



## Is the Debt Ceiling Unconstitutional?

He even has a speech for the President [ready to go](#):

My fellow Americans, I am speaking to you tonight to let you know the steps I have taken to ensure that America lives up to its obligations during the current political crisis....

Unfortunately, Congress has not passed an increase in the statutory debt limit [and] members of the House majority have informed me that they will not agree to an increase in the debt limit without imposing restrictions on the government budget....

For this reason, I have ordered the Secretary of the Treasury [to] begin issuing binding debt instruments on the world market sufficient to cover all the current obligations of the United States government....

[The authority for this action] is contained in Section Four of the Fourteenth Amendment which directs, in no uncertain terms, that "the validity of the public debt of the United States, authorized by law ... shall not be questioned."

This provision makes clear that both the monies our nation owes to bondholders, and the sums promised in legislation to those receiving pensions set by law from the federal government, must be paid regardless of the political whims of the current congressional majority....

Section Four does not say that the national debt "shall be paid sooner or later," or "shall be stretched out [for] as long as possible," or "shall be paid in some areas but not in others." It also does not say "shall not be questioned unless Congress really wants to."

This action requires me to authorize borrowing that is not in conformity with the debt-limit statute. *But no congressional statute can command or permit our government to violate the Constitution....*

Good night. And God bless America.

Of course, the speech is fiction, but the reasoning and proofs being considered not only by the Obama administration but also by an increasing number of members of Congress, is not. Senator Chris Coons (D-Del.), [in an interview](#) with *Huffington Post* on Tuesday, said, "This is an issue that's been raised in some private debates between senators as to whether in fact we can default, or whether that provision of the Constitution can be held up as preventing default. I don't think, as of a couple of weeks ago, when this was first raised, it was seen as a pressing option. But I'll tell you that it's going to get a pretty strong second look as a way of saying, 'Is there some way to save us from ourselves?'"

If this strategy is adopted, and President Obama decides to ignore the debt limitation statute, he could





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put the Tea Party into the uncomfortable position of appearing to oppose the Constitution that they highly revere. A former Reagan administration official, [Bruce Bartlett](#), claims that this reading of the 14th Amendment gives the President the edge in the debate. [He wrote](#), "It's worth remembering that the debt limit is statutory law, which is trumped by the Constitution.... This could easily justify this sort of extraordinary presidential action to avoid default."

People smarter than I am tell me that the Treasury has an almost infinite ability to avoid a debt crisis. I hope they are right. But I am hypothesizing a situation in which the Treasury reaches the end of its rope and a day comes when it needs \$X billion to pay interest and it has less than \$X billion in cash. Under those circumstances, when default is the only possible alternative, I believe that the president and the Treasury secretary would be justified in taking extraordinary action to prevent it, even if it means violating the debt limit.

There is a pertinent Supreme Court case which directly addresses the issue, [Perry v. United States](#), decided in 1935. Chief Justice Charles Evans Hughes, writing for the majority, explained:

The Fourteenth Amendment, in its fourth section, explicitly declares: "The validity of the public debt of the United States, authorized by law ... shall not be questioned." While this provision was undoubtedly inspired by the desire to put beyond question the obligations of the government issued during the Civil War, its language indicates a broader connotation. We regard it as confirmatory of a fundamental principle which applies as well to the government bonds in question, *and to others duly authorized by the Congress....* [Emphasis added.]

To say that the Congress may withdraw or ignore that pledge is to assume that the Constitution contemplates a vain promise; a pledge having no other sanction than the pleasure and convenience of the pledger [Congress].

If the President decides to use this reading of the 14th Amendment to do an end run around the desires of millions of Americans who see the danger of continued government spending, he runs an increasing risk of being a one-term President. He also runs the nearly certain risk of a legal challenge, which could also turn out badly for the President.

In the larger perspective, all this potential political maneuvering continues to avoid the main issue: government spending beyond its means and constitutional prerogatives. The only way to cut government spending is to cut government spending. Surely there can be found enough legislators who understand that, and will concentrate not on "end-runs" but on the task of cutting government spending. Then all this palaver and persiflage about the debt-ceiling will become happily irrelevant.



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