



Written by [Christian Gomez](#) on March 29, 2017

The Unbalanced Budget Amendment

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A careful analysis of the various previously proposed balanced budget amendments reveals a number of problems or loopholes, making it more appropriate to call them the unbalanced budget amendments (or UBAs).

On Monday, March 27, Arizona successfully passed [House Concurrent Resolution 2013](#) reapplying an application to Congress to call an Article V convention to propose a Balanced Budget Amendment (BBA) to the Constitution, making it the 29th state with a live application for such a convention to propose a BBA. Arizona originally applied for a BBA Article V convention in 1977 and 1979, but rescinded its applications in 2003. The addition of Arizona to the list of states with a live applications for a BBA Article V convention brings the country only five states away from Congress convening a convention, in accordance with Article V of the Constitution which requires applications from two-thirds of the states (34 states).



Wisconsin is also considering its own application for a BBA Article V Convention. On March 16, 2017 [Senate Joint Resolution 18](#) was introduced by state Senator [Chris Kapenga](#) (R), who serves also as the co-president of the [Assembly of State Legislatures](#) (ASL), a bipartisan body of strictly currently serving state legislators who advocate for an Article V convention to propose amendments. In addition to SJR 18, a companion resolution was introduced in the Wisconsin State Assembly, [Assembly Joint Resolution 21](#), on March 20, 2017.

If passed, SJR 18 and its Assembly companion, AJR 21, would constitute a “continuing application for a convention for proposing amendments in accordance with Article V of the Constitution of the United States.” Although these identical resolutions do not provide the text for the proposed BBA, seeing as it would be written, proposed, and debated by the delegates to the convention, under Article V, we do have an idea of how an actual BBA might read based on the various iterations that have been proposed by members of Congress, state legislators, and several advocacy organizations over the past few decades.

A careful analysis of the various previously proposed balanced budget amendments reveals a number of problems or loopholes, making it more appropriate to call them the Unbalanced Budget Amendments (or UBA).

Of the various proposed BBAs in Congress over the past few years, virtually all of them allow for deficit



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spending based upon an agreement of a 60 percent or 67 percent approval of both legislative chambers, the House and Senate. For example, Section 3 of both [SJR 7](#), sponsored by Senator [Mike Lee](#) of Utah and introduced on January 24, 2017, and [HJR 29](#), sponsored by Congressman [Barry Loudermilk](#) of Georgia and introduced on January 31, 2017, provide for suspending the balanced budget requirements for that fiscal year by an easily attainable roll call vote of two-thirds of both houses of Congress. That means that 290 votes in the House and 67 in the Senate would be able to waive the requirement to balance the budget, and each of those 290 representatives and 67 senators would be able to return to their congressional districts and tell their constituents that they have obeyed their oath of office of upholding the Constitution, with respect to the likely wording we would expect from a BBA.

However, in the event that Congress fell short of the required 290 votes in the House or 67 in the Senate, virtually every proposed BBA includes an even larger loophole making it easier for Congress to not have to balance the budget. That loophole reads “requiring that in the *absence of a national emergency* the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.” (Emphasis added.) In other words, all it would take constitutionally to not balance the budget is a declared national emergency.

Suppose the BBA was already ratified and part of the Constitution; the budget still might not be balanced. Why? Because the United States is currently under 32 separate states of emergency, the oldest of which remains the national emergency with respect to Iran that was first issued through [Executive Order 12170](#) by then-President Jimmy Carter on November 14, 1979 during the Iran hostage crisis. Most recently, President Obama extended the 37-year old EO, which gives the president extraordinary powers to seize property, summon the National Guard, and hire and fire military officers at will.

In fact, according to an [article](#) from *USA Today*, “In his term in office, Obama has declared 13 new emergencies, continued 21 declared by his predecessors and revoked just two, which imposed sanctions on Liberia and Russia.” Of the aforementioned 32 national emergencies, most of these are used to impose economic sanctions as required under the International Emergency Economic Powers Act.

If a national emergency is required to not balance the budget under a BBA, then would not Congress likely follow suit in order to avoid the hard task of balancing the budget? If one doubts Congress would do this, consider the following. That same [article](#) published by *USA Today* states: “Congress is also required to meet every six months to consider whether to revoke each state of emergency. In 40 years of the National Emergencies Act, Congress has never done so — and only seriously threatened it once.”

