

Balanced Budget Compact: An Interview with Nick Dranias

Only the states can rein in a debt-addicted Congress

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Nick Dranias is Vice President of Compact for America Educational Foundation, Inc. which is a 501(c)(3) charity that focuses on educating citizens and statesmen about the power of interstate compacts to achieve constitutional amendments and other reforms. He previously served as General Counsel and Constitutional Policy Director for the Goldwater Institute. FEE's director of programs, Richard Lorenc, got to sit down with Nick and talk about his work.

The Freeman: Your project, the Compact for a Balanced Budget, is a federalist-style approach to reform. What inspired you to pursue reform at the state level?

Dranias: The short answer is that I became convinced by Thomas Jefferson, who wished for an amendment to remove the federal government's borrowing capacity in 1798, and by public choice theory [which says] that unlimited borrowing capacity is the root political cause of the growth of the federal government and, therefore, its overreach. This is because unlimited borrowing capacity enables the federal government to create the illusion of unlimited resources. It also enables the costs of current spending policies to be shifted to nonvoting future generations. More than any other factor, these two dynamics ensure that unlimited borrowing capacity propels unlimited growth of the federal government.

The Freeman: How does the system work today?

Dranias: Thinking that the federal government can do anything, citizens and special interests push for every kind of benefit and subsidy. Unprincipled politicians, in turn, buy their votes with new spending programs based on borrowed money, knowing that they will not suffer electoral consequences in the near or medium term, because the costs of borrowing are shifted to our kids, who are currently nonvoters. No parchment barrier, limited-government message, or messenger can reliably and sustainably beat these two dynamics in the political marketplace. Instead, the rules of the political game must be changed to limit borrowing capacity in order for advocates of limited government even to have a chance to stop the growth of the federal government.

The Freeman: And your reform?

The Compact for a Balanced Budget is the only plausible vehicle for promoting constitutional reform that would do just that in the near term. The Compact greatly simplifies the exceedingly complicated and cumbersome process of originating constitutional amendments through an Article V convention. With Georgia and Alaska already on board, we are only 36 state

enactments, one 24-hour convention, and one congressional resolution away from ratifying a federal balanced budget amendment. All other Article V convention efforts are at least 70 state enactments, one indefinitely long convention, and two congressional resolutions away from any comparable constitutional reform. The Compact approach is the only way to fix the national debt problem before it crashes the system — at least in my view.

The Freeman: How successfully have interstate compacts been used thus far?

Dranias: Interstate compacts are wildly popular in the states. More than 200 exist. The average state is a party to 20 or more. They are used fairly routinely to solve problems of collective action. Not one has ever been struck down by any court. Using an interstate compact to coordinate the process of amending the Constitution from the states, which represents perhaps the ultimate problem of collective action in politics, is just a natural solution.

The Freeman: Why is an interstate compact superior to the direct amendment process?

Dranias: By direct amendment process, I assume you mean the process of Congress proposing amendments by a two-thirds vote of each house. The principal problem with that process is that Congress has an obvious conflict of interest when it comes to proposing amendments that would meaningfully limit its own power. There is no reason to believe the debt addicts in Congress would ever overcome a two-thirds vote hurdle in each house in order to tie their own hands when it comes to the ability to borrow money and buy votes.

The Freeman: It seems unlikely.

Dranias: Well, the only plausible way to obtain a federal balanced budget amendment, therefore, is with leadership from the states. That can be done without a compact, of course, but the process is far less certain and involves far more legislative moving parts. In particular, the noncompact approach to originating a constitutional amendment from the states would require 34 states to pass resolutions applying for an Article V convention; it would require at least 26 states to pass laws appointing and instructing delegates for the convention; it would require a convention to be called by a congressional resolution; it would require the convention to successfully meet and draft a meaningful amendment; it would require Congress to pass a resolution referring the amendment out for ratification; and it would require 38 states to ratify that amendment by passing legislative resolutions or organizing in-state conventions for that purpose.

