United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, TUESDAY, FEBRUARY 28, 1995 No. 37

Senate

(Legislative day of Wednesday, February 22, 1995)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer will be offered by a guest Chaplain, Father Paul Lavin, of St. Joseph's Catholic Church, Washington, DC.

PRAYER

The guest Chaplain, the Reverend Paul Lavin, offered the following prayer:

In Psalm 89 we read:

May the goodness of the Lord be upon us, and give success to the work of our hands.

Let us pray:

God our Father, You have placed all the powers of nature under the control of the human family and the work we do.

May the men and women of the U.S. Senate and their staffs work to support one another and our fellow citizens to bring Your spirit to all our efforts, and may we work with our brothers and sisters at our common task of guiding Your creation to the fulfillment to which You have called us.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of House Joint Resolution 1, which the clerk will report.

The assistant legislative 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.

Pending:

(1) Feinstein amendment No. 274, in the nature of a substitute.

(2) Feingold amendment No. 291, to provide that receipts and outlays of the Tennessee Valley Authority shall not be counted as receipts or outlays for purposes of this article.

(3) Graham amendment No. 259, to strike the limitation on debt held by the public.

(4) Graham amendment No. 298, to clarify the application of the public debt limit with respect to redemptions from the Social Security Trust Funds.

(5) Kennedy amendment No. 267, to provide that the balanced budget constitutional amendment does not authorize the President to impound lawfully appropriated funds or impose taxes, duties, or fees.

(6) Bumpers modified motion to refer H.J. Res. 1 to the Committee on the Budget with instructions.

(7) Nunn amendment No. 299, to permit waiver of the amendment during an economic emergency.

(8) Nunn amendment No. 300, to limit judicial review.

(9) Levin amendment No. 273, to require Congress to pass legislation specifying the means for implementing and enforcing a balanced budget before the balanced budget amendment is submitted to the States for ratification.

(10) Levin amendment No. 310, to provide that the Vice President of the United States shall be able to cast the deciding vote in the Senate if the whole number of the Senate be equally divided.

(11) Levin amendment No. 311, to provide that the Vice President of the United States shall not be able to cast the deciding vote in the Senate if the whole number of the Senate be equally divided.

(12) Pryor amendment No. 307, to give the people of each State, through their State representatives, the right to tell Congress how they would cut spending in their State in order to balance the budget.

(13) Byrd amendment No. 252, to permit outlays to exceed receipts by a majority vote.

(14) Byrd amendment No. 254, to establish that the limit on the public debt shall not be increased unless Congress provides by law for such an increase.

(15) Byrd amendment No. 255, to permit the President to submit an alternative budget.

(16) Byrd amendment No. 253, to permit a bill to increase revenue to become law by majority vote.

(17) Byrd amendment No. 258, to strike any reliance on estimates.

(18) Kerry motion to commit H.J. Res. 1 to the Committee on the Budget.

(19) Hatch (for Dole) motion to recommit H.J. Res. 1 to the Committee on the Budget with instructions.

(20) Hatch (for Dole) motion to recommit H.J. Res. 1 to the Committee on the Budget with instructions.

(21) Hatch (for Dole) motion to commit H.J. Res. 1 to the Committee on the Judiciary with instructions.

(22) Hatch (for Dole) motion to commit H.J. Res. 1 to the Committee on the Judiciary with instructions.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The distinguished Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I yield 10 minutes to the distinguished Senator from North Dakota [Mr. CONRAD].

(Mr. KYL assumed the chair.)

Mr. CONRAD. I thank the Chair and I thank the minority leader. Mr. President, today is an important day in the life of our Nation. Today we consider a balanced budget amendment to the Constitution of the United States. We do not lightly consider amendments to the Constitution because that document has served as the framework that has made this the greatest Nation in human history.

Mr. President, we are here because this Nation faces a debt threat. I have brought with me several charts to try to illustrate the challenge that we face. This first chart shows what has happened to the gross debt in our country from 1940 to 1999. One can see that back in 1940 the debt of the country exploded during World War II, and then

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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we went into a long period in which the gross debt of the country came down steadily, until 1979. At that time, gross debt, once again, exploded. We saw the gross debt of the country down about 30 percent, and it has gone up 70 percent, not as high as it was during the Second World War, nonetheless a real concern because the growth of the debt puts enormous pressure on the financial markets, puts pressure on interest rates, and has an adverse effect on our total economy.

Mr. President, I think this chart tells a very important story. This is the work of the entitlements commission that just concluded their work. On this chart, the green line shows the revenue of the United States back from 1970, forecasted up through 2030. One can see that the revenue has consistently run at just under 20 percent of our gross domestic product. We are right in this change today. One can see that the difference between the green line and these bars is the deficit, and we have worked the deficit down in this period to about 2.5 percent of gross domestic product.

Mr. President, look at what happens if we do not change course. Let me just say the entitlements commission did not take the worst case scenario. They assumed no recessions, no wars, no catastrophes, no natural disasters. Look at how the deficit explodes by the year 2030. By the year 2012 alone, we will use every penny of Federal revenue just on entitlements and interest on the debt.

Mr. President, we must address the debt threat without question. That takes us to the next chart. Some have said, ''Well, Senator CONRAD, if you feel so strongly about the need to attack the deficits, why have you not signed up to the constitutional amendment'' that is before us today? Very simply, Mr. President, I have several concerns. As I indicated earlier, we do not amend the Constitution of the United States lightly. That is the organic law of our country. It is the document that has stood the test of time, and we must take that measure against any proposed constitutional amendment.

Mr. President, there are three items that especially concern me. First is the possibility of looting the Social Security trust fund in order to balance the operating budget. That really raises the question that I have on this chart: What budget is being balanced? I think it is very important to know what budget is being balanced. To answer that question, we need to go to the language of the amendment itself.

In section 7, it says:

> Total receipts shall include all receipts of the U.S. Government except those derived from borrowing. Total outlays shall include all outlays of the U.S. Government except for those for repayment of debt principal.

Mr. President, what that means, very simply, is that everything is going in the pot. This is a little teapot that shows the pot of Federal spending that we have created. It shows what goes in on the revenue side—individual income taxes, social insurance taxes, corporate income taxes, and other taxes. It shows the spending that comes out the spigot of Federal spending, the spigot of the pot of Federal spending. You can see Social Security comes out of the spending spigot—interest on the debt, defense, Medicare, and Medicaid. They are the big items. In fact, Social Security, interest, defense, and Medicare make up 78 percent of Federal spending.

Mr. President, the problem with that part of this constitutional amendment is that it assumes Social Security is in the pot, and Social Security is not contributing to the deficit; Social Security is in surplus. Social Security, in fact, is going to run a surplus over the 7 years necessary to balance the budget, under this provision, by $636 billion. So the amendment that is before us today assumes that we will be looting the Social Security trust fund surpluses of the $636 billion in order to balance the operating budget.

Mr. President, I do not consider that balancing the budget. That is, frankly, Washington talk for balancing a budget. If a head of any company in this country told the investors that he was balancing the budget and that a central part of balancing was to take the employees' trust funds, that person would be on the way to a Federal facility—and it would not be the U.S. Congress; that person would be on their way to jail. So this is a concern that I think must be addressed.

The second concern that I have—and it is a concern shared by others—is the role of the courts, because once you put in the Constitution of the United States an amendment, you have constitutionalized the issue. I brought with me a quote from Walter Dellinger who testified last year at the hearings on the question of a balanced budget, and he said:

> If we have an amendment that for the first time constitutionalizes the taxing and spending process and creates a constitutional mandate which the courts are sworn on oath to uphold, there is simply no way that we can rule out the possibility that tax increases or spending cuts would be ordered by the judiciary. And I think we would all agree that that is a profound change in our constitutional system.

Mr. President, I hope people focus on this question. Would we really want unelected judges to be able to order tax increases in this country? I think not. That would be taxation without representation. Judges are not elected. Judges are not chosen to make these decisions. That is part of the genius of our Constitution: a separation of powers, with Congress, the elected representatives, making the financial decisions for the people of America.

Mr. President, it is not just Mr. Dellinger's view. Former Senator Danforth, who was among our most respected colleagues, a Republican Senator from Missouri, said last year when he offered an amendment—an amendment, by the way, which was accepted—to deal with the issue of clarifying the role of the courts said:

> The implications of this judicial encroachment are staggering when applied to the proposed balanced budget amendment. As Professor Tribe testified before the Committee on the Budget: ''What remedy could a federal court then decree? [if the budget is not balanced under this amendment] The court in the United States in Missouri vs. Jenkins a couple of years ago held that judges may have the power to mandate higher taxes if needed to force the government to comply with the Constitution.''

Senator Danforth went on to say:

> I find it troublesome, but it is the law. Talk about taxation without representation, unelected judges mandating higher taxes.

Mr. President, we ought to listen to the wisdom of former Senator Danforth. He was one of the most respected Members of this Chamber. He was dead right on this question.

Mr. President, there is a third issue that I want to raise today that is of concern and I think must be addressed if we are to pass a balanced budget amendment.

Mr. President, the third issue that I raise is the question of an economic emergency. Mr. President, we know that today the right policy is to cut spending and reduce the deficits and balance the budget. Sixty years ago that was precisely the wrong policy. In the Depression, raising taxes and cutting spending only made the Depression deeper and longer lasting.

Mr. President, Robert Solow, of MIT, a Nobel laureate in economics, said:

> The balanced budget amendment would force perverse actions by Congress, easily turning a small recession into a big one and a big one into a disaster. Monetary policy can solve the small problems, but not the big ones.

Mr. President, if we are to have a constitutional amendment, I believe we must have special provision for an economic emergency.

I end on this note, a quote from Henry Aaron, the director of economic studies at the Brookings Institution. Dr. Aaron, in testimony last year said:

> One does not need to be a primitive Keynesian to believe that a requirement forcing tax increases or spending cuts during an economic slowdown could be catastrophic.

Catastrophic, Mr. President—

> Yet the need to mobilize a three-fifths majority, not just in the Senate but in the House of Representatives as well, heightens the possibility that such policies would result because of incapacity to mobilize the necessary supermajority in both Houses.

Mr. President, some have assured Members ''Don't worry. If we are in an economic emergency, you will be able to get 60 votes.'' Mr. President, I went back to the time leading into World War II when the economy of this country was in deep trouble, when we faced an enormous external threat. I found an interesting thing. When we needed $1 billion to start to rebuild the Navy of this country, that passed by only 58 votes. When we needed to start to have a draft to prepare for war, that passed by only 56 votes.

Mr. President, I think it is very clear that we cannot take the assurance that in an emergency we would be able to muster the 60 votes.

Mr. President, let me just conclude by saying I believe deeply that we must address the debt threat hanging over this country. We must cut spending. We must reduce the deficit. We must balance the budget in preparation for the time when the baby boom generation starts to retire, the Social Security expenses and Medicare and all the rest start to explode.

Mr. President, we are talking about amending the Constitution of the United States. We should only do it if we are absolutely convinced we are properly crafting such an amendment. The three concerns that I have raised must be addressed if this amendment is to secure my vote.

We should not loot the Social Security trust fund because that is not balancing the budget. That is a paper sham. That is wrong. We should not leave the role of the courts vague and ambiguous. No unelected judges should be writing the budget for the United States, raising taxes, cutting spending. That would subvert the genius of the Constitution. Third, I believe we must have provision for an economic emergency so that we do not put our great Nation at risk at a time of economic weakness and vulnerability.

Mr. President, I thank the Chair. I yield the floor. I look very much forward to what the day will bring. I hope that we are able to come together and craft an amendment that will stand the test of time.

Mr. STEVENS. Mr. President, how much time am I allowed?

The PRESIDING OFFICER. The Senator controls 73 minutes 20 seconds.

Mr. STEVENS. Will the Chair notify me when I have used 12 minutes?

The PRESIDING OFFICER. Yes, sir.

Mr. STEVENS. Mr. President, my support of a balanced budget amendment goes back to the 95th Congress.

In the last Congress, I did not perceive the willingness of Congress to consider all expenditures in order to achieve a balanced budget and did not support this amendment at that time.

Now, it is my belief that the changes in Congress and in the attitude of the country as a whole have brought a new commitment to consider all Federal expenditures, including entitlements. There is no question that the passage of this amendment is important to the Nation as a whole. That is particularly true to small States such as Alaska, and other States in the West.

We believe Congress must operate under fiscal restraint, restraint that is missing from the Federal budget process at this time. I am informed that next September the current Federal debt limit of $4.9 trillion will be reached. Congress may have to vote to increase that Federal debt limit above $5 trillion or face the prospect of shutting down the Federal Government and defaulting upon our obligations.

Default is an unthinkable option for a Nation like the United States. But I do not believe that I could in good conscience vote to increase the debt limit unless this Nation adopts a plan to balance the budget and end unnecessary deficit spending.

Based upon President Clinton's 1996 budget, 16 percent of the total Federal budget for this next fiscal year will be required to pay interest on that $4.9 trillion dollar national debt. The President's budget also requests and projects 16 percent of the total Federal budget to go to support of our national defense, 15 percent to grants to States and localities, and 5 percent to go to the operation of Federal agencies.

In my judgment, interest payments are competing now with the national defense. Our national defense is the second largest expenditure of Federal funds, second only to the direct benefit payments to individuals. This national debt is a real threat. Left unchecked, increased interest payments will endanger every Federal program.

In the past, and particularly last year, I expressed concern that entitlement programs would not be included in any efforts to balance the budget and that the necessary cuts would come from the remaining 36 percent of the budget. I was concerned that discretionary spending would bear all of the cuts.

It was my expressed fear that small States, like Alaska, would be severely and unfairly impacted by those cuts in discretionary spending. Cuts of the magnitude required to balance the budget taken solely from discretionary spending would impose a great burden upon us because of the necessity to have Federal programs—the Coast Guard, the FBI, the FAA, and so many other agencies of the Federal Government that provide the safety net for our people—in a State as large and diverse as mine.

After giving this issue serious consideration and having discussed the matter seriously with many of my colleagues, I have come to the conclusion that it is now the intent of Congress that spending cuts would be fairly applied to all expenditures.

Mr. President, we keep track of the calls and letters we receive in my Washington and Alaska offices, and the majority of Alaskans support a balanced budget amendment. They support it by a margin of 6 to 1, as reflected by the calls and letters that have come to my office endorsing or opposing the Amendment.

The Kerry-Danforth Commission, the Bipartisan Commission on Entitlement Reform, identified as one of its five broad principles the issue of balancing entitlement commitments with the funds available to meet those promises. If current entitlement policies are left unchanged, entitlement spending and interest on the national debt would consume almost all Federal revenues in the year 2010. By the year 2030, projected Federal revenues will not cover entitlement payments.

I do not support exempting any specific type of spending in the balanced budget amendment, per se, but I do believe Congress must find a way to balance the budget without reducing Social Security payments. On February 10, our distinguished majority leader, Senator DOLE, offered a measure on the Senate floor which calls on the Senate Budget Committee to report to the Senate a plan to protect Social Security while allowing Congress to balance the budget. I supported that amendment.

According to our Joint Economic Committee, Congress could balance the budget while Government spending increases 2 percent per year without touching Social Security or Medicare and allowing Medicaid to grow at the rate of 5 percent per year. There are some who question that plan, but that is the result of the report by the Joint Economic Committee.

It is time for the Federal, State, and local legislative and executive leaders to work together to find a way or to find ways to cut the fat out of Government without removing its heart. Spending decisions will be more difficult as interest on the national debt consumes a larger portion of Federal revenues.

It is my judgment that the Congress and the States must act now to ratify this balanced budget amendment to the Constitution. There is still time for Federal, State, and local governments to work together, as I suggested, to decide how to provide the necessary government services for our people. Our country cannot afford to wait any longer. We must get our fiscal house in order, and we can begin that process today.

I want to urge the Senate, particularly my colleagues who have not taken a position on this amendment, to support it. I shall support this amendment. I do so in order that, consistent with our Constitution, it may be submitted to the 50 States for ratification and we may begin this process. It will be a long and arduous process, Mr. President, but I think the time to commence is now.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. EXON. Mr. President, I ask that I be yielded approximately 8 minutes from the time reserved for Senator HATCH, the Senator from Utah.

The PRESIDING OFFICER. Does the Senator yield time?

Mr. STEVENS. I am pleased to yield to the Senator from Nebraska that amount of time.

Mr. EXON. Mr. President, I thank my friend from Alaska.

The constitutional amendment to balance the budget should be viewed as an important step in the right direction, but rejected as a certain cure-all assuring future sound national fiscal policy. The primary benefit, if passed in Congress and ratified by three-fourths of the States, is the considerable ''discipline''—and I emphasize the word ''discipline''—that it would provide to correct our current course. We veered dangerously off course in the 1980's when we ballooned annual deficits from manageable levels, under $100 billion by increasing it threefold or more. And from 1980 to the present we have skyrocketed the national debt, the culmination of those yearly deficits, fivefold, to $5 trillion, and it is going higher.

In fiscal year 1996, annual interest on that debt to nontrust fund or public debt costs taxpayers $260 billion, which alarmingly is the fastest growing part of our Federal budget. Of that $260 billion in interest costs about a fourth or $65 billion goes to foreign investors. Talk about foreign aid give-aways.

The $65 billion in interest the taxpayers will pay is shipped directly overseas, with no strings attached, and it is going up each and every year. It is astonishing, Mr. President, when we compare the $20 billion that we provide annually for foreign aid, a category that we hear so much about, which is actually going down every year, compare that, if you will, with the $65 billion in taxpayers' money that is going overseas without any strings attached whatsoever.

The facts are that we are giving $45 billion more to foreigners in interest than in aid. If there were no other sound reasons—and there are many—the concerns just stated would be reason enough to employ the discipline that the balanced budget amendment will bring.

I salute the many good and reasoned arguments made by opponents in opposition to the amendment. Indeed, there are good reasons not to vote for it. I am not satisfied in total with the amendment and I believe it should have been amended in the Senate.

The trouble seems to be that the constitutional amendment before us has been Newtonized. Such a description, therefore, makes it infallible and unamendable. It is a believe-exactly-as-we-do-or perish philosophy that is dangerous.

It is required that Republicans and the Democrats alike simply roll over and play dead for the good of the new order.

Mr. President, this is a very important day in the history of the U.S. Senate. Today, at the Republican caucus, the decision will be made as to whether or not a reasonable compromise will be accepted. That is the last real chance for success.

Notwithstanding what will be reported Tuesday evening—today—this amendment will not be approved—I emphasize, will not be approved—unless it is on a bipartisan basis. We can garner the minimum 67 votes to pass it—and the numbers I have indicate that it should be 52 Republicans and 15 Democrats—if we accept some version of the Danforth-Johnston-Nunn, et al., amendment. That concept is to keep the courts out of budgeting and agree to address some of the Social Security trust fund concerns that have been expressed on the floor most recently by my colleague from North Dakota a few moments ago. If we do not do that, it will not, and, in such an event, the responsibility for failure will rest on our inability to compromise just a little bit.

We can still pass this constitutional amendment if there is just a little give and a little concern. Despite the many seemingly unsurmountable hurdles, I am encouraged that, after a series of discussions of last Friday, yesterday and this morning, we may well be close to resolving enough of the more contentious issues to see success today. But I am not sure.

The key vote, Mr. President, on whether or not we can pass a constitutional amendment will come today on the Nunn amendment regarding concerns about court involvement. If that fails, I predict we will not garner the 67 votes for the balanced budget amendment. In that case, the final vote will just be an exercise to establish how many votes short of the required 67 that the constitutional amendment requires.

Mr. President, I think we are about some very, very serious business. I have previously said on many occasions why I support the constitutional amendment to balance the budget, with some reservations.

At this time, I appeal for reason and I appeal somehow to give and take a little bit, to compromise on one or two very important issues. If that happens and it is approved in the Republican caucus today, we can go on to success with the balanced budget amendment. If not, we will live to regret it, in the view of this Senator.

Mr. President, I yield the floor and yield back the remainder of any time that I had reserved on my original request.

Mr. HATCH. Mr. President, I suggest the absence of a quorum, with the time divided equally.

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

The clerk will call the roll.

The assistant legislative 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.

Mr. HATCH. I understand the distinguished Senator from Texas would like some time. How much time would the Senator like, 10 minutes?

Mr. GRAMM. What about 15?

Mr. HATCH. We are pressed for time. I yield 10 minutes to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mr. GRAMM. Mr. President, I thank our distinguished colleague from Utah for yielding me time.

Mr. President, today we have an opportunity to change the course of American history. I guess each of us in our own way came into public life because we wanted to make historic decisions. I think it is fair to say that every Member of the Senate initially ran for office because he or she wanted to make a difference in the lives of the people in their State and across this country. We have an opportunity today in one vote to rewrite the history of the United States of America. That one vote is adopting a balanced budget amendment to the Constitution of the United States of America.

I would like to talk today about what happens if we do not pass a balanced budget amendment to the Constitution, and to also talk about what happens if we do, not in abstract terms but in concrete terms that have to do with the well-being of the forgotten people in America who do the work, pay the taxes, pull the wagon, and who ought to be the focal point of this debate, but unfortunately are not.

Then I wish to touch very briefly on some of the arguments that are being made against the amendment. First of all, I think we have to understand that Government spending means Government taxing. In 1950, the average American family with two children sent $1 out of every $50 it earned to Washington, DC. Today, that same family is sending $1 out of every $4 it earns to Washington, DC, and in 20 years, if we do not create a single new Federal program, if we simply pay for the Government that is already on the books, that family is going to be sending $1 out of every $3 it earns to Washington, DC.

It seems to me we have come to the moment of truth where either we are going to stay on this 40-year spending spree and squander the future of our children or we are going to the spending so as to save the American dream. That is the choice we make today.

Since 1950, the Federal Government's budget has grown 2½ times as fast as the family budget. Since 1950, the Government has spent money at a rate 2½ times as fast as the institution in America which created the income that the Government spent, the American family.

Now, what difference has it made over the last 40 years that Government spending has grown 2½ times as fast as family spending? Let me give you a startling statistic. If the ability of the family to spend the money it earned had grown as fast as the ability of Government to spend the money the family earned, families in America today

would be spending not $45,000 per family of four but would be spending $120,000 per family.

Conversely, if Government spending had grown only as rapidly as spending by the family, the Federal Government would be roughly one-third the size it is today.

When you think about the American dream, when you think about the kind of America you want for your children and grandchildren, which pictures fits your view of America's future: Families with incomes three times as large as they are today and the Government a third the size it is today, or the reverse?

It seems to me that the priority of the family's budget over the Federal budget is the definition of what we are talking about. The debate here is not a debate about how much money is going to be spent on education and housing and nutrition and all of the other things that we are all for. The debate is about who is going to do the spending. For many of our colleagues on the left, many of the Democratic Members of the Senate, the President of the United States, Bill Clinton, their vision for America's future is that they want Government to do the spending. Our vision for America's future is that we want the family to do the spending. We know the Government; we know the family; we know the difference; and we know something else. We are betting the future of America on the decision we make today. We want to bet the future of America on the family and not on the Government.

Now, in looking at these mind-numbing figures, since they are so big, we tend to forget that they really mean something. Let me give you some figures. If we adopt and enforce the budget proposed by Bill Clinton, that will mean that in 10 years we are going to be spending $412 billion simply paying interest on the public debt. That is more money than Jimmy Carter's budget for the whole Government of the United States in 1977. That was not that long ago.

Let me give you another figure that gives you an idea of the magnitude of the choice we make today. If we do nothing, if we stay with the status quo that Bill Clinton would have us adopt, the interest cost on the public debt in a decade is going to rise by $177 billion.

Now, nobody knows what $1 billion is except Ross Perot, but let me convert that into English. If we stop the deficit spending, if we did not borrow all that money, we could give every family in America a $13,000 tax deduction for the money we are going to squander paying interest on debt simply because this Congress has been incapable of saying no to any special interest group with a letterhead that has asked for our money.

Now, I wish to address very briefly some of the arguments that are made against the amendment. One argument, which many of us heard this weekend on television, is that deficit spending is a powerful medicine that can cure recessions, that can cure depressions, and if we lost the ability to use this medicine we might forever be pushed into a great recession and a great depression.

Mr. President, deficit spending is a drug to which we have become addicted. We have engaged in deficit expenditures in expansions, in contractions, in recessions, in inflations, and if deficit spending ever had any curative power, that curative power has long ago been lost.

We debate today whether to end this addiction to deficit spending. We debate today whether or not to force the Government to do what every family and every business in America has to do, and that is say no.

Finally, let me try to set this in perspective. Balancing the Federal budget is not going to be easy. It is going to mean hard choices. It is certainly not going to be easy for Members of Congress. But we cannot forget the benefits to be derived for the future of America in terms of opportunity and growth, and we must not forget what this means in terms of freedom. We should not get so caught up in the dollars and cents of the deficit and the budget debate that we forget that what is being squandered here is not just our money, it is our freedom. Government has grown so big, so powerful, so expensive, so distant, so hostile that this is a process that has to be reversed and we have it within our power today to do it. We all stand here on the floor of the Senate and wring our hands about the deficit. To balance the Federal budget means we have to freeze Government spending at its current level for 3 years.

How many businesses in America have made tougher choices than that just to keep their doors open in the last year? How many families in America have had to make tougher choices than that when a job was lost or when a parent died? The difference is that families and businesses in America live in the real world where you have to say no, where bad things happen, where you have to make adjustments, where you have to change.

Change is a fact of life everywhere except in Washington, DC, in America. Our Government has not lived in the real world for 40 years. We have it within our power today to change that. We have it within our power to pull our Government into the real world with our people, and in doing so enrich the lives of millions of Americans who want the kind of opportunity that has been routine in the American experience.

If we can adopt the balanced budget amendment to the Constitution today, we will change the course of the history of our Nation. And I am prayerfully hopeful that when our colleagues cast this vote they will realize we are shooting with real bullets and we are determining the future of the greatest country that the world has ever known.

The PRESIDING OFFICER. The distinguished minority leader.

Mr. DASCHLE. Mr. President, I yield 5 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I do want to point out for the record on the floor of the U.S. Senate, as I listened to my colleague from Texas speak about special interests, that I introduced an amendment several weeks ago, with Senator FEINGOLD from Wisconsin, which said that when we go forward with deficit reduction and continue on this path of deficit reduction and reach the goal of balancing the budget, we should consider $425 billion—that is in any given year—of tax expenditures, many of which are loopholes and deductions and sometimes outright giveaways to the largest corporations and financial institutions in America. That amendment was voted down on the floor of the U.S. Senate.

So it is interesting how children are a special interest, somehow with a negative connotation. Older Americans are a special interest, somehow with a negative connotation. Students who are trying to afford higher education are a special interest, sometimes with a negative connotation. But, on the other hand, subsidies for oil companies, the subsidies for coal companies, subsidies for pharmaceutical companies—they are not special interests at all. I think that has something to do with who are the heavy hitters, who has the representation, who does the lobbying, who has the power, who is well represented and who is left out.

I have been very involved in this debate and today there is just time for a few concluding remarks or reflections. At the very beginning of this 104th Congress I came to the floor with an amendment from my State of Minnesota. This amendment essentially said, based upon a resolution passed by my State legislature and signed by Governor Carlson, which urged that before we send a balanced budget amendment to the States, if it is passed, we ought to do an analysis for States of the impact on our States and of the people back in Minnesota and across the country. That was voted down. Similar amendments were also voted down.

There are other amendments that were very important to this effort to improve this constitutional amendment to balance the budget—very important. There was an amendment to make sure that there would not be a raid on the Social Security trust funds. That was voted down. There was an amendment, as I mentioned, that Senator FEINGOLD and I introduced, that urged that we at least consider some of the tax subsidies and giveaways to the largest corporations of America, the wealthiest people, as part of what we do in deficit reduction. Let us not just cut nutrition programs for children or Medicare. That was voted down. There

was an amendment introduced on the floor of the U.S. Senate that said—and it makes good, rigorous economic sense—let us separate capital budgets from operating budgets. If we are going to make a comparison to family budgets, then let's really look closely at the similarities and differences. Sheila and I have never cash flowed the homes we've bought. We did not cash flow education for our children, higher education. And we did not cash flow cars. Those were investments in the future. We certainly have done a good job of balancing our budget every month, if that means keeping up with our payments. The same thing is true of most of the State legislatures in this country. So the point was to make some separation.

There was an important amendment that said in times of recession let us not have those recessions become depressions. This is rigorous economic analysis. I say this as someone with an interest and a background in political economy. That was voted down. We do have to be concerned about the economics and the economic management of our Nation.

There were other amendments as well. I had a sense of the Senate amendment that we would not do anything to increase hunger or homelessness among children. That was voted down.

I have to say, I am acutely aware of what is politically popular at the moment. This constitutional amendment to balance the budget is politically popular at the moment. It is politically popular in the abstract. But people do not yet know what the specifics are. There has not been any truth in budgeting with this. I do not believe people have yet had a chance to look at all of the consequences of it.

So my position remains the same position. I was sent to the U.S. Senate from Minnesota to listen closely to people. I was sent to the U.S. Senate from Minnesota to stay close to people. But I also said to people in Minnesota that I would always vote my conscience. I would always vote what I believed was right for my Nation. I would always vote what I believed was right for the people I represented—even if it was a difficult political vote, even if it was politically unpopular at the moment, even if I was subject to attack ads and other criticism for my vote.

I will not back down from that. I will continue to go by that code. And it is my honest view, it is my profound sense that this constitutional amendment to balance the budget is a very serious mistake for a Nation that I love and for a State that I love.

And therefore for all the reasons I have outlined during this debate over the last month, I will vote no.

(Disturbance in the visitors' galleries.)

The PRESIDING OFFICER. The gallery will please withhold any display.

Thank you.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER (Mr. DEWINE). The Senator is recognized for 10 minutes.

AMENDMENT NO. 274

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent my amendment be the pending business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I rise today in support of a substitute amendment to House Joint Resolution 1, the balanced budget constitutional amendment.

I support a balanced budget amendment to the Constitution, and I would like to see this body pass such an amendment. However, as I have previously stated, I do not believe that the House-passed amendment, the amendment being considered by the Senate, is the right amendment for this country.

With Senators FORD, HOLLINGS, MCCAIN, MIKULSKI, KOHL, HARKIN, DASCHLE, DORGAN, REID, and GRAHAM of Florida, I, therefore, offer my colleagues—both Republican and Democratic—a substitute.

The substitute I am offering today is a balanced budget amendment to the Constitution that will permanently exempt Social Security from the calculations. It will protect this fund, holding in trust the money deducted from American workers' paychecks every week until they are ready to use them in retirement.

The amendment does not alter any other aspect of House Joint Resolution 1—not a single item. It merely exempts Social Security—it is an honest balanced budget amendment—a balanced budget amendment which can pass.

Unfortunately, this body has steadfastly refused to make any changes to the original balanced budget amendment submitted to the Senate despite hours of good debate—especially on the establishment of capital budgeting procedures, with which I agree, the removal of Social Security from the budget, and attempts by both Senators JOHNSTON and NUNN to clarify the areas of legal redress under this amendment. The leadership has merely posed the same amendment which the House passed and asked that we rubberstamp it here in the Senate. I find this approach both unacceptable and puzzling.

This Senate has been involved in 1 month of detailed and incisive debate of this subject. Virtually all amendments have been defeated. No matter how salient or cogent points raised have been, they have been rejected. Apparently, the only acceptable amendment is the one presented. No changes can be made no matter how correct or compelling the criticism.

Now, while I believe a balanced budget is the correct policy decision for this country—I do not believe we must pass any amendment just because a few have ordained this to be the amendment. It is our duty in the Senate to weigh all legislative matters carefully. Amending the Constitution is a serious historical task which demands the thought and wisdom of all of us here in the Senate. I was elected by the people of California to represent their interests in the Senate. I was not elected to genuflect to a measure simply because it was passed by the House of Representatives.

At this point in our history, we should not be altering the legislative process. This body should not be simply a rubberstamp to a measure ramrodded through the other House. We should be examining all pieces of legislation independently from the House. This deliberation includes altering and amending legislation to fit the needs of Americans as we see them—I believe that the balanced budget amendment being offered by Republicans does not best serve as a correct methodology for balancing the budget.

Mr. President, I have stated previously my reasons for strongly supporting a constitutional balanced budget amendment. In the year that I was born, the Federal debt amounted to less than $25 billion. In the year my daughter was born, the Federal debt was about $225 billion—10 times greater. My granddaughter Eileen was born 2 years ago. At the time of her birth, the Federal debt was more than 150 times greater than it was when I was born—nearly $4 trillion.

In the last 35 years, the Federal Government has balanced its budget exactly twice. Once in 1960, a surplus of $300 million and again in 1969, a surplus of $3.2 billion.

Yet, in the last quarter of a century, the Federal Government has run up more than $4 trillion in debt without once balancing the budget. During this time, this Nation has experienced war and peace and economic booms and recessions. Never did this Government balanced the Federal budget, let alone run a surplus.

One fact is inescapable—spending in this country has grown out of control, and we have let the Federal debt grow at a rate that is unacceptable. That is why I am a strong supporter of a constitutional balanced budget amendment. We do not have another generation to allow this problem to fester. The time for action is now. But equally important to the need for a solution is its workability in the future.

There are four important arguments for protecting Social Security:

First, this amendment would place Social Security off-budget, thereby enshrining into the Constitution congressional action and guaranteeing the integrity of the system.

Between its creation in 1935 and 1969, Social Security had always been off-budget. In an attempt to cover the

costs of the Vietnam war and later to mask growing deficits, Social Security was put on-budget. This was a misuse of the Social Security trust fund. In the 1990 Budget Enforcement Act, Congress put an end to this practice by declaring Social Security funds off-budget. The amendment in the Senate to exclude Social Security from budget calculations was passed in the 101st Congress by a vote of 98–2. Every Member today who served in the 101st Congress voted to place Social Security off-budget.

Second, Social Security is not like other Government programs and should not be treated like other Government programs.

Social Security is a publicly administered, compulsory, contributory retirement system. Through the Federal Insurance Contributions Act, known as FICA, workers are required to contribute 6.2 percent of their salaries to Social Security. Every worker does this. Employers are required to match that amount. Every employer does this. This combined 12.4-percent contribution funds the Social Security system. It is not meant to fund Interior, or Agriculture, or Defense, or HUD, or welfare, or anything else. By law these funds are required to be held by the Federal Government in trust. They are not the Federal Government's funds, but contributions that workers pay in and expect to get back.

Over 58 percent of working Americans pay more in FICA taxes, if you include the employers' share, than they pay in Federal income taxes. This is not a small amount, and it is not adjusted by salary.

Third, Social Security does not contribute to the Federal deficit. In fact, the Social Security trust fund surpluses are masking the true size of the deficit today. In 1995, Social Security will take in $69 billion more than it will pay out in benefits. By 2001, Social Security will be running surpluses of more than $100 billion a year. By the time this amendment goes in place, in 2002, the surplus in the Social Security System will be $705 billion.

Fourth, the failure to save Social Security surpluses could undermine the system's viability.

In the late 1970's and 1980's, Congress changed the way the Social Security System was financed. Recognizing the large demand on the system that would be created by the retirement of the baby boomer generation early next century, the Social Security System was changed from a pay-as-you-go system to a system that would accumulate large surpluses now to prepare for the vast increase in the number of retirees later.

The amendment being offered by the Republicans permits the collected funds to be used to finance the deficit. That means beginning in 2019, when Social Security is supposed to begin drawing down its accumulated surpluses to pay for the benefits of the vast numbers of retiring baby boomers, there will be no money saved to distribute.

Congress will be forced to either raise taxes, cut Social Security benefits, or further cut other spending programs to meet the obligations workers are paying for now. In short, the American workers will have to pay twice for the retirement of the baby boomers because we will not be saving what they contribute now.

The only way to save the Social Security surpluses to pay for future retirements is to balance the budget exclusive of these revenues, and that is what this amendment would do.

The impact of this, of course, would be that the Federal Government would run a unified budget surplus—a balanced Federal budget and a surplus in the Social Security trust fund. In this way, we would cut the Federal debt and save Social Security funds, not just watch the debt keep growing. The alternative balanced budget amendment being offered today will do just that.

On February 17, the Times Mirror released its latest public interest poll. I think every Senator here should be aware of the results. When asked what should be given a higher priority in 1995, cutting taxes or taking steps to reduce the budget deficit, 55 percent want to reduce the deficit while 37 percent want to cut taxes for the middle class. Now, this supports the argument which we all are making for the balanced budget amendment. The American public wants to reduce the deficit; balancing the budget is the best way to do just that.

But this question is only one part of the story. When asked if it was more important to reduce the budget or keep Social Security and Medicare benefits as they are, the respondents favored keeping Social Security benefits as they are by a 70 to 24 percent margin. Let me say that again, 70 percent of the American public favors protecting Social Security while only 24 percent want to reduce the deficit at the expense of Social Security. This amendment we are offering will satisfy both of these desires.

Just last week, on February 23, I received a letter from the AARP supporting the protection of Social Security. Let me quote some of it:

> The Association believes that a specific exemption for Social Security is required because anything less is inadequate and nonbinding. Without an exemption the program is at risk in several ways. First, benefits could be cut to reach the balanced budget goal even though money from such unwarranted reductions would remain in the Social Security trust funds. This would have the affect of further masking the deficit at the expense of Social Security beneficiaries. Just as important the benefit promise to today's workers will be jeopardized because the annual reserve will continue to be used to hide the extent of the Federal deficit.

The letter concludes by stating:

> During the most recent election, candidates and the leadership of both political parties pledged to protect Social Security. The American people have grown angry and wary of promises from Washington. To tell the American public that Social Security is protected—and then fail to address the issue directly—will only lead to an increase in the cynicism that is currently prevalent throughout the Nation.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of this letter, along with a letter I received on February 1 from the National Committee to Preserve Social Security and Medicare supporting this amendment to protect the Social Security.

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

AMERICAN ASSOCIATION OF RETIRED PERSONS

Washington, DC, February 23, 1995.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The American Association of Retired Persons (AARP) appreciates your efforts to protect Social Security from the proposed constitutional amendment to require a balanced budget. Many members of Congress speak about the importance of this program and the need to maintain it for current and future beneficiaries. However, since previous attempts to specifically shield Social Security from the balanced budget amendment have been defeated, your substitute represents the last opportunity to truly protect this vital program before the amendment would be sent to the states.

While AARP continues to believe that a requirement for a balanced budget federal budget does not belong in the Constitution, we believe that exempting Social Security is warranted for the following reasons:

Social Security is a self sustaining program that is financed by employer and employee contributions that are credited to the Social Security trust funds in order to pay benefits and run the program,

Social Security does not contribute one penny to the federal deficit. It currently has over $400 billion in reserve—an amount that is expected to increase by $70 billion this year alone; and

Raiding the trust funds would weaken our benefit promise to today's worker, as well as undermine their confidence in our nation's most important protection program.

The Association believes that a specific exemption for Social Security is required because anything less is inadequate and nonbinding. Without an exemption the program is at risk in several ways. First, benefits could be cut to reach the balanced budget goal even though the money from such unwarranted reductions would remain in the Social Security trust funds. This would have the affect of further masking the deficit at the expense of Social Security beneficiaries. Just as important, the benefit promise to today's workers will be jeopardized because the annual reserve will continue to be used to hide the extent of the federal deficit. In addition, Section 2 of the proposed amendment treats the Social Security trust funds' government bonds differently than the rest of the debt held by the public. This differentiation could lead to further attempts to use the Social Security trust funds as a cash cow.

During the most recent election, candidates and the leadership of both political parties pledged to protect Social Security. The American people have grown angry and wary of promises from Washington. To tell the American public that Social Security is protected—and then fail to address the issue

directly—will only lead to an increase in the cynicism that is currently prevalent throughout the nation.

Sincerely,

HORACE B. DEETS.
Executive Director.

NATIONAL COMMITTEE TO
PRESERVE SOCIAL SECURITY AND
MEDICARE,
Washington, DC, January 9, 1995.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the nearly six million members and supporters of the National Committee to Preserve Social Security and Medicare, I offer our strong support for your amendment to remove Social Security trust funds from budget and deficit calculations under the pending balanced budget constitutional amendment, S.J. Res. 1.

The National Committee agrees that the future economic growth of this nation will be enhanced if the budget of the United States is brought into balance. However, we strongly disagree that balancing the budget requires putting Social Security at risk by including it in the budget.

Balancing the budget requires reasoned decision making and the courage to face up to hard choices. It also requires recognizing the source of the problem. And that, by definition, excludes Social Security. The Social Security program is self-supporting and does not contribute one penny to the deficit. To the contrary, it produces a substantial surplus which Congress has been using to conceal the true size of the deficit. Including Social Security in this balanced budget constitutional amendment makes this budgetary charade much worse by writing it into the Constitution.

Amending the Constitution of the United States to legitimize this practice amounts to a breach of trust with the American people. Social Security today is exactly what it was established to be almost sixty years ago—a publicly administered, compulsory, contributory retirement program. Treating Social Security as just one more federal expenditure alters the very character of the program in a way that will ultimately undermine the program's great success.

Seniors support a balanced budget, but will strongly object to a Constitutional amendment which includes Social Security trust funds in budget and deficit calculations. On behalf of our members, I offer our sincere thanks for your efforts to protect Social Security.

Sincerely,

MARTHA A. MCSTEEN,
President.

Mrs. FEINSTEIN. I will not rehash the arguments lodged against this alternative balanced budget amendment at this point except to restate two important points:

First, the opponents of this amendment have repeatedly stated that we should not place a statute in the Constitution. They fear that Congress will have to amend the Constitution every time they enact enabling legislation.

This statement is pure hogwash—history has proven that constitutional amendments are inevitably defined by enabling legislation. During my statement on February 9, I displayed 20 volumes of the United States Code Annotated related to the 14th amendment. Are the supporters of this argument saying that they are opposed to all this legislation because it does not belong in the Constitution?—I think not.

They also believe that the Social Security trust funds can be protected through this same enabling legislation. At this time, I will reintroduce to the RECORD a letter from the American Law Division of the Congressional Research Service. Just to remind my colleagues, let me read the reply I received to an inquiry about the ability to protect Social Security in implementing legislation. The letter reads,

If the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security trust funds from the calculation of total receipts and outlays under section 1 of the balanced budget amendment.

I ask unanimous consent that the letter be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 6, 1995.

To: Senator Diane Feinstein
Attention: Mark Kadesh
From: American Law Division
Subject: Whether the Social Security Trust Funds Can Be Excluded from the Calculations Required by the Proposed Balanced Budget Amendment.

This is to respond to your request to evaluate whether Congress could by statute or resolution provide that certain outlays or receipts would not be included within the term ''total outlays and receipts'' as used in the proposed Balance Budget Amendment. Specifically, you requested an analysis as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund could be exempted from the calculation necessary to determine compliance with the constitutional amendment proposed in H.J. Res. 1, which provides that total expenditures will not exceed total outlays.[1]

Section 1 of H.J. Res. 1, as placed on the Senate Calendar, provides that total outlays for any fiscal year will not exceed total receipts for that fiscal year, unless authorized by three-fifths of the whole number of each House of Congress. The resolution also states that total receipts shall include all receipts of the United States Government except those derived from borrowing, and that total outlays shall include all outlays of the United States Government except for those used for repayment of debt principal. These requirements can be waived during periods of war or serious threats to national security.

Under the proposed language, it would appear that the receipts received by the United States which go to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund would be included in the calculations of total receipts, and that payments from those funds would similarly be considered in the calculation of total outlays. This is confirmed by the House Report issued with H.J. Res. 1.[2] Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security Trust Funds from the calculations of total receipts and outlays under section 1 of the amendment.[3]

KENNETH R. THOMAS,
Legislative Attorney,
American Law Division.

FOOTNOTES

[1] H.J. Res. 16, 104th Congress, 1st Sess. (January 27, 1995) provides the following proposed constitutional amendment—

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

Section 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

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.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

Section 5. 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.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

Section 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

[2] House Rept. 104–3, 104th Congress, 1st Session states the following: ''The Committee concluded that exempting Social Security from computations of receipts and outlays would not be helpful to Social Security beneficiaries. Although Social Security accounts are running a surplus at this time, the situation is expected to change in the future with a Social Security related deficit developing. If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for this projected deficit. . . .'' (Id. at 11.)

it should also be noted that an amendment by Representative Frank to exempt the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund from total receipts and total outlays was defeated in committee by a 16–19 rollcall vote. Id. at 14. A similar amendment by Representative Conyers was defeated in the House, 141 Cong. Rec. H741 (daily ed. January 23, 1995), as was an amendment by Representative Wise. Id. at H731.

[3] Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that the Congress would have the authority to pass legislation which conflicts with the provisions of the amendment.

Mrs. FEINSTEIN. Second, I recognize that the exclusion of Social Security will make it harder to balance the budget. Taking Social Security off budget will require about $3 trillion more in spending cuts by the year 2017. However, the alternative of leaving Social Security on budget allows Social Security funds to be stolen to avoid spending cuts. When the baby-boomer generation begins to retire, there will not be any funds available for them to collect.

In order to address this valid concern, I believe a capital budget should be established to assure continued Federal investments in major public physical assets. Instituting a capital budget would more than offset the effects of moving Social Security from the budget. However, I was not permitted to offer this alternative. I was hoping that we would have been able to vote on this alternative. However, the Senate was denied that opportunity by an

objection from the other side of the aisle. It is rather ironic—we are considering amending our Constitution—the great protector of free speech—and my speech was stifled, squashed, and censored.

In conclusion, I do not believe that the working men and women of this country are well served if we take the FICA tax moneys that they believe will be available for their retirements and use them to balance the budget. That is wrong. It is dishonest. It masks the debt. It betrays people. And it jeopardizes the retirements of future generations. I will not break the trust of the American people.

I urge my fellow Senators to vote for this honest balanced budget amendment. I want to see a balanced budget amendment pass this Senate.

This amendment can pass—there are enough Senators in this body who support a balanced budget amendment to pass this version.

However, if Senators wish to gamble in an attempt to gather enough votes for House Joint Resolution 1, they can.

I, for one, do not wish to take that risk.

I will vote for this honest balanced budget amendment.

Mr. FORD. Mr. President, time is short and I have only a few minutes to speak on behalf of the Feinstein substitute balanced budget amendment, so I'll keep my remarks to the point. As I have said before, the public trusts Congress to keep the Nation's finances in order. Nowhere is that agreement and that trust more evident or more important than in the governing of the Social Security trust fund. For that reason, I have had a great deal of concern about voting for the version of the balanced budget amendment that is before the Senate and it is that concern which led me to cosponsor with my colleague from California, a substitute amendment exempting Social Security from the equation.

The fact is that surpluses in trust funds are being used to hide the true debt of our Nation. As I mentioned on the floor last Friday, the highway and airport improvement trust funds are being used to hide debt. There are billions of dollars in these funds that are expressly raised and set aside for the specific purposes of repairing and building either highways or airports. What are they being used for? I'll tell you, they are being used to hide the actual level of the shortfall that we have around here between what comes in and what goes out.

The biggest example of this trickery is in Social Security. The other trust funds amount to a few billion dollars apiece, an amount that pales by comparison to the Social Security fund. From 1994 through the year 2002, the date that the amendment would likely take effect, an additional $706 billion in creative accounting and budgetary illusions will be used to mask the true size of our Nation's red ink. Well, I want to believe that all of us in this body know that these budgetary manipulations are not good for the country and should be stopped. Those that support the Feinstein substitute amendment will actually be doing something about that.

Senator FEINSTEIN's amendment respects the contract our Nation made with its people long ago. It reinforces the Social Security pact, makes it stronger, safer, and more secure. By exempting Social Security with the substitute amendment, it secures and fortifies its position as a separate trust fund. Social Security did not cause the deficit, and under our amendment, it will not be used to hide the deficit. Our amendment demands honest budgeting to get us to a balanced budget.

I have heard some argue that this amendment would shield any program Congress wanted to protect under the guise of Social Security. This simply is not true. We would require the same mechanisms to change the structure of Social Security as we do today, a 60-vote supermajority to waive the Budget Act.

Passage of the much-needed balanced budget amendment could be guaranteed if we're only willing to tell the American people that we will not misplace their trust. Working Americans pay into the Social Security system for the purpose of providing a nest egg in their older years. Perhaps it will give them the freedom and dignity to live independent lives so that they will not be a burden to their children. In any case, these taxes are paid to the Federal Government for retirement—not for Government operating expenses.

Mr. President, I will yield the floor shortly so that other Senators may speak, but I must add one more thought. Why is it that we have two separate and distinct Houses of Congress? As I always remembered from my history lessons, the Senate and the House are co-equal bodies. If that is the case—and I don't think I will find anyone in the Chamber who will disagree with me—if that is the case, then why are we being asked to be a rubberstamp for the House? Certainly most things in life are not perfect. The Feinstein substitute is not perfect either, but surely my colleagues must agree that it is better than the present language of the balanced budget amendment. Each body is supposed to review the others' actions and try to improve upon them. Surely if given a chance, the other body will pass the Feinstein amendment language. Why don't we give them a chance? Are we afraid of improving this measure? If not, there is no excuse for what has been going on here.

Mr. HATCH. Mr. President, this debate is unnecessary. We have already debated and voted on the substance of this amendment. This amendment is a substitute balanced budget amendment incorporating the Reid Social Security amendment, which has already been rejected by the Senate.

This issue was debated in committee and it was rejected. Then it was brought to the Senate floor, with only a minor alteration in the language, where it was debated and rejected again. Now, we are encouraging the same amendment for the third time. I also note Mr. President, that the distinguished Senator from California voted for the balanced budget amendment last year without a similar amendment on Social Security. Why?

We have heard complaints from the opponents of the balanced budget amendment that things are moving too fast, that we need to take more time, even though we have spent a full month of floor time on this constitutional amendment. Well, if all we are going to do is rehash the same arguments—and indeed the same amendments—over and over, it is time to vote.

Every minute of every day that we spend debating the balanced budget amendment, the debt increases more and more. Over $829 million every day. It is right here on my debt tracker chart. And people in Washington cannot understand why the American people are so upset at their Government it is because we do things like this—have repeated debates using the same old arguments on the same amendments we have already disposed of, while the country runs up hundreds of millions of dollars of debt every day. Business as usual has got to end.

Mr. President, there is only one reason that I can think of for this amendment to be brought to the floor again. The vote on this amendment could be used by some Senators who have promised their constituents that they would vote in favor of a balanced budget amendment the political cover to vote against the Balanced budget amendment. In other words, they can claim that they kept their promise to vote for a balanced budget amendment by voting for something of that name which has no chance of passing, and then not voting for the one that does. We know this alternative has no chance because we have already had a vote on the modification embodied in this alternative it was rejected.

Mr. President, such a cover vote was offered last year to help defeat the balanced budget amendment. Like last year's cover alternative, this substitute amendment is simply a sham, a cover vote to allow Members to say to their constituents—the vast majority of whom want a balanced budget amendment—that they supported a balanced budget amendment, but one which would obviously fail. Remember that last year, proponents of the real balanced budget amendment were not alone in this assessment. The New York Times agreed. As Adam Clymer wrote in the Times last year.

The substitute version was intended to serve as a political fig leaf that would allow some Senators to vote for the measure and them, after its near-certain defeat, vote against the original version and still tell

constituents they had supported a balanced budget amendment.—Option May Doom Budget Amendment (for Now) The New York Times, Friday, February 25, 1994, page A14.

More interesting, and more damning, is the fact that one of the key administration opponents of the balanced budget amendment suggested days before the introduction of last year's cover amendment that such tactics would be necessary to beat the real amendment. On February 18 of last year, Leon Panetta, President Clinton's then Director of the Office of Management and Budget, now his Chief of Staff, and a longtime foe of a balanced budget amendment, has this to say:

If you allow people to say, ''Are you for or against a balanced budget,'' you'll lose it.

He explained that—

There are going to be some members who are going to have to have an alternative proposal that they can vote for in order to give them cover to come out against the [original] proposal.

Describing the process of developing sufficient cover for Members, Mr. Panetta further explained that—

You're basically counting votes and you're basically saying to members, ''What do you need?'' To the extent that a member says, ''I need a constitutional amendment'' * * * you probably have to design an alternative amendment to the Constitution that would in some way protect them.

Well, Mr. President, here they go again. Given the fact that this is the only complete substitute alternative balanced budget amendment, and given that the only change from the real balanced budget amendment is the addition of Social Security language already debated at length and rejected, the purpose of this amendment can be no other than a cover vote. Well, Mr. President, the American people will not be fooled by this. They want a real balanced budget amendment, and they want it passed now.

Let me repeat for the record, that I believe this amendment would not help Social Security recipients. In fact this amendment would create an incentive to call as much of the budget Social Security as a clever Congress could get away with. This would gut the balanced budget amendment, destroy Social Security, and keep us on the path to economic ruin. The real threat to Social Security is our mounting debt. If we can get that under control with the help of a real balanced budget amendment, only then will Social Security and any other Government program be safe, and only then will our Nation's economic future be brighter, rather than darker, for all our generations.

Mr. President, I urge my colleagues to table this alternative to the real balanced budget amendment.

Mr. President, I move to table the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 300, AS MODIFIED.

Mr. NUNN. Mr. President, I ask unanimous consent that my amendment No. 300 be modified by the amendment I now send to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 300), as modified, is as follows:

On page 3, line 3, after the period insert: ''The judicial power of the United States shall not extend to any case or controversy arising under this Article except as may be specifically authorized by legislation adopted pursuant to this section.''

Mr. DASCHLE. I yield 5 minutes to the distinguished Senator from New York.

Mr. MOYNIHAN. Mr. President, at the outset of this very important day, I rise to speak not to the particulars of our budget and our budget problems, but to the risk which we take with the entire economy by the measure proposed before us; a measure that would place in the Constitution a set of propositions that are essentially contrary to everything we have learned about the management of a modern industrial economy in this extraordinary half century since the enactment of the Employment Act of 1946.

I will take the liberty of reading to the Senate a statement issued by the Jerome Levy Economics Institute of Bard College at Annandale-on-Hudson, NY, written by some of the finest economists gathered together in any site in the country today. It was placed as an advertisement in the Washington Post, a rare and unprecedented event for the persons involved, but a measure of their sense of urgency. It is headed, sir, ''An Invitation to Disaster.'' It reads:

The balanced budget amendment would destroy the ability of the United States government to prevent economic depressions, to respond to natural disasters, to protect the savings of tens of millions of working Americans, and, over time, to enable the economy to grow.

The ability of the federal government to pump money into an ailing economy has time and again in the postwar era limited the depth and duration of a recession and prevented a depression. During the 1957–58 recession, the Eisenhower administration deliberately increased the deficit.

And from that moment on, sir—and I can say I came to Washington as an Assistant Secretary of Labor, policy planning and research, which was on the periphery but still very much involved, and took a place in the economic response of the Kennedy administration to the recession of 1961, which followed that of the Eisenhower administration that was followed on in the next decade by that of the Nixon administration. We have gone, sir, 50 years with only one recession that brought us to a significant negative economic growth, which was a 2.2-percent drop in 1982—50 years. It was the great crisis of capitalism which shook the world, shook our country, because we could not manage the business cycle, and have yielded to understanding, to discourse, to evidence. It was a bipartisan, immensely successful experience to save everything we hold most valuable about a free-enterprise, private-market economy.

We put this in jeopardy. It is an invitation to disaster. The New York Newsday, in an editorial this morning, speaks of an ''Unbalanced Idea'' and refers to the chart that I have several times shown on the floor of the huge swings, boom and bust, starting from the 1890's, the panic of 1893, leading up to the postwar period of almost unbroken—the business cycle is moderate and the growth is continuous. That chart, says Newsday, ''tells it all.'' In part, it reads:

Since World War II, this country has enjoyed 50 years of economic stability unmatched in modern U.S. history. Recessions have been shorter and shallower, periods of growth markedly longer than during the half century before the war.

That's largely because government spending has expanded, which works to fill in some of the gaps when recessions hit * * *.

We have automatic anticyclical measures. It says in this provision that we can anticipate and we can vote with a supermajority to raise the debt ceilings and such like. No. Mr. President, recessions in our country have not occurred until the dating committee of the National Bureau of Economic Research announced that they happened. In the meantime, the automatic adjustments have been responding long before anybody is aware of an economic decline.

Mr. President, we know this. President after President has understood it. The time has come to say we understand it as well and reject the amendment.

Mr. President, I ask unanimous consent that at the conclusion of these remarks, we have printed in the RECORD the statement of the Jerome Levy Economics Institute; the statement of the New York Newsday, an ''Unbalanced Idea''; and above all, the lead editorial in today's Washington Post, sir, which says it all. It is entitled, ''The Urgency of Political Courage.''

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

[From the Washington Post, Feb. 27, 1995]

AN INVITATION TO DISASTER

The Balanced Budget Amendment would destroy the ability of the United States government to prevent economic depressions, to respond to natural disasters, to protect the savings of tens of millions of working Americans, and, over time, to enable the economy to grow.

The ability of the federal government to pump money into an ailing economy has time and again in the postwar era limited the depth and duration of a recession and prevented a depression. During the 1957–58

recession, the Eisenhower administration deliberately increased the deficit. That strategy brought a rapid end to the decline. During every recession thereafter, either by design or through circumstance, a deficit was crucial in containing and ending the decline. For example, tax reductions adopted in 1981 were not planned as a counter-recession tactic, but the enacted cut that took effect in 1982 was the key to the recovery that began in that year.

