We can pass the balanced budget amendment and preserve the future for our children, our grandchildren, and this country. We can stop this runaway Federal train of spending and taxing that is out of control right now. I urge my colleagues to support the balanced budget amendment today so that we and our children will have a prosperous tomorrow.

This morning will end our third full week of debate on this amendment. We started debate on the subject matter even before the bill was brought to the floor during the unfunded mandates debate. We have had 11 votes on amendments and spent 14 days on floor debate on this constitutional amendment so far, more than we have ever spent debating a balanced budget amendment before. Back in 1982, which was the next toughest debate, we debated 11 days before passing the balanced budget amendment by 69 votes. I hope that our longer debate this year will mean our margin of victory will be proportionately higher.

As we have said, every day while we talk, the debt we leave our children and grandchildren continues going up to a shocking point. This must end and must end soon. Mr. President, let us tell the American people in this cloture vote when we will stop talking and start acting to bring this country to fiscal sanity. Let us pass the balanced budget amendment to the States for ratification and get on with balancing the budget.

We have had 11 votes, and every one we have won on a bipartisan vote. Democrats and Republicans have voted with us, every one. There is nothing partisan about this. Anybody who tries to say this is a partisan debate just has not watched it and has not looked at the voters and has not realized that this balanced budget amendment is a bipartisan consensus, a Democrat-Republican effort, to save our country, and to help our children and grandchildren have the futures that we all had when we were born.

I was born in poverty. We did not have indoor facilities. We lost our first home shortly after I was born. We did not have indoor facilities in the second home for years. I thought all homes were kind of brown and dark because my dad built our home out of a torn-down old burnt-out building. Frankly, I thought everyone had a Pillsbury flour sign on the side of their home. I thought that was a pretty unique thing, and it really was.

To make a long story short, I had a future even though I was born in the Depression, because Congresses had not run the country totally into the ground from a national debt standpoint. But we have done it now, and we have to change our way of doing things around here.

I emphasize again that the first vote was 56 to 44. There were a number of Democrats voting with us. The Dole amendment passed 87 to 10, a lot of Democrats. The Reid amendment was defeated on a motion to table, 57 to 41, a lot of Democrats with us. The next was 70 to 28, a lot of Democrats. Then 66 to 32, 52 to 45, Senator HOLLINGS, that was a close vote. Still a number of Democrats helped to defeat that. Then 59 to 40, 59 to 40, and 52 to 47 last night; eight or nine Democrats voted with us on that. Then 51 to 38, 61 to 33, the last vote, and a lot of Democrats voted on that. This is a bipartisan effort. There is no reason for a filibuster or delay here. There is no reason not to get about business. There is no reason not to come up with amendments when the time comes.

I am willing to proceed and happy to proceed in any way our colleagues want to do this. But do not try to present this as partisan, a Democrat-Republican difference here. This is a bipartisan effort. We have made it that. I am proud of my Democratic colleagues that are standing up on this amendment. All we need are 15 to stand up and we will pass this, 15 out of 47. That is all we need. Gee, there ought to be 15 Democrats in the Senate out of 47 who will help us. I know of 13. I think I know of 14. Who is going to be that 15th vote, or the one that defeats this, if that is what happens? I do not believe it will.

I do not believe that our colleagues, when we put forth this kind of a bipartisan, heartfelt, eager effort, are going to shoot this down for the one time in history, after the House of Representatives had the guts to pass it, with the help of I believe 78 courageous Democrats in the House. We need 15 courageous Democrats here and I think we will get them. I believe we will get them, because this is the time in history when we can make a statement against what has been going on, this runaway train of Federal spending, this abdication of responsibility, this rejection of our children's and grandchildrens' future. Let us do something about it and quit talking partisan politics, and let us work together to get it done.

To the extent that this delay and a final vote will continue after today, let us do the best we can to bring up as many amendments as we can and debate them, and we are happy to do that. I think the debate has been healthy. I commend Senators on both sides of the aisle for the excellent debate they have given to us, and I hope our colleagues will vote for cloture today so that we can end the delay and have the responsible amendments that are left brought up. And let us vote on them and then let us pass the balanced budget amendment for the benefit of everybody—Democrats, Republicans, all loyal Americans—but most of all, for our children and grandchildren.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDING OFFICER. The Senate will resume consideration of House Joint Resolution 1, which the clerk will report.

The bill clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate resumed consideration of the joint resolution.

Ms. MIKULSKI. Mr. President, I rise today to oppose invoking cloture on the balance budget amendment. Mr. President, the Senate should not rush to finish this measure—we are amending the Constitution of the United States and there is still much we do not know. We still do not know the impact of the balanced budget amendment on Social Security, Medicare, and many other vital programs. I am voting to continue with robust and vigorous debate so the American people fully understand the ramifications of what we are doing and how it will affect their lives.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 a.m. having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on House Joint Resolution 1, the constitutional balanced budget amendment:

Bob Dole, Orrin G. Hatch, Larry Craig, Trent Lott, Bill Frist, R.F. Bennett, Kay Bailey Hutchison, Alfonse D'Amato, Jon Kyl, Fred Thompson, Ted Stevens, Olympia J. Snowe, John Ashcroft, Craig Thomas, Conrad Burns, Mike DeWine, Judd Gregg, Rick Santorum, Rod Grams, Lauch Faircloth.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on House Joint Resolution 1, the balanced budget amendment to the Constitution, shall be brought to a close? The yeas and nays are required.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 57, nays 42, as follows:

[Rollcall Vote No. 74 Leg.]

YEAS—57

Abraham	Gorton	McConnell
Ashcroft	Gramm	Murkowski
Bennett	Grams	Nickles
Bond	Grassley	Packwood
Brown	Gregg	Pell
Burns	Hatch	Pressler
Campbell	Hatfield	Roth
Chafee	Heflin	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simon
Cohen	Inhofe	Simpson
Coverdell	Jeffords	Smith
Craig	Kempthorne	Snowe
D'Amato	Kohl	Specter
DeWine	Kyl	Stevens
Dole	Lott	Thomas
Domenici	Lugar	Thompson
Faircloth	Mack	Thurmond
Frist	McCain	Warner

NAYS—42

Akaka	Exon	Leahy
Baucus	Feingold	Levin
Biden	Feinstein	Lieberman
Bingaman	Ford	Mikulski
Boxer	Glenn	Moseley-Braun
Bradley	Graham	Moynihan
Breaux	Harkin	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pryor
Byrd	Johnston	Reid
Conrad	Kennedy	Robb
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Lautenberg	Wellstone

NOT VOTING—1

Kassebaum

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 42. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Under the previous order, the Senator from West Virginia is recognized to offer an amendment.

Mr. BYRD. I thank the Chair. Mr. President, it is my understanding that the Senator from Nevada [Mr. BRYAN] wishes to speak for not to exceed 7 minutes. I ask unanimous consent that I may yield to the distinguished Senator for that purpose, not to exceed 7 minutes, and that I retain my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nevada is recognized for 7 minutes.

Mr. BRYAN. I thank the Chair.

(The remarks of Mr. BRYAN pertaining to the introduction of S. 429 are located in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the Chair.

May I take just a moment here to compliment the Republican Senators who have been sitting in the chair from the very beginning of this session. In the main, I think they have done very well. They have presided over the Senate with dignity, except in a few cases when there probably ought to be a little less talking up there at the desk because the cameras are often focused right on that desk. State legislators, professors, students, and the people at large expect this Senate to be the premier deliberative body in the world. It is not a State legislature. And I do not say that to cast any aspersions on State legislatures. I have been a member of both houses many years ago in West Virginia.

Generally speaking, the presiding officers have been alert and have been paying attention to the debate, as they should.

Madam President, the original Constitution and the amendments heretofore adopted serve two basic functions: One, they create a structure of government and establish three departments thereof: the Legislative, the Executive, and the Judicial, and they allocate the powers of government among the three branches of the Federal Government and between the two Houses of Congress.

The Constitution also prohibits the States from taking certain actions, and all powers that are not delegated to the Congress by the Constitution shall be reserved to the States or the people.

So this is a Constitutional system, with checks and balances and a separation of powers, thus establishing an equilibrium between and among the three departments—the Legislative, the Executive, and the Judicial.

Two, the original Constitution and the amendments thereto, protect the most fundamental individual rights, such as life, liberty, and property; free speech; freedom of assembly; freedom of religion; freedom of the press; and equal justice under law.

So the Framers wisely left the determination of fiscal policy to the elected representatives of the people. Deciding when or whether to balance the budget, and whether and when to risk a deficit, calls for a judgment of policy, the kind of political judgment left by the Founding Fathers to the majoritarian processes of representative democracy. The Constitution and the amendments thereto do not undertake to resolve questions of fiscal policy. And for 206 years, that Constitution has not been amended to include fiscal policy.

Under the constitutional amendment that the Senate has been debating, such a judgment of fiscal policy, and when or whether to apply countercyclical measures would, to a considerable degree, be inhibited. Section 3 of the amendment, for example, would fetter and hamstring the President in the proper exercise of his powers.

Let me read section 3 of the proposed amendment to the Constitution.

I quote. This is section 3, from the constitutional amendment to balance the budget.

> Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

I think it is important that we recognize that this amendment to the Constitution, by virtue of section 3, would, if adopted, hamper the President. It would fetter the President. It would hamstring the President in the proper exercise of his powers by requiring him to submit a balanced budget even though he may consider a deficit to be necessary as a countercyclical measure to combat a recession that may be already underway. Countercyclical stabilizers are rendered even more difficult in a period of economic decline by the requirement of a supermajority vote to waive the section 1 mandate for a balanced budget in every fiscal year. Such requirement for a supermajority can prove to be a very troubling recipe for gridlock.

The amendment now being debated by the Senate provides that outlays in any given year shall not exceed receipts; that Congress may appropriate money in excess of anticipated revenues only by a three-fifths vote of the full membership of both Houses, and not by lesser majorities; that Congress may enact revenue increases only by majority votes of the full membership of both Houses on rollcall votes, and not by lesser majorities.

Let me state that again.

The constitutional amendment that is before the Senate requires that Congress may enact revenue increases only by majority votes of the full membership of both Houses—of both Houses—on rollcall votes.

In other words, in the Senate that would mean by no less than 51 votes and in the House that would mean no less than 218 votes.

The amendment also provides that Congress may raise the ceiling on the national debt, but only by a three-fifths vote of the full membership of both Houses, and not by lesser majorities.

Justice Oliver Wendell Holmes was right when he warned that the Constitution ought not ''embody a particular economic theory.'' In keeping with that wisdom, the Framers remitted Federal fiscal policy, not to special supermajorities, but rather to the crucible of ordinary majoritarian democratic politics. Article I, Section 8, Clause 1, gives Congress the power to tax and spend for the common defense and general welfare, and to borrow money on the credit of the United States—all obviously by simple majorities.

So basic is the majoritarian premise of Article I of the United States Constitution that it is barely mentioned, except for the statement in Article I, Section 5, Clause 1, that ''a majority of each House shall constitute a quorum to do business.'' The contemporaneous history supports the majoritarian premise, for the Framers entertained, but rejected, the idea requiring that ordinary legislation on any particular subject matter be passed by a supermajority. For example, Alexander Hamilton, in the Federalist No. 22, warned:

> To give a minority a negative upon the majority—

Which is always the case where more than a majority is requisite to a decision—

is, in its tendency, to subject the sense of the greater number to that of the lesser number. . . . The public business must in some way or other go forward.

This is Hamilton speaking.

If a pertinacious minority can control the opinion of a majority respecting the best mode of conducting it—

Meaning the public business.

the majority, in order that something may be done, must conform to the views of the minority; and thus—

Says Hamilton.

the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays—continual negotiation and intrigue—contemptible compromises of the public good. . . . For upon some occasions, things will not admit of accommodation; and then the measures of government must be injuriously suspended or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes—

This is Hamilton speaking. Let me begin again that sentence.

It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savour a weakness—sometimes border upon anarchy.

That was Alexander Hamilton. Where are all these Senators who are proponents of this amendment? It would not hurt them to hear the Constitution read today, from the beginning to the end. I do not intend to inflict that kind of punishment on them, but they certainly would do well to read and to hear read those portions of the Constitution which impact upon this constitutional amendment on the balanced budget.

Madison added his warning against supermajorities, in the Federalist No. 58:

It has been said that more than a majority ought to have been required for a quorum, and in particular cases, if not in all, more than a majority of a quorum for a decision. . . . [But] . . . In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule;

This is Madison speaking.

the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or in particular emergencies, to extort unreasonable indulgences.

That is Madison.

That is James Madison. He referred to particular emergencies and the supermajorities that are included in this nefarious constitutional amendment to balance the budget to deal with ''particular emergencies.'' I am using Madison's words—''particular emergencies.''.

Let me read again what Madison said.

Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or in particular emergencies, to extort unreasonable indulgences.

Where are the proponents of this amendment? Why do they not interrogate James Madison? Why do they not hearken to his words and Hamilton's words? No. They do not want to hear. As was said in Homer's Iliad, ''Not if I had 10 tongues and 10 mouths, a voice that could not tire, lung of brass in my bosom,'' would they hear me. They have eyes that cannot see and ears that cannot hear, and minds that are unwilling to comprehend the warnings of the Framers of the Constitution. Should one conclude that they pretend to be wiser men than those who wrote the Constitution?

Mr. President, the balanced budget amendment would reject the wisdom both of Hamilton and Madison by adopting supermajority requirements that would transfer power from majorities to minority factions. And George Washington in his Farewell Address warned against parties and factions. Sections 1 and 2 of the constitutional amendment to balance the budget would require that deficit spending and increases in the statutory debt limit be approved by three-fifths of the whole number of each House. Section 4 would impose a minisupermajority requirement, in that revenue increases must be authorized by a majority of the whole number of each House. Meaning in the Senate, 51 votes would be required to increase revenues, and in the House 218 votes would be required, 217 would not be enough, 218 votes would be required to pass legislation in the House to increase revenues—rather than, as is usual, by a majority of Members present and voting. Were the Framers wise? To ask the question is to answer it. This minisupermajority that is required for revenue increases flies in the face of Madison's warning against a requirement of ''more than a majority of a quorum for a decision.''

Defenders of the balanced budget amendment often say, what is so bad about supermajority requirements? After all, the Senate in its own rules requires a supermajority for cloture on filibusters. So why is it so bad to have in the Constitution a requirement of a supermajority? The proponents also refer to the supermajorities that are mentioned in the Constitution and the amendments thereto. But these existing supermajority requirements furnish no precedent for those in the balanced budget amendment, for they are fundamentally different in kind.

Rules on parliamentary procedures that the Senate adopts for its own governance are surely no model for an alteration of the Nation's fundamental charter. Anybody who argues that point simply does not, and has not stopped to think, knows very little about the Senate rules, and very little, in all likelihood, about the Constitution. Such rules of the Senate can be changed by the Senate acting itself alone, and are not comparable to an amendment to the Constitution, which requires the support of both Houses of Congress by a two-thirds vote and three-fourths of the State legislatures for adoption.

Although the Constitution does impose some supermajority requirements, it does so quite sparingly, and only for good reasons, namely, to provide one branch a check upon another branch—for example, treaty ratification and veto overrides. In the case of a treaty approval, the legislative branch—one component thereof; namely, the Senate—acts as a check upon the executive, in the ratification of treaties that bind this Nation in its relations with other nations. It is a check and balance. A supermajority is also required for a veto override, and again provides a check and balance between the executive and the legislative branch. One of the Framers stated that the one reason for the veto itself was that the President, the Executive, could provide protection for himself and his office, against the legislative branch. So he was given the veto. That is check and balance. Other supermajorities in the original Constitution were to protect individual rights. For example, in the case of the expulsion of a Member of the Senate or of the House, a Member cannot be expelled by a simple majority. It requires two-thirds of the Senate to expel a Senator, two-thirds of the House to expel a House Member. These supermajorities are provided for the protection of individual rights, the individual rights of the Members of the two bodies, else a simple majority could expel Members of the minority, get rid of them, send them home, expel them by a simple majority. A supermajority is there for the protection of the individual rights of the elected representatives of the people.

The same is the case with impeachment. Were there not a supermajority required, then an impulsive and partisan majority in the Senate could convict a President in an impeachment trial. That almost happened with Andrew Johnson, as we all know. So that supermajority is required to protect individual rights, the rights of a President, the rights of other officers who may be impeached, the rights of Federal judges who may be impeached. The supermajority required in article V is to insure that the fundamental charter of this Republic not itself be too freely amended.

Amending the Constitution is provided for, but the Framers wisely established that amendments not be adopted and ratified too freely. Thus, we have only seen 17 amendments added to the original Constitution and Bill of Rights. They were wise men.

Then there are certain other supermajorities. Amendment XII of the Constitution deals with the election of a Vice President by the Senate. In the 14th amendment, a supermajority is required to waive the disability upon individuals who, having previously taken

the oath of office to support the Constitution, later engage in rebellion against the United States. It requires a supermajority in both Houses to lift that disability from such individual. I am not against amending the Constitution. Our forefathers provide for that situation, and I have voted for five constitutional amendments to the Constitution.

Hence, there are nine supermajorities of one kind or another in the original Constitution and the amendments thereto. I think it is very unwise, however, to provide a constitutional amendment that requires a supermajority in the enactment of a fiscal policy.

There is one other supermajority, and that is the supermajority written into the original Constitution that dealt with the matter of a quorum in the election of a President when such election is thrown into the House of Representatives.

So there you have it. These are all structural concerns or, as I say, they provide basic protections for individual rights. They are structural concerns that deal with the structure of this form of government as established by the original Framers—and the States and people thereof, who ratified the Constitution—or they deal with rights of individuals.

The supermajority requirements of this balanced budget amendment embody no such structural concerns and no protections of individual rights. Rather, the supermajority requirements to the balanced budget amendment would for the first time in our constitutional history—the first time in 206 years—inject a minority veto into the ordinary processes of the determination of fiscal policy within the legislative branch. The danger of supermajority requirements in this policymaking context is that a minority of either House can hold the legislative agenda hostage, blocking majority choices until the minority factions obtain the policy concessions that they want. James Madison described this very danger in Federalist No. 58, where he warned that supermajority requirements permit the minority—permit the minority—to ''extort unreasonable indulgences'' from the majority. In the business of budget balancing, permitting such minority vetoes might actually be counterproductive if it fostered minority demands for expensive pet programs as the price of deficit spending authorizations.

The rules laid down, therefore, are those of parliamentary procedure, which may belong in the rules of the Senate and the House of Representatives, but not in the Constitution. To insert parliamentary rules into the Constitution cheapens—cheapens—that basic charter and erodes the respect upon which its vitality and usefulness depend.

There would be years in which three-fifths majorities of the full membership of both Houses of Congress authorized spending in excess of receipts, and there would be years in which expenditures outran receipts because actual receipts fell short of honest and careful estimates, or because actual expenditures exceeded the best and most careful estimates. As these deficit years occur down the road, what would be the reaction of the citizens who supported this amendment and who were told that the amendment would produce a balanced budget each year? The result surely would be disillusionment, cynicism, distrust of those who govern, and loss of confidence in our basic, fundamental, organic law: the Constitution of the United States.

The operation of the budget, appropriations, and revenue processes are so highly complex that disputes are bound to arise. Forecasts with regard to both receipts and outlays vary so widely that violations of the requirement that outlays shall not exceed receipts in a given year are bound—bound—to occur.

I have shown that. I have shown charts that demonstrate that fact time and time again.

Old disputes about the separation of powers, reminiscent of the impoundment controversy of the Nixon administration, would be reopened.

How many Senators here today were Members of this body when that controversy occurred? Very few.

The powers of the executive vis-a-vis the legislative branch will, in all likelihood, be substantially enlarged.

Who are the proponents of this balanced budget amendment? Are they monarchists? Are they monarchists who want to see the power shifted to the executive? Do they want an all-powerful, imperial President?

To rivet into the Constitution this amendment calling for a balanced budget annually would be to Constitutionalize fiscal policy, and would give rise to disputes cast in Constitutional terms, which must either go unresolved or bring the courts into the determination of fiscal policy. Few judges, if any, have expertise in such matters as fiscal policy, budgets, and appropriations, and lack the experience to guide their decisions. The courts would lack judicially manageable standards to guide their decisions, and drawing the Judiciary into budgetary, appropriations, revenue and other fiscal matters would mean an intrusion—an intrusion—into an area that Congress and the President have long regarded as their—their—exclusive domain. As a result, the stage would be set to injure the prestige and authority of the courts, as well as to impair the effectiveness of the Judiciary in preserving the ancient framework of republican government and protecting the Constitutional liberties of the nation's citizens. The people's faith in both the Judiciary and the Constitution would be seriously damaged.

Hence, the implications of an amendment for the constitutional structure of our Government and for the status of our Constitution as partisan law would be very, very serious.

That is what this amendment is. It is a partisan amendment. It is a political amendment supported by a political party. It is the Republican Party as of today in the Senate and the House that is pressing for this amendment. And they want to do it now, do it here—''Do it now; do it here; we can't wait''—because they have it in their so-called Contract With America. That so-called contract is supposed to supplant the Constitution when it comes to this amendment.

Should the measure be enforced by the judiciary, it would produce an unprecedented restructuring of the balance of power among the three branches of Government. There are no two ways about it. It would produce an unprecedented restructuring of the balance of power among the three branches of Government.

