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## The Budget Resolution Should Be a Law

The budget resolution is a “concurrent resolution,” which is a resolution passed by both houses of Congress. A concurrent resolution is not a law, because it does not meet the constitutional requirement that laws must be presented to the president for approval. A concurrent resolution is instead a vehicle used by the House and the Senate to make or amend rules or to express positions. “Bills” and “joint resolutions” are used to enact laws. Though there are distinctions between bills and joint resolutions, they are not relevant here; proposals to convert the budget resolution into a law have suggested that the joint resolution label be used.

During the extensive consideration of the Congressional Budget Act, there was next to no discussion of the possibility of having the president approve or veto the proposed budget of the Congress.

A second determination of JSC [the Joint Study Committee on Budget Control] was to create a process independent of the President and dependent solely on Congressional action. The linchpin of the new process was to be a concurrent resolution, a legislative measure which is not submitted to the President for his review. After years of battling the President on budget priorities and economic policies, Congress would have its own procedures, unconstrained by presidential preferences.<sup>1</sup>

The next major budget process reform effort—that of the Beilenson Task Force for the House Rules Committee—considered changes in the budget resolution, but did not pay much attention to whether the president should have a role in formulating the resolution. The Rules Committee reported a bill that converted the preliminary and final budget resolution procedure of the Congressional Budget Act into a single binding resolution procedure, which was already being carried out in practice.<sup>2</sup> This reform was included in the Balanced Budget Act of 1985.

Experience with the Balanced Budget Act led to more interest in making the budget resolution a law.<sup>3</sup> The sequestration penalty made it more important for the Congress and the president to enact bills that could be interpreted as meeting budget targets. One way of making this more likely was the negotiation of an agreement between the

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congressional leadership and the president over certain budgetary allocations and procedures—a procedure that has become known as a “budget summit.” Budget summits produced a two-year agreement for fiscal years 1988 and 1989, and a one-year agreement for fiscal year 1990.

Evaluations of these agreements have been mixed. The agreement for fiscal years 1988 and 1989 did not develop until late in 1987, but subsequently contributed to the passage of all regular appropriations on time for fiscal 1989, the first time that had occurred since fiscal 1977. In contrast, the agreement for 1990 was roundly criticized for relying on questionable assumptions and accounting practices to meet budgetary goals. It was also difficult to enforce because of differences between the branches on the meaning of the agreement, particularly with regard to the president’s proposal to cut capital gains tax rates. Nevertheless, there is support for formalizing budget summits by requiring a joint budget resolution. The president proposed this change in his fiscal year 1991 budget:

A joint resolution, which needs approval of the President, would guarantee Presidential involvement in budget negotiations early in the process. The ensuing legislation—appropriations bills, revenue measures and reforms of mandatory programs in reconciliation bills—would reflect those negotiations and thus there should normally be less conflict between the executive and legislative branches over these bills in the later stages of each Congress.

There will always be problems of interpretation of budget resolutions and a joint resolution will not make the later budget process completely smooth. But it would at least assure a negotiation each year and should settle the basic boundaries for later legislative action.<sup>4</sup>

At least six bills that would establish joint budget resolutions were introduced in the 101st Congress.<sup>5</sup>

This article describes the potential effects of enacting the budget resolution as a law. It addresses whether a joint resolution could produce an earlier agreement between the Congress and the president and analyzes its effect on the distribution of power between them. The article also discusses the argument that the Congress should forgo preparing a budget resolution and projects the effect of a joint resolution on enforcement.

## ANALYSIS

Budget resolutions have typically been passed by partisan majorities of less than two-thirds of each house’s membership, and split partisan control of the Congress and presidency has been the rule rather than the exception since the end of World War II. If these conditions continue, requiring the president’s signature on a budget resolution could force the Congress to modify its preferred budget resolution to obtain the president’s signature.

Requiring such accommodation is far from the intent of the Congressional Budget Act, in which “Congress would have its own procedures, unconstrained by presidential preferences,” to repeat Schick’s description. But this desire for independence, if taken to its logical extreme, was clearly inconsistent with the constitutional design of “sep-

arate institutions sharing powers.”<sup>6</sup> The president’s veto power makes the president a roughly equal participant in the legislative process, absent cohesive, two-thirds majorities in both the House and Senate that would override vetoes. The veto power ensures that the budgetary process at some point turns into a bargaining session between the Congress and the president.<sup>7</sup> Given this reality, two critical issues are *when* and *in what form* the Congress should negotiate with the president. Two basic alternatives are: at the early stage of setting aggregate budgetary targets—the joint resolution alternative—or later, when individual budget bills are considered—as expected in current law.

