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## Introducing Article V 2.0: The Compact for a Balanced Budget

by Nick Dranias\*

### Introduction

The U.S. gross national debt is approaching \$20 trillion.<sup>1</sup> That figure is:

- more than twice what was owed (\$8.6 trillion) in 2006, when the junior U.S. senator from Illinois, Barack H. Obama, opposed lifting the national debt limit;<sup>2</sup>
- nearly as big a percentage of the American economy (103+ percent of Gross Domestic Product) as during the height of World War II,<sup>3</sup> and
- nearly \$160,000 per taxpayer.<sup>4</sup>

In 2014, Govs. Nathan Deal (Georgia) and Sean Parnell (Alaska) formed the “Compact for a Balanced Budget.” In 2015, Mississippi and North Dakota adopted the Compact.

And that is just the tip of the iceberg, with unfunded federal liabilities estimated at \$205 trillion.<sup>5</sup>

The burden is daunting. But what if states could advance and ratify a powerful federal balanced budget amendment in only 12 months?

That could happen with a new approach to state-originated amendments under Article V of the United States Constitution. At the stroke of their pens on April 12 and 22, 2014, respectively,

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Govs. Nathan Deal<sup>6</sup> and Sean Parnell<sup>7</sup> formed the “Compact for a Balanced Budget” between Georgia and Alaska. Subsequently, on March 13, 2015 and April 2, 2015, respectively, Mississippi<sup>8</sup> and North Dakota<sup>9</sup> adopted the Compact as well.

The Compact for a Balanced Budget now establishes a binding commitment to fix the national debt, spanning the nation from the Atlantic to the Pacific.<sup>10</sup> The formation of the Compact for a Balanced Budget changes the political game.

## **A Persistent Platform for Reform**

The Compact for a Balanced Budget Commission – an interstate agency dedicated to organizing a convention for proposing a balanced budget amendment – held its first organizational meeting on January 13, 2015.<sup>11</sup> Previously, on June 16, 2014, Deal appointed state Rep. Paulette

The Compact for a Balanced Budget Commission held its first organizational meeting in January 2015 and has engaged Congress in the amendment process.

Braddock to the Commission.<sup>12</sup> Parnell appointed former Lt. Gov. Mead Treadwell on November 19, 2014.<sup>13</sup>

This historic Commission is now busy leading the charge for fiscal reform shoulder-to-shoulder with allied legislators, citizens, and public interest groups.<sup>14</sup> It has lent credibility to and ignited support for the effort. And with the introduction of House

Concurrent Resolution 26 on March 19, 2015, the Commission is also engaging with Congress on fulfilling its role in the amendment process.

The Compact for a Balanced Budget Commission is an outside-the-beltway organization that can do much more than ponder hypothetical fiscal reforms: It will marshal a state-based effort to propose and ratify a powerful balanced budget amendment.

## **The Amendment in a Nutshell**

The Compact’s proposed amendment constitutionally codifies a five-point plan for fixing the national debt.<sup>15</sup>

First, the amendment would ensure Washington cannot spend more than tax revenue brought in at any point in time, with the sole exception of borrowing under a fixed debt limit.<sup>16</sup> Section 1 of the proposed amendment states, “Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.” By limiting federal spending to available cash on hand from taxes and authorized borrowing, all known forms of fiscal gaming would be avoided.

Second, the amendment imposes a limit on the amount of federal debt.<sup>17</sup> Section 2 of the proposed amendment states, in relevant part, “Outstanding debt shall not exceed authorized debt,

which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article.” In other words, if there is \$20 trillion of outstanding debt at the time of ratification, the federal government’s line of credit will be fixed initially at \$21 trillion. The additional \$1 trillion borrowing cushion would provide approximately 18 to 24 months of borrowing capacity based on current annual deficit rates (\$500 billion to \$650 billion per year). This cushion would give Congress a transition period during which to develop a proposal to address the national debt crisis.<sup>18</sup>

For example, this strict cash-flow-based “pay-as-you-go” spending limit will not be circumvented by inaccurate budget projections or delays in payments of amounts due (“rollovers”). Additionally, borrowing could not supply additional funds for spending beyond the constitutional limit because the definition of “debt” in Section 6 of the proposed amendment limits approved borrowing to proceeds from full faith and credit obligations.<sup>19</sup> Finally, the definition of “total receipts” in Section 6 of the proposed amendment to which “total expenditures” are limited excludes “proceeds from [the federal government’s] issuance or incurrence of debt or any type of liability.”<sup>20</sup> This ensures expenditures cannot be increased by raiding trust funds, sale-leaseback schemes, or even direct deposits into the U.S. Treasury of freshly printed fiat money; these actions would constitute excluded “proceeds from [the federal government’s] issuance or incurrence of debt or any type of liability.”<sup>21</sup>

The amendment imposes a limit on the amount of federal debt and would ensure Washington is forced to reduce spending long before borrowing reaches its debt limit, preventing any default on obligations.

Third, by compelling spending impoundments when 98 percent of the debt limit is reached, the proposed amendment would ensure Washington is forced to reduce spending long before borrowing reaches its debt limit, preventing any default on obligations.<sup>22</sup> Section 4 of the proposed amendment provides, in relevant part, “Whenever the outstanding debt exceeds 98 percent of the debt limit ... the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt.”

Here’s how it would work: Assuming the constitutional debt limit were \$21 trillion, this provision would be triggered when borrowing reached \$20.58 trillion, with about \$420 billion in available borrowing left under the debt limit. At current yearly deficits ranging between \$500 billion and \$650 billion, the president would be required to start designating spending delays approximately seven to ten months before reaching the constitutional debt limit. This provision would start a serious fiscal discussion with plenty of time in which to develop a plan to fix the national debt.

It is important to underscore that the foregoing provision does not increase presidential power. It *regulates* presidential power by requiring the president to use his or her existing impoundment power, under the threat of impeachment, when borrowing reaches 98 percent of a constitutional debt limit – as opposed to waiting until the midnight hour. It also checks and balances the president’s ability to abuse the impoundment power by empowering simple majorities of Congress to override impoundments within 30 days without having to repeal the underlying

appropriations, which is currently the only way Congress can respond to abusive presidential impoundments. Specifically, once the president puts proposed impoundments on the table, Section 4 provides, “Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective.”<sup>23</sup>

With the proposed amendment in place, it would be easy to know who is responsible for any impoundment that is enforced. It will be either the president’s impoundments or Congress’s impoundments. And if neither the president nor Congress acts, spending will be limited to tax receipts as soon as the debt limit is reached, in effect resulting in an across-the-board sequester. The threat of a massive, automatic sequester resulting from inaction would give the president a strong incentive to designate and enforce the required impoundments. Congress otherwise would be all too happy to shift the blame for a disorderly across-the-board sequester to the president by invoking the provision of Section 4 that provides, “The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor.”<sup>24</sup>

If borrowing beyond the debt limit proved truly necessary, the proposed amendment would end the absurdity of allowing a bankrupt debtor (Washington) to increase its credit unilaterally.

Fourth, if new revenue streams are needed to avoid borrowing beyond the debt limit, the amendment would ensure all possible spending cuts are considered first. It does this by requiring abusive tax measures (new or increased sales or income taxes) to secure supermajority approval from each house of Congress.<sup>25</sup> It reserves the current simple majority rule for new or increased taxes only

for completely replacing the income tax with a non-VAT sales tax (“fair tax” reform),<sup>26</sup> repealing existing taxation loopholes (“flat tax” reform), and increasing tariffs or fees (the Constitution’s original primary source of federal revenues). Any push for new revenue through these narrow channels would generate special-interest pushback, strongly incentivizing spending cuts before taxes are raised.

Fifth and finally, if borrowing beyond the debt limit proved truly necessary, the proposed amendment would end the absurdity of allowing a bankrupt debtor (Washington) to increase its credit unilaterally. Instead, the amendment would give the states and the people the power to impose outside oversight by requiring a majority of state legislatures to approve any increase in the federal debt limit within 60 days of a congressional proposal of a single-subject measure to that effect.<sup>27</sup>

Specifically, Section 3 provides, “From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a *quid pro quo* for such approval.” Further, “If such approval is not obtained within sixty (60) calendar days after referral

then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.”<sup>28</sup>

Using the time-tested idea of dividing power between the states and the national government, and balancing ambition against ambition, requiring a referendum of the states on any increase in a fixed constitutional debt limit would minimize the abusive use of debt compared to the status quo. It would become

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substantially more difficult to increase debt if both Congress and simple majorities of the states were necessary to do so. Two hurdles are better than one. The fact that states rely on federal funding does not mean debt spending would increase relative to the status quo, because states are far less dependent on federal borrowing than the national government itself is. Moreover, any *quid pro quo* trade of debt approval for appropriations would prevent any increase in the debt limit from having legal effect<sup>29</sup> and would render void any debt thereby incurred.<sup>30</sup>

By requiring a nationwide debate in 50 state capitols over any increase in the constitutional debt limit it establishes, the proposed amendment would shine more light on national debt policy and give the American people a greater chance to stop needless increases in the debt limit. And by requiring state approval within 60 days, the proposed amendment establishes a strong default position disfavoring any increase in the national debt limit.

It is important to underscore that the proposed amendment does not include any emergency spending or borrowing loopholes because of the flexibility made possible through this state referendum process. Congress is a debt addict and cannot be trusted with the sole power to decide whether an emergency or war justifies taking on additional debt. Once the Compact’s balanced budget amendment is in place, all Congress would need to do is pay down its debt during good times, and it would enjoy a huge line of credit that could cover any war or emergency. If additional borrowing beyond the initial debt limit were somehow truly necessary, there would be plenty of time for Congress to ask the states to approve an increase in the debt limit. Current tax cash flow is adequate to allow for dramatic increases in discrete spending priorities; by redirecting available funds, Congress could double or even triple current military expenditures without additional borrowing.

A sudden demand for emergency expenditures thus could be handled through the temporary reallocation of existing cash flows while a longer-term borrowing proposal is submitted for consideration by a majority of state legislatures. If Congress ultimately could not persuade 26 state legislatures to approve such additional borrowing, that should be reason enough to stop the proposed spending. A simple majority of state legislatures can be trusted to approve any truly necessary increase in the balanced budget amendment’s debt limit to handle legitimate war or emergency requests.

This powerful reform proposal, advanced by an interstate agency – the Compact Commission – is jump-starting fiscal discussions in Washington. It has been championed by conservative columnist George Will,<sup>31</sup> but the amendment should have bipartisan appeal. Democrats and

Republicans alike should recognize that if we want to preserve the federal spending that is truly necessary, the first thing we need to do is start treating debt as a limited resource.

Imposing scarcity on debt conforms fiscal policy to the reality of limited resources, which is necessary to ensure that meaningful fiscal planning and prioritization take place such that the necessary borrowing capacity will exist when the states and the people actually need it. No state or person who hopes to receive any federal benefit will be in a better position if the government spends the nation over the fiscal cliff. If unsustainable borrowing crashes the system, there will be no more borrowing to fund desired programs.

## The Next-Generation Article V Movement

The Compact for a Balanced Budget uses an interstate agreement to simplify the state-originated Article V convention process. Ordinarily, without an interstate compact, the Article V convention process would require at least 100 legislative enactments, six independent legislative stages, and five or more years of legislative sessions to generate a constitutional amendment.

The Compact for a Balanced Budget uses an interstate agreement to simplify the state-originated Article V convention process.

In particular, the non-compact Article V approach first requires two-thirds of the state legislatures to pass resolutions applying for a convention (34 enactments). Second, a majority of states must pass laws appointing and instructing delegates (26 enactments).

Third, Congress must pass a resolution calling the convention. Fourth, the convention must meet and propose an amendment. Fifth, Congress must pass another resolution to select the mode of ratification (either by state legislature or in-state convention). And sixth, three-fourths of the states must pass legislative resolutions or successfully convene in-state conventions that ratify the amendment (at least 38 enactments).

By contrast, the Compact approach to Article V consolidates everything states do in the Article V convention process into a single agreement among the states that is enacted once by three-fourths of the states.<sup>32</sup> Everything Congress does is consolidated in a single concurrent resolution passed just once with simple majorities and no presidential presentment.

The Compact includes everything in the Article V amendment process from the application to the ultimate legislative ratification.<sup>33</sup> The counterpart congressional resolution includes both the call for the convention and the selection of legislative ratification for the contemplated amendment.<sup>34</sup>

The Compact is able to pack both the front and back ends of the Article V convention process into just two overarching legislative vehicles by using conditional enactments. For example, using a conditional enactment, the “nested” Article V application contained in the Compact goes “live” only after three-fourths of the states join the compact (three-fourths, rather than two-thirds, is the threshold for activating the Article V application because the Compact is designed to start and complete the entire amendment process).<sup>35</sup> The Compact also includes a

nested legislative ratification of the contemplated balanced budget amendment, which goes live only if Congress selects ratification by state legislature rather than in-state convention.<sup>36</sup>

Correspondingly, using conditional enactments, the nested call in the congressional counterpart resolution goes live only after three-fourths of the states join the Compact.<sup>37</sup> Likewise, the nested selection of legislative ratification in the congressional resolution becomes effective only if, in fact, the contemplated amendment is proposed by the Article V convention organized by the Compact.<sup>38</sup>

By using an interstate agreement and conditional enactments to coordinate and simplify the state-originated Article V amendment process, the Compact approach to Article V reduces the number of necessary legislative enactments, stages, and sessions from 100+ enactments to 39 (38 states joining the Compact, one congressional resolution), from six legislative stages to three (passage of compact, convention proposal of amendment, congressional passage of resolution), and from five or more session years to as few as one (the current target is three years).

