

Why the “Balanced Budget Amendment” is a Hoax – and a Deadly Trap

By **Publius Huldah**.

You can not *responsibly* support a proposed Amendment to Our Constitution unless you have read and understand the proposal **and how it would change our Constitution**. You must look behind the nice sounding name! Will the Balanced Budget Amendment (BBA) *really* “rein in” the federal government? Will it *really* “show them” that they have to balance their budget the same as we do?

Or does it *actually* legalize spending which is now unconstitutional? Is it *actually* a massive grant of new *constitutional* powers to the President and the federal courts – a grant which will cut the Heart out of The Constitution our Framers gave us?

Amending the Constitution is serious business – and you are morally bound to get informed before you jump on The Amendment Bandwagon.

So, lay aside your giddy joy at the fact that all 47 U.S. Senate Republicans are co-sponsoring the **Balanced Budget Amendment, Senate Joint Resolution 10 (March 31, 2011)**. Let's go through it. What you *believe* the BBA will do, and what it will *actually* do, are two very different things indeed.

But First: How Did We Get a National Debt of \$14.4 Trillion?

Congress gave us a debt of \$14.4 trillion which increases at the rate of \$4 billion *a day*. Let us look at a few of the items which comprise this \$14.4 trillion debt:

Congress spent **\$2.6 million** to teach **Chinese prostitutes** how to drink responsibly. Congress appropriates \$147 million a year to **subsidize Brazilian cotton farmers**. Congress spent \$3.6 million to fund a study of the **sex lives of dope-smoking, menstruating monkeys**. Congress paid \$500,000 **to paint a salmon** on an Alaska Airlines passenger jet. Congress appropriates **\$6.9 billion a year for the National Science Foundation** where they fund such research as that which revealed the amazing fact that sick shrimp do not perform as well on stamina tests as do healthy shrimp.¹ Citizens Against Government Waste's **pig book** shows Congress spent \$16,547,558,748. on pork projects last year. In Sen. Tom Coburn's **Waste Book 2010**, which lists 100 spending projects, he shows that \$1.5 million was spent to spruce up apartments in Shreveport, La. before they were torn down.

All this spending – every penny of it – and trillions more which is not here listed – has one thing in

common: **It is all *unconstitutional* as outside the scope of the powers delegated to Congress in the Constitution. Congress has no *constitutional* authority to spend money on these projects.**

So! It was **Congress' *unconstitutional* spending** which put us in the mess we are in today.

What Does Our Constitution Permit Congress To Spend Money On?

WE THE PEOPLE ordained and established a Constitution wherein the powers WE delegated to the federal government are limited and defined – “enumerated”. Read the list at Art. I, Sec. 8! Basically, all WE gave Congress authority to do for the Country at large is international relations, commerce & war; and domestically, the creation of an uniform commercial system (weights & measures, patents & copyrights, a money system based on gold & silver, bankruptcy laws, mail delivery & road building.) Some Amendments authorize Congress to make laws protecting civil rights. That’s about it, Folks! The list of objects on which Congress may *lawfully* appropriate funds is short. The only significant authorized expense is the military. James Madison, Father of the U.S. Constitution, said in **Federalist No. 45** (9th para):

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. **The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.** The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.
[boldface added]

Note that Madison contemplated that the federal government would be financed in large part *by taxation on foreign commerce*. **That is because the constitutional powers of the federal government are so limited & defined!** The States and the People are to handle everything else.

Do you now see that *Our Constitution* does not authorize Congress to pay for a museum for neon signs (\$5.2 million), to archive memorabilia for a rock group (\$615,000), or to post poems in zoos (\$997,766.)? [See Sen. Coburn's Waste Book 2010]. Congress has no lawful authority to do most of what they do. They just do it because they want to, they have been doing it for a long time, and WE haven't known enough to stop them. Our \$14.4 trillion debt was caused by **Congress' spending** in thousands of

areas where they have no constitutional authority to spend.

My dear Friend Mark said it best [here](#):

...the federal government's expenditures are limited by the Constitutional grants of authority, NOT THE AMOUNT OF REVENUE THEY CAN GENERATE. [caps are Mark's].

