



Proposed Constitutional Amendments in the 115th Congress to Balance the Federal Budget

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In the ongoing effort to hold our government fiscally accountable, talk of a balanced budget amendment offers promise. In the 115th Congress alone, over a dozen balanced budget amendments have been introduced, on both sides of the aisle.

The three amendments introduced by Democrats only ostensibly attempt to balance the budget. These amendments are H.J.Res. 109,¹ H.J.Res. 107,² S.J.Res. 39,³ introduced by Rep. Peter Defazio (D-Ore.), Sen. Patrick Murphy (D-Fla.), and Rep. Joe Donnelly, respectively.

The Democrat amendments include provisions to exclude spending for programs like Social Security and Medicare from their definitions of outlays and receipts, or to waive the balancing of the budget in years that include economic stagnation or recession and allow for stimulus spending. Because of these provisions, these amendments are not worth entertaining, as they do not actually balance the whole budget.

On the Republican side of the aisle, however, more promising, truly effective proposals have been made. A majority of these, ten of thirteen feasible amendments, largely follow one common format that varies slightly between the amendments. This format includes balancing the budget by capping total outlays, and language throughout the body of the amendments that parallels that of the other twelve.

Common Republican Balanced Budget Amendments

Individual provisions of each of the thirteen commonly formatted amendments vary slightly, including the supermajority required to override caps, the restrictive provisions on increasing the limit on the debt held by the public and on passing bills that increase revenue, the extenuating circumstances for which Congress may waive provisions of the article, and the fiscal year following ratification during which the article will become effective, among other variances.

All of these amendments, however, require that the total outlays for any fiscal year shall not exceed the total receipts for that fiscal year, where total outlays include all except

¹ H.J.Res. 109, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/109>

² H.J. Res. 107, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/107>

³ S.J. Res. 39, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/senate-joint-resolution/39>

those for repayment of the debt principal and total receipts include all except those derived from borrowing, and express that it is Congress' duty to enforce the article by appropriate legislation.

Among these amendments, the variation in individual provisions creates additional differences in the larger picture of each amendment, including the standard that the balanced budget is held to, difficulty of circumventing the goal of the balanced budget, the acceptable enforcement of the balanced budget under different circumstances, and other gauges of effectiveness. The individual provision variations are expressed in the following chart.

Balanced Budget Amendments in the 115th Congress: Common Format											
A. Roll call vote in both houses to override cap of total outlays not exceeding receipts B. Additional cap for total outlays: percentage GDP of prior year and/or economic output? C. Roll call vote in both houses to override additional total outlay cap D. Roll call vote in both houses to increase the limit on the debt held by the public E. Roll call vote in both houses to pass a bill that increases revenue F. Includes a provision requiring the president to transmit to Congress a proposed budget that complies with the article? G. Fiscal year effective after ratification H. Allows Congress to waive provisions of the article for a specific excess in certain circumstances a. Declaration of war in FY? Roll call vote required? b. Imminent and serious military threat declared by joint resolution? Roll call vote required? I. Provision stating that no court shall order any increase in revenue to enforce this?											
Sponsor	A.	B.	C.	D.	E.	F.	G.	H.	a.	b.	I.
Rep. Bob Goodlatte (R-Va.) - H.J. Res. 1 ⁴	3/5	---	N/A	3/5	3/5	Yes	5th	Yes	Yes; ---	Yes; maj.	No
Rep. Bob Goodlatte (R-Va.) - H.J. Res. 2 ⁵	3/5	---	N/A	3/5	3/5	Yes	5th	Yes	Yes; ---	Yes; maj.	No
Rep. Vern Buchanan (R-Fla.) - H.J. Res. 5 ⁶	2/3	18% GDP	2/3	3/5	2/3	No	5th	Yes	Yes; maj.	Yes; 3/5	Yes
Rep. Bradley Byrne (R-Ala.) - H.J. Res. 14 ⁷	3/5	1/5 econ. output	2/3	3/5	3/5	Yes	5th	Yes	Yes; ---	Yes; maj.	No
Rep. Scott Perry (R-Pa.) - H.J. Res. 18 ⁸	3/5	20% GDP*	---	3/5	3/5	Yes**	10th+	Yes	Yes; ---	Yes; 2/3	No
Rep. Barry Loudermilk (R-Ga.) - H.J. Res. 29 ⁹	2/3	18% GDP	2/3	2/3	2/3	No	10th	No	----	No; N/A	Yes+++
Rep. John Ratcliffe (R-Texas) - H.J. Res. 98 ¹⁰	2/3	18% GDP	2/3	3/4	2/3	Yes***	7th	Yes	Yes; ---	Yes; maj.	Yes
Rep. Steve Stivers (R-Ohio) - H.J. Res. 110 ¹¹	---	---	N/A	---	---	Yes	10th	Yes++	Yes; ---	Yes; ---	No
Sen. Mike Lee (R-Utah) - S.J. Res. 7 ¹²	2/3	18% GDP	2/3	2/3	2/3	No	2nd	No	----	No; N/A	Yes+++
Sen. Orrin Hatch (R-Utah) - S.J. Res. 24 ¹³	2/3	18% GDP	2/3	3/5	3/5	Yes	5th	Yes	Yes; maj.	Yes; 3/5	Yes

