

Statement of Former Senator Sam J. Ervin, Jr. of North Carolina
Concerning a Constitutional Convention Called at the Instance of
States to Consider a Balanced Federal Budget Amendment

I write this statement simply because I love my country and believe that its day as a viable economic entity is doomed unless the Constitution is amended to require Congress to balance the federal budget. I love my country so much I cannot keep silent while opponents of a balanced budget conjure up a non-existent constitutional ghost to defeat the efforts of those who believe in fiscal sanity.

In writing this statement, I will ignore Mark Twain's advice: "The truth is precious; use it sparingly." In telling the truth about Congress, I omit from my criticism the many wise congressmen who have been advocating the adoption by Congress of a balanced budget. I will number the specific points I wish to make in the paragraphs set forth below.

1. The fiscal folly of Congress itself is responsible for the demand of many people throughout the nation for the utilization of the alternative method of amending the Constitution -- that is, the calling of a constitutional convention to submit an amendment. This provision was inserted in the Constitution to enable the states and their people to make amendments they desired when Congress failed to perform its constitutional duty, and in addition failed to submit to them for ratification or rejection a constitutional amendment they deemed essential. During 43 of the last 50 years, Congress has refused to balance the budget. I think the reason for this is simple. Members of Congress have found that it is possible for them to use the taxpayers' taxes and the taxpayers' credit to buy the votes of all the groups of people who want to get funds out of the empty federal treasury for themselves and the causes they support, regardless of the effect of such action on the financial stability of the country. As a consequence, our national debt has increased to over

one trillion, four hundred billion dollars, the annual interest charge on the national debt has risen to approximately 128 billion dollars, and interest rates have ascended toward the skies. These things would never have happened if Congress had exercised its power to balance the budget. It could have done this in either one of two ways. First, it could have increased taxes sufficient to pay the appropriations it was making, or second, it could have reduced its appropriations to the amount of revenues available to it under the existing tax system. It didn't dare to do the first of these things because it feared there might be a taxpayers' revolt and some members of Congress who favor reckless spending might be thrown out of office. It didn't dare to do the second of these things because some of its members would have lost the votes of those groups who wanted access to the empty treasury for some programs which are good and some which are bad, and which are for non-governmental purposes. Instead of acting with courage and intelligence, Congress has been scattering the patrimony of the American people at home and abroad like a drunken sailor for approximately half a century.

2. Congress could avoid the necessity of calling a convention at the instance of two-thirds of the states if it would manifest either the intelligence and the courage to balance its budget itself, or to submit to the states for ratification or rejection an amendment requiring a balanced budget. Congress is apparently unwilling to do either of these things. It is rapidly destroying the United States as a viable economic entity and thereby depriving us of the financial ability to even fight a necessary war for survival. It is ruining our industries because it is taking the confiscating taxes and robbing the future by deficit financing of the funds necessary to modernize the machinery in our industrial plants, and make them once again the production marvels of the world.

3. It is futile to expect Congress to act with courage and intelligence in fiscal matters unless it is compelled to do so by the people of the United States. For many years members of the Senate like Senator Harry F. Byrd of Virginia, Senator Styles Bridges of New Hampshire, and myself tried to persuade Congress to submit to the states an amendment requiring a balanced budget. My amendment provided, in substance, that Congress would have to balance the budget each year except in times of war declared by Congress or in times of great depressions like that of the early 1930's. My amendment took care of the second of these propositions by providing that Congress, by a record two-thirds vote of both Houses of Congress, could suspend the requirement for a balanced budget in times of great economic necessity. Congress ignored our attempts to persuade it to submit a balanced budget and continued on its reckless course. Personally I believe Congress will submit a balanced budget if -- and only if -- enough of the states call for a convention to submit one.

4. The claim of some opponents of the demand for the calling of a constitutional convention at the instances of the states that the country would be endangered by a run-away convention is totally without foundation. Congress could avoid any danger of such event by submitting a proposed amendment for a balanced

budget itself. It could also do so by passing a bill regulating such a convention which I introduced and persuaded the Senate to pass twice virtually without opposition. My bill provided complete machinery for the operation of a convention called at the instance of two-thirds of the states. It provided that each state would have the number of delegates equal to its Senators and Congressmen, and that the two delegates allotted to each state because of its two Senators would be elected by the state at large, and the delegate from each district would be elected by the district. It provided expressly that no convention could call for an amendment not sought in the resolutions of two-thirds of the states asking for the convention, and thus made it impossible to have what is called a run-away convention. In the opinion of two great constitutional scholars who cooperated with me in drafting the bill, Phillip B. Kurland of the University of Chicago Law School, and the late Alexander Bickel of the Yale Law School, my bill was clearly constitutional under the provisions of section 8 of Article I of the Constitution which expressly empowers Congress "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." The House simply would not take the bill because it did not want its members handicapped by requiring them to be fiscally responsible.

In my judgment, there is no danger of a run-away convention. It requires a tremendous effort on the part of the states to call for a convention. This effort can only be generated when at least two-thirds of the states feel the necessity of making a specific amendment to the Constitution. No effort on the part of two-thirds of the states to call for a convention for the submission of a multitude of amendments could possibly have the momentum necessary to generate the calling of a convention. Furthermore, it is inconceivable that members of the convention called at the instance of the states would ever attempt to rewrite the Constitution. If they were to do so, I believe the federal courts would hold that it is implied in the Constitution that at least two-thirds of the states must ask for any amendment which is submitted. This, of course, is merely a surmise. Nevertheless, it is plain that there is no danger of a run-away convention trying to rewrite the entire Constitution. This is true simply because nothing the convention does can ever have any effect unless the amendments it submits are ratified by three-fourths of the states. Any proposal which is not ratified by three-fourths of the states after being submitted by the convention will never have any force or effect. Surely, there is no basis for anyone to object to three-fourths of the states and their people amending the Constitution. After all, the Constitution is the property of the people and not the toy of the members of Congress. Those who use the argument of a run-away convention to persuade state legislators not to call for a constitutional convention to submit a balanced budget amendment are simply conjuring up a non-existent ghost. After all, those who want to use the taxpayers' resources to buy the votes of those who want to rob the federal treasury are like all other tyrants. They never surrender their power to practice tyranny fiscally or otherwise voluntarily. It has to be taken away from them by the people.

It is time for Congress to put an end to deficit financing which robs the past of its savings, the present of its financial power, and the future of its hopes as well as of its unearned income. As I have indicated, the reckless fiscal conduct of Congress for many, many years has actually imperiled the capacity of our country to finance a defensive war if such a war should come.

Just before the French Revolution, the French Court recognized that France was sitting on a volcano which was in danger of erupting at any moment and destroying the old France. It is said that at formal banquets the nobility of France used to drink to this toast: "After me, the deluge", indicating that they didn't care what happened after their day was over.

Those who oppose a balanced budget and the dangers which imperil the future of our nation may not be drinking exactly the same toast. But their conduct indicates that as long as the causes they like can get access to an empty treasury, they don't care what happens to the future of our nation or its posterity.

With all good wishes, I am

Sincerely yours,

Sam J. Ervin, Jr.
Former United States Senator

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