



Statement of

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Committee on the Judiciary
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Regarding the Subcommittee's Hearing on

Whether the Constitution Should be Amended to Address the Federal Deficit

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Introduction

Chairman Franks and distinguished Members of the Subcommittee, thank you for the opportunity to testify on behalf of the American Taxpayer regarding the important issue of a constitutional amendment to address the federal deficit. My name is Andrew Moylan, and I am Vice President of Government Affairs for the National Taxpayers Union (NTU), a non-partisan citizen group founded in 1969 to work for lower taxes and smaller government at all levels. NTU is America's oldest non-profit grassroots taxpayer organization, with 362,000 members nationwide. We look forward to this hearing as the beginning, rather than the end, of robust and serious deliberation of constitutional protections for taxpayers, hopefully to include hearings by the full Committee on the Judiciary in this chamber and the Senate."

Few citizen groups in Washington can match NTU's decades-long history of principled advocacy in favor of a Balanced Budget Amendment (BBA), which is why I hope you will find these comments on solutions to our staggering debt problems helpful. NTU has been one of the most powerful voices in support of durable structural reforms to our budget process to protect taxpayers. We were active participants in several major campaigns to enact a BBA in Congress, including the closest-ever effort in the 104th Congress that saw House passage and fell one vote short in the Senate. During that time and to this day, NTU has additionally sought to propose a BBA for ratification through the limited amendment convention process provided under Article V of the U.S. Constitution. . You can also find further research into these topics on our website at www.ntu.org.

In pursuit of a sustainable fiscal future, NTU has worked in conjunction with friends and allies as part of the "BBA Now Coalition." The result of these deliberations is a "Common Sense Balanced Budget Amendment" proposal that has attracted the support of more than 90 grassroots and campus groups across the country. Along with NTU, our coalition includes such national groups as the American Civil Rights Union, Americans for a Balanced Budget Amendment, Americans for Tax Reform, American Solutions, Balanced Budget Amendment Now, Contract from America, Institute for Liberty, Let Freedom Ring, National Tax Limitation Committee, ReAL Action, Regular Folks United, 60 Plus Association, Tea Party Express, Young Americans for Freedom, and Young Conservatives Coalition. The proposal details and a full list of supporters can be found at the coalition's website, www.bbanow.org.

In the course of our work with coalitions such as BBA Now, other organizations, and academic experts on public finance, we have received a great deal of advice and consultation on the elements of a successful federal tax and expenditure limitation. Much of that advice and consultation has been informed by experience at the state and local level. For example, Colorado's Taxpayer's Bill of Rights (TABOR) has, since its adoption in 1992, been regarded as one of the most important constitutional mechanisms for state and local fiscal discipline ever devised. TABOR, in turn, can trace its lineage to a wealth of experience in other states. Few individuals have been as deeply involved in this process as Professor Barry Poulson of the University of Colorado. For that reason, I would like to commend Members of the Subcommittee to Professor Poulson's important work in the hopes that it might be helpful in your deliberations on a federal constitutional amendment as well as statutory mechanisms.

We were gratified that the three most important components of the BBA Now Coalition's product are reflected in several resolutions under consideration in Congress: a simple balanced budget requirement, a supermajority threshold to enact any tax increase, and a limit to prevent spending from climbing above historical averages. We believe that these three cornerstones,

along with greater discipline in the appropriations process, a restructuring of our entitlement programs, and a complete overhaul of our burdensome and loophole-ridden Tax Code would provide a solid foundation for America's future.

The Problem

In the past decade, under the direction of Presidents and lawmakers from both parties, our federal budget has expanded dramatically no matter what measure one consults. At the dawn of the new millennium in 2001, federal outlays were about \$1.8 trillion or 18.2 percent of our Gross Domestic Product (GDP), a level below post-World War II averages. Through the middle of the decade, we saw an explosion in spending driven by such factors as the creation of a new cabinet-level Department of Homeland Security as well as increased expenditures on defense and education. By 2003, the modest spending discipline of the late 1990s had given way to federal outlays that now seem permanently fixed at or above the post-war average of 19.6 percent of GDP. Add in the more recent surge in so-called "crisis response" spending, such as the \$700 billion Troubled Asset Relief Program (TARP) of 2008 or the \$862 billion "economic stimulus" bill of 2009, and the picture grows even bleaker.

