

Statement of

The Honorable Patrick Leahy

United States Senator
United States Senate
November 30, 2011

Earlier this month, the House of Representatives rejected by a bipartisan vote a proposed constitutional amendment to require a so-called balanced budget. That should have ended the matter. Nonetheless, as a result of this summer's brinksmanship, which resulted in lowering the credit rating of the United States and brought the Government to the brink of a shutdown, the Senate is still required to vote on something that is entitled a "Joint Resolution proposing a balanced budget amendment to the Constitution of the United States". The absurdity of this required vote is driven home by the fact that it does not require any particular provisions, just that whatever is voted on bear this specific title. I hope the Senate will follow the House's lead and withhold its endorsement of such a change to our fundamental charter, the Constitution of the United States.

I thank Senator Durbin for chairing this hearing of the Constitution Subcommittee. I expect that today's hearing will highlight many problematic provisions of the McConnell-Hatch proposal to alter the Constitution, and the dire consequences for our Nation were it to be adopted. The legislation passed this summer requiring the Senate vote did not allow for thoughtful Committee consideration. Rather it required that within five days of receiving a constitutional amendment adopted by the House, it be discharged from the Judiciary Committee. There were months of maneuvers behind closed doors within the House Republican caucus before its leadership could concoct a procedure to vote on a newly-minted version of their constitutional amendment, which failed.

The Constitution is not a posting wall for bumper stickers. It is our fundamental charter. Amendments to the Constitution are permanent. Each word matters to hundreds of millions of Americans and future generations.

The McConnell-Hatch proposal is the most extreme of the pending proposals. In fact, it does nothing to remedy our Nation's deficit, nor does it set forth any mechanism to balance the budget. What it does is incorporate an arbitrary economic estimation into fundamental law. This amendment runs contrary to any previous amendment to our Constitution and has not been carefully considered.

In particular, section six of this proposal relies on estimates for outlays and receipts. We know that economists' estimates and recommendations do not always agree. So what do these proposed constitutional provisions really mean? We know that estimates are not static but ever changing. What if during the course of a fiscal year, there is a natural disaster, a terrorist attack, or a shift in the economy? What then? What if estimates were recalculated or revised, as employment statistics are every month? Would that make every penny expended by the Government

unconstitutional? Would that mean we could not help disaster victims or could not respond to a terrorist attack?

The language of the McConnell-Hatch proposal is also a recipe for a flood of lawsuits and for judges, rather than the people's elected representatives, deciding what the Government can and should spend. That could force a Government shutdown of everything from border patrol to food safety to Social Security. Do the proponents of this constitutional amendment really want to turn fiscal policy over to the same Federal judges they have spent years railing against as unelected activists?

I recently asked Justice Scalia at a hearing before the Senate Judiciary Committee whether the Federal judiciary was equipped to handle such a task. He laughed, and indicated that budget issues and determining the proper allocation of resources is not the judiciary's proper role. Of course, he is right, and the proponents of this effort to constitutionalize fiscal policy are wrong.

Fighting two unfunded wars and insisting simultaneously on the Bush tax cuts for the wealthy are prime examples of how to run up deficits and our national debt. Working with President Clinton, Democrats in Congress voted for a balanced budget. We did so without a single Republican vote to help. Our strong economy in the Clinton years led to budget surpluses. If we are serious about reducing deficits and paying down our debt, we need to get to work improving our economy, getting Americans back to work and continuing to recover from the worst economic conditions since the Great Depression.

When I consider proposals to amend the Constitution, I start with my oath as a Senator to protect and defend the Constitution and to bear true faith and allegiance to it. I wish those who ran for office professing reverence for the Constitution would show some. The McConnell-Hatch proposal has the potential to create a constitutional crisis by threatening the checks and balances that have guided us for 223 years. Our Constitution deserves better. I respect the wisdom of the Founders and will oppose this ill-conceived effort.

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