SENATE—*Friday, February 25, 1994*

(Legislative day of Tuesday, February 22, 1994)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable DIANNE FEINSTEIN, a Senator from the State of California.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

To every thing there is a season, and a time to every purpose under the heaven.—Ecclesiastes 3:1.

Eternal God, patient Heavenly Father, help us to appreciate the precious resource of time. Help us to see that no one has more time than another. The Senator has the same amount of time as the child. Give us the insight that to kill time is murder—that the only way to save time is to spend it wisely. We cannot store it up; when passed, it is gone forever. We know that delay, for its own sake, is not virtuous—only dilatory; but we also know that haste makes waste. Save us from the abuse of time.

We thank Thee, Father, for the response of the Vermont farmer who, when asked why he did not hurry, replied, "I figure that I pass up more than I catch up with." And as someone else said, "The hurrier I go, the behinder I get."

God of eternity, help us to make time our servant rather than our master.

We pray in His name who was never in a hurry but used time to the glory of God. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 25, 1994.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DIANNE FEINSTEIN, a Senator from the State of California, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. FEINSTEIN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADERSHIP TIME

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

BALANCED BUDGET AMENDMENT

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of Senate Joint Resolution 41, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 41) proposing an amendment to the Constitution of the United States to require a balanced budget.

The Senate resumed consideration of the joint resolution.

Pending:

Reid amendment No. 1471, in the nature of a substitute.

Mr. THURMOND. Madam President, I suggest the absence of a quorum and the time be charged equally to both sides.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CRAIG. Madam President, I ask unanimous consent that when we return to a quorum call that the time spent in that quorum call be divided equally among Senators REID, SIMON, and HATCH.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. I ask my good friend from West Virginia if I may use part of his time?

Mr. BYRD. How much would the distinguished Senator like?

Mr. STEVENS. I should say about 45 minutes.

Mr. BYRD. I yield to the distinguished Senator from Alaska [Mr. STEVENS] 45 minutes.

Mr. STEVENS. Madam President, I thank my good friend from West Virginia. I am grateful to him for his leadership on this issue.

Madam President, I can recall the days when I have looked at the balanced budget concept and supported the concept of a balanced budget amendment. I do not think we have ever really seen both Houses of Congress vote on a constitutional amendment to balance the budget during the same session. But now that we have reached the point where it is fairly certain that we will vote on this and there is a good possibility that the version before this body, Senate Joint Resolution 41 could become part of the Constitution, I have spent a lot of time researching and thinking about the consequences of this legislation.

I have listened to and studied what the Senator from Nevada [Mr. REID] is doing in proposing his amendment to Senate Joint Resolution 41. In my judgment, he is right. Although I am not certain if I support all of the provisions his amendment includes, he makes some important points. Madam President I have a vision, of some time at the turn of the century talking to a new President and having that President ask me—as a matter of fact, "she" might ask me—how the Congress came to the judgment to put such a corset around the economy of the United States.

Let me first start off by saying that my research indicates that—and the CRS confirms this in a 1992 study—there are five nations of the world that have balanced budget requirements. Germany has one. It is the only industrialized nation in the world that has one. But if you look at their constitution, they permit borrowing funds in times of recession. In addition, their budget functions differently than ours because they can include borrowing as a revenue in some instances, similar to the way many States count borrowing as revenue.

The others are Rwanda, Burkina Faso, Niger, and Israel.

The United States is the largest industrial nation in the world. We have had larger ups and downs than any nation in the world. Today, we have a very large debt, and we run budget deficits that are very worrisome; but has the Senate stopped to think that the interest that we are charged to borrow money for our debt is probably the lowest in the world today? Why is that? It is because our own people and the people of the world have confidence in our system. Notwithstanding this debt and notwithstanding the deficits we run, we continue to have the ability to function, and we will have the ability

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

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to function if we exercise good judgment and can continue to believe in the Constitution as it exists now.

Mr. SIMON. Will my colleague yield for a question?

Mr. STEVENS. Not until I am finished. Then I will be happy to yield to the Senator.

Madam President, if we look at what we have now, we have very difficult circumstances. I wonder if the Senate realizes that Britain adopted a balanced budget concept in the late eighties and, by 1992 had abandoned it. Let me repeat that. Britain, with all its problems; adopted during the heyday of the "Iron Lady," for whom I have great respect, a balanced budget concept and, by 1992, abandoned it. The reason they abandoned it is because it became a straitjacket on their economy. The changes that British Government wanted to pursue could not be pursued while abiding by a balanced budget target as the British call it.

What would we do if we add the balanced budget amendment to our Constitution? How do we get rid of it if we find that it is a mistake? We live with a very rigid constitutional system that is very difficult to amend, thank God. But in my opinion, it ought to be much more difficult than it appears to be right now. I do not think a lot of people are thinking about the history of the United States and what we have done in the past to right our ship of state or cure the defects of our economy because of the freedom and flexibility of the Constitution as it was devised by our forefathers. It is a good Constitution.

I do not believe that we ought to saddle our people with a concept that is so inflexible that it would not permit us to meet the economic difficulties we may face in the future without having to go through the process, the constitutional process, of waiving or even eliminating a constitutional balanced budget amendment.

I have a few charts, not many, and I really do not have a prepared statement. I am sort of wandering around here to explain myself. The real problem we have right now is not that we have not known what we are doing, but that we have in fact put into effect a series of programs which are known as entitlements—mandatory costs, costs that cannot be controlled annually by the Congress. And this balanced budget amendment does nothing to address entitlements. Nothing is mandated, nothing is directed. We have the same power now to address entitlements that we would have if the balanced budget amendment were adopted.

