

Debt Ceiling Games - Court Could End Leverage

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By [Robert Weiner](#) and [Richard Mann](#), [The Hill](#) | *News Analysis*

The Constitution of the United States:

Fourteenth Amendment, Section 4: The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.

Twenty-Seventh Amendment: No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

In the debate over whether the president should simply pay bills owed by the United States, missing is the key aspect of whether the Courts would back him up. The bill passed in the House Wednesday, set for passage in the Senate, delays the debt ceiling for four months but ties the action to House and Senate salaries. The courts, including the Supreme Court, would likely confirm the president's Constitutional obligation to pay the U.S. debts and would declare unconstitutional the link to issuing congressional paychecks. The congressional leadership insisted on reading the full Constitution aloud at the beginning of the session. We do not believe they skipped the relevant sections.

Under contract law, entities must pay bills for expenses they obligate. So must the U.S. government. The 14th Amendment, Section 4 states: "The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned." The "inclusion" is to emphasize those are a part of what must be paid, not the sole items.

The latest House bill "holding salaries of Members of Congress in escrow upon failure to agree to budget resolution" directly flies in the face of the 27th Amendment to the Constitution, which states: "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

A court ruling affirming presidential power under Amendment XIV of the Constitution would remove congressional leverage for another "fiscal cliff" and end stop the now-regular debt ceiling games. It would give teeth to President Obama's statement that paying the country's debt is "not a bargaining chip" despite congressional demands that debt be used as leverage to make cuts in Social Security and Medicare. Court approval would stop the congressional fiscal cliff insanity. The White House should institute or support this move.

Congressional legislation on the debt is not needed and has only been passed since 1917. Prior to 1917 Congress simply "authorized" the funding — which it still separately does in "authorization" bills.

The new Republican strategies are "a reflection of the same kind of politics of that 112th Congress, which reflected political gamesmanship rather than substantive policy," Steny Hoyer, the House Democratic Whip, said. In four months, Republicans will continue to try to use the debt ceiling as leverage.

House Democratic Leader Nancy Pelosi said that she would use the 14th amendment to pay US debt "in a second." House Democratic Assistant Leader Jim Clyburn (D-N.C.) told us, "The president should just use the Constitution."

Former President Bill Clinton, who Obama says should be "Secretary of Explaining Stuff," stated he would use the 14th amendment "without hesitation." Former House Speaker Newt Gingrich (R-Ga.) asserted the debt ceiling is "frankly a dead loser" because "the whole national financial system is going to say, 'The entire economy of the world will collapse,'" and Congress "will cave."

Rep. John Conyers (D-Mich.), Ranking Member of the House Judiciary Committee and the second longest serving Member of Congress, argued, "It's my belief that the courts would support the president if he cited the 14th Amendment and instructed our executive agencies to pay the nation's debts." He told us that the new salary tie "is not constitutional" and "shows how superficial" the legislation is.

Top constitutional authorities Michael Dorf, former law clerk for U.S. Supreme Court Justice Kennedy and law professor at Cornell University, and Neil Buchanan, law professor at George Washington University, wrote in the Columbia Law Review in October, "Given the balance of constitutional, practical, and prudential considerations," the most constitutional choice "would be for the president to continue to issue debt, in the amounts authorized by the duly enacted budget of the United States."

President Obama has been reluctant so far to say he will invoke the 14th Amendment. The president is by experience a state and federal legislator who has worked by successful compromise and consensus. The White House may not realize the likely Court support for paying the nation's bills.

If President Obama wants his 2nd term agenda not to be handcuffed by ongoing debt ceiling games, he could seek Court support against the constant threats to throw our economy under the bus.

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