In 2011, our budget is more than twice as large as in 2001, reaching about \$3.8 trillion. As a percentage of our economy, 2011 outlays will surpass a level unseen since the era of full-scale war mobilization in the 1940s, at over 25 percent. Perhaps most disturbing, President Obama's estimate of our overspending problem, at roughly \$1.6 trillion in 2011 is about equal, in inflation-adjusted terms, to the *entire* federal budget in 1982. Put another way, we will raise through the Tax Code and spend (in real terms) roughly the federal budget of 2003 and borrow an amount approximating the 1982 federal budget just for good measure.

Perhaps even more disturbing, Congress and Presidents alike in recent years have not only failed to grapple with our broken entitlement programs but have actually added to their size and scope. The Medicare prescription drug benefit that passed in 2003, which NTU vigorously opposed, added another layer to the program's liabilities. Just last year, the health care reform bill passed by Congress included large changes to Medicare spending that would lead to significant savings; however, that legislation spends every single dime of the savings (and more than \$500 billion raised through higher taxes) on a dramatic expansion of Medicaid and a new regime of health care subsidies. These and other actions have led the nation's finances to the point where if leaders do not take corrective action soon, the United States could face a devastating debt crisis that would likely precipitate not only dramatic spending cuts but also massive tax hikes in very short order.

The federal government has seen deficits during 44 of the last 50 years. This fact ought to give pause even to die-hard Keynesians, who believe surpluses should be the norm in most economic growth cycles. While NTU's dedication to limited government would on its own lead us to conclude that this spending spree is unacceptable, sheer mathematics tell us that it is unsustainable. As of today, we are perilously close to the point where our country's debt exceeds its economic output. This sad statistic places us in rare company – just slightly below countries already staggered by debt crisis (like Ireland) and just above countries thought to be under grave threat of one (like Portugal).

The Solution

While the causes of the recent spending spree are myriad and complicated, the remedies are relatively straightforward. On the discretionary side, Congress must cancel wasteful programs, root out inefficiencies, and roll back agency spending to pre-bailout, pre-stimulus levels. With mandatory spending, Congress must take hold of the so-called “third rail” of politics with both hands and enact serious entitlement reforms primarily focused on controlling the growth in spending on Medicare and Medicaid and rectifying the terrifying prospect of Social Security operating in deficit from here on out.

Though Congress should aggressively pursue these prudent spending restraints, they will not be enough to rectify the defects of the budget process itself. Thus, Congress must enact with all deliberate speed a robust Balanced Budget Amendment to the Constitution.

As I briefly recounted earlier in this testimony, NTU’s most fundamental and enduring goal has been to establish constitutional limits on the size and future growth of government. Throughout the 1970s and 1980s, my organization helped to launch and sustain the movement for a limited Article V amendment convention among the states to propose a Balanced Budget Amendment for ratification, all while pursuing a BBA through Congress. Our members were elated over the passage of S.J. Res. 58 in 1982, and the passage of H.J. Res. 1 in 1995 through the House of Representatives. In both cases the measures, whose provisions varied somewhat, fell short of enactment in the other chambers of Congress.

This history provides an illustration of how prescient the arguments of BBA advocates have proven to be, and how specious those of opponents have been. For the better part of 40 years, we were told that fiscal discipline would evolve simply by “electing the right people,” all while Republican and Democratic Presidents and Congresses abused the nation’s good credit. We were told that statutory measures would bring outlays under control, even as laws such as the Gramm-Rudman Hollings Act were trampled underfoot. We were told that our foundational document shouldn’t be “cluttered” with mundane matters of budgeting, even as the tax-and-spend culture in Washington eroded the foundations of prosperity for current and future generations.

This is particularly interesting in light of an oft-overlooked portion of our nation’s history: the failure of the Articles of Confederation and the drafting of the Constitution. In 1995, NTU’s then-Chairman (and current Chairman Emeritus) James Davidson testified before this very Subcommittee about that event’s connection to fiscal mismanagement:

Our Constitution was adopted precisely because of fiscal collapse under the Articles of Confederation. As Sidney Homer wrote in *A History of Interest Rates*, ‘The finances of the nation were chaotic. Expenditures were authorized without the power to tax. Government credit sank so low that by 1787 certified interest-bearing claims against it were worth less than fifteen cents on the dollar.’