To crucify the Constitution upon the cross of the so-called Contract With America is of little consequence, provided you will give us the Barabbas of temporary partisan and political gain!

That Constitution bears the stains of blood from thousands of men and women throughout the history of this Nation—men and women who gave their lives at Valley Forge, at Saratoga, at Yorktown, at Lexington, and Concord.

Nathan Hale. Who is he? Never heard of him. Who was Nathan Hale?

Well, Nathan Hale was a young man, 21 years of age, who was a schoolteacher.

He responded to General George Washington's request for a volunteer to go behind the British lines and to bring back the drawings of fortifications. Nathan Hale responded as that old patriarch did in biblical times, ''Speak Lord, thy servant heareth.'' Nathan Hale responded, knowing that that task was fraught with danger and might cost him his life.

He went behind the British lines, disguised as a Dutch schoolmaster. His mission was almost finished when, on the night before he was ready to return to the American lines, he was discovered with notes and letters on his person, and he was arrested. The next morning, on September 22, 1776, he was brought before the gallows. He saw before him the gallows. He saw to one side, the wooden coffin which would soon claim his lifeless body. He requested a Bible. His request was refused.

The British officer, who was a major by the name of Cunningham said, ''Do you have anything to say?'' Nathan Hale replied, ''I regret that I have only one life to lose for my country.'' The British officer angrily commanded, ''String the rebel up,'' and Nathan Hale died. He only had one life to give for his country.

Yet, there are some who are unwilling to give one vote for their country—one vote. Not everybody sees this as I do, of course. I see it through the context of many, many years of dedicated service to this institution, having

sworn 13 times to support and defend the Constitution—13 times over a period of 48 years. Some of those who support this amendment are undoubtedly—undoubtedly—sincere, and they conscientiously believe that this is the only way to get deficits under control.

But not all, I would say—and I attempt to be the judge of no man and no woman, but I have talked with many Senators around here on this matter, and some have expressed strange reasons for not supporting this amendment. Some think that we ought to just wash our hands of it, let it go to the States. ''The States will not ratify it,'' they say. Some say if the States ratify it, the backlash will destroy the Republican Party in time.

Madam President, we cannot say, ''Let this cup pass from me.'' Harry Truman, even if he were in the White House today, could not say, ''The buck stops here.'' This constitutional amendment does not stop on its way to the President. It does not go to the President's desk. So where does the buck stop? The buck stops here—right here in the Senate.

I hope that Senators will think again, those who may be guided by political motives to vote for this amendment. I hope they will think again. Nathan Hale gave one life, and thousands have given their lives to sustain the freedoms that are guaranteed by the Constitution of the United States. That Constitution, as I say, is stained with the blood of thousands.

There is not one proponent of this amendment to the Constitution against whom the blood of that Constitution will not cry out as loudly as did the blood of Abel against Cain, if it is adopted. Not one!

There are those who say, ''Well, he is the chairman of the Appropriations Committee. He is the chairman of the Appropriations Committee. You would not expect him to do anything else. He is the 'king of pork.' No wonder he is against this amendment.''

Fie on such little men who think in such little terms, who have themselves, in all likelihood, never taken an oath to support and defend the Constitution of the United States. I have taken that oath, and every other Member here—man and woman—has taken that oath.

Montesquieu said when it came to the oath, the Romans were the most religious people on Earth. Marcus Atilius Regulus, a Roman consul, captured by the Carthaginians in the year 258 B.C., was sent by the Carthaginians with an embassy to Rome to plead the case of the Carthaginians before the Roman Senate and to attempt, if possible, to arrange for an exchange of prisoners, also, to endeavor to bring about a truce on terms that would be favorable to the Carthaginians. Marcus Atilius Regulus, however, when he spoke to the Roman Senate, advised the Senate against entering into any such arrangement or agreement or treaty with the Carthaginians, because such an arrangement would not be beneficial to Rome.

Regulus said, ''I know that they will know what I have said here and that I will pay with my life.'' The Roman Senate offered to protect Regulus against his being returned to Carthage. But Regulus said, ''No, I gave them my word. I swore an oath to them, which they made me do. I swore an oath to them that I would return.'' And he said, ''I will keep my oath, even when given to the enemy.''

Against the pleadings and the tears of his wife and children, Marcus Atilius Regulus returned to Carthage, and he was tortured. He was forced to lie on spikes in a specially-built enclosure from which he could only see the Sun. The Carthaginians cut off his eyelids, and he was forced to look at the Sun all day long. He soon perished!

He was a Roman who believed in keeping his oath. So we can understand what Montesquieu meant when he said that when it comes to the oath, the Romans are the most religious people in the world. I, too, am from a generation that believed in keeping its oath, when sworn before God and with one hand on the Bible.

Mr. President, if this constitutional amendment proves to be unenforceable, it would create an equally troubling hazard; namely, by inscribing an empty promise into the fundamental charter of our Government, thus breeding cynicism both toward our Government and the Constitution as well for the rule of law.

Before I diverted my thoughts to the Romans, I talked about what our constitutional form of Government would suffer in the event that the balanced budget amendment were to be ratified and enforced.

But now I say, on the other hand, if the amendment proved to be unenforceable, it would create an equally troubling hazard; namely, by inscribing an empty promise into the fundamental charter of our Government, thus breeding cynicism both toward our Government and the Constitution, as well as for the rule of law.

Keep in mind that not only would Federal judges—keep in mind that not only would Federal judges—become involved in fiscal policy, but State judges would also be required to make fundamental decisions about taxing and spending. And these are issues, I say to my friend from Georgia, these are issues that judges on both the State and Federal levels lack the institutional capacity to decide in any remotely satisfactory manner.

Some proponents of the amendment may be of the opinion that the ''political question'' doctrine or limitations on standing would preclude litigation that would ensnare the judiciary in the thicket of budgetary politics.

Some recent decisions of the Supreme Court, however, suggest that the Court is prepared—is prepared—to resolve questions that might once have been considered political. For example, in *Missouri* v. *Jenkins*, 1990, the Supreme Court upheld the power of a Federal district court to order a local board of education to levy higher taxes to build magnate schools in order to promote desegregation. And the Court even held open as a last resort the possibility that the district court might itself levy the taxes.

Now get that. ''Oh,'' they say, ''the courts won't enter that political thicket.'' It is not so much that it is a thicket, it is political. It is political. Judges are not elected by the people. Judges are not out there rubbing shoulders and elbows with the American people and hearing from them as to their advice on making law. But it is otherwise with the elected representatives of the people, who daily work and move in a political thicket.

It might not happen, but if the proposed amendment is adopted and ratified, no one, no man, no man—it reminds me, may I say to my good friend, one of the fine Senators who is on the ''Republican response team''—and I love him, I think a lot of the senior Senator from New Hampshire, I really do—but it reminds me of Odysseus.

Odysseus, Senators will recall from that great story, the ''Odyssey,'' written by Homer, who supposedly lived circa 800 years before Christ, was blind, blind like Milton who wrote ''Paradise Lost.'' Homer was blind. But he went around singing songs and poetry. Perhaps Homer's words have come down to us through the centuries, the early, early centuries, by repetition, by other men relating, speaking, and conveying the thoughts and words of Homer.

But let us say it was ''written'' by Homer. I think that is fair enough. The ''Odyssey.'' In the ''Odyssey,'' we will remember that Odysseus found himself imprisoned in a cave by the Cyclops, the giant with one eye in the middle of his forehead. He probably still had more vision than some of the proponents of this amendment. In any event, the Cyclopean giant asked Odysseus his name. Odysseus said, ''No Man.'' His name was Noman. No-man.

Well, I will not proceed with the story, but let me just say that no man, and no woman, no one should be very surprised to find a Federal court made up of unelected judges, appointed for life, enjoining expenditures selected by the court or requiring the levy of a tax. People up in New Hampshire would not stand still for that, for unelected judges levying a tax. We fought one war over taxation without representation, and the people of New Hampshire know about that.

Even if taxpayers and Members of Congress were not granted standing, the amendment could lead to litigation by recipients whose benefits, mandated by law, were curtailed by the President through impoundment of funds or a line-item veto, in reliance upon the amendment. The President might well conclude that the Constitutional command that ''total outlays for any fiscal year shall not exceed total receipts''

must take precedence over mere statutes, including appropriation bills, entitlement laws, and the Impoundment Act of 1974.

If a Presidential decision were made to order a reduction in pension payments, or in social security payments, or in Medicare payments, or in veterans compensation payments, the President could argue in defense of his action that there was a conflict between the statutes requiring these outlays and the Constitutional provision commanding that ''total outlays shall not exceed total receipts,'' and that to execute the spending statutes would result in the Constitution's being violated.

Assuming that a President concludes that his duty to comply with the Constitutional amendment implicitly includes the impoundment power or enhanced rescissions power or a line-item veto power necessary to ensure that the budget is in fact balanced, the result would be an inevitable shift of power from the Legislative Branch to the Executive Branch. At the very heart of our Constitutional system of government is the proposition that power over the raising of revenues and the appropriation of funds rests with the people's elected representatives in Congress. The shift to unrestrained Presidential impoundment and line-item veto or rescissions authority would effectively take from Congress the ''power over the purse'' and confer that power on the President.

The placing of the power of the purse in the hands of the Legislative Branch—and not in the hands of the Executive or Judicial Branches—was a decision that was not lightly made by the Framers of the Constitution. James Madison wrote in the 58th Federalist:

> This power over the purse may, in fact, be regarded as the most effectual weapon with which any Constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

That was Madison. Let me state it again. James Madison wrote in the 58th Federalist:

> This power over the purse may, in fact, be regarded as the most effectual weapon with which any Constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

So the Framers, Mr. President, explicity rejected the notion that such a crucial power should rest either with the Executive or with the Judiciary.

As I have already stated, the Courts lack not only the experience and the resources, but also the close link to the general public needed for responsible budgetary decisions. It would be a profound—a profound—mistake for Congress to adopt an amendment to the Constitution that could transfer such a vital Legislative power to an unelected Judiciary.

The Framers were well acquainted with the history of England. They were very familiar with the long and bloody struggle in which the English people had wrested from tyrannical monarchs the power of the purse and vested that power in the elected representatives of the people in Parliament. The Framers, consequently, considered that the appropriations of money were a bulwark against Executive usurpations, and they, therefore, carefully wrote into the organic law the provisions of Article I, Section 9, which guarantee that no monies shall be drawn from the Treasury but in consequence of appropriations made by the laws of Congress. It is hard to imagine that the possibility of such a dramatic reform of the basic structure of our government would be contemplated in this amendment, by the Members of both Houses of Congress, all of whom have sworn an oath to support and defend the Constitution of the United States.

On the other hand, if the amendment is to be only an empty promise welded into the fundamental charter of our government, only to have this new provision of the Constitution routinely violated, it would inevitably make all other provisions of the Constitution seem far less inviolable. Let us soberly reflect on that.

As Alexander Hamilton noted in Federalist No. 25:

> Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers toward the Constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.

Mr. President, unless a Senator has a question of me, I am prepared to yield to the Senator from Arkansas for not to exceed 15 minutes without losing my right to the floor. I do not intend to hold the floor all afternoon, but I do have some other things that I wish to say in opposition to the amendment to balance the budget.

Do not forget, I support a balanced budget. I supported lowering the deficits in the 1993 deficit reduction bill. So I support the goal of achieving balanced budgets. But I do not support the prostitution and rape of the Constitution of the United States by a Constitutional amendment that will not achieve a balanced budget but will destroy the very form of our government with its separation of powers and checks and balances.

Mr. President, I ask unanimous consent that I may yield to the Senator from Arkansas [Mr. PRYOR], for not to exceed 15 minutes without losing my right to the floor.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Is there objection? The Chair hears none, and it is so ordered.

The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I thank the Chair, and I thank the distinguished Senator from West Virginia for yielding this amount of time to me.

The other afternoon I was down visiting on the steps, the steps in the Senate where the pages sit. I gathered up four or five of the pages who diligently serve us around here and perform many, many wonderful duties for this institution and for us individually and collectively. I gathered them up and I said:

> Ladies and gentlemen, I want you to remember something. When I speak, or when a lot of us speak in the Senate, maybe from time to time you do not have to listen too carefully to what some of us have to say. But remember that when Senator BYRD of West Virginia speaks, you take time, and you listen, and listen intently to what he has to say, because you will learn something. You will learn something about this body, you will learn something about this country, you will learn something about the Constitution, and you will learn something about what makes the Senate one of the unique institutions in the world. I learn from the Senator constantly.

I thank him not only for his message today but his continuing message on this issue, relative to the balanced budget amendment.

When I was young and growing up in Camden, AR, I remember at birthday parties we used to play a game. In fact, when I raised my sons, they played the same game. Perhaps other Members of this body played a game called pin the tail on the donkey. One of us would be blindfolded, and we would be given the donkey's tail and someway or another we would try to go up to the wall or the board and find the proper place to attach the tail on the donkey. Sometimes, because we could not see it—we were blindfolded—we would not even be near our destination, or near our target.

In the last several weeks, relative to this debate—not only in this Chamber but in the other body and on the talk shows, in the media, in the public, wherever—somehow or another I am reminded of that game once again, of pin the tail on the donkey.

I think there is a lot of blame being passed around—the Democrats blame the Republicans, the Republicans blame the Democrats. We might blame this Senator or that Congressman, we blame this act or this particular time or effort or law or regulation as to why we got to this point and how we got to this point at this time in our country's history.

We are in trouble. We are in deep trouble. And this morning I heard the distinguished majority whip, Senator LOTT, as he quoted a statement that Senator DASCHLE had made 1 year ago in this debate on the constitutional amendment. At that time, Senator DASCHLE voted for that amendment, and Senator DASCHLE was quoted as giving the reasons why he was supporting that amendment.

Mr. President, I invite the distinguished Republican whip to go back to 1982, to go back to 1986, and he can find some statements of this Senator from the State of Arkansas who at that time also not only spoke on this floor but

back in my home State, as to why at that moment in our history, that window of opportunity, that I thought we had to support a balanced budget amendment to the Constitution. I believed it then. I believed it in 1982. I believed it in 1986.

Not long after those votes, I also voted for two extremely far-reaching, extremely strict, you might say, proposals that would have frozen spending across the board. In the early 1980's, I supported those particular freezes.

But, Mr. President, something has happened since that period of time. Something has happened to have dramatically and drastically changed the economic and fiscal landscape of America. What has happened is very simple, and I will use the analogy that after the mid-1980's we let the horse get out of the barn.

The horse got out of the barn, and today, we are being asked for support by our wonderful friends, like Senator SIMON of Illinois, who believes with all of his heart that this constitutional amendment is the way to get this horse back in the barn.

Mr. President, I respect my friend from Illinois. I respect my friend from New Hampshire. I respect my friend from Utah—in their belief that a constitutional amendment, where we would balance the budget in the next 7 years is the proper way to get the horse back in the barn. I truly believe it is wrong to attempt to amend the Constitution to bring the horse back in the barn. I think what we are doing, if I may use this analogy, is we are attempting with a constitutional amendment to lasso an elephant with a piece of thread. It cannot be done.

The trouble is not in the Constitution. This is not where the trouble is. It is not in the Constitution that was passed in Philadelphia over 200 years ago. The trouble is in us. That is where the problem lies.

The problem is in me, Senator PRYOR from Arkansas. In 1981, I voted for then-President Ronald Reagan's proposal to increase spending and to decrease taxes. There were 11 Members of the U.S. Senate who voted against that package, and I wish I could say today I had been one of those 11, or that I had made number 12. I was not. I bought on to the idea: We have a new President, let us give him an opportunity to show us what he can do. And I supported President Reagan's package.

In retrospect, I was wrong. So I would like to stand here today and take blame. I will take the blame for making a mistake that helped cause these massive deficits and this gargantuan, absolutely awesome national debt.

So here we are, almost on the eve of voting whether or not we want to refer to the States an amendment to cause, demand, and mandate a balanced budget.

Last Friday morning, I happened to be in this body, fortunately enough, as the Senate was opened with a prayer by Rev. Richard C. Halverson, Jr. I thought the prayer was timely, and I thought it was poignant. I would like to quote, if I might, Mr. President, from that prayer of Dr. Halverson.

> Once again, in the urgency of this hour, we beseech Thee for divine assistance. We pray for a hedge of enlightened restraint around this ''necessary fence'' of the Senate. For through this body, regulations must pass that will either strengthen or weaken our country.

Dr. Halverson's ''necessary fence,'' of course, is a reference to James Madison who called the Senate, this body, this institution, ''a necessary fence to protect the rights and property of its citizens against an impetuous public.''

Mr. President, James Madison feared that the Congress from time to time might act impetuously to please the public. Reverend Halverson continued in his prayer last Friday morning, and once again I quote.

> As pressures mount for instant solutions to complex problems, grant those who hold this ''senatorial trust'' the calm resolve to be not driven by public restlessness, nor drifting in stubborn idleness, but drawn by Thy vision of righteousness—which upholdeth the Nation.

That was an insightful prayer, Mr. President. I hope that Dr. Halverson's prayer are the words that set the tone for this debate. The public is restless. They are demanding instant solutions. They are demanding action, and one instant answer is this very imperfect balanced-budget amendment is before us today.

It is like a bottle of snake oil because it promises to solve all of our budget problems. But what it delivers are loopholes and false hopes. It gives politicians the easy and the temporary cover to go back home and to say we have voted to balance the budget.

There are loopholes, Mr. President, throughout this proposal. And their inclusion assures that false hopes will be created and this is just what our country and just what Americans do not need right now.

Loophole No. 1. Right at the top of this balanced-budget amendment is the three-fifths loophole. Section 1 says that three-fifths of the House and three-fifths of the Senate can vote to completely waive the balanced-budget requirement for a year. I believe the framers of the Constitution placed provisions in the Constitution which they held inviolate.

For example, in the first amendment of the Constitution, it does not say that ''Congress shall make no laws respecting an establishment of religion unless three-fifths of each House passes legislation specifying otherwise.''

The 13th amendment, for example, does not provide that slavery or involuntary servitude shall exist in the United States unless three-fifths of each House passes legislation specifying otherwise.

Mr. President, the reason that the three-fifths requirement sounds ridiculous is because it is ridiculous.

I do not believe that we should pass this amendment. I do not believe we should pass it with or without this particular loophole. But if the supporters of the balanced budget amendment think it is the panacea to all of our problems, why create a three-fifths loophole? Why not, if we are going to require a balanced budget? Why do we not require a balanced budget, period?

This is the second loophole, Mr. President. That loophole is the definitions game. Section 6 of the balanced budget amendment provides that estimates of outlays and receipts may be used by Congress when drafting legislation to enforce and implement the provisions of this amendment. Nowhere in this amendment before this body today, and nowhere in the Constitution, are the words ''outlays or receipts'' defined.

Why would the word ''outlays'' need to be defined? Because outlays are the moneys that the Government spends. And without an airtight definition of what constitutes spending we had better realize that clever lawyers are going to find many ways to circumvent the intention of this amendment, whatever it may be.

The same goes for the definition of ''receipts.''

Take the example of sales of Government assets. If someone were to propose that we sell Mount Rushmore, would the money collected when we sold Mount Rushmore represent a receipt under this amendment? It might and it might not.

How about user fees? Will moneys collected from new user fees be considered a receipt? They might. But they might not.

It is no wonder that Judge Bork has recently said that we had better anticipate not only hundreds but perhaps thousands of lawsuits and other forms of litigation in this particular area.

Mr. President, I wonder if the distinguished Senator will yield me perhaps 5 additional minutes?

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield an additional 5 minutes to the distinguished Senator from Arkansas [Mr. PRYOR] under the same terms as heretofore agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRYOR. The Senator is very generous. I thank him.

Mr. President, what we are doing today is looking at a possibility of adopting perhaps the greatest sea change in the relationship between the judiciary, the executive branches of Government, and the legislative branches of Government that we have ever concerned ourselves with. The definitional games are going to be played necessarily on what is or is not an outlay or what is or is not a receipt. But the definition games will not be limited to just these issues. And I can say, in my opinion, there are not going to be any winners in this definitional game under these false promises.

Mr. President, there is a third loophole. There are many loopholes. But

No. 3 is, I think, one of the more serious—determining what an estimate is.

Who makes those estimates? If one estimator's ''estimate'' comes out one way, the budget may be in balance. If we use another estimator's estimate, we will no doubt have different estimates and then be out of balance. More lawsuits will ensue.

It sounds like estimators, not Congress, would control the measure of our outlays and receipts, and ultimately, the decisions effecting our lives.

The point is that estimates can differ, and they can differ drastically. Estimates can be flat wrong. Human nature being what it is, estimates can also be manipulated. In any case, do we really want something as unreliable as economic estimates to become the underpinning of the United States Constitution? I do not believe, notwithstanding that the people of our country want us to balance the budget, that they want to underpin the U.S. Constitution with something this illusory.

The estimation game is one more loophole through which runaway Government spending is going to continue. It will take the decisionmaking process out of the hands of the people and the Congress, and place it in the hands of the economists and the estimators who seldom agree on anything.

The fourth loophole, Mr. President—Let us assume that all of our numbers, estimates, statistics and forecasts are correct, and we are struggling to meet the requirement of a balanced budget. Then what Congress will do is probably start playing budget games.

Is there not one of us who has been here for any length of time who has seen the game of putting certain functions of Government on budget or off budget? Mr. President, I predict under this constitutional amendment, if it were a part of our Federal Constitution, that we would spend the majority of our time not balancing the budget, but figuring out which Government programs were on budget and off budget, which programs raise money, and which programs cost money. And we will have many, many heated debates on what should and should not be included in that budget.

