



ANALYSIS OF A PLEDGE TO AMERICA

October 2010

House Republicans will “fight to renew the drive for a smaller, less costly, and more accountable government,” according to their new “A Pledge to America,” a 45-page governing document announced on Sept. 23 that is available at pledge.gop.gov. The Pledge contains the outlines of legislative proposals covering five themes:

- Create jobs, end “economic uncertainty,” and make America more competitive
- Stop “out-of-control” spending and cut the size of government
- Repeal and replace the new health care law
- Reform Congress and “restore trust”
- Keep our “nation secure at home and abroad,” which includes immigration and national security

The document starts with a preamble containing five pledges that the House GOP will follow:

1. **Strict Constructionism.** House Republicans will “honor the original intent” of “the Constitution as constructed by its framers...” A key element is honoring the intent of the Tenth Amendment, which says all powers not given to the federal government and not prohibited by the Constitution are reserved to the states or the people. This emphasis on federalism derives from long-held conservative views of limiting the role of the federal government and devolving powers to the states.

The Pledge seems to intend to create tension between the Commerce Clause (Article 1, Section 8, Clause 3) and the Tenth Amendment. Congress has relied on the Commerce Clause to pass civil rights laws, environmental and worker protections, sex offender laws, and much more. It would appear the Pledge, like its predecessor, the Contract with America, wants to limit congressional use of the Commerce Clause and put greater emphasis on the Tenth Amendment. During the Contract with America, the emphasis was on mandates imposed by the federal government on the states. The Pledge appears to be broadening the focus.

2. **Conservative Policies.** The Pledge promises policies that “promote greater liberty, wider opportunity, a robust defense, and national economic prosperity.” The legislation discussed in the Pledge aligns with smaller government: less taxes and spending, less regulation, and ending or sunseting programs.
3. **Conservative Values.** Although the Pledge lacks details, the preamble promises “to honor families, traditional marriage, life, and the private and faith-based organizations that form the core of our American values.” The proposals within the Pledge do not discuss these social issues with the exception of abortion. The Pledge promises to pass

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the Hyde Amendment, which prohibits government funding of abortion including through insurance subsidies. It also promises to put into law “conscience protections” for health care providers. Although the Pledge does not describe the “conscience protections” that would be put into law, President Bush put in place a rule shortly before he left office that would make federal funding contingent on requiring health care providers to certify they allowed their employees to withhold services on the basis of religious or moral grounds. Presumably, the Pledge’s legislation would follow this model.

4. **Make Government Transparent and Honest.** The Pledge includes a promise to make government more transparent, “careful in its stewardship, and honest in its dealings.” The only concrete transparency promise is to publish bills online “for at least three days” before voting on them. There are several proposals to limit federal spending and change the legislative process to make it easier to cut spending.
5. **A Better America.** The final promise is a general principle to “uphold the purpose and promise of a better America...” The Pledge’s authors argue that the “blessings of our liberty buoy the hopes of mankind.”

The following sections provide a more detailed analysis of the legislative proposals covering three topics: proposals that affect regulations, tax and budget proposals, and transparency and accountability proposals. This document is very different than the 1994 Contract with America, in which House Republicans presented a list of eight rules changes they would immediately make to House operations, followed by ten bills they would pass within the first 100 days.

The Contract provided detailed information on the legislative agenda for 1993, whereas the Pledge provides more of a guiding philosophy for how House Republicans will govern in 2011 and beyond. The Pledge places an emphasis on downsizing government by freezing spending, lowering taxes, abolishing programs and agencies through sunsets, and eliminating major government regulations by requiring a cumbersome approval process that requires an affirmative congressional vote on each new significant rulemaking. The Contract, by comparison, was aimed more at procedural changes, such as changing the way regulations are reviewed in agencies, placing a cap on the cost of regulation, and passing a constitutional balanced budget amendment.

Since the Pledge has been released, House Republicans have been clear that the document is intended to provide a governing path and is not limited to simply what is laid out in the Pledge. Several have spoken about even more controversial legislation, including a constitutional amendment limiting federal spending to one-fifth the size of the economy, a new crackdown on illegal immigration, and a parental notification bill for teen abortions. The Pledge is a controversial, if not highly polarizing, governing document. If pursued, the Pledge will lead to even more gridlock in government, which, in the end, would reinforce the objectives sought by the Pledge itself.

I. Regulatory Proposals

A. Reining in Red Tape

A Pledge to America notes that a key element of boosting the economy is that “small businesses must have certainty that the rules won’t change every few months...” The Pledge maintains that the “threat of new taxes and new regulations” creates an atmosphere of

uncertainty that may put capital at risk and harm creation of jobs and ultimately weaken the U.S. economy.

To solve this problem, the Pledge proposes a halt to all new major regulations unless Congress approves of each one. “[W]e will require congressional approval of any new federal regulation that has an annual cost to our economy of \$100 million or more,” the Pledge states. “This is the threshold at which the government deems a regulation ‘economically significant’.”

How This May Work

The Pledge does not provide any detail on this legislative proposal. However, bills to require congressional approval for major rules have already been introduced in both the House and the Senate. In October 2009, Rep. Geoff Davis (R-KY) introduced the Regulations from the Executive in Need of Scrutiny Act of 2009 (H.R. 3765). This was widely discussed on the America Speaking Out website that generated ideas for the Pledge. On Sept. 22, 2010, the day before Republicans released the Pledge, Sen. Jim DeMint (R-SC) introduced a companion bill (S. 3826).