Is the BBA Really the Solution?

So! These 47 Senate Republicans (and some in the House) are showing you how much they now “care” about fiscal responsibility by supporting the BBA. **But think:** Why don't they control their spending **now**? The Republicans control the House – ***NO spending can get through the House unless the Republicans approve it.*** So if the Republicans really wanted to control spending and balance the budget, they could do it now. Why don't they do it? ***Because they don't want to.***

Furthermore, the BBA they support with such broad smiles and glib promises of future fiscal responsibility, doesn't make them control their spending. Instead, ***it would legalize spending which is now unlawful*** and would markedly increase the powers of the federal government. And it would do *nothing* to reduce spending. In short, **the BBA is a Scam and a Terrible Trick.**

What Would We Get From the BBA ?

In plain English, this is what the 10 Sections of the BBA mean [*but read it yourself*- it's very short]:

Section 1: They won't spend more than they take in *unless* they vote to spend more than they take in.

Section 2: They won't spend more than 18% of the GDP *unless* they vote to spend more than 18% of the GDP.

Section 3: The President will write the budget: He will designate **the taxes**, and **what the money will be spent on**. He won't spend more than he decides to tax you for, and he won't spend more than 18% of the GDP. The GDP is a computation made by the **Bureau of Economic Analysis** in the Department of Commerce, an agency under the control of the President. [Do you see? The President controls the agency which computes the number which limits his spending.]

Section 4: Congress won't make a law raising your taxes *unless* they vote to raise your taxes.

Section 5: Congress won't raise the debt limit *unless* they vote to raise the debt limit.

Sections 6 & 7: Congress can waive the above provisions of the BBA (except for Sec. 4 which says they can't raise your taxes unless they vote to raise your taxes) when there is a declared war or a "military conflict" which they think justifies their waiving the above provisions of the BBA.

Section 8: Courts can't order your taxes to be raised. [But you can bet your life that this section, together with section 3, will be seen to authorize *the President* to order that your taxes be raised.]

Section 9: I leave this to others to explain. But be assured the President's minions will define stuff however *he* wants; make stuff "off-budget" or "on-budget" to fit *his* agenda.

Section 10: Congress can make laws to enforce the BBA, and can rely on numbers provided by the President who is to be given constitutional authority to order tax increases & decide how to spend the money.

So! Do you see? You get *no* benefit from the BBA. But it will cause us irreparable harm.

How Would the BBA Cut the Heart Out of Our Constitution?

1. It would Transform Our Constitution *From One of Enumerated Spending Powers To One of General ("Unlimited") Spending Powers.*

Congress' Powers are enumerated. Thus, the objects on which Congress may lawfully appropriate funds are limited to those listed in the Constitution. Congress has ignored the limitations on its powers for many decades – but at least the limitations are still in the Constitution, to be invoked if We The People ever repent. ²

But the BBA, by ignoring **the unconstitutional *objects*** of Congress' spending, and by merely limiting **the *amount*** of such spending to 18% of the GDP & the taxes the President assesses, **repeals** the enumerated powers aspect of our Constitution. Furthermore, **if Congress limited its appropriations to its enumerated powers, they could not possibly spend a sum as vast as 18% of the GDP.** Thus, the BBA is clear intention to repeal the enumerated powers, and transform the federal government into one of **general and *unlimited* powers.**

Congress' idiotic spending is now unlawful & unconstitutional. ***But with the BBA, it would become lawful & constitutional,*** as long as the total spending doesn't exceed the limits (unless they waive the limits). With the BBA, it will become lawful for them to appropriate funds for *whatever the President* (who will write the budget) *says!* ³

2. The BBA Transfers Control of the “Purse” *from Congress to the President.*

The federal government didn't even have a budget until Congress passed the **Budget and Accounting Act of 1921**. That “law” purported to grant budget making power (taxes & appropriations) to the President.