Floods in the Midwest, hurricanes in the Southeast, and earthquakes in California during recent years prompted the federal government to spend hundreds of millions to relieve suffering and limit damage. Scientists who study natural phenomena warn against worse disasters. The balanced budget amendment would keep the federal government from dealing with such calamities.

Occasional man made disasters have occurred throughout the history of capitalism—for example, the savings and loan debacle of the 1980s. Had the federal government not been able to provide the money to validate the deposits of millions of ordinary citizens, their losses and runs on saving and commercial banking institutions would have recreated 1932. To assume that financial crises will never recur is unrealistic.

The balanced budget amendment ignores the nature of our monetary system. The Federal Reserve and the commercial banks issue money against their holdings of federal debt. Under a balanced budget amendment, the debt will not increase. Eventually the system will not be able to create the money the economy needs in order to grow.—The Jerome Levy Economics Institute.

[From the New York Newsday, Feb. 28, 1995]

UNBALANCED IDEA—A RISKY BUDGET AMENDMENT

The chart that New York's Sen. Daniel Patrick Moynihan showed the Senate a couple of weeks ago tells it all: Since World War II, this country has enjoyed 50 years of economic stability unmatched in modern U.S. history. Recessions have been shorter and shallower, periods of growth markedly longer than during the half-century before the war.

That's largely because government spending has expanded, which works to fill in some of the gaps when recessions hit and private spending contracts. That counterbalance effect will be far harder to achieve if the nation adopts the balanced-budget amendment the U.S. Senate is scheduled to vote on today.

So the senators should turn it down. That's too bad, in a way. The federal government has run up its debt to frightening levels during the last 20 years because of its now-routine reliance on deficits—spending more than it takes in—in the bountiful years as well as the bad ones. That should be stopped. But despite President Bill Clinton's effort to change that in his first budget, annual deficits will start growing again in a couple of years.

Some formal discipline, such as a constitutional amendment, might give presidents and legislators the cover they need to cut popular spending programs and raise unpopular taxes. ''We have to; it's in the Constitution,'' they could say. But the trouble is that the amendment the Senate votes on today, essentially unchanged from the version passed by the House last month, goes too far the other way. It includes *no* mechanism to allow deficit spending during recessions—when deficits help to keep economic downturns from getting worse.

There is only an allowance for Congress to waive the balance requirement by a supermajority vote. Winning such a waiver would be far from a certainty, and a minority of lawmakers in either house could block it.

A realistic mechanism to counter recessions probably could be devised. It's regrettable the Republican leadership took the easier path—the ''just say no to deficits'' approach—instead of a responsible one. As a result, it's the Senate that should just say no, today, to an ill-conceived balanced-budget amendment.

[From the Washington Post, Feb. 28, 1995]

THE URGENCY OF POLITICAL COURAGE

It is hard to decide which would be worse: if the balanced budget amendment that the Senate is voting on today functioned as its sponsors intend, thereby locking the country into what would often be an ill-advised economic policy; or if Congress found a way to duck the command, thereby trivializing the Constitution and creating a permanent monument to political timidity.

Take the second possibility. The Constitution of the United States is remarkable because no country in the world has taken its written Constitution so seriously. It is a concise Constitution, and it has not been amended lightly. Other countries have acted as if their constitutions were merely pieces of legislation to be changed at will, but not the United States.

The balanced budget amendment marks the intrusion of the worst kind of legislative politics onto our constitutional tradition. For about a decade and a half, for mostly political reasons, Congress has not found the fortitude to come even close to balancing the budget. Instead of doing what it should and voting the spending cuts and taxes to narrow the deficit, Congress wants to dodge the hard choices by changing the Constitution. But as Sen. Daniel P. Moynihan argued on ''Meet the Press'' this Sunday: ''My proposition is that you avoid trying to pretend a machine will do this for you. . . . You have to do it yourself.'' With or without the amendment, only Congress will get the budget balanced. And who is to say that the amendment, which becomes effective only in 2002, won't delay Congress from making the hard decisions until it is against the wall of its mandate, give it yet another excuse? ''Gosh, we passed the balanced budget amendment,'' the unfailingly inventive members will be inclined to say, ''and it goes into effect in just a few years. Isn't that enough? What do you want us to do? Balance the budget?''

Sen. Sam Nunn, whose vote could prove decisive, has argued forcefully that this amendment could lead to the judiciary's making decisions on spending cuts and tax increases that ought only be made by the legislative branch. Last night, Sen. Byron Dorgan, another whose vote had been in doubt, voiced a similar reservation. Supporters of the amendment are now trying to win their votes by arguing that legislation could be passed to protect against judicial supremacy. But surely Mr. Nunn's first instinct was right: No legislation can supersede the Constitution. If the amendment itself does not protect against judicial interference, there is no guarantee as to how a court will act. And if, on the other hand, there is no enforcement mechanism for the amendment, then why pass it in the first place? It becomes an utterly empty symbol, which is exactly what the United States Constitution has never been and never should be.

As bad as this prospect is, and effective balanced budget amendment might be even worse. By requiring three-fifths votes to pass unbalanced budgets, it would enshrine minority rule. And while deficits in periods of prosperity make little sense, modest deficits during economic downturns have been powerful engines for bringing the economy back to prosperity. This amendment, if it worked as planned, would shackle government to economic policies that are plainly foolish. Since government revenues drop during recessions and since payments for benefits such as food stamps and unemployment compension increase, the amendment would require Congress by constitutional mandate to pursue exactly the policies that would only further economic distress; to raise taxes, to cut spending, or do both.

Moreover, as Mr. Moynihan and others have pointed out, the amendment could one day lead to the devastation of the banking system. This might happen because a balanced budget amendment could stall or stop the government from meeting its obligations to protect the depositors of banks that failed during an economic downturn. Mr. Moynihan is not exaggerating when he says that ''everything we have learned about managing our economy since the Great Depression is at risk.''

Voting against this amendment should be easy. It has been said that were today's vote secret, the amendment would certainly fail. But the political pressures on the undecided senators—Mr. Nunn, Mr. Dorgan, John Breaux, Kent Conrad and Wendell Ford—are immense and largely in the amendment's favor. These senators have an opportunity only rarely given public figures; to display genuine courage on an issue of enormous historical significance. They should seize their moment and vote this amendment down.

Mr. MOYNIHAN. I thank the Chair and I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I yield myself 10 minutes of the democratic leader's time. I request that the Chair notify me when I have used 8 of the 10 minutes.

Mr. President, I have just been looking at the modification that apparently the majority party has agreed to in order to accommodate Senator NUNN's concerns about the court's role in enforcing this amendment.

I do not want the courts involved, but I do not want to tinker with our sacred organic law, either. Because when you take the courts out, what you have are the same people charged with the responsibility of enforcing this amendment that are now in charge. The only difference is you have the requirements of a supermajority of 60 votes.

The Nunn proposal apparently says that the courts may not involve themselves in this matter unless we grant them that authority in the future. I can tell you now, I am not ever going to grant them the authority to meddle in this. That makes another portion of the Constitution, of which James Madison was proudest, a eunuch, because then you torpedo the separate branches of Government.

My amendment, which we are going to vote on this afternoon, is more powerful in getting the budget balanced than is this constitutional amendment. If you take the courts out, the only thing you have left is a 60-vote majority required to unbalance the budget. My amendment does that by amending the Budget Act and saying you may not change—you may not change—the

requirement that every budget resolution, starting this year—not in the year 2002, this year—must provide for a deficit smaller than the preceding year and a balanced budget in the year 2002.

This constitutional amendment does not require this body to do one blessed thing until the year 2002. We may do it, but there is not anything in this thing that requires it. My amendment would require it now, not in 2002, not after the Republicans have spent another $471 billion. That is what the contract calls for between now and 2002, $471 billion in additional tax cuts and defense spending, and then—and then—we will start talking about balancing the budget. It is the biggest scam ever perpetrated on an unsuspecting nation.

There has to be some ambivalence on the other side among some people about whether they really want this or not. If they do not get it, it will be the No. 1 issue in the 1996 election. ''He voted against a constitutional amendment to balance the budget.'' And to the ordinary American citizen that is tantamount to voting against a balanced budget. Is that not a tragedy, that we have not been able to separate the two during this debate?

I yield to nobody in this body in my efforts to get spending under control for 20 years, but I am not willing to tinker with, literally trivialize, the sacred organic law of this Nation that makes us the oldest living democracy, living under the oldest living document, for political purposes.

So if they lose, they have it all going their way in 1996. ''He voted against a budget resolution.'' And the reason I think they are ambivalent is because, if they win, then they have to say to the American people sometime between now and the year 2002, ''We overpromised. It cannot be done.''

Do you think $1.5 trillion can be cut from the budget between now and 2002? Why, of course, it is ridiculous. The question answers itself.

My amendment is tougher than the constitutional amendment, as I say, because it puts us on a glidepath now. It starts balancing the budget now, not in the year 2002.

Let me ask my colleagues who are still perhaps undecided: If you vote to take the courts out, what do you have? You have a constitutional amendment that nobody but the U.S. Congress can enforce. It is wholly unenforceable unless we have the spine to do it.

That is what this amendment is all about. It is an admission to the American people that we cannot be trusted to trust them with the truth. And it is an admission that we cannot bring the budget into balance. And if you take the courts out of this, that is what you have.

One Senator told me the reason he was voting for it was because he wanted the courts to enforce it. And I am wondering now how that Senator is going to vote, now that there is going to be a provision in the amendment saying they cannot enforce it.

And if you put the courts in or if you do nothing, there is a chance that the courts would take jurisdiction, and then you have unmitigated chaos.

Do you know what the litmus test is going to be in 1996 and 1998 and the year 2000? It will not be, ''If you elect me, I will vote for a balanced budget amendment. I will vote for a line-item veto. I will vote for term limits. I will vote for prayer in school. You tell me whatever has a majority of popular opinion. Count me in, I will vote for it.''

The PRESIDING OFFICER. The Chair advises the Senator he has used 8 minutes.

Mr. BUMPERS. I thank the Chair.

Everybody will be campaigning with one additional provision— ''I will never vote and be one of the 60 votes to unbalance the budget.''

So what do you have? You have a depression, you have a hurricane, you have an earthquake, you have floods, you have an S&L bailout, the banks fail, and we sit here trying to muster 60 votes and everybody says, ''No, I promised my people in the last campaign that I would never be one of the people who would vote to unbalance the budget.'' A depression, so be it. Precisely what Herbert Hoover said, precisely the reason we had 25 percent unemployment in 1933.

I talked to one of my law school classmates yesterday who is a couple years older than I. We both remember the Depression. He said to me, ''Do you know what this country needs? A good depression.''

They have forgotten why all these laws are in effect—FDIC, FSLIC, the Securities and Exchange Commission. They are there because we put them in during the Depression to protect people.

Mr. President, the distinguished floor manager from Utah was quoted in the press this morning as saying, ''I pity''—I pity—''anybody in this body who votes no.''

Mr. President, I pity an unsuspecting nation if we vote yes.

I yield the floor.

Mr. LEAHY. Mr. President, I share the anger, frustration, and impatience of those who want to reduce our deficit. But a constitutional amendment simply is not the way to achieve that goal.

The Senate debate on this constitutional amendment and the amendments offered to improve it, which were all tabled by the majority, have reinforced my conclusion that the balanced budget amendment is a bad idea whose time has not come.

I have 10 reasons why I believe adoption of this proposed 28th amendment to the U.S. Constitution would be a grave mistake.

IT DOES NOT REDUCE THE DEBT OR THE DEFICIT

First, the proposed constitutional amendment will not cut a single penny from the Federal budget or deficit this year, next year, or any year. It is a copout.

There are only two responsible ways to reduce our budget deficit: cut spending or raise taxes. Focusing our attention on this proposed amendment only delays us from making progress on those choices.

PROPONENTS' DEBT TRACKER CHART

I have noted the daily ritual of proponents of this amendment using their debt tracker chart. That practice is as deceptive as the constitutional amendment that we are debating: It misleads the American people by suggesting that this debate is responsible for billions of dollars of increased national debt.

But if this resolution had been passed on the first day of debate, the national debt would have risen just as fast and just as high. The debt tracker has nothing to do with the debate on this resolution. But it is symbolic of the lack of substance of the arguments of the proponents of this so-called balanced budget amendment.

Further, the debt tracker is indicative, not of delay by opponents of this constitutional amendment, but delay in starting the difficult process of cutting the deficit. It is the proponents of the amendment that are fiddling while the debt is growing.

It makes more sense to cast votes that will cut the deficit now and not wait until the next century. Of course, this year there is additional irony in that the Republican Party has assumed majority status in both the House and Senate. As such, it can pass any budget it wants. That only requires a majority vote.

If they want to balance the budget, eliminate the deficit, pay off the debt. They can do all that by a simple majority vote in both Houses. They do not need a constitutional amendment to do any of this; they can do it right now.

Our Republican colleagues have been preparing for their leadership role since November 9. In over 3 months, they have proposed no budget resolution, proposed no balanced budget, proposed no budget moving toward balance, indeed, proposed no budget at all. Instead, they choose to distract and delay through the use of this proposed constitutional amendment.

It is only with resolve and hard work that we make progress. Neither is evident in this effort. This is politics pure and simple and no one should play politics with the Constitution.

IT WILL SHIFT BURDENS TO STATE AND LOCAL GOVERNMENTS

Second, the proposed amendment contains no protection against the Federal Government seeking to balance its budget by shifting burdens to the States. This is the ultimate budget gimmick—pass the buck to the States.

That is not the way to cut the Federal deficit—shifting burdens to State and local government and requiring them to raise the revenues necessary to take up the slack. Working people cannot afford tax increases any more easily because they are imposed by State and local authorities.

Unless we carefully balance the budget, this amendment could pass the buck to the States. Studies make dire predictions if we resort to across-the-board spending cuts—the easiest way to avoid the painful choices needed to balance the budget.

In response to a request from Governor Dean of Vermont, the Treasury Department recently studied what could happen to State and local taxes under the balanced budget amendment.

Assuming that Social Security and Defense cuts were off the table, as the Republican leadership has promised, the Treasury analysis predicts cuts in Federal grants of over $200 million to Vermont in 2002.

Treasury predicts Vermont would lose $89 million per year in Medicaid funding. Treasury predicts Vermont would lose $37 million per year in highway trust fund grants. Treasury predicts Vermont would lose $13 million per year in welfare funding. And Treasury predicts Vermont would lose $68 million in other Federal funding.

To try to offset these losses, Vermont would have to raise State taxes by 17.4 percent.

The Treasury Department forecast higher State taxes not only for Vermont, but for the other 49 States as well. Louisiana would have to raise State taxes by 27.8 percent to make up for lost Federal funds. Rhode Island would have to raise State taxes by 21.4 percent to make up for lost Federal funds. South Dakota would have to raise State taxes by 24.7 percent to make up for lost Federal funds. West Virginia would have to raise State taxes by 20.6 percent to make up for lost Federal funds. Mississippi would have to raise State taxes by 20.8 percent to make up for lost Federal funds, and so on. If we try to balance the Federal budget by scaling back essential services, we will just as surely be shifting these costs and burdens on State and local governments. I know that the people of Vermont are not going to let their neighbors go hungry or without medical care.

And I expect people elsewhere will not either. As much as our churches, synagogues, charities, communities, and volunteers will contribute, a large share of the costs will fall to State and local governments.

I believe that before we are called upon to consider this constitutional amendment, we need to know what its impact is likely to be. Certainly before any State is called upon to consider ratification of such a constitutional amendment, it should be advised of the likely effects on its budget.

In spite of the majority leader's assurance more than 2 weeks ago that Republicans would provide as much detail as possible in the course of this debate about how they intend to balance the budget, we have heard none. Their secret plan remains secret. Let us get some answers and know where we are headed.

IT WILL HURT CHILDREN'S PROGRAMS

Third, simple arithmetic indicates that sharp cuts will be proposed in programs for our Nation's children. Supporters of this amendment have promised not to cut Social Security and not to cut defense, although they do propose that we cut taxes. What is left?

Programs like school lunches, education, childhood immunization. Under the proposed amendment, programs like these will face likely cuts of 30 percent or more.

The Children's Defense Fund has predicted that across-the-board spending cuts from the balanced budget amendment would unfairly balance the budget on the backs of children.

Under the balanced budget amendment in 2002, the Children's Defense Fund fears that in Vermont alone: 4,850 babies, preschoolers, and pregnant women would lose infant formula under the WIC Program; 7,600 children would lose food stamps; 13,900 children would lose subsidized school lunches; 13,750 children would lose Medicaid health coverage, and 2,500 children in child care and Head Start would lose Child and Adult Care Food Program meals.

More than 7 million children nationwide may be thrown out of these Federal programs.

Let us remember that these programs for children are investments in our future. Study after study shows that healthy, educated children grow up to become productive citizens.

Take for example the WIC Program, which provides nutrition and health care for pregnant women, infants, and children. The GAO indicates that in the long haul, a dollar spent on WIC saves $3.50 in health care costs. Let us not be pennywise in our deliberations. There will be a bill to pay later for unwise, shortsighted cuts, and that bill will be left to the next generation.

I do not want to saddle our children and grandchildren with Federal debt, but neither do I want to leave them a legacy of malnutrition, poor education, and inadequate health care. Children are our most vulnerable population and our most valuable resources for the future.

IT WILL ENCOURAGE BUDGET GIMMICKRY

Fourth, this proposed constitutional amendment would invite the worst kind of cynical evasion and budget gimmickry. The experience of States with balanced budget requirements only bears this out.

Many States with a balanced budget requirement achieve compliance only with what the former controller of New York State calls ''dubious practices and financial gimmicks.''

These gimmicks include shifting expenditure to off-budget accounts, postponing payments to localities and school district suppliers, delaying refunds to taxpayers, deferring contributions to pension funds, and selling State assets. The proposed balanced budget amendment does not prohibit the Federal Government from using these same and other ''dubious practices and gimmicks.''

With Congress facing a constitutional mandate, the overwhelming temptation will be to exaggerate estimates of economic growth and tax receipts, underestimate spending and engage in all kinds of accounting tricks, as was done before the honest budgeting effort of 1993.

Passing a constitutional directive that will inevitably encourage evasion, will invite public cynicism and scorn not only toward Congress, but toward the Constitution itself.

Let us not debase our national charter in a misguided, political attempt to curry favor with the American people by this declaration against budget deficits. Let us not make the mistake of other countries and turn our Constitution into a series of hollow promises.

IT IS LOADED WITH LOOPHOLES

Fifth, the loopholes in House Joint Resolution 1 already abound. One need only consult the language of the proposed amendment and the majority report for the first sets of exceptions and creative interpretations that will allow Congress to reduce the deficit only so far as Members choose to cast responsible votes. The distinguished senior Sentor from West Virginia and others have pointed out additional problems, as well.

The Senate Judiciary Committee report says that Congress will have ''flexibility'' in deciding what is off-budget for purposes of the constitutional amendment.

Proponents expressly exempt in that report the Tennessee Valley Authority as ''[a]mong the Federal programs that would not be covered.'' What other exemptions are contemplated or will be granted?

It may mean one thing this year and another the next. It can be shifted around the calendar as Congress deems appropriate. Watch out for the shifting of fiscal years in order to juggle accounts when elections are approaching.

As the senior Senator from West Virginia so ably explained, this proposed amendment gives Congress leeway to rely on estimates to measure the budget and to ignore very small or negligible deficits. But what is small, what is negligible? With an apology to Everett Dirksen: ''A billion here, a billion there, after a while it does not add up.''

I commend Senator FEINGOLD for offering an amendment to strike the exemption for the Tennessee Valley Authority from the Judiciary Committee report. I voted for it. Unfortunately, my colleagues overwhelmingly voted to keep this loophole.

This proposed constitutional amendment uses the seemingly straightforward term ''fiscal year.'' But, according to the Senate report, this time period can mean whatever a majority in Congress wants it to mean.

The biggest loophole, of course, is using the Social Security trust fund to make the true deficit. I commend Senator REID and Senator FEINSTEIN for

their amendment to exclude Social Security from the balanced budget amendment. Unfortunately, it was tabled by the majority.

Social Security is the true contract with America. And we owe it to our senior citizens to make sure we do not balance the budget with their lifetime contributions.

Social Security does not add a penny to our deficit. In fact, the Social Security trust fund runs annual surpluses that are now used to offset the deficit. In 1995, the Social Security trust fund is estimated to run a $69 billion surplus, and by 2002 the Social Security trust fund will run annual surpluses totaling $636 billion.

We should not raid the annual surpluses in the Social Security trust fund to balance the budget.

IT MAY HARM THE ECONOMY

Sixth, this proposed constitutional amendment could be economically ruinous. During recessions, deficits rise because tax receipts go down and various Government payments, like unemployment insurance go up. By contrast, the amendment would demand that taxes be raised and spending be cut during a recession or depression.

Last week, the Treasury Department issued a report that concluded the balanced budget amendment would have worsened the recession of 1990–92. The Treasury Department found that:

> A balanced budget amendment would force the Government to raise taxes and cut spending in recessions—at just the moment that raising taxes and cutting spending will do the most harm to the economy, and aggravate the recession.

In Vermont, had this amendment been in effect, Treasury predicted that between 1,300 to 3,800 more Vermonters would have lost their jobs during the 1990–92 recession.

A study completed last year by the Wharton Econometrics Forecasting Associates concluded that a balanced budget amendment would devastate the economies of our States. The study found that such a constitutional amendment would cause severe job losses and drastic cuts in personal income in 2003.

For Vermont, the study predicted a loss of personal income of $1.2 billion, an average of 5.4 percent for each Vermonter, and 3,900 lost jobs, resulting in a 0.5 percent rise in Vermont's unemployment rate. The study predicted dire job loss and devastating economic consequences for every other State.

Economic policy must be flexible enough to deal with a changing and increasingly global economy. Yet, the requirements of this proposal will tie Congress' hands to address national problems that may necessitate deficit spending.

Senator BOXER and I offered an amendment that would have permitted Congress to waive the balanced budget supermajority requirement to provide Federal aid in response to a natural disaster as declared by the President.

The Boxer-Leahy amendment would have given future Congresses needed flexibility to respond to the needs of natural disaster victims under a balanced budget amendment. But once again, the majority voted in lock step to table this amendment.

We should not hamstring the legislative power expressly authorized in article I, section 8, of the Constitution. Let us not undo that which our Founders wisely provided—flexibility.

Let us not limit choices and accountability. Instead, let us exercise our constitutional responsibilities in the best interests of the American people.

IT INVITES CONSTITUTIONAL CLASHES

Seventh, this proposed constitutional amendment risks seriously undercutting the protection of our constitutional separation of powers.

No one has yet convincingly explained how the proposed amendment will work and what roles the President and the courts are to play in its implementation and enforcement. Constitutionalizing economic policy would inevitably throw the Nation's fiscal policy into the courts, the last place issues of taxing and spending should be decided.

The effect of the proposed amendment could be to toss important issues of spending priorities and funding levels to the President or to thousands of lawyers, hundreds of lawsuits and dozens of Federal and State courts. If approved, the amendment could let Congress off the hook by kicking massive responsibility for how tax dollars are spent to unelected judges and the President.

Indeed, the Nunn amendment, as modified this morning, arguably makes things worse. It seeks to strip the Federal courts, including the U.S. Supreme Court of judicial power in connection with cases arising under this constitutional provision. The result of the Nunn amendment is that State courts are left to interpret and apply the constitutional provision and that any conflicts that arise in that interpretation and implementation by the courts of the 50 States cannot be considered or resolved by the U.S. Supreme Court.

I do not believe that this is what Senator NUNN intended, but that is the result of the language he has offered. This shows the difficulty and danger of seeking to draft constitutional language overnight with careful consideration and the input of constitutional experts.

I applaud Senator JOHNSTON for his foresight in offering an amendment to preclude judicial review of this amendment unless Congress specifically provides for such review in the implementing legislation. The Johnston amendment would have dried up one of the many murky swamps surrounding this constitutional amendment. But in their zest to keep the Senate version of this constitutional amendment identical to the House version, the majority tabled the Johnston amendment.

Instead of creating future constitutional crises, let us do the job we were elected to do. Let us make the tough choices, cast the difficult votes and make progress toward a balanced budget.

IT ERODES THE FUNDAMENTAL PRINCIPLE OF MAJORITY RULE

Eighth, this proposed constitutional amendment undermines the fundamental principle of majority rule by imposing a three-fifths supermajority vote to adopt certain budgets.

Our Founders rejected such supermajority voting requirements on matters within Congress' purview. Alexander Hamilton described supermajority requirements as a ''poison.''

As one of my home state newspapers, the Rutland Herald, recently noted, James Madison condemned supermajority requirements in Federalist Paper No. 58.

Madison warned that:

> 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.

Such supermajority requirements reflect a basic distrust not just of Congress, but of the electorate itself. I reject that notion.

I am prepared to keep faith with and in the American people.

IT WILL RESULT IN DISTRESSING SURPRISES

Ninth, there is much truth to the axiom that the devil is in the details.

The proposed constitutional amendment uses such general terms that even its sponsors and proponents concede that implementing legislation will be necessary to clarify how it will work.

What will this implementing legislation say?

We will not find out until we see this implementing legislation what programs will be off-budget, what role the courts and the President will have in enforcing the amendment, and how much of a deficit may be financed and carried over to the next year. And who knows what other core matters will be added to implementing legislation.

I do not think that Congress should be asked to amend the Constitution by signing what amounts to a blank check. Nor should any State be asked to ratify a pig in a poke.

That is why I voted for Senator DASCHLE's amendment that would have required Congress to tell the American people the details of how we intend to balance the budget by 2002. The distinguished minority leader's right-to-know amendment was the right thing to do. Unfortunately, this amendment was just the first of many to be tabled by the majority.

In the interests of fair disclosure, Congress should first determine the substance of any implementing legislation, as it did in connection with the 18th amendment, the other attempt to

draft a substantive behavioral policy into the Constitution.

IT IS NOT CONSTITUTIONALLY NECESSARY

Tenth, this amendment does not meet the requirements of article V of the Constitution for proposal to the States—it is not constitutionally necessary.

Instead of a sloganeering amendment, what we need is the wisdom to ask what programs we must cut and how much we need to raise revenues, and the courage to explain to the American people that there is no procedural gimmick that can cut the deficit or the debt.

Let us not proceed with a view to short-run popularity, but with vision of our responsibilities to our constituents and the Nation in accordance with our cherished Constitution.

We should quit playing politics with the Constitution. This is folly. There is nothing wrong with the Constitution.

Let us get on with the real business of reducing the deficit and balancing the budget.

Mr. BRADLEY. Mr. President, today's vote on the balanced budget amendment is not a vote on how we should reduce our Nation's crippling deficit. It's not a vote about the substance of serious deficit reduction. After this vote, not a single program will have been cut and not a single dollar will have been saved. Instead, this is simply a vote on a procedure that will enshrine in our Nation's most sacred document both bad constitutional policy and bad economic policy that will make it more difficult to counter recessions. It is more likely that banks will fail and more certain that disasters will go unabated.

We all agree on the need to cut the deficit. However, the debate over the balanced budget amendment is not about which programs to cut, how to stop the unchecked growth of entitlement spending, or what our tax policy should be. Instead, this debate is about procedural fixes. It is about finding ways to continue ducking the tough choices that need to be made, all the while appearing to be concerned about the deficit. If a decade of procedural fixes to the deficit has shown us anything, it has shown us that such fixes are no substitute for leadership.

Unfortunately, Mr. President, the amendment we will vote on today is simply a substitute for solid, courageous leadership. Before taking this route, we would do well to remind ourselves why we were elected. Under our Constitution, it is the Congress that is vested with the power to make all laws, and it is our obligations as Senators to make decisions about these laws and live with the implications of these decisions. No one. No President. No Senator has placed the cuts necessary for a balanced budget before the American people. We vote on the amendment without knowing what it means for citizens who work every day.

The irony of this proposed amendment is that nothing in the Constitution stands in the way of a balanced budget. The plain truth is that the Senate already has the power to reduce the deficit. Cutting the deficit requires leadership now and no amendment to the Constitution will cut the deficit if we lack such leadership. In fact, we can have a balanced budget whenever enough Members of Congress are ready to vote for one. If we agree that deficits should be reduced, then we should take the responsibility for making the necessary decisions and live with the consequences.

Mr. President, this amendment does nothing to reduce the deficit. It simply allows Congress to postpone action until at least 2002, and even then it will not require Congress to balance the budget. Instead, it will lead to more gimmicks such as off-balance-sheet budgeting, inflated revenue estimates, redefining such terms as CPI, and raids on the Government trust funds to mask the size of the deficit. Throughout this debate, I have supported efforts to protect Social Security and prevent Congress from relying on budgetary gimmicks. Each of these efforts has been defeated by the supporters of this balanced budget amendment.

No one disputes that we need to reduce the deficit substantially. The massive Federal deficit continues to sap our economic strength by raising interest rates and passing an enormous tax burden onto our children and grandchildren. Throughout my tenure in the Senate, I have introduced legislation to cut wasteful Government spending. I have offered proposals to cut wasteful spending in appropriations bills for defense spending, for agricultural spending, for Interior Department spending, and for HUD spending, among others. I have also offered legislation to close many of the tax loopholes that increase the Federal deficit by billions of dollars each year. In addition, in 1993, I voted for the largest deficit reduction act in our Nation's history. That act, which cut the deficit by over $500 billion, passed without a single Republican vote in its favor.

I am also concerned that the balanced budget amendment will serve to exacerbate recessions. Currently, Federal spending helps to reduce the harm caused by recessions. As the economy slows down, more people qualify for unemployment compensation and other Federal assistance programs. In addition, as people earn less as a result of the recession, they pay less in taxes. While these changes in spending and taxes temporarily increase the deficit, they also serve to reduce the damage done by recessions to the American economy and families. The balanced budget amendment would require the Federal Government to raise taxes and cut spending at precisely the same time that such policies will cause the most harm. Have we learned nothing from economic lessons of the 20th century?

According to a recent report by the Treasury Department, if this amendment had been in place during the 1990–92 recession, an additional 1.5 million Americans would have lost their jobs as the unemployment rate rose to 9.4 percent, the highest level since the enactment of the Employment Act of 1946. In New Jersey, we would have seen the unemployment rate reach 11.8 percent, as an additional 34,000 to 103,000 New Jerseyans lost their jobs. Without the support provided by Federal assistance programs, many of these families might have found themselves destitute.

Mr. President, not only would the balanced budget amendment that we are voting on today aggravate recessions and harm American families, it makes no distinction between current operating expenses and long-term capital investments. Every family understands the difference between credit card debt and mortgage debt. While we need to balance our budget, we should not do so in a way that would prevent us from making those investments that will be necessary for our children to compete in the world economy.

Despite a balanced budget requirement, New Jersey, along with almost all other States, allows the State government to borrow to finance long-term capital projects, such as highways, schools, and water treatment facilities. Although families are required to balance their budgets, they also borrow to buy homes. The balanced budget amendment would prevent the Federal Government from borrowing to finance long-term projects over their useful lives. As a result, we will be far less likely to make these necessary investments in our Nation's infrastructure, especially when confronted with the day-to-day demands of competing interests. In order to address this risk, Senator BIDEN and I offered an amendment to the balanced budget amendment that would have allowed the Federal Government to borrow to invest in long-term capital projects just as families, businesses, and States do.

Mr. President, in addition to the damage that this balanced budget amendment will cause our economy, I am concerned that the amendment will significantly damage our democratic form of government. The Constitution is primarily a charter of basic rights, not a prescription for economic policy. Unfortunately, while enshrining economic policy in the Constitution, this amendment would allow minority rule and potentially shift tremendous power to unelected judges—both violations of the basic tenets of a representative democracy.

Of the 26 amendments to the Constitution, all but 2 have been drafted to protect the fundamental rights of American citizens or correct flaws in the original structure of the Constitution. The only two exceptions are the amendments which were passed to establish prohibition and then to repeal it.

Prohibition—established by the 18th amendment and repealed by the 21st

amendment—was a scar on the face of our Constitution. Its proponents screamed, ''Keep us from drinking'' only to find there was not the will equal to the words.

Mr. President, I find a parallel between the prohibition amendment and the balanced budget amendment. Proponents of this amendment scream, ''Keep us from spending.'' Here also, there must be the will to equate the words.

Without that will, the amendment will make little difference. If our experience with Gramm–Rudman and the budget agreement has shown anything, it has shown the ability of Congress to get around rules meant to limit deficits. If we are unwilling to make unpopular votes, the amendment will result in placing more programs off-budget, mandating more expenditures by the States, and playing more tricks with revenue and expenditure estimates. We have seen these types of gimmicks before.

In 1981, in their official estimates, the Republicans promised the Nation that they could cut taxes, increase defense spending, and balance the budget—all by 1984. By relying on false estimates to pass their legislative programs, the Republicans unleashed a tidal wave of red ink. In the almost 200 years leading up to 1980, our Nation amassed a Federal debt of roughly $750 billion. Over the next 12 years, this debt quintupled to approximately $4.5 trillion.

Ironically, it is these same empty promises that have led to our current budgetary problems. In 1994, total Federal revenue exceeded all programmatic spending combined. The deficits that we suffer from today are due solely to the cost of paying interest on the debt that was run up during the 1980's. If we did not have to pay these interest charges, we would have a balanced budget today.

In addition, Mr. President, even with the proposed changes suggested by Senator NUNN, this amendment holds the potential to significantly expand the rule of the courts. Over 200 years ago, the Framers were wise enough to exclude judges from making economic policy decisions. Depending on unspecified enabling legislation, this amendment would allow judges to make unilateral tax and spending decisions. In fact, legal scholars as diverse as Judge Robert Bork and Harvard Prof. Lawrence Tribe have opposed the amendment because of the danger posed by the expansion of the role of the courts. The change proposed by Senator NUNN does not eliminate this danger.

Furthermore, this amendment will enshrine in the Constitution not a balanced budget amendment, but rather the principle of minority rule. With this amendment, just more than 40 percent of either House will be able to hold the entire Government hostage to their demands. Over 200 years ago, in The Federalist Papers No. 22, Alexander Hamilton warned against the danger of granting a congressional minority a veto power over government activities. We would be wise to heed this warning.

Mr. President, I am painfully aware of the effects which the Federal Government's uncontrolled spending is having on this generation and on future generations. The longer we wait to address the issue, the more enormous the problem is going to be. Balancing the budget will be bitter medicine for the entire country. I believe the time has come for this bitter medicine. But, Mr. President, I also believe that it is fundamentally unfair to ask the American people to take this medicine without their full knowledge and consent. Every citizen has a right to know what the likely effects of the budget cuts will be before their elected representatives are asked to vote on it.

The bottom line is that we have to decide just what it is that we owe to our children. By running deficits, we have been acting as if we owe no obligation at all to the future. Traditionally, Americans have thought otherwise. We have seen ourselves as part of a progression of Americans, linked to each other across time. We have agreed with Edmund Burke, who saw society as a ''partnership not only between those who are living, but between those who are dead, and those who are to be born.'' Otherwise, ''The whole chain and continuity of the commonwealth would be broken. No one generation could link with the other.''

Instead of postponing action with gimmicks such as the balanced budget amendment and Contract With America, let's get onto the job of fashioning real deficit reduction. One of the great tasks for this Congress should be to define—in terms of specific policies and spending priorities—what such a partnership across time should mean. The first step should be to stop arguing about process and start debating substance.

Mr. President, in the coming weeks, I will propose a package of spending cuts that will substantially reduce the Federal deficit and place us on a path toward a balanced budget. If the American people are to be prepared for the sacrifices necessary to put us back on a track toward long-term growth, their elected leaders must be candid in their description of the problem and forthcoming in their discussion of possible solutions. We must also begin this debate now—not at some point in the distant future. Unfortunately, the balanced budget amendment before us today simply postpones this debate, while doing nothing to actually reduce the deficit. We should defeat it and lead with serious action.

AMENDMENT NO. 300, NUNN AMENDMENT, AS MODIFIED

Mr. LEAHY. Mr. President, a few hours ago, our distinguished colleague from Georgia came to the floor and modified his amendment seeking to prohibit judicial review of matters that may arise under the so-called balanced budget amendment to the Constitution. In the brief opportunity I have to examine the language of his modification, I discern a number of serious problems with this amendment.

The first and most obvious point is that this amendment and the language it would add to our fundamental charter, the U.S. Constitution, is being considered without adequate study or debate. The language has not been the subject of hearings, testimony, examination, comment by constitutional experts, or comment by the Department of Justice. Nor is there any opportunity provided to obtain adequate study. This language was sprung on the Senate this morning without any opportunity for Senate debate before the scheduled votes on this amendment or the other pending amendments or the constitutional amendment, itself. This is not the way to go about considering constitutional language. The value of the month of debate in which we did engage is likely to be lost in this last-minute maneuvering. That, too, is a shame.

Second, the language of the amendment does not do that which its sponsor apparently intends. It does not remove the likelihood of judicial review of matters arising under this constitutional language. To the contrary, it is expressly limited to denying our Federal courts authority to decide cases. Thus, it leaves the courts of the 50 States free to determine what this constitutional amendment means and whether it is properly implemented.

It was a proponent of the constitutional amendment, the former Republican Attorney General, William P. Barr, who emphasized at the Judiciary Committee hearing back on January 5, 1995, a problem with the drafting of the constitutional amendment that ''holds some potential for mischief.'' That problem, according to Mr. Barr was the possibility that ''a State court could entertain a challenge to a Federal statute under the balanced budget amendment * * * [T]he State court in such a circumstance would have the authority to render a binding legal judgment.''

Mr. Barr went on to suggest that:

> To avoid the possibility that a Federal statute or the Federal budgetary process itself might be entangled in such a State court challenge . . . Congress include a provision for exclusive federal jurisdiction in any implementing legislation enacted pursuant to section 6 of the amendment. Such a provision should be carefully worded so as not to create inadvertently any implied right of judicial review in federal court and so as not to affect any of the otherwise applicable limitations on justiciability. . . .

The Nunn amendment, as just modified this morning, would do the opposite of that which former Attorney General Barr recommended. Instead of restricting judicial review to the Federal courts, the Nunn amendment prohibits Federal court involvement by the prohibition against the extension of the ''judicial power of the United

States'' to cases and controversies arising under the constitutional amendment.

That serves to funnel court challenges to the myriad State courts. Ironically, Mr. Barr was worried that the State courts are not bound by the same justiciability doctrines, like standing and the political question doctrine, that act to restrain Federal courts from intervening in matters in which they are not competent and in which judicial determination is inappropriate. Through the Nunn amendment we will, in fact, be left with an even less perfect world in which the various State courts may choose to intervene in budgetary matters and in which the U.S. Supreme Court is literally powerless to stop them or even to resolve the conflict among their rulings and competing injunctions of spending and taxation.

Senator NUNN has been quite right to argue, as he has forcefully and repeatedly, that we should not leave these important matters to the vagaries of implementing legislation. Unfortunately, that is the circumstance in which we are left by the Nunn amendment as modified. I have little doubt that Congress will reinstate the authority of the U.S. Supreme Court in the wake of the implicit authorization of State courts left by the Nunn amendment. It is inconceivable that Congress would tolerate a situation where supreme courts of different States could interpret important provisions of the U.S. Constitution differently or in conflict.

My main point here is that those who believe that by adopting the Nunn amendment they have cut off judicial review are mistaken.

There are other problems with the language of the amendment that we are not able to explore before being required to vote on it or the constitutional amendment to which it is being attached. Whether once the Nunn language is adopted in the Constitution, it is even possible in mere implementing legislation to curtail the sole avenue to judicial review that we retain through the State courts by way of this amendment is a complex constitutional problem. Whether we can effectively strip the Supreme Court of authority to construe the Constitution of the United States is a much mooted legal question. Whether this amendment language can be interpreted to be consistent with the absolute language of article III and our 200-year history of respecting the Supreme Court and judicial power is another question that will require serious reflection that our circumstances in the Senate Chamber today do not allow.

Finally, I cannot support the Nunn amendment for additional reasons. One of the enduring guarantees of our Constitution is that its provision will be respected and will be enforced. To strip the Federal courts of the power to enforce a constitutional right is wrong in my view. Too many other countries around the world have embarked on such a path with too little result for us to follow. Rather our Constitution is one of positive rights that can and should be enforceable. If we start by seeking to limit Federal judicial power to protect rights under this amendment to the Constitution, what will it mean? What rights will we next ask the American people to cede? When will we be asked to sacrifice court protection of our first amendment guarantees or of the rights to equal protection or due process? This is not the way. We need only ask the people of Eastern Europe and elsewhere whose constitutions were filled with empty promises. I will not vote to degrade and deface our Constitution in this way.

Mr. SHELBY. Mr. President, Webster's dictionary defines the term ''red herring'' as ''something that distracts attention from the real issue. [From the practice of drawing a red herring across a trail to confuse hunting dogs].''

The reason I share this definition is because most all of the arguments we have heard over the past 4 weeks in objection to the balanced budget amendment amounts to little more than red herrings. The objections are simply distractions from the real issue.

The real issue is that Federal spending is out of control and unless we pass a constitutional amendment to control spending, our children and grandchildren will never know the America we take for granted. The United States has a current national debt of over $4.75 trillion and according to President Clinton's new budget, will be $6.7 trillion in the year 2000. I have said it before and I will say it again Mr. President, debtors are never free, they are only subject to dominion of their creditors. That is the real issue.

Over the past couple of weeks, we have heard no less then six red herrings that are repeated time and again. I would like to take a moment to go through them one at a time and explain why they are just distractions from the real issue.

Red herring No. 1: The balanced budget amendment would raid Social Security and put the burden of balancing the budget on the elderly.

The fact is that there is no Social Security trust fund. The surplus to which many speak is actually in the form of IOU.'s. The purpose of the balanced budget amendment is to ensure the solvency of the United States so we can protect the living standards of Americans and pay our creditors. If we experience a currency problem like Mexico, we will not be able to pay our creditors much less Social Security recipients. If you truly care about the elderly and clearly understand the issue at hand, I see no other option but to support the balanced budget amendment.

Why do the opponents view the Reid and Feinstein amendments as litmus tests to whether we support Social Security? They contest the only reason one would not support these amendments is because one wants to raid the trust fund. Some of the opponents even say we should be more honest with the American people and what we have in mind for Social Security. Besides the fact there is no trust fund, this charge is completely false and an effort to demagog the issue at hand. To imply proponents of the balanced budget amendment favor cutting Social Security is incorrect, wrong, and at odds with the consistent demonstrated record of advocacy Congress has toward seniors. We should not balance the budget on the backs of Social Security recipients. In fact, I believe we should help seniors by repealing the earnings limits for Social Security recipients. However, proponents of the balanced budget amendment believe the solvency of the whole country will do far more to protect the standard of living of every American than making an ineffective attempt to ensure one particular interest group is protected. Which, by the way, those amendments would not do.

Primarily, these amendments would not protect anyone because Congress could, and in my opinion would, reclassify programs such as supplemental security income and Medicaid as Social Security. This would allow Congress to avoid balancing the budget by using FICA taxes to pay these benefits. In addition, Congress could redefine terms in the Social Security Act such as the term ''recipient.'' We define who the recipients of Social Security are and as such could change the definition to include any special interest group.

Red herring No. 2: The balanced budget amendment is not enforceable. The amendment would curtail the authority of and respect for the Constitution.

Section 2 of the amendment requires a three-fifths vote to increase the debt ceiling. If you consider that insignificant, I ask why do we vote every year to increase the debt limit? Why does the President submit his budget by the first Monday in February every year? Neither of these procedures are identified in the Constitution. Indeed, these budget procedures are based on statute. As U.S. Senators, we are obligated to abide by the law. If one suggests that Members will arbitrarily disregard the Constitution, then I content you are completely off base and your lack of confidence in the institution undermines our role as a legislative body in a participatory democracy.

Red herring No. 3: The people have the right to know how this is going to affect them. Proponents of the balanced budget amendment should map out the way they will achieve a balanced budget within 7 years.

It is true the people need to know what their legislature is doing and how its decisions affect them. For the most part, I think they have the general idea. However, as former Nobel Laureate of Economics James Buchanan has so eloquently stated, ''This argument reflects a failure to understand what a

choice of a constitutional constraint is all about and conflates within-rule choices and choices of rules themselves.''

We have debated year after year and day after day ways to cut spending. We have also debated year after year and day and day whether or not we should increase taxes. Unfortunately we have been unable to achieve significant deficit reduction within the framework we have. The choices we have made as a collective body have placed us deeper in debt. As a result, we are sincerely trying to rectify the problem by changing the framework in which we operate. The idea that we are trying to pull the wool over someone's eyes is false and seemingly disingenuous.

Furthermore, I would like to know where right to know advocates were when Congress passed the Endangered Species Act and the wetlands legislation? Wouldn't one assume the people would like to have known ahead of time that a puddle that stands for more then 2 weeks of the year would be considered a wetland and that their property rights thereof would be foregone? I think they would. Do you think the American people would like to have known the inflationary impact of the 1993 Tax Act before it was passed? I'm sure they would have. The point is that there is no way to tell an individual that the balanced budget amendment will reduce their Government subsidy by exactly $342.34 or that a particular service will be taken from the States and therefore State taxes will be increased by exactly $43.25 You can see how absurd that request really is. The point is the citizens of the United States know all too well the problems of Federal spending. They want to see us pass a balanced budget amendment to stop the fiscal hemorrhaging from the Nation's Capital. The opponents are correct in that the people have a right, but the right they have is for the Federal Government to stop spending this country into bankruptcy.

Red herring No. 4: The balanced budget amendment will have dire consequences on the elderly and the children.

On the one hand the opponents claim a balanced budget amendment will lead to draconian cuts in very critical programs. According to them every old person, young person, and poor person will be cut off from a dignified standard of living.

Red herring No. 2 claims that the balanced budget amendment is not enforceable. No amendment will be able to force the President and Congress to balance the budget. Who is going to sue them they ask. Well, which is it? Are we going to experience draconian cuts or aren't we? The arguments against the balanced budget amendment are faulty according to their own logic.

Since the logic is inconsistent, opponents will try to paint a dreadful picture to the American people, hoping this will elevate opposition to the balanced budget amendment. Well, I have a frightening picture I would like to share with the American people.

Imagine, one day 30 years in the future, your children are now retired and living comfortably. They have worked all their lives, spent frugally and saved religiously. One day, they wake up and find the value of the dollar has crashed in financial markets. The Federal Reserve cannot stop the falling dollar and in response, the Treasury prints money. Suddenly, your children's assets are worth half of what they were a day before. Inflation is rampant and we are reduced to a Third World country. Everything your children have worked for has been taken from them because Members of the generations represented in this Chamber did not think that addressing the debt was important. Instead, Members chose the immediate gratification of consumption.

The opposition to the balanced budget amendment provides significant insight as to why many people do not understand the virtues of capitalism. The idea of capitalism means that one chooses to forego current consumption and save in order to accumulate capital. In other words, deny consumption now for bigger and better things later. To gather capital—which by the way, increases productivity and therefore living standards—we must deny ourselves immediate gratification. In order to pass the America we know on to our children, we must deny ourselves immediate gratification and pay the bills we have incurred.

Red hearing No. 5: The balanced budget amendment is just some popular idea we are voting for brought about by the Contract With America. We need time to think about a balanced budget amendment.

The fact of the matter is that the balanced budget amendment is not a new idea at all. Thomas Jefferson is well known for saying, ''If I could add one amendment to the Constitution, it would be to prohibit the Federal Government from borrowing funds * * * We should consider ourselves unauthorized to saddle posterity with our debts and morally bound to pay them ourselves.''

In 1936, Representative Harold Kuntson of Minnesota proposed the first constitutional amendment to balance the budget. Since then, a number of balanced budget amendments have been proposed. We have held hearings as far back as 1979 and even passed a balanced budget amendment in 1982. Indeed, the issue has come up several times since then. Several of the Senators opposing the balanced budget amendment have been around for many of those debates.

The balanced budget amendment is not a new idea that has not been justly considered. We know the issue all too well. The balanced budget amendment is an idea whose time has come.

Red herring No. 6: Federal accounting does not allow for capital budgeting. Federal accounting would throw chills down the spine of any business executive.

Trying to confront the arguments against the balanced budget amendment is like following a bouncing ball. When they are defending Social Security, the books are fine, they are in surplus. However, when we discuss the tremendous deficits and debt of the United States, the Federal accounting is somehow inept.

Once again, there is an inconsistency in the opponents reasoning. If you maintain the argument that Federal accounting is flawed, then one must take another look at the books of the Social Security trust fund. There is no fund. There is no surplus. According to accounting rules used by business executives, liabilities exceed assets. By definition, that is not a surplus.

In addition, I hear analogies being made to the American family in that they enter into substantial debt when they purchase a house. They have to pay mortgage payments monthly, but they are not worse off. Indeed, most would say they are better off. This is true, but lets take that analogy one step further as it applies to our national debt. The difference is that homeowners do not buy a house this year, and another house the next year and another the year after that. A homeowner pays down the principal. As a Government, we never get to this point because we have to borrow just to pay the interest. It is a perpetual problem that feeds on itself.

The arguments I have just mentioned are the objections opponents make to the balanced budget amendment. I call them red herrings because I believe such arguments are just distractions from the real issue. The term again comes from the practice of drawing a red herring across a trail to confuse hunting dogs.

Mr. President, the trail of debt now tops $4.75 trillion. The red herrings of a balanced budget amendment will not convince anyone on Wall Street or Main Street. Mr. President, the hunting dogs are not confused. The time has come for a balanced budget amendment to the Constitution of the United States of America.

Mr. CAMPBELL. Mr. President, I rise today to speak in favor the balanced budget amendment to the Constitution.

When we began this debate, I spoke on the floor in favor of this constitutional amendment as a means to ensure a strong economy and protect our children from rising interest payments and the debt.

There is no doubt that passage of this amendment will raise our Nation's savings rate and standard of living.

Today, I speak in favor of the amendment because I believe the American people and the States have the right to make the decision to either approve or reject the balanced budget amendment.

It's often repeated on this floor that the American people want this constitutional amendment. Most surveys show that about 80 percent of Americans favor it. Likewise, Governors and

State legislators are calling for its adoption.

Realizing that the American people want this, and that a general feeling of frustration and distrust exists among voters, we should hand it to States and ask, ''Do you really want a balanced budget or not?''

We should bring the debate closer to the people, to the States. States have a profound interest in this legislation because their budgets will be affected. Of the 50 States, 44 rely on the Federal Government for at least one-fifth of their budgets. Alabama relies on Federal funds for 58 percent of its budget, and Mississippi relies on Federal funds for 41 percent of its budget.

If elected officials in the States are worried that the sky will fall under a balanced budget, as so many have predicted, they can vote against the Amendment in the State legislatures.

On the other hand, if the States think a balanced budget is necessary to ensure a strong economy and protect our children from rising interest payments and the debt, they can vote for the amendment in the State legislatures.

Opponents claim a constitutional amendment is bad policy, and that the voters are not ready for the necessary spending cuts. If that is true, let the American people and the State legislatures reject it.

A recent editorial in the Durango Herald, a newspaper that actually opposes the constitutional amendment, yet realizes the need to get our fiscal house in order, says, ''Since it's clear this thing is not going to just wander off and die, let's get on with it'' and approve it so the States can decide.

The point is that this debate will not end until it is won or lost. This debate will not end until the States have the opportunity to either approve or reject the balanced budget amendment. In other words, to quote the Durango Herald, ''Let's get on with it.''

I ask unanimous consent that this article from the Durango Herald be printed in the RECORD. Thank you.

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

[From the Durango Journal, Jan. 15, 1995]

PASS IT AND MOVE ON: LET THE STATES KILL THE BALANCED BUDGET AMENDMENT

Amending the Constitution of the United States to require a balanced budget is a terrible idea—and one Congress should approve. Since it's clear this thing is not going to just wander off and die, let's get on with it. Give everyone in Congress the opportunity to posture and pose and send the proposed amendment to the states for ratification. Closer to the people, and the problems, cooler heads will drive a stake through its heart.

With good reason, the states fear Washington would balance its budget at their expense. And, they have no desire to have federal budgets decided by the courts. Both of those are likely consequences of a balanced budget amendment.

Of course there are other reasons to oppose such an amendment. For starters, it would be an abdication of one of Congress' fundamental responsibilities. Moreover, it wouldn't work. It's not even certain it would be good if it did.

Writing in The Wall Street Journal, economist Robert Eisner points out one of the fallacies behind a balanced budget amendment is that deficit spending is inherently bad. One common argument compares the deficit with an individual's finances: ''I balance my checkbook. Why can't the government balance its?'' Eisner says that's wrong on a couple of points.

Both the government's revenue and its expenditures are tied to the economy in ways that are out of its immediate control. Eisner figures that if unemployment were to go back up to where it was in June of 1992 the deficit would increase by more than $110 billion. What gets cut when that happens? And, if Congress could make that kind of call why do we need a balanced budget amendment?

A better point is that the checkbook analogy neglects another side of spending. Deficit spending is borrowing, something responsible individuals and businesses do all the time.

So do states. Although they may have balanced budgets mandated by their constitutions, most also have separate capital budgets financed by borrowing. In checkbook terms, they don't consider themselves overdrawn because they have a mortgage.

Eisner points out that if the deficit grows at the same rate as national income, the ratio of debt to gross domestic product will stay constant. Like someone who always trades in the car before it's paid off, we'll always be in debt, but never in trouble. Excess debt is crippling, but would our lives be better off if we were compelled to pay for houses, cars and appliances out of pocket?

What's needed is not a balanced budget, but some responsibility, some agreement as to what's important and a sense of proportion. No amendment will provide that. By sending the balanced budget amendment to the states for execution, maybe we can be rid of it for good.

Mr. MCCONNELL. Mr. President, I rise today to join the chorus of support for a balanced budget amendment to the Constitution. This action is long overdue. For the last quarter-century the Federal Government has failed to pass a single balanced budget. Rhetoric, desk-pounding, and campaign promises notwithstanding Congress has time and time again come up short. The fact is, willpower hasn't done it and term limits won't do it. We must be boxed in by a constitutional mandate.

To say the least, Congress' fiscal irresponsibility has frustrated the American people. The last election was a collective scream for change. Voters did not just send new members to Congress last November, but a clear message as well: cut the waste and balance the books.

The public clamor for term limits is largely attributable to the Federal budget fiasco. Ironically, term limits would not work to instill courage or fiscal disciple but a balanced budget amendment may serve to limit terms as Members are constrained from using the Treasury to buy votes.

Unfortunately, the President has not heeded the message of last November, or did not hear it, and sent a budget that embodies more of the same. Between 1994 and the year 2000, President Clinton proposes that we add another $2.5 trillion to the gross national debt. I fail to see how it gets us close to a balanced budget—must be some new math of the 1990's.

Since coming to the Senate 10 years ago, I have listened to those who oppose a balanced budget tell the American people that all we need is courage. Year after year, Congress runs up billions on the public credit card that is to be paid for by future generations. What right do we have to ask our children and grandchildren to pay for excesses today?

Thomas Jefferson, a strong proponent of a balanced budget amendment, felt very strongly about this. He stated:

The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.

That was the questions our Founding Fathers wrestled with when drafting the Constitution. It is the same question we contemplate as we cast our votes to amend this living document. Is it our place to ask others to pay for our lack of discipline? I think not.

A balanced budget amendment will serve as a bulwark to ensure that spending not exceed outlays. It purposely excludes any reference to specific programs—such a detailed blueprint has no place in the Constitution. Within this confine Congress can reprioritize spending to meet the most urgent needs and eliminate those programs that are duplicative or outmoded. Among other things, we will need to redefine terminology used in Washington. Only in Washington bureaucratese does a cut mean an increase in spending smaller than the increase the year before.

Congress would have 7 years to meet the objective of a balanced budget in the year 2002. This will be an evolutionary process in an effort to accurately reflect ongoing economic and political changes. In testimony before the Senate Budget Committee, on February 7, Secretary Rubin echoed these sentiments regarding the difficulty to predict economic situations 7 years from now. It would not be possible to precisely lay out budget priorities for the next 7 years.

Mr. President, to ensure we don't continue to resort to higher taxes instead of cutting spending to balance the budget, I urge my colleagues to support the three-fifths vote requirement to raise taxes. The record is clear, Congress has been remarkably resourceful in raising taxes. And each time taxes went up it was accompanied by increased spending. Clearly, the deficit is not a result of taxing too little, but spending too much.

Mr. President, let's take a look where we are now. Presently, the Federal debt is $4.7 trillion. If every man, woman, and child were to pay an equal

share, they would owe about $18,000. Under the Clinton proposal, their Federal share would jump to $26,000 by the year 2000.

Probably one of the most astounding facts is that interest on the debt has become the second largest budget item. It amounts to 5½ times more than is spent on education, job training, and employment programs combined. On top of that, this budget function is the only item truly off-limits. The only way we can reduce it is to balance the budget. In the meantime it remains a very substantial charge to taxpayers. The Congressional Budget Office predicts that if interest rates are even 1 percent higher than predicted, interest costs would rise by $50 billion in 2000. This is on top of the $310 billion in net annual payments expected that year.

