Citizens Against an Article V Convention
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Points in opposition to Compact for America's Balanced Budget Amendment

I. Compact For America's (CFA's) Balanced Budget Amendment (BBA) Does Not Control Federal Spending and Authorizes Imposition of a National Value-Added and/or Sales Tax

CFA's BBA cannot fix our debt and spending problems because it doesn't address the *cause* of the problem: Congress spends where it has no constitutional authority to spend.

CFA's BBA pretends to place a limit on total spending by Congress. However, the limit on total spending is fictitious because the spending limit can be raised whenever Congress wishes and 26 States agree.

In addition, CFA's BBA permits Congress to impose a national sales tax or value-added tax on the American People in addition to the income tax!

II. Brief Section by Section Analysis of CFA's BBA

Section 1 of CFA's BBA says the federal government may not spend more than they take from us in taxes or ***add*** to the national debt.

Section 2 accepts debt as a permanent feature of our Country – the "*Authorized Debt.*" This is the maximum amount of debt the federal government may incur *at any given point in time.*

- *Initially*, when the Amendment is ratified, the "authorized debt" shall be 105% of the then existing national debt. So, if the national debt is $20 trillion when the Amendment is ratified, the authorized debt is 105% of $20 trillion or $21 trillion.

- After that *initial* addition to the national debt, the "authorized debt" may not be increased unless it is approved by State Legislatures as provided in Section 3.

Section 3 says whenever Congress wants, it may increase the national debt if 26 of the State Legislatures agree.

Section 4 says whenever the national debt exceeds 98% of "the debt limit set by Section 2," the President shall "impound" sufficient expenditures so that the national debt won't exceed the "authorized debt." And if the President doesn't do this, Congress may impeach him.

However:

- **No debt limit is set by Section 2!** The national debt can be increased *at any time* if Congress gets 26 State Legislatures to agree.

- Section 6 defines "impoundment" as "a proposal not to spend all or part of a sum of money appropriated by Congress." Who believes Congress will impeach the President for failing to "impound" *an appropriation made by Congress*?!

Section 5 says any new or increased "**general revenue tax**" must be approved by 2/3 of the members of both houses of Congress.

Now this is a monstrous trick to be played on the American People: Section 6 defines "general revenue tax" as "**any income tax, sales tax, or value-added tax levied by the government of the United States** excluding imports and duties**."**

When you read the first sentence of Section 5 with *the definition* of "general revenue tax**"** in place of "general revenue tax," you see that it says:

> **"No bill that provides for a new or increased income tax, sales tax, or value-added tax shall become law unless approved by a two-thirds roll call vote…"**

This permits Congress to impose a national sales tax or value-added tax ***in addition to the income tax***, if 2/3 of both houses agree!

Section 5 then says that "this requirement" [a 2/3 vote of each House] does not apply to a "new end user sales tax" which would ***replace the federal income tax.*** *<u>That</u>* tax need only be approved by a simple majority of the members of both houses. This makes most readers believe that the income tax would be replaced by a sales tax.

But the Amendment does not require Congress to introduce a "new end user sales tax" *to replace* the income tax. [Remember, *that* sales tax requires only a simple majority to get passed.]

Whereas it authorizes Congress to impose a sales tax or value-added tax *in addition to the income tax*! [*This* tax requires a 2/3 majority to get passed.]

Which option will Congress choose?

Please read **this article** to understand why CFA leaders are wrong in responding that our Constitution already authorizes a national sales or value-added tax.

Section 6 sets forth the definitions for the Amendment. As you see, you must always read the definitions and apply them to the text.

Section 7 says the Amendment is "self-enforcing." But no Constitution or amendment is "self-enforcing." There is only one way to enforce our Constitution: WE THE PEOPLE, who are "the natural guardians of the Constitution" (**Federalist No. 16**, next to last paragraph), enforce it by learning it and by *throwing out* politicians who ignore it. And we must *always* be on guard against those who seek to destroy our Constitution.

III. Our Constitution already provides for control of federal spending

Our Constitution already provides a mechanism for limiting federal spending: spending is limited by the "enumerated powers" listed in the Constitution.

It has been estimated that approximately **67 percent of expenditures approved by Congress violate the U.S. Constitution**.

If an object is on the list of powers delegated to Congress or the President, Congress may lawfully appropriate funds for it. But if it isn't listed, Congress may not lawfully spend money on it.

All federal and State officials take an oath to support the federal Constitution. When people in Congress appropriate funds for objects not listed in the Constitution; and when State officials accept federal funds for objects not listed, they violate their oath to support the Constitution.

Power over education, agriculture, labor relations, energy, police, etc., is not delegated to the federal government; those powers were reserved by the States or the People.

Congress spends on objects for which it has no constitutional authority such as bailouts of private businesses, welfare handouts, farming programs, education schemes, and grants paid to States to bribe them into implementing unconstitutional federal programs. It was the unconstitutional spending which gave us this crushing $19 Trillion debt.

Instead of amending the Constitution, we must systematically dismantle unconstitutional federal departments and agencies **and restore these functions to the States or the People**. We begin the shutdown by selecting for immediate closure those agencies which serve no useful purpose or cause actual harm such as the Departments of Energy, Education, Homeland Security, and the Environmental Protection Agency.

An orderly phase-out is required of those unconstitutional federal programs in which Citizens were forced to participate – such as Social Security and Medicare – so that the rug is not pulled out from American Citizens who became dependent.

And since our Constitution was written to delegate to the federal government only the few and defined powers enumerated in the Constitution, we won't have to change the Constitution to rein in federal spending. The Constitution isn't the problem.

