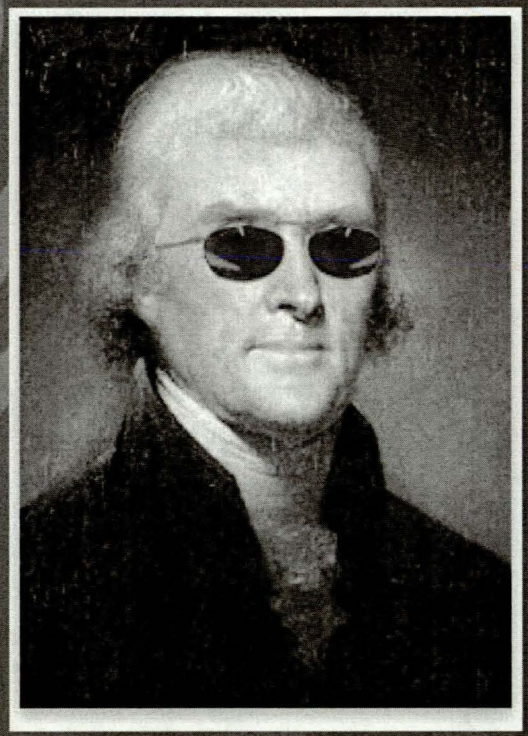
#3 pg 4

POINT OF LEVERAGE

"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 to the genuine principles of its constitution. I mean an additional article taking from the federal government the power of borrowing."



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#3 pg 5

STATES CAN DO IT

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;

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#3 pg 6

EXHIBIT A

Original text:

"The Congress . . . on the Application of two thirds of the Legislatures of the several States shall propose amendments . . ."

- THE APPLICATION WOULD SPECIFY THE AMENDMENT(S).

Final text:

"The Congress . . . on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments . . ."

- NOTHING INDICATES "APPLICATION" CHANGED MEANING.

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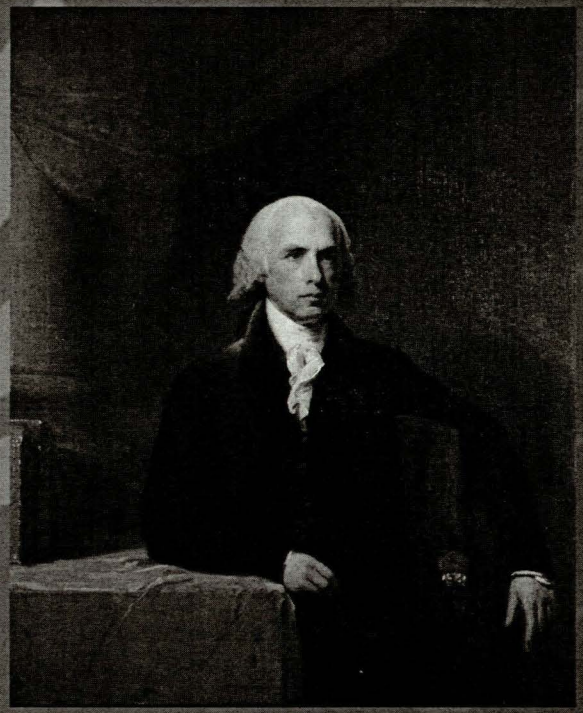
#3 pg 7

EXHIBIT B

Federalist No. 43:

Article V: "equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."



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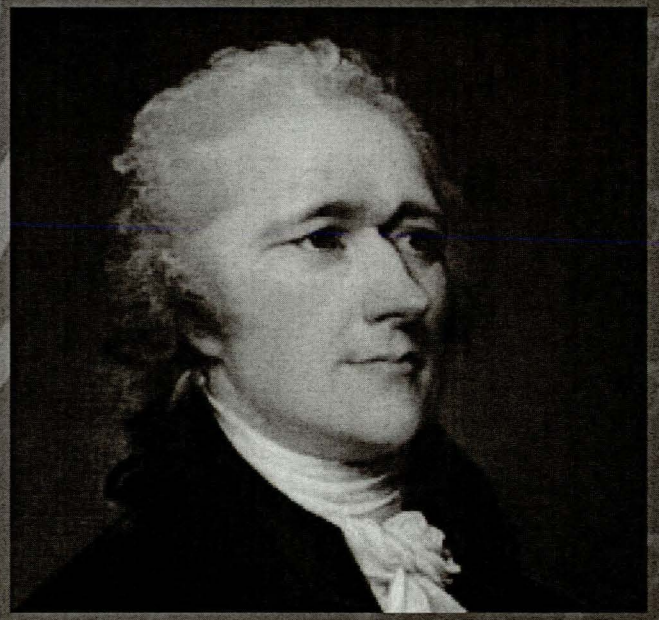
#3 pg 8

EXHIBIT C

Federalist No. 85:

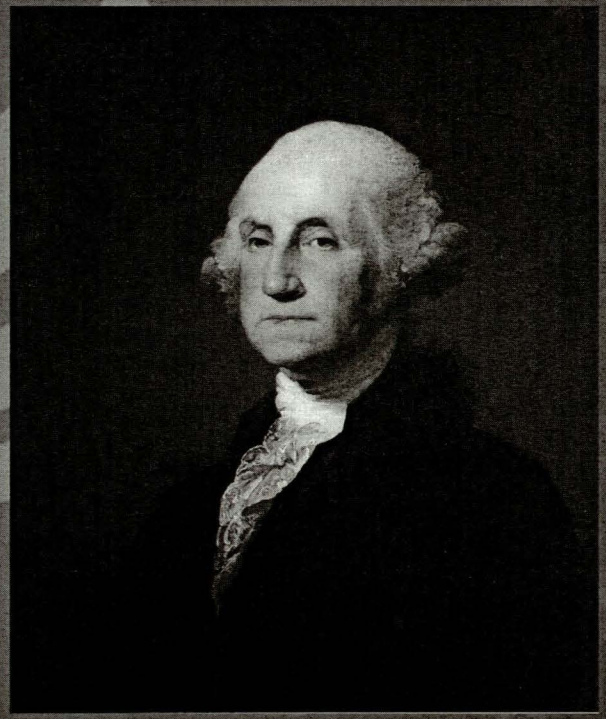
- "every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point-no giving nor taking"
- "nine" states [two-thirds] would effect "alterations"
- "nine" states would effect "subsequent amendment" by setting "on foot the measure"
- "We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority"



#3 pg 9

EXHIBIT D

1788: "It should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States."



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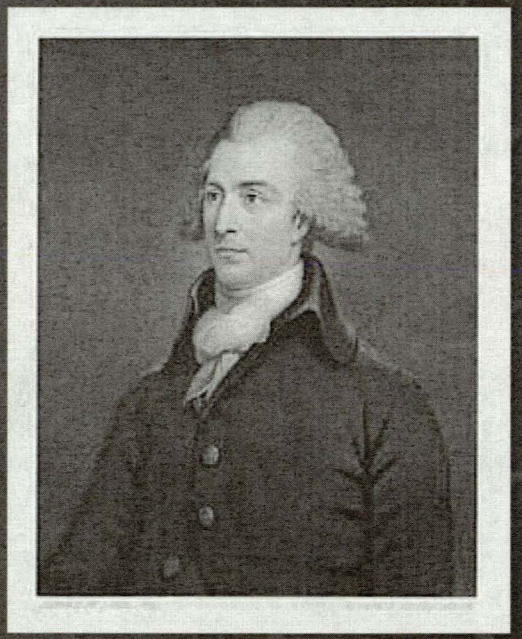
#3pg 10

Exhibit E

"If two thirds of those legislatures require it, Congress must call a general convention, even though they dislike the proposed amendments . . . Three fourths of the states concurring will ensure any amendments, after the adoption of nine or more."



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#3pg 11

EXHIBIT F

On June 6, 1788, Patrick Henry raged against ratification at the Virginia convention.

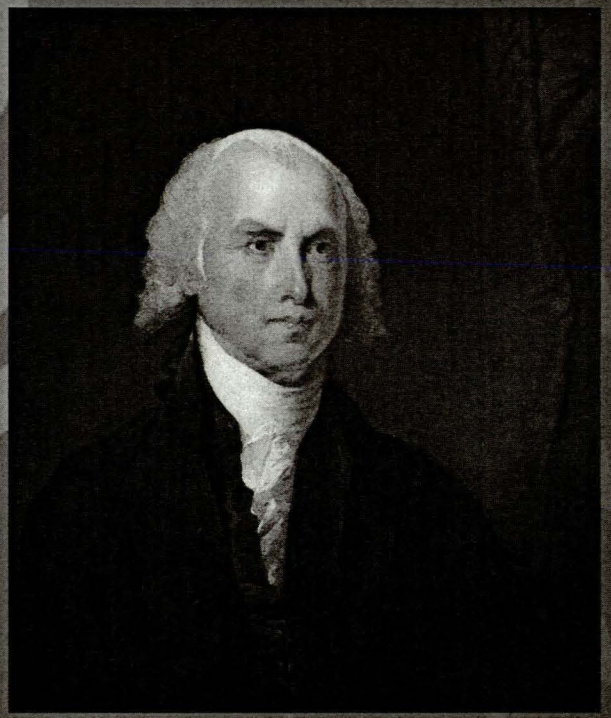
In response, leading Federalist, George Nicholas, observed that state legislatures may apply for an Article V convention confined to a "few points;" and that "it is natural to conclude that those States who will apply for calling the Convention, will concur in the ratification of the proposed amendments."