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In addition, like any well-drafted contract, the Compact approach eliminates all reasonable uncertainty about the process. It identifies and specifies the authority of the delegates from its member states.<sup>39</sup> It specifies in advance all Article V convention ground rules, limiting the duration of the convention to 24 hours.<sup>40</sup> It requires all member state delegates to vote to establish rules that limit the agenda to an up-or-down vote on a specific, pre-drafted balanced budget amendment.<sup>41</sup> It disqualifies from participation any member state – and the vote of any member state or delegate – that deviates from that rule.<sup>42</sup> It further bars all member states from ratifying any other amendment that might be generated by the convention.<sup>43</sup>

Thus, from the vantage points of efficiency, public policy, and certainty, the Compact for a Balanced Budget is an upgrade from the non-compact approach to Article V – with one significant caveat. The requirement of such detailed and upfront agreement will probably work only for well-formed reform ideas that likely already command supermajority support among the states and the people. The list of such reform ideas is short, but sustained polling data across four decades undoubtedly put the Compact’s balanced budget amendment on that short list.

During the summer of 2012, Compact for America, Inc. commissioned a nationwide poll from one of the leading pollsters in the country, McLaughlin & Associates, to assess what policy reforms could command supermajority support from the American people and whether the Compact’s balanced budget amendment in particular was politically viable. McLaughlin concluded, “Six in ten voters favor a balanced budget amendment and at least 70% favor Compact for America’s specific and common sense proposals to rein in the federal deficit. Subsequent polling in Texas and Alabama by West-Third Group during the spring of 2015, further confirmed supermajority support for the specific policy components of the Compact for a Balanced Budget at between 60% to 68% of registered voters. These survey results demonstrate that the Compact has the potential to obtain broad support.”<sup>44</sup>

## Article V: Not Meant to Be an Insurmountable Obstacle

Some supporters of Article V – “Fivers,” they call themselves – have criticized the Compact effort. Their concerns are addressed below.

Through the operation of conditional enactments, the Compact conforms strictly to the text of Article V.

One argument is that the Compact for a Balanced Budget violates the text of Article V by avoiding a difficult, multi-staged, multigenerational amendment quest. This criticism generally focuses on the fact that the Compact includes pre-ratification

of the amendment it contemplates. But this criticism is meritless. Through the operation of conditional enactments, the Compact conforms strictly to the text of Article V. Furthermore, the “spirit” of Article V in no way requires states to originate amendments in an uncoordinated, multi-staged amendment process.

There is no textual conflict between Article V and the use of a conditional enactment to pre-ratify a desired amendment. The Compact’s pre-ratification is entirely contingent on Congress first effectively selecting legislative ratification of the contemplated amendment, which, in turn, presumes the prior proposal of the amendment. In other words, the pre-ratification will go live only in the precise sequence required by the text of Article V.

There is perhaps no more universally accepted legislative provision than the conditional enactment. Conditional enactments are common components of congressional legislation, including legislation approving interstate compacts,<sup>45</sup> as well as within many existing interstate and federal-territorial compacts.<sup>46</sup> The U.S. Supreme Court and courts in 45 states and territories have recognized the appropriateness of conditional enactments for a wide range of state and federal legislation,<sup>47</sup> including state laws enacted contingent on the passage of new federal laws.<sup>48</sup> As explained in one typical court decision, “[l]egislation, the effectiveness of which is conditioned upon the happening of a contingency, has generally been upheld.”<sup>49</sup> Courts defer to “broad legislative discretion”<sup>50</sup> when conditional enactments are used. Because a state’s authority over whether to apply for an Article V convention or whether to legislatively ratify an amendment is as plenary as any other form of legislation, case law sustains the use of a conditional enactment in connection with Article V applications and ratifications.

Moreover, the “spirit” of Article V is not somehow violated by coordinating and consolidating the amendment process in such a way that the states applying for a convention also agree to ratify a desired amendment. To the contrary, there is strong evidence that the Founders expected the states would do just that. In rebuttal of Patrick Henry’s lengthy oration at the Virginia ratification convention that it was too difficult for the states to use Article V, George Nicholas responded, “It is natural to conclude that *those States who will apply* for calling the Convention, *will concur in the ratification* of the proposed amendments” (emphasis added).<sup>51</sup> Nicholas clearly anticipated that states would coordinate their use of Article V from beginning to end.

The Founders never said the states had to apply for a convention without having any specific amendments in mind and without coordinating the ratification of those amendments. They never “sold” ratification of the Constitution on the basis that the Article V convention was a

mysterious, autonomous body that no one – not even the states – controlled outside of the convention. The Founders never would have succeeded with such unpersuasive arguments against opponents of ratification, such as Patrick Henry, who railed against the usefulness of the Article V convention as a means of limiting federal power from the states.

It is well-established that the amendment process under Article V was supposed to be neither extraordinarily difficult nor extraordinarily easy. It was meant to strike a balance between these two extremes. In Federalist No. 43, James Madison wrote that Article V “guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults.”<sup>52</sup> If anything, the balance struck by Article V between facility and difficulty was meant to allow for amendments to be accomplished more easily than was the Founders’ experience in attempting to revise the Articles of Confederation.

The amendment process under Article V was supposed to be neither extraordinarily difficult nor extraordinarily easy. It was meant to strike a balance between these two extremes.

During the New Jersey ratification debates, for example, the *New Jersey Journal* noted the Constitution included “an easy mode for redress and amendment in case the theory should disappoint when reduced to practice.”<sup>53</sup> Similarly, at the time of the Connecticut ratification debates, Roger Sherman wrote, “If, upon experience, it should be found deficient, [the Constitution] provides an easy and peaceable mode of making amendments.”<sup>54</sup> Likewise, in Federalist No. 85, Alexander Hamilton stated there was “no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution.”<sup>55</sup>

These representations formed the basis of the public understanding of the Constitution as it was ratified. If anything, the targeted, streamlined, coordinated Compact approach to Article V is more consistent with the actual spirit of Article V as described by advocates of ratification than the multi-staged legislative obstacle course necessitated by a non-compact approach to Article V.

## Consent of Congress Requirements

Another common objection is that the Compact approach is defective because Article I, Section 10, of the U.S. Constitution provides that states may not enter into compacts without the “consent” of Congress. There is no question the Compact approach requires some form of congressional consent for the convention to be called and for legislative ratification to be selected, but such consent need not be express and it need not come in advance of the formation of an interstate compact.

The Supreme Court has held for nearly 200 years that congressional consent to interstate compacts can be given expressly or implicitly, either before or after the underlying agreement is reached.<sup>56</sup> Moreover, under equally longstanding precedent, a binding interstate compact can be constitutionally formed without congressional consent so long as the compact does not infringe on the federal government’s delegated powers.<sup>57</sup>

Nothing in the Compact for a Balanced Budget infringes on any federally delegated power, because conditional enactments and express provisions ensure all requisite congressional action in the Article V amendment process would be secured before any compact provision predicated on such action became operative. For example, no member state or delegate appointed by the Compact can participate in the convention it seeks to organize before Congress calls the convention in accordance with the Compact.<sup>58</sup> Similarly, as discussed above, the pre-ratification of the contemplated balanced budget amendment goes live only if Congress effectively selects legislative ratification. Thus no provision of the Compact in any way invokes or implicates any

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power textually conferred on Congress by Article V unless implied consent is first received from Congress exercising its call and ratification referral power in conformity with the Compact.

Although it is true that the Compact Commission operates immediately upon the membership of two states, that changes nothing in this regard. The Compact Commission serves as a unified platform for securing congressional cooperation in

originating constitutional amendments by way of an Article V convention. A compact does not infringe on federal power necessitating prior congressional consent merely because it provides “strength in numbers” among the states for a more effective federal educational or lobbying campaign.<sup>59</sup>

To claim the Compact infringes on powers delegated to the federal government, one would have to demonstrate that the federal government has the exclusive power to direct and control an Article V convention by way of setting the convention agenda and delegate instructions. But there is no evidence that anyone during the Founding era or immediately thereafter – whether Federalist or Anti-Federalist – thought the Article V convention process was meant to be controlled exclusively by Congress in these crucial respects. On the contrary, all of the available Founding-era evidence shows it was the understanding of the framers and ratifiers that the states would target the Article V convention process to desired amendments, which implies state control over the convention agenda and delegates.

For example, on January 23, 1788, Federalist No. 43 was published with James Madison’s attributed observation that Article V “equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other.”<sup>60</sup> Similarly, George Washington wrote on April 25, 1788, “it should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States.”<sup>61</sup> On June 6, 1788, as discussed above, George Nicholas reiterated the same points at the Virginia ratification convention, observing that state legislatures may apply for an Article V convention confined to a “few points.”<sup>62</sup> This understanding of Article V was further confirmed by the last of the *Federalist Papers*, Federalist No. 85, in which Alexander Hamilton concluded, “We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority” by using their amendment power under Article V.<sup>63</sup> Because Congress selects the mode of ratification, we know Hamilton was

speaking of the targeting of Article V applications originated by state legislatures, not state legislative ratification, as the source of such barriers to national encroachments.

At the time of the Constitution’s framing, the word “application” was a legal term of art that described a written means of petitioning a court for specific relief. The historical record of “applications” to the Continental Congress confirms this meaning extended to legislative bodies as well, with applications

The usual and customary practice in response to specific applications was either to grant what was requested or to deny them.

being addressed to Congress by various states with very specific requests on a regular basis.<sup>64</sup> The contemporaneous usage of “application” thus naturally supports the conclusion that state legislatures had the power to apply for an Article V convention with a specific agenda. Moreover, the usual and customary practice in response to specific applications was either to grant what was requested or to deny them.<sup>65</sup> Given Congress’s obligation to call a convention for proposing amendments in response to the requisite number of applications, any convention called in response to applications of state legislatures seeking a convention with a specific agenda is – and was<sup>66</sup> – naturally understood as adopting that agenda.

Consistent with this understanding of the specific agenda-setting power of an Article V application, Hamilton wrote in Federalist No. 85, “If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, *alterations in it may at any time be effected by nine States*” (emphasis added). The reference to alterations being “effected by nine States” was in regard to what would be put into effect by the application of two-thirds of the states for an Article V convention; nine states being two-thirds of the original 13.

That Hamilton intended to convey that the application itself would specify the desired “alteration” is evident in the immediately following sentence: “Here, then, the chances are as thirteen to nine in favor of subsequent amendment, rather than of the original adoption of an entire system.” Significantly, Hamilton footnoted the number “nine,” explaining: “It may rather be said TEN, for though two thirds may set on foot the measure, three fourths must ratify.” The colorful phrase that “two thirds may set on foot the measure” clearly indicates the ultimately ratified amendment (“the measure”) would be specified initially by the application of “two thirds” of the state legislatures. This understanding is further established later in Federalist No. 85, where Hamilton observes, “Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people.” Again, in referring to both the two-thirds threshold for an Article V application and the three-fourths threshold for ratification, Hamilton clearly contemplated the states would “unite” on the same “amendments,” further illustrating his expectation that the prompting application would advance the very amendments that would be ultimately ratified.

Hamilton was not alone in his understanding of how applications would unite the states in advancing one or more particular amendments. Ten years later, during 1799, James Madison’s *Report on the Virginia Resolutions* observed the states could organize an Article V convention for the “object” of declaring the Alien and Sedition Acts unconstitutional.<sup>67</sup> After highlighting

that “Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose,” Madison wrote the states could ask their senators not only to propose an “explanatory amendment” clarifying that the Alien and Sedition Acts were unconstitutional, but also that two-thirds of the legislatures of the states “might, by an application to Congress, have obtained a Convention for the same object.”

As illustrated by Madison’s *Report on the Virginia Resolutions*, no one in the founding era thought the states were somehow preempted or otherwise disabled by Article V in setting the agenda of the convention for proposing amendments and securing desired amendments through the convention. An Article V convention obviously was not regarded as an autonomous body following an agenda and populated by delegates selected by Congress. An Article V convention was meant to bypass Congress and deliver the amendments desired by the states, as specified in their application. It is only logical to conclude the states have the authority to determine who will represent them at the convention, how they will represent them, how they will run the convention, what they will propose, and how the states will respond to those proposals.

This basic principle further reinforces the conclusion that the Compact for a Balanced Budget does not infringe on any power delegated to the federal government by fully occupying the space of convention logistics. Hence there is no need for congressional consent for the Compact to be validly formed, although such consent is unavoidably necessary before the Compact’s contemplated convention call and ratification referral can be effective.

## Presidential Presentment Not Necessary

Another concern occasionally expressed about the Compact is that the counterpart congressional concurrent resolution would require presidential presentment, as do ordinary bills.

Another concern occasionally expressed about the Compact is that the counterpart congressional concurrent resolution, which gives implied consent to the Compact by calling the convention and preselecting legislative ratification in accordance with its terms, would require presidential presentment, as do ordinary bills.<sup>68</sup> However, the U.S. Supreme Court has ruled in

*Hollingsworth v. Virginia* that Congress’s role in the Article V amendment process does not implicate presidential presentment.<sup>69</sup> Although this ruling was applied specifically to the congressional proposal of amendments, there is every reason to conclude that Congress’s convention call and ratification referral powers would be treated the same way, even if exercised by way of a resolution giving implied consent to an interstate compact.

Even more so than the congressional proposal of amendments in *Hollingsworth*, Congress’s call and ratification referral powers under Article V are purely ministerial, procedural powers of the sort not ordinarily subject to presidential presentment. The contemplated concurrent resolution’s exercise of Congress’s Article V call and ratification referral power is similar in legal effect to the direct proposal of constitutional amendments. In both cases, Congress is merely channeling a legislative proposal for further action by other bodies – it is not, itself, making federal law.

If anything, the convention call component of the contemplated resolution has an even more attenuated relationship to lawmaking than does the direct congressional proposal of amendments. This is because any convention call would precede both the convention's proposal of an amendment (which is not guaranteed) and the ultimate ratification referral. The exercise of such call power is far more like an exercise of the rulemaking power conferred by the Constitution exclusively upon each house of Congress,<sup>70</sup> to which presidential presentment clearly does not apply, than it is like ordinary lawmaking.

A different conclusion is not warranted by the fact that a concurrent resolution exercising such powers in accordance with the Compact would be construed as giving implied congressional consent to the Compact. There is no textual difference between the role of the president in regard to the Compact Clause (Article I, Section 10, of the U.S.

Like the direct congressional proposal of amendments, the congressional resolution is not equivalent to ordinary lawmaking, and therefore its passage does not require presidential presentment.