The cumulative impact of this irresponsible behavior is staggering. Deficit spending crowds out savings and investment. Over the last 14 years, savings has declined from its highest point to record lows. Billions are diverted annually from private investment to cover government excess, and this has a direct impact on job creation.

Balanced budget opponents are trying to scare people with Social Security nightmare scenarios. The fact is, Congress continues to abdicate its fiscal responsibility, it will surely jeopardize future commitments to retirees. Only by putting our fiscal house in order now, can we continue to honor retirement obligations. Already actuarial models show the rapid depletion of the trust funds as baby-boomers begin to retire. Unless Congress takes swift action, there will be no resources available to support these people.

Opponents of the balanced budget would like seniors to believe that a balanced budget amendment will devastate the trust funds. I would be interested in knowing how many of my colleagues who have engaged in this rhetoric also supported the President's tax increase on seniors that diverted billions from Social Security to the General Treasury? This should be a clear indication of the threat posed to the trust fund under an unbalanced budget. I am as committed to Social Security as anyone and will work to ensure this commitment can be honored, a promise which must entail balancing the budget.

Some in this body seeking to undermine the balanced budget by attaching a Social Security exemption. This exemption is a hoax fraught with loopholes and questions. This exemption would create an off-budget blackhole where more and more programs are sent to be exempt from the constraints of a balanced budget. If this prediction comes true, seniors will be sharing their special exemption with a multitude of other programs. This will threaten the reserves and defeat the purpose of a balanced budget. As the old saying goes, ''give them an inch and they'll take a mile.''

No amount of gimmickry will protect future generations like a balanced budget will. Only by relieving them of our burdens, can we ensure that they can realize a higher standard of living. This is something every generation has been afforded until now. I urge my colleagues to support the balanced budget amendment to the Constitution.

Wouldn't it be nice if our children could owe a debt of gratitude, and not just a debt?

Mr. KEMPTHORNE. Mr. President, if this Senate has the courage to finally approve the balanced budget amendment, I predict that my State of Idaho will proudly be the first State to ratify the amendment.

Idaho eagerly waits the opportunity to do what is right. Idaho will not waste 40 years ratifying this amendment, it will not waste 40 weeks or even 40 days to approve this amendment. Idaho may well act within 40 hours to ratify this amendment. And for the simple reason Idaho knows what Congress is just now figuring out—our future as a nation, and the future of our children demand that Congress stops spending the Nation recklessly into debt.

This past Monday evening I was in Montpelier, ID—population 2,520—for a Lincoln Day meeting. What impressed me was the number of young folks who came.

Those young folks, Mr. President, were there because they are concerned about their own future. They see our generation mortgaging away their future. This debate is about bringing us some fiscal sanity so that these young people will have a future, and not one that is mortgaged away.

Idahoans, like most Americans, have lived under a State balanced budget requirement for years. Has it forced tough decisions? Certainly. Has it prevented Idaho from doing some things the people may have wanted to do? Undoubtedly. But has it worked? Yes.

The people of my home State have shown they can and will live within a limited budget, on both a personal and governmental level. It is an example Congress would do well to follow.

The truth is Congress soon will once again raise the debt limit, this time to more than $5 trillion—a staggering, incomprehensible amount of debt, a debt we pass on as our selfish legacy to future generations. It is sad to say, but all signs indicate this deficit spending will continue unless we make it against the law.

It has been 26 years since the last balanced budget was approved by Congress. 26 years. Mr. President, I was preparing to graduate from high school and enter the real world 26 years ago. But for more than a quarter of a century, Congress has failed to operate in the real world. Congress' world has been one of illusions where, when the money runs out, it is like that Doritos Corn Chip ad where Jay Leno boasts, ''We'll make more.'' In Congress, we fire up the printing presses, make more, and add a few extra zeroes to the national debt.

As many of my colleagues are aware, I had the privilege of serving as the mayor of Boise, ID, before coming to the U.S. Senate.

As chief executive officer for a municipality, I had the responsibility to make sure the city's budget was balanced. I did not have other options. I could not spend the city into the red. I had to prioritize. I would have loved to put more police officers on the street. We had vacant parcels of land which had been waiting years for grass, ball fields, and playground equipment. It would have been fantastic to expand more bus routes, build a new firehouse, and purchase a new bookmobile.

Those were all desirable propositions. But we did what was realistic, and we lived within our means.

And do you know what? We kept our river clean. Our crime rates went down. We built some great parks. We modernized our fire fighting equipment. We were voted one of the most livable cities in America—''A great place to raise a family''—said one national magazine.

We were able to do that because our mandate from Boiseans was clear: Learn to do more with less. And, I would add, Mr. President, that we did all this and either held the line or decreased the property tax levy the final 2 years I was in office.

We need to get used to the fact that the American people want the Federal Government to cut up its credit cards, prioritize the real needs, ignore the wants list, learn to do more with less, and balance its budget.

I mention credit cards, and I am sure this has never happened to any of my colleagues, but I had a bit of an embarrassing experience while I was back in Idaho this past weekend.

I pulled out a credit card and gave it to a hotel clerk. She ran it through the machine to print out a receipt for me to sign. But instead of handing me a receipt, she politely handed me my card back and said, ''I'm sorry Mr. KEMPTHORNE, but your card expired at the end of January.''

It became painfully clear to me at that moment, that Congress' credit card has also expired. And the American people aren't going to issue a new card because Congress has run its limit up to a point where we no longer have a favorable credit rating.

When that happens, the solution is obvious. You cut up the credit cards and start to pay off the debt.

The call for fiscal responsibility is nothing new, it has been sounding for years. Just over a decade ago, the American people heard these words:

> We must act not to protect future generations from government's desire to spend its citizens' money and tax them into servitude when the bills come due. Let us make it unconstitutional for the Federal Government to spend more money than the Federal Government takes in.

This sage advice came from President Ronald Reagan on the event of his second inauguration. His words were true then, and they are even more so now. Since he made that call for a balanced budget amendment to the Constitution, we have had 10 more years of unbalanced budgets, 10 more years of deficits, 10 more years of telling our children and grandchildren that they will have to discover a way to do what we did not have the courage to do.

We have been inching closer to passing a balanced budget amendment. One reason for this is the tireless efforts of Idaho's senior Senator, LARRY CRAIG, who has spent 13 years working to see his dream of congressional approval of a balanced budget come true.

His partners in this effort—Senators HATCH and SIMON—have left no stone unturned in the effort to get this amendment passed.

These Senators know better than anyone else here that the Senate has approved this amendment in the past, only to have it fail in the House. Now, the House has approved a balanced budget amendment, and the eyes of the Nation—particularly the eyes of those young people I met in rural Idaho this past weekend—are watching and waiting for us to do what is right.

This vote is real this time.

This vote counts.

Let us finally stop talking and do what is right: Pass House Joint Resolution 1, the constitutional amendment to balance the budget. Idaho and the rest of the Nation is watching, and waiting, and is ready to act.

Mr. HEFLIN. Mr. President, I again come to the floor as an original cosponsor of the resolution calling for a balanced budget amendment to the U.S. Constitution. I do so with the firm belief that this measure, and the amendment it would help establish, is the very best hope we have now or in the near future of finally getting a handle on our massive budget debt and yearly deficits.

Just as we did in the summer of 1993 by passing the largest deficit-reduction legislation in history, we again stand at a unique place and time in history with regard to addressing our most pressing structural economic problems. The American public, through countless opinion surveys, consistently ranks deficit reduction as one of its paramount concerns. What we did in August 1993 was the right thing to do, and we are seeing benefits from that legislation. Deficits are coming down for the 3d year in a row. But as we know all too well, that is nowhere near enough. The temptation to spend is still a mighty one to resist for Congress, regardless of who is in control.

I believe in the inherent good sense of the American people, and I believe that good sense has opened millions of eyes and even hearts to the fact that America has been victimized by more than a dozen years of borrow-and-spend Federal fiscal policies that have run up a horrendous $4 trillion national debt. The public is saying, ''enough is enough. This irresponsibility must stop.'' There is a sense of urgency for protecting the future of our children and grandchildren. The question is whether we will act further with an even more bold step to not only reduce the deficit, but to eventually wipe it out completely. If we don't seize this opportunity—the best chance we've ever had to pass the balanced budget amendment—we might not get another opportunity any time soon. We must act to complete what the House has started.

Unfortunately, our viable alternatives are few. We must finally begin to service and reduce our debt or our Nation will face the miserable consequences of bankruptcy.

We are deeply and sincerely committed to doing something about deficit reduction. The American people, by all accounts, are prepared to do their part. This is one of the few times in my more than 16 years in the Senate that I have seen such an array of forces converged in an attempt to address this pervasive problem. Indeed, it is rare that we ever have a committed public and majority of Congress aligned on any economic issue, much less one that strikes at the very soul of our free republic. But we need more than just a simple majority. We must get 67 votes to ratify what the House has already passed overwhelmingly.

The bottom line is this: We have the momentum to take bold and decisive action to begin reducing it. It is an opportunity to build on what we started 2 years ago. I am fearful that if we do not act this time and finally send this amendment to the States for ratification, we will lose that momentum, perhaps never to regain it.

And so, we can continue to wring our hands and play the blame game, or we can act. There is plenty of blame to go around, in both branches of Government and both parties, for how we came to this point. But the time has come for the blame to end and for us, as a body, to accept responsibility.

Winston Churchill once said, ''If we open a quarrel between the past and the present, we shall find we have lost the future.'' We can argue forever about what might have been done in the past to avoid the debt we face. We do not have the luxury of replaying the past, but we do have the present. And the quarreling of the present will only impact our future security. Let us heed Churchill's warning and cast a vote for the future.

I implore all of my colleagues to stop the blame game and wringing of hands and vote for a new beginning with this resolution calling for a balanced budget amendment to the Constitution. Let us give it to the States, where it will be fully debated, analyzed, and voted on. This is as it should be, because amending the Constitution is gravely serious business. This is why the process is so difficult. But the States should have the opportunity to decide this issue. Support this historic effort at debt reduction by stepping up to the plate and accepting responsibility. It is what we have been elected to do. The economic future of our Nation depends on us fulfilling that responsibility.

AMENDMENT NO. 300, AS MODIFIED

Mr. GORTON. Mr. President, the Nunn amendment fills the last gap in a vitally needed balanced budget amendment. It makes clear that the responsibility for abiding by its solemn requirements rests in the Congress and the President. The prospect of judicial intervention into fiscal estimates, and taxing and spending decisions, made exclusively by the elected representatives of the people for more than 2 hundred years, is appalling. The people of the United States must retain their control over those whose decisions so affect their lives and their pocketbooks.

Under the Nunn amendment, of course, Congress may grant this power of judicial review with such limitations as it deems appropriate. But the power can be withdrawn, and that makes all the difference. Such a power is highly unlikely to be misused.

The balanced budget amendment, House Joint Resolution 1, is the key to our commitment to change, to a new course of action to deal with deficits that choke our economy and unjustly burden our children and grandchildren. It is a revolt against the status quo and the promise of a new way. It is a rejection of the old and discredited way of doing business, and the promise of a brighter future.

With the Nunn amendment, the balanced budget amendment is the most important initiative of this Congress. It must be approved.

AMENDMENT NO. 291

Mr. HATFIELD. Mr. President, on February 15, 1995, this body considered an amendment by Senator FEINGOLD, the effect of which would have been to nullify Judiciary Committee report language pertaining to the impact of the balanced budget constitutional amendment on the legal status of the Tennessee Valley Authority.

I opposed the motion to table the Feingold amendment because I believe the Judiciary Committee report language related to TVA goes beyond the plain meaning of the language of the balanced budget constitutional amendment.

Section 7 of the Senate Judiciary Committee's Report No. 104–5 indicates that total receipts under section 5 of the proposed constitutional amendment are intended to include all moneys received by the Treasury either directly or indirectly, except for the proceeds of Federal borrowing. The report states that ''total outlays'' under section 5 of the proposed constitutional amendment are intended to include all disbursements from the Treasury, either directly or indirectly through Federal or quasi-Federal agencies created by the Congress, whether they are

on budget or off budget, with the exception of that total outlays do not include the repayment of debt principal. In the case of TVA or the Bonneville Power Administration, this means that their borrowing would not count as a receipt and their debt principal repayment would not count as an outlay. This is correct and entirely consistent with existing budget law.

It is the following statement in the Senate Judiciary Committee report language that is troubling to me: ''Among the Federal programs that would not be covered by Senate Joint Resolution 1 is the electric power program of the Tennessee Valley Authority.'' The text of the proposed constitutional amendment is clear: There are to be no exemptions to the amendment unless the Congress would later waive the provisions of the article under the Declaration of War provision in section 4. The above TVA report language attempts to go beyond the stated language in the proposed constitutional amendment. I do not believe this report language can overcome the plain meaning of the text of the proposed constitutional amendment.

Congress has recognized that the power programs of TVA, BPA, and the other power marketing administrations are unique and that ratepayer revenues should not be traded off against taxpayer appropriations. Under our current budget rules, the TVA and BPA power programs are on budget, direct spending authority programs. These programs possess borrowing authority which is subject neither to sequestration nor reduction. This sequestration protection has been provided because the funds that would be reduced are derived from electric ratepayers and not taxpayers and such reduction would not reduce the Federal district.

We should not return to the time when the Congress was involved in detailed power system decision making for the TVA and the BPA. These programs must remain direct spending and exempt from sequestration and budget reduction. Reduction of the expenditure of ratepayer revenues would not help reduce the Federal deficit. At the same time, the proposed constitutional amendment as currently written clearly applies to TVA and BPA. The Senate Judiciary report language cannot overcome the clear language of the proposed constitutional amendment.

The Senate tabled the Feingold amendment on a vote of 63 to 33. I voted against tabling because of my belief that the TVA report language would have no effect because it exceeds the language of the constitutional amendment. It is my view that the tabling of this amendment did the disservice of reinforcing the TVA report language and further complicating the ability of courts or this body to clearly understand the legislative intent behind this part of the balanced budget amendment.

Senator FEINGOLD has now offered another amendment to force the issue of whether this report language overcomes the plain meaning of the balanced budget amendment. The point is made in a counterintuitive way by seeking to exempt TVA in the legislative language, rather than the report language, of the balanced budget amendment.

Because I oppose exempting TVA from the balanced budget amendment, just as I would oppose exempting BPA, I will vote to table the Feingold amendment. Regardless of the outcome of this vote, I continue to believe that, to the extent it is inconsistent with the text of the balanced budget amendment, the underlying report language related to TVA should be without effect.

I yield the floor.

THE BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. ROTH. Mr. President, today I rise as a proud cosponsor of the constitutional balanced budget amendment, and I urge its adoption.

The time has come to put an end to out of control Federal spending that has taken money from the private sector—the very sector that creates jobs and economic opportunity for all Americans.

The President's recent budget proposals for next year offer clear evidence for the lack of political will to make the hard choices when it comes to cutting Government spending. I strongly disagree with President Clinton's decision not to fight for further deficit reduction this year.

The American people are crying out for a smaller, more efficient government. They are concerned about the trends that for too long has put the interests of big Government before the interests of our job-creating private sector. They are irritated by the double-standard that exists between how our families are required to balance their checkbooks and how Government is allowed to continue spending despite its deficit accounts.

It is clear, Mr. President. The time has come to heed the will of the people. It is our duty, not only to heed their will, but to act in their best interest. And this amendment is in their best interest.

The President's budget maintains deficits of $200 billion over the next 5 years, and the deficits go up from there. His budget does not take seriously the need for spending restraint—restraint that would put us on a path toward a balanced budget by the year 2002.

In fact, Bill Clinton proposes spending over $1.5 trillion in fiscal year 1995 to over $1.9 trillion in the year 2000. In other words, the only path that the President proposes is one that leads to higher Government spending and ever increasing deficits.

Mr. President, my decision to cosponsor this legislation was not made lightly. The U.S. Constitution is our Nation's most sacred document. Dozens of countries have modeled their constitutions around the principles espoused in ours. Many of the emerging democracies around the world recognize the profound simplicity and timelessness contained in that hallowed document.

Any amendments to the Constitution should be made with care, and with careful consideration of the intended outcome.

I believe the outcome of a balanced budget for our Nation is one of the most important steps we can take to ensure the economic opportunities for prosperity for our children and for our children's children.

As a Nation—and as individuals—we are morally bound to pass opportunity and security to the next generation. This is what a balanced budget amendment will help us do. As Thomas Paine has written, no government or group of people has the right to shackle seceding generations with its obligations. A balanced budget amendment will help us prevent the shackling of future generations.

As chairman of the Senate Governmental Affairs Committee I have outlined a plan to reduce the Federal bureaucracy, eliminate out-dated and wasteful Government programs, and to strengthen Government's ability to better serve the taxpayers.

In January I kicked off a series of hearings on Government Reform: Building a Structure for the 21st Century. It is my belief that as we move into the 21st Century, so should our Government. Innovative technologies should allow us to cut out many layers of management bureaucracy, and reduce Federal employment. Programmatic changes should also occur.

Just this week I released a report that I asked the GAO to examine the current structure of the Federal Government. The GAO examined all budget and Government functions and missions. They did not conduct in depth analysis, but simply illustrated the complex web and conflicting missions under which agencies are currently operating.

The GAO report confirms that our Federal behemoth must be reformed to meet the needs of all taxpayers for the 21st century. I am convinced that it is through a smaller, smarter government we will be able to serve Americans into the next century.

Deficit spending cannot continue. We can no longer allow waste, inefficiency, and overbearing Government to consume the potential of America's future. I am committed to spending restraint as we move to balance the budget by the year 2002. And I ask my colleagues—and all Americans—to support our efforts.

THIS IS THE VOTE THAT COUNTS; DO WE TRUST THE PEOPLE?

Mr. CRAIG. Mr. President, we are now down to final passage of House Joint Resolution 1, the BBA.

No matter how any Senator voted on any amendment earlier, your constituents will understand:

Vote no, and you kill any form of BBA, here and now.

Vote yes, and you continue one of the great debates of our age.

This vote is really about engaging the American people in the most important public debate about the appropriate role of the Federal Government since the Bill of Rights was sent to the States by the First Congress.

Do we trust the people with that debate?

Do we trust the 80 percent of the people who demand this amendment?

Do we trust the American people who voted for change last November?

This Senator trusts the people.

FUNDAMENTAL RIGHTS, LIMITS ON GOVERNMENT

A constitution—

Protects the basic rights of the people;

Outlines the fundamental responsibilities of the Government and broad principles of governance;

Sets forth just the essential procedures to do these things.

House Joint Resolution 1 fits squarely within that constitutional tradition:

The American people have a right to be protected from the burdens of an intolerable public debt.

The Framers thought that the limited and enumerated powers of government, a gold standard, and a moral imperative would make an explicit balanced budget requirement redundant.

For 150 years, they were right. But times have changed.

We are having this debate today because the American people are demanding that Congress change, as well.

THE DEBT IS THE THREAT

Even as we speak, we are adding to the Federal debt: $829,440,000 a day; $34,560,000 an hour; $576,000 a minute; and $9,600 a second.

Americans are paying now, with a sluggish economy. Under current trends, our children will pay even more dearly.

For each year with a $200 billion deficit, a child born today will pay $5,000 in additional taxes over his or her lifetime.

Last year, the President's budget projected that future generations face a lifetime net tax rate of 82 percent in order to pay the bills left by this generation.

Total Federal debt is now $4.8 trillion—$18,500 for every many, woman, and child in America.

Gross interest on that debt is $300 billion—the second largest item of Federal spending;

Growing interest payments threaten to squeeze out every other budget and economic priority—including Social Security.

THE BBA IS THE BEST HOPE FOR ECONOMIC SECURITY

A 1992 GAO report shows gains in standard of living of between 7 percent and 36 percent in 2020 resulting from balanced Federal budgets.

According to the economic forecasting firm DRI/McGraw-Hill:

Balancing the budget can create 2.5 million new jobs by 2002.

Lower interest rates from balancing the budget could increase nonresidential investment 4 percent to 5 percent by 2002.

Balancing the budget could produce an additional $1,000 in per-household GDP in 2002, in today's dollars.

We can balance the budget by simply holding the growth of spending to 3 percent a year until 2002.

Spending would still grow from $1.53 trillion this year to $1.88 trillion in 2002—a $350 billion increase in 2002 alone.

CBO and the Treasury Department say a balanced budget saves $64 to $74 billion in 2002, in interest costs. DRI says lower interest rates and economic growth would save even more.

CONCLUSION

It's been suggested that we don't need a BBA—we already have the power to balance the budget.

We also have the power to protect freedom of speech and religion, protect property rights, and ensure equal protection under the law.

That didn't stop previous Congresses from including those protections in the Constitution.

Today, it is clear from bitter experience that the American people need one additional protection, from a profligate, borrow-and-spent government.

This is not a short-term problem; the Federal Government has run deficits for: 57 of the last 63 years; 34 of the last 35 years; the last 26 years in a row.

Washington, Franklin, Madison, and others learned from experience and determined that certain protections were inadequate unless provided for in the Constitution.

We should do the same.

Jefferson said:

> I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. * * * We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.

If you want to ignore the lessons of the last 35 years of excessive debt, vote no on this amendment.

If you are willing to leave our children a stagnant or declining standard of living, vote no on this amendment.

If you want to continue the failed status quo, vote no on this amendment.

If you agree with Jefferson that, ''as new discoveries are made, new truths discovered, * * * institutions must advance also,'' then vote yes on the balanced budget amendment.

If you trust the American people, and understand their demand that government change its ways, then vote yes on the balanced budget amendment.

If you want today to be the first day of new hope and opportunity for our Nation, our economy, and our children, then vote yes on the balanced budget amendment.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time do we have remaining on both sides?

The PRESIDING OFFICER. The Senator from Utah has 42 minutes 40 seconds.

Mr. HATCH. And the other side?

The PRESIDING OFFICER. The minority leader has 20 minutes 9 seconds.

Mr. HATCH. Mr. President, I am just going to finish the last day with this balanced budget debt tracker that we have been keeping track of throughout this whole debate.

As you can see, we started 30 days ago and we have gone steadily uphill from this baseline of $4.8 trillion.

We are now, in this 30th day, almost $25 billion more in debt. I do not care what anybody says, that is a tremendous problem to this country. In other words, while we have been debating this matter, almost every day we have gone $1 billion deeper in debt.

Now, we can scream and shout all we want. We can talk about how important it is to do the right thing around here. For 36 years we have failed to balance the budget except once—one time in 36 years. The people who are fighting this want to continue business as usual, the old way of doing things, forgetting about our children and the grandchildren and the future of this country while we just continue to go up ad infinitum.

And the President's own budget this year made it very clear that he has no serious intent to do anything about bringing deficit spending down, because for the next 12 years his budget averages, there will be at least $190 billion-plus deficits each of those next 12 years. That is, in the next 12 years, trillions of dollars in debt.

For the first time in history, the House of Representatives has passed a balanced budget amendment. Many people think that was a miracle after watching the House for all these years. I, myself, feel that it was a stunning occasion, as one who has brought the balanced budget amendment to the floor of either House for the first time in history in 1982, then 1986, and then last year again. We won in 1982. We had 69 votes. We lost in 1986 by one vote. We lost last year by four votes. Now we have picked up three people who voted against it last year, Senator BIDEN, Senator BAUCUS, and Senator HARKIN, who have committed to vote for this. We have lost a few who voted for it last year.

It is coming right down to one vote, one way or the other. This is the last chance, it seems to me, for Members to strike out and do something that is right for our country, for our children, for our grandchildren, and for their future.

I hear a lot of talk about automatic stabilizers. Let me say, the only automatic stabilizer I know is an attempt to live within our means. All the automatic stabilizers in the world will not work if we do not get spending under control. We are wrecking the future of our children and our grandchildren. This is the day. This is the day. We will pass this amendment or we will not pass this amendment. It is coming down to one solitary vote.

One thing is crystal clear. That is, we need to move toward a balanced budget. During the debate, both sides have cited lots of numbers and figures. One such figure is the $4.8 trillion represented by the red line on the balanced budget amendment debt tracker.

But how does one communicate the implications of our staggering debt in trillions of dollars? In 1975, before the recent borrowing spree, the Federal debt amounted to $2,500 per individual in this country, man, woman, and child, and the annual interest charges were roughly $250 per taxpayer.

At the present, the Federal debt amounts to $18,500 for every man, woman, and child in America with annual interest rates exceeding $2,575 per taxpayer. That is what we owe.

That is at today's interest rates, which could go much higher. Thanks to Congress, every American is endowed not only with life or liberty but with over $18,500 in individual owed debt. I wonder how long liberty will last if we keep going the way we are going.

The Congressional Budget Office predicts under the current law if we continue business as usual, which is what is being argued for here on the floor today by the other side—sincerely, I might add. I do not find fault with people who differ from us, except I think it is time to wake up. The Congressional Budget Office predicts under current law in 1999 total firm debt will be $6.4 trillion. That is under the President's current budget package. It will go from $4.8 trillion, that bottom red line, to $6.4 trillion. That means $23,700 per person with annual interest cost projected to be over $3,500 per taxpayer. The last figures would mean a tenfold increase in per capita debt and a nearly fourteenfold increase in annual interest charges per taxpayer since 1975.

This breakdown may give a bigger picture of the actual magnitude of the debt. It still does not describe human implications. Its human implications are that our children are shackled with an insurmountable burden as a result of our profligacy. How could you conclude otherwise? According to the National Taxpayers Union, a child born today will have to pay over $100,000 in extra taxes over the course of his or her lifetime in order just to pay the interest on the debt which accumulates in just their first 18 years of life; $100,000 more in taxes for every kid born today, in the first 18 years of life, the way things are going.

Further, the National Taxpayers Union has calculated that for every $200 billion deficit the Government runs up—and we will do it every year now for 12 years, according to the President's budget—the average child born today will have to pay an additional $5,000 in taxes just to cover the interest charges. That is $5,000 for every $200 billion in deficit spending that will occur every year now for the next 12 years.

Think about that. That is $60,000 over the next 12 years that that child will have to pay—extra taxes on top of the $100,000 that they have to pay in the first 18 years of their lives. Over time the disproportionate burdens imposed on today's children and their children can include some combination of the following: Increased taxes, reduced public welfare benefits, reduced public pensions, reduced expenditures on infrastructure and other public investments, and diminished capital formation, job creation, productivity enhancement, real wage growth in the private economy, and higher interest rates, higher inflation, increased indebtedness, and economic dependence on foreign creditors, increased risk of default on the Federal debt.

This sociopathic economic policy has continued under President Clinton's latest budget proposal, as I have said. In complete surrender to deficit spending, the President's budget runs deficits of around $200 billion for each of the next 5 years—actually, 12 years. That is $1 trillion right there in the next 5 years added to the debt and another $25,000 in tax for today's children. Under recent projections of the Congressional Budget Office, we will continue to have deficits of about 3 percent of GDP for the next 10 years, increasing as we go into the future.

In a 1992 report, the GAO found that this scenario, which it called the ''muddling through option,'' would not be sufficient to avoid the severe economic consequences of deficit spending. Among the conclusions that GAO reached are the following:

No. 1:

> If we continue on the current ''muddling through option,'' by the year 2005 the amount of deficit reduction that will be required to limit the deficit to 3 percent of GDP will increase exponentially. By the year 2020, it will require $1/2 trillion of additional deficit reduction every year just to maintain a deficit path of 3 percent of GDP.

No. 2:

> The muddling through path requires one to make harder and harder decisions just to stay in place, partly just to offset the growing interest rates that compound with the deficit. To select this path is to fend off the disaster of inaction, but it would lock the Nation into many years of unpleasant and relatively unproductive deficit debates rather than debates about what Government ought to do and should be doing. It is death by 1,000 cuts.

No. 3:

> While the implications for the economy of the muddling through approach are less devastating than the no action scenario, they still imply an economy that grows only slowly with ominous implications for the ability to sustain both the commitments made to the retiring baby boomers and a satisfactory standard of living for the working-age population in 2020 and beyond.

It sounds like shock therapy. The shocking thing about this forecast is that President Clinton's much ballyhooed deficit reduction only keeps us in this muddling through approach. President Clinton's one-time fix of record-setting tax hikes does not set us off in the direction of responsible Government nor does it move us off the path to long-term fiscal disaster.

It just sets the stage for ever-increasing tax hikes and growing debt. I think that the President's latest proposal is best described by a famous American who said:

> Look at the President. He started in with the idea of a balanced budget, and said that was what he would hold out for. But look at the thing now. Poor President, he tried but couldn't do it by persuasion and he can't do it by law. So he may just have to give up and say, ''Boys, I've tried, but I guess it's back to the old ways of an unbalanced budget.''

The amazing thing about that statement is that it was made over 60 years ago by Will Rogers. You see, Mr. President, budget deficits are not new. They are not cyclical. They are not short-term. Budget deficits are an institutional, structural problem which must be dealt with in a long-term, insoluble rule. We need a constitutional amendment to balance the budget.

The debate is going to end pretty soon. We will all have to vote. I just want to point out to my colleagues how expensive our debate has been. It has been 30 days since we started. We are now in the 30th day, and just in those 30 days we have put us $35 billion further in debt. If you stop and think about it, that is over $95 for every man, woman and child in America, just in these 30 days.

I hope the American people have been enjoying the debate. It has cost each of them $95 in national debt. One of my staffers told me that much would buy him groceries for 2 weeks. I am sure most people watching this debate would prefer to have the $95 to spend on something other than this debate. Certainly they could have found better entertainment for their money than this debate. Any way you cut it, this has been an expensive debate. And if the people watching prefer things change, they should call their Senators today and tell them you want them to vote for change, to vote for a balanced budget amendment. I promise the call will be less than the $95 this debate has cost you.

Now that I have reviewed what will happen without a balanced budget amendment, I would like to tell you some of the gains we will enjoy if we do adopt it.

DRI/McGraw-Hill, one of the country's leading nonpartisan economic analysis firms, has analyzed the economic impact of the balanced budget amendment and has concluded that it will result in a significant improvement for our Nation's citizens. Their

study suggests that the balanced budget amendment would greatly brighten the future for Americans of all generations. Among the good news following adoption of a balanced budget amendment are these highlights:

As Government spending is reduced, resources will be freed up for private investment and interest rates will drop. Both of these factors will make it easier for businesses to expand, resulting in the creation of 2.5 million new jobs by the year 2002.

Further, fueled by the drop in interest rates, private investment will rise and real nonresidential investment could grow by 4 to 5 percent by the year 2002.

Last, by the end of the 10-year forecast, real GDP is projected to be up $170 billion from what it would be without the balanced budget amendment. That is about $1,000 per household in the United States.

The balanced budget amendment also serves to protect the civil rights of generations of young Americans. As we spend the money of generations not yet old enough to vote, we commit one of the most infamous offenses against liberty in the history of our country: No taxation without representation. Just as the 15th and 19th amendments stand as great defenders of our democracy and the right to vote, so, too, does the balanced budget amendment. It will prevent Congress from spending our children's future wages and preserve their future for them to shape their own destiny as all Americans have sought to do.

Mr. President, we have a clear choice between two visions of the future of our children and grandchildren. We can choose to continue down the path to oppressive Government and increased taxes, stagnant wages, fiscal chaos and economic servitude, or we can choose decreased Government burdens, a robust economy, and political freedom. So I think it is time for the Senate to pass House Joint Resolution 1 to end business as usual and leave a legacy to future generations we can be proud of, a legacy of responsible Government and greater personal and economic freedom.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I yield myself 1 minute of the minority leader's time.

I have been looking at this chart now for 30 days. It is a beautiful chart, very impressive, all these microfigures, $4.6 trillion and so on.

We should remember one thing, between 1981 and 1992, the national debt tripled in 12 years—tripled. I am not going to go through the rest of it because you have heard it too many times. In 1993, we proposed to cut the deficit by $600 billion. I say ''we,'' the Democrats proposed to cut the deficit by $600 billion in 5 years and we did it without one single Republican vote—50 Democrats plus the Vice President. That is the reason the deficit was down $100 billion less last year than anticipated.

If you want to be honest, add one-third to the top of each one of those green bars. Add one-third to the top of each one of those green bars and that is what it would have been if the Republicans had had their way in August 1993.

I yield 5 minutes to my distinguished colleague from Connecticut on behalf of the minority leader.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Arkansas.

Mr. President, let me say first that this has been a remarkable debate, a serious, thoughtful and important debate as befits the subject. I must say personally that the result of it has been my own increased respect for my colleagues and pride in service in this institution. As this debate ends, I wanted to rise briefly to explain why I will vote against the balanced budget amendment.

Our national books obviously are out of balance, and that should worry every American because it directly affects every American. We spend too much of our wealth each year on interest payments on the debt, money that could otherwise remain with taxpayers for them to save or invest.

Because of the deficit, we jeopardize our capacity to fund vital programs that we need to enhance our security and our futures. We burden our children and their children with a debt that they must pay for obligations that we have incurred but not paid for. This is wrong and must be stopped.

That is why I introduced a deficit reduction program during the last session of Congress which would have cut more than $150 billion from our projected debt. That is why I joined with a bipartisan group of colleagues, including Senators KERREY and BROWN, ROBB, GREGG, and GRAHAM in introducing another deficit reduction package that would have cut $91 billion from the deficit. That is why I will work with that same group this year to enact further spending cuts. And that is why I will support a line-item veto as a reasonable test of whether greater Presidential authority will be used responsibly to prune unnecessary spending from our Nation's budget.

But, Mr. President, I will not support this balanced budget amendment because it freezes forever in our Constitution the response to a fiscal problem—that is budget deficits—that has been a serious problem for only a small part of our history, and it does so in a way that will alter the fundamental allocation of power in the Constitution from elected officials, the President and Congress to unelected judges who will inevitably end up interpreting and enforcing taxing and spending.

Mr. President, we should have more respect for the wisdom of those who founded and formed our democracy, if not for our personal capacity to govern responsibly than as expressed in this amendment.

I will also vote against this amendment because it takes our Government's responsibility to protect the American people and puts it in a straitjacket that will weaken the Government and make it difficult, if not impossible, for us to respond to serious military, economic or law enforcement threats to our Nation.

Reducing the deficit is and must be accepted as a very important national goal and responsibility. But it is not our only national goal and responsibility. Passing this amendment will effectively make everything else the Federal Government may need to do subservient to balancing the budget, and that, in my opinion, is not a prescription for good and strong Government.

In a given year, the elected leaders of the American people may decide that they need to spend more to protect our security or our health or our jobs than the balanced budget amendment will allow. They should be free to do that, subject to the will of the people as expressed at the next election.

Our aim should be to continue to reduce the deficit each year, both in absolute dollars and as a percentage of our gross domestic product, as we have in the last 2 fiscal years and as we in Congress must for the next fiscal year, even though, sadly, the Administration has not sent us a budget that will do so.

Mr. President, the best way to eliminate the deficit is not by forcing into the Constitution our promise to do so. The best way is the hard way—by doing so, by continuing the difficult work of reducing the size of the Federal Government and cutting its costs until we return to a balanced budget.

Today, Mr. President, I renew my personal commitment to that work, as I cast my vote against this amendment.

I thank the Chair and yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Georgia.

Mr. NUNN. I thank my friend from Utah.

Mr. President, as I noted last Thursday, adoption of the balanced budget amendment to me is very important, but I also noted that without a limitation on judicial review, a limitation which was accepted during our 1994 debate when offered by Senator DANFORTH of Missouri, we could radically alter the balance of powers among the three branches of Government that is fundamental to our democracy.

Former Federal Judge Robert Bork, who served as Solicitor General during the Reagan administration, has stated that a restriction on judicial intervention is ''essential if Congress is not to risk ceding some of its most important powers to the Federal judiciary.''

As Judge Bork has said, without some restriction on judicial review, the result—

> would likely be hundreds, if not thousands, of lawsuits around the country, many of them on contradictory theories and providing inconsistent results. By the time the Supreme Court straightened out the whole matter, the budget in question would be at least 4 years out of date and lawsuits involving the next 3 fiscal years would be slowly climbing toward the Supreme Court.

Former Attorney General Nicholas Katzenback has noted:

> [T]o open up even the possibility that judges appointed for life might end up making the most fundamental of all political decision[s] is not only an unprecedented shift of constitutional roles and responsibilities but one that should be totally unacceptable in a democratic society.

Mr. President, the Framers of the Constitution placed the constitutional taxing and spending powers in the two elected policy making branches of Government, not in unelected life-tenure members of the Federal bench, because our Founding Fathers knew well the dangers of taxation without representation. The single-most important motivating force in the American Revolution was the opposition of the American people to taxation without representation. They would have found it inconceivable that the power to tax might be vested in the unelected, lifetime-tenure members of the judicial branch.

Mr. President, I have listened with care to the arguments on the issue offered by my good friend and superb floor leader on this amendment, Senator HATCH, the chairman of the Judiciary Committee. I have also conferred at length on this subject with Senator SIMON, an individual I respect immensely, as well as Senator CRAIG, who has done a superb job on this. All are highly respected in their views and knowledge of the Constitution and in this amendment. Senator HATCH, in particular, has provided detailed arguments in the Judiciary Committee report, on the Senate floor, and in personal discussions with me in support of the proposition that an amendment is not needed to address the issue of judicial intervention. His arguments are carefully researched and well written.

If my amendment does not pass, if this constitutional amendment does pass, if this matter is adjudicated before the Supreme Court, I would want the Senator from Utah to make those arguments before the Supreme Court because I do not think anyone would be more effective. I just do not happen to agree with the arguments because I think, in spite of his arguments, there is considerable risk left that the courts would decide otherwise.

The issue before us, however, is not whether we would personally agree with Senator HATCH's views on how a court should resolve a case. I agree with those views. We are not in the process of filing an amicus brief with the Supreme Court. We are writing words that will become the text of the Constitution of the United States. We are engaged—and I think we all ought to think about this very, very heavily—in the same awesome task that was undertaken by the Framers in Philadelphia during the Constitutional Convention, and the States will be making those same decisions if this amendment is passed and sent to them.

The issue before us is whether we have taken reasonable and prudent action in drafting the balanced budget amendment to ensure that it does not result in judicial management of the taxing and spending process. In my judgment, we will not have done so unless we adopt an amendment on judicial review similar to the Danforth amendment we agreed to last year and the Johnston amendment, which was defeated last week by 47 to 51.

My concerns are based upon three considerations.

First, the legislative history of the balanced budget amendment is, at best, ambiguous and, at worst, literally invites judicial intervention into the taxing and spending process.

Second, despite my high regard for the legal views of the Senator from Utah, I am constrained to note that there are other highly respected legal scholars who come to a different conclusion about the prospects of judicial intervention.

We cannot ignore respectable legal arguments based upon the hope that the arguments set forth in the Judiciary Committee report against the Court becoming unduly involved will prevail before the Supreme Court.

Finally, if we believe that judicial intervention is inappropriate, except as specifically provided by specific legislation, the only constitutionally certain means for eliminating the judicial role is to authorize the limitations in the text of the Constitution.

THE LEGISLATIVE HISTORY OF THE BALANCED BUDGET AMENDMENT

Mr. President, the legislative history of the balanced budget amendment contains a substantial amount of material indicating that Congress has contemplated a role for the courts:

The discussion in the report of the Judiciary Committee, on page 9, expressly declines to state that the amendment precludes judicial review. Instead, the report states:

> By remaining silent about judicial review in the amendment itself, its authors have refused to establish congressional sanction for the Federal courts to involve themselves in fundamental macroeconomic and budgetary questions, while not undermining their equally fundamental obligation to ''say what the law is.''

Mr. President, there is a vast difference between actually prohibiting judicial review as opposed to merely ''refus[ing] to establish congressional sanction'' for judicial review. An activist court, faced with a lawsuit based upon the balanced budget amendment, will have no trouble pointing out that Congress consciously decided not to prohibit judicial review.

The express actions of the Senate on this issue underscore the potential for such a ruling. Last year, the Senate adopted the Danforth amendment expressly restricting judicial review. This year, the Senate rejected a similar amendment offered by Senator JOHNSTON. While the defeat of an amendment does not necessarily provide conclusive legislative intent of a desire to achieve the opposite result, it constitutes powerful evidence of intent when the issue is separation of powers and the Congress specifically rejects a proposal to frame the constitutional amendment in a manner that would protect the prerogatives of the legislative branch.

The intent to provide for judicial review is highlighted by the remarks of Senator HATCH, floor manager of the amendment, during the debate on the Johnston amendment. During the debate on February 15, he made a number of statements reflecting an understanding that the courts could be involved in budget decisions, including the following:

> [I]f the Senator writes the courts out of * * * this balanced budget amendment, he will be writing people out that we cannot foresee at this time—I do not know—who may have some legitimate, particularized injury to themselves that will enable them to have standing and a right to sue.
>
> We do not want to take away anybody's rights that may develop sometime in the future.
>
> Now we have people in both bodies who want the courts involved * * *. Can we satisfy those who do not want the courts involved in this to the exclusion of those who do?
>
> I might add that some do like the courts involved in some of these areas.
>
> Congress should not, as the distinguished Senator from Louisiana proposes, cut off all judicial review * * *. A litigant in such a narrow circumstance, if he or she can demonstrate standing, ought to be heard.

Similar statements were made by Senators BROWN, THOMPSON, SANTORUM, and CRAIG.

The legislative history in the House is even more of a problem. As Senator LEVIN noted on February 15, Representative SCHAEFER, a lead sponsor of the House amendment, has said:

> A member of Congress or an appropriate administration official probably would have standing to file suit challenging legislation that subverted the amendment.
>
> The courts * * * could invalidate an individual appropriation or tax Act. They could rule as to whether a given Act of Congress or action by the Executive violated the requirements of this amendment.

Representative SCHAEFER's statements echoed those set forth in a document prepared by an ad hoc group known as the Congressional Leaders United for a Balanced Budget Amendment, which was included in the RECORD last year by Senator CRAIG on March 1, 1994. The statements by a lead sponsor in the House represent a wide open invitation for the unelected, lifetenured members of the judicial branch to make fundamental policy decisions on budgetary matters.

Mr. President, I have the highest respect for the judiciary. As a general matter, the judiciary has treated questions involving the power to tax and spend as political questions that should not be addressed by the judicial branch. There will be a fundamental difference, however, when the balanced budget amendment becomes part of the Constitution, the fundamental law of the land.

Our constituents view the balanced budget amendment as a means to address taxation and spending decisions over which they feel less and less control. They would be sorely disappointed, if not outraged, if the result of the amendment is to transfer the power to tax and spend from elected officials to unelected, life-tenure judges.

CONTRASTING VIEWS ON THE ISSUE OF JUDICIAL INTERVENTION

The Judiciary Committee report, which reflects the committee's and Senator HATCH's thoughtful legal views, sets forth three basic arguments in support of the proposition that an amendment to the balanced budget amendment is not necessary to restrict judicial review:

(1) limitations on Federal courts contained in article III of the Constitution, primarily the doctrine of ''standing''; (2) the deference courts owe to Congress under both the ''political question'' doctrine and section 6 of the amendment itself, which confers enforcement authority on Congress; and (3) the limits on judicial remedies to be imposed on a coordinate branch of government—limitations on remedies that are self-imposed by courts and that, in appropriate circumstances, may be imposed on the courts by Congress.

There are other views, however, from individuals who have served at the highest levels in the Justice Department in both Republican and Democratic administrations, as well as from distinguished legal scholars.

President Reagan's Solicitor General, Prof. Charles Fried of Harvard Law School, has testified that:

[M]ost constitutional scholars agree that recent Supreme Court jurisprudence would favor allowing a fair range of issues relating to the implementation of the amendment in the form now before you to become the subject of litigation and court determination.

Professor Fried also observed that:

[T]he amendment would surely precipitate us into subtle and intricate legal questions, and the litigation that would ensue would be gruesome, intrusive, and not at all edifying.

Professor Fried cautioned against reliance on the political question doctrine to limit judicial review under a balanced budget amendment:

I cannot be confident that the courts would treat as a political question a demand by a taxpayer or by a member of Congress that further spending * * * should be enjoined * * * I cannot be confident that the courts would stay out of this.

The current Assistant Attorney General for Legal Counsel, Walter Dellinger, who previously served as a professor law at Duke, testified last month that:

[T]his amendment, once part of the Constitution, may be read to authorize, or even mandate, judicial involvement in the budgeting process. When confronted with litigants claiming to have been harmed by the government's failure to comply with the amendment, or by impoundment undertaken by the President to enforce the amendment, courts may well feel compelled to intervene. * * *.

The proposal appears to contemplate a significant expansion of judicial authority: state and federal judges may be required to make fundamental decisions about taxing and spending in order to enforce the amendment. These are decisions that judges lack the institutional capacity to make in any remotely satisfactory manner.

Mr. Dellinger specifically addressed the possibility that the courts could mandate increases in Federal taxes:

[The amendment] fails to state whether federal courts would or would not be empowered to order tax increases in order to bring about compliance. In Missouri v. Jenkins, [495 U.S. 33 (1990)] the Supreme Court held that a federal district court could mandate that a state increase taxes in order to fund a desegregation program * * *. Once the outcome of the budgeting process has been specified in a constitutional amendment, a plaintiff with standing might successfully argue that he or she had a right to have a court issue whatever relief is necessary to remedy the constitutional violation. The failure of the amendment to preclude such powers might even be thought to suggest, in light of Jenkins that the possibility deliberately was left open.

Mr. President, I recognize, as Senator HATCH has argued, that Jenkins arose under the 14th amendment, which guarantees due process and equal protection, and not under a balanced budget amendment. The problem, however, is that the Supreme Court in Jenkins authorized a lower Federal court to mandate the imposition of taxes by a State, even though the imposition of taxes by the Judiciary was not contemplated by the Framers of the 14th amendment of the congressional legislation implementing the 14th amendment.

Justice Kennedy, concurring in the result in Jenkins, rejected the majority's conclusion that a court could order a State to raise taxes, citing the very concerns that motivate my amendment:

Our Federal Judiciary, by design, is not representative or responsible to the people in a political sense; it is independent. * * * It is not surprising that imposition of taxes by an authority so insulated from public communication or control can lead to deep feelings of frustration, powerlessness, and anger on the part of taxpaying citizens. 495 U.S. at 69.

Those are the very concerns that should compel us to ensure that the Federal Judiciary does not assert similar powers to mandate the issuance of Federal taxes.

Mr. Dellinger outlined other types of suits that could arise:

[I]t is possible that courts would hold that either taxpayers or Members of Congress would have standing to adjudicate various aspects of the budget process under a balanced budget amendment. 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 in reliance upon the amendment, in the event that he determines that he is compelled to enforce the amendment by impounding funds. In addition, a criminal defendant, prosecuted or sentenced under an omnibus crime bill that improved tax enforcement or authorized fines or forfeitures, could argue that the bill ''increased revenues'' within the meaning of Section 4. Surely such a defendant would have standing to challenge the failure of the Congress to enact the entire bill—not just the revenue-raising provisions by the constitutionally required means [under the Balanced Budget Amendment] of a majority rollcall vote of the whole number of each House of Congress. Budget bills that include enforcement provisions could prove similarly vulnerable.

Prof. Cass Sunstein, a well-known constitutional expert and the Karl N. Llewellyn Distinguished Service Professor of Jurisprudence at the University of Chicago Law School, sent me a letter yesterday commenting on this debate. I ask unanimous consent that the letter be included in the RECORD at the conclusion of my remarks.

Professor Sunstein, who makes it clear that he is not an opponent of the balanced budget amendment, argues forcefully for an constitutional provision restricting judicial review. He observes that:

Senator Hatch's arguments are of course reasonable, and it is to be hoped that courts would follow those arguments; but courts could find a sufficient basis in the text of the proposed amendment and in precedent to engage in judicial management under the amendment.

In his letter, Professor Sunstein notes:

There is a legitimate risk that the balanced budget amendment would produce a significant increase in judicial power. If it comes to fruition, this risk could compromise the democratic goals of the amendment.

Prof. Kathleen Sullivan of Stanford University Law School also wrote to me yesterday commenting on the need for an amendment restricting judicial review. According to Professor Sullivan:

There are at least three categories of litigants who might well be able to establish standing the challenge violations of the Amendment. First, taxpayers might claim that their rights to a balanced budget are violated, for example, by projections that outlays will exceed receipts. * * * Second, members of Congress might well have standing to claim that congressional actions have diluted the vote they were entitled to exercise under the amendment. * * * Third, persons aggrieved by actions taken by the government in claimed violation of the amendment might well have standing to challenge the violation.

Each of these claims poses plausible claims of injury in fact, and none of them poses insurmountable problems of redressability. In most of them, in fact, simple injunctions can be imagined that would redress the plaintiffs' claims.

I ask unanimous consent that a copy of Professor Sullivan's February 27, 1995, letter to me be included in the RECORD at the conclusion of my remarks.

STATUTORY LIMITATIONS ON JUDICIAL REVIEW MUST BE GROUND IN THE CONSTITUTION

Mr. President, there have been suggestions that my amendment is not necessary because a constitutional amendment is not needed to enable Congress by statute to restrict judicial intervention in the future. If my judicial review amendment is not passed and the constitutional amendment is ratified, I hope that my colleague and friend Senator HATCH will take the lead in making these arguments. I would hope that his arguments would prevail, but I do not believe that we should take the enormous risk that the courts would not agree.

In the first place, until we determine that there is a majority in favor of such a proposition, there is no guarantee that such limitations would be placed in the implementing legislation. I would like to believe that a conservative institution would not find it difficult to preclude judicial management of the budget process. I had much greater faith in the belief until the Johnston amendment was defeated February 15. Reviewing that debate, and the various statements by leading Members about the potential for judicial review, I do not believe it is responsible for us to postpone that decision.

Second, I am not certain that there will be a majority in favor of any specific proposition. Some favor a complete ban on judicial relief. Some favor declaratory judgments. Others appear to favor standing for Members of Congress. Still others believe that the rights of individuals or groups should be subject to vindication. Again, let's vote now and uphold the longstanding conservative principle that judges shouldn't be involved in taxing and spending decisions.

Third, I am not persuaded by the argument that section 6 of the amendment, which states that ''Congress shall enforce and implement this article by appropriate legislation,'' precludes judicial review. Section 6 is not a grant of exclusive power—it does not state that ''only Congress'' shall enforce the legislation. In light of the legislative history that I have discussed earlier, there is no basis for concluding that section 6 was intended to exclude the Judiciary from enforcing the act. As Professor Sullivan noted in her February 27 letter to me:

> The proposed Amendment, as did [the 13th, 14th, and 15th] Amendments gives Congress authority to legislate, but it does not oust the courts, who need not defer to Congress in these matters.

Fourth, although I agree that the courts have sustained certain statutory limitations on judicial review of statutory and common law rights, there is no case in which the Supreme Court has held that Congress could cut off all avenues of judicial review of a constitutional issue. As noted in the highly respected analysis of the Constitution prepared by the Congressional Research Service:

> [T]hat Congress may through the exercise of its powers vitiate and overturn constitutional decisions and restrain the exercise of constitutional rights is an assertion often made but not sustained by any decision of the Court.

In *Webster* v. *Doe*, 486 U.S. 592 (1988), for example, the Supreme Court emphasized that a '''serious constitutional question' * * * would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.''

Charles Fried, Solicitor General in President Reagan's administration, has stated:

> [S]ection 6, as it is written, does not allow Congress to so limit jurisdiction, and it seems to me that if Congress tried to limit jurisdiction in this way without an express authorization, which there is not in this bill, that limitation itself might well be unconstitutional

Professor Sunstein, in his February 27 letter to me, expressed similar concerns:

> If your proposed change, or some version of it, is not added, it is by no means clear that Congress can forbid judicial involvement by statute. Courts are quite reluctant to allow Congress to preclude judicial review of constitutional claims. . . . Courts would be especially reluctant, perhaps, to preclude judicial review of an amendment specifically designed to limit Congress' power to provide for budget deficits. One could easily imagine a judicial decision invalidating implementing legislation that denies a judicial role, on the theory that the balanced budget guarantee—without your amendment—is best understood to contemplate a firm judicial check on congressional activity.

THE RESPONSIBILITY OF CONGRESS

Mr. President, the report of the Judiciary Committee indicates there is little likelihood of judicial involvement in the taxing and spending process under the budget amendment, and they cite the history of this country in that regard. The difference is that now, if this amendment is in the Constitution, it will be a different Constitution than has framed the history of our country.

Mr. President, others including leading constitutional authorities from both the Republican and Democratic Parties believe there is a reasonable likelihood the amendment could transform the courts into the forum for managing the budgetary process.

To me, the risk is too high. In the face of conflicting legal views by respected authorities, it is our responsibility to act. If we believe, as I do, that we should not risk subjecting the budget process to judicial management, then we should adopt my amendment.

I have modified that amendment now. The amendment very simply —and I am not quoting it, but the very simple essence of the amendment is that the judicial power of the United States shall not extend to any case or controversy arising under this article except as may be specifically authorized by legislation adopted pursuant to this section.

In other words, Mr. President, the Congress will decide the jurisdiction of the courts. The courts will not decide it on the basis of constitutional interpretation. We can change the implementing statute if it does not work. We can mold it later. We can mold the statute after we have decided what the enforcement mechanism here is because those two things have to be considered together.

So it is my hope that this amendment, which is now modified, will be accepted by the managers of this bill and it will be accepted by my colleagues. If it is, then I plan to support this overall constitutional amendment because I think it is enormously important that we have a mandate to the Congress of the United States to get this budget and our fiscal house in order. Nothing else has worked. This is the last resort.

I wish we had not reached this point. I wish we had been able to use our normal political process, because I do not like amending the Constitution of the United States. However, I do believe it is the last resort.

Mr. President, I am concerned about other areas that my colleagues are concerned about. I am concerned about Social Security. I am concerned about economic emergency. But my bottom line has been and is today that it is my fervent hope this judicial article, this judicial amendment will be put into this constitutional amendment so there is no doubt about the intent of Congress and the authority of Congress in managing the taxing and spending of this great country.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

UNIVERSITY OF CHICAGO LAW SCHOOL,
Chicago, IL, February 27, 1995.

Hon. SAM NUNN,
U.S. Congress, Washington, DC.

DEAR SENATOR NUNN: As a teacher of constitutional law, I am writing to endorse your remarks about the balanced budget amendment on the Senate floor on Thursday. There is a legitimate risk that the balanced budget amendment would produce a significant increase in judicial power. If it comes to fruition, this risk would compromise the democratic goals of the amendment.

It is certainly not clear that current political question and standing doctrines would bar judicial involvement under the proposed amendment. Issues involving spending and taxation do not necessarily involve political questions, and the balanced budget amendment, unaccompanied by a change of the sort you propose, would increase the risk that political questions would become legal questions. The political question doctrine is extremely narrow in the aftermath of Baker v. Carr, 369 US 186 (1962), and it is certainly possible that a court would find, in the amendment, ''judicial administrable standards'' for the grant or injunctive relief. Under existing law, no one can rule out the possibility that the political question doctrine would be held inapplicable to the balanced budget amendment. Cf. Michael v. Anderson, 14 F3d 623 (DC Cir 1994).

Taxpayers and citizens as such would probably lack standing to enforce the amendment, but as you stated, it is certainly possible to think of potential litigants with direct financial interests at stake who would

claim that, if the amendment were not followed, and if the budget was not balanced, they would suffer from an ''injury in fact'' sufficient to trigger judicial review under Lujan v. Defenders of Wildlife, 112 S. Ct. 2130 (1992). At the very least, it can be said that costly and time-consuming debates about justiciability would ensue, and we cannot reasonably rule out, in advance, the prospect of undemocratic and unprecedented judicial involvement in the budgetary process.

In this light your proposal—limiting the judicial role—seems to me to make a great deal of sense. You are certainly correct to say that the legislative history of the balanced budget would not rule out judicial management. The legislative history of a constitutional amendment is relevant, but it does not resolve the question of constitutional meaning. Senator Hatch's arguments about likely judicial deference are of course reasonable, and it is to be hoped that courts would follow those arguments; but courts could find a sufficient basis in the text of the proposed amendment and in precedent to engage in judicial management under the amendment.

If your proposed change, or some version of it, is not added, it is by no means clear that Congress can forbid judicial involvement by statute. Courts are quite reluctant to allow Congress to preclude judicial review of constitutional claims. See Webster v. Doe, 486 US 592 (1988), allowing review of employment decisions by the Central Intelligence Agency in the face of a claim that a discharge of a homosexual employee was unconstitutional. *Webster* shows that even in highly sensitive areas, judges will be likely to allow review, in part because serious constitutional issues would be raised by an effort to insulate constitutional claims from judicial scrutiny.

Courts would be especially reluctant, perhaps, to allow Congress to preclude judicial review of an amendment specifically designed to limit Congress' power to provide for budget deficits. One could easily imagine a judicial decision invalidating implementing legislation that denies a judicial role on the theory that the balanced budget guarantee—without your amendment—is best understood to contemplate a firm judicial check on congressional activity. I add that you are entirely correct in your reading of Missouri v. Jenkins, 495 US 33 (1990), which is not limited to fourteenth amendment cases, and which refers to ''a long and venerable line of cases in which this Court held that federal courts could issue the write of mandamus to compel local governmental bodies to levy taxes adequate to satisfy their debt obligations.'' Id. at 55. (While it is unlikely that courts would specifically order Congress to raise taxes under the proposed amendment, I share your concern about the issue, and think it would be best to avoid any reasonable risk that they might do so.)