As Sidney Homer and other historians have documented, the need to balance the budget and restore the good credit of the government led directly to the drafting of the Constitution in the first place. Mr. Homer says, ‘In spite of the great potential economic strength of the new country, its financial and political system broke down completely in 1786. Credit at home and abroad was no longer available. The impossibility of

government without money, credit, or power led to the Constitutional Convention of 1787 and a new nation in 1789.’

It is often said that politicians do not need constitutional help to maintain fiscal responsibility; all they are supposed to need is the ‘will’ to do so. The evidence of our own history says otherwise. No one would argue that the great leaders who brought our country its independence lacked political will. Yet even they could not balance the budget and keep up payments on the national debt under the Articles of Confederation. It took a change in the Constitution to restore sound policy and sound credit.”

The notion that limits on taxes and spending are too trivial for the Constitution seems quaint today, as our national debt tests the ominous level of 100 percent of the nation’s economic output. As noted earlier, unsustainable entitlement programs, whose dire condition has been known for at least 20 years now, threaten to heap unfathomable burdens on taxpayers. BBA naysayers sought to derail the constitutional budgetary discipline that could have made adjustments to the realities of these programs gradual and bearable, all while they complained that the measure would “take too long to ratify” for it to have any salutary effect. The question now before Congress is, how could our Constitution *not* be allowed to contribute toward restoring our nation’s fiscal stability? The fiscal crisis our government faces overwhelmingly demonstrates the continued relevance of a BBA to curing the maladies that threaten the health of our economy.

Current Proposals

To our members, a BBA would provide the very lifeblood that will restore and sustain the financial health of our Republic. We are therefore encouraged over the intensifying interest among Members of Congress and state legislators in a unified BBA concept. Several iterations of a Balanced Budget Amendment have already been introduced in the 112th Congress. NTU has traditionally supported a range of approaches to a BBA, but several merit specific discussion here.

Perhaps the most prominent proposal is the so-called “Consensus BBA” introduced by Senator Hatch (R-UT) as S.J. Res. 10 and by Representative Walsh (R-IL) as H.J. Res. 56. This resolution combines and refines elements from several amendments introduced thus far in Congress. Its structure is relatively simple. First, it directs the President to submit and Congress to enact a balanced budget while allowing for a two-thirds vote to authorize any specific excess. A two-thirds vote would also be required for any tax increase and courts would be prevented from ordering any increase in revenue. It would provide a backstop by requiring a three-fifths vote of Congress in order to approve any increase in the national debt. Further, the resolution carefully spells out how Congress could suspend the provisions of the BBA and authorize specific additional spending to address national security threats: by majority vote in the event of a declared war, and by three-fifths vote in any other type of military conflict. Finally, it enacts a spending limitation that will hold federal spending to 18 percent of GDP.

NTU supports this proposal for its strength and comprehensiveness and its proper focus on the true cause of our fiscal maladies: overspending. By including a strong expenditure limitation, this version of a BBA would provide a vital check on irresponsible budgeting. Although several types of mechanisms could answer to the purpose of controlling growth in expenditures, any such protection incorporating Gross Domestic Product must pay careful heed to historical experience. In this case, NTU believes that an annual spending cap at 18 percent of

GDP is clearly the most prudent choice. Such a level reflects the share of economic output that federal revenues have typically represented since World War II. Given that constitutional amendments should be designed with a long nod to the past and an equally farsighted view to the future, 18 percent is a most stable and logical benchmark.

In addition, setting the expenditure limit at 18 percent would make a valuable contribution toward harmonizing all parts of the amendment so that the whole functions as intended. An assumption that spending should normally be linked to the average and customary federal revenue proportion would, by its very nature, give Congress and the President a starting point that is closer to balance. Indeed, the limit helps to remedy Washington's increasingly metastasized affliction of tax-spend-and-borrow, by elevating the concept of expenditure restraint to its rightful place in policymaking. While the two-thirds "supermajority" override requirement is essential to ensuring this place, so is the 18 percent cap on expenditures. If set too high, the spending limit would merely institutionalize, rather than minimize, deficits. Recent spending-to-GDP ratios in excess of 20 percent – and the resulting pressures to borrow or tax even more – ought to convince fiscal disciplinarians of the need for a carefully-designed limit, given that Washington has only collected more than 20 percent of GDP in revenues three times since 1940.