### *The Possibility of Early Agreement*

The objects of disagreement between the president and the Congress in budgetary legislation are of three types: the aggregate levels of spending and revenues; specific program spending levels and tax provisions; and the legislative language included in budgetary bills. One argument in favor of the joint budget resolution alternative is that it could lead to an early agreement over budgetary aggregates and perhaps over amounts for major categories of spending and revenues. This could reduce the potential range of disagreement over specific program spending levels and tax provisions when individual budgetary bills are considered, presuming that a joint resolution’s targets are enforced.

Nothing guarantees that a joint resolution procedure would lead to an early agreement, however. Either the president or the Congress could calculate that not having a joint budget resolution is preferable to having one, causing the negotiations over a joint budget resolution to be long and unproductive. The majority in the Congress might prefer to use the budget resolution to dramatize its policy differences with a president from the opposite party, with the goal of affecting the next election. Or the president might propose a “dead-on-arrival” budget—one that had no possibility of being adopted by the Congress, and was not even viewed as a reasonable first offer for a negotiation between the branches. The president could then refuse to make any concessions to the Congress, knowing that in the past the public has tended to blame the Congress more than the president for the failure to pass budgetary legislation, and hoping that the public would continue to apportion blame in this manner.

This would place the Congress in a difficult situation. To do nothing could leave it exposed to the charge that it was shirking its responsibility to respond to the president. On the other hand, if the Congress proposed a joint budget resolution that would meet the constraints of the Balanced Budget Act and could be the basis of a bargain between the president and the Congress, this would require the Congress to take much more political heat than the president. In particular, the Congress would probably have to propose higher tax increases than the president, which it has been extremely reluctant to do in recent concurrent budget resolutions.

Another possible cause of delay in adopting a joint resolution would be the difficulty an incoming president could have in simultaneously developing a negotiating position and organizing the administration, particularly when there has been a partisan shift in

control of the presidency. Similarly, it often takes a great deal of time for the Congress to select its leadership, make committee assignments, and debate and formulate party and committee positions.

Yet these possible causes of delay—political intransigence and organizational difficulties—apply to concurrent budget resolutions as well. The hope of proponents of the joint budget resolution approach is that by making an early agreement between the Congress and the president a goal, the branches would often decide to negotiate soon after the president's budget was proposed. Even when this scenario did not occur—when the president proposed an unrealistic budget and the Congress reacted with a joint resolution that was vetoed—the hope is that negotiations would begin soon after a veto. This is because the public would understand that it is the joint responsibility of the branches to develop a budget resolution, and both branches, rather than just the Congress, would be blamed for the failure to adopt one.

In addition, the branches could learn that advance scheduling of joint budget resolution negotiations is in their own self-interest. Congressional leadership and the president have negotiated budget levels in recent years—1980, 1982, 1984, 1987 (covering two budget years), and 1989—but agreeing to negotiate often took a good deal of time because the Congress and the president distrusted each other's intentions.<sup>8</sup> Each branch has taken the position that it would be willing to negotiate only if the other branch would prove that it would enter such negotiations with good intentions, and the required proof has usually been a publicly stated willingness to consider backing away from some preferred policy position, such as opposition to new taxes or benefit reductions. Because such statements might be viewed as abandoning a position without a commensurate reward, and thus as an indicator of weakness, each branch has been reluctant to make such statements. While this awkward ritual may help build a minimum level of trust for the eventual negotiations, it also takes a great deal of time for the little amount of progress that is made. It might be more useful simply to agree beforehand to negotiate over budget levels at the beginning of each budget cycle, and to transfer the energy currently used determining whether and when to negotiate to the resolution of policy disputes.