* Cap starts at 20% GDP, but is to be decreased each year until it reaches 16%.

** Also requires that president's proposed budget includes justification by each department/agency for funding proposed in that plan.

*** Also withholds compensation from the president until he does so, and from Congress until they pass a budget.

+ Or, first FY that US budget is not in deficit; whichever is earlier.

++ Also allows Congress to waive provisions of the article with a declaration of national emergency by majority vote.

Requires that any increases made when Congress waives the provisions must be offset within ten FY of the end of the waiver.

+++ Also states that members of Congress can seek judicial enforcement of this article, following a petition of 1/3 of either house.

Other Republican Balanced Budget Amendments

⁴ H.J. Res. 1, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/1>

⁵ H.J. Res. 2, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/2>

⁶ H.J. Res. 5, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/5>

⁷ H.J. Res. 14, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/14>

⁸ H.J. Res. 18, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/18>

⁹ H.J. Res. 29, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/29>

¹⁰ H.J. Res. 98, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/98>

¹¹ H.J. Res. 110, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/110>

¹² S.J. Res. 7, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/senate-joint-resolution/7>

¹³ S.J. Res. 24, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/senate-joint-resolution/24>

Three Republican amendments to balance the budget deviate from this common format, but are still worthy of entertaining in the discussion about which of the thirteen is both most effective and has the highest chance of being ratified. These amendments include different language used for balancing the budget – discussing expenditures and money instead of total outlays – as well as fewer provisions to make it more difficult to increase federal spending.

These differences largely make them less appealing than some written in the common format. Inserted into a chart paralleling the provisions of the common format, their relative incomprehensiveness can be seen.

Balanced Budget Amendments in the 115th Congress: Other Formats								
A. Roll call vote in both houses to override the base balanced budget cap								
B. Additional cap for balancing the budget								
C. Roll call vote in both houses to override additional cap								
D. Roll call vote in both houses to increase the limit on the debt held by the public								
E. Roll call vote in both houses to pass a bill that increases revenue								
F. Includes a provision requiring the President to transmit to Congress a proposed budget that complies with the article?								
G. Fiscal year effective after ratification								
H. Provision stating that no court shall order any increase in revenue to enforce this?								
Sponsor	A.	B.	C.	D.	E.	F.	G.	H.
Rep. Justin Amash (R-Mich.) - H.J. Res. 15 ¹⁴	2/3	---	N/A	---	---	No	1st*	No
Rep. Martha Roby (R-Ala.) - H.J.Res. 114 ¹⁵	2/3 HR; 3/5 S	20% GDP	2/3 HR; 3/5 S	---	---	Yes	1st	No
Rep. Dave Brat (R-Va.) - H.J.Res. 119 ¹⁶	2/3	---	N/A	---	---	No	10th**	No

* Phased in over nine years, with each year able to exceed the cap by nine-tenths in the first year, eight-ninths in the second, seven-eighths in the third, etc.

