House Balanced Budget Amendment (H.J. Res. 1): Rewriting the Constitution to Raid the Social Security Trust Fund

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The balanced budget amendment (H.J. Res. 1) approved by the House Committee on the Judiciary along party lines[1] would amend the Constitution to require that federal spending in any fiscal year not exceed revenues collected in that fiscal year unless three-fifths of members in each chamber of Congress agree to additional spending. In addition, it would require a two-thirds vote in each chamber to approve any federal spending above 18 percent of "economic output" (gross domestic product, GDP)[2] – a level not seen for about 50 years.[3] Third, it would require a two-thirds vote in both houses to raise revenues.

The requirement of an annual balanced budget, regardless of the state of the economy, would force the federal government to take steps that would weaken the economy, turning downturns into recessions and making recessions worse.[4] The 18 percent spending cap would force even deeper cuts to Medicare, Medicaid, and many other critical programs than in the House-passed Ryan budget.[5] At the same time, the supermajority required for any tax increase would shield tax breaks for the very rich and corporations that are a major cause of growing deficits and debt.[6]

Although policy makers of both parties have promised to protect Social Security benefits for current beneficiaries and near retirees, H.J. Res. 1 would pose an immediate threat to the Social Security benefits Americans have worked for and are counting on – despite Social Security's dedicated revenues and ample reserves.

Social Security is a self-financed social insurance program with a $2.6 trillion Trust Fund.

Social Security is a social insurance program financed primarily by the payroll tax contributions of covered workers and their employers. The surplus contributions of workers and employers to Social Security are invested by the Social Security Trust Fund in interest-bearing U.S. Treasury bonds. These contributions built up a Trust Fund of $2.6 trillion by the end of 2010, and the Trust Fund is expected to grow to $3.7 trillion by the end of 2022. The Social Security Board of Trustees estimates that with its dedicated revenues and reserves, Social Security can pay 100 percent of promised benefits until 2036 and 77 percent of benefits after that.[7]

Because of its self-financing nature, current budget rules treat the Social Security program as "off-budget," and Social Security has been exempted from past budget enforcement rules.[8] But these statutory rules would be superseded by the language of a constitutional amendment like H.J. Res. 1.

H.J. Res. 1 would treat Social Security revenues and benefits like other government revenues and spending.

H.J. Res. 1 requires that "total outlays for any fiscal year shall not exceed total receipts for that fiscal year." It defines "total receipts" as "all [federal government] receipts…except those

derived from borrowing," and "total outlays" as "all [federal government] outlays…except those for repayment of debt principal."[9] Similar or identical language in earlier proposals consistently has been interpreted to encompass Social Security revenues and benefits,[10] and the report from the House Committee on the Judiciary affirms that the Committee rejected minority amendments that would have "limit[ed] the application of balanced budget principles to Social Security, Medicare, or other government benefit programs."[11]

Social Security would be subject to cuts under H.J. Res. 1.

- ***H.J. Res. 1 rewrites the Constitution to authorize a raid on the Social Security Trust Fund.*** As noted above, Social Security historically has been deemed off-budget, but H.J. Res 1 would override longstanding protections and require Social Security benefits and revenues to be counted with total government outlays and receipts. Because H.J. Res. 1 requires all spending to be offset by tax revenues collected *in the same year*, if total government spending exceeded total revenue in any year, Social Security benefit payments would be included among the outlays that could be subject to cuts to reduce the deficit – even if the balance in the Social Security Trust Fund considered separately were more than sufficient to pay current benefits (as it is expected to be until 2036). In fact, the amendment would generally bar Social Security from drawing on its Trust Fund reserves to pay promised benefits unless the rest of the federal budget ran an offsetting surplus (or the House and Senate each garnered the supermajority necessary to permit deficit spending).[12]

- ***The timeline for implementing the balanced budget and spending limit requirements in H.J. Res. 1 would likely force major cuts to Social Security – and soon.*** H.J. Res. 1 limits annual federal spending to 18 percent of GDP, a level not seen since the 1960s.[13] This limit would go into effect, and the budget would have to be balanced, as early as fiscal year 2018.[14] As a result, the cuts required to comply with the amendment would be even more drastic than those proposed in the fiscal year 2012 budget introduced by House Budget Committee Chairman Paul Ryan (R-WI) and passed by the House, as Chairman Ryan's plan would not bring the budget into balance until some time in the 2030s and would not reduce spending below 18 percent of GDP until after 2040.[15]

