

“OUTLOOK STABLE?” FISCAL FLAWS IN AMERICAN CONSTITUTIONAL LAW AND ITS FAILURE TO PROTECT THE YOUNG

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More bad news for millennials. New research suggests that they could become the first generation to earn less than their predecessors.

Myers¹

ABSTRACT

“No taxation without representation!” These flag words of the American Republic serve as a roadblock to ambitious politicians. As restraints on government spending weaken, American sovereign debt rises, posing threats to the economic, financial, and national security of the United States. Laws addressing these concerns have done little to curtail the problem, delaying the remedy and placing the burden of current spending on future generations; some are too young to vote or otherwise protest, and some have yet to be born. These matters demand immediate

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1. Joe Myers, *Millennials Will Be the first Generation to Earn Less Than Their Parents*, WORLD ECON. F. (July 19, 2016), <https://www.weforum.org/agenda/2016/07/millennials-will-be-the-first-generation-to-earn-less-than-their-parents/> [https://perma.cc/QP2G-ME8Q].

attention from courts and lawmakers alike, requiring a novel application of the Public Debt Clause.

ABSTRACT..... 559

I. INTRODUCTION 561

II. SUBSTANCE, STRUCTURE, AND SERVICING OF THE NATIONAL
DEBT 567

a. Substance..... 568

b. Structure 575

c. Inflation 579

III. THE PUBLIC DEBT CLAUSE 583

a. Prior Literature 584

b. Legal Precedent..... 588

c. Questioning the Debt..... 595

IV. THE KIDS ARE NOT ALRIGHT..... 604

V. CONCLUSION 616

I. INTRODUCTION

“Are you telling me the crown is three million in debt?”

“I’m telling you the crown is six million in debt.”

“How could you let this happen!?”

Game of Thrones²

The national debt continues to grow at an alarming rate.³ By 2024, it approaches 35,000,000,000,000.00,⁴ and given the annual federal deficits since 2020,⁵ one could expect it to grow by no less than \$2,000,000,000,000.00 per year in the foreseeable future.⁶ When the matter comes to a public debate on the floors of Congress, sometimes leading to government shut-downs,^{4a} legal scholars are almost of one voice: “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.”⁷ This article suggests a novel interpretation of this clause, more consistent with a balanced federal budget and fiscal responsibility in sovereign borrowing.

We argue that there is more than one way to “question” federal debt. Many scholars claim that Congress questions the debt when it threatens default, but this need not be the only possible method of “question[ing]:”

2. *Game of Thrones: Lord Snow* (HBO television broadcast May 1, 2011).

3. Michelle Fox, *The U.S. National Debt is Rising by \$1 Trillion About Every 100 Days*, CNBC (Mar. 4, 2024, 11:48AM), <https://www.cnbc.com/2024/03/01/the-us-national-debt-is-rising-by-1-trillion-about-every-100-days.html> [<https://perma.cc/68TW-ZWR6>].

4. Troy Adkins, *What the National Debt Means to You*, INVESTOPEDIA, <https://www.investopedia.com/articles/economics/10/national-debt.asp> [<https://perma.cc/2TJ4-AT5C>] (last updated Sept. 7, 2024).

5. *Deficit Tracker*, BIPARTISAN POL’Y CTR. (Sept. 17, 2024), <https://bipartisanpolicy.org/report/deficit-tracker/> [<https://perma.cc/BWM9-DJ6M>].

6. Tami Luhby, *Federal Budget Deficit Expected to Nearly Double to Around \$2 Trillion, Government Watchdog Says*, CNN POL. (Sept. 6, 2023, 12:04 AM), <https://www.cnn.com/2023/09/06/politics/federal-budget-deficit/index.html> [<https://perma.cc/F79Q-4GAX>] (“The federal budget deficit is expected to balloon to about \$2 trillion for fiscal year 2023, roughly double what it was in the previous fiscal year, according to a government watchdog group.”).

7. U.S. CONST. Amend. XIV; Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveau, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch & Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

A much more powerful, irremediable form of questioning the national debt is to take on a debt obligation that *cannot* be repaid.⁸ Given the decline in American long-term economic growth,⁹ a decline in its population growth,¹⁰ the destitute economic state of its younger generations,¹¹ a ballooning increase in liabilities,¹² and recent high inflation¹³ the United States draws closer and closer to taking on debt it can never repay. With this evidence in mind and the compelling national (and international) interest in avoiding a default of the national debt,¹⁴ federal courts should have a constitutional basis for reconciling federal debt obligations with the ability of the government to honor those obligations. Since the youth of the country will end up shouldering the burden assumed by aging American politicians, courts should grant standing to the future obligors to sue and prevent the auctioning of their future to the highest bidder at treasury auctions.

It is no secret that debt in the United States is a generational struggle: to spend on government today, politicians inevitably borrow from

8. U.S. CONST. Amend. XIV; Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveaux, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch & Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

9. *See generally* Congressional Budget Office, *The Long-Term Budget Outlook: 2024 to 2054*, CONGRESSIONAL BUDGET OFFICE (Mar. 2024), <https://www.cbo.gov/publication/60127> [<https://perma.cc/RC29-QTXT>].

10. *U.S. Population Projected to Begin Declining in Second Half of Century*, U.S. CENSUS BUREAU (Nov. 9, 2023), <https://www.census.gov/newsroom/press-releases/2023/population-projections.html> [<https://perma.cc/57PT-5TP8>].

11. Timothy Rusch & John Neurohr, *America's Young Adults Face Serious Economic Challenges According to New Data Report and Opinion Poll Analysis*, CTR. FOR AM. PROGRESS (May 6, 2008), <https://www.americanprogress.org/press/americas-young-adults-face-serious-economic-challenges-according-to-new-data-report-and-opinion-poll-analysis/> [<https://perma.cc/8ZWF-3JUX>].

12. James C. Capretta, *Federal Unfunded Liabilities Are Growing More Rapidly than Public Debt*, AM. ENTER. INST. (Nov. 17, 2022), <https://www.aei.org/articles/federal-unfunded-liabilities-are-growing-more-rapidly-than-public-debt/> [<https://perma.cc/V4TB-RHG8>].

13. Leonardo Vasquez, *Unpacking the Causes of Pandemic-Era Inflation in the US*, NAT'L BUREAU OF ECON. RSCH. (Sept. 1, 2023), <https://www.nber.org/digest/2023/unpacking-causes-pandemic-era-inflation-us> [<https://perma.cc/LA69-7HGG>].

14. Jean Ross, *Default Would Have a Catastrophic Impact on the Economy*, CTR. FOR AM. PROGRESS (May 11, 2023), <https://www.americanprogress.org/article/default-would-have-a-catastrophic-impact-on-the-economy/> [<https://shorturl.at/OuHeF>].

tomorrow.¹⁵ Sometimes, the paying generations will be so young that they cannot vote, and sometimes generations that have not yet been born.¹⁶ This raises the classic problem seminal to the creation of the United States: taxation without representation.¹⁷ As the government borrows and spends in the present, it inherently raises taxes in the future, for the liabilities incurred today must be repaid tomorrow. Yet, the generations that must pay those taxes lack the political power, either *de jure* or *de facto*, to politically challenge these decisions.

The younger generations can feel their burden, and their struggles result in a lack of motivation for work,¹⁸ declines in earnings,¹⁹ increased drug use,²⁰ increased suicide or suicidality,²¹ an increase in deaths of

15. James McBride et al., *The U.S. National Debt Dilemma*, COUNCIL ON FOREIGN RELATIONS (Dec. 4, 2023), <https://www.cfr.org/backgrounder/us-national-debt-dilemma> [https://shorturl.at/7YT5].

16. Robert Hormats, *This Generation of Politicians has Killed Fiscal Responsibility—but Millennials and Gen Zers Will Be the Ones Who Pay the Price*, FORTUNE (Sept. 21, 2023, 1:01 PM), https://finance.yahoo.com/news/generation-politicians-killed-fiscal-responsibility-170112206.html?fr=sycsrp_catchall [https://perma.cc/E93J-LU2L] (“It shifts the repayment and interest burden to successor generations: our children and grandchildren, who will inherit enormous financial obligations.”).

17. Julia Kagan, *Taxation Without Representation: What it Means and History*, INVESTOPEDIA, https://www.investopedia.com/terms/t/tax_without_representation.asp [https://perma.cc/V7WV-CGLC] (last updated Sept. 6, 2024).

18. Han Li, *Low Motivation of Youth in 21st Century: A Case Study of The U.S., China, and Japan*, 496 ADVANCES SOC. SCI., EDUC. AND HUMANS. RSCH. 272 (2020), https://www.researchgate.net/publication/347915068_Low_Motivation_of_Youth_in_21st_Century_A_Case_Study_of_The_US_China_and_Japan [https://perma.cc/QXN9-TL2S] (discussing the reasons for the younger generations’ lack of motivation).

19. Tami Luhby, *Many Millennials are Worse Off Than their Parents – a First in American History*, CNN PS. (Jan. 11, 2020, 7:05 AM), <https://www.cnn.com/2020/01/11/politics/millennials-income-stalled-upward-mobility-us/index.html> [https://perma.cc/5RB9-J7ZV].

20. *Gen Z and Addiction*, ADDICTION CTR, <https://www.addictioncenter.com/addiction/gen-z-addiction/> [https://perma.cc/9MCW-M5YA] (“Much like Millennials, members of Generation Z (Gen Z), also called zoomers, run a higher risk of developing a substance abuse problem than previous age groups.”).

21. Aditi Shrikant, *Youth Suicide Rates Rose 62% from 2007 to 2021: ‘People Feel Hopeless,’ One Recent Grad Says*, CNBC (Dec. 7, 2023, 10:05 AM), <https://www.cnbc.com/2023/12/05/youth-suicide-rates-rose-62percent-from-2007-to-2021.html> [https://perma.cc/3G7G-HS9G].

despair,²² decline in marriages,²³ a decreased birth rate,²⁴ failure to launch,²⁵ cohabitation with parents well into adulthood,²⁶ a decline in life expectancy,²⁷ and other socio-economic problems.²⁸ This is unfortunate since the youth ordinarily cannot vote before the age of eighteen, and even when they do, the youth do not form a sufficiently large (and sufficiently organized) political block to make a significant difference in elections.²⁹ The young are underrepresented in American politics, a stark contrast to the founding of the United States, where many of its founding fathers were

22. *Generation Z and Deaths of Despair*, AM. UNIV. SCH. OF PUB. AFFAIRS (Aug. 10, 2023), <https://www.american.edu/spa/news/generation-z-and-deaths-of-despair.cfm> [https://perma.cc/V34U-J4HX]; Karen Feldscher, *Why 'Deaths of Despair' are Rising in the U.S.*, HARV. T.H. CHAN SCH. OF PUB. HEALTH (Nov. 26, 2019), <https://www.hsph.harvard.edu/news/features/why-deaths-of-despair-are-rising-in-the-u-s/> [https://perma.cc/X8JQ-9ZHQ].

23. See Suzannah Kolbeck, *Are Younger Americans Souring on Marriage?*, DAILY PRESS (Aug. 9, 2023), <https://www.dailypress.net/life/features/2023/08/are-younger-americans-souring-on-marriage/> [https://perma.cc/YMZ5-LKTC] (discussing Gen Zers' and millennials' views on marriage).

24. Prarthana Prakash, *Millennials and Gen Z Won't Have Enough Kids to Sustain America's Population — and it's Up to Immigrants to Make Up the Baby Shortfall*, FORTUNE (Jan. 25, 2023, 1:47 PM), <https://www.inkl.com/news/millennials-and-gen-z-won-t-have-enough-kids-to-sustain-america-s-population-and-it-s-up-to-immigrants-to-make-up-the-deficit> [https://perma.cc/3SUZ-F6BE].

25. Brittany Leitner, *Failure to Launch: When Young Adults Live With Parents*, KLIPLINGER (May 22, 2023), <https://www.kiplinger.com/personal-finance/failure-to-launch-when-young-adults-live-with-parents> [https://perma.cc/2WN8-QKHP] (“[O]ne in three U.S. adults between the ages of 18 and 34 live in their parents' home . . .”).

26. *Id.*

27. Robert H. Shmerling, MD, *Why Life Expectancy in the US is Falling: COVID-19 and Drug Overdoses Are the Biggest Contributors.*, HARV. HEALTH PUBL'G (Oct. 20, 2022), <https://www.health.harvard.edu/blog/why-life-expectancy-in-the-us-is-falling-202210202835> [https://perma.cc/VQQ3-E6PV].

28. See generally; Ellie Kaverman, *Young People Will Bear the Brunt of COVID-19's Economic Consequences*, CENTURY FOUND. (Nov. 19, 2020), <https://tcf.org/content/commentary/young-people-will-bear-brunt-covid-19s-economic-consequences/> [https://perma.cc/GQ66-GWAE]; Andrew Leon Hanna, *Socio-Economic Mobility of Youth: Factors, Obstacles, and Potential Solutions*, 10 J. YOUTH DEV. 72 (2016), https://www.researchgate.net/publication/311067549_Socio-Economic_Mobility_of_Youth_Factors_Obstacles_and_Potential_Solutions [https://perma.cc/24KD-G36G];

Timothy K. Rusch, *The Economic Challenges Facing Young Adults*, DEMOS: A NETWORK FOR IDEAS & ACTION (Dec. 17, 2019), https://www.demos.org/sites/default/files/publications/youngpeople_briefingkit.pdf [https://perma.cc/6YVJ-BYDL].

29. Hannah Grabenstein, *Should 16-year-olds Be Allowed to Vote?*, PBS: NEWS HOUR (Apr. 20, 2018, 4:26 PM), <https://www.pbs.org/newshour/politics/should-16-year-olds-be-allowed-to-vote> [https://perma.cc/4SLD-DSMW] (“Historically, political parties have struggled to get 18- to 24-year-olds to show up on Election Day. . . . The percentage [of 18- to 24-year-old voters] didn't crack 40 percent in the 2016 election.”).

younger than forty (and many younger than thirty).³⁰ The structure of American debt itself allows the matter to evade the vote of the young: with treasury bond maturity periods as long as thirty years, many individuals whose earnings will be taxed to pay off the bond will not have been born when the United States took on the commitment.³¹

Since debt incurred today must be repaid tomorrow by those who did not vote on the spending (or the politicians doing the spending), this creates taxation-without-representation issues and consequences. One unavoidable consequence is the pressure the national debt exerts on the average individual, which can lead to overall declines in economic performance per capita.³² If the national debt had to be paid today, each American would owe over \$100,000.00 (not to mention debts incurred at the state, county, and municipal level).³³ The consequences of this debt manifest indirectly (since no one demands the money from citizens directly): they manifest via inflation,³⁴ reduced standards of living,³⁵ difficulty finding work,³⁶ difficulty obtaining an education,³⁷ and

30. Grace Adcox, *No Generation Without Representation: A Survey of Young Americans*, DATA FOR PROG. (Oct. 17, 2022), <https://www.dataforprogress.org/blog/2022/10/17/no-generation-without-representation-a-survey-of-young-americans> [https://perma.cc/7QQQ-U8J7]; Todd Andrlik, *How Old Were the Leaders of the American Revolution on July 4, 1776?*, SLATE (Aug. 20, 2013, 5:30 AM), <https://slate.com/news-and-politics/2013/08/how-old-were-the-founding-fathers-the-leaders-of-the-american-revolution-were-younger-than-we-imagine.html> [https://perma.cc/8KJN-G7BS]; Daniel Stockemer et. al, *Young Adults' Under-representation in Elections to the U.S. House of Representatives*, 81 ELECTORAL STUD. 102554 (2023).

31. Chen, *infra* note 97; *National Debt and the Next Generation*, PETER G. PETERSON FOUND. (Aug 9, 2023), <https://www.pgpf.org/next-gen> [https://perma.cc/78Y5-VLBR].

32. See Kimberly Amadeo, *The US National Debt and How It Affects You*, THE BALANCE, <https://www.thebalancemoney.com/what-is-the-national-debt-4031393> [https://perma.cc/Q2VE-4J9S] (last updated Jan. 17, 2023).

33. John Stossel, *The National Debt Is Now So High That Every American Essentially Owes \$100,000*, REASON (June 19, 2024), <https://reason.com/2024/06/19/the-national-debt-is-now-so-high-that-every-american-essentially-owes-100000/> [https://perma.cc/SQV8-S856].

34. Eric Boehm, *The National Debt Is Making Us Poorer*, REASON (June 5, 2024), <https://reason.com/2024/06/05/the-national-debt-is-making-us-poorer/> [https://shorturl.at/oe4IW].

35. Boehm, *supra* note 34.

36. Jack Kelly, *How the \$34 Trillion U.S. National Debt Could Hurt the Job Market*, FORBES (Feb. 24, 2024), <https://www.forbes.com/sites/jackkelly/2024/02/24/how-the-34-trillion-us-national-debt-could-hurt-the-job-market/> [https://shorturl.at/bMzEN].

37. Élisé Wendlassida Miningou, *Does COVID-19-related Debt Affect Government Expenditure on Education?*, WORLD BANK BLOGS (July 20, 2023), <https://blogs.worldbank.org/en/developmenttalk/does-covid-19-related-debt-affect-government-expenditure-education> [https://shorturl.at/WrKWT]; *How Defaulting on the National Debt Could Affect Higher Education*, AM. COUNCIL ON EDUC. (May 22, 2023), <https://www.acenet.edu/News-Room/Pages/Debt-Default-and-Higher-Ed.aspx> [https://perma.cc/AE39-44EM].

difficulty starting the type of life typically described as the “American Dream.”³⁸

Some legal remedy must exist to balance the interests of today’s generations against those in the future. Perhaps the Public Debt Clause can provide the remedy. Typically, this provision of the Fourteenth Amendment comes to mind during periods of political crisis when Congress and the Executive cannot come to terms with the national budget. When politicians cannot agree on a solution, and the prior funding bill expires, the government becomes unfunded and technically “shuts down.”³⁹ Legal scholars, then, rush to raise arguments under the Public Debt Clause that the shutdown is not constitutional because it might lead to failing to pay the interest (or otherwise refinance) the national debt.⁴⁰ This is a bit ironic since today’s government must go deeper into debt to acquire the money necessary to make the payments on prior debt, but the point remains logically consistent: politicians who threaten government shutdowns to gain negotiating leverage may be violating the United States Constitution.⁴¹

38. Mitt Romney et. al, *National Debt Is the Greatest Threat to Our Country; It’s Time for Congress to Act*, THE HILL (Jan. 18, 2024), <https://thehill.com/opinion/congress-blog/4415862-national-debt-is-the-greatest-threat-to-our-country-its-time-for-congress-to-act/> [https://perma.cc/X33Q-6C82] (“To put this in context, the national debt has now exceeded \$100,000 for every person in the United States. Given the imminent nature of this crisis, continuing to turn a blind eye will only put the American Dream further out of reach for our children and grandchildren.”).

39. Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveau, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch & Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

40. Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveau, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch & Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

41. Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveau, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch &

Our argument is less bold but more pragmatic. Perhaps the Public Debt Clause means something else. Government shutdowns were not a concern when it was enacted, especially given the political and military dominance of Republican politicians in Congress at that time.⁴² The Clause served to ensure the federal government took the actions necessary which might repudiate its obligations, ensuring that the debt “shall not be questioned.”⁴³ Perhaps, then, the Clause concerns itself with the creditworthiness of the United States government in the present and into the future rather than with the wisdom (or foolishness) of using government shutdowns as political ploys.⁴⁴ If the former is of primary concern, then it must be that the government should both ensure it pays its debt and also prevent current *and future* default. One obvious criterion of this must be: that no present generation can encumber the future beyond the means of the future generations to repay it. By viewing this clause in a new light, politicians, legal scholars, and judges would not only revive its original intent but also enable the country to adopt a more effective fiscal path forward that adequately protects the interests of future generations.

II. SUBSTANCE, STRUCTURE, AND SERVICING OF THE NATIONAL DEBT

Republic credits are no good out here. I need something more real.
Star Wars: Episode I – The Phantom Menace⁴⁵

The national debt of the United States federal government is not so different from the debt of private entities that is bought and sold on the financial markets. The federal government issues bonds of varying maturities and sells them at a series of auctions.⁴⁶ The bonds can be purchased there or on secondary markets, where they can change hands

Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

42. Zachary Price, *Congress Has Broad Power to Structure the Military—and It Should Use It*, LAWFARE (September 2, 2020, 10:31 AM), <https://www.lawfaremedia.org/article/congress-has-broad-power-structure-military-and-it-should-use-it> [https://shorturl.at/7DDnM].

43. Jim Probasco, *14th Amendment and Its Role in the Debt Ceiling Debate*, INVESTOPEDIA (Nov. 5, 2023), <https://www.investopedia.com/14th-amendment-and-its-role-in-the-debt-ceiling-debate-7724689> [https://shorturl.at/HInAL].