#3pg 12

Exhibit G

February 7, 1799 (James Madison):

States could ask their senators to propose an "explanatory amendment" clarifying that the Alien and Sedition Acts were unconstitutional, and also that two-thirds of the Legislatures of the states "might, by an application to Congress, have obtained a Convention for the same object."



#3 pg 13

PROBLEM OF SAFETY

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#3 pg 14

SOLUTION

- Fully Defined Process and Goal.
  - Clear boundary lines.
  - Sunset provision.
- Multiple kill-switches.
  - Automatic disqualification of rogue delegates and states.
  - Prohibition of rogue convention & ratification of rogue proposals.
- Universal enforcement.
  - 5th Circuit & Texas State Courts.

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#3 pg 15

PROBLEM OF SPEED

34 states pass resolution applying for amendment(s) by convention

→

26+ states pass law appointing/ instructing convention delegates

↓

Congress passes resolution calling convention

→

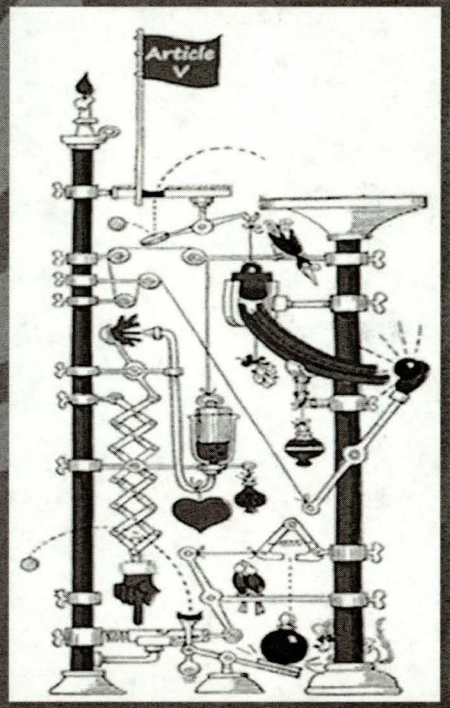
Convention proposes amendment(s)

↓

Congress passes resolution referring amendment(s) for ratification

→

38 states ratify by legislative or in-state convention resolution



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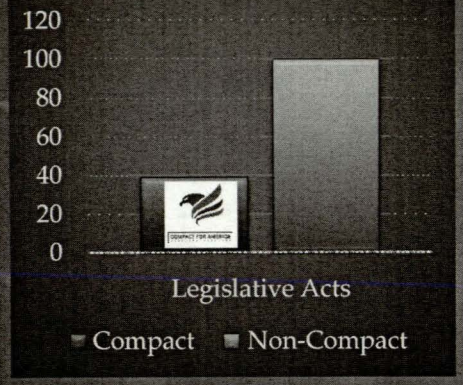
#3 pg 16

SOLUTION

Legislation Required



Minimum Time Investment

38 states pass bill joining Compact

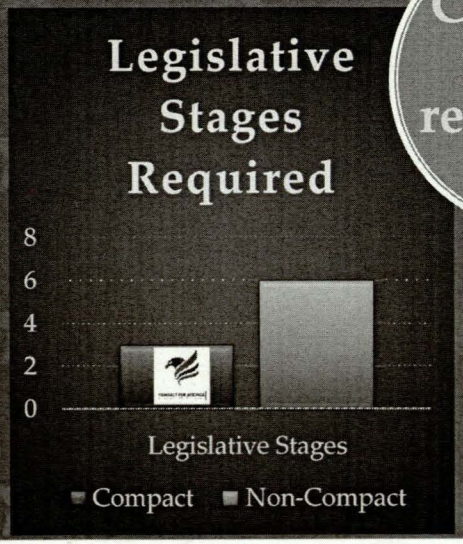
+

Congress passes resolution activating Compact

→

Convention proposes Balanced Budget **Amendment**

Legislative Stages Required



#3 pg 17

The Compact Approach to Article V

State Compact

- A2 Proposed amendment
- A4 Compact Commission
- A5 Application to Congress
- A6 Delegate appointment
- A7 Convention rules
- A8 Scope limitations
- A9 Ratification

Congressional Resolution

- S1 Call
- S2 Ratification referral

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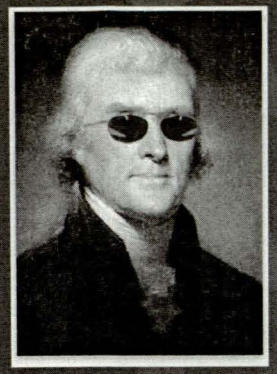

LET'S GET 'EM DONE.

- Certainty
- Safety
- Speed

Convention of States	COMPACT FOR AMERICA	BBA Task Force
TACKLE EVERY PROBLEM • 94+ state enactments • 1 convention • 2 congressional resolutions	Vetted, Poll-Tested Balanced Budget Amendment after: • Only 35 state enactments • One 24-hour convention • 1 congressional resolution	HEDGE THE COMPACT • 68 to 82+ state enactments • 1 convention • 2 congressional resolutions

www.CompactforAmerica.org

Greetings to North Dakota State Senate from the Commissioners of the Compact for a Balanced Budget:

We are writing to you and offering this testimony in our capacity as members of the Compact Commission for the Compact for a Balanced Budget (the "Compact".) Article IV of the Compact details the role of the Compact Commission. Each of the first three states to join the Compact can appoint a member to the Commission and the Commission activates when the first two members are appointed. In 2014, Georgia Governor Nathan Deal appointed State Representative **Paulette Rakestraw** as the Georgia Commission member. In the same year, Alaska Governor Sean Parnell appointed Lt. Gov. **Mead Treadwell** as the Alaska Commission member. With these appointments, the Compact Commission was formed.

The powers and duties of the Compact Commission include:

1. to encourage States to join the Compact and Congress to call the Convention in accordance with the Compact;
2. to appoint and oversee a Compact Administrator;
3. to coordinate the performance of obligations under the Compact;
4. to oversee the Convention's logistical operations as appropriate to ensure this Compact governs its proceedings;
5. to oversee the defense and enforcement of the Compact in appropriate legal venues;
6. to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and
7. to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact

In January of 2015, the Compact Commission appointed Compact for America Educational Foundation, Inc., and its staff ("CFA"), as the Compact Administrator and Technical Advisor. In this role, CFA's powers and duties are to assist the Commission members with their specific duties and to provide technical assistance and support, including providing expert testimony and technical advice before state legislative committees. CFA through its staff and expert advisors and consultants is authorized to speak on behalf of the Commission and to answer any and all questions you may have.

Our desire is for your state to join the Compact without delay. The reasons for joining the Compact for a Balanced Budget are four-fold:

First, debt is taxation if it is to be repaid. It is taxation of our kids and their kids. It is taxation without representation. It is the worst kind of taxation.

Second, there is no reliable political constraint on the abuse of debt when borrowing capacity is unlimited. This is because the costs of borrowing rarely, if ever, fall on currently elected officials or their constituents. Money is typically borrowed to pay the interest on the money that is borrowed. The borrowing and spending will likely continue until the system crashes, without a limit on borrowing capacity.

Third, responsible spending requires a limited borrowing capacity. Otherwise, there is little or no reason to prioritize spending or to pursue workable spending programs. Without such prioritization, we will waste resources needlessly. Because resources are ultimately scarce, there will come a time when the music will stop and the system will crash, imperiling both legitimate and illegitimate spending programs.

Fourth, unlimited borrowing capacity is dangerous to national security. In order to maintain our debt-spending habits, our country has no choice but to borrow from many potential or actual international adversaries. This could give foreign nations that are willing to risk their own economic injury significant leverage in influencing our policies. It is not wise to put our future in their hands and hope that their own prudential calculations would counsel against such behavior.

The Compact for a Balanced Budget is an innovative, streamlined vehicle to achieve a federal Balanced Budget Amendment that will address and enable us to remedy all of the problems associated with unlimited federal borrowing capacity.

We invite your great state to join the Compact and to help us protect future generations from unsustainable debt spending at the federal level.

Thank you.

Mead Treadwell
Alaska Compact Commissioner
Lieutenant Governor, State of Alaska (ret.)

Paulette Rakestraw
Georgia Compact Commissioner
Member, Georgia State House of Representatives

TESTIMONY CONCERNING HB1138-BILL PROPOSING ENTRY INTO THE COMPACT FOR A BALANCED BUDGET

My name is Harold R. DeMoss, III, and I currently reside in Houston, Texas. I am the CEO of Compact for America Educational Foundation, Inc., and a member of the Board of Directors. Please allow me to introduce into testimony before your respective committees the following information:

- Written testimony from Judge Harold R. DeMoss, Jr. – Senior Judge on the U.S. Fifth Circuit Court of Appeals and member of the Foundation's Council of Scholars, in a personal capacity

- Written testimony from Ilya Shapiro, JD – Senior Fellow in Constitutional Studies at the Cato Institute, editor-in-chief of the *Cato Supreme Court Review* and member of the Foundation's Council of Scholars

- Written testimony from Byron Schlomach, PhD – Economist, Director of the Center for Economic Prosperity at the Goldwater Institute, and member of the Foundation's Council of Scholars

- Written testimony from Kevin Gutzman, JD, PhD – Professor and Director of Graduate Studies in the Department of History at Western Connecticut State University, New-York Times best-selling author of two books on constitutional history – *Who Killed the Constitution* and *The Politically Incorrect Guide to the Constitution*, and member of the Foundation's Council of Scholars

- Written Testimony (selections) from Lawrence Lessig, JD - Professor, Harvard Law School, and member of Compact for America Action's Advisory Council.