Constitution) and the role of the president in regard to the congressional proposal of amendments under Article V. In both provisions, the text of the Constitution articulates no role for the president whatsoever. Where the Constitution is silent, as here, the Supreme Court has ruled that presidential presentment applies only to congressional actions that are equivalent to ordinary lawmaking.<sup>71</sup>

In substance, the contemplated congressional resolution is no more like ordinary lawmaking than is the direct congressional proposal of amendments under Article V. Although congressional consent has been regarded as rendering an interstate compact the functional equivalent of federal law, this doctrine has been applied only in the context of such consent being furnished by federal statute.<sup>72</sup> In the absence of consent being furnished by statute, the legal effect of any such consent consists entirely of yielding to member states' own underlying sovereign power,<sup>73</sup> to which presidential presentment obviously does not apply. Thus, like the direct congressional proposal of amendments, which is meant to facilitate subsequent legislative action, the contemplated counterpart congressional resolution does not imply legislative action that is equivalent to ordinary lawmaking by exercising congressional call and ratification referral powers. Therefore, its passage does not require presidential presentment.

## Status of Existing Article V Applications

The last few criticisms of the Compact for a Balanced Budget come from Lew Uhler, a key member of the Reagan-Friedman drive for a balanced budget amendment in the 1970s and '80s.

Uhler criticizes the Compact for a Balanced Budget for starting the Article V application process from scratch and failing to aggregate existing Article V applications that seek a balanced budget amendment convention.<sup>74</sup> But the claim that 23 or 24 applications exist that can be aggregated to trigger a convention call cannot be sustained if one takes the Founders at their word that the Article V convention process was meant to allow the states to obtain the amendments they desired.

Only a handful of the Article V applications call for the same convention agenda. The remaining applications differ in significant respects.

Only a handful of the Article V applications actually call for the same convention agenda. (See Appendix 3.) The remaining applications differ in significant respects. For example, an application from Mississippi, passed in 1979, very clearly seeks a convention agenda that would consider only one specific amendment proposal – and the

text of that amendment is even specified in the application.<sup>75</sup> If a convention were to be organized in accordance with the intent the respective states express, it is difficult to see how this application could be viewed as capable of being aggregated with applications that request the calling of a convention that could consider a broader array of balanced budget amendment proposals.

The same problem arises with aggregating the applications that specifically call for a balanced budget amendment convention with a wide variety of emergency spending exceptions.<sup>76</sup> It is unlikely those states intended for their applications to be aggregated with others that have no such exceptions and thereby risk Congress calling a convention with an agenda that would include the possible proposal of a balanced budget amendment without exceptions.<sup>77</sup> A similar problem arises with the applications that apply for a balanced budget amendment convention “alternatively” to Congress proposing such an amendment but without imposing on Congress a deadline to act.<sup>78</sup> It is unclear whether those applications will ever go or stay “live” because Congress could propose a balanced budget amendment at any time and thereby render them inactive.

The assertion that Congress must aggregate the 23 or 24 current Article V applications essentially proclaims for Congress the power to mix and match applications that neither activate on the same terms nor seek the same convention agenda. Uhler appears to be arguing the aggregation of applications would be based on Congress’s sole and discretionary judgment that they are “close enough.” But ascribing such discretion to Congress is contrary to the text of Article V, which references “Application” in the singular, implying that two-thirds of the state legislatures would be advancing and concurring in the same application. It is also contrary to the text and context of Article V that indicates Congress “shall call” the convention.

In view of such mandatory language, Hamilton observed in Federalist No. 85 that “whenever nine States concur” in an application, Congress’s role in calling a convention would be “peremptory” because “[n]othing in this particular is left to the discretion of that body.” Thus, according to Hamilton, Congress’s mandatory duty to call a convention would be triggered upon receiving an application that had received the concurrence of two-thirds of the states. It seems inconsistent with Congress’s envisioned peremptory, nondiscretionary role to claim that its duty to call a convention could be triggered by a grab-bag of different Article V applications, not one of which actually received the concurrence of two-thirds of the states. If anything, the ministerial nature of Congress’s envisioned role in the Article V process would seem to preclude exercising the kind of discretion needed to determine whether facially different applications were “close enough” to be aggregated. Thus, Congress might rightfully balk at aggregating different Article V applications.

Even if Congress played along with the grab-bag approach to Article V, a successful aggregation of applications that do not seek the same convention agenda on the same terms would be dangerous for the wider Article V movement. It would set a precedent that Congress is entitled to cobble together applications to produce a convention agenda never actually agreed upon by the state applicants. In other words, Congress would be empowered to call a convention with an agenda largely determined by Congress. That would tend to consolidate all amendment power in Congress, rather than allowing the states to have a parallel means of obtaining the amendments they desire – hardly what Fivers or originalists should want from the process.

Getting to a convention should not be an end in itself, and any effort that relies upon aggregating distinct or mutually exclusive Article V applications is short-sighted.

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## **Restrictions on the Convention**

Uhler also contends the Compact for a Balanced Budget deviates from constitutional requirements by pre-committing member state delegates to voting up or down on the proposal of a specific balanced budget amendment.

In response, it should first be observed that the legislature of each member state has full deliberative authority to enact, amend, or refuse to enact the Compact, including the Article V application, the contemplated balanced budget amendment, and prospective ratification contained therein. The delegates to the convention organized by the Compact also have full deliberative authority to propose or reject proposing the constitutional amendment the Compact contemplates. Legislative deliberation does not intrinsically require more than this; state legislatures, for example, have long entertained special sessions limited to considering or reconsidering specific bills or laws – essentially an up-or-down vote – without anyone questioning the existence of legislative deliberation in doing so. In addition, Article V’s ratification convention process recognizes there is nothing about legislative deliberation in the context of a “convention” that requires more than an up-or-down vote on a specific amendment proposal.<sup>79</sup>

Nothing in the history or text of Article V requires states to organize a “black box” amendment-drafting convention. No Founder ever expressed the distinctly modern view that the states must first organize an Article V convention to find out what constitutional amendments it might propose.

To the contrary, as discussed above, George Washington, James Madison, and Alexander Hamilton all suggested the states’ power to obtain desired amendments through the Article V convention process would be equal to that of Congress to propose desired amendments. These representations, if taken as true, imply the Article V convention was meant to be an instrument

of the states that could be directed by the states to proposing specific amendments, not an independent agency with a mysterious constitutional reform agenda of its own.<sup>80</sup> Hamilton expressly distinguished the Article V amendment process from the sort of secretive, wide-ranging legislative deliberation that characterized the Philadelphia Convention.

No Founder ever expressed the distinctly modern view that the states must first organize an Article V convention to find out what constitutional amendments it might propose.

In Federalist No. 85, Hamilton wrote, “But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point[:] no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue.”<sup>81</sup> Significantly,

Hamilton made the foregoing representation with regard to “every amendment,” logically including those brought forward by the states through an Article V convention, which implies that an Article V convention could be limited to an up-or-down vote on proposing a single amendment.<sup>82</sup>

Furthermore, the Founders’ expectation that the states would direct the convention to propose desired amendments is entirely consistent with the rationale given for the insertion of the convention mode of proposing amendments in Article V. As reported in *The Records of the Federal Convention of 1787*, the original language of Article V as proposed by James Madison would have required Congress to propose amendments on application of two-thirds of the legislatures of the several states.<sup>83</sup> To the modern eye, this original formulation would seem to be a more direct route for the states to obtain desired amendments. Nevertheless, on September 15, 1787, George Mason objected to this formulation because it made the proposal of amendments desired by the states entirely dependent upon Congress, and he feared Congress would not propose amendments that would limit its own power.<sup>84</sup> To address Mason’s objection, the congressional proposal of amendments on application of two-thirds of the state legislatures was replaced with the convention mode of proposing amendments, which Congress would call upon application of two-thirds of the legislatures of the several states.

In short, the convention mode of proposing amendments was explicitly adopted in order to better guarantee that the states could obtain the proposal of desired amendments. This rationale is inconsistent with the notion that an Article V convention was meant to be a freewheeling, independently deliberative body. However ironic that rationale may look to modern eyes, it makes perfect sense in light of the technological limitations of the eighteenth century. At the time, communications would take days, weeks, or months to travel from state capitol to state capitol, traveling by horse rather than by telegraph, telephone, or email. Ensuring the states all convened at a central location through their own representatives to propose desired amendments was simply a practical necessity to ensure unity and control over what was proposed.

Given the technological limitations of the eighteenth century, Mason's preferred formulation of Article V not only ensured state control over the formulation of proposed amendments, it streamlined the amendment process. The states would have had to first organize an informal convention to reach consensus on their desired amendments before delivering conforming applications to Congress. Because an informal convention was a practical predicate to states making use of Madison's proposed amendment process, Mason's preferred formulation of Article V, which instead allows a formal convention of the states to propose amendments directly, sidestepped the additional hurdle imposed by Madison's original idea of requiring the states to apply to Congress to propose amendments. There is nothing in the text or history of Article V that suggests the convention mode of proposing amendments precludes states from setting a strict agenda of voting up or down on the proposal of a specific amendment.

As the first order of business, delegates are strictly instructed to adopt the Compact's contemplated convention rules, which require an up-or-down vote on the contemplated amendment, or else they forfeit their authority in a variety of ways.

Criticism of the Compact's laser-focused approach to advancing a specific balanced budget amendment also fails to account for the mechanism by which the Compact requires an up-or-down vote on the contemplated amendment. Although the application nested in the Compact sets the agenda, as is perfectly consistent with the meaning of "application" at the time of the founding era, it is the delegate instructions set out in the Compact that enforce the adoption of convention rules that limit the agenda to an up-or-down vote on the contemplated balanced budget amendment. As the first order of business, delegates are strictly instructed to adopt the Compact's contemplated convention rules, which require an up-or-down vote on the contemplated amendment, or else they forfeit their authority in a variety of ways.<sup>85</sup>

This means the scope limitations of the Compact are enforced based on the agency principle that the delegates are the agents of the states that sent them. Thus, the extent of targeting in the Compact differs only in degree, not kind, from the custom and practice of more than a dozen interstate and inter-colonial conventions organized prior to ratification of the U.S. Constitution.

At the time, it was usual and customary for states to set the agenda for any such convention and to instruct their delegates specifically on what to advance and address at the convention.<sup>86</sup> Although Federalists and Anti-Federalists famously disputed whether the delegates to the Philadelphia Convention had stayed within the scope of their state-specified legal authority, nobody at the time argued that the delegates were legitimately free to exceed their authority and ignore their states' instructions.<sup>87</sup>

In other words, the debate over the legitimacy of the scope of proceedings at the Philadelphia Convention proves only that it was generally understood at the time of the founding that delegates to a convention had no lawful authority to do anything other than what they were told to do by their state principals. It was simply taken for granted during the founding era that delegates were "servants" of the states that sent them. Even if (for the sake of argument) the delegates violated their lawful authority in the course of the Philadelphia Convention, that would not in any way legitimize their conduct or define the authority of delegates to an Article V

convention. It is a complete *non sequitur* to argue that because the delegates violated their authority at the Philadelphia Convention, all future delegates at all future conventions under Article V have the right and authority to disregard their state authority.<sup>88</sup>

Without an agreement in advance among the states, you have no idea what you are going to get from the incredibly difficult process of organizing a convention.

Under ordinary principles of agency law, states, as the “masters,” naturally would have every right and power to circumscribe the authority of their delegates, as their “servants,” as tightly as they wish. Consequently, the Compact’s strict delegate instructions and limitations on delegate authority are entirely consistent with relevant

law, custom, and practice. Accordingly, the limited agenda contemplated by the Compact should win the day if for no other reason than that a supermajority of delegates from member states will form a quorum at the convention and do exactly what they are authorized and instructed to do – namely, vote to establish rules that restrict the convention to an up-or-down vote on the contemplated balanced budget amendment within 24 hours. If they do not, the Compact ensures they immediately lose all legal authority to act for their respective states and are automatically recalled.

This last point underscores the superiority of the Compact approach for advancing and ratifying a powerful balanced budget amendment. Without an agreement in advance among the states structuring the procedure and substance of an Article V convention, you have no idea what you are going to get, if anything, from the incredibly difficult process of organizing such a convention. With a compact, you have as much certainty in the process as politics can afford. But even more importantly, a compact provides a plausible vehicle for co-opting Congress before it can use its powerful political leverage to disrupt the movement, which is discussed below.

## Countering Congressional Leverage

As the Congressional Research Service recently noted, Congress has never regarded its role in Article V as purely ministerial.<sup>89</sup> Analyst Thomas Neale has observed that Congress “has traditionally asserted broad and substantive authority over the full range of the Article V Convention’s procedural and institutional aspects from start to finish.”<sup>90</sup> Congress repeatedly has introduced bills that purport to give it a substantial role in delegate selection, convention rules, and even setting or enforcing the convention agenda.<sup>91</sup> All of these efforts are unconstitutional in view of the public understanding of the purpose of Article V discussed above, but they nevertheless pose a real and substantial political and litigation risk that Congress could assume control over any Article V convention.

The hurdle of requiring ratification from three-fourths of the states is not a perfect defense against such an ultra vires “congressional convention,” because just over 10 percent of constitutional amendments (for example, the 16th Amendment (income tax), 17th Amendment (popular election of senators), and 18th Amendment (Prohibition)) have been contrary to

limited-government principles, and they were still ratified. Furthermore, even if Congress called a convention with no federal strings attached on the front end, there is no guarantee Congress would not set an impossibly short ratification sunset date for any proposal it disliked on the back end.

In short, Congress has significant leverage in the Article V amendment process. It is irresponsible to ignore this fact. Only a compact ensures the states lead and Congress follows. By fully occupying all logistical spaces and then deliberately seeking to co-opt Congress at the states' time of choosing – using the platform of a compact commission to unite the states and enable them to parley institution-to-institution – the compact approach minimizes the risk that Congress will abuse its leverage. This, in turn, enables the compact effort to neutralize the principal political and litigation risk to the Article V movement: the erroneous view that Congress, not the states, controls convention logistics in significant ways.<sup>92</sup>

## Conclusion: The Most Secure Process

Even if Congress took an uncharacteristic hands-off approach to the Article V convention process, a compact-organized Article V convention remains the superior approach for a balanced budget amendment.