The legislation would require Congress to approve all major rules before they could go into effect. The current procedure under the Congressional Review Act is that Congress has 90 session or legislative days to disapprove of a rule – and that resolution must be signed by the president before the rule can be stopped. The Pledge would flip this around by forcing all major rules to be approved by each house of Congress before the rule can be implemented.

The legislation to consider the regulation would limit the amount of time congressional committees have to consider rules and prevent amendments or filibusters (in the Senate) before a vote. If either house does not act within 90 session or legislative days, then the rule would be deemed dead. However, if Congress does not pass a resolution within 90 session or legislative days, the executive branch may put forward the same or a similar rule for Congress to reconsider.

The House and Senate bills would allow the president to immediately implement a regulation for 90 days in certain circumstances while Congress acts on its resolution of approval. This presidential power would include regulations covering imminent threats to health, safety, or national security; other emergencies; criminal laws; or implementation of trade agreements. However, after 90 days, if Congress has not acted on a resolution of approval, the regulations would no longer be enforceable.

Commentary

Requiring congressional approval of economically significant regulations would have profound consequences for the public. This is a blatant attempt to shut down a major role of the federal government – crafting public protections. Congress already sanctions regulation when it writes laws, often including specific criteria for agencies to consider, specific requirements to impose, and/or deadlines for completion. Agencies only embark on rule writing after delegation from Congress, either generally or specifically. This attempt to shut down the regulatory process makes it nearly impossible to implement the laws of the land. Shutting down the rulemaking process as proposed is no less absurd than a law that says Congress shall not make any more laws.

The current process of rulemaking, political as it is, is less subject to the push and pull of partisan politics than legislation. Requiring all major rules to be approved by Congress will only further politicize public protections. Powerful special interests will lobby hard to stop approval of a rule. In a political environment as polarized as today's, requiring votes on all major rules will likely mean it will be tough to get approval in both houses for any rule. Thus, the Pledge's proposal will either result in significant delay or will completely stop the executive branch from carrying out its statutory and constitutional responsibilities.

Moreover, there are roughly 50 to 100 major rules each year that federal agencies publish. Each of these would need to be considered by each house – 10 hours of debate in the Senate and two hours in the House. Over the past five years, the House was in session an average of 132 days and the Senate about 162 days. Will Congress drop its other legislative priorities, such as appropriations bills, to consider regulatory resolutions of approval? It is already way behind on handling existing legislation. The likely scenario is that many major regulations simply won't come to a vote in Congress, thereby killing the rules.

For the public, the inevitable delay, if not stoppage, caused by a mandatory congressional approval process would leave at risk the workers, consumers, businesses, or environment protected by regulation. Major rules issued during congressional recesses could not take effect until after Congress returned. Similarly, if a Congress adjourns, the public would need to wait until the new Congress convenes to approve the rule or let it lapse.

For agencies, the requirement would further politicize the already controversial cost-benefit analysis they must conduct for every rule. Some stakeholders, especially those in regulated industries, would be motivated to pressure agencies to push their estimates above the \$100 million threshold, thereby advancing the rule to Congress where lobbyists' inroads are well worn and political pressure points well established. It should be noted that agency cost-benefit analyses are speculative and that both cost and benefit estimates are often presented in ranges – ranges that may cover millions of dollars and even span the \$100 million threshold.

This concept of Congress approving each major rule raises fundamental questions about the role of each branch of government. More to the point, the Constitution provides clear distinctions between the legislative and executive branches of government. The executive branch has the responsibility to implement the laws enacted by Congress. While Congress has the authority to conduct oversight hearings and may have the authority to withhold funding for implementation of a specific rule, it is extremely unlikely that it has the authority to approve each rule. This is because such a requirement would almost certainly violate the Constitution's separation of powers principle. Thus, the Pledge's proposal may very well set up a showdown between the two branches over the extent of their authority.

B. Sunsets

Under A Pledge to America, House Republicans propose to sunset all federal programs – a term used to impose a prescribed end date for programs – in an attempt to eliminate those that are outdated, ineffective, or duplicative. The proposal is intended “to force Congress to determine if a program is worthy of continued taxpayer support.”

How This May Work

Over the years, sunset proposals have been introduced in Congress and have taken a variety of forms. Generally, proposals seek to create commissions that would examine certain programs

that have reached their sunset dates and suggest or mandate renewal or termination. More extreme bills call for each agency and program to be sunsetted, requiring Congress to take action for the agency or program to continue. Plans for commissions usually call for appointees outside of Congress to serve as commissioners. In addition, proposals in the past have used highly political methods for determining what is "ineffective" or "duplicative." The scope of "programs" covered under these sunset proposals can include all departments and agencies, all programs, and all regulations.

There are two leading sunset commission bills that have been introduced in the House during the current Congress that could serve as the model for the Pledge's proposal. In January 2009, Rep. Kevin Brady (R-TX) introduced his Federal Sunset Act (H.R. 393), which he seems to introduce in each Congress. The Brady bill would require a commission to review all federal agencies and programs at least once every 12 years, evaluate the efficiency and need for the agencies and programs, and recommend to Congress whether to abolish or reorganize the agency or program. The program or agency is automatically eliminated within one year if Congress does not act to reauthorize it – even if the commission gives the agency or program a positive review. Congress can give a two-year extension to the deadline for eliminating the program or agency through a supermajority vote.