44. *Id.*

45. STAR WARS: EPISODE I – THE PHANTOM MENACE (Lucasfilm Ltd. 1999) (quoting dialogue from the character Watto).

46. *U.S. Bonds vs. Bills vs. Notes: What’s the Difference?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/difference-between-bills-notes-and-bonds/> [https://perma.cc/C5Y2-4A99] (updated May 25, 2024).

multiple times.⁴⁷ The bondholders convey the government money for bonds bought at auctions in hopes of repayment of the principal at the end of the bond's maturity.⁴⁸ What concerns us is the overreliance of the government on this source of financing instead of ensuring its almost five trillion dollars of tax revenue suffices to address its expenses.⁴⁹

a. *Substance*

“Sometimes,” she said, “they threaten you with something—something you can’t stand up to, can’t even think about. And then you say, ‘Don’t do it to me, do it to somebody else, do it to So-and-so.’ And perhaps you might pretend, afterwards, that it was only a trick and that you just said it to make them stop and didn’t really mean it. But that isn’t true. At the time when it happens you do mean it. You think there’s no other way of saving yourself, and you’re quite ready to save yourself that way. You want it to happen to the other person. You don’t give a damn what they suffer. All you care about is yourself.”

George Orwell⁵⁰

Generally speaking, the debt increases when the government cannot fund 100% of its annual spending with the taxes it collects from the populace.⁵¹ Even though the federal government collects more than four trillion dollars in taxes each year, it usually runs a deficit because the spending exceeds the amount collected by anywhere between a few

47. David Goebel & Adrian Lowcock, *The Basics of Bonds*, EVELYN PARTNERS (July 5, 2023), <https://www.evelyn.com/insights-and-events/insights/the-basics-of-bonds/> [https://perma.cc/6H4Y-QRTE].

48. Nicholas Johnson et al., *Understanding Treasury Futures*, CME GROUP (Nov. 2017), <https://www.cmegroup.com/education/files/understanding-treasury-futures.pdf> [https://perma.cc/2UW5-E95A].

49. See *The Latest Data on Federal Revenue, Spending, Deficit, and the National Debt*, FISCALDATA, <https://fiscaldata.treasury.gov/americas-finance-guide/> [https://perma.cc/CKT9-F7R4] (last visited Oct. 18, 2024) (revealing that the federal government spent \$1.83 trillion more than it collected in revenue).

50. GEORGE ORWELL, 1984 pt. 3, ch. 6, (1949) (ebook), available at <http://www.george-orwell.org/1984/22.html> [https://perma.cc/9KDM-2ENU].

51. *What is the National Debt?*, FISCAL DATA, <https://fiscaldata.treasury.gov/americas-finance-guide/national-debt/> [https://perma.cc/A9G9-A27P] (last visited Oct. 12, 2024); *Public Debt of the United States from 1990 to 2023*, STATISTA (July 5, 2024), <https://www.statista.com/statistics/187867/public-debt-of-the-united-states-since-1990/> [https://perma.cc/6EPK-4KW7]; see generally Section 20—*Terms and Concepts*, OMB Circular No. A-11, THE WHITE HOUSE (2024), <https://www.whitehouse.gov/wp-content/uploads/2018/06/s20.pdf> [https://perma.cc/6UQB-GP94].

hundred billion to more than two trillion dollars.⁵² The Department of the Treasury must finance this deficit, and it does so by issuing and selling treasury bonds and applying the proceeds to satisfy the government's budget obligations.⁵³ Over the past two decades, which consisted of at least one major financial crisis, several American wars, and a global pandemic, the federal government spending greatly exceeded its revenue, and the national debt climbed at an alarming rate.⁵⁴

This climb in the amount of outstanding debt represents the fact that the nation is spending tomorrow's money on government benefits it will receive today.⁵⁵ The present generation in power, represented by their senators and representatives, shows a desire for government services for itself while potentially passing the costs of those services to their children and grandchildren.⁵⁶ After all, it is entirely possible to either curb spending or raise taxes in hopes of raising the money to pay for increased government spending.⁵⁷ Voters and politicians eschewed these options over the last two decades, sometimes going as far as to actually lower taxes.⁵⁸ Perhaps most notably, the problem has been steady growth in government spending, which the annual federal budget does not accurately

52. *Policy Basics: Deficits, Debt, and Interest*, Center on Budget and Policy Priorities, <https://www.cbpp.org/research/policy-basics-deficits-debt-and-interest> [https://perma.cc/36PB-HMD2] (last updated July 9, 2022); *The Latest Data on Federal Revenue, Spending, Deficit, and the National Debt*, FISCALDATA, <https://fiscaldata.treasury.gov/americas-finance-guide/> [https://perma.cc/CKT9-F7R4] (last visited Oct. 19, 2024) ("In 2023, the federal government collected \$4.44 trillion. The primary source of revenue for the U.S. government in 2023 was Individual Income Taxes.").

53. *What is the National Debt?*, *supra* note 51.

54. James McBride et. al, *The U.S. National Debt Dilemma*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/backgrounders/us-national-debt-dilemma> [https://perma.cc/A7QC-LJV4] (last visited Dec. 4, 2022).

55. See Veronique de Rugy & Charles Blahous, *Funding Parental Leave Today with Tomorrow's Social Security Benefits Won't Work*, GEO. MASON UNIV. MERCATUS CTR. (Sept. 6, 2022), <https://www.mercatus.org/research/policy-briefs/funding-parental-leave-today-tomorrows-social-security-benefits-wont-work> [https://perma.cc/JZ8C-HB2C].

56. Steve Robinson, *Passing the Buck: How the National Debt Burdens Future Generations*, CONCORD COAL. (June 27, 2022), <https://www.concordcoalition.org/issue-brief/passing-the-buck-how-the-national-debt-burdens-future-generations/> [https://perma.cc/7Y46-WAZ9].

57. See Alberto Alesina et. al, *Climbing Out of Debt*, INT'L MONETARY FUND (Mar. 2018), <https://www.imf.org/en/Publications/fandd/issues/2018/03/alesina> [https://perma.cc/BW6F-937E].

58. Erica York, *Summary of the Latest Federal Income Tax Data, 2023 Update*, TAX FOUNDATION (Jan. 26, 2023), <https://taxfoundation.org/data/all/federal/summary-latest-federal-income-tax-data-2023-update/> [https://perma.cc/6PT5-EMXS] (discussing the government's tax revenue and the 2017 Tax Cuts and Jobs Act, which cut taxes for certain tax brackets); Esteban Ortiz-Ospina & Max Roser, *Government Spending*, OUR WORLD IN DATA, <https://ourworldindata.org/government-spending> [https://perma.cc/VY3C-YGYB] (Mar. 2023) (discussing increases of government expenditures over the years).

capture and which somehow swallows the entirety of four trillion dollars in collected taxes.⁵⁹

Due to foreign wars, not to mention a remarkable amount of spending on social programs, the United States has been over budget virtually every year since 2001.⁶⁰ In the past five decades, only five years resulted in a surplus to the federal budget, with the remainder adding to the national debt.⁶¹ Young men and women graduating from college today face the brunt of this economic burden, which curiously began to grow after the United States abandoned the gold standard for its currency.⁶² Little by little, the government accumulated several trillions worth of debt obligations, expanding the military-industrial complex all over the world.⁶³ Involvements in Afghanistan and Iraq serve as the best examples of government military expenditures, but they are hardly exclusive.⁶⁴ Before the financial crisis of 2007 and 2008, the United States engaged in a variety of foreign interventions that had to be funded with debt.⁶⁵ In the

59. Ortiz-Osina & Roser, *supra* note 58; *see also Policy Basics: Where Do Our Federal Tax Dollars Go?*, CTR. ON BUDGET AND POL'Y PRIORITIES, <https://www.cbpp.org/research/policy-basics-where-do-our-federal-tax-dollars-go> [https://perma.cc/RCX8-AGRM] (July 18, 2024).

60. *What is the National Deficit?*, FISCALDATA, <https://fiscaldata.treasury.gov/americas-finance-guide/national-deficit/> [https://perma.cc/V2TR-TAEG] (last visited Oct. 19, 2024); *Economic Costs*, WATSON INST. FOR INT'L & PUB. AFFS., <https://watson.brown.edu/costsofwar/costs/economic> [https://perma.cc/74LK-R4J9] (last updated Sept. 2021) ("Through Fiscal Year 2022, the United States federal government has spent and obligated \$8 trillion dollars on the post-9/11 wars in Afghanistan, Pakistan, Iraq and elsewhere.").

61. *What is the National Deficit?*, *supra* note 51; *\$9 Trillion Added to the National Debt over the Last Decade*, PETER G. PETERSON FOUND. (Dec. 19, 2019), <https://www.pgpf.org/blog/2019/12/9-trillion-added-to-the-national-debt-over-the-last-decade> [https://perma.cc/28HY-BDD4].

62. Mark Simonson, *The Rise and Fall of the Gold Standard*, MEDIUM (Feb. 11, 2020), <https://ndsu-pcpe.medium.com/the-rise-and-fall-of-the-gold-standard-bf3c4f948d43> [https://perma.cc/XWJ5-D9C8]; William J. Luther, *Young People Aren't Nearly Angry Enough About Government Debt*, DAILY ECONOMY (Mar. 19, 2024), <https://thedailyeconomy.org/article/young-people-arent-nearly-angry-enough-about-government-debt/> [https://perma.cc/H9H9-B66S].

63. John Nichols, *There's Never a Debt Ceiling for the Military-Industrial Complex*, THE NATION (May. 31, 2023), <https://www.thenation.com/article/politics/debt-ceiling-military-spending/> [https://perma.cc/C4R9-F79C].

64. Linda J. Bilmes, *The Financial Legacy of Afghanistan and Iraq: How Wartime Spending Decisions Will Constrain Future U.S. National Security Budgets*, 9 THE ECON. PEACE AND SEC. J. 5, 5 (2018), <https://www.epsjournal.org.uk/index.php/EPSJ/article/view/185/176> [https://perma.cc/54VE-5ELE].

65. Heidi Peltier, *The Cost of Debt-financed War: Public Debt and Rising Interest for Post-9/11 War Spending*, WATSON INST. OF INT'L AND PUB. AFFS, BROWN UNIV. (Jan. 2020), <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2020/Peltier%202020>

meantime, the American birthrate was beginning to decline, meaning that the generations that would ultimately have to pay off the debt would have fewer members (and likely fewer workers/taxpayers) than the generations that incurred it.⁶⁶

Then came the Great Recession.⁶⁷ The tumultuous economic contraction that followed was the worst on record, with the exception of the Great Depression.⁶⁸ Economic growth was negative for several quarters, and the United States stock market took five years to regain its highs after the S&P 500 fell more than 50 percent.⁶⁹ One would have thought that the government saved up funds for this occasion, as nearly two decades of prosperity preceded the economic crash⁷⁰, where the United States found itself alone on the world stage as the only surviving superpower (at least in the traditional sense).⁷¹ Yet, when times became tough, and many perceived the need for the government to bail out citizens and corporations during the Great Recession, government coffers were bare.⁷² For even in times of prosperity, when both the United States

%20-%20The%20Cost%20of%20Debt-financed%20War.pdf [https://perma.cc/K9HC-NUE5].

66. Rachel Greszler & Emily Marsh, *Declining U.S. Birthrate Another Reason to Rein in Federal Spending*, HERITAGE FOUND. (July. 26, 2021), <https://www.heritage.org/budget-and-spending/commentary/declining-us-birthrate-another-reason-rein-federal-spending> [https://perma.cc/8E6Z-NQ59].

67. John Weinberg, *The Great Recession and Its Aftermath*, FED. RSRV. HIST. (Nov. 22, 2013), <https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath> [https://perma.cc/YU69-4BK6].

68. *Great Recession: What It Was and What Caused It*, INVESTOPEDIA, <https://www.investopedia.com/terms/g/great-recession.asp> [https://perma.cc/A3CC-CMAH] (updated Dec. 18, 2023).

69. Ward Williams, *Timeline of U.S. Stock Market Crashes: The Most Economically Impactful Crashes Within the Last 100 years*, INVESTOPEDIA, <https://www.investopedia.com/timeline-of-stock-market-crashes-5217820> [https://perma.cc/K2EV-U3PX] (last updated May 4, 2024); Josh et al., *From free-fall to stagnation*, ECON. POL'Y INST. (Feb. 14, 2013), <https://www.epi.org/publication/bp355-five-years-after-start-of-great-recession/> [https://shorturl.at/9Grjs].

70. *Gross Domestic Product of the United States from 1990 to 2023*, STATISTA (July 5, 2024), <https://www.statista.com/statistics/188105/annual-gdp-of-the-united-states-since-1990/> [https://perma.cc/G7JH-6GTM]; Guy Sorman, *A Brief History of American Prosperity*, CITY J. (2012), <https://www.city-journal.org/article/a-brief-history-of-american-prosperity> [https://shorturl.at/VQVPV].

71. Shri Dilip Hiro, *The Sole Superpower in Decline: The Rise of a Multipolar World*, MILITARY REV. (July-Aug. 2008) republished at <https://www.commondreams.org/views/2007/08/20/sole-superpower-decline-rise-multipolar-world> [https://perma.cc/D4G F-UH5R].

72. See, e.g., Paul Kiel & Dan Nguyen, *ProPublica's Bailout Tracker*, PROPUBLICA, <https://projects.propublica.org/bailout/> [http://perma.cc/SJZ5-8MBL] (last updated Aug. 18, 2022).

economy and the American equity markets grew at staggering rates, the federal government continued to run deficits, saving nothing at all.⁷³

Without savings to fall back on, the federal government turned, once again, to debt financing.⁷⁴ The national debt doubled in less than eight years, and the escalation in debt financing continued well after the Great Recession ended.⁷⁵ In fact, even though the second-longest stock market rally ever occurred in the decade after the Great Recession, and even though the United States economy grew significantly over that time, the federal government continued to incur federal budget deficits and continued to finance those deficits with debt.⁷⁶ In the twenty-first century, regardless of the political party holding Congress or the presidency, the government continued to expand the national debt at a previously unprecedented rate.⁷⁷

Ever since the Great Recession, most of the debt the government incurred could be incurred at lower interest rates because the Federal Reserve lowered those rates in an attempt to combat the negative economic consequences of the downturn of the early 2000s.⁷⁸ As a result, the disincentive to take on additional debt disappeared: if the government could borrow money for nearly nothing, then what would prevent it from doing so in perpetuity?

As the economy finally began to boom in the late 2010s, tax revenues rose, and it was at least theoretically possible to shrink or eliminate the

73. Donald B. Marron, *America in the Red*, NAT'L AFFS. (Spring 2010), <https://nationalaffairs.com/publications/detail/america-in-the-red> [<https://perma.cc/DD9K-AAEP>].

74. Tami Luhby, *The US is Paying a Record Amount of Interest on its Debt. It's Only Going to Get Worse*, CNN (Feb. 14, 2023, 7:09 AM), <https://www.cnn.com/2023/02/14/politics/interest-payments-federal-debt/index.html> [<https://perma.cc/BL9X-RCAT>]; Tami Luhby, *US Hits Debt Ceiling, Prompting Treasury to Take Extraordinary Measures*, CNN, <https://www.cnn.com/2023/01/19/politics/debt-ceiling-deadline-treasury/index.html> [<https://perma.cc/3GQV-HFYM>] (last updated Jan. 19, 2023, 1:38 PM).

75. Kimberly Amadeo, *US National Debt by Year*, THE BALANCE, <https://www.thebalancemoney.com/national-debt-by-year-compared-to-gdp-and-major-events-3306287> [<https://perma.cc/7VCE-KJZF>] (last updated July 10, 2024).

76. *Id.*; James Chen, *Market Milestones as the Bull Market Turns 10*, INVESTOPEDIA (Oct. 16, 2019), <https://www.investopedia.com/market-milestones-as-the-bull-market-turns-10-4588903> [<https://perma.cc/3JPU-2Y5L>]; *Chart Book: Tracking the Post-Great Recession Economy*, CTR. ON BUDGET AND POL'Y PRIORITIES (May 27, 2022), <https://www.cbpp.org/research/economy/tracking-the-post-great-recession-economy> [<https://perma.cc/ZM8R-78L8>] [hereinafter *Chart Book*].

77. *What is the US National Debt and How Has it Grown Over Time?*, US FACTS, <https://usafacts.org/articles/what-is-the-us-national-debt-and-how-has-it-grown-over-time/> [<https://perma.cc/9W7D-W3PK>] (last updated Aug. 1, 2024).

78. Sarah Foster, *Fed's Interest Rate History: The Federal Funds Rate From 1981 to the Present*, BANKRATE (Nov. 7, 2024), <https://www.bankrate.com/banking/federal-reserve/history-of-federal-funds-rate/> [<https://shorturl.at/6UJXT>].

federal budget deficit and begin to reduce the amount of the federal debt.⁷⁹ Yet, since rates were still low, the American government did not wish to miss out on the opportunity to borrow cost-free and continued to expand its bond issues.⁸⁰ Unfortunately, the 2020s began with a worldwide coronavirus pandemic, leading to the elimination of millions of jobs across the United States, causing yet another recession and a bear market in stocks.⁸¹

The entire world suffered from the pandemic, causing supply shortages, trade lane disruption, and a variety of other disastrous economic consequences.⁸² Heterogenous lockdown and vaccination policies across the world and the United States slowed trade, travel, and other profitable activities.⁸³ Job losses across the country, as well as temporary stock price declines, meant that the federal government would receive even less money from taxation of wages and capital gains, further widening the federal deficit.⁸⁴ The deficit grew even more as a result of the government's response to the coronavirus pandemic when politicians elected to spend significant amounts of money to bail out businesses and United States residents during the pandemic.⁸⁵ These government actions,

79. Kimberly Amadeo, *U.S. Federal Government Tax Revenue by Year*, THE BALANCE, <https://www.thebalancemoney.com/current-u-s-federal-government-tax-revenue-3305762> [<https://perma.cc/387C-5M5T>] (last updated May 15, 2024); *Chart Book*, *supra* note 76.

80. Binyamin Appelbaum, *A U.S. Boon in Low-Cost Borrowing*, N.Y. TIMES (Feb. 28, 2012), <https://www.nytimes.com/2012/02/28/business/era-of-low-cost-borrowing-benefits-federal-government.html> [<https://perma.cc/EY5X-5T4R>].

81. *Covid-19 UPDATE: Bear Markets and Recovery Periods*, USI ADVISORS, INC. (April 2020), <https://www.usi.com/contentassets/dbb460dceede4873bca89a60e7512dc7/covid-19-update-bear-markets-and-recovery-periods.pdf?v=490824> [<https://perma.cc/VMB3-2YFT>].

82. *COVID-19 to Plunge Global Economy into Worst Recession since World War II*, WORLD BANK GROUP (June 8, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii> [<https://perma.cc/Q955-AY2B>].

83. *See generally Economic Report of the President*, THE WHITE HOUSE, <https://www.whitehouse.gov/wp-content/uploads/2022/04/ERP-2022.pdf> [<https://perma.cc/C8YQ-W9TS>].

84. *See* Angela Guoet al., *Job Loss Consequences and the Pandemic Recession*, FED RSRV. BANK OF CLEVELAND (Feb. 3, 2023), <https://www.clevelandfed.org/publications/economic-commentary/2023/ec202302-job-loss-consequences-pandemic-recession> [<https://perma.cc/SHK7-2N3B>]; Mieszko Mazur et. al, *COVID-19 and the March 2020 Stock Market Crash. Evidence from S&P1500*, 38 FIN. RSCH. LETTERS 101690 (2021).

85. *Highlights of the FY 2020 Financial Report of the U.S. Government*, BUREAU OF THE FISCAL SERV., <https://www.fiscal.treasury.gov/reports-statements/financial-report/2020/results-in-brief.html> [<https://perma.cc/8RWU-9CNZ>] (last visited Oct. 19, 2024); *How Did the Fiscal Response to the COVID-19 Pandemic Affect the Federal Budget Outlook?*, TAX POL'Y CTR. (2019), <https://taxpolicycenter.org/briefing-book/how-did-fiscal-response-covid-19-pandemic-affect-federal-budget-outlook> [<https://shorturl.at/W5j27>].

too, had to be financed through issuing treasuries and the expansion of the money supply.⁸⁶ The national debt easily breached thirty trillion dollars, and the money supply grew by more than sixty percent.⁸⁷

Much of the money printing took place so that the Federal Reserve could purchase federal treasury bonds and hence provide the necessary cash flows to the government, which would, in turn, inject the cash into the economy.⁸⁸ These treasury bonds swelled the Federal Reserve's balance sheet.⁸⁹ In fact, the federal reserve's balance sheet contained almost nine trillion dollars in assets.⁹⁰ At this time, the government still borrowed at a low rate since the Federal Reserve returned to its quantitative easing policies of keeping rates just above zero.⁹¹ The downside of the government's borrowing practices would be felt later when the Federal Reserve raised rates significantly, and the government had to refinance its debt rather than pay off the treasury bonds reaching maturity.⁹² While some hoped this could be avoided, interest rates did rise, and the government did not pay off its debt, requiring refinancing at much higher, less favorable rates.⁹³

86. Liz Capo McCormick, *With the Deficit Hitting \$1.39 Trillion, a 'Sobering' 170% Increase, Traders are Bracing for a \$102 Billion Auction of Treasury Bonds*, FORTUNE (July 31, 2023), <https://fortune.com/2023/07/31/how-big-federal-debt-deficit-treasury-bonds-auction-markets/> [https://perma.cc/CPN6-FN4P].

87. Orkideh Gharehgozli & Sunhyung Lee, *Money Supply and Inflation after COVID-19*, 10 ECONOMIES 101, 101 (2022).

88. Valerie Pavilonis, *Fact Check: Posts Spur Confusion About How Much Money US has 'Printed'*, USA TODAY (Apr. 14, 2022, 7:49 PM), <https://www.usatoday.com/story/news/factcheck/2022/04/14/fact-check-federal-reserve-has-balance-sheet-9-trillion/7198368001/> [https://perma.cc/7DSM-CNPF].