Because this process would not be officially coordinated through an agreement among all of the participating states, there would not be any enforceable consensus on who would actually be sent as delegates to the convention, what the convention rules would be, or what the proposed constitutional amendment might be. Certain informal understandings might be reached, but there would be no reliable or credible way to enforce those understandings in the absence of a formal agreement among the states. In essence, without a compact, you would have to organize an Article V convention to find out who would be going, how it would conduct itself, and what it might propose. This is just not the best way to go about constitutional reform when you can use an agreement among the states to answer those questions in advance.

By contrast, an interstate compact, like a good contract, settles all issues in advance in a credible and reliable way. And the Compact for a Balanced Budget vastly simplifies the process using conditional enactments to consolidate all of the moving parts into two overarching enactments — one interstate compact and one congressional resolution. Packed into the interstate compact is the Article V application, the contemplated amendment, the delegate appointments and instructions, all convention logistics including rules requiring an up-or-down vote on the contemplated amendment, and the legislative ratification of the contemplated amendment. All of these measures are passed into law by enacting a single law that adopts and joins the compact. Additionally, packed into one congressional resolution is the call for the Article V convention organized by the compact and the selection of ratification by state legislature. All of the components consolidated into these two overarching enactments are activated at the constitutionally right time by conditional enactments.

For example, apart from organizing a commission to coordinate the process when two states join the compact, nothing else happens until the number of states required for ratifying the contemplated amendment, three-fourths or 38 states, joins the Compact. When that happens, the Article V application contained in the compact goes live. When that happens, the convention call contained in the congressional resolution goes live. When that happens, the delegate appointments contained in the compact go live. If the convention proposes the contemplated amendment, then the selection of legislative ratification contained in the congressional resolution will go live. And when the amendment is referred out by Congress for legislative ratification, the legislative ratification contained in the compact goes live. Like falling dominoes, the entire amendment process is set inexorably in motion by conditional enactments embedded in just two overarching pieces of legislation. This cuts the number of legislative enactments and sessions needed to advance and ratify a constitutional amendment by more than 60 percent as compared to the noncompact approach.

The Freeman: What would happen at the Compact Commission?

Dranias: The Compact Commission is formed to provide a platform for states that join the Compact to have a unified voice in marshalling other states to join the effort, to coordinate the logistics of the amendment process, including the logistics associated with running the convention itself, and to provide oversight of the amendment process to coordinate enforcement of the Compact's provisions. The first three states to join the Compact would populate the initial commissioner slots. The commissioners can, however, vote to expand representation on the Commission to other member states. In the beginning, the Commission would appoint a compact administrator whose job will be to notify other states and Congress whenever the Compact is joined by a member state. This will serve the crucially important purpose of notifying Congress when constitutionally and legally significant triggers have been met. Additionally, commissioners may wish to engage directly with Congress and other states to encourage them to cooperate with the effort. The Commission will be responsible for directing and coordinating litigation that might arise. Finally, during the Article V convention, the Commission would have the power to relocate the meeting if requested by the convention chair to ensure it proceeds in a lawful and orderly fashion under the terms of the Compact.

The Freeman: Is there any risk your opponents could somehow block your process from taking force, either in the short term or longer term once borrowing limits become inconvenient?

Dranias: The Compact itself does not set any amendment process in motion until it is joined by 38 states and activated by a congressional resolution. Political opponents could obviously prevail in blocking the success of that effort. But once the Compact's amendment process is set in motion, it will be very difficult for political opponents to derail it because it is designed to move very quickly, essentially generating a ratified amendment within several weeks of the compact being activated by congressional resolution. Litigation against the compact is unlikely to succeed, because it is fully constitutional under current case law.

History also shows that courts are loath to interfere with interstate compacts and the amendment process in general. The balanced budget amendment itself, once ratified, is drafted to be self-enforcing. It does not require any implementing legislation by Congress. The amendment prohibits spending beyond tax and fee cash flow with the sole exception that excess spending can be "exclusively" financed by borrowing under a fixed debt limit. Any debt issued in excess of this limit is deemed "void."