### *Congressional and Presidential Power*

Joint budget resolutions have been viewed in the past by some congressional proponents as an unnecessary cession of power to the president. The basis of this belief is partially the fear that allowing the president to veto the budget resolution would prevent the Congress from expressing its own policy preferences. But the joint budget resolution procedure would not prevent the Congress from enacting a "veto-bait" budget resolution, any more than it would prevent the President from proposing a "dead-on-arrival" budget. The Congress could pass a budget resolution that was not acceptable to the president, the president would veto it, and then the branches could then decide if and when to negotiate a compromise.

This dynamic has occasionally occurred during the consideration of appropriation bills when an important issue has been in dispute, and the result has usually been serious negotiations to resolve disputes very shortly after the veto scenario has been played out for public consumption. These negotiations are necessitated by the fact that, without enacted appropriations, government agencies must discontinue operations. In contrast, a veto of a joint budget resolution might not lead to a serious negotiation because the penalty for not passing a joint resolution would not be as immediate or harsh. The most likely effect would be a delay in consideration of budgetary legislation, assuming current practices are followed. Section 303(a) of the Congressional Budget Act creates a point of order against considering budgetary legislation until a concurrent budget resolution has been adopted, and although Section 303(a) does not apply in the House after May 15 for regular appropriation bills, some proposed waivers of this provision have been denied in the Senate.<sup>9</sup> These delays could eventually promote post-veto negotiations, as could the increased likelihood of sequestration.

Another reason for opposition to a joint budget resolution within the Congress is the belief that the president would not ask for a joint budget resolution if it was not of advantage to the executive branch. After a decade of interbranch conflict, this is not an unnatural suspicion (although the danger of holding it, if mistaken, is failing to take the president's offer to cooperate). And on its face, a joint resolution clearly appears to be a grant of additional power to the president, who would now have the opportunity to veto a budget resolution that previously could not be vetoed.

There is a simple and strong counterargument to this view, however. A budget resolution is simply a plan that will be effective only if budgetary legislation is enacted. Since the president currently has the authority to veto budgetary legislation, the president already can prevent the Congress from converting its plan into action. Therefore, granting the president the authority to veto the plan as well gives the president no additional power.

Even after acknowledging this point, it is still possible to believe that the Congress would be somewhat disadvantaged by negotiating over aggregates early in the year in addition to negotiating over individual bills late in the year. One explanation that has been put forward is that the president would not be under as great pressure to conclude a deal in the budget resolution. In contrast, presidents are said to abandon bargaining positions when confronted with a continuing resolution because of the undesirable effects when government agencies discontinue operations. This explanation assumes that the Congress does not also draw back on some bargaining positions to prevent shutdowns, but there is a great deal of anecdotal evidence that both branches are flexible enough to arrive at acceptable continuing resolutions. The explanation also assumes—probably incorrectly—that the president is incapable of telling the Congress early in the process which of its positions are unacceptable, or that the Congress is incapable of making an accurate assessment of this threat. Furthermore, it seems likely that the president can profitably blame the Congress for causing a veto if it stubbornly rejects the president's position. A reasonable conclusion is that late negotiations over individual bills do not materially disadvantage the president, despite public presidential

protests to the contrary.<sup>10</sup> Given that continuing resolutions do not give additional bargaining leverage to the Congress as a whole, there would seem to be little, if any, strategic disadvantage to the Congress from reaching an interbranch budget agreement earlier.

Besides changing the timing of an agreement, using a joint budget resolution would also shift the initial focus of a budget agreement from individual bills to budgetary aggregates. This could change the character of the interbranch debate, emphasizing how much borrowing is desirable rather than which program should get how much funding. Some argue that this would cause a diminution of congressional power, assuming that the Congress desires to spend and borrow more than does the president. There is no uncontested evidence supporting this assumption, however. And even if the assumption was correct, the shift of emphasis would probably be small, as references to the likely sources of revenue increases and spending cuts have always found their way into concurrent budget resolution debates, and cannot be expected to be absent from joint resolution debates.