The entitlements have grown apace, as we all know. They include: Social Security benefits, Medicare and Medicaid, farm price supports, and other entitlements such as food stamps, supplemental security income, family support, veterans' pensions, child nutrition, extended tax credits, student loans, Federal and civilian military retirement obligations, veterans' benefits, and social services.

On the right-hand bottom corner of the chart is the list of what "other" includes.

We all know that those entitlements are there. Most of us have voted for them. Problems have developed in almost every one of them that have needed correction in the past or may in the future. The welfare program we all know needs revision. It is time now to find a way to prevent the cheating that is going on in welfare. It is time to find a way to help people get off of welfare without locking them and their children into welfare for a lifetime. We can do that without a balanced budget amendment.

We know there are problems with Social Security, but they are not really problems that are incurable. They are problems about making certain that it is fully funded, that it will continue into the next century with the support it must have from the people of this country. And there has to be a fair balance between the cost to those who are going to receive Social Security in the future and the cost to the coming generations.

At one time, over 10 years ago, the former Senator and former Governor of Oklahoma, Henry Bellmon, who was chairman of the Budget Committee, came to my office and sat down and talked to me. He said, "You know we have a problem out in the next century, by about 2015"—you have to think this is at least 15 years ago. He is saying, "We have a problem out at 2015. Let me tell you what it is. Of the total population, about one-third are too young to work, one-third are working, and one-third are retired. Those people working are obviously going to be taking care of children—those too young to work—but they are not going to be willing to take care of those who are retired. What we have to do is work on a Social Security System that is self-sustaining and requires no contribution from next generation to support those of the people in the generation ahead of them."

We have worked toward that goal. I think we have done a good job. We still have corrections to make in the Social Security System, and that is a problem Congress must attack. That is something the people of the country and particularly those at my age who are in the senior citizens category must address. We must be fair to not only our children but our children's children and their children and not set up a situation where there is a burden on future working taxpayers to not only support their children but to support us. I think we are going in that direction.

A balanced budget does not do anything to solve that problem. That is a basic legislative problem that Congress must face and Congress already faced partially in the past. We will face this problem again before the turn of the century.

So what is really the problem? The problem comes down to the fact that we have a basic growth in those entitlements that remains unchecked, and this chart shows it as well as anything that I could devise. It shows that in 1962 defense accounted for almost 50 percent of our Federal expenditures; mandatory costs were 23 percent. If you compare that to 1992, defense spending has decreased to 21 percent of our Federal budget—21 percent from 50 percent. But mandatory expenditures are now twice what they were in 1962. Interest on the national debt has more than doubled. In 1992, we have a very different skew in terms of what we do with Federal funds.

The question is, how can a balanced budget amendment deal with that? It can only deal with that if we make up our mind we are going to deal with entitlements and we are going to decrease the rate of growth of our national debt.

Again, Congress has the legislative powers necessary to make these changes, a constitutional amendment is not necessary. We do not need a constitutional amendment to give Congress the authority to do the things that must be done to correct our economic imbalance. Powers that the Congress already possesses.

I think that one of the things we have to do is look at what we are doing and try to understand what the problems will be if we have a balanced budget amendment.

Let me take you back just briefly to the period just before World War I. It may interest you to know—and, incidentally, I was not in the Senate then, in spite of what some people may think—but at the time prior to the time we entered World War I, we had an increase in our defense spending. As a matter of fact, it increased steadily in 1913, 1914, 1915, and 1916.

If you examine this balanced budget amendment, what it says is if you have declared war or if you are engaged in a conflict, then you will have a right to waive the balanced budget amendment. Let me repeat that. Only if the United States is at war under a declaration of war or involved in a conflict could we exceed the balanced budget limitations in terms of our annual expenditures for defense.

Before World War I we did it, and we were barely ready in 1916. As a matter of fact, I think the record would show we lost a lot of people because we were not ready. In my lifetime, in World War II everyone at that time knew we were going to go to war. It was just a question of time. And yet, although we did start our expenditures increasing, we had a steady increase in expendi-

tures in 1937, 1938, 1939, and 1940, by the time we entered the war, of course, the expenditures exploded. They had increased by about 60 percent. That was up to $1.6 billion in 1940, a monstrous amount for that period of our history, and we were not at war. We were not involved in a conflict, but we had started to prepare to protect this country.

That is not possible under this amendment without a resolution adopted by a majority of the whole number of each House.

It may interest you to note that the vote on lend-lease was 60 to 31. We had a series of votes at the time. I tried to find some record, but my memory is that we had a series of votes at that time where the margin was very thin. I can only believe that a vote to waive the Constitution would be even closer.

Let us leave defense and let us think about other things in terms of our current situation in the world and particularly here at home. Disasters. We have had a series of disasters recently.

One of the ones where I went through a simulation a year ago was the problem of what the country will face if it has an earthquake along the Madrid fault. We think of earthquakes in terms of Alaska, my home. We have them almost every few days. And California, of course, has had a great many earthquakes. But the Madrid fault when it went off in the 19th century, when the earthquake occurred along the Madrid fault, which goes down past Tennessee and then goes into the southland of our country, it changed the direction, as I recall, of the Mississippi River. When that earthquake occurred in the southern part of the United States the bells in the churches of Boston rang.

