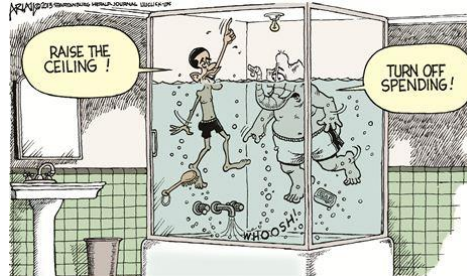
 **THE 14th AMENDMENT,
SECTION 4
- THE DEBT CEILING VS.
THE BUDGET**

Stephen L. Bakke  January 22, 2013



Our Founders set up a system of checks, balances and deliberation to make sure the process was thorough – and in situations like changing the dynamics of our economic system, even excruciatingly so. The Founders intended for it to be difficult to get big changes done. – Stephan Bakkovich, obscure, but very wise purveyor of opinions on just about anything.



The issues of budgets, deficits, and the debt ceiling are now intertwined like a messy, tangled ball of twine. Since we will be hearing a lot about this in the coming weeks, I decided to learn a little bit more about an issue introduced by Nancy (the) Pelosi and other democrats when they implored Obama to use the process of issuing an executive order to unilaterally raise the debt limit. It is their contention that the debt limit is unconstitutional on the basis of Amendment 14, Section 4 of the U.S. Constitution. First a look at what that says:

United States Constitution, Amendment 14, Section 4. *The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.*

This was adopted in 1868 as one of the “Reconstruction Amendments” dealing with post Civil War issues. Its immediate intention was to reaffirm the obligation (by the entire United States) to pay all U.S. obligations incurred by the Union in defeating the confederacy. I should add that in 1935 the Supreme Court supported the interpretation that this amendment applied broadly to all debt incurred by the U.S., not just limited to the Civil War obligations.

More relevant to the current dilemma are the following statements. First, the “Pelosi argument” is that the Republican desire to tie raising the debt ceiling to debt reduction measures invalidates the obligations under the section above. Second, and closely related, is Timothy (the tax evader) Geithner’s contention that the very existence of the debt ceiling is arguably unconstitutional, and therefore void, because it interferes with the duty of the government to pay interest on outstanding

bonds and to make payments owed to Social Security beneficiaries. To his credit, Obama has never asserted the position of Nan or Tim.

The President Hasn't Been Consistent on the Debt Ceiling

First from 2006, then 2012 – get ready for a major **WIPLASH**:

The fact that we're here today to debate raising America's debt limit is a sign of leadership failure. Leadership means 'The buck stops here.' Instead, Washington is shifting the burden of bad choices today onto the backs of our children and grandchildren. America has a debt problem and a failure of leadership. Americans deserve better. I therefore intend to oppose the effort to increase America's debt limit The problem is that the way Bush has done it over the last eight years is to take out a credit card from the Bank of China in the name of our children, driving up our national debt from \$5 trillion for the first 42 presidents — #43 added \$4 trillion by his lonesome, so that we now have over \$9 trillion of debt that we are going to have to pay back — \$30,000 for every man, woman and child. That's irresponsible. It's unpatriotic – Senator Barack Obama, 2006

What I will not do is to have that negotiation with a gun at the head of the American people They can act responsibly, and pay America's bills or they can act irresponsibly, and put America through another economic crisis, but they will not collect a ransom in exchange for not crashing the American economy We must raise the debt ceiling, it's our responsibility – President Barack Obama, 2013



OUCH!!

Budget, Deficit, Debt Ceiling – What's the Connection?

My first conclusion is easy to arrive at: The Obama administration is NOT focused on cost cutting, and budget balancing is NOT a priority! If Obama is to achieve his transformational vision, he only has four years remaining, and his legacy is important to him. Advancing his vision, and budget discipline, are most certainly competing forces. So, his vision takes priority, while he plans to give lip service only to really making “tough choices.” Obama’s inauguration address on Monday gave absolute proof of my conclusion – entitlements will be left virtually untouched if it’s left up to him.

It is to Obama’s advantage, obviously, to separate the issue of paying the bills from the budget process. Why? Because they are so inexorably linked! Obama has now stated we don’t have a spending problem, it’s a revenue problem – so we’ve got that fight to contend with. And he claims that spending is a separate issue from the debt limit. In actual fact, not only do we have a spending problem, the level of borrowing (debt limit) reflects how we choose to fund that spending. The national debt is the result of spending more than we have, and the presence of a debt limit has

inherent implications on psychologically, and actually, reducing the tendency to spend. Our debt problem is caused by the spending problem!