The second bill, the Commission on the Accountability and Review of Federal Agencies Act (H.R. 1802), was introduced by Rep. Todd Tiahrt (R-KS) in March 2009. Like the Brady bill, it also has been introduced in past Congresses. The bill would create a seven-member commission required to evaluate federal agencies and programs and recommend program cuts, realignments, consolidations, and eliminations. The commission is also to prepare draft legislation to implement the recommendations. The commission could hold hearings, but the bill does not require those hearings to be open to the public. The draft implementing legislation prepared by the commission would be taken up by Congress under special rules that fast-track the bill, limit the debate to 10 hours, and protect the bill from any amendments.

Commentary

Regardless of political ideology, many concur that the public is entitled to know that taxpayer funds are being wisely spent, that federal programs are performing, and that ongoing efforts are being made to improve the quality of federal programs. In their best light, these sunset proposals force federal agencies and programs to measure their effectiveness in the years leading up to a sunset date and force them to make a compelling case in order to continue to exist, bringing greater government accountability.

While the sunset proposal is couched as a good-government measure, these processes would quickly turn political: The programs targeted are usually the types of human needs, public health, or environmental programs disfavored by some congressional members. The sunset becomes a tool to give those who dislike certain agencies (e.g., the Department of Education) or certain programs (e.g., legal services) an opportunity to abolish or radically overhaul them. Thus, the negatives of the sunset bills far outweigh the positive dimensions. Of the two bills discussed above, the Brady bill approach is far more extreme, but both are nothing more than a means for shutting down large portions of government, including many services Americans rely on.

Under the Brady bill, agencies and programs are abolished unless Congress affirmatively votes to preserve them in some fashion. Thus, if there are not 60 votes in the Senate, the programs or agencies would be abolished. Under the Tiahrt bill, a commission would draft legislation to

be fast-tracked through Congress on program and agency eliminations or changes. Thus, an up-or-down vote could eliminate hundreds of programs impacting education, the environment, workers, housing, nutrition, transportation, and other programs on which we rely for a better, more productive America.

These sunset bills would shift the balance of power in the federal government away from elected officials. Congress already has the power to reorganize government programs when it determines the need to do so, and Congress revisits their effectiveness and continued existence each year through appropriations bills. The sunset concept would usurp power from Congress by entrusting shadowy, unelected commissions with important decisions about all government services. By voting to give a sunset commission the authority to broadly reorganize government and terminate government programs, Congress would be abdicating its constitutional oversight authority.

Another troubling aspect of the sunset bills is that they would leave the public in the dark and without much opportunity for input. The Tiahrt commission, for example, would make its evaluations in the shadows, without public notice or comment or open meetings. A sunset commission would be made up of unelected officials, meaning the public would have no way of holding them accountable.

The Pledge starts with the premise that “[m]ore than 20 states have addressed this problem by requiring that programs end – or ‘sunset’ – by a date certain.” However, the two prominent bills in Congress vastly differ from well-known state sunset efforts. For example, the Texas sunset commission is made up of elected leaders, not appointees as in the Brady or Tiahrt bills. The Texas sunset commission requires all work to be done in the open, with findings discussed in regular legislative session, where the public can participate in the same way as with any other legislative matter. The Texas Sunset Act also places no limits on debate or amendments and has no fast-track characteristics like the Brady or Tiahrt bills.

The Texas Sunset Act is also limited to evaluations of the state agencies and does not include evaluation of every agency and program within government like the Brady and Tiahrt bills, which put Social Security, veterans’ benefits, Medicare, and many other programs up for grabs. Additionally, when the House considered the Tiahrt bill a few years ago, the legislation was amended to include all government regulations, in addition to its scope of all agencies and programs. The scope of the tasks these bills present is enormous. A sunset commission could not possibly evaluate all agencies, programs and regulations.

There are numerous other differences with the major sunset requirements in states, making the Brady and Tiahrt bills quite radical in their approach.

C. Other Regulatory Issues

The Bush administration published a number of regulations at the end of the term, called midnight regulations. Among the many midnight regulations is one from the Department of Health and Human Services (HHS) that has far-reaching impacts on women and family planning decisions. The rule allows health care professionals at institutions that receive government money to opt out of providing abortion and sterilization if such services create a problem of conscience for the provider. HHS requires the institutions to certify they are complying with federal laws that allow health care workers to withhold services on the basis of religious or moral grounds. Violations could lead to loss of funding.

The Obama administration has been working to undo this regulation. Under the Pledge, House Republicans promise to “enact into law conscience protections for health care providers, including doctors, nurses, and hospitals” that would likely directly counter the work the Obama administration has been doing on this issue.