But the Budget Act of 1921 is unconstitutional: The **Constitution** places the taxing & appropriations powers squarely in the hands of Congress – **not** the Executive Branch; and contrary to the beliefs of indoctrinated lawyers, Congress may not “amend” the Constitution by making a law. ⁴

Article I, Sec. 8, cl. 1, grants **to Congress** the Power to lay and collect Taxes; and Art. I, Sec. 9, next to last clause, grants **to Congress** the Power to make the appropriations:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Accordingly, for most of our history, Congress made appropriations as the need arose; determined the taxes, and kept records of both. [See **Bruce Bartlett's** excellent history of the budget process.]

Our Framers gave us an elegant system of separated powers, where **Congress commands the purse – not the Executive Branch and not the Judicial Branch!** In **Federalist No. 78** (6th para), Alexander Hamilton outlines this separation of powers:

...The Executive not only dispenses the honors, but holds the sword of the community. **The legislature not only commands the purse**, but prescribes the rules ... The judiciary ... has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society... ⁵

In **Federalist No. 58** (4th para from end) Madison explains why **the House alone is granted power to propose taxes** (Art. I, Sec. 7, cl. 1): To protect *The People* from overreaching by the other branches of the federal government:

...**The House of Representatives cannot only refuse, but they alone can propose, the supplies requisite for the support of government. They, in a word, hold the purse** that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and

importance, and finally reducing ... all the overgrown prerogatives of the other branches of the government. **This power over the purse may ... be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people,** for obtaining a redress of every grievance...

Ponder Hamilton's and Madison's words. You must understand what they are saying if we are to restore our Constitutional Republic. Otherwise, the BBA will usher in a totalitarian dictatorship.

Pursuant to the unconstitutional Budget Act of 1921, the President has been preparing the budget. Since the Budget Act is unconstitutional, the President's preparation of the budget has been likewise unconstitutional. Section 3 of the BBA would legalize what is now unconstitutional and unlawful.

But Section 3 of the BBA does more than merely legalize the unlawful. **It actually transfers the constitutional power to make the appropriations and to determine taxes to the President.** Congress will become a rubber stamp.

Now look at *this* pretty little snare: Section 8 of the proposed BBA says:

No court of the United States or of any State shall order any increase in revenue to enforce this article. [emphasis added]

Our Constitution does not grant to courts the power to "order" tax increases. So why does Sec. 8 of the BBA say they can't do it?

It's a trap! There is an ancient maxim of legal construction which goes like this: **"The Expression of One Thing is the Exclusion of Another":**

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within the ambit of its legislation, it would have referred to that thing expressly. Because of this expectation, **the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied.** ...[emphasis added]

Why does Sec. 8 of the BBA exclude the President? From this exclusion, one may reasonably infer that the intent of Sec. 8 is **to permit the President to order tax increases.** If the BBA is ratified, you can be sure that Presidents will claim power under Sec. 8 of the BBA to order tax increases. That inference is strengthened by the fact that Sec. 3 of the BBA transfers constitutional power over the Budget to the

President.

So! The BBA surrenders the purse to the President! Our Framers understood the danger of having the sword & the purse held by one person. That is why our Constitution provides for **Congress** to make the decisions on taxes & appropriations; and, as pointed out in **Federalist No. 72** (1st para), the President is to apply and disburse “the public moneys in conformity to the general appropriations of the legislature”.

With the BBA, Congress' sole remaining constitutional function over taxing & spending will be to rubberstamp the dictates of the President.

3. The BBA grants judicial power over taxing & spending to the federal courts.

Article III, Sec. 2, cl. 1 states: “The judicial Power shall extend to all Cases...arising under this Constitution.”

If the BBA is ratified, it will become an Amendment to the Constitution which is subject to the judicial authority of the federal courts.

You say the BBA won't transfer power over the purse to the President? You say Congress won't become a mere rubberstamp whose sole remaining function over taxing & appropriations is to enact into law the dictates of the President?

Who will decide? Since this would be an issue “arising under the Constitution”, the supreme Court will decide. The Judicial Branch – a branch which Hamilton took care to point out should have no power whatsoever over The Purse.

And so five (5) people on the supreme Court will decide an issue which goes to the heart of our Constitution – an issue which the People clamoring for the BBA don't even know exists. And remember: Our supreme Court is filled with fallen people who looked at Sec. 1 of the 14th Amendment and said it means that women may kill their babies. They looked at the 1st Amendment and said it means that Congress may regulate political speech, and courts may ban Christian speech in the public square, but it gives **Westboro “baptists”** a “right” to spew their filth & hate at private funerals of dead American heroes.