Congress has significant leverage in the Article V amendment process. Only a compact ensures the states lead and Congress follows.

The organization of a convention of indefinite duration populated by as-yet unidentified delegates governed by as-yet unidentified rules is as likely to produce deadlock or to generate something worthless as to engender something worthwhile. Even if an effective balanced budget amendment were proposed, the drafting-convention approach would require the subsequent step of ratification. And there is no guarantee that any amendment proposed by the convention would secure ratification from the requisite 38 states.

With the Compact for a Balanced Budget, by contrast, you know what you are going to get. The text of the contemplated balanced budget amendment is known in advance. The identities of convention delegates are known in advance. The convention agenda and rules are known in advance. The convention itself would be limited to 24 hours, ensuring the fiscal impact of the convention itself is minimal. The amendment would be ratified if approved by the convention, because the Compact pre-commits each member state to ratifying the contemplated amendment. Congress's willingness to call the convention in accordance with the Compact would be known in advance, because the introduction of the requisite congressional resolution could be sought whenever the political stars align. (The conditional enactments utilized in the resolution would allow the resolution to lie dormant if sought early, and later activate.)

The Compact's amendment payload would be worth the effort. Imposing a fixed constitutional debt limit, which requires a referendum of the states on any debt limit increase, would increase transparency and be far more likely to generate a balanced budget than the status quo of limitless debt spending.

Before this crucial reform can become a reality, 34 more states (at print) must join the Compact (to reach the ratification threshold of three-fourths of the states) and simple majorities of Congress must approve it.

With the Compact's balanced budget amendment in place, Washington would no longer have the ability to set its own credit limit and write itself a blank check. The states would become an active board of directors charged with keeping an eye on our wayward federal CEO and staff. Debt would become scarce. Priorities would have to be set. Sustainable federal programs would have to

become the norm. A broad national consensus – not midnight-hour panic – would have to support any further increases in the national debt.

Before this crucial reform can become a reality, 34 more states (at print) must join the Compact (to reach the ratification threshold of three-fourths of the states) and simple majorities of Congress must approve it. This can be done in as few as 12 months, because the Compact for a Balanced Budget consolidates everything states do in the constitutional amendment process into a single agreement among the states that is enacted once by each state, and everything Congress does in a single resolution passed once. This greatly simplifies the cumbersome amendment process outlined in Article V of the Constitution, which would otherwise take more than a hundred legislative actions – a process that no one, not even Ronald Reagan or Milton Friedman, has ever successfully navigated to its conclusion despite decades of trying.

Not only is the Compact's payload worth the effort, the Compact approach is clearly a superior Article V vehicle for advancing and ratifying a balanced budget amendment.

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## Endnotes

1. Treasury Direct, *The Debt to the Penny and Who Holds It*, [www.treasurydirect.gov/NP/debt/current](http://www.treasurydirect.gov/NP/debt/current).
2. Whet Moser, "Remember When Barack Obama Voted Against Raising the Debt Limit?" *Chicago Magazine*, July 14, 2011, [www.chicagomag.com/Chicago-Magazine/The-312/July-2011/Remember-When-Barack-Obama-Voted-Against-Raising-the-Debt-Limit/](http://www.chicagomag.com/Chicago-Magazine/The-312/July-2011/Remember-When-Barack-Obama-Voted-Against-Raising-the-Debt-Limit/).
3. *U.S. National Debt and Deficit History*, Chart 4.02, [www.usgovernmentdebt.us/debt\\_deficit\\_history](http://www.usgovernmentdebt.us/debt_deficit_history).
4. U.S. Debt Clock, [www.usdebtclock.org/](http://www.usdebtclock.org/).
5. Laurence J. Kotlikoff, *Assessing Fiscal Sustainability*, Mercatus Center, George Mason University, December 12, 2013, p. 4, [mercatus.org/sites/default/files/Kotlikoff\\_FiscalSustainability\\_v2.pdf](http://mercatus.org/sites/default/files/Kotlikoff_FiscalSustainability_v2.pdf).
6. Enactment History of HB794, [www.legis.ga.gov/legislation/en-US/Display/20132014/HB/794](http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/794).
7. Enactment History of HB284, [www.legis.state.ak.us/basis/get\\_bill.asp?bill=HB%20284&session=28](http://www.legis.state.ak.us/basis/get_bill.asp?bill=HB%20284&session=28).
8. Mississippi State Senate Bill 2389, available at <https://legiscan.com/MS/bill/SB2389/2015>.
9. North Dakota State House Bill 1138, available at <https://legiscan.com/ND/text/1138/2015>.
10. Although the effective date of Alaska's HB284 is July 21, 2014, the contractually binding nature of Alaska's adoption of the compact proposed by HB794 is not tethered to that effective date. Georgia's HB794 has been effective since it was signed on April 12, 2014. By its terms, HB794 becomes contractually binding on Georgia immediately upon enactment of counterpart legislation by another state and Georgia's receipt of seasonable notice. The relevant language of the compact (Article III, section 2) provides, "in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State's Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State." HB794, [www.legis.ga.gov/Legislation/20132014/144709.pdf](http://www.legis.ga.gov/Legislation/20132014/144709.pdf). In essence, Georgia invited acceptance of its offer to compact through performance without specifying a deadline for acceptance. As a result, under ordinary contractual principles, upon Alaska's part performance of the terms of acceptance (enactment of HB284), Georgia became contractually obligated thereafter to keep its offer open for a reasonable period of time – and certainly that time will not expire before the effective date of Alaska's legislation. RESTATEMENT (SECOND) OF CONTRACTS, §§ 41, 45 (1981). Therefore, by enacting the counterpart compact legislation HB284 and giving seasonable notice, the State of Alaska has performed the terms of acceptance proposed by HB794 and the Compact has been formed, although its various provisions will not have the force of law in Alaska until July 21, 2014. *Oklahoma v. New Mexico*, 501 U.S. 221, 236 (1991) (holding contractual principles, as well as statutory interpretive principles, govern the interpretation of a compact).
11. Minutes from Compact for a Balanced Budget Commission organizational meeting, available at [http://media.wix.com/ugd/e48202\\_b04db59f0b6a4ebc8b9139027de14d4e.pdf](http://media.wix.com/ugd/e48202_b04db59f0b6a4ebc8b9139027de14d4e.pdf).
12. Executive Order of Governor Nathan Deal, available at [http://media.wix.com/ugd/e48202\\_1c07f88163a1447b93c314f3fbb7631e.pdf](http://media.wix.com/ugd/e48202_1c07f88163a1447b93c314f3fbb7631e.pdf).
13. Letter of Appointment from Governor Sean Parnell, available at [http://media.wix.com/ugd/e48202\\_f3a4bfee0e514bb09e0b9f003ae0974c.pdf](http://media.wix.com/ugd/e48202_f3a4bfee0e514bb09e0b9f003ae0974c.pdf).

14. See Official Website of the Compact for a Balanced Budget Commission, <http://www.balancedbudgetcompact.org>.

15. See *ibid.*, Article II, section 7.

16. *Ibid.* (section 1).

17. *Ibid.* (section 2).

18. It is important to underscore that there is no constitutional debt ceiling right now. The Constitution, as-is, provides for unlimited borrowing power. On what otherwise would be totally unlimited borrowing authority for the federal government, the balanced budget amendment would impose a limit of 105 percent of outstanding debt on ratification. This would be a constitutional debt limit, not an increase in debt authority. The definition of debt utilized in the proposed balanced budget amendment is deliberately narrow. It is designed to encompass only full faith and credit borrowing so that spending ("total outlays") is restricted to proceeds from taxes, fees and full faith and credit borrowing ("total receipts" + authorized debt).

19. *Ibid.* (section 6).

20. *Ibid.*

21. It is important to emphasize the mechanics of the spending limit. The limit on total expenditures would be fixed at all points in time based on available cash from taxes (or the equivalent) and approved borrowing. If fiscal gaming tactics – such as no-recourse borrowing, trust-fund raiding, sale-lease-back schemes, and money-printing – were attempted, the resulting proceeds would not count as receipts affecting the expenditure limits, and thus would not serve to increase the spending limit. This would neutralize any incentive to engage in such gaming tactics.

22. *Supra* note 14 (section 4).

23. *Ibid.*

24. *Ibid.*

25. *Ibid.* (section 5).

26. Without the proposed amendment, Congress could levy both end-user sales taxes and value-added taxes (VATs) as a type of excise tax or impost, with only simple majorities in both houses, perhaps even as an additional tax on top of the current income tax. The proposed amendment would prevent this, providing a restriction on congressional taxing power that does not currently exist. The amendment would require any new national sales tax to "completely replace all existing income taxes" if it were to be approved with simple majorities of Congress. This would be a one-time occurrence, because once all existing income taxes were completely replaced by a new end-user sales tax, the provision could not be invoked again. Instead, any new or increased sales tax would thereafter have to secure two-thirds approval of the whole number of each house of Congress.

27. *Supra* note 14 (section 3).

28. *Ibid.*

29. *Ibid.*

30. *Ibid.* (section 4).

31. George Will, "Amend the Constitution to Control Federal Spending," *Washington Post*, April 9, 2014, [www.washingtonpost.com/opinions/george-will-amend-the-constitution-to-control-federal-spending/2014/04/09/00fa7df6-bf3c-11e3-bcec-b71ee10e9bc3\\_story.html](http://www.washingtonpost.com/opinions/george-will-amend-the-constitution-to-control-federal-spending/2014/04/09/00fa7df6-bf3c-11e3-bcec-b71ee10e9bc3_story.html).
32. *Supra* note 14.
33. [www.legis.ga.gov/Legislation/20132014/144709.pdf](http://www.legis.ga.gov/Legislation/20132014/144709.pdf).
34. Model Congressional Resolution, <http://goldwaterinstitute.org/sites/default/files/CFA%20-%20Text%20-%20Cong%20Omnibus%20Resolution%20Final%282%29.pdf>.
35. *Supra* note 14 (Article V, section 3).
36. *Supra* note 14 (Article IX, section 2).
37. Model Congressional Resolution, *supra* note 34, Title I, section 103.
38. *Ibid.*, Title II, section 202.
39. *Supra* note 14.
40. *Ibid.*, Article VII.
41. *Ibid.*, Article VI, section 9.
42. *Ibid.*, Article VI, section 10.
43. *Ibid.*, Article VIII, section 3.
44. McLaughlin & Associates, National Survey – Executive Summary, January 14, 2013 (copy on file with Author).
45. See, e.g., Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, Pub. L. 99-240, Title II, 99 Stat. 1842, 1859 (1986), available at [www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1842.pdf](http://www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1842.pdf); Northeast Interstate Dairy Compact, 7 U.S.C. § 7256 (1996).
46. See, e.g., Compact of Free Association Act of 1985, Pub. L. 99-239, Title II, 99 Stat. 1770, 1800, available at [www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1770.pdf](http://www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg1770.pdf); Jennings Randolph Lake Project Compact authorized, W. Va. Code, § 29-1J-1 (1994); Interstate Compact on Licensure of Participants in Live Racing with Parimutuel Wagering, Ky. Rev. Stat. § 230.3751 (2001); Interstate Compact on Juveniles, Wyo. Stat. § 14-6-102 (1977).
47. See, e.g., *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892); Opinion of the Justices, 287 Ala. 326 (1971); *Thalheimer v. Board of Supervisors of Maricopa County*, 11 Ariz. 430, 94 P. 1129 (Ariz. Terr. 1908); *Thomas v. Trice*, 145 Ark. 143 (1920); *Busch v. Turner*, 26 Cal. 2d 817 (1945); *People ex rel. Moore v. Perkins*, 56 Colo. 17 (1913); *Pratt v. Allen*, 13 Conn. 119 (1839); *Rice v. Foster*, 4 Harr. 479 (De. 1847); Opinion to the Governor, 239 So. 2d 1 (Fla. 1970); *Henson v. Georgia Industrial Realty Co.*, 220 Ga. 857 (1965); *Gillesby v. Board of Commissioners of Canyon County*, 17 Idaho 586 (1910); *Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011); *Lafayette, M&BR Co. v. Geiger*, 34 Ind. 185 (1870); *Colton v. Branstad*, 372 N.W. 2d 184 (Iowa 1985); *Phoenix Ins. Co. of N.Y. v. Welch*, 29 Kan. 672 (1883); *Walton v. Carter*, 337 S.W. 2d 674 (Ky. 1960); *City of Alexandria v. Alexandria Fire Fighters Ass'n, Local No. 540*, 220 La. 754 (1954); *Smigiel v. Franchot*, 410 Md. 302 (2009); *Howes Bros. Co. v. Mass. Unemployment Compensation Commission*, 296 Mass. 275 (1936); *Council of Orgs. & Ors. For Educ. About Parochial, Inc. v. Governor*, 455 Mich. 557 (1997); *State v. Cooley*, 65 Minn. 406 (1896); *Schuller v. Bordeaux*, 64 Miss. 59 (1886); *In re O'Brien*, 29 Mont. 530 (1904); *Akin v. Director of Revenue*, 934 S.W.2d 295 (Mo. 1996); *State v. Second Judicial Dist. Ct. in & for Churchill County*, 30 Nev. 225 (1908); *State v. Liedtke*, 9

Neb. 490 (1880); *State ex rel. Pearson*, 61 N.H. 264 (1881); *In re Thaxton*, 78 N.M. 668 (1968); *People v. Fire Ass'n of Philadelphia*, 92 N.Y. 311 (1883); *Fullam v. Brock*, 271 N.C. 145 (1967); *Enderson v. Hildenbrand*, 52 N.D. 533 (1925); *Gordon v. State*, 23 N.E. 63 (Ohio 1889); *State ex rel. Murray v. Carter*, 167 Okla. 473 (1934); *Hazell v. Brown*, 242 P.3d 743 (Or. App. 2010); *Appeal of Locke*, 72 Pa. 491 (1873); *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634 (1999); *Clark v. State ex rel. Bobo*, 113 S.W.2d 374 (Tenn. 1938); *State Highway Dept. v. Gorham*, 139 Tex. 361 (1942); *Bull v. Reed*, 54 Va. 78 (1855); *State v. Baldwin*, 140 Vt. 501 (1981); *State ex rel. Zilisch v. Auer*, 197 Wis. 284 (1928); *Brower v. State*, 137 Wash. 2d 44 (1998); *Le Page v. Bailey*, 114 W. Va. 25 (1933).