Another strong BBA proposal is S.J. Res. 5, introduced by Senator Mike Lee (R-UT). This version is similar in structure to the aforementioned "Consensus BBA," with a balanced budget requirement, an 18 percent spending cap, and a supermajority threshold for tax hikes but is stricter in several areas. First, it harmonizes all supermajority requirements at a two-thirds vote of Congress. Second, it contains no specific language authorizing excesses for national security purposes, preferring to allow the supermajority override option to serve that purpose.

Senators Cornyn (R-TX) and Hatch (R-UT) have also introduced a BBA, S.J. Res. 3, which would achieve many of the same goals, though its spending limit is placed at a higher level of 20 percent of GDP, roughly the historical post-war average for outlays. In your chamber, Representative Bob Goodlatte (R-VA) has continued his long history of leadership on this issue by introducing H.J. Res. 1, which incorporates other supermajority requirements and spending limitations, and H.J. Res. 2, which takes a more basic stance. All of these proposals, and perhaps some others yet to be introduced, deserve consideration, but Congress must do so without delay.

In NTU's opinion some particular BBA concepts are worthy of further deliberation, and some should be avoided. While many proposals in Congress achieve a cap on spending by limiting it to a certain percentage of GDP, this is not the only way to achieve such a goal. Basing a limitation on a prior year's revenues, or receipts over a range of years, could achieve similar aims. However, we would strongly urge Members to avoid any provisions to exempt certain portions of the federal budget from a BBA. This policy would provide an enormous loophole through which to drive additional spending and unleash a destructive lobbying war over what programs should receive special status.

Rebuttals to Common Arguments against a BBA

The latter, chilling prospect aside, a legion of BBA opponents has for quite some time waged war against the very notion of a constitutional protection against greater debt. Some of the arguments they deploy have gained an unwarranted amount of political currency and I'd like to address the more common ones here.

During the BBA debates of the 1980s and 1990s, one familiar refrain from opponents was that an amendment was simply unnecessary to restrain deficits because Congress could do so on its own. If political “will” were enough to protect citizens from unwise or pernicious legislation, then we could likewise do without the all-important First Amendment to the Constitution as well since Congress could simply refrain from passing any laws abridging freedom of speech. But our Founders recognized, and citizens and scholars now universally accept, the need for limitations on the power of government to abridge fundamental rights such as these. So it is that we must limit the power of legislators to imperil our nation’s finances and our children’s future. Just as our Founders did, Congresses and Presidents both present and future need a credible fiscal structure and reasonable guidelines within which they can operate. A strong BBA would provide exactly that kind of protection. Though prominent in prior debates, this argument ought to have no relevance now that we’ve had decades of intervening experience with scarcely interrupted (and bipartisan) support for ever-higher debt to the detriment of our fiscal health.

The common refrain heard today is that a BBA would be a “depression-maker” because it would prevent Congress from utilizing fiscal policy to counteract an economic recession. The response to this contention is two-fold: one technical, the other practical. The technical response is that under the “Consensus BBA,” Congress can enact whatever kind of spending or tax policies it likes so long as two-thirds of its Members vote in the affirmative. Other proposals include lower thresholds, such as three-fifths, to achieve such an override. These provisions preserve Congressional flexibility by allowing large majorities to act in times of emergency.

The practical response is that despite claims to the contrary, Congress is not only capable of achieving such supermajorities but has done so regularly when faced with truly urgent decision points in recent history. For example, when the financial panic of late 2008 gripped the nation, Congress passed the Troubled Asset Relief Program with strong bipartisan supermajorities in both chambers (including 74 votes in the Senate). Setting aside for a moment whether or not TARP was good policy (for the record, NTU was a staunch opponent), it was clearly advertised as an emergency measure to prevent an economic collapse. For better or worse, Congress took that advice and passed the bill with votes from both parties.

For further evidence, we can look to supplemental appropriations bills. In recent years, these have generally fallen into two categories: spending on wars, or response to natural disasters. Disaster spending tends to draw strong support and pass with huge majorities, but the vigorous public debate surrounding the wars in Iraq and Afghanistan led to much closer votes. NTU took no position on U.S. involvement in these conflicts, but it is clear that policies enjoying widespread public support have no trouble clearing a supermajority hurdle while policies that are controversial have a more uncertain path.

