

## In This Issue

### Fiscal Stewardship

[Automatic Defense Cuts No Threat to National Security](#)

### Government Openness

[California Suspends Open Meetings Law to Save Money](#)  
[The STOCK Act Faces New Hurdles](#)

---

## Automatic Defense Cuts No Threat to National Security

Unless Congress acts to undo the \$110 billion in automatic, across-the-board spending cuts scheduled to take effect early next year, [most federal programs will be cut by about eight percent](#). These cuts are the unfortunate product of crisis budgeting and will have deleterious impacts on many Americans, but harm to national defense won't be one of them.

Ending a months-long congressional battle to increase the federal debt ceiling, the Budget Control Act of 2011 (BCA) was signed into law on Aug. 2, 2011. The legislation put in place a complex set of provisions designed to reduce the deficit by some \$2 trillion over the next ten years. It immediately reduced discretionary budget authority by \$840 billion (over ten years) and required the establishment of a bipartisan, joint select committee that was charged with creating legislation that would reduce the deficit by \$1.5 trillion. However, because this so-called Super Committee could not agree on a plan, a provision in the BCA has triggered automatic, across-the-board cuts ("sequestration") of \$984 billion starting on Jan. 2, 2013. Half of these cuts (\$492 billion) will be applied to national defense spending and the other half to non-defense spending. Spaced out evenly, the cuts to defense and non-defense spending will be \$54.7 billion per year over the next nine years.

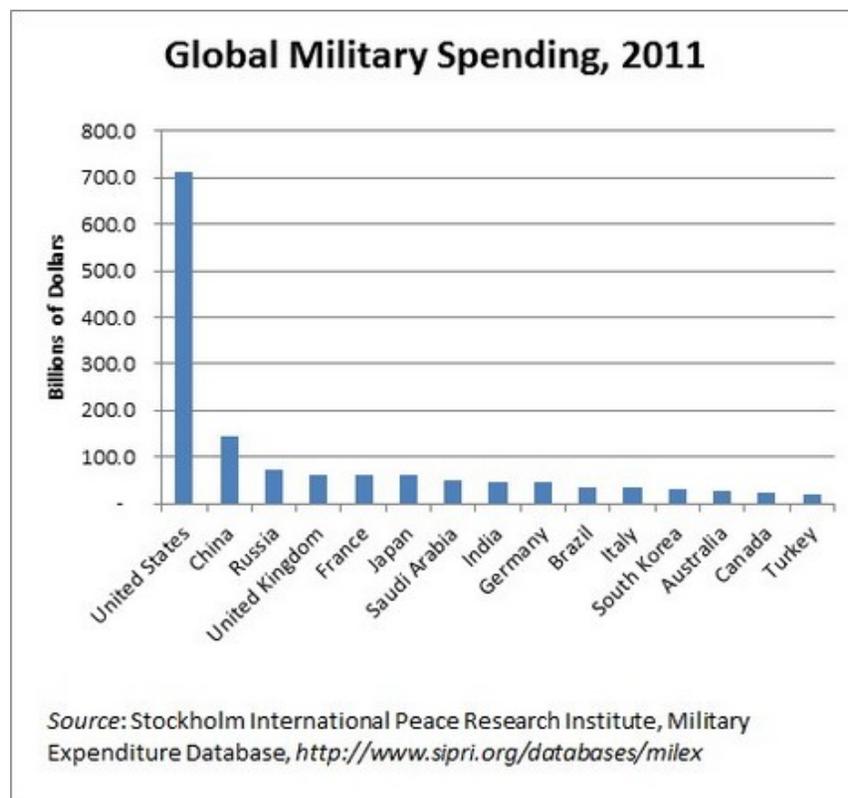
Both sides of the aisle and the Obama administration have been raising alarms about the impact that sequestration will have on national defense. Defense Secretary Leon Panetta [testified](#) the cuts would be "devastating" and "hollow out the force and inflict serious damage to the national defense." In an opinion piece co-authored with Sen. John McCain (R-AZ), chairman of the House Armed Services Committee Buck McKeon (R-CA) [wrote](#) that the [\\$54.7 billion \(7.5 percent\) cut](#) would "force the

greatest Armed Forces in history to its knees." And Speaker of the House John Boehner (R-OH) believes the cuts will "hurt our Department of Defense, will hurt our ability to...provide security for the American people."