The temptation to take deficit programs ''off budget'' is going to be great. For example, today under section 13301 of the Budget Enforcement Act, we forbid the use of Social Security trust fund surpluses to offset the Federal deficit.

However, under this constitutional amendment, we are going to apparently use Social Security surpluses for that purpose. Many, many experts are predicting that in the year 2013, Social Security will begin to run its own deficit. At that point, the temptation will be to put Social Security off budget in order to meet the balanced budget constitutional requirement.

Nothing in this amendment prevents this chicanery, and we all know it will occur. Will this inspire confidence? No. Will it balance the budget? No.

Mr. President, there are big questions about this amendment. I have discussed just a few loopholes and gimmicks. This amendment to the Constitution deserves as much time as necessary to clear the air.

I am almost out of time. But I want to simply state that I think this has been a splendid debate. I think that we have not, in any way, caused anyone to truly believe that we are attempting a filibuster on this side of the aisle. We have had very few quorum calls. We have had, in my opinion, a debate that is one that will go down in the record books. I truly believe it is one of the better debates that the U.S. Senate has ever engaged in.

Once again, Mr. President, I do not feel that our situation today with regard to these awesome Federal deficits is the fault of the Constitution. It is our fault and it is our obligation to cure those problems by making the hard decisions, the tough decisions that all of us know we have to make to balance the budget.

Mr. BYRD. I thank the distinguished Senator from Arkansas [Mr. PRYOR] for his lucid, incisive observations.

Mr. President, I yield to the distinguished Senator from New Hampshire, [Mr. SMITH] with the understanding that I do not lose my right to the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. Mr. President, I do appreciate the Senator yielding briefly to me. In the spirit of friendly debate, I ask the Senator if there was any significance to the fact that when I happened to come on the floor to give relief to Senator HATCH, who has been out here many hours during this debate, he mentioned Cyclops. I wondered whether there was any significance to that fact that when he saw me on the floor, immediately the debate went to Cyclops. I think he is a better expert on history than I am, for sure, but the Cyclops had one eye, as I remember. I suppose there is some relevance here, because it is going to take more than one eye to stay focused on where this debate is going and where this debt is going in this country.

I do not know if the Senator wishes to respond, but I did take notice of that fact that immediately, Cyclops became the topic of discussion when I came on the floor.

Mr. BYRD. If the Senator will indulge me briefly.

Mr. President, I will try to answer the Senator's question. Indeed, the Senator's appearance did not have any part in my reference to the Cyclopean giant. I just wish that, if I ever became involved in a street brawl in this city, the distinguished Senator from New Hampshire would be around close by. If I could have him and Senator HOLLINGS there to help me, I would feel like fighting rather than running. He is a genuinely congenial Senator and I have enjoyed my service here with him. We have often talked and discussed matters together. I value his friendship and his advice and counsel. I do not always follow it, but I certainly listen to what he has to say. I will say that I really was pleased to see him come on the floor, because he is one of those distinguished Members of the ''Republican response team,'' and he is a very worthy one. He has been around here a while. I consider him as a formidable and respectable protagonist of the constitutional amendment to balance the budget.

I think that answers the question, except there is one further matter he mentioned, the matter of having one eye. The giant in the story by Homer had one eye, and the distinguished Senator referred to the national debt, namely that an individual would need more than one eye to see the national debt because it is so high.

I remember that during the early first administration of President Reagan, I saw the President on television. He was very effective. He had a chart and he pointed to that chart which had a line drawn to represent the national debt at that time, in terms of $1,000 bills. He said, if I recall, that if one had $1,000 bills stacked 4 inches high, the stack of $1,000 bills would represent $1 million. Mr. Reagan indicated by the chart that the stack of $1,000 bills necessary to reach the then sum of the national debt, which at that time was just a little under $1 trillion, would require a stack of $1,000 bills 63 miles high.

That was the last time Mr. Reagan ever appeared on television using that chart, because when he left office at the conclusion of his second administration, that stack of bills, using his chart, would by then have reached about 237 or 240 miles into the stratosphere—because the Nation had added to its debt almost an additional $3 trillion during his 8 years in office. And then, of course, under the administration of Mr. Bush, the debt continued to grow.

I thank the Senator for reminding me of that chart.

Mr. SMITH. Will the Senator continue to yield to me?

Mr. BYRD. Yes.

Mr. SMITH. The Senator mentioned he might like to have me on his side in a fight at some point. This is my fifth year in the Senate. It does not come anywhere near the number of years the distinguished Senator has served here, but I am hoping that someday before either one of our terms is over in the Senate we might be on the same side on an issue, as he is a very worthy adversary.

The Senator referred to a comment that I made a few days ago that made the national press; that it was our goal to wear the Senator from West Virginia out so we could get the balanced budget amendment to a vote. And the Senator is a very worthy adversary, because we have not been able to do that yet. Even though we have had a number of us out here relieving one another, the Senator still stands on his

feet and still continues to debate, which is really the great thing about the Senate.

Over behind my desk, there is the desk of Daniel Webster, one of the greatest orators in the Senate. The Senator from West Virginia certainly ranks up there in oratorical skills with those great Senators of that time—Clay, Webster, Calhoun, and so many others.

But it does remind you that the time we spend here is very fleeting; that we are only temporary stewards of this country.

But I think, in that perspective, if the Senator would continue to yield just for a moment, it is important to realize the significance of this debate. I think this is a debate of historical significance.

The Senator from West Virginia and the Senator from Arkansas mentioned the fact that the debt went up significantly during the Reagan years when Reagan was President. That is accurate.

However, during those years, there were a lot in the Senator's party in Congress who certainly contributed to that. All of the Reagan budgets, at least from when I was here from 1985 through 1988–89 during the Reagan years, they were always dead on arrival and so predicted before they got here. And then they were increased by the party in power in the Congress. So the debt went up, true, while Reagan was President, but whether or not it went up all because of Ronald Reagan I think is something that I would take pretty sharp issue on with the Senator.

Mr. BYRD. Will the Senator yield on that point?

Mr. SMITH. It is the time of the Senator from West Virginia.

Mr. BYRD. Number one, the Senator has stated that all of the Reagan budgets were dead on arrival. I call the distinguished Senator's attention to the fact that some of those budgets were subjected to a vote in this body or the other body or both and the Republican Members did not vote for those Reagan budgets. I believe I am correct in that. If I am not, I will be glad for someone to correct me.

Second, the Senator is in error—I know this to be a fact—when he indicated, as I thought I understood him to so indicate, that in the case of all of Mr. Reagan's budgets the Congress increased those budgets. That is not the case, if I understood the Senator correctly.

Mr. SARBANES. The Congress reduced them.

Mr. BYRD. The Congress reduced Mr. Reagan's budgets in some of those years, in some of the Reagan years.

Going back to 1945, the accumulated requests of all the Presidents exceeded the accumulated appropriations by the Congress—exceeded the accumulated appropriations by the Congress—over that same period.

But precisely under Mr. Reagan, I say again, the Congress did not exceed his budgets in every year. In fact, in some years Congress appropriated less than the budget requests.

Mr. SARBANES. Will the leader yield?

Mr. SMITH. But the Senator knows, as an expert on the Constitution, that the Congress of the United States controls the purse strings. The President does not spend any money without the approval of Congress.

So I think, to be fair about it, it would be fair to say that Congress is ultimately responsible, not the President, for increasing the debt. The President's budget is purely advisory. We do not have to agree to it. We can increase it, decrease it, ignore it, kill it, do whatever we want to do with it. But the Congress appropriates the money. The Congress authorizes the spending. And it is the spending that drove the debt up over that period of years.

And I would accept that there is certainly enough blame to go around between the two parties. But my point is, I think it is unfair to say that Ronald Reagan alone was responsible for the debt that we have today.

Mr. BYRD. As the Senator says, there is enough blame to go around. But the President, Mr. Reagan, never once submitted a balanced budget to the Congress.

Mr. SMITH. That is accurate. He should have, but he did not. The Senator is right. And neither did the Congress.

Mr. BYRD. Pardon?

Mr. SMITH. Neither did the Congress.

Mr. BYRD. Well, President Carter did. President Carter once submitted a balanced budget.

I sat right over here in room 211. I was then the majority leader of the Senate. I sat over in room 211 on a weekend, brought my little paper bag, with some coal miner's ''steaks''—slices of baloney—in that little paper bag. We had the Secretary of the Treasury, the Director of the Office of Management and Budget, and others. We had the President's men in that room, and we sat through Saturday and Sunday—and I believe Senator SARBANES of Maryland, who is now on the floor, was there at that time—and we hammered out a balanced budget.

But, the President also has a veto pen. And Mr. Reagan never once vetoed any appropriation bill for that reason, in particular. He vetoed some bills for other reasons.

Mr. SMITH. Will the Senator yield for just a brief response to that?

Mr. BYRD. Yes.

Mr. SMITH. That is true. But, as the Senator knows, the Congress during those years rolled these huge continuing resolutions in to the President with everything from Social Security to defense and every little program that could possibly hurt anybody in America all rolled into one, essentially saying, ''Well, Mr. President, if you veto this, then we will shut the Government down and stop the Social Security checks.''

So, as I say, I think the reason we are here today is because of the irresponsibility, essentially, of the Congress, not any President, over the years.

As we debate today right now on the floor of the Senate, $9,600 a second the national debt increases. It increases $576,000 a minute, $34,560,000 an hour, and $829 million a day—almost a $1-billion-a-day increase as this debate continues.

Mr. BYRD. Senator, ''You cram these words into mine ears against the stomach of my sense.''

The Senator spoke of the omnibus continuing resolution. I have a little grandson who would say, ''Do you know what?''

Well, do you know what? On that continuing resolution that was so heavy and that Mr. Reagan dropped on the table before a joint session of the Congress, do you know what? He asked that those appropriations be sent to him in one bill. I was here. I know. He asked that they be given to him in one bill.

Any further questions?

Mr. SMITH. Well, you did not give him any choice.

(Mr. KYL assumed the chair.)

Mr. BYRD. Oh, yes. He asked for it.

Mr. SMITH. Not really. If Congress controls the purse strings, I say to the Senator from West Virginia, and the national debt increased $3 trillion during those years, how can we blame the President? I mean, whose responsibility is it?

Mr. BYRD. Well, there is enough to go around, but in the case of the 1993 budget deficit reduction package, I would shift the blame in large measure, to those who did not support that deficit reduction package.

They sat here in the Senate. They sat in the House. We had a 1993 deficit reduction package that reduced the deficit over a period of 5 years by $482 billion. Somewhere between $450 and $500 billion. Not one Republican Senator voted for that deficit reduction package.

Actually, the deficits have been reduced more than that. They have come down 3 consecutive years. Not one Republican Senator voted for that package. Why?

Mr. SMITH. Mr. President, I would be happy to answer on behalf of the Senator from New Hampshire. The Senator from New Hampshire voted against that package for a number of reasons.

One, $250 billion in increased taxes on the American people was in it. No. 2, the projections beyond the 5 years in that budget that the Senator mentioned, the deficits go up. As we see from the follow-on budget that the President has sent, we are looking at an annual average increase of $200 billion a year. And the deficits will add $1.5 trillion more to the debt by the turn of the century. He did not take the corrective action that was necessary to continue the downward spiral.

True, deficits went down for over a 5-year projected period, largely due to the tax increases, not a lot of spending cuts. When we look at the outyears, the six, seventh, the eighth, they go like this, and under the President's projections those deficits will be over $350 billion as we turn into the 21st century.

That is not making the corrective decisions that need to be made to turn the country around, which is why we need the amendment. If Congress had the discipline we would not be here. They do not have the discipline. This chart proves it.

There are a number of attempts at balancing the budget of congressional action over the years that were taken but they never got the job done. One of the more recent ones is Gramm-Rudman-Hollings. Lot of fanfare. What happened? We walked away from it because Congress did not have the discipline to do it.

A comparison or analogy would be the Base Closing Commission. Congress did not have the courage to close bases that we did not need, so they created a commission. Some said we should create a commission to balance the budget. The point is the amendment forces us. It is unfortunate, I agree with the Senator. I wish we would not have to be here saying we needed a balanced budget amendment to clutter the Constitution to balance the Federal budget. We should do it. But we do not do it, and we will not do it until we have the amendment.

That is why we have to have it. If we do not, I would say to the Senator, our grandchildren are going to have a country that I cannot imagine. I can imagine a press conference by a President in the future, maybe not too many years, where he comes on television and says, ''My fellow Americans, I have some very dismal news to share. We cannot meet our fiscal obligations, and I will go to Mexico and Japan and China, who knows where, and see if I cannot borrow some money to meet our obligations.''

That is going to happen, I say to the Senator from West Virginia, because he knows we have to meet obligations. We are going to get to the point where we cannot. Interest is consuming us. Interest is now 16 percent of our budget. Sixteen percent of our budget, and defense is 16 percent of our budget. Interest is going this way and defense is going this way.

I would say to the Senator, where do we stop it?

Mr. BYRD. Will the Senator allow me to answer the question?

Where do we stop? We have to, in order to stop it, we will have to swallow some tough medicine. We have already seen the Republican Senators turn tail and run when it came to tough medicine in the 1993 budget deficit reduction package.

Well, that was tough medicine. I assume, by what my friend has said, it was tough medicine because it raised taxes. The Senator must come to a conclusion at some point in time that this budget cannot be balanced simply by cutting, cutting, cutting. Discretionary spending has been cut to the bone.

There has to be at some point in time, a combination of cuts and tax increases. There has to be.

I heard a Senator on the Republican side of the aisle the other day say he would never, never vote for a tax increase. Well, he has the right to take that position if that is the way he feels.

That kind of an attitude is never going to get this budget in balance. The Senator talks about our children and grandchildren. I suppose then, that rather than vote for a tax increase we should just put this burden of debt over on our children and grandchildren. I have children, I have grandchildren. Are we going to stand here and say to them, ''You children, you future generations will have to raise taxes because we do not have the guts to do it''?

We have been on a national credit card since 1981. I can remember those good-feel messages that used to be issued during the Reagan years from the oval office. Every morning. ''Good morning in America, everything is fine.'' There really is a free lunch.

But we say we will not raise taxes. We have more than one tool by which to bring budgets into balance. That effort must not be limited simply to cutting programs. I have voted to cut spending programs. I will vote further to cut spending programs. But we cannot put aside the tool of revenue increases. The men who framed the Constitution provided for revenues to be increased to pay the debts to provide for the common defense and the general welfare.

But if we are going to take the position that the only thing we will support is to cut, cut, cut, programs but we will not raise taxes, then we are cheating our children and grandchildren.

I say we have to combine these tools if we really, really, really mean business.

Mr. SMITH. Mr. President, would the Senator yield for one more point?

Mr. BYRD. Mr. President, let me first yield to Mr. SARBANES. He has been asking me to yield, and then I will be happy to yield to the Senator.

Mr. SARBANES. Mr. President, I wanted to direct an inquiry to the distinguished Senator from West Virginia with respect to the supermajorities that are provided for in this amendment.

As the distinguished Senator has very ably pointed out, the Founding Fathers rejected supermajorities. Both Hamilton and Madison are very explicit in the Federalist Papers about the dangers of supermajorities and the power we place in the hands of minorities.

The argument has been made here on the floor by proponents of this amendment that they have certain waiver provisions in the amendment and if we ever found ourselves in the difficult circumstance clearly a waiver would be obtained and we would be able to address issues of national importance.

The Senator earlier talked about the fiscal provisions, but I wanted to direct his attention to another section, and that is the national security section. I submit to my colleagues that this is very serious business and it is time to stop playing games. The Senator from West Virginia just pointed out one game. People are for the balanced budget amendment but they will not vote for the deficit reduction package. There is a tough deficit reduction package and they say, ''No, I cannot vote for that but I am for amending the Constitution to require a balanced budget.''

Let me leave that for a moment and let me talk about the national security section which is section 5. I want Members to stop and think about this very carefully because we obviously need to stop, look, and listen before we place ourself into any framework that could conceivably endanger the national security of our country.

The provision says that Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

We do not have many declarations of war. We can get involved in a situation we have to deal with, but we do not have a declaration of war. It then goes on to say:

> The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and if so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

In other words, if you are facing a threat, an imminent threat the amendment may be waived. The amendment does not even address the situation in which we are not yet engaged in military conflict.

I ask the distinguished Senator from New Hampshire, who is on the floor, suppose we are not engaged in a military conflict, there is just the danger of a military conflict breaking out which requires us to take action involving the expenditure of moneys. Could you waive that with a joint resolution? I ask the Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Maryland for the purpose of his engaging in a colloquy, if they so wish, with the Senator from New Hampshire, without my losing the right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. I ask the Senator. It says, if engaged in military conflict, you may waive it. Suppose you are not engaged in military conflict but you need to prepare for a possible engagement in military conflict; you need to

take actions which will cost money, which will unbalance your budget, in order to deter the potential of a forthcoming military conflict. Can you waive that under this provision?

Mr. SMITH. Would the Senator like me to respond to that?

Mr. SARBANES. Certainly.

Mr. SMITH. The Senator knows very well that this debate is simply an attempt to divert attention from the real problem. You just mentioned a moment ago the tough deficit reduction——

Mr. SARBANES. No, no, I yield to the Senator to respond to my question. The question is on the national security issue. The question is specifically addressed to section 5 of House Joint Resolution 1, and it specifically goes to the question of whether you could have a waiver where we were not engaged in military conflict but needed to take action in order to address a potential military conflict.

Mr. SMITH. Well, since the Senator wants me to respond to certain parameters rather than the parameters I prefer to respond, I say: ''Declaration of war is intended to be construed in the context of the powers of the Congress to declare war under article I, section 8. The committee intends that ordinary and prudent preparations for a war perceived by Congress to be imminent would be funded fully within the limitations imposed by the amendment, although the Congress could establish higher level of spending or deficits for these or any other purposes under section 1.''

Mr. SARBANES. I know the Senator from New Hampshire is reading the report, but it does not really answer the question. The first provision says that Congress may waive it for any fiscal year in which a declaration of war is in effect. I am addressing a situation in which a declaration of war is not in effect.

Mr. SMITH. I can read it——

Mr. SARBANES. I am addressing a situation in which we are not actually engaged in military conflict, but we want to take actions to forestall a military conflict. Can you waive it?

Mr. SMITH. Is that not ordinary and prudent preparations for war? Yes, that is ordinary and prudent.

Mr. SARBANES. You can waive it?

Mr. SMITH. It did not say waive it. ''The committee intends that ordinary and prudent preparations for a war perceived by Congress to be imminent would be funded fully * * *'' There is nothing to waive.

Mr. SARBANES. Fully funded; in other words, you can violate the requirements of the balanced budget amendment.

Mr. SMITH. Not at all. That is not what this says. The truth of the matter is, there will not be any funds even to conduct war if we continue along the lines that the Senator from Maryland would like to go, which is literally to bankrupt the United States of America. We will not have any money to spend on defense.

Mr. SARBANES. What does the Senator make of this waiver provision? What is its intention to be in section 5?

Mr. SMITH. This is the time of the Senator from West Virginia. I am not going to engage the Senator on the time of the Senator from West Virginia.

Mr. SARBANES. I see. I regret the Senator does not want to respond. If the Senator from West Virginia will continue to yield?

Mr. BYRD. Yes.

Mr. SARBANES. I regret the Senator from New Hampshire does not want to address that question. Let me just point out to the Senate that when you really get down to some of these hard questions, the proponents of this amendment just slide off them and they say, ''Oh, well, we would get a waiver.''

The waiver that is required here is declared by joint resolution adopted by a majority of the whole number of each House and, as the very able Senator from West Virginia has pointed out, this is contrary to what the Constitution now requires.

What this waiver means is that you would have to have 51 votes in the Senate and 218 votes in the House. I have heard the proponents stand on the floor and say, ''Don't worry, no problem. If a situation arises, clearly the Members will vote for the waiver and we will be able to address it, we will get these votes, there is no problem.''

I just want to recount one story, because this is very serious business, I suggest to the Members.

On August 12, 1941, the House of Representatives was confronted with the issue of extending the time of service of those members of the armed services who had been drafted the year before.

In the summer of 1940, the Congress had passed the Selective Training and Service Act, and, under it, people called up were to serve for 1 year—the President could extend the period indefinitely if Congress declared that the national interest is in peril.

On July 21, 1941, with the prospect of war increasing, President Roosevelt acted. In a special message to Capitol Hill, he asked Congress to declare a national emergency that would allow the Army to extend the service of draftees. The President came to the Congress and asked them to make this extension. Everyone is telling us that ''if we had a national emergency, surely the Congress would act.'' The measure regarding the draft for World War II passed the House of Representatives by a vote of 203 to 202. It passed the Senate by a vote of 45 to 30.

Now, just think of this. We are literally a few months away from the outbreak of World War II. The President has said to the Congress, ''There is a national emergency. I ask you to extend the time of duty of those who had been drafted the previous year for a 12-month period. The storm clouds are on the horizon for all to see. We need to take action.''

In many ways, it is comparable to envisioning a waiver situation for national security under this amendment for which the proponents say, ''Oh, if there is a real problem, we'll get the waiver and we'll address our national security situation.''