I should add that I have not opposed the balanced budget amendment as such, and that I am writing as a teacher of constitutional law who is concerned that any amendment to this effect ought not to increase the power of the federal courts over an area in which they do not belong. Your proposed change—expecially the suggestion to the effect that ''the judicial power of the United States shall not extend'' to enforcement of the amendment except as authorized by statute—seems to me an admirable effort to deal with this problem. If some such revision is not included, there is a legitimate risk that the proposed amendment would transfer considerable power over budgetary matters from Congress to the Supreme Court or to lower federal courts. I very much hope that steps will be taken to ensure that this does not happen.

Sincerely,

CASS R. SUNSTEIN.

STANFORD LAW SCHOOL,
February 24, 1995.

Re proposed balanced budget amendment.

Senator SAM NUNN,
U.S. Senate, Washington, DC.

DEAR SENATOR NUNN: I have had the opportunity to review your comments yesterday in the floor debate regarding the role of the courts in cases that might arise under the proposed Balanced Budget Amendment to the Constitution. My views on the subject are very similar to your own, and I have taken the liberty of sending you the following thoughts, which were prompted by the testimony of former Attorney General William P. Barr before the Senate Committee on the Judiciary on January 5, 1995.

In that testimony, Mr. Barr argued that ''the courts' role in enforcing the Balanced Budget Amendment will be quite limited.'' While I have great respect for Mr. Barr, and while I found his testimony to be considered and thoughtful, I must respectfully state that I disagree with him. I continue to believe that, as I testified before the Senate Appropriations Committee on February 16, 1994, the Balanced Budget Amendment in its current draft form is likely to produce numerous lawsuits in the federal and state courts, and that neither Article III justiciability doctrines nor practices of judicial deference will operate as automatic dams against that flood tide of litigation.

Let me begin with the doctrines of justiciability under Article III of the Constitution. Mr. Barr argues that ''few plaintiffs would be able to establish the requisite standing to invoke federal court review.'' This is by no means clear. There are at least three categories of litigants who might well be able to establish standing to challenge violations of the Amendment.

First, taxpayers might claim that their rights to a balanced budget are violated, for example, by projections that outlays will exceed receipts. True, taxpayers are generally barred from suing the government for the redress of generalized grievances. But the Supreme Court a quarter of a century ago held that there is an exception to the general bar on taxpayer standing when the taxpayer claims that a government action ''exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power.'' *Flast v. Cohen*, 392 U.S. 83 (1968). Mr. Barr suggests that this exception may be limited to Establishment Clause challenges, but there is nothing in the principle stated in Flast that so confines it. If anything, the proposed Balanced Budget Amendment more clearly limits congressional taxing and spending power than does the Establishment Clause. The Amendment is not confined, as Mr. Barr suggests, merely to the power of Congress to borrow. Thus taxpayers would have an entirely plausible argument for standing under existing law.

Second, members of Congress might well have standing to claim that congressional actions have diluted the vote they were entitled to exercise under the Amendment. For example, suppose that the Congress declined to hold a three-fifths vote required to approve deficit spending under section 1, or a rollcall vote required to increase revenue under section 4. This might occur, for example, because of a dispute over whether outlays really exceeded receipts, or over whether revenue was really being increased, because the meaning of those terms might be controversial as a matter of fact. Declining to implement the supermajority voting requirements in such a context, however, might be plausibly claimed to have diluted a Member's vote. This is arguably analogous to other circumstances of vote dilution in which the lower courts have held that Members of Congress have standing. See, e.g., *Vander Jact v. O'Neill*, 699 F.2d 1166, 1168–71 (D.C. Cir. 1982), cert. denied, 464 U.S. 823 (1983).

Third, persons aggrieved by actions taken by the government in claimed violation of the Amendment might well have standing to challenge the violation. For example, consider a criminal defendant charged under a law claimed to cost more to enforce than the government can finance through expected receipts. Or suppose that the President, believing himself bound by his Oath to support the Constitution, freezes federal wages and salaries to stop the budget from going out of balance. In that circumstance, a federal employee might well challenge the President's action, which plainly causes her pocketbook injury, as unauthorized by the Amendment, which is silent on the question of executive enforcement.

Each of these circumstances poses plausible claims of injury in fact, and none of them poses insurmountable problems of redressability. In most of them, in fact, simple injunctions can be imagined that would redress the plaintiffs' claims. Thus, contrary to Mr. Barr's prediction, the doctrine of standing is by no means certain to preclude federal judicial efforts at enforcement of the Amendment. And further, as Mr. Barr concedes, federal standing doctrine will do nothing to constrain litigation of the proposed Amendment in state courts, which are not bound by Article III requirements at all.

Nor is the political question doctrine likely to eliminate all such challenges from judicial review. True, the Supreme Court has held that a question is nonjusticiable when there is ''a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.'' *Baker v. Carr*, 369 U.S. 186 (1962). But the proposed Amendment implicates neither of these kinds of limitation. It does not reserve enforcement exclusively to the discretion of the Congress, as, for example, the Impeachment or Speech and Debate Clauses may be read to do. And it presents no matters that lie beyond judicial competence. Rather, here, as with apportionment, the question whether deficit spending or revenue increases ''exceed whatever authority has been committed, [would] itself [be] a delicate exercise in constitutional interpretation,'' and thus would well within the ordinary interpretive responsibility of the courts. See *Baker v. Carr*, at 211.

Let me turn now from doctrines of justifiability to practices of judicial deference. Mr. Barr argues that, as a prudential matter, ''a reviewing court is likely to accord the utmost deference to the choices made by Congress in carrying out its responsibilities under the Amendment,'' especially in light of the enforcement clause in section 6. This is by no means clear. The Reconstruction Congress expected that enforcement of the Thirteenth, Fourteenth and Fifteenth Amendments would be undertaken primarily by the Congress, and reflected that expectation in the Enforcement Clauses specifically included in those Amendments. But we have seen time and time again in our history that judicial review has played a pivotal role in the enforcement of those Amendments nonetheless. The proposed Amendment, as did those Amendments, gives Congress authority to legislate, but it does not oust the courts, who need not defer to Congress in these matters. Courts rightly have not hesitated to intervene in civil rights cases, even though

those cases involved grave structural questions as well as questions of individual rights.

Finally, Mr. Barr argues that courts will, again as a matter of prudence and practice rather than doctrine, ''hesitate to impose remedies that could embroil [them] in the supervision of the budget process.'' He is correct to observe that a direct judicial order of a tax levy such as that in *Missouri v. Jenkins*, 495 U.S. 33 (1990), is highly exceptional. But even if that is so, courts could issue a host of other kinds of injunctions to enforce against conceivable violations of the proposed Balanced Budget Amendment. For example, a court could restrain expenditures or order them stayed pending correction of procedural defaults, or a court could enjoin Congress simply to put the budget into balance while leaving to Congress the policy choices over the means by which to reach that end. Thus, there is little reason to expect that prudential considerations will keep enforcement lawsuits out of court, or keep judicial remedies from intruding into political choices.

In sum, the draft Balanced Budget Amendment in its present from has considerable potential to generate justiciable lawsuits, which in turn would have considerable potential to generate judicial remedies that would constrain political choices. Thank you for considering these remarks in the course of your current deliberations.

Sincerely,

KATHLEEN M. SULLIVAN.

Mr. HATCH. Mr. President, I appreciate the very kind remarks of the Senator from Georgia. With the Senator's permission, I would like to place in the RECORD, a copy of the written comments on the issue of judicial review and the balanced budget amendment that I prepared for his review. Mr. President, I so ask unanimous consent.

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

BALANCED BUDGET AMENDMENT AND JUDICIAL REVIEW

I. PRELIMINARY COMMENTS

The balanced budget amendment (''BBA'' or the ''amendment''), H.J. Res. 1, creates a constitutional procedure, a mechanism if you like, that requires Congress to adopt, or at a minimum, at least to move toward a balanced budget.

For instance, section 1 of H.J. Res. 1 requires that total outlays of the United States not exceed receipts unless three-fifths of the whole number of both Houses waives the requirement. Section 2 prohibits the raising of the debt ceiling unless three-fifths of the whole number of both Houses of Congress waives the requirement; and section 4 requires that there be no revenue increases unless approved by a majority of the whole number of each House of Congress (51 Senate; 218 House). Consequently, the BBA does not create a ''right'' to a balanced budget, much as the First Amendment recognizes a right to free speech. What it does do is establish a procedure which restricts Congress' budgetary authority by creating a strong presumption in favor of a balanced budget which can be overcome by a three-fifths vote of each Chamber of Commerce.

This is amply shown by section 6 of the BBA, which provides that ''Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.'' Thus, there is no absolute requirement that Congress balance the budget to the penny. Congress may rely on estimates and is mandated to implement and enforce the amendment through some statutory scheme such as establishing, for example, a contingency or ''rainy day'' fund, providing for automatic sequestration, or delegating to the President limited rescissionary authority. This is a strong indication that the Congress, and not the courts or the President, is the branch that is authorized to enforce the amendment.

The import of all of this is that the judiciary will be loathe to interfere in economic and budgetary matters, in what is a quintessential ''political question.'' These are matters committed to Congress by Article I of the Constitution and the BBA does not disturb that allocation of powers. Courts have no ascertainable standards to determine exactly what the budget numbers ought to be, whether the budgetary figures are ''good faith'' estimates, or which spending program ought to be cut. In other words, there are no ''justiciable'' standards for the courts to provide broad based relief that interferes with the budgetary process. Whether one talks in terms of standing, justiciability, separation of powers, or the political question doctrine, courts will not be authorized to interfere with Congress' Article I powers—which, after all, are exclusively delegated by the Constitution to the legislative branch.

Furthermore, section 6 of the amendment, as well as Article III of the Constitution, provide authority to Congress to limit the jurisdiction of the courts. In this way, the equitable powers of the courts may be restricted in such a way that shields Congress' Article I spending, taxing, and borrowing powers.

Below are detailed responses to your concerns over particular judicial review and presidential impoundment issues arising out of the enforcement of H.J. Res. 1.

II. STANDING

You have stated that it is not difficult to contemplate scenarios where standing to sue under the BBA could occur. For instance, in your February 23, 1995, floor statement contained in the Congressional Record, you cite Assistant Attorney General Dellinger's example that a criminal defendant would have standing to challenge a forfeiture if a new forfeiture provision, which would raise revenue, was passed by a voice vote instead of a rollcall vote as required by the BBA.[1] I respectfully disagree.

I believe that the Dellinger example is faulty: criminal sanctions and fines are simply not commonly understood to be revenue or tax measures and as such would not be subject to the BBA. The basic point I want to make, however, is not that a court cannot ever find standing, but that standing would be highly improbable and that the courts, in an improbable cause where standing is found, could not provide relief that interferes with the budgetary process due to other jurisprudential doctrines such as justiciability and the political question doctrine.

As you know, as a preliminary obstacle, a litigant must demonstrate a standing to sue.[2] The sometimes arcane nature of the standing doctrine has enabled courts to avoid difficult and contentious decisions on the merits.[3] At a minimum, however, the Court traditionally has taken the position that Article III standing requires allegation of a ''personal stake'' in the outcome of a controversy sufficient to guarantee concrete (as opposed to speculative) adverseness.[4] Although application of the standing doctrine still divides the Court, all Justices would agree that to establish ''personal stake'' in the outcome of a case challenging the BBA, a litigant must show some actual or threatened concrete injury and that the injury is likely to be redressed if a court grants relief.[5] In suits involving the BBA, litigants seeking to meet the above general standing requirements fall into three categories: citizens, taxpayers, and Members of Congress.

A. Citizen suits

The most important recent Supreme Court pronouncement on the standing doctrine is contained in *Lujan* v. *Defenders of Wildlife*.[6] There, in an opinion by Justice Scalia, the Court in reviewing its own precedents made clear that standing has three elements: (1) the litigant must have suffered an ''injury in fact'' which is concrete, particularized, actual and imminent and not hypothetical,[7] (2) there must be a casual connection between the injury and conduct complained of, e.g., the injury must result from actions of the complained party and not a third party,[8] and (3) it must be likely, as opposed to speculative, and the injury must be ''redressable'' by a favorable court decision.[9]

Turning to the three-part test, it is doubtful that a citizen or citizen associations could demonstrate the ''injury in fact'' prong of the standing test because it is well settled that a mere interest in the constitutionality of a law or executive action is noncognizable.[10] Moreover, it is doubtful that a litigant could demonstrate that the challenged law was the one that ''unbalanced'' the budget:[11] in a sense, every spending program could be said to do so. And it is beyond cavil that a congressional reduction of a spending program, or eliminating it altogether, is not considered a constitutional harm and thus not actionable.[12]

As to the third prong, ''redressability'', this prong subsumes justiciability and the political question doctrine and will be discussed in greater detail below. Suffice it to say that except in highly unlikely circumstances, it is nearly certain that a judicial remedy which interferes with congressional control over the budgetary process or Congress' Article I powers would violate the separation of powers doctrine.

B. Taxpayer standing

In *Flast* v. *Cohen*,[13] the Court announced a liberalized standing test for taxpayers. Under this ''double nexus'' test, taxpayer standing requires that the taxpayer-plaintiff: (1) challenge the unconstitutionality of the law under the Taxing and Spending Clause of the Constitution, and (2) demonstrate that the challenged enactment exceeds specific limitations contained in the Constitution. Professor Tribe has testified that some taxpayers' suits to enforce the BBA would satisfy this test because the proposed amendment would be a specific constitutional limitation on congressional taxing and spending power. There are three counters to this argument: (1) recent Court decisions appear to have severely limited the *Flast* doctrine;[14] indeed, the Court seems to limit *Flast* to Establishment Clause situations,[15] (2) implementing legislation would be enacted not for some illicit purpose that violates some specific provision of the Constitution, but to effectuate a balanced budget, and (3) the *Flast* test is not a substitute for the *Lujan* test, meeting the *Flast* test only establishes the ''harmed in fact'' first prong of *Lujan*[16] and, as explained below, it is doubtful that *Lujan*'s ''redressability'' prong can be met by taxpayer-plaintiffs. This conclusion is supported by the *Lujan* decision itself, whereby taxpayer standing cases are discussed in context of concrete harm.

C. Congressional standing

The final possible route to standing in cases challenging the BBA, congressional standing, also seems to have little chance of

[1] Footnotes at end of article.

success. It must be pointed out that the Supreme Court has never addressed the question of congressional standing and that the Circuit courts are divided on this issue.[17] However, the D.C. Circuit recognizes congressional standing in the following limited circumstances:[18] (1) the traditional standing tests of the Supreme Court are met, (2) there must be a deprivation within the ''zone of interest'' protected by the Constitution or a statute (generally, the right to vote on a given issue or the protection of the efficacy of a vote),[19] and (3) substantial relief cannot be obtained from fellow legislators through the enactment, repeal or amendment of a statute (''equitable discretion'' doctrine). Although there is an argument to be made that in certain limited and far-fetched circumstances (e.g., where Congress ignores the three-fifths vote requirement to raise the debt limitation) the voting rights of legislators are nullified and therefore there would be standing, the court could equally invoke the equitable discretion doctrine to dismiss the action because the Member of Congress could obtain relief by appealing to his other colleagues for a vote for reconsideration of the issue.

In other circumstances challenging the enforcement of spending measures, Members of Congress would be subject to the same exacting standards as citizens.

III. JUSTICIABILITY AND THE POLITICAL QUESTION DOCTRINE

Faced with a case challenging appropriations that allegedly cause outlays to exceed total receipts, federal courts historically would inquire first whether the litigant had standing and would then evaluate the content of the claim pursuant to the political question doctrine.[20] Although it is uncertain whether the doctrine rests upon prudence,[21] or inheres in the Constitution,[22] the doctrine is generally understood as ''essentially a function of the separation of powers.''[23]

The Court in *Baker* v. *Carr*,[24] set out a lengthy test to determine when courts should dismiss an action on political question grounds. Since *Baker*, the Court has narrowed the political question doctrine to two elements: (1) whether there is a demonstrable commitment of the issue to a coordinate political department, and (2) whether there is a lack of judicially discoverable and manageable standards for resolving the issue (''justiciability'').[25] Essentially identical to the ''redressability'' issue discussed above, analysis of the first prong reveals significant separation of powers concerns. Any significant relief (outside of a congressional standing suit for declaratory judgment) would require placing the budget process under judicial receivership (e.g., injunctive relief setting a pro-rata budget cut or the nullification of any measure after outlays exceed receipts). This relief interferes with congressional Article I powers. In other words, federal courts may not exercise Congress' spending and taxing authority, such authority being exclusively delegated to Congress, a coordinate branch of the federal government, by the Constitution. Concerning the justiciability prong, budgetary, spending, and tax policies are quintessential areas of governance where there is a lack of judicially discoverable and manageable standards.[26] Certainly, there are no available standards for courts to determine which spending programs to cut or to declare unlawful.

There is another related justifiability issue: whether the granting of equitable or declaratory relief so interferes with the congressional budget process that courts should abstain from granting such relief as a matter of prudence.[27] This is another theory by which courts can be constrained from interfering with congressional spending and taxing powers under the BBA.

Finally, there is an issue whether courts could simply grant declaratory relief[27] adjudicating an executive action or legislative act unconstitutional and leaving remedial action to the political branches. Outside of the bizarre,[29] courts generally will not grant declaratory relief to avoid the political question doctrine or where injunctive relief is not available.[30]

IV. THE CONCERN OVER JUDICIAL TAXATION

I know that you are concerned that the Supreme Court's 5–4 holding in *Missouri* v. *Jenkins*[31] is an invitation for courts to raise taxes in the event that there is an imbalanced budget. In this case, the Supreme Court in essence upheld a lower court remedy ordering state or county political subdivisions to raise taxes to support a court ordered school desegregation order. Intentional segregation, in violation of the Fourteenth Amendment's Equal Protection Clause, had been found by the lower court in a prior case against the school district.

The fear is that the BBA would allow a federal court to order Congress to raise taxes to reduce a budget deficit. This is virtually impossible. First, *Jenkins* is a Fourteenth Amendment case. Under Fourteenth Amendment jurisprudence, federal courts may[32] perhaps issue this type of remedial relief against the States, but not against Congress—a coequal branch of government. The Fourteenth Amendment, of course, does not apply to the federal government. Second, separation of powers concerns, as well as the political question doctrine, argue against courts arrogating to themselves congressional power by imposing taxes. This was implicitly recognized by the *Jenkins* Court which stated that the situation before the Court was not one in which it was asked to order a co-equal branch of government—Congress—to raise taxes. Indeed, the Court in *Jenkins* noted that the case before them was a Fourteenth Amendment case involving state action and not ''an instance of one branch of the Federal Government invading the province of another.''[33] Third, Congress cannot be a party-defendant. To order taxes to be raised, Congress must be a named defendant. Presumably, suits to enforce the BBA would arise when an official or agency of the executive branch seeks to enforce or administer a statute whose funding is in question in light of the BBA.[34] Consequently, there is no real ''analogy'' that a court can make between the *Jenkins* case— which involved state action under the Fourteenth Amendment—and a situation involving the enforcing of a federal statute implementing the BBA.

V. STATUTORY PROTECTION OF CONGRESSIONAL POWER

I think it just wrong that Congress cannot and will not protect its institutional prerogatives. The Framers of the Constitution designed a constitutional system whereby each branch of government would have the power to check the zeal of the other branches. In James Madison's words in The Federalist No. 51:

''[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition.''

Under the enforcement mechanism of the BBA,[35] the Congress could limit the type of equitable relief granted by federal courts and thereby limit court intrusiveness into the budget process and Congress' exercise of its Article I powers. It is well established that this authority may also arise out of Article III's delegation to Congress to define and limit the jurisdiction of lower federal courts.[36] Congress may not, however, use its authority to limit or define jurisdiction in a manner that violates specific provisions of the Constitution or denies any relief whatso-ever.[37] Congress may also limit judicial review to particular special tribunals with limited authority to grant relief.[38]

Use of Congress' authority under section 6 of the Amendment or Article III of the Constitution to limit the remedies a court may provide, does not mean in any way, as you suggested in your floor speech, a ''cut off all avenues of judicial review of a constitutional issue.'' This I have readily conceded above is beyond congressional power. What it does mean is that Congress may protect its Article I prerogatives by limiting—not eliminating—the scope of remedies that courts may render.

VI. PRESIDENTIAL IMPOUNDMENT

A good deal of the ''standing'' examples you provided in your floor statement are really concerns over presidential impoundment.[39] I want to initially say that there is nothing in H.J. Res. 1 that authorizes or otherwise allows for impoundment. Nor is it the intent of the amendment to grant the President any impoundment authority under H.J. Res. 1. Indeed, H.J. Res. 1 imposes one new duty, and corresponding authority, on the President: to transmit to Congress a proposed budget for each fiscal year in which total outlays do not exceed total receipts.[40]

In fact, there is a ''ripeness'' problem to any attempted impoundment: up to the end of the fiscal year the President has no plausible basis to impound funds because Congress under the amendment has the power to ameliorate any budget shortfalls or ratify or specify the amount of deficit spending that may occur in that fiscal year.

Moreover, under section 6 of the amendment, Congress must—and I emphasize ''must''—mandate exactly what type of enforcement mechanism it wants, whether it be sequestration, rescission, or the establishment of a contingency fund. The President, as Chief Executive, is duty bound to enforce a particular requisite congressional scheme to the exclusion of impoundment. That the President must enforce a mandatory congressional budgetary measure has been the established law since the nineteenth century case of *Kendall* v. *United States ex rel. Stokes*, 37 U.S. (1 Pet.) 54 (1838).[41] The *Kendall* case was given new vitality in the 1970s, when lower federal courts, as a matter of statutory construction, rejected attempts by President Nixon to impound funds where Congress did not give the President discretion to withhold funding.[42]

The position that section 6 implementing legislation would preclude presidential impoundment was seconded by Attorney General Barr at the recent Judiciary Committee hearing on the balanced budget amendment. Testifying that the impoundment issue was in reality incomprehensible, General Barr concluded that ''the whip hand is in Congress' hand, so to speak; under Section 6 [the] Congress can provide the enforcement mechanism that the courts will defer to and that the President will be bound by.''

What we have here then, is an argument based on a ''mere possibility'' or fear of impoundment. I strongly believe that the President is not given any new authority under the BBA to impound funds, and that the mandatory enforcement implementing legislation would preclude any real impoundment possibilities. This was all but conceded by Assistant Attorney General Dellinger in his testimony on the BBA before my Committee. I also want to emphasize that because section 6 of the amendment allows Congress to rely on estimates, the fact that there might be some budgetary shortfall in a given fiscal year's budget does not necessarily render that budget out of compliance with the BBA.

VII. OTHER CONCERNS

Finally, I want to address two additional concerns that you have expressed in your floor statement. First, I have to disagree with your statement that state balanced budget litigation is widespread. In fact, there are very few reported cases. We also have to take note that state balanced budget amendments are very different than H.J. Res. 1, in that there is usually a distinction made between state capital and operating budgets which sometimes results in litigation over the meaning of ''state debt'' and ''capital expenditure.'' Also, many state courts do not have standing or justiciability requirements as barriers to bringing a lawsuit.[43]

Finally, concerning the statements of noted experts, such as Judge Bork, that there could indeed be judicial enforcement of the BBA. My response is that Judge Bork—who is a very close friend—and whose contentions are contained in a letter of January, 1994, has greatly exaggerated fears of judicial activism in a BBA context. In fact, he admits that there would probably be no standing to bring a challenge to actions taken under the amendment. The substance of his argument is ''what if'' courts took jurisdiction; what would stop them from interfering in the budgetary process. He did not consider at all in his letter, however, the well-accepted precept that implementing legislation could curtail the excesses of judicial activism.

FOOTNOTES

[1] The other ''standing'' examples you provide for in your February 23 floor statement implicate presidential impoundment and will be addressed below.

[2] An issue prior to standing is identification of the proper party defendant. The appropriate defendant in a case involving the BBA is the person acting unconstitutionally under the law, almost always an executive branch official, since that branch is charged with the administration of the law. See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163–66 (1803); *Reigle* v. *Federal Open Mkt. Comm.*, 656 F.2d 873, 879 n.6 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981). Another issue is ''ripeness.'' Because under the BBA Congress may correct any budgetary shortfalls right up to the end of the fiscal year, potential plaintiffs are prevented from litigating until that time—another daunting hurdle litigants face in challenging congressional measures implementing the BBA.

[3] See, e.g., *Valley Forge Christian College* v. *Americans United, Inc.*, 454 U.S. 465, 475 (1982) (''We need not mince words when we say that the concept of 'Art. III standing' has not been defined with complete consistency . . . by this Court. . . .'').

[4] E.g., *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

[5] It also is now clear that standing is an Article III requirement that can not be waived by Congress or the courts. See *Valley Forge*, 454 U.S. at 488 n.24; *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41 n.22 (1976).

[6] 112 S.Ct. 2130 (1992). *Lujan* involved legal challenges to regulations promulgated under the Endangered Species Act of 1973. Conservation and environmental groups argued that standing inhered in anyone alleging an interest in studying or seeing endangered animals anywhere on earth and anyone with a professional interest in such animals. Suffice it to say that the Court held that there was no showing of ''injury in fact''.

[7] Citing, *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975) and *Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983).

[8] Quoting, *Simon*, 426 U.S. 26, 41–42.

[9] Quoting, *Simon*, 426 U.S. at 38, 43.

[10] E.g., *Frothingham* v. *Mellon*, 262 U.S. 447 (1923) (allegations that amount to a ''generalized grievance'' are not judicially cognizable.

[11] This too would therefore be a nonjusticiable ''generalized grievance''. See Id.

[12] Government is not under a duty to provide benefits, and, thus, Congress may cut or eliminate any program consistent with the protection of equal protection or individual rights. *Overton* v. *John Knox Retirement Tower, Inc.*, 720 F.Supp. 934, 937 (M.D. Ala. 1989).

[13] 392 U.S. 83 (1968).

[14] The test has suffered through application. The Court subsequently required detailed particularized pleading challenging specific spending measures promulgated under Article I, Section 8's Spending and Taxing Clause. These measures must violate specific provisions of the Constitution, See, e.g., *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208 (1974); *United States* v. *Richardson*, 418 U.S. 166 (1974). Litigants have not been successful in recent times applying the *Flast* test.

[15] See *Valley Forge*, 454 U.S. 464 (1982). Indeed, in *Flast*, Justices Stewart and Fortas perceived the nexus test as simply a means of limiting federal taxpayer's suits to Establishment Clause challenges. *Flast*, 392 U.S. at 114–15.

[16] In *Valley Forge*, 454 U.S. at 471–82, the Court implicitly views the *Flast* test as a measure of a taxpayer's constitutionally required actual injury.

[17] Compare *Harrington* v. *Bush*, 553 F.2d 190 (D.C. Cir. 1977) (congressman seeking declaratory and injunctive relief against C.I.A. for allegedly illegal activities lacks concrete injury requisite for standing), with *Harrington* v. *Schlesinger*, 528 F.2d 455 (4th Cir. 1975) (same facts, opposite result).

[18] *Reigle* v. *Federal Open Market Committee*, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981).

[19] See *Coleman* v. *Miller*, 307 U.S. 433 (1939) (state senators denied the efficacy of their votes when Lieut. Governor by statute was allowed to break tie vote by casting ballot); *Kennedy* v. *Sampson*, 511 F.2d 430 (D.C. Cir. 1974) (challenging illegal use of Presidential pocket veto).

[20] The *Lujan* ''redressability'' prong of its standing test essentially merges the justiciability and the political question doctrine. Accord *Valley Forge*, 454 U.S. 464 (1982) (where the Court makes clear that separation of powers consequences play a vital role in the standing calculus).

[21] See Bickel, The Supreme Court, 1969 Term—Foreword: The Passive virtues, 75 Harv. L. Rev. 40, 46 (1961).

[22] See Wechsler, Toward Neutral Principles of Constitutional Law, 73 Harv. L. Rev. 1,9 (1959).

[23] *Baker* v. *Carr*, 369 U.S. 186, 217 (1962).

[24] Id.

[25] See, e.g., *Nixon* v. *United States*, 113 S.Ct. 732 (1993).

[26] While the BBA does, indeed, contain some ''process'' standards (e.g., the requirement of a three-fifths vote in each chamber to increase the debt ceiling), it is doubtful that standing could be found to enforce even such standards.

[27] See Henkin, Is There a Political Question Doctrine?, 85 Yale L. J. 597 (1976) (where Professor Henkin argues that the political question doctrine boils down to the discretionary equitable power of courts not to dispense relief). See *Colegrove* v. *Green*, 328 U.S. 549 (1946) (courts have duty to avoid constitutional issues where resolution will clash with the political branches of government).

[28] Declaratory relief is available under the Federal Declaratory Judgment Act, 28 U.S.C. sections 2201–2202.

[29] Where, for instance, both Chambers of Congress ignore the constitutional majority provision to raise taxes, presents the measure to the President, and the President refuses to veto the subsequent unlawful measure. The aggrieved taxpayer who sees his pay check decrease could probably receive declaratory relief.

[30] See *Colgrove* v. *Green*, 328 U.S. at 552 (where Justice Frankfurter opines that declaratory relief should not be granted in situations where injunctions are inappropriate).

[31] 495 U.S. 33 (1990).

[32] This power was hotly contested by the dissenters in *Jenkins* and may not command a majority today.

[33] 495 U.S. at 67.

[34] See *Reigle*, 656 F.2d at 879 n.6 (''When a plaintiff alleges injury by unconstitutional action taken pursuant to a statute, his proper defendants are those acting under the law . . . and not the legislature which enacted the statute,'' citing, *Marbury* v. *Madison*, 5. U.S. (1 Cranch) 137, 175–80, (1803)). Illustrative of this point is *Powell* v. *McCormack*, 395 U.S. 486 (1969), where Congressman Adam Clayton Powell was ''excluded'' by the House from taking his seat. Powell sued the enforcement official—Speaker McCormack, under whose jurisdiction the Sergeant-at-Arms was—and not the House of Congress as a whole. In contrast, Members of Congress have absolute immunity to suit for actions taken on the floor of the Chamber when acting in a legislative capacity, such as voting for or against a measure. See U.S. Const. art. I, sec. 6 (''Speech or Debate Clause'').

[35] Section 6 of H.J. Res. 1 mandates that Congress promulgate enforcement legislation.

[36] E.G., the Norris-LaGuardia Act, 29 U.S.C. sections 101–115 (denial of court use of injunctions in labor disputes); the Federal Anti-Injunction Statute, 28 U.S.C. section 2283 (prohibition on enjoining state court proceedings); the Anti-Injunction Provisions of the Internal Revenue Code, Int. Rev. Code section 7421(a) (prohibition on enjoining the collection of taxes).

[37] E.g., *United States* v. *Bitty*, 298 U.S. 393 (1908); *Lauf* v. *E.G. Shinner & Co.*, 303 U.S. (1938). Furthermore, the BBA does not create an individual ''right'' akin to the First Amendment's Free Speech Clause. As stated above, there is no right to a balanced budget much as the Twenty-first Amendment repealing prohibition creates no right to drink alcohol; the BBA is simply a procedural limitation on Congress' taxing, spending, and borrowing powers which creates a presumption in favor of a balanced budget that may be overcome by a three-fifths vote of the whole number of each House.

[38] E.G., the Emergency Price Control Act, which established a special Emergency Court of Appeals vested with exclusive authority to determine the validity of claims under that Act. The Court in *Yakus* v. *United States*, 319 U.S. 182 (1943), upheld the constitutionality of this limited judicial enforcement mechanism. Accord *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981) (upholding constitutionality of executive order, promulgated pursuant to congressional delegation of power, establishing Iranian-United States Claims Tribunal as exclusive forum to settle claims to Iranian assets).

[39] For example, you quote Walter Dellinger's example where a social security beneficiary would have standing to challenge a presidential order reducing benefits. The other Dellinger example given is a similar one, with welfare payments being substituted for social security payments, A twist is added, wherein a state would have standing to sue if a President does not impound funds. I, in all respect, believe these examples to be gross exaggerations of the law. First, a President must faithfully execute the law pursuant to his oath of office, and, therefore, must enforce these social spending programs. Second, neither a state nor an individual would have standing to challenge a spending program, as explained above. How are they individually harmed by the enforcement of the programs? Finally, and ironically, if the first example challenging impoundment somehow prevailed in litigation, it would be a vindication of congressional prerogatives over the budget.

[40] H.J. Res. 1, sec. 3.

[41] In *Kendall*, Congress had passed a private act ordering the Postmaster General to pay Kendall for services rendered. The Supreme Court rejected the argument that Kendall could not sue in mandamus because the Postmaster General was subject only to the orders of the President and not to the directives of Congress. The Court held that the President must enforce any mandated—as opposed to discretionary—congressional spending measure pursuant to his duty to faithfully execute the law pursuant to Article II, section 3 of the Constitution.

[42] E.g., *State Highway Commission* v. *Volpe*, 479F.2d 1099 (8th Cir. 1973).

[43] These factors were recognized by Asst. Attorney General Dellinger to me in a letter dated January 9, 1995, This letter also corrected a misstatement made to Senator Brown whereby Mr. Dellinger had erroneously contended that there was an avalanche of state litigation over their balanced budget requirements. Mr. Dellinger in the letter now admits that:

''Senator Brown is correct that there has not been a significant amount of litigation in the states interpreting their balanced budget provisions, and that this is a factor that weighs against the argument that there would be an avalanche of litigation under a federal balanced budget amendment.''

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Louisiana.

Mr. BREAUX. I thank the Senator for yielding his time.

Mr. President, my colleagues, amendments to the Constitution cannot be passed by the Congress alone. It is a partnership arrangement. The process must also include ratification by the various States. Three-fourths of the States, 38 States, must also join with the Congress in ratifying any proposed amendment to the Constitution before it comes part of the Constitution.

In order for me to justify not even voting to send this proposal to my State of Louisiana and the various other States for them to debate and to vote on this measure, I must be convinced that on its face this amendment is such bad public policy that it must die here in Washington. Is this amendment perfect? No, it certainly is not. Its faults are many and they raise serious concerns in a number of areas.

No. 1, can unelected Federal judges who are appointed for life raise taxes and cut programs to enforce this measure? The Nunn and Johnston amendments address this particular question. I understand that there are those this morning who are willing to correct it with the adoption of the Nunn amendment which would go a long ways to correcting this very serious problem. The question of how can the States cast an intelligent vote on ratification without having the right to know in advance, for instance what will happen to them if it is ratified, is a very serious concern that needs further debate and consideration. Are programs, such as those that have trust funds as a means of funding programs, like the Social Security Program, in danger of being cut under this amendment? There needs to be further discussion and further debate on that particular issue.

The answers to these questions are not clear and more debate, not less, must occur. It is an issue that has generated a great deal of justified emotion. National polls and polls of my State of Louisiana indicate that approximately 75 percent of American people support a balanced budget amendment. But the polls also indicate, at the same time, that they do not support the balanced budget amendment if it means that there will be cuts in Social Security, or there will be cuts in Medicare, or there are likely to be cuts in some other favorite program of our constituents.

I voted for a balanced budget amendment to the Constitution in the past as I believe the long-term debt of our Nation is a critical problem that, so far, we have been giving to our children and to our grandchildren. We have made good efforts on reducing the deficits, as we have in 1993 in adopting President Clinton's deficit reduction plan which cut the deficit by $500 billion over 5 years. I might add we made that very difficult decision without a single Republican vote. But more needs to be done, and if this amendment passes there will be many more and difficult decisions to make. It will not be easy.

I cannot vote to kill this effort today, here in Washington. Our States must be involved. They should have the right to bring this measure up in our State legislatures, debate it, and then have the right and indeed the obligation to vote on it. For me to vote no here in Washington is to say to my State of Louisiana, and the other States, that I know so much more than you on this particular issue that I now vote no so that you cannot vote at all. I will not do that. So today I will vote yes on the balanced budget amendment and send it to the States for ratification and consideration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

UNANIMOUS-CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that it be in order for me to move to table the following amendments en bloc, and the ordering of the yeas and nays be in order, with one show of seconds.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia

Mr. BYRD. Mr. President, I ask the Senator to clarify his request to make sure that the request does not include the tabling of several amendments listed en bloc.

Mr. HATCH. As I understand it, what we are trying to do is make sure the motions to table on each of these amendments will be in place. They can be called up separately.

I modify my unanimous-consent request to make that clear.

Mr. LEAHY. Reserving the right to object, then, now that the unanimous consent has been modified, will the Chair restate it, please?

The PRESIDING OFFICER. It is the Chair's understanding that the Senator has requested to move to table each individual amendment en bloc, and to order the yeas and nays en bloc, but that the votes would actually be taken individually. Is that correct?

Mr. HATCH. That is correct. I now move to table the following amendments.

Mr. LEAHY. I am still reserving my right to object.

Mr. HATCH. Sure.

Mr. LEAHY. Those votes would occur beginning this afternoon, is that correct?

The PRESIDING OFFICER. It is the Chair's understanding that they would take place this afternoon.

Mr. LEAHY. I have no objection.

Mr. HATCH. Mr. President, with that understanding I now move to table the following amendments and motion and ask for the yeas and nays: The Kennedy amendment No. 267, Nunn amendment No. 299, Levin amendment No. 273, Levin amendment No. 310, Levin amendment No. 311, Pryor amendment No. 307, Byrd amendment No. 252, Byrd amendment No. 254, Byrd amendment No. 255, Byrd amendment No. 253, Byrd amendment No. 258, Kerry motion to commit to budget committee.

The Nunn amendment is as modified.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Excuse me—that is right. I withdraw that last statement. Just the amendments I read the numbers for.

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to personally chat with the distinguished Senators from Georgia and Louisiana. I have listened to their comments carefully and will agree that we would take the amendment of the distinguished Senator from Georgia, as modified—hopefully by a voice vote. It will save us all time but nevertheless to accommodate the distinguished Senator. And hope that would, of course, allow us to proceed from there.

Mr. NUNN. I thank my friend from Utah and my friend from Illinois, and also Senator CRAIG and Senator LOTT and others who have worked hard making this amendment acceptable.

The Senator from Washington State, Senator DORGAN, and I have had some conversations also. Some of the language in this amendment now as is modified has been suggested by the Senator from Washington.

Mr. President, I think this is enormously important, as I said. I will not repeat my remarks but I appreciate the fact that the managers of the bill have agreed to accept this amendment or to recommend its acceptance to the Senate. I urge my colleagues to vote for the amendment. Assuming as I do assume that the amendment will be part of this constitutional amendment, then I will vote for the final passage on the constitutional amendment and I urge my colleagues to join in that effort.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, there are a number of Senators who have expressed concerns about a voice vote on this amendment. Given the fact that it has been the subject of debate and people are on record on this amendment during the course of the last several weeks of debate, I suggest that we have a rollcall, just to provide Senators the opportunity to express themselves on this amendment.

But that is consistent with the unanimous-consent request. I urge we do that.

At this time I yield 7 minutes to the distinguished Senator from North Dakota.

Mr. DORGAN. Mr. President, I thank the Senator from South Dakota for yielding the time. Twelve years ago I was a member of the House Ways and Means Committee when we wrote a piece of legislation called the Social Security Reform Act, one of the most significant, important, and useful things we did during the entire decade of the 1980's. We raised payroll taxes on both the employees and employers, we did a whole series of things to make the Social Security system work for, we thought then, 50 years. And we solved it for that period of time.

During the writing of that bill, which I participated in, I expressed great concern about the fact that the surpluses that we designed to occur in the Social Security system would be misused unless we protected them. We created surpluses. This year the surplus alone is $69 billion and the question is, is it being protected? The answer is no.

All during the discussion of this constitutional amendment, and on previous occasions when we have debated it, I have raised this question. Unfortunately, following an hour and a half discussion yesterday with the proponents of this legislation, it appears that this question will not be resolved. I indicated two concerns, one of which has now been resolved, for which I am appreciative: The enforcement issue. I think that resolved that concern.

But I am also concerned about the Social Security trust fund. Does anyone in this room believe that it is appropriate to use Social Security trust funds for other purposes? That is what is happening. That is what will happen under the imprimatur of the Constitution if the balanced budget amendment is passed with this language.

The way to correct this problem is with the Reid amendment. We had a vote on that and lost. The way to correct it is with the substitute offered by Senator FEINSTEIN. We will have a vote on that, and I expect that will lose.

The other way to correct it is for the proponents to bring up implementing language today, before we pass the constitutional amendment, which defines expenditures and receipts as not including Social Security, and that will solve the problem as far as I am concerned. Pass the Reid amendment or pass the Feinstein substitute, either of which will solve this problem as far as I am concerned. If that does not happen, when the final roll is called, I will be voting against this amendment, and I want people to understand why.

This is three-forths of a trillion dollars. This is not a $10 or $20 billion issue. It is three-forths of a trillion dollars and deals with the promise between those who work and those who have retired and deals with the agreement that we made in 1983 about how we would protect the future of the Social Security system in this country. We can protect it in this constitutional amendment to balance the budget. It is our decision. The will of the Senate will be expressed to determine whether we do that or do not. I am told that it is not possible to protect Social Security because there are not sufficient votes for it. If that is the case, then it is not possible for me to vote for this constitutional amendment to balance the budget. If between now and the end of the day people say that is possible, I say, fine, let us do it then. And then I will revisit this issue.

But I just want people to understand that my notion of this issue has not changed. It is an enormously important consideration. Social Security is one of the most important things this country has ever done. The 1983 reform act was one of the most significant pieces of legislation in the last decade and a half. And the question is whether we are going to be true to our word and stand for the solvency of the Social Security system for the long term.

On the broader question, do we need a balanced budget amendment? You had better believe we do. We need greater balanced budget discipline, whether it is a constitutional amendment or whether some new legislative initiative. We are sinking in a sea of debt. Yes, we need to do this. But you do not pull yourself out of a sea of debt by inappropriately spending three-forths of a trillion dollars of Social Security revenue. One is not a tradeoff for the other.

I will simply not vote for a constitutional amendment to balance the budget unless this problem is solved in one of two ways: either pass the implementing legislation to redefine what is meant by receipts and outlays before we pass the constitutional amendment, or pass the Reid amendment as embodied in Senator FEINSTEIN's substitute. One or the other is satisfactory to me. If it appears neither will be done, those who count votes should understand I will then vote no on the constitutional amendment.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I yield.

Mr. DASCHLE. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. We have about 8 minutes 10 seconds.

Mr. DASCHLE. I yield the remainder of my time to the distinguished Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished leader.

Mr. President, I compliment the distinguished Senator from Georgia [Mr. NUNN] on his efforts to cure a major flaw in this constitutional amendment to balance the budget. I shall vote for his amendment. Nevertheless, Mr. President, I do not feel that this amendment by Mr. NUNN will effectively bar the courts from intervening in cases or controversies that will arise outside this or even inside the article. Let us read the amendment. The ''judicial power of the United States.'' Mr. President, that language does not appear to say anything about the State courts. In fact, by omitting any reference to State courts, the language impliedly invites them to come in.

The judicial power of the United States shall not extend to any case or controversy arising under this article.

''Under this article.'' Suppose the case or controversy arises under some other article, under the takings clause, under the obligations of contract clause, or under the due process clause. The Supreme Court of the United States, if it construes a case or controversy as affected by this amendment, is going to take into consideration the whole document, the four corners of the Constitution and the other amendments thereto. And if there is a John Marshall on that court, he will find a way because, after all, the major purpose of this constitutional amendment is to bring into balance the outlays and receipts annually of the United States.

The amendment goes on to say—Mr. President, may we have order in the Senate? Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. We will not proceed until we have order in the Senate, please.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I will read the Nunn amendment again.

The judicial power of the United States shall not extend to any case or controversy arising under this article, except as may be specifically authorized by legislation adopted pursuant to this section.

Mr. President, we say here that the judicial power of the United States shall not extend to any case or controversy arising under this article except as may be specifically authorized by legislation adopted pursuant to the article.

We all know that legislation that may be adopted to implement the article may change from Congress to Congress. A subsequent Congress can amend or repeal the implementing language enacted by a previous Congress.

So what we are setting up here is a situation in which uncertainty will continue to be a key factor in the judgments that are to be reached, not only uncertainty within the government itself but by the people. We are leaving it to the Congress to pass legislation authorizing thus and so, perhaps authorizing the courts to enter into this kind of case or that kind of case or another sort of controversy. So we are left with the same uncertainty with this amendment as we are without it.

Mr. President, the proposed language by Mr. NUNN seeks to—and it may effectively do so up to a point—eliminate court jurisdiction over legitimate

claims raised under the balanced budget amendment. This means, in effect, that the Nunn amendment confers no right not to be convicted under a statute passed, for example, in violation of section 4 of the amendment. Section 4 reads:

> No bill to increase Federal revenue shall become law unless approved by a majority of the whole number of each House by rollcall vote.

Of course, the Constitution requires that bills that raise revenues originate in the other body. If a person is convicted under a criminal statute that originates in this body, but the contents of which criminal statute result in an increase in revenues, then the defendant who seeks relief will do well on the basis of a bill which raises revenue—even though it was a criminal statute under which he was indicted and convicted—which did not originate with the other body.

The Nunn amendment confers no right not to be convicted under a statute passed in violation of any of the sections of this amendment.

The Nunn amendment may, in certain cases, take away the right of an injured citizen to challenge any cuts in benefits—mandated by law—ordered by a President who is seeking to enforce the amendment by impounding funds. As to due process, this amendment is writing the due process clause out of the Constitution, as far as such claims are concerned. I have already indicated that citizens could be convicted of a crime in violation of the Constitution, or taxed in violation of the Constitution. Yet, Congress would have the power to deny these citizens access to the courts in which to vindicate their rights.

The courts could refuse to hear challenges to unconstitutional actions. It is unclear, Mr. President, whether this amendment can be raised as a defense. While the amendment seeks to bar plaintiffs from access to the Federal courts to claim a violation of their rights, it is not clear whether the proposed language also would bar governmental actors—for example, the President of the United States—from raising the balanced budget amendment as a defense. Here is an example: Suppose the President cuts Social Security. The plaintiff might sue, but he does not sue under the balanced budget amendment but under a statute. The President raises the defense that the balanced budget amendment justifies his action. How would a court rule? Would the court rule that the case should be dismissed because of the balanced budget amendment? But then, all the President has to do to escape scrutiny is to invoke the amendment. Would the court rule that the plaintiff wins because the court has no power to review the defense? Then other plaintiffs could bring similar actions and the budget would go unbalanced.

Mr. President, let us say that the Nunn amendment is effective in barring intervention by the Federal courts into cases or controversies arising ''under this article.'' Even then, the result could be a shift to the President of unreviewable power to impound funds. The Federal courts would be barred by this amendment from reviewing the President's action, despite the Framers' view that the power of the purse should be left in the hands of the Congress, the closest representatives of the people. And if Congress should respond to presidential impoundment by granting the courts the power to review such actions, then the courts would again be embroiled in the budget process and, quite possibly, in the unseemly role of a conscripted ally of one branch against the other.

So, Mr. President, even if this amendment is effective in accomplishing the goal that the distinguished Senator from Georgia seeks, it seems to me that it creates a greater impetus to the flow of legislative power and the control of the purse from the legislative branch to the President. The amendment provides that the courts, in essence, may be authorized to intervene based on implementing legislation that may be passed or may not be passed and may be changed from Congress to Congress. And thus, it gives authority for the Congress to transfer legislative powers to the courts.

Subsequent legislation to implement the article may be vetoed. That would require two-thirds of both Houses to override the President's veto. Even if it becomes law, a subsequent Congress can change the law. The provision may be read as granting Congress the power to confer sweeping legislative powers over taxing and spending priorities on the courts, in the guise of implementing legislation.

This is a mess. Congress may very well, in implementing legislation, decide just to hand the whole mess over to the courts of the land. Such legislation would abdicate Congress' fundamental responsibility over taxing and spending and transfer it to unelected judges, and thus decrease the accountability of the Federal Government to the taxpayers. The courts would be blamed for making the tough choices, though it may be two, three or four, five years down the road. But by then the fingerprints of the proponents of this amendment would be cold, and the mess would be left in the hands of the courts. The courts would be blamed for making the tough choices, which should be the responsibility of the elected officials.

Assuming, Mr. President, that the amendment would be effective in stripping court jurisdiction and assuming further that Presidential impoundment is not the result—and those are large assumptions—the amendment would be an empty promise inscribed in the fundamental charter of our Nation.

Mr. President, the proponents of this amendment have thus far tabled all amendments. Their ears have been deaf to the pleas of those Senators who have sought to protect the Social Security trust fund. There was no give on that amendment. There was no give on amendments that would deal with the ups and downs, the rises and the falls in the economy—no give on that. But suddenly, here comes an amendment that the proponents on the other side of the aisle seem to be willing to take. What about all of the other amendments that they have rejected?

If the Nunn amendment is included in this overall constitutional article, then the balanced budget constitutional amendment as amended goes back to the House. If the House does not accept the Nunn language, then the balanced budget amendment will go to a conference. The whole balanced budget amendment may then be rewritten in that conference. When that conference report comes back to the Senate, it may not look like the balanced budget amendment that is presently before the Senate. Senators would certainly not have the opportunity to debate at length a conference report on a constitutional amendment that had been measurably changed in the conference process.

Mr. President, I see many slips between the cup and lip in connection with this amendment. It is well-intentioned. I intend to vote for it. But, Mr. President, it demonstrates the farce that we are about to vote on later today—the farce in the form of this constitutional amendment to balance the budget. It is a mess! It is a ''quick fix'', and there is no way to fix this quick fix. The Nunn amendment clearly demonstrates that.

I reserve the remainder of my time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah has 38 minutes under his control.

Mr. HATCH. Mr. President, I yield 4 minutes to the distinguished Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, today the Senate stands poised to vote on one of the most important measures that will come before this Congress. Indeed, for many in this Chamber, the vote on the balanced budget amendment will be the most important vote they cast in their career, and I urge each of my colleagues to support it.

As I have stated on this floor before, I chose a career in public service because, throughout my life, the public—through government—helped broaden my opportunities. I am fundamentally committed to ensuring that future generations have the same opportunities I enjoyed. Every child born in this country—whether black or white, whether rich or poor—should have the chance to achieve his or her dreams. Every person should have a chance to contribute to society, to the maximum extent their talent or ability will allow.

Government should play an active role in expanding people's opportunities. The Government should invest in technology and infrastructure, in job

creation and training, and in education, in order to raise the people's living standards. The Government should help unemployed Americans get back on their feet, should help those who want to work to find jobs, should ensure that high-quality, affordable health care is available to all Americans, and should protect our environment. Government is not the enemy of society; it should be a partner, an instrument of the people's will, and a facilitator of our public interest. But if the Government does not get its fiscal house in order—if we don't act now to stop our runaway deficit spending—the Government will have little money left to provide for the public interest. Only the holders of the treasury bonds will be assured of any Government assistance.

As I learned through my work on the Entitlements Commission, unless we get the deficit under control, we will be leaving our children—and our children's children—a legacy of debt that will make it impossible for them to achieve the American dream of living a better life than their parents.

There is simply no way to get around the fact that our present spending trends are not sustainable in the long term. In 1963, Mandatory spending—the combination of entitlement programs and interest on the national debt—comprised 29.6 percent of the Federal Budget. By 1983, that number has almost doubled, to 56.3 percent. Ten years later, in 1993, mandatory spending was 61.4 percent of the annual budget. Let me underscore that: today, mandatory spending—entitlements, plus interest on the national debt—comprise almost two thirds of the entire Federal Budget.

But what about the future? If we don't act now, by the year 2003—8 years from now—mandatory spending will comprise 72 percent of the Federal Budget, 58.2 percent for entitlement programs, and 13.8 percent for net interest on the national debt. Obviously, if we are spending 72 percent of budget on mandatory spending, there is not much left over for defense, education, or infrastructure.

Consider this example. In real terms, AFDC benefits have actually declined since 1970. The significance of that fact should not be lost on anyone. We are spending ourselves into a deeper and deeper hole, yet people are not better off as result.

I have heard many opponents of the balanced budget amendment question the need to tackle the deficit immediately. America is not, they maintain, in the midst of a budgetary crisis. In the short term—the next 7 years—that's perhaps true. The country can probably continue on its current irresponsible path for a few years into the next century. But, after that, it will no longer be possible to ignore the basic demographic and health care cost trends driving the increases in Federal spending. We simply will not be able to continue on our current path, and expect the Federal Government to function as a partner of the people well into the next century. And, if we wait to act until crisis comes, any action we take will be that much more painful, and that much less effective.

The entire Federal deficit for the current fiscal year—estimated at $176 billion—represents the interest owed on the huge national debt run up during the 1980's. This year, and next year, the budget would be balanced if not for the reckless supply-side economics that caused the deficit to balloon from its 1980 level of about $1 trillion to its current level of more than $4.7 trillion. If we had acted in 1980 to tackle the deficit, rather than adopting programs that merely fed its rapid growth, the problems we face today—in terms of demographics, and the aging of the baby boomers—would seem much more manageable. In 1980, interest on the debt was $75 billion—that is a lot of money, Mr. President, but it is nowhere near the $950 billion we currently pay. How much better off we would be if, in 1980, congress had possessed the courage to make the difficult choices, and balance the budget. Not passing the balanced budget amendment will not make our problems go away. Our ability to meet our priorities will be much greater if we enact the balanced budget amendment now, if we tackle the tough problems now, instead of waiting until the country is on the brink of financial ruin. If we need any convincing about the need to address the deficit now, in 1995, we should just look at the consequences of our failure to address it then, in 1980.

But I disagree that deficit spending is the most effective way to accomplish that. In 1966, when our deficit totaled $3.7 billion, 2.6 percent of our budget went toward funding long-term investment. Now, with our budget deficit about to hit $268 billion, our long-term investment has shrunk to 1.8 percent of the budget. The reason, I think, is obvious—more and more of our funds must be devoted to paying interest on the debt, leaving less and less for investment.

I have heard opponents of House Joint Resolution 1 state that we should not be tinkering around with the Constitution. Well, I couldn't agree with them more. The years I spent studying law at the University of Chicago gave me a deep appreciation for the Constitution. I believe the U.S. Constitution to be the finest exposition of democratic principles ever written. I make that statement fully aware that, in its original form, the Constitution included neither African-Americans nor women in its vision of a democratic society. But it changed to better realize the promise of America. The beauty of the Constitution is that it can, through a deliberate, cumbersome and sometimes painful process, be amended to reflect the changing realities, and meet new challenges faced by our Nation. This current problem—the problem of our growing fiscal disorder—is too important not to act on today. Who could be opposed to affirmatively stating in the Constitution that current generations must act responsibly, so that future generations will not be forced to bear the burden of their irresponsibility? What could be more important than the fiscal integrity of our Nation? As another of our Founding Fathers, Thomas Jefferson once said, ''We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.'' Why is that proposition not important enough to be included in the Constitution?

Last year I had the honor of reading George Washington's farewell address to the Nation on the floor of the Senate. In that address, Mr. Washington left us with some words of wisdom that, I believe, support the notion of a balanced budget amendment. I would like to quote those here today:

> As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering, also, that timely disbursements, to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasion of expense, by my vigorous exertions, in times of peace, to discharge the debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear.

Finally, Mr. President, I would like to take head on the political implications of this debate, because it is an important political question for the Congress. I am not a signatory of the Contract with America. Indeed, I agree with Senator BYRD; the only contract with America that matters to me is the U.S. Constitution.

But I want to be clear that this issue is not a partisan one. It reflects philosophical differences that have little to do with party lines. The senior Senator from my State of Illinois, Senator SIMON, has been one of the chief advocates of the balanced budget amendment for years. Senator SIMON's liberal credentials are without question. He is, and has always been, a Democrat—he was at one time even a candidate for our Presidential nomination. so this is not a Republican versus Democrat debate. Nor is this a battle of the conservatives against the liberals. I am proud to call myself a liberal, for the simple reason that I believe government has a positive and constructive role to play in promoting the public good. I do not believe government is the enemy of progress. I believe it can promote progress. In my lifetime, I have seen firsthand the positive contributions a commitment to the American dream of equality and opportunity can make, I would not be here but for the struggles of people of good will to make the American dream a reality. And it is precisely because I so value their struggles that I believe we must take the steps that a commitment to

providing opportunity requires. We have a duty to use our decisionmaking power in a manner that preserves freedom and opportunity for all Americans, not only in this generation, but in every generation to come.

Poor people are not helped by the deficits and out-of-control spending habits we cannot seem to shake. Its interesting as I listen to the debate that swirls around the issue of the balanced budget amendment and Social Security. The reason that debate is so intense, Mr. President, is that current recipients of Social Security—and even those of us in the baby boom generation who will be collecting checks in the not so distant future—have an absolute expectation that Social Security will provide for us in our retirement. The same cannot be said for those in our younger generations. When you speak to people who are my son Matthew's age, they have absolutely no faith that Government will be there for them when they need it, that it will help them enjoy retirement security or affordable health care or a high standard of living. And why should they, Mr. President? Since my son was born in 1977, he has never seen a balanced budget. He has no idea what it means to live under a Federal Government that spends within its means. He has heard politician after politician promise to balance the budget, yet has only seen the deficit skyrocket.