Finally, a joint resolution could be viewed as hurting the position of the Congress not only by changing the character of the debate, but also by restricting the ability of the Congress to structure agreements. In the current system, the Congress decides the order in which bills are sent to the president and the composition of these bills. Many observers believe that the Congress can benefit from using this "agenda power." For example, presidents often complain that the Congress compiles items into appropriation bills in order to weaken the veto power.<sup>11</sup>

The practical effect of such agenda power is probably small, however. Consider the effect of the item veto in the states—a useful parallel because giving governors the item veto takes the power to determine the composition of bills away from legislatures. In theory, states where the governor has the line-item veto power should have lower spending than those states where the governor does not, after controlling for other factors, and assuming that governors prefer to spend less than legislatures.<sup>12</sup> Empirical researchers have concluded, however, that there is no such effect, or that this effect is quite small.<sup>13</sup> A plausible explanation for this result is that governors who lack an item veto simply refuse to sign bills unless objectionable provisions are dropped. Similarly, a president can refuse to sign early bills until later ones are presented, or develop a scorekeeping system that will reduce the chance that signing an early bill will force approval of an objectionable bill later in the year.

In other words, a legislature's agenda power can become quite limited if the executive refuses to accept legislative agendas as binding. In addition, a legislature can choose for other reasons to not use its agenda power. For example, to reduce internal conflict, congressional committee and subcommittee jurisdictions are relatively fixed, but this reduces the opportunity to vary the composition of bills for strategic purposes.

To the extent that the Congress has an effective agenda power, it seems unlikely that a joint resolution would materially limit this power. Joint resolutions could produce early agreements on spending for functional or other macro categories, much like the targets for the international affairs function of the last two summit agreements, but this

would not prevent the Congress from subsequently tying passage of the foreign aid appropriation bill to presidential approval of other bills.

### THE BUDGET RESOLUTION'S FUNCTIONS

Another basis of opposition to the joint resolution is the fear that it would lead to overcentralization in the Congress. A negotiation between the branches over budgetary aggregates could take place only if the Congress is represented by a small group of negotiators. In the budget summits, the negotiators have ranged from the two leaders in each house to broad groups of leaders, committee chairs, and ranking members. Members of Congress have occasionally voiced their dismay at having their leaders bargain on their behalf without having the opportunity to instruct them through the regular legislative process.

Fears about the potential powers of leaders and budget committees have contributed to the high level of budgetary decentralization in the Congress. Some observers of the Congress suggest that this decentralization, while often valuable for the fulfillment of its representational function, makes the Congress organizationally incapable of formulating a coherent budget.<sup>14</sup> For evidence, they cite the frequency with which the Congress misses deadlines and the high level of conflict over budgetary issues.

Believing that attempts to construct a budget resolution—whether concurrent or joint—are likely to fail, some argue that the Congress should be content with an activity for which it is more suited—responding to presidential proposals. Louis Fisher, for example, has suggested that the budget resolution be eliminated altogether.<sup>15</sup> His thesis is that when the Congress assumed the task of preparing a budget, it drew public attention away from the executive branch's performance of this role, allowing the president to escape opprobrium for proposing unrealistic budgets. Eliminating the budget resolution would take away the opportunity for the president to blame the Congress for failure to formulate its budget. Thus, it is expected that the president would be forced to propose a budget that used more realistic assumptions and was balanced in its distribution of deficit reductions.<sup>16</sup>

Yet if the Congress were to disclaim responsibility for setting budgetary aggregates, increased presidential responsibility is not the only possible result. The president could still find the "dead-on-arrival" strategy attractive, supplemented with criticism of the Congress if it did not pass bills that were consistent with the president's budget. The president would be able to claim, as did presidents before the passage of the Congressional Budget Act, that the Congress was enacting bills without regard to a budget total.

Even allowing for the widespread discontent with the budget process within the Congress, it seems unlikely that members of Congress would want their budget powers to atrophy. Not preparing a budget resolution would make it harder for a partisan majority in Congress to show that it can "govern" as well as, and perhaps better than, a president from the opposite party. Even without the motive of partisan opposition,

members of Congress have a clear record of proposing comprehensive, consensus-oriented solutions to the deficit problem, in part because they believe that formulating a budget is a constitutional responsibility for the institution that has been granted the power of the purse.

Budget resolutions may represent the minimum amount of centralization that is necessary for the Congress to pass individual bills and meet its own expectations. Without targets for aggregates and for committees, and without point of order enforcement provisions, committees would have greater latitude to report legislation that would cause the desired but unspecified deficit to be exceeded. Budget resolutions also create reconciliation instructions, which direct committees to report changes in mandatory spending and revenue law. Without the agreement in a budget resolution that a portion of deficit reduction would come from these areas, there would be no procedural expectation that committees other than the appropriations committees would report deficit-reducing legislation.