II. Tax and Budget Proposals

According to the Pledge, the “crushing” debt is a “crisis,” and a “lack of a credible plan to pay [it] back causes anxiety among consumers and uncertainty for investors and employers.” To address the problem, the Pledge offers four proposals specific enough that their impact on federal spending can be estimated:

- Cut spending to Fiscal Year 2008 levels
- Rescind unspent Recovery Act funds
- End the Troubled Asset Relief Program
- End the government’s ownership of Fannie Mae and Freddie Mac

The Pledge offers other proposals aimed at reducing federal spending but does not provide enough detail to assess the impact they would have. Some of these proposals include setting “strict” budget caps, reducing Congress’s budget, holding weekly votes on measures to cut spending, imposing a federal hiring freeze on non-security positions, instituting “sunset” provisions for federal programs (discussed above), and reviewing entitlement spending. Depending on how these proposals are implemented, they could have a significant impact on the nation and its people.

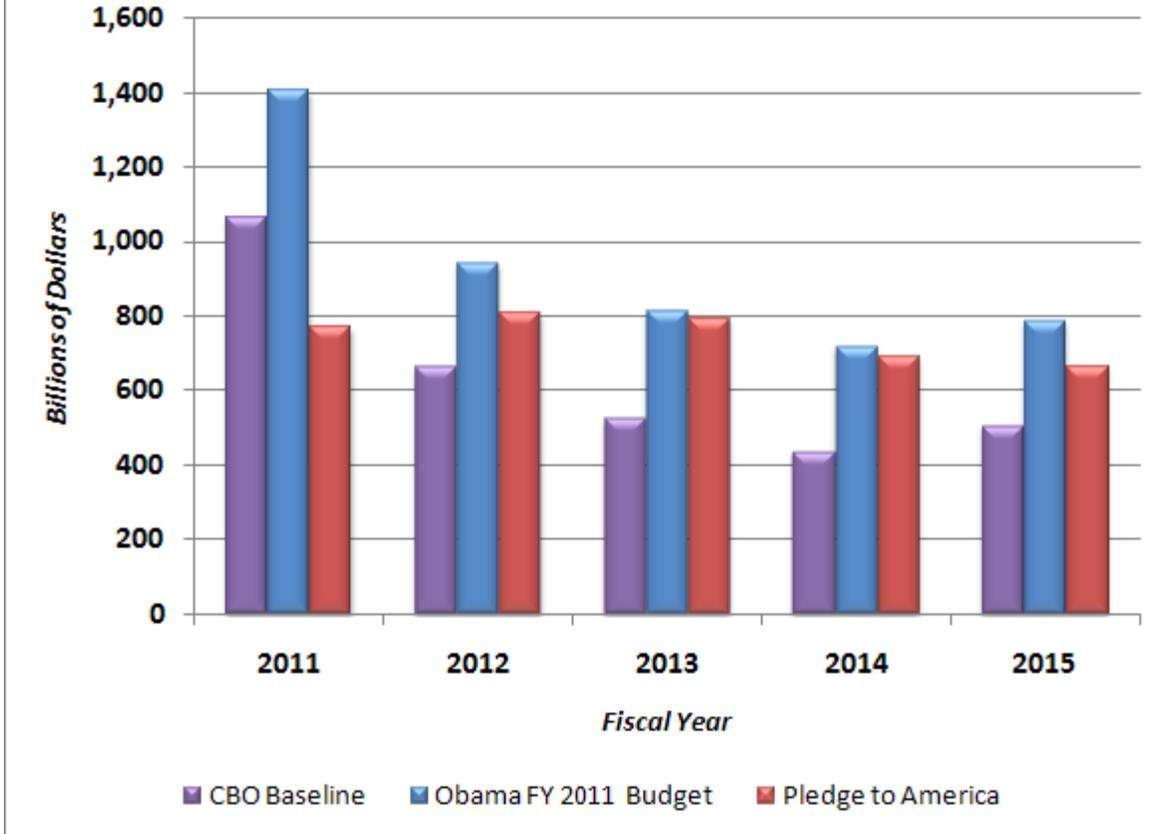
Overall, the Pledge calls for sharp reductions in taxes and discretionary spending.

Commentary

The Pledge’s emphasis appears to be on reducing deficits, not balancing the budget. For example, there is no pledge for a constitutional amendment to balance the budget as there was in the Contract with America. At the same time, there may be additional proposals to cut spending that will emerge beyond those covered in the Pledge. For example, since the Pledge was announced, Rep. Jeb Hensarling (R-TX) has said he will offer a constitutional amendment limiting federal spending to one-fifth the size of the economy.