At that time, the vote in the Senate was 45 to 30; in the House of Representatives, 203 to 202. Neither of those votes meets the requirement of section 5 of this balanced budget amendment proposal. Even though in both instances a majority of those voting on this draft question voted to extend it, 45 to 30 in the Senate, 203 to 202 in the House, with Speaker Rayburn going into the well of the House in order to bring about that vote, neither of those votes is a majority of the whole number of each House, which is what this amendment requires.

So I ask my friends, the proponents of this proposition, how have they provided for the national security of the Nation? I am giving you an absolute, specific demonstration of an instance in which anyone looking back upon it would say clearly there was an important national security question that needed to be addressed and yet the vote to address it would not carry the day under the requirements of section 5 of this balanced budget amendment. The section states ''So declared by a joint resolution adopted by a majority of the whole number of each House,'' which means you have to have 218 votes in the House—it carried in the House 203 to 202; it did not have 218 votes—and means you would have had to have 49 votes in the Senate. It carried in the Senate 45 to 30, but it did not have the necessary 49 votes in the Senate. There were 48 states in the Union during World War II and 96 Senators; therefore, the whole number would be 49.

Now, this is the absolute harm which supermajorities can potentially do to the national security of our Nation.

Mr. SMITH. Will the Senator allow me to respond to that?

Mr. SARBANES. Sure.

Mr. SMITH. The point is, it is very clear in the language that I have just indicated on the amendment as well as article I of the amendment. The Senator is correct that it does take a three-fifths vote. Now, the point is——

Mr. SARBANES. Will the Senator yield at that point? This requirement, as I understand it, does not take a three-fifths vote.

Mr. BYRD. Right, it does not.

Mr. SARBANES. This requirement requires the supermajority in the sense that it required that it be adopted by a majority of the whole number of each House.

You see, this is very important, and I am glad we are having this discussion because it is important to know exactly what this resolution provides and how it would work in real-life situations. There is a great tendency to just brush it all aside, and in fact I think this exchange illustrates that because I am not now focusing on the three-fifths requirement. That is a different issue.

Mr. SMITH. It is not a different issue.

Mr. SARBANES. I am focusing on the section 5 provision, and its supermajority requirement of the majority of the whole number of each House.

Mr. SMITH. But the Senator is focusing on that and ignoring article I, which allows you to raise the debt if you need to raise the debt in order to deficit spend, in order to deal with the emergency that the Senator is talking about.

Mr. SARBANES. By a three-fifths vote.

Mr. SMITH. That is what the Senator chooses to ignore, because that answers his question.

Mr. SARBANES. By a three-fifths vote.

Mr. SMITH. That is right.

Mr. SARBANES. That underscores my point even more. If the Senator's answer to me is you can waive it on a three-fifths vote, then in neither of these instances in the Senate or the House for the extension of the draft did they come anywhere close to the three-fifths vote. They did not have the three-fifths vote.

Mr. SMITH. It goes right back to the issue of priorities, which is why we are dealing with a balanced budget amendment to begin with, I say to the Senator from Maryland. Priorities are, if you are at war or need to go to war to defend the national interest of the United States of America, and you need a three-fifths vote to do it and you cannot get it, you will cut spending somewhere else; you will take out some pork or some wasteful spending that we never can get out of this budget, which is the reason we are in this mess.

You set priorities. What is more important, the national security of the United States or funding the Education Department or funding the Commerce Department or HUD? You make decisions, just like everybody else has to do in America.

That is the problem. The Senator has gone right to the heart of it. That is exactly why we are here today, because of this mess, because of the point the Senator makes. Nobody wants to set priorities anymore.

You set priorities. If I am a Senator and this happens, and the President of the United States, whoever he or she may be, needs money, needs forces, needs to protect the national security of the United States or the troops in the field, I am going to cut somewhere; you bet I am going to cut somewhere, and I am going to do it quickly if I cannot get the three-fifths.

I say to the Senator, I think we would get the three-fifths because the Senate and the House of Representatives, speaking on behalf of the American people, with our Armed Forces in jeopardy, are certainly not going to deny them the protection they need and the materials they need to protect themselves in the field or the national security interests of the United States.

It is a weak argument, and the Senator knows it. It is just a way to obfuscate this issue, to deny those who are out here saying we need this amendment. We do need it, and that is exactly why we do need it, because nobody wants to set priorities. No priorities can be set here—only in the household budgets, only in business, only in the cities of America, only in the States but not in the Congress of the United States. Oh, no; we have to spend more than we take in, year after year after year after year, $18,500 per American. That is the share of the national debt. It goes up, up, up, up.

The Senator talked about the guts to support the President's budget. The President's budget did not resolve it. If it resolved it, why are we looking at $200 billion more in annual deficits? How are you going to defend America when we get $20 trillion in debt? Where do you draw the line? Where do you draw the line?

The Senators talked about taxes. We can raise the tax rate, the Senator from West Virginia said—36 percent, 50 percent, 70 percent, 100 percent? That is what is going on in Washington, DC, right now. The taxes are so high they cannot pay them anymore. They are asking the Federal Government to come in and take over the city.

Mr. SARBANES. Let me bring the Senator back to the very real-life problem that I wish to discuss with him based on a very clear example in history, because what the Senator has just done is what is consistently done here. If we try to focus, in a tough-minded way, on a particular problem they say, ''Oh, well, don't worry about it; somehow or other it is going to be taken care of.''

Now, I want the Senator to come with me for just a moment or two and to look at some history, and I want to read from this article that appeared in the summer of 1991.

> Fifty years ago last Monday, on August 12, 1941, House Speaker Sam Rayburn saved the draft from legislative defeat and kept the U.S. Army intact to fight a war that was only 4 months away.

The reason I am citing this story is because we are constantly told that if we have an emergency situation, we will get this waiver. The Senator from New Hampshire has just told me we are going to get a three-fifths waiver. He left the section I was focusing on that required a majority of the whole number, namely you had to actually have 218 votes in the House or actually have 51 votes in the Senate, and he has now gone to three-fifths of the whole number. So you have to have 290 votes in the House and 60 votes in the Senate in order to address the crisis. He says if we have a crisis, we obviously will address it. I am going to point to a lesson in history in which I think people would now agree we had a crisis that had to be addressed. We did address it. But if we had been operating with these requirements, either one of them, we would not have addressed it because we would not have gotten the vote that was necessary to do it.

Let me read on from the article.

> The margin of victory was a single vote. And the battle could have been lost as easily as won except for Rayburn's personality and leadership and mastery of parliamentary procedure. If Rayburn had failed, the Army stood to lose about two-thirds of its strength and three-fourths of the officer corps. At issue was whether to extend the 12-month service obligation of more than 600,000 draftees already in the Army, thousands of others being inducted every day, and the active-duty term of several thousand National Guardsmen and Reservists who had been called up for 1 year. Without an extension, the obligations of both the draftees and the Guardsmen and Reservists would begin expiring in the fall. The United States had adopted its first peacetime draft during the previous summer after weeks of heated and acrimonious debates in both congressional Chambers.

The article then goes on to point out:

> Although the legislation limited the draftees' terms of service to 12 months, it provided that the President could extend the period indefinitely if Congress declared that the national interest is imperiled.
>
> On July 21, 1941, with the prospect of war increasing, Roosevelt acted. In a Special Message to Capitol Hill, he asked Congress to declare a national emergency that would allow the Army to extend the service of draftees, guardsmen and reservists for whatever period the legislators deemed appropriate.
>
> Despite the measure's unpopularity and strong lobbying by isolationist forces, the Senate approved a joint resolution on August 7, declaring the existence of a national emergency and authorizing the President to extend the service of most Army personnel by 18 months.

The vote was 45 to 30, I say to my good friend from New Hampshire; 45 to 30. That vote would not have qualified under the amendment that he is proposing. That vote was inadequate. You needed 49 now you would need 51, if you did it by the whole number, or 60 if you are doing the three-fifths. I am now quoting the article.

> In the House it was a different story. The Republican leadership viewed opposition to draft extension as a political opportunity too good to ignore. Others had their own reasons for opposing the measure.

It then discusses what Rayburn went through, and of course the final vote was 203 to 202. Mr. President, I say to the distinguished Senator from New Hampshire, 203 votes is not enough under the provisions of the proposal that he is now seeking to place in the Constitution of the United States.

So, here we have a real situation. This is not hypothetical. This was a critical issue. It was carried under the provisions of the Founding Fathers, which the very distinguished Senator from West Virginia has been expounding. Under the provisions of the Founding Fathers, the Congress was able to make a decision. You had a majority in both Houses for it, 45 to 30 in the Senate, 203 to 202 in the House of Representatives. They addressed the situation. Under this proposal, we would not have been able to address that crisis.

Mr. SMITH. If I might just respond to the Senator, his point is well taken.

However we have a situation where I think we are mixing apples and oranges. The Senator is assuming—we did not have an amendment at the time, we did not have a $5 trillion national debt in 1941. We did not have a situation where the Members who were debating knew that they would need a certain number of votes to get over the top to be able to declare war. It is an entirely different situation. You cannot compare 1941 with 1995—you can, but I do not believe it is a fair comparison.

I think things were different then. The situation was different. The debate was different. The issues were different. I think in this particular case if the emergency was such, under the amendment—if the emergency were such that we needed to do something in the area of national security, it could be done either by a three-fifths vote of both parties to deficit spend to take care of it—which is one option. If they do not want to do that, then they have other options. But I think to say 1941 when Roosevelt declared war is the same as it is today is simply wrong.

The issue is, we can deficit spend. That is the first option. Or we can cut spending somewhere else. And that is exactly what most responsible people would do in the future, who are here on the floor of the Senate or in the House, wherever the debate takes place—in both places. They would make the responsible decision, surely, to protect the national security of the United States. They would cut something if they did not agree to go the three-fifths route to deficit spend to do it. I think that is very well protected under the Constitution. It makes complete sense. It is common sense. We are the representatives of the American people. If we decide we cannot muster three-fifths votes then I assume the American people do not feel it is a national security problem for us.

If we still believe that they are wrong, we can then cut spending somewhere else with a simple majority. I do not see what the Senator's problem is.

Mr. SARBANES. Mr. President, I say to my colleague we are just being given these kind of bland assurances. ''Surely this would happen. No question this would be done. It is common sense that we would respond.'' Yet I am giving you a real, live, historical example. There was nothing hypothetical about it, nothing conjectural about it. It happened at a critical time in American history. We were faced in the Congress with a very fateful decision. We are talking literally months before Pearl Harbor. Literally months. And the Congress was faced with this difficult decision.

The Congress reacted, I think, appropriately. But by very narrow margins. And neither of the margins in the Senate nor the House are adequate to meet the requirements contained in your proposal, which only dramatizes the point that the Senator from West Virginia has made so effectively here this morning about the danger of going against the Founding Fathers, against Madison and Hamilton, and writing in these supermajority requirements.

The real danger to the Republic is that you will not be able to deal with crisis situations when they emerge.

The Senator says, ''Oh, no, we will take care of those. Do not worry about it. Do not worry about it. Surely we would respond.''

I am saying to the Senator: I am giving an example right out of history where we, under his standards, would not have taken care of it. Fortunately the standard was the one laid down by the founders, the one that the Senator from West Virginia propounded here. In other words, we decide things by majority. We were able to address the situation. But with your provisions here that situation could not have been addressed. It is clear on its face.

Mr. SMITH. Mr. President, if the Senator will yield for a response, there are a couple of points here. First of all, the Senator is assuming something he does not know to be the fact. In 1941 we did not have a three-fifths situation. In 1941, I would assume that the American people would have wanted us to support the President of the United States, which we did, to go to war when we were attacked.

Mr. SARBANES. Will the Senator yield on that? Is the Senator telling me that on a measure that passed the House 203 to 202, that if at the time there had been a three-fifths requirement of the entire membership of the House of Representatives—which would be 261 votes?

Mr. SMITH. I did not do the math. I will take the Senator's word for it.

Mr. SARBANES. It is 261.

Mr. BYRD. Let me tell the Senator, 175 votes could defeat it; two-fifths could defeat it.

Mr. SARBANES. It is 261. Are you telling me that a good number of the 202 who voted against it then would have voted for it, so you would have had 261 votes? Where are you going to come up with these? You barely got 203 votes. It almost lost. It passed by one vote. And now you are telling me, ''They did not have the three-fifths requirements then. If they had the three-fifths requirement somehow, miraculously they would have gotten the other votes in order to do it when they voted against it at the time?'' They almost beat it. They almost beat it on a straight up or down vote: 203 to 202. And now you are telling me, ''Well, they did not have the three-fifths requirements. If they would have had the three-fifths requirement, namely that he had to get 261 votes then a big chunk of these 202 who voted against it then, to prevent it from happening, would have switched over and voted for it?'' Is that what the Senator is telling me? I cannot believe it.

Mr. SMITH. The Senator did not listen to me very carefully. That is not exactly what I said. What I said is there are two options. One, those people, if they had the three-fifths provision, I think, would have looked at it a lot differently, and they may have gotten more votes.

Let us assume the Senator's position and say that did not happen. If it did not happen and this amendment were, in 1941, part of the Constitution, we then would have gone and spent money by taking money from someplace else in the budget because we would have believed that the national security interests of the United States should come first ahead of subsidies to apples or whatever else.

Mr. SARBANES. How do you know they would have done that?

Mr. SMITH. Because it takes 51 percent to do it. That is why.

Mr. SARBANES. My dear friend.

Mr. SMITH. That is exactly why. It is the same numbers.

Mr. SARBANES. The Senator from New Hampshire is my dear friend. But how can the Senator stand here and say, ''We easily would have gone somewhere else and found the money'' when at the time, on the very issue itself without that constraint, without that additional complication in terms of getting support for the measure, without the further complication of the dynamics of trying to achieve a majority vote, when at the time they only passed it by one vote, 203 to 202? That was the vote.

Mr. HATCH. Will the Senator yield?

Mr. SARBANES. Speaker Rayburn walked the Halls of the Congress. I am now quoting this article.

> The vote was set for Monday, August 11. But Rayburn put it off for one day out of respect for a Republican Member who had died over the weekend.

I must say those were the days when there was a degree of civility that prevailed in the workings of the Congress.

> With the President out of town meeting secretly in New Foundland with British Prime Minister Winston Churchill to frame the Atlantic Charter, Rayburn spent the additional day roaming the corridors of Capitol Hill trying to win over recalcitrant Democrats and wavering Republicans. His lobbying style was like the man himself, honest, direct and intensely personal without a hint of intimidation. The debate went on for 10 hours in the House. Finally at 8:05 p.m. the reading clerk began calling the roll.

I reach back into history to try to bring you a real, live example.

Mr. HATCH. Will the Senator yield?

Mr. SARBANES. Certainly.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield for such colloquy without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I apologize. I did not realize my distinguished friend from West Virginia had the floor.

Let me just say this. That is what was created 203 to 202. There were times when that could have happened. It was extraordinary. In the Senate, there were only 96 Senators sitting at that time. The vote was 45 to 30. So there were 21 Senators that were missing. We could have had a constitutional majority in this case.

Mr. SARBANES. How could you have had it? Those votes could not qualify under your amendment. Is that correct? Neither of those votes qualifies under your amendment.

Mr. HATCH. You could not with those two votes.

Mr. SARBANES. Either in the Senate or the House.

Mr. HATCH. The Senator was talking about Senators walked. They walked there. There were 30 that walked in the House. There were 21 in the Senate; 96 in the Senate; only 75 voted. So even under a minority vote, people can walk, if they want to.

But the point is we have a constitutional majority in here for one reason, and it has been accepted by both Democrats and Republicans in the House and the Senate; and that is so that we would have tax-limiting effect. I think it is going to be a tax-limiting effect. That is the purpose of it.

Mr. SARBANES. If the Senator will yield, you have it in section 5 to do a waiver for a military conflict you require a whole number of each House.

Mr. HATCH. That is right.

Mr. SARBANES. The whole number.

Let me go back. There were only 48 States then. So there were 96 Senators.

Mr. HATCH. Right.

Mr. SARBANES. The whole number would be 49 in that circumstance. Is that correct?

Mr. HATCH. That is right.

Mr. SARBANES. The vote in the Senate was 45 to 30. That does not qualify. Correct?

Mr. HATCH. Right.

Mr. SARBANES. In the House, they had 218.

Mr. HATCH. 203 to 202.

Mr. SARBANES. 218.

Mr. HATCH. No. It was 203 to 202.

Mr. SARBANES. In any event, it will not qualify there either.

Mr. HATCH. It would have, had they not walked.

My point is the Senator is saying they might walk under this constitutional majority. They walked then under a regular majority vote.

Mr. SARBANES. That is right.

Mr. HATCH. But in both cases, had they not walked, you could have had a constitutional majority. I think these votes are going to be heightened votes, and nobody is going to miss them.

Mr. SARBANES. If I could say to my dear friend from Utah, the Founders specifically discussed this. They debated whether the quorum should be more than a majority of the body and they rejected the notion that it should be more than a majority. They said then that you would prevail on a measure by majority of those present and voting.

Mr. HATCH. That is right.

Mr. SARBANES. Assuming you had a quorum. You have escalated the number, and you have done it in such a way as to negatively effect very critical decisions, as I have indicated by the history of World War II. A measure that was before the body that I would argue very strenuously was needed to provide for the national security of our Nation would have failed, not because a majority of those present and voting did not support it—they did support it—but because you have introduced supermajority requirements. And these votes would not have met your supermajority requirements.

Mr. HATCH. Will the Senator from West Virginia yield once more to me?

Mr. BYRD. Mr. President, yes. I do.

Mr. HATCH. Keep in mind, I do not think that we can use votes in 1941. There was not a constitutional amendment in effect then. Keep in mind, one of the other things our Founding Fathers did—they did it very carefully—was to put article V into the Constitution which provides for constitutional amendments, and for changes that are needed. We are asserting that this change is needed because of the way Congress has been profligate over the last 60 years.

But let us say the last 26 years during which time we have—could I finish? Let me finish this one thought. The point is that one of the most important aspects of the balanced budget amendment is that these two votes, if they are taken every year, are going to be the votes nobody is going to be able to miss. If you vote on increasing taxes, there are going to have to be 100 Senators here because it is going to be a vote that everybody in the country is going to pay attention to. If you vote on increasing the deficit, there had better be 100 Senators here. There are not going to be any walks. Anybody who walks is not going to be there in the next Congress.

That is one thing this amendment will do.

Mr. SARBANES. Let us assume that. Let us assume in 1941 in the House of Representatives that everyone who walked would have voted for the measure. It is a big assumption. Let us assume that. Everyone who did not vote would have voted for it.

Mr. HATCH. You would have had a constitutional majority——

Mr. SARBANES. No, you would not have had the three-fifths——

Mr. HATCH. Not to increase spending.

Mr. SARBANES. Which the Senator from New Hampshire was making reference to.

Mr. HATCH. I said a constitutional majority for increasing taxes.

Mr. SARBANES. The point I want to get across to my colleague is that there is the assumption that issues of national security will not be a matter of controversy. In other words, he is saying clearly, if there is a problem, we are going to get these supermajorities in order to do what needs to be done. I am demonstrating that we had an instance in which there was clearly a national security question and you are not commanding the supermajority.

Mr. HATCH. The fact that you cannot command a supermajority is part of what is going to happen here. What we are saying is, look.

I think a better illustration, if the Senator wants me to substitute one for him, would be the vote last year on the tax package which the President brought up here. It is an interesting constitutional question that I know will intrigue my dear friend from West Virginia who has spent a lifetime studying the Constitution—for whom I have a lot of respect—in that area, among many others. That is, that vote last year did not have one Republican. We have been excoriated by Members of the other side of the floor as Republicans because we did not vote for that tax increase, or the deficit reduction part of it either. We did not because we did not want taxes to increase. And some stood up and said, ''We stood up and did something about the deficit.'' Well, I suspect that is true. We just did not happen to agree. But now that vote was a 50–50 tie in the Senate.

I want the attention of my dear friend from West Virginia. It was a 50–50 tie. Had this constitutional amendment been in effect, would that bill have become law today? Or would it have become law at that time? We did not have a majority of the whole number of the U.S. Senate. It took the Vice President to break the tie.

There are two ways of looking at that. One is that 50 of us could have thwarted the tax increase. I think that would have been a terrific thing to do, and that is what we tried to do. We lost because of the fact that under the Constitution the Vice President could vote. But the other point would be—

Mr. SARBANES. Will the Senator yield?

Mr. HATCH. Let me finish and I will be glad to. The other point—with the delegation given to me from our colleague—is that, from your standpoint, a simple majority was not allowed to win, and that this would make it even more difficult because you would have to have 51 actual votes of the whole number here.

Mr. SARBANES. Is that your reading of section 4 of this balanced budget amendment?

Mr. HATCH. Not necessarily. I am raising—

Mr. SARBANES. What is your interpretation? What does it mean? Section 4 says, ''No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.'' Take the situation you just described. It is a 50–50 split. The Vice President is entitled to cast his vote. Would this negate the vote-casting power of the Vice President?

Mr. HATCH. No. He could cast his vote, but since you did not have 51 votes of the majority of the whole number, the tax bill would have gone down to defeat.

Mr. SARBANES. That is your understanding of the meaning of that?

Mr. HATCH. That is my interpretation. I thought I would give you a good illustration.

Mr. SARBANES. I wanted to have that on the record.

Mr. HATCH. We would not have had that highest tax increase in history had this amendment been in effect.