It seems unlikely that negotiations over a joint resolution would depart significantly from the consensual nature of the current process of developing a budget resolution. Budget resolutions are not imposed by an overbearing leadership and all-powerful budget committees; instead, they are coaxed out of the membership. While the details of the budget are often discussed during preparation of the resolution, committees have a great deal of freedom to ignore the programmatic assumptions used in preparing the resolution, face no penalty for failing to meet reconciliation instructions, and can propose that points of order triggered by the resolution be waived. Relying on the leadership to represent the Congress in interbranch negotiations seems like a low-risk strategy, given the multiple opportunities the membership has for communicating with the leadership. In addition, centralization of this type is traditional in the Congress during periods when it is facing challenges to its authority from the president and difficult fiscal and other problems.<sup>17</sup>

### *Enforcement*

The final issue discussed here is the potential effect of a joint budget resolution on enforcement. Because the budget resolution would be a law rather than a congressional rule, it could create the presumption that the government's intention to meet the budget resolution's goals is stronger than under the concurrent resolution. Members of Congress and the president would have the slight rhetorical advantage of a statutory basis for demanding compliance.

This effect would be strictly symbolic, for although the budget resolution would be a law, any subsequent law in conflict with the budget resolution would in effect amend or repeal it. In addition, the Congress could change any enforcement provisions in a joint resolution without having to pass another statute, because Article I, Section 5 of the Constitution stipulates that each house of the Congress shall determine its own rules.

Should there be concern about the president being able to veto procedural provisions for the Congress, the Congress could restrict the content of the joint budget resolution

to budgetary aggregates, and also include functional and/or other macro categorizations if desired. At the same time the joint resolution was passed, the Congress could pass a concurrent resolution that would establish committee budget allocations and any other procedures deemed necessary by the Congress. The Congress would retain the flexibility to propose such changes in the content of the joint resolution in each year.

Enforcement could also be eased if the experience of recent budget summits continues, in which some technical disagreements between the branches have been resolved as part of the negotiations.

## CONCLUSION

Among the various meanings of the word "resolution" are "a course of determined action" and "a solution to a problem." The emphasis in concurrent budget resolutions has been the expression of the preferred course of the Congress. A possible effect of making the budget resolution a joint resolution would be to shift the process somewhat toward an interbranch search for a solution to the budget deficit problem.

Adopting a joint resolution procedure would certainly not guarantee a successful negotiation between the branches. Some conflict is natural, given the constitutional design in which two powerful institutions have different electoral bases and overlapping powers and responsibilities. But a joint resolution could create the expectation that the branches would begin negotiations early in the process. This could reduce the effort currently expended in just deciding to hold negotiations.

A major concern of members of Congress is that having the president participate in drawing up the government's budget plan could cause the Congress to lose power. Given that the president already has the authority to veto budgetary legislation, such a loss of power would probably be small, to the extent that it exists at all. Moreover, the Congress has been willing to negotiate general budgetary policy with the president in the past, so a joint resolution process would not be a new undertaking. It would merely formalize the budget summits that have been held in recent years.

By granting the president a formal role in preparation of the budget resolution, the Congress would acknowledge that the president is a constitutionally equal partner in the consideration of budget legislation. This could benefit the Congress by serving notice that the presidential responsibility to participate in budgeting does not stop temporarily after the submission of the president's budget and begin again when enacted legislation is presented to the president.

## NOTES

Sandy Davis of the Congressional Research Service provided valuable comments on a draft of this article.

1. Allen Schick, *Congress and Money* (Washington, D.C.: Urban Institute, 1980), 60. See also Allen Schick, "The Congressional Budget Act of 1974 (P.L. 93-344): Legislative History and Analysis," *Congressional Research Service* (Feb. 26, 1975): 101-108.
2. See Report of the Committee on Rules, House of Representatives, "Congressional Budget Act Amendments of 1984," House Report 98-1152, Part 1 (Oct. 1984): 23-31.

