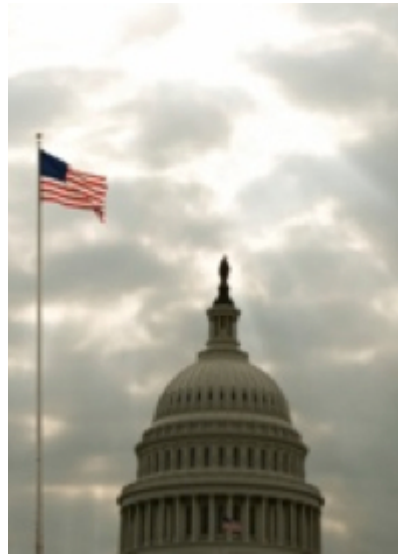




## Options After the Supercommittee Failure

Of course, there is the slim possibility that the Supercommittee could come up with the cuts, in which case Congress would be expected to vote the legislation up or down without amendment. There are other possibilities too. The Supercommittee could “split the baby” and come up with a bipartisan deal that cuts less than the \$1.2 trillion, leaving Congress to find the balance before the automatic cuts kick in. The Supercommittee could even hand Congress a package that includes tax increases as well as spending cuts.



But as of this writing, these possibilities appear unlikely. What appears more likely to happen is that, following a failure of the Supercommittee to present a bill, Congress will abolish the Supercommittee and its automatic cuts and once again begin exercising its constitutional authority regarding spending.

In fact, the constitutionality of the Supercommittee is dubious at best. As former New Jersey Superior Court Judge [Andrew Napolitano noted](#) on Fox News last summer when the Budget Control Act that created the Supercommittee was being debated:

Members of the Senate and members of the House have the opportunity under the Constitution to debate items that are sent to them and to modify items that are sent to them. To force them to vote just yes or no with no debate, not to follow the rules of the House, which permits amendments, not to follow the rules of the Senate, which permits a filibuster, is such a substantial removal of the authority the Constitution gave them that this legislation is treading in waters that might not be constitutional.

Napolitano also noted that “this is this Congress binding itself and all future Congresses to a simple up-or-down vote.” This aspect of the Budget Control Act is unquestionably unconstitutional. Though Congress has the constitutional authority to determine the rules of its proceedings and choose its officers, which includes establishing committees, it does not possess any constitutional authority to bind any future Congress with its rules of procedure.

And of course, the current Congress is bound by the rules now in effect only so long as it chooses not to change them.

So what will Congress do regarding the fiscal crisis? There are plenty of hard decisions waiting to be addressed. First, the 2 percent payroll tax is due to expire automatically at the end of December. This has kept nearly \$1,000 in the pockets of taxpayers this year, at a cost of \$120 billion to the government. And extended unemployment benefits are also due to expire, worth about \$300 a week to each claimant and costing the government \$50 billion. Almost two million beneficiaries will be cut off within a month if benefits aren’t extended further. Even liberal Senator Dick Durbin (D-Ill.) noted that these measures would amount to a tax increase: “The notion of imposing a new payroll tax on people after January 1 in the midst of this recession on working families is totally counterproductive”:



Written by [Bob Adelman](#) on November 20, 2011

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Many people [here] will hate to go home for Christmas saying to the American people, “Merry Christmas, your payroll taxes go up 2 percent on January 1st and [your] unemployment benefits are cut off.”

And eliminating proposed cuts to Medicare providers and doctors would add at least another \$26 to \$32 billion to the projected deficit. There is the Alternative Minimum Tax, which most lawmakers agree is unfair, sticking 30 million taxpayers with higher taxes, unless it is repealed. And certain write offs and tax breaks for small business are also in jeopardy, causing the prime driver of the economy to continue to hold its collective breath before making new capital and labor commitments.

If the Supercommittee does in fact fail to come up with its legislative package, two things should become crystal clear to everyone: The committee was not a serious effort to solve the deficit crisis, but just a distraction that only bought Congress a little time to ignore its responsibilities; and deficit spending will continue. Yet, it is clear to some that the Supercommittee was never intended to be a serious effort to begin with. Economic advisor [John Mauldin](#), who had a private meeting on November 15 with Senator Rob Portman (R-Ohio), a member of the Supercommittee, reminded his readers that even if the Supercommittee were to come up with a bipartisan plan to cut \$1.2 trillion from the budget over 10 years, it wouldn't have made any difference. He said that Portman agreed that “we need to cut \$1.2 trillion *annually* from the deficit.” (Emphasis in original.)

With the failure of the Supercommittee, and the pressures from constituencies already deep into the federal trough during an election year, there are certain outcomes to be expected, including a further downgrading by credit-rating agencies of the country's sovereign debt, higher interest rates charged by investors to offset the increased risk of default in the future, and ever higher deficits and debt. The pain being inflicted on taxpayers and beneficiaries is not yet high enough to cause any significant change in Washington. The Supercommittee was just a diversion and a distraction.



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