- Executive summary of national survey undertaken by McLaughlin & Associates that demonstrate that **six in ten** of voters favor a balanced budget amendment and **at least 70%** favor Compact for America's specific and common sense proposals to rein in the federal deficit.

Thank you for this opportunity to provide this testimony.

Harold R. DeMoss, III

TESTIMONY CONCERNING HB1138-BILL PROPOSING ENTRY INTO THE COMPACT FOR A BALANCED BUDGET

My name is Harold R. DeMoss, Jr., and I currently reside in Houston, Texas. I am writing to encourage you to support the Compact for a Balanced Budget. Please understand that in order to comply with the Code of Conduct for United States Judges, I am required to advise you that while I am currently a sitting Senior Judge on the United States Court of Appeals for the Fifth Circuit, I am writing this letter in a personal capacity and nothing herein should be construed as indicating the opinion of any other judge on the Fifth Circuit.

As a member of Compact for America's Advisory Council, I can assure you that the Compact's legal and policy foundations have been thoroughly examined and vetted by numerous experts in the relevant fields. The fundamental underpinning of the Compact is the ability to resolve the concerns expressed by many of a possible "runaway" convention. These concerns are best exemplified in the famous "Twenty Questions" raised by the Eagle Forum. At the outset of the development of the Compact, we engaged Andy Schlafly, who is Phyllis Schlafly's son, a Harvard-trained constitutional attorney, and a member of the board of directors of Eagle Forum. I personally participated in conference calls with Andy to make sure that each of the Eagle Forum's concerns had been fully addressed in the Compact. Andy's input was invaluable, the Compact is a much better document because of it, and CFA has acknowledged the important role of Eagle Forum.

Additionally, you should find comfort in the fact that nothing happens with the Compact until Congress consents to the terms and provisions of the Compact. Three key provisions to highlight are that 1) the contemplated convention is limited to no more than 24 hours in duration; 2) the sole agenda item is the formal vote as to the proposal of the Balanced Budget Amendment contained in the Compact; and 3) the Compact is enforceable under state law, federal law, and under the Contract Clause of the U.S. Constitution under Article I, Section

And finally, since the passage of the 17th Amendment a hundred years ago, the states have had very little role in the formation of federal policy. The Compact begins a process to reinsert the states back into the equation by placing them in a "Board of Directors" oversight capacity over Congress, with the sole authority to authorize a requested increase in the federal debt limit with approval of a majority of the state legislatures. In addition to attacking the problem of concentrated power in Washington DC, the Compact will also bring a halt to Congress' ability to borrow money without limit and will force Congress to act in a fiscally-responsible manner.

There is no doubt in my mind that time is growing short for leadership on fixing the national debt problem. In my opinion, Congress will not lead - only the states can. Your state has taken a leading role in uniting the states around the Compact to begin the travel along the road to restoring fiscal responsibility in our federal government. I very much appreciate your leadership and thank you for your consideration.

Harold R. DeMoss, Jr.

TESTIMONY CONCERNING HB1138-BILL PROPOSING ENTRY INTO THE COMPACT FOR A BALANCED BUDGET

My name is Ilya Shapiro. I am a senior fellow in constitutional studies at the Cato Institute and the editor-in-chief of the *Cato Supreme Court Review*. I am also a member of the Advisory Council for Compact for America. Before joining Cato, I was a special assistant/advisor to the Multi-National Force in Iraq on rule of law issues and practiced international, political, and commercial litigation. I have provided testimony to Congress and state legislatures and, as coordinator of Cato's amicus brief program, have filed more than 100 "friend of the court" briefs in the U.S. Supreme Court. I lecture regularly on a variety of constitutional issues on behalf of the Federalist Society and other groups, am a member of the Legal Studies Institute's board of visitors at The Fund for American Studies, was an inaugural Washington Fellow at the National Review Institute, and have been an adjunct professor at the George Washington University School of Law. Before entering private practice, I clerked for Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit. I hold an A.B. from Princeton University, an M.Sc. from the London School of Economics, and a J.D. from the University of Chicago Law School.

I am an ardent support of the compact approach to Article V constitutional change because this method of constitutional amendment makes the path to to state-initiated constitutional reform quicker, easier and more legally certain. It allows states to agree in advance to everything they control in the amendment process in a single bill passed once by the state legislatures. It allows Congress to fulfill its entire role in the amendment process in a single resolution passed once. When time is of the essence and the country is in peril, this approach would allow constitutional change to occur within one legislative year. I know of no other approach to Article V that can do this with the certainty, efficiency and safety that is offered by the compact approach.

Above all, I believe the compact approach actual serves to minimize the risk of litigation, because only this method of constitutional amendment requires that state legislatures and Congress agree on all aspects of the process up-front. It is also important to me that the compact is able to address each and every one of the concerns that have been raised over the past 30 years by the Eagle Forum.

I have previously written about my support of the Balanced Budget Amendment that is the payload carried by the Compact for a Balanced Budget. Unlike the recent and continuous brinkmanship spurred by the statutory debt limit, the Compact for a Balance Budget is designed to force Washington to prepare a budget that makes the case for more debt long before the midnight hour arrives. It requires the president to start designating impoundments when spending exceeds 98% of the debt limit and then requires Congress to override those impoundments within 30 days with alternative cuts if it disagrees. By forcing both the executive and legislative branches to show their cards long in advance of the constitutional debt limit, this compact-turned-BBA would ensure that no game of chicken holds the country hostage. Because our debt problem is primarily a spending problem, the CBB would also require a two-thirds vote of both houses of Congress for any general tax increase. The proposed amendment would thereby ensure that any new tax burden assumed to pay down the debt would make our tax code flatter, fairer, and far more conducive to economic growth – which is the best way to prevent both debt spending and tax increases in the long run. The Compact for a Balanced Budget could permanently and structurally bridge future fiscal cliffs with a principled compromise that has been poll-tested to get at least 38 states on-board.

Thank you for giving this very important matter your attention. I also thank you for this opportunity to provide testimony to the committee.

Ilya Shapiro

TESTIMONY CONCERNING HB1138-BILL PROPOSING ENTRY INTO THE COMPACT FOR A BALANCED BUDGET

My name is Byron Schlomach. I am the Director of the Center for Economic Prosperity at the Goldwater Institute in Phoenix, Arizona. After earning my bachelors and doctorate degrees at Texas A&M University, I entered public policy work at the Texas Legislature and then served as Chief Economist at the Texas Public Policy Foundation before coming to the Goldwater Institute. I have worked in public policy for 20 years. Much of the transparency movement originated with my efforts in Texas starting in the late 1990s. I was instrumental in the passage of a public/private partnership law for roads in Arizona, helped lead the way in resistance to establishing ObamaCare exchanges around the country, was instrumental in passage of a law to more easily privatize Arizona state parks, and have studied state budgets in both Arizona and Texas. Many of my recommendations for spending reductions in Arizona during the financial crisis were adopted.

I have been a student of economics for over 30 years and a student of state policy as well as federal policy for nearly as long. The mounting debt of the federal government has long concerned me. Having seen how federal money is spent at the state level as well as the federal, it is not as if the $18 trillion debt was accumulated to win a war that threatened our existence. It was not accumulated in order to build roads, bridges, dams, and pipelines. The big spending has been in programs that have encouraged people to become dependent and irresponsible.

Ultimately, the mounting federal debt must end with the collapse of our nation's finances as debt has historically done-in Argentina, Germany, Greece, and Spain, just to name a few. The only prop for us now is our currency's status as the world's reserve currency, but the still-growing debt and the eventual release of bank reserves will devalue the dollar and eventually cause its rejection as a reserve currency. When that happens, inflation in the U.S. will skyrocket and our economy will be sent reeling. Our only chance is to stop debt accumulation and allow economic growth to catch up with our money printing.

The founding fathers wisely rested ultimate responsibility for the nation in the collective action of state legislatures allowing them to amend the Constitution. Congress and the President have demonstrated their inability to control the federal fiscal budgetary process. They are marching us to oblivion. State legislators are all that currently stand in their way. You are the cavalry that must ride in to save the day.

Even in the face of long odds, the Compact for a Balanced Budget provides a winning strategy for passage of a constitutional amendment that will impose discipline on the federal government. Some are frozen by fear and risk. But the risk of doing nothing is much greater. We have reached a threshold. Will future generations look back at this one and wonder, if we'd had the courage, would their lives be better? Or will they look back with wonder at our courage and foresight. State legislators, it is up to you!

Thank you for this opportunity to provide written testimony to the committee.

Byron Schlomach

Byron Schlomach, Ph.D. (Economics)

TESTIMONY CONCERNING HB1138-BILL PROPOSING ENTRY INTO THE COMPACT FOR A BALANCED BUDGET

My name is Sven Larson. I am an economist and a senior fellow with the Wyoming Liberty Group, a think tank in Cheyenne, Wyoming. I am also a member of the Compact for America Council of Scholars. I received my BA in economics and philosophy from the University of Stockholm, Sweden and my PhD in Economics from Roskilde University in Denmark. My research is primarily focused on the role of government in the economy and on the effects of fiscal policy and deficits on government services. My most recent research contribution is a book wherein I present tangible reform ideas for key entitlement systems, including Social Security, welfare and health care, while taking into account the factors that contributed to the European crisis and their implications for the United States.