That cynicism grows deeper and deeper every day, despite pronouncements of politicians that a brighter day is just around the corner. The fact is, with current budget trends, a brighter day is not around the corner. What lies ahead, if we fail to act, is slower economic growth, greater debt, fewer options and higher taxes. The time has passed for us to realize that by failing to act, we are indeed making a choice—a choice that involves throwing away most of our options for dealing with our fiscal problems. The only way we will be able to turn current budget trends around is to face reality with the help of the balanced budget amendment.

Mr. President, I want to take this debate back to the beginning—to the Constitution. The Constitution states, in its preamble:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and to secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Mr. President, I believe that this constitutional preamble sets the stage for the vote we will soon cast on this balanced budget amendment, and tells us the direction in which we should go.

This Constitution gives Congress the power to protect Social Security, to respond to fiscal emergencies, and to foreclose judicial interference in budgeting. It gives us the power to do everything necessary to respond to concerns that have been raised in opposition to this balanced budget amendment.

Unfortunately, absent the balanced budget amendment, the Constitution does not give us what we now lack—the will to make the difficult decisions necessary for us to get our fiscal house in order. That is what the balanced budget amendment is calculated to do. It will impose on Congress the fiscal discipline to do what we should have done years ago, what George Washington exhorted us to do in his farewell address to the Nation, and what the preamble to this Constitution tells us to do.

This is not a partisan debate, or at least it shouldn't be. The essence of this debate boils down to whether each individual Senator, regardless of party, believes we have a fundamental obligation to our posterity, and a fundamental obligation to the American people, to abide by the Constitution that we are all sworn to uphold.

Mr. President, I call upon my colleagues to take the pledge by voting for this amendment that we will deficit spend no more, that we will be responsible for the debts that we incur, that we will be responsible for the budgets we pass, and that we will be responsible to future generations, and not saddle them with debt. I call on my fellow Senators to transcend the hysteria and fear that has fueled the opposition to this balanced budget amendment, and respond instead to our hopes, and to the responsibility that we are given as Members of this U.S. Congress to get our fiscal house in order, to discharge our debts, and not to ungenerously throw upon posterity the burdens which we ourselves ought to bear.

Mr. President I thank the Senator from Utah for his yielding, and I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 4 minutes to the distinguished Senator from Virginia.

Mr. ROBB. Mr. President, I will be brief. My views are already known to most of the Members of this body. I support the balanced budget amendment reluctantly—as a bad idea whose time has come. What I really support are the balanced budgets this amendment seeks to achieve.

I support the amendment because I do not believe we are ever going to have the will to actually balance our budgets without it and that out failure to do so puts our future in doubt and demands extraordinary and uncommon action by this Congress.

Let me begin by saying that I endorsed this amendment more than a decade ago, not because I believed then or now, that it will, in and of itself, bring our budget into balance, but because it establishes both a call to action and a destination—and because it takes away an excuse for not making the hard choices we are going to have to make with or without the amendment. It forces us to confront—head-on—the fiscal disaster we have created, and it will force an essential discipline in our budget process that has been sadly absent.

President Clinton deserves enormous credit for the $500 billion deficit reduction package, which passed this body in 1993. It took courage and he did not have the bipartisan help he deserved. But it was not enough.

Mr. President, during the course of this debate, I have heard many thoughtful and sincere arguments in opposition to this amendment. This morning, I would like to address just two of them—whether or not the amendment will result in deep cuts to important programs and whether or not the amendment is worthy of constitutional consideration.

Mr. President, those who oppose this amendment because it will lead to painful cuts are arguing not against the amendment, but against actually balancing the budget. None of the choices are easy.

But to oppose this amendment because of the difficult choices it will force, is to say to the American people that we do not have the will to govern responsibly and live within our means.

Making these choices means establishing essential priorities for our Nation, identifying effective programs, that provide hope and opportunity for our people, programs that defend our freedom at home and abroad, and programs that invest in a better tomorrow for our children and our grandchildren.

Protecting these priorities means: saying ''no'' to less critical spending; and having the fortitude to turn to the revenue side when we cannot responsibly cut spending any more; and refusing to enact new tax cuts we cannot afford and tackling entitlement reform, the 800 pound gorilla of the 21st century.

If we do not, Mr. President, if we continue on our present course and speed, entitlements and interest on the debt—and nothing more—will absorb the entire tax revenue base of the Federal Government by the year 2012. It will absorb all of it, with nothing left for national defense or any other Federal program.

How then do we invest in our children?

Interest payments on the national debt will not ever put a single poor child through college. Interest payments on the national debt will not ever provide nutrition for a disadvantaged pregnant woman, special education for a child with disabilities, or the only hot meal of the day for a 6-year-old living in poverty.

I support this amendment, reluctantly, Mr. President, not because I want to endanger programs that provide real opportunity for our children, but because I fear for the strength and security of the world we leave them, and their children if we do not act today.

A child born today will be 17 years old—a senior in high school—the year entitlements and interest on the debt begins to absorb all our tax revenue.

What kind of a nation will that child inherit? Will it even resemble the world of unlimited possibilities that our parents left us?

Today, we make that decision, Mr. President. Today, we decide the future of the class of 2012. Today, we either begin to assume the responsibility for our own debt or we leave it to our children and our grandchildren.

Our Founding Fathers would be dismayed to know that we have reached the point where amending their Constitution is necessary to protect the strength and security of future generations of Americans. And if we had governed with the political courage of our forefathers, we would not be facing a fiscal crisis of such enormous proportion.

But I would argue, Mr. President, that paying our own bills is not a trivial matter. Protecting our ability to invest in the kind of America we want for our children, is not a minor academic argument. Tripling our debt in 15 years is not an inconsequential act. Mr. President, $6 trillion is not trivial.

To me our own lack of will in paying our bills trivializes our Constitution—and this institution—far more than a balanced budget amendment.

To the children graduating from high school in 2012, an amendment to balance our Federal budget will be more important to the kind of country they inherit than the last amendment we added to the Constitution. That amendment, the 27th, ratified in May, 1992, required intervening elections before congressional pay raises go into effect.

The legacy of debt we leave our children, can never be trivial nor inconsequential. It violates a sacred obligation that has passed through generations of Americans, an obligation which has endured since the birth of our democracy and the adoption of our Constitution. That obligation is to leave a future brighter than our past. If we do not act today we are violating that obligation.

Mr. President, I yield the floor and I thank the manager.

Mr. HATCH. Mr. President, we are down to our last half-hour. It is my honor to yield 4 minutes to the distinguished Senator from South Carolina, who was the first to ever fight for a balanced budget amendment on our side and who deserves a lot of credit if this amendment passes.

Mr. THURMOND. Mr. President, we have seen the national debt and deficits rise because, in large part, the Federal Government has grown. It has grown tremendously out of reason.

The first $100 billion budget in the Nation occurred in 1962. This was almost 180 years after the Nation was founded. Yet it took only 9 years, from 1962 to 1971, for the Federal budget to reach $200 billion. Then, the Federal budget continued to skyrocket: $300 billion in 1975, $500 billion in 1979, $800 billion in 1983, and the first $1 trillion budget in 1987. The budget for fiscal year 1995 was over $1.5 trillion.

Federal spending has gripped the Congress as a narcotic. It is time to break the habit and restore order to the fiscal policy of the Nation. It is incumbent upon this body to send the balanced budget amendment to the American people for ratification. I am pleased that we have reached agreement to vote on final passage today.

I want to say this: The federal debt is $4.8 trillion. How did it come about? Big government, big spending, not following sound fiscal policy at all. The annual interest on this debt—the annual interest we pay for which we get nothing, it just goes down the drain—$235 billion. That is the second largest item in the budget.

The average annual deficit for each year during this decade has been $259 billion. It is unreasonable. How are we going to stop it? I have been here 40 years. We have balanced the budget only one time in 32 years. The budget has been balanced only eight times in the last 64 years. When are we going to stop it? When are we going to stop spending more than we take in? When are we going to stop putting this debt on our children and grandchildren and generations to come.

I say to Members that we must take action. Today is the day to do it. Today is the day to pass this amendment and let the American people know we mean business and we are going to protect this country. We have to protect it from this big spending just like we have to protect it in time of war. Either can ruin this Nation.

Now, I want to mention this: The leadership in both houses have stated that Social Security will be protected in the implementing legislation once the balanced budget amendment is adopted. I have long supported our senior citizens and believe that the promise of Social Security is not to be broken. The Federal debt is the greatest threat to Social Security. Adoption of the balanced budget amendment and strong language in the implementing legislation will ensure the viability of Social Security.

The Senate should pass this amendment. My home State of South Carolina has a balanced budget requirement. We have abided by it for years. We do not run any deficits. Why? Because we have the mandate of a balanced budget by constitutional provision. That is what we are trying to get here. We also have a statute.

I say to Members, if we do not pass this amendment today, we will miss a great opportunity. There is no one piece of legislation we can pass this year or any year to come that is more important than this balanced budget amendment. I hope we pass it today. It is for the good of America. It is for the good of our country. We ought to do it without delay. I yield the floor.

Mr. HATCH. Mr. President, I yield to the distinguished Senator from Tennessee for 1 minute.

Mr. THOMPSON. Thank you, Mr. President.

Mr. President, there is nothing more basic to human nature than looking out for the interests of those we bring into this world. Yet we are not doing that in this country. On the contrary, we are creating an economic disaster for the next generation, a debt that they will never be able to dig out of and the prospects of living in a second-rate country.

We are doing this not because of some great depression. We are doing this not because of some great war. We are doing this not because of some natural disaster. We are doing this simply because we have lacked the will to make the tough decisions.

Mr. President, through the history of the course of this country, in times of crisis, leaders of both parties have banded together to face that crisis and overcome it. We must do so again this very day because, indeed, it is a crisis we face. We must do so by passing this balanced budget amendment.

The people's voice could not be more clear on this matter. They have spoken in the polls. They have spoken through their legal, elected representatives in the House. They stand ready to speak again in State legislatures throughout this Nation once we have done our duty. Let it not be said that it was the Senate of the United States of America that stifled the strong, clear voice of the American people. I yield the floor.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Maine.

Ms. SNOWE. I thank the Senator.

Mr. President, Robert Louis Stevenson once said, ''These are my politics: To change what we can to better what we can.'' With today's vote, we have the chance to do both.

Like so many other times in this great Nation's history, we are standing today before the American people on the cusp of monumental change. We have inherited the challenges and the responsibilities of leadership of previous generations of Americans, Americans who have stood in this Chamber and voted for difficult votes that molded the image of their generation.

In this century alone we had women's suffrage, the declaration of World War II, and civil rights laws. Each of these events ended the status quo of one generation and ushered in a new beginning for the next.

The prophetic nature of this debate cannot be understated in the annals of America's history. This is a defining moment for our generation. This is our chance to be remembered for what is just and right in our time. This is our last chance to roll back the years of indebtedness.

This legacy of debt is not just an imbalance between revenues and expenditures. It is an imbalance between trust and responsibilities. The last time the

Congress balanced its budget was when America put a man on the noon.

If there is one thing that we have learned in the last 26 years, it is this: We cannot balance our budget in the absence of a stronger force than politics.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Arizona.

Mr. KYL. Mr. President, outside the Senate Chamber on the Capitol grounds, the debt clock is ticking: an additional $9,600 every second, $576,000 every minute, $35 million every hour, and $829 million every day. That is nearly $1 billion in additional debt the Federal Government is accumulating each and every day. It is a catastrophe waiting to happen.

The choice before the Senate today is clear. We can defuse that time bomb of debt by passing the balanced budget amendment and begin to make the tough decisions necessary to put our Nation's fiscal house in order, or we can bury our collective heads in the sand and pretend that spending $1 billion a day beyond our means will not have devastating economic consequences.

But we ought to be honest with the American people: Without the balanced budget amendment, there is no plan to balance the budget—not in 5 years, not in 10 years, or ever. The budget that President Clinton submitted to the Congress earlier this month proposes $200 billion deficits as far as the eye can see. The President has no plan to balance the budget.

Although the new Congress is poised to make significant cuts in spending, there is no assurance that when the pain begins to be felt in a few years, it will not opt to mitigate pain by resuming Federal borrowing as Congresses in the past have done. That is why Gramm–Rudman failed several years ago. It is why nothing less than the balanced budget amendment will succeed in the future.

Mr. President, this is a debate about the future, about preserving what is best in America. It is about protecting senior citizens on Social Security. It is about letting our families keep what they earn. It is about protecting our children's future.

I am hopeful today when this day ends the U.S. Senate will have passed the balanced budget amendment.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Ohio.

Mr. DEWINE. Mr. President, the passage of a balanced budget amendment will do more to bring about the fundamental change that the American people voted for in 1994 than anything else that we can do. This is a vote about our future. This is a vote about our children.

Let me share some sobering facts. When my parents graduated from high school in the early 1940's, the debt on each child that graduated was about $360 dollars. By the time my wife and I graduated in the mid-1960's it was up to $1,600. When my children, Patrick and Jill and Becky, graduated in the mid-1980's, it was up to almost $9,000.

If we continue to go the way we have been going, by the time my grandson, Albert, graduates in the year 2012, it will be up to almost $25,000.

Mr. President, this is a defining moment. We vote today to change the Government. We vote today to carry out the mandate that was given to this Congress in 1994.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Wyoming.

The PRESIDING OFFICER (Mr. CRAIG). The Senator from Wyoming is recognized for 1 minute.

Mr. THOMAS. Mr. President, I am proud to rise today to urge the passage of House Joint Resolution 1, the balanced budget amendment to the Constitution. I am profoundly convinced that the future of our Government, indeed the future of our country, depends upon reaching a measure of financial responsibility. I am equally convinced that failure to pass this amendment will result in continued deficit spending and added burdens of debt and interest payments.

As Members of this body, we are honored to be trustees in the area of public policy for those who we represent, for the people of the United States. The financial stewardship of this Congress has not met the test of fiscal and moral responsibility.

I am persuaded that the people of Wyoming demand that Congress respond to their voice in November. They called for smaller Government, less expensive Government. The test of good Government is the responsiveness of that Government to the will of the people. We have that opportunity today.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 1 minute.

Mr. SANTORUM. Mr. President, we see here 11 freshmen who were elected in the last election, and sophomores who are with us. You do not see this many Members in the Senate—at least I do not usually when I have gotten up to speak.

We are here because we got the message. We are here because the American people sent us on a mission. They sent us on a mission to make Government leaner, smaller and more efficient, and this balanced budget amendment is the vehicle by which all of that happens.

If this does not pass, all those things that the people voted for on November 8 will not happen. But let me tell you something, the balanced budget amendment will pass. Oh, it may not pass today —I think it will—but it may not. But it will pass. The people who will stand in the way of this balanced budget amendment today will not be around long to stand in the way the next time. It will pass. It is just a matter of when.

It is a matter of when we are going to be able to look in the eyes, as I do, of my 2-year-old little boy and my 3-year-old little girl and say that ''it is time to look out for your future, too. It is time that someone stands up and cares about you and your opportunities.''

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Minnesota.

Mr. GRAMS. Mr. President, at the State capital building in St. Paul, MN, lawmakers presented Gov. Arne Carlson with this petition yesterday. It says:

> We, the undersigned officials, duly elected by the citizens of the great State of Minnesota, commit our support to congressional passage of the balanced budget amendment and its ratification by the Minnesota State Legislature.

Our petition is signed by 81 representatives on the Federal and State level, Republicans and Democrats, who are concerned that this debt that we are heaping onto the backs of our children is not just wrong, it is criminal.

I ask unanimous consent that this document be printed into the RECORD.

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

MINNESOTANS FOR A BALANCED BUDGET AMENDMENT

(As of February 25, 1995)

We the undersigned officials, duly elected by the Citizens of the Great State of Minnesota, commit our support to congressional passage of the Balanced Budget Amendment and its ratification by the Minnesota State Legislature:

United States Senator Rod Grams.

Governor Arne Carlson.

U.S. Representative Gil Gutknecht (IR–1st CD).

U.S. Representative David Minge (DFL–2nd CD).

U.S. Representative Collin Peterson (DFL–7th CD).

U.S. Representative Jim Ramstad (IR–6th CD).

State Senate Republican Leader Dean Johnson.

State House Republican Leader Steve Sviggum.

State Senator Charlie Berg (DFL–District 13).

State Senator Joe Bertram, Sr. (DFL–District 14).

State Senator Florian Chmielewski (DFL–District 8).

State Senator Dick Day (IR–District 28).

State Senator Steve Dille (IR–District 20).

State Senator Dennis Frederickson (IR–District 23).

State Senator Paula Hanson (DFL–50).

State Senator Terry Johnston (IR–District 35).

State Senator Sheila Kiscaden (IR–District 30).

State Senator Dave Kleis (IR–District 16).

State Senator Dave Knuston (IR–District 36).

State Senator Cal Larson (IR–District 10).

State Senator Arlene Lesewski (IR–District 21).

State Senator Warren Limmer (IR–District 33).

State Senator Bob Lessard (DFL–District 3).
State Senator Tom Neuville (IR–District 25).
State Senator Ed Oliver (IR–District 43).
State Senator Gen Olson (IR–District 34).
State Senator Mark Ourada (IR–District 19).
State Senator Pat Pariseau (IR–District 37).
State Senator Martha Robertson (IR–District 45).
State Senator Linda Runbeck (IR–District 53).
State Senator Kenric Scheevel (IR–District 31).
State Senator Dan Stevens (IR–District 17).
State Senator Roy Terwilliger (IR–District 42).
State Senator Jim Vickerman (DFL–District 22).
State Representative Ron Abrams (IR–District 45A).
State Representative Hilda Bettermann (IR–District 10B).
State Representative Dave Bishop (IR–District 30B).
State Representative Fran Bradley (IR–District 30A).
State Representative Sherry Broecker (IR–District 53B).
State Representative Tim Commers (IR–District 38A).
State Representative Roxann Daggett (IR–District 11A).
State Representative Steve Dehler (IR–District 14A).
State Representative Jerry Dempsey (IR–District 29A).
State Representative Ron Erhardt (IR–District 42A).
State Representative Don Frerichs (IR–District 31A).
State Representative Jim Girard (IR–District 21A).
State Representative Bill Haas (IR–District 48A).
State Representative Tom Hackbarth (IR–District 50A).
State Representative Elaine Harder (IR–District 22B).
State Representative Mark Holsten (IR–District 56A).
State Representative Virgil Johnson (IR–District 32B).
State Representative Kevin Knight (IR–District 40B).
State Representative Le Roy Koppendrayer (IR–District 17A).
State Representative Ron Kraus (IR–District 27A).
State Representative Philip Krinkie (IR–District 53A).
State Representative Peggy Leppik (IR–District 45B).
State Representative Arlon W. Kindner (IR–District 33A).
State Representative Bill Macklin (IR–District 37B).
State Representative Dan McElroy (IR–District 36B).
State Representative Carol Molnau (IR–District 35A).
State Representative R.D. Mulder (IR–District 21B).
State Representative Tony Onnen (IR–District 20B).
State Representative Mike Osskopp (IR–District 29).
State Representative Dennis Ozment (IR–District 37A).
State Representative Erik Paulsen (IR–District 42B).
State Representative Tim Pawlenty (IR–District 38B).
State Representative Dick Pellow (IR–District 52B).
State Representative Walt Perlt (DFL–District 57A).
State Representative Jim Rostberg (IR–District 18A).
State Representative Alice Seagren (IR–District 41A).
State Representative Steve Smith (IR–District 34A).
State Representative Doug Swenson (IR–District 51B).
State Representative Howard Swenson (IR–District 23B).
State Representative Barb Sykora (IR–District 43B).
State Representative Eileen Tompkins (IR–District 36A).
State Representative H. Todd Van Dellen (IR–District 34B).
State Representative Tom Van Engen (IR–District 15A).
State Representative Barb Vickerman (IR–District 23A).
State Representative Charlie Weaver (IR–District 49A).
State Representative Steve Wenzel (DFL–District 12B).
State Representative Gary Worke (IR–District 28A).

Mr. GRAMS. Mr. President, whether by fax or phone or during our conversations together in town halls, Minnesotans, just like the rest of America, are demanding action on this balanced budget amendment.

If this Senate is going to do the will of the people as we were elected to do, then this balanced budget amendment will pass and the final vote would be 100–0. Mr. President, let us make February 28, 1995, the day we finally take responsibility for the uncontrolled spending of Congress in the 1980's. Let us make February 28, 1995, the day that we, the Congress, keep our promise to the American taxpayers and deliver a balanced budget amendment.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 1 minute.

THREE WORST EXCUSES AGAINST THE BALANCED BUDGET AMENDMENT

Mr. ASHCROFT. Mr. President, here are the three worst excuses that have been made against voting for the balanced budget amendment in this Chamber.

Bad excuse No. 1: We do not need a balanced budget amendment because Congress already has the authority to balance the budget.

Of course, we have the authority to balance the budget. What we need is a prohibition against doing what is wrong. The Constitution is not needed to protect Americans from Congress doing what is right. Americans need the Constitution to protect them from Congress doing what is wrong: Spending the money of the next generation.

The first five words of the Bill of Rights are, ''Congress shall make no law.'' These words shield the people from Congress. Now we need to protect the rights and resources of the next generation from debts incurred by Congress.

Bad excuse No. 2: Before we have a balanced budget amendment, we must specify every detail about how we will achieve it. When President Kennedy made the commitment to send a man to the Moon, he did not lay out the design for the Apollo spacecraft or the booster rocket. He did not decide which astronaut would be the first man to set foot on the Moon. No, President Kennedy called America to greatness, he challenged people to a higher standard, because it was critical to our future.

Today, we need to challenge America to greatness again, because balancing our budget is essential for our future.

Bad excuse No. 3: A supermajority requirement is undemocratic because it gives a minority the right to block the will of the majority.

What is undemocratic is that this Congress spends the resources of the unrepresented next generation. No taxation without representation was the cry of our Founding Fathers, and it is my cry on behalf of unrepresented generations yet to come.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. Mr. President, I yield 1 minute to the junior Senator from Tennessee.

The PRESIDING OFFICER (Mr. GRAMS). The junior Senator from Tennessee is recognized for 1 minute.

Mr. FRIST. Mr. President, 4 months ago, I was elected to the U.S. Senate with the mandate to aggressively treat problems that have been readily diagnosed by the American people. The national debt is a malignant cancer growing every second of every day, consuming the health and vitality of this Nation.

The future hard work and dreams of our children are being sacrificed every day to feed this cancer. Conventional treatment has failed.

Congress has demonstrated a lack of discipline to rein in Federal spending. The President has said he will tolerate increasing the debt from $18,000 to $24,000 for every individual.

But there is a cure: The balanced budget amendment.

Clearly, we are mortgaging the future of our children if we do not take action today. I want the children of America to inherit a prosperous future, not a legacy of debt. For this reason, I urge my colleagues to join me in supporting the balanced budget amendment.

I yield the floor.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 1 minute.

Mr. ABRAHAM. Mr. President, I will undoubtedly cast many hundreds of votes during my tenure in the Senate, but it is unlikely I will cast any more important vote than the one I will make later today.

With that vote, I will seek to amend the Constitution of our Nation to require that our national budget be balanced. There are many reasons why I

will vote this way, but first among them is my conviction that our responsibility to secure the economic future of our country can only be fulfilled if we adopt this amendment.

Last night, when I said good night to my 20-month-old twin daughters, I thought about the country they will inherit when they grow up. I will not bequeath to them and their generation a legacy of debt.

For too long, this Congress has failed to meet this responsibility to future Americans. The failures have occurred on both sides of the political aisle, and so now the solution must be bipartisan as well.

I call on my colleagues to provide Betsy and Julie Abraham, and the other children of this country, the future they deserve—a future in which they will have the fullest opportunity to realize the promise of America.

Mr. President, I urge this Senate to adopt this amendment to the Constitution.

Mr. HATCH. Mr. President, I yield the distinguished Senator from Oklahoma 1 minute.

The PRESIDING OFFICER. The Senator is recognized.

Mr. INHOFE. Mr. President, for weeks on end now we have been debating this issue, and I think we know what the arguments are.

The other night I took to the floor and spent 1 hour and 10 minutes diffusing the 11 arguments that have been given against the balanced budget amendment. The bottom line is that those are not real arguments. The bottom line is that those individuals who are going to use arguments against the balanced budget amendment really do not want to cut spending.

Mr. President, the American people do. Let us look at what happened on last November 8. Last November 8, using the two indices of the stimulus bill for spending hikes and the National Taxpayers Union rating for tax increases, virtually everyone in the House and the Senate that was defeated on November 8 voted for the stimulus increase—that is the spending increase—and was rated either a ''D'' or an ''F'' by the National Taxpayers Union.

The bottom line is the big spenders and the big taxers do not want a balanced budget amendment, but the American people do. And we have the unique opportunity to give them what they asked for on November 8.

Mr. HATCH. Mr. President, I am really impressed that all 11 new Members to the Senate have spoken for the balanced budget amendment. It shows the difference between what has gone on in the past and what is really going to go on in the future.

I hope our colleagues pay attention, because this is the wave of the future, and we have to pass this balanced budget amendment.

I yield 1 minute to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 1 minute.

Mr. BENNETT. Mr. President, I am impressed by the unanimity of this freshman class. I am reminded of one great truth around here, and that is that people who come to Washington and stay a long time sometimes—and I underline sometimes because it is not universal. I see many Members on the floor for whom it is not true—sometimes lose touch with the people back home. It is always the most dangerous political thing that can happen to a Member of the Senate, is to lose touch. My father got to the Senate because his predecessor became too important in Washington to pay attention to the people of Utah. My colleague, the senior Senator from Utah, became a Senator because the man he defeated got out of touch. He was just reelected for a fourth term, indicating that has not happened to him.

But the 11 Members who have come here now, who are the most recent people to face the voters, come unanimously in favor of the balanced budget amendment. When I return home to Utah and conduct my efforts to stay in touch, I find, again, unanimously the voice of the people are demanding that we do this. So I rise to say I think the people in this body should listen to the people of the country who are telling us overwhelmingly this is what they want, and as their representatives here it is time for us to give them what they want.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from New Hampshire.

Mr. SMITH. Mr. President, I say to my colleagues, I have only been around here 5 years. I am hardly considered a veteran. But I have never seen a more impressive display in my time in the Senate, indeed in all the years I have spent in the Congress, both the House and the Senate. This is a very personal appeal, talking about their children on behalf of the millions of other American children, and what this is going to do to them in the future. That kind of unanimity, speaking on behalf of the elections in November as you have, is something I hope my colleagues who are still on the fence will hear.

This is much bigger than any one Senator or any one Senator's views. This is the American people at stake here. This is the economic future of America. All this talk we hear about how we are going to get it done, we do not need the amendment—we are not getting it done.

This has been a crusade for me since the first day I ran for Congress and announced I was running in 1979. I am just proud to be with you, all of you, and appreciate what you have done.

If this passes it will be because of you.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATCH. Mr. President, I yield a minute to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, let me commend my colleagues, not only for their statements but for their clarity, the clarity they have brought to this argument, that they campaigned on. They did not just forget their campaign promises. They are committed to cutting down the size of Government.

We must pass the balanced budget amendment. Those who oppose this amendment will face the wrath of the people. We must force the Federal Government to live within its means. The Federal Government spends too much and taxes too much.

Today, as we vote on this amendment, it is ironic that the Denver International Airport is finally opening—more than 16 months late and $3 billion over its original budget.

This $4.9 billion boondoggle demonstrates why we need the balanced budget amendment. It demonstrates why we need less government, not more.

If you have any question about the balanced budget amendment, take a look at the Denver airport.

The FBI, SEC and the Denver district attorney are investigating allegations of fraud and public corruption involving the construction of DIA.

This airport is a monument to Government waste and mismanagement. The FAA has already poured almost $700 million of Federal dollars into this white elephant. How much more will be needed to keep this airport from crash landing?

In 1989, when Denver voters approved the construction of DIA, the politicians promised that the new airport would cost $1.7 billion and have 120 gates. The airport's price tax has now reached almost $5 billion, and the airport has only 87 gates. What happened to gates 88 to 120?

The taxpayers have a right to know why DIA's cost increased by $3 billion while the airport shrunk in size? Where did the extra $3 billion go?

The Denver airport was built on the expectation of 56 million passengers per year. But a total of only about 32 million passengers will fly in and out of Denver this year.

It is outrageous that Denver travelers will reportedly have to pay $40 extra on every round-trip ticket to support this airport.

Why was this Taj Mahal of the Rockies ever built? Why wasn't Denver's existing airport, Stapleton, simply expanded? Who is to blame for this folly?

The new Denver airport was built with almost $4 billion in municipal bonds. In the wake of the Orange County debacle, the Banking Committee is looking into the adequacy of disclosure to DIA bondholders.

Were bondholders adequately advised of DIA's projected revenues and costs? Was information about Denver's faulty

baggage system withheld? What is the long-term viability of DIA? Will DIA's bondholders be paid in full?

The airport's bonds have a junk rating. Standard & Poor's says that ''DIA faces major ongoing uncertainties that could lead to inadequate capacity to meet timely debt service payments.'' Will Denver's taxpayers have to pick up the tab if the airport defaults?

As we vote on the balanced budget amendment, we must remember the Denver airport. We must remember what happens when taxpayers' money is wasted on grandiose schemes. We must force Government to live within its means.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Utah.

Mr. HATCH. Mr. President, this has been a very good debate. I appreciate our friends and colleagues and the others who have spoken. There are a number of others who would like to speak. Frankly, I would like to yield the remainder of our time to a person who I think has fought his guts out for this amendment, who I think has shown a great deal of courage, who I know has been badgered both ways, and for whom I have the utmost respect in this matter. That is the distinguished Senator from Illinois.

Mr. SIMON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes and 45 seconds.

Mr. SIMON. Mr. President, I thank Senator HATCH, Senator CRAIG, and everyone who has played a part in this. I got on the Dirksen elevator the other day and right after me came in Senator JOHN CHAFEE and he said, ''What a horrible debt we are imposing on future generations.'' That sums it all up.

We heard precisely the same arguments in 1986. We had $2 trillion worth of debt and now we have $4.8 trillion worth of debt. This year we will spend $339 billion on interest. We will spend twice as much as what we spend on our poverty programs, 11 times as much as we spend on education, 22 times as much as we spend on foreign economic assistance. In fact, we spend twice as much money on foreign aid for the wealthy in terms of interest on bonds that are held overseas than we spend on foreign aid for the poor.

Will it be painful if we pass this? Yes. There is going to be some pain. There is going to be infinitely more pain for this Nation and a lowered standard of living if we continue to have these huge deficits. The pain we are asked to impose upon ourselves is small compared to some of the steps that, for example, Margaret Thatcher took in Great Britain to turn that country around.

If you assume no change in interest rates, and every projection is that if we pass this, interest rates are going to go lower—but if you assume no change in interest rates, and no deductions on Social Security, it means that we can grow 1.7 percent a year in income. Put another way, in the year 2002, it is anticipated we will have about $300 billion more in income than we are spending this year. We can have a gradual growth, but we will have to have restrained growth.

I have read the editorials, Mr. President, as have you, criticizing this. It is interesting that not a single editorial has mentioned economic history. Take a look at this chart right here. This is the latest CBO estimate of where we are going in deficit versus national income, GDP. Historically, as nations have come around 9 or 10 or 11 percent, right around here, they have started monetizing the debt, started the printing presses rolling, started devaluing their currency. Those who vote against this are taking the chance that we can be the first nation in history to go up to this kind of debt without monetizing the debt. But what a huge gamble with the future of our country. As responsible Members of this body we should not be making that gamble.

I have heard a lot of about Social Security on the floor of the Senate today and these past days. I want to protect Social Security. The only way you can protect Social Security is to make sure we do not devalue our currency. I think it is vital for the future of our Nation and our children and generations to come that we pass this constitutional amendment.

The PRESIDING OFFICER. The remaining time is under the control of Senator BYRD.

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

Mr. President, I note that we have the entire Republican response team on the floor here today. They are out in full numbers. I have thought heretofore, when only one or two members of the response team came to the floor, that the other seven might be compared with the Seven Sleepers of Ephesus, to whom Gibbon referred in his magnificent magisterial work, ''The Decline and Fall of the Roman Empire.'' But they are all here today. They really did not sleep as long as the Seven Sleepers, who slumbered 187 years, from the reign of Decius, who reigned from 249 to 251 A.D., until the reign of Theodosius II, who reigned from 408 to 450 A.D. Congratulations to the Republican response team. They have worked hard and acquitted themselves well.

Mr. President, it may be of historical interest to some Senators, as it is to me, that on this very day 200 years ago, the Congress was debating public debt legislation—on February 28, 1795—just as we are today, on February 28, 1995.

I will ask to include in tomorrow's RECORD, for the information of Senators, the materials pertinent to that debate, and to the statute that resulted therefrom.

Mr. President, rarely have I seen in all my years in the Senate a measure so flawed as the one before us today. If adopted, this constitutional amendment will surely create more mischief, generate more surprise consequences, and spin-off more unfortunate crises than has any other single legislative proposal in the history of this Nation. How something that seems so simple and straightforward to the casual observer can be so truly diabolical and destructive in nature confounds conventional wisdom. But a closer look reveals the impossible nature of this oft-touted but little understood amendment.

Section VI of the amendment states that ''The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.'' The amendment is immediately rendered unworkable with those 20 words in section VI. If one looks at the history of budget forecasts, it quickly becomes apparent—and no one would know this better than the distinguished Chairman of the Budget Committee, Senator DOMENICI—that forecasting budget receipts and outlays is not unlike forecasting the weather. Both are far from exact sciences, although the local weatherman probably hits the bull's eye with much more frequency than even our best budget prognosticators.

Under Section VI of this balanced budget proposal, erroneous and changing budget forecasts would have us dealing with the budget almost continually. Planned spending enacted before the fiscal year could have to be changed one or more times during the fiscal year. In a constantly fluctuating economy, where outlays and receipts alter with business cycles, as well as with unemployment, earthquakes, fires, and overseas conflicts, requiring rigid end-of-year budget balance, to be determined by estimates is nothing short of a recipe for utter chaos. As if that were not enough, the problem of inaccurate estimates is compounded by the text of Section II. Section II requires that the limit on debt held by the public not be increased absent a three-fifths vote. Since an increase in debt closely correlates with an excess of outlays over receipts, the amendment actually requires Congress to take two actions to allow for a deficit in any given fiscal year: pass a law to increase the debt limit, and pass another law for a specific deficit for the year.

To further elaborate on the ''shop of horrors'' which this amendment offers, let us discuss for a moment the principle of majority rule. This amendment would, for the first time, I believe, overturn the principle of majority rule. The budget of this Nation and critical economic decisions that relate to that budget could, at the most critical of times, be placed in the hands of a minority. Minorities are not elected to control the Nation's policies. Majorities are charged with that duty. Yet, this amendment would actually hand a minority the power to determine economic policy, and it would hand that power over during times of domestic or foreign economic crises, natural disasters, international turmoil, recessions,

or other economic emergencies. That makes no sense. It makes no sense at all.

Moreover, the amendment's wording in section II—''The limit on the debt of the United States held by the public shall not be increased. . . .,'' allows the Federal Government to keep borrowing from the trust funds, including the Social Security trust fund, because ''debt held by the public'' refers to externally-held debt, not internally-held debt. So, we can keep putting IOU's into the trust funds and borrowing to mask the true size of the deficit, without ever having to make good on our IOU's. In the case of the Social Security trust fund, when the baby boomers reach retirement age and the revenues in the trust fund drop because fewer people are working and paying into the fund and more people are drawing benefits out of the fund, how will we ever be able to replace the nearly $3 trillion which we have borrowed?

The amendment is so full of flaws, so reflective of flabby thinking, so arrogant in its disregard for the traditional checks and balances and separation of powers, that its consequences could be nothing short of a calamity.

The amendment so blurs and smudges the historical balance among the three branches that it renders our traditional constitutional structure to a mere shadow of its former clarity. Congress's traditional power of the purse is seriously hamstrung by the yearly supermajority requirements to waive the provisions of the amendment, and by the possibility of unchecked impoundments of appropriated funds by the Executive. The President's flexibility on budgetary matters is also seriously impaired because he must present a balanced budget every year whether he deems it wise or not.

The courts will either gain tremendous power over both branches and over matters of budget policy or be rendered largely impotent, depending upon how the implementing legislation, if there ever is any, is written, and depending upon the course of events. One thing is certain: uncertainty will reign.

One additional thing is certain. The ghost of John Marshall was not looking over the shoulders of the authors of this most unfortunate amendment.

There is no reason to spoil our grandest historical document with this macabre twisting of the balance of powers. We can begin to address budget deficits right now by passing legislation to further reduce the deficits, and without waiting on any constitutional amendment to provide us cover for the hard choices we were elected to make.

Political cover has its place and can be helpful in some situations, but this cover is far too costly. Destroying the Constitution is too high a price to pay for political cover.

We can cut the deficit without this amendment. But, I fear that the paramount concern of some is whether, absent this amendment, they can vote to cut deficits and be reelected. That is hardly a noble reason to proceed to rewrite our carefully preserved national charter, preserved for us with blood and protected through the statesmanship and the courage of the past membership of this and the other body through 200 years of time. It is now up to the Members of this current Senate to live up to the standard of patriotism and courage set by our predecessors on important and critical matters throughout our history. There will be no more important vote any of us will ever cast.

Before this day has passed, each of us will be tested as to strength of character and fealty to our sworn oath as Senators.

I hope, Mr. President, we will not, in this critical moment, be found wanting. The amendment will have consequences which no one can predict—no one. We have tried to explore some of those consequences throughout the 30 days of debate which have been consumed on this proposal. But it seems that the more one studies the amendment, the more flaws become apparent.

I am confident that should we go on another 30 days, additional flaws and problems would very likely be found. However, here we are at the 11 hour, witnessing desperate—desperate —last-minute efforts to salvage this amendment through a cut-and-paste process designed only to win votes and to somehow shove this extremely perilous proposal through the Senate. Have we lost all of our senses? What other flaws are we writing into the Constitution with this quick editing process which is currently going on on the Senate floor? What other checks and balances are we compromising with this insane bidding war for votes?

So here we are at the last minute, the 11 hour, the 59th minute of the 11 hour, and there is this hurried, desperate effort to find a way to garner another vote. Cut and paste. Change. We see this frenetic exercise being carried on here, all the hurry at the last moment now to try to patch over some of the flaws that have been brought to light.

Careful consideration has been thrown to the four winds, and all that seems to matter at this point now, Mr. President, is a victory for the proponents, at all costs. We are not filling in a crossword puzzle. We are not trying this word or that word out to win a prize. We are writing a constitutional amendment. John Marshall said: ''Let us not forget that it is the Constitution we are expounding.'' I add my own modest footnote by saying that it is the Constitution that we are amending. We are writing a constitutional amendment—something that will affect the representative democracy for generations of Americans through the coming ages. I regret the rather tawdry attempt at the last-minute tinkering being made to try to salvage a proposal that is so flawed that it ought to be immediately rejected by the Senate. I hope that we will come to our senses and defeat this patched-up, pulled-together ''Frankenstein'' before it is too late.

Mr. President, on March 2, 1805—that is only 2 days away from being exactly 190 years ago—Aaron Burr, after he had presided over the impeachment trial of Samuel Chase and before leaving the Senate Chamber for the last time, spoke to the Members of that body over which he had presided for 4 years. The speech was one which left many of the Senators of that ancient day in tears. As we come to a close of this debate very soon, his closing words should ring in the ears of today's men and women who serve in this body. Aaron Burr said, with regard to the U.S. Senate: ''This House is a sanctuary—a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge—here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.''

Mr. President, the decision which the Senate will make before this day's sun has set can very well turn out to be the prophetic end of Burr's words. I have cast 13,744 votes in this Senate since I came to the Senate, now going on 37 years ago. This does not include the more than 400 votes that I cast in the other body before I came to the Senate. But barring none, this is the most important vote of my political career on Capitol Hill. It is important, because we are tampering with the Constitution of the United States, an immortal document that has served us well over a period of 206 years. And we are reaching a critical point in the history of this country and in the history of the Constitution when we face the awful prospect of an amendment, which has been rushed through the other body in 2 day's time, and which has the support all over this country of the overwhelming majority of the American people—because they have not been duly informed of its contents and of the ramifications that will flow from its adoption and ratification. It is said that there is only one vote that stands between the Senate and the Constitution and that awful end which Burr prognosticated which would be witnessed on this floor. ''If the Constitution be destined ever to be destroyed by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.''

Mr. President, I pray to God that Senators will rise to the occasion—I have seen this Senate demonstrate courage and character before, and I hope it will do so today—and that Senators will cast their vote to protect for their children and their children's children throughout all the ages to come,

this unique Constitution that was written by those illustrious men, like Hamilton and Madison and the other Framers who sat in Philadelphia in 1797, lacking only 2 years, Mr. President, of being 210 years ago.

Mr. President, I close with the urgent plea that we remember Marshall's admonition. Let us not forget that it is a Constitution that we are expounding and let us not forget also, Mr. President, that it is a Constitution that we are amending.

God save the United States of America! God save the Constitution of the United States! May this Senate rise to do its duty in order that our children may have cause to honor the memories of their fathers as we have cause to honor the memory of ours.

The PRESIDING OFFICER. The time has expired.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I ask unanimous consent to proceed for just 30 seconds.

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

Mr. SARBANES. Mr. President, I know time has expired. I asked for 30 seconds to express my very profound gratitude to the distinguished Senator from West Virginia for his powerful statement on behalf of the Constitution.

I know of no Member of the Congress who has a deeper, more enduring dedication to the Constitution than does the Senator from West Virginia. I take his wise and moving words to heart. I am privileged to serve with him. I want to thank him for standing resolutely on this floor day in and day out and eloquently championing the basic, fundamental document of our Republic—the Constitution—which has served us so well for 206 years.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to proceed for 30 seconds.

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

Mr. DODD. Mr. President, I just want to join my colleague from Maryland in commending our beloved colleague from West Virginia.

However the Senate decides this afternoon, I can speak with a great deal of certainty that the children, grandchildren, great grandchildren, and great-great-grandchildren of the distinguished Senator from West Virginia will indeed be proud of how he has stood for his country and has stood for the Constitution. I am deeply proud to stand with him.

I have cast no vote in the past 20 years that will be as important as the one I cast this afternoon. I am proud to cast my vote along with that of the Senator from Maryland and the Senator from West Virginia in defending our Constitution from this assault.

Mr. BYRD. Mr. President, I ask unanimous consent for 30 seconds.

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

Mr. BYRD. I wish to express my thanks to the Senator from Maryland and the Senator from Connecticut for their constant and vigilant defense of our Constitution of the United States against this assault that is being made on the Constitution.

I thank them for their vigor, for their constant diligence, and for their spirit of defense of a great Government.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SANTORUM).

The PRESIDING OFFICER. The Senate will now come to order.

Mr. DOLE. Mr. President, let me indicate to my colleagues the first vote will be a 20-minute vote. All subsequent votes will be 10 minutes.

It is my hope that it will not take 10 minutes on each vote. I urge my colleagues on both sides to stay on the floor. There will be 17, 18, 19, or 20 votes, and we can complete action on the votes, hopefully by 5 o'clock, if we all stay right here. There will not be time to go anywhere else. I urge my colleagues to stay on the floor.

VOTE ON MOTION TO TABLE AMENDMENT NO. 274

The PRESIDING OFFICER (Mr. THOMPSON). Under the previous order, the vote now occurs on the motion to table amendment No. 274 offered by the Senator from California [Mrs. FEINSTEIN].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KERRY] is necessarily absent.

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

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 80 Leg.]

YEAS—60

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

NAYS—39

Akaka	Dorgan	Lautenberg
Baucus	Feingold	Leahy
Biden	Feinstein	Levin
Bingaman	Ford	Lieberman
Boxer	Glenn	McCain
Bradley	Graham	Mikulski
Breaux	Harkin	Moynihan
Bryan	Heflin	Nunn
Bumpers	Hollings	Pell
Byrd	Inouye	Pryor
Conrad	Johnston	Reid
Daschle	Kennedy	Sarbanes
Dodd	Kohl	Wellstone

NOT VOTING—1

Kerry

So the motion to lay on the table the amendment (No. 274) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 291

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 291, offered by the Senator from Wisconsin [Mr. FEINGOLD].

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KERRY] is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—99

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Bradley	Grassley	Nickles
Breaux	Gregg	Nunn
Brown	Harkin	Packwood
Bryan	Hatch	Pell
Bumpers	Hatfield	Pressler
Burns	Heflin	Pryor
Byrd	Helms	Reid
Campbell	Hollings	Robb
Chafee	Hutchison	Rockefeller
Coats	Inhofe	Roth
Cochran	Inouye	Santorum
Cohen	Jeffords	Sarbanes
Conrad	Johnston	Shelby
Coverdell	Kassebaum	Simon
Craig	Kempthorne	Simpson
D'Amato	Kennedy	Smith
Daschle	Kerrey	Snowe
DeWine	Kohl	Specter
Dodd	Kyl	Stevens
Dole	Lautenberg	Thomas
Domenici	Leahy	Thompson
Dorgan	Levin	Thurmond
Exon	Lieberman	Warner
Faircloth	Lott	Wellstone

NOT VOTING—1

Kerry

So the motion to lay on the table the amendment (No. 291) was agreed to.

VOTE ON THE MOTION TO TABLE AMENDMENT NO. 259

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to lay on the table the amendment numbered 259 offered by the Senator from Florida [Mr. GRAHAM]. On this question, the yeas

and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KERRY] is necessarily absent.

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

The result was announced—yeas 59, nays 40, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—59

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

NAYS—40

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

NOT VOTING—1

Kerry

So, the motion to lay on the table was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 298

The PRESIDING OFFICER (Mr. ABRAHAM). Under the previous order, the question is on a motion to table amendment No. 298, offered by the Senator from Florida [Mr. GRAHAM].

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 83 Leg.]

YEAS—57

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

NAYS—43

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

So the motion to lay on the table the amendment (No. 298) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 267

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment numbered 267 offered by the Senator from Massachusetts [Mr. KENNEDY].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 84 Leg.]

YEAS—62

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

NAYS—38

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

So the motion to lay on the table the amendment (No. 267) was agreed to.

VOTE ON MOTION TO TABLE MOTION TO REFER

The PRESIDING OFFICER. Under the previous order, the question now occurs on agreeing to the motion to lay on the table the motion to refer House Joint Resolution 1, offered by the Senator from Arkansas [Mr. BUMPERS].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 85 Leg.]

YEAS—63

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

NAYS—37

Akaka	Feingold	Leahy
Biden	Feinstein	Levin
Bingaman	Ford	Lieberman
Bradley	Glenn	Mikulski
Breaux	Harkin	Moynihan
Bryan	Hollings	Murray
Bumpers	Inouye	Pell
Byrd	Johnston	Pryor
Conrad	Kennedy	Robb
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Kohl	
Exon	Lautenberg	

So the motion to lay on the table the motion to refer House Joint Resolution 1 was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Let me caution all Members to stay on the floor. From now on the vote will end in 10 minutes regardless. Members have been cautioned to be on the floor. We would like to complete action. We have lost about 10 or 15 minutes waiting throughout the afternoon. That will not happen again. Ten minutes, that is it.

VOTE ON MOTION TO TABLE AMENDMENT NO. 299

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 299, offered by the Senator from Georgia [Mr. NUNN].

The yeas and nays have been ordered and the clerk will call the roll.

The result was announced—yeas 61, nays 39, as follows:

[Rollcall Vote No. 86 Leg.]

YEAS—61

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

NAYS—39

Akaka	Bingaman	Bradley
Biden	Boxer	Breaux

Bryan	Graham	Levin
Bumpers	Harkin	Lieberman
Byrd	Hollings	Mikulski
Conrad	Inouye	Moynihan
Daschle	Johnston	Murray
Dodd	Kennedy	Nunn
Dorgan	Kerrey	Pell
Exon	Kerry	Pryor
Feingold	Kohl	Rockefeller
Feinstein	Lautenberg	Sarbanes
Ford	Leahy	Wellstone

So the motion to lay on the table the amendment (No. 299) was agreed to.

Mr. HATCH. Mr. President, I ask for the yeas and nays on the Nunn amendment.

The PRESIDING OFFICER. Is there a sufficient?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT NO. 300, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 300, as modified, offered by the Senator from Georgia [Mr. NUNN].

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 92, nays 8, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—92

Abraham	Faircloth	Lugar
Akaka	Feinstein	Mack
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Glenn	Murkowski
Biden	Gorton	Murray
Bingaman	Graham	Nickles
Bond	Grams	Nunn
Boxer	Grassley	Packwood
Bradley	Gregg	Pell
Breaux	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heflin	Reid
Burns	Helms	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Coats	Inouye	Sarbanes
Cochran	Jeffords	Shelby
Cohen	Johnston	Simon
Conrad	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Dole	Lautenberg	Thurmond
Domenici	Levin	Warner
Dorgan	Lieberman	Wellstone
Exon	Lott	

NAYS—8

Brown	Harkin	Moseley-Braun
Feingold	Leahy	Moynihan
Gramm	McCain	

So the amendment (No. 300), as modified, was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 273

The PRESIDING OFFICER. Under the previous order, the question is on the motion to table amendment No. 273 offered by the Senator from Michigan [Mr. LEVIN].

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. FRIST). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 88 Leg.]

YEAS—62

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

NAYS—38

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

So the motion to table the amendment (No. 273) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 310

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 310, offered by the Senator from Michigan [Mr. LEVIN].

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 89 Leg.]

YEAS—57

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

NAYS—43

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

So the motion to lay on the table the amendment (No. 310) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 311

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table the amendment No. 311 offered by the Senator from Michigan [Mr. LEVIN].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 90 Leg.]

YEAS—100

Abraham	Feinstein	Mack
Akaka	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Glenn	Mikulski
Bennett	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Packwood
Brown	Hatch	Pell
Bryan	Hatfield	Pressler
Bumpers	Heflin	Pryor
Burns	Helms	Reid
Byrd	Hollings	Robb
Campbell	Hutchison	Rockefeller
Chafee	Inhofe	Roth
Coats	Inouye	Santorum
Cochran	Jeffords	Sarbanes
Cohen	Johnston	Shelby
Conrad	Kassebaum	Simon
Coverdell	Kempthorne	Simpson
Craig	Kennedy	Smith
D'Amato	Kerrey	Snowe
Daschle	Kerry	Specter
DeWine	Kohl	Stevens
Dodd	Kyl	Thomas
Dole	Lautenberg	Thompson
Domenici	Leahy	Thurmond
Dorgan	Levin	Warner
Exon	Lieberman	Wellstone
Faircloth	Lott	
Feingold	Lugar	

So the motion to lay on the table the amendment (No. 311) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 307

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 307, offered by the Senator from Arkansas [Mr. PRYOR].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 91 Leg.]

YEAS—63

Abraham	Cohen	Gorton
Ashcroft	Coverdell	Graham
Bennett	Craig	Gramm
Bingaman	D'Amato	Grams
Bond	DeWine	Grassley
Brown	Dole	Gregg
Burns	Domenici	Hatch
Campbell	Exon	Hatfield
Chafee	Faircloth	Heflin
Coats	Feinstein	Helms
Cochran	Frist	Hollings

Hutchison	McConnell	Simon
Inhofe	Murkowski	Simpson
Jeffords	Nickles	Smith
Kassebaum	Nunn	Snowe
Kempthorne	Packwood	Specter
Kyl	Pressler	Stevens
Lott	Reid	Thomas
Lugar	Roth	Thompson
Mack	Santorum	Thurmond
McCain	Shelby	Warner

NAYS—37

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

So the motion to lay on the table the amendment (No. 307) was agreed to.

VOTE ON THE MOTION TO TABLE AMENDMENT NO. 252

The PRESIDING OFFICER. Under the previous order, the question occurs on the motion to lay on the table amendment No. 252 offered by the Senator from West Virginia [Mr. BYRD].

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 69, nays 31, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—69

Abraham	Faircloth	Mack
Ashcroft	Feinstein	McCain
Baucus	Frist	McConnell
Bennett	Gorton	Moseley-Braun
Biden	Graham	Murkowski
Bingaman	Gramm	Nickles
Bond	Grams	Nunn
Brown	Grassley	Pressler
Bryan	Gregg	Reid
Burns	Hatch	Robb
Campbell	Hatfield	Roth
Chafee	Heflin	Santorum
Coats	Helms	Shelby
Cochran	Hollings	Simon
Cohen	Hutchison	Simpson
Conrad	Inhofe	Smith
Coverdell	Jeffords	Snowe
Craig	Kassebaum	Specter
D'Amato	Kempthorne	Stevens
DeWine	Kohl	Thomas
Dole	Kyl	Thompson
Domenici	Lott	Thurmond
Exon	Lugar	Warner

NAYS—31

Akaka	Glenn	Mikulski
Boxer	Harkin	Moynihan
Bradley	Inouye	Murray
Breaux	Johnston	Packwood
Bumpers	Kennedy	Pell
Byrd	Kerrey	Pryor
Daschle	Kerry	Rockefeller
Dodd	Lautenberg	Sarbanes
Dorgan	Leahy	Wellstone
Feingold	Levin	
Ford	Lieberman	

So the motion to lay on the table was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 254

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 254, offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 68, nays 32, as follows:

[Rollcall Vote No. 93 Leg.]

YEAS—68

Abraham	Feinstein	McConnell
Ashcroft	Frist	Moseley-Braun
Baucus	Gorton	Murkowski
Bennett	Gramm	Nickles
Bingaman	Grams	Nunn
Bond	Grassley	Packwood
Brown	Gregg	Pressler
Bryan	Harkin	Reid
Burns	Hatch	Robb
Campbell	Hatfield	Roth
Chafee	Heflin	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simon
Cohen	Inhofe	Simpson
Conrad	Jeffords	Smith
Coverdell	Kassebaum	Snowe
Craig	Kempthorne	Specter
D'Amato	Kohl	Stevens
DeWine	Kyl	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Thurmond
Exon	Mack	Warner
Faircloth	McCain	

NAYS—32

Akaka	Ford	Levin
Biden	Glenn	Lieberman
Boxer	Graham	Mikulski
Bradley	Hollings	Moynihan
Breaux	Inouye	Murray
Bumpers	Johnston	Pell
Byrd	Kennedy	Pryor
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Lautenberg	Wellstone
Feingold	Leahy	

So the motion to lay on the table the amendment (No. 254) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 255

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 255, offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 94 Leg.]

YEAS—62

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

NAYS—38

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

So the motion to lay on the table the amendment (No. 255) was agreed to.

MOTION TO TABLE AMENDMENT NO. 253

The PRESIDING OFFICER. Under the previous order the question now occurs on the motion to table amendment No. 253 offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 95 Leg.]

YEAS—63

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

NAYS—37

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

So the motion to lay on the table the amendment (No. 253) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 258

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 258 offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 75, nays 25, as follows:

[Rollcall Vote No. 96 Leg.]

YEAS—75

Abraham	Baucus	Biden
Ashcroft	Bennett	Bingaman

Bond	Graham	Moseley-Braun
Bradley	Gramm	Murkowski
Brown	Grams	Murray
Bryan	Grassley	Nickles
Burns	Gregg	Nunn
Campbell	Harkin	Packwood
Chafee	Hatch	Pressler
Coats	Hatfield	Reid
Cochran	Heflin	Robb
Cohen	Helms	Roth
Coverdell	Hollings	Santorum
Craig	Hutchison	Shelby
D'Amato	Inhofe	Simon
DeWine	Jeffords	Simpson
Dole	Kassebaum	Smith
Domenici	Kempthorne	Snowe
Dorgan	Kohl	Specter
Exon	Kyl	Stevens
Faircloth	Lott	Thomas
Feingold	Lugar	Thompson
Feinstein	Mack	Thurmond
Frist	McCain	Warner
Gorton	McConnell	Wellstone

NAYS—25

Akaka	Glenn	Lieberman
Boxer	Inouye	Mikulski
Breaux	Johnston	Moynihan
Bumpers	Kennedy	Pell
Byrd	Kerrey	Pryor
Conrad	Kerry	Rockefeller
Daschle	Lautenberg	Sarbanes
Dodd	Leahy	
Ford	Levin	

So the motion to table the amendment (No. 258) was agreed to.

VOTE ON MOTION TO TABLE THE MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table the motion to commit House Joint Resolution 1, offered by the Senator from Massachusetts [Mr. KERRY].

The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 97 Leg.]

YEAS—63

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

NAYS—37

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

So the motion to lay on the table the motion to commit was agreed to.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

MOTIONS WITHDRAWN

Mr. MACK. Mr. President, I ask unanimous consent that motions offered by Senator DOLE be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The motions were withdrawn.

MOTION TO RECONSIDER VOTES EN BLOC

Mr. MACK. I ask unanimous consent that I may move to reconsider and table all previous votes en bloc at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MACK. I move to reconsider and table en bloc the previous rollcall votes.

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized for 15 minutes.

The Senator from West Virginia.

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

Mr. President, I first would like to commend the proponents of the constitutional amendment for their spirited defense of this balanced budget amendment, misnamed though it is. I cannot commend them, however, on the content of their proposal. I believe that the proposal is inherently flawed, wrong-headed and worth absolutely nothing in terms of real deficit reduction. But I do believe that the debate has been enlightening, and I also believe that an adequate amount of time has been accorded to a thorough discussion of the amendment. So I thank Senator HATCH and Senator DOLE and all of the proponents for the time that we have deliberated. And I thank them for their spirited defense of the amendment.