  Rather, the cuts necessitated by H.J. Res. 1 would likely resemble those in the Republican Study Committee (RSC) budget plan, which proposes to limit spending to 18 percent of GDP by 2017 and balance the budget by 2020.[16] To reach these extreme goals, the RSC plan would:

  - slash total funding for non-defense discretionary programs by approximately 70 percent in 2021;[17]
  - cut funding for Medicaid, the Supplemental Security Income program and the Supplemental Nutrition Assistance Program in half during the same time frame;[18]
  - convert Medicare into a voucher program while raising the eligibility age to 67 for anyone born in 1963 or later – much like the proposal in Chairman Ryan's plan, which would *double* out-of-pocket health care costs for a typical 65-year-old Medicare beneficiary;[19] and

- cut Social Security benefits for everyone currently under 60 by accelerating the increase in the retirement age, which would be raised to 70 for those born in 1975 or later (representing a nearly 20 percent cut in scheduled benefits).[20]

Though Congress would not have to enact the specific policies outlined in the RSC plan, it would be forced to make cuts very similar in scope to comply with H.J. Res. 1 – and if Congress chose to enact smaller reductions in funding for some programs, cuts to Social Security could be even larger. Increasing Social Security revenues to avoid benefit cuts or otherwise strengthen the program would not be an option because of the two-thirds vote required to do so (and because revenues could not be dedicated to Social Security due to the elimination of the program's off-budget status).

Conclusion

At first blush, the balanced budget amendment sounds like a good idea to many who say, "states [with balanced budget amendments] have been able to prioritize their obligations and make tough choices,"[21] or "[a] Balanced Budget Amendment will make Washington tighten its belt like families do."[22] However, even states with their own balanced budget amendments only have to balance their *operating* budgets, not their capital budgets, which fund projects like roads and schools. States can borrow money and build up reserves to fund important investments – and so can families, who might take out a mortgage to purchase a home or a loan to pay for college.

Moreover, both states and families would face greater challenges during recessions if the federal government could not run a deficit. When the economy is weak, the expansion of federal programs like extended unemployment benefits, Medicaid, and SNAP (food stamps) helps struggling families, relieves pressure on state budgets, and boosts demand, helping the economy recover. The federal government's ability to quickly boost spending to respond to economic downturns, natural disasters and other national emergencies is often all that can prevent a serious problem from becoming far worse.

While polls show that a majority of the public supports the general idea of a balanced budget amendment, support quickly flips when the public understands the painful cuts that such an amendment could require.[23] Amending the Constitution to require strict adherence to an arbitrary balanced budget requirement – especially with additional restrictions on spending and raising revenues – is neither a fair nor sensible way to run the federal government.

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[1] H.J. Res. 1, 112th Cong. (2011) (introduced by Rep. Goodlatte (R-VA) Jan. 5, 2011; approved as amended by H. Comm. on the Judiciary June 15, 2011).

[2] The text of H.J. Res. 1 refers to a spending cap of 18 percent of U.S. "economic output," which generally has been interpreted to mean GDP. *See, e.g.*, Rep. Eric Cantor & Rep. Jim Jordan, *Control Debt, Pass Balanced Budget Amendment*, USA Today, July 12, 2011, http://www.usatoday.com/news/opinion/forum/2011-07-12-balanced-budget-amendment-cantor_n.htm (referring to supermajority required by H.J. Res. 1 to spend more than 18 percent of GDP); H.R. Rep. 112-117, at 25, 35 (2011) (reflecting assumptions by Congressional Budget Office and minority Committee members that economic output is GDP).

[3] *See* Office of Mgmt. & Budget, Fiscal Year 2012 Historical Tables, Budget of the U.S. Government, Table 15.3: Total Government Expenditures as Percentages of GDP: 1948-2010 (2011), *available at*

http://m.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/hist.pdf (showing total federal government outlays were last below 18 percent in fiscal year 1966).

[4] *See generally* Robert Greenstein & Richard Kogan, Ctr. on Budget & Policy Priorities, A Constitutional Balanced Budget Amendment Threatens Great Economic Damage (2011), http://www.cbpp.org/files/6-6-11bud2-rev7-26-11.pdf.

[5] *Id.* at 10.