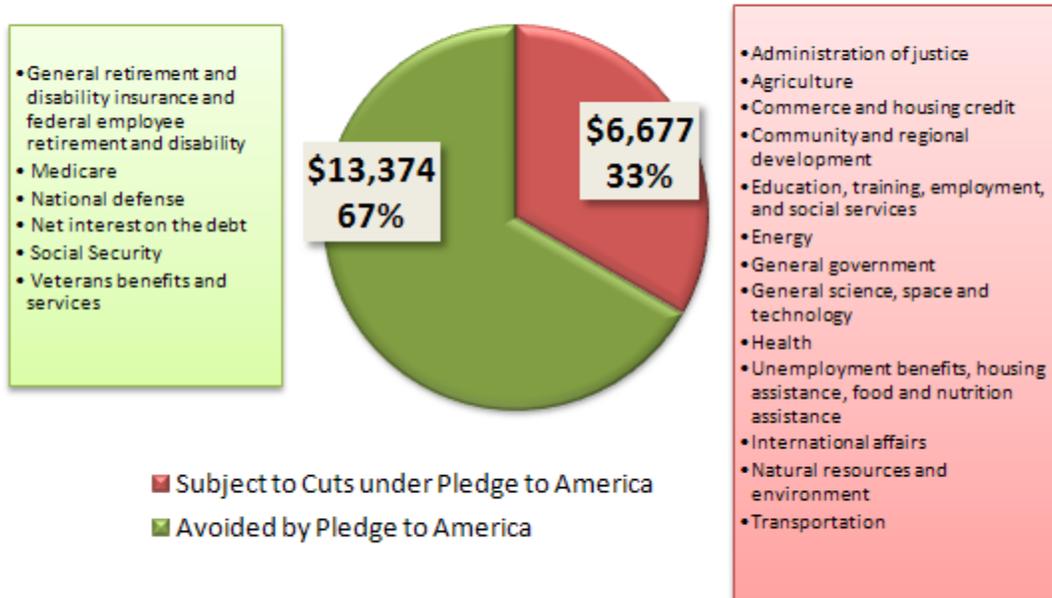
Based on what can be assessed in the Pledge, House Republicans have put forth a plan that would increase the federal deficit over the next five years by \$3.7 trillion. While that’s \$936 billion below the projected \$4.7 trillion deficit (2011-2015) in the president’s FY 2011 budget, it’s \$533 billion more than the \$3.2 trillion deficit projected in the Congressional Budget Office’s (CBO) baseline deficit. While the Pledge does not balance the budget, it does create a stark change in our national priorities: it would essentially cut services and public protections in order to transfer those sums to wealthy individuals through tax cuts.

Figure 1: Projected Deficits under the Pledge and Comparisons with CBO and Obama Estimates, 2011-2015
(billions of dollars)



Over the five-year period, the Pledge's spending cuts would be aimed at programs that comprise about one-third of the federal budget. As Figure 2 shows, this covers many programs vital in communities across the country. The Pledge is not detailed enough to know whether House Republicans would eliminate some programs for savings or make across-the-board cuts. What is certain is that programs that serve low-income families and other populations that have less clout in Congress are likely to feel the impact most.

Figure 2: The Pledge Targets Small Portion of Federal Spending, 2011-2015
(billions of dollars)



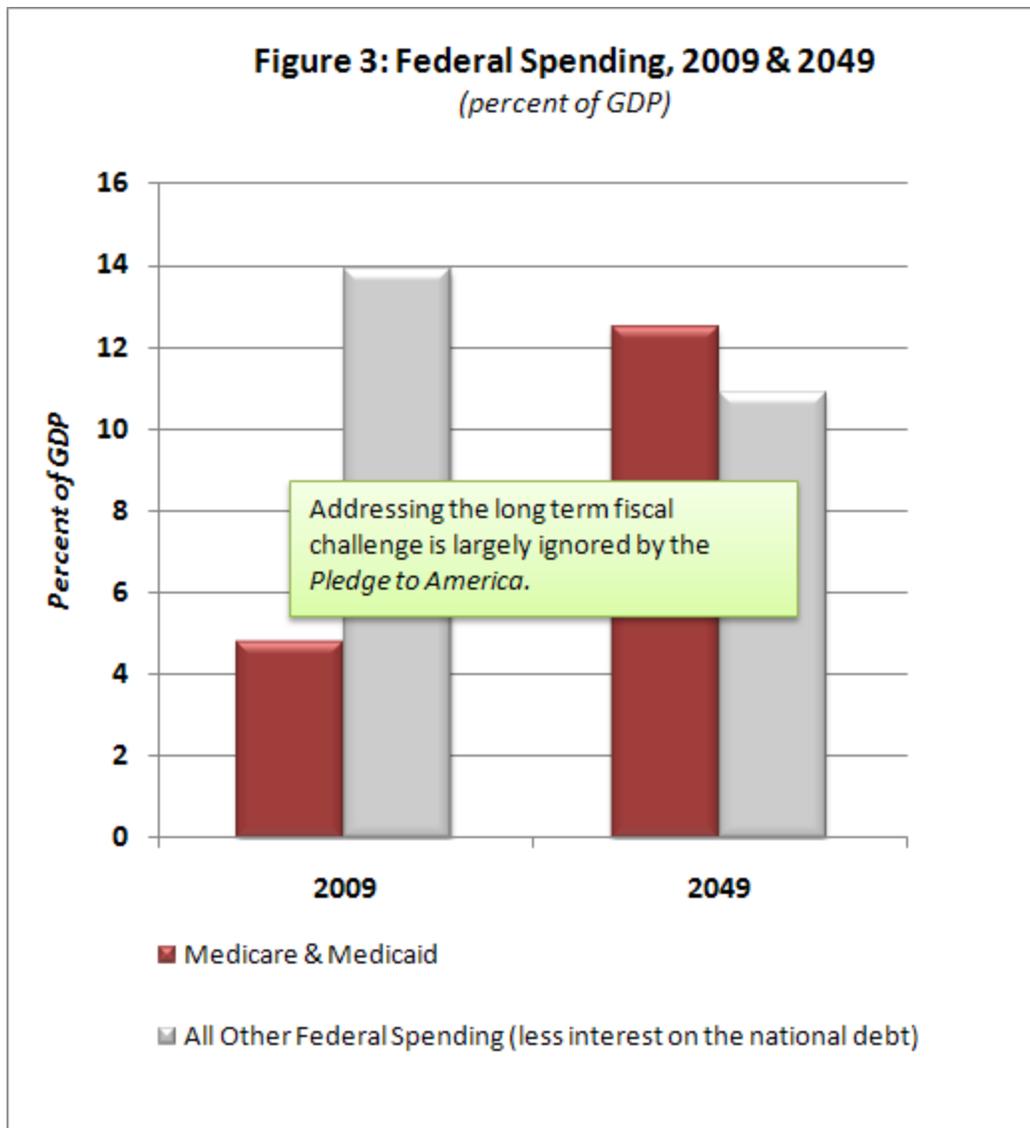
If implemented in the next fiscal year (FY 2011), which started Oct. 1, 2010, the House Republican plan would cut about \$248 billion (20%) in federal spending from this year's levels in areas such as housing and nutrition assistance, health care services, education, job training, highway and air transportation, environmental protection, scientific research and development, food safety, and international affairs. In subsequent years, those program funding cuts will increase, on average, from 20 percent to 28 percent in 2015 when compared to Obama's budget.