I also commend Senator SIMON. He obviously believes so wholeheartedly in this proposal that one must admire his constancy.

There have been many profiles in courage, Mr. President, and they will very soon make themselves manifest. But the profiles in courage displayed by Senator MARK HATFIELD and Senator TOM DASCHLE must not pass unnoticed—must not pass unnoticed—as we near the end of this long debate. Both of these Senators, and others who likewise will have displayed great courage in voting against this amendment, have lived up to the highest standards imagined by the Framers when they devised the marvelous institution of the Senate and envisioned Senators as men who would be able to withstand pressure, lift themselves above the political fray, and, according to their consciences, do the right and the honorable thing, regardless of political cover.

Mr. President, I ask for attention in this Senate, and I do not want the time to be charged against me.

The PRESIDING OFFICER. The Senate will be in order. The time will not be charged against the Senator from West Virginia. He will suspend while the Senate comes to order.

I ask that all Senators and staff please take the conversations off the floor.

The Senator from West Virginia.

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

Mr. President, I have spent most of my adult life in service to my country. No small part of that time has been engaged in trying to protect the Framers' views of the powers of the legislative branch, and particularly in attempting to thwart attacks on the powers of the U.S. Senate. I am so thoroughly in awe of the genius of the Framers, their foresight, their judgment, their tempered wisdom, that I would make any political sacrifice to protect the Constitution from permanent harm.

But we have entered an age, Mr. President, when reverence for our Constitution and for the wisdom of history have rather gone out of fashion. Talk shows, public opinion polls, bumper sticker slogans, and a so-called political Contract With America are the order of the day. There is little patience with going against the tide, and one man's courage may be judged as nothing more than foolhardy if that courage jeopardizes his chances for reelection.

Yet, I remain a believer in the old values. I believe that a solemn oath binds one. I believe that courage is eventually rewarded and has its own reward in any event. And I believe that preserving the constitutional system intact for future generations, insofar as the constitutional system itself is concerned, is the most solemn and important thing that a Member of this body can ever do.

There are those who would scoff at these old-fashioned views. There are those who would put efficiency, expediency and political agenda before any considerations of courage, fealty to an oath, loyalty to a higher purpose, or the preservation of the genius of a 200-year-old charter.

''Change'' is the watchword of the day—change, merely for the sake of change, is suddenly a virtue above all others, a goal to be achieved at all costs. But I will never, never, never bow to those messengers of expediency or to the managers of any political party's agenda when basic principles are at stake.

The hurricanes may blow, the tides may rise, but there still remain those of us who will never, never bend, because we believe it is our sworn duty not to yield to attacks on our constitutional system of mixed powers and checks and balances.

So whatever the final outcome of this vote, I will retire to my bed tonight satisfied that I have done all that one man can do to live up to the oath that I have taken over and over again to

protect the written framework of our representative democracy.

If the amendment should pass, I shall fervently hope that the States will have the wisdom that the Senate could not find to reject this dangerous and unwise proposal. If the amendment should fail, I shall be enormously proud of this body to which I have devoted so much of my life. And, most particularly, I will be proud of those Senators who set their sails against the wind and who chose the harder course in order that our venerable Constitution might be saved for yet a little while longer.

Our cherished liberties were not easily won, and they are not easily maintained. The preservation of our hard-won freedoms always has a price. But we who serve here are charged with the awesome duty of preserving those freedoms for generations yet unborn. The bruising battle that we have just been through demonstrates, once again, that we who have the honor of calling ourselves United States Senators must be ever vigilant to guard what has been bequeathed to us by wise men—men of vision, men of courage, men of character.

The political seas may churn and boil, but our solemn duty as Senators must always be to drown out the noise and keep faith with our own inner voices. The Senate, from time to time, is the very last bulwark against the too-hot passions that rail in this land. However various Senators may vote today, it is my hope that each of us will take away from this debate some lessons learned and wisdom gained. As in no other institution of this great and marvelous democracy—in the Senate, one individual can make a difference. Service here is difficult and it is demanding. It requires the very best of one's nature and the most assiduous cultivation of one's character. When the battle is over and the roar of the debate has subsided, whether one's side has won or lost is not the final thing. In the final analysis, service here boils down to one quality. Horace Greeley expressed it best when he said:

> Fame is a vapor, popularity an accident; riches take wings, and those who cheer today may curse tomorrow—only one thing endures; character!

Mr. President, to all those who have stood straight and tall in the fight I salute them with the words ''morituri te salutamus.'' And may they, like I, feel as did the Apostle Paul in writing his second Epistle to Timothy, when he said: ''I have fought a good fight, I have finished my course, I have kept the faith.''

Mr. President, I ask unanimous consent that a series of pertinent commentaries from the press be printed in the RECORD.

There being no objection, the commentaries were ordered to be printed in the RECORD as follows:

[From the Washington Post, Feb. 28, 1995]

THE URGENCY OF POLITICAL COURAGE

It is hard to decide which would be worse: if the balanced budget amendment that the Senate is voting on today functioned as its sponsors intend, thereby locking the country into what would often be an ill-advised economic policy; or if Congress found a way to duck the command, thereby trivializing the Constitution and creating a permanent monument to political timidity

Take the second possibility. The Constitution of the United States is remarkable because no country in the world has taken its written Constitution so seriously. It is a concise Constitution, and it has not been amended lightly. Other countries have acted as if their constitutions were merely pieces of legislation to be changed at will, but not the United States.

The balanced budget amendment marks the intrusion of the worst kind of legislative politics onto our constitutional tradition. For about a decade and a half, for mostly political reasons, Congress has not found the fortitude to come even close to balancing the budget. Instead of doing what it should and voting the spending cuts and taxes to narrow the deficit, Congress wants to dodge the hard choices by changing the Constitution. But as Sen. Daniel P. Moynihan argued on ''Meet the Press'' this Sunday: ''My proposition is that you avoid trying to pretend a machine will do this for you. . . . You have to do it yourself.'' With or without the amendment, only Congress will get the budget balanced. And who is to say that the amendment, which becomes effective only in 2002, won't delay Congress from making the hard decisions until it is against the wall of its mandate, give it yet another excuse? ''Gosh, we passed the balanced budget amendment,'' the unfailingly inventive members will be inclined to say, ''and it goes into effect in just a few years. Isn't that enough? What do you want us to do? Balance the budget?''

Sen. Sam Nunn, whose vote could prove decisive, has argued forcefully that this amendment could lead to the judiciary's making decisions on spending cuts and tax increases that ought only be made by the legislative branch. Last night, Sen. Byron Dorgan, another whose vote had been in doubt, voiced a similar reservation. Supporters of the amendment are now trying to win their votes by arguing that legislation could be passed to protect against judicial supremacy. But surely Mr. Nunn's first instinct was right: No legislation can supersede the Constitution. If the amendment itself does not protect against judicial interference, there is no guarantee as to how a court will act. And if, on the other hand, there is no enforcement mechanism for the amendment, then why pass it in the first place? It becomes an utterly empty symbol, which is exactly what the United States Constitution has never been and never should be.

As bad as this prospect is, an effective balanced budget amendment might be even worse. By requiring three-fifths votes to pass unbalanced budgets, it would enshrine minority rule. And while deficits in periods of prosperity make little sense, modest deficits during economic downturns have been powerful engines for bringing the economy back to prosperity. This amendment, if it worked as planned, would shackle government to economic policies that are plainly foolish. Since government revenues drop during recessions and since payments for benefits such as food stamps and unemployment compensation increase, the amendment would require Congress by constitutional mandate to pursue exactly the policies that would only further economic distress: to raise taxes, to cut spending, or do both.

Moreover, as Mr. Moynihan and others have pointed out, the amendment could one day lead to the devastation of the banking system. This might happen because a balanced budget amendment could stall or stop the government from meeting its obligations to protect the depositors of banks that failed during an economic downturn. Mr. Moynihan is not exaggerating when he says that ''everything we have learned about managing our economy since the Great Depression is at risk.''

Voting against this amendment should be easy. It has been said that were today's vote secret, the amendment would certainly fail. But the political pressures on the undecided senators—Mr. Nunn, Mr. Dorgan, John Breaux, Kent Conrad and Wendell Ford—are immense and largely in the amendment's favor. These senators have an opportunity only rarely given public figures: to display genuine courage on an issue of enormous historical significance. They should seize their moment and vote this amendment down.

[From the New York Times, Feb. 28, 1995]

WHY FEAR DEBT?

(By Robert Heilbroner)

It is doubtful that the balanced-budget amendment, which the Senate votes on today, would be effective, even if ratified. The reason is there are many ways of placing expenditures outside the budget—Social Security, for example. What is not doubtful is that the real cause for worry is a balanced, not an unbalanced, budget.

Here's why: Deficit spending is legitimate when it is used to protect the future well-being of the nation.

Though one hears much about ''living beyond our means,'' very few people can concisely define deficit spending. In fact, it means one and only one thing: borrowing. A deficit refers to the amount the government has borrowed. If there is no borrowing, there cannot be a deficit. That introduces a ray of light into the darkness for it makes us ask whether there might be circumstances in which the Government ought to borrow.

Suppose a law enjoined households from any borrowing. That would cut down gambling losses, but it would also prevent families from buying houses by taking out mortgages. Similarly, a prohibition on all business borrowing might eliminate a few extravagances, but it would cripple private investment. In the same way, a blanket injunction against Federal borrowing might cause the Government to eliminate waste, but it also would make much public investment impossible.

That would mean goodbye to such improvements as bridges, tunnels, highways, public-health research centers and other undertakings that would normally be considered public-sector business but could not be financed by taxation, because, as is the case with mortgages and business capital expenditures, the outlay is too large to be charged against one year's income.

What about the Federal debt?

We hear pious declarations about the need to remove the burden of our profligacy from the shoulders of our innocent children. I often wonder how my own children would feel if they opened my safe deposit box at my death to find it stuffed with Government debt—bonds. Would my heirs feel I had burdened them unfairly, as they transferred the bonds to their own safe deposit boxes?

In a word, whatever its problems—and a debt, like all borrowing, always poses financial management considerations—a national debt also serves a vital purpose. It provides the only asset in which households, insurance companies, corporations, banks and,

not least, pension funds, including Social Security, can invest whatever assets need to be placed in the least risky of all financial instruments.

Do not forget, there is no income-producing investment other than Government securities that enjoys the power of the Government to assure that it will be redeemed at full face value.

Obviously, these arguments are not an excuse for Government profligacy any more than the legitimacy of consumer or corporate debt is an excuse for mindless private borrowing. But these arguments do suggest that the Government needs to depict its borrowing in a more understandable way. Specifically, it should have what it does not now have: a formal capital budget in which its expenditures for investment are identified. Such an accounting method would reassure the anxious public that at least an identifiable part of the ''deficit'' represents borrowing for purposes that most would approve.

Since there is no such accounting system, all public borrowing is deemed to be the work of the devil—when, properly understood, it may be crucial to the future strength and vitality of the nation.

[From Business Week March 6, 1995]

THE WRONG WAY TO BALANCE THE BUDGET

(By Christopher Farrell)

In the early days of the American republic, financial panics often led to steep declines in economic activity. Yet the last time a financial crisis triggered an economic collapse was the Great Depression. In the half-century following World War II, financial blowups have had minimal impact, and the economy has enjoyed a relatively smooth ride.

Now, Congress confronts the possibility of returning us to the chaotic days of yore. In the coming weeks, after years of debate, the Senate will decide whether to require the federal government to balance its budget. Many GOP lawmakers back the amendment. They shouldn't. The Balanced Budget Amendment would strip away much of the government spending that cushions the economy in hard times—just when disinflation and the prospect of deflation are raising the odds of financial crises.

The U.S. economy is a remarkably stable system, in large part because of the government's expansive safety net. Federal deposit insurance, for example, prevented the collapse of the savings-and-loan industry in the late 1980s from turning into a depression of the 1990s. A market collapse in Mexico sparks jitters in the U.S. but not much more.

Needed Net. Impose the Balanced Budget Amendment, however, and the system breaks down. Today, as soon as the economy begins to slump, government tax collections fall, and government transfer payments, such as food stamps, increase. The result is higher deficit spending during recessions—but these automatic stabilizers also put more money into the hands of Americans precisely when they most need it.

A Balanced Budget Amendment, by contrast, would require an explicit vote of Congress to run a larger deficit to counteract an economic slow-down. Given the current climate against deficits, politicians may be reluctant to approve large-scale deficit spending until a recession is well under way. The result? Bigger swings in the economy and a far more volatile financial system.

This at a time when changing economic conditions are creating a world where stability will be particularly in demand. For years, the powerful interaction of inflation hawks at the Federal Reserve Board, bond-market vigilantes, and the new world economic order have been exerting a firm downward pressure on prices. As a result, ''we are a lot closer to the edge of deflation than we have been in some time,'' says Edward E. Yardeni, chief economist at C.J. Lawrence Inc.

The Fed, for one, is pursuing an austere monetary policy toward its goal of wringing inflation out of the economy. By almost any measure, the U.S. money supply is growing at an anemic rate—hardly fertile ground for price increases. Similarly, bond-market investors send interest rates sharply higher on any hint of inflation news. ''The bond market will not whatever is necessary to make sure inflation won't take off,'' says Charles I. Clough Jr., chief investment strategist at Merrill Lynch & Co.

Meanwhile, with the collapse of communism and the embrace of freer markets by much of the developing world, the supply of goods, services, capital, and labor is soaring. White-hot domestic and international competition helps explain why last year's inflation rate in the U.S., measured by hourly compensation, was the lowest since 1949—easily offsetting price increases of many commodities and crude-materials prices. Disinflation is here to stay.

Vicious Cycle. So what? In a world of low inflation, the risk from unexpected financial crises soars. A stock market crash, a bank failure, or a drop in the dollar's value could send asset prices plunging. Suddenly, interest payments become onerous. Credit contracts. This is the sort of vicious cycle that was common in the pre-World War II era—and that deficit spending later eased. ''The stability of our economy is drastically diminished when the federal government is powerless to intervene to prevent a disastrous debt deflation,'' says Hyman P. Minsky, an economist at the Jerome Levy Economics Institute at Bard College.

The Balanced Budget Amendment wouldn't leave us completely defenseless. The Fed always can open the money spigots to offset the immediate impact of a financial panic, much as it did following the stock market crash of 1987. But monetary policy is a tool best used to control inflation, not to counteract the cyclical ebbs and flows of the economy and financial markets. Getting the government's finances in order makes sense. But the Balanced Budget Amendment is a dangerous step back into the 19th century.

[From the Baltimore Sun, Feb. 28, 1995]

RISKY CONSTITUTIONAL AMENDMENT

''The last thing we want to do is turn over taxing and spending to the federal courts,'' Sen. Sam Nunn told Ross Perot Sunday night, in explaining why he wants to amend the Balanced Budget Amendment to forbid courts to get involved in any ''case or controversy'' arising out of Congress' failure to balance the budget. ''I don't think we want to vest [judges] with spending and tax decisions. I think that would stand the Constitution on its head. I think the taxpayers of this country would be in revolt the first time a federal judge came down and said, 'You're mandated to increase taxes by $50 billion.' ''

You bet taxpayers would be in revolt. But what could they do?

Nothing without Senator Nunn's modification, which will be voted on today before the vote on the Balanced Budget Amendment itself (and maybe nothing with it). Senator Nunn fails and then the main amendment passes and ultimately becomes part of the Constitution, judges would soon be rewriting the budget, based on lawsuits demanding that this tax be raised and that one lowered, etc. And citizens whose benefits were cut would also be in court, arguing that welfare should go down but not agricultural price supports, etc.

That is what is really at stake if the Balanced Budget Amendment as now written becomes the law of the land.

Sen. Orrin Hatch, leading the effort for the amendment, says Senator Nunn's concerns can be met with legislation. We dispute that, and so do most legal scholars—from Robert Bork on the right to Laurence Tribe on the left. The result would likely be hundreds, if not thousands of lawsuits around the country,'' Judge Bork has written. And Professor Tribe says, ''Someone who has been cut off from a program, a taxpayer—these people will be able to go to court. No question about it.''

This nation has never constitutionalized its taxing and spending process, so saying with complete confidence what judges would do is in a sense speculation. But there is a record worth noting. In states which have balanced budget requirements in their constitutions, judges have taken over the legislative and executive function regarding spending and taxing a result of lawsuits. That has happened in recent years in New York, Georgia, Wisconsin, California and Louisiana.

We have made it clear that we oppose the Balanced Budget Amendment for many reasons, including the prospect of judges taking over the budgeting process. So even if the Nunn amendment is added, we would oppose it. And Senator Nunn and others who dread judicial control of taxing and spending better be careful. Even seemingly clear language in an amendment doesn't guarantee hands off. There's always a risk.

As Sen. Howell Heflin, a former chief justice of the Alabama Supreme Court recently put it, ''Every constitutional amendment that has ever been adopted has had to be interpreted, has had the court to have to look at it and make some kind of interpretation.''

[From the Washington Post, Feb. 28, 1995]

HOW STATES HANDLE DEBT MAY NOT WORK FOR NATION—STAYING IN BALANCE REQUIRES SOME JUGGLING

(By Dan Morgan)

If the Senate approves today a constitutional amendment requiring a balanced federal budget, 48 states will say, ''Welcome to the club.''

Only Vermont and Wyoming do not have some kind of similar statutory or constitutional requirement, and state officials have been among the loudest critics of the federal debt spree.

But studies of how these requirements work in practice show that states can find their ways around them when necessary. And some experts question whether the states are a good model for the federal government to be copying, given their vastly different responsibilities and fiscal systems.

''It is naive to believe that since states balance their budgets, the federal government should be able to do so as well,'' said Steven D. Gold, director of the Center for the Study of the States, who testified before the House Budget Committee in 1992. ''States do not always balance their budgets. Many states avoid deficits only by using funds carried from previous years, or by relying on gimmicks that often represent unsound policy.''

A 1993 study by the General Accounting Office for Congress, found that 10 states had carried over end-of-year deficits or borrowed money to finance such deficits in the previous three years. ''Furthermore,'' the report noted, ''some states reported balanced budgets at year end at least in part through one-time budget strategies,'' such as dipping into cash reserves, delaying payments to suppliers or using their accounting tricks.

States balance their budgets most of the time. But they have also been known to sell

assets, temporarily reduce pension contributions and accelerate tax collection in order to stay within the letter of budget law.

Despite a requirement that the governor submit a balanced budget to the legislature, California has had at least four deficits since 1983, and its fiscal predicament ''clearly shows that a balanced budget provision is no panacea—in fact, at present it seems almost an irrelevancy,'' Gold told the Budget Committee. Since then, California's financial plight has worsened.

States with large, persistent operating deficits, including Louisiana, New York, and Connecticut, have issued bonds to finance the shortfall, a device that is permitted under some state balanced budget requirements.

Most of the 35 constitutional and 13 statutory balanced budget requirements on the books of the states apply only to state general funds—the operating budgets that pay for basic, day-to-day governmental services out of revenues from taxes, fees and sometimes lottery proceeds.

Outside of this, however, states borrow heavily to finance longer-term needs for buildings, roads, education and other infrastructure. They also maintain numerous ''off budget'' public authorities (for ports, highways, pensions and mineral extraction, for example) that issue bonds and incur debts.

Some experts say that longstanding political tradition, and fear of a downgraded credit rating, exert at least as much pressure on governors to run tight fiscal ships as the balanced budget requirements.

Because of these pressures, governors often take harsh austerity measures that would face far more resistance in Washington. During the 1991 recession, 23 states did not give workers salary increases; 17 states cut welfare benefits and many cut funding for higher education. According to Gold, a widespread response to state fiscal stress has been to increase tuition at state colleges, enabling state governments to reduce contributions to higher education.

Some say this kind of austerity, if extended to the federal budget because of the sanctions of a balanced budget amendment, would increase the severity and pain of economic downturns in a way that has not been true since the Depression.

State balanced budget requirements ''generally have worked for state and local government,'' said Philip M. Dearborn, director of government finance research at the U.S. Advisory Commission on Intergovernmental Relations. ''But there is a substantial difference between the management of states and of the federal government.''

(During today's session of the Senate, the following morning business was transacted.)

COMMENDING DR. ROBERT D. REISCHAUER

Mr. DOMENICI. Mr. President, today brings to an end the very distinguished term of the third Director of the Congressional Budget Office—Dr. Robert D. Reischauer. He has served in that office with the highest degree of professionalism. Under some very difficult conditions in his 6 years as Director he has been able to maintain the independence and high respect all of us have for the CBO. He has always given his best, and called them as he saw them—sometimes to the chagrin of both sides of the aisle.

In the 21 years of the CBO there have been only three Directors. The first, Dr. Alice Rivlin, followed by Dr. Rudy Penner and then Dr. Robert Reischauer. Dr. Reischauer will now be followed in the high tradition of those Directors by Dr. June O'Neill. Quite frankly, one of the difficulties in finding someone to replace Bob's expired term was the very high standards of professionalism and objectivity Bob and his predecessors have brought to that office.

This is as it should be. The CBO directorship is a critical position and one that must provide objective, nonbiased, and professional analysis to the Congress—not an easy task in this day of instant communications and many well funded, organized lobbyists' ''think tanks.'' Just being able to sort out the wheat from the chaff has become a full time responsibility of the CBO. Over the years we have also given CBO more responsibilities as in the recent case of the unfunded mandates legislation. Of course, we have not necessarily always given them more resources to go along with the additional workload.

Last evening the U.S. Senate adopted by unanimous consent, Senate Resolution 81, commending Dr. Reischauer for his long and faithful service to the Congress and the American public. The resolution was cosponsored by myself and the ranking member of the Budget Committee, the distinguished majority and minority leaders of the Senate, all the members of the Senate Budget Committee, and many others. I am sure, had time and resources permitted we would have had 100 original cosponsors.

The resolution we adopted unanimously last evening can only be considered a very small token of the Senate's appreciation of Dr. Reischauer's service to the Congress. In this arena today, where making decisions about complicated, complex, and difficult public policy issues that can affect the future course of this country, Dr. Reischauer has been a clear and concise voice. We may not have always agreed with Dr. Reischauer's analysis, but we always respected his analysis. He always gave his best. He always was fair and honest in his analysis. Somehow, I think wherever Bob Reischauer's career now takes him, that mantle of honesty and integrity will always go with him.

I now wish him and his family the best and I congratulate him for his public service and a job well done.

HARRY V. McKENNA FUNERAL—THE PASSING OF A PIONEER

Mr. PELL. Mr. President, I rise to share with my colleagues the news that Harry V. McKenna died last week and I recently returned from his funeral in Rhode Island.

Harry McKenna was not only the dean of broadcast journalism in our State for many decades, he was a premier broadcast journalist whose high standards remain a challenge for his successors.

Harry became the touchstone for Rhode Island politicians until his retirement in 1983. It seems you would not be taken seriously as a candidate, unless you were interviewed by Harry McKenna.

When I first ran for the Senate, almost 36 years ago, my first public interview was with Harry. His weekly ''Radio Press Conference'' ran for 32 years and was Rhode Island's longest-running news broadcast.

I was saddened when I learned of his death and I was touched by the gathering that honored him at his funeral. He was a good friend and an exemplary journalist.

After he retired, I missed him. Now I miss him even more.

My wife's and my deepest sympathy go to his wonderful wife, Julie, and his children and grandchildren.

I ask unanimous consent that the text of an obituary that appeared in the Feb. 22, 1995 issue of Providence (RI) Journal be printed in the RECORD.

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

HARRY V. MCKENNA; DIRECTED NEWS PROGRAM ON LOCAL RADIO

(By S. Robert Chiappinelli)

CRANSTON—Harry V. McKenna, the former WEAN news director who became an institution himself while interviewing Rhode Island's movers and shakers, died yesterday at the Roger Williams Medical Center.

Mr. McKenna, of *107 Grace St., was the husband of Jule (Lister) McKenna.*

A large man with a resonant voice, blustery style, and in later years, a shock of white hair, Mr. McKenna was called the dean of Rhode Island news correspondents.

His weekly *Radio Press Conference* ran for 32 years and was Rhode Island's longest-running news broadcast.

''He had kind of a special place,'' former Gov. J. Joseph Garrahy recalled yesterday. ''He always sat at the right-hand corner of my desk at a press conference.''

After each press conference, Mr. McKenna would collar the willing governor for a special telephone interview for WEAN.

''We had a wonderful relationship,'' Garrahy said.

Mr. McKenna, a member of the Rhode Island Heritage Hall of Fame, won respect both among politicians and fellow members of the press.

''For more than three decades, Rhode Island radio audiences tracked the course of state government and politics through the WEAN news reports of Harry McKenna,'' James V. Wyman, Journal-Bulletin vice president and executive editor, said.

''His familiar deep voice resonated with authority and credibility as he applied his aggressive style to interviews with key governmental officials,'' Wyman said.

''Harry's approach to newsgathering was both straightforward and relentless. But he was known and respected for his fairness.''

Mr. McKenna joined the Journal-Bulletin in 1944 as nightside police and fire reporter. In 1949, he was named WEAN news director and was the station's news and public affairs director when he retired. More than 1,400 persons attended his retirement party in February, 1983.

John P. Hackett, former Journal-Bulletin chief editorial writer and longtime political writer who often teamed with Mr. McKenna on Radio Press Conference, said he was a

skilled interrogator who frequently knew the answer to a question before he asked it.

''He was a good newsman,'' Hackett said. ''He dug up more stuff. He'd pass tips on to me.''

Mr. McKenna was in great demand as a master of ceremonies for community dinners, Hackett said, and his introductions would be a show in themselves.

''Before he got through,'' Hackett said, ''he would have recognized everyone in the audience.''

M. Charles Bakst, Journal-Bulletin political columnist, said: ''He was a throwback to the days when radio coverage of the State House was an important part of the daily scene, and governors deferred to him, giving him extensive interviews and a seat of honor at press conferences.''

''He was a big man who could get angry and sound tough, but who also had a playful, generous, patient side,'' Bakst said.

Mr. McKenna had served on the board of directors of the Associated Press Broadcasters Association, was a former international vice president of the Radio and Television News Directors Association, and was the first president of the Rhode Island Press Club.

In 1973, he caused a stir with a taped telephone interview with underworld informant Vincent ''Big Vinnie'' Teresa from a secret location. Teresa alleged that there was widespread corruption in the Providence Police Department, and said New England crime boss Raymond L.S. Patriarca had exerted influence on the department.

Mr. McKenna was chairman of the Traffic Safety Commission of Cranston for 20 years. He also served in numerous community organizations.

Besides his wife he leaves two daughters, Constance A. McKenna, and Deborah E.M. Brody, both of Cranston; a son, Robert W. McKenna of Warwick, and five grandchildren.

The funeral will be held Saturday at 8:30 a.m. from the Hoey Funeral Home, 168 Academy Ave., Providence, with a Mass of Christian Burial celebrated by Bishop Louis E. Gelineau at 10 at St. Matthew Church, Elmwood Avenue. Burial will be in Swan Point Cemetery in Providence.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, as I pointed out yesterday in this daily report—which I began 3 years ago—Federal debt has risen to astronomical proportions. As of the close of business yesterday, Monday, February 27, the Federal debt stood at $4,839,489,402,270.31—or $18,370.79 on a per capita basis.

Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

Mr. President, I am convinced today, as I was back in 1973, that it is the absolute responsibility and duty of Congress to control Federal spending. The U.S. Senate has a momentous challenge later today in lowering this enormous debt by approving a balanced budget amendment to the U.S. Constitution and sending it to the 50 States for ratification.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 257. An act to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–442. A communication from the Chairman of the Farm Credit Administration, transmitting, pursuant to law, the report of the 1995 salary structures; to the Committee on Agriculture, Nutrition, and Forestry.

EC–443. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report on military expenditures for countries receiving U.S. assistance; to the Committee on Appropriations.

EC–444. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 94-2; to the Committee on Appropriations.

EC–445. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a violation of the Antideficiency Act; to the Committee on Appropriations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Herman E. Gallegos, of California, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Lee C. Howley, of Ohio, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Isabelle Leeds, of New York, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Frank G. Wisner, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Career Minister, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period.

Robert E. Rubin, of New York, to be United States Governor of the International Monetary Fund for a term of five years; United States Governor of the International Bank for Reconstruction and Development for a term of five years; United States Governor of the Inter-American Development Bank for a term of five years; United States Governor of the African Development Bank for a term of five years; United States Governor of the Asian Development Bank; United States Governor of the African Development Fund; United States Governor of the European Bank for Reconstruction and Development.

Jeanette W. Hyde, of North Carolina, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Antigua and Barbuda, and as Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Kitts and Nevis, and as Ambassador Extraordinary and Plenipotentiary of the United States of America to Grenada.

Nominee: Jeanette W. Hyde.

Post: Ambassador to Antigua and Barbuda to St. Kitts & Nevis, and to Grenada.

Contributions, Amount, Date, Donee.

1. Self, Jeanette W. Hyde's Federal Campaign Contributions: 1990–94:

1. Price for Congress Committee—$400 (1990).

2. Gantt for Senate Committee—$1,000 (1990.

3. Gore for Senate Committee—$1,000 (1990).

4. Americans for Kerry Committee—$250 (1991).

5. David Price Reelection Committee—$1,000 (1991).

6. Committee to Reelect Terry Sanford—$500 (1991).

7. Gephardt for Congress Committee—$250 (1991).

8. Clayton for Congress Committee—$500 (1992).

9. David Price for Congress Committee—$1,000 (1992).

10. Committee to Reelect Terry Sanford—$1500 (1992).

11. Committee to Elect Bill Clinton President—$1,000 (1992).

12. Braun for Senate Committee—$1,000 (1992).

13. NC Democratic Campaign (Federal Account)—$5,000 (1992).

14. DNC Victory Fund (Finance Council Membership)—$5,000 (1992).

15. DNC Victory Fund—$5,000 (1992).

16. DSCC—$200 (1992).

17. Clayton for Congress Committee—$150 (1993).

Spouse, Wallace N. Hyde's Federal Campaign Contributions, 1990–94:

1. David Price for Congress—$500 (1990).

2. Gantt for Senate Committee—$1,000 (1990).

3. Clark for Congress Committee—$500 (1990).

4. Democratic House and Senate Council—$1,500 (1990).

5. Gore for Senate Committee—$1,000 (1990).

6. Bill Clinton for President—$250 (1991).

7. David Price for Congress Committee—$300 (1991).

8. Clark for Congress Committee—$400 (1991).

9. Stevens for Congress Committee—$300 (1991).

10. Gephardt for Congress Committee—$250 (1991).

11. Democratic House and Senate Council—$1,500 (1991).

12. Bradley for Senate Committee—$1,000 (1991).

13. Americans for Kerry Committee—$250 (1991).
14. Terry Sanford for Senate Committee—$2,000 (1992).
15. Bill Clinton for President—$750 (1992).
16. Stevens for Congress Committee—$500 (1992).
17. DNC Victory Fund—$7,000 (1992).
18. Friend of Clayton and Watt for Congress—$200 (1992).
19. Democratic House and Senate Council—$1,500 (1992).
20. Democratic House and Senate Council—$625 (1993).
21. DNC Business Leadership Council—$10,000 (1994).
22. Sandy Sands for U.S. Congress—$1,000 (1994).
24. Gene Stucky for U.S. Congress—$500 (1994).
3a. Children and spouses Names; None.
3b. Stepchildren and spouses names, Martha Hyde Jones, None; Dan Jones (spouse), none; Charlie W. Hyde, none; Barbara Hyde White, none; Joseph White (spouse), none.
4. Parents names, Gurney C. Wallace, deceased; Effie W. Wallace, none.
5. Grandparents names, Nettie B. Whitlock, deceased; Jones J. Whitlock, deceased.
6. Brothers and spouses names; none.
7. Sisters and spouses names, June W. Smith, none; John G. Smith (spouse), none; Wanda W. Dobbins, none; Ralph A. Dobbins (spouse), none.

Martin S. Indyk, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Israel.

Nominee: Martin S. Indyk.
Post: U.S. Ambassador to Israel.
Contributions, Amount, Date, Donee.
1. Self, None.
2. Spouse, $200.00, 1992, DNC.
3. Children and spouses names, None.

Johnnie Carson, of Illinois, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zimbabwe.

Nominee: Johnnie Carson.
Post: U.S. Ambassador, Republic of Zimbabwe.
Contributions, Amount, Date, Donee.
1. Self, None.
2. Spouse, None.
3. Children and spouses names, Elizabeth, Michael, Katherine, None.
4. Parents names, Dupree Carson, Aretha Carson, None.
5. Grandparents names, All deceased.
6. Brothers and spouses names, Ronald Carson, Gregory Carson, None.
7. Sisters and spouses names, Barbara Carson Latimer, None.

Bismarck Myrick, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

Nominee: Bismarck Myrick.
Post: Lesotho.
Contributions, amount, date, donee.
1. Self, Bismarck Myrick, $100, 1993, Jean W. Cunningham (for the House of Representatives).
2. Children and spouses, Bismarck Myrick, Jr., none; Wesley Todd Myrick, none; Allison Elizabeth Myrick, none.
4. Parents, Elizabeth Lee Land, deceased; Maceo Lee Myrick, deceased.
5. Grandparents, Emmanuel Myrick, deceased.
6. Brother and spouse, James M. Lee, none.
7. Sisters and spouses, Carol Myrick Kitchen, none; Steve Kitchen, none; Emily D. Thomas, none.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MCCAIN:

S. 479. A bill to provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes; to the Committee on Indian Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN:

S. 479. A bill to provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT OF 1995

● Mr. MCCAIN. Mr. President, today I am introducing the Indian Federal Recognition Administrative Procedures Act of 1995.

The Indian Federal Recognition Administrative Procedures Act provides for the creation of the Commission on Indian Recognition. The Commission will be an independent agency of the executive branch and will be composed of three members appointed by the President. The Commission would be authorized to hold hearings, take testimony and reach final determinations on petitions for recognition. The bill provides realistic timelines to guide the Commission in the review and decisionmaking process. Under the existing process in the Department of the Interior, some petitioners have waited 10 years or more for even a cursory review of their petition. The bill I am introducing today requires the Commission to set a date for a preliminary hearing on a petition not later than 60 days after the filing of a documented petition. Not later than 30 days after the conclusion of a preliminary hearing, the Commission would be required to either decide to extend Federal acknowledgement to the petitioner or to require the petitioner to proceed to an adjudicatory hearing.

To ensure fairness, the bill provides for appeals of adverse decisions to the U.S. District Court for the District of Columbia. To ensure promptness, the bill authorizes adequate funding for the costs of processing petitions through the Commission and to assist petitioners in the development of their petitions. This bill will also provide finality for both the petitioners and the Department of the Interior.

The Department has had a process of one type or another for recognizing Indian tribes since the 1930's. Great uncertainty has existed about how or when this process might be concluded and how many Indian tribes will ultimately be recognized. I believe that it is in the interests of all parties to have a clear deadline for the completion of the recognition process. Accordingly, the bill requires all interested tribal groups to file their petitions within 6 years after the date of enactment and the Commission must complete all of its work within 12 years from the date of enactment.

This bill is similar to the bills which I have introduced in each of the last three Congresses. It is also similar to a bill which passed the House of Representatives in the 103d Congress, H.R. 4462, and which has been reintroduced in this Congress by Representative FALEOMAVAEGA, H.R. 671. The major differences between the bill I am introducing today and H.R. 671 are; First, H.R. 671 would make naive Hawaiians and Alaska Native villages eligible to petition for recognition while this bill does not; second, H.R. 671 would create a part-time Commission, while this bill creates a full-time independent entity in the executive branch, and H.R. 671 would not sunset the Commission or the recognition process while this bill would terminate the Commission and require the process to be completed in 12 years.

From the earliest times, the Congress has acted to recognize the unique government-to-government relationship with the Indian tribes. There are and always have been some Indian tribes which have not been recognized by the Federal Government. This lack of recognition does not alter the fact of the existence of the tribe or of its retained inherent sovereignty; it merely means that there is no formal political relationship between the tribal government and the Federal Government and that the enrolled members of the tribe are not eligible for the services and benefits accorded to Indians because of their status as members of federally recognized Indian tribes.

Over the years, the Federal courts have ruled that recognition, while solely within the authority of the Congress, may also be conferred through actions of the executive branch. Both the President and the Secretary of the Interior have historically acted in ways which the courts have found to constitute recognition of Indian tribes. And beginning in 1954, it was the established policy of the Congress to officially sanction the termination of the Federal/tribal relationship. This misguided policy was only effectively ended in 1970 when President Nixon called for the beginning of an era of self-determination and the end of termination.

In 1978, the Department of the Interior promulgated regulations to establish criteria and procedures for the recognition of Indian tribes by the Secretary. Since that time tribal groups have filed 147 petitions for review. Of those, 31 have been resolved and 75 are letters expressing an intent to petition, and 7 require legislative authority to proceed. The remainder are in various stages of consideration by the Department. During this same time, the Congress has recognized nine other tribal groups through legislation.

In 1978, 1983, 1988, 1989, and 1992, the Committee on Indian Affairs held oversight hearings on the Federal recognition process. At each of those hearings the record clearly showed that the process is not working properly. The process in the Department of the Interior is time consuming and costly, although it has improved somewhat in recent years. Some tribal groups allege that Interior Department's process leads to unfair and unfounded results. It has frequently been hindered by a lack of staff and resources needed to fairly and promptly review all petitions. At the same time, the Congress extends recognition to tribes with little or no reference to the legal standards and criteria employed by the Department. The result is yet another layer of inconsistency and apparent unfairness.

The record from our previous hearings reveals a clear need for the Congress to address the problems affecting the recognition process. I believe that the bill I am introducing today will go a long way toward resolving the problems which have plagued both the Department and the petitions over the years.

Mr. President, I ask unanimous consent that the full text of the Indian Federal Recognition Administrative Procedures Act of 1995 and a section-by-section summary be printed in the RECORD.

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

S. 479

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Federal Recognition Administrative Procedures Act of 1995''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to establish an administrative procedure to extend Federal recognition to certain Indian groups;

(2) to extend to Indian groups that are determined to be Indian tribes the protection, services, and benefits available from the Federal Government pursuant to the Federal trust responsibility with respect to Indian tribes;

(3) to extend to Indian groups that are determined to be Indian tribes the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States;

(4) to ensure that when the Federal Government extends acknowledgment to an Indian tribe, the Federal Government does so with a consistent legal, factual, and historical basis;

(5) to establish a Commission on Indian Recognition to review and act upon petitions submitted by Indian groups that apply for Federal recognition;

(6) to provide clear and consistent standards of administrative review of documented petitions for Federal acknowledgment;

(7) to clarify evidentiary standards and expedite the administrative review process by providing adequate resources to process petitions; and

(8) to remove the Federal acknowledgment process from the Bureau of Indian Affairs and transfer the responsibility for the process to an independent Commission on Indian Recognition.

SEC. 3. DEFINITIONS.

Unless the context implies otherwise, for the purposes of this Act the following definitions shall apply:

(1) ACKNOWLEDGED.—The term ''acknowledged'' means, with respect to an Indian group, that the Commission on Indian Recognition has made an acknowledgment, as defined in paragraph (2), for such group.

(2) ACKNOWLEDGMENT.—The term ''acknowledgment'' means a determination by the Commission on Indian Recognition that an Indian group—

(A) constitutes an Indian tribe with a government-to-government relationship with the United States; and

(B) with respect to which the members are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) AUTONOMOUS.—

(A) IN GENERAL.—The term ''autonomous'' means the exercise of political influence or authority independent of the control of any other Indian governing entity.

(B) CONTEXT OF TERM.—With respect to a petitioner, such term shall be understood in the context of the history, geography, culture, and social organization of the petitioner.

(4) BUREAU.—The term ''Bureau'' means the Bureau of Indian Affairs of the Department.

(5) COMMISSION.—The term ''Commission'' means the Commission on Indian Recognition established pursuant to section 4.

(6) COMMUNITY.—

(A) IN GENERAL.—The term ''community'' means any group of people, living within a reasonable territorial propinquity, that are able to demonstrate that—

(i) consistent interactions and significant social relationships exist within the membership; and

(ii) the members of such group are differentiated from and identified as distinct from nonmembers.

(B) CONTEXT OF TERM.—Such term shall be understood in the context of the history, culture, and social organization of the group, taking into account the geography of the region in which the group resides.

(7) CONTINUOUS OR CONTINUOUSLY.—With respect to a period of history of a group, the term ''continuous'' or ''continuously'' means extending from the first sustained contact with Euro-Americans throughout the history of the group to the present substantially without interruption.

(8) DEPARTMENT.—The term ''Department'' means the Department of the Interior.

(9) DOCUMENTED PETITION.—The term ''documented petition'' means the detailed, factual exposition and arguments, including all documentary evidence, necessary to demonstrate that such arguments specifically address the mandatory criteria established in section 5.

(10) GROUP.—The term ''group'' means an Indian group, as defined in paragraph (12).

(11) HISTORICALLY, HISTORICAL, HISTORY.—The terms ''historically'', ''historical'', and ''history'' refer to the period dating from the first sustained contact with Euro-Americans.

(12) INDIAN GROUP.—The term ''Indian group'' means any Indian, Alaska Native, or Native Hawaiian tribe, band, pueblo, village or community within the United States that the Secretary does not acknowledge to be an Indian tribe.

(13) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, pueblo, village, or community within the United States that—

(A) the Secretary has acknowledged as an Indian tribe as of the date of enactment of this Act, or acknowledges to be an Indian tribe pursuant to the procedures applicable to certain petitions under active consideration at the time of the transfer of petitions to the Commission under section 5(a)(3); or

(B) the Commission acknowledges as an Indian tribe under this Act.

(14) INDIGENOUS.—With respect to a petitioner, the term ''indigenous'' means native to the United States, in that at least part of the traditional territory of the petitioner at the time of first sustained contact with Euro-Americans extended into the United States.

(15) LETTER OF INTENT.—The term ''letter of intent'' means an undocumented letter or resolution that—

(A) is dated and signed by the governing body of an Indian group;

(B) is submitted to the Commission; and

(C) indicates the intent of the Indian group to submit a petition for Federal acknowledgment as an Indian tribe.

(16) MEMBER OF AN INDIAN GROUP.—The term ''member of an Indian group'' means an individual who—

(A) is recognized by an Indian group as meeting the membership criteria of the Indian group; and

(B) consents in writing to being listed as a member of such group.

(17) MEMBER OF AN INDIAN TRIBE.—The term ''member of an Indian tribe'' means an individual who—

(A)(i) meets the membership requirements of the tribe as set forth in its governing document; or

(ii) in the absence of a governing document which sets out such requirements, has been recognized as a member collectively by those persons comprising the tribal governing body; and

(B)(i) has consistently maintained tribal relations with the tribe; or

(ii) is listed on the tribal membership rolls as a member, if such rolls are kept.

(18) PETITION.—The term ''petition'' means a petition for acknowledgment submitted or transferred to the Commission pursuant to section 5.

(19) PETITIONER.—The term ''petitioner'' means any group that submits a letter of intent to the Commission requesting acknowledgment that the group is an Indian tribe.

(20) POLITICAL INFLUENCE OR AUTHORITY.—

(A) IN GENERAL.—The term ''political influence or authority'' means a tribal council, leadership, internal process, or other mechanism which a group has used as a means of—

(i) influencing or controlling the behavior of its members in a significant manner;

(ii) making decisions for the group which substantially affect its members; or

(iii) representing the group in dealing with nonmembers in matters of consequence to the group.

(B) CONTEXT OF TERM.—Such term shall be understood in the context of the history, culture, and social organization of the group.

(21) PREVIOUS FEDERAL ACKNOWLEDGMENT.—The term ''previous Federal acknowledgment'' means any action by the Federal Government, the character of which—

(A) is clearly premised on identification of a tribal political entity; and

(B) clearly indicates the recognition of a government-to-government relationship between that entity and the Federal Government.

(22) RESTORATION.—The term ''restoration'' means the reextension of acknowledgment to any previously acknowledged tribe with respect to which the acknowledged status may have been abrogated or diminished by reason of legislation enacted by Congress expressly terminating such status.

(23) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(24) SUSTAINED CONTACT.—The term ''sustained contact'' means the period of earliest sustained Euro-American settlement or governmental presence in the local area in which the tribe or tribes from which the petitioner claims descent was located historically.

(25) TREATY.—The term ''treaty'' means any treaty—

(A) negotiated and ratified by the United States on or before March 3, 1871, with, or on behalf of, any Indian group or tribe;

(B) made by any government with, or on behalf of, any Indian group or tribe, from which the Federal Government subsequently acquired territory by purchase, conquest, annexation, or cession; or

(C) negotiated by the United States with, or on behalf of, any Indian group in California, whether or not the treaty was subsequently ratified.

(26) TRIBE.—The term ''tribe'' means an Indian tribe.

(27) TRIBAL RELATIONS.—The term ''tribal relations'' means participation by an individual in a political and social relationship with an Indian tribe.

(28) TRIBAL ROLL.—The term ''tribal roll'' means a list exclusively of those individuals who—

(A)(i) have been determined by the tribe to meet the membership requirements of the tribe, as set forth in the governing document of the tribe; or

(ii) in the absence of a governing document that sets forth such requirements, have been recognized as members by the governing body of the tribe; and

(B) have affirmatively demonstrated consent to being listed as members of the tribe.

(29) UNITED STATES.—The term ''United States'' means the 48 contiguous States, and the States of Alaska and Hawaii. Such term does not include territories or possessions of the United States.

SEC. 4. COMMISSION ON INDIAN RECOGNITION.

(a) ESTABLISHMENT.—There is established, as an independent commission, the Commission on Indian Recognition. The Commission shall be an independent establishment, as defined in section 104 of title 5, United States Code.

(b) MEMBERSHIP.—

(1) IN GENERAL.—

(A) MEMBERS.—The Commission shall consist of 3 members appointed by the President, by and with the advice and consent of the Senate.

(B) INDIVIDUALS TO BE CONSIDERED FOR MEMBERSHIP.—In making appointments to the Commission, the President shall give careful consideration to—

(i) recommendations received from Indian tribes; and

(ii) individuals who have a background in Indian law or policy, anthropology, genealogy, or history.

(2) POLITICAL AFFILIATION.—Not more than 2 members of the Commission may be members of the same political party.

(3) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each member of the Commission shall be appointed for a term of 4 years.

(B) INITIAL APPOINTMENTS.—As designated by the President at the time of appointment, of the members initially appointed under this subsection—

(i) 1 member shall be appointed for a term of 2 years;

(ii) 1 member shall be appointed for a term of 3 years; and

(iii) 1 member shall be appointed for a term of 4 years.

(4) VACANCIES.—Any vacancy in the Commission shall not affect the powers of the Commission, but shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the term of such member until a successor has taken office.

(5) COMPENSATION.—

(A) IN GENERAL.—Each member of the Commission shall receive compensation at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties authorized by the Commission.

(B) TRAVEL.—All members of the Commission shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission while away from their homes or regular places of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) FULL-TIME EMPLOYMENT.—Each member of the Commission shall serve on the Commission as a full-time employee of the Federal Government. No member of the Commission may, while serving on the Commission, be otherwise employed as an officer or employee of the Federal Government. Service by a member who is an employee of the Federal Government at the time of nomination as a member shall be without interruption or loss of civil service status or privilege.

(7) CHAIRPERSON.—At the time appointments are made under paragraph (1), the President shall designate a Chairperson of the Commission (referred to in this section as the ''Chairperson'') from among the appointees.

(c) MEETINGS AND PROCEDURES.—

(1) IN GENERAL.—The Commission shall hold its first meeting not later than 30 days after the date on which all members of the Commission have been appointed and confirmed by the Senate.

(2) QUORUM.—Two members of the Commission shall constitute a quorum for the transaction of business.

(3) RULES.—The Commission may adopt such rules (consistent with the provisions of this Act) as may be necessary to establish the procedures of the Commission and to govern the manner of operations, organization, and personnel of the Commission.

(4) PRINCIPAL OFFICE.—The principal office of the Commission shall be in the District of Columbia.

(d) DUTIES.—The Commission shall carry out the duties assigned to the Commission by this Act, and shall meet the requirements imposed on the Commission by this Act.

(e) POWERS AND AUTHORITIES.—

(1) POWERS AND AUTHORITIES OF CHAIRPERSON.—Subject to such rules and regulations as may be adopted by the Commission, the Chairperson may—

(A) appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director of the Commission and of such other personnel as the Chairperson considers advisable to assist in the performance of the duties of the Commission, at a rate not to exceed a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) procure, as authorized by section 3109(b) of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(2) GENERAL POWERS AND AUTHORITIES OF COMMISSION.—

(A) IN GENERAL.—The Commission may—

(i) hold such hearings and sit and act at such times;

(ii) take such testimony;

(iii) have such printing and binding done;

(iv) enter into such contracts and other arrangements, subject to the availability of funds;

(v) make such expenditures; and

(vi) take such other actions,

as the Commission may consider advisable.

(B) OATHS AND AFFIRMATIONS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(3) INFORMATION.—

(A) IN GENERAL.—The Commission may secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Commission may require to carry out this Act. Each such officer, department, agency, establishment, or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon the request of the Chairperson.

(B) FACILITIES, SERVICES, AND DETAILS.—Upon the request of the Chairperson, to assist the Commission in carrying out the duties of the Commission under this section, the head of any Federal department, agency, or instrumentality may—

(i) make any of the facilities and services of such department, agency, or instrumentality available to the Commission; and

(ii) detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis.

(C) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(g) TERMINATION OF COMMISSION.—The Commission shall terminate on the date that is 12 years after the date of enactment of this Act.

SEC. 5. PETITIONS FOR RECOGNITION.

(a) IN GENERAL.—

(1) PETITIONS.—Subject to subsection (d) and except as provided in paragraph (2), any Indian group may submit to the Commission a petition requesting that the Commission recognize an Indian group as an Indian tribe.

(2) EXCLUSION.—The following groups and entities shall not be eligible to submit a petition for recognition by the Commission under this Act:

(A) CERTAIN ENTITIES THAT ARE ELIGIBLE TO RECEIVE SERVICES FROM THE BUREAU.—Indian tribes, organized bands, pueblos, communities, and Alaska Native entities that are recognized by the Secretary as of the date of enactment of this Act as eligible to receive services from the Bureau.

(B) CERTAIN SPLINTER GROUPS, POLITICAL FACTIONS, AND COMMUNITIES.—Splinter groups, political factions, communities, or groups of any character that separate from the main body of an Indian tribe that, at the time of such separation, is recognized as an Indian tribe by the Secretary, unless the group, faction, or community is able to establish clearly that the group, faction, or community has functioned throughout history until the date of such petition as an autonomous Indian tribal entity.

(C) CERTAIN GROUPS THAT HAVE PREVIOUSLY SUBMITTED PETITIONS.—Groups, or successors in interest of groups, that prior to the date of enactment of this Act, have petitioned for and been denied or refused recognition as an Indian tribe under regulations prescribed by the Secretary.

(D) INDIAN GROUPS SUBJECT TO TERMINATION.—Any Indian group whose relationship with the Federal Government was expressly terminated by an Act of Congress.

(E) PARTIES TO CERTAIN ACTIONS.—Any Indian group that—

(i) in any action in a United States court of competent jurisdiction to which the group was a party, attempted to establish its status as an Indian tribe or a successor in interest to an Indian tribe that was a party to a treaty with the United States;

(ii) was determined by such court—

(I) not to be an Indian tribe; or

(II) not to be a successor in interest to an Indian tribe that was a party to a treaty with the United States; or

(iii) was the subject of findings of fact by such court which, if made by the Commission, would show that the group was incapable of establishing one or more of the criteria set forth in this section.

(3) TRANSFER OF PETITION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 30 days after the date on which all of the members of the Commission have been appointed and confirmed by the Senate under section 4(b), the Secretary shall transfer to the Commission all petitions pending before the Department that—

(i) are not under active consideration of the Secretary at the time of the transfer; and

(ii) request the Secretary, or the Federal Government, to recognize or acknowledge an Indian group as an Indian tribe.

(B) CESSATION OF CERTAIN AUTHORITIES OF SECRETARY.—Notwithstanding any other provision of law, on the date of the transfer under subparagraph (A), the Secretary and the Department shall cease to have any authority to recognize or acknowledge, on behalf of the Federal Government, any Indian group as an Indian tribe, except for those groups under active consideration at the time of the transfer whose petitions have been retained by the Secretary pursuant to subparagraph (A).

(C) DETERMINATION OF ORDER OF SUBMISSION OF TRANSFERRED PETITIONS.—Petitions transferred to the Commission under subparagraph (A) shall, for purposes of this Act, be considered as having been submitted to the Commission in the same order as such petitions were submitted to the Department.

(b) PETITION FORM AND CONTENT.—Except as provided in subsection (c), any petition submitted under subsection (a) by an Indian group shall be in any readable form that clearly indicates that the petition is a petition requesting the Commission to recognize the Indian group as an Indian tribe and that contains detailed, specific evidence concerning each of the following items:

(1) STATEMENT OF FACTS.—A statement of facts establishing that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1871. Evidence that the character of the group as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence that the Commission may rely on in determining the Indian identity of a group may include any one or more of the following items:

(A) IDENTIFICATION OF PETITIONER.—An identification of the petitioner as an Indian entity by any department, agency, or instrumentality of the Federal Government.

(B) RELATIONSHIP OF PETITIONER WITH STATE GOVERNMENT.—A relationship between the petitioner and any State government, based on an identification of the petitioner as an Indian entity.

(C) RELATIONSHIP OF PETITIONER WITH A POLITICAL SUBDIVISION OF A STATE.—Dealings of the petitioner with a county or political subdivision of a State in a relationship based on the Indian identity of the petitioner.

(D) IDENTIFICATION OF PETITIONER ON THE BASIS OF CERTAIN RECORDS.—An identification of the petitioner as an Indian entity by records in a private or public archive, courthouse, church, or school.

(E) IDENTIFICATION OF PETITIONER BY CERTAIN EXPERTS.—An identification of the petitioner as an Indian entity by an anthropologist, historian, or other scholar.

(F) IDENTIFICATION OF PETITIONER BY CERTAIN MEDIA.—An identification of the petitioner as an Indian entity in a newspaper, book, or similar medium.

(G) IDENTIFICATION OF PETITIONER BY ANOTHER INDIAN TRIBE OR ORGANIZATION.—An identification of the petitioner as an Indian entity by another Indian tribe or by a national, regional, or State Indian organization.

(H) IDENTIFICATION OF PETITIONER BY A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION.—An identification of the petitioner as an Indian entity by a foreign government or an international organization.

(I) OTHER EVIDENCE OF IDENTIFICATION.—Such other evidence of identification as may be provided by a person or entity other than the petitioner or a member of the membership of the petitioner.

(2) EVIDENCE OF COMMUNITY.—

(A) IN GENERAL.—A statement of facts establishing that a predominant portion of the membership of the petitioner—

(i) comprises a community distinct from those communities surrounding such community; and

(ii) has existed as a community from historical times to the present.

(B) EVIDENCE.—Evidence that the Commission may rely on in determining that the petitioner meets the criterion described in clauses (i) and (ii) of subparagraph (A) may include one or more of the following items:

(i) MARRIAGES.—Significant rates of marriage within the group, or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) SOCIAL RELATIONSHIPS.—Significant social relationships connecting individual members.

(iii) SOCIAL INTERACTION.—Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) SHARED ECONOMIC ACTIVITY.—A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) DISCRIMINATION OR OTHER SOCIAL DISTINCTIONS.—Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

(vi) SHARED RITUAL ACTIVITY.—Shared sacred or secular ritual activity encompassing most of the group.

(vii) CULTURAL PATTERNS.—Cultural patterns that—

(I) are shared among a significant portion of the group that are different from the cultural patterns of the non-Indian populations with whom the group interacts;

(II) function as more than a symbolic identification of the group as Indian; and

(III) may include language, kinship or religious organizations, or religious beliefs and practices.

(viii) COLLECTIVE INDIAN IDENTITY.—The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) HISTORICAL POLITICAL INFLUENCE.—A demonstration of historical political influence pursuant to the criterion set forth in paragraph (3).

(C) CRITERIA FOR SUFFICIENT EVIDENCE.—The Commission shall consider the petitioner to have provided sufficient evidence of community at a given point in time if the petitioner has provided evidence that demonstrates any one of the following:

(i) RESIDENCE OF MEMBERS.—More than 50 percent of the members of the group of the petitioner reside in a particular geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent social interaction with some members of the community.

(ii) MARRIAGES.—Not less than 50 percent of the marriages of the group are between members of the group.

(iii) DISTINCT CULTURAL PATTERNS.—Not less than 50 percent of the members of the group maintain distinct cultural patterns including language, kinship or religious organizations, or religious beliefs or practices.

(iv) COMMUNITY SOCIAL INSTITUTIONS.—Distinct community social institutions encompassing a substantial portion of the members of the group, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

(v) APPLICABILITY OF CRITERIA.—The group has met the criterion in paragraph (3) using evidence described in paragraph (3)(B).

(3) AUTONOMOUS ENTITY.—

(A) IN GENERAL.—A statement of facts establishing that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the time of the petition. The Commission may rely on one or more of the following items in determining whether a petitioner meets the criterion described in the preceding sentence:

(i) MOBILIZATION OF MEMBERS.—The group is capable of mobilizing significant numbers of members and significant resources from its members for group purposes.