In fact, since the National Emergencies Act was passed by Congress and signed by then-President Gerald Ford in 1976, a total of 52 states of emergency have been declared: 53 national emergencies in just the past 41 years — 32 of which are still in place.

While some may argue that such escape or emergency stipulations are necessary for any unforeseen problems that may arise or as a means of garnering the broadest support across both party and ideological lines, such stipulations would also have the adverse effect of making it constitutional to do the very opposite of what the amendment is intended to do. Is this not the problem we already face with our Constitution and its various amendments? *If Congress does not already abide by the present Constitution and amendments, why would we expect them to start doing so with the addition of a new amendment such as the balanced budget amendment?*

Under Senator Lee and Congressman Loudermilk’s BBA proposal, and other similar ones, it would be



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constitutional to not balance the budget if certain conditions are met — conditions which could easily be satisfied in order to not only ensure the continuity of big government but even to justify it as being in accordance with the Constitution. In other words, the BBA makes an unbalanced budget constitutional.

We know that an Article V convention would not be made up of solely fiscal conservative delegates. There may be some, but there would also many delegates from progressive states or even conservative-leaning states who would be progressives, liberals, and moderates. In order to widen support for a BBA from such groups, the BBA would likely be watered down with even further loopholes such as the following amendments that Democratic lawmakers in Congress have added to BBAs proposed in the past.

The following information (from an [article](#) by Ernest Istook, a Distinguished Fellow at the [Heritage Foundation](#)) is a sampling of such proposals offered on the floors of both the House or Senate during the 1995–1997 considerations for a BBA:

Representative Robert Wise (D-WV) offered a multifaceted substitute that would have provided for separate federal capital and operating budgets; would have required that only the operating budget be balanced; would have exempted Social Security from balanced budget calculations; and would have permitted Congress to waive the balanced budget provisions in times of war, military conflict, or recession.

Senator Richard Durbin (D-IL) tried to insert the following language into the BBA: “The provisions of this article may be waived for any fiscal year in which there is an economic recession or serious economic emergency in the United States as declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.”

Senator Barbara Boxer (D-CA) proposed, “The provisions of this article may be waived for any fiscal year in which there is a declaration made by the President (and a designation by the Congress) that a major disaster or emergency exists, adopted by a majority vote in each House of those present and voting.”

Representative Major Owens (D-NY) wanted “to allow a majority of Congress to waive the balanced budget provisions contained in the joint resolution in any fiscal year that the national unemployment rate exceeds 4 percent.”

Representative John Conyers (D-MI) wanted to require a detailed plan of spending cuts before balance could be required, proposing “to exempt Social Security from balanced budget calculations; and provide that before the constitutional amendment could take effect, Congress would be required to pass legislation showing what the budget will be for the fiscal years 1996 through 2002, containing aggregate levels of new budget authority, outlays, reserves, and the deficit and surplus, as well as new budget authority and outlays on an account-by-account basis.”

Representative David Bonior (D-MI) tried not only to exempt Social Security from the calculations, but also to require only a simple constitutional majority vote (218 in the House, 51 in the Senate) to allow deficit spending.

With amendments such as these, exempting Social Security or not having to balance the budget during a time of military conflict or economic recession, the budget will never truly be balanced and it would be constitutional.

Rather than promoting a BBA, [The John Birch Society](#), which has opposed both an Article V convention



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and BBA since the early-mid 1980s, firmly believes that state legislators and the voters at large should instead urge Congress to get their house in order by *abiding by the Constitution*, only spending on that which is solely authorized by Article I, Section 8 and adding sunset provisions to all entitlement programs to gradually phase them out all together. Only then, by returning to constitutional spending, might the budget not only truly be balanced but it could see a surplus as billions of taxpayer dollars would no longer be wasted on unconstitutional programs, legislation, and their costly regulations.

No actual BBA with a realistic chance of working should include any of the aforementioned escape or emergency clauses, but no proposed BBA with any real desire of attaining the widest appeal would come without them. It would behoove state legislators to oppose all such BBA Article V convention applications that potentially jeopardize the whole Constitution, opening it to a possible total rewrite, for the mere sake of proposing one amendment that will more than likely be diluted, not work after its ratified, and even make it constitutional to *not* balance the budget.

The Constitution should not be put at risk through an unprecedented and unpredictable convention to propose what would likely and ultimately be an Unbalanced Budget Amendment.





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