89. William R. Emmons, *Have Fed Asset Purchases Reshaped Bank Balance Sheets? Part 1*, FED. RESRV. BANK OF ST. LOUIS (Jan. 31, 2022), <https://www.stlouisfed.org/on-the-economy/2022/january/have-fed-asset-purchases-reshaped-bank-balance-sheets-part-1> [https://perma.cc/37B8-WWTM].

90. Karl Montevirgen, *An Alchemy of Assets: Understanding the Federal Reserve's Balance Sheet*, BRITANNICA MONEY (Nov. 11, 2024), <https://www.britannica.com/money/federal-reserve-balance-sheet-explained> [https://perma.cc/8ELC-2EAA].

91. Paula Moura, *The Fed Is Ending Pandemic Stimulus Sooner Than Planned. What Could It Mean for Inflation?*, PBS (Dec. 16, 2021), <https://www.pbs.org/wgbh/frontline/article/powell-fed-ending-pandemic-stimulus-early-what-does-it-mean-for-inflation/> [https://perma.cc/XY4Z-XZUC].

92. Daniel Bergstresser, *The Rising Burden of U.S. Government Debt*, ECONOFACT (June 19, 2024), <https://econofact.org/the-rising-burden-of-u-s-government-debt> [https://shorturl.at/iRzPK]; Scott Horsley, *The Fed Raises Interest Rates Again Despite the Stress Hitting the Banking System*, NPR (Mar. 22, 2023, 2:02 PM), <https://www.npr.org/2023/03/22/1165274305/the-fed-raises-interest-rates-again-despite-the-stress-hitting-the-banking-system> [https://perma.cc/9JFA-TF5L].

93. See Tami Luhby, *Interest Payments on the Nation's Debt are Soaring, Adding Pressure to Congress' Spending Battle*, CNN POLITICS, <https://edition.cnn.com/2023/11/16/politics/interest-payments-federal-government-debt/index.html> [https://perma.cc/9JFA-TF5L].

b. *Structure*

There is nothing we can print more quickly and efficiently than little green pieces of paper.

Milton Friedman⁹⁴

The structure of the national debt varies between short-term and long-term debt.⁹⁵ Federal treasury bills, which lend the government money for months at a time, have an expiration date between a few days and one year from the date of issue.⁹⁶ Thirty-year treasury bonds, as their name suggests, will be issued to pay for government today and must be paid by taxpayers thirty years from now, even if those taxpayers have not yet been born and could not vote for representatives and senators who assumed the liability on their behalf.⁹⁷ Like most bonds, federal government bonds do not amortize the government's liability in the bond over time (like one would with most consumer debt). Instead, treasury bonds are issued with a face value of \$1,000.00, and the government pays interest on this note for the entire maturity of the bond without paying any of the principal.⁹⁸ Only after the bond reaches maturity does the government pay down the principal.⁹⁹ How can the government pay down the principal of the bond

.cc/9JTY-APJQ] (last updated Nov. 16, 2023, 7:49 AM) (“One reason why payments will soar further is that the majority of the nation’s debt was issued when the average interest rates on shorter-term Treasury securities was much lower – less than 3% in many cases, Goldwein said. That debt is now rolling over into Treasuries that are paying roughly between 4.5% and 5.5%.”).

94. Free to Choose Network, *Milton Friedman Speaks: Money and Inflation*, YOUTUBE (Mar 21, 2016), https://www.youtube.com/watch?v=B_nGEj8wIP0 [https://perma.cc/VX7U-AFNK] (recording of a talk given by Milton Friedman at the University of San Diego in 1978).

95. See generally Robin Greenwood et. al, *The Optimal Maturity of Government Debt*, BROOKINGS (2016), <https://www.brookings.edu/wp-content/uploads/2016/07/Chapter-One-31.pdf> [https://perma.cc/ANW8-8DCV].

96. Andrew Loo, *Treasury Bills (T-Bills)*, CFI, <https://corporatefinanceinstitute.com/resources/fixed-income/treasury-bills-t-bills/> [https://perma.cc/JT3H-N37C] (last visited Oct. 19, 2024).

97. James Chen, *30-Year Treasury: Meaning, History, Examples*, INVESTOPEDIA, <https://www.investopedia.com/terms/1/30-year-treasury.asp> [https://perma.cc/66HE-HTZB] (last updated Mar. 28, 2022); Robert P. Murphy, *Government Debt and Future Generations*, ECONLIB (Jun 1, 2015), <https://www.econlib.org/library/Columns/y2015/Murphy-wardebt.html> [https://shorturl.at/V7Jhc]; Matthew Goldberg, *How Often Do Treasury Bonds Pay Interest?*, BANKRATE (Sept. 30, 2024), <https://www.bankrate.com/investing/how-often-do-treasury-bonds-pay-interest/> [https://perma.cc/8G4P-JJKE].

98. James Chen, *Treasury Bond: Overview of U.S. Backed Debt Securities*, INVESTOPEDIA (Aug. 21, 2023), <https://www.investopedia.com/terms/t/treasurybond.asp> [https://shorturl.at/vjyrK].

99. *Id.*

when facing record levels of debt and a two-trillion-dollar budget deficit?¹⁰⁰ Simple: the government sells more bonds and uses the proceeds therefrom to pay off the principal on the bonds it issued earlier, effectively refinancing the debt.

This is where the structure of the debt becomes critical: refinancing the debt may not be a problem if the interest rates at which the government borrows remain low or actually decline.¹⁰¹ But what happens if the rates rise? If rates rise, and the government has no choice but to refinance its debt, the payments on the new debt will greatly exceed those on the old debt the government just refinanced.¹⁰² If the government issued a large amount of debt when rates were low and took no action to retire that debt before rates rose, it could easily have to refinance all its debt at comparatively astronomical rates.¹⁰³ As a result, the payments on its debt could quickly exceed all other government expenditures, leaving it unable to pay for the services it ordinarily provided while forcing future generations to pay increased taxes to pay down the debts of their predecessors for government services rendered in the past.¹⁰⁴

This possibility became a probability after the Federal Reserve made the decision to begin hiking rates to combat inflation and prevent the economy from “overheating” due to the increased government spending during the coronavirus pandemic.¹⁰⁵ Seeing the possibility of economic overheating while recovering from the COVID-19 pandemic, the Federal Reserve began to raise interest rates at which banks lend to one another.¹⁰⁶ This served as a critical blow to the government’s debt structure and the

100. William McBride, *Federal Deficit Grew to \$2 Trillion in FY 2023*, TAX FOUND. (Oct. 12, 2023), <https://taxfoundation.org/blog/federal-budget-deficit-2023/> [https://perma.cc/VGG5-6MYB].

101. See Stephen Moore, *Refinance U.S. Debt While Rates Are Low*, HERITAGE FOUND. (Sept. 3, 2019), <https://www.heritage.org/markets-and-finance/commentary/refinance-us-debt-while-rates-are-low> [https://perma.cc/EJ7M-UQ7L].

102. See Carla Tardi, *Refinancing Risk: What It is, How It Works*, INVESTOPEDIA (Mar. 22, 2024), https://www.investopedia.com/terms/r/refinancing_risk.asp [https://perma.cc/44KQ-8ZSE] (last updated Mar. 22, 2024).

103. See Julian Kozlowski & Samuel Jordan-Wood, *Assessing the Costs of Rolling Over Government Debt*, ECON. RSCH., FED. RSRV. BANK OF ST. LOUIS (June. 2, 2023), <https://research.stlouisfed.org/publications/economic-synopses/2023/06/02/assessing-the-costs-of-rolling-over-government-debt> [https://perma.cc/SAM8-DFM8].

104. *The US is Paying a Record Amount of Interest on its Debt. It's Only Going to Get Worse*, *supra* note 74.

105. *The Federal Reserve Explained*, FED. RSRV., <https://www.federalreserve.gov/aboutthefed/fedexplained/monetary-policy.htm> [https://perma.cc/Y7Z6-PAQZ].

106. Jane Ihrig & Chris Waller, *The Federal Reserve's responses to the post-Covid period of high inflation*, FED. RSRV. (Feb. 14, 2024), <https://www.federalreserve.gov/econres/notes/feds-notes/the-federal-reserves-responses-to-the-post-covid-period-of-high-inflation-20240214.html> [https://shorturl.at/4nPUF].

underlying value of government bonds on the books of various banking institutions.¹⁰⁷ Now, the federal government could no longer borrow at near-zero interest rates in order to finance its trade deficit.¹⁰⁸ Moreover, the present value of its bonds fell, making it difficult to sell them for the same amount on the open market.¹⁰⁹ The government would now receive roughly five percent less than the face value for each treasury bond sold, and banking institutions holding these notes would have to sell them at a loss if they released them onto the open market.¹¹⁰

As rates continued to climb, this presented a larger and larger problem, because some government notes began to approach maturity.¹¹¹ At maturity, the government could no longer avoid default by making coupon payments on the treasuries.¹¹² The government now had to pay off the full

107. Mahir Rasheed, *U.S. Public Debt Concerns Are Growing in the Higher Interest Rate Regime*, SWISS RE INST. (Dec. 4, 2023), <https://www.swissre.com/institute/research/sigma-research/Economic-Insights/us-public-debt.html> [https://perma.cc/PF6W-FFD3].

108. *Id.*

109. Greg Iacurci, *2022 Was the Worst-ever Year for U.S. bonds. How to Position Your Portfolio for 2023*, CNBC (Jan. 7, 2023, 9:00 AM), <https://www.cnbc.com/2023/01/07/2022-was-the-worst-ever-year-for-us-bonds-how-to-position-for-2023.html> [https://perma.cc/2WF4-MWQ4] (“The Fed raised its benchmark interest rate seven times last year, hoisting it to 4.25% to 4.5% in what were its most aggressive policy moves since the early 1980s. . . . Bond prices move opposite interest rates — as interest rates rise, bond prices fall. In basic terms, that’s because the value of a bond you hold now will fall as new bonds are issued at higher interest rates. Those new bonds deliver bigger interest payments courtesy of their higher yield, making existing bonds less valuable — thereby reducing the price your current bond commands and dampening investment returns.”).

110. *Treasury Bond Screener*, FIDELITY, [https://fixedincome.fidelity.com/ftgw/fi/FILanding#tbindividual-bonds\[treasury](https://fixedincome.fidelity.com/ftgw/fi/FILanding#tbindividual-bonds[treasury) [https://perma.cc/95TE-CT5P] (Look for all zero-coupon treasury bonds with a maturity of at least one year from today’s date) (last visited January 6, 2025); *See, e.g.,* Stacey Vanek Smith, *Bank fail: How rising interest rates paved the way for Silicon Valley Bank’s Collapse*, NATIONAL PUBLIC RADIO (Mar. 19, 2023), <https://www.npr.org/2023/03/19/1164531413/bank-fail-how-government-bonds-turned-toxic-for-silicon-valley-bank>; *see also* Kevin Wack, *Dramatic collapses made 2023 the biggest year ever for bank failures*, AMERICAN BANKER (Dec. 13, 2023), <https://www.americanbanker.com/list/dramatic-collapses-made-2023-the-biggest-year-ever-for-bank-failures>.

111. Jason Fernando, *Bonds: How They Work and How to Invest*, INVESTOPEDIA, <https://www.investopedia.com/terms/b/bond.asp> [https://perma.cc/SUE9-D7XV] (last updated May 3, 2024); Tim Sablik, *The Fed Is Shrinking Its Balance Sheet. What Does That Mean?*, FED. RSRV. BANK OF RICHMOND (2022), https://www.richmondfed.org/publications/research/econ_focus/2022/q3_federal_reserve [https://perma.cc/Y56W-3W9J]; Michael S. Barr, *Review of the Federal Reserve’s Supervision and Regulation of Silicon Valley Bank*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (Apr. 28, 2023), <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf> [https://perma.cc/6JSG-UMMP].

112. Nick Lioudis, *Treasury Bonds vs. Treasury Notes vs. Treasury Bills: What’s the Difference?* (Sept. 24, 2024), <https://www.investopedia.com/ask/answers/033115/what->

face amount of each bond, which greatly exceeded the small coupon payments that the government secured during the fifteen years of low interest rates following the Great Recession.¹¹³ While on the surface, everything seemed calm, underneath, the government struggled to find buyers for its bonds and had to sell them at a discount.¹¹⁴ As a result, even though the face value of the treasury bonds read \$1,000.00 each (which would be conveyed to bondholders at maturity), the federal government received less than \$1,000.00 per bond for these obligations.¹¹⁵

The result of refinancing at higher rates while simultaneously increasing government spending has, as of late 2023, made a significant impact on government expenditures.¹¹⁶ The interest rate payments the federal government must now make have doubled, eclipsing eight hundred billion dollars per year.¹¹⁷ To put that in perspective, this nearly eclipses the federal defense budget, which is by far the largest defense budget of any country in the world (and greater than the defense budget of the next

are-differences-between-treasury-bond-and-treasury-note-and-treasury-bill-tbill.asp [https://perma.cc/XB9V-XUZR] (“Treasury bonds, notes, and bills have *no default* risk since the U.S. government guarantees them.”)

113. Public Education & Outreach, *The Fed Explained What the Central Bank Does* (Aug. 2021), <https://www.federalreserve.gov/aboutthefed/files/the-fed-explained.pdf> [https://perma.cc/5JPB-PTY3] (“The setting of a separately determined discount rate appropriate to each District was considered the most important tool of monetary policy at that time.”).

114. *Treasury Bond Screener*, FIDELITY, <https://fixedincome.fidelity.com/ftgw/fi/FILanding#tbindividual-bonds|treasury> [https://perma.cc/95TE-CT5P] (Look for all zero-coupon treasury bonds with a maturity of at least one year from today’s date) (last visited January 6, 2025); Smith, *supra* note 110.

115. James Chen, *Treasury Yield: What It Is and Factors That Affect It* (Jun. 06, 2024), <https://www.investopedia.com/terms/t/treasury-yield.asp> [https://perma.cc/TA8Y-DXNS] (“A Treasury Bill, or T-bill, is a short-term debt obligation issued by the U.S. Treasury and backed by the U.S. government with a maturity of one year or less.”).

116. See generally *The 2023 Long-Term Budget Outlook*, CONG. BUDGET OFF. (June 2023), <https://www.cbo.gov/publication/59331> [https://perma.cc/4MWX-73AW]; *The Nation’s Fiscal Health*, U.S. GOV’T ACCOUNTABILITY OFF. (May 2023), <https://www.gao.gov/assets/gao-23-106201.pdf> [https://perma.cc/GY6L-DL4D].

117. See William McBride et al., *How to Rein in the National Debt* (Sept. 12, 2023), <https://taxfoundation.org/research/all/federal/us-debt-deficits-federal-budget-spending-taxes/> [https://perma.cc/5RL3-9WWC]; Jeff Stein, *U.S. Payments on Debt Spike to \$659 Billion, Nearly Doubling in Two Years* (Oct. 20, 2023), <https://www.washingtonpost.com/business/2023/10/20/interest-debt-payment-treasury/> (“The U.S. government spent \$659 billion this year paying off the interest on its debt, according to a Treasury report released Friday.”); House Budget Committee, *National Debt Skyrockets to Highest Level Yet*, N.Y. TIMES (Jan. 4, 2024), <https://www.nytimes.com/2018/09/25/business/economy/us-government-debtinterest.html> [https://perma.cc/EWL7-VYP6] (“[Interest] Payments are expected to triple from nearly \$475 billion in fiscal year 2022 to a stunning \$1.4 trillion in 2032.”).

top ten combined by military spending.¹¹⁸ All projections indicate that this interest spending will likely increase in the next several years.¹¹⁹ In fact, the interest payments are now higher, in absolute terms, than they have ever been, and they are now a higher proportion of the American GDP than they have ever been.¹²⁰

If the United States continues to spend on foreign wars, if the budget of federal agencies and the costs of federal services continue to grow, and if the government continues to fund these expenditures with debt, the outlook for the economy may be grim in future years.¹²¹ While the politicians making these decisions are likely too old to see the fruits of those decisions many years down the road, the proverbial chickens may just come home to roost when future generations must bear the burden of spending that occurred many years before they could vote (or before they were even born). As the age of the average legislator and of the president continue to set records,¹²² and as those individuals are less and less likely to have to face the consequences of borrowing in the present, the amount of the federal debt grows, too. This problem demands the attention of the younger generations, as well as the elder generations that care about their offspring before it swells out of control.

c. Inflation

The first panacea for a mismanaged nation is inflation of the currency; the second is war. Both bring a temporary prosperity; both bring a permanent ruin. But both are the refuge of political and economic opportunists.

Hemingway¹²³

118. *U.S. Defense Spending Compared to Other Countries*, PETER G. PETERSON FOUND. (Apr. 24, 2023), https://www.pgpf.org/chart-archive/0053_defense-comparison [https://perma.cc/5Y48-JE3D].

119. CONG. BUDGET OFF., *supra* note 9.

120. *What Are Interest Costs on the National Debt?*, PETER G. PETERSON FOUND. (Apr. 4, 2024), <https://www.pgpf.org/budget-basics/what-are-interest-costs-on-the-national-debt> [https://perma.cc/TE6C-QESU].

121. *How Much Has the U.S. Government Spent This Year?*, U.S. TREASURY: FISCALDATA <https://fiscaldata.treasury.gov/americas-finance-guide/federal-spending/> [https://perma.cc/FXL8-P8QL] (last updated Nov. 30, 2024) (“Explore federal spending by category or agency and learn how much the United States government spends each year.”).

122. Anika Yoder, *Pros and Cons of Congress Age and Term Limits*, THE REFLECTOR (Mar. 6, 2023), <https://reflector.uindy.edu/2023/03/08/pros-and-cons-of-congress-age-and-term-limits/> [https://perma.cc/64LG-QHCD]; Brianna Navarre, *The 10 Oldest U.S. Presidents*, U.S. NEWS (Feb. 9, 2024, 2:38 PM), <https://www.usnews.com/news/slideshows/the-10-oldest-presidents?slide=12> [https://perma.cc/4QAB-55P3].

123. Ernest Hemingway, *Notes on the Next War: A Serious Topical Letter*, ESQUIRE, Sept. 1935, at 19.

The problems the government has paying its national debt and the interest on that debt create an unfortunate temptation: the temptation to inflate the currency. Without backing via natural resources, the American currency has significantly depreciated in value over the past five decades.¹²⁴ Some economists argue that increasing the money supply, either via expanding currency or credit, is the sole cause of inflation (perhaps its very definition).¹²⁵ Significant evidence bolsters this conclusion,¹²⁶ though it is not the only one economists reach.¹²⁷ While we cannot resolve the economic debate, we can at least conclude that *some* inflation results from the national deficit and the national debt when the federal government prints money to pay that national debt rather than paying it down with revenue.¹²⁸ All else held constant, an increased money supply will result in more money being required to purchase the same amount of goods.¹²⁹

The option of simply printing money is unappealing to most citizens but a boon to governments wishing to spend beyond their means. Inflating the monetary supply in this manner allows the government to use debt to purchase items it cannot cover with revenue. The government knows it can always “honor” its debt (at least nominally) by printing currency not

124. FM, ‘*Real Value*’ of Dollar Drops 86% in 50 Years, FINANCIAL MIRROR (Mar. 21, 2022), <https://www.financialmirror.com/2022/03/21/real-value-of-dollar-drops-86-in-50-years/> [https://perma.cc/K4BX-FA5U].

125. Friedman, *supra* note 94 (“Now the first step toward understanding the cause of inflation is to recognize that it is always and everywhere a monetary phenomenon. It’s always and everywhere a result of too much money, of a more rapid increase in the quantity of money than in output. Moreover, in the modern era, the important next step is to recognize that today governments control the quantity of money so that, as a result, inflation in the United States is made in Washington and nowhere else.”).

126. *Where Cutting-Edge Criminal Defense Meets Texas Justice*, SHANE PHELPS LAW, <https://www.shanephelpslaw.com/the-atticus-files/understanding-circumstantial-evidence/> [https://perma.cc/346U-3XKC] (“Unlike direct evidence, which directly proves or disproves a fact, this evidence relies on inference and assumptions to support a conclusion.”).

127. See Yi Wen & Maria A. Arias, *What Does Money Velocity Tell Us about Low Inflation in the U.S.?*, FED. RSRV. BANK ST. LOUIS (Sept. 1, 2014), <https://www.stlouisfed.org/on-the-economy/2014/september/what-does-money-velocity-tell-us-about-low-inflation-in-the-us> [https://perma.cc/AW32-PGRN].

128. John H. Cochrane, *Inflation and Debt*, NAT’L AFFAIRS 9 (Fall 2011), <https://www.nationalaffairs.com/publications/detail/inflation-and-debt> [https://perma.cc/XE68-FXF6] (“Most analysts today—even those who do worry about inflation — ignore the direct link between debt, looming deficits, and inflation.”).

