

48. NATIONAL DEBT AND THE CONSTITUTION

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For Immediate Release

Former Senator Schmitt Says Congress's Select Committee for Debt Reduction Is a Bad Idea and Questions its Constitutionality

Among many bad ideas out of Washington over the last century, one of the worst may be the twelve-member congressional Joint Select Committee on Debt Reduction, created by the so-called "Budget Control Act of 2011". More critically, this Committee's existence as a source of federal legislation is unconstitutional.

This "Super Committee", as the media refers to it, has been empowered by the Act to submit a bill to both Houses of Congress for an up or down vote with a goal of reducing "the deficit by at least \$1.5 trillion over the period of fiscal years 2012 to 2021." It should be noted that this non-mandatory "goal" makes up less than three quarters of the approved \$2.1 trillion increase in the deficit in just the first two years of that period. It does nothing to actually stop the deficit's growth or account for future hyperinflation. The word "Control" in the Act becomes another word for continued irresponsibility.

The empowerment of a Select Committee to produce a bill that is required by law to be voted on by Congress is a very bad idea for many reasons. For example, if the Select Committee agrees to any debt reduction plan, liberal members will insure that

there will be higher taxes and less income for Americans to create jobs and raise their standards of living. Additionally, if the Committee submits a Bill providing for any direct or indirect increase in taxes, and thereby requiring a vote of the Senate, such an action would violate Article I, Section 7, Clause 1 of the Constitution. That Clause states: "All Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills." The Budget Control Act of 2011 even attempts to remove the Senate's power to amend a revenue measure.

Further, if the Committee cannot agree on a debt reduction plan, automatic cuts outlined in other provisions of the Budget Control Act will occur. Most of these cuts will undermine national security at a time when radical Islam, an aggressive national socialist regime in China, and an invasion across our southern border constitute growing threats to liberty. Has Congress forgotten the constitutional mandate for the Federal Government to "provide for the common defence"? Unfortunately, the Act's severability provision means that these defense cuts will take effect even if other sections are declared unconstitutional.

Constitutionality

Just as critical to American liberty, by its mandate for time-certain action by the Congress on a Select Committee Bill that cannot be amended, the Budget Control Act effectively vests unconstitutional legislative powers in the Select Committee. This real legislative power is not negated by the facts that: (1) the Committee might not agree to a bill, and (2) either the House or Senate can vote down any Committee's Bill submitted. Legislation is legislation. Article I, Section 1, Clause 1 states: "All Legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." Legislative powers rest solely with Congress and not some rump select committee whatever mandate Congress and the President may have given it. The Budget Control Act establishes an unconstitutional third House of Congress, however limited a life it has been given— a life that could be extended and enhanced by the Congress unless the Committee itself is ruled unconstitutional by the Courts.

The Act intends that the Select Committee's Bill will not, repeat *not*, be subject to amendment by either House of Congress. The Bill's consideration prior to an up or down vote before December 23 of 2011 is bounded by mandatory rules intended to prevent modification. Those rules, if adhered to, would prohibit serious debate or any amendment by the people's elected representatives much less informed analysis by the people themselves. The Constitution, however, prohibits legislative override of the rules of the House and Senate by stating in Article I, Section 5, Clause 2 that "Each House may determine the Rules of its Proceedings...". If the House, for example, does not wish to abide by the negation of its Rules by Title IV, Section 402 of this Budg-

et Control Act, it is constitutionally empowered to consider the Select Committee's recommendations by rules of its own choosing.

Strangely, the Budget Control Act contradicts its own attempt in Section 402 to impose new mandatory rules (in which the word "shall" is used, repeatedly) by stating in Section 401 that "Any change to the Rules of the House of Representatives or the Standing Rules of the Senate included in the [Select Committee's] report or legislative language shall be considered to be merely advisory." How can "legislative language" be "merely advisory" when it cannot be amended? Section 404 furthers this contradiction by inclusion of the Act's "recognition of the constitutional right of either House to change such rules...at any time, in the same manner, and to the same extent as in the case of any other rule of such House." So, can the House make a rule to allow amendments to the Select Committee's Bill or not? Which Sections of the Act will prevail when challenged within the Congress or the Courts?

What a mess! The Elections of 2012 cannot come too soon. The Federal Government's spending of Americans' incomes and its tyrannical control of American's lives must stop!

Plan of Action

What can Americans do now that the Budget Control Act has been signed into law?

First of all, Members of Congress, for whom the Act would eliminate their ability to represent constituents, should challenge the constitutionality of the Section 402 overrides of House and Senate Rules. This challenge should be filed as soon as possible and

an immediate injunction sought. These Members also should be prepared to challenge the constitutionality of any tax increases included in legislation submitted by the Select Committee.

Second, the six Republican members of the Select Committee should insist that the Committee's proposed legislation be the House's previously passed "Cut, Cap and Balance" Bill.

Third, the House and Senate should exercise their Article 1, Section 5 constitutional power to debate and amend any proposed Select Committee legislation and not be held to the arbitrary deadlines of the Budget Control Act.

Fourth, the House should pass its previously passed "Cut, Cap and Balance" Bill as an "amendment in the form of a substitute" for the entire Select Committee proposed Bill if that has not previously been accomplished within the Committee. This Amendment should include any necessary revisions of the drastic cuts in national security spending contained in the Budget Control Act.

Fifth, the House should immediately pass legislation that includes real reform of and major reductions in the future growth of all entitlements. Particular attention should be paid to Social Security and Medicare for persons under 50 years of age, subsidized housing and business activity, and federally funded health care other than that for veterans. All federal spending, not just national security, must be part of fiscal reform.

Sixth, the Conservatives in the House and Senate, with the grassroots aid of the Tea Party, immediately should begin a campaign to prevent future increases in the debt limit. A request to once again increase the debt limit probably will come early in 2013 if not sooner. Make stopping spending increases and rejection of new debt the issues of the 2012 election campaign. Time is not on our side.

As included in the Cut, Cap and Balance Bill, the real long-term solution to the debt crisis lies in a constitutional amendment requiring annual balanced budgets with protections against increased taxation except in true national emergencies. Every state government other than Vermont has such a constitutional provision for good reason. A Select or "Super" Committee that can override the Rules of Congress creates a very dangerous precedent, hinting at the way the Politburo ruled the legislature of the former Soviet Union.

Let's not just sit back and take the losses that came from the so-called "compromise" on raising the federal debt limit. Stay engaged and on offense in the battle to save liberty!

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