Even if political opponents succeeded in issuing illegal debt, and the courts stood down, bond markets would likely refuse to purchase the bonds or they would charge an interest rate reflecting a significant risk premium that would punish and deter such behavior. As a result, it is simply impossible that the political class in Washington would not experience a very real sense that its borrowing capacity had been limited beyond the current status quo. This would encourage a sense of resource scarcity, prioritization, and ultimately balanced budgets to conserve borrowing capacity for times when such capacity is truly needed.

The Freeman: Who supports your plan — any strange ideological bedfellows?

Dranias: The Compact effort enjoys a wide spectrum of support, from outright endorsement to educational promotion. On the endorsement side, we proudly include [political columnist] George Will, Judge Andrew Napolitano, radio personality Mike Church, and numerous congressmen and state legislators. Most members of the advisory council of our partner, Compact for America, Inc., support the entirety of the plan, including [the] Cato Institute's Ilya Shapiro, Wyoming Liberty Group's Dr. Sven Larson, [and] bestselling author and historian Dr. Kevin Gutzman. Our strange bedfellows, depending on your perspective, include Mark McKinnon, a moderate who worked on Senator McCain's presidential campaign, and Professor Lawrence Lessig, who supports the Compact approach to Article V but, as a progressive, is neutral on the balanced budget amendment payload itself.

The interstate compact vehicle for a balanced budget amendment has been approved by ALEC [the American Legislative Exchange Council] as model legislation. The balanced budget amendment itself has been endorsed by the Republican Liberty Caucus. Lastly, I'm proud to say that numerous member think tanks of the State Policy Network have lent or offered to lend resources to educate the public and policy makers about the effort, including Advance Arkansas, Alaska Policy Forum, Georgia Public Policy Foundation, Goldwater Institute, Heartland Institute, MacIver Institute, Mackinac Center, Pelican Institute, and Wyoming Liberty Group —

and these ranks continue to grow. We are encouraged by the very real and increasing possibility that most, if not all, member think tanks in SPN will be supportive in some capacity.

The Freeman: How do you talk with people who see little need to limit the government's borrowing ability and debt?

Dranias: First, emphasize that debt is taxation if it is to be repaid. It is taxation of our kids and their kids. It is taxation without representation. It is the worst kind of taxation.

Second, emphasize that there is no reliable political constraint on the abuse of debt when borrowing capacity is unlimited. This is because the costs of borrowing rarely, if ever, fall on the current political class or their constituents. The borrowing and spending will likely continue until the system crashes, without a limit on borrowing capacity.

Third, emphasize that responsible spending requires a limited borrowing capacity. Otherwise, there is little or no reason to prioritize spending or to pursue workable spending programs. Without such prioritization, we will waste resources needlessly. Because resources are ultimately scarce, there will come a time when the music will stop and the system will crash, imperiling both legitimate and illegitimate spending programs.

Fourth, emphasize that unlimited borrowing capacity is dangerous to national security. In order to maintain our debt-spending habits, our country has no choice but to borrow from many potential or actual international adversaries, like China and Saudi Arabia. This could give foreign nations that are willing to risk their own economic injury significant leverage in influencing our policies. China, for example, could easily start a stampede out of bonds if they dumped their bond holdings tomorrow. This could imperil the dollar as a reserve currency and crash our economy. It is not wise to put our future in their hands and hope that their own prudential calculations would counsel against such behavior.

The Freeman: Your plan limits borrowing to 105 percent of debt at the time of ratification. What's a safe debt figure for the United States?

Dranias: We placed an initial limit on the federal government's borrowing capacity of 105 percent to ensure that a clear and transparent limit existed. If the balanced budget amendment were ratified in the near future, this would create a cushion of roughly \$1 trillion in additional borrowing capacity — enough to handle nearly two more years of borrowing at current annual deficits. This limit, however, is not static. It can be increased with the approval of a majority of state legislatures. We expect that the additional borrowing cushion will buy time for Congress to craft a credible budget that may very well propose a further increase in the constitutional debt limit. However, as the battle in the states over health exchanges and Medicaid expansion has proven, Congress will not be able to bank on just any debt increase being approved. Congress will have to demonstrate to the American people through their closest representatives that the federal government has a plausible fiscal plan. We believe that fiscal responsibility, or at least greater fiscal responsibility than we have seen, will prevail more often in the states than in Congress.

