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**Statement of  
Craig Jennings, Director of Federal Fiscal Policy  
OMB Watch**

**House Committee on the Judiciary  
Subcommittee on the Constitution  
On**

**Whether the Constitution Should be Amended to Address the Federal Deficit?**

**May 18, 2011**

Chairman Franks, Ranking Member Nadler, members of the Committee:

On behalf of OMB Watch, an independent, nonpartisan watchdog organization, I respectfully submit this written testimony for the record of the May 13, 2011, hearing, "Whether the Constitution Should be Amended to Address the Federal Deficit?"

OMB Watch was founded in 1983 and has spent more than twenty-five years advocating for government accountability, transparency and access to government information, and citizen participation in governmental processes. OMB Watch works to ensure sound and equitable budgetary processes and policies, and this hearing speaks directly to this issue.

Enacting a balanced budget amendment (BBA) would not only severely restrict a fundamental duty of Congress to maintain control of the nation's finances, but it would hinder the government's capacity to combat economic downturns; convert significant amounts of federal spending into special interest tax breaks; inject the judiciary into the budget making process; and present myriad unintended consequences.

A strong majority of economists believe that the government plays an important role in moderating the ups and downs of the business cycle, primarily through increasing aggregate demand; that is, putting enough purchasing power into the economy to get businesses to hire workers to meet the new demand. Federal spending also plays another key role: it helps cushion the blow of a faltering economy through "automatic stabilizers." Automatic stabilizers are features of the federal budget that are designed to automatically adjust in real time to negative economic shocks. Examples include programs like unemployment insurance and food stamps, which do not have set enrollment levels and thus see higher usage when the economy dips. Similarly, various tax provisions, such as the Earned Income Tax Credit, function in the same countercyclical way, but through the tax code.

Automatic stabilizers not only translate into benefits for those hardest hit by recessions, they also have an effect on the greater economy. Thanks to an economic phenomenon known as the multiplier effect, each dollar spent on these programs, either through lower taxes or more

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benefits, rebounds throughout the nation's economy, greatly increasing the dollar's impact. One study found that the automatic stabilizers in the tax code "offset perhaps as much as eight percent of initial shocks to GDP [Gross Domestic Product]."<sup>1</sup>

However, this spending, which Congress does not specifically offset, automatically increases the deficit. While automatic stabilizers adjust as the economy starts faltering, it would be difficult for legislators to act as fast if a balanced budget amendment required lower spending or higher taxes to offset the stabilizers. More importantly, though, offsetting the cost of the automatic stabilizers defeats their whole purpose: they pump money into the economy just when it needs it. By raising taxes or cutting spending, the government would be giving out money with one hand while taking it back with the other, reducing the stabilizers' effectiveness.

Many of the BBAs currently before Congress come with other provisions that would hamper the federal government's operations. The most drastic of the proposals is House Joint Resolution 1, which, in addition to requiring a balanced budget every year, would also set a limit on spending levels, cap the debt ceiling, and require a super-majority vote for increasing revenues. None of these provisions are necessary for balancing the budget, but they would make it difficult for the government to react to changing fiscal situations. In short, a BBA would trade fiscal responsibility for a one-size-fits-all approach to a constantly changing economy.

A BBA with super-majority approval required to increase federal outlays would also encourage lawmakers to build more deductions and special-interest loopholes into an already complex tax code. With new spending requiring super-majorities under a BBA, Congress would likely turn to tax expenditures, as such reductions in revenue would require only simple majority votes for passage. However, spending through tax breaks is significantly harder to track than direct outlays and would hamper spending transparency and accountability.

The BBA proposals under consideration are silent in many critical aspects, raising a host of questions about enforcement and other issues as simple as defining what constitutes a "balanced" budget. A BBA would have to rely on estimates and economic forecasts to set revenue and spending limits, yet none of the proposed amendments stipulate a referee that determines if a budget is in balance. Politicians could take advantage of this and create several versions of estimates, each suiting their own political agenda. Regardless, even the current budget referee, the Congressional Budget Office (CBO), is consistently off by hundreds of billions of dollars in its projections, calling into question whether a proposed budget is "balanced."

BBAs face other practical problems, as well. First, it is difficult to predict revenue and outlays accurately for the coming fiscal year, again thanks to budget items like automatic stabilizers that rise and fall with economic fortunes. Looking at the federal budget estimates from 1983 to 2005, the Tax Policy Center noted that "the average absolute error in the five-year revenue projection of the Congressional Budget Office (CBO) caused by changes in the economic and technical assumptions was 1.6 percent of GDP,"<sup>2</sup> which would be \$235 billion at the 2010 level of GDP. With errors of this magnitude (about equal to the combined

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<sup>1</sup> "The Significance of Federal Taxes as Automatic Stabilizers," Alan J. Auerbach, April, 2000, <http://www.econ.berkeley.edu/~auerbach/ftp/jpe.pdf>.

<sup>2</sup> "Taxes and the Budget: How accurate are short-run and long-run budget scenarios?," Tax Policy Center, <http://www.taxpolicycenter.org/briefing-book/background/taxes-budget/accuracy.cfm>.

budgets of the departments of Education, Energy, Homeland Security, Interior, Justice, and State in FY 2010.), Congress could unintentionally violate the amendment after the fact, such as when a year's unexpectedly low revenues do not cover unforeseen costs.

Furthermore, without specific language on enforcing the substance of the amendment, the BBA would likely create a quagmire of constitutional ambiguity. If Congress ignores the amendment, it would likely be up to the courts to enforce it, markedly increasing the courts' role in the budget process. However, It isn't clear if anyone has standing to sue the government to enforce a BBA, as no one is harmed, while constitutional challenges to bills would take years, tying up the judicial system. Nor is it clear that the judiciary has the authority or the desire to override Congress on the political question of federal spending.

Another potential problem with a BBA is that it would have many unintended consequences. Many seemingly non-budget-related bills may be subject to requirements set out by a BBA, frustrating areas of lawmaking outside of budget making. Testifying before Congress in 1995, Assistant Attorney General Walter Dellinger pointed out that any bill that improved tax enforcement or authorized fines or forfeitures could be considered revenue raisers and would fall under a BBA's super-majority requirement.<sup>3</sup> Because a BBA cannot possibly take into account these unforeseen situations, hundreds of bills a year, dealing with everything from regulations to National Parks, might fall under the amendment or end up in court.

Accordingly, OMB Watch strongly opposes a constitutional amendment to balance the federal budget.

*For documents and additional commentary, see <http://www.ombwatch.org/BBA>.*

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<sup>3</sup> "Statement Before the Joint Economic Committee, United States Congress," Walter Dellinger, Jan. 23, 1995, <http://www.justice.gov/olc/jtecon.95.8.htm>