If the BBA is ratified, do you really want five (5) of those judges deciding this issue? ⁶

What is the Solution to The Financial Plight *Congress* has put us in?

We have 47 Republican U.S. Senators who don't understand [or do they?] the ramifications of the BBA which some of them (most notably Senators Jim De Mint & Mike Lee) are determined to cram down our throats. Many supposedly conservative talk show hosts & pundits (**most notably, Redstate.com**), are carrying their water. Whether these people are fools or tyrants, I do not know; but *you* must learn that you can not trust anybody. You must insist that people **prove** what they say!

WE THE PEOPLE must reclaim our glorious Heritage. We must find & support candidates who understand the Constitution, obey it, and agree to work to dismantle the unconstitutional federal apparatus. We can eliminate the trillions of dollars of unconstitutional spending by restoring constitutional government. In an orderly fashion, we can dismantle the multitude of offices and agencies and departments of the last 100 years which harass us and eat out our sustenance.

Oh my People! The grinning politicians and pundits who promise you "fiscal responsibility" with their BBA will actually strip you of the protections of Our Constitution. Their BBA will **legalize** a totalitarian dictatorship. Do not be deceived by them – they are leading you astray, and their BBA will destroy us.

Oh you Proponents of this thoroughly Evil Scheme: I throw my glove in your face: Show me, if you can, where I am wrong. Or rethink your position. **PH**

End Notes:

¹ Our Constitution does not authorize Congress to fund scientific research. Congress' only power in the areas of the arts and sciences is to issue patents and copyrights (Art. I, Sec. 8, cl. 8). If Congress obeyed Our Constitution and stopped funding "scientific" research, the proponents of these idiotic studies would have to do something useful instead of sucking at the taxpayers' teat.

² We must repent of *our desire to live at other peoples' expense*. **This** is the contradiction which undermines the Tea Party. Many don't want a constitutional government of limited & enumerated powers. They just want to eliminate funding for programs *they* don't like. They want *their* social security, *their* Medicare, *their* government retirement pensions, *their* perks. I beg each of you who is now living at other peoples' expense: Are you willing to sacrifice your grandchildren so that *you* can keep *your* handouts? Or will you accept **an orderly & gradual dismantlement** of the unconstitutional "entitlement" programs?

³ Are you aware that **federal executive agencies are forming their own SWAT teams**? Are you

aware that DHS is federalizing our local police and using their **fusion centers** to turn them into a national secret police – America's version of the STAZI? Building Obama's "civilian national security force" which is "just as powerful just as strong just as well funded as the military" takes money. Lots of it! **The BBA will permit the President to write into the Budget the funding needed to build this armed force; and it will be under his sole & personal control.**

⁴ Article V sets forth the exclusive methods of amending The Constitution.

⁵ **In Federalist No. 26**, Hamilton addresses how Congress is to determine (after public deliberations) the appropriations for the military; **and warns that the President must never be given power over the purse respecting armed forces:**

The legislature of the United States will be OBLIGED, by this provision [Art. I, Sec. 8, cl. 12], once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter, by a formal vote in the face of their constituents. **They are not AT LIBERTY to vest in the executive department permanent funds for the support of an army, if they were even incautious enough to be willing to repose in it so improper a confidence....** (9th para) [capitals are Hamilton's; boldface mine]

It has been said that the provision which limits the appropriation of money for the support of an army to the period of two years would be unavailing, because the Executive, when once possessed of a force large enough to awe the people into submission, would find resources in that very force sufficient to enable him to dispense with supplies from the acts of the legislature.... (12th para)

Do you see that Hamilton warned us not to trust the President with power to determine the funding for the armed forces? Learn from Hamilton & Madison. Or perish.

⁶ If the President disagrees with the supreme Court's decision, he – who would, thanks to the BBA, **hold both the sword & the purse** – could ignore it with impunity. **PH**

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purse, national debt, power over the purse, Sen. Mike Lee, unconstitutional spending