(ii) ISSUES OF PERSONAL IMPORTANCE.—Most of the membership of the group considers issues acted upon or taken by group leaders or governing bodies to be of personal importance.

(iii) POLITICAL PROCESS.—There is a widespread knowledge, communication, and involvement in political processes by most of the members of the group.

(iv) LEVEL OF APPLICATION OF CRITERIA.—The group meets the criterion described in paragraph (2) at more than a minimal level.

(v) INTRAGROUP CONFLICTS.—There are intragroup conflicts which show controversy over valued group goals, properties, policies, processes, or decisions.

(B) EVIDENCE OF EXERCISE OF POLITICAL INFLUENCE OR AUTHORITY.—The Commission shall consider that a petitioner has provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders or other mechanisms exist or have existed that accomplish the following:

(i) ALLOCATION OF GROUP RESOURCES.—Allocate group resources such as land, residence rights, or similar resources on a consistent basis.

(ii) SETTLEMENT OF DISPUTES.—Settle disputes between members or subgroups such as clans or moieties by mediation or other means on a regular basis.

(iii) INFLUENCE ON BEHAVIOR OF INDIVIDUAL MEMBERS.—Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior.

(iv) ECONOMIC SUBSISTENCE ACTIVITIES.—Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(C) TEMPORALITY OF SUFFICIENCY OF EVIDENCE.—A group that has met the requirements of paragraph (2)(C) at any point in time shall be considered to have provided sufficient evidence to meet the criterion described in subparagraph (A) at such point in time.

(4) GOVERNING DOCUMENT.—A copy of the then present governing document of the petitioner that includes the membership criteria of the petitioner. In the absence of a written document, the petitioner shall be required to provide a statement describing in full the membership criteria of the petitioner and the then current governing procedures of the petitioner.

(5) LIST OF MEMBERS.—

(A) IN GENERAL.—A list of all then current members of the petitioner, including the full name (and maiden name, if any), date, and place of birth, and then current residential address of each member, a copy of each available former list of members based on the criteria defined by the petitioner, and a statement describing the methods used in preparing such lists.

(B) REQUIREMENTS FOR MEMBERSHIP.—In order for the Commission to consider the members of the group to be members of an Indian tribe for the purposes of the petition, such membership shall be required to consist of established descendancy from an Indian group that existed historically, or from historical Indian groups that combined and functioned as a single autonomous entity.

(C) EVIDENCE OF TRIBAL MEMBERSHIP.—Evidence of tribal membership required by the Commission for a determination of tribal membership shall include the following items:

(i) DESCENDANCY ROLLS.—Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes.

(ii) CERTAIN OFFICIAL RECORDS.—State, Federal, or other official records or evidence identifying then present members of the petitioner, or ancestors of then present members of the petitioner, as being descendants of a historic tribe or historic tribes that combined and functioned as a single autonomous political entity.

(iii) ENROLLMENT RECORDS.—Church, school, and other similar enrollment records identifying then present members or ancestors of then present members as being descendants of a historic tribe or historic tribes that combined and functioned as a single autonomous political entity.

(iv) AFFIDAVITS OF RECOGNITION.—Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying then present members or ancestors of then present members as being descendants of 1 or more historic tribes that combined and functioned as a single autonomous political entity.

(v) OTHER RECORDS OR EVIDENCE.—Other records or evidence identifying then present members or ancestors of then present members as being descendants of 1 or more historic tribes that combined and functioned as a single autonomous political entity.

(c) EXCEPTIONS.—A petition from an Indian group that is able to demonstrate by a preponderance of the evidence that the group was, or is the successor in interest to, a—

(1) party to a treaty or treaties;

(2) group acknowledged by any agency of the Federal Government as eligible to participate under the Act of June 18, 1934 (commonly referred to as the ''Indian Reorganization Act'') (48 Stat. 984 et seq., chapter 576; 25 U.S.C. 461 et seq.);

(3) group for the benefit of which the United States took into trust lands, or which the Federal Government has treated as having collective rights in tribal lands or funds; or

(4) group that has been denominated a tribe by an Act of Congress or Executive order,

shall be required to establish the criteria set forth in this section only with respect to the period beginning on the date of the applicable action described in paragraph (1), (2), (3), or (4) and ending on the date of submission of the petition.

(d) DEADLINE FOR SUBMISSION OF PETITIONS.—No Indian group may submit a petition to the Commission requesting that the Commission recognize an Indian group as an Indian tribe after the date that is 6 years after the date of enactment of this Act. After the Commission makes a determination on each petition submitted prior to such date, the Commission may not make any further determination under this Act to recognize any Indian group as an Indian tribe.

SEC. 6. NOTICE OF RECEIPT OF PETITION.

(a) PETITIONER.—

(1) IN GENERAL.—Not later than 30 days after a petition is submitted or transferred to the Commission under section 5(a), the Commission shall—

(A) send an acknowledgement of receipt in writing to the petitioner; and

(B) publish in the Federal Register a notice of such receipt, including the name, location, and mailing address of the petitioner and such other information that—

(i) identifies the entity that submitted the petition and the date the petition was received by the Commission;

(ii) indicates where a copy of the petition may be examined; and

(iii) indicates whether the petition is a transferred petition that is subject to the special provisions under paragraph (2).

(2) SPECIAL PROVISIONS FOR TRANSFERRED PETITIONS.—

(A) IN GENERAL.—With respect to a petition that is transferred to the Commission under section 5(a)(3), the notice provided to the petitioner, shall, in addition to providing the information specified in paragraph (1), inform the petitioner whether the petition constitutes a documented petition that meets the requirements of section 5.

(B) AMENDED PETITIONS.—If the petition described in subparagraph (A) is not a documented petition, the Commission shall notify the petitioner that the petitioner may, not later than 90 days after the date of the notice, submit to the Commission an amended petition that is a documented petition for review under section 7.

(C) EFFECT OF AMENDED PETITION.—To the extent practicable, the submission of an amended petition by a petitioner by the date specified in this paragraph shall not affect the order of consideration of the petition by the Commission.

(b) OTHERS.—In addition to providing the notification required under subsection (a), the Commission shall notify, in writing, the Governor and attorney general of, and each federally recognized Indian tribe within, any State in which a petitioner resides.

(c) PUBLICATION; OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS.—

(1) PUBLICATION.—The Commission shall publish the notice of receipt of each petition (including any amended petition submitted pursuant to subsection (a)(2)) in a major newspaper of general circulation in the town or city located nearest the location of the petitioner.

(2) OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS.—

(A) IN GENERAL.—Each notice published under paragraph (1) shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to, the petition.

(B) COPY TO PETITIONER.—A copy of any submission made under subparagraph (A) shall be provided to the petitioner upon receipt by the Commission.

(C) RESPONSE.—The petitioner shall be provided an opportunity to respond to any submission made under subparagraph (A) prior to a determination on the petition by the Commission.

SEC. 7. PROCESSING THE PETITION.

(a) REVIEW.—

(1) IN GENERAL.—Upon receipt of a documented petition submitted or transferred under section 5(a) or submitted under section 6(a)(2)(B), the Commission shall conduct a review to determine whether the petitioner is entitled to be recognized as an Indian tribe.

(2) CONTENT OF REVIEW.—The review conducted under paragraph (1) shall include consideration of the petition, supporting evidence, and the factual statements contained in the petition.

(3) OTHER RESEARCH.—In conducting a review under this subsection, the Commission may—

(A) initiate other research for any purpose relative to analyzing the petition and obtaining additional information about the status of the petitioner; and

(B) consider such evidence as may be submitted by other parties.

(4) ACCESS TO LIBRARY OF CONGRESS AND NATIONAL ARCHIVES.—Upon request by the petitioner, the appropriate officials of the Library of Congress and the National Archives shall allow access by the petitioner to the resources, records, and documents of such entities, for the purpose of conducting research and preparing evidence concerning the status of the petitioner.

(b) CONSIDERATION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, petitions submitted or transferred to the Commission shall be considered on a first come, first served basis, determined by the date of the original filing of each such petition with the Commission

(or the Department if the petition is transferred to the Commission pursuant to section 5(a) or is an amended petition submitted pursuant to section 6(a)(2)(B)). The Commission shall establish a priority register that includes petitions that are pending before the Department on the date of enactment of this Act.

(2) PRIORITY CONSIDERATION.—Each petition (that is submitted or transferred to the Commission pursuant to section 5(a) or that is submitted to the Commission pursuant to section 6(a)(2)(B)) of an Indian group that meets one or more of the requirements set forth in section 5(c) shall receive priority consideration over a petition submitted by any other Indian group.

SEC. 8. PRELIMINARY HEARING.

(a) IN GENERAL.—Not later than 60 days after the receipt of a documented petition by the Commission submitted or transferred under section 5(a) or submitted to the Commission pursuant to section 6(a)(2)(B), the Commission shall set a date for a preliminary hearing. At the preliminary hearing, the petitioner and any other concerned party may provide evidence concerning the status of the petitioner.

(b) DETERMINATION.—

(1) IN GENERAL.—Not later than 30 days after the conclusion of a preliminary hearing under subsection (a), the Commission shall make a determination—

(A) to extend Federal acknowledgment of the petitioner as an Indian tribe to the petitioner; or

(B) that provides that the petitioner should proceed to an adjudicatory hearing.

(2) NOTICE OF DETERMINATION.—The Commission shall publish in the Federal Register a notice of each determination made under paragraph (1).

(c) INFORMATION TO BE PROVIDED PREPARATORY TO AN ADJUDICATORY HEARING.—

(1) IN GENERAL.—If the Commission makes a determination under subsection (b)(1)(B) that the petitioner should proceed to an adjudicatory hearing, the Commission shall—

(A)(i) make available appropriate evidentiary records of the Commission to the petitioner to assist the petitioner in preparing for the adjudicatory hearing; and

(ii) include such guidance as the Commission considers necessary or appropriate to assist the petitioner in preparing for the hearing; and

(B) not later than 30 days after the conclusion of the preliminary hearing under subsection (a), provide a written notification to the petitioner that includes a list of any deficiencies or omissions that the Commission relied on in making a determination under subsection (b)(1)(B).

(2) SUBJECT OF ADJUDICATORY HEARING.—The list of deficiencies and omissions provided by the Commission to a petitioner under paragraph (1)(B) shall be the subject of the adjudicatory hearing. The Commission may not make any additions to the list after the Commission issues the list.

SEC. 9. ADJUDICATORY HEARING.

(a) IN GENERAL.—Not later than 180 days after the conclusion of a preliminary hearing under section 8(a), the Commission shall afford a petitioner who is subject to section 8(b)(1)(B) an adjudicatory hearing. The subject of the adjudicatory hearing shall be the list of deficiencies and omissions provided under section 8(c)(1)(B) and shall be conducted pursuant to section 554 of title 5, United States Code.

(b) TESTIMONY FROM STAFF OF COMMISSION.—In any hearing held under subsection (a), the Commission may require testimony from the acknowledgement and research staff of the Commission or other witnesses. Any such testimony shall be subject to cross-examination by the petitioner.

(c) EVIDENCE BY PETITIONER.—In any hearing held under subsection (a), the petitioner may provide such evidence as the petitioner considers appropriate.

(d) DETERMINATION BY COMMISSION.—Not later than 60 days after the conclusion of any hearing held under subsection (a), the Commission shall—

(1) make a determination concerning the extension or denial of Federal acknowledgment of the petitioner as an Indian tribe to the petitioner;

(2) publish the determination of the Commission under paragraph (1) in the Federal Register; and

(3) deliver a copy of the determination to the petitioner, and to every other interested party.

SEC. 10. APPEALS.

(a) IN GENERAL.—Not later than 60 days after the date that the Commission publishes a determination under section 9(d), the petitioner may appeal the determination to the United States District Court for the District of Columbia.

(b) ATTORNEY FEES.—If the petitioner prevails in an appeal made under subsection (a), the petitioner shall be eligible for an award of reasonable attorney fees and costs under section 504 of title 5, United States Code, or section 2412 of title 28 of such Code, whichever is applicable.

SEC. 11. EFFECT OF DETERMINATIONS.

A determination by the Commission under section 9(d) that an Indian group is recognized by the Federal Government as an Indian tribe shall not have the effect of depriving or diminishing—

(1) the right of any other Indian tribe to govern the reservation of such other tribe as such reservation existed prior to the recognition of such Indian group, or as such reservation may exist thereafter;

(2) any property right held in trust or recognized by the United States for such other Indian tribe as such property existed prior to the recognition of such Indian group; or

(3) any previously or independently existing claim by a petitioner to any such property right held in trust by the United States for such other Indian tribe prior to the recognition by the Federal Government of such Indian group as an Indian tribe.

SEC. 12. IMPLEMENTATION OF DECISIONS.

(a) ELIGIBILITY FOR SERVICES AND BENEFITS.—

(1) IN GENERAL.—Subject to paragraph (2), upon recognition by the Commission of a petitioner as an Indian tribe under this Act, the Indian tribe shall—

(A) be eligible for the services and benefits from the Federal Government that are available to other federally recognized Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; and

(B) have the responsibilities, obligations, privileges, and immunities of such Indian tribes.

(2) PROGRAMS OF THE BUREAU.—

(A) IN GENERAL.—The recognition of an Indian group as an Indian tribe by the Commission under this Act shall not create an immediate entitlement to programs of the Bureau in existence on the date of the recognition.

(B) AVAILABILITY OF PROGRAMS.—

(i) IN GENERAL.—The programs described in subparagraph (A) shall become available to the Indian tribe upon the appropriation of funds.

(ii) REQUESTS FOR APPROPRIATIONS.—The Secretary and the Secretary of Health and Human Services shall forward budget requests for funding the programs for the Indian tribe pursuant to the needs determination procedures established under subsection (b).

(b) NEEDS DETERMINATION AND BUDGET REQUEST.—

(1) IN GENERAL.—Not later than 180 days after an Indian group is recognized by the Commission as an Indian tribe under this Act, the appropriate officials of the Bureau and the Indian Health Service of the Department of Health and Human Services shall consult and develop in cooperation with the Indian tribe, and forward to the Secretary or the Secretary of Health and Human Services, as appropriate, a determination of the needs of the Indian tribe and a recommended budget required to serve the newly recognized Indian tribe.

(2) SUBMISSION OF BUDGET REQUEST.—Upon receipt of the information described in paragraph (1), the appropriate Secretary shall submit to the President a recommended budget along with recommendations, concerning the information received under paragraph (1), for inclusion in the annual budget submitted by the President to the Congress pursuant to section 1108 of title 31, United States Code.

SEC. 13. ANNUAL REPORT CONCERNING COMMISSION'S ACTIVITIES.

(a) LIST OF RECOGNIZED TRIBES.—Not later than 90 days after the first meeting of the Commission, and annually on or before each January 30 thereafter, the Commission shall publish in the Federal Register a list of all Indian tribes that—

(1) are recognized by the Federal Government; and

(2) receive services from the Bureau.

(b) ANNUAL REPORT.—

(1) IN GENERAL.—Beginning on the date that is 1 year after the date of the enactment of this Act, and annually thereafter, the Commission shall prepare and submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives that describes the activities of the Commission.

(2) CONTENT OF REPORTS.—Each report submitted under this subsection shall include, at a minimum, for the year that is the subject of the report—

(A) the number of petitions pending at the beginning of the year and the names of the petitioners;

(B) the number of petitions received during the year and the names of the petitioners;

(C) the number of petitions the Commission approved for acknowledgment during the year and the names of the acknowledged petitioners;

(D) the number of petitions the Commission denied for acknowledgment during the year and the names of the petitioners; and

(E) the status of all pending petitions on the date of the report and the names of the petitioners.

SEC. 14. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

Any petitioner may bring an action in the district court of the United States for the district in which the petitioner resides, or the United States District Court for the District of Columbia, to enforce the provisions of this Act, including any time limitations within which actions are required to be taken, or decisions made, under this Act. The district court shall issue such orders (including writs of mandamus) as may be necessary to enforce the provisions of this Act.

SEC. 15. REGULATIONS.

The Commission may, in accordance with applicable requirements of title 5, United States Code, promulgate and publish such regulations as may be necessary to carry out this Act.

SEC. 16. GUIDELINES AND ADVICE.

(a) GUIDELINES.—Not later than 90 days after the first meeting of the Commission, the Commission shall make available to Indian groups suggested guidelines for the format of petitions, including general suggestions and guidelines concerning where and how to research information that is required to be included in a petition. The examples included in the guidelines shall not preclude the use of any other appropriate format.

(b) RESEARCH ADVICE.—The Commission may, upon request, provide suggestions and advice to any petitioner with respect to the research of the petitioner concerning the historical background and Indian identity of such petitioner. The Commission shall not be responsible for conducting research on behalf of the petitioner.

SEC. 17. ASSISTANCE TO PETITIONERS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services may award grants to Indian groups seeking Federal recognition as Indian tribes to enable the Indian groups to—

(A) conduct the research necessary to substantiate petitions under this Act; and

(B) prepare documentation necessary for the submission of a petition under this Act.

(2) TREATMENT OF GRANTS.—The grants made under this subsection shall be in addition to any other grants the Secretary of Health and Human Services is authorized to provide under any other provision of law.

(b) COMPETITIVE AWARD.—The grants made under subsection (a) shall be awarded competitively on the basis of objective criteria prescribed in regulations promulgated by the Secretary of Health and Human Services.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—There are authorized to be appropriated to the Commission to carry out this Act (other than section 17)—

(1) $1,500,000 for fiscal year 1996; and

(2) $1,500,000 for each of fiscal years 1997 through 2008.

(b) SECRETARY OF HHS.—To carry out section 17, there are authorized to be appropriated to the Department of Health and Human Services for the Administration for Native Americans $500,000 for each of fiscal years 1996 through 2007.

SECTION-BY-SECTION SUMMARY OF THE INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT OF 1995

SECTION 1. SHORT TITLE.

This section provides that the Act may be cited as the ''Indian Federal Recognition Administrative Procedures Act of 1995''.

SEC. 2. PURPOSES.

This section provides that the purposes of the Act are: to establish a procedure to extend Federal recognition to Indian groups; to extend to Indian groups that are found to be Indian tribes the protection, services, benefits and privileges and immunities which are available pursuant to the Federal trust responsibility and to those Indian tribes with a government-to-government relationship with the United States; to ensure that a consistent legal, factual and historical basis is utilized to determine when acknowledgement should be extended to an Indian tribe; to establish a Commission on Indian Recognition; to provide clear and consistent standards of administrative review of petitions for acknowledgement; to clarify evidentiary standards and provide adequate resources to process petitions; and to remove the Federal acknowledgement process from the Bureau of Indian Affairs.

SEC. 3. DEFINITIONS.

This section provides definitions for the following terms: ''acknowledged'', ''acknowledgement'', ''autonomous'', ''Bureau'', ''Commission'', ''community'', ''continuous or continuously'', ''Department'', ''documented petition'', ''group'', ''historically, historical, history'', ''Indian group'', ''Indian tribe'', ''indigenous'', ''letter of intent'', ''member of an Indian group'', ''member of an Indian tribe'', ''petition'', ''petitioner'', ''political influence or authority'', ''previous federal acknowledgement'', ''restoration'', ''Secretary'', ''sustained contact'', ''treaty'', ''tribe'', ''tribal relations'', ''tribal roll'', and ''United States''.

SEC. 4. COMMISSION ON INDIAN RECOGNITION.

Subsection (a) of this section authorizes the establishment of the Commission on Indian Recognition as a three member independent agency of the Executive Branch.

Subsection (b) provides that Commission members are to be appointed by the President with the advice and consent of the Senate. Indian tribes may make recommendations to the President and the President shall consider individuals with backgrounds in Indian law or policy, anthropology, genealogy or history in making appointments to the Commission. Commissioners will serve for a term of four years, except in the case of the initial commissioners, whose terms shall be staggered. Vacancies in the Commission will be filled in the same manner as original appointments. Commissioners are to be paid at a rate equivalent to level V of the Executive Schedule and are to be reimbursed for all travel and per diem expenses. Commissioners are to be full-time employees of the Federal Government and cannot be otherwise employed by the Federal Government during their service on the Commission. The Chairperson of the Commission is to be designated by the President at the time the Commissioners are nominated.

Subsection (c) provides that the first meeting of the Commission will occur no later than 30 days after all of the Commissioners have been confirmed by the Senate. Two members of the Commission will constitute a quorum for the conduct of business. The Commission is authorized to adopt any rules necessary to govern its operation, organization and personnel. The principal office of the Commission is required to be in the District of Columbia.

Subsection (d) requires the Commission to carry out the duties assigned to it and to meet the requirements imposed on it by this Act.

Subsection (e) authorizes the Chairperson of the Commission to appoint, terminate and fix the compensation of an Executive Director of the Commission and such other personnel as the Chairperson considers advisable to assist in the work of the Commission. The Chairperson is also authorized to procure temporary and intermittent services. In general, the Commission is authorized to hold hearings, take testimony, enter into contracts and take such other actions as the Commission may consider advisable. Any member of the Commission may administer oaths to witnesses appearing before the Commission. The Commission is authorized to secure such information as it may need to carry out this Act from any officer or entity of the Federal Government. Other federal departments and agencies are authorized to provide personnel and facilities or services to the Commission on a nonreimbursable basis. The Commission is also authorized to use the U.S. Mails on the same terms and conditions as other Federal departments and agencies.

Subsection (f) provides that the Federal Advisory Committee Act does not apply to the Commission.

Subsection (g) provides that the Commission shall terminate 12 years after the date of enactment of this Act.

SEC. 5. PETITIONS FOR RECOGNITION

Subsection (a) of this section provides that any Indian group, subject to the exceptions in this section, may submit to the Commission a petition requesting that the Commission recognize the Indian group as an Indian tribe. Indian tribes already recognized by the United States, splinter groups or factions of such Indian tribes, groups which have previously been denied recognition groups which were terminated by an Act of Congress, and groups which have been denied recognition by a Federal court are not eligible to petition the Commission for recognition. Not later than 30 days after all members of the Commission have been confirmed by the Senate, the Secretary is required to transfer to the Commission all petitions pending before the Department of the Interior that are not under active consideration. All authority of the Secretary to recognize or acknowledge an Indian group as an Indian tribe, except for those groups under active consideration, shall cease on the date of transfer to the Commission. All petitions transferred to the Commission shall be considered as having been submitted to the Commission in the same order they were submitted to the Department.

Subsection (b)(1) provides that a petition must be readable and contain detailed, specific evidence showing that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1871. The Commission can determine the Indian identity of a group based on any one or more of the following: Identification as an Indian entity by the Federal Government; a relationship of petitioner with a state government or a unit of local government based on the Indian identity of the petitioner; identification as an Indian entity by public or private records, by anthropologists or historians, newspapers, books, other Indian tribes and Indian organizations, or foreign governments.

Subsection (b)(2) provides that the petition must contain a statement of facts establishing that the membership of the petitioner comprises a distinct community which has existed from historical times to the present. The Commission can determine the existence of an Indian community based on one or more of the following items: marriages within the group; social relationships and interaction within the group; shared labor or economic activity; discrimination or other social distinctions by nonmembers; shared ritual activity and cultural patterns; collective Indian identity continuously over a period of more than 50 years; and a demonstration of historical political influence.

Subsection (b)(2) further provides that the Commission shall find that the petitioner has provided sufficient evidence of a community if the petitioner has provided evidence that demonstrates any one of the following: more than 50% of the members of the group reside in a particular geographic area exclusively composed of members of that group and the remainder of the group maintains consistent social interaction with some members of the community; not less than 50% of the marriages of the group are between members of the group; not less than 50% of the members of the group maintain distinct cultural patterns including language, kinship or religious beliefs and practices; and distinct community social institutions encompassing a substantial portion of the members of the group.

Subsection (b)(3) requires the petition to contain a statement of facts establishing that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times. The Commission may rely on one or more of

the following items to determine if the petitioner is an autonomous entity: the group is capable of mobilizing a significant number of its members and member resources for group purposes; most of the group considers issues acted upon by the group leadership to be of personal importance; there is widespread knowledge and involvement in political processes by most group members; and there are intragroup conflicts which show controversy over valued group goals, properties, policies and processes.

Subsection (b)(3) also provides that the Commission shall determine that a petitioner has provided sufficient evidence to demonstrate the exercise of political influence or authority by demonstrating that leaders or other mechanisms exist to accomplish the following: allocation of group resources; settlement of disputes between members or subgroups; influence the behavior of individual members; and organize or influence economic activities among the members.

Subsection (b)(4) provides that the petition must include a copy of the governing document of the petitioner that includes the petitioner's membership criteria or a description of the governing procedures and membership criteria.

Subsection (b)(5) requires the petition to contain a list of all of the petitioner's current members and a statement describing the methods used to prepare such list. A group's membership must consist of established descendancy from an Indian group that existed historically or from historical Indian groups that combined and functioned as a single autonomous entity. Evidence of tribal membership shall include the following items: descendancy rolls prepared by the Secretary; state, federal or other official records; church, school and similar enrollment records; and affidavits of recognition by tribal elders, leaders or the tribal governing body.

Subsection (c) provides that a petition from a group that is able to demonstrate by a preponderance of the evidence that the group was or is the successor in interest to a party to a treaty; or a group acknowledged by the Federal Government as eligible to participate in the Indian Reorganization Act; or a group for which the United States holds lands in trust; or a group that has been denominated a tribe by an Act of Congress or an Executive Order shall only have to prove continuity of its existence as an Indian group from the date of such event rather than from the date of 1871.

Subsection (d) provides that no petitions can be submitted to the Commission after the date that is 6 years after the date of enactment of this Act.

SEC. 6. NOTIFICATION OF RECEIPT OF PETITION.

Subsection (a) of this section provides that 30 days after a petition is submitted or transferred to the Commission, the Commission shall send a written acknowledgement of receipt to the petitioner and publish a notice of such receipt in the Federal Register. With regard to a petition that is transferred to the Commission from the Secretary, the Commission shall also advise the petitioner whether the petition meets the requirements of Section 5 of this Act and, if necessary, provide the petitioner with 90 days to submit a petition to the Commission which does meet the requirements of Section 5.

Subsection (b) provides that the Commission shall provide written notification to the Governor, attorney general and each federally recognized Indian tribe located in the state in which the petitioner resides.

Subsection (c) provides that the Commission shall publish the notice of the receipt of each petition in a major newspaper or general circulation in the town or city located nearest the petitioner. These notices shall include a statement of the opportunity for any interested parties to submit factual or legal arguments in support of or in opposition to the petition. A copy of any such statements shall be made available to the petitioner by the Commission and the petitioner shall be afforded an opportunity to respond to such statements from other parties.

SEC. 7. PROCESSING THE PETITION.

Subsection (a) requires the Commission to conduct a review of all documented petitions which it receives. The review shall include consideration of the petition, supporting evidence and the factual statements contained in the petition. The Commission may also initiate other research relative to an analysis of the petition and consider such evidence as may be submitted by other parties. Upon a request by a petitioner, the Library of Congress and the National Archives shall allow the petitioner access to their resources, records and documents to conduct research and prepare evidence concerning the status of the petitioner.

Subsection (b) provides that petitions shall be considered on a first come, first served basis, determined by the date of the original filing, except for those petitions which meet the requirements of Section 5(c) which shall receive priority consideration.

SEC. 8. PRELIMINARY HEARING.

Subsection (a) provides that not later than 60 days after the Commission receives a documented petition, it shall set a date for a preliminary hearing. At the preliminary hearing the petitioner or any other concerned party may provide evidence concerning the status of the petitioner.

Subsection (b) provides that not later than 30 days after the conclusion of a preliminary hearing, the Commission shall either decide to extend Federal acknowledgement to the petitioner or to require the petitioner to proceed to an adjudicatory hearing.

Subsection (c) provides that if the Commission requires an adjudicatory hearing then it must: make appropriate records of the Commission available to the petitioner and provide such guidance as the Commission considers necessary to assist the petitioner in preparing for the hearing. Not later than 30 days after the conclusion of the preliminary hearing, the Commission is required to make available to the petitioner a written list of any deficiencies or omissions the Commission relied upon in the preliminary hearing. The scope of the adjudicatory hearing is limited to the list of deficiencies or omissions and the Commission cannot make any additions to the list after it is issued to the petitioner.

SEC. 9. ADJUDICATORY HEARING.

Subsection (a) provides that the adjudicatory hearing shall be held not late than 180 days after the preliminary hearing.

Subsection (b) provides that the Commission may require testimony from the acknowledgement and research staff of the Commission or from other witnesses. All such testimony shall be subject to cross examination by the petitioner.

Subsection (c) provides that the petitioner can provide such evidence as the petitioner considers appropriate.

Subsection (d) provides that not later than 60 days after the conclusion of an adjudicatory hearing the Commission shall make a determination concerning the acknowledgement of the petitioner as an Indian tribe. The determination shall be published in the Federal Register and shall be delivered to the petitioner and every other interested party.

SEC. 10. APPEALS.

Subsection (a) provides that not later than 60 days after the publication of a determination by the Commission, the petitioner may appeal the determination to the United States District Court for the District of Columbia.

Subsection (b) provides that petitioner may be awarded attorney fees and costs if the petitioner prevails on the appeal.

SEC. 11. EFFECT OF DETERMINATIONS.

This section provides that a determination by the Commission that a petitioner is recognized by the United States as an Indian tribe will not have the effect of depriving or diminishing: (1) the right of any other Indian tribe to govern its reservation as such reservation existed prior to the recognition of the Indian group; (2) any property right held in trust by the: United States for such other Indian tribe as such property existed prior to the recognition of such Indian group; or (3) any previously or independently existing claim by a petitioner to any such property right held in trust by the United States for such other Indian tribe prior to the recognition of the Indian group.

SEC. 12. IMPLEMENTATION OF DECISIONS.

Subsection (a) provides that upon recognition by the Commission of an Indian group as an Indian tribe, the Indian tribe shall be eligible for the benefits and services made available to Indian tribes by the Federal Government because of their status as Indian tribes with a government-to-government relationship with the United States. Newly recognized Indian tribes shall also have the responsibilities, obligations, privileges and immunities of such Indian tribes. The programs, services and benefits available to Indian tribes shall only become available to a newly recognized tribe upon the appropriation of funds.

Subsection (b) provides that not later than 180 days after an Indian group is recognized by the Commission, officials of the BIA and IHS shall consult with and develop in cooperation with the Indian tribe a determination of the needs of the Indian tribe and a recommended budget required to serve the tribe. The appropriate Secretary will forward the recommended budget to the President for inclusion in the President's annual budget request to the Congress.

SEC. 13. ANNUAL REPORT CONCERNING COMMISSION'S ACTIVITIES.

Subsection (a) provides that 90 days after the first meeting of the Commission and annually thereafter the Commission shall publish in the Federal Register a list of all Indian tribes that are recognized by the Federal Government and receive services from the BIA.

Subsection (b) provides that the Commission shall submit an annual report on its activities to the Congress prior to January 30 of each year. Each such report shall contain the number of petitions pending and the names of the petitioners; the number of petitions approved or denied during the year and the names of the petitioners and the status of all petitions pending on the date of the report.

SEC. 14. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

This section authorizes any petitioner to bring an action in the Federal courts to enforce the provisions of the Act, including any time limitations within which actions are required to be taken.

SEC. 15. REGULATIONS.

This section authorizes the Commission to promulgate and publish regulations to carry out the Act.

SEC. 16. GUIDELINES AND ADVICE.

Subsection (a) provides that not later than 90 days after the first meeting of the Commission, the Commission shall make available to Indian groups suggested guidelines for the format of petitions.

Subsection (b) provides that the Commission may provide any petitioner with suggestions and advice with respect to research concerning the historical background and Indian identity of the petitioner.

SEC. 17. ASSISTANCE TO PETITIONERS.

Subsection (a) authorizes the Secretary of the Department of Health and Human Services to award grants to Indian groups seeking recognition as Indian tribes to enable such groups to conduct research and prepare the documentation necessary to submit a petition under this Act.

Subsection (b) provides that grants shall be awarded competitively on the basis of objective criteria prescribed in regulations which are published by the Secretary of HHS.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

Subsection (a) authorizes $1.5 million to be appropriated to the Commission to carry out this Act for each fiscal year from 1996 through 2008.

Subsection (b) authorizes $500,000 to be appropriated to HHS for the fiscal years 1996 through 2007 to carry out the grant program authorized in Section 17 of this Act.●

ADDITIONAL COSPONSORS

S. 190

At the request of Mr. PRESSLER, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 190, a bill to amend the Fair Labor Standards Act of 1938 to exempt employees who perform certain court reporting duties from the compensatory time requirements applicable to certain public agencies, and for other purposes.

S. 198

At the request of Mr. CHAFEE, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 198, a bill to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Alabama [Mr. SHELBY], and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 351

At the request of Mr. HATCH, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

AMENDMENT NO. 299

At the request of Mr. NUNN the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of amendment No. 299 proposed to House Joint Resolution 1, a joint resolution proposing a balanced budget amendment to the Constitution of the United States.

AMENDMENT NO. 300

At the request of Mr. CONRAD his name was added as a cosponsor of amendment No. 300 proposed to House Joint Resolution 1, a joint resolution proposing a balanced budget amendment to the Constitution of the United States.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 28, 1995, at 2 p.m. to hold a business meeting to vote on pending nominations.

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

ADDITIONAL STATEMENTS

TRIBUTE TO STATE REPRESENTATIVE KATHY HOGANCAMP

● Mr. MCCONNELL. Mr. President, I rise today in honor of an inspiring Kentucky leader—Kathy Hogancamp, State representative for Kentucky's Fourth District.

Representative Hogancamp's resiliency determination, and strong sense of community service is clearly reflected in the course of her career prior to political service. She is a former teacher, and also served as an official of the U.S. Department of Health and Human Services and Department of Education from 1985 to 1991. Most recently, Kathy applied her master's degree in guidance and educational psychology in her work as a private tutor.

As our Nation struggles to recapture the initiative and stamina essential to reviving the American Dream, Kathy Hogancamp exemplifies what self-empowerment and the courage to make a difference truly mean. Since age 17, Kathy has been wheel-chair bound. Yet, she has never allowed her physical limitations to deter her work in serving her community and fulfilling her Christian mission. Kathy believes that character and intellect are far more important than her physical condition. Her optimism and drive to achieve are the basis of her personal philosophy—if there are obstacles to overcome, then overcome them.

In 1994, Kathy Hogancamp set out to win Kentucky's Fourth District House seat. Despite the odds in a predominately Democratic district, Hogancamp won the confidence of the voters and the title of State representative. Representative Hogancamp's campaign reflected the needs and interests of her district, not herself, as her platform focused on cutting taxes and revising the Kentucky Education Reform Act.

In February, Representative Hogancamp encountered a challenge that tested her will and strength as a serious automobile accident left her battered and bruised in the hospital. I am pleased to tell the Chamber that Kathy is recovering quite well and is eager to return to her duties as State representative. Mr. President, I want to share with my colleagues her thoughts on public service and sense of responsibility in her role as a lawmaker and community leader. It is my hope that her words will serve to remind us what our role as Members of the U.S. Senate means to our constituents and the future of our Nation.

Mr. President, I ask that the Paducah Sun's February 14, 1995, article on Representative Hogancamp be printed in the RECORD.

The article follows:

[From the Paducah Sun, Feb. 14, 1995]

REP. HOGANCAMP RESOLVED, UPBEAT SINCE LAST BRUTAL BRUSH WITH DEATH

(By Donna Groves Haynes)

Bruised, battered and lying in a hospital bed, state Rep. Kathy Hogancamp still radiates strength and determination.

''That's the way God built me,'' said Hogancamp, who has been paralyzed since a car wreck 23 years ago and is now recovering from serious injuries sustained in a van wreck Feb. 7 near Beaver Dam.

''I could have decided to be a couch potato when I was 17 and would have been justified in doing so,'' Hogancamp said in an interview from her hospital room Monday. ''I made the decision to make something of my life because I do believe I have something to give back to our culture.''

Now after a second serious car crash, Hogancamp is displaying the same resilience. ''I've learned that accidents do strike twice, and God still has His hand on my head,'' she said.

Doctors do not expect Hogancamp's mobility to be any more impaired than it was before the wreck. ''It's just all the logistics—getting a new (wheel) chair, a new car . . . new makeup,'' she said jokingly, referring to the fact that her personal belongings were strewn over about a 30-foot area in the wreck.

Over the weekend, Hogancamp was moved out of intensive care and into a private room. Although she has been told she could be released Thursday, Hogancamp added, ''but I don't trust doctors.''

Even in the hospital, Hogancamp was beginning to talk about business again. When U.S. Sen. Mitch McConnell called Monday to ask her how she was feeling, she volunteered to speak at the upcoming Lincoln Day festivities ''if at all possible.''

Hogancamp views her latest ordeal as a ''wake-up call from God,'' an attempt on His part to ensure she is properly motivated in her legislative endeavors. ''God had to get my attention again, a second time, telling me to stay on the track. When you reach adulthood, it's easy to slip into lifeless faith, I had not escaped that.

''He was saying to me; 'I put you in this position of responsibility. Don't blow it.' ''

Asked if she ever wanted to question, ''Why me?'' Hogancamp explained that she learned from the Biblical character Job that that would be futile. ''Job never got his question answered. He just saw God, and his question paled in comparison.

''It's an insignificant question. You can waste your life on it. You just need to take what you can from your past and move on. A lot of the things I learned when I was walking are helpful to me now. I used to be in speech and drama. That helped me learn to write a heck of a speech.''

Although Hogancamp is alert and making jokes, she realizes she has a long road of recovery ahead of her. ''I'm a lot more recovered upstairs than my body is,'' she said. ''My whole body is one big bruise.''

Among her more serious injuries are a few cracked ribs and a compound fractured wrist. But because it's her left wrist, Hogancamp made light of that. ''It's not my major makeup hand anyway,'' she said.

Hogancamp is optimistic that the wrist injury will not prevent her from using an adaptive device to write on her computer.

And she believes her injuries could even result in some benefits. ''It banged up my legs pretty good, so much so that I may end up sitting straighter. It banged me around so much, I may end up with better posture. Isn't that ironic?''

Hogancamp said she remained conscious as the van tumbled out of control Tuesday night. ''Bright lights, going round and round and wondering, 'When is this going to end?' I've never done drugs, but that's got to be close to what a drug experience would be.''

When the van finally came to rest, Hogancamp found herself face down in the mud with her body twisted. She could see that her left wrist was severely mangled, but, being paralyzed, had no idea what her other injuries might be.

Still, she said, her faith helped her to remain calm. ''I knew if God had brought me that far, it wasn't going to be the end.''●

TRIBUTE TO ALEX MANOOGIAN

● Mr. LEVIN. Mr. President, this Friday, March 3, 1995, the Armenian General Benevolent Union of Detroit is holding a tribute banquet honoring Mr. Alex Manoogian. Mr. Manoogian is one of the most inspiring people I have ever met. This Friday evening at St. John's Armenian Church in Southfield, MI, the Republic of Armenia will award him the National Hero of Armenia Award and an honorary doctorate degree from Yerevan State University.

As an appropriate tribute to Mr. Manoogian's stature, the president of the Armenian Parliament, His Excellency Babken Ararktsian will be the keynote speaker.

Alex Manoogian's life is an affirmation of the American dream. And yet the key to understanding the meaning of his vast worldly success is to know of the love, fidelity, and loyalty that Alex Manoogian has held in his heart for his family, his people, and his community.

He was born in Asia Minor in 1901, and came to America in 1920. Settling in Detroit in 1924, he founded his own company in 1928 which has grown into the multinational Masco Corp.

He was married to Marie Tatian in 1931. In over 60 years of marriage they were blessed with two loving children and six adoring grandchildren. To understand the depth of his love of family and his embrace of the Armenian community is to understand the magnanimous actions of his remarkable life.

His involvement and generosity have created or expanded hospitals, museums, libraries, universities, schools, and other important institutions throughout the world. Close to home, it is his former residence, donated to the city of Detroit, that is the official residence for the mayor of Detroit.

Mr. President, the positive impact of his life cannot be overestimated, and his legacy will live forever through the countless people around the world that have been changed by, and benefited from, the vast array of cultural, educational, humanitarian, and charitable institutions that have thrived as the result of his efforts.

His awards and honors have been many, and his international renown is well-deserved. His life has been a tribute to all that is possible and good in this great country, his adopted home. And the loyalty for and love of his heritage have been the guiding light and beneficiary of his remarkable life. It is an honor to know him, and an honor for me to pay tribute to him.●

AMERICAN HEART MONTH

● Mr. GORTON. Mr. President, I stand in support of February, American Heart Month. February 1995 marks the 32d annual American Heart Month. To convey the importance that all Americans participate in the battle against cardiovascular diseases, including heart attack and stroke, in 1963 the U.S. Congress passed a joint resolution requesting that the President proclaim each February as American Heart Month. But the battle has not been won, cardiovascular diseases remain America's No. 1 killer and a major cause of disability.

During American Heart Month, the American Heart Association and its more than 3.7 million volunteers canvass neighborhoods nationwide distributing educational materials and soliciting public support for the AHA mission, the reduction of disability and death from cardiovascular diseases, including heart attack and stroke. The American Heart Month theme this year is ''Life. It's What We're Fighting For,'' highlighting the value of biomedical research and its significance in daily life for many Americans. AHA-sponsored activities and information during this American Heart Month focus on the importance of current medical research projects in the fight against cardiovascular diseases and outline some medical miracles responsible for longer and healthier lives of millions of Americans. Through these educational efforts, the AHA hopes to enhance public support and knowledge about the critical nature of biomedical research in the battle against cardiovascular diseases.

Since 1949, the American Heart Association has invested about $1.3 billion in medical research and hopes to reach the $2 billion mark by the year 2000. The AHA reports that it will contribute about $94 million in support of almost 2,900 medical research projects across this country in 1995.

American Heart Association-supported research has produced some significant results, such as CPR, life-extending drugs, bypass surgery, pacemakers and other surgical techniques to repair heart defects. In addition, four physicians who received the Nobel Prize in Physiology or Medicine had been supported, at one time, by the AHA, including Dr. Edwin G. Krebs of the University of Washington in Seattle. Doctor Krebs and Dr. Edmond H. Fischer, also of the University of Washington in Seattle, both were awarded the 1991 Nobel Prize in Physiology or Medicine for their discovery of how proteins in the body are switched on to perform functions within cells.

I can personally attest to the benefit of medical research. According to the American Heart Association, each year 1.5 million Americans suffer a heart attack—that is approximately 1 heart attack every 20 seconds. As my colleagues know, unfortunately, last November, I suffered a heart attack. But, thanks to medical research, I am living a healthy, productive life.

As a recent beneficiary of medical research, I welcome this opportunity to salute the American Heart Association for their research support and public and professional education and community service programs to advance the battle against heart attack and stroke. I am particularly proud of the contribution of the American Heart Association Washington affiliate. The AHA Washington affiliate in 1994–1995 will support about $797,332 on research being conducted at the following research facilities in Washington: University of Washington, Washington State University, Children's Hospital in Seattle, VA Medical Center, and the Fred Hutchinson Cancer Research Center.

However, I am still concerned about the federal commitment to the battle against cardiovascular diseases, including heart attack and stroke. The American Heart Association estimates that about 1 in 4 Americans suffers from cardiovascular diseases that will cost this Nation approximately $138 billion in medical expenses and lost productivity in 1995. But, the fiscal year 1993 National Institutes of Health budget for research on heart disease and stroke is only $855 million, representing a research investment of less than 1 percent of the expenditures for these diseases.

Again, I encourage my colleagues to reaffirm our dedication to the fight against cardiovascular diseases. A significant growth in Federal resources is needed to take advantage of promising research projects in this area.

I ask that this year's Presidential proclamation be printed in the RECORD.

The proclamation follows:

[Proclamation 6768 of February 10, 1995]

AMERICAN HEART MONTH, 1995

(By the President of the United States of America)

A PROCLAMATION

Throughout history, the heart has been a symbol of health and well-being. Yet nothing now overshadows Americans' health as much as heart disease—the leading cause of death among men and women. Diseases of the heart and blood vessels kill nearly a million Americans each year, most from the effects of atherosclerosis, the narrowing and stiffening of blood vessels fro the buildup of plaque that usually begins early in life.

Today, Americans are enjoying the rewards of the progress humanity has made in understanding and treating cardiovascular disease. Advances in diagnosis make it possible to see the heart beat without the use of invasive procedures. Thousands of heart attack victims are being saved by the rapid administration of drugs to dissolve blood clots. Soon, gene therapy may be able to prevent the smooth muscle cell multiplication that contributes to the narrowing of blood vessels. Perhaps most important, we have greater understanding of how to prevent the development of heart disease. By controlling blood pressure and blood cholesterol, being physically active, and not smoking cigarettes, more Americans can have the chance to lead long, healthy lives.

The Federal Government has contributed to these successes by supporting research and education through the National Heart, Lung, and Blood Institute. Through its commitment to research, its programs to heighten public awareness, and its vital network of dedicated volunteers, the American Heart Association also has played a crucial role in bringing about these remarkable accomplishments.

Yet the heart has not revealed all of its mysteries. No one knows why heart disease begins. And, while it is known that heart disease develops differently in men and women, the reasons for those variations are still being studied. About 50 million Americans continue to suffer from hypertension, a major cause of stroke, and 1.25 million Americans have heart attacks every year.

Conquering these diseases requires unwavering national and personal commitment. On the national level, the Federal Government will continue to support research into the prevention, diagnosis, and treatment of heart disease. On the personal level, Americans can take steps to prevent heart disease from striking their families, including teaching their children heart-healthy habits. Working together, we can make the tragedy of heart disease a nightmare of the past.

In recognition of the need for all Americans to become involved in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843, 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

Now, Therefore, I, William J. Clinton, President of the United States of America, do hereby proclaim February 1995 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

In Witness Whereof, I have hereunto set my hand this tenth day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

WILLIAM J. CLINTON.●

LOUIS E. CURDES

● Mr. LUGAR. Mr. President, I rise today to pay tribute to the outstanding life and service of Louis E. Curdes. Mr. Curdes, who recently passed away at his home in Fort Wayne, IN, served his country with honor, and was a recognized hero of World War II.

Mr. Curdes demonstrated his skill and valor during his first 2 weeks as a fighter pilot in World War II, when he shot down a total of five German planes to become a flying ace. Several months later, when his plane was damaged in fighting, he was forced down in Italy and spent months in war prisons, until his eventual escape and walk to freedom.

Late in the war, Louis Curdes saw action in the South Pacific. He shot down aircraft from Japan and Italy, as well as Germany. Two of the Italian aircraft he shot down are displayed at the Smithsonian Air and Space Museum.

In 1963, Mr. Curdes retired as a lieutenant colonel after 22 years of service in the U.S. Air Force. He earned numerous medals including the Distinguished Flying Cross, Purple Heart, and Air Medals. Upon his retirement, he began Curdes Builders Co., and devoted his life to his family and work in Fort Wayne, IN.

Mr. President, it is with great respect that I call to my colleagues' attention the contributions Louis Curdes made to his country. He is truly an example and inspiration for all who follow him .●

HOMICIDES BY GUNSHOT IN NEW YORK CITY

● Mr. MOYNIHAN. Mr. President, I rise today, as I have done each week of the 104th Congress, to announce to the Senate that during the past week, 6 people were murdered by gunshot in New York City, bringing this year's total to 95.

Today I received a letter from Sarah Brady, chairman of Handgun Control Inc., which brought some very welcome news. The letter, which not coincidentally arrives on the 1-year anniversary of the implementation of the Brady law, announces the results of a new survey unequivocally proving that the Brady law is working. Conducted jointly by the International Association of Chiefs of Police and Handgun Control, Inc., the survey of 115 law enforcement agencies in 27 States reveals that background checks in those jurisdictions prevented the sale of guns to over 19,000 persons prohibited by law from purchasing firearms. Mrs. Brady also informs me that, according to Bureau of Alcohol, Tobacco, and Firearms estimates, the Brady law has prevented some 70,000 persons nationwide from illegally purchasing firearms.

Mr. President, this demonstrates that Congress can make a difference in the fight to reduce gun violence. I hope it will convince the Senate to adopt future measures to address this terrible problem.

I ask that the letter from Mrs. Brady be printed in the RECORD.

The letter follows:

FEBRUARY 27, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: Thanks to you, it's working. The results are in! Tuesday, February 28, 1995 marks the first anniversary of the implementation of the Brady Law and a new survey confirms that the new law is helping to keep guns out of the wrong hands.

Attached for your review are the results of a survey conducted by the International Association of Chiefs of Police (IACP) and Handgun Control, Inc. The survey found that background checks in 115 state and local jurisdictions, covering all or part of 27 states, stopped 19,000 felons and other prohibited persons from obtaining handguns.

While that is no national reporting requirement, the Bureau of Alcohol, Tobacco and Firearms estimates that background checks in the past year stopped 70,000 convicted felons and other prohibited persons from making an over-the-counter purchase of a handgun. Forty-thousand of those denials came from ''new'' states which did not previously meet the requirements of the Brady Law. As a result of these background checks, hundreds of arrests have been made of those wanted on outstanding warrants.

If you have any questions regarding this information, please do not hesitate to call HCI's Marie Carbone.

On behalf of Jim and myself, please accept our deepest appreciation for all that you did to make these results possible.

Sincerely,

SARAH BRADY,
Chair.●

RULES OF THE SENATE SPECIAL COMMITTEE ON AGING

● Mr. COHEN. Mr. President, today I am filing the committee rules of the Senate Special Committee on Aging. I ask that the rules be printed in the RECORD.

The rules follow:

SPECIAL COMMITTEE ON AGING—JURISDICTION AND AUTHORITY

(S. Res. 4 § 104, 95th Cong., 1st Sess. (1977) [1]

(a)(1) There is established a Special Committee on Aging (hereafter in this section referred to as the ''special committee'') which shall consist of nineteen Members. The Members and chairman of the special committee shall be appointed in the same manner and at the same time as the Members and chairman of a standing committee of the Senate. After the date on which the majority and minority Members of the special committee are initially appointed on or after the effective date of title I of the Committee System Reorganization Amendments of 1977, each time a vacancy occurs in the Membership of the special committee, the number of Members of the special committee shall be reduced by one until the number of Members of the special committee consists of nine Senators.

(2) For purposes of paragraph 1 of rule XXV; paragraphs 1, 7(a)(1)-(2), 9, and 10(a) of

[1] As amended by S. Res. 78, 95th Cong., 1st Sess. (1977), S. Res. 376, 95th Cong., 2d Sess. (1978), S. Res. 274, 96th Cong., 1st Sess. (1979), S. Res. 389, 96th Cong., 2d Sess. (1980).

rule XXVI; and paragraphs 1(a)-(d), and 2 (a) and (d) of rule XXVII of the Standing Rules of the Senate; and for purposes of section 202 (i) and (j) of the Legislative Reorganization Act of 1946, the special committee shall be treated as a standing committee of the Senate.

(b)(1) It shall be the duty of the special committee to conduct a continuing study of any and all matters pertaining to problems and opportunities of older people, including, but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employment, of engaging in productive and rewarding activity, of securing proper housing, and when necessary, of obtaining care or assistance. No proposed legislation shall be referred to such committee, and such committee shall not have power to report by bill, or otherwise have legislative jurisdiction.

(2) The special committee shall, from time to time (but not less often than once each year), report to the Senate the results of the study conducted pursuant to paragraph (1), together with such recommendation as it considers appropriate.

(c)(1) For the purposes of this section, the special committee is authorized, in its discretion, (A) to make investigations into any matter within its jurisdiction, (B) to make expenditures from the contingent fund of the Senate, (C) to employ personnel, (D) to hold hearings, (E) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (F) to require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (G) to take depositions and other testimony, (H) to procure the services of individual consultations or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (I) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(2) The chairman of the special committee or any Member thereof may administer oaths to witnesses.

(3) Subpoenas authorized by the special committee may be issued over the signature of the chairman, or any Member of the special committee designated by the chairman, and may be served by any person designated by the chairman or the Member signing the subpoena.

(d) All records and papers of the temporary Special Committee on Aging established by Senate Resolution 33, Eighty-seventh Congress, are transferred to the special committee.

RULES OF PROCEDURE

(139 Cong. Rec. S1929 (Daily ed. Feb. 18, 1993))

I. CONVENING OF MEETINGS AND HEARINGS

1. MEETINGS. The Committee shall meet to conduct Committee business at the call of the Chairman.

2. SPECIAL MEETINGS. The Members of the Committee may call additional meetings as provided in Senate Rule XXVI (3).

3. NOTICE AND AGENDA:

(a) HEARINGS. The Committee shall make public announcement of the date, place, and subject matter of any hearing at least one week before its commencement.

(b) MEETINGS. The Chairman shall give the Members written notice of any Committee meeting, accompanied by an agenda enumerating the items of business to be considered, at least 5 days in advance of such meeting.

(c) SHORTENED NOTICE. A hearing or meeting may be called on not less than 24 hours notice if the Chairman, with the concurrence of the Ranking Minority Member, determines that there is good cause to begin the hearing or meeting on shortened notice. An agenda will be furnished prior to such a meeting.

4. PRESIDING OFFICER. The Chairman shall preside when present. If the Chairman is not present at any meeting or hearing, the Ranking Majority Member present shall preside. Any Member of the Committee may preside over the conduct of a hearing.

II. CLOSED SESSIONS AND CONFIDENTIAL MATERIALS

1. PROCEDURE. All meetings and hearings shall be open to the public unless closed. To close a meting or hearing or portion thereof, a motion shall be made and seconded to go into closed discussion of whether the meeting or hearing will concern the matters enumerated in Rule II.3. Immediately after such discussion, the meeting or hearing may be closed by a vote in open session of a majority of the Members of the Committee present.

2. WITNESS REQUEST. Any witness called for a hearing may submit a written request to the Chairman no later than twenty-four hours in advance for his examination to be in closed or open session. The Chairman shall inform the Committee of any such request.

3. CLOSED SESSION SUBJECTS. A meeting or hearing or portion thereof may be closed if the matters to be discussed concern: (1) national security; (2) Committee staff personnel or internal staff management or procedure; (3) matters tending to reflect adversely on the character or reputation or to invade the privacy of the individuals; (4) Committee investigations; (5) other matters enumerated in Senate Rule XXVI (5)(b).

4. CONFIDENTIAL MATTER. No record made of a closed session, or material declared confidential by a majority of the Committee, or report of the proceedings of a closed session, shall be made public, in whole or in part or by way of summary, unless specifically authorized by the Chairman and Ranking Minority Member.

5. BROADCASTING.

(a) CONTROL. Any meeting or hearing open to the public may be covered by television, radio, or still photography. Such coverage must be conducted in an orderly and unobtrusive manner, and the Chairman may for good cause terminate such coverage in whole or in part, or take such other action to control it as the circumstances may warrant.

(b) REQUEST. A witness may request of the Chairman, on grounds of distraction, harassment, personal safety, or physical discomfort, that during his testimony cameras, media microphones, and lights shall not be directed at him.

III. QUORUMS AND VOTING

1. REPORTING. A majority shall constitute a quorum for reporting a resolution, recommendation or report to the Senate.

2. COMMITTEE BUSINESS. A third shall constitute a quorum for the conduct of Committee business, other than a final vote on reporting, providing a minority Member is present. One Member shall constitute a quorum for the receipt of evidence, the swearing of witnesses, and the taking of testimony at hearings.

3. POLLING.

(a) SUBJECTS. The Committee may poll (1) internal Committee matters including those concerning the Committee's staff, records, and budget; (2) other Committee business which has been designated for polling at a meeting.

(b) PROCEDURE. The Chairman shall circulate polling sheets to each member specifying the matter being polled and the time limit for completion of the poll. If any Member so requests in advance of the meeting, the matter shall be held for meeting rather than being polled. The clerk shall keep a record of polls; if the Chairman determines that the polled matter is one of the areas enumerated in Rule II.3, the record of the poll shall be confidential. Any Member may move at the Committee meeting following a poll for a vote on the polled decision.

IV. INVESTIGATIONS

1. AUTHORIZATION FOR INVESTIGATIONS. All investigations shall be conducted on a bipartisan basis by Committee Staff. Investigations may be initiated by the Committee staff upon the approval of the Chairman and the Ranking Minority Member. Staff shall keep the Committee fully informed of the progress of continuing investigations, except where the Chairman and the Ranking Minority Member agree that there exists temporary cause for more limited knowledge.

2. SUBPOENAS. Subpoenas for the attendance of witnesses or the production of memoranda, documents, records, or any other materials shall be issued by the Chairman, or by any other Member of the Committee designated by him. Prior to the issuance of each subpoena, the Ranking Minority Member, and any other Member so requesting, shall be notified regarding the identity of the person to whom the subpoena will be issued and the nature of the information sought, and its relationship to the investigation.

3. INVESTIGATIVE REPORTS. All reports containing findings or recommendations stemming from Committee investigations shall be printed only with the approval of a majority of the Members of the Committee.

V. HEARINGS

1. NOTICE. Witnesses called before the Committee shall be given, absent extraordinary circumstances, at least forty-eight hours' notice, and all witnesses called shall be furnished with a copy of these rules upon request.

2. OATH. All witnesses who testify to matters of fact shall be sworn unless the Committee waives the oath. The Chairman, or any Member, may request and administer the oath.