129. *What Is the Quantity Theory of Money: Definition and Formula*, INVESTOPEDIA, <https://www.investopedia.com/insights/what-is-the-quantity-theory-of-money/> [https://perma.cc/W5ZB-H35U] (last updated Feb. 28, 2024).

backed by any limited resource.¹³⁰ This has significant political expedience: politicians can now “balance” the budget without cutting spending or raising taxes, allowing them to spend more money on their voters (in exchange for more votes) without taking the unpopular measure of raising taxes on these same voters. Sometimes, the money is not even spent on the voter at all, but rather on foreign wars and other special interest projects, but as long as taxes remain unaffected, politicians can hope to avoid at least some voter scrutiny while creating the appearance of government generosity toward the masses.

Of course, inflation is not really a solution; in the long term, it is a significant problem.¹³¹ Once again, the generation that incurs inflation in order to pay its debts always does so at the expense of future generations.¹³² As the money supply inflates more rapidly than goods and services become available, the costs of those goods and services rise (where demand remains constant).¹³³ Goods and services become unaffordable for large sectors of the population, and while wages may also rise (given a limited labor supply from which employers must hire), they may not rise enough to keep up with the rising costs of living.¹³⁴ What is more, inflation creates conditions where citizens’ savings (and some investments) begin to lose value rapidly, punishing those who avoided spending today to have money tomorrow by eliminating the value of the money tomorrow.¹³⁵ This is a poor way to reward responsible citizens for saving their money and making it available to the banking and investment sector so that this sector can finance profitable businesses.

130. John H. Cochrane, *How the Fed Plans to Pay the Country’s Bills*, CHI. BOOTH REV. (May 12, 2020), <https://www.chicagobooth.edu/review/how-fed-plans-pay-countrys-bills> [https://perma.cc/V8ZN-D7PY].

131. Peter Hall, *Peter Hall: Why inflation is Not Really the Problem*, FIN. POST (Nov. 23, 2022), <https://financialpost.com/news/economy/inflation-not-the-problem> [https://perma.cc/VL2Y-XCZL] (“Clearly, inflation is a huge problem for households, businesses, government budgets — and of course, for monetary policymakers.”).

132. Cochrane, *supra* note 128.

133. David Gorton, *How Does Money Supply Affect Inflation?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/042015/how-does-money-supply-affect-inflation.asp> [https://perma.cc/5L7K-NK6E] (last updated Aug. 22, 2023) (“Inflation can happen if the money supply grows faster than the economic output under otherwise normal economic circumstances.”).

134. Michelle Ullman, *How Inflation Affects Your Cost of Living*, INVESTOPEDIA, <https://www.investopedia.com/articles/personal-finance/081514/how-inflation-affects-your-cost-living.asp> [https://perma.cc/X6GB-TECU] (last updated Oct. 26, 2023).

135. Troy Segal, *What Is Inflation and How Does Inflation Affect Investments?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/what-is-inflation-and-how-should-it-affect-investing/> [https://perma.cc/45FC-2W4F] (last updated Apr. 12, 2024) (“The rate of inflation represents how quickly investments lose their real value and how quickly prices increase over time.”).

Because citizens functionally lose value as a result of inflation while the government gains it,¹³⁶ many consider inflation to be a tax.¹³⁷ Politicians prefer this tax as it requires no law to be issued from Congress and no signature from the president. True, voters can always elect politicians who oppose inflationary policies, but sufficient public support has usually not materialized for anti-inflationary policies, as demonstrated by the fact that significant inflation continues to erode the value of the U.S. dollar.¹³⁸ One of the most sinister aspects of the inflation tax is its tendency to impact low-income households and individuals disproportionately.¹³⁹ Inflation serves as a regressive tax by raising the costs of goods and services that those in poverty need to survive.¹⁴⁰ The wealthy also suffer from the effects of inflation, but because they typically have more investments than those considered low-income, the value of those investments tends to rise and mitigate the effects of inflation.¹⁴¹ In a country with a growing disparity between the poor and the wealthy, the disparity grows as a result of inflation.¹⁴²

136. *See id.*

137. *Inflation*, TAX FOUND., <https://taxfoundation.org/taxedu/glossary/inflation/> [<https://perma.cc/R2V2-RXTY>] (last visited Sept. 28, 2024); Paul Kupiec, *The Inflation Tax Is Not Only Real, It's Massive*, THE HILL (Nov. 4, 2021, 12:31 PM), <https://thehill.com/opinion/finance/580043-the-inflation-tax-is-not-only-real-its-massive/> [<https://perma.cc/3SCE-CDCH>] (“The inflation tax is the amount of business and household wealth that is transferred to the federal government as a result of inflation.”).

138. *Consumer Price Index, 1913-*, FED. RSRV. BANK OF MINNEAPOLIS, <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1913-> [<https://perma.cc/92SA-ZDGP>] (last visited Oct. 12, 2024).

139. William McBride & Alex Durante, *The “Inflation Tax” is Regressive*, TAX FOUND. (Sept. 29, 2022), <https://taxfoundation.org/blog/inflation-regressive-effects/> [<https://perma.cc/ZMM5-WBSB>].

140. *Inflation*, *supra* note 137 (“The same paycheck covers less goods, services, and bills. It is sometimes referred to as a ‘hidden tax,’ as it leaves taxpayers less well-off due to higher costs and ‘bracket creep,’ while increasing the government’s spending power.”).

141. Jack Kelly, *How Inflation Benefits the Wealthy and Harms the Working Class*, FORBES (Apr. 8, 2024, 6:00 AM), <https://www.forbes.com/sites/jackkelly/2024/04/08/how-inflation-benefits-the-wealthy-and-harms-the-working-class/> [<https://perma.cc/34AX-7F7S>] (“Inflation can have varying effects on different wealth brackets with the middle class benefiting from real estate assets, but facing challenges in other areas. The “wealth effect” benefits those with substantial assets from increased asset values, like stocks, real estate and entrepreneurial endeavors.”).

142. Mahtab Uddin Ahmed, *Inflation Widening Rich-Poor Gap*, THE DAILY STAR (Aug. 12, 2022, 1:54 AM), <https://www.thedailystar.net/business/economy/news/inflation-widening-rich-poor-gap-3093206> [<https://perma.cc/Y4ZQ-3AXH>] (“High inflation, in short, tends to worsen economic inequality or poverty because it hits harder the earnings and savings of lower or middle-income households than the well-off.”).

III. THE PUBLIC DEBT CLAUSE

The validity of the public debt of the United States, authorized by law . . . shall not be questioned.

U.S. CONST. amend. XIV, § 4.

The Public Debt Clause of the Fourteenth Amendment assures that the national debt not be “questioned.”¹⁴³ This clause has generally served as a boon for scholars encouraging more government spending and more government debt.¹⁴⁴ After all, if the federal debt must not be “questioned,” it must mean that federal government shutdowns over the debt ceiling, or over-servicing an ever-expanding annual federal budget, impede America’s ability to pay its debt.¹⁴⁵ This, according to many legal scholars, means unconstitutionally questioning the debt.¹⁴⁶ Yet this is far from the only possible interpretation; in fact, the plain language of the clause might suggest the very opposite conclusion. The continued expansion of the federal deficit and the federal debt, which may prevent future generations from honoring it by creating an irrecoverable downward spiral,¹⁴⁷ seems to be more of a questioning of the debt than a government shutdown is.

143. U.S. CONST. amend. XIV, § 4.

144. Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveau, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch & Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

145. Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveau, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch & Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

146. Strickland, *infra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *infra* note 149; Buchanan & Dorf, *Borrowing for Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *infra* note 149; Deveau, *infra* note 149; Fagan, *infra* note 149; McGuire, *infra* note 149; Charles, *infra* note 149; Magliocca, *infra* note 149; Ostro, *infra* note 149; Tiefer, *infra* note 149; Kitch & Mahoney, *infra* note 149; *see generally* Hiddleston, *infra* note 149; Hutchison, *infra* note 149; McCommas, *infra* note 149; Williams, *infra* note 149.

147. *When Does Federal Debt Reach Unsustainable Levels?*, PENN WHARTON BUDGET MODEL (Oct. 6, 2023), <https://budgetmodel.wharton.upenn.edu/issues/2023/10/6/when->

a. *Prior Literature*

Arwen: Why do you fear the past? You are Isildur's heir, not Isildur himself. You are not bound to his fate.

Aragorn: The same blood flows through my veins. The same weakness.

Arwen: Your time will come. You will face the same evil, and you will defeat it.

The Lord of the Rings: the Fellowship of the Ring¹⁴⁸

Scholars typically analyze the Public Debt from the perspective of its requirement to service the national debt by reaching the required political agreements to assure interest payments and refinancing of the liability in the short- to medium- term.¹⁴⁹ Because the federal government has never

does-federal-debt-reach-unsustainable-levels [https://perma.cc/KW7P-GN76] (“Under current policy, the United States has about 20 years for corrective action after which no amount of future tax increases or spending cuts could avoid the government defaulting on its debt whether explicitly or implicitly [i.e., debt monetization producing significant inflation].”).

148. THE LORD OF THE RINGS: THE FELLOWSHIP OF THE RING (New Line Cinema 2001).

149. See generally Daniel Strickland, Note, *The Public Debt Clause Debate: Who Controls This Lost Section of the Fourteenth Amendment?*, 6 CHARLESTON L. REV. 775 (2012); Neil H. Buchanan & Michael C. Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, 112 COLUM. L. REV. 1175 (2012); Neil H. Buchanan & Michael C. Dorf, *Borrowing by Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, 114 COLUM. L. REV. SIDEBAR 44 (2014); Chad DeVeaux, *The Fourth Zone of Presidential Power: Analyzing the Debt-Ceiling Standoffs Through the Prism of Youngstown Steel*, 47 CONN. L. REV. 395 (2014); Kelleigh Irwin Fagan, Note, *The Best Choice Out of Poor Options: What the Government Should Do (Or Not Do) if Congress Fails to Raise the Debt Ceiling*, 46 IND. L. REV. 205, 233–38 (2013); John McGuire, Comment, *The Public Debt Clause and the Social Security Trust Funds: Enforcement Mechanism or Historical Peculiarity?*, 7 LOY. J. PUB. INT. L. 203 (2006); Jacob D. Charles, Note, *The Debt Limit and the Constitution: How the Fourteenth Amendment Forbids Fiscal Obstructionism*, 62 DUKE L.J. 1227 (2013); Gerard N. Magliocca, *The Gold Clause Cases and Constitutional Necessity*, 64 FLA. L. REV. 1243 (2012); Zachary K. Ostro, *In the Debt We Trust: The Unconstitutionality of Defaulting on American Financial Obligations, and the Political Implications of Their Perpetual Validity*, 51 HARV. J. ON LEGIS. 241 (2014); Charles Tiefer, *Confronting Chaos: The Fiscal Constitution Faces Federal Shutdowns and (Almost) Debt Defaults*, 43 HOFSTRA L. REV. 511 (2014); Edmund W. Kitch & Julia D. Mahoney, *Restructuring United States Government Debt: Private Rights, Public Values, and the Constitution*, 2019 MICH. ST. L. REV. 1283 (2019); See generally Clark A. Hiddleston, *Reducing the National Debt: Why the Federal Reserve Bank Should Refuse Receipt of \$4.26 Trillion in Bond Interest and Principal Payments from the United States Treasury and Government Sponsored Enterprises (GSES)*, 44 RUTGERS L. REC. 118 (2016–2017); Michael Abramowicz, *Beyond Balanced Budgets, Fourteenth Amendment Style*, 33 TULSA L.J. 561 (1997); Zachary L. Hutchison, Note, *Whose Authority? Executive Power and the*

defaulted on its debt and has never failed to otherwise service it,¹⁵⁰ scholars generally shift their perspective to political movements that might impede the government's ability to make interest payments.¹⁵¹ Rather than focusing on fiscal responsibility and spending reduction, they tend to look for constitutional grounds for either ignoring, circumventing, defaulting, restructuring, or otherwise addressing the national debt without cutting national excesses.¹⁵² These articles all precede the 2020 COVID-19 crisis and much of the debt accumulation that has occurred in the 2010s and the 2020s, and in light of today's \$35 trillion debt liability that grows by several billion per day,¹⁵³ they appear borderline irresponsible.¹⁵⁴

The general thrust of these articles is a critique of congressional gridlock and remedies available to the executive branch or the American

Debt Crisis of 2011, 34 U. LA VERNE L. REV. 167 (2013); Stuart McCommas, *Forgotten but Not Lost: The Original Public Meaning of Section 4 of the Fourteenth Amendment*, 99 VA. L. REV. 1291 (2013); Victor Williams, *Raze the Debt Ceiling: a Test Case for State-Sovereign and Institutional Bondholder Litigation to Void the Debt Limit Statute*, 72 WASH. & LEE L. REV. ONLINE 96 (2015).

150. David J. Lynch, *If U.S. Defaults on Debts, This Company Has Two Months of Payroll Saved Up*, WASH. POST (May 13, 2023, 6:00 AM), <https://www.washingtonpost.com/business/2023/05/13/debt-ceiling-companies-investors-financial-markets/> [<https://perma.cc/VK73-5X4M>].

151. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

152. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

153. *What is the National Debt?*, *supra* note 51.

154. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

people.¹⁵⁵ They espouse the view that politicians who use the national budget and the national debt as a bargaining chip do the nation a severe, unconstitutional disservice and that these efforts can (and should) be circumvented out of a constitutional and fiscal necessity.¹⁵⁶ Contrary to the argument in this Article, most authors argue that the federal government should be able to spend without impediment *because* of the Public Debt Clause rather than in spite of it.¹⁵⁷ Only one article, by Michael Abramowicz, discusses (but hardly champions) the alternate view: that the Public Debt Clause can be read as a limit on irresponsible fiscal policy, though he writes in his 1997 article that the National Debt is relatively small and does not see the urgency of applying the Public Debt Clause to limit federal spending that has arisen over the past three decades.¹⁵⁸

Our response and critique of this literature should not be surprising; while the national debt was below \$20 trillion when most of these works were written, it took only about a decade to more than double in size.¹⁵⁹

155. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVeaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

156. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVeaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

157. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVeaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

158. Abramowicz, *supra* note 149, at 572.

159. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVeaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; *see*

The idea that the Public Debt Clause should serve to *ease* continued borrowing and a deterioration of the nation's fiscal position runs contrary to the intent of its framers and general common sense.¹⁶⁰ Arguments in favor of allowing the government to continue borrowing money in the present at the expense of future generations do little to actually address the debt issue head-on.¹⁶¹ The best they offer is an acknowledgement of current budget deficits and increasing national debt, but they soften the blow by pointing out that it has not yet reached unsustainable levels.¹⁶²

In the 2010s, when acclaimed scholars made these arguments, they made sense; after all, the national debt clearly could sustain greater accumulation since the American economy has not imploded despite its continued increase well into the 2020s.¹⁶³ Yet, the underlying assumption was always that the rates of borrowing themselves were sustainable; that is, that the Federal Reserve kept rates so low that borrowing was practically free because of the low amounts of interest the government would pay on the debt, regardless of how large the principal became.¹⁶⁴ With federal reserve rates in excess of five percent, these assumptions (and the federal budget) come under tremendous pressure from the debt. And this is not even the worst-case scenario; historical Federal Reserve rates in living memory have approached nearly four times their level at the end of

generally Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

160. Abramowicz, *supra* note 149.

161. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

162. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

163. *What is the National Debt?*, *supra* note 51.

164. *See* Louise Sheiner & Kadija Yilla, *Federal Debt Policy in an Era of Low Interest Rates: A Guide to the Issues*, HUTCHINS CTR. ON FISCAL & MONETARY POL'Y., Oct. 2020, at 11, <https://www.brookings.edu/wp-content/uploads/2020/10/Debt-level.pdf> [<https://perma.cc/UKS3-M5KF>] ("But the fact that rates are so low despite the recent increase in debt does mean that the amount of debt that the U.S. can easily sustain is a lot larger than people used to think.").

2023.¹⁶⁵ One can only shudder when considering what refinancing the treasury bonds at the rates available in the 1980s would do to the annual budget.¹⁶⁶

b. Legal Precedent

“I wish it need not have happened in my time,” said Frodo. “So do I,” said Gandalf, “and so do all who live to see such times. But that is not for them to decide. All we have to decide is what to do with the time that is given us.”

Tolkien¹⁶⁷

Interestingly, the case theory most prior literature advanced reached the United States Court of Appeals for the District of Columbia.¹⁶⁸ Just as suggested by legal theorists, the plaintiff alleged future injury would be inevitable if the Court permitted the debt limit statute to remain in place, as it prevented the federal government from borrowing money in order to pay off its maturing debts.¹⁶⁹ Putting aside how similar this government

165. *Id.*; *Federal Reserve Recalibrates Monetary Policy as Inflation Recedes* (Nov. 8, 2024), <https://www.usbank.com/investing/financial-perspectives/market-news/federal-reserve-tapering-asset-purchases.html> [https://perma.cc/YHA2-YMDH] (“The Fed held rates at 5.25% to 5.50% from July 2023 to September 2024. Between March 2022 and July 2023, the Fed raised rates eleven times, from near 0%.”).

166. *Federal Funds Effective Rate*, FED. RSRV. BANK OF ST. LOUIS, <https://fred.stlouisfed.org/series/FEDFUNDS> [https://perma.cc/GSX5-NT2Y] (last visited Sept. 29, 2024) (showing that the federal funds effective rate was 19.10% in June, 1981).

167. J.R.R. TOLKIEN, *THE FELLOWSHIP OF THE RING* 67 (HarperCollins 2008) (1954).

168. *Williams v. Lew*, 819 F.3d 466 (D.C. Cir. 2016). For a discussion of this case theory, see Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

169. *Williams*, 819 F.3d at 472 (“Williams avers to “certainly-impending” future economic and noneconomic harms from the full enforcement of the Debt Limit Statute—i.e., an actual default on United States debts.”). The prior literature advanced this same argument. See Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential “Spending Cuts” Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

practice is to a Ponzi scheme, one can still see a profound expression of legal theorists' concern that governmental gridlock over whether additional spending should occur would question the validity of the government's debt obligations because the government could not pay its current liabilities without incurring future liabilities.¹⁷⁰ Yet, the concern that the government would be unable to function in light of the statutory debt limit did not carry the day; the ability to suspend the debt limit statute, not to mention the requirement of many speculative events necessary for a debt default to occur, convinced the Court that the harm to the bondholder was too speculative to warrant court intervention.¹⁷¹ That ruling proved prophetic, as nearly a decade later, the federal government has not defaulted on its debt due to political gridlock or spending limitations (even after the longest government shutdown of all time under President Trump).¹⁷² One might infer, then, that *limits* on spending (as opposed to excessive spending itself) are not the problem.

Outside of *Williams*, cases implicating the National Debt Clause are rare because opportunities to bring them have, up to this point, been few. The United States has never defaulted on its national debt, which is part of the reason investors and scholars alike consider it a risk-free asset and a solid investment for individuals reliant on safe, consistent payments from their investments.¹⁷³ The Supreme Court of the United States only passed judgment on the Public Debt Clause once, in 1935.¹⁷⁴ That case, heard almost one hundred years ago, involved strikingly similar concerns to those in 2024: whether government control of gold during the Great Depression and its refusal to pay a Liberty Bond in gold rather than currency violated the Public Debt Clause.¹⁷⁵ The Court considered the question alongside *Norman v. Baltimore & Ohio Railroad Company*,¹⁷⁶

170. *Williams*, 819 F.3d. at 472; Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

171. *Williams*, 819 F.3d at 473.

172. Lynch, *supra* note 150.

173. David Gura, *Here's What Could Happen in Markets if the U.S. Defaults. Hint: It Won't Be Pretty*, NPR (May 21, 2023, 5:00 AM), <https://www.npr.org/2023/05/21/1177203159/debt-limit-ceiling-default-wall-street-biden-mccarthy-economy> [<https://perma.cc/M2JK-9NC9>].

174. *Perry v. United States*, 294 U.S. 330 (1935).

175. *Id.*

176. 294 U.S. 240 (1935).

United States v. Bankers' Trust Company,¹⁷⁷ and *Nortz v. United States*,¹⁷⁸ which together with *Perry v. United States*¹⁷⁹ comprised the "Gold Clause Cases".¹⁸⁰ In several 5-4 decisions, the Court mostly upheld the government's actions, though only in *Perry* did it reach the question of whether the government could constitutionally refuse to render payment in gold and render payment in dollars instead (even though the government had devalued those dollars in gold terms).¹⁸¹

When considering the Public Debt Clause, the Court recognized its prospective application.¹⁸² Holding that the Clause applied to past and future debts of the nation,¹⁸³ the Court considered whether its language "embrac[ed] whatever concerns the integrity of the public obligations."¹⁸⁴ The Court concluded it could not interpret the clause otherwise.¹⁸⁵ This demonstrates the Court's acknowledgment that "questioning" the validity of the federal debt could entail passing laws or adopting policies that would render the federal debt unserviceable.¹⁸⁶ A close reading of the case shows that "questioning" the validity of the federal debt could just as easily result from the government taking a financial position that made paying the debt in the future virtually impossible.¹⁸⁷

In *Perry*, the reason the federal debt became unserviceable, according to the plaintiff, spanned from the adoption of regulations prohibiting payments on Liberty Bonds in gold rather than in United States currency.¹⁸⁸ This was a problem because when the plaintiff invested in Liberty Bonds, the amount of gold that could be obtained in exchange for

177. 293 U.S. 548 (1934).

178. 294 U.S. 317 (1935).

179. *Perry*, 294 U.S. 330.