The estimates of what it will cost if we have an earthquake in this century or early in the next century—it has been more than 100 years and most people are telling you about every 100 years those fault lines are going to adjust—will be catastrophic. The cost to the United States if the Madrid fault earthquake happens in this day and age will be worse than a nuclear war, and we will have to find some way to deal with the problems of that type of disaster.

Of course, you could waive the balanced budget amendment. But are we sure that the Congress is going to be willing to react immediately? Are we really going to be willing to go totally in debt for one part of the country?

The occupant of the chair knows that Alaska and California worry seriously about the increasing attitude toward disaster assistance. It is changing. The country is changing. There have been so many disasters. There has been so much expense associated with disasters, even this small, and I say that respectfully, the small disaster in California recently—a very short fault line—has cost billions of dollars.

I say we do not need to live in a straitjacket in this country to deal with the problems of the country. Yet, that is what is going to happen if this occurs.

I say to you, Madam President, and I think those of us particularly from the West ought to think about what is happening also. The bulk of our land is federally owned land. We now have a series of changes being made in our national budget, and if you wanted to look at them, the bulk of them are hitting the West because that is where the basic governmental functions—the Departments of our Government—the Department of the Interior, the Department of Agriculture, the Department of Commerce, and even the Coast Guard are being cut back. That is because we are reacting and Congress is trying to cut the controllable domestic expenditures in an effort to reduce the deficit. They have to do this because the entitlement programs, the uncontrollable spending has been escalating. The controllable expenditures—domestic spending—have over the past 30 years hardly changed. In 1962, the United States spent 15.7 percent of its budget on domestic programs including all of the expenditures for the Departments of the United States including Commerce, Interior, Justice, and Agriculture. In 1992, we spent only 15.47 percent of our budget on those programs, a slight decrease.

But what has the Congress been doing as it tried to balance the budget? It has started to cut discretionary spending. The bulk of the discretionary spending means more to the West than it does to any other part of the country because that is where the Federal Government maintains its responsibility since it owns most of the land.

Now, I will tell you, the net result of a balanced budget amendment is going to be that the West will suffer. Already in my State this year, the administration wants to close the Bureau of Mines, it wants to shut down the U.S. Geological Survey, it is reducing the manpower in the Minerals Management Service and reducing the Forest Service and people in the Department of Agriculture in the U.S. Forest Service. Why? Because the gun of the Congress can reduce funding. It can reduce discretionary spending.

I am surprised to see that so many people from the West are rushing pell-mell, as Margaret Thatcher did, to the concept of a balanced budget amendment. The only difference is that Margaret Thatcher's government adopted a balanced budget target during a time of budget surplus.

Incidentally, I ask unanimous consent to have printed in the RECORD following my remarks a Sunday London Times story of 1992 which was headlined "Goodbye to a Balanced Budget."

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. STEVENS. Having lived with a balanced budget for 5 years, from 1987 to 1992, the London Times joined everybody and said goodbye; it was not good for their country. A private enterprise country trying to revise its system, trying to stimulate its economy could not deal with the problem of the restrictions of the balanced budget concept.

I come back, really, in terms of my basic interest here, to defense, Madam President. I remember so well the problem of preparation for World War II. I left college in 1942 and went to war. Those of us at that time knew we were not prepared. We had seen the movie reels of Patton and his people in Kansas practicing tank tactics with Ford automobiles, with pieces of plywood attached to them saying "this is a tank" or "this is a truck." They did not have the ability to train.

As a matter of fact, many of our people, when they went in the Army, did not even have guns. They were trained with wooden guns or with World War I guns. We were manufacturing them fast. And by the time we really got to the main battles in Europe we had the equipment we needed, thank God.

But the only reason we had even the preparation we had at the time was we had the ability, through Congress and through a strong executive, to commit the country to the course of rearmament, to the course of expenditures, to the course of World War II production to making those Liberty ships, to building our bombers, to building our fighters, building the tanks.

We provided the material that won World War II. There is no question about it. And it was because of our basic economic capability to respond under the existing Constitution. I do not believe that would be possible.

Let me point out, by the way—my gracious assistant, Christine, just pointed out to me that the moneys that we approved to fund the supplemental required for the Los Angeles riots and the Chicago floods passed this Congress last year, 2 years ago, 61 to 36. A slim margin to meet the three-fifth requirement that Senate Joint Resolution 41 would require. How many times have we waived the Budget Act? Not very many.

But every time we have a disaster, every time we get ready to prevent war—mind you, Madam President, if we want to take action to prevent war, we are not under that category that says you can waive this by virtue of being at war or being involved in a conflict.

I have tried to dedicate my career here in trying to be able to have a military that had the capability to prevent war. I really think that we ought to listen now, we ought to listen to the Department of Defense. The Department of Defense responded to those of us in

the Appropriations Committee—and this was not a debate; they told us as a matter of fact. Keep this in mind. We have steadily decreased the share of defense money in our Federal spending from 6.3 percent of the gross national product in 1987 to 2.8 percent in 1994. By the time we get to 1995, our percentage of the gross national product spent for defense will be less than it was in 1940—less.

And we are supposed to be keeping our country ready to meet the contingencies and to carry out the agreements we have made throughout the world for a mutual defense. No other area of Federal activity has had the pressure as much as national security. And, again, look at the chart. From 1962 to 1992, reduced from 49 percent of Federal outlays to 21 percent of Federal outlays. It is even down more now.

Mr. CRAIG. Will the Senator yield for a correction?

Mr. STEVENS. Yes, I will yield.