IV. CFA's Compact cannot circumvent the provisions of Article V of the United States Constitution

CFA attempts to circumvent Article V of the Constitution by means of a "compact," which CFA claims can provide procedures for applying for an Article V convention; choose the convention chair; choose the delegates; specify duties of convention delegates; establish rules for the convention; limit the subject matter of the convention to *ratifying the Balanced Budget Amendment*; specify the mode of ratification, and more.

But CFA may not override Article V by means of a compact or anything else!

Article V provides that when State Legislatures want a convention, they must apply to *Congress* for Congress to "call" it. And despite what CFA claims, the Constitution authorizes **only Congress** to set up and organize the convention.

The Constitution was meant for ordinary citizens to understand, and it is quite clear. Article I, Section 8, last clause, says:

> *"The Congress shall have the Power…:* ***To make all Laws which shall be necessary and proper for carrying into Execution*** *the foregoing Powers, and* ***all other Powers vested by this Constitution in the Government of***

> ***the United States, or in any Department or Officer thereof***."[Boldface added] *(**Federalist No. 51** uses the word "department" to refer to the 3 branches of government: Congress, the Executive, and the Judiciary).*

Article V of the Constitution delegates to Congress the power to "call" a convention. The "necessary and proper" clause delegates to Congress the power to make **all** laws that are necessary and proper to carry out its power to "call" a convention. This would include laws pertaining to the time and place of the convention; determining the number and selection process for its delegates; apportionment of convention delegates among the states; how votes will be apportioned among the delegates; etc.

Furthermore, Article V provides that amendments will be proposed at the convention—**the Convention is the deliberative body**. Any State laws or Compact dictates which pretend to divest the convention of this deliberative function and convert it into a mere rubber stamp to approve amendments drafted by States, or agreed to by committees of States or "compacts" of States, would be void as contrary to the U.S. Constitution. Such is the plan CFA is proposing.

V. Congressional Research Service Report

The Congressional Research Service (CRS) **Report issued April 11, 2014** confirms that Congress most likely will claim authority over the power to organize and set up an Article V convention. Because of lack of precedent and so many unknowns, the CRS Report suggests on page 27 that they'll have to call a convention to see what sort of convention they'll get (general, limited, or runaway)!

VI. State Law cannot prevent a "Runaway" Convention

Those promoting an Article V convention assure us that delegates to a convention can be controlled by State laws. But that is not true. Delegates cannot even be controlled by federal laws!

It is not a matter of mere opinion that delegates to a convention have unlimited sovereign authority. They do! The second paragraph of the Declaration of Independence recognizes the sovereign right of a People to throw off their "Form of Government," and it was reinforced 11 years later in the preamble to our Constitution with "We the People..."

> *"To secure (our unalienable rights), Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive…it is the Right of the People to alter or abolish it, and to institute new Government…"*
>
> –Declaration of Independence, 1776, Paragraph 2.

The convention of 1787 was called by the Continental Congress "**for the sole and express purpose of revising the Articles of Confederation**." But the delegates ignored their instructions and wrote an entirely new Constitution. Furthermore, they changed the mode of ratification. Whereas Article XIII of The Articles of Confederation required **all** of the then 13 States **and** the Continental Congress to approve amendments before they became effective; the new Constitution provided at Article VII that it would require only 9 States for ratification. **There is *nothing* that can stop delegates to a convention today from doing the same thing if they propose a new Constitution.**

The only convention "for proposing amendments" is one called by Congress. And Congress has total power to organize and set it up. But once the delegates assemble, they are the sovereign representatives of the people and can do whatever they want. This includes proposing amendments on any subject or replacing the Constitution altogether and changing its mode of ratification. Please see **this article** for a scenario of how a convention called for CFA's BBA could quickly get out of control.

VII. Wise Voices Have Warned Against an Article V Convention

Wise voices have warned of the deadly perils of an Article V convention. Here are three:

James Madison, Father of our Constitution, said in his **November 2, 1788 letter to Turberville** that he "trembled" at the prospect of a second convention; and that if there were an Article V Convention:

> "…the most violent partizans," and "individuals of insidious views" would strive to be delegates and would have "a dangerous opportunity of sapping the very foundations of the fabric" of our Country.

Throughout **Federalist Paper No. 49**, Madison warns against an Article V convention to correct breaches of the federal Constitution. He said, among other things, that the legislators who caused the problem would get themselves seats at the convention and would be in a position to control the outcome of a convention.

Former US Supreme Court Justice Arthur Goldberg reminds us in his **Sept. 14, 1986 editorial in The Miami Herald** that at the convention of 1787, the delegates *ignored their instructions* from the Continental Congress and instead of proposing amendments to the Articles of Confederation, wrote a new Constitution; and **warns us that "…any attempt at limiting the agenda would almost certainly be unenforceable."**

Former US Supreme Court Chief Justice Warren Burger wrote in his **June 22, 1988 letter to Phyllis Schlafly**:

> "…there is no effective way to limit or muzzle the actions of a Constitutional Convention…"
>
> **"**After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda…"
>
> "…A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn…"

VIII. Conclusion

We oppose Compact for America's BBA because it would legalize spending which is now unconstitutional as outside the scope of the enumerated powers; it would do nothing to control federal spending; and it would authorize Congress to impose a national sales tax or value-added tax on top of the existing income tax!

Furthermore, Delegates to an Article V convention would have the inherent right to propose whatever changes to our Constitution they want, including abolishing our "Form of Government" and rewriting or replacing our Constitution, and changing the ratification process.

If there is an Article V convention, we run a grave risk of losing our Constitution and getting a new one imposed. Is that really what your State Legislature wants to apply for?

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