I accepted the invitation to join the Council of Scholars of Compact for America because of the urgency of our nation's debt crisis and because the amendment proposed by the Compact for a Balanced Budget provides the best path to a balanced budget of all proposals that I have studied.

Not too long ago our debt grew larger than our GDP. At that point, global investors started paying more attention to us. We saw this happen in several European countries: investors are worried, and worry-driven attention means investor bias. They start looking for reasons why we may default on our debt. As a consequence, the cost of our debt starts going up. We are already at a point where we pay higher interest rates on ten-year Treasury Bonds than some European countries.

If the Federal Reserve tapers off its quantitative easing, and interest rates continue to rise with our growing debt, Congress will have to divert more and more tax revenues to paying interest on our debt. This rapidly leads to challenging priority conflicts. It is not far-fetched that Congress, in a situation of fiscal panic, starts making drastic cuts to federal aid to states. This would perhaps temporarily ease the debt crisis at the federal level, but it would do so by transferring the crisis to the states. State legislators would be left with gaping holes in programs such as Medicaid, public education, welfare and transportation, and an obligation to find a way to fill them with new in-state revenue.

There are not many ways to prevent this fiscal-panic scenario from unfolding, but the balanced-budget amendment proposed by Compact for a Balanced Budget is a good example of how it can be done. It is, in fact, to the best of my scholarly judgment, the best balanced-budget amendment ever proposed - not because it immediately brings about a balanced budget - but because of its dynamic properties. Its strength lies in that it creates a pathway to that balanced budget, a pathway that is predictable, inevitable and transparent. The pathway allows us to close the federal budget gap without the risk of fiscal panic. It will not only change for the better how Congress manages taxpayers' money, but it will also send a strong signal to global investors that the United States is now serious about solving its debt problems.

I thank you for this opportunity to provide written testimony on behalf of the Compact for a Balanced Budget.

Sven R. Larson, Ph.D.

TESTIMONY CONCERNING HB1138-BILL PROPOSING ENTRY INTO THE COMPACT FOR A BALANCED BUDGET

My name is Kevin Gutzman and I am Professor and Director of Graduate Studies in the Department of History at Western Connecticut State University. I received my Master of Public Affairs from the Lyndon B. Johnson School of Public Affairs at the University of Texas, my Juris Doctor from the University of Texas School of Law, and my Master of Arts and Doctor of Philosophy in American history from the University of Virginia. My area of scholarly expertise is American constitutional and intellectual history. I have published scholarly articles in several of the leading history journals, two best-selling books in constitutional history, and two books on the American Revolution and Early Republic-most recently, James Madison and the Making of America.

I enthusiastically endorse the Interstate compact approach to a balanced budget amendment. Not only is this endeavor a moral imperative, but it is entirely in keeping with the Founding Fathers' understanding of the way that American constitutionalism would work.

Presently, the Federal Government's debt tops $17 trillion. More ominously, estimates of the Federal Government's unfunded obligations range between $50 trillion and $222 trillion. While I am more prone to accept the latter figure, I am certain that anything in this range represents coming calamity. Reasonable people on both sides of the aisle recognize the urgency of this issue. Still, Congress seems unable meaningfully to tackle, or even to consider, this problem. James Buchanan's Public Choice Theory, for which he won the Nobel Prize in Economics, tells us that without a change to the system, we can expect the system to continue to produce similar results. In short, if we want an end to the profligacy, we need to amend the Constitution. We need to rein in Congress. Experience has revealed a flaw in our constitutional system, precisely as the Found Fathers expected it would, and that is why they thought amendment would occasionally be necessary.

Congressional failure to address its own misbehavior is precisely the problem with which George Mason intended to deal when he insisted In the Philadelphia Convention that Article V of the Constitution include a provision enabling the states to initiate the amendment process. An interstate compact is the best mechanism for the states to ensure that the convention they call will address and vote on precisely and only the measure the states have in mind for the convention to adopt. This is entirely In keeping with the explanation of the amendment process given by prominent Federalists during the ratification process in 1788.

In my judgment, passing this measure is a moral imperative. Thank you for hearing me.

Kevin R.C. Gutzman, MPAff, JD, PhD
Western Connecticut State University

TESTIMONY OF
LAWRENCE LESSIG
ROY L. FURMAN PROFESSOR
OF LAW AND LEADERSHIP
HARVARD LAW SCHOOL

ASSEMBLY OF STATE LEGISLATURES
JUDICIARY COMMITTEE

DECEMBER 8, 2014

I am honored by the opportunity to testify in this proceeding, both because I believe state legislatures (and hence state legislators) were to be the constitutional backstop within our tradition, and because I view you to be among the unfortunately few who are taking up that responsibility. We all agree, whether Democrats or Republicans or Independents, that our nation faces grave threats of governance. You believe, and I agree with you, that as state legislators, you have a critical role in resolving those threats. I admire the work you are doing to live up to that responsibility.

I am a professor of law at Harvard Law School. Since 1991, I have been teaching and writing in the areas of constitutional law and constitutional theory. I was involved in the transition of a number of Central and Eastern European countries after 1989, and was involved in the drafting of the constitution of the former-Soviet Republic of Georgia. I have written about the Article V method for proposing amendments to the Constitution in my book, *Republic, Lost* (2011).

You have ask for my opinion about a relatively narrow set of questions. I have sketched my answers to those that I feel competent to address below. But at the outset, I want to state my understanding of the state of the debate about the nature of an Article V convention, and the political conditions under which it might succeed.

It is my firm belief that the convention referred to in Article V is a very limited institution. It is not a "constitutional convention," as that term is understood in constitutional theory. It is instead a "proposing convention." Its sole power is to propose

amendments that the states then consider. It has no power to amend the existing constitution. It has no power to change the mode by which amendments might be adopted. Whatever the Convention of 1787 was, a convention called pursuant to Article V is a different, and lesser convention. What they did then an Article V convention could not do now.

I also believe that the scope of an Article V convention can be limited. How such a limit would be enforced is a separate question. But that it can be limited seems to me beyond question. The states, in their application to Congress, can specify the topics they would like a convention to consider. When 34 states concur on a similar topic, it is Congress' duty to make the call. That is not to say that the question whether an application is in fact a limited application is an easy interpretive question. Scholars of Article V acknowledge that the rules for counting are complicated. But there should be no doubt that if 34 states sent to Congress an application to make the New England Patriots the national football team (to offer a more plausible hypothetical than the Committee's Responsibility Form), and stated that the convention is to be limited to that question and only that question, the convention called by Congress would then be so limited.

But these legal questions notwithstanding, it is also my view that within the current political environment, the only way that an Article V convention could succeed is if it avoided being framed in partisan way. The only way to do that would be to open the convention to considering proposals viewed to be from the left and right. A convention limited to issues perceived to be from the right alone would be the greatest fundraising gift to the Democratic Party since the Iraq War. And this committee could be certain that the very idea of such a convention would motivate Democrats and some progressives to launch a massive fear campaign about this "uncertain and ancient forum" that could "run away" and thereby "destroy" a whole tradition of constitutional rights. The same would be true the other way around. It is my view that *only* way to earn the confidence of the American people that the convention is not a partisan putsch is to commit fundamentally to a cross-partisan agenda.

The Proposing Convention of Article V is a gift from the framers to deal with precisely the pathologies in government that

we face today. I am grateful to you for accepting the responsibility that it places on you as state representatives, to use that gift to address these pathologies. I would only urge that you deploy it in a way that avoids the most obvious political response, and hence, almost certain failure.

QUESTIONS PRESENTED

1. *Process to ensure that the Compact Clause in Article 1 Section 10 of the Constitution is not triggered.*

Whether the activities of the ASL will trigger the obligations of the Compact Clause depends upon the nature of those activities. The Court has narrowed the reach of the Compact Clause substantially. So narrowed, so long as any compact does not purport to restrict the activities of any federal entity, or encroach on federal power, it is not subject to the requirements of the Compact Clause.

The clear and legitimate purpose of Compact Clause was to assure that states didn't combine to aggrandize their own power, relative either to other states or the federal government.

This is the understanding the Supreme Court has given to the Clause in *Virginia v. Tennessee,* 148 U.S. 503, 518 (1893). In that case, the Court acknowledged that the plain language of the clause reached every kind of agreement. But after considering a range of agreements that could not possibly have been meant be regulated by the Constitution, the Court concluded that there must be a line to distinguish between agreements within the scope of the Constitution, and agreements outside the scope. As the Court wrote,

> If, then, the terms 'compact' or 'agreement' in the constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of congress must be obtained, to what compacts or agreements does the constitution apply?

Virginia v. Tennessee, 148 U.S. 503, 518 (1893).

Answering this question, the Court relied on the purpose of the clause:

> Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States.

Id. at 519.

The question as Justice Story framed it is whether the agreement "infring[es on] the rights of the national government," *id.*, and if not, the consent of Congress is not required.

The Court has further narrowed the scope of the Clause by restricting the range of "agreements" that are within its reach. States engage in many forms of cooperation — model legislation, for example. In *Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*, 472 U.S. 158 (1985), the Court made clear that every form of cooperation is not a "compact." In questioning whether the agreement at issue in that case qualified as a "Compact," the Court wrote:

> No joint organization or body has been established to regulate regional banking or for any other purpose. Neither statute is conditioned on action by the other State, and each State is free to modify or repeal its law unilaterally.

Id. at 175.