180. Angus D. MacLean, *Outline of the Gold Clause Cases*, 15 N.C. L. REV. 249, 249 (1937).

181. *Perry*, 294 U.S. at 349; *Norman*, 294 U.S. 240; *Bankers Trust Co.*, 294 U.S. 240; *Nortz*, 294 U.S. 317.

182. *See Perry*, 294 U.S. at 354 (stating "[w]hile this provision was undoubtedly inspired by the desire to put beyond question the obligations of the Government issued during the Civil War, its language indicates a broader connotation. We regard it as confirmatory of a fundamental principle which applies as well to the government bonds in question, and to others duly authorized by the Congress, as to those issued before the amendment was adopted. Nor can we perceive any reason for not considering the expression 'the validity of the public debt' as embracing whatever concerns the integrity of the public obligations.>").

183. *See id.*

184. *Id.*

185. *Id.*

186. *See Perry*, 294 U.S. at 354.

187. *See id.*

188. *See id.* at 347.

one dollar was 25.8 grains.¹⁸⁹ When the Liberty Bonds matured, however, a dollar could only be redeemed for 15-5/21 grains of gold, rendering it less valuable in gold terms, and the plaintiff hoped to cure this inadequacy by redeeming his bond for its gold value rather than its dollar value.¹⁹⁰ He hoped that, by redeeming his Liberty Bonds in gold, he would receive 25.8 grains of gold for each dollar the government owed him rather than receiving paper currency redeemable for only 15-5/21 grains of gold by weight.¹⁹¹ The government, of course, opposed his position, citing federal laws requiring the payment in paper currency (and the suspension of the ability to redeem paper currency for its weight in gold on account of the Great Depression).¹⁹²

Many forget that the government actually lost a part of the Court's decision: federal regulations that prevented the repayment of a government bond in gold (despite the lender's prior right to seek a repayment via the precious metal as opposed to cash) *did* materially and impermissibly alter the government's obligation.¹⁹³ At least with respect to the question of government liability, the plaintiff had prevailed: Perry successfully showed that the government violated the Constitution and overreached the limits of the Fourteenth Amendment in refusing to render payment in gold.¹⁹⁴ One saving grace remained for the government: the fact that its paper currency, which it wished to deliver to Perry in satisfaction of its debt, was backed by gold.¹⁹⁵ As a result of this gold-backing, the Court concluded, Perry would suffer no monetary damages for which he was entitled to recover.¹⁹⁶ After all, since the value he would have received in gold would be identical to the value he would receive in gold-backed United States currency after the government's adjustment of the weight of gold associated with each dollar, Perry could show no damages for which relief could be granted, and so, his suit would still be dismissed.¹⁹⁷ The Court did not adopt Perry's case theory that the government owed him \$1.69 in paper currency for every dollar owed, which would have been an adjustment the plaintiff demanded on the basis of the gold weight associated with each dollar.¹⁹⁸

189. *Id.* at 331.

190. *Id.* at 331–32.

191. *Id.* at 347.

192. *Perry*, 294 U.S. at 332.

193. *Id.* at 354.

194. *Id.*

195. *Id.* at 354–58.

196. *Id.*

197. *Id.*

198. *Perry*, 294 U.S. at 358.

Because no gold or silver backs the American dollar today,¹⁹⁹ it is entirely plausible that *Perry* would be decided differently today. Already a close 5-4 ruling in 1934, the case hinged on the government's ability to convince the Court that receiving the value of the bond in dollars was just as valuable as receiving the value of the bond in gold.²⁰⁰ Few things could be further from the truth today. A federal bond note that entitled its holder to payment in currency or in the equivalent of the currency in gold at the time of bond auction would almost always see redemptions in gold. Why? Because the value of the currency, due to inflation, has dropped so precipitously compared to the value of the precious metal in ways that may not have been obvious in 1934 but are undeniable today.²⁰¹ As a result, *Perry* might have recovered for his damages today, and the landscape of constitutional jurisprudence on this subject might be much more substantive. Of course, the United States is now careful not to issue bonds backed by the possibility of reclaiming the value of the dollar in gold at the time of issuance, so the matter may not come up.²⁰² What makes *Perry* so relevant, though, is that it highlights how government monetary policy can bring the government close to a technical default in the midst of an economic crisis.²⁰³

This perspective of *Perry* and the Public Debt Clause provides a stark contrast to prior scholarship because it views the government's ability to meet its debt obligations as a critical part of not "questioning" the "validity of the public debt" from the perspective of currency devaluation.²⁰⁴ Past

199. Kristopher Kane, *What Is the Gold Standard?*, MONEY, <https://money.com/what-is-the-gold-standard/> [<https://perma.cc/YC6V-XEXR>] (last updated May 22, 2024) ("Since 1971, the U.S. has used fiat currency as its monetary system. With currency that's no longer backed by any physical commodity, the government can print as much money as needed to enact various measures to influence economic activity.").

200. *Id.*

201. Evan Tarver, *What Impact Does Inflation Have on a Dollar's Value Over Time?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/042415/what-impact-does-inflation-have-time-value-money.asp> [<https://perma.cc/6ZFE-WL9B>] (last updated Aug. 28, 2023).

202. Konstantin Vasilev, *Gold Bond*, CBONDS, <https://cbonds.com/glossary/gold-bond/> [<https://perma.cc/E7XF-M84B>] (last updated Apr. 18, 2023) ("In the United States, the government typically does not issue Gold Bonds, even though there was such a practice on the part of certain States before the 1930s.").

203. *Perry*, 294 U.S. 330.

204. U.S. CONST. amend. XIV, § 4; *Perry*, 294 U.S. 330; Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston,

articles assume, either implicitly or explicitly, that printing additional money to service the debt or taking on new debt to honor past debt obligations does not impede public debt repayment in a constitutionally meaningful way.²⁰⁵ After all, the creditor received a promise to be paid in United States currency (not gold or silver), and that is precisely what the individual will receive. Hence, no need exists for concern since the government can always guarantee the delivery of currency to creditors, no matter how much value that currency would lose in the interim.

This ignores the critical nuances in the *Perry* decision.²⁰⁶ The reason *Perry* did not prevail against the government (and the decision was a close one, at 5-4 at a time when the Court felt considerable political pressure driven by a massive economic crisis) is *not* that the government met its obligations under the Public Debt Clause.²⁰⁷ On the contrary, the government failed to meet those obligations;²⁰⁸ it only prevailed because the paper currency had a gold backing which made it of identical value to the plaintiff as gold in the eyes of the Court.²⁰⁹ Hence, *Perry*'s case could not proceed because while he could establish government liability, he could not establish damages, missing a critical element for the case to be one where relief could be granted.²¹⁰ Today, though, there would absolutely be damages because the currency a plaintiff in *Perry*'s shoes would receive in 2023 is significantly less than its value in gold at the time of the purchase of the Liberty Bond.²¹¹

supra note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

205. Strickland, *supra* note 149; Buchanan & Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, *supra* note 149; Buchanan & Dorf, *Borrowing by Any Other Name: Why Presidential "Spending Cuts" Would Still Exceed the Debt Ceiling*, *supra* note 149; DeVaux, *supra* note 149; Fagan, *supra* note 149; McGuire, *supra* note 149; Charles, *supra* note 149; Magliocca, *supra* note 149; Ostro, *supra* note 149; Tiefer, *supra* note 149; Kitch & Mahoney, *supra* note 149; *see generally* Hiddleston, *supra* note 149; Hutchison, *supra* note 149; McCommas, *supra* note 149; Williams, *supra* note 149.

206. *Perry*, 294 U.S. 330.

207. *Id.*

208. *Id.* at 354 ("We conclude that the Joint Resolution of June 5, 1933, in so far as it attempted to override the obligation created by the bond in suit, went beyond the congressional power.").

209. *Id.* at 354–58.

210. *Id.*

211. *See* Christopher Guzelian, *Dollars That Devalue are Unconstitutional*, 54 ST. MARY'S L.J. 85, 150 (2023) (quoting Letter from John Adams to John Taylor (Mar. 12, 1819), *Founders Online*, NATIONAL ARCHIVES, <https://founders.archives.gov/documents/Adams/99-02-02-7096> [<https://perma.cc/LN9C-NDNW>]) (early access document to forthcoming final authoritative source) ("[I]n [paper] money there is absolutely no real value it is more ruinous because by its gradual depreciation during all this time of its

True, today, no option exists to have one's bonds repaid in gold, silver, or other precious resources, so no one could demand the same payment from the federal government as the petitioner/plaintiff in *Perry*.²¹² Yet, even the petitioner in *Perry* did not hold a bond guaranteeing repayment in precious metal; instead, the Liberty Bond entitled its holder to currency, and it was the currency (backed by gold at that time) that then entitled the petitioner to gold.²¹³ The bond, in the plaintiff's view, could simply be used as a shortcut in that process, entitling the plaintiff to relief for failing to receive the same gold weight that he otherwise would have received.²¹⁴

The Petitioner argued that the federal government impermissibly changed the gold weight associated with a dollar of American currency, but the Court disagreed with this argument, pointing out that the Liberty Bond's promise and the petitioner's calculations regarding the value of his gold did not conform with the economic and legal realities of the day.²¹⁵ The Supreme Court specifically noted the difference in the valuation of gold by weight as compared to gold used as currency with the full faith and backing of the United States.²¹⁶ This was a curious choice since entitlement to currency gold should have made the petitioner's claim for damages stronger on account of gold's apparently greater value after the change in how much dollar currency such weight would account for.²¹⁷ Nevertheless, the Court relied on the value of paper currency being identical to that of gold currency to conclude that no damages could be recovered for receiving paper currency rather than gold currency so long as the amount of such currency was precisely the same in dollar terms.²¹⁸

The inflationary policies today, of course, are far more extreme than those that were in place when the United States still adhered to the gold standard,²¹⁹ weakening (if not eliminating) the assumption that paper currency and gold are interchangeable. It is not uncommon, for instance,

existence it produces the effect which would be produced by an infinity of successive deteorations [sic] of the coins . . .").

212. *Perry*, 294 U.S. at 347.

213. *Id.* at 354–58.

214. *Id.*

215. *Id.* at 355–58 ("The question of actual loss cannot fairly be determined without considering the economic situation at the time the government offered to pay him the \$10,000, the face of his bond, in legal tender currency.").

216. *Id.* at 356 (citing *Ling Su Fan v. United States*, 218 U.S. 302) ("[P]ublic law gives to such coinage a value which does not attach as a mere consequence of intrinsic value. Their quality as a legal tender is an attribute of law aside from their bullion value.").

217. *Perry*, 294 U.S. at 347.

218. *Id.* at 356.

219. Tim McMahon, *Total U.S. Cumulative Inflation*, INFLATIONDATA.COM (Aug. 10, 2022), <https://inflationdata.com/articles/2022/08/10/u-s-cumulative-inflation-since-1913/> [<https://perma.cc/8PE4-8KL2>].

for gold and silver coins minted by the government to greatly exceed the equivalent face value of the paper currency over time.²²⁰ As a result, it is entirely possible for a creditor to purchase American bonds and receive in payment a value that is less than what the creditor paid for the bond due to the decline in value of the currency in which the bonds are denominated, relative to minerals or otherwise. Of course, any investment (including bonds) carries with it the risk of receiving less than the principal, but when it happens to a theoretically “risk-free” asset that is supposed to store the investor’s value and provide a dependable source of income,²²¹ it creates cause for alarm. In light of the Public Debt Clause, returning to the lender payments that are less valuable than the amount lent becomes problematic because of *Perry*’s pronouncement that government action must not encumber “the integrity of public obligations.”²²²

c. *Questioning the Debt*

“Who gets the message?”

“Posterity.”

TENET²²³

Our perspective observes a greater danger to the national debt than all other dangers combined: the possibility that today’s politicians run up a bill that future generations of workers cannot pay. Putting aside, temporarily, questions of justiciability, one cannot help but observe that federal spending now, or in the near future, may seriously infringe upon the Public Debt Clause.²²⁴ The unsustainable nature of borrowing almost \$ 2 trillion or more per year, at growing interest rates, to finance

220. *Differences Between a Coin’s Face Value and Actual Value*, PROVIDENT METALS, <https://www.providentmetals.com/knowledge-center/collectible-coins/collectible-coin-value.html> [https://perma.cc/KNU5-V2AK] (last visited Sept. 29, 2024).

221. *Are Long-term U.S. Government Bonds Risk-free?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/168.asp> [https://perma.cc/H822-JQZ6] (last updated Jan. 29, 2021) (“There is virtually zero risk that you will lose principal by investing in long-term U.S. government bonds.”).

222. *Perry*, 294 U.S. at 354.

223. TENET (Warner Bros Pictures 2020).

224. *See, e.g.*, Davide Barbuscia, *US Fiscal Strain Looms as Key Challenge for Newly Elected Trump*, REUTERS (Nov. 6, 2024), <https://www.reuters.com/markets/us/us-fiscal-strain-looms-key-challenge-newly-elected-trump-2024-11-06/> [https://perma.cc/7WJM-QTH5].

government expenditures should loom large in the minds of those who make public policy.²²⁵

The importance of using the Public Debt Clause as a weapon against runaway spending expressed in the plain language of the Fourteenth Amendment and its straightforward application would be both prospective and in opposition to issuing treasury bonds that either cannot be paid off or that require significant currency manipulation (and devaluation) to satisfy.²²⁶ It is true that, in years past, the United States incurred significant amounts of debt to fund emergencies.²²⁷ Nevertheless, the government ordinarily found ways to drastically reduce the debt once the emergency passed. Politicians cut spending and allowed the debt to fall significantly after World War I and World War II.²²⁸ Both wars were substantially greater emergencies than COVID-19, for example, and yet, policymakers implicitly understood the need to pay down the national debts so that the nation could borrow at reasonable rates in the event of future emergencies.

The COVID-19 emergency concluded sometime between 2021 and 2023, at least if one measures its conclusion by the rescission of emergency orders and measures by the federal government.²²⁹ Yet, the

225. *The Current Federal Deficit and Debt*, PETER G. PETERSON FOUND., <https://www.pgpf.org/the-current-federal-budget-deficit> [https://perma.cc/V5XH-V36U] (last visited Oct. 13, 2024).

226. Melissa McCall, J.D. *The Fourteenth Amendment's Public Debt Clause*, FINDLAW (July 29, 2022), <https://constitution.findlaw.com/amendment14/annotation16.html> [https://perma.cc/P8QR-Z8WX] (“The Fourteenth Amendment’s public debt clause as a limitation on questioning the public debt, it also helped protect the victories of the Civil War.”).

227. Christopher J. Neely, *A Look at the Fed's Emergency Lending Programs*, FED. RESRV. BANK OF ST. LOUIS (Dec. 22, 2020), <https://www.stlouisfed.org/on-the-economy/2020/december/fed-emergency-lending-programs> [https://perma.cc/6BFB-XFR4] (“The Federal Reserve used its emergency lending powers earlier this year to launch several facilities similar to those created during the 2007-08 (sic) financial crisis.”).

228. Jeffrey Rogers Hummel, *What Would Lincoln Do? Constitutional Approaches to Wartime Finance and Economics: Civil War Finance: Lessons for Today*, 12 CHAP. L. REV. 591, 603 (“Prior to World War II, there were four significant periods of debt reduction: post-American Revolution, post-War of 1812, post-Civil War, and post-World War I. Each period was also one of tax cuts. While raising taxes to balance the budget may be good accounting, it appears to be bad politics. The only exception is the decline of the national debt as a percent of GDP following World War II.”).

229. *Response to COVID-19*, EMP. BENEFITS SEC. ADMIN., <https://www.dol.gov/agencies/ebsa/coronavirus> [https://perma.cc/SD8J-G7UP] (last visited Sept. 29, 2024) (“The COVID-19 public health emergency and national emergency ended on May 11, 2023. This means some of the policies put in place to respond to the public health emergency and national emergency will be concluding, through health plans may decide to continue these protections.”); *Fact Sheet: End of the COVID-19 Public Health Emergency*, U.S. DEP’T OF HEALTH AND HUM. SERV. (May 9, 2023), <https://www.hhs.gov/about/news/2023/05/09/fact-sheet-end-of-the-covid-19-public->

spending by the government remains at highs never witnessed before the pandemic.²³⁰ While some cuts did occur in 2021 and 2022, the federal government found other reasons to funnel borrowed dollars elsewhere, such that the budget in 2023 remained unbalanced to the tune of \$1.7 trillion.²³¹ No political consensus has, as of yet, formed around a budget that would bring costs down, requiring more financing of the federal budget deficit with abnormally expensive national debt.²³² Despite several budget showdowns, which almost led to a government shutdown,²³³ lawmakers in Congress have not decided to cut down on debt that their children and grandchildren will be paying off for as long as the next thirty years.

The result is obvious if courts are willing to recognize it: The government actively questions its debt at every treasury auction when no sound plan exists to satisfy the national obligations. When the government borrows at unsustainable rates, it violates the Fourteenth Amendment.²³⁴ Two legal questions can logically remain: what constitutes unsustainable debt accumulation, and who has standing to challenge the matter in court? *Perry* serves as a sound guide on the latter, while historical economic performance should serve as a guide on the former.²³⁵

When weighing whether the level of debt has become unsustainable, federal courts should look to both the reason politicians incur the debt and the likelihood of its repayment in currency of sufficiently similar value to that which the government receives from creditors. This is a difficult question and requires courts to hear a significant amount of expert evidence on finance and economics, but the inquiry cannot be avoided when all other political safeguards fail. First, courts must put aside the argument that the government can never default on its debts because they

health-emergency.html [https://perma.cc/U2R4-R43K] (noting that the Public Health Emergency for Covid-19 would expire on May 11, 2023).

230. *Federal Government: Current Expenditures*, FED. RSRV. BANK OF ST. LOUIS, <https://fred.stlouisfed.org/series/FGEXPND> [https://perma.cc/M52A-MNZX] (last visited Oct. 16, 2024).

231. *What Is the National Deficit?*, *supra* note 51.

232. See, e.g., Louise Sheiner, *No Need to Panic about the Budget Deficit*, BROOKINGS INST. (Sept. 20, 2023), <https://www.brookings.edu/articles/no-need-to-panic-about-the-budget-deficit/> [https://perma.cc/L9XL-QZPY] (paradoxically claiming that despite historic deficits never previously seen in the history of *any* nation, the situation was not [yet] an emergency); McBride et al., *supra* note 117 (analyzing reforms to the federal budget and federal spending to rein in the national debt and deficits).

233. Tim Smith, *U.S. Debt Ceiling: Definition, History, Pros, Cons, and Clashes*, INVESTOPEDIA, <https://www.investopedia.com/terms/d/debt-ceiling.asp> [https://perma.cc/AM2Y-VBP3] (last updated Sept. 24, 2024) (discussing several budget showdowns that have occurred during the Biden presidency).

234. See *supra* Part.III.b; see also *Perry v. United States*, 294 U.S. 330 (1935).]

235. *Perry*, 294 U.S. 330.

are owed in paper currency and can always be satisfied using paper currency the government can print.²³⁶ This inflationary outlook resulted in too many catastrophes in the economic management of nations to count.²³⁷ Every serious policymaker and judge must understand that simply printing currency to satisfy a debt is a functional default; the government should actually submit projections that suggest the ability to pay back its debts using revenue rather than increases in the money supply. The government may, perhaps, even be required to identify specific revenue streams from specific sources of government revenue that would pay specific government bonds.

The courts must also examine closely the government's claims that it will find revenue streams that can satisfy the debt. Up to this point, the federal government has incurred its debts with the assumption that sufficient government revenue will become available in the future. These assumptions have never received serious judicial scrutiny under the Public Debt Clause, and courts have generally avoided making dire predictions against the American economy. Based on the unprecedented levels of debt currently on the books,²³⁸ and with no policies in place to reduce it (which was the case in prior instances of debt spikes), courts should consider whether the government's projections about its future solvency have become overly optimistic.²³⁹ Looking to examples from history, such as post-World War II Britain, current Japan, and even less developed countries like Argentina paints a bleak picture of countries that overestimated their future abilities to repay obligations.²⁴⁰

236. See *supra* note 199 and accompanying text.

237. See, e.g., *Hyperinflation in the Weimar Republic*, BRITANNICA, <https://www.britannica.com/event/hyperinflation-in-the-Weimar-Republic> [<https://perma.cc/K426-7KHL>].

238. *Historical Debt Outstanding*, FISCALDATA, <https://fiscaldata.treasury.gov/datasets/historical-debt-outstanding/historical-debt-outstanding> [<https://perma.cc/H2RC-V7KB>] (last updated Sept. 28, 2024) (showing that, as of October 2024, the national debt exceeds \$35 trillion).

239. See George A. Krause & J. Kevin Corder, *Explaining Bureaucratic Optimism: Theory and Evidence from U.S. Executive Agency Macroeconomic Forecasts*, 101 AM. POL. SCI. REV. 129, 130 (2007) ("If government forecasts are too optimistic, then the federal government will have unanticipated declines in revenue and unanticipated demands for services and transfers.").