Mr. CRAIG. In article 1 of our amendment, it requires a three-fifths vote, or 60, for extraordinary spending. So in the case of the earthquakes, in the case of the riots in Los Angeles, those passed by a three-fifths vote. So in the case of an extraordinary threat, you only have to ask yourself: Will this Congress respond to an extraordinary problem with a three-fifths vote? The answer has historically been yes.

(Mr. DORGAN assumed the Chair.)

Mr. STEVENS. I stand corrected.

But I still take the position that, as a matter of fact, it is a straitjacket we do not have to live with. We already have that in terms of the Budget Act. We already have that same restriction today.

I really think, when we talk in terms of how effective it is going to be, the effect of this is going to be whether we get into entitlements, not whether we waive the Budget Act or the balanced budget amendment for the purpose of having discretionary spending.

I do not believe you have to waive the Budget Act to deal with entitlements. That is the real point of my statement to the Senate. We do not need a restriction in the Constitution as far as a balanced budget amendment to deal with this in order to prevent and cure the problems that exist in the economy today.

I think the worst case that we can face, in terms of defense, is not going to be related to conflict or declaration of war at all. It is going to be faced with the realization on the part of some of us in the Congress that we need to have changes in the defense structure and we have to commit ourselves to spending more than is currently planned.

The administration has told us—and these are the Department of Treasury's estimates, not mine—that if the balanced budget goes into effect, defense could face nationwide cuts up to $270 billion between 1995 and 1999.

What they are saying is that in order to achieve a balanced budget by the year 2000 defense's share of the budget cuts would be $270 billion.

Mind you, between now and 1996 we will close—I do not know if the Senate knows this, we will close two bases out of three that exist in the country today. That is what we have already planned. When we get down to it, we will have 10 divisions, we will have 11 or maybe 12 aircraft carriers. We will be down to 18 wings of fighters. That is what is planned already.

I would like the Members of the Senate to consider what it would be like to be in the Senate in the 1999 and suddenly realize we do not have the defense that is necessary to protect our country. I think that will happen before then, but I do not think it will settle in until about 1998 or 1999. And then we are going to have to start rebuilding this defense structure as we did in 1981.

Let me remind the Senate, some of my colleagues did not do what I did in 1980. I went to Norfolk in 1980 and saw ships tied up there. They could not get away from the dock because they did not have the personnel. We visited Air Force installations and we found row after row of airplanes red lined. They were short of parts. We were down to the point, Senator HOLLINGS and I went into Germany to visit our defense personnel there and I distinctly remember him walking up to about a third or fourth floor—we call it a cold water flat in Germany where some of the dependents of our young soldiers were living. They did not have the allowances, they did not have the housing. We had skimped defense so badly by 1979 and 1980 that they were living literally in poverty in Germany.

We had people in this country in the Defense Department that were using food stamps for their families.

We changed that through a period of votes in 1981, 1982, 1983, 1984. If you went back and looked at them Mr. President, you would find a series of one-vote margins. Those changes we brought about in the Department of Defense in those days were by one vote. We were not at war. We did not have a declaration of war. We were not involved in a conflict. There were just some of us who said this has gone too far. This has gone too far. We have to restore our capability in the Department of Defense, and we did it in the Senate by one-vote margins, several times.

What would happen if we had the balanced budget amendment and we decided on deficit spending to restore the Department of Defense? How do we get there? We just do not.

I think this is wrong. I think it is basically wrong.

Incidentally, the Department of Defense tells us the most likely scenario to cut the $270 billion between 1996 and 2000 would require a reduction of 275,000 military people, one out of five. We would lay off 170,000 National Guard, one out of three. We would discharge 125,000 civilian workers. We would close—in addition to those we were already going to close by 1996—we would close half of the remaining 22 major bases in the United States. We would close nine logistics depots, terminate the F-18, terminate the C-17. And after the turn of the century we will have no other transport but the C-17. The 141's are wearing out, the 130's are wearing out. There is nothing left. But we would have to terminate it because it is too large an expenditure. We would have to cancel the nuclear aircraft carriers. We would have to cancel the next submarine, SSN-23, cancel the attack submarine, cancel the M-1 tank upgrades. We would have to eliminate theater missile defense. And even then, it may equal $270 billion.

If you are in the Senate at that time and that eventuality comes and you are not at war and you are not involved in a conflict, how do you get the changes necessary?

I remember—and I was whip of the Senate at the time—there were many of us who felt the same way in 1981. And I brought to the floor of the Senate President Reagan's budget for defense. It was very controversial, extremely controversial. We knew it was deficit spending. Anyone who says we did not is wrong. We knew it was deficit spending, but we also knew the Russians, the Soviets, were pulling ahead of us so quickly, they were committing so much, we had to find a way to restore our defenses, and we did.

We went through a period of buildup, and it was substantial. But there was no question about it, we were superior, we had the capability, we made expenditures that caused the Soviets to increase their expenditures beyond their capability to survive, and their system imploded.

Are we going to go into a process that we set up our own implosion? We have a massive debt. We have massive deficits. But, again, I tell you, our country has not suffered because of that yet. And the question is, will we attack entitlements—not will we attack defense, will we attack the Coast Guard, will we attack the USGS, will we attack the Forest Service? That is what this balanced budget amendment will attack, discretionary spending, because it mandates action in a very short period of time. I know the Senator from Illinois has changed that now to 2001, he intends to do that. But it is still too soon. It is still too soon. And this is the wrong amendment at the wrong time to address the wrong problem.