Defenders of the Department of Defense (DOD) argue that cutting \$492 billion (the sequester amount over the next 10 years) would, as Sen. Lindsey Graham (R-SC) described it, "[shoot ourselves in the head](#)." The chairman of the Joint Chiefs of Staff, Gen. Martin Dempsey, went so far as to suggest that the cuts would "[increase the likelihood of conflict](#)" because the United States would "go from being unquestionably powerful everywhere to being less visible globally and presenting less of an overmatch to our adversaries."

In reality, a \$55 billion reduction in defense spending in FY 2013 would return defense spending to levels seen just a few years ago in 2006, when the Pentagon had \$597 billion in discretionary budget authority. In 2001, the DOD discretionary budget authority was \$402 billion (in 2011 dollars). Ten years later, in 2011, that number had increased by 71 percent to \$687 billion. This growth has outpaced all other discretionary spending. In that same time period, the discretionary budget for the rest of the government increased by 21 percent, growing from \$442 billion (in 2011 dollars) to \$534 billion.

The United States spends about five times as much on defense as the next biggest spender, China, and about \$100 billion more than then next ten nations combined. A \$55 billion reduction in defense spending would mean that we would still outspend [the next ten top defense spenders](#) combined by \$45 billion.



Combined, the automatic cuts and the initial BCA spending caps would reduce defense spending by about \$1 trillion over 10 years. To put that into perspective, the [DOD has spent \\$1.3 trillion on the wars](#) in Iraq and Afghanistan since 2001. In that same time, it saw its non-war expenditures increase from [\\$401 billion \(in 2011 dollars\) to \\$527.9 billion](#) and its share of the discretionary budget grow from 48 percent to over 50 percent.

Should the defense sequester occur, the U.S. would undoubtedly retain its preeminence as the world's military superpower. Defense spending would still be more than four times larger than our nearest military spending competitors. And when compared against recent historic growth in defense spending, sequestration can hardly be considered a significant constraint.

Regardless of the relative level of military spending, it remains unclear that cutting \$492 billion from the defense budget will materially affect the nation's military capabilities. A close study of the Pentagon's weapons acquisitions reveals that every dollar spent on defense procurement is not a dollar spent on increased security. Two government watchdog groups – the Project On Government Oversight (POGO) and Taxpayers for Common Sense (TCS) – examined the DOD's weapons acquisition spending and found that Congress and the Pentagon can reduce military expenditures without hurting national security. [POGO-TCS identified \\$700 billion](#) (from FY 2013 to FY 2022) in wasteful or unnecessary national security spending, while the [Center for American Progress \(CAP\) found \\$600 billion](#) in potential savings from reducing unneeded military resources.

CAP and POGO-TCS noted that both the V-22 airplane-helicopter hybrid and the ground-based missile defense system have significant operational limitations, calling into question their contributions to national defense. Cutting these two programs would save \$23 billion over the next 10 years (\$6 billion from missile defense and \$17 billion from the V-22). All three groups also reported that the role of certain variants of the F-35, a next-generation fighter jet, could be executed just as effectively with the current fleet of F/A-18E/F Super Hornets and do it for a fraction of the price. The new F-35s are projected to cost \$200 million each, compared to the \$5.7 million acquisition cost of the F-18. Limiting acquisition of the F-35 could save \$54 billion over the next 10 years. POGO-TCS also point out that Congress is forcing the Pentagon to purchase more M1 tanks that it says it needs, needlessly appropriating \$272 million in FY 2012.

Defense cuts as a strategy for deficit reduction has bipartisan support. Sen. Tom Coburn (R-OK), an uncompromising deficit hawk, would like to see defense spending on the chopping block. According to Coburn, [none of the military personnel that he's spoken to](#), which includes "four-star generals all the way down to privates," would agree that a 10 to 15 percent cut in DOD spending would affect military readiness or strength. The libertarian Cato Institute has [proposed cutting \\$1.2 trillion from the defense budget](#) over the next 10 years, recognizing that not all military spending directly supports national defense.