240. Leika Kihara & Tetsushi Kajimoto, *Japan's Debt Time Bomb to Complicate BOJ Exit Path*, REUTERS (Feb. 10, 2023), <https://www.reuters.com/markets/asia/japans-debt-time-bomb-complicate-boj-exit-path-2023-02-10/> [<https://perma.cc/JKE2-J7V6>] ("A flurry of big spending packages and ballooning social welfare costs for a rapidly ageing population have left Japan with a debt pile 263% the size of its economy - double the ratio for the United States and the highest among major economies."); Roberto E. Silva et al., *Lessons from Argentina's Default on Its International Sovereign Debt*, LATIN LAWYER (Oct. 20, 2023), <https://latinlawyer.com/guide/the-guide-restructuring/third-edition/article/>

Courts should also be wary of government claims that every program is essential, which then justifies the expansion of deficits and debt burdens further. This, too, should require a factual inquiry when the federal budget and the debt balance reach historic highs. Akin to this are government pleas that its budget will balance given a certain set of usually optimistic assumptions.²⁴¹ Budgets that omit emergency expenses, even though emergencies happen (and require additional government spending) every year, are not realistic, especially given the government's tendency to classify as emergencies mundane natural events, which hardly resemble their classification in the eyes of rational observers.²⁴² Projections that exclude even the possibility of overseas military intervention do not make sense in light of American history in the twentieth and twenty-first centuries.²⁴³ At the very least, the budget should include the expected values for these expenses, given data starting at the turn of the millennium. If the disasters do not materialize, then the government can always use the unexpected budget surplus to pay off (at least part of) the already ballooning national debt.

The most important assumptions about the national debt and the future ability to pay it, though, should concern interest rates. Optimistic assumptions about the Federal Reserve rate, inflation, rate of employment, and so on can be used to justify almost any expense and deserve significant attention from the courts. Set the rates low enough in an economic model, and almost any expense can be financed. After all, a rate of zero means the government can borrow money and pay no interest, which would essentially mean leaving free money on the table. A negative rate would

lessons-argentinias-default-its-international-sovereign-debt [https://perma.cc/4NVF-K4SK] ("Argentina has defaulted on its international sovereign debt nine times, including three times during the past two decades."); *Life After War – WJEC*, BBC, <https://www.bbc.co.uk/bitesize/guides/zgmf2nb/revision/1> [https://perma.cc/8ZAA-TNMB] (last visited Oct. 17, 2024) ("One of the key challenges facing the UK in 1945 was the economic position of the country. The national debt had risen from £760 million to £3500 million. Britain had spent close to £7 billion, or a quarter of the national wealth, on the war effort.").

241. See e.g., Alicia Wallace, *New Data Shows US Job Growth has been Far Weaker than Initially Reported*, CNN BUS. (Aug. 21, 2024), <https://www.cnn.com/2024/08/21/economy/bls-jobs-revisions/index.html> [https://perma.cc/A2F7-MPR3].

242. Justin Bogie, *Congress Must Stop the Abuse of Disaster and Emergency Spending*, HERITAGE FOUND. (Feb. 4, 2019), <https://www.heritage.org/budget-and-spending/report/congress-must-stop-the-abuse-disaster-and-emergency-spending> [https://perma.cc/33ZL-TQFN] ("Too much of the funding is going toward purposes that do not represent true emergencies, and too little of the spending is being offset, leaving taxpayers holding the bag to pay for ineffective and untargeted response.").

243. Heather Stephenson, *U.S. Foreign Policy Increasingly Relies on Military Interventions*, TUFTS NOW (Oct. 16, 2023), <https://now.tufts.edu/2023/10/16/us-foreign-policy-increasingly-relies-military-interventions> [https://perma.cc/52DB-MSFH] ("... [T]he U.S. is indeed engaging in military interventions more often than before ...").

suggest that borrowers pay the government of the United States for the privilege of lending it money. Assume that rates can stay near zero, or even turn negative, for a long period of time, and one can justify using the national debt to finance almost any expense.

This is where courts would struggle the most: Wall Street should have the upper hand in predicting future interest rates. After all, accurately predicting future rates impacts the valuation of stocks,²⁴⁴ bonds,²⁴⁵ options,²⁴⁶ futures,²⁴⁷ warrants,²⁴⁸ foreign currencies,²⁴⁹ swaps,²⁵⁰ and a litany of other investment products.²⁵¹ Having a more accurate prediction of rates would allow investors to spot bargains in the investment markets. Consequently, even a few basis points can make a difference in making or losing billions, and investors try to reach a very precise estimate. How, then, can the courts compete with that?

244. *Interest Rate Effects on Equities: Valuation Impacts*, LYN ALDEN INV. STRATEGY (Jan. 2021), <https://www.lynalden.com/interest-rate-effects/> [https://perma.cc/4TU9-PFFX] (“When it comes to determining a fair value for equities, interest rates are an important variable to consider.”).

245. True Tamplin, *Effect of Interest Rates on Bonds*, FIN. STRATEGISTS (June 17, 2024), <https://www.financestrategists.com/wealth-management/bonds/effect-of-interest-rates-on-bonds/> [https://perma.cc/DKH8-22J3] (“Overall, interest rate movements have a significant impact on the value and yields of bonds.”).

246. *Options Amid Rising Rates*, FIDELITY (Feb. 16, 2023), <https://www.fidelity.com/learning-center/trading-investing/options-and-interest-rates> [https://perma.cc/TA59-WDRD] (“Rates can influence the price of an options contract, along with the underlying company and stock that options are based on.”).

247. Elvin Mirzayev, *How and Why Interest Rates Affect Futures*, INVESTOPEDIA (Oct. 13, 2023), <https://www.investopedia.com/articles/active-trading/043015/how-why-interest-rates-affect-futures.asp> [https://perma.cc/DF5P-R4MJ] (“Interest rates are one of the most important factors that affect futures prices.”).

248. Stephen D. Simpson, *Factors That Influence Black-Scholes Warrant Dilution*, INVESTOPEDIA (July 27, 2022), <https://www.investopedia.com/articles/trading/10/warrants.asp> [https://perma.cc/HL4G-34RY] (“Higher interest rates increase the value of warrants.”).

249. Nick Lioudis, *How National Interest Rates Affect Currency Values and Exchange Rates*, INVESTOPEDIA (Apr. 16, 2024), <https://www.investopedia.com/ask/answers/040315/how-do-changes-national-interest-rates-affect-currencys-value-and-exchange-rate.asp> [https://perma.cc/8BRK-9S8Q] (“Higher interest rates tend to attract foreign investment, increasing the demand for and value of the home country’s currency. Conversely, lower interest rates tend to be unattractive for foreign investment and decrease the currency’s relative value.”).

250. Cedric Thompson, *Swap Rate: What It Is, How It Works, and Types*, INVESTOPEDIA (Aug. 25, 2024), <https://www.investopedia.com/terms/s/swaprate.asp> [https://perma.cc/CVJ8-EQ4Q] (“Swap rates are influenced by factors such as prevailing interest rates, credit risk, liquidity conditions, and market participants’ expectations”).

251. *How Do Interest Rates Work?*, U.S. BANK, <https://www.usbank.com/financialiq/invest-your-money/investment-strategies/how-do-interest-rates-affect-investments.html> [https://perma.cc/42HR-ZZ6J] (last visited Sept. 28, 2024) (“If you have holdings in real estate, an interest rate hike can be detrimental, while a cut can be beneficial.”).

Rather than expecting a federal court judge to reach an estimate of interest rates consistent with that of Wall Street, the Public Debt Clause might simply require the court to confirm that the federal government took rational steps to reach its conclusion that the debt will be reasonably serviceable in the future. In so doing, of course, the court might compare government estimates to estimates proposed by a plaintiff suing to enforce the Public Debt Clause. Both parties can and should rely on estimates other than just their own, including estimates gleaned from professional investors. This can include prospectus reports as well as empirical observation of pricing on items like Treasury Bonds, which trade on the open markets. A litany of evidence exists concerning investor predictions about future interest rates, and experts can gather it (and inform the court thereof) from market pricing of bonds, stocks, and other assets.²⁵²

Allowing asset valuation by the private sector to supplement government estimates of future rates will ensure that the government does not make overly favorable assumptions and reach unrealistic conclusions about the rate at which it will be able to borrow and refinance the debt in the future. Because private estimates frequently show less optimism about rates, government solvency, and other metrics,²⁵³ they will be a welcome counterbalance to government projections. Courts must ensure that in making financing decisions and issuing debt, the Treasury Department properly and accurately assesses economic estimates other than its own.

Once courts accept that issuing government debt that cannot be paid with currency of reasonably similar value undermines the validity of the national debt, the path to standing should not be complex. While the injury-in-fact prong of standing doctrine has significant bite to remove cases from judicial consideration when harm is not articulable or sufficiently unique to a litigant,²⁵⁴ individuals could articulate precisely

252. See, e.g., Roland I. Robinson, *Forecasting Interest Rates*, 27 J. BUS. 87, 88 (1954) (“Interest rates appear explicitly on almost every direct lending transaction; they are mathematically derivable from the prices at which bonds, notes, or mortgages are sold.”).

253. Jeffrey A. Frankel & Jesse Schreger, *Bias in Official Fiscal Forecasts: Can Private Forecasts Help?* (Harvard Kennedy Sch. Working Paper No. RWP16-021, 2016), <https://www.hks.harvard.edu/publications/bias-official-fiscal-forecasts-can-private-forecasts-help> [<https://perma.cc/3XQZ-6BL2>].

254. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (citations omitted) (“[T]he plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and and particularized. . . and (b) ‘actual or imminent, not “conjectural” or “hypothetical”’). Further, harm to the plaintiff is that “plainly undifferentiated and common to all members of the public” is insufficient to confer standing and is classified as a “generalized grievance.” *Id.* at 575 (citations and internal quotation marks omitted); *Federal Election Comm’n v. Akins*, 524 U.S. 11, 24 (1998).

the harm necessary to proceed with litigation in this instance.²⁵⁵ Individuals and corporations who hold government bonds suffer sufficiently unique harm compared to everyone else when American currency devalues as a result of issued debt where no legitimate plan exists for repayment. While everyone suffers from inflation and currency devaluation, those who hold treasury notes suffer additional harm because, unlike others, bondholders gave up valuable currency at some point in the past to receive significantly less valuable currency in the present.²⁵⁶ This additional harm is articulable and would have sufficed to grant Perry his victory if the Court had concluded Perry received less valuable currency when the government repaid the bond than when Perry lent to the government.²⁵⁷ While Perry's argument failed to carry the day by the slightest margin in a time of low national debt and when the government still held gold to back the currency, a different conclusion would be apparent in today's legal and economic context.²⁵⁸

Both in cases of standing and in deciding what government action would constitute questioning the national debt, courts will face arguments that creditors to the government, whether individual citizens or otherwise, should receive no relief on account of bond pricing mechanisms that might theoretically protect them. After all, creditors to the United States government are not helpless in the face of rising debt balances and inflation: they can refuse to purchase government bonds, they can bid down government bond prices so as to reflect their inherent risk, and they can diversify into other investments so as to reduce the harm they suffer as a result of currency devaluation. None of these, however, can overcome the stringent language of the Public Debt Clause.

First, one must consider that almost all of these strategies for dealing with the risk of government insolvency existed for creditors at the time of the Fourteenth Amendment's ratification in 1868. Financial markets were not nearly as expansive as they are today, but the ability to incorporate the risk of government default into bond prices was always present. After all, the Union may not have defaulted on its debts (per the Public Debt

255. See *Massachusetts v. EPA*, 549 U.S. 497, 517, 522 (2007) (finding that a widely shared harm may qualify as an injury in fact for Article III standing purposes).

256. Barry Nielsen, *Understanding Interest Rates, Inflation, and Bonds*, INVESTOPEDIA, <https://www.investopedia.com/articles/bonds/09/bond-market-interest-rates.asp> [https://perma.cc/B29Z-4R8V] (last updated Aug. 14, 2023) ("Inflation is a bond's worst enemy. Inflation erodes the purchasing power of a bond's future cash flows. Typically, bonds are fixed-rate investments. If inflation is increasing (or rising prices), the return on a bond is reduced in real terms, meaning adjusted for inflation.").

257. *Perry v. United States*, 294 U.S. 330, 354–58 (1935); see also *supra* notes 179–182 and accompanying text.

258. *Perry*, 294 U.S. at 354–58.

Clause), but all Confederate bonds, and indeed, Confederate currency, became worthless when the South lost the Civil War.²⁵⁹ This potential insolvency of the losing side could have been incorporated into the bond price as far back as the nineteenth century. That would, of course, also hold true today.²⁶⁰

Yet, the framers of the Fourteenth Amendment were also likely aware of creditors' ability to offset the risk of default via pricing mechanisms. Those who lent to the Union, just like those who lent to the Confederacy, could demand to receive bonds of a thousand-dollar face value for half that price (as an example), thus compensating themselves for the fifty-fifty probability that the North or the South would win the war. Prices could, of course, adjust with inflation, productivity, and developments on the battlefields, allowing the free market to decide the winners and losers of the Civil War trade. Yet, whether through wisdom or folly, the framers of the Public Debt Clause saw it as critical to the future financial health of the nation to honor the debt contracts of the winning side both in the present day and into the future.²⁶¹

Creditors' access to pricing mechanisms, which would protect them, at least somewhat, in the event of government default did not preclude the North from honoring its debt to the last cent and requiring future generations to do the same as a matter of constitutional mandate.²⁶² Proponents of the Public Debt Clause inherently realized that, regardless of *a priori* arrangements that would dilute their losses, bondholders after the war which lent to the Union would nevertheless be worse off if, *a posteriori*, their worst-case scenario came true and a victorious North refused to pay. No amount of diversification and protection could have offset those losses entirely, and proponents of the Public Debt Clause sought to ensure that those who had faith in the Union, despite early defeats, would have that faith rewarded. The same supporters of the Public Debt Clause likely understood the dire consequences of a nation's default

259. Patrick Boyle, *Cornerstone Contributions: Paying for Rebellion: Confederate Currency in the Lee Cornerstone Box*, VA. DEP'T OF HIST. RES. (Jan. 31, 2022), <https://www.dhr.virginia.gov/blog-posts/cornerstone-contributions-paying-for-rebellion-confederate-currency-in-the-lee-cornerstone-box/> [https://perma.cc/LFD5-83AJ] ("The overall quality of Confederate currency declined throughout the war. . . . Many Southerners lost their fortunes as a result of using Confederate currency throughout the war.").

260. CFI Team, *Default Risk*, CFI, <https://corporatefinanceinstitute.com/resources/commercial-lending/default-risk/> [https://perma.cc/N9LL-QS3Z] ("default risk is key in determining the price and yield of financial instruments")

261. *Perry*, 294 U.S. at 354 ("While [the Public Debt Clause] was undoubtedly inspired by the desire to put beyond question the obligations of the government issued during the Civil War, its language indicates a broader connotation."); U.S. CONST. amend. XIV, § 4.

262. *Perry*, 294 U.S. 330; U.S. CONST. amend. XIV, § 4.

on its debts for future generations—struggling to convince creditors of the country’s creditworthiness ever again.²⁶³

IV. THE KIDS ARE NOT ALRIGHT

“Marty! You’ve got to come back with me!”

“Where?”

“Back to the future.”

...

*“What are you talking about? What happens to us in the future? Do we become ***** or something?”*

“No, no, no, no, no, Marty. Both you and Jennifer turn out fine. It’s your kids, Marty. Something’s gotta be done about your kids!”

BACK TO THE FUTURE²⁶⁴

Sound policy reasons exist for court intercession on behalf of younger generations in the national debt debate. The youth of the United States have little say in decisions to finance today’s government with debt that must be repaid ten, twenty, or even thirty years from now.²⁶⁵ Many taxpayers of tomorrow are not voters today, and many voters today will not be the taxpayers of tomorrow. Courts have traditionally interceded on behalf of underprivileged or underrepresented groups on Fourteenth Amendment grounds, though usually under the Equal Protection or the Due Process Clause of that amendment.²⁶⁶ There is nothing, of course, that would prevent federal courts from viewing the Equal Protection, Due Process, and Public Debt Clause in unison, as matters of the national debt will, almost certainly, impact American creditors and taxpayers differently depending on their specific economic conditions (an international phenomenon with respect to sovereign debt) and may even infringe upon their due process rights to life, liberty and property. The national debt, and its questioning, creates unequal and inequitable conditions between the

263. Melissa McCall, J.D., *The Fourteenth Amendment’s Public Debt Clause*, FINDLAW (July 29, 2022), <https://constitution.findlaw.com/amendment14/annotation16.html> [<https://perma.cc/P8QR-Z8WX>] (“The public debt clause mitigated many of these concerns. It clearly distinguishes between the national debt of the U.S. and any debts incurred from supporting an insurrection or rebellion against the country.”).

264. BACK TO THE FUTURE (Amblin Entertainment 1985).

265. See Steve Robinson, *Passing the Buck: How the National Debt Burdens Future Generations*, CONCORD COAL. (June 27, 2022), <https://www.concordcoalition.org/issue-brief/passing-the-buck-how-the-national-debt-burdens-future-generations/> [<https://perma.cc/3JVA-S5YH>] (“When the government pays for itself by borrowing money instead of raising taxes, critics claim the burden is shifted from current taxpayers to future taxpayers.”).

266. U.S. CONST. amend. XIV, § 4.

young and the old, the wealthy and the poor, and American minorities and the majority population.²⁶⁷ While one cannot find these inequalities in the fine print of Treasury Bonds, they are, nevertheless, the de facto outcome, which the Fourteenth Amendment abhors.

The first and most important inequality that questioning the national debt by overspending creates is the different experience of the young versus the old at the same time during their life cycle.²⁶⁸ Just a few decades ago, when the Baby Boomer generation—which currently holds the most government power—grew up, an individual with a collegiate degree could afford a large home, a vehicle, and a family.²⁶⁹ A single income could support multiple children and could easily pay for these children’s education all the way through college, even in a time when parental assistance was not, strictly speaking, even necessary to go to college).²⁷⁰ The American economy was a beacon to the world for wealth and prosperity, with the national debt comfortably below one trillion dollars.²⁷¹ Politicians monitored the national debt closely, and even though it was nowhere near the levels it is today, ensured that it did not rise too high and

267. Qiongzhi Li & Yun Bai, *Government Debt and Household Wealth Inequality: Evidence from China*, 36 ECON. RSCH. EKONOMSKA ISTRAŽIVANJA, 2023 no. 2, 2023, <https://www.tandfonline.com/doi/epdf/10.1080/1331677X.2022.2142633?needAccess=true> [https://perma.cc/8DCA-WTST]; Sigrid Rohrs & Christoph Winter, *Reducing Government Debt in the Presence of Inequality*, 82 J. OF ECON. DYNAMICS & CONTROL, Sept. 2017 (2017), <https://www.sciencedirect.com/science/article/pii/S0165188917301136> [https://perma.cc/E6KV-227C]; Juan Pablo Bohoslavsky, *Economic Inequality, Debt Crises and Human Rights*, 41 YALE J. OF INT’L. L. ONLINE 177 (2016), <https://bpbus-e1.wpmucdn.com/campuspress-test.yale.edu/dist/8/1581/files/2016/10/J-Bohoslavsky-Special-Edition-11nf9v3.pdf> [https://perma.cc/G8RR-8Z8L].

268. Jonathan Russo, ‘Eat the Boomers’: How to Repay America’s National Debt, THE HILL (May 6, 2024, 7:30 AM), <https://thehill.com/opinion/finance/4633773-eat-the-boomers-how-to-repay-americas-national-debt/> [https://perma.cc/C3KC-8PYV] (“And so the post-World War II economy and its hyper-productive decades, plus accompanying rising stock and home prices, have left one generation extraordinarily rich — so rich that the Boomers have more net worth than the three subsequent generations combined.”).

269. Preston Hardwick, *8 Things That Were Normal for Boomers, but Are Luxuries Now*, YAHOO! FIN. (Sept. 15, 2024), <https://finance.yahoo.com/news/8-things-were-normal-boomers-130426237.html>. [https://perma.cc/C5R2-X7EN].

270. See Sarah Kendzior, *The Unaffordable Baby Boomer Dream*, AL JAZEERA (Feb. 26, 2013), <https://www.aljazeera.com/opinions/2013/2/26/the-unaffordable-baby-boomer-dream> [https://perma.cc/95W5-F6M3] (“In 1968, \$2,545 was about the most you could expect to pay for college — most schools cost half as much, and many public universities were still free.”).

271. *The History of U.S. Public Debt - the 1950s to 1980s*, TREASURYDIRECT KIDS, https://www.treasurydirect.gov/kids/history/history_1950-1980.htm. [https://perma.cc/H6Q4-2TM8] (last visited Sept. 29, 2024).

took steps to address what they perceived as government excess.²⁷² All of this was possible on the heels of World War II, the most destructive war in human history,²⁷³ and during the Cold War, where geopolitical tensions with the Soviet Union convinced some politicians to increase defense spending and finance American involvement in a variety of overseas conflicts.²⁷⁴

Despite geopolitical difficulties, the Boomer generation grew up in prosperity compared to the Generation Z and Millennials.²⁷⁵ High-paying jobs were abundant.²⁷⁶ The state and federal minimum wage were low, but because jobs were so necessary, almost all workers made so much more than the minimum wage—to the point that it became almost unnecessary.²⁷⁷ Large houses were plentiful and affordable, requiring only a few years' income to purchase.²⁷⁸ While the nominal rate of taxation was

272. See Brian Riedl, *Why Did Americans Stop Caring About the National Debt?*, REASON (Aug.–Sept. 2024), <https://reason.com/2024/07/13/the-debt-lies-we-tell-our-selves/> [<https://perma.cc/2DFM-3USL>].

