

## Gramm-Rudman bill's impact begins a political upheaval

by Vin Berg

President Ronald Reagan, in an effort to save his defense budget from devastation by the Gramm-Rudman-Hollings "balanced budget" bill, will attempt to have Congress alter its budget-approval procedures, according to a UPI wire since confirmed by White House spokesman Larry Speakes. Reagan signed the bill on Dec. 12, and thereby signed into law an austerity program for the United States that commits the nation to destroying itself. That is what will be required to meet interest payments to the holders of the nation's debt, the one area of "spending" Gramm-Rudman will not cut.

If it has not yet dawned on the President that Gramm-Rudman will destroy the nation in the service of usury, it has dawned on him, at least, that Gramm-Rudman will destroy the defense budget. According to latest reports, he will, therefore, use his State of the Union Address Jan. 29 to ask Congress to change its budget process, by setting a binding limit on spending at the outset. This will avoid the provision of Gramm-Rudman which institutes automatic cuts, 50% of them defense cuts, if total budgetary allocations exceed Gramm-Rudman target ceilings in any of the years between now and 1991. That is the year that the budget is supposed to be balanced—but of course, at the rate debt service will grow, it won't be.

Instead of passing a concurrent budget resolution that does not have the force of law, as Congress now does in its yearly budget process, the President would have Congress pass a joint resolution that would require the President's signature. This binding budget resolution would meet the deficit-reduction targets specified by Gramm-Rudman for the relevant fiscal year.

Thus, by staying within Gramm-Rudman's overall ceiling, the automatic-cuts provision would not be triggered, and so, the defense budget would not automatically have to be cut—although everyone knows that, with this Congress, the defense budget is certain to be cut massively anyway, to stay within the overall ceiling.

In sum, President Reagan's ignorance of economics, the "free market" idiocy that has made him putty in Chief of Staff Don Regan's hands, has placed him in a trap. It is a trap from which there is no escape until it is recognized that "balancing the budget" is no priority at all—except from the standpoint of usury; that the issue is not between raising taxes and cutting spending, but one of using the powers of government to create currency and credit and a tax structure that favor growth in manufactures and agriculture, and penalizes the sort of "services" that have proliferated over the past decade, especially since the Volcker measures of 1979. In that event, the federal budget, through expansion of the revenue base, will tend automatically to come into balance.

### The constitutional issue

On the same day that Gramm-Rudman was signed, two law suits challenging the constitutionality of portions of the bill were filed, one by 11 congressmen led by Mike Synar (D-Okla.), the other by the National Association of Retired Federal Employees. Neither suit challenges the Gramm-Rudman bill's constitutionality, only the constitutionality of mechanisms established in the bill, which even Phil Gramm, Warren Rudman, and Ernest Hollings must know to be un-

constitutional. These involve, in the event the "automatic cuts" provision is triggered, the binding character of cut-recommendations by congressional agencies, the Congressional Budget Office and the Comptroller General, instead of Executive Branch agencies.

The Synar suit (see *Documentation*) was in fact undertaken as provided for by the Gramm-Rudman bill itself. Said Synar's Dec. 12 press statement: "A balanced budget is important. Our goal is to correct the Gramm-Rudman process so that we achieve a balanced budget without trampling our Constitution or permanently altering the balance of power. We can do this through the fallback.

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"In other words, each fiscal year, if Congress has failed to meet the deficit targets, the CBO and OMB would report that fact to Congress. Each House then would have to vote up or down whether to allow the sequestration process to go forwards. . . ."

The retired employees' association suit, according to a NARF release, challenges the Gramm-Rudman provision which suspends payment of the 3.1% cost-of-living adjustment to federal retirees, effective under law as of Dec. 1, and whose suspension therefore deprives recipients of property without just compensation, violating the Fifth Amendment.