The BCA is a bull-in-the-china shop approach to deficit reduction. The automatic, across-the-board cuts set to take place in a few months will have serious consequences for the economy, our public protections, and the social safety net. Cutting defense spending, on the other hand, will only impact the bottom line of defense contractors who spend [millions lobbying Congress](#) to keep their funding

stream flowing.

## **California Suspends Open Meetings Law to Save Money**

In June, the California state legislature suspended the state's open meetings law, which requires cities and other agencies to publish the agendas of public meetings before they occur and make the minutes of these meetings available to citizens after they occur. In suspending the law, the state is sacrificing not only a fundamental element of a democratic society, but a vital tool that can actually save money.

### **Background**

Open meetings laws, also known as sunshine laws, require state and local government agencies to give the public access to meetings held by legislative bodies, as well as provide citizens access to records related to those meetings. These types of laws were established to enable the public to learn about and participate in decision making by public officials that affects their well-being and the health of their communities.

Currently, all 50 states have some type of open meetings laws requiring transparency, with the regulations varying by state. Each state law established similar requirements such as advance notice of meetings, recording and posting of minutes, and what is required before a decision can be considered "official."

### **California Suspension**

The California legislature, as part of its Budget Act of 2012 (passed in June), suspended the state's open meetings law for the next three years in an effort to cut state expenditures. Since 1953, the [Ralph M. Brown Act](#), commonly referred to as California's open meetings law, has required local legislative bodies to post public meeting agendas (with brief descriptions of each item of business) for public review and in a location that is freely accessible to the public at least 72 hours in advance. The act also requires that all decisions made in closed session be announced publicly.

The state, facing increasingly tight budgets, suspended the law to save money. Under state rules, California is required to reimburse cities and counties for the cost of complying with mandated requirements, which includes its open meetings requirements. However, California has not reimbursed local governments for open meetings costs since 2005, accumulating a debt estimated at [\\$96 million](#). By suspending the open meetings provision in the Brown Act, California expects to avoid paying open meetings costs for the next three years, as well as eliminate the current debt owed to local governments.

If these costs of meeting transparency seem excessive to you, it's because they are probably heavily inflated. A [2011 report](#) by the Legislative Analyst's Office showed many examples of questionable reimbursement costs by local (non-education) agencies. For example, Santa Barbara County government claimed a flat rate of \$134 for each agenda produced and posted, and the Mesa Consolidated Water District claimed that more than half of its meeting agendas cost \$155 each. But

"the cost of posting agendas is basically zero," according to San Diegans for Open Government, a government watchdog organization.

San Diegans for Open Government [filed a lawsuit](#) claiming that the state's suspension was unconstitutional and violated [Proposition 59](#). Proposition 59 amended the state constitution to include safeguards for an individual's right to access information as part of his or her right to petition the government and instruct elected officials. "Local government should not be allowed to use an unreimbursed bill for relatively few dollars to justify doing the public's business in secret," the organization said.

Despite the suspension, many counties are planning to continue to follow transparency standards for meetings. San Diego County, which has yet-to-be-reimbursed claims totaling to \$400,000, plans to ignore the mandate suspension. "The money is not why we do it; we do it because it's the right thing to do," said Michael Workman, a spokesperson for the county.

Though most big agencies may continue to comply with the Brown Act, said Jim Ewert, of the California Newspaper Publishers Association, "there may be some smaller Brown Act bodies, a cash-strapped mosquito abatement or water district, that may, for whatever reason, chose to conduct themselves in a different manner, and that's the danger."

### **Transparency Saves Money**

Though California sacrificed transparency for cost reasons, there are many examples of transparency (and the increased accountability that accompanies it) helping to prevent corruption and leading to more efficient government operations.

For example, Texas was able to [save \\$4.8 million](#) within the first two years of using a transparency website, called [Where the Money Goes](#). Launched in 2007, the site acts as a management tool, allowing the public to track state spending to ensure accountability on every level. At the federal level, the IT Dashboard, an online tool that lets users examine every federal IT project by agency and shows whether each project is on schedule and on budget, is estimated to have [saved \\$3 billion](#) as struggling projects were cancelled or cut back.