The Pledge strenuously avoids enumerating specific areas within the budget that will see funding cuts, staying close to the vague rhetoric about "out-of-control spending" that will be pared back to "prestimulus, pre-bailout levels." Assuming that spending cuts are distributed evenly to all parts of the budget, a sample of what specific program funding levels would look like is:

	2010 Projected Funding (excluding Recovery Act) (in millions)	2011 Pledge Proposal Level (in millions)	Percent Reduction from 2010
Head Start	7,235	6,877	4.9%
Vaccines for Children	3,652	2,720	25.5%
Food Safety and Inspection Service	1,019	930	8.7%
Administration of Clean and Safe Water programs	489	460	5.9%
Operation of the National Park System	2,141	2,002	6.5%
Advanced Scientific Computing Research	1,669	1,253	24.9%
Highway Safety Improvement	1,331	1,187	10.8%

While hundreds of programs would see their budgets trimmed significantly, the Pledge explicitly fences off more than two-thirds of federal spending as untouchable or unaddressed. The “exceptions for seniors, veterans, and our troops” seems consistent with both parties' attempt to protect key voting blocks. However, the Pledge also does not address mandatory spending, including the single largest risk to fiscal and economic stability: the rapidly rising costs of Medicare and Medicaid that will dwarf the size of other spending over the next 40 years.

In 2010, spending on Medicare and Medicaid equaled 4.8 percent of gross domestic product (GDP) while all other spending (excluding interest on the national debt) equaled 13.9 percent of GDP. In 2049, spending on those federal health care programs are projected to be 12.5 percent of GDP, with all other spending at 10.9 percent of GDP (again, excluding interest on the debt). These facts are absent in the Pledge, and the only references to Medicare are ones that bemoan potential cuts to the program under the new health care law and a vague promise to reform the budget process “to ensure that Congress begins making the decisions that are necessary to protect our entitlement programs.”



As mentioned above, the net impact of the measurable proposals would be to reduce federal spending by \$248 billion from current spending; it would be a \$157 billion cut when compared to Obama's 2011 budget request and a \$1.4 trillion cut over the 2011-2015 period when compared to Obama's projections. These numbers would seem to indicate that the Pledge's budget policies would reduce the federal budget deficit somewhat by reducing federal spending by about seven percent. However, the improvement in the fiscal outlook is absolutely swamped by the Pledge's tax plans.

Every tax proposal in the Pledge would decrease revenues. The largest hit to the balance sheet would come from the permanent extension of the Bush-era tax cuts enacted between 2001 and 2003. Compared to Obama's FY 2011 budget, federal receipts under the Pledge shrink by \$822 billion from 2011-2015, and compared to the CBO baseline, by \$1.6 trillion. While some spending would be cut, even more revenue would be lost, ultimately pushing the budget further into the red.

The Pledge also frequently uses the term “job killing tax hikes” and laments “out-of-control” spending. Even though long-term spending problems are related to mandatory programs (e.g., health care), the Pledge focuses on discretionary spending. The Pledge also does not address the job-killing impact of federal spending cuts. These are jobs that many Americans believe to be extremely important, like protecting the food supply and the environment, enforcing the law, and conducting scientific research to keep our nation competitive with the rest of the world. It is not just employees of the federal government that may find their jobs on the chopping block, but also thousands state and local government employees including teachers, policemen, and firemen, along with many in the nonprofit sector who provide services to so many affected by the recession.

Ironically, the Pledge’s proposed net “freeze” on non-security federal hiring might actually not “ensure that the public sector no longer grows at the expense of the private sector,” as argued in the Pledge. From 1999 to 2009, federal civilian employment increased about 16 percent, or 178,000 full-time equivalents (FTEs). However, the largest increases were in the Departments of Homeland Security (157.6 percent), Veterans Affairs (32.0 percent), and Justice (14.7 percent). (The Department of Homeland Security was created during this period.) These are likely to be some of the agencies exempt from the net freeze in hiring.

Only two other civilian federal agencies expanded their workforces – Health and Human Services (4.0 percent) and Interior (3.0 percent). Every other agency has seen FTE cuts; a net freeze would not likely result in a savings from these agencies or reduced competition with the private sector.

