



Written by [Thomas R. Eddlem](#) on April 1, 2011

“Government Shutdown Prevention Act” Provokes Constitutional Lecture by Barney Frank

Majority Leader Eric Cantor, the second-ranking Republican in the U.S. House, [noted on his website](#) that "On Friday, we will bring to the floor the Government Shutdown Prevention Act, that will say to the American people, the Senate has to act prior to the expiration of the CR [continuing resolution]. If it does not act, H.R. 1 becomes the law of the land."

This is no April Fools Day Joke.

Of course, under the U.S. Constitution, bills must be passed by both the House and the Senate (and signed by the President) to become law. So how does a bill become law if only the House passes it? Barney Frank [called](#) the proposal one from "cloud cuckoo-land" on MSNBC's *The Last Word with Laurence O'Donnell* March 30, [stressing](#) that Cantor is essentially saying: "We're passing a bill that says that if the Senate doesn't pass the bill, we're going to act as if the Senate passed the bill. It makes literally no sense. A bill that says the Senate doesn't have to pass the bill would require the Senate to pass it."



The bill itself, [H.R. 1255](#), notes: "If the House has not received a message from the Senate before April 6, 2011, stating that it has passed a measure providing for the appropriations for the departments and agencies of the Government for the remainder of fiscal year 2011, the provisions of H.R. 1, as passed by the House on February 19, 2011, are hereby enacted into law."

The chances of the Government Shutdown Prevention Act passing the Senate is zero. But even if it did, the bill would be unconstitutional. Neither Congress — nor any part of it — can delegate away its constitutional authority to spend money from the U.S. Treasury. This is a concept even the U.S. Supreme Court recognized in the case of [Clinton v. City of New York](#) back in 1998. Perhaps not surprisingly, the bill pushed by the Republican leadership has no constitutional authority statement as required by the rules of the House enacted by the Republican leadership in January of this year.

"The misunderstanding of the Constitution by these people is profound and it's ironic. They call themselves constitutionalists. They think they're in England," Barney Frank [told](#) Laurence O'Donnell. "In England, on one day they elect the House of Commons. On the next day, whichever group has a majority in the House of Commons has total control. They have no checks and balances. They have a



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unitary government. The Founders of the American Constitution specifically rejected that notion. Under the American Constitution at any given time it is people who have been elected in three elections over a six year period who have the power to govern. You have Senators who have been elected in 2006, a President in 2008 and then the Congress in 2010. The Tea Party won a big victory — I regret it, but they did and I acknowledge it — back in 2010. But that's the British system that says whoever won the last election has total power. Under the American system, it takes at least two and sometimes three elections to have that kind of total control. And that was a conscious choice — as anyone who has read *The Federalist Papers* knows — of the Founding Fathers."

Barney Frank's history is as unarguably true as it is incomplete, though from his own perspective it is perhaps complete. No one body of the federal government can govern without the consent of the other bodies, but it's entirely possible for the House of Representatives alone to stop deficit spending. [Article I, Section 9 of the U.S. Constitution](#) prohibits spending without the affirmative support of both houses of Congress: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." That means that if the House refuses to authorize deficit spending, the deficit would end within the year, regardless of what the Senate and President do. The problem of needing both houses of Congress is only necessary when one wants to pass more spending, as Barney Frank undoubtedly does. If a party is interested in cutting government spending, then control of one house of Congress is unquestionably enough to guarantee those spending cuts. (However, tax rates could not be cut. The ["Bush tax cuts,"](#) most of which would expire at the end of 2012 under current law, could not be extended by the House alone.)

The political question for the House Republicans is this: If they pass appropriations bills with lower spending levels and the Senate refuses to go along (or the Senate does go along but the President vetoes the bills), what then? That would cause a partial government shutdown, but would the Republicans cave, [as they did in 1995 under the leadership of Newt Gingrich](#)? Back in 1995, President Clinton vetoed the smaller spending bills the House wanted, partially shutting down the federal government, while demanding that the House pass bigger spending bills. The House could have merely re-passed bills at the same reduced spending levels and portrayed Clinton as a spoiled brat holding his breath during a tantrum, and waited him out. After all, the Democratic President was the one who loved government spending the most; the shutdown had reduced government spending substantially. But that's not how it happened. Though the House held all the cards constitutionally, then-House Speaker Newt Gingrich folded to Clinton's obvious bluff and passed all the spending Clinton demanded.

Would a shutdown scenario end differently in 2011? House Financial Services Committee Chairman Spencer Bachus told the Fox Business Network back in November that House Republicans would not blink in a shutdown scenario this time. "I would think when we send the spending bills to the President he will veto them, and then the hard vote will be when he sends them back and we will be faced with another situation where he will probably try to force us to shut government down and we are going to have to be brave this time," the Alabama Republican [said](#). "We wouldn't be shutting it down, we would be cutting out the excessive spending. And if the President wanted to shut the government down, we would not shut the government down, but we wouldn't allow him to force us to spend taxpayer dollars that don't need to be spent."

But Bachus is not in the House leadership. Based on their bizarre actions in the past few days, it doesn't appear the House GOP leadership has learned anything about their overwhelming constitutional control of spending during the 16 years since the last government shutdown.



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Photo: Rep. Barney Frank



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