Another example of transparency saving money is the Recovery Act website, [Recovery.gov](#). The [American Recovery and Reinvestment Act of 2009 website](#) provides public disclosure about the recipients and projects funded under the Recovery Act. Despite hundreds of billions of dollars being spent in a very short period of time, there was very little fraud. According to [Earl Devaney](#), former Chairman of the Recovery Accountability and Transparency Board, "I have little empirical evidence to prove it, but I believe it is due to the transparency embedded in the Recovery Act."

### **Open Meetings Laws in Other States**

Many states are experiencing economic difficulties but have chosen to strengthen their open meetings laws instead of weakening them. In New York, Governor Andrew Cuomo (D) signed a measure on [Jan. 3](#) that requires documents or resolutions discussed in meetings to be made available to the public, via

hard copy or on the Internet. In the past, agencies were not required to make such documents available to the public if they were deemed to be too costly to produce.

In Illinois, on July 19, Governor Pat Quinn (D) signed [House Bill 4687](#), requiring meeting notices and agendas to be available to the public 48 hours in advance in order to increase government accountability and reduce corruption. This legislation was influenced by a court case related to an Illinois municipality that posted a meeting notice in a building that was neither open on the weekends nor accessible to the public. H.B. 4687 will close that loophole.

Despite these efforts, cities and counties in many states continue to struggle to comply with open meetings laws. For instance, [earlier this month](#), some New York communities passed resolutions stating that residents with natural gas beneath their land have the right to extract it, essentially prohibiting local fracking bans. Some residents in these communities complained that local government officials violated their open meetings laws by not adequately notifying the public that this issue was being considered. In Hancock, NY, a resident argued that a resolution on natural gas extraction was not put on the government's website, nor was the public notified of any changes prior to the meeting. In Fremont, NY, residents claimed that resolutions were not made available to the public prior to the meeting and that the minutes were not widely distributed to individuals afterward.

## **Conclusion**

California, and every other state, has a responsibility to provide its citizens with information about the public business elected and appointed officials are conducting and the decisions they are considering. Government of and for the people requires that people know about and can participate in government decisions that may affect their health and well-being. A revenue shortfall can't be an excuse for withholding public information – especially when the costs of providing information today are almost nil.

## **The STOCK Act Faces New Hurdles**

On Aug. 2, the American Civil Liberties Union (ACLU) filed a lawsuit and an injunction against the Office of Government Ethics (OGE), challenging the constitutionality of the [Stop Trading on Congressional Knowledge Act](#) (STOCK Act). The ACLU is suing on behalf of seven high-level federal government employees and four organizations representing them. The ACLU claims that posting officials' financial information online violates their privacy in addition to potentially threatening their physical safety. On the basis of similar concerns, Congress passed a bill delaying implementation of the STOCK Act.

## **Background**

Congress [passed the STOCK Act](#) in March, and the legislation was quickly signed into law by President Obama in April. Although several existing laws required public officials to disclose personal finance information, the STOCK Act brought those disclosures under a common legal standard and significantly expanded the number of officials whose reports were to be posted online. Such asset

disclosure helps ensure that public officials cannot abuse their positions for personal gain by identifying and addressing conflicts of interest these officials may have before they act on insider information.

The STOCK Act would affect some 28,000 executive branch employees, including civilian, military, and diplomatic personnel, as well as their spouses and dependent children. The data would reveal, among other things, employees' ownership of stocks and bonds, investment income, business interest, and non-investment income such as salary and retirement benefits. Opponents of the law say putting this information online will expose these officials to harassment, identity theft, financial fraud, blackmail, bribery, and hacking and could threaten their personal security.

### **ACLU Lawsuit**

In its [lawsuit](#), the ACLU makes three arguments against the law and asks for an [injunction](#) against implementation until the suit is resolved. First, the organization claims that [Walls v. City of Petersburg](#) (Fourth U.S. Circuit Court of Appeals, 1990) established two conditions that must be met to allow disclosure of a person's private information: a compelling governmental interest that outweighs the individual's privacy interest and robust safeguards against dissemination of the information. In *Walls*, the Fourth Circuit found that a public official's privacy had not been violated because her financial information had governmental value in preventing corruption (compelling interest) and was locked in a private filing cabinet, to which few officials had access (robust safeguards). The court stated, "If this type of information had been more widely distributed, our conclusions might have been different." The ACLU argues that there are no robust safeguards in place when the dissemination of financial data is online, and therefore, the STOCK Act requirement to post officials' information violates the First Amendment and constitutes an unreasonable invasion of privacy.