Additionally, unless there is an increase in government hiring, we will continue to face inadequate protection of our food supply, our workers, and our families. We also will not keep up with improved efficiencies in serving the public (e.g., delivering Social Security, providing passports, etc.). A net freeze in non-security hiring is penny-wise but pound-foolish.

The net result of the budget proposals outlined in the Pledge would be a situation in which vital programs that ensure the safety of drugs and the food supply, protect the workforce and the environment, retrain the unemployed, and provide nutrition assistance to families hit by the Great Recession would see drastic cuts while any possible gains in the nation’s fiscal outlook would be erased by trillions in dollars in tax cuts that disproportionately benefit the wealthy.

Our Methodology

To calculate spending amounts, we assumed all defense, veterans, Social Security, Medicare, and other retirement spending would continue as projected in the Obama budget. This is because the Pledge calls for “common-sense exceptions for seniors, veterans, and our troops” from the proposed cuts. The remaining portions of the budget are subject to the Pledge’s proposed cuts.

We use the 2011-2015 timeframe because detailed budget estimates beyond 2015 are not produced by either the Office of Management and Budget or the CBO.

Our projections of the Pledge’s impact on federal deficits are conservative and clear underestimations for several reasons. First, we excluded the impact of the revenue-reducing small business tax cut because the proposal is not defined enough to assess impact. Additionally, it is not clear whether House Republicans intend on paying for the tax cut through other means. Second, the Pledge implies that there will be military spending increases, such as

for missile defense, increased border security, and other measures to "provide a robust defense."

Our analysis is based on the policies set forth in the Pledge that were detailed enough to assign dollar values to them. Namely:

- Cut spending to 2008 levels
- Extend all of the Bush-era FY 01-03 tax cuts
- Repeal IRS Form 1099 reporting mandate (included in our spending-effects estimate of repealing the health care bill)
- Repeal the health care law
- End TARP
- Cancel unspent Recovery Act funds
- End government control of Fannie Mae and Freddie Mac

Things that we could not quantify with any certainty are:

- Setting budget caps on federal spending, since the amounts were not specified in the Pledge
- Allowing small businesses to deduct 20 percent of their income from their tax liability
- Reducing Congress's budget
- Holding "weekly" votes on spending cuts
- Imposing a federal hiring freeze
- Instituting "sunset" provisions for federal programs
- Requiring "a full accounting of Social Security, Medicare, and Medicaid...and [preventing] the expansion of unfunded liabilities."
- Devoting more resources to homeland security and national defense, including increased funding for missile defense

III. Transparency and Accountability Proposals

Although the Pledge states that House Republicans will "fight to ensure transparency and accountability in Congress and throughout government," there are few specific legislative items in the Pledge addressing this theme. This section describes several proposals in the Pledge covering transparency and accountability. One proposal, Read the Bill, is clearly a transparency proposal and is relatively specific; the others in the Pledge are less clearly transparency or accountability proposals, but we've included them anyway.

A. Read the Bill

To ensure that legislation is understood before it is voted on, the Pledge promises to publish "the text online for at least three days before coming up for a vote in the House of Representatives."

How this May Work

In June 2009, Rep. Brian Baird (D-WA) introduced a resolution, H. Res. 554, which would achieve the Pledge's objectives. Under Minority Leader John Boehner's (R-OH) leadership, House Republicans have led a campaign to get the resolution discharged from committee.

Thus, it is likely that H. Res. 554 would likely be the vehicle House Republicans would use to implement the Pledge.

The resolution would prohibit a bill (e.g., authorization, appropriations, conference report, etc.) from coming to the House floor until 72 hours (excluding weekends and federal holidays unless the House is in session) after the text of the bill and the accompanying reports are made public through the Internet. The rule could be waived with a two-thirds vote of those voting in the House. The resolution also makes clear that classified information would not be posted online.

When it comes to amendments, the resolution expresses “the sense of the House,” an approach that is aspirational rather than actually changing House rules. Proposed amendments (except those offered under an open rule) that are major in size, scope, or cost should be posted on the Internet for an appropriate number of hours, according to the resolution. However, the resolution leaves it to the Rules Committee to work out any changes that would affect how amendments are handled.

Commentary

House Minority Leader John Boehner (R-OH), a major force behind the Pledge, has argued for some time that Congress needs to change the way it operates to be more transparent. In October 2009, Boehner wrote in an op-ed, “We've listened to the American people, and we're united in our support for common-sense changes such as ‘read the bill’ reform that would require all bills to be posted online for a minimum of 72 hours before they are brought to a vote.” (John Boehner, “Let America read the bill”, *Dallas Morning News*, Oct. 28, 2009, at http://www.dallasnews.com/sharedcontent/dws/dn/opinion/viewpoints/stories/DN-boehner_29edi.State.Edition1.282075d.html)

Earlier in 2009, Boehner posted the Read the Bill suggestion on a public forum launched by the Obama administration to prioritize ideas for strengthening executive branch transparency. Boehner’s proposal quickly received lots of “votes” of support on the website even though it had nothing to do with the executive branch. In fact, a number of transparency and good government groups have endorsed the Read the Bill concept, including OMB Watch (see ReadTheBill.org).