48. See, e.g., *State v. Dumler*, 559 P.2d 798 (Kan. 1977); *Bracey Advertising Co. v. North Carolina Dept. of Transportation*, 241 S.E.2d 146 (N.C. Ct. App. 1978).

49. 44. *Helmsley v. Borough of Ft. Lee*, 394 A.2d 65, 82 (N.J. 1978). Of course, this robust general rule is not without exception. In a case of first impression, the Missouri Supreme Court recently rejected the use of contingent effective dates where a legislative act was made contingent on the passage of another act on a "completely different matter" because doing so violated a state constitutional single-subject rule. *Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d 348 (Mo. 2013). The Compact's contingent effective dates, however, do not pose a single-subject rule violation. The contingencies are subject to the passage of legislation that obviously relates to the same purpose as the Compact; specifically, the passage of substantially identical compact language in other states and the congressional components of the Article V process the Compact invokes. Thus, the contingent effective dates in the Compact are exactly like the contingency upheld in *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 299 (Mo. 1996), in which the Missouri Supreme Court ruled the "legislature may constitutionally condition a law to take effect upon the happening of a future event."

50. *Helmsley*, 394 A.2d at 83.

51. Jonathan Elliot, *The Debates in the Several State Conventions of the Adoption of the Federal Constitution*, vol. 3, pp. 101–2 (Virginia) (1827), available at [files.libertyfund.org/files/1907/1314.03\\_Bk.pdf](http://files.libertyfund.org/files/1907/1314.03_Bk.pdf).

52. Federalist No. 43 in *The Federalist* (The Gideon Edition), edited with an Introduction, Reader's Guide, Constitutional Cross-reference, Index, and Glossary by George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), available at [oll.libertyfund.org/?option=com\\_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27).

53. "Reply to George Mason's Objections to the Constitution," New Jersey Journal, December 19, 26, 1788, in *The Documentary History of the Ratification of the Constitution*, Digital Edition, edited by John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber, and Margaret A. Hogan (Charlottesville: University of Virginia Press, 2009), available at [history.wisc.edu/csac/documentary\\_resources/ratification/attachments/nj%20a%20reply%20to%20george%20mason.pdf](http://history.wisc.edu/csac/documentary_resources/ratification/attachments/nj%20a%20reply%20to%20george%20mason.pdf).

54. "Letters of a Citizen of New Haven," in *Friends of the Constitution: Writings of the "Other" Federalists, 1787–1788*, edited by Colleen A. Sheehan and Gary L. McDowell (Indianapolis: Liberty Fund, 1998), p. 271, available at [files.libertyfund.org/files/2069/Sheehan\\_0118\\_Bk.pdf](http://files.libertyfund.org/files/2069/Sheehan_0118_Bk.pdf).

55. Federalist No. 85 in *The Federalist*, *supra* note 52.

56. *Cuyler v. Adams*, 449 U.S. 433, 441 (1981); *Wharton v. Wise*, 153 U.S. 155 (1894); *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893); *Green v. Biddle*, 21 U.S. 1, 39-40 (1823).

57. *Cuyler*, 449 U.S. at 440; *U.S. Steel v. Multistate Tax Commission*, 434 U.S. 452, 459 (1978); the decision stated congressional consent is required only for an interstate compact that would enhance "states power quoad [relative to] the federal government").

58. *Supra* note 14, Article VI, section 4, Article VIII, section 1.

59. *U.S. Steel*, 434 U.S. at 479 n. 33.
60. Federalist No. 43 in *The Federalist*, supra note 52.
61. *The Writings of George Washington*, collected and edited by Worthington Chauncey Ford, Vol. XI (1785-1790) (New York and London: G.P. Putnam's Sons, 1890) , p. 249, available at [files.libertyfund.org/files/2415/Washington\\_1450-11\\_Bk.pdf](http://files.libertyfund.org/files/2415/Washington_1450-11_Bk.pdf).
62. Jonathan Elliot, *The Debates in the Several State Conventions of the Adoption of the Federal Constitution*, vol. 3 (Virginia) (1827), p. 102, available at [files.libertyfund.org/files/1907/1314.03\\_Bk.pdf](http://files.libertyfund.org/files/1907/1314.03_Bk.pdf).
63. Federalist No. 85 in *The Federalist*, supra note 52.
64. See, e.g., *Journals of the Continental Congress, Proceedings, vol. VI* (June 1780) (application from New Hampshire), p. 189; id. at 331 (October 1780) (application from New York), available at <https://play.google.com/store/books/details?id=QmgFAAAAQAAJ&rdid=book-QmgFAAAAQAAJ&rdot=1>.
65. *Ibid.*
66. Robert Natelson, "Amending the Constitution by Convention: A Complete View of the Founders' Plan," *Goldwater Institute Policy Report No. 241*, September 16, 2010, pp. 15-18.
67. *The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed*, Vol. 6, edited by Gaillard Hunt (New York: G.P. Putnam's Sons, 1900) , pp. 403-4, available at [files.libertyfund.org/files/1941/1356.06\\_Bk.pdf](http://files.libertyfund.org/files/1941/1356.06_Bk.pdf).
68. U.S. Const., art. I, sec. 7 (cl. 2).
69. *Hollingsworth v. Virginia*, 3 U.S. 378 (1798); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 460 (D.C. Cir. 1982); Special Constitutional Convention Study Committee, American Bar Association, Amendment of the Constitution by the Convention Method under Article V 25 (1974).
70. U.S. Const., art. I, sec. 5 (cl. 2).
71. *Ins v. Chadha*, 462 U.S. 919, 951 (1983); *Myers v. United States*, 272 U.S. 52, 123 (1926).
72. See, e.g., *New Jersey v. New York*, 523 U.S. 767, 811 (1988) (holding that congressional approval "transforms an interstate compact within [the Compact Clause] into a law of the United States"); *Bryant v. Yellen*, 447 U.S. 352, 369 (1980); *McKenna v. Washington Metropolitan Area Transit Authority*, 829 F.2d 186 (D.C. Cir. 1987).
73. See, e.g., *Poole v. Fleeger's Lessee*, 36 U.S. 185, 1837 Westlaw 3559, \*24 (1837) (Baldwin, J., concurring) ("The effect of such consent is, that thenceforth, the compact has the same force as if it had been made between states who are not confederated ... or as if there had been no restraining provision in the constitution. Its validity does not depend on any recognition or admission in or by the constitution, that states may make such compacts with the consent of congress; the power existed in the states, in the plenitude of their sovereignty, by original inherent right; they imposed a single restraint upon it, but did not make any surrender of their right, or consent to impair it to any greater extent. Like all other powers not granted to the United States, or prohibited to the states, by the constitution, it is reserved to them, subject only to such restraints as it imposes, leaving its exercise free and unlimited in all other respects, without any auxiliary by any implied recognition or admission of the existence of the general power, consequent upon the particular limitation").
74. Lew Uhler, "Discipline of the Federal FISC – Article V," *Human Events*, April 29, 2014, [www.humanevents.com/2014/04/29/discipline-of-the-federal-fisc-article-v/](http://www.humanevents.com/2014/04/29/discipline-of-the-federal-fisc-article-v/).

75. 125 CR 2111 (HCR51 (MS 1979)).

76. See, e.g., HJR548 (TN 2014); SJR5 (OH 2013); 125 CR 3007 (R5 (NC 1979)); 125 CR 2112 (SJR (NM 1979)); 126 CR 1104 (SJR8 (NV 1980)); SR371 (GA 2014); 125 CR 9188 (SJR1 (IN 1979)); 125 CR 2110 (SCR1661 (KS 1979)); SJR4 (MD 1977); SJRV (MI 2013).

77. See, e.g., 129 CR 20352 (SCR3 (MO 1983)); 125 CR 15227 (SJR1 (IA 1979)).

78. See, e.g., 125 CR 2112 (LR106 (NB 1979)); 125 CR 2113 (R236 (PA 1979)); 125 CR 5223 (HCR31 (TX 1979)).

79. Michael B. Rappaport, "The Constitutionality of a Limited Convention: An Originalist Analysis," *Constitutional Commentary*, Vol. 81 (2012), p. 53; Mike Stern, "Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention," *Tennessee Law Review* **765** (Spring 2011), p. 78.

80. A similar conclusion has been reached by numerous experts. See, e.g., Michael Rappaport, *ibid.*; Mike Stern, *ibid.*; "Note, The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process," *Harvard Journal of Law and Public Policy* **30** (2007), pp. 1005, 1022.

81. Federalist No. 85 in *The Federalist*, *supra* note 52.

82. The foregoing analysis is not cast into doubt by any modern case striking down state laws or ballot initiatives seeking to compel the proposal of constitutional amendments or Article V applications by congressional candidates or legislative representatives. See, e.g., *Miller v. Moore*, 169 F.3d 1119 (8th Cir. 1999); *Barker v. Hazeltine*, 3 F.Supp.2d 1088 (D.S.D. 1998); *League of Women Voters of Me. v. Gwadosky*, 966 F. Supp. 52 (D.Me. 1997); *Bramberg v. Jones*, 20 Cal.4th 1045, 86 Cal.Rptr.2d 319, 978 P.2d 1240 (1999); *Morrissey v. State*, 951 P.2d 911 (Colo. 1998); *Simpson v. Cenarrusa*, 130 Idaho 609, 944 P.2d 1372 (1997); *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119 (1996); *In re Initiative Petition No. 364*, 930 P.2d 186 (Okla. 1996). The Compact does not compel anyone or anything to propose any amendment, nor does it place any power conferred by Article V to a designated body in the hands of anyone or anything that is not designated to exercise such power.

83. *The Records of the Federal Convention of 1787*, Vol. 2, edited by Max Farrand (New Haven: Yale University Press, 1911), pp. 629-30, available at [files.libertyfund.org/files/1786/0544-02\\_Bk.pdf](http://files.libertyfund.org/files/1786/0544-02_Bk.pdf).

84. *Ibid.*

85. The Compact's limitations on delegate authority and instructions are enforced by automatic forfeiture of the appointment of all delegates for that member state if any delegate violates such limitations and instructions (see *supra* note 14, Article VI, section 10). Second, the legislature of the respective member state also could immediately recall and replace the runaway delegate (sections 3 and 4). Third, if such behavior were disorderly, in addition to all other standard means of maintaining order and enforcing the rules furnished under Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure, the chair of the Convention could suspend proceedings and the Commission could relocate the Convention as needed to resume proceedings with a quorum of states participating (*supra* note 14, Article VII, Sections 2, 7 and 8). Fourth, a declaratory judgment ruling all actions of the runaway delegate "void ab initio" and an injunction or temporary restraining order forcing the delegate to cease participation and to return to his or her state capitol would be another option because attorneys general of each member state are required to seek injunctions to enforce the provisions of the Compact (compare *supra* note 14, Article X, section 3, with Articles VI, sections 6, 7, 10). These delegate-specific direct enforcement mechanisms are in addition to the following backstop "kill-switches" (which every member state attorney general also must enforce): (1) the prohibition on member states participating in the convention unless the Compact rules are adopted as the first order of business (*supra* note 14, Article VIII, section 1(b)); (2) the prohibition on transmission of any amendment proposal from the convention other than the contemplated amendment (Article VII, section 9); (3) the nullification of any convention proposal other than the contemplated amendment (compare Article VIII, section 2(a), with

Articles VI, sections 6, 7, 10, and Article VII, section 2); and (4) the disapproval of ratification of any amendment by all member states other than the contemplated amendment (Article VIII, section 3).

86. See, *inter alia*, Robert Natelson, *supra* note 66.

87. See, e.g., Federalist No. 40, in *The Federalist*, *supra* 52.

88. The truth is that the delegates to the Philadelphia Convention stayed well within the scope of their authority. Translated with the usage of the times, the legal instruments organizing the Philadelphia Convention essentially declared, "The convention is being organized for the 'sole' purpose of considering a total rewrite of the Articles of Confederation with such alterations and new provisions as might establish a firm national government and make it adequate to governance." It does not take a legal genius to fit the proposal of the Constitution within the scope of such authority. The breadth of the foregoing authority is evident from the fact that the congressional resolution for the Philadelphia Convention contemplated a broad purpose for the meeting – to establish "in these states a firm national government ... [and] render the federal Constitution adequate to the exigencies of Government and the preservation of the Union" (*Resolution of Feb. 21, 1787*, 32 *J. Continental Cong. 1774-1789* (edited by Roscoe R. Hill, reprint ed. 1968), p. 74. It also contemplated "revising" the Articles with "alterations and provisions." *Id.* Equally broad language was reflected in the state-issued credentials of nearly all delegates to the convention (with New Jersey's delegates being an arguable exception). (*Records of the Federal Convention of 1787*, edited by M. Farrand, 1911, pp. 706–36. Contemporaneous legal usage indicates the word "revision" had a broader meaning than "amendment" and indicated the possibility of a total or substantial rewrite of an original document. See, e.g., *Cases of Judges of Court of Appeals*, 1788 Va. LEXIS 3, \*27 (1788) (using "revisal" to describe total rewrite of state laws); *Respublica v. Dallas*, 1801 Pa. LEXIS 56, \*\*18 (Pa. 1801) (referring to a committee creating a new state constitution as charged with "revising" the old constitution); *Waters v. Stewart*, 1 Cai. Cas. 47, 65-72 (N.Y. 1805) (using "revision" in the context of describing a total rewrite of state statutes); *Commonwealth v. Daniel Messenger*, 4 Mass. 462, 467, 469–70 (1808) (describing statutes as a "revision" of prior provincial laws and a "revised" statute as replacing a "former statute"); *Lessee of Ludlow's Heirs v. Culbertson Park*, 1829 Ohio LEXIS 36, \*\*24-26 (Ohio 1829) (using "revision" to describe a total rewrite and consolidation into one act all prior statutes); see generally *Strauss v. Horton*, 207 P.3d 48, 59 (Cal. 2009) (holding that "[w]hile both constitutional amendments and revisions require a majority of voters approval, a revision – which substantially alters the entire Constitution, the basic framework of the governmental structure or the powers held by one or more governmental branches – requires prior approval of two-thirds of each house of the California State Legislature") (citing Cal. Const. art. X (1849) ("Mode of Amending and Revising the Constitution"); Browne, *Rep. of the Debates in Convention of Cal. on Formation of State Const.* 354-61 (1850); *Livermore v. Waite*, 102 Cal. 113 (1894); Dodd, *The Revision and Amendment of State Constitutions* (1910), 118-20; Jameson, *A Treatise on Constitutional Conventions: Their History, Powers, and Modes of Proceeding* (4th ed. 1887), §§ 530-2, 550-2 (citing the Constitutions of Maine (1820), New Jersey (1844), New York (1846), and Michigan (1850)); William B. Fisch, "Constitutional Referendum in the United States of America," *American Journal of Comparative Law* 54 (2006), pp. 485, 493 (noting "the preferred vehicle for major revisions of existing state constitutions and creation of new ones has been the popularly elected convention, which has often been called by a state legislature without explicit authority in the existing governing document").