Mr. SARBANES. That is right. You are saying if this amendment were passed, the August vote would have been negated.

Mr. HATCH. That is my interpretation. It would have meant that we would have had to have gotten that 51 votes to increase taxes, and we probably would have been faced with having to reduce the deficit more.

Mr. BYRD. Mr. President, what it also means is that in a situation such as the distinguished Senator from Maryland has raised—and he has focused on a section which I am going to reach a little later, but he has done it much better than I would have done it. What my Republican friends are saying—and I hope I will have the attention of both of my friends—what our friends here have just said is that in the event we are in a situation which jeopardizes the national security——

Mr. HATCH. No, that is not what I said.

Mr. BYRD. Wait. That is, in essence, what you are saying. You have not let me finish what I am going to say. How do you know what I am going to say? Be a little patient.

Mr. HATCH. I will.

Mr. BYRD. What they are, in essence, saying is that you have to have 51 votes in the Senate—no matter how many take a walk; you have to have 51 Senators, not including the Vice President, who would be willing to stand up and vote for a resolution which authorizes the Commander in Chief in a situation where there is a declaration of war or——

Mr. HATCH. No, no——

Mr. BYRD. Just let me finish. This is one Senator who is not going to be befuddled or frustrated by interruptions. I will be very happy to yield to my friend when I have finished.

Let me start again. We will learn over a period of time that there are some Senators who will just not be rushed.

''Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.'' In the last 48 years, this country has fought three wars and engaged in several military conflicts that were of a lesser nature. Not one time was there a declaration of war. Not one time.

The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House which becomes law.

Therein lies a tale—many tales, as a matter of fact. First, there has to be a resolution passed. There has to be a joint resolution passed, even considering the fact that we might have a filibuster conducted on such a resolution because the opposition could be very strong in the Senate on that occasion There could be a filibuster. The President could veto the resolution when it reaches him. How much time do we have? My friend from New Hampshire—I believe, if I did not misunderstand him—said in that kind of a situation, we would make cuts, we would make cuts from other programs. We would adjust priorities.

We do not have time to make cuts when the Nation is faced with a military threat. We do not have time to search through various programs and come up with cuts. And besides, the domestic discretionary programs have already been pared to the bone. When the Nation is put in jeopardy, there must be a resolution passed. It must be enacted into law by the President's signature, and the Nation's security is in the balance. We do not have time to make cuts. It takes time.

Secondly, in the event there is a 50–50 tie, under the Constitution as it is written, the Vice President could cast a vote breaking the tie. Under this section of the amendment, the Vice President, representing the President and his administration, is not permitted to cast a vote to break a tie, while the Nation's security is in the balance. No, it has to be a Senator. The amendment says you have to have 51 Senators.

Mr. President, this section 5, plays Russian roulette with the national security of this country. You do not have the time to look at some programs providing research on apples, or mushrooms, or whatever it may be. You do not have time for that. And that is small chicken feed, that is small; you are talking about pennies in comparison with the billions of dollars that military threats to our security will cost. It puts the Nation's security into a gamble.

Mr. President, does the distinguished Senator wish me to yield to him again?

Mr. HATCH. I would appreciate it. I appreciate what the Senator is saying. This amendment is not going to allow business as usual. It is going to require a constitutional majority to increase taxes, which is a tax-limiting approach. I suspect that that will be more difficult to get than a three-fifths majority to increase the debt. I really suspect that that is so.

The distinguished Senator from West Virginia—as he always is—was very accurate in stating that section 5 says that during a declared war, Congress can waive this provision. That only takes a majority vote. However, if you get into a military conflict which causes an imminent and serious military threat, then it will take a constitutional majority.

I cannot imagine any Congress that would not grant a constitutional majority under those circumstances. But be that as it may, if it does not, then that will be the right of the Congress.

(Mr. GREGG assumed the chair.)

Mr. SARBANES. Will the Senator yield for a question?

Mr. HATCH. Yes, I will.

Mr. SARBANES. The people who are against it do not even have to show up; is that correct?

Mr. HATCH. Yes.

Mr. SARBANES. Now the way the Constitution is written, if a matter is put to a vote, let us say four or five Members are missing, they may be ill, they may be in the hospital, they may be sick, they may have gone to a family funeral, so they cannot be here. It is not unheard of. In fact, it has happened on occasion. You take a vote amongst those that are here. It passes 47 to 46, and that is that. Under your provision you need 51 votes.

Mr. HATCH. Right.

Mr. SARBANES. Suppose you had a vote 50 to nothing, just to draw the most extreme hypothetical, 50 are for, zero against. The rest are all absent. That does not carry; is that correct?

Mr. HATCH. You would wait until the next day when you had 51. You can come up with hypotheticals in every situation, but that does not change reality. This body has increased the debt ceiling.

Mr. SARBANES. But the people that are against do not have to vote; right?

Mr. HATCH. That is right.

Mr. SARBANES. They are not required to be here to make a difference. Because the standard is not between those that are for and those that are against, you have to get so many affirmative votes; is that correct?

Mr. HATCH. You could use the same logic. It does not—-

Mr. SARBANES. Or it could be the three-fifths where you have —-

Mr. HATCH. You have to have 51 here to constitute a quorum, so it would not have passed anyway. That could be under any hypothetical.

Mr. BYRD. No, no, no. You can have 51 here, which is a quorum, under the constitutional amendment that presently obtains and 26 Senators would be a majority.

Mr. SARBANES. If you had 51 present so you had a quorum and the vote was say 48 to 3.

Mr. HATCH. Then you would not have the requisite number.

Mr. SARBANES. It would not pass; right?

Mr. HATCH. No.

Mr. SARBANES. You would have a quorum and you would not pass it.

The more you probe into this, the more of a Rube Goldberg contraption it is.

Actually what happens is, the more we debate this section, the more you come to understand and a appreciate the perceptions and the wisdom of the drafters of the Constitution.

It is incredible that we are out here playing games with a document that has withstood 206 years of scrutiny and was put together by a group of men whom Gladstone, the great British Prime Minister, regarded as the greatest assemblage of statesmen in the history of the world. That was his comment about them in framing the Constitution of the United States. Yet, we

are playing games with it all throughout here.

You have a three-fifths of the whole number requirement, you have a majority of the whole number requirement, you have a waiver requirement. You are negating the tie-breaking vote given to the Vice President of the United States, as I understand it, under another provision of the Constitution.

Mr. HATCH. Not really.

Mr. SARBANES. The Senator told me on a vote of 50 to 50, in which the Vice President sought to cast the tie-breaking vote, would not qualify under your proposal.

Mr. HATCH. Only under that instance. In other instances it who qualify.

Let me make this point. The game that is being played is business as usual. We are running this country right into bankruptcy.

Mr. SARBANES. No, that is not the case.

Mr. HATCH. Let me finish.

Mr. SARBANES. No, I am going to reclaim my time. I am not going to let the Senator——

Mr. HATCH. He yielded to me.

The PRESIDING OFFICER. Does the Senator from West Virginia yield the floor?

Mr. BYRD. Let me get it perfectly clear. I yielded to both Senators for a colloquy, with the understanding that I would not lose my right to the floor, into which colloquy I presume I can intervene at any point I wish.

Mr. HATCH. That is right.

If I could finish my remarks, I would be happy to allow the Senator from Maryland to respond.

My problem is, you can find fault with almost anything. The reason we brought this balanced budget amendment before us is because we have a runaway train of Federal spending. We have a runaway train that is not treating our taxpayers fairly. The answers always seem to be more spending and more taxing.

This amendment is an amendment that does not require a balanced budget, but it does require us to at least make priority choices.

If we are going to spend, then we are going to have to stand up and vote to do so. You have to vote. We do not have to now. If we are going to tax, then you have to stand up and vote to tax. We do not have to do that right now. We can do it through voice votes.

I just want to add this to it: If you are going to tax more, by gosh, I think you are going to find these two votes—a vote to increase taxes, a vote to increase the deficit—from this point on, if this balanced budget amendment passes both Houses and becomes ratified, you are going to find that those two votes are going to have 100 Senators every time, because nobody could fail to vote on them. And if they do, they are in jeopardy of losing their seat. It is going to highlight the importance of these votes around here. We will not have any more of these 51 votes or 26 to 25. We have not had any of those as long as I have been here.

The point is that when the Senator mentioned that in his hypothetical, he said 50 votes. I am saying that would not have been acceptable; 51, if you have 26 votes, yes.

Mr. SMITH. Will the Senator from West Virginia yield?

Mr. SARBANES. If I could just engage in this colloquy further.

The game that is being played, I say to my friend, is very clear today because the other side has been very clear that they have drafted this in a way that would have knocked out the deficit reduction package of August 1993.

Now, I understand that the Senator was not for that. I was for it. I disagree with him. The Senator portrays it as a tax increase on all the American people. The fact of the matter is, it was a tax cut on the top 2 percent of the income, other than the gasoline tax. But the income tax rates affected the top 2 percent.

Now, I understand the Senators on the other side have a very soft spot for the top 2 percent, but it seemed to me reasonable to do this and to try to address some of our Nation's problems.

In any event, the situation could have been reversed. You could have been trying to push through a deficit reduction package that I opposed for one reason or another.

The question is whether you are going to skew the Constitution in a way that a majority is not going to be able to make decisions. The Founding Fathers very carefully constructed this document and they are very explicit, both Madison and Hamilton in the Federalist Papers, in pointing out in the documents about a supermajority.

Let me just read what Madison said in Federalist 58. Because he is the father of our Constitution and a man of great reason and fairness. He would recognize the other arguments and try to deal with them rationally, which is what we are trying very hard to do here today. Let me just quote him.

This is Madison now, in the Federalist 58:

> It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of the quorum for a decision. That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free Government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.

Now, I agree with Gladstone's evaluation of the Founding Fathers. This amendment is fraught with peril. The more we go into it and the more we develop it and the more we measure it against historical experience, the more I find wrong with the amendment.

The Senator asserted earlier that surely three-fifths would vote to raise the debt limit. I invite my colleague to go back through the votes on raising debt limits in the past to spot the ones where three-fifths did not. It is not so obvious.

In many of these issues it is a struggle to get the simple majority to make the decision. These are controversial issues. They are recognized as controversial. The August 1993 package was controversial. You disagreed with it. I supported it. I think it has proven itself out. I think all the subsequent history supports a decision to have passed it.

Those decisions ought to be made by majority vote. That is what the Founding Fathers intended. That is what I think we should stick with.

I yield the floor.

Mr. SMITH. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD. Mr. President, I yield.

Mr. SMITH. The Senator has been very generous for all Members here on his time for which this Senator is grateful.

I would like to pick up on something that Senator HATCH said, and say to the Senator from Maryland, the Senator has pointed out some points which are well taken regarding this debate and this amendment. I would also say to the Senator that Winston Churchill once said, ''Democracy is not perfect, but it is the best thing going.''

The issue here is the Founding Fathers were not infallible. We are not infallible. There are reasonable decisions that have to be made from time to time. The Dred Scott decision in 1857 when a Supreme Court said a slave was property and therefore could not sue in Federal court. That came in under the Constitution. Is that right? No. But it happened. So we are an infallible people.

So my point is, what Senator HATCH was alluding to, if we look at what is happening we are talking about a situation where a national emergency might emerge. The Senator is correct. He made some very good points about what might happen if that national emergency were to come about.

The other point is, if we are looking at where the debt is going and how much of the debt is being consumed, how much of the budget is being consumed by interest on the debt, and looking at where it is today, 16 percent roughly of that budget is interest on the debt and 16 percent is national defense.

I would say to the Senator, with all due respect, if we did not stop it, if we do not stop this runaway train of debt and deficit spending, we are not going to have any money for national defense. We are not going to have any

money for any emergency under any situation because, and the Senator knows, that the commission, which was a bipartisan commission, on entitlements headed by Senator Bob KERREY, Democrat, and Senator Jack DANFORTH, Republican, said by the year 2013 at the latest, this country will be spending 100 percent of its budget on interest on the debt and entitlements. There is not going to be any money for defense.

I would just say to the Senator if this is fallible, this amendment, then tell me what the alternative is when we get to 2013 and we do not have any money—none, zero—to defend our national security or our national interests.

Mr. SARBANES. Mr. President, I will tell the Senator. First of all, it boggles the imagination that we are hearing this argument from someone who voted against the 1993 deficit reduction package. All of the situation that the Senator is talking about would be far worse had the Senator prevailed on that vote.

There are tough decisions to be made. Everyone recognizes that. Because they are tough to make it is very difficult to get a majority for them. What the Senator is doing is escalating the standard from a majority to a supermajority. So the Senator is making it even tougher to make the tough decisions, not easier. The Senator is putting more power into the hands of the minority to frustrate or to thwart the effort.

Where I disagree with the Senator is, in his assumption, that all of these waivers will be granted in a time of crisis. If we go back through our history, it does not support the Senator. Historically, when we come up against these situations they are often very divisive and very controversial and action in the end is taken by a bare majority. I went through at great length earlier the example of the extension of the service requirement under the draft in 1940.

Clearly, that was important to the national security of the country. I am quoting from that article:

> In an effort to depoliticize the issue as much as possible, Roosevelt and Secretary of War Henry Stimson designated Army Chief of Staff George Marshall as the administration's point man on the Hill. Marshall worked tirelessly but found converts difficult to come by despite his tremendous prestige on Capitol Hill. ''You put the case very well,'' one Republican Congressman told him, ''but I will be damned if I am going to go along with Mr. Roosevelt.''
>
> The vote was set for Monday August 11, but Rayburn put it off for one day out of respect for a Republican Member who had died over the weekend. With the President out of town meeting secretly in Newfoundland with British Prime Minister Winston Churchill, to nail the Atlantic Charter, Rayburn spent the additional day roaming the corridors of Capitol Hill trying to win over recalcitrant Democrats and wavering Republicans. His lobbying style was like the man himself, honest, direct, and intensely personal without a hint of intimidation.

Here is Rayburn himself, walking the corridors. Here is General Marshall, one of the really great statesmen of American history, a man for whom I have enormous respect and admiration, working—as they say here ''Worked tirelessly but found converts difficult to come by despite his tremendous prestige on Capitol Hill.'' When the vote came, it was 203–202. That vote would not qualify under the provisions of your balanced budget amendment proposition here.

We would not have been able to respond to this national crisis. The Senator earlier said to me if they had known they needed a three-fifths requirement they would have gotten more votes. I said to the Senator, it defies belief that a sizable chunk of the 202 who voted against it would switch over because they knew there was a three-fifths requirement. They voted against it when there was a simple majority requirement and the thing would have gone down, and it would have been a disaster for the Nation had it happened.

All I am saying is that these tough decisions need to be made by majority vote just as is provided for in the Constitution. The Founding Fathers could foresee these things and that is why they provided it. This is, as the distinguished Senator from West Virginia said, playing Russian roulette with the national security of the United States.

Mr. SMITH. Mr. President, if I could have a last response, I promise the Senator from West Virginia.

The Founding Fathers also provided for an amendment process to the Constitution because they knew that it would need that flexibility, because it could not predict the future nor foresee the future. The Senator knows that. That is why we are here.

I also would respond to the Senator on the point of the budget agreement of 1993. This debate is, essentially, a nonpartisan debate on the issue of whether or not we need an amendment, constitutional amendment, to balance the Federal budget. But the Senator introduced a partisan matter on the issue of the budget agreement.

Just because this Senator and the remaining Republican Senators in the Senate at the time did not agree with the Senator from Maryland that the way to bring the deficit down was to increase taxes $250 billion, but rather bring spending down $250 billion to move the budget deficit down, that does not make me opposed to bringing the deficit or the debt down.

The truth of the matter is, those on this side who voted against that wanted to cut spending, not raise taxes.

The second point is, which we have already gone into on the floor many times before, not only during this debate, but the truth of the matter is the correction that needed to be taken to reduce the debt was not taken with that budget agreement, for the same reason it was not taken with any of these other agreements that are on this chart from 1921 all the way up to Gramm–Rudman-Hollings and the budget agreement of 1993. The truth of the matter is, Congress walks away from them.

The President of the United States, President Clinton, just submitted a budget, the follow-on to this budget, which increases the national debt by $1.6 trillion over the next 5 years. Since this agreement has been passed, we have increased the national debt another one-half trillion dollars. So where is the progress?

This Senator fails to understand where the progress is being made. I hear about all these great agreements, we have had all these budget agreements, we are bringing the debt down, bringing the deficit down. We are not bringing it down. It is going up, up, up, up, and the reason why is because we need this amendment because Congress will not do it without it. That is absolutely evident.

The Senator talks about a national emergency. I do not know whether he has a commission out there somewhere that defines a national emergency or whether he has to read it in the newspaper that it is a national emergency. If the Congress of the United States does not think it is a national emergency or the President does not think it is, I do not know how you define a national emergency.

So I assume, by definition, if the Congress does not vote to say it is a national emergency and provide the funding to go to war, maybe they do not think we should go to war. That is the prerogative of the U.S. Congress. That is the prerogative. That is exactly what the Founding Fathers meant that ''Congress shall have the power to declare war.''

This argument that somehow we are going to defend the right of the United States to protect itself by voting against the balanced budget amendment is the most nonsensical thing I heard since I have been here.

By the time this debate is over, we are going to add tens of billions, hundreds of billions of dollars to the national debt; $9,600 per second as we debate the debt goes up. Interest on the debt is now going to pass defense. What we spend on defense and interest is going this way, just like that, and defense is going this way. And by the year 2013, by most admissions of a bipartisan commission, we will be spending 100 percent on interest and 100 percent on entitlements.

Mrs. BOXER. Will the Senator yield?

Mr. SMITH. That is what is going to threaten the national security of the United States of America, not a constitutional amendment to balance the budget.

Mrs. BOXER. Will the Senator yield to me to ask a question?

The PRESIDING OFFICER. The Senator from West Virginia has the time.

Mrs. BOXER. If the Senator will yield for a short period of time.

Mr. BYRD. Mr. President, I ask that I may continue to yield with the understanding that I not lose the floor for

the purpose of a colloquy to include now the distinguished Senator from California [Mrs. BOXER].

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I thank you very much. I was not planning to participate, but something the Senator said makes me want to, and that is during the discussion with the Senator from Maryland on the vote on the deficit reduction package, which the Senator from New Hampshire says is, in fact, not working, every expert in the country says that the deficit would have been $500 billion higher. But let us not even get into that because what I want to ask the Senator are two basic questions.

First of all, the Senator said at that time he did not like the package that the President sent over, the deficit reduction package, because it contained some tax increases of which he did not approve. We also know it contained a large tax cut for the working poor and far many more people are affected in a positive way from that tax cut. But let us put that aside.

The Senator said he would have preferred instead of raising taxes—and he puts it at $250 billion—he would have cut spending $250 billion.

So my question is, did the Senator offer an amendment to cut $250 billion and show us how he was going to cut $250 billion from the deficit? I do not recall it.

Mr. SMITH. If the Senator will allow me to respond, you know the situation as well as I do with regard to the debate and the politics, what was going on. The truth of the matter is, there were many discussions on our side, many attempts to redirect that in committee. The distinguished Senator from New Hampshire, who is in the chair, was involved in a number of efforts in the Budget Committee to reprioritize that whole budget, and the Senator from California knows that.

The truth of the matter is, the position of the President and the majority in the Senate at the time, and in the House, was that the best way to deal with the deficit was to raise taxes on the American people. My point is, the best way to deal with the deficit would be to reduce spending and to continue that spending on a downward trend.

Mrs. BOXER. So the answer to my——

Mr. SMITH. My final point. My only point is we did not do what we needed to do to correct it. Even with the tax increase you did not correct it. If you want to take the position, which I happen to disagree with, that we can continue to raise taxes forever until we balance the budget, you have a right to that position. But there is only so much you can get.

Mrs. BOXER. My question to the Senator was, he said at the time he would have preferred to cut spending $250 billion instead of raising the taxes. The President's plan did raise taxes on the wealthy, and it also cut taxes much more broadly on the working poor.

Mr. SARBANES. It also cut spending.

Mrs. BOXER. And it cut spending the other $250 billion. But the point I want to make, in conclusion, and then I will yield back the time to the good Senator and thank him once again for his leadership on this: The Senator himself said he was working on some plans. I am sure he is. I have never seen that plan.

I wrote to every single Republican who is in the leadership, heads committees when this debate started. I said, ''Show me your plan. You want this balanced budget to go into effect. I want to know if it is going to hurt the people of California, the people I represent. I want to know what is going to happen if there is a disaster or a war.''

You have a three-fifths supermajority built into this, as the Senator from West Virginia and the Senator from Maryland have stated. They do not agree with it. I do not agree with it. I think it shows a mistrust for the people, that is what I think about supermajorities. They show a mistrust for the people. They give too much power to the minority, and I do not think that is what America is all about.

But putting all that aside for this conversation, I have to stand up and say to my friend from West Virginia that when Senators on that side criticize those of us on this side for voting for deficit reduction, which was the largest package in history and it is working, for them not to show what their plan is and to hide behind this figleaf of a balanced budget amendment, trying to tell the American people, because of that, they are going to be the ones to balance the budget, I find it very problematical. And I rose today to add my voice.

They did not vote for the right to know. They did not vote to exclude Social Security. I think this is a dangerous, dangerous balanced budget amendment.

By the way, I wanted to vote for a balanced budget amendment. I wanted to vote for one over on the House side, I say to my friend from West Virginia. He would not have agreed with me. I did, in fact, do that because it was flexible, it took Social Security off the table, it did not have a supermajority, and we tried to fix this amendment.

