



Written by [Joe Wolverton, II, J.D.](#) on April 15, 2014

## George Will Promotes Plan to Grant President Legislative Powers

In an April 9 opinion piece published in the *Washington Post*, commentator George Will praises the Goldwater Institute's Compact for America and its component calling for an Article V constitutional convention.

Will points out a few of the proposal's "benefits," insisting that the balanced budget amendment (BBA) that it aims to enact "delivers immediate benefits to constituents." Unfortunately, Will's analysis of the Compact for America ignores several of its distinctly unconstitutional provisions.



First, before state legislatures vote for an Article V con-con proposal such as the Compact for America that could cause real and radical damage to our Constitution, they should first consider whether a balanced budget amendment is necessary and whether it would actually repair the damage already done by a Congress committed to ignoring the constitutional limits on its power.

The fact is that determined citizens and state legislators could rescue the United States from its financial peril without resorting to opening up the Constitution to tinkering by 38 or more state-appointed delegates, many of whom would be bought and paid for by special interests and corporations.

Imagine for a moment the brand of "conservative" delegates that might be chosen by state partisans to represent them at an Article V convention. It isn't unlikely that Arizona might choose John McCain, Jan Brewer, or Sandra Day O'Connor. New York might send Michael Bloomberg. South Carolina could appoint Lindsey Graham. Similar selections could be predicted in every state.

Next, there is no historical proof that a balanced budget amendment would drive Congress back to within its constitutional corral. Even the most conservative estimates indicate that about 80 percent of expenditures approved by Congress violate the U.S. Constitution. That fact wouldn't change by adding an amendment to the Constitution.

Whether these bills spend our national treasure on unconstitutional and undeclared foreign wars, billions sent overseas in the form of foreign aid, expanding the so-called entitlement programs, or redistributing wealth via corporate and individual welfare schemes, none of these outlays is authorized by the Constitution.

And don't forget, a committed, concerned, and constitutionally aware citizenry can balance our budget more quickly than any balanced budget amendment and without the danger of letting the wolves of special interests and their political puppets into the constitutional hen house.

Third, rather than forcing Congress to adhere to spending money in only those areas specifically permitted by the Constitution in Article I, the Compact for America's Balanced Budget Amendment specifically allows Congress to spend money on anything, no matter how unconstitutional, so long as the amount does not exceed the limits set in Section 2 of their BBA. If approved, the CFA's BBA would



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do nothing to break Congress of its unconstitutional spending habits, habits that have nearly ruined the economic might of this Republic.

In fact, under the CFA's budget-balancing scheme, Congress could continue spending on projects and programs not authorized by the Constitution.

Section 3 of the CFA's BBA explicitly authorizes an increase in the federal debt limit to 105 percent of the actual debt level on the effective date of this amendment. That hardly sounds like a balanced budget and is not something true conservatives should support as a remedy to a runaway federal government.

Fourth, beyond the initial five-percent increase in the national debt permitted by the CFA's BBA, Congress could increase the national debt under the BBA at any time if it could get the approval of a simple majority of the states. Given that many states have their own debt problems and are dependent on the federal government for large portions of their budgets, finding 26 states to approve an increase in the national debt might be much easier than the CFA's proponents think.

Perhaps most perplexing of all the fiscal failures of the CFA's Balanced Budget Amendment is the fact that although it does require a two-thirds vote in both Houses of Congress to raise taxes, it does not prohibit Congress from doing so.

Higher taxes, loopholes for increased federal spending, and no requirement that expenditures conform to constitutional limits on congressional power are a powerful one-two-three combination that could K.O. the American middle class, all in the name of balancing the budget.

Next, in his op-ed, George Will mentions the multi-state compact that is the keystone of the Compact for America. Will states that despite Article I, Section 10's mandate that "No state shall, without the consent of Congress ... enter into any agreement or compact with another state," the courts have held "that states do not need congressional consent for compacts that exercise state power without displacing federal power."

For the sake of argument, we'll assume that Will's assessment of the constitutionality of interstate compacts is correct. That said, there are still significant constitutional contradictions included in the Compact for America.

That such interstate agreements exist and function is true. In many instances, interstate compacts are the grease that allows the gears of federalism to drive the engine of the various commercial interests of the several states.

How, then, CFA adherents would ask, is the Constitution threatened by passing another multi-state compact?

The primary difference between the agreements listed by CFA and the one they propose as a vehicle for the passage of a balanced budget amendment is that the former do not impact the Constitution. None of the 208 compacts CFA lists changes one letter of the existing Constitution.

They deal primarily with matters relating to the behavior of the states that are parties to the agreements, leaving the Constitution — including its checks, balances, and separation of powers — unchanged. The same can't be said of the interstate compact proposed by the Compact for America Initiative.

If George Will wants to retain his conservative bona fides, perhaps he should read the Compact for America a little more closely and take note of the substantial alterations it would make to the separation of powers.



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The fact is that in several sections, the balanced budget amendment proposed by the CFA endows Congress and the president with new powers not granted to them in the Constitution.

Consider, for example, this section of the Compact for America:

Whenever the outstanding debt exceeds 98 percent of the debt limit set ... 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. 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. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor.

This part of the CFA's BBA would grant the president sweeping unconstitutional authority over the budget-making process. Giving the president the right to "designate" any spending request is tantamount to giving him the power to rewrite the law; such an act would be an obvious violation of Articles I and II of the Constitution.

Article I of our current Constitution explicitly places "all legislative power" in Congress, but if the Compact for America were adopted, the president would be a sort of super legislator with expansive power to pick and choose which programs to fund and which to kill.

Finally, Section 3 of the BBA offered by the Compact for America allows Congress to increase public debt if a simple majority of state legislatures sign off on the measure. This is part of the CFA's decentralization strategy: Taking power from Washington and giving to the states. That is a proposition that appeals to all constitutionalists, but it brings up a big question.

Why is such a scheme necessary when states already possess the power to prevent federal excess? By ratifying the Constitution, states did not cede their sovereignty to the federal government. In fact, in order to save our Constitution and our Republic, states are obligated to assert themselves and to reject any act of the federal government that exceeds the "few and defined" powers granted to it by the states in the Constitution.

George Will would better serve his readers if he would encourage enforcing the Constitution and demanding that states stand up to their would-be federal overlords. Such an effort would accomplish the same goal as the CFA's balanced budget amendment without putting the Constitution so close to the shredder that an Article V convention could become.

All Americans and state legislators who stand united in their resistance to unconstitutional federal spending and the ever-increasing tax burden that supports it, which has bankrupted our nation, must make a closer inspection of the Compact for American than George Will has apparently done.

Furthermore, they should unite in their opposition to the Compact for America Initiative. This includes refusing to support passage by the state legislatures of the interstate compact and the balanced budget amendment it proposes.

The states and people must also forcefully reject the Article V constitutional convention called for by the CFA, a convention that would be beyond the control of the people or their representatives, one that could result in the proposal by the assembled delegates of potentially fatal and irreversible alterations to our Constitution that could very well end up being ratified.



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