Ask any loan officer in a bank: “Would you make a loan to an entity without understanding the implications of their budget and their intended maximum loan usage?” That question is almost too absurd for me to present with a straight face. Congress is constitutionally given the “power of the purse,” there’s no question about that, and the method of paying for expenditures, taxes vs. borrowing, is part of that authority! **To argue that Congress should not have the influence of a debt ceiling at their disposal is to claim they don’t, in fact, have any true “budgetary power” as carefully designed in our Constitution!**

Obama Seems to Give Lip Service to Growth, but then Makes Real Progress Impossible!

I say again - advancing Obama’s transformational vision vis-a-vis budget discipline are most certainly competing forces. They contradict each other as do many other of his stated objectives - e.g. ObamaCare vs. lower health care costs; green, anti-carbon energy policies vs. energy independence; energy and environmental policies vs. improved employment numbers; aggressive regulatory policies vs. economic growth; egalitarian goals vs. the advantages of traditional American incentives for individualism and freedom; and on-and-on!



Some Arguments and Realities

Here are just a couple arguments to consider:

- The 14th Amendment refers to obligations “authorized by law.” Doesn’t that mean that expenditures taking you beyond the debt ceiling are NOT actually authorized by law? That’s a defensible argument. That’s why the “Obamanites” must fall back on the argument that, somehow, the very existence of a debt ceiling is unconstitutional.
- Section 5 of the Amendment (not shown herein) goes on to plainly state that CONGRESS has “the power to enforce by appropriate legislation, the provisions” of the amendment. **The introduction of a debt ceiling is one prominent legislative action taken by Congress precisely for the purpose of having an orderly and responsible budget and funding process.**

Let’s assume Obama goes the extra mile and unilaterally raises the debt ceiling. As far as I have researched this topic, I find many scholars who confidently state that would be unconstitutional, but nowhere have I found anyone who would come right out and state equally confidently that Obama wouldn’t get away with it. Goodness knows, he gets away with about everything else he tries. Also, there is very little precedence on this legal issue, making predictions difficult. We must face the reality that the press would support him in this move, as would many of the uninformed citizenry. No, we won’t give up on this. We just need to pick our fights. Remember to be careful what fights you pick - you might lose.

But I am confident Obama wouldn't choose this route which would create a bitter Constitutional challenge – he doesn't want that I am quite sure!

If Not a Constitutional War, Then What?

As I assess this, the Republicans have no chance of governing merely by having the majority in the House of Representatives – and I guess that inability is the way it was intended, and the way I want it to stay! But maintaining the integrity and usefulness of the ceiling should be a priority. Furthermore, there is no quick fix to this deficit and debt dilemma we find ourselves in. Even Paul Ryan's long term budget plan didn't balance the budget for quite an extended period of time. Elections have consequences, and conservatives must swallow hard and make plans given that Obama is President and the Democrats have a healthy majority in the Senate. But we need to chip away at this process, so in the long term a solution is possible.



Given the enormity of the financial project we want to take on, the determination of the radical (and capable) liberal administration we must deal with, and the lonesome position we occupy opposite the incompetent mainstream media, we need to do something smart right now even if it sticks in our craw. Maybe the Republicans came up with a good strategy at their “retreat” last week – we shall see. But I am willing to risk a suggestion which I know will not be popular with my more conservative friends!

I have read many analyses and assessments of this particular debt ceiling debate. This is the only one that I have come upon that I believe will “advance the ball” in a meaningful way. I would consider supporting granting temporary authority for the President to increase the debt during 2013, but only to the extent necessary to **SERVICE** the existing debt (that's the 16+ trillion number). Furthermore, we should make it mandatory that the President actually does carry out his assignment to service the debt. It would also require passage of a comprehensive budget ASAP. The penalty would be “no budget, no pay for the legislators.” This temporary authority would have no similar implications for general spending. Most importantly, it would take away the “default” argument that Obama constantly overplays. I think it has a chance to work.

Then, let's get on with our business!

The budget should be balanced, the Treasury should be refilled, public debt should be reduced, the arrogance of officialdom should be tempered and controlled, and the assistance to foreign lands should be curtailed lest Rome become bankrupt. People must again learn to work, instead of living on public assistance. - Cicero - 55 BC