Some opponents of a BBA contend that we have never enshrined any specific economic policy in the Constitution and should not do so now. But the BBA is not an economic policy and it is not a federal budget; it is a set of guidelines within which Congress can create economic policy and a federal budget. It is no more an economic policy than the 21st Amendment, which repealed alcohol prohibition, was a specific regulatory policy for states. Neither of these amendments prescribes the manner in which legislators must incorporate them in daily policy; they simply lay out the ground rules for the debate.

Others argue that a BBA would take too much time and effort to ratify and gain the force of law. While it is true that ratification can be protracted, the process of amending our

Constitution is rightly one that involves meeting strict criteria. Nonetheless, the obvious point needs to be made: had the Senate followed the House's lead in 1995 and passed the BBA, the measure could very well have been ratified and operating for the better part of a decade by now. In any case, NTU urges passage of statutory language in pursuit of the same goals expressed in a Balanced Budget Amendment to help bridge the gap. Still, given that statutory measures exist at the whim of Congress, taxpayers can only count on a strong constitutional measure to protect them from fiscal disaster.

There are often questions about how such an amendment would be enforced. Some say that a BBA is essentially unenforceable because there is nothing that will compel Congress to comply with its mandates, but that cynical view could be extended to virtually any policy, whether constitutional or statutory. President Jackson famously said of an 1832 Supreme Court decision, “[Chief Justice] John Marshall has made his decision, now let him enforce it!” Marshall, of course, did not have an army at his disposal and could rely only upon the tensile strength of the fabric of our system of checks and balances and robust public involvement in the federal government. As with essentially every other policy, a BBA would be enforced through these tools if a violation occurred.

BBA opponents argue that it is unwise for it to include a spending limitation since that would necessitate large reductions in expenditures over the coming years. First, it is simply not accurate to characterize a return of spending to post-war revenue averages as any kind of “steep” or “draconian” cut. Further, even the most aggressive budget outline that has been proposed (by the Republican Study Committee, the caucus of House conservatives) would envision outlays hovering around \$3.3 trillion (an amount just shy of 2009 expenditures of \$3.5 trillion) and then modestly increasing to \$4.3 trillion by the end of the decade. This would merely allow for the historical trend for spending increases to catch up with the massive spikes witnessed in 2009 and 2010. But most importantly, these kinds of reductions are absolutely necessary to changing our trajectory of ever-increasing deficits and debt. We must begin to reduce spending now to ward off fiscal catastrophe.

Others argue that a BBA in and of itself does nothing to solve the long-term drivers of our debt: entitlement costs. While technically correct, no single policy is likely to solve those problems and the Constitution would be the wrong place to deal with such details. What a BBA will do is ensure that future leaders do not dig the debt hole any further and that they do not habitually deviate from historical norms on spending. By establishing those boundaries, the BBA will give Congress the proper incentives to finally grapple with entitlement reform,

Conclusion

Thomas Jefferson, a hero to many conservatives, once wrote, “I wish it were possible to obtain a single amendment to our Constitution . . . ; I mean an additional article, taking from the federal government the power of borrowing.” Franklin D. Roosevelt, a hero to many liberals, once said, “Let us have the courage to stop borrowing to meet continuing deficits. Revenues must cover expenditures by one means or another. Any government, like any family, can, for a year, spend a little more than it earns. But you and I know that a continuation of that habit means the poorhouse.” Though they lived more than a century apart in time and miles apart on the ideological spectrum, both of these titans of American history recognized the threat posed by deficits and expressed support for policies to make them a thing of the past.

No proposal in Congress today would guarantee such an outcome – an end to deficit spending. What a BBA will guarantee is a more deliberative, accountable budgeting process that avoids the rash impulse to tax or borrow and encourages consensus-building toward spending restraint. Constitutions shouldn't make policy, but they should set rules within which policymakers operate and they should safeguard the rights of citizens. If the fundamental right – of every generation – to be free of excessive federal debt cannot be protected by our Constitution, little else in that precious document will matter. Thus, the past, present, and future all speak clearly to us on behalf of this reform.