Second, the ACLU argues that the asset disclosure forms submitted prior to the passage of the STOCK Act explicitly stated the provided information would be subject to Privacy Act protections. Under the Ethics in Government Act of 1978, top federal employees have filed a financial disclosure form, [OGE Form 278](#), with their agencies' ethics officials. The Ethics in Government Act also established a process for the public to [request](#) the financial disclosure forms of government officials, but only if they identified themselves in writing and acknowledged that they wouldn't misuse the information. The formal requests for review were also public. The ACLU also argued that barring the formal request process, the financial information provided by officials was covered by the Privacy Act and cannot be disclosed by agencies without the written consent of the submitters. The ACLU concludes that since the STOCK Act instructs agencies to post previously filed financial forms, it violates the filers' due process rights under the Fifth Amendment.

Third, the ACLU argues the STOCK Act cannot be implemented under the Administrative Procedure Act (APA), the codified guidelines for implementing laws. The organization notes that the APA prohibits agency actions that are "contrary to constitutional right, power, privilege, or immunity." They reason that if their two previous points are correct (i.e., the law violates the First and Fifth Amendments), the STOCK Act cannot be implemented under the APA.

Attorney Jack McKay, a member of the law firm that is co-counsel with the ACLU in the lawsuit, [said](#), "The reach of this law and its consequences are unprecedented.... The consequences for personal privacy and national security are extraordinary." Echoing these sentiments, Arthur Spitzer, legal director of the Washington, DC ACLU, said, "This is like putting your tax returns on the Internet for everyone to see. Think about what that would mean to you. It's a privacy disaster, and it's compounded by the risk to employees' safety and to our national security."

The ACLU filings do not address the fact that these financial disclosures are already publicly available upon request and that once the data is released, third parties may post this information online. In fact, some groups, such as the [Center for Responsive Politics](#), are already posting financial disclosure data online related to members of Congress and presidential candidates.

Additionally, a number of states have already established some level of online access to public officials' financial information, including [Arkansas](#), [Rhode Island](#), and [Tennessee](#). A [recent OMB Watch report](#) examined accountability websites in the states, including asset disclosure information, and found several of them very functional and broad in scope, even if they wouldn't have the same level of detail and searchability that the STOCK Act requires on the federal level. The states appear to have been posting financial disclosure data for many public officials for several years without any apparent privacy or personal safety problems that the ACLU claims would result from federal disclosure.

### **Congress Delays Implementation**

On Aug. 2, citing concerns about privacy and personal safety similar to those raised by the ACLU in its court filing, Congress quickly passed a bill ([S. 3510](#)) delaying the effective date of the online financial disclosure requirement one month, from Aug. 31 to Sept. 30. The two-page bill also amends the STOCK Act to close a reporting loophole for House officials. All other provisions of the STOCK Act remain in effect. Legislators in both the House and Senate passed the legislation the same day it was introduced to provide additional time to consider steps "to prevent harm to the national security or endangering the military officers and civilian employees."

The bill makes explicit the requirement for periodic reporting of certain financial transactions of House members' spouses and dependent children. This means that lawmakers, spouses, and dependents will have to file a report detailing the sale or purchase of stocks, bonds, and other financial assets. These reports must be filed within 30 to 45 days of the transaction taking place. Previously, depending on how the House and Senate Ethics Committees interpreted the law, only senators would have had to comply with this requirement.

[Comments Policy](#) | [Privacy Statement](#) | [Standards of Quality](#) | [Press Room](#) | [OMB Watch Logos](#) | [Contact OMB Watch](#)

OMB Watch • 1742 Connecticut Avenue, N.W. • Washington, D.C. 20009  
202-234-8494 (phone) | 202-234-8584 (fax)

© 2012 | Please credit OMB Watch when redistributing this material.



Combined Federal Campaign #10201