Thus as applied to the work of the ASL, there are two questions: First, does any particular agreement affect a federal interest. Second, even if it does, is the nature of the agreement properly conceived as a Compact.

To the extent the work of the ASL simply coordinates states making application to Congress, it would fail the first of these two conditions. The power to make such application is clearly a state power. Coordination around that power does not render it federal . . . .

McLaughlin & Associates

To: Chip DeMoss: Chairman/CEO – Compact for America
From: John McLaughlin
Re: National Survey – Executive Summary
Date: January 14, 2013

Survey Summary: Six in ten voters favor a balanced budget amendment and at least 70% favor Compact for America's specific and common sense proposals to rein in the federal deficit. These survey results demonstrate that Compact for America has the potential to obtain broad support.

- ✓ After being probed about the failed leadership in Washington and the fiscal instability of the United States, 62% favor a constitutional amendment to balance the federal budget annually, while 24 oppose. Intensity is strong among those who favor the amendment, 41% strongly favor to 21% somewhat favor.

President Obama and Congress have failed to provide leadership, which is causing gridlock and partisanship in Washington and has made it impossible to pass meaningful legislation to balance the federal budget. Currently, the United States is borrowing over 40 cents on every dollar it spends and the credit of the United States has been downgraded for the first time in history. Knowing all of this, would you favor or oppose a constitutional amendment that would require the President and Congress to operate the federal government under an annual balanced budget?

	TOTAL
Favor	**62%**
Strongly Favor	41%
Somewhat Favor	21%
Oppose	**24%**
Somewhat Oppose	9%
Strongly Oppose	15%
DK/Refused	**13%**

More specifically, please tell me if you would favor or oppose each of the following provision in a balanced budget amendment.

	Favor/Oppose
Requiring a roll call vote by each member of Congress when a tax increase is proposed.	**81%/11%**
Limiting the amount of money the federal government can borrow.	**75%/20%**
Prohibiting the federal government from spending more than it takes in each year.	**72%/22%**
Requiring the President to make the appropriate spending cuts to remain within the debt limit when Congress is unable to borrow more money or raise additional taxes.	**72%/18%**
Cutting spending **FIRST** before taxes are raised or additional money is borrowed if the federal government spends more than it takes in.	**71%/21%**

Methodology: This national survey of 1,000 likely general election voters was conducted on from June 10th – June 12th, 2012. All interviews were conducted via telephone by professional interviewers. Interview selection was random within predetermined geographic units. These units were structured to correlate with actual voter distributions in a nationwide general election. This national survey of 1,000 likely general election voters has an accuracy of +/- 3.1% at a 95% confidence interval.

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COMPACT FOR AMERICA
to Fix the National Debt

Compact for a Balanced Budget
Legislative One-Page Overview

The Balanced Budget Amendment – the amendment "Payload" in Article II of the Compact

- Section 1 - balances federal budget by limiting spending to taxes except for borrowing under a constitutional debt limit.
- Section 2 – establishes a constitutional debt limit equal to 105% of outstanding debt at time of ratification
- Section 3 – requires approval of a majority of the state legislatures if Congress desires to increase the debt limit
- Section 4 – requires the President to protect the constitutional debt limit through impoundments Congress can override
- Section 5 – encourages spending and tax loophole reductions to bridge deficits, as opposed to general tax increases
- Section 6 – provides necessary definitions
- Section 7 – provides for self-enforcement of the amendment

The Compact for a Balanced Budget - the "Delivery Vehicle" for the BBA

Purpose – to greatly simplify the amendment process by combining all the steps required of the state legislature to safely, efficiently, and effectively propose and ratify the Balanced Budget Amendment

- Article I – describes purpose of organizing the states to originate the Balanced Budget Amendment using a compact
- Article II – provides the necessary definitions, **including the actual text of the proposed Balanced Budget Amendment**
- Article III – sets compact membership and withdrawal requirements
- Article IV – establishes the Compact Commission – when 2 states join
- Article V – **applies to Congress for Balanced Budget Amendment Article V convention** – effective when 38 states join
- Article VI – appoints and instructs delegate(s) who will attend the Balanced Budget Amendment Article V convention
- Article VII – details the **convention agenda and rules**, allows first member state to designate Convention Chair
- Article VIII – prohibits participation in convention before Congress consents to Compact; prohibits runaway convention and ratification of runaway proposals by member states
- Article IX – **resolution ratifying the balanced Budget Amendment** – effective when convention proposes amendment and Congress refers amendment to the state legislatures for ratification
- Article X – provides enforcement by state attorney generals, central venue, severability and termination provisions

The Congressional Resolution – the "blessing" of the compact by Congress

- Title 1 – **resolution calling the required convention** in accordance with the terms and provisions of the Compact for a Balanced Budget – effective when 38 states join the Compact
- Title 2 – **resolution referring the Balanced Budget Amendment to the state legislatures for ratification** – effective when convention proposes amendment

COMPACT FOR AMERICA
to Fix the National Debt

Why the Compact for a Balanced Budget is Far Safer than the Political Status Quo

- **The political status quo is exceedingly dangerous**.
    - The status quo is a runaway convention in Washington.
    - Keeping the locus of power in Washington will eventually destroy the Constitution.
    - Not using Article V is unilateral disarmament.
        - Not using Article V does not make it go away. It does not disable anti-constitutionalists from using it. It only hobbles constitutionalists and forces them to be reactive rather than proactive. This is a losing strategy.
        - Right now there are anywhere from 200 to 400 Article V resolutions in existence. If the states don't mass political will behind their own Article V effort, what stops Congress from simply calling a puppet Article V convention tomorrow?
- **The Compact is exceedingly safe**.
    - All of Eagle Forum's famous 20 questions about the Article V amendment process have been answered by reference to specific provisions in the Compact (including the identity of delegates, voting procedures, rules, location of convention, etc.).
    - Not a single delegate of a single member state can participate in the convention the Compact organizes unless the rules specified in the Compact requiring an up or down vote on the contemplated Balanced Budget Amendment are adopted as the first order of business.
        - If any delegate tries to violate this prohibition, all delegates of that delegate's member state are automatically recalled, attorneys general in 38 states are commanded to enforce that recall immediately (in the jurisdiction that is most favorable to constitutionalists-Texas), and that member state's legislature is immediately empowered to select and send new delegates.
    - No convention is ever convened before 38 states and simple majorities of Congress settle their differences and agree on the Compact.
        - This ensures that the federal courts would not only have to disregard their constitutional duty in tolerating a runaway convention, but also a united front among Congress and supermajorities of the states and the American people.
    - The power of nullification is used to deem "void ab initio" any runaway convention and any runaway proposal.
    - The Compact self-repeals in 7 years from its first enactment (April 12, 2021).

3/19 HB 1138 #4 Pg 1

What caused the Federal debt?

#4 pg 2

"The Federal debt is the inventory of the unresolved conflict between politically unpopular taxation and politically popular spending. Without external discipline, Congress will not resolve this conflict."

--**James Booth**, President

Restoring Freedom.org

What is the root cause?

- Out of control federal debt
- Increasing encroachment of over-regulation
- A bloated federal bureaucracy over which Congress is unable to maintain oversight and control
- Excessive military spending
- A proliferation of Executive Orders

Congress has the unfettered, unilateral power to borrow and spend money

#4 pg 5


What you should NOT do!
(Unless you truly enjoy completely wasting your time and energy)

#4 pg 6

11.3052.01000
Sixty-second
Legislative Assembly
of North Dakota
Introduced by
Senators Stenehjem, Christmann, Sitte
Representatives Carlson, Delzer, Pollert

A concurrent resolution urging Congress to adopt a federal balanced budget amendment.

WHEREAS, a balanced budget amendment to the Constitution of the United States is necessary to restore fiscal discipline to our republic; and

WHEREAS, a balanced budget amendment should require the President to submit to Congress a proposed budget before each fiscal year in which total federal spending does not exceed total revenue; and

WHEREAS, that the balanced budget amendment should include a requirement that a supermajority of both houses of Congress be necessary to increase taxes; and