Many of my colleagues have complained about Secretary Aspin's Bottom-Up Review. Over the years I had a great many meetings with Secretary

Aspin when he was in the House and when he was Secretary of Defense. Let me tell you, his Bottom-Up Review, while I do not agree with it because it went too far, was a sound proposition compared to where we are going now if the balanced budget amendment becomes effective and we have to cut another $270 billion from defense. I have already told my colleagues what that will cause.

But one thing Secretary Aspin was right about was that the Bottom-Up Review contemplated will cost $50 billion more in the projected budget for defense. Where are we going to be if we say we want at least the Bottom-Up Review numbers to be the basis, the bottom line for defense? We are going to have to have some deficit spending to get there, and that is just to maintain the absolute minimum. Let me remind the Senate, that will be expenditures at the rate we expended money in 1940.

We must reduce our Federal deficit. We have to pay down the national debt. But we have to keep our system going and maintain the confidence that the world has now in our system. That confidence is maintained primarily because we have had the sense to present to the public and to the world an economy that does maintain its defense, it does stimulate expansion economically, and it does meet its requirements.

I want to talk about what will happen to a particular State if this balanced budget amendment passes. Let me just mention Alaska for a little bit. We have four major bases in Alaska. Each one of those bases is the equivalent of two bases in what we call the south 48 because the people there are forward deployed and our people from our four major bases can either go to Europe in 8 hours or go to the Far East in 8 hours. It is the same as having two bases, one on the east coast and one on the west coast in the south 48.

But as we look at the $270 billion the Department of Defense has estimated that the balanced budget amendment would require as a reduction in defense spending, in order to achieve that we will lose at least Fort Richardson and Eielson Air Force Base, and maybe one other. They say it would be two out of three bases. It would have a dramatic impact on my State if it happens in a short period of time. We are an area that is owned by the Federal Government. About 80 percent of our land mass now is owned by the Federal Government. Eventually, when we have our grants to the Native people in the State perfected, the Federal Government will still own 60 percent of the land mass in Alaska. The Federal Government plays a massive role in our State.

We missed the period of the building of superhighways. The decision was made that Alaska would use airways. And guess what is suffering some of the cuts now: the FAA system. There will be no chance Alaska would, like everyone else, come into the 21st century having superhighways. One of my predecessors, Senator Gruening, presented to the Senate a program to build highways in Alaska, and the environmental movement just came in and shot that down.

We did not build any of those highways because they said we had airways.

FAA is part of the discretionary spending that will have to be cut. As I said, it is already being cut. If the balanced budget amendment passes further dramatic cuts will be required. We already have to shut down almost all of the flight service stations in Alaska. One of these days, you will be landing in Unalakleet, AK, and someone in Denver will say, "It's all right, the runway is clear." But they will not be there. We are remoting everything in the system and losing the safety requirement.

Let me point out the impact on my State because we do not have highways. We rely on mail carried by air. The Postal Service, which is independent almost from the Federal Government—it does have some ties—but it says, "Look, it is costing us more money in Alaska to ship because we ship everything by air." We cannot ship by truck or train or boat, and rivers are frozen in the winter time. They said we have to find some way to cut down.

They want to cut $50 million out of the current cost of shipping mail in Alaska. I said to them, you cannot ship it on any ground means during the winter. It is not possible. They said, "That is not our problem. We are going to increase the rates in Alaska. You are going to have to pay special rates because you ship only by air. In South Dakota, North Dakota, we can ship some of them by air, but most of it will go by ground."

I said, "Wait a minute, if we built highways, that would cost the Federal Government money." They said, "That is not our problem. We are running the Postal Service. We are not running the highway system."

All I am telling you is, if you look at the impact of a balanced budget amendment, it is going to discriminate against particular States. The impact of this is going to be, how will I ever get a waiver of the balanced budget amendment to try and get special money to meet special problems in Alaska? Do you think I can do that, Mr. President? We had the largest earthquake that has hit the United States in this century. God forbid we have another one. But will I be able to get a waiver for one State? Will we get a waiver if we have another great flood in Alaska? Oh, you would get one in the Midwest, I know, because you have several States in demand.

Or, how about essential air service? Actually, I was the author of the essential air service because at the time of deregulation, I was afraid some of the small carriers might stop serving small villages, and we had to have some way to assure that service. It now has expanded to the whole country. But we are dependent upon essential air service because we have been unable to build those roads I talked about, and the cost of flying passengers and mail is increasing.

Now the Postal Service says it is going to decrease what it pays the people to fly the mail. So that means we have to increase the cost to passengers. I foresee the time when almost every small area in Alaska is really going to be under essential air service, and this Senate is going to explode and say, "Why should we subsidize those small areas for air service?" They will forget that we built the Federal highway system to every town and village in the south part of the United States. We have built the super highways to connect all those States. We built neither in Alaska—neither. So we do have to have special systems to survive in Alaska, and essential air service is one.

Another thing is, if you want to look at Alaska, we cannot even get the authority to drill in the area that is known as the last—last—surviving great reservoir of oil in the United States. Seismic studies show that there is a tremendous reservoir on the North Slope. An amendment of my late, good friend, Scoop Jackson, preserved a 1.5 million acres at the very top of our State for continued exploration. It is not within the wildlife refuge closed area wilderness. It should be drilled.

About 85 percent of the money that goes to support schools in our rural areas come from State revenue. Guess what, at the time of the Persian Gulf war we were putting through the Alaska pipeline 2.1 million barrels a day. The last time I checked we were putting through 1.3 million. We have already lost one-third of our State income from Prudhoe Bay. As the years go by that will continue to shrink down; we believe somewhere down below 900,000 barrels. When it gets down there we will have the problem of trying to figure out how to support our State.