Everyone knows and states, including the President and the Justice Department, that the mechanisms now in Gramm-Rudman violate the separation of powers and law-making procedures established by the Constitution. Therefore, there is little doubt that the bill's "fallback" alternative, as described by Synar, will eventually be the bill's final shape, even though at present it appears that both lawsuits will be dismissed from federal court on a technicality: that the plaintiffs do not have standing to sue, because the bill has not yet gone into effect.

In any case, the suits, the congressmen, the President, and the Department of Justice all miss the point. It is not Gramm-Rudman mechanisms that are unconstitutional, but Gramm-Rudman itself.

The same point arises when considering President Reagan's expressed desire to move toward a "balanced budget amendment" to the Constitution. That would make the Constitution itself unconstitutional, so to speak.

The American Constitution was drafted in order to establish a nation-state republic whose affairs, regardless of the opinions of episodic majorities, would be governed by natural law. Natural law dictates the material and moral development of a sovereign people, if that people is to survive. With this in mind, the Constitution established the purposes of government: "to promote the general welfare," to promote "the progress of science and the useful arts," to "provide for the common defense."

Instead, Gramm-Rudman dictates the dismantling of any

and all government activity toward those ends, as necessary to provide for the general welfare of usury. Gramm-Rudman is an attack on natural law and an attack on the very existence of the U.S. Constitution.

## **A national upheaval**

Gramm-Rudman's prima facie unconstitutionality is not a matter of mere legal argumentation, but an immediate, practical reality. The horrifying impact that Gramm-Rudman will have on the national well-being is sinking in at all levels of the national polity. Slowly, state, county, and municipal governing bodies are reviewing their own budgetary situations from the standpoint

Rudman will steal from them to pay federal debt-service. One knows when such reviews have been completed in any locality, for, as a general rule, howls and screams such as have never been heard before arise from the shocked officials who have just engaged in the review.

As such reviews slowly expand around the nation, a political time-bomb is being created, as awareness spreads that nothing of political machines or social order will remain in the wake of Gramm-Rudman's devastation.

In this circumstance, a nationally significant political campaign was launched in New Hampshire on Jan. 10, when Major Robert Patton, U.S. Air Force (ret.), announced that he would run for the U.S. Senate seat now occupied by Warren G. Rudman (R). Before a large group of reporters, Major Patton blasted Rudman, calling his bill the morally repulsive act of a gutless legislator and a vote to destroy the United States, "without the Soviets having to fire a shot."

Patton is only one of the candidates now backed by Lyndon LaRouche's National Democratic Policy Committee—a sign of things to come as the NDPC goes after every congressional seat in the nation.

## **Cuts at the state level**

The relevant facts on Gramm-Rudman's nationwide impact are as follows.

The states of the United States have an aggregate budget of \$500 billion in spending for all purposes. Fully \$100 billion of this comes from the federal government in one form or another. In short, one-fifth of all state spending in the United States comes from the federal government. That \$100 billion will be among the first federal expenditures Gramm-Rudman, or the President and Congress under the sword of Gramm-Rudman, will eliminate. And, those cuts will start to hit within weeks, perhaps days, if they have not already hit as federal agencies anticipate Gramm-Rudman going into effect.

Under the present timetable, as of Jan. 10, the Office of Management and Budget and the Congressional Budget Office will have prepared projections on the relevant features of income, expenses, the deficit, inflation, unemployment, and economic growth. They will then have given these projec-

tions to the Comptroller General. By Jan. 15, the Comptroller will announce whether or not the two projections agree, and if they disagree, he will then take a statistical average between the two. That will be the basis of a report to the President, which will contain designated budget cuts the President is ordered to implement.

In the bill's own language: "There is no legislative, judicial, or administrative recourse or appeal against the methods or assumptions in making the projections." The bill emphasizes that under all circumstances, net interest—debt-service—must be paid.

For the states, counties, and municipalities of the country, federal funds for transportation, health, sanitation and sewage, education, and unemployment compensation, will be eliminated year by year.