** No later than ten years after ratification

As is evident from the blanks and “No”s in this chart in comparison to the previous chart of commonly formatted balanced budget amendments, significantly fewer concrete restrictions are put on the federal government by these three amendments to prevent circumvention of this article.

Two provisions included in all but one of the common format amendments are not included in these three. These are the requirements for a supermajority in both houses of Congress to increase the limit on the debt held by the public, and to pass a bill that increases revenue. Such requirements make it more difficult for Congress to increase spending by simply making the American people pay for it. This way of circumventing the article defeats the purpose of the balanced budget amendment, which is aimed at encouraging fiscal responsibility.

In this same vein, a provision included in half of the common format amendments is not included in the three aforementioned amendments. This provision explicitly states that no court shall order any increase in revenue to enforce the balanced budget

¹⁴ H.J.Res. 15, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/15/>

¹⁵ H.J. Res. 114, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/114>

¹⁶ H.J.Res. 119, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/119>

amendment, further making it more difficult to circumvent the article by forcing the American people to pay more.

Although these amendments make significantly more of an attempt to balance the budget than any of the three Democrat amendments do, ultimately their incomprehensiveness and lack of restrictions to prevent circumvention of the article's goal puts all three behind those that follow the common format.

Considerations in Selection

What is most important to consider when comparing these balanced budget amendments is which one offers the most comprehensive and most enforceable approach to requiring and maintaining a balanced budget. As is the pattern in the federal government, Congress and the executive branch will take any necessary steps to avoid doing something if they are not held accountable to doing so.

The key, then, to successfully passing a balanced budget amendment that holds the federal government fiscally accountable is finding a middle ground of a passable bill that also has the teeth necessary to be effective in practice. The thirteen Republican amendments in Congress span this spectrum, with both idealistic aspects and practical aspects present throughout.

One provision of Rep. Brat's amendment requires that "[d]ebts incurred from such expenditures [that exceed the balanced budget] shall be paid back as soon as practicable."¹⁷ This idea is certainly an ideal principle in a balanced budget amendment – repaying as quickly as possible the debt resulting from emergency situations that result in a budget that is not balanced. However, the specific language is loose enough that, without enforceable measures indicating how debts will be repaid or what is considered practicable, Congress will unfortunately likely not hold itself accountable to actually doing this, should this particular amendment get ratified.

On the opposite end of the spectrum, amendments with too rigid of measures to enforce the article have a low chance of passing Congress. Rep. Ratcliffe's amendment, for example, not only requires the president to transmit to Congress a budget in compliance with the article and Congress to pass a balanced budget, but also would withhold compensation, or pay, from the president and Congress if they fail to do their respective duties. These provisions would hold both branches extraordinarily accountable.

However, provisions such as withholding compensation are impractical when considering the process by which an amendment is ratified. Amendments to the Constitution that are proposed in Congress must be approved by two-thirds of both

¹⁷ H.J.Res. 119, 115th Congress (2017) <https://www.congress.gov/bill/115th-congress/house-joint-resolution/119>

houses before being sent to the states for ratification.¹⁸ Convincing members of Congress to vote yes on a measure that would withhold their pay indefinitely should they fail to pass a balanced budget, which they have not in over fifteen years, would prove to be a likely insurmountable challenge.

In recent years, bills to institute congressional pay cuts and withholdings have garnered outside support, as commonsense measures to hold Congress accountable. In 2013, the No Budget, No Pay Act actually became law.¹⁹ It passed with just under a 2/3 vote in both chambers. However, it only placed temporary restrictions on congressional pay, and did not hold the permanence of a Constitutional amendment. It is not difficult to foresee congressional unwillingness to support the passage of a measure that, if ratified, can only be repealed by another amendment.