273. Christopher J. Tassava, *The American Economy During World War II*, ECON. HIST. ASS'N, <https://eh.net/encyclopedia/the-american-economy-during-world-war-ii/> [<https://perma.cc/JYD2-AYSN>] (last visited Sept. 29, 2024) (“The federal government emerged from the war as a potent economic actor, able to regulate economic activity and to partially control the economy through spending and consumption.”).

274. See Kenneth N. Waltz, *The Emerging Structure of International Politics*, 18 INT'L SEC. 44, 47 (1993), <https://www.jstor.org/stable/2539097?origin=crossref> [<https://perma.cc/QCR8-2HD3>] (“The United States as well as the Soviet Union intervened widely in others' affairs and spent a fair amount of time fighting peripheral wars.”).

275. Jack Kelly, *The Great Wealth Transfer from Baby Boomers to Millennials Will Impact the Job Market and Economy*, FORBES, <https://www.forbes.com/sites/jackkelly/2023/08/09/the-great-wealth-transfer-from-baby-boomers-to-millennials-will-impact-the-job-market-and-economy/?sh=71ba4e3d3e4a> [<https://perma.cc/7HL3-CHF6>] (Aug. 9, 2023, 8:56 AM) (“Baby Boomers were in the right place at the right time. Following World War II, this generation experienced immense economic growth and prosperity. The state of affairs afforded them the golden opportunity to accumulate much wealth in their lifetime.”).

276. Hasanthi Kodit, *19 Reasons Why Baby Boomers Had It Easier Than Any Other Generation*, MILLION DOLLAR SENSE (April 10, 2024), <https://milliondollarsense.com/reasons-why-baby-boomers-had-it-easier> [<https://perma.cc/KLJ4-JT4Y>] (“Baby Boomers grew up during a period of economic growth and prosperity. There were more job opportunities, and standards of living were on the rise.”).

277. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 – 2009*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage/history/chart> [<https://perma.cc/NGQ6-H9BL>] (last visited Sept. 29, 2024); see also Massimo Florio, *The Real Roots of the Great Recession: Unsustainable Income Distribution*, INT'L J. POL. ECON., Winter 2011–12, at 5, 10 (2011) (stating that, on average, real family income rose by over 80% for each quintile of American households between 1947 and 1979).

278. *Baby Boomers and the Future of Homeownership in the United States*, BERKELEY ECON. REV. (Apr. 22, 2019), <https://econreview.berkeley.edu/baby-boomers-and-the-future-of-homeownership-in-the-united-states/> [<https://perma.cc/HEX8-V67K>] (“[Boomers]

once 90%, the Boomer generation succeeded in electing politicians that lowered them three-fold.²⁷⁹ The government could afford the interest payments on its debt without increasing taxation because debt levels were low.²⁸⁰ Drug addiction and deaths of despair, while not unheard of, were much lower than they are today.²⁸¹

Now, almost none of these things are remotely true. Homelessness plagues American cities, where many Millennials and Generation Z workers look for jobs.²⁸² Some members of these generations ultimately become homeless, sometimes also developing debilitating drug habits.²⁸³ Home ownership has become unaffordable for the median and average American, which almost by definition excludes Millennials and Generation Z, since most people acquire wealth (even the median level of wealth) when they reach their forties or fifties.²⁸⁴ Rents have risen

also experienced an affordable housing market that allowed for 45% of baby boomers to buy their first home between the age of 25 and 34. Buying a home became the hallmark of the American dream; a dream attainable for many, because of relatively low housing costs and competition.”).

279. Jason Mayland, *The Horrible Legacy of the Baby Boomers, Part 1: Taxes*, MEDIUM (Dec. 17, 2017), <https://medium.com/@jasonmayland/the-horrible-legacy-of-the-baby-boomers-part-1-taxes-50c7bdb86ec9> [<https://perma.cc/96AD-MMR7>] (showing that from the 1950s and 60s (when the Boomers were children) to 1988, the top marginal tax rate fell from 90% to 28%).

280. Hiranmayi Srinivasan, *U.S. National Debt by Year*, INVESTOPEDIA, <https://www.investopedia.com/us-national-debt-by-year-7499291> [<https://perma.cc/R2LM-UGB4>] (last updated Sept. 14, 2024) (indicating that the national debt was 286 billion dollars in 1960) ; see also Kai Zhao, *War Debt and the Baby Boom*, MUNICH PERS. REPEC ARCHIVE 17 (July 22, 2011), <https://mpira.ub.uni-muenchen.de/36330/> [<https://perma.cc/W2NU-TCLF>] (“[T]he dramatic reduction in the government debt-GDP ratio after WWII was an important cause of the baby boom in the US.”).

281. REPUBLICANS OF JOINT ECON. COMM., 116TH CONG., SCP REP. ON LONG-TERM TRENDS IN DEATHS OF DESPAIR, (Comm. Print 2019), <https://www.jec.senate.gov/public/index.cfm/republicans/2019/9/long-term-trends-in-deaths-of-despair> [<https://perma.cc/U5CQ-LSZL>].

282. *How Many Homeless People Are in the US? What Does the Data Miss?*, USA FACTS, <https://usafacts.org/articles/how-many-homeless-people-are-in-the-us-what-does-the-data-miss/> [<https://perma.cc/CX8V-Z5TR>] (last updated Mar. 28, 2024) (noting that in 2023, “[t]he Department of Housing and Urban Development (HUD) counted 653,104 homeless Americans in its annual point in time report . . .”).

283. Rebecca Gomez, Sanna J. Thompson & Amanda N. Barczyk, *Factors Associated with Substance Use Among Homeless Young Adults*, 31 SUBSTANCE ABUSE 24, 24 (2010), https://www.researchgate.net/publication/43136246_Factors_Associated_with_Substance_Use_Among_Homeless_Young_Adults [<https://perma.cc/2TTR-FZ6J>] (“Drug use for homeless young people is higher in comparison to their housed counterparts.”).

284. See Adrian Nesta, *Millennial Homeownership Still Lagging Behind Previous Generations*, INVESTOPEDIA (June 10, 2023, 11:11 PM), <https://www.investopedia.com/millennial-homeownership-still-lagging-behind-previous-generations-7510642> [<https://perma.cc/XYP4-JGVW>] (“Millennials are buying homes at a lower rate than generations

astronomically, especially in densely populated areas of the United States.²⁸⁵ College costs a small fortune for those who are able to gain admission, and many high-paying jobs are entirely unavailable even after receiving one or multiple graduate degrees.²⁸⁶ Over the past few months, times have gotten so difficult for some Americans that the number of individuals working multiple full-time jobs has skyrocketed to previously unthinkable heights.²⁸⁷ While the number of jobs created after the Coronavirus continues to set records, the workforce increases at a much slower rate.²⁸⁸ How can that be? Because one job no longer equals one worker, but one worker can end up working several jobs just to get by.²⁸⁹

Millennials (and now Generation Z) have delayed marriage, childhood, home ownership, and a variety of other life milestones because

before, and an increasingly difficult housing market could exacerbate a problem that has far-reaching impacts on the entire economy.”).

285. Swapna Venugopal Ramaswamy, *Rent Is the ‘Largest Contributor’ to Inflation. See Where It Is Going Up (or Down)*, USA TODAY (Apr. 13, 2023, 2:12 PM), <https://www.usatoday.com/story/money/personalfinance/real-estate/2023/04/12/where-rents-are-going-up/11648843002/#> [https://perma.cc/6HYB-86LC] (“Over the past two years, the U.S. median rent rose by 18%. That was mostly because a competitive housing market and higher mortgage rates shut many people out of home buying. A strong jobs market and shortage of inventory also contributed to rising rent.”); *Visual Capitalist: The Monthly Cost of Buying vs. Renting a House in America*, Evaluator Funds (Sept. 7, 2023), <https://www.evaluatorfunds.com/visual-capitalist-the-monthly-cost-of-buying-vs-renting-a-house-in-america/> [https://perma.cc/F4Y4-46HP].

286. 2024 *College Hopes & Worries Survey Report*, PRINCETON REV. (2024), <https://www.princetonreview.com/college-rankings/college-hopes-worries> [https://perma.cc/P23B-AAUW] (click “Download the Report” to view the full report). Melos Ambaye, *Many Master’s Degrees Aren’t Worth the Investment, Research Shows*, VOICE OF AMERICA (May 15, 2024), <https://www.voanews.com/a/many-master-s-degrees-aren-t-worth-the-investment-research-shows-/7613093.html> [https://perma.cc/9QWQ-8X3P] (“That’s reinforced by colleges who make lofty promises regarding their graduate degree programs’ outcomes, which all too often fall short.”).

287. Mark C. Perna, *Working Multiple Jobs? Here Are Some Reminders to Save Your Sanity*, FORBES (Jan. 17, 2023, 6:45 PM), <https://www.forbes.com/sites/markcperna/2023/01/17/working-multiple-jobs-here-are-some-reminders-to-save-your-sanity/?sh=e57f0b97cbce> [https://perma.cc/CL5E-PXC7] (“More than 400,000 Americans work two full-time jobs, according to data from the Bureau of Labor Statistics.”).

288. Felix Richter, *The Covid Jobs Recovery Is Complete (And Then Some)*, STATISTA DAILY DATA (Nov. 7, 2023), <https://www.statista.com/chart/24363/number-of-jobs-lost-since-february-2020/> [https://perma.cc/ZGP5-6VWV] (“By October 2023, nonfarm payrolls had increased to 156.9 million, exceeding their pre-pandemic peak by 4.6 million jobs.”).

289. CBS Miami Team, *More Americans Are Working Two Jobs to Make Ends Meet*, CBS NEWS (Nov. 7, 2023, 8:54 AM), <https://www.cbsnews.com/miami/news/more-americans-are-working-two-jobs-to-make-ends-meet/> [https://perma.cc/B96V-NMA2] (“A growing number of Americans are working multiple jobs just to make ends meet.”).

they lack the financial stability to maintain them.²⁹⁰ Reports now indicate that almost fifty percent of all twenty-year-olds in the United States will never marry,²⁹¹ and that, but-for immigration, the population of the country would be shrinking due to low birth rates.²⁹² Families with four or five children, which were common in the middle of the twentieth century, are virtually unheard of among the younger generations.²⁹³ While the youth of today struggle to pay for the debts of the elderly,²⁹⁴ they also lack the resources to support children of their own,²⁹⁵ potentially leaving a greater burden of supporting themselves in their old age to their own children, who may lack the aid of siblings when it comes to providing elder care or assistance during unforeseen emergencies.

What does the national debt have to do with these problems, which undoubtedly have many social causes? The national debt becomes an opportunity cost for money that the government could spend improving the lives of today's working generations.²⁹⁶ As it stands, the payments on that national debt swallow forty percent of all personal income tax

290. Patrick Hicks, *Generational Wealth Gap: Millennial vs Boomer Wealth Gap*, TRUST & WILL, <https://trustandwill.com/learn/generational-wealth-gap> [<https://perma.cc/2K8P-VL3Y>] (last visited Sept. 28, 2024) (“Millennials are behind when benchmarked with the wealth boomers had accumulated around the same age. Building wealth for millennials has been stunted and delayed by a variety of economic events, meaning that they have much less time than boomers had to play catch-up.”).

291. Harry Benson, *Who's Still Getting Married These Days?*, MARRIAGE FOUND. (June 2014), <https://marriagefoundation.org.uk/research/nearly-half-of-todays-20-year-olds-will-never-marry/> [<https://perma.cc/9N3K-7ZJ>] (click “Download the Research Paper as a PDF” to view the report).

292. *The Demographic Outlook: 2023 to 2053*, CONG. BUDGET OFF. (Jan. 2023), <https://www.cbo.gov/publication/58912> [<https://perma.cc/WX38-NE9Y>] (click “Download” to view the report) (“[Population]growth will be increasingly driven by immigration as fertility rates remain below the rate that would be required for a generation to exactly replace itself in the absence of immigration.”).

293. Prakash, *supra* note 24 (“Millennials and Gen Z are less enthusiastic about having children than their parents.”).

294. EJ Antoni, *American Taxpayers Are Now Slaves to Interest Payments*, HERITAGE FOUND. (Nov. 28, 2023), <https://www.heritage.org/debt/commentary/american-taxpayers-are-now-slaves-interest-payments> [<https://perma.cc/P4TA-47MN>]. (“Interest on the federal debt is now so immense that it’s consuming 40% of all personal income taxes.”).

295. *Nation is Missing Opportunities to Strengthen More than 6 Million Futures as Young Parents Lack Resources to Ensure Families Thrive*, ANNIE E. CASEY FOUND. (May 27, 2021), <https://www.aecf.org/blog/nation-is-missing-opportunities-to-strengthen-more-than-6-million-futures-a> [<https://perma.cc/G7CA-J6NH>] (“With limited access to opportunities to advance their education and find a family-sustaining job, young parents face barriers to supporting their children and fulfilling their own potential.”).

296. *Top 10 Reasons Why the National Debt Matters*, PETER G. PETERSON FOUND. (Aug. 21, 2024), <https://www.pgpf.org/top-10-reasons-why-the-national-debt-matters> [<https://perma.cc/ZCK6-AHH4>] (“A nation saddled with debt will have less to invest in its own future.”).

revenue, or more than one trillion dollars.²⁹⁷ As the nation continues to fund federal budget deficits with the debt, the government takes out debt at much higher rates than before, raising the burden on taxpayers by both increasing the principal and interest payments.²⁹⁸ Instead of using more than a trillion dollars a year (which exceeds all expenditures save social security and which will soon eclipse social security) to provide government services to today's younger generation, the government must spend it on the debts incurred by the elderly.²⁹⁹ Not only are Medicare, Medicaid, and Social Security taxes paid primarily by the working class to help fund the needs of primarily retirees, but now, another trillion-dollar-a-year liability arises to place even more of a burden on today's workers.³⁰⁰ Because the worker-to-retiree ratio is lower than it has ever been in the history of the United States, each worker will have to work at nearly an unsustainable pace to support the retirees who adopted these self-destructive policies, unless some legal or political consensus can be reached to stop the bleeding.³⁰¹ When the government cannot extract value

297. Antoni, *supra* note 293; *What is the National Debt?*, *supra* note 51; see also *The National Debt Is Now More than \$35 Trillion. What Does That Mean?*, PETER G. PETERSON FOUND. (July. 29, 2024), <https://www.pgpf.org/infographic/the-national-debt-is-now-more-than-34-trillion-what-does-that-mean> [<https://perma.cc/Q6UL-T57Z>]. (“The \$35 trillion gross federal debt includes debt held by the public as well as debt held by federal trust funds and other government accounts.”).

298. Tobias Adrian, Vitor Gaspar, Pierre-Olivier Gourinchas, *The Fiscal and Financial Risks of a High-Debt, Slow-Growth World*, IMF (Mar. 28, 2024), <https://www.imf.org/en/Blogs/Articles/2024/03/28/the-fiscal-and-financial-risks-of-a-high-debt-slow-growth-world> [<https://perma.cc/U57F-4BHX>] (“Persistently higher interest rates raise the cost of servicing debt, adding to fiscal pressures and posing risks to financial stability.”).

299. *What Is the National Debt?*, *supra* note 51 (“As of August 2024 it costs \$1049 billion to maintain the debt, which is 17% of the total federal spending in fiscal year 2024.”); *The National Debt Is Now More than \$35 Trillion. What Does That Mean?*, *supra* note 289; *Social Security Administration (SSA)*, USA SPENDING.GOV, <https://www.usaspending.gov/agency/social-security-administration?fy=2023> [<https://perma.cc/EB8D-HQHE>] (Last visited Sept. 28, 2024) (revealing that the government spent \$1.51 trillion in 2023).

300. See Liz Manning, *Federal Insurance Contributions Act (FICA)*, INVESTOPEDIA, <https://www.investopedia.com/terms/f/fica.asp> [<https://perma.cc/CVN7-LPYZ>] (updated Apr. 22, 2024) (detailing the FICA taxes that workers pay to fund Social Security and Medicare); Antoni, *supra* note 293. Manning, *supra* (“Roosevelt believed that the money collected from all working Americans through FICA would belong directly to them. He didn't want the financial benefits for their retirement, disability, or death to depend on federal revenue. He feared that politicians would take and use the money for their own purposes.”).

301. *Quick Facts on Social Security*, UNIV. VT., https://www.uvm.edu/~dguber/POLS21/articles/quick_facts_on_social_security.htm [<https://perma.cc/Z7AG-KUEX>] (“In 1940, there were 42 workers per retiree. Today the ratio is 3-to-1; by 2050 it will be 2-to-1”).

from the workers, it then turns to the printing press to make up the deficit.³⁰² Yet, that harms the worker even more.³⁰³

Studies repeatedly show that inflating the currency has a disproportionate impact on the population because of its function as a regressive tax.³⁰⁴ True, individuals who own real estate property, exchange-traded funds, options, and stocks experience the effect of inflation—they are ultimately less impacted because the prices of their assets tend to rise as inflation rises.³⁰⁵ They are well-hedged against inflation risks in ways that the more impoverished individuals, who rely on the value of their wages, are not.³⁰⁶

There are, in fact, significant demographic differences between those who have the means to hedge against inflation and those who do not.³⁰⁷ Research in finance and economics shows that individuals who suffer most

302. Norbert Michel, *What Should the Fed (and Congress) Do Now?*, CATO INST. (Sept./Oct. 2022), <https://www.cato.org/policy-report/september/october-2022/what-should-fed-congress-do-now> [<https://perma.cc/D8KK-Z6Q8>]. (“The natural tendency is to associate high inflation with monetary policy, faulting the Federal Reserve for ‘printing too much money,’ but the current bout of rising inflation is not entirely the Fed’s fault.”).

303. Maria Martinez, *The Impact of Printing Money on the Economy*, MEDIUM (Aug. 31, 2023), https://medium.com/@maria_97378/the-impact-of-printing-money-on-the-economy-2cbd48b8b0a4 [<https://perma.cc/SXT2-DK3P>] (“[The printing of currency] creates a situation where the demand for goods and services exceeds the available supply, causing prices to rise. As a result, each unit of currency becomes less valuable, and people can buy fewer goods with the same amount of money.”).

304. McBride & Durante, *supra* note 138. (“Inflation operates much like a tax, a particularly egregious one that disproportionately falls on the poor and leads to a variety of economic problems, including, as we’re seeing, higher interest rates, slow economic growth, and reduced incomes.”).

305. Kelly, *supra* note 141 (“Inflation can have varying effects on different wealth brackets with the middle class benefiting from real estate assets, but facing challenges in other areas. The “wealth effect” benefits those with substantial assets from increased asset values, like stocks, real estate and entrepreneurial endeavors.”); *see also* Segal, *supra* note 135 (“One of the chief reasons most workers place money into stocks, bonds, and mutual funds is to keep their savings safe from the effects of inflation.”).

306. Aparna Jayashankar & Anthony Murphy, *High Inflation Disproportionately Hurts Low-income Households*, FED. RSRV. BANK OF DALLAS (Jan. 10, 2023), <https://www.dallasfed.org/research/economics/2023/0110> [<https://perma.cc/5KEZ-RPM>] (“Prior research suggests that inflation hits low-income households hardest for several reasons. They spend more of their income on necessities such as food, gas and rent—categories with greater-than-average inflation rates—leaving few ways to reduce spending.”).

307. Rekesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. Is Rising Most Rapidly Among Asians*, PEW RSCH. CTR. (July 12, 2018), <https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/> [<https://perma.cc/F8TK-7YWB>] (“Income inequality, a measure of the economic gap between the rich and poor, has risen steadily in the United States since the 1970s.”).

from inflation are of minority origin and the young.³⁰⁸ Hence, by racking up a national debt that the nation cannot pay for without money printing, American politicians inherently impose disproportionate inflationary burdens on individuals of minority descent and younger generations.³⁰⁹ Once again, the problem of taxation without representation rears its ugly head, resulting in the detriment of the very people American law is supposed to protect.³¹⁰ Without the connections necessary to influence the political spending process, individuals who cannot hedge against inflation suffer its most brutal effects.³¹¹ Because those individuals who cannot hedge against inflation usually find themselves in precarious financial positions already, their quality of life suffers, and their wealth level declines further.³¹² This has the tendency to become a vicious spiral, as those lower on the socioeconomic ladder in the United States have less and less influence on the decisions made by American politicians as their wealth and earning power decline.³¹³

Aside from the political implications of impoverishing minorities and the young, one must also consider the implications of making the condition of the poor in the United States even worse for the poor. Poverty in the

308. See *The Impact of Inflation and Recession on Poverty and Low-Income Households*, UC DAVIS OFF. OF RSCH. (Nov. 30, 2022), <https://web.archive.org/web/20240520194612/https://research.ucdavis.edu/the-impact-of-inflation-and-recession-on-poverty-and-low-income-households/> [https://perma.cc/N6JF-SRHS] (stating that low-income households tend to be younger and are more likely to be racial minorities).

309. ANALYSIS: *Typical Family Pays \$5,000 for Bidenflation Tax; Minorities, Young Adults, Middle Class Hit Hardest*, HOUSE COMM. ON WAYS AND MEANS (Feb. 4, 2022), <https://waysandmeans.house.gov/2022/02/04/analysis-typical-family-pays-5000-for-bidenflation-tax-minorities-young-adults-middle-class-hit-hardest/> [https://perma.cc/VYZ2-RYW2] (“American minorities suffer the most. Hispanic and Latino Americans experienced the highest inflation rate, and Black Americans aren’t far behind. . . . Inflation impacts young adults the most, including those just starting their careers or families.”).