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## Documentation

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# Congress, Justice try to save the bill

*The following is excerpted from President Reagan's written statement upon signing the legislation containing the Gramm-Rudman amendment, Dec. 12, 1985.*

Today I have signed H.J. Res. 372, which increases the statutory limit on the public debt and includes the Balanced Budget and Emergency Control Act of 1985. . . . With the passage of this landmark legislation, the Congress has made an important step toward putting our fiscal house in order. Deficit reduction is no longer simply our hope and our goal—deficit reduction is now the law. From here to the end of the decade, mandated cuts can put the deficit on a declining path and eliminate governmental overspending by 1991. . . .

. . . This legislation mandates that the President and the Congress work together to eliminate the deficit over the next five years. The first step in that process will begin early next year. At that time I anticipate that we will have to take some significant across-the-board reductions in a wide range of programs. . . . Whether increased government spending is financed through taxes or borrowing, it imposes a heavy burden on the private economy. . . . That is why increasing taxes is not an option: deficit reduction must mean spending reductions.

We must also never lose sight of the necessity to maintain a strong national defense. Restoring our defenses has been vital not only to our security, but to the cause of freedom. . . . I am confident that implementing our previous agreements with Congress for steady real growth in defense will keep our defenses secure.

In signing this bill, I am mindful of the serious constitutional questions raised by some of its provisions. The bill

assigns a significant role to the Director of the Congressional Budget Office and the Comptroller General in calculating the budget estimates that trigger the operative provisions of the bill. Under the system of separated powers established by the Constitution, however, executive functions may only be performed by officers in the Executive Branch. The Director of the Congressional Budget Office and the Comptroller General are agents of Congress, not officers in the Executive Branch.

The bill itself recognizes this problem, and provides procedures for testing the constitutionality of the dubious provisions. The bill also provides a constitutionally valid alternative mechanism should the role of the Director of the Congressional Budget Office and the Comptroller General be struck down. *It is my hope that these outstanding constitutional questions can be promptly resolved.*

Similar constitutional concerns are raised by a provision in the bill authorizing the President to terminate or modify defense contracts for deficit reduction purposes, but only if the action is approved by the Comptroller General. Under our constitutional system, an agent of Congress may not exercise such supervisory authority over the President. As the Supreme Court made clear in its *Chadha* decision, Congress can "veto" Presidential action only through a constitutionally established procedure of passing a bill through both Houses and presenting it to the President.

*The following is from the press statement issued by Rep. Mike Synar on Dec. 12, 1985.*

Today, I am filing suit in Federal District Court challenging the constitutionality of the Gramm-Rudman balanced-budget [sic]. If I prevail, the legislation will not be struck down in its entirety but rather the "fallback" mechanism contained in the bill, which is constitutional, will be activated.

I support a balanced budget. . . .

As a conferee on Gramm-Rudman, I spent long hours trying to find a way to cure its constitutional problems. The end result of our efforts, however, was to agree to disagree and to provide for expedited review by the courts. . . .

A balanced budget is important. Our goal is to correct the Gramm-Rudman process so that we achieve a balanced budget without trampling our Constitution or permanently altering the balance of power. We can do this through the fallback.

. . . It provides that if the "automatic pilot" feature of Gramm-Rudman is found to be invalid, it will be replaced with a vote by the Congress.

In other words, each fiscal year, if Congress has failed to meet the deficit targets, the CBO and OMB would report that fact to Congress. Each House then would have to vote up or down whether to allow the sequestration process to go forwards. . . .

*The following is excerpted from the civil action filed Dec.*

12 by Rep. Synar and 11 other congressmen.

1. This is an action seeking a declaratory judgment that the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 . . . which authorize reductions in federal spending other than by the passage or legislation requiring such reductions, are unconstitutional because they violate the lawmaking procedures of the Constitution and principles of separation of powers. . . .

5. . . . The principal purpose of the Act is to create a mechanism by which the federal deficit can be reduced below the levels otherwise anticipated for the next six years, with the objective of achieving a balanced budget by fiscal 1991. The method chosen to accomplish this is a process described in sections 251 and 252 of the Act, which automatically causes across-the-board reductions . . . to go into effect through a Presidential order. . . .