Why do we need to do that? Because this Congress will not give us the authority to drill in the area that was set aside to drill to prove up oil for the United States.

Again, almost 80 percent of our land is controlled by this Congress, not by the State legislature. We are totally controlled by the Federal Government, despite the fact that we have been a State for more than 35 years. We have worked and worked and worked to get out from under the yoke of Uncle Sam, and we cannot do it. We are economically dependent upon the Federal Gov-

ernment, and as we get into the era of a balanced budget, what is going to change? Do you think it is going to be Medicare and farm price supports that change, Mr. President? Discretionary spending will be the first target of all those budgeteers who want to cut back.

They will cut everything from search and rescue in our State, to Coast Guard protection for our fisheries, to those who outline the areas of the national forest that we can cut—and even that is shrinking every year. I think it will be a total, total disaster for a State such as mine to come under a balanced budget amendment.

I will tell you, whether it is weather service, whether it is FAA, whether it is Coast Guard, look at what has been done already as we have tried to control the budget. What has changed? Has it been the escalating cost of Medicare? Has it been the escalating costs of all these entitlements? No, what has been restricted already—even this year the President of the United States reduces the money for public radio and television. We have literally hundreds of small communities and that is their only source of news. Their only source of programming of any kind is through the public television-public radio.

We have throughout the State small, small radio stations and television stations. Our State actually pays for what we call Radnet. Using some of the money we get from the oil revenues, we have connected together and put out once a day part of the national broadcast to those small television and radio stations.

We estimate under this balanced budget amendment that—and this is the Coalition for Budget Integrity which gave us the figures extrapolating them to Alaska—by the year 2000 if the budget is balanced by raising $1 in taxes and $2 of spending cuts, Alaska will lose 94,000 jobs; there will be 24 percent less personal income in Alaska; the rate of unemployment, which is already the Nation's highest, will increase by 6.4 percent; and our Alaska economy will be negatively impacted for at least 10 years.

If this balanced budget amendment is adopted; 44,000 elderly people in our State will see their average Social Security benefits cut by $1,259 a year.

Native Alaskans in remote villages could see their community health aid cut; the Indian Health Service, which provides their health delivery service, will be cut; fishermen in coastal villages will see driftnet monitoring by the North Pacific Council cut, and the coverage to prevent illegal fishing on the high seas; we will see our fish stock assessment money—two of these are in this budget right now—fish stock assessments and ocean research are already slated for cuts; Federal loans to fishermen to help them modernize their vessels will be gone; 5,000 Federal and private sector timber jobs will be lost; and the education programs that are provided to our Indian people, our native people and to the military schools will go down; public works projects such as the Bethel seawall that I have been working on now for 10 years and finally got on the schedule, it will go. The Dillingham erosion control project, the Ketchikan Visitor Center, where people who come into the State on ferry or cruise ship, come and see what they want to see; harbor maintenance for Nome, Seward, Sitka, and Kodiak we feel will be eliminated; the $25 million Federal match of State matching money to provide water and sewer projects for those 176 villages I told you about, would be cut or eliminated. The State puts up half, the Federal Government puts up half, it will have to go.

Spending will be gone for needy places in areas like Alaska that are not under an entitlement program but are beneficiaries of discretionary spending.

Now, I think it is time to think. It is time to recognize that this does not address the problem of the massive deficits and the massive debt.

The PRESIDING OFFICER. The Senator has consumed 45 minutes.

Mr. STEVENS. I just ask for 2 more minutes of the Senate's time. I wish to close out.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

Mr. SIMON. Senator BYRD—he is speaking on Senator BYRD's time—would agree to that.

Mr. STEVENS. He said I could take more or less. Let me finish.

The PRESIDING OFFICER. The Senator is recognized.

Mr. STEVENS. Mr. President, I come to the Senate floor as one who voted to put some caps on entitlements twice. Not many people who are here proposing this constitutional amendment did that. We could have the courage right now, in this session of Congress, to start putting on caps progressively, and we would have the same impact on the deficit and debt by the year 2001, if we did that, without putting people out of work, without putting the United States in a straitjacket, and particularly without setting up a series of conditions that will make it more difficult for us to prevent war.

Above all, I wish to try to make the Senate think about the things we must do in the future to restore our capability to provide our defense function. The money it needs to prove that we can defend ourselves and carry out our commitments to our friends around the world.

I believe that we have reached the point now where we must do that even before 1996. The Department of Defense tells me that if we pass this resolution, what will happen is that there will be another cut of up to $270 billion between 1996 and the year 2001.

That to me is absolute disaster. If for no other reason than that, I will not vote for this amendment. I do want to close by congratulating the Senator from Nevada, and I urge all Senators who have any questions about this to at least look at Senator REID's amendment because he sees some of the problems that I believe will be caused by this resolution.

I thank the Senator for his courtesy.

EXHIBIT 1

[From the Times Newspapers Limited Sunday Times, Feb. 2, 1992]

GOODBYE TO A BALANCED BUDGET

(By David Smith)

With just over five weeks to go to the budget, two things are clear. The economy's failure to recover means that government borrowing, both in the current fiscal year and next, will exceed official forecasts. This will not, however, stand in the way of tax cuts on March 10.