89. Thomas H. Neale, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, R42589, 18 (C.R.S., April 11, 2014), [www.fas.org/sgp/crs/misc/R42589.pdf](http://www.fas.org/sgp/crs/misc/R42589.pdf).

90. *Ibid.*

91. *Ibid.* at 36 ("Between 1973 and 1992, 22 bills were introduced in the House and 19 in the Senate that sought to establish a procedural framework that would apply to an Article V Convention. Proponents argued that constitutional convention procedures legislation would eliminate many of the uncertainties inherent in first-time consideration of such an event and would also facilitate contingency planning, thus enabling Congress to respond in an orderly fashion to a call for an Article V Convention. The Senate, in fact, passed constitutional convention procedures bills, the "Federal Constitutional Convention Procedures Act," on two separate occasions: as S. 215 in 1971 in the 92nd Congress, and as S. 1272 in 1983, in the 98th Congress").

92. Congressional implied consent could be construed as transforming the Compact's terms and conditions relating to the Article V convention it organizes into the functional equivalent of federal law for procedural purposes under current precedent if Congress's call power were wrongly regarded as entailing such power. See, e.g., *New Jersey*, 523 U.S. at 811; *Bryant*, 447 U.S. at 369; *McKenna*, 829 F.2d 186.

APPENDIX 1

LAWS OF ALASKA

2014



**Source**  
HB 284

**Chapter No.**  
\_\_\_\_\_

**AN ACT**

Relating to an interstate compact on a balanced federal budget.

\_\_\_\_\_

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1

**AN ACT**

1 Relating to an interstate compact on a balanced federal budget.

2 \_\_\_\_\_  
3 \* **Section 1.** AS 44.99 is amended by adding new sections to read:

4 **Article 6. Compact for a Balanced Budget.**

5 **Sec. 44.99.600. Entry into agreement.** The Compact for a Balanced Budget is  
6 hereby enacted into law and entered into with all jurisdictions legally joining it in a  
7 form substantially as contained in AS 44.99.610.

8 **Sec. 44.99.610. Compact terms.** The terms and provisions of the compact  
9 referred to in AS 44.99.600 are as follows:

10 **COMPACT FOR A BALANCED BUDGET**

11 **ARTICLE I**

12 **DECLARATION OF POLICY, PURPOSE AND INTENT**

13 Whereas, every State enacting, adopting and agreeing to be bound by this  
14 Compact intends to ensure that their respective Legislature's use of the power to  
15 originate a Balanced Budget Amendment under Article V of the Constitution of the

1 United States will be exercised conveniently and with reasonable certainty as to the  
2 consequences thereof.

3 Now, therefore, in consideration of their expressed mutual promises and  
4 obligations, be it enacted by every State enacting, adopting and agreeing to be bound  
5 by this Compact, and resolved by each of their respective Legislatures, as the case  
6 may be, to exercise herewith all of their respective powers as set forth herein  
7 notwithstanding any law to the contrary.

8 ARTICLE II  
9 DEFINITIONS

10 Section 1. "Compact" means this "Compact for a Balanced Budget."

11 Section 2. "Convention" means the convention for proposing amendments  
12 organized by this Compact under Article V of the Constitution of the United States  
13 and, where contextually appropriate to ensure the terms of this Compact are not  
14 evaded, any other similar gathering or body, which might be organized as a  
15 consequence of Congress receiving the application set out in this Compact and claim  
16 authority to propose or effectuate any amendment, alteration or revision to the  
17 Constitution of the United States. This term does not encompass a convention for  
18 proposing amendments under Article V of the Constitution of the United States that is  
19 organized independently of this Compact based on the separate and distinct  
20 application of any State.

21 Section 3. "State" means one of the several States of the United States. Where  
22 contextually appropriate, the term "State" shall be construed to include all of its  
23 branches, departments, agencies, political subdivisions, and officers and  
24 representatives acting in their official capacity.

25 Section 4. "Member State" means a State that has enacted, adopted and agreed  
26 to be bound to this Compact. For any State to qualify as a Member State with respect  
27 to any other State under this Compact, each such State must have enacted, adopted and  
28 agreed to be bound by substantively identical compact legislation.

29 Section 5. "Compact Notice Recipients" means the Archivist of the United  
30 States, the President of the United States, the President of the United States Senate, the  
31 Office of the Secretary of the United States Senate, the Speaker of the United States

1 House of Representatives, the Office of the Clerk of the United States House of  
2 Representatives, the chief executive officer of each State, and the presiding officer(s)  
3 of each house of the Legislatures of the several States.

4 Section 6. Notice. All notices required by this Compact shall be by U.S.  
5 Certified Mail, return receipt requested, or an equivalent or superior form of notice,  
6 such as personal delivery documented by evidence of actual receipt.

7 Section 7. "Balanced Budget Amendment" means the following:

8 "Article \_\_

9 Section 1. Total outlays of the government of the United States shall not  
10 exceed total receipts of the government of the United States at any point in time unless  
11 the excess of outlays over receipts is financed exclusively by debt issued in strict  
12 conformity with this article.

13 Section 2. Outstanding debt shall not exceed authorized debt, which initially  
14 shall be an amount equal to 105 percent of the outstanding debt on the effective date  
15 of this article. Authorized debt shall not be increased above its aforesaid initial amount  
16 unless such increase is first approved by the legislatures of the several states as  
17 provided in Section 3.

18 Section 3. From time to time, Congress may increase authorized debt to an  
19 amount in excess of its initial amount set by Section 2 only if it first publicly refers to  
20 the legislatures of the several states an unconditional, single subject measure  
21 proposing the amount of such increase, in such form as provided by law, and the  
22 measure is thereafter publicly and unconditionally approved by a simple majority of  
23 the legislatures of the several states, in such form as provided respectively by state  
24 law; provided that no inducement requiring an expenditure or tax levy shall be  
25 demanded, offered or accepted as a quid pro quo for such approval. If such approval is  
26 not obtained within sixty (60) calendar days after referral then the measure shall be  
27 deemed disapproved and the authorized debt shall thereby remain unchanged.

28 Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit  
29 set by Section 2, the President shall enforce said limit by publicly designating specific  
30 expenditures for impoundment in an amount sufficient to ensure outstanding debt shall  
31 not exceed the authorized debt. Said impoundment shall become effective thirty (30)

1 days thereafter, unless Congress first designates an alternate impoundment of the same  
2 or greater amount by concurrent resolution, which shall become immediately  
3 effective. The failure of the President to designate or enforce the required  
4 impoundment is an impeachable misdemeanor. Any purported issuance or incurrence  
5 of any debt in excess of the debt limit set by Section 2 is void.

6 Section 5. No bill that provides for a new or increased general revenue tax  
7 shall become law unless approved by a two-thirds roll call vote of the whole number  
8 of each House of Congress. However, this requirement shall not apply to any bill that  
9 provides for a new end user sales tax which would completely replace every existing  
10 income tax levied by the government of the United States; or for the reduction or  
11 elimination of an exemption, deduction, or credit allowed under an existing general  
12 revenue tax.

13 Section 6. For purposes of this article, "debt" means any obligation backed by  
14 the full faith and credit of the government of the United States; "outstanding debt"  
15 means all debt held in any account and by any entity at a given point in time;  
16 "authorized debt" means the maximum total amount of debt that may be lawfully  
17 issued and outstanding at any single point in time under this article; "total outlays of  
18 the government of the United States" means all expenditures of the government of the  
19 United States from any source; "total receipts of the government of the United States"  
20 means all tax receipts and other income of the government of the United States,  
21 excluding proceeds from its issuance or incurrence of debt or any type of liability;  
22 "impoundment" means a proposal not to spend all or part of a sum of money  
23 appropriated by Congress; and "general revenue tax" means any income tax, sales tax,  
24 or value-added tax levied by the government of the United States excluding imposts  
25 and duties.

26 Section 7. This article is immediately operative upon ratification, self-  
27 enforcing, and Congress may enact conforming legislation to facilitate enforcement."

### 28 ARTICLE III

#### 29 COMPACT MEMBERSHIP AND WITHDRAWAL

30 Section 1. This Compact governs each Member State to the fullest extent  
31 permitted by their respective constitutions, superseding and repealing any conflicting

1 or contrary law.

2 Section 2. By becoming a Member State, each such State offers, promises and  
3 agrees to perform and comply strictly in accordance with the terms and conditions of  
4 this Compact, and has made such offer, promise and agreement in anticipation and  
5 consideration of, and in substantial reliance upon, such mutual and reciprocal  
6 performance and compliance by each other current and future Member State, if any.  
7 Accordingly, in addition to having the force of law in each Member State upon its  
8 respective effective date, this Compact and each of its Articles shall also be construed  
9 as contractually binding each Member State when: (a) at least one other State has  
10 likewise become a Member State by enacting substantively identical legislation  
11 adopting and agreeing to be bound by this Compact; and (b) notice of such State's  
12 Member State status is or has been seasonably received by the Compact  
13 Administrator, if any, or otherwise by the chief executive officer of each other  
14 Member State.

15 Section 3. For purposes of determining Member State status under this  
16 Compact, as long as all other provisions of the Compact remain identical and  
17 operative on the same terms, legislation enacting, adopting and agreeing to be bound  
18 by this Compact shall be deemed and regarded as "substantively identical" with  
19 respect to such other legislation enacted by another State notwithstanding: (a) any  
20 difference in section 2 of Article IV with specific regard to the respectively enacting  
21 State's own method of appointing its member to the Commission; (b) any difference in  
22 section 5 of Article IV with specific regard to the respectively enacting State's own  
23 obligation to fund the Commission; (c) any difference in section 1 and 2 of Article VI  
24 with specific regard to the number and identity of each delegate respectively appointed  
25 on behalf of the enacting State, provided that no more than three delegates may attend  
26 and participate in the Convention on behalf of any State; or (d) any difference in  
27 section 7 of Article X with specific regard to the respectively enacting State as to  
28 whether section 1 of Article V of this Compact shall survive termination of this  
29 Compact, and thereafter become a continuing resolution of the Legislature of such  
30 State applying to Congress for the calling of a convention of the states under Article V  
31 of the Constitution of the United States, under such terms and limitations as may be

1 specified by such State.

2 Section 4. When fewer than three-fourths of the States are Member States, any  
3 Member State may withdraw from this Compact by enacting appropriate legislation,  
4 as determined by state law, and giving notice of such withdrawal to the Compact  
5 Administrator, if any, or otherwise to the chief executive officer of each other Member  
6 State. A withdrawal shall not affect the validity or applicability of the compact with  
7 respect to remaining Member States, provided that there remain at least two such  
8 States. However, once at least three-fourths of the States are Member States, then no  
9 Member State may withdraw from the Compact prior to its termination absent  
10 unanimous consent of all Member States.

#### 11 ARTICLE IV

#### 12 COMPACT COMMISSION AND COMPACT ADMINISTRATOR

13 Section 1. Nature of the Compact Commission. The Compact Commission  
14 ("Commission") is hereby established. It has the power and duty: (a) to appoint and  
15 oversee a Compact Administrator; (b) to encourage States to join the Compact and  
16 Congress to call the Convention in accordance with this Compact; (c) to coordinate the  
17 performance of obligations under the Compact; (d) to oversee the Convention's  
18 logistical operations as appropriate to ensure this Compact governs its proceedings; (e)  
19 to oversee the defense and enforcement of the Compact in appropriate legal venues; (f)  
20 to request funds and to disburse those funds to support the operations of the  
21 Commission, Compact Administrator, and Convention; and (g) to cooperate with any  
22 entity that shares a common interest with the Commission and engages in policy  
23 research, public interest litigation or lobbying in support of the purposes of the  
24 Compact. The Commission shall only have such implied powers as are essential to  
25 carrying out these express powers and duties. It shall take no action that contravenes  
26 or is inconsistent with this Compact or any law of any State that is not superseded by  
27 this Compact. It may adopt and publish corresponding bylaws and policies.

28 Section 2. Commission Membership. The Commission initially consists of  
29 three unpaid members. Each Member State may appoint one member to the  
30 Commission through an appointment process to be determined by their respective  
31 chief executive officer until all positions on the Commission are filled. Positions shall

1 be assigned to appointees in the order in which their respective appointing States  
2 became Member States. The bylaws of the Commission may expand its membership  
3 to include representatives of additional Member States and to allow for modest  
4 salaries and reimbursement of expenses if adequate funding exists.

5 Section 3. Commission Action. Each Commission member is entitled to one  
6 vote. The Commission shall not act unless a majority of its appointed membership is  
7 present, and no action shall be binding unless approved by a majority of the  
8 Commission's appointed membership. The Commission shall meet at least once a  
9 year, and may meet more frequently.