As the Senator from Maryland has stated so eloquently, the more you look at this amendment—and that is why I appreciate the time we have here in the Senate to do that—the worse it gets for the American people and the people that I came here to fight for, the people of California.

Mr. SMITH. May I ask the Senator one question?

Mrs. BOXER. Does the Senator continue to yield?

Mr. SMITH. One final question. Under your definition of ''exemption,'' if Social Security and other entitlements get to 100 percent of the budget, do you still support the exemption?

Mrs. BOXER. Let me say to——

Mr. SMITH. Answer yes or no.

Mrs. BOXER. I will answer it. I agree with the Republicans who have said over and over again by vote, ''You're not going to touch Social Security.''

Mr. SMITH. But when you exempt it——

Mrs. BOXER. The answer is I am not for touching Social Security either, and because I believe that, I think it is a compact with the people who paid into it.

Mr. SMITH. You are going to destroy it without the——

Mrs. BOXER. No.

Mr. SMITH. You certainly are.

Mr. SARBANES. If the Senator will yield, the Social Security System is paying its way.

Mrs. BOXER. Exactly right.

Mr. SARBANES. The Social Security System is not only paying its way, it is, in fact, running a surplus.

Mr. SMITH. And the Treasury is borrowing all the money to fund the debt, and the Senator knows it.

Mr. SARBANES. That has nothing to do with the Social Security System. It is terribly important for the American people to understand this because a game may well be played with the Social Security trust fund, as was just indicated, in effect, by my colleague from New Hampshire, if they do not understand.

The Social Security trust fund is more than paying for itself. People receiving Social Security owe no apology on the deficit question, because the trust fund currently is not only paying its way, it is running surpluses, which in an accounting sense are used to offset the size of the deficit.

Now, the other side would obviously want to use those, and many of us feel that should not be done. In the 1980's, when the Social Security trust fund ran into some difficulties, we took the measures of reducing benefits and raising Social Security taxes in order to put the Social Security trust fund back into a healthy position.

That is exactly what we did. This is an effort to raid the Social Security trust fund. It is implicit in this balanced budget amendment, and to some extent was made explicit the other day with the tabling of the Reid amendment, which sought to make it very clear that it could not be tapped or drawn on. It needs to be understood the Social Security system is paying its way. We have other so-called entitlements that are not, but the Social Security trust fund is more than paying its way. That needs to be understood, and this assault on the Social Security system needs to be repudiated.

Mrs. BOXER. I say to my friend—and I thank him for continuing to yield—the reason I answered the question the way I did to my friend, the good Senator from New Hampshire, is because the Republicans are trying to have it both ways.

It is really extraordinary, and I am glad we have this chance, because on the one hand they have passed motion

after motion stating that they will never touch Social Security or the benefits and it is off the table and they are not going to look at it. On the other hand, they vote against the Reid amendment, the Reid-Feinstein amendment, which would have clearly taken Social Security out of this balanced budget requirement.

So they are talking two ways. And what was so interesting right here this afternoon just a few minutes ago is the good Senator from New Hampshire says to me, Senator, are you saying that even if Social Security and the other entitlements are 100 percent of the problem, that you are not going to touch them?

Well, that is what they have been saying. They have been saying they are not going to touch them. But if you listen very carefully, it is a very clear threat to Social Security, as clear as the nose on your face.

I say that this amendment is very dangerous. It is very dangerous to the stability of this Nation because it is so inflexible, and my Republican friends have voted almost unanimously—we came close on the Johnston amendment on the Court issue, but basically they have walked down the aisle with this rigid supermajority requirement amendment that puts Social Security in jeopardy, it puts our States in jeopardy, and it puts our people in jeopardy.

I wish to thank the Senator from West Virginia for his generosity in yielding to me.

Mr. BYRD. I thank the distinguished Senator from California [Mrs. BOXER].

Mr. President, when all is said and done, our friends on the other side of the aisle have not answered the question put to them by Senator SARBANES. He brought up the language in Section 5 of the constitutional amendment to balance the budget:

> The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Of course, then the proponents of the amendment, not wishing to focus on section 5 and the questions asked by the distinguished Senator from Maryland related thereto, wish to talk about the seriousness of the budget deficits and the seriousness of the debt, and so on.

We are all concerned about those deficits and the debt. There is no disagreement as to the desired goal to reach a balanced budget and to reduce the deficits and ultimately to begin paying the principal on the debt and hopefully reducing the interest that is paid on that debt.

The proponents do not want to focus on this section 5. I will ask the question: If the country ''is engaged in a military conflict,'' short of a war that has been declared, ''engaged in a military conflict that causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority number of the whole number of each House, which becomes law,'' does that language mean that once the joint resolution referred to in that section is adopted by a majority of the whole number of each House and becomes law, and in the event that the military conflict which causes an imminent and serious military threat to national security continues over a period of another year or 2 years or subsequent years, does this language mean that Congress will have to waive the provisions of this article by way of a joint resolution in each and every subsequent fiscal year in which that threat to the national security exists? Does that mean we have to do it over and over again?

I am waiting on the Republican response team to respond. Does that mean that we have to go through this obstacle course every year, every subsequent year after that first year, or that first occasion in which the joint resolution is adopted by a majority of the whole number of each House? Do we have to do that over and over again?

Suppose the support for the Commander in Chief's position, suppose the national support wavers?

Initially, people having been supportive, through their representatives, of adopting the joint resolution are—suppose that threat to the national security continues into a subsequent fiscal year, and then again into another fiscal year? Does this language make it incumbent upon the Congress to continue, with each new fiscal year, to pass a joint resolution by a majority of the whole number of each House? What does this mean?

The Commander in Chief and the military forces which he may have committed as he did in Desert Storm, or as President Truman did in Korea—suppose that initial support of the people lessens? What does the Commander in Chief do? He is left out there hanging. He has men on distant battlefields. He has ships plying the waves of the several seas. He has planes transporting Marines and soldiers. He has an Air Force out there that is flying in various areas of the world. What does it mean? Do we have to pass another joint resolution in the next fiscal year?

Suppose this emergent situation should arise in August, with the close of the fiscal year imminent on September 30. There is not time to pass a joint resolution and look for cuts in other areas of the budget, to which my friends on the other side of the aisle have alluded. What happens? The fiscal year is closed on September 30 and the total outlays have exceeded the total receipts for that fiscal year. You have men out there in the field facing danger. Their lives are on the line, their lives are in jeopardy, and the security of this country is in jeopardy. What are we going to do? Are we going to be entertained by a wide-ranging debate in both Houses on a joint resolution every fiscal year that that situation continues? And, in addition, we have to have a majority of the whole number elected to each House for passage.

Mr. THOMAS. Will the Senator yield for a question?

Mr. BYRD. Yes, I yield.

Mr. THOMAS. Senator, I am not as familiar as you are with the process, but it seems to me that now there has to be approval, there has to be approval annually for the budget, there has to be approval for the President's move in terms of military activities.

Mr. BYRD. There was not any approval in the case of his invasion of Haiti. The invasion actually started.

Mr. THOMAS. There was in Desert Storm, as you will recall.

Mr. BYRD. Wait just a second. The invasion of Haiti started. The President called it off—in midair, almost. I was not supportive of that invasion.

Mr. THOMAS. Nor was I.

I guess further I would say, I am not sure I am confounded by the Congress each year approving this. I do not think that is an unusual kind of thing. Do you not think the Congress represents the people——

Mr. BYRD. When the Senator is around here long enough he may find himself confounded. If we get into a situation where the Nation's security is in the balance, we may all feel confounded by the necessity of acting expeditiously, because we have the lives of men and women in dire peril. And then, under this amendment, we are going to require a majority of the Senators who are chosen and sworn to pass a resolution in a situation like that—we are going to explain that away by talking about the budget deficits?

Mr. THOMAS. I have a little more confidence in the Members of this body than to ignore an issue of that kind. It just seems to me that the evidence is that we need to do something different than we have been doing. I constantly hear we cannot change things. But the record is, we have to if we want different results.

Mr. BYRD. Senator, I am talking about section 5.

Mr. THOMAS. I understand.

Mr. BYRD. Let us stay with it. Let us not talk about, at the moment—I will be glad to yield later to the Senator, if he wants to broaden the discussion.

We are talking about section 5. As Napoleon said, there were men on his council who were far more eloquent than he, but that he won every argument simply by saying 2 plus 2 equals 4. It is pretty simple.

So I want to say to my friend, as Napoleon might have, he would say let us stick with the question. Let us stick with section 5. That is the question that has been raised this afternoon, in the main, on this floor.

So, is the Senator telling me that we should run the risk of adopting a joint

resolution each fiscal year in which our national security is in jeopardy? We should run the risk of adopting a joint resolution and that he is willing to subject this country's security to the necessity of a supermajority vote—a mini-supermajority vote, a majority of those Senators chosen and sworn?

Mr. THOMAS. I have, I guess—and I do not suggest I know the answers—but I have a good deal of confidence. What does it say? It says, ''* * * this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious militarily threat * * *'' I have a hunch that most of us, a supermajority of us, would respond to that.

Mr. BYRD. Is that the Senator's answer?

Mr. THOMAS. Yes, sir.

Mr. BYRD. Well, Mr. President, that is the kind of answer that the proponents of this ill-advised constitutional amendment continue to make. ''Well, I have confidence that the Congress would do thus and so.'' Or ''The intent of the proponents of this constitutional amendment is thus and so—the intent.'' Or ''That would never happen.'' Or ''I am sure that the Senate and House will rise to meet the needs of providing—by providing supermajorities.''

Senators do not know that. Senators do not know what the intent of a future Congress may be. Senators do not know with enough certitude to give me confidence that Congress will act in a given situation that may be years away, as it might act at this moment or in this year of Our Lord 1995.

Mr. President, this is the typical response: ''I have confidence.'' That is it. ''I have confidence. I am willing to trust our colleagues.'' Well, I am willing to trust colleagues also. I am willing also to trust the good judgment of a majority of the representatives of the people, if the people are adequately informed. I am willing to trust the opinions of the American people if they are properly informed. But we cannot cavalierly push away this sobering question nor the serious questions that arise with respect to this Constitutional amendment simply by saying, ''Well, I am sure it won't happen,'' or ''I am willing to trust'' so and so and ''a future Congress'' and ''this is not the intent.''

Read what the amendment says. That is what the court is going to go by. It is going to first look at the four corners of the document.

Section 1:

Total outlays for any fiscal year shall not exceed total receipts for that fiscal year.

Then in section 5:

The provisions of this article—

Meaning section 1.

may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security.

Who is going to determine what is an ''imminent and serious military threat'' to the national security? Obviously, there are going to be differences of opinion.

Mr. THOMAS. That is what I am suggesting; that is, that is the role of Congress, and I think it is a legitimate role and one that is not unusual, one that I have perceived has been done for a number of years.

Mr. BYRD. Absolutely. But for a number of years it has not been required.

Mr. THOMAS. It should be required.

Mr. BYRD. For 206 years it has not been required that there be a majority of the whole number in each House to pass a resolution.

Mr. THOMAS. Where does the President get the money, if the majority of the Congress does not agree?

Mr. BYRD. Where does he get the money?

Mr. THOMAS. Yes.

Mr. BYRD. Let me ask the Senator. Suppose the President needs a new tax. Suppose he needs to raise taxes to meet that serious military conflict, that serious military threat to the United States. Suppose he needs to increase taxes. Then what? Would the Senator be willing to raise taxes?

Mr. THOMAS. The President does not raise taxes.

Mr. BYRD. That is not the question which I asked the Senator.

Mr. THOMAS. I think there is a system in which the President can move. But the President then comes to the Congress for either a declaration or for the money, or he, as he is doing now, comes for a supplemental budget. The Congress has to be involved to make this decision.

Mr. BYRD. Of course. This Senator has never said the Congress should not be involved. This Senator is saying simply that the Congress ought to continue to be involved under the present Constitution which has provided very well for congressional actions to meet all emergencies that have occurred throughout the 206-year history of this country.

Mr. THOMAS. I understand that.

Mr. BYRD. But now we are going to be in a very different situation if this Constitution is going to be amended. And it will not be amended for just a year or so; it will be changed from now until kingdom come, unless the American people and Congress repeal this amendment once it is in the Constitution. The Senator knows that. It is not easy once it is in there. It is not like a statute which can be repealed by the same Congress that enacted it in the first place.

I am asking the Senator. Suppose we get into a situation where this Nation's security is in peril and more money is needed and the necessity arises for an increase in taxes. Then what are my friends on the other side going to do in that situation?

Mr. THOMAS. That is why this provision is there to waive.

Mr. BYRD. Yes. By what vote?

Mr. THOMAS. By a supermajority vote.

Mr. BYRD. Yes. That is just the question. Why subject this country's security to the necessity of a supermajority vote when the Nation's very life is in danger, the security of the American people are in danger, the security of the troops in the field are in danger, and the security of the planes in the air is in danger? Why subject a decision at that critical moment to a supermajority? The Framers, in their wisdom, did not do it. And we have fought a good many wars.

Mr. THOMAS. I understand. This is the basis of what we are talking about. Of course, the Senator says leave it as it is. Others say we need to change it. That is what it is, whether we change or whether we do not. Many people think that there needs to be a change. Many people think the performance is such that there needs to be a change. And I respect greatly the Senator's wisdom and knowledge. But that is the issue. And the Senator does not want it changed. I understand that. Others do. That is what it is all about.

Mr. BYRD. It is about more than that. That is why we need to take the time to probe and to explore these provisions that are in this amendment to balance the budget. We are all in agreement, I say to the Senator, with the goal of a balanced budget. We are all in agreement. I am in agreement that we need to reduce the deficits. And I agree that it is going to require some pain. I also am of the opinion that we do not need to wait 7 years. We started in 1990. We took a great step beyond that in 1993. We need to do more.

Why cannot we continue on that course of enacting multiyear budget deficit reduction bills? Do you know why? Because of the pain, and part of that pain may just have to be an increase in taxes. I do not like to vote to increase taxes. I have been in political office 48 years, and I know it is not easy to vote to increase taxes. It is always easy to cut taxes. It was easy to cut taxes in 1981 when Mr. Reagan asked for a tax cut in one package involving 3 successive years of cuts, 5 percent the first year, 10 the next, and 10 the next. It does not take courage to vote to cut taxes.

But in a situation—I keep getting back to this section 5. What is the Senator's answer? Is he willing to put this Nation's security in peril by requiring a supermajority consisting of a majority of the Senators and House Members elected? The Framers did not think that was wise. We had just come through the Revolutionary War. We had still ahead of us the War of 1812. We had ahead of us the Mexican War of 1848, the Civil War, the war with Spain in 1898, the First World War, the Second World War, Korea, Vietnam, and the Persian Gulf. In addition to these, there were several military conflicts that were not wars, of that magnitude, by any stretch of the imagination.

There was never, until this amendment comes along, any thought of requiring a mini-supermajority to pass a

resolution in a moment of dire peril to deal with our Nations's security. We get nothing from the proponents when we direct the question at them, ''Would you be willing to raise the revenues to meet the needs in that moment of peril?'' ''Would you be willing to raise taxes?''

Mr. LEVIN. Will the Senator yield for a question.

Mr. BYRD. Yes, shortly. What we get is what the Senator from Maryland got a while ago when he tried to pin Senators down on the other side of the aisle with his questions concerning section 5. Section 5 has not been talked about much in the Senate. It needs to be talked about. What we get are speciocities, irrelevancies, platitudes, well-wishes, and expressions of good intent. We do not know what the ''intent'' of the Senators who sit at these desks will be 2 years form now, 3 years from now. Perhaps they will be the same Senators. How can we say what their intent will be? We need to read the words of the amendment. They speak for themselves when they say ''total outlays shall not exceed total receipts in any fiscal year.'' That does not leave any wiggling room. The proponents say, yes, it does, because you can waive that by a three-fifths majority.

It is a dangerous amendment. Section 5—I would not want to risk the lives of my grandsons on that kind of language, requiring 51 Senators in this Chamber to pass such a resolution, denying the Vice President of the United States his vote to break a tie, if there should be a tie. This amendment would deny the Vice President of his vote that is accorded him in the current Constitution——

Mr. LEVIN. Will the Senator yield?

Mr. BYRD. To vote to break a tie. I yield.

Mr. LEVIN. I understand that the Senator from Utah said that the Vice President would be denied, in his opinion, a vote to break a 50–50 tie. But he also said it was an ''open question.'' I do not think we ought to have an open question in a constitutional amendment, because this is a life and death matter.

Mr. BYRD. You have a constitutional crisis when you have this open question.

Mr. LEVIN. It will, in fact, plunge this constitutional amendment into the courts to interpret as to whether or not he Vice President can break a tie. It should not be left open. It should be resolved in this amendment as to whether or not the Vice President's vote counts to break a 50–50 tie. I think it is irresponsible to write a constitutional amendment knowing that that question is left open.

By the way, that is not some theoretical question. Last year's deficit reduction bill, as it has been debated here this afternoon, was a 51–50 vote, based on the Vice President's vote. So this is not some theory that we are arguing here in a civics class. This is the reality of the U.S. Senate, and life and death matters can be resolved on whether or not the Vice President's vote counts to break a tie.

It was the opinion of the Senator from Utah, as I understand it, stated earlier this afternoon, that the Vice President's vote would not count in this provision. And yet, the chief sponsor of this language that is in front of us, Representative DAN SCHAEFER of Colorado, says the Vice President's vote would count. Yesterday, we had the same problem. We had, on this side, the chief sponsor saying that there would be no standing, do not worry about it. We had the chief sponsor on the other side—this is the Schaefer-Stenholm substitute. Representative SCHAEFER has said that there would be standing for Members of Congress to sue. I had a big board up, and my friend from Pennsylvania who is managing the bill now saw where we had the prime sponsor of this language quoted in a very formal document, by the way. These were not casual comments. These were questions and answers he submitted for the RECORD, in the HOUSE CONGRESSIONAL RECORD, where he made statements which were exactly contrary to what the opinion of the Senator from Utah is—exactly contrary on critical issues on the role of the court.

Representative SCHAEFER said, in a formal answer, that a court could throw out an appropriations bill or a tax bill, as being unconstitutional. But we were told by the Senator from Utah that it was his opinion that a court could not involve itself in the budgetary process.

My question of my friend from West Virginia is this—and I want to read now into the RECORD the statement of Representative SCHAEFER on the question of whether or not the Vice President's vote counts. It is on page 758 of the CONGRESSIONAL RECORD of January 26. This is a formal interpretation of section 4. And, again, this is a formal question and answer presentation that was supplied for the RECORD by Representative SCHAEFER:

> This language is not intended to preclude the Vice President in his or her constitutional capacity as President of the Senate from casting a tie-breaking vote that would produce a 51–50 result.

He goes on to say:

> Nothing in section 4 of the substitute takes away the Vice President's right to vote under such circumstances.

Mr. SARBANES. Will the Senator yield?

Mr. LEVIN. I do not have the floor, but——

Mr. BYRD. Mr. President, the courts are going to decide that. It does not make any difference what my intent is or what the intent of the House Member was who was addressing himself to that question, or what he intent of any other Senator is. It is the court, and it will be a constitutional crisis. Once we constitutionalize this fiscal policy by writing this amendment into the Constitution, it is an open invitation to the courts to come into this equation. There is nothing in this amendment that prohibits or forbids the courts from intervening.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BYRD. Yes.

Mr. SARBANES. I think the Senator from West Virginia is absolutely correct. But what is going to draw the court in even more is the fact that two principal sponsors of this measure give absolutely contrary views as to the meaning of this clause, as the Senator from Michigan has pointed out. One of the chief House sponsors says that under section 4 the Vice President would have the tie-breaking vote. The distinguished Senator from Utah, chairman of the Judiciary Committee and the lead manager for this bill, very explicitly stated on the floor of the Senate not too long ago that you would have to produce 51 votes out of 100 in this body in order for section 4 to apply. A 50–50 vote with the Vice President supposedly casting a tie-breaking vote would not work. In effect, you have negated the tie-breaking vote of the Vice President.

This is important in underscoring all of the pitfalls that are contained in this provision. I am certain it will bring about what the Senator from West Virginia has just stated, and that is the involvement of the courts, because the legislative history on this is absolutely contradictory on the part of its proponents.

Mr. LEVIN. I thank the Senator from Maryland. My point here is that this is being left——

Mr. BYRD. I ask unanimous consent that I may continue to yield the floor, retaining my rights to the floor, for colloquies. I do not intend to hold the floor all afternoon. My feet are getting tired.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I call attention to the fact that we have a fresh new Member here from the Republican response team. They are sending them in in relays.

Yes, I would be glad to yield.

Mr. LEVIN. The Senator has eloquently pointed out the reasons why we should not require majorities, and on that there is a difference of opinion. I happen to share the opinion of the Senator from West Virginia for the reasons that he has given that we should not require a supermajority.

But the issue that I raise, the Senator from Maryland has raised, and the Senator from Utah has raised relates to that question. It is, what is a supermajority and whether the Vice President's vote counts? And on that one, I think 100 of us ought to agree.

Maybe there is a disagreement as to whether or not we should have a supermajority—and there is a disagreement—but there should be no disagreement, there ought to be absolute unanimity on a determination that this

constitutional amendment be clear on the question as to whether or not the Vice President can break a tie and count towards the 51 votes. We should not leave that ambiguous.