Why, I wondered aloud recently, is there all this talk of tax cuts when we are faced with a sharply rising budget deficit? The stated aim of the Tories is, after all, to achieve a balanced budget a zero public-sector borrowing requirement (PSBR) over the course of the economic cycle. Is all this being forgotten in the mad scramble to the ballot box? The response, from someone who was in a position to know, was in three parts. First, the Tories do indeed need all the help they can get, including any from tax cuts. Second, there is a strong economic case for boosting the economy by fiscal means, particularly if interest-rate cuts are constrained by the Bundesbank's hold over the European exchange-rate mechanism.

The third reason, and I think the most interesting, was that the policy of balancing the budget over the cycle will be quietly dropped after the election, assuming the Tories win, as it would be openly abandoned by Labour.

Norman Lamnt will pay lip-service to the balanced-budget goal on March 10. It will also be used by the Tories during the election campaign to distinguish between the government's responsible attitude to borrowing and that of Labour. But it will not last into the next parliament.

The argument for a balanced budget has never been very convincing. It was preceded, readers may recall, by a Treasury target of running a PSBR of 1% of gross domestic product, around Pounds 6 billion currently. A 1% rule, as the Treasury said at the time (1987), would allow a comfortable reduction in the national debt as a proportion of GDP.

Then, when the great budget surpluses came along in the boom of the late 1980s, the Tory party and the Treasury saw the attractions of a balanced budget. As a medium-term rule it was simple, and it appealed to Margaret Thatcher's habit of equating the nation's budget with that of a middle-class family of four ("neither a borrower nor a lender be").

The old argument, that it was right to balance current revenues and expenditure, but that it was appropriate to borrow for public investment purposes, went out of the window in the government's attempt to be more Victorian than the Victorians.

The PRESIDING OFFICER. The Senator from Alaska yields the floor. Who yields time?

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois [Mr. SIMON].

Mr. SIMON. This is on my time. If the Senator will keep the chart up—not that one; the one behind it.

Mr. STEVENS. The pie chart.

Mr. SIMON. Yes, the pie chart. I would point out to my colleague and friend from Alaska—incidentally, I sympathize when you talk about Alaska. When I was in the House, our family drove up the Alaska Highway when it was 1,100 miles of gravel road. I made some speeches about the need to develop transportation in Alaska.

Mr. President, if you take a look at that interest that the Senator has already pointed out has grown from 6 to 14 percent, GAO says by the year 2020 that is going to grow to 37 percent. You can imagine the squeeze on defense spending. And that is why GAO says if we do not change things, defense spending is really going to get the squeeze. And we are trying to change things.

I would point out, second, when you talk about interest, the Wharton School of Economics last Thursday, a week ago yesterday, pointed out that if this were to pass, their projection is that 30-year bonds would drop from 6.5 percent to 2.5 percent.

That is going to have an impact on that pie that the Senator has there in terms of interest. So that defense spending really, long-term—I do not suggest for a moment that short term there are not going to be some squeezes, though nothing like the devastation that the Senator has heard from the administration. I see the Presiding Officer is Senator DORGAN, who has followed the economic field very closely and has contributed a great deal. He described the administration figures in terms of what is going to happen to North Dakota and Alaska and Illinois and elsewhere as "hot air," and I think that is a generous appraisal.

I would simply point out to the Senator from Alaska that the budget this year in round numbers is $1.5 trillion. The revenue this year is $1.3 trillion. The revenue projected for the year 2001, when this is to go into effect, is $1.8 trillion. So what we are talking about is a growth in revenue and that everything has to absorb some cuts in that growth in revenue.

One projection is that if you were to exempt Social Security and permit growth of 2 percent in everything else—I recognize that is not as much as inflation—of the $600 billion, $542 billion would come from just a limitation of 2 percent in growth.

That is not going to be hurting anyone. And in terms of jobs in Alaska, let me point out the New York Federal Reserve Bank study suggests that between 1978 and 1988, we lost 5 percent growth in GNP because of our deficit. CBO says 1 percent is 650,000 jobs. That means 3.75 million jobs. As I calculate it very roughly, Alaska has about one-half of 1 percent of the Nation's population. That would mean 16,000 jobs in Alaska.

Now, obviously, no one knows how that would be distributed. But just as we have lost in the past, we are going to lose in the future.

Then, finally, when my friend and colleague talks about a vote of 61 to 36 in May of 1992 on an emergency appropriation, that is three-fifths, so it would pass. But this last one for California was 85 to 10; August of 1993, 86 to 14; June of 1993, voice vote; August 1992, voice vote; April 1992, 84 to 16; September 1992, 84 to 10; November 1991, 95 to 17; May 1991, voice vote; March 1991, 98 to 1; March 1991, 92 to 8. We have not been restrictive in terms of responding. And if we have a balanced budget amendment, we are going to have the resources and the ability to respond more generously to areas like Alaska or any other area that has a problem.

I am sure I am not persuading the Senator from Alaska to support the balanced budget amendment, but I do suggest to him that the horror scenario the Senator outlined for Alaska and the Defense Department just is not valid.

Mr. STEVENS. I do not know if I can still use Senator BYRD's time, but in any event, if I can respond——

Mr. SIMON. Yes.

Mr. STEVENS. Will the Senator address Great Britain? Will the Senator address the fact that no other European industrialized nation has done what the Senator proposes? Will the Senator address the fact that if you want to look at the history of the world, no nation has survived under this kind of restriction?

Mr. SIMON. I will respond in two ways. As far as I am concerned, Mr. President, this can come out of my time, so this is no problem.

The PRESIDING OFFICER. This will be charged to the time of the Senator from Illinois.

Mr. SIMON. I respond in two ways. First, no nation has gone into where we are projected to go.

Mr. STEVENS. Not true. Germany was in worse shape after World War I and World War II.