10 Section 4. First Order of Business. The Commission shall at the earliest  
11 possible time elect from among its membership a Chairperson, determine a primary  
12 place of doing business, and appoint a Compact Administrator.

13 Section 5. Funding. The Commission and the Compact Administrator's  
14 activities shall be funded exclusively by each Member State, as determined by their  
15 respective state law, or by voluntary donations.

16 Section 6. Compact Administrator. The Compact Administrator has the power  
17 and duty: (a) to timely notify the States of the date, time and location of the  
18 Convention; (b) to organize and direct the logistical operations of the Convention; (c)  
19 to maintain an accurate list of all Member States, their appointed delegates, including  
20 contact information; and (d) to formulate, transmit, and maintain all official notices,  
21 records, and communications relating to this Compact. The Compact Administrator  
22 shall only have such implied powers as are essential to carrying out these express  
23 powers and duties; and shall take no action that contravenes or is inconsistent with this  
24 Compact or any law of any State that is not superseded by this Compact. The Compact  
25 Administrator serves at the pleasure of the Commission and must keep the  
26 Commission seasonably apprised of the performance or nonperformance of the terms  
27 and conditions of this Compact. Any notice sent by a Member State to the Compact  
28 Administrator concerning this Compact shall be adequate notice to each other Member  
29 State provided that a copy of said notice is seasonably delivered by the Compact  
30 Administrator to each other Member State's respective chief executive officer.

31 Section 7. Notice of Key Events. Upon the occurrence of each of the following

1 described events, or otherwise as soon as possible, the Compact Administrator shall  
2 immediately send the following notices to all Compact Notice Recipients, together  
3 with certified conforming copies of the chaptered version of this Compact as  
4 maintained in the statutes of each Member State: (a) whenever any State becomes a  
5 Member State, notice of that fact shall be given; (b) once at least three-fourths of the  
6 States are Member States, notice of that fact shall be given together with a statement  
7 declaring that the Legislatures of at least two-thirds of the several States have applied  
8 for a convention for proposing amendments under Article V of the Constitution of the  
9 United States, petitioning Congress to call the Convention contemplated by this  
10 Compact, and further requesting cooperation in organizing the same in accordance  
11 with this Compact; (c) once Congress has called the Convention contemplated by this  
12 Compact, and whenever the date, time and location of the Convention has been  
13 determined, notice of that fact shall be given together with the date, time and location  
14 of the Convention and other essential logistical matters; (d) upon approval of the  
15 Balanced Budget Amendment by the Convention, notice of that fact shall be given  
16 together with the transmission of certified copies of such approved proposed  
17 amendment and a statement requesting Congress to refer the same for ratification by  
18 three-fourths of the Legislatures of the several States under Article V of the  
19 Constitution of the United States (however, in no event shall any proposed amendment  
20 other than the Balanced Budget Amendment be transmitted); and (e) when any Article  
21 of this Compact prospectively ratifying the Balanced Budget Amendment is effective  
22 in any Member State, notice of the same shall be given together with a statement  
23 declaring such ratification and further requesting cooperation in ensuring that the  
24 official record confirms and reflects the effective corresponding amendment to the  
25 Constitution of the United States. However, whenever any Member State enacts  
26 appropriate legislation, as determined by the laws of the respective state, withdrawing  
27 from this Compact, the Compact Administrator shall immediately send certified  
28 conforming copies of the chaptered version of such withdrawal legislation as  
29 maintained in the statutes of each such withdrawing Member State, solely to each  
30 chief executive officer of each remaining Member State, giving notice of such  
31 withdrawal.



1 immediately vacate the Convention and return to delegate's respective State's capitol.

2 Section 4. Oath. The power and authority of a delegate under this Article may  
3 only be exercised after the Convention is first called by Congress in accordance with  
4 this Compact and such appointment is duly accepted by such appointee publicly taking  
5 the following oath or affirmation: "I do solemnly swear (or affirm) that I accept this  
6 appointment and will act strictly in accordance with the terms and conditions of the  
7 Compact for a Balanced Budget, the Constitution of the State I represent, and the  
8 Constitution of the United States. I understand that violating this oath (or affirmation)  
9 forfeits my appointment and may subject me to other penalties as provided by law."

10 Section 5. Term. The term of a delegate hereunder commences upon  
11 acceptance of appointment and terminates upon the permanent adjournment of the  
12 Convention, unless shortened by recall, replacement or forfeiture under this Article.  
13 Upon expiration of such term, any person formerly serving as a delegate must  
14 immediately withdraw from and cease participation at the Convention, if any is  
15 proceeding.

16 Section 6. Delegate Authority. The power and authority of any delegate  
17 appointed hereunder is strictly limited: (a) to introducing, debating, voting upon,  
18 proposing and enforcing the Convention Rules specified in this Compact, as needed to  
19 ensure those rules govern the Convention; and (b) to introducing, debating, voting  
20 upon, and rejecting or proposing for ratification the Balanced Budget Amendment. All  
21 actions taken by any delegate in violation of this section are void ab initio.

22 Section 7. Delegate Authority. No delegate of any Member State may  
23 introduce, debate, vote upon, reject or propose for ratification any constitutional  
24 amendment at the Convention unless: (a) the Convention Rules specified in this  
25 Compact govern the Convention and their actions; and (b) the constitutional  
26 amendment is the Balanced Budget Amendment.

27 Section 8. Delegate Authority. The power and authority of any delegate at the  
28 Convention does not include any power or authority associated with any other public  
29 office held by the delegate. Any person appointed to serve as a delegate shall take a  
30 temporary leave of absence, or otherwise shall be deemed temporarily disabled, from  
31 any other public office held by the delegate while attending the Convention, and may

1 not exercise any power or authority associated with any other public office held by the  
2 delegate while attending the Convention. All actions taken by any delegate in violation  
3 of this section are void ab initio.

4 Section 9. Order of Business. Before introducing, debating, voting upon,  
5 rejecting or proposing for ratification any constitutional amendment at the Convention,  
6 each delegate of every Member State must first ensure the Convention Rules in this  
7 Compact govern the Convention and their actions. Every delegate and each Member  
8 State must immediately vacate the Convention and notify the Compact Administrator  
9 by the most effective and expeditious means if the Convention Rules in this Compact  
10 are not adopted to govern the Convention and their actions.

11 Section 10. Forfeiture of Appointment. If any Member State or delegate  
12 violates any provision of this Compact, then every delegate of that Member State  
13 immediately forfeits his or her appointment, and shall immediately cease participation  
14 at the Convention, vacate the Convention, and return to his or her respective State's  
15 capitol.

16 Section 11. Expenses. A delegate appointed hereunder is entitled to  
17 reimbursement of reasonable expenses for attending the Convention from his or her  
18 respective Member State. No delegate may accept any other form of remuneration or  
19 compensation for service under this Compact.

## 20 ARTICLE VII

### 21 CONVENTION RULES

22 Section 1. Nature of the Convention. The Convention shall be organized,  
23 construed and conducted as a body exclusively representing and constituted by the  
24 several States.

25 Section 2. Agenda of the Convention. The agenda of the Convention shall be  
26 entirely focused upon and exclusively limited to introducing, debating, voting upon,  
27 and rejecting or proposing for ratification the Balanced Budget Amendment under the  
28 Convention Rules specified in this Article and in accordance with the Compact. It  
29 shall not be in order for the Convention to consider any matter that is outside the scope  
30 of this agenda.

31 Section 3. Delegate Identity and Procedure. States shall be represented at the

1 Convention through duly appointed delegates. The number, identity and authority of  
2 delegates assigned to each State shall be determined by this Compact in the case of  
3 Member States or, in the case of States that are not Member States, by their respective  
4 state laws. However, to prevent disruption of proceedings, no more than three  
5 delegates may attend and participate in the Convention on behalf of any State. A  
6 certified chaptered conforming copy of this Compact, together with government-  
7 issued photographic proof of identification, shall suffice as credentials for delegates of  
8 Member States. Any commission for delegates of States that are not Member States  
9 shall be based on their respective state laws, but it shall furnish credentials that are at  
10 least as reliable as those required of Member States.

11 Section 4. Voting. Each State represented at the Convention shall have one  
12 vote, exercised by the vote of that State's delegate in the case of States represented by  
13 one delegate, or, in the case of any State that is represented by more than one delegate,  
14 by the majority vote of that State's respective delegates.

15 Section 5. Quorum. A majority of the several States of the United States, each  
16 present through its respective delegate in the case of any State that is represented by  
17 one delegate, or through a majority of its respective delegates, in the case of any State  
18 that is represented by more than one delegate, shall constitute a quorum for the  
19 transaction of any business on behalf of the Convention.

20 Section 6. Action by the Convention. The Convention shall only act as a  
21 committee of the whole chaired by the delegate representing the first State to have  
22 become a Member State, if that State is represented by one delegate, or otherwise by  
23 the delegate chosen by the majority vote of that State's respective delegates. The  
24 transaction of any business on behalf of the Convention, including the designation of a  
25 Secretary, the adoption of parliamentary procedures and the rejection or proposal of  
26 any constitutional amendment, requires a quorum to be present and a majority  
27 affirmative vote of those States constituting the quorum.

28 Section 7. Emergency Suspension and Relocation of the Convention. In the  
29 event that the Chair of the Convention declares an emergency due to disorder or an  
30 imminent threat to public health and safety prior to the completion of the business on  
31 the Agenda, and a majority of the States present at the Convention do not object to

1 such declaration, further Convention proceedings shall be temporarily suspended, and  
2 the Commission shall subsequently relocate or reschedule the Convention to resume  
3 proceedings in an orderly fashion in accordance with the terms and conditions of this  
4 Compact with prior notice given to the Compact Notice Recipients.

5 Section 8. Parliamentary Procedure. In adopting, applying and formulating  
6 parliamentary procedure, the Convention shall exclusively adopt, apply or  
7 appropriately adapt provisions of the most recent editions of Robert's Rules of Order  
8 and the American Institute of Parliamentarians Standard Code of Parliamentary  
9 Procedure. In adopting, applying or adapting parliamentary procedure, the Convention  
10 shall exclusively consider analogous precedent arising within the jurisdiction of the  
11 United States. Parliamentary procedures adopted, applied or adapted pursuant to this  
12 section shall not obstruct, override, or otherwise conflict with this Compact.

13 Section 9. Transmittal. Upon approval of the Balanced Budget Amendment by  
14 the Convention to propose for ratification, the Chair of the Convention shall  
15 immediately transmit certified copies of such approved proposed amendment to the  
16 Compact Administrator and all Compact Notice Recipients, notifying them  
17 respectively of such approval and requesting Congress to refer the same for  
18 ratification by the States under Article V of the Constitution of the United States.  
19 However, in no event shall any proposed amendment other than the Balanced Budget  
20 Amendment be transmitted as aforesaid.

21 Section 10. Transparency. Records of the Convention, including the identities  
22 of all attendees and detailed minutes of all proceedings, shall be kept by the Chair of  
23 the Convention or Secretary designated by the Convention. All proceedings and  
24 records of the Convention shall be open to the public upon request subject to  
25 reasonable regulations adopted by the Convention that are closely tailored to  
26 preventing disruption of proceedings under this Article.

27 Section 11. Adjournment of the Convention. The Convention shall  
28 permanently adjourn upon the earlier of twenty-four (24) hours after commencing  
29 proceedings under this Article or the completion of the business on its Agenda.

## 30 ARTICLE VIII

### 31 PROHIBITION ON ULTRA VIRES CONVENTION



1 otherwise amend and conform all such rules, policies or procedures to allow for the  
2 effectiveness of this Compact to the fullest extent permitted by the constitution of any  
3 affected Member State.

4 Section 2. Date and Location of the Convention. Unless otherwise specified by  
5 Congress in its call, the Convention shall be held in Dallas, Texas and commence  
6 proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the  
7 latter of the effective date of Article V of this Compact or the enactment date of the  
8 Congressional resolution calling the Convention.

9 Section 3. In addition to all other powers and duties conferred by state law  
10 which are consistent with the terms and conditions of this Compact, the chief law  
11 enforcement officer of each Member State is empowered to defend the Compact from  
12 any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief  
13 to enforce this Compact; and shall take such action whenever the Compact is  
14 challenged or violated.

15 Section 4. The exclusive venue for all actions in any way arising under this  
16 Compact shall be in the United States District Court for the Northern District of Texas  
17 or the courts of the State of Texas within the jurisdictional boundaries of the foregoing  
18 district court. Each Member State shall submit to the jurisdiction of said courts with  
19 respect to such actions. However, upon written request by the chief law enforcement  
20 officer of any Member State, the Commission may elect to waive this provision for the  
21 purpose of ensuring an action proceeds in the venue that allows for the most  
22 convenient and effective enforcement or defense of this Compact. Any such waiver  
23 shall be limited to the particular action to which it is applied and not construed or  
24 relied upon as a general waiver of this provision. The waiver decisions of the  
25 Commission under this provision shall be final and binding on each Member State.

26 Section 5. The effective date of this Compact and any of its Articles is the  
27 latter of: (a) the date of any event rendering the same effective according to its  
28 respective terms and conditions; or (b) the earliest date otherwise permitted by law.

29 Section 6. Article VIII of this Compact is hereby deemed non-severable prior  
30 to termination of the Compact. However, if any other phrase, clause, sentence or  
31 provision of this Compact, or the applicability of any other phrase, clause, sentence or

1 provision of this Compact to any government, agency, person or circumstance, is  
2 declared in a final judgment to be contrary to the Constitution of the United States,  
3 contrary to the state constitution of any Member State, or is otherwise held invalid by  
4 a court of competent jurisdiction, such phrase, clause, sentence or provision shall be  
5 severed and held for naught, and the validity of the remainder of this Compact and the  
6 applicability of the remainder of this Compact to any government, agency, person or  
7 circumstance shall not be affected. Furthermore, if this Compact is declared in a final  
8 judgment by a court of competent jurisdiction to be entirely contrary to the state  
9 constitution of any Member State or otherwise entirely invalid as to any Member  
10 State, such Member State shall be deemed to have withdrawn from the Compact, and  
11 the Compact shall remain in full force and effect as to any remaining Member State.  
12 Finally, if this Compact is declared in a final judgment by a court of competent  
13 jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the  
14 Constitution of the United States, then it shall be construed and enforced solely as  
15 reciprocal legislation enacted by the affected Member State(s).