Keep in mind that there is no real consensus on a “safe” level of debt, and I believe it would be a mistake to prescriptively impose an absolute and unchanging limit on debt. A good constitutional amendment works by casino rules — trying to incentivize the right policy decision most of the time, rather than forcing the right decision all of the time. The reason is that you want to encourage political players to play within the rules, not to find ways to bypass them. The proposed amendment creates the right incentive structure for the use of debt by creating a real sense of scarcity for the political class, rather than dictating the amount of debt that is “safe.” To minimize debatable or partisan policy judgments, the amendment is based most fundamentally on just one policy premise: having no limit on debt at all is incredibly dangerous because of the powerful political incentive unlimited borrowing capacity creates to spend beyond a nation’s means.

The Freeman: Let's talk monetary policy. Are there any safeguards in your plan against the Fed engaging in a massive printing project?

Dranias: Yes. The typical way the Fed prints money is by purchasing bonds. The supply of bonds will be limited under our amendment and [will] thus reduce the Fed’s degree of freedom in expanding the money supply. Beyond that, as compared to the status quo today, I believe, as do our consulting economists, that political forces will restrain the Fed from using extraordinary measures to increase the money supply because the federal government’s borrowing capacity will be fixed initially at an absolute dollar amount.

To preserve the real value of the federal government’s borrowing capacity, it will be in the interest of the political class to restrain the Fed’s money creation. Lastly, even if statutes were changed to enable it to do so, the Fed, or the Treasury itself, will not have an incentive to print and deposit money directly into the Treasury because, apart from authorized borrowing, the amendment limits spending strictly to available tax and fee cash flow. Any direct deposit of new money into the Treasury will not increase the spending limit, thus removing any incentive to do so.

The Freeman: How did you first become interested in becoming a lawyer for liberty?

Dranias: Clint Bolick [cofounder of the Institute for Justice] is the reason why I became a lawyer for liberty. I attended one of his early speeches on defending education choice during the mid-1990s and a seed was planted in my mind that pursuing a career in liberty would be possible someday. After I spent nine years of private practice in the Chicago area, that seed ultimately germinated, and I made the jump to public interest law, starting with the Institute for Justice in 2005.

But the soil was fertile no doubt because I had long been an avid reader of Rand, Hayek, Mises, and Friedman, among others.

The Freeman: Some of our readers may want to know how they can help your efforts. Can they donate, for instance, and if so, is it tax deductible?

Dranias: Yes indeed, the Compact for America EDUCATIONAL Foundation now has its non-profit educational status as a 501(c)(3) organization under the IRS Code. That means that all contributions to the Foundation, distinctly separate from our (c)(4) entity, are tax deductible for the donor. This effort cannot succeed without the voluntary support of fellow Americans who believe this may be the last, best hope to turn this country and its fiscal affairs in the right direction so we would be grateful for anyone's financial support!

The Freeman: Aside from supporting the Foundation financially, what else can an interested party do on behalf of the Compact?

Dranias: First, get education by visiting www.compactforamerica.org, watching the educational videos, reading the blog, and downloading the available fact sheets. Second, educate your friends and neighbors. Tell them that we only have a few more years to fix the national debt before it's too late, that the Compact for a Balanced Budget can get the job done, and that we owe it to ourselves, our kids, and the brave souls defending our Republic with their lives to do everything we can. Third, organize your friends and neighbors, write letters to the editor, "like" us on Facebook, create a supportive website, email me at nick.dranias@compactforamerica.org and help us project our message to the opinion and policy makers in your state.

The Freeman: Thank you, Nick Dranias.