Thus, it is not surprising that the Read the Bill proposal was in the Pledge. It is laudable that bills considered on the floor of the House would be placed online for public review before a vote. However, it is surprising that other transparency initiatives supported by Boehner were not part of the Pledge. For example, Read the Bill does not address disclosure as legislation works its way through committees. Yet much of the work of refining and altering bills is done through committees. Additionally, why doesn't the Pledge require that all floor amendments be made public for some time period before voting? While some amendments are narrow and only a few sentences long, it is not uncommon for some to be entire replacements of a bill or large sections of it.

B. Adhere to the Constitution

The Pledge includes a commitment to “require each bill moving through Congress to include a clause citing the specific constitutional authority upon which the bill is justified.”

How this May Work

The Pledge does not specify how House Republicans would implement this promise, but it could be done through a rule change that requires all legislation to contain such a clause upon introduction. There could be a point of order or the ability of a member of Congress to challenge the constitutional authority that is cited to make the rule enforceable.

Commentary

In theory, this sounds good, but the document provides little detail on this promise. First and foremost, the Pledge offers little evidence that overstepping constitutional authority is such a significant and recurring problem that such a requirement is needed for every piece of legislation. However, there is nothing troubling about identifying the constitutional basis for proposed legislation.

What may present concerns is the lack of clarity about who would be making these constitutional determinations. There are wide variations among people's interpretation of the Constitution and the authorities it grants. It is to be expected that there will be disagreements among members over the validity of the constitutional authority cited in any given bill. There are also important questions here that go unaddressed in the Pledge: Would these determinations be a partisan exercise, or would they be carried out by a nonpartisan entity like the Congressional Research Service? Would these judgment calls be made in a transparent way, with both the determinations and the legal reasoning behind them fully available to the public?

Without clear mechanisms to ensure that such an effort is handled fairly and impartially, this promise could easily become a vehicle for House Republicans to block unwanted legislation. The creation of a one-sided veto mechanism for House Republicans would go against the stated goals of increasing openness and accountability in Congress.

C. Make It Easier to Cut Spending

In response to the stated problem that the Democratic leadership in the House did not allow a single spending bill to be considered under an "open" amendment process, the Pledge promises to allow any lawmaker to offer amendments to reduce spending on appropriations bills.

How this May Work

It might be possible to change the House rules to require spending bills to allow such amendments and eliminate the ability of the majority to structure markup and floor votes for spending bills. However, it seems more likely that this promise would have to be implemented through consistent management decisions and enforced by the Rules Committee.

Commentary

It is strange that, despite leveling criticism at Democrats for the lack of an "open" amendment process on appropriations bills, the promise is limited only to amendments to cut spending. For a truly open process to work, it would need to allow any and all proposals, including amendments to increase spending or provide alternative spending priorities. Depending on the interpretation of the promise, it could also block amendments that seek to shift funds between programs but keep overall spending levels the same, as this would increase spending in some area or another.

Government spending has become an issue of greater concern over the last few years, and numerous public interest groups have voiced concerns about accountability. However, the Pledge fails to include many of the prominent ideas to increase accountability for government spending. For instance, earmarks have garnered a great deal of attention as a potential vehicle for wasteful and inappropriate spending. Yet the Pledge does not propose requiring lawmakers to openly acknowledge which earmarks they have proposed. Similarly, there has been increased public interest in how well federal funds are being used. Between the bank bailout and Recovery Act spending, the federal government has spent an unprecedented amount of money. While the Recovery Act funds have come with new levels of transparency, there have been calls for even more openness. The Pledge could have promised increased data on contractor performance or the use of funds by banks to assure the public that the money spent by the federal government is being used wisely, but such promises do not appear in the Pledge.

D. What's Missing from the Pledge?

Given that the Pledge put such strong emphasis on the need to improve transparency to restore trust in government, it is surprising that so few specific transparency items made it into the document. This is especially striking considering that House Republicans have been advocating for a number of specific proposals outside of the Pledge.

For example, in his October 2009 op-ed mentioned above and his February 2010 CPAC speech (<http://www.facebook.com/video/video.php?v=314008906271>), Minority Leader Boehner identified changes beyond Read the Bill that were needed, including making committee actions more transparent by posting online votes by committee members within 48 hours and by making committee bills public within 24 hours of adoption. Boehner also called for putting TV cameras in the Rules Committee room; the Rules Committee establishes how bills are considered on the House floor.

Rep. Darrell Issa (R-CA), the ranking member of the House Oversight and Government Reform Committee, also has drafted a number of proposals. He created a "Transparency Challenge" that provides a comprehensive agenda for transparency and accountability, primarily aimed at the executive branch but also covering Congress and the judiciary. The ideas in the Challenge – ranging from federal spending transparency to making Congressional Research Service reports publicly available to applying needed data standards across government – were developed by Issa in consultation with many leaders in the openness and government accountability community. It is surprising that none of the ideas made it into the Pledge.

Since the Pledge was released, Issa spoke at the Heritage Foundation raising a number of accountability issues, ranging from improving data quality to ensuring Inspectors General have subpoena power to ideas for reducing waste in military spending. (See <http://www.c-spanarchives.org/program/295729-2>) Yet none of these ideas are in the Pledge, either.

Indeed, one of the criticisms of the Pledge's stance on transparency and accountability is that it is so limited and narrow. One clear transparency proposal, Read the Bill, does not translate into an agenda.