This is not a matter where there is a difference of opinion as to whether or not a supermajority is appropriate in order to raise revenues or not. This is a question of writing a constitutional amendment, knowing that a question, a critical question, is left open. It should not be left open.

Because if it is, this constitutional crisis, which the Senator from West Virginia and the Senator from Maryland talked about, is something that we are inviting. And we should not only not invite it, we should close the door on any such constitutional crisis by making that clear.

That will not resolve the question that the Senator from West Virginia has raised as to whether or not it is desirable that there be a requirement for a supermajority, and I happen to, again, share his view on that. But, again, we should clarify the question.

I ask unanimous consent at this point, Mr. President, that the statement of the prime sponsor of the joint resolution in front of us, Representative SCHAEFER, that appears on page H758 of the CONGRESSIONAL RECORD of January 26 of this year, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

This language is not intended to preclude the Vice President, in his or her constitutional capacity as President of the Senate, from casting a tie-breaking vote that would produce a 51–50 result. This is consistent with Article I, Section 3, Clause 4, which states: ''The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.'' Nothing in Section 4 of the substitute takes away the Vice President's right to vote under such circumstances.

Mr. LEVIN. Mr. President, I do not have the floor, but I think it would be very desirable for the Senator from Pennsylvania to respond, should the Senator from West Virginia so yield.

Mr. BYRD. Mr. President, of course, I would not want to shut out from this electrifying moment in this very illuminating debate a Member of the ''Republican response team.''

I ask unanimous consent that my previous request include the Senator from Pennsylvania and any other Member of the response team.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator and I thank the Chair.

I was going to refer you to the 12th amendment that uses the same language that is used in section 5 and section 2, which refers to the whole number of the Senate. In one case, it says the whole number or two-thirds of the whole number of the Senators, the same language that we use here only we say in each House.

If you have questions about the ability of the Vice President to cast votes with respect to this, then I suspect you have questions as to whether the Vice President can cast votes under the 12th amendment, because it is word for word what is put in this document.

Mr. LEVIN. If the Senator will yield, I do not have a question about it.

The Senator from Utah, who is the principal sponsor on that side, said that the Vice President's vote would not count. Now that is coming from a pretty authoritative source here.

Senator HATCH said—and I was not on the floor, but I understand that he said—two things about this question. Number one, it is an open question. That means what it says. It is an open question, presumably left for the courts or left for somebody to decide. But then Senator HATCH said—it was reported to me, and I was not on the floor; I believe the Senators from West Virginia and Maryland were here—Senator HATCH apparently then said that, in his opinion, in his opinion, the Vice President's vote would not count toward the 51 votes. And I think that is what the Senator from West Virginia reflected in his statement.

Mr. BYRD. Yes.

Mr. LEVIN. So it is not the Senator from Michigan who is raising the question—I think we ought to button down the issue—it is the principal sponsor of the amendment here in the Senate who has rendered that opinion.

Mr. SARBANES. Will the Senator yield to me? Because the analogy—

Mr. BYRD. Before I yield, may I point out to the Member of the response team who just, I believe, indicated that the supermajority in amendment No. 12 would be a parallel to the situation which we have been discussing—namely, as the Vice President's vote would be involved—I point out to the junior Senator from Pennsylvania, who perhaps has not read the 12th amendment lately, that that is what that amendment is all about. There is no Vice President.

Mr. SANTORUM. Right.

Mr. BYRD. There is no Vice President to cast a vote under the 12th Amendment. The reason for that amendment is to provide for the election of a Vice President by the U.S. Senate when the Vice President's seat is vacant.

Mr. SARBANES. If the Senator will yield, that was exactly the point I was going to make.

The Senator from Pennsylvania got up and said, ''Well, if you want to know what this language means here of the majority of the whole number, just refer to amendment 12.''

Now, amendment 12 has to deal with picking the Vice President. There is not a Vice President. And it says——

Mr. SANTORUM. Does that not make it obvious.

Mr. SARBANES. It says:

The Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But the choice is picking the Vice President. It does not answer the question that the Vice President can cast the tie-breaking vote.

Mr. SANTORUM. If the Senator will yield, I think it makes that very point. Obviously, the Vice President is not considered part of it because there is no Vice President. So the whole number must mean that it is the Members of the Senate, absent the Vice President. Otherwise, this would make no sense. I mean, I think that is the reason I used it, because it is apparent.

Mr. SARBANES. Once a Vice President has been chosen——

Mr. SANTORUM. The Vice President is a Member of the Senate.

Mr. SARBANES. Once the Vice President has been chosen——

Mr. BYRD. He is not a Member of the Senate. The Vice President is never a Member of the Senate.

Mr. SANTORUM. I rest my case.

Mr. SARBANES. We take a vote——

Mr. BYRD. That is not the case.

Mr. SARBANES. Once the Vice President is chosen and we take a vote, a 50–50 vote, can the Vice President break the tie?

Mr. LEVIN. Under this amendment.

Mr. SANTORUM. If we compare it to the language in the amendment it parallels, my opinion would be no.

Mr. LEVIN. He cannot?

Mr. SANTORUM. Correct.

Mr. LEVIN. So you disagree with Congressman SCHAEFER?

Mr. SANTORUM. I do.

Mr. LEVIN. Then in that case, we have the prime sponsors in the Senate and we have the prime sponsor in the House, whose name is on top of this constitutional amendment—this is the Schaefer amendment—we have the sponsors here and the sponsor there in total disagreement on an absolutely fundamental question as to whether or not the Vice President's vote can be counted to break a 50–50 tie. And that determines the outcome of the whole deficit reduction package last year.

That should not be an open question. Whatever side of this issue you are on, whether or not you believe in supermajorities or you do not, we should not leave an ambiguity that huge in the Constitution as to whether or not the Vice President's vote counts. And I think it ought to be clarified. It ought to be clarified one way or the other, but it ought to be clarified because, otherwise, it is an invitation for a constitutional crisis.

I yield the floor and I thank my friend.

Mr. BYRD. Mr. President, I have been unable to get a question answered here, and perhaps the Senator from Pennsylvania can answer it.

My question being: If the threat to our national security should continue into the next fiscal year, or the next calendar year after the year in which the joint resolution referred to in this section is adopted by a minimajority of

a majority of all the Members of the Senate and all the Members of the House chosen and sworn, if that threat continues, and we are in a second fiscal year does such a joint resolution have to be passed again by both Houses?

If not, do both Houses have to waive the requirements of section 1, which requires a three-fifths majority? Does Congress have to continue to waive for each fiscal year during which we have the military threat? Does that mean that every new fiscal year in which the threat continues, we have to have three-fifths to waive the requirements of section 1? Or does it require that every fiscal year we pass another joint resolution requiring a majority of the total membership of both Houses as referred to in section 5? Or does it require that both sections be waived?

Mr. President, I ask unanimous consent that I may propound a question to the Senator, even though I hold the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, section 5 reads: ''The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.'' So it would seem very obvious to me the Congress has the availability to raise it for the fiscal year or any subsequent fiscal year in which the war is in effect.

That is pretty much what it says.

Mr. BYRD. I am glad we are going by what the amendment says for once.

Now, what do you think it says? What does the Senator think it says?

Mr. SANTORUM. I think that is what it says.

Mr. SARBANES. I ask the Senator, what does it mean? What is your understanding of the meaning? Would you have to have a waiver for each fiscal year?

Mr. SANTORUM. I am stupefied that the plain reading of this language is not apparent to the Senator from Maryland. I think it is very serious.

Mr. SARBANES. I have to say to the Senator from Pennsylvania perhaps I am not as quick as he is to pick up the plain language. I thought the question was a good question. The question, as I understood it is, must you have a waiver in each fiscal year since?

Mr. SANTORUM. It says, ''The Congress may waive in any year.''

Mr. SARBANES. For any fiscal year in which the United States is engaged.

So, we may waive it for that fiscal year.

Mr. SANTORUM. Or next fiscal year.

Mr. SARBANES. The next fiscal year comes along. Then what?

Mr. SANTORUM. It says we may waive for any fiscal year. It does not say we have to waive for this fiscal year. We could pass—it says ''any fiscal year.'' It could be for next fiscal year, the one afterward, as long as the declaration of war is in effect, we can raise for any fiscal year.

Mr. SARBANES. So you think it means any and all?

Mr. SANTORUM. As long as the declaration of war is continuing, I assume that is what the Congress can do.

Mr. SARBANES. What about the next sentence?

Mr. BYRD. There are two different situations there.

Mr. SARBANES. What about the next sentence? Same interpretation.

Mr. SANTORUM. Obviously, in one case we have declaration of war. That is, a declaration of war has a certain time limit, then the declaration of war ceases.

In this case——

Mr. BYRD. Would the Senator say that again?

Mr. SANTORUM. The declaration of war at some point ends.

Mr. BYRD. What causes it to end? What terminates a war?

Mr. SANTORUM. A signing of a treaty to end the war.

Mr. BYRD. What terminates the declaration of war?

Mr. SANTORUM. I ask the Senator, since I was not around the last time we declared war, I assume it would be some act of Congress to end the declaration.

Mr. SARBANES. But it was the Senator that asserted that the declaration of war would end. How does that happen?

Mr. SANTORUM. I just responded.

Mr. BYRD. The Senator was responding to a question. His response, I do not understand.

Mr. SANTORUM. As long as a declaration is in effect, however long that may be, that Congress can, under this provision, waive this amendment.

Mr. BYRD. How long was the declaration of war in World War II in effect?

Mr. SANTORUM. I yield to the Senator from West Virginia.

Mr. BYRD. I am asking a question. I want to be informed.

Mr. SANTORUM. I do not know the answer.

Mr. BYRD. The ready response team should have all the answers.

How long was the declaration of war in World War I in effect? The war is over. Suppose declaration of war is still in effect. What happens in a situation like this?

Mr. SANTORUM. I think it would be apparent that at some point the Congress would rescind the declaration of war and then this article would no longer be operative.

Mr. BYRD. Congress did not rescind all previous declarations of war. Why does the Senator not help me find the answer to that question?

Mr. SANTORUM. I will do my best.

Mr. SARBANES. Would the Senator address the second question? Let us move beyond the declaration of war. What is your understanding of the second sentence? This is not a declaration of war in which the United States is engaged in military conflict, so declared by a joint resolution. Would we have to get a joint resolution the following year?

Mr. SANTORUM. My opinion on that is that the—according to the plain reading of the constitutional amendment—Congress would have to, each year, go through the process of exempting itself from this provision because of that conflict.

Mr. SARBANES. How can the phrase ''for any fiscal year,'' which is identically the same phrase in sentence 1 and sentence 2, be given diametrically opposite definitions?

You just told me that the phrase ''for any fiscal year'' in sentence 1, linked to a declaration of war, means that it can be waived for not only the current fiscal year but fiscal years beyond that.

Now the Senator tells me in sentence 2, ''waive for any fiscal year'' means only the fiscal year in which you find yourself and not subsequent fiscal years.

Now, how can the Senator give that phrase an entirely different interpretation?

Mr. SANTORUM. Let me give you the committee report which says: ''For any fiscal year, in effect, is intended in the first sentence of this section to require a separate waiver of the provisions of any amendment each year.''

Mr. SARBANES. For which sentence?

Mr. SANTORUM. For the first usage.

Mr. SARBANES. In section 5.

That is not what you told me a few minutes ago.

Is that right?

Mr. SANTORUM. That is correct.

Mr. SARBANES. Which is correct then, your answer or the committee report?

Mr. SANTORUM. I refer to the committee report.

Mr. SARBANES. So, the answer you gave me earlier is not correct?

Mr. SANTORUM. According to the committee report, that is correct.

Mr. SARBANES. Well, what is your view? Is your view the committee's report or is your view the answer which you gave yourself just a couple minutes ago?

Mr. SANTORUM. My view is that the committee report, having had the time to study it longer than I, is probably the accurate view.

Mr. BYRD. Was there a minority view on this particular question in that report?

Mr. SANTORUM. Not that I am aware. I will have someone check.

Mr. BYRD. Let me ask the Senator.

Mr. SANTORUM. By the way, I would further read that the meaning in the second sentence, the second use, is also the same, that in every fiscal year the Congress would have to extend this waiver.

Mr. SARBANES. I say to the Senator that is certainly a consistent reading of the meaning ''for any fiscal year.'' At least it is being read the same way in the second sentence as it was read in the first sentence according to the committee report.

Now, that is not the answer the Senator was giving us because he was giving a completely opposite view of the meaning ''any fiscal year'' in sentence

1 and in sentence 2. But it only underscores the problems with this amendment.

The distinguished Senator from Pennsylvania came to manage the bill during this time period. The Senator had—I assume now it has changed—a perception of the meaning of this proposed amendment to the Constitution which I am now told he is withdrawing.

Mr. SANTORUM. If the Senator will yield, that is why it is very important to have committee reports and implementing legislation that is called for in the article; that we have implementing legislation to clear up these kinds of doubts that may exist with respect to specific provisions of the act.

So I suggest to the Senator that a lot of this debate is useful. In fact, it is illuminating. I find it to be such, not just on this point, but on many others.

But what is important to note is the ability of this Senate to come back, as it will, and implement this act and further specify the meanings of how this constitutional amendment will be implemented.

Mr. SARBANES. I ask the Senator from Pennsylvania, do you think that the implementing legislation could be used to clarify the discrepancy in view that was outlined here earlier on the floor as to whether a Vice President has the power to break a tie? Could that be clarified by the implementing legislation?

Mr. SANTORUM. I guess I would defer to answer on that. I do not know whether the implementing legislation would do that or not, to be honest. I think that would be a matter of interpretation.

Mr. SARBANES. Let me just carry the question a step further. Do you think that implementing legislation can rewrite provisions of a constitutional amendment?

Mr. SANTORUM. Obviously not, but they certainly can clarify points of a constitutional amendment. Obviously, constitutional amendments, particularly of this nature, are not meant to stand on their own. There has to be some legislation that is going to allow this to be complied with.

Mr. BYRD. Will the Senator allow me on that point?

Mr. SARBANES. Certainly.

Mr. BYRD. Implementing legislation may be repealed in the very same session—for that matter, in the very same month—in which the original legislation was enacted. Does this mean then that we are going to trust to the hands of shifting opinions in the country and in this body the interpretation of the amendment if we are going to do it by implementing legislation?

Does this mean that we are going to put at risk the Nation's security by leaving this up to the implementing legislation, which can be changed, as I say, by even the same Senators in a subsequent year? Are we going to place the Nation's security at risk by falling back on the language that talks about implementing legislation?

Mr. SARBANES. Will the Senator yield?

Mr. BYRD. Yes.

Mr. SARBANES. He is making an extremely important point. Suppose one Congress comes along and passes implementing legislation saying that the Vice President cannot cast a tie-breaking vote. Then a new Congress comes in and they pass implementing legislation saying the Vice President can cast a tie-breaking vote.

I say to the Senator from Pennsylvania, I do not see how this particular provision can bounce back and forth with the implementing legislation. I just do not understand how that could happen. It is obvious that a court would have to come in to decide it if it is not decided here, and we have directly conflicting views.

Let me just read you—I do not know whether the Senator is acquainted with what Congressman SCHAEFER on the House side said about this.

Mr. SANTORUM. If the Senator will yield, again, I am a little bit perplexed. I look at, for example, section 8 powers under article I that are given to the Congress to borrow money, to regulate commerce. Does it say how we regulate commerce or do we leave that to implementing legislation? And if we do change that, does that mean we somehow violate the Constitution, or is that somehow dangerous upon our society? The Constitution, as the Senator will tell you, is a contract of principles, not as to how to.

Mr. SARBANES. Will the Senator yield on that very point?

Mr. SANTORUM. We continually change how to.

Mr. SARBANES. That is absolutely wrong. That is absolutely wrong. The Constitution is very specific in describing how, in terms of the process, decisions will be made. It is not specific about the substance of the decision to be made, but it is very specific about how we are to do our business. The Framers were very careful about that. They spelled out what would be a quorum, then a majority of the quorum could pass the legislation. It is all laid out.

I want to give you a real-life situation. A bill is before this body. It is a controversial, closely fought bill. We take a vote on it. The vote is 50–50, and the Vice President is sitting in the chair.

Now, it is very clear under current procedure in that circumstance, the Vice President can cast a tie-breaking vote. It does not have to be 50–50, it can be 48–48, whatever. And I have been in this body when that has happened, not only on the 1993 deficit reduction bill, but on other measures as well. I have seen the Vice President in the chair casting a tie-breaking vote.

What is the outcome in that situation?

Let me read to you what Congressman SCHAEFER says the outcome would be. This is the Republican lead sponsor on the House side:

> This language is not intended to preclude the Vice President in his or her constitutional capacity as President of the Senate from casting a tie-breaking vote that will produce a 51-to-50 result. This is consistent with article I, section 3, clause 4 which states: ''The Vice President of the United States shall be President of the Senate but shall have no vote unless they be equally divided.'' Nothing in section 4 of the substitute takes away the Vice President's right to vote under such circumstances.

The Senator, I take it, has told us that he disagrees with that; is that correct? That is not his view of the meaning of article 4.

Mr. SANTORUM. It is apparent from the committee report that refers to, as I did, the 12th amendment and refers to that being similar to what the 12th amendment would be. That would be my answer.

Mr. BYRD. In the 12th amendment there is no Vice President——

Mr. SANTORUM. It is obvious as to what——

Mr. BYRD. To cast any kind of vote, whether it is a deciding vote or anything else. That is why we have the 12th amendment, to fill the vacancy in the Vice Presidency.

Mr. SARBANES. What is the reference in the committee report to which the Senator is referring?

Mr. SANTORUM. Page 15, about three-quarters of the way down, ''the whole number of each House.''

Mr. SARBANES. That does not answer the question. That just makes a statement.

> The whole number of each House is intended to be consistent with the phrase ''the whole number of Senators'' in the 12th amendment to the Constitution * * *

But that does not answer my question, since the 12th amendment to the Constitution was a situation in which there was no Vice President. It addresses a situation in which you are choosing a Vice President, not the situation after which the Vice President has been chosen. And once the Vice President is chosen under article I, section 3, clause 4 of the Constitution, he has a vote in an equally divided situation.

So what the Senator from Pennsylvania is doing is drawing an analogy from a situation that governs circumstances in which a Vice President has not been picked and you are picking a Vice President. It does not then answer the question of the vote-casting power of the Vice President once he has been chosen.

Mr. SANTORUM. If the Senator will yield, I think the Senator from West Virginia, in fact, helped me answer this question when, if you look at, again, what the committee report says, ''The whole number of each House is intended to be consistent with the phrase 'the whole number of Senators * * *' ''

The Vice President is not a Senator. I quote the Senator from West Virginia, just a few minutes ago. So it would be obvious to any reader that a whole number of Senators must be 51, assuming there are 100 Senators.

Mr. SARBANES. I just make this observation to my friend.

You must be desperate about the 1993 legislation to be so driven that you want to deny the Vice President of the United States his tie-breaking power to cast a vote which has been in the Constitution from the very beginning.

Now, I know Members on the other side are unhappy about that legislation, but it seems to me it is carrying your differences over the substance of a piece of legislation much too far when you start tinkering, really assaulting, the Constitution of the United States in this fashion. We end up getting two completely differing interpretations of the application of this provision as interpreted by the lead House Republican sponsor of this measure and by the answers that I am now receiving in the Chamber of the Senate.

Mr. BYRD. Mr. President, I ask unanimous consent that notwithstanding the fact that I have the floor, I may propound a question to another Senator without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Let me ask the distinguished Senator from Pennsylvania, in a situation in which in a given fiscal year the United States is engaged in military conflict which causes an imminent and serious military threat to national security, and that threat continues into the next fiscal year, is it section 1 that would have to be waived in the subsequent fiscal year or years? Would section 1 have to be waived in the subsequent fiscal year or years?

Mr. SANTORUM. I am not too sure—if the Senator is asking for an answer, I am not too sure I understand what the question is. Is he suggesting that the second year would be treated differently than the first year of the conflict?

Mr. BYRD. Why would it not? It is a new fiscal year. And the constitutional amendment on the balanced budget requires that the outlays not exceed receipts in any fiscal year. So we are into a new fiscal year. And yet the threat to the security of this country is still in effect. What do we do? Do we have to waive section 1 again in the new fiscal year?

Mr. SANTORUM. According to the committee report, a joint resolution of Congress would be required in order to have this provision be eligible to be waived, this amendment to be waived.

Mr. BYRD. The Senator is talking about two things there. The Senator is talking about the joint resolution in section 5 that would have to be enacted into law which would require a majority of the whole number of Members in each House. But section 1 requires a vote, in order to be waived, of three-fifths of the whole number of each House.

Mr. SANTORUM. And section 5 provides an exception to section 1.

Mr. BYRD. To section 1.

Mr. SANTORUM. In other words, section 1 binds us with the exception of, as outlined in section 5, when we have a declaration of war or——

Mr. BYRD. But my question is, if that military threat continues into a second fiscal year——

Mr. SANTORUM. We would be required then to pass a separate waiver of this amendment.

Mr. BYRD. Congress would have to pass a joint resolution in each and every fiscal year that ensued following the fiscal year of the first joint resolution?

Suppose there is not a declaration of war in effect. The first sentence of section 5 addresses the situation in which there is a declaration of war. Now, I will read it:

> Congress may waive the provisions of this article—

Meaning section 1——

> for any fiscal year in which a declaration of war is in effect.