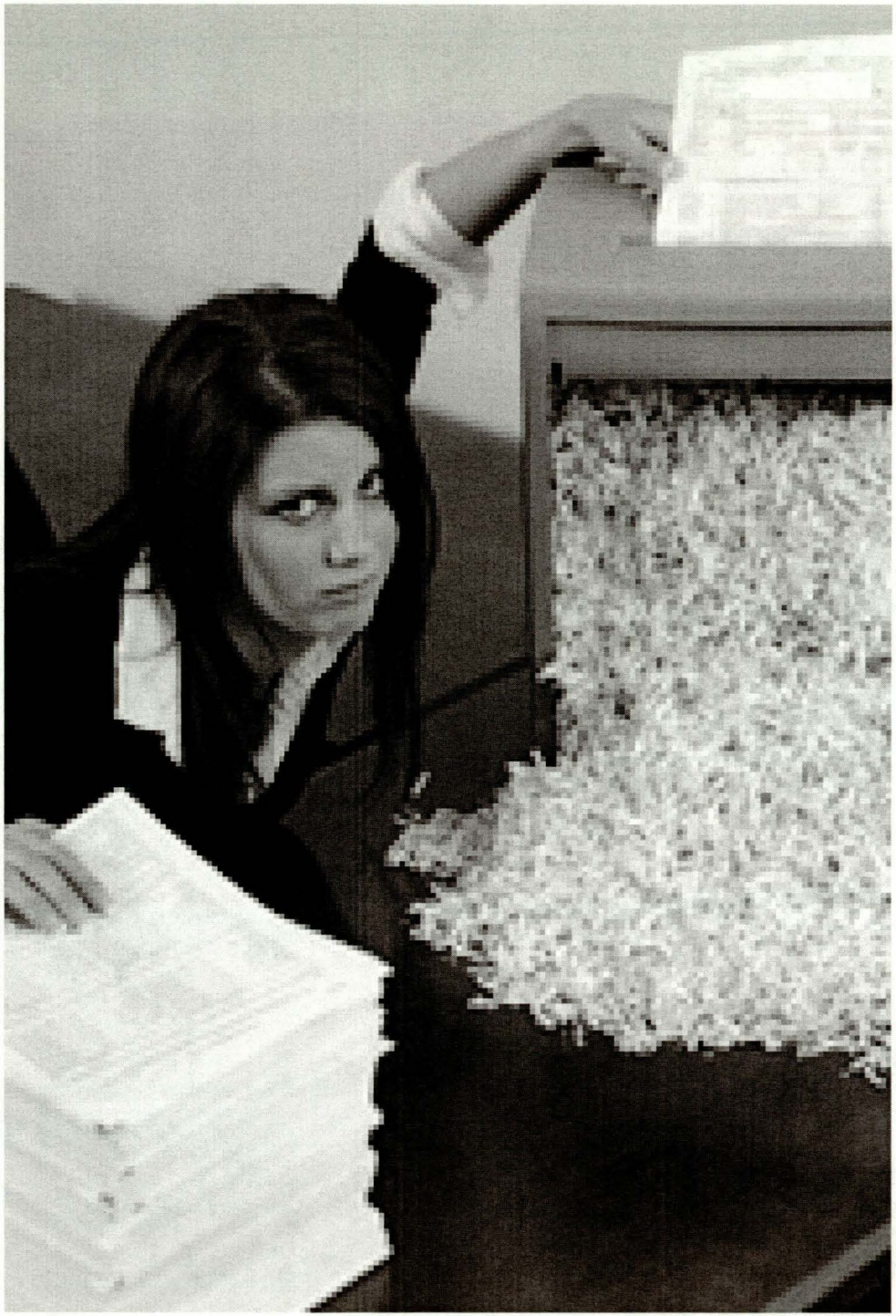
WHEREAS, a balanced budget amendment should include a limitation on total federal spending;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

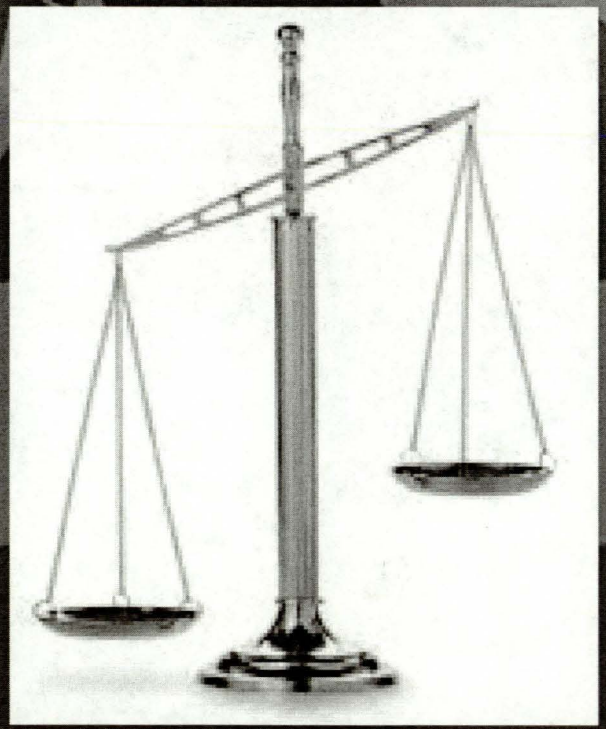
That the Sixty-second Legislative Assembly "urges Congress" to adopt a federal balanced budget amendment; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the presiding officer of each house of Congress, the President, and to each member of the North Dakota Congressional Delegation.