Congressional accountability aside, Rep. Ratcliffe's amendment is, in many ways, the dream balanced budget amendment. It also includes an additional cap on outlays by percentage of GDP, requires a large supermajority vote to raise the limit on the debt held by the public and to pass bills that increase revenue, and expresses that no court may order any increase in revenue to enforce the article. These principles, in addition to the requirement that the president transmit an acceptable budget to Congress, are those that should be present in a both desirable and feasible balanced budget amendment.

Recommendations

These principles considered, the most appealing and practical amendments are those introduced by Reps. Buchanan, Perry, and Loudermilk and Sen. Lee. The Loudermilk and Lee amendments are identical, except for the fiscal year after ratification in which they become effective (tenth versus second, respectively), so can be discussed together in comparisons. From this narrowed list, specifics of each provision can be considered.

Each of these amendments have their individual drawbacks and advantages. All four have two measures of outlay caps, and require supermajorities to raise the limit on the debt held by the public and to pass bills that increase revenue.

The tradeoffs, then, between the Buchanan, Perry, and Lee and Loudermilk amendments are in their individual roll call vote supermajority requirements, and their inclusion of two other provisions: the president's transmission of a budget to Congress, and express court prohibition on enforcement through increasing revenue. These tradeoffs can be analyzed in the first chart. Ultimately, due chiefly to their stiff yet still practical restrictions on budget caps, increasing spending, and holding Congress accountable, the Lee and Loudermilk amendments come out on top.

¹⁸ National Archives, "Article V, U.S. Constitution," Retrieved November 8, 2017 <https://www.archives.gov/federal-register/constitution/article-v.html>

¹⁹ H.R. 325, 113th Congress (2013) <https://www.congress.gov/bill/113th-congress/house-bill/325>

In these amendments, a supermajority of 2/3, higher than the 3/5 figure in other amendments, would be required to override either of two budget caps, as well as to increase the limit on the debt held by the public and to pass a bill increasing spending. These restrictions on circumventing the article are of utmost importance in ensuring that the article is effective in holding Congress fiscally accountable.

Furthermore, although they do not require that the president transmit a budget in compliance with the article to Congress, they do expressly state that no court shall increase revenue in order to enforce the article. This second provision is of further importance in these amendments, because the amendments also allow for Congress to seek judicial aid in enforcing the article.

If the courts are actively called on to be involved in enforcement, it is even more crucial that they are expressly not allowed to increase revenue when doing so. Therefore, the courts provision is ultimately more substantial than the presidential transmission provision, as it closing off an open avenue for circumvention of the article through unchecked judicial power.

The question remains, then, which of the two amendments – Sen. Lee’s or Rep. Loudermilk’s – is more feasible to be passed, ratified, and put into practice. This comes down to the difference in time frame to implement the article. While it would be ideal to have a balanced budget amendment fully implemented two years after ratification, as Sen. Lee’s amendment calls for, this is not entirely viable in practice.

Sen. Loudermilk’s amendment, allowing ten years to become effective, is more palatable to those concerned about implementation, and offers a smoother transition into following the new article.

Budgets passed by Congress in recent years usually offer a way to balance of the budget within the following ten-year window. Therefore, it would be realistic to expect Congress to be able to use those ten years and follow the framework set out for themselves, and initially achieve a balanced budget in that manner. Following those ten years, then, Congress would have had ample time to work out a seamless transition to following a constitutional balanced budget amendment.

Having a plethora of balanced budget amendments available for consideration in the 115th Congress is encouraging in that they very simply reflect the urgency of requiring a balanced budget. The promise and practicality of the Loudermilk amendment is even more encouraging. The individual provisions in Loudermilk’s amendment, H.J.Res.29, best represent the desired middle ground of a passable bill including enough provisions to hold the government accountable, while at the same time remaining practicable.

It is long past time that the federal government discontinue its trend of unchecked borrowing and spending above its, and its taxpayers', means, and passing and ratifying a balanced budget amendment is an effective way to turn this goal into a reality.

About the Author

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The mission of FreedomWorks is to build, educate, and mobilize the largest network of activists advocating the principles of smaller government, lower taxes, free markets, personal liberty, and the rule of law. Find out more at FreedomWorks.org.