[6] *See id.* at 9; Kathy Ruffing & James R. Horney, Ctr. on Budget & Policy Priorities, Economic Downturn and Bush Policies Continue to Drive Large Projected Deficits 1, 3-4 (2011), http://www.cbpp.org/files/5-10-11bud.pdf; Pew Fiscal Analysis Initiative, The Great Debt Shift: Drivers of Federal Debt Since 2001 3-5 (2011), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Fact_Sheets/Economic_Policy/drivers_federal_debt_since_2001.pdf.

[7] Bd. of Trustees of the Fed. Old-Age & Survivors Ins. & Fed. Disability Trust Funds, 2011 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Trust Funds, H.R. Doc. No. 112-23, at 2 (2011), *available at* http://www.ssa.gov/OACT/TR/2011/tr2011.pdf.

[8] *See generally* Dawn Nuschler, Cong. Research Serv., Social Security's Treatment Under the Federal Budget: A Summary (2002).

[9] H.J. Res. 1, *supra* note 1.

[10] *See, e.g.*, H.R. Rep. No. 104-3, at 1-2, 6 (1995); S. Rep. No. 105-3, at 14-16, 19 (1997). *See also* James V. Saturno & Megan Suzanne Lynch, Cong. Research Serv., A Balanced Budget Constitutional Amendment: Background and Congressional Options 32-33 (2011).

[11] H.R. Rep. 112-117, at 13 (2011).

[12] Saturno, *supra* note 10; Greenstein & Kogan, *supra* note 4, at 6.

[13] Office of Mgmt. & Budget, *supra* note 3.

[14] H.J. Res. 1 specifies that its provisions are to take effect in the first fiscal year beginning after December 31, 2016 (i.e., fiscal year 2018) or in the second fiscal year beginning after its ratification, whichever is later. As approved by the House Committee on the Judiciary, the amendment's preamble required ratification within seven years of its approval by Congress. This deadline was removed prior to the floor vote on H.J. Res. 1 scheduled up to July 31, 2011, but if Congress passed H.J. Res. 1 this year and three-quarters of the states ratified it, ratification would likely be completed before 2016 and the amendment would take effect in fiscal year 2018.

[15] Robert Greenstein, James R. Horney, & Kelsey Merrick, Ctr. on Budget & Policy Priorities, Balanced Budget Amendment Would Require More Extreme Cuts Than Ryan Plan 1-2 (2011), http://www.cbpp.org/files/6-6-11bud-rev7-26-11.pdf.

[16] Republican Study Comm., Fiscal Year 2012 Budget 12, 33 (2011), *available at* http://rsc.jordan.house.gov/UploadedFiles/Honest_Solutions_Final.pdf.

[17] Greenstein, Horney, & Merrick, *supra* note 15, at 2.

[18] *Id.* at 2-3.

[19] Republican Study Comm., *supra* note 16, at 13-16; Robert Greenstein, Ctr. on Budget & Policy Priorities, CBO Report: Ryan Plan Specifies Spending Path That Would Nearly End Most of Government Other Than Social Security, Health Care, and Defense by 2050 3 (2011), http://www.cbpp.org/files/4-7-11bud.pdf. The RSC budget also would repeal the Affordable Care Act, so 65- and 66-year-olds with pre-existing health conditions would lose protection against discrimination and tax credits to make insurance more affordable. *See* Republican Study Comm., *supra* note 16, at 16.

[20] *See id.* at 17.

[21] Sen. Mike Lee, *Why We Need a Balanced-Budget Amendment*, Washington Post, March 4, 2011, http://www.washingtonpost.com/wp-dyn/content/article/2011/03/03/AR2011030304714.html.

[22] Press Release, Sen. Kelly Ayotte, Senator Ayotte Bolsters Effort to Pass Balanced Budget Amendment (June 29, 2011), http://ayotte.senate.gov/?p=press_release&id=101.

[23] *See* Hart/McInturff, Study #11139, NBC News & Wall Street Journal Survey, at 25 (March 31-April 4, 2011), http://online.wsj.com/article/SB10001424052748704013604576247331658689202.html (showing 61 percent of respondents favor "a balanced budget amendment to the U.S. Constitution," but 69 percent *oppose* such an amendment "if that would require a twenty percent cut to spending on entitlement programs such as Medicare, Medicaid, and veterans benefits").