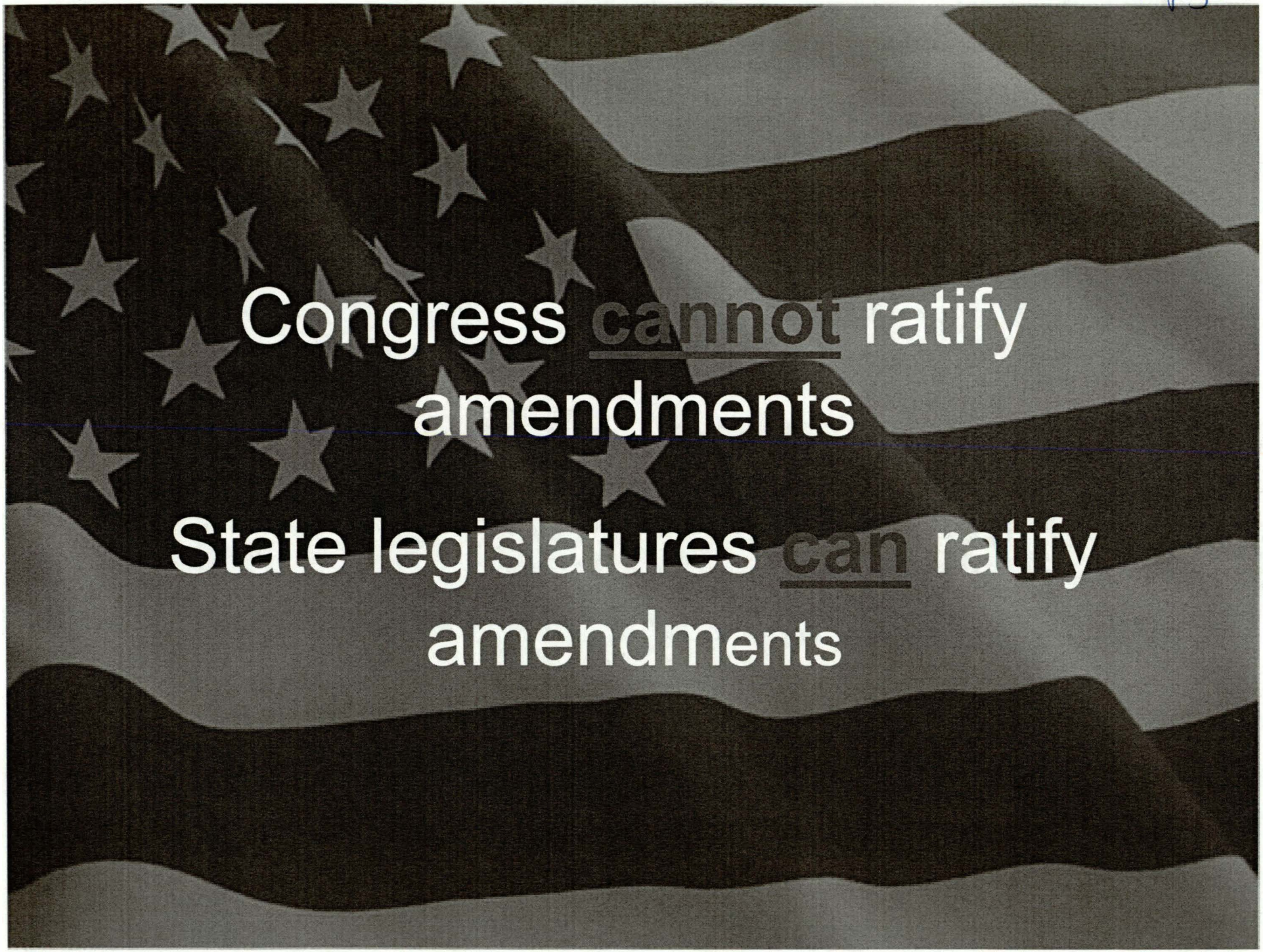
#4 pg 7

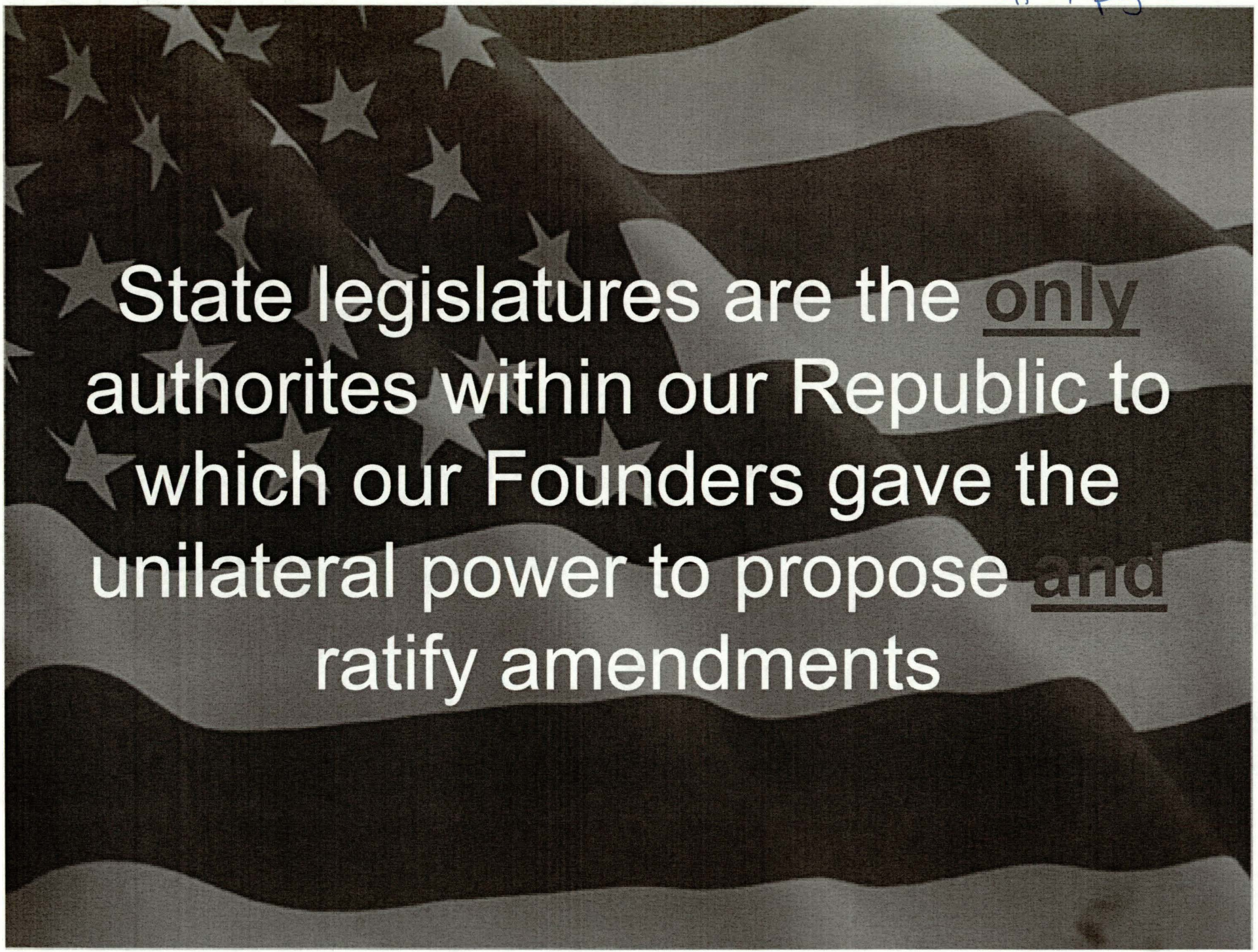


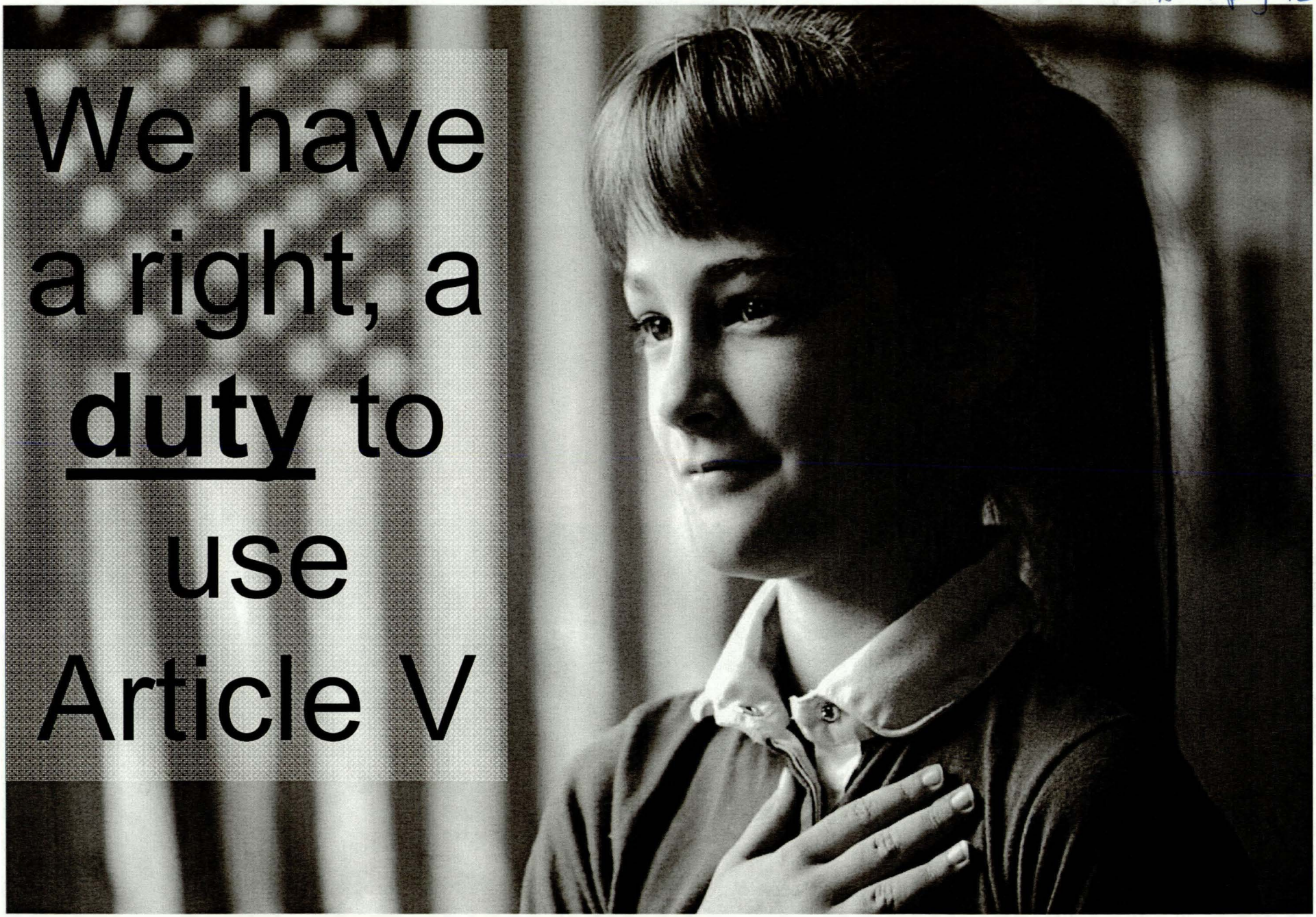
Who did the Founding Fathers entrust with the greatest power? In the amendment process, state legislatures have more power than Congress