16 Section 7. Termination. This Compact shall terminate and be held for naught  
17 when the Compact is fully performed and the Constitution of the United States is  
18 amended by the Balanced Budget Amendment. However, notwithstanding anything to  
19 the contrary set forth in this Compact, in the event such amendment does not occur  
20 within seven (7) years after the first State passes legislation enacting, adopting and  
21 agreeing to be bound to this Compact, the Compact shall terminate as follows: (a) the  
22 Commission shall dissolve and wind up its operations within ninety (90) days  
23 thereafter, with the Compact Administrator giving notice of such dissolution and the  
24 operative effect of this section to the Compact Notice Recipients; and (b) upon the  
25 completed dissolution of the Commission, this Compact shall be deemed terminated,  
26 repealed, void ab initio, and held for naught.

27 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 REVISOR'S INSTRUCTION. Notwithstanding AS 01.05.031(c), the revisor of  
30 statutes is instructed not to edit or revise the text of the compact in AS 44.99.610, enacted by  
31 sec. 1 of this Act, so as to avoid the use of pronouns denoting masculine or feminine gender.

## APPENDIX 2

\_\_\_\_ Congress  
\_\_ Session  
\_\_.Con.Res.\_\_\_\_

### OMNIBUS CONCURRENT RESOLUTION

Be it resolved by the \_\_\_\_\_ of the United States of America (the \_\_\_\_ Concurring) in Congress Assembled,

Section 1. Omnibus Concurrent Resolution to Effectuate the Compact for a Balanced Budget

(a) DECLARATION—The Congress determines and declares that this omnibus concurrent resolution calls the Convention contemplated by the Compact for a Balanced Budget under Article V of the United States Constitution, and refers for ratification the Balanced Budget Amendment contemplated by the Compact for a Balanced Budget.

(b) TABLE OF CONTENTS—The Table of Contents for this Resolution is as follows:

Sec. 1. Concurrent Resolution to Effectuate the Compact for a Balanced Budget

Title I—Concurrent Resolution Prospectively Calling Convention Contemplated by Compact for a Balanced Budget.

Sec. 101. Effective Date.  
Sec. 102. Convention Call.  
Sec. 103. Termination Date.

Title II—Concurrent Resolution Prospectively Referring the Balanced Budget Amendment to State Legislatures for Ratification.

Sec. 201. Effective Date.  
Sec. 202. Referral to Legislatures of the Several States for Ratification.

#### Title I

Concurrent Resolution Prospectively Calling Convention  
Contemplated by Compact for a Balanced Budget.

Sec. 101. EFFECTIVE DATE—This Title does not take effect until Congress receives sufficient certified conforming copies of the chaptered version of the Compact for a Balanced Budget formed initially by the State of Georgia and the State of Alaska pursuant to 2014 Georgia Laws Act 475 (H.B. 794) and 2014 Alaska Laws Ch. 12 (H.B. 284), respectively, as it may be joined by additional states and amended from time to time (“Compact for a Balanced Budget”), evidencing that at least three-fourths of the several States are Member States of the Compact for a Balanced Budget and have made application thereunder for a convention for proposing amendments under Article V of the United States Constitution.

1  
2 Sec. 102. CONVENTION CALL— Upon the effective date of this Title, be it resolved  
3 by the \_\_\_\_\_ of the United States of America (the \_\_\_\_ Concurring) in Congress  
4 Assembled, Congress hereby calls a convention for proposing amendments under Article V of  
5 the United States Constitution in accordance with the Compact for a Balanced Budget.

6  
7 Sec. 103. TERMINATION DATE—If for any reason the convention for proposing  
8 amendments under Article V of the United States Constitution contemplated herein has not  
9 permanently adjourned within one year from the Effective Date of this Title, all titles of this  
10 resolution shall become null and void ab initio and shall be deemed repealed in its entirety.

## 11 Title II

### 12 Concurrent Resolution Prospectively Referring the Balanced Budget Amendment to State 13 Legislatures for Ratification.

14 Sec. 201. EFFECTIVE DATE—This Title does not take effect until Congress receives a  
15 certified conforming copy of the Balanced Budget Amendment, as defined by the Compact for a  
16 Balanced Budget and described herein, evidencing that the convention for proposing  
17 amendments under Article V of the United States Constitution organized thereunder has  
18 approved and proposed the same for ratification.

19 Sec. 202. REFERRAL TO LEGISLATURES OF THE SEVERAL STATES FOR  
20 RATIFICATION. Upon the effective date of this Title, be it resolved by the \_\_\_\_\_ of the  
21 United States of America (the \_\_\_\_ Concurring) in Congress Assembled, that the following  
22 article has been proposed as an amendment to the Constitution of the United States by a  
23 convention for proposing amendments under Article V of the United States Constitution, which  
24 shall be valid to all intents and purposes as part of the Constitution when ratified by the  
25 legislatures of three-fourths of the several States within seven years after the date of its  
26 submission for ratification:

27 “Article \_\_\_\_

28 Section 1. Total outlays of the government of the United States shall not exceed total  
receipts of the government of the United States at any point in time unless the excess of outlays  
over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an  
amount equal to 105 percent of the outstanding debt on the effective date of this article.  
Authorized debt shall not be increased above its aforesaid initial amount unless such increase is  
first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in  
excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of  
the several states an unconditional, single subject measure proposing the amount of such  
increase, in such form as provided by law, and the measure is thereafter publicly and

1 unconditionally approved by a simple majority of the legislatures of the several states, in such  
2 form as provided respectively by state law; provided that no inducement requiring an  
3 expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such  
4 approval. If such approval is not obtained within sixty (60) calendar days after referral then the  
5 measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

6 Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by  
7 Section 2, the President shall enforce said limit by publicly designating specific expenditures for  
8 impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized  
9 debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first  
10 designates an alternate impoundment of the same or greater amount by concurrent resolution,  
11 which shall become immediately effective. The failure of the President to designate or enforce  
12 the required impoundment is an impeachable misdemeanor. Any purported issuance or  
13 incurrence of any debt in excess of the debt limit set by Section 2 is void.

14 Section 5. No bill that provides for a new or increased general revenue tax shall become  
15 law unless approved by a two-thirds roll call vote of the whole number of each House of  
16 Congress. However, this requirement shall not apply to any bill that provides for a new end user  
17 sales tax which would completely replace every existing income tax levied by the government  
18 of the United States; or for the reduction or elimination of an exemption, deduction, or credit  
19 allowed under an existing general revenue tax.

20 Section 6. For purposes of this article, “debt” means any obligation backed by the full  
21 faith and credit of the government of the United States; “outstanding debt” means all debt held  
22 in any account and by any entity at a given point in time; “authorized debt” means the  
23 maximum total amount of debt that may be lawfully issued and outstanding at any single point  
24 in time under this article; “total outlays of the government of the United States” means all  
25 expenditures of the government of the United States from any source; “total receipts of the  
26 government of the United States” means all tax receipts and other income of the government of  
27 the United States, excluding proceeds from its issuance or incurrence of debt or any type of  
28 liability; “impoundment” means a proposal not to spend all or part of a sum of money  
appropriated by Congress; and “general revenue tax” means any income tax, sales tax, or value-  
added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and  
Congress may enact conforming legislation to facilitate enforcement.”

### APPENDIX 3

## Balanced Budget Amendment Task Force

### Approach to Article V

One of the three major Article V efforts claims 24 Article V applications exist that aggregate toward the two-thirds threshold for Congress calling a convention limited to proposing a Balanced Budget Amendment. Sadly, this claim is considerably oversold.

As shown in the tables below, there are not 24 Article V applications that evidence 24 states agreeing on the same agenda for a Balanced Budget Amendment convention on the same terms. There are only nine such applications. If different, non-contingent applications that seek convention agendas that are not mutually exclusive are aggregated, there might be 10 applications. If substantively different applications, which are non-contingent (or subject to a contingency that does not logically preclude a convention call), which propose both consistent and mutually exclusive convention agendas while nevertheless stating an intention to be aggregated together, are aggregated, then there might be 11 applications.

**Table 1**  
**Summary of State Article V Applications**  
 (\* refer to caveats in Table 2)

<b>Bucket A</b> Balanced federal budget required in absence of a national emergency	<b>Bucket B</b> Outlays cannot exceed federal revenue; subject to defined national emergency exception	<b>Bucket C</b> Outlays cannot exceed "estimated" federal revenue; subject to undefined national emergency exception	<b>Bucket D</b> Outlays cannot exceed income except during a declared "war"	<b>Bucket E</b> Requirement of adoption of balanced federal budget or prohibiting deficit spending with undefined "exceptions"	<b>Bucket F</b> Convention limited to proposal of specific BBA
IA (1979)	AL (2011)	AK (1982)	DE (1976)	CO (1978)	MD (1977)
NC (1979) ***	IN (1979)	AR (1979) *		MO (1983) *	MS (1979)
		FL (2014) +		NH (2012) **	
		GA (2014) +			
		KS (1979)			
		LA (2014) +			
		MI (2013) +			
		NE (1979) *			
		NV (1980)			
		NM (1979) *			
		OH (2013) +			
		PA (1979) *			
		TN (2014) +			
		TX (1979) *			
<b>2 (1 w/o caveats)</b>	<b>2</b>	<b>14 (9 w/o caveats)</b>	<b>1</b>	<b>3 (1 w/o caveats)</b>	<b>2</b>

**Table 2**  
**Caveats in State Article V Applications**

	<b>* Article V application made “alternatively” to direct congressional proposal of BBA (without deadline)</b>	<b>** Application made void on direct congressional proposal of BBA (with deadline)</b>	<b>*** “Memorial” for either Congress “or” a convention to propose a BBA</b>	<b>+ Includes intent to aggregate with all BBA applications</b>
	AR (1979)	NH (2012)	NC (1979)	FL (2014)
	MO (1983)			GA (2014)
	NE (1979)			LA (2014)
	NM (1979)			MI (2013))
	PA (1979)			OH (2013)
	TX (1979)			TN (2014)
<b>Total</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>6</b>

There is no way to aggregate existing Article V applications toward a Balanced Budget Amendment convention beyond 11 applications without counting applications that on their face: (a) seek mutually exclusive different convention agendas; and (b) may never become effective because of contingencies on Congress first proposing a balanced budget amendment.

The BBA Task Force approach, which asserts 24 Article V applications can be aggregated toward a Balanced Budget Amendment convention call, is premised on the idea that the two-thirds application threshold required for a Congressional call permits Congress to mix and match substantively different and mutually exclusive Article V applications.

This approach plainly violates the text and original understanding of Article V. The text of Article V talks about two-thirds of the state legislatures making an “Application” in the singular. This implies the congressional call requires two-thirds of the states to advance substantively identical, not mutually exclusive, applications. Not surprisingly, the Founders themselves repeatedly expressed the expectation that the states would “concur” in the same application agenda.

Hamilton observed in Federalist No. 85 that “whenever nine States concur” in an application, Congress’s role in calling a convention would be “peremptory” because “[n]othing in this particular is left to the discretion of that body.” Thus, according to Hamilton, Congress’s mandatory duty to call a convention would be triggered upon receiving an application that actually received the concurrence of two-thirds of the states.

Similarly, ten years later, on February 7, 1799, James Madison’s *Report on the Virginia Resolutions* further observed the states could organize an Article V convention for the “object” of declaring the Alien and Sedition Acts unconstitutional. Specifically, after highlighting that “Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose,”

Madison wrote that the states could not only ask their senators to propose an “explanatory amendment” clarifying that the Alien and Sedition Acts were unconstitutional, but also that two-thirds of the legislatures of the states “might, by an application to Congress, have obtained a Convention for the same object.”

Madison and Hamilton clearly understood and argued that Article V applications must reflect a concurrence of two-thirds of the state legislatures on the same application and the same Article V agenda.

This makes perfect sense insofar as Congress’s role in calling the convention is mandatory and “peremptory” (according to Federalist No. 85); hence, Congress has no constitutional discretion or judgment that would allow it to aggregate substantively different and mutually exclusive applications. Congress has only the power and duty to yield automatically to the agenda sought by the “Application” of the States. That cannot happen if different and mutually exclusive agendas are sought by the states.

For this reason, to the extent that it claims more than 11 applications exist that can trigger Congress’s Article V call duty for a Balanced Budget Amendment convention, the BBA Task Force is advancing a clearly unconstitutional approach to Article V from an originalist perspective. Any aggregation of Article V applications above nine toward triggering such a convention is entirely debatable and unlikely to sustain a litigation effort to compel Congress to call a convention under Article V.

That does not mean the BBA Task Force approach will not succeed as a political movement. But Fivers considering whether to advance the approach should do so with their eyes open.

## About The Heartland Institute

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The mission of The Heartland Institute is to discover, develop, and promote free-market solutions to social and economic problems. Three things make Heartland unique among free-market think tanks:

- We communicate with more national and state elected officials, more often, than any other think tank in the U.S. In 2015 we recorded more than 1.0 million contacts with elected officials.
- We produce four monthly public policy newspapers – *Budget & Tax News*, *Environment & Climate News*, *Health Care News*, and *School Reform News* – which present free-market ideas as news rather than research or opinion.
- We promote the work of other free-market think tanks on our Web sites, in our newspapers, at our events, and through our extensive Government Relations and Media Relations efforts. Nobody else does more to promote the work of other think tanks than we do.

A telephone survey of randomly selected state and local elected officials conducted in 2014 found 74 percent of state legislators read at least one of our publications. Sixty-six percent say Heartland publications are a useful source of information.

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Heartland's annual budget of \$6.2 million supports a full-time staff of 37. Approximately 250 academics and professional economists participate in our peer-review process, and more than 200 elected officials serve on our Legislative Forum. We are supported by the voluntary contributions of approximately 6,000 supporters. We do not accept government funding.

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