6. Under section 251, the determination described in paragraph 5 is initially made jointly by the Director of the Office of Management and Budget, an officer of the executive branch of the government, and the Director of the Congressional Budget Office, an officer of the legislative branch of the government. That determination is then reviewed by the Comptroller General, an official of the legislative branch, who issues a final determination to the President . . . and under section 252 the President is obligated to carry out the budget cuts detailed in a report of the Comptroller General. . . .

8. Because the presidential order accomplishing the spending reductions will have the effect of changing existing laws mandating higher levels of spending, it is valid only if the power to amend spending laws is one that can be delegated to the President. . . . Article 1, section 7 of the Constitution requires that all laws, including spending laws, be passed by both Houses of Congress and are either signed by the President or approved by two-thirds of each House following a veto. Since the process of amending spending laws provided in the Act does not meet those requirements, it is constitutionally invalid as an unauthorized attempt to make law.

9. Even if the power to alter spending levels provided for in the Act could constitutionally be delegated by Congress, the delegation in this Act is still invalid because it is made to the Director of the Office of Management and Budget, the Director of the Congressional Budget Office, and the Comptroller General, and only the first of these is an official of the executive branch. . . [Therefore,] the delegation is unconstitutional as a violation of principles of separation of powers. . . .

*The following is excerpted from a memorandum from Attorney-General Edwin Meese to Vice-President George Bush, in his capacity as President of the Senate, and Tip O'Neill, Speaker of the House.*

This is written to advise you of litigation initiated by several Members of Congress to challenge the constitutionality of

portions of the Balanced Budget and Emergency Deficit Control Act of 1985. . . . The suit has been filed pursuant to paragraph 1 of subsection 274(a) of the Act, which purports to give Members of Congress standing to challenge the constitutionality of any Presidential order that might be issued pursuant to section 252.

. . . It is our view that the plaintiffs in *Synar* have no standing to sue and that section 274(a)(1) cannot confer such standing in the absence of a case or controversy as required by Article III of the Constitution. Accordingly the Department intends to file a motion to dismiss the *Synar* action on December 30, 1985. . . .

In the event that the case is not dismissed, you should be advised of our view that the role prescribed for the Comptroller General in sections 251 and 252 of the Act is not constitutional. . . . The Department cannot defend this aspect of the law. We also believe that the same constitutional limitation applies to the role that the Director of the Congressional Budget Office may perform pursuant to sections 251 and 252.

I should emphasize that our position on this issue will not prevent the important purposes of the Act from being accomplished in a timely fashion. As the President's signing statement noted, the Act provides a constitutionally valid alternative mechanism should the procedures involving the Comptroller General be held invalid. We look forward to working cooperatively with the Congress in carrying out the objectives of this landmark legislation.

*The following is excerpted from a release of the National Association of Retired Federal Employees.*

On Friday, December 20, the NARFE and its National Officers filed suit in the U.S. District Court for the District of Columbia, challenging as unconstitutional the provisions of the Gramm-Rudman-Hollings Deficit Control Act which suspend payment of the 3.1 percent cost-of-living adjustment that is due to nearly two million federal annuitants and survivors in January.

The lawsuit claims that the cost-of-living adjustment was effective under law as of December 1 and that the 3.1 percent increase is required to be included with the January annuity check. Because payment was suspended, the suit claims, the annuitants and survivors have had their property taken away without just compensation, in violation of the Fifth Amendment to the U.S. Constitution. . . .

In addition to the legal point on which our lawsuit is based, we feel that Gramm-Rudman-Hollings violates the basic tenets of fairness and equity by discriminating between different non-means-tested retirement programs sponsored by the federal government. It shelters protection for 36 million persons covered by Social Security while suspending such protection for 1.9 million federal retirees and survivors. Inflation does not discriminate between classes of the elderly; neither should inflation protection. . . .