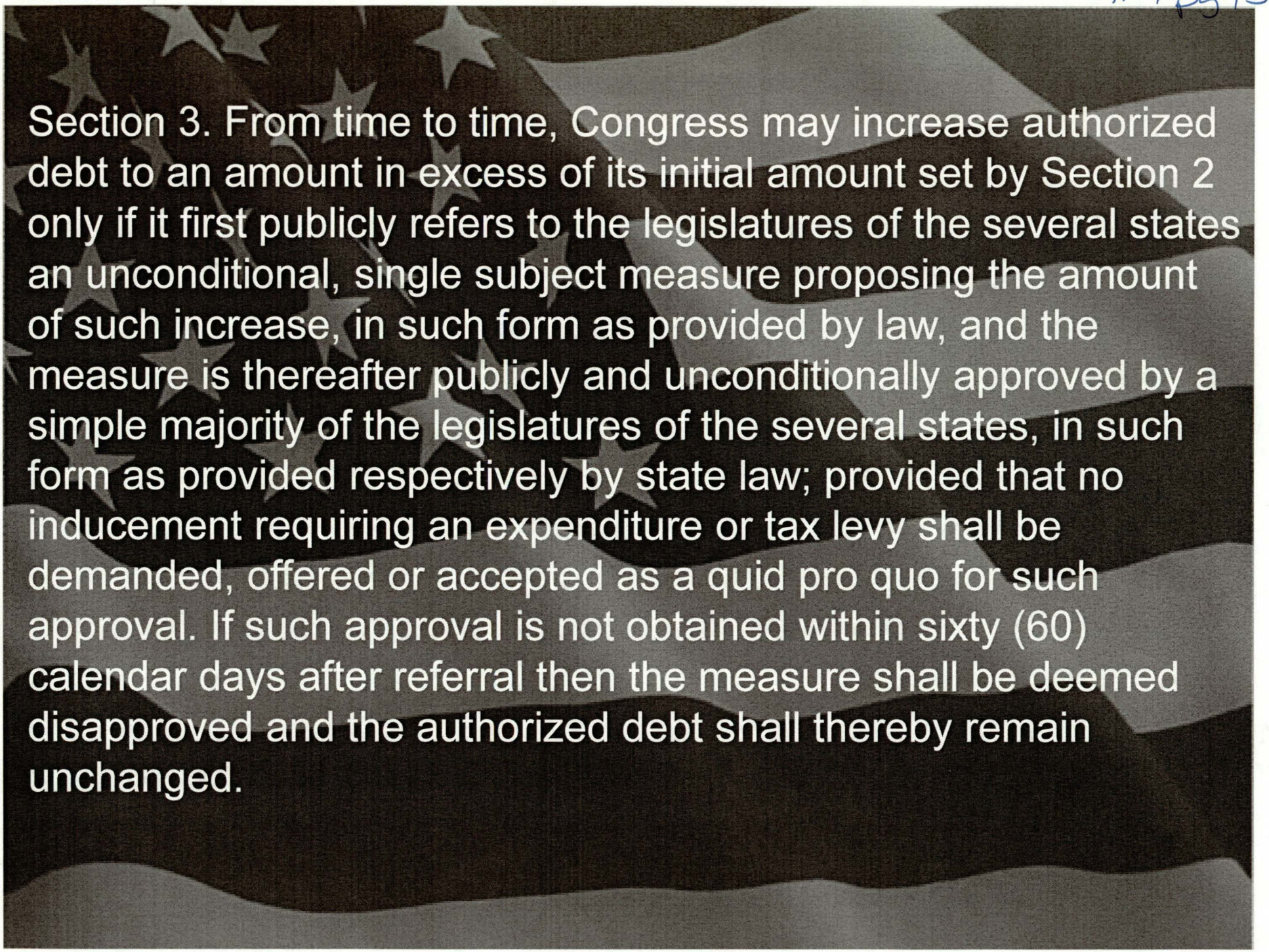


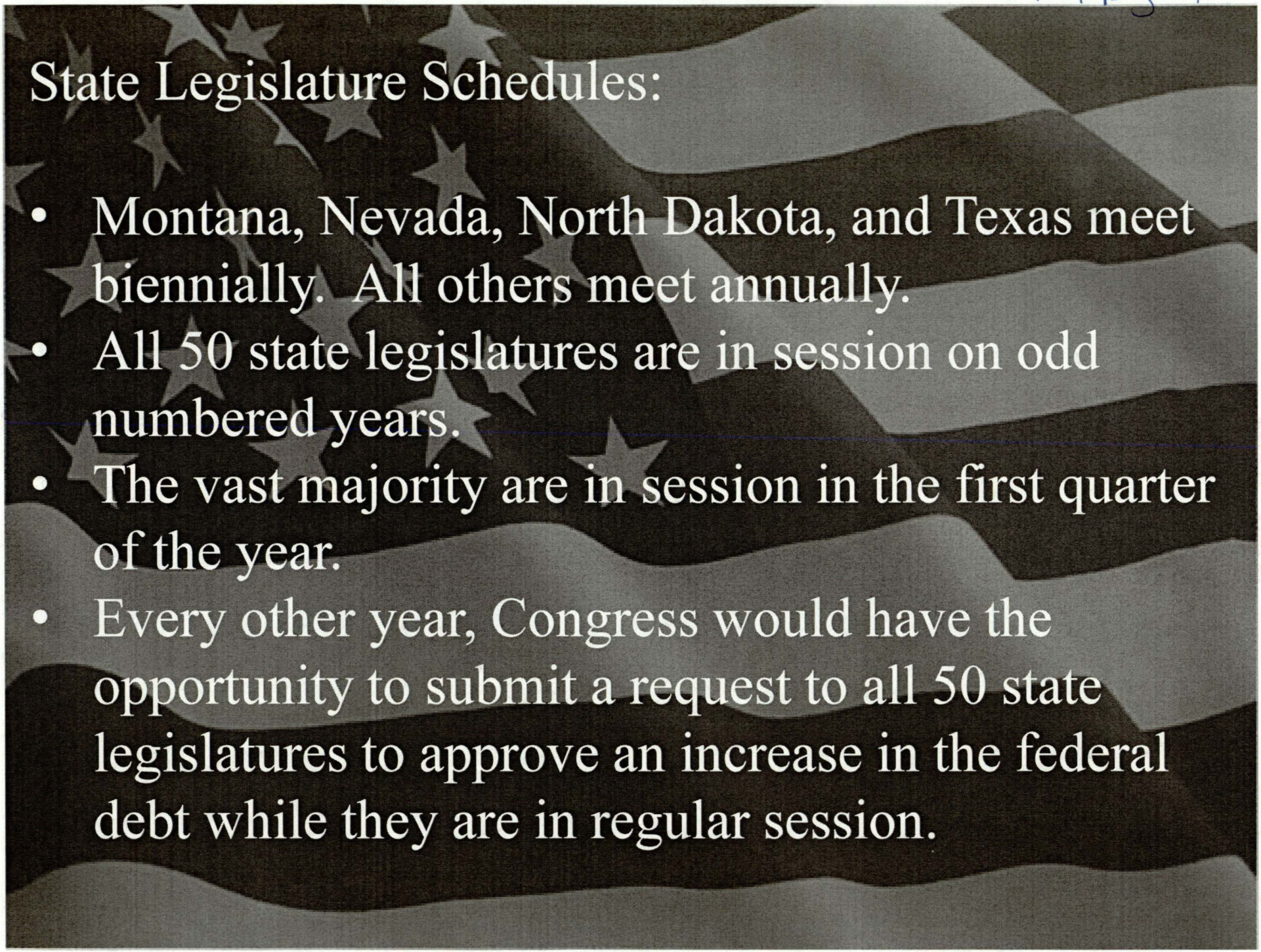

Congress can propose amendments
State legislatures can propose amendments


Congress cannot ratify amendments
State legislatures can ratify amendments


State legislatures are the only authorites within our Republic to which our Founders gave the unilateral power to propose and ratify amendments


We have a right, a duty to use Article V

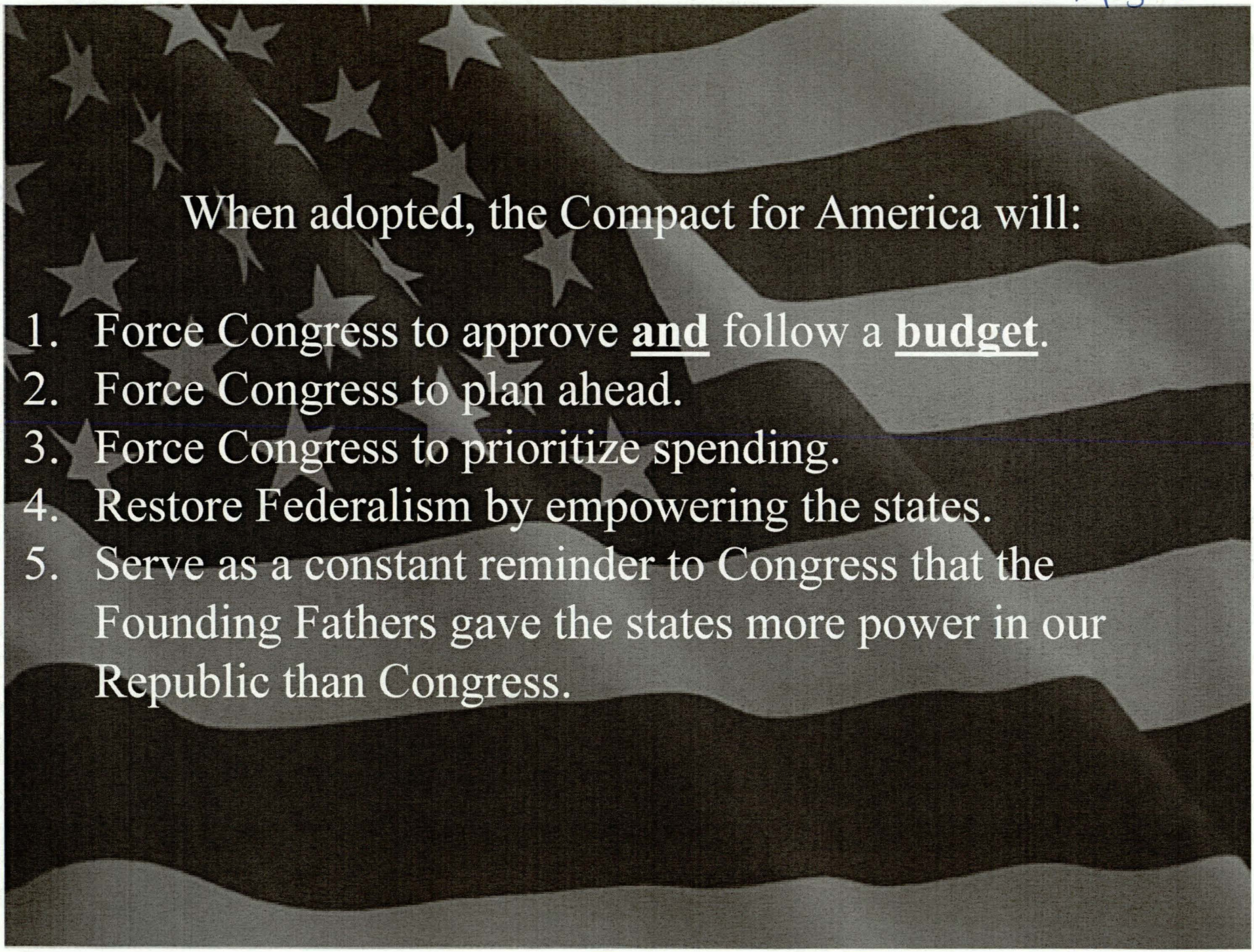

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.


State Legislature Schedules:
• Montana, Nevada, North Dakota, and Texas meet biennially. All others meet annually.
• All 50 state legislatures are in session on odd numbered years.
• The vast majority are in session in the first quarter of the year.
• Every other year, Congress would have the opportunity to submit a request to all 50 state legislatures to approve an increase in the federal debt while they are in regular session.

What about Emergencies?

- Under our current system, the process of borrowing and bonding is not an instant process.
- State legislatures that are not in session during an emergency can be quickly called into session.
- Discretionary spending can be temporarily delayed in order to divert funds needed to deal with an emergency.

#4 pg 16


When adopted, the Compact for America will:
1. Force Congress to approve **and** follow a **budget**.
2. Force Congress to plan ahead.
3. Force Congress to prioritize spending.
4. Restore Federalism by empowering the states.
5. Serve as a constant reminder to Congress that the Founding Fathers gave the states more power in our Republic than Congress.

#4 pg 17