Now, the country has fought three major wars and engaged in several military conflicts during the past 48 years without declaring any war. Suppose there is not a declaration of war in effect. Then let us see what it says.

> Provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Now, I have two or three questions I wish to ask the Senator. I will ask them singly or I will ask them en bloc.

One. Does this mean that in each subsequent fiscal year—let us imagine that a military threat develops in August, which is only 2 months preceding the close of the fiscal year. A threat is imminent. The Commander in Chief asks for a resolution, and Congress, notwithstanding the rules providing for unlimited debate in the United States Senate, quickly passes such a joint resolution for that fiscal year.

Then let us imagine that the threat continues over into the next fiscal year, January, February, March, April. Is another joint resolution required by the Congress?

Third question. Suppose that the response of the Congress to the President's request is favorable and the President launches his planes and ships, his troops, and vast expenditures of money are entailed. The fiscal year ends. The outlays exceed the receipts. The threat continues throughout the next fiscal year. There is no declaration of war but expenditures run into the billions of dollars—billions. What are we going to do?

This amendment says outlays shall not exceed receipts in any fiscal year. What are we going to do about the fact that the deficits rose greatly in the previous fiscal year, the one in which the threat first made itself clear and the deficit of the second year amounted to billions of dollars? What are we going to do? And suppose that passions within the Congress and in the country in the early-on support for the war dwindled away and left the Commander in Chief out there with his men in far-flung seas and lands, with their lives on the line. What do we do? No war has been declared.

Do we require that in order to waive—in order to waive section 5 there must be a majority of the Members elected in both bodies to waive. And you do not have that majority. What are you going to do? You have already run in excess, many—$10 billion, $15—who knows what? It cost billions, the Persian Gulf War, what do you do, Senator?

Mr. SANTORUM. I would answer the question——

Mr. BYRD. Are you going to raise taxes?

Mr. SANTORUM. I would answer that question the same as I would with any war. The Congress has the responsibility of funding the war and appropriating the dollars. The President cannot continue to execute a war if the Congress does not provide the funds to do so by a majority vote. So we already have, already, an existing requirement that Members of Congress vote by a majority to fund the war.

So I guess I do not see the complication. If we are going to go ahead by a majority vote and fund the war through an appropriations process, and we have the support to do that, why would we not continue very consistently, almost an afterthought, to go ahead and waive this provision of the Constitution, recognizing the imminent threat to our national security?

Mr. BYRD. Except that a majority is not a majority is not a majority, under this new amendment to the old Constitution. A majority under the current Constitution is not a majority under this constitutional amendment to balance the budget.

So the deficits have been increased, the debt has gone through the stratosphere, and we have people overseas with their lives on the line. What are we going to do?

You have an administration under the control of one party and the leadership of the Congress under the control of the other. You are putting our Nation's security in peril——

Mr. SANTORUM. Senator, what you are suggesting——

Mr. BYRD. Requiring a mini-supermajority for such a critical time.

Mr. SANTORUM. Is what the Senator is suggesting that this body or the other body would pass appropriations bills to fund the conflict, our participation in the conflict, and then not come back and waive the requirement for a balanced budget to allow us to do that? Is that what the Senator is suggesting?

Mr. BYRD. I am not suggesting it. The Senator——

Mr. SANTORUM. Same vote——

Mr. BYRD. The amendment the Senator is so avidly supporting requires that in each fiscal year——

Mr. SANTORUM. As we do with appropriations——

Mr. BYRD. Outlays shall not exceed receipts.

Mr. SANTORUM. Except——

Mr. BYRD. Suppose that in order to make that work, we had to have a tax to fund this threat—to protect us against the threat to the security of the Nation. I have heard Senators on that side of the aisle say they will not vote for a tax, ever. What about the deficits that have already been run up in the previous fiscal years, for which a majority of the Members chosen and sworn have voted to waive? Does that mean we have to go back and put on a retroactive tax? How would the Senator feel about that?

Mr. SANTORUM. How I would feel about it is, as you know, every year we have to appropriate money for the Defense Department. Particularly in time of war we would have to appropriate money through an appropriation process; we would have to go through both sides, it would have to be passed by a majority vote. In addition, we have put an additional hurdle—yes, of this section—which requires a simple majority, not a three-fifths or constitutional majority, but a majority of the whole number of each House——

Mr. BYRD. That is not a simple majority.

Mr. SANTORUM. A majority of the whole number of each House.

Mr. BYRD. Which is not a simple majority.

Mr. SANTORUM. Which would be slightly higher, possibly slightly higher burden in the House, and potentially higher, depending on interpretation, vote here in the Senate. But certainly consistent with the passage of the appropriations bill.

Mr. BYRD. Slightly higher, but it does not necessarily mean it would be slightly easier.

Would the Senator recommend that in order to deal with the deficits that had been built up as a result of the waiver of the article in previous fiscal years—does he suggest there might have to be a retroactive tax?

Mr. SANTORUM. There is nothing here in this constitutional amendment that requires us to pay back deficits that have been incurred since the enactment of this constitutional amendment, that have occurred as a result of a waiver of this amendment. So there is no requirement in the constitutional amendment to require the payment of existing debt.

Mr. BYRD. Oh, there is not? There is not?

The other day, the Senator from Pennsylvania stated with reference to dealing with the deficit for a year that has ended, the Senator stated: ''We could, as has been done here, retroactively tax.'' I do not believe the Senator would have made that statement without having given it long and serious thought. So the question that naturally occurred to me today, again, is would the Senator be willing, in that situation, to vote for a retroactive tax? We are talking about a fiscal year or fiscal years that have ended and the estimate for the deficits for that year or those years have gone wrong by virtue of the sudden imminence of a serious military threat to our national security.

Is the Senator willing—he would not be willing, I do not believe, to vote for a package to reduce the deficits, such as the one we enacted in 1993. But in a situation like this, in which the Nation's security is imperiled, would he be willing to vote to increase taxes? I heard a Republican Senator stand over there on the floor and say he would not vote to increase a tax, ever.

I do not believe the Senator from Pennsylvania's feet are in such concrete. But I am just wondering, in the light of what he said about a retroactive tax the other day, whether or not he would suggest that, in a situation like this? In order to go back and wipe out those deficits?

Mr. SANTORUM. Would I in fact vote for a retroactive tax? If we needed to tax in order to meet the needs of war, I think we would have broad bipartisan support, as we would—as we do now, with appropriations bills.

Mr. BYRD. And he would vote for a retroactive tax?

Mr. SANTORUM. I do not know what the need would be for a retroactive tax but if that is what would be required, I would certainly consider it, if our country was at war. Certainly.

Mr. BYRD. How would the taxpayers of this country ever know how to fill out an income tax form, if we are going to go back and enact retroactive taxes? How are they going to know what the tax requirements are when they fill out their income tax forms and whether they may have to pay back taxes?

Mr. SANTORUM. That was our argument against the retroactive tax in 1993.

Mr. BYRD. But the other day—I am talking about the Senator's statement the other day, when he suggested there might be a retroactive tax.

SANTORUM. I said that is an option available to future Congress, if necessary.

Mr. BYRD. And I am asking the Senator.

Mr. SANTORUM. I would not recommend that option.

Mr. BYRD. But you would be willing——

Mr. SANTORUM. In a time of war, Senator, I would be willing to do things that otherwise I would not be willing to do at other times.

Mr. BYRD. What I am concerned about is in a time of serious military threat to this country, under this amendment a majority of the Senators and House Members elected and sworn would be required in order to waive the requirements of this amendment, under such dire extremities, and could not do so by a simple majority vote.

May I say, for the information of the Senate, I have an amendment which is at the desk.

I would be willing to agree to a vote on that amendment on the day that the Senate returns following this weekend—be willing to agree to a vote on or in relation to the amendment. I say ''in relation'' because the amendments around here to this constitutional amendment do not get up-or-down votes. Motions to table are made. There have been several amendments offered and debated to this constitutional amendment. There have been no up-or-down votes, and all of the amendments succumbed to the motion to table. That certainly is within the right of Senators to move to table.

I would be willing to offer my amendment, and it will be germane, if cloture is invoked. I would be willing to offer that amendment today, and agree to a time on it for debate and vote on or in relation to it, which includes the tabling motion, to take place on next Wednesday. I have not offered the amendment yet. So it cannot be tabled today. But I can offer it. So if the manager of the bill would like to respond, I will yield.

Mr. HATCH. Mr. President, will my dear friend yield?

Mr. BYRD. Yes. I am happy to yield.

Mr. HATCH. As I understand it, the Senator from West Virginia is willing to lay down his amendment as long as it is not tabled today, and willing to have the vote on it at a time certain when we get back on Wednesday.

Mr. BYRD. Yes.

Mr. HATCH. Can the Senator tell me what time the distinguished Senator would desire? Could we keep it short?

Mr. BYRD. Let me modify my request. Let me offer this modification, or possible modification. I believe a unanimous-consent order was entered for the recognition of the Senator from West Virginia immediately upon the disposition of the cloture vote today to call up amendment No. 252, and that amendment would eliminate the three-fifths supermajority contained in section 1.

I would like to have the privilege of calling up that amendment, laying it down today, or calling up instead an amendment which is equally germane, in the event cloture is invoked, to deal with section 5, which the Senators from Maryland and Michigan and I and other Senators have been discussing this afternoon—with the understanding that there would be no tabling motion offered today, and that the vote on or in relation to that amendment, whichever of the two it is, would not occur until next Wednesday.

There is a cloture vote, I believe, that will occur, possibly even two of them, on that day. As I understand it, the majority leader laid down two cloture motions last night—say 2 hours of debate, equally divided. Of course, if cloture is invoked, we will operate under the rule.

Mr. HATCH. Will the Senator be willing, if our side takes only 15 minutes, to reduce that time to an hour? He would almost have the same amount of time as 2 hours equally divided. It would be 15 minutes less. But I would be 45 minutes less.

Mr. BYRD. The Senator is most generous.

Mr. HATCH. I have tried. What I am trying to do with my dear colleague is get moving on the amendment process, face whatever we have to face on this amendment, and try to bring this matter to a close sometime within the near future so that we can alleviate delays as much as possible. We are willing. As the Senator from West Virginia can see, we have been willing to take very little time on our side and allow plenty of time on the opposite side of this issue as an accommodation to try to move things along.

Mr. BYRD. Mr. President, accommodations do not matter to this Senator——

Mr. HATCH. I understand that. It is just a request.

Mr. BYRD. —when it comes to amending the Constitution. There is probably too much accommodation around here, in any event. But, nevertheless, it is characteristic of the distinguished Senator to want to accommodate.

What I was amused about was the offer to let the proponents of my amendment have 1 hour of debate and the opponents have 15 minutes. That is an indication to me that there is not much serious thought being given to my amendment. It is going to suffer the same fate as have other amendments around here—that they have been debated a little bit, and a motion to table is then made. They are not accorded serious debate.

Mr. HATCH. Will the Senator yield on that?

Mr. BYRD. I am not directing this at the Senator. I am simply saying that it says something about the debate on this constitutional amendment.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. Yes.

Mr. HATCH. No, it does not, because the amendment the Senator is going to call up we are fully cognizant of. We spent a lot of time analyzing it. We believe we can answer it in a reasonable period of time. I feel we can answer it in 15 minutes. If we cannot, I would be happy to—but I think we can.

On the second amendment, I do not know what amendment that would be. So we might have to grant some more time on that. But our problem is not so much that we do not want to give enough time on this. We have been giving hours and hours. We have given. It is now 14 days of Senate floor time; long hours. I am not complaining. I am willing to be here as long as the distinguished Senator wants to debate any of these issues. But we have spent 14 days, which is 3 more than was spent on any balanced budget amendment in history.

Like I say, I am willing to spend more, but it is to accommodate my colleagues who are on the other side of this issue. So it is not a matter of giving a short shrift. We believe some of the amendments in the past have not deserved a lot of consideration from a constitutional standpoint. And we felt as though we had full debate, even with the limited amount of time we have allocated to ourselves, and we felt as if we made the case enough. But so far, we have been successful in tabling motions.

One last thing. Every amendment that has been brought forth has been a significant amendment, in my eyes.

I have wondered why some were brought forth, perhaps, but I still hope that they are substantively significant amendments. We cannot constitutionally answer some of them in less time than it takes for others. We are hopeful that on the amendment that we believe the Senator will call up before the end of today we can shorten the time. If the Senator wants 2 hours equally divided, I am not sure that the majority leader would not grant him that. But I am trying to accommodate the Senate and accommodate the opponents so they can bring up their amendments and yet still make sure that the record is made constitutionally on these important issues.

I add that the distinguished Senator from West Virginia always brings up important, substantive issues that are important not only to himself but to others as well, and they are certainly important to me. I admire and appreciate his desire to at all times uphold the Constitution and at all times do what is right, in his view, under the Constitution. That is all we are trying to do here—to do what is right.

We have spent 14 days of full Senate floor time, and compared to other balanced budget amendment debates, we have had far less amendments. So we have given adequate time to these amendments, and we have spent far more time than on prior amendments. But we cannot be governed just by prior debates. I am happy to spend whatever time it takes. I am sure the Senator understands the majority leader is asking me to try to move it along as fast as I can.

Mr. BYRD. Let me say——

Mr. HATCH. I am trying to accommodate the Senator. I will have to ask the majority leader. I felt like it was an attempt to accommodate by giving the Senator most of the time, almost as much as he would get with 2 hours equally divided, while we would try to make our arguments—as feeble as they might be—in a shorter time.

Mr. SARBANES. Why could the Senator not—if the request was 2 hours equally divided and the Senator's suggestion is that the Senator from West Virginia have 1 hour and he have 15 minutes, why would the Senator not agree to the 2 hours and not use all his time if it was not necessary in the debate? I mean, give the Senator from West Virginia time to debate at the time, and you might discover on that occasion that you might need more than 15 minutes. You can always yield back your time.

Mr. HATCH. This is not a demand. This is a suggestion. If the Senator from West Virginia does not agree——

Mr. SARBANES. I was just seeing a way where you could get where you want to go.

Mr. HATCH. Anything that will move the debate forward I am happy to try to do. In any event, we will have to see what the majority leader wants to do next Wednesday. We have that cloture vote, and I am not sure when he is going to have that cloture vote; I am not aware. But we will have to put in a quorum call and decide. I understand the Senator's request, that he would like to bring up one of two amendments——

Mr. BYRD. At this point.

Mr. HATCH. Could the Senator inform us what the other amendment is? I believe you said it is No. 252.

Mr. BYRD. I said it pertained to section 5. That has been discussed all afternoon here.

Mr. HATCH. I thought you mentioned there might be two amendments and you would make your choice between the two.

Mr. BYRD. I mentioned amendment No. 252 and an amendment No. 256. Amendment No. 256 deals with section 5. I believe I have 7 or 8 or 9 or 10 amendments at the desk.

Mr. HATCH. You would choose whichever one you want, but there would be no amendments to the amendment in order by either side?

Mr. BYRD. Well, if cloture is invoked, I suppose if I were able to qualify, or if other Senators were able to qualify, they could have second-degree amendments at the desk.

Mr. HATCH. Unless we agree to a time agreement with those terms. That is what I am asking.

Mr. BYRD. I am not quarreling with the hour that I am to be given. I have had a good bit of time this afternoon. But I think it is indicative of the lack of interest on the part of the proponents in seriously trying to improve the constitutional amendment that is before the Senate when they say, well, we will take 15 minutes, you can have your hour. I know what is going to happen; the amendment is going to be tabled. That is certainly the right of the manager of the resolution, or the leader, or any other Senator.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. Yes.

Mr. HATCH. Surely, I do not believe the Senator is suggesting that I am not taking his amendment seriously or that I have not taken any amendment seriously, is he? I have taken them all extremely seriously. This is the Constitution we are working on and nobody takes it more seriously than the distinguished Senator from West Virginia, unless it is the Senator from Utah. I would not claim to take it more seriously than the Senator, but I do not think anybody takes it more seriously than either of us. I will try to do my best to answer.

Mr. SARBANES. If the Senator will yield, can I be included in that duo, to make it a trio of people who take the Constitution seriously?

Mr. HATCH. We just do not feel that people on the east coast—I am kidding. Yes.

Mr. SARBANES. Let us make it a trio.

Mr. HATCH. Let us make it 100 of us. We are all serious. The fact of the matter is let us see what we can do to get Senator DOLE to resolve this.

Will the Senator yield for a unanimous-consent request?

Mr. BYRD. Yes.

PROVIDING FOR AN ADJOURNMENT OF THE TWO HOUSES—HOUSE CONCURRENT RESOLUTION 30

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate temporarily lay aside the pending business and turn to the consideration of House Concurrent Resolution Res 30, the adjournment resolution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HATCH. Mr. President, I ask unanimous consent that concurrent resolution be agreed to and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 30) was agreed to; as follows:

H. CON. RES. 30

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, February 16, 1995, it stand adjourned until 12:30 p.m. on Tuesday, February 21, 1995, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, February 16, 1995, pursuant to a motion made by the Majority Leader or his designee, in accordance with this resolution, it stand recessed or adjourned until noon, or at such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, on Wednesday, February 22, 1995, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

Mr. HATCH. I ask that the Senate resume the pending bill.

Mr. BYRD. While the distinguished Senator is making an inquiry of the majority leader, let me just say for the RECORD that the distinguished Senator from Utah talks about this amendment that is presently before the Senate as having had 14 days of debate.

Mr. HATCH. Will the Senator yield, and I will make a unanimous consent request on the Senator's request, if it is all right?

Mr. BYRD. On the request that we have been discussing, yes.

UNANIMOUS CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the time prior to a motion to table amendment No. 252, the Byrd amendment, be limited to 2 hours to be equally divided, and that no amendments be in order prior to the motion to table. As I understood it, the Senator wanted it after the cloture vote?

Mr. BYRD. Yes. Would the Senator provide for the alternative of amendment No. 256, either/or?

Mr. HATCH. Could the Senator give me a copy of amendment No. 256?

Mr. BYRD. I ask that the clerk state, for the edification of the Senate, amendment No. 256.

The PRESIDING OFFICER (Mr. SMITH). The clerk will report the amendment for the information of the Senate.

The assistant legislative clerk read as follows:

Amendment 256: On page 2, lines 24 and 25, strike ''adopted by a majority of the whole number of each House.''

Mr. HATCH. Would the Senator agree to bring up the amendment and have the 2 hours, if there are two cloture votes, after the second cloture vote, if necessary?

Mr. BYRD. Yes. I have no desire to interfere with cloture votes.

Mr. HATCH. Then let us add either No. 252 or No. 256 to the request. The Senator will have his choice on amendments.

Mr. BYRD. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I thank the distinguished Senator.

May I say briefly that I want to yield to Senator PELL for 10 minutes and then I am going to yield the floor.

The distinguished Senator from Utah—and he is a distinguished Senator—has talked about the 14 days that we have spent on this constitutional amendment. Well, so what? The constitutional Framers spent 116 days—116 days in closed session at the Constitutional Convention—116 days. And now we have spent, the Senator said, 14 days. So what? What is 14 days as between us Senators, 14 days to amend the Constitution in a way which can destroy the separation of powers and checks and balances—14 days.

The other body spent all of 2 days on this constitutional amendment. I believe that is right, 2 days. What a joke! Two days in adopting this constitutional amendment. Why, any town council in this country would spend 2 days in determining whether or not it should issue a permit to build a golf course.

Two days to amend the Constitution.

I will not say any more than that now.

I ask unanimous consent that I may yield to the distinguished Senator from Rhode Island. He has an ambassador waiting on him in his office. I understand he wishes 10 minutes.

Mr. PELL. Thank you very much.

Mr. HATCH. Reserving the right to object, would the distinguished Senator allow me just a few seconds to just make a closing comment on what the distinguished Senator just said?

Yes, they did spend over 100 days to arrive at the full Constitution, without the Bill of Rights. And we have spent 19 years working on this amendment. This amendment is virtually the same as we brought up in 1982, 1986, and last year. We have had weeks of debate on this amendment. It is a bipartisan amendment. It has been developed in consultation between Democrats and Republicans in the House and in the Senate. It has had a lot of deliberation, consideration, negotiation, and debate on the floor.

Admittedly, I am sure the distinguished Senator from West Virginia would agree that the constitutional convention did not debate this on the floor of the Senate at the time, nor would it have taken that much time had there been a debate on the floor of the Senate. But be that as it may, if it had, we are living today with an amendment that is one amendment to the whole Constitution that, if adopted, would become the 28th amendment to the Constitution.

We have spent 14 days on the floor. I am willing to spend more. I am not complaining, and I do want to have a full and fair debate, but I also believe that we are reaching a point where there is deliberate delay here, not by the distinguished Senator from West Virginia necessarily, but I believe reasonable people can conclude that there is a desire to delay this amendment for whatever purpose that may be and that is the right of Senators if they want to do it.

The majority leader has filed a cloture motion which we voted on today. We had 57 Senators who wanted to end this debate and make all matters germane from this point on. Next Wednesday, we will vote on cloture again. And if there are 60 Senators who vote for cloture, then that will bring a large part of this debate to a closure.

I think I would be remiss if I did not say, on behalf of the majority leader and others on our side who are working hard to move this amendment, that we believe that is a reasonable period of time and we believe that every person here has had a chance to bring up their amendments.

We tried to get to an amendment up last night. We were willing to work