3. STATEMENT. Any witness desiring to make an introductory statement shall file 50 copies of such statement with the Chairman or clerk of the Committee 24 hours in advance of his appearance, unless the Chairman and Ranking Minority Member determine that there is good cause for a witness's failure to do so. A witness shall be allowed no more than ten minutes to orally summarize his prepared statement.

4. COUNSEL:

(a) A witness's counsel shall be permitted to be present during his testimony at any public or closed hearing or depositions or staff interview to advise such witness of his rights, provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Chairman may rule that representation by counsel from the government, corporation, or association creates a conflict of interest, and that the witness shall be represented by personal counsel not from the government, corporation, or association.

(b) A witness who is unable for economic reasons to obtain counsel may inform the Committee at least 48 hours prior to the witness's appearance, and it will endeavor to obtain volunteer counsel for the witness. Such counsel shall be subject solely to the control of the witness and not the Committee. Failure to obtain counsel will not excuse the witness from appearing and testifying.

5. TRANSCRIPT. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. Any witness shall be afforded, upon request, the right to review that portion of such record, and for this purpose, a copy of a witness's testimony in public or

closed session shall be provided to the witness. Upon inspecting his transcript, within a time limit set by the committee clerk, a witness may request changes in testimony to correct errors of transcription, grammatical errors, and obvious errors of fact; the Chairman or a staff officer designated by him shall rule on such request.

6. IMPUGNED PERSONS. Any person who believes that evidence presented, or comment made by a Member or staff, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his character or adversely affect his reputation may:

(a) file a sworn statement of facts relevant to the evidence or comment, which shall be placed in the hearing record;

(b) request the opportunity to appear personally before the Committee to testify in his own behalf; and

(c) submit questions in writing which he requests be used for the cross-examination of other witnesses called by the Committee. The Chairman shall inform the Committee of such requests for appearance or cross-examination. If the Committee so decides, the requested questions, or paraphrased versions or portions of them, shall be put to the other witness by a Member of by staff.

7. MINORITY WITNESSES. Whenever any hearing is conducted by the Committee, the minority on the Committee shall be entitled, upon request made by a majority of the minority Members to the Chairman, to call witnesses selected by the minority to testify or produce documents with respect to the measure or matter under consideration during at least one day of the hearing. Such request must be made before the completion of the hearing or, if subpoenas are required to call the minority witnesses, no later than three days before the completion of the hearing.

8. CONDUCT OF WITNESSES, COUNSEL AND MEMBERS OF THE AUDIENCE. If, during public or executive sessions, a witness, his counsel, or any spectator conducts himself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of such hearing the Chairman or presiding Member of the Committee present during such hearing may request the Sergeant at Arms of the Senate, his representative or any law enforcement official to eject said person from the hearing room.

VI. DEPOSITIONS AND COMMISSIONS

1. NOTICE. Notices for the taking of depositions in an investigation authorized by the Committee shall be authorized and issued by the Chairman or by a staff officer designated by him. Such notices shall specify a time and place for examination, and the name of the staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear unless the deposition notice was accompanied by a Committee subpoena.

2. COUNSEL. Witnesses may be accompanied at a deposition by counsel to advise them of their rights, subject to the provisions of Rule V.4.

3. PROCEDURE. Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee staff. Objections by the witnesses as to the form of questions shall be noted by the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the Committee staff may proceed with the deposition, or may at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from a Member of the Committee. If the Member overrules the objection, he may refer the matter to the Committee or he may order and direct the witness to answer the question, but the Committee shall not initiate the procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a Member of the Committee.

4. FILING. The Committee staff shall see that the testimony is transcribed or electronically recorded. If it is transcribed, the witness shall be furnished with a copy for review. No later than five days thereafter, the witness shall return a signed copy, and the staff shall enter the changes, if any, requested by the witness in accordance with Rule V.6. If the witness fails to return a signed copy, the staff shall note on the transcript the date a copy was provided and the failure to return it. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record to the testimony, and the transcript shall then be filed with the Committee clerk. Committee staff may stipulate with the witness to changes in this procedure; deviations from the procedure which do not substantially impair the reliability of the record shall not relieve the witness from his obligation to testify truthfully.

5. COMMISSIONS. The Committee may authorize the staff, by issuance of commissions, to fill in prepared subpoenas, conduct field hearings, inspect locations, facilities, or systems of records, or otherwise act on behalf of the Committee. Commissions shall be accompanied by instructions from the Committee regulating their use.

VII. SUBCOMMITTEES

1. ESTABLISHMENT. The Committee will operate as a Committee of the Whole, reserving to itself the right to establish temporary subcommittees at any time by majority vote. The Chairman of the full Committee and the Ranking Minority Member shall be ex-officio Members of all subcommittees.

2. JURISDICTION. Within its jurisdiction, as described in the Standing Rules of the Senate, each subcommittee is authorized to conduct investigations, including use of subpoenas, depositions, and commissions.

3. RULES. A subcommittee shall be governed by the Committee rules, except that its quorum for all business shall be one-third of the subcommittee Membership, and for hearings shall be one Member.

VIII. REPORTS

Committee reports incorporating Committee findings and recommendations shall be printed only with the prior approval of the Committee, after an adequate period for review and comment. The printing, as Committee documents, of materials prepared by staff for informational purposes, or the printing of materials not originating with the Committee or staff, shall require prior consultation with the minority staff; these publications shall have the following language printed on the cover of the document: ''Note: This document has been printed for informational purposes. It does not represent either findings or recommendations formally adopted by the Committee.''

IX. AMENDMENT OF RULES

The rules of the Committee may be amended or revised at any time, provided that not less than a majority of the Committee present so determine at a Committee meeting preceded by at least 3 days notice of the amendments or revisions proposed.●

RULES OF PROCEDURE OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

● Mr. ROTH. Mr. President, I herewith submit a copy of Rules of Procedure adopted by the Committee on Governmental Affairs pursuant to rule XXVI, section 2, Standing Rules of the Senate, and ask that they be printed in the RECORD at this point.

The Rules of Procedure follow:

RULES OF PROCEDURE OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

(Pursuant to rule XXVI, Sec. 2, Standing Rules of the Senate)

RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. Meeting dates. The Committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he deems necessary to expedite Committee business. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

B. Calling special Committee meetings. If at least three members of the Committee desire the chairman to call a special meeting, they may file in the offices of the Committee a written request therefor, addressed to the chairman. Immediately thereafter, the clerk of the Committee shall notify the chairman of such request. If, within three calendar days after the filing of such request, the chairman fails to call the requested special meeting, which is to be held within seven calendar days after the filing of such request, a majority of the Committee members may file in the offices of the Committee their written notice that a special Committee meeting will be held, specifying the date and hour thereof, and the Committee shall meet on that date and hour. Immediately upon the filing of such notice, the Committee clerk shall notify all Committee members that such special meeting will be held and inform them of its date and hour. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

C. Meeting notices and agenda. Written notices of Committee meetings, accompanied by an agenda, enumerating the items of business to be considered, shall be sent to all Committee members at least three days in advance of such meetings, excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session. In the event that unforeseen requirements or Committee business prevent a three-day notice of either the meeting or agenda, the Committee staff shall communicate such notice and agenda, or any revisions to the agenda, as soon as practicable by telephone or otherwise to members or appropriate staff assistants in their offices.

D. Open business meetings. Meetings for the transaction of Committee or Subcommittee business shall be conducted in open session, except that a meeting or series of meetings on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

E. Prior notice of first degree amendments. It shall not be in order for the Committee, or a subcommittee thereof, to consider any amendment in the first degree proposed to any measure under consideration by the Committee or Subcommittee unless a written copy of such amendment has been delivered to each member of the Committee or Subcommittee, as the case may be, and to the office of the Committee or Subcommittee, at least 24 hours before the meeting of the Committee or Subcommittee at which the amendment is to be proposed. This subsection may be waived by a majority of the members present. This subsection shall apply only when at least 72 hours written notice of a session to mark-up a measure is provided to the Committee or Subcommittee.

F. Meeting transcript. The Committee or Subcommittee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceeding of each meeting whether or not such meeting or any part thereof is closed to the public, unless a majority of the Committee or Subcommittee members vote to forgo such a record. (Rule SSVI, Sec. 5(e), Standing Rules of the Senate.)

RULE 2. QUORUMS

A. Reporting measures and matters. A majority of the members of the Committee shall constitute a quorum for reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

B. Transaction of routine business. Five members of the Committee shall constitute a quorum for the transaction of routine business, provided that one member of the minority is present.

For the purpose of this paragraph, the term ''routine business'' includes the convening of a meeting and the consideration of any business of the Committee other than reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

C. Taking testimony. One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony. (Rule XXVI, Sec. 7(a)(2), and 7(c)(2) Standing Rules of the Senate.)

D. Subcommittee quorums. Subject to the provisions of sections 7(a)(1) and (2) of Rule XXVI of the Standing Rules of the Senate, the Subcommittees of this Committee are authorized to establish their own quorums for the transaction of business and the taking of sworn testimony.

E. Proxies prohibited in establishment of quorum. Proxies shall not be considered for the establishment of a quorum.

RULE 3. VOTING

A. Quorum required. Subject to the provisions of subsection (E), no vote may be taken by the Committee, or any Subcommittee thereof, on any measure or matter unless a quorum, as prescribed in the preceding section, is actually present.

B. Reporting measures and matters. No measure, matter or recommendation shall be reported from the Committee unless a majority of the Committee members are actually present, and the vote of the Committee to report a measure or matter shall require the concurrence of a majority of those members who are actually present at the time the vote is taken. (Rule XXVI, Sec. 7(a)(1) and (3), Standing Rules of the Senate.)

C. Proxy voting. Proxy voting shall be allowed on all measures and matters before the Committee, or any Subcommittee thereof, except that, when the Committee, or any Subcommittee thereof, is voting to report a measure or matter, proxy votes shall be allowed solely for the purposes of recording a member's position on the pending question. Proxy voting shall be allowed only if the absent Committee or Subcommittee member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. All proxies shall be filed with the chief clerk of the Committee or Subcommittee thereof, as the case may be. All proxies shall be in writing and shall contain sufficient reference to the pending matter as is necessary to identify it and to inform the Committee or Subcommittee as to how the member establishes his vote to be recorded thereon. (Rule XXVI, Sec. 7(a)(3) and 7(c)(1), Standing Rules of the Senate.)

D. Announcement of vote. (1) Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such a measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee. (Rule XXVI, Sec.7(c), Standing Rules of the Senate.)

(2) Whenever the Committee by roll call vote acts upon any measure or amendment thereto, other than reporting a measure or matter, the results thereof shall be announced in the Committee report on that measure unless previously announced by the Committee, and such announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment thereto by each member of the Committee who was present at the meeting. (Rule XXVI, Sec. 7(b), Standing Rules of the Senate.)

(3) In any case in which a rollcall vote is announced, the tabulation of votes shall state separately the proxy vote recorded in favor of and in opposition to that measure, amendment thereto, or matter. (Rule XXVI, Sec. 7(b) and (c), Standing Rules of the Senate.)

E. Polling. (1) The Committee, or any Subcommittee thereof, may poll (a) internal Committee or Subcommittee matters including the Committee's or Subcommittee's staff, records and budget; (b) steps in an investigation, including issuance of subpoenas, applications for immunity orders, and requests for documents from agencies; and (c) other Committee or Subcommittee business other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public.

(2) Only the chairman, or a Committee member or staff officer designated by him, may undertake any poll of the members of the Committee. If any member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the Committee shall keep a record of polls; if a majority of the members of the Committee determine that the polled matter is in one of the areas enumerated in subsection (D) of Rule 1, the record of the poll shall be confidential. Any Committee member may move at the Committee meeting following the poll for a vote on the polled decision, such motion and vote to be subject to the provisions of subsection (D) of Rule 1, where applicable.

RULE 4. CHAIRMANSHIP OF MEETINGS AND HEARINGS

The chairman shall preside at all Committee meetings and hearings except that he shall designate a temporary chairman to act in his place if he is unable to be present at a scheduled meeting or hearing. If the chairman (or his designee) is absent ten minutes after the scheduled time set for a meeting or hearing, the ranking majority member present shall preside until the chairman's arrival. If there is no member of the majority present, the ranking minority member present, with the prior approval of the chairman, may open and conduct the meeting or hearing until such time as a member of the majority arrives.

RULE 5. HEARINGS AND HEARINGS PROCEDURES

A. Announcement of hearings. The Committee, or any Subcommittee thereof, shall make public announcement of the date, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearing, unless the Committee, or Subcommittee, determines that there is good cause to begin such hearing at an earlier date. (Rule XXVI, Sec. 4(a), Standing Rules of the Senate.)

B. Open hearings. Each hearing conducted by the Committee, or any Subcommittee thereof, shall be open to the public, except that a hearing or series of hearings on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the hearing to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such hearing or hearings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

C. Full Committee subpoenas. The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing of deposition, provided that the chairman may subpoena attendance or production without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this subsection, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

D. Witness counsel. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition to advise such witness while he or she is testifying, of his or her legal rights; provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by staff or during testimony before the Committee by personal counsel not from the government, corporation, or association or by personal counsel not representing other witnesses. This subsection shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such manner so as to prevent, impede, disrupt, obstruct or interfere with the orderly administration of the hearings; nor shall this subsection be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. Witness transcripts. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. the record of his or her testimony whether in public or executive session shall be made available for inspection by the witness or his or her counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be provided to any witness at his or her expense if he or she so requests. Upon inspecting his or her transcript, within a time limit set by the chief clerk of the Committee, a witness may request changes in the transcript to correct errors of transcription and grammatical errors; the chairman or a staff officer designated by him shall rule on such requests.

F. Impugned persons. Any person whose name is mentioned or is specifically identified, and who believes that evidence presented, or comment made by a member of the Committee or staff officer, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his or her character of adversely affect his or her reputation may:

(a) file a sworn statement of facts relevant to the evidence or comment, which statement shall be considered for placement in the placement in the hearing record by the Committee;

(b) request the opportunity to appear personally before the Committee to testify in his or her own behalf, which request shall be considered by the Committee; and

(c) submit questions in writing which he or she requests be used for the cross-examination of other witnesses called by the Committee, which questions shall be considered for use by the Committee.

G. Radio, television, and photography. The Committee, or any Subcommittee thereof, may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television or both, subject to such conditions as the Committee, or Subcommittee, may impose. (Rule XXVI, Sec.5(c), Standing Rules of the Senate.)

H. Advance statements of witnesses. A witness appearing before the Committee, or any Subcommittee thereof, shall provide 100 copies of a written statement and an executive summary or synopsis of his proposed testimony at least 48 hours prior to his appearance. This requirement may be waived by the chairman and the ranking minority member following their determination that there is good cause for failure of compliance. (Rule XXVI, Sec.4(b), Standing Rules of the Senate.)

I. Minority witnesses. In any hearings conducted by the Committee, or any Subcommittee thereof, the minority members of the Committee or Subcommitee shall be entitled, upon request to the chairman by a majority of the minority members, to call witnesses of their selection during at least one day of such hearings. (Rule XXVI, Sec. 4(d), Standing Rules of the Senate.)

J. Full Committee depositions. Depositions may be taken prior to or after a hearing as provided in this subsection.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority member as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee member or members or staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 5D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee member or members or staff. If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee member or members or staff may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it, which shall be handled in accordance with the procedure set forth in subsection (E). If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. The chairman or a staff officer designated by him may stipulate with the witness to changes in the procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

RULE 6. COMMITTEE REPORTING PROCEDURES

A. Timely filing. When the Committee has ordered a measure or matter reported, following final action the report thereon shall be filed in the Senate at the earliest practicable time. (Rule XXVI, Sec.10(b), Standing Rules of the Senate.)

B. Supplemental, minority, and additional views. A member of the Committee who gives notice of his intention to file supplemental, minority or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less

than three calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views. (Rule XXVI, Sec. 10(c), Standing Rules of the Senate.)

C. Notice by Subcommittee chairmen. The chairman of each Subcommittee shall notify the chairman in writing whenever any measure has been ordered reported by such Subcommittee and is ready for consideration by the full Committee.

d. Draft reports of Subcommittees. All draft reports prepared by Subcommittees of this Committee on any measure or matter referred to it by the chairman, shall be in the form, style, and arrangement required to conform to the applicable provisions of the Standing Rules of the Senate, and shall be in accordance with the established practices followed by the Committee. Upon completion of such draft reports, copies thereof shall be filed with the chief clerk of the Committee at the earliest practicable time.

E. Impact statements in reports. All Committee reports, accompanying a bill or joint resolution of a public character reported by the Committee, shall contain (a) an estimate, made by the Committee, of the costs which would be incurred in carrying out the legislation for the then current fiscal year and for each of the next five years thereafter (or for the authorized duration of the proposed legislation, if less than five years); and (2) a comparison of such cost estimates with any made by a Federal agency; or (3) in lieu of such estimate or comparison, or both, a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(a), Standing Rules of the Senate.)

Each such report shall also contain an evaluation, made by the Committee, of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation shall include (a) an estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses, (b) a determination of the economic impact of such regulation on the individuals, consumers, and businesses affected, (c) a determination of the impact on the personal privacy of the individuals affected, and (d) a determination of the amount of paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial, as well as reasonable estimates of the recordkeeping requirements that may be associated with the bill or joint resolution. Or, in lieu of the forgoing evaluation, the report shall include a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(b), Standing Rules of the Senate.)

RULE 7. SUBCOMMITTEES AND SUBCOMMITTEE PROCEDURES

A. Regularly established Subcommittees. The Committee shall have three regularly established Subcommittees. The Subcommittees are as follows:

Permanent Subcommittee on Investigations.

Oversight of Government Management and the District of Columbia.

Post Office and Civil Service.

B. Ad hoc Subcommittees. Following consultation with the ranking minority member, the chairman shall, from time to time, establish such ad hoc Subcommittees as he deems necessary to expedite Committee business.

C. Subcommittee membership. Following consultation with the majority members, and the ranking minority member of the Committee, the chairman shall announce selections for membership on the Subcommittees referred to in paragraphs A and B, above.

D. Subcommittee meetings and hearings. Each Subcommittee of this Committee is authorized to establish meeting dates and adopt rules not inconsistent with the rules of the Committee except as provided in Rules 2(D) and 7(E).

E. Subcommittee subpoenas. Each Subcommittee is authorized to adopt rules concerning subpoenas which need not be consistent with the rules of the Committee; provided, however, that in the event the Subcommittee authorizes the issuance of a subpoena pursuant to its own rules, a written notice of intent to issue the subpoena shall be provided to the chairman and ranking minority member of the Committee, or staff officers designated by them, by the Subcommittee chairman or a staff officer designated by him immediately upon such authorization, and no subpoena shall be issued for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the chairman and ranking minority member waive the 48 hour waiting period or unless the Subcommittee chairman certifies in writing to the chairman and ranking minority member that, in his opinion, it is necessary to issue a subpoena immediately.

F. Subcommittee budgets. Each Subcommittee of the Committee, which requires authorization for the expenditure of funds for the conduct of inquiries and investigations, shall file with the chief clerk of the Committee, not later than January 10 of the first year of each new Congress, its request for funds for the two (2) 12-month periods beginning on March 1 and extending through and including the last day of February of the two following years, which years comprise that Congress. Each such request shall be submitted on the budget form prescribed by the Committee on Rules and Administration, and shall be accompanied by a written justification addressed to the chairman of the Committee, which shall include (1) a statement of the Subcommittee's area of activities, (2) its accomplishments during the preceding Congress detailed year by year, and (3) a table showing a comparison between (a) the funds authorized for expenditure during the preceding Congress detailed year by year, (b) the funds actually expended during that Congress detailed year by year, (c) the amount requested for each year of the Congress, and (d) the number of professional and clerical staff members and consultants employed by the Subcommittee during the preceding Congress detailed year by year and the number of such personnel requested for each year of the Congress. The chairman may request additional reports from the Subcommittees regarding their activities and budgets at any time during a Congress. (Rule XXVI, Sec. 9, Standing Rules of the Senate.)

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. Standards. In considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.

B. Information Concerning the Nominee. Each nominee shall submit the following information to the Committee:

(1) A detailed biographical résumé which contains information relating to education, employment and achievements;

(2) Financial information, including a financial statement which lists assets and liabilities of the nominee and tax returns for the 3 years preceding the time of his or her nomination, and copies of other relevant documents requested by the Committee, such as a proposed blind trust agreement, necessary for the Committee's consideration; and,

(3) Copies of other relevant documents the Committee may request, such as responses to questions concerning the policies and programs the nominee intends to pursue upon taking office.

At the request of the chairman or the ranking minority member, a nominee shall be required to submit a certified financial statement compiled by an independent auditor.

Information received pursuant to this subsection shall be made available for public inspection; provided, however, that tax returns shall, after review by persons designated in subsection (C) of this rule, be placed under seal to ensure confidentiality.

C. Procedures for Committee inquiry. The Committee shall conduct an inquiry into the experience, qualifications, suitability, and integrity of nominees, and shall give particular attention to the following matters:

(1) A review of the biographical information provided by the nominee, including, but not limited to, any professional activities related to the duties of the office to which he or she is nominated;

(2) A review of the financial information provided by the nominee, including tax returns for the three years preceding the time of his or her nomination;

(3) A review of any actions, taken or proposed by the nominee, to remedy conflicts of interest; and

(4) A review of any personal or legal matter which may bear upon the nominee's qualifications for the office to which he or she is nominated.

For the purpose of assisting the Committee in the conduct of this inquiry, a majority investigator or investigators shall be designated by the chairman and a minority investigator or investigators shall be designated by the ranking minority member. The chairman, ranking minority member, other members of the Committee and designated investigators shall have access to all investigative reports on nominees prepared by any Federal agency, except that only the chairman, the ranking minority member, or other members of the Committee, upon request, shall have access to the report of the Federal Bureau of Investigation. The Committee may request the assistance of the General Accounting Office and any other such expert opinion as may be necessary in conducting its review of information provided by nominees.

D. Report on the Nominee. After a review of all information pertinent to the nomination, a confidential report on the nominee shall be made by the designated investigators to the chairman and the ranking minority member and, upon request, to any other member of the Committee. The report shall

summarize the steps taken by the Committee during its investigation of the nominee and identify any unresolved or questionable matters that have been raised during the course of the inquiry.

E. Hearings. The Committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office, including the policies and programs which he or she will pursue while in that position. No hearing shall be held until at least 72 hours after the following events have occurred: the nominee has responded to pre-hearing questions submitted by the Committee; and the report required by subsection (D) has been made to the chairman and ranking minority member, and is available to other members of the Committee, upon request.

F. Action on confirmation. A mark-up on a nomination shall not occur on the same day that the hearing on the nominee is held. In order to assist the Committee in reaching a recommendation on confirmation, the staff may make an oral presentation to the Committee at the mark-up, factually summarizing the nominee's background and the steps taken during the pre-hearing inquiry.

G. Application. The procedures contained in subsections (C), (D), (E), and (F) of this rule shall apply to persons nominated by the President to positions requiring their full-time service. At the discretion of the chairman and ranking minority member, those procedures may apply to persons nominated by the President to serve on a part-time basis.

RULE 9. PERSONNEL ACTIONS AFFECTING COMMITTEE STAFF

In accordance with Rule XLII of the Standing Rules of the Senate and the Congressional Accountability Act of 1995 (P.L. 104–1), all personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, state of physical handicap, or disability.

ORDER OF BUSINESS

Mr. BIDEN. Mr. President, my vote on the motion to table amendment No. 253 should have been ''no.'' I was mistaken on the sequence of the amendments before us today. I believe that a simple majority, as now provided in the Constitution, is appropriate for decisions to increase revenues. I do not believe that we—or future generations—should be constrained in the options available to keep the budget in balance.

(Ms. SNOWE assumed the Chair.)

Mr. HATCH. Madam President, I yield 3 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah has 15 minutes.

The Senator from Idaho is recognized for 3 minutes.

Mr. CRAIG. Madam President, thank you. Let me thank the Senator from Utah for yielding. There are so many people that I would like to thank this evening who have been direct participants in what I believe to have been one of the most important debates that the Senate of the United States has engaged in—at least in my tenure and in the tenure of many of our Senators.

I certainly would like to thank the Senator from Utah for his leadership on this issue and a good many others who have been directly responsible for bringing this most important issue and statement to the floor. I also thank the Senator from Illinois, PAUL SIMON, for his stalwart leadership in pursuit of the fiscal responsibility that most of us aspire to, which the Constitutional amendment would allow.

But tonight, let me talk to my colleagues here in the Chamber, for I believe we suffer the wrong idea. Somehow tonight, those who plan to vote against this amendment believe that their vote against it is like the passage of the vote for or against a bill that oftentimes comes to the floor. It is not that kind of vote.

Article V of our Constitution—the very organic document that we attempt to offer out an amendment to tonight—says this very clearly: ''The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose an amendment.''

So tonight we are not voting on an amendment to pass it or to fail it. We are voting on an amendment to propose it to the citizens of this country, to allow them to decide what the organic law of this land will be about.

And anyone who suggests tonight that they will stand in opposition to this amendment stands in opposition to the right of the people of their State to say, ''Yes, we support it,'' or ''No, we don't.'' And that is the fundamental issue.

So I ask you to search your soul tonight and decide whether you, as a Senator of the U.S. Senate, are going to stand in the way of the citizens of your State, if you know better than they, if you really have a better vision than the average citizen of this country that supports you and elects you and sends you to this Congress to represent their interest.

But in this instance, you are not allowed to do that. You are not allowed to say, ''I know better.'' What you can say is, ''I propose.''

Let us allow tonight the right of the citizens to decide. The Constitution is a basic document. It protects the people's right. Tonight we want to protect the people's right against an overburdening debt structure that has denied this country the kind of economic freedom that all Americans are entitled to.

I ask all of you to join with us tonight in proposing to the citizens of this great Nation a constitutional amendment for their decision.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I yield 5 minutes to my distinguished colleague and prime cosponsor of this amendment, the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Madam President, and my colleagues, first, let me pay tribute to Senator BYRD, who is a very worthy foe and certainly one of the most distinguished Members of this body.

I also appreciate the leadership of Senator HATCH on this, Senator CRAIG, and my colleagues on this side, Senator HEFLIN, Senator ROBB, Senator MOSELEY-BRAUN, Senator EXON, Senator CAMPBELL, and I should be mentioning others.

If we had a proposal in here that said, two decades after we balance a budget, we are going to have an average increase in income of every American of 36 percent, we would vote for it overwhelmingly. And yet that is precisely what the General Accounting Office says will happen if we balance the budget in this country.

Data Resources, Inc., one of the two top econometric forecasters in this country, says if we balance the budget, the prime rate will go down 2.5 percent and we will have an increase in national income of 2 percent. CBO says at least 1 percent growth in income. The Wharton School in Philadelphia says the prime rate will go down 4 percent. We have an opportunity to do these things that can help our economy immensely. And I hope we do not muff that opportunity.

I heard a reference from Senator BYRD to history. It is important to remember that Thomas Jefferson, in 1787, said, ''If I could add one amendment to the Constitution, it would be to prohibit the Federal Government from borrowing.''

And remember the rallying cry of the American Revolution—taxation without representation.

What are we doing to our grandchildren and generations to come? If that is not taxation without representation, nothing is.

And talk about history, I have not heard one opponent talk about economic history here. I have not read one editorial talking about economic history. The reality is the history of nations is that when they pile up debt and they get around 9, 10 or 11 percent of deficit versus national income, they start monetizing the debt. They start the printing presses rolling.

CBO says we are headed for 18 percent. We can take a chance that we will be the first nation in history to go up 18 percent without monetizing the debt, but we are taking a huge, huge gamble.

The Declaration of Independence. We are making, every year as we add to the deficit, a declaration of dependence. We now owe roughly $800 billion in our bonds to other countries. If the SIMON family gets too deeply into debt, we start losing our independence; and if a nation does, it starts losing its independence.

Senator DODD and I are old enough to remember 1956, when three nation friends of ours—Israel, France, and Great Britain—went in and seized the Suez Canal, which President Nasser had taken. They did it because they were our friends; thought they could get by with it, and it was just before an

election. President Eisenhower said, ''This is wrong.''

But something else happened we did not know about, or most of us did not know about until sometime later. The United States threatened to dump the British pound sterling. And without firing a shot, the troops of Great Britain, France, and Israel withdrew.

We are in that situation.

Talk about American foreign aid. We now spend twice as much in foreign aid to the wealthy through interest and bonds than we do in foreign economic assistance to poor people. This year, the current estimate is $339 billion on interest, 11 times as much on interest as education, twice as much on interest as all our poverty programs combined, 22 times as much on interest as foreign economic assistance. It gets worse each year, and it will continue to get worse unless we pass this amendment.

The PRESIDING OFFICER. The Senator has used his 5 minutes.

Mr. SIMON. I ask unanimous consent for 30 more seconds.

Mr. HATCH. I yield 30 seconds to the Senator.

Mr. SIMON. I would simply point out, is there going to be pain if we pass this? Yes. But it is very interesting, there were polls by the Wirthlin Group which showed 76 percent of the population favors this, and 53 percent said they favor it, but they also believe it is going to cause them pain.

The American people are yearning for leadership. Tonight, my friends in the Senate, let us give it to them.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I yield 2½ minutes to the distinguished Budget Committee chairman, Senator DOMENICI.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. I thank the distinguished chairman, Senator HATCH, for yielding me 2½ minutes.

Madam President, fellow Senators, this is a historic night. We have never been so close to putting our Nation's fiscal house in order as we will be in 40 minutes. It is on our shoulders, but I can tell you that our children and grandchildren, whether they are present, whether they are listening, whether they are capable of listening or they are too small, they will either thank us tonight for doing something for them or they will wonder where we were when they needed us most.

The truth of the matter is there are many risks, but the status quo will not work. For those who come to the floor and raise the risks of a balanced budget, the risks of this amendment, they should be asked what are the risks of doing nothing. I am convinced that the status quo, with reference to fiscal policy for our Nation, means that the legacy for our children is very close to zero.

I want to close by quoting Laurence Tribe, a very liberal constitutional scholar. He was testifying on the balanced budget. I asked him whether or not it made sense to do something like this. And listen carefully to what he said:

> Given the centrality in our revolutionary origins of the precept that there should be no taxation without representation, it seems especially fitting in principle that we seek somehow to tie our hands so we cannot spend our children's legacy.

That is the issue. Do we spend our children's legacy or do we leave a legacy to them? Plain and simple. That is the issue.

I thank the Senator for yielding, and I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I yield 1 minute to the distinguished Senator from Nebraska, the ranking member of the Budget Committee.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. EXON. I thank my friend and colleague, the manager of the bill.

Let me be brief. I just want to say that I have listened to what Senator SIMON just said about the debt that continues to consume America. Even if we pass this in the next half-hour—which I hope and urge we do—we are still at least 8 years away from beginning to cut down the national debt. That shows how far we are behind the curve.

I just wish to say, Madam President, that it has been a real experience in working with the many people on both sides of the aisle. I hope we have the 67 votes in the next few minutes when we cast this historic vote. I think this amendment must be approved.

I yield back the remaining time.

The PRESIDING OFFICER. There is no remaining time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, as a Member of the Senate, I have had the great honor of voting on many historic bills, but few in the history of the Senate are as significant as this one. It is so rare that we have a vote that so dramatically and directly affects the future of our children and our grandchildren. This vote is clearly a vote for future generations.

This vote is especially significant because of who it will help and who it will hurt. It will help our children and our grandchildren. By removing the onerous burden of debt that we have been accumulating on their shoulders, we are helping to level the generational playing field. It will restore the American dream for another generation of Americans.

Who does this vote hurt if we prevail? For starters, the politics-as-usual crowd, the special interest groups, and those with vested interests in the status quo, all those groups who keep feeding at the trough and who think the gravy train will never run out of gas.

The balanced budget amendment means no more pork for the special interests. And while I am at it, I want to give the special interests and those with vested interests in the status quo one piece of advice: Pack your bags and hit the road. The show is over.

Do Members know who else is hurt by the balanced budget amendment? You may find this hard to believe—everyone in this Chamber. Gone are the days when politicians can take the easy way out. Gone are the days when politicians can say ''Pass it; we will worry about how to pay for it later.'' We can no longer pass anything that we cannot come up with the money for. It is called accountability, and it starts right here, right now.

That is why I am so proud to have been a part of this debate. And when I see my grandchildren I can look them in the eye and tell them that today marks a new beginning in their lives. I can smile, knowing that when it comes time for them to go to college, to train for a career, to buy a house, to raise a family, they will be able to do so. The American dream will live on for another generation.

To the President of the United States, I have a caution for him: Mr. President, you have joined forces with the special interests. Let me ask you one simple question. How can you look your daughter, Chelsea, in the eye after what you are trying to do here? How can you justify the trillions of dollars of red ink that you and others who are voting against this have subjected the children of America to?

Madam President, over the next several months, we will be working late into the evening, examining every single line of the Federal budget, searching for waste, fraud and abuse, cutting programs that have outlived their usefulness, and finding the money for those that still work. It will all be worth it. For our grandchildren, it is worth it.

Madam President, I want to thank everybody who has participated. I want to pay tribute to the distinguished Senator from West Virginia for the dignified manner in which he has conducted his opposition to this amendment. I want to pay great tribute to my friend from Illinois, Senator SIMON, and to my friend from Idaho, Senator CRAIG, and all the others who have worked so hard on this floor, especially those 11 brandnew Senators. They have made a real difference here. They have shown Members that this is the new way.

Adopting this amendment is what we have to do. We have to do so to have a future for our children and grandchildren. We can no longer afford to spend this country into bankruptcy. I want to thank all of the loyal and dedicated staff people and those who have worked so hard during this debate and in preparation for it.

And above all, I thank all those who will vote for this amendment this evening. I urge my colleagues to vote for it. It is one of the most important votes we will ever cast. Our national life depends upon it. The salvation of this country depends on it. And the future of our children depends on it.

The PRESIDING OFFICER. The Chair now recognizes the Democratic leader, who has the next 15 minutes.

Mr. DASCHLE. Madam President, this has been a good debate. It has been a long and historic debate. But it has not been a debate about a balanced budget.

No one supports the current debt or deficit. Every Senator believes, as I believe, that deficit spending must end. We heard the figures. We have debated how we got to this point. We have noted all of our efforts so far. I have not heard anyone argue for doing nothing. The debate has been about how we achieve what we all say we want, and over what time period, and whether or not to accomplish what we say we all want, we amend the Constitution for the 28th time.

During this debate, we have heard many who have argued eloquently that there is no purpose in amending the Constitution for this reason. Our colleague, the senior Senator from New York, emphasizes over and over again that while 1 machine can do the work of 100 men and women, no machine can replace the need to take fundamental responsibility.

No provision in the Constitution can create a formula for automatic deficit reduction. Nothing we do here will embolden Senators to make decisions which we are otherwise unable to make for ourselves.

This debate has also underscored the role the Federal Government plays within our economy. No one can deny that fiscal policy has moderated the extraordinary consequences of a deep recession.

This countercyclical strategy employed since World War II has had profoundly positive consequences for the economy during our lifetimes. We have seen them. We have seen the charts. We have seen all of the arguments made on the other side, and nothing will dissuade me that the fiscal policy initiated since World War II has had the desired result.

Many who will vote no today will do so out of legitimate fear that our ability to counter economic downturns will be severely jeopardized—severely jeopardized—with the passage of this amendment.

There are also many who believe that fiscal policy should never be written into the Constitution because it does not belong there. They have argued that, like the thousands of other amendments proposed in 200 years, this, too, should be defeated.

Many Members have listened to the logic of many of these arguments and appreciate each and every one. Many Members have also decided that the time has come for a balanced budget amendment—that the question of a constitutional amendment is before Members for a good reason.

But we also question the wisdom of the amendment that is now presented to the Senate, and we are deeply troubled by the attitude of many of our Republican colleagues that we take this amendment or there will be no amendment at all. We are troubled, really, for three reasons: First, it is our belief that this ought to be our very best effort. We cannot come back later as we can with statutes. We cannot come back later and say, if we could only change that phrase or that paragraph or even that word. That is not something we can do with the Constitution. We will have to admit that we made mistakes in drafting, and, if we have, we will have to live with them for all time. This is going to be with us a long, long time. Even the prohibition amendment was with us for 13 years, long after we came to the conclusion that it, too, was a mistake.

Second, this debate has been politicized, unfortunately. The RNC has used this debate as a membership drive. In fact, in my State of South Dakota, they are interrupting ads with programs, there are so many these days. The practical ramifications of this amendment, as well, as currently drafted, are profound, and we ought to realize that. We ought to understand the ramifications of this particular language, regardless of how we view the constitutional amendment itself. Let Members look at this language. Let Members examine this draft, and let each and every one ask, are we prepared, tonight, to put it into the United States Constitution?

This amendment could pass by 70 votes, yet it will fail perhaps by two tonight. Why? Not because two-thirds of a majority opposes the concept of a balanced budget amendment—I am sure that two-thirds and more support it—but because some of us have a grave concern about the specific draft our Republican colleagues tonight insist upon, a draft which is filled with promise but devoid of details.

That was the reason I offered, many weeks ago, the Right to Know amendment requiring that we spell out the details, insisting that we know how we get from here to there, recognizing the importance of a blueprint, of a glidepath, knowing that, as you cannot build a house without a blueprint, you cannot balance the budget without one, either.

Today the chairman of the Finance Committee indicated that Medicare and Medicaid may be cut by $400 billion over the course of the next several years. This is a detail that happens to be very important, that we recognize may be part of the mix. If we are not willing to spell it out, if we are not willing to put on paper the details, then, indeed, I think we are asking for a pig in the poke, and we are asking for it in the U.S. Constitution.

The Republicans promise, even though they are unwilling to spell it out, to leave Social Security untouched. But while they argue we need to put a balanced budget requirement into the Constitution for purposes of certainty, they are unwilling to do so for Social Security. Without the promise in writing, we cannot require future Congresses to comply with our expectations.

I will predict tonight, if this amendment passes, that the Social Security trust fund will be used, and that is wrong. The American people oppose it. We have made a commitment to them now for over 60 years. We compound the deficit reduction problem, and we mask the size of the deficit, but we invite the cynicism of the American people all over again. If we are prepared to reduce the deficit using Social Security trust funds, what confidence should they have in us with any future decision, after we have made the commitment that has stood for this long?

In my view, the amendment is also especially lacking when it comes to enforcement and the role of the courts. Something this important should not be unresolved. In spite of the best efforts of the senior Senator from Georgia, as written, it is very likely we will see a constitutional crisis as Congress and the courts face off on the very question of jurisdiction in the years ahead.

It is also unfortunate that the Federal Government cannot be allowed to function budgetarily like virtually everyone else does. We should not treat investment and operating costs alike, and yet that is exactly what we will require as a result of the actions taken in this body now for the last several weeks.

No one does that at any level of Government, no one does that in business, no one does that in their family budgeting. We should not do it either. And yet tonight, by the action taken on this amendment, we will be, if indeed the amendment passes, requiring the Federal Government to do something no one else does.

Madam President, the bottom line, regardless of whether we are talking about Social Security, a capital budget, the right to know, enforcement, or any one of a number of the issues that we have raised for the last several weeks, the bottom line is this: We can do better. This is not the best we can do. This is a shoot-now-ask-later approach, and we will regret it. That could destroy the very fabric upon which this Nation was built. And I hope—I just hope—that we all come to the realization of what the stakes are as we cast our vote tonight. It is, as others have said, one of the most critical votes we will cast, a vote which could change not only the budget but the economy and the perception of the very Constitution itself. Let us take care to do it right. Let us defeat this amendment and go back to the drawing

board before it is too late. Future generations are counting upon us tonight to do just that.

I retain the remainder of my time and yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senate majority leader.

Mr. DOLE. Madam President, do I understand the Democratic leader retains the remainder of his time? Are there additional requests?

Mr. DASCHLE. Madam President, I was anticipating others who may ask for time, but if there is no other request for time, I yield it back.

The PRESIDING OFFICER. Is the Senator yielding back?

Mr. DASCHLE. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senate majority leader is recognized for 15 minutes.

Mr. DOLE. Madam President, the Senator from South Dakota asked earlier for 1 minute, which I am prepared to allow.

Mr. DOLE. Madam President, for those who follow this debate, we have had 19 days of consideration. We have had 115 hours 54 minutes of debate. That does not include votes or quorum calls or morning business, where a lot of the morning business was directed at the balanced budget amendment. So we have had a lot of debate. I just say that for the RECORD for some who think maybe we have not been on this long enough.

My view is we are down to about one vote—one vote. Maybe it is 68; maybe it is 66. I think we do stand at the crossroads in American history. I think this vote is one of the most important many of us will have cast in decades because now we have an opportunity to do it, and we have not had that opportunity before. In fact, this may be the single most important vote we cast in our careers.

I will say at the outset, and I think the figures I quoted indicate, we do not take amending the Constitution lightly. This certainly has been considered at length. Everybody has had an opportunity to say just about everything they wanted to say. I think we also must understand that there was never a more serious time when Washington needed the discipline, when Congress needed the discipline, that the Constitution and only the Constitution can impose.

We heard a lot of talk about laws that were passed, and we passed since 1969—the last time we passed a balanced Federal budget—we passed seven different laws containing balanced budget requirements. And despite all the speeches and the good intentions and everything else that went with it over the past quarter of a century, the Federal debt has grown each year and every year.

Why is it so important to balance the budget? There are probably a lot of reasons that have been stated on this floor from people who oppose and people who support the balanced budget amendment. Oh, it is important to balance the budget and maybe it is even important to vote for the balanced budget amendment if you are in a tough race for reelection. But in 1969, the American taxpayers paid $12.7 billion for interest on the national debt. This year interest on the national debt will devour a staggering $234 billion, more than all the Government spent on agriculture, crime, crime fighting, veterans, space and technology, infrastructure, natural resources, the environment, education and training—all of that and more was spent for interest on the debt.

We have gone through this debate where some are trying to scare America's senior citizens, but by doing what we hope we can do in about 20 minutes, by passing a constitutional amendment with 67 votes, we take the opposite view, that we are protecting the very programs that they try to scare seniors with—Medicare and Social Security.

What they fail to mention is the national debt threatens every program. Every program is threatened—Medicare, Medicaid, Social Security, agriculture, nutrition programs, you name it. If the debt continues to escalate, as it will, each year interest payments are going to be larger and larger and consume more and more of its share of the Federal dollar.

According to President Clinton's budget, interest on the debt is going to consume 16 percent of every Federal dollar. And anyone who is still not convinced need look no further than President Clinton's recent budget, which essentially gave up on ever balancing the budget and ever balancing the Nation's books.

In 1992, Candidate Clinton seized on the $292 billion deficit, the highest in history, and he campaigned against the deficit. He was successful. He agreed to cut it in half. Now, 2 years into his administration, his own budget abandons the pledge, predicting a deficit of $196.7 billion next year and roughly $200 billion a year through the year 2000. In each of the next 5 years, the amount the Federal Government collects in taxes is projected to rise, but spending will go up much more.

The picture only gets worse in the next century when the deficit is projected to rise to $421 billion—$421 billion—by the year 2005. So we are going to double it, we are going to double it if we fail to take action in the next few moments.

If there was any message last November—and different people heard different messages; some did not hear any message at all and some are here, and some will be voting. There was a revolution last November. The American people said, ''Stop. Stop. Wait a minute. We want less Government, we want to rein in Government, we want to dust off the 10th amendment, we want to return power to the States and power to the people, and one way to do that is to rein in Federal spending and not increase Federal taxes.''

So the American people—Democrats, Republicans, Independents, voters generally—sent us a message. I am not certain what the precise message was, but I think the general message was, as I stated, ''Rein in the Federal Government.''

I believe adoption of this amendment is a big step in that effort. If we are ever going to rein in the Federal Government, rein in spending, we need help. We do not have the will in this body to do it. Oh, I have heard all the speeches, and then I checked the voting records and they do not match.

Oh, I hear speeches. I hear speeches at night when I cannot sleep.

People on the Senate floor say all we have to do is make these tough decisions. But then when the tough decision comes, oh, that is too tough, or it is not tough enough, or any other excuse to duck. We cannot wait for statutory changes. We cannot count on them. They have not worked, as I said, since 1969. I think the American people want us to stand up to the special interests and they want us to do the right thing.

Many say, oh, well this is the easy way out. You all vote for the balanced budget amendment. Then you go out and say, well, I voted for the balanced budget amendment. Then you continue to vote for all the spending programs.

I do not think so. My view is, if we adopt this amendment and three-fourths of the States ratify it, it is going to fundamentally change the way we do business in the Congress and all over Washington.

So this is an amendment whose time has come. Thomas Jefferson said in 1789:

> The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.

Now, if you think about that for a moment, this was just 1 year after the new Constitution went into effect. Thomas Jefferson himself was pondering whether a constitutional amendment requiring a balanced budget was needed.

So, Madam President, the time for a balanced budget amendment to the Constitution has come. Since our first Constitution went into effect in 1788, a total of 27 amendments have been adopted. The first 10, commonly referred to as the Bill of Rights, made the United States a model for the world by limiting the powers of Government and securing rights for individuals and States. The Bill of Rights was proposed to the legislatures of the several States by the first Congress on September 25, 1789, and ratified by December 15, 1791.

I think there is a common thread that runs through all the amendments

that have been adopted, whether it is the first 10, the Bill of Rights—there is a common thread. Most have either limited the power of Government or provided constitutional protection to groups of Americans. And I believe the balanced budget amendment would do both. By limiting the Federal Government's ability to borrow, it will help provide constitutional protection to future generations of Americans and those who are not adequately represented in our current system.

Nobody has contacted me on behalf of the 5-year-olds or the 10-year-olds or the 15-year-olds about their future. Nobody is lobbying for them. They are waiting for us.

I do not believe we can continue to mortgage America's future. If we continue current tax-and-spend policies, we are going to saddle that future generation with lifetime tax rates, effective rates of more than 80 percent. So if we want to take away representation of our children and our grandchildren, if we want to take away the discipline, if we want to have it one way in an election year and another way in the next year, then we can vote against the balanced budget amendment.

As I look around the Chamber, I see Democrats and Republicans saying, wait a minute; it is time we act. This is a bipartisan effort. We need Democrats and Republicans to make this happen. It is not going to happen unless it is bipartisan.

We also took an oath of office to support and defend the Constitution of the United States against all enemies, foreign and domestic. Well, I consider the rising debt and the interest rates to be sort of a domestic enemy, and I think that simple oath illustrates why the balanced budget amendment is so important. We have not been successful in the past. We have not balanced the budget in the past because the Federal budget never became a national priority, and if you want to make it a national priority, we adopt a balanced budget amendment and say we are going to have a balanced budget by the year 2002. That makes it clear to everyone in this body that balancing the budget is not only a national priority but also a constitutional duty and that every Senator will be sworn to uphold and defend this amendment to the Constitution. That is the way it works. That is the way it should work.

So we have had a healthy debate, as I have said, of 115 hours, or 116 hours, plus a lot of other morning business hours. I certainly wish to commend my colleague, Senator HATCH, who has been on this floor day after day after day, and my colleague, Senator CRAIG, who every morning in my office has had a meeting with the group to work on the balanced budget amendment, trying to find out what we need to address, how we can pick up one more vote. And if anybody ever questioned anybody's motives, you cannot question the motives of the Senator from Illinois, Senator SIMON. He has been for the balanced budget as long as I have known him. He can go any way he wants. He is not running again. This is not politics to PAUL SIMON. This is a commitment he has made to the people of Illinois and a commitment he has made to his colleagues on both sides of the aisle. So I appreciate the efforts made by my friend from Illinois.

Certainly the Senator from West Virginia deserves our thanks, hopefully not to overdo that. He has made a great contribution to the debate. In fact, I have been saying around the country that Senator BYRD is the expert, and I say it with admiration; he is a master of the game. He also understands Roman history, at least he understands it better than the rest of us because we never question what he says about Roman history. I am trying to get C-SPAN to give college credit to those who watch it. And it would be deserved because the Senator from West Virginia does understand it, and certainly he has contributed to this debate.

Then let me just have the last word. I think everybody has said out here from time to time that the Constitution is a living document, and that is why it includes article V, which outlines the process for proposing and ratifying constitutional amendments. The Founding Fathers did not make amending the Constitution easy, and the action we take today, if we succeed, is not the last word. And if we fail, it is not the last word, because the final word of whether or not there is going to be a balanced budget goes outside Washington, goes away from this body and out to our respective States.

I will say to those who still maybe have not quite decided which way to go—there may be two or three of those, maybe four—maybe you are not quite certain, but certainly you have some confidence in your State legislature, wherever it may be. Why not give them a chance? It takes three-fourths of the States to ratify. Why not say that we have some confidence in the people who live in our respective States and deal on a daily basis with problems that affect our constituents, too, because the Founding Fathers said in the final analysis it is going to be determined by the people, by those who are closest to the people, and those are the men and women who serve in statehouses around the country.

I think we ought to remember that as we vote. The Founding Fathers did not put the final authority in the hands of Congress; they put it in the people, members, men and women, State legislators who are closest to the people.

So I remind my colleagues as we prepare to vote here of just a few facts. I think many Senators referred to these earlier. Depending upon which poll you use—and polls change from time to time—about 80 percent of the American people favor the balanced budget amendment. Now, maybe 80 percent are wrong and the 20 percent are right. It has happened in the past. But these polls have been consistent—71, 75, 78, 81, somewhere between 75 and 80 percent. Three hundred Members of the other body voted for a balanced budget amendment, 72 Democrats and 228 Republicans. They joined together to give us this historic opportunity. And I would state what every Member already knows, that adoption of this amendment, if it is adopted, is only the first step in securing our Nation's financial future. Whatever happens, we are going to have to make difficult choices.

Republicans will begin work on a detailed 5-year plan to put the budget on a path of balance by the year 2002, and our plan will not raise taxes. Our plan will not touch Social Security. Everything else, from agriculture to zebra mussel research, will be on the table.

So, Madam President, as George Washington reminded us in his farewell address:

> The basis of our political system is the right of the people to make and alter their institutions of government.

The time has come for us to exercise that right. So I would just say, let us get prepared for this fundamental change. It is going to come. If not tonight, it will come maybe next month or the next month or the next year. It is not going to be business as usual in Washington.

So I just urge my colleagues to vote for this amendment—it will take 67 of us—and send it back to the States for ratification. Let those closest to the people then decide if we spelled out how we will reach the balanced budget amendment. Let us not take that judgment away from them.

Madam 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. DOLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DOLE. Madam President, I move that the Senate stand in recess until 10 a.m.——

Mr. BYRD. Before the distinguished leader makes his motion, would he explain to the Senate why we are going out and why we are not having the vote, as we all anticipated we would be having a vote?

Mr. DOLE. Let me explain to my friend from West Virginia that we still think there is some chance of getting this resolved by tomorrow morning, because we could have 67 votes or maybe more.

We have been on this now for 115 hours. I do not know how many days. Everybody has had a right to debate. We are up to the critical time of the vote. This Senator wants to make every effort he can to see if we can reach the 67 votes. If we fail, we will fail, and it will be 10 o'clock or perhaps noon tomorrow morning.

Madam President, I renew the motion.

Mr. BYRD. Madam President, would the Senator allow me 5 minutes before he makes that motion?

The PRESIDING OFFICER. Debate is not in order at this point.

Mr. BYRD. Madam President, I ask unanimous consent to speak for 5 minutes.

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

Mr. BYRD. Madam President, I thank the distinguished majority leader for allowing me to have this privilege to address this question before he makes the motion to adjourn.

Madam President, I think this is a sad spectacle. We have had 30 days of debate. Both sides have poured out their hearts, have worked hard, and we came to the moment that we thought we were going to have a rollcall vote. We entered into an agreement to that effect. Now, if we had known that we were going to reach this kind of a travesty, this Senator would never have agreed to that unanimous-consent request.

Madam President, the Framers intended that, before the people at the State level should have an opportunity to ratify a constitutional amendment, it must be approved by both Houses of the Congress by a two-thirds vote, and it was here that the amendment was supposed to be probed and examined and carefully studied before it was sent on its way to the States.

Now, here is what we see: We see the sad spectacle of Senators on the other side trying to go over until tomorrow in order to get another vote for this amendment. It should be obvious to everyone that the main object here is to get that vote, as the distinguished majority leader says.

It boils down to an insatiable, insatiable desire to get a vote for victory. We are tampering with the Constitution of the United States! This is no place for deal-making, back-room huddles. No wonder the people have such a low estimation of the Congress. Going to make deals in the back room. I do not imply by what I am saying—I do not want to cast any aspersions on any Senator in particular.

But this is a process that we have worked our way through. We were told there would be a vote. We have waited on a vote. Up here the press is gathered. They want to see the outcome of this debate.

(Disturbance in the visitors' galleries.)

The PRESIDING OFFICER. The Chair will remind the occupants of the galleries there will be no expressions of approval or disapproval.

Mr. BYRD. Madam President, this has every appearance of a sleazy, tawdry effort to win a victory at the cost of amending the Constitution of the United States.

We have had our chances, why do we not vote? I hope we will vote, Madam President. Let us not wait until tomorrow. Now is the time for the decision. That is what we were told.

I deplore this tawdry effort here to go over until tomorrow so that additional pressures can be made on some poor Member in the effort to get this vote. Laugh if you must. Laugh! This is no laughing matter. We are talking about the Constitution of the United States. We were ready for a vote. Obviously, the proponents on the other side felt they were going to lose. We cannot win them all. We cannot lose them all. I think it is a sad day for the U.S. Senate if this is the way that we are going to go about amending the Constitution of the United States.

I thank the distinguished majority leader. I hope we will vote tonight.

Mr. DOLE. I ask for 5 minutes to respond and then I will make the motion. This is probably, as I said in my statement, the most important vote we will cast around here, maybe in our careers.

We do not take amending the Constitution lightly. But to suggest that somehow this is unprecedented, tawdry, whatever, in my view, is out of bounds. We have every right to use the rules to determine if we have the votes or if we can pick up votes, and I intend to do that. We have been on this amendment 115 hours, plus 20-some hours of quorum calls and votes. Nobody complained about that.

What about the 80 percent of the American people? Do you think they care whether we vote at 7 o'clock or 7:30 or 10 o'clock in the morning, the 80 percent who want this passed? Do Members think they feel the way the Senator from West Virginia feels? Absolutely not.

Now, we have some obligation to ourselves. Obviously, nobody is trying to put the arm on anybody around here. We have not made house calls. We have not knocked on the doors. We have gone in their offices. But we have good-faith negotiations going, and maybe they have helped. That is fine. If they have ended, there are still other options.

So I just suggest, Madam President, this is an important vote. If I thought there was one more vote tomorrow morning or two more votes or three more votes next week, I would make every effort I could to secure those votes, just as the distinguished Senator from West Virginia has done time after time after time in this body.

I think the sad spectacle is that we may lose this vote, whether it is tonight—it is not going to be tonight—whether it is tomorrow or later, where people who voted for the amendment before their election, vote against it after their election. What are the American people to think? What are the American people to think about any Member in this body? They sent us a loud and clear message last November, and as I said, nobody knows what the precise message was, but generally, it was to rein in the Federal Government, to give power back to the people and back to the States. That is what this amendment does.

So, in my view, by postponing this vote, we will attempt to reflect the will of 76 to 80 percent of the American people and not the will of 20 percent. We may fail this time. I quoted earlier statements of Jefferson and Washington who had a little knowledge about what the Founding Fathers had in mind and who suggested themselves that there might come a time we would have to amend the Constitution. We should not pile up a debt on the next generation as we continue to do.

I want to commend, again, those who is worked on both sides of the aisle. This has been bipartisan, and it should be, and it still can be. I know the President is very strongly opposed to the balanced budget amendment. I know he has called Members. I know what happens when your President calls. We have gone through it on this side. It puts a lot of pressure on a Senator or a Member of Congress.

We have tried to improve the conditions by accepting or agreeing to an amendment offered by the distinguished Senator from Georgia, Senator NUNN. I just hope that all Senators will think about this overnight. Somebody could decide to vote the other way. We take a gamble. We might lose a vote. But in my view the gamble is worth taking. The risk is worth taking. I know the Senator from West Virginia——

Mr. HOLLINGS. Will the distinguished Senator yield for a question?

Mr. DOLE. No, I will not yield for a question.

I know the Senator from West Virginia feels strongly about this amendment, and he has a right to feel strongly about it. It does not mean he is right. He might be wrong. We may be right. If we cannot determine that tonight or tomorrow night we will determine it the next time the voters have a chance to speak.

RECESS UNTIL 10 A.M. TOMORROW

Mr. DOLE. Madam President, I move that the Senate stand in recess until 10 a.m., Wednesday, March 1.

The PRESIDING OFFICER. The question is on agreeing to the motion to recess.

So the motion was agreed to, and at 7:41 p.m., the Senate recessed until Wednesday, March 1, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate February 28, 1995:

THE JUDICIARY

Peter C. Economus, of Ohio, to be U.S. District Judge for the Northern District of Ohio, vice Frank J. Battisti, resigned.

Joseph Robert Goodwin, of West Virginia, to be U.S. District Judge for the Southern District of West Virginia, vice Robert J. Staker, retired.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Henry W. Foster, Jr., of Tennessee, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years, vice M. Joycelyn Elders, resigned.