310. Friedman, *infra* note 317; Kagan, *supra* note 17 (“The phrase taxation without representation describes the quandary of a populace that is required by law to pay taxes but has no say in the matter.”).

311. Catherine Thorbecke, *How Sky-high Inflation is Evaporating Americans’ Savings, Imposing “Cruellest Tax” on the Poor*, ABC NEWS (Jan. 15, 2022, 10:19 AM), <https://abcnews.go.com/Business/sky-high-inflation-evaporating-americans-savings-imposing-cruellest/story?id=82221754> [https://perma.cc/6MSK-KEEW] (“For Americans who are living paycheck to paycheck, the impacts of inflation can be even more devastating.”).

312. *Id.*

313. Ned Resnikoff, *Princeton Scholar: Poor and Middle Class Have No Say in Government Policy*, LEAN FORWARD (Aug. 16, 2012, 2:53 PM), <https://www.princeton.edu/~mgilens/Gilens%20homepage%20materials/MSNBC%20review%20of%20A&I/13317619-princeton-scholar-poor-and-middle-class-have-no-say-in-government-policy> [https://perma.cc/62YS-2N8J] (“But according to a new book by Princeton politics professor Martin Gilens, poor and lower-income Americans might not have much of a vote at all.”).

United States is a growing problem, even in light of an apparent economic recovery after the coronavirus pandemic.³¹⁴ A large number of Americans cannot afford the basic necessities of life, such as food and shelter.³¹⁵ Many households are single-parent households,³¹⁶ where the decline in the value of the parent's income can have drastic consequences both for the livelihood of the parent and of the children within that household.³¹⁷

Allowing the federal government to spend through debt that requires monetizing via an expanded money supply can be considered taxation without representation.³¹⁸ Most of the dollars the government commits to spend must, at some point, be collected via taxation.³¹⁹ All the national debt does is transfer that liability from the current time period into the future.³²⁰ As a result, a growing national debt becomes a significant financial weight on the younger generations, imposing a heavier tax burden while depriving them of the ability to access necessary government services for their benefit.³²¹ The American Dream begins to seem out of

314. Elizabeth Kneebone & Alan Berube, *Post-pandemic Poverty is Rising in America's Suburbs*, BROOKINGS (Oct. 11, 2023), <https://www.brookings.edu/articles/post-pandemic-poverty-is-rising-in-americas-suburbs/> [<https://perma.cc/G7QA-M6C3>] ("The increase in the poor population translated into a small yet statistically significant bump in the U.S. poverty rate, from 12.3% in 2019 to 12.6% in 2022").

315. Alexa Lardieri, *Study: 40 Percent of Americans Struggle to Afford Basic Needs*, US NEWS & WORLD REP. (Aug. 28, 2018, 11:44 AM), <https://www.usnews.com/news/politics/articles/2018-08-28/study-40-percent-of-americans-struggle-to-afford-basic-needs> [<https://perma.cc/Z842-KJKV>].

316. Stephanie Kramer, *U.S. Has World's Highest Rate of Children Living in Single-parent Households*, PEW RSCH. CTR. (Dec. 12, 2019), <https://www.pewresearch.org/short-reads/2019/12/12/u-s-children-more-likely-than-children-in-other-countries-to-live-with-just-one-parent/> [<https://perma.cc/77EB-L4FR>] (finding that nearly a quarter of American minor children live with only one parent).

317. Zachary Parolin & Emma K. Lee, *Economic Precarity Among Single Parents in the United States During the COVID-19 Pandemic*, 702 ANNALS AM. ACAD. POL. SOC. SCI. 206, 206 (2022) ("Single-parent families have historically faced greater economic precarity relative to other family types in the United States.").

318. Milton Friedman, *Inflation, Taxation, Indexation*, in LORD ROBBINS ET AL., INFLATION: CAUSES, CONSEQUENCES, CURES: DISCOURSES ON THE DEBATE BETWEEN THE MONETARY AND TRADE UNION INTERPRETATIONS 71–88 (1974) ("[I]nflation is a form of taxation without representation. It is the kind of tax that can be imposed without being legislated by the authorities and without having to employ additional tax collectors.").

319. Antony Davies, *Where Does the Government Get the Money It Spends?*, MERCATUS CTR. (Jul. 31, 2010), <https://www.mercatus.org/research/research-papers/where-does-government-get-money-it-spends> [<https://perma.cc/W4VC-VC5A>] ("The chief way the government gets the money it spends is through taxation.").

320. MARC LABONTE & GAIL E. MAKINEN, CONG. RSCH. SERV., RL30520, THE NATIONAL DEBT: WHO BEARS ITS BURDEN? 7 (2010) (stating that the burden of the national debt "is largely shifted forward to future generations.").

321. *Why Should We Worry About the National Debt?*, COMM. FOR A RESPONSIBLE FED. BUDGET (Apr. 16, 2019), <https://www.crfb.org/papers/why-should-we-worry-about->

reach, and the youth of America can be expected to react accordingly.³²² Some will move out of the country.³²³ Some will have smaller families,³²⁴ thereby increasing (even more) the tax load on a per-individual basis for future generations. Some may elect not to start a family due to the expense and the perceived burden, exacerbating the aforementioned problem. Finally, some may fall into depression or develop other mental health problems, potentially leading to even more depths of despair in the following years.³²⁵

The solution, then, must be to recognize that younger generations today, and younger generations not yet born, deserve better. They deserve to have the same opportunities that the Baby Boomer generation received.³²⁶ Putting the federal budget back in balance is an indispensable first step to achieving this outcome. When we hear stories of economic

national-debt [<https://perma.cc/L56W-H6T6>] (“By borrowing more today, policymakers are all but assuring higher taxes and lower spending on future taxpayers and government beneficiaries.”); *see also* Labonte & Makinen, *supra* note 319, at 6 (“Thus, future generations would be forced to consume fewer goods and services because a larger part of their income would be taxed and transferred to Social Security recipients.”).

322. Aaron Zitner, *Voters See American Dream Slipping Out of Reach*, *WSJ/NORC poll shows*, MINT (Nov. 24, 2023, 2:20 PM), <https://www.livemint.com/politics/voters-see-american-dream-slipping-out-of-reach-wsj-norc-poll-shows-11700810811248.html> [<https://perma.cc/YD4B-Y639>] (“The American dream—the proposition that anyone who works hard can get ahead, regardless of their background—has slipped out of reach in the minds of many Americans.”).

323. Erica Prush, *Expat Nation: Why More Young Americans than Ever Are Emigrating*, *PREPLY* (Apr. 17, 2024), <https://preply.com/en/blog/gen-z-american-emigration-trends-2023/> [<https://perma.cc/L9FH-2JVZ>] (finding that the rising cost of living in America and superior social programs in other countries were two major reasons young Americans desire to emigrate).

324. Hiranmayi Srinivasan, *2023: The American Dream Now Costs \$3.4 Million*, *INVESTOPEDIA* (Dec. 5, 2023, 9:55 AM), <https://www.investopedia.com/the-american-dream-now-costs-over-usd3-million-8409951> [<https://perma.cc/3A6R-TGJ6>] (“The classic ‘American Dream’ including two kids, a house, and car costs more than most make in a lifetime.”); Aimee Picchi, *The Cost of Raising a Child is Almost \$240,000—and That’s Before College*, *CBS NEWS* (Sept. 14, 2023, 3:40 PM), <https://www.cbsnews.com/news/how-much-does-it-cost-to-raise-a-child-240000/> [<https://perma.cc/4UEV-GJ6F>] (“The financial impact of child-related costs may be one reason why some adults are opting to delay or even forego having children . . .”).

325. Sebastian Trautmann et al., *The Economic Costs of Mental Disorders: Do Our Societies React Appropriately to the Burden of Mental Disorders?*, 17 *EMBO REP.* 1245, 1247 (2016) (“[M]ental disorders cause tremendous economic costs, directly via relatively low costs in the healthcare system, and indirectly via proportionally high productivity losses and impact on economic growth.”).

326. Jan Cawser, *Letters: Baby Boomers, Give the Young a Chance*, *THE GUARDIAN* (Dec. 1, 2019, 12:59 AM), <https://www.theguardian.com/commentisfree/2019/dec/01/baby-boomers-give-young-a-chance-observer-letters> [<https://perma.cc/UVK3-ZJMJ>] (“Surely they *deserve* the *opportunities* we *had*.”).

collapse in countries like Greece,³²⁷ Venezuela,³²⁸ Argentina,³²⁹ Zimbabwe,³³⁰ and Türkiye,³³¹ we cannot continue to think that the United States is above the laws of economics. Yes, the United States may be too big to fail today, but there is no guarantee that will continue to be the case. Excessive debt has torn apart great empires that many historians consider America to be a successor. From Rome to the British Empire, economic historians show that public debt eventually comes due, and failure to tend to the national budget can be more harmful than dreadful defeats on the battlefield.³³² If courts do not use the Public Debt Clause to protect younger generations from the predations of elderly politicians, the end of American economic prowess on the world stage may follow.

327. Stelios Stylianidis & Kyriakos Souliotis, *The Impact of the Long-lasting Socioeconomic Crisis in Greece*, 16 BJPSYCH INT'L 16 (2019) (discussing the economic crisis in Greece and its devastating effects on its population).

328. Amelia Cheatham & Diana Roy, *Venezuela: The Rise and Fall of a Petrostate*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/background/venezuela-crisis> [https://perma.cc/6KV3-XNBE] (last updated July 31, 2024, 2:55 PM) (“In recent years, Venezuela has suffered economic collapse, with output shrinking by three-quarters and rampant hyperinflation contributing to a scarcity of basic goods . . .”).

329. Ryan Dubé & Silvina Frydlewsky, *Argentina's Next President Will Face an Economy in Crisis*, ENERGIESNET.COM, <https://energiesnet.com/argentinas-next-president-will-face-an-economy-in-crisis-ryan-dube-and-silvina-frydlewsky-wsj-video/> [https://perma.cc/54EL-4M7Y] (last visited Sept. 28, 2024) (“As Argentines prepare to choose a new president later this month, the once-prosperous nation known for its baroque architecture and robust cattle is grappling with its most debilitating economic crisis in a generation.”).

330. *Economic Crisis in Zimbabwe*, SYNERGIA FOUND. (Oct. 18, 2018), <https://www.synergiafoundation.org/insights/analyses-assessments/economic-crisis-zimbabwe> [https://perma.cc/6WLC-HKZB] (“The economic crisis in Zimbabwe has shifted from bad to worse. The currency has collapsed, the unemployment rate has reached 90 per cent, and shops shelves have been stripped bare due to panic-buying.”).

331. Suzan Fraser, *Why Turkey's Currency is Crashing after Erdogan Got Reelected*, AP NEWS (June 9, 2023, 5:31 AM), <https://apnews.com/article/why-is-turkeys-currency-falling-erdogan-1faf7d58144fc84479c251c3fdeabe2a> [https://perma.cc/W9T6-RVXR] (“Turkey has been plagued by a currency crisis and skyrocketing inflation since 2021 . . .”).

332. EJ Antoni & Peter Onge, *Has America Entered the Fall of Rome?*, HERITAGE FOUND. (Oct. 5, 2023), <https://www.heritage.org/budget-and-spending/commentary/has-america-entered-the-fall-rome> [https://perma.cc/9HXX-SVPQ] (“Rome’s failure to curtail its spending as it simultaneously throttled its own economy eventually turned the empire’s finances into the equivalent of a Ponzi scheme. Debt rose at unsustainable and accelerating rates.”); *The Rise and Development of the British Empire*, BRITISH LIT. WIKI, <https://sites.udel.edu/britlitwiki/the-british-empire-imperialism-post-colonialism-literature/> [https://perma.cc/35GE-X6GR] (last visited Sept. 29, 2024) (“Ultimately, the billions of dollars worth of debt following World War II marked the ultimate cause of the Empire’s fall . . .”).

V. CONCLUSION

You know, we're effectively—we're borrowing from future generations. And every generation really should pay for the things that it, that it needs. It can cause the federal government to buy the things that it needs for it, but it really should pay for those things and not hand the bills to our children and grandchildren.³³³

The U.S. began with the Founding Fathers' desire for local governance and limiting government power (and the associated expenses).³³⁴ After a bitter Civil War, the Founding Fathers' vision required amendment to resolve many of the problems that could not be adequately resolved during the Constitutional Convention.³³⁵ The Fourteenth Amendment stands out among these amendments as arguably the most consequential due to its Equal Protection and Due Process Clauses, to name just a few.³³⁶ Yet, perhaps the most critical clause to national survival might be the Public Debt Clause if the courts find the courage (or political will) to interpret it as a limit on the national debt.³³⁷ The Roman Empire, the British Empire, and a long list of many others did not collapse for lack of Due Process or Equal Protection; they collapsed because the government encumbered itself to such an extent that the young could no longer pay for the excesses of the elderly.³³⁸ With insurmountable debt burdens, malaise fell over even the greatest among world nations, and collapse inevitably followed.³³⁹

333. Jerome Powell, *Full 2024 60 Minutes Interview Transcript*, CBS NEWS (Feb. 4, 2024), <https://www.cbsnews.com/news/full-transcript-fed-chair-jerome-powell-60-minutes-interview-economy/> [<https://perma.cc/7C57-EZ8T>].

334. Tom G. Palmer, *Limited Government and the Rule of Law*, CATO INST. (2017), <https://www.cato.org/cato-handbook-policy-makers/cato-handbook-policy-makers-8th-edition-2017/limited-government-rule-law> [<https://perma.cc/H2MK-F3CJ>] (“[T]he American Founders established a system of government based on delegated, enumerated, and thus limited powers”).

335. *U.S. Constitution and the Civil War Amendments*, TEX. POL. PROJECT, <https://texaspolitics.utexas.edu/educational-resources/us-constitution-and-civil-war-amendments> [<https://perma.cc/HBN6-3S47>] (last visited Sept. 28, 2024).

336. U.S. CONST. Amend XIV.

337. U.S. CONST. Amend XIV §4.

338. *Decline of the British Empire*, ENCYC. BRITANNICA, <https://www.britannica.com/summary/Decline-of-the-British-Empire> [<https://perma.cc/6E6W-JMJY>] (last visited Sept. 28, 2024) (“Although Great Britain emerged as one of the victors of World War II, it had been economically devastated by the conflict. The British Empire gradually gave way to the Commonwealth.”); *The Debt Crisis in Ancient Rome: Lessons for Today*, OCPA (Feb. 6, 2012), <https://ocpathink.org/post/the-debt-crisis-in-ancient-rome-lessons-for-today> [<https://perma.cc/RPL7-5TXG>]; Fraser, *supra* note 331 and accompanying text.

339. Jeff Desjardins, *Currency and the Collapse of the Roman Empire*, VISUAL CAPITALIST (Feb. 19, 2016), <https://www.visualcapitalist.com/currency-and-the-collapse->

The courts have the tools to avoid this catastrophe. They should not be the first resort, of course; if anything, they must be the last, but the option to declare future debt obligations unconstitutional when overwhelming evidence exists to the effect must be on the table. Courts already exercise significant caution in exercising jurisdiction over these matters under standing doctrine.³⁴⁰ They should continue to exercise that caution when the debt burden still appears manageable. Yet they must be able to distinguish between a sound, evidence-based conclusion by the government that the debt can be paid from a conclusion drawn arbitrarily, based on wishful thinking and unrealistic projects regarding future growth, future spending, or both.

Judges should not have to take the reins from economic experts on this topic: Experts in finance and economics should appropriately advise politicians in Congress and the White House regarding the dangers of excessive spending and borrowing. Voters, too, should be able to organize around the concepts of fiscal responsibility and refrain from overburdening future generations with debts they cannot repay. All of these checks and balances *should* occur before the situation merits judicial review, but one must admit that in the twenty-first century, no such consensus among politicians and voters could form.³⁴¹ It is almost as if politicians had incentives to continue to spend government money to incentivize votes in their favor, and voters, already facing dire economic circumstances, see no alternative except to pass the buck, with interest, to those who cannot vote at all.³⁴²

The courts, themselves, are not immune to politics, but federal judges who enjoy lifetime appointments may have to use the protection it gives

of-the-roman-empire/ [https://perma.cc/2Q5K-388B] (“Along with other factors, this led to hyperinflation, a fractured economy, localization of trade, heavy taxes, and a financial crisis that crippled Rome.”).

340. Scott R. Anderson, *Revisiting Standing Doctrine: Recent Developments, Policy Concerns, and Possible Solutions*, BROOKINGS (Sept. 29, 2022), <https://www.brookings.edu/articles/revisiting-standing-doctrine-recent-developments-policy-concerns-and-possible-solutions/> [https://perma.cc/5CRJ-KCJ3] (“In recent decades, the strict application of standing requirements has become a widely accepted feature of the federal legal system.”).

341. *In a Politically Polarized Era, Sharp Divides in Both Partisan Coalitions*, PEW RSCH. CTR. (April 14, 2024), <https://www.pewresearch.org/politics/2019/12/17/in-a-politically-polarized-era-sharp-divides-in-both-partisan-coalitions/> [https://perma.cc/YR2U-8WJW] (“Partisanship continues to be the dividing line in the American public’s political attitudes, far surpassing differences by age, race and ethnicity, gender, educational attainment, religious affiliation or other factors.”).

342. R. Kent Weaver, *The Politics of Blame Avoidance*, 6 J. PUB. POL’Y 371, 373 (1986) (“Thus the concentrated losses to constituents need not outweigh benefits for a policymaker to have strong blame-avoiding incentives; it is enough that those costs are substantial.”).

them to stand in the way of some legislators' worst instincts.³⁴³ The Constitution provides them a way to shield younger generations, and generations not yet born, from the burden of the national debt imposed on them before they could vote for it. In generations past, before the national debt ballooned to its present size, government expenditures in excess of the budget were rare and limited to emergencies.³⁴⁴ World War I and World War II come to mind as exceptions that prove the then-existing rule of fiscal responsibility.³⁴⁵ Politicians and voters alike seemed to implicitly share the desire to leave the next generation better off than the present one.

For reasons unknown, the ability to borrow from the future to spend in the present has brought out the worst in our present ruling generations. Many economists now predict that Millennials and Generation Z will probably live worse than their parents and grandparents.³⁴⁶ These generations already struggle from a plethora of social ills, and the proverbial payments on much of the national debt have not even come due!³⁴⁷ Once interest payments on the federal debt become the largest item on the federal budget, which is more and more likely as the government refinances its debt at higher and higher rates, younger, less populous generations will have to bear the burden while necessarily tightening

343. Hon. Jason Sengheiser, *Upholding Judicial Independence Through Civics Education*, A.B.A. (Jan. 4, 2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-civic-education-in-america/upholding-judicial-independence-through-civic-education/ [https://perma.cc/A6DS-UCAF] (“The lifetime appointment of Article III judges is the key bulwark protecting the federal judiciary’s independence from political interference.”).

344. John Cogan, *Federal Budget*, ECONLIB, <https://www.econlib.org/library/enc/federalbudget.html> [https://perma.cc/V3D8-Q9RM] (last visited Sept. 28, 2024) (“[M]ost of our history prior to 1940, the federal budget was balanced, except in years of war or economic recession.”).

345. *History of the Debt*, TREASURYDIRECT, <https://www.treasurydirect.gov/government/historical-debt-outstanding/> [https://perma.cc/9979-F42J] (last visited Sept. 28, 2024) (“The debt grew steadily into the Twentieth Century and was roughly \$22 billion as the country paid for involvement in World War I. The buildup to World War II brought the debt up another order of magnitude from \$51 billion in 1940 to \$260 billion following the war.”).

346. Luhby, *supra* note 19 (“More than a dozen millennials told CNN of their struggles to meet or exceed their parents’ job status or lifestyle. Some had trouble landing good-paying jobs, while others found that housing prices, student loans and other expenses were dragging them down.”).

347. Jeff Cox, *Interest payments on the national debt top \$1 trillion as deficit swells*, CNBC (Sep. 12, 2024), <https://www.cnbc.com/2024/09/12/interest-payments-on-the-national-debt-top-1-trillion-as-deficit-swells.html> [https://perma.cc/K7WV-ANYN] (“The U.S. government for the first time has spent more than \$1 trillion this year on interest payments for its \$35.3 trillion national debt, the Treasury Department reported Thursday.”).

government spending on services they may need.³⁴⁸ Whether through court intervention via constitutional prohibitions or via more prudent and careful fiscal policy, the men, women, husbands, wives, children, and grandchildren of tomorrow must be saved from the financial irresponsibility of today. The framers of the Fourteenth Amendment realized that in writing a prospective component of the Public Debt Clause and it may be time to apply it in practice.

348. Robert Homats, *This Generation of Politicians Has Killed Fiscal Responsibility—but Millennials and Gen Zers Will Be the Ones Who Pay the Price*, YAHOO! FIN. (Sept. 21, 2023), <https://finance.yahoo.com/news/generation-politicians-killed-fiscal-responsibility-170112206.html> [<https://perma.cc/M5WR-K63C>] (“It shifts the repayment and interest burden to successor generations: our children and grandchildren, who will inherit enormous financial obligations. They will have to repay these huge burdens—or shoulder astronomical interest costs.”).