3. See the brief discussions in House Committee on Government Operations, "Reform of the Federal Budget Process: An Analysis of Major Proposals" (June 1987): 75-77; Allen Schick, "Proposed Budget Reforms: A Critical Analysis," Senate Committee on Governmental Affairs (April 1988): 28-32; and Rudolph G. Penner and Alan J. Abramson, *Broken Purse Strings: Congressional Budgeting, 1974-88* (Washington, D.C.: Urban Institute, 1988), 113-115.
4. *Budget of the United States Government, Fiscal Year 1991*, 265.
5. Four omnibus bills include joint resolution provisions: S. 391 (Domenici, R-N.Mex.), H.R. 1957 (Schuette, R-MI), H.R. 2936 (Upton, R-Mich.), and H.R. 3464 (Patterson, D-S.C.). Two bills require joint resolutions: H.R. 191 (Ireland, R-Fla.), and H.R. 3068 (Lightfoot, R-Iowa).
6. See Louis Fisher, *The Politics of Shared Power: Congress and the Executive*, 2nd ed. (Washington, D.C.: Congressional Quarterly Press, 1987).
7. See Robert J. Spitzer, *The Presidential Veto: Touchstone of the American Presidency* (Albany: State University of New York Press, 1988).
8. For a detailed history, see Joseph White and Aaron Wildavsky, *The Deficit and the Public Interest* (Berkeley, Calif.: University of California Press, 1990).
9. See Robert Keith, "Waivers of the 1974 Budget Act Considered in the Senate During the 100th Congress," *Congressional Research Service* (Feb. 3, 1989), and "Senate Consideration of Regular Appropriations Bills Under Waivers of Section 303(a) of the 1974 Budget Act," *Congressional Research Service* (Jan. 18, 1989).
10. See Joe White, "The Continuing Resolution: A Crazy Way to Govern?" *The Brookings Review* (Summer 1988): 28-35; and Louis Fisher, "Continuing Resolutions: Can't Live With 'em, Can't Live Without 'em," *Public Budgeting & Finance* 8 (Summer 1988): 101-104.
11. If this is the case, the Congress could be advantaged if it packaged plans about future legislative provisions into another omnibus bill—the joint budget resolution. Recent research, while far from definitive, suggests that packaging spending decisions into a budget resolution does not necessarily lead to lower spending. Given some distributions of congressional preferences, using budget resolutions could lead to higher spending than would be expected under a system of separately considered spending bills. See John Ferejohn and Keith Krehbiel, "The Budget Process and the Size of the Budget," *American Journal of Political Science* 31 (May 1987): 296-320.
12. For a formal analysis, which also shows that the effects of the item veto can be more complicated than described here, see James A. Dearden and Thomas A. Husted, "Executive Budget Proposal, Executive Veto, Legislative Override, and Uncertainty: A Comparative Analysis of the Budgetary Process," *Public Choice* 65 (April 1990): 1-19.
13. See, respectively, David C. Nice, "The Item Veto and Expenditure Restraint," *Journal of Politics* 58 (May 1988): 487-499; and Douglas Holtz-Eakin, "The Line Item Veto and Public Sector Budgets: Evidence From the States," *Journal of Public Economics* 36 (1988): 269-292.
14. A recent expression of the view that decentralization makes the Congress relatively incapable of action can be found in Michael Mezey, *Congress, the President, and Public Policy* (Boulder, Colo.: Westview Press, 1989). One paradox in this discussion is that although the Congress is described as incapable of developing broad legislative packages, it is also criticized for using omnibus appropriation bills.
15. See his March 21, 1990 testimony before the House Committee on Rules and "The Budget Act of 1974: A Further Loss of Spending Control," in W. Thomas Wander, F. Ted Hebert, and Gary W. Copeland, *Congressional Budgeting: Politics, Process, and Power* (Baltimore: Johns Hopkins University Press, 1984), 170-189.
16. For discussion of a related proposal, see Bernard T. Pitsvada, "The Executive Budget—An Idea Whose Time Has Passed," *Public Budgeting & Finance* 8 (Spring 1988): 85-94, and comments on 95-107.
17. See W. Thomas Wander, "Patterns of Change in the Congressional Budget Process, 1865-1974," *Congress and the Presidency* 9 (Autumn 1982): 23-49; and Lawrence C. Dodd, *Congress and Public Policy* (Morristown, N.J.: General Learning Press, 1975).

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