Mr. SIMON. This is my time. I wish to answer the question.

No nation has gone into where we are projected to go in terms of deficit versus GDP without monetizing the debt, without printing money.

Second, all the other industrial nations without exception that I know of have a parliamentary system. So that when the Government decides something—some of us, for example, were meeting with Margaret Thatcher, I remember, and she said, "Why don't you get ahold of your deficit? I can't believe you are not getting ahold of your deficit." And we had to explain to her—and she knows a lot about our system, but we had to explain—"We just cannot get rid of a deficit as easily as you can in the United Kingdom." And they faced this problem. We have not faced this problem. What this amendment is trying to tell us to do is let us face this problem.

Mr. STEVENS. Mr. President, if the Senator will let me make one last comment—I have lived through the years that we have increased in our debt and our deficit. The majority of the years involved were when there was a Democratic Congress and a Republican President. The Republican President wanted more defense spending and wanted more action that would stimulate investment, stimulate expansion, and so forth. The Democratic Members wanted things, as Wayne Hayes did, an increase in Social Security—increases in welfare programs, increases in the entitlements in general. They worked out a balance. We had both guns and butter, as Lyndon would have said. All right.

Mr. SIMON. That is precisely right.

Mr. STEVENS. We increased our spending for defense, but we also increased massive entitlements. And we put into effect the one concept, we indexed them so they automatically went up. We did not have to have an act of Congress everytime to raise them. They went up with the inflation rate. You remember some of those inflationary rates. At one time we had double-digit interest, and double-digit inflation. When you look at that, that is where this debt came from.

But as I said before, we did not back into that. We knew what we were doing. It was the compromise worked out. We wanted the defense. You all wanted changes in the welfare entitlement structure, and we both had our way. That debt represents that. It is not Republican, not Democrat. It is both.

But that debt represents the decision of free people. It represents the decision of a majority of the House and the Senate. It does not represent 60 percent.

My last comment is look at the Constitution of the United States. Do you find any other place where the Congress can waive a provision in the Constitution? Do you? Do you find any other time in history where we have said, "Listen, we want this in the Constitution. Oh, by the way, 60 percent, or three-fifths can waive the Constitution?" I want you to know I think this amendment to the Constitution of the United States is wrong. It has never been done. It was proposed in the Constitutional Convention and defeated. I think it was wrong then. It is wrong now.

Mr. SIMON. I would respond to my friend from Alaska who just reinforces my point. First of all, there are eight different provisions in the Constitution where with a supermajority we can do certain things. Second, the point is——

Mr. STEVENS. Not waiving it like this.

Mr. SIMON. I want to reclaim my time here. The Senator from Alaska makes precisely the point. How do we compromise around here? We compromise by doing everything because there is no restraint. We have a blank check. We are saying we cannot have a blank check and do the right thing by the future of this country.

I yield my time. I do not yield my time, but I am not going to speak anymore.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. CRAIG. Mr. President, let me inquire of the Senator from New Hampshire. How much time does he choose to use?

Mr. SMITH. Fifteen or twenty minutes.

Mr. CRAIG. I yield to the Senator from New Hampshire 15 minutes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 15 minutes.

Mr. SMITH. Mr. President, thank you. I would like to, first of all, commend my colleagues from Illinois and Idaho for their leadership on this amendment.

There has been a lot of debate about the amendment, and whether or not it is necessary. The fact of the matter is if Congress had taken on the fiscal responsibility that it has the constitutional right and obligation to do, we would not need the amendment. That has been said. That is true. But we have been hearing that now year after year after year. The debt continues to go up year after year after year.

So I think we ought to realize that we are now in a crisis session. Anyone who does not believe that the situation with our debt, our national debt, which is rising daily, is not a crisis is simply wrong. When you have a crisis, you have to act accordingly.

The constitutional amendment is a drastic action. There is no question about it. The question is, though, Are we in a crisis? The answer is yes. Because we have a crisis, we need an amendment. It is a sad commentary upon this body and the Congress of the United States that they have steadfastly refused to respond to the wishes of the American people, which is to exercise fiscal restraint and to balance the budget, and to move on to buy down the debt. They have not done it. That is why the American people overwhelmingly support this amendment.

Amending the Constitution should not be taken lightly. I do not take it lightly. It has only been done 27 times since the Constitution was first ratified in 1789.

But it is a testimony frankly to the genius of our Founding Fathers that we have so rarely felt compelled to modify this extraordinary document. And when there has been a problem that needed to be addressed, we amended the Constitution.

So when we do that, we should do it with caution. I think this issue has been debated for long enough, and as we have watched the debates year after year, we have watched the debt continue to rise.

If Thomas Jefferson had had his way, Federal borrowing would have already been restricted because that is what he said in 1798. He said:

> I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of the Constitution. I mean an additional article taking from the government the power of borrowing.

We look back on that quote, and we certainly can see how right he was about that.

We can argue on any amendment as to whether or not it is critical enough to have an amendment to the Constitution. We could have used the same argument on the Bill of Rights. But obviously, we did not.

Most Americans I am sure would agree that we are glad to have those who said we should not have an amendment added to the Constitution. Those first 10 amendments, I am sure most of us would agree that those were certainly worthwhile, and that those who are argued otherwise were wrong. With all due respect to those who are arguing against the amendment today, they are wrong. We are in a crisis situation. We need it.

Why do we need the balanced budget amendment? The Federal Government has not balanced its budget since 1969. That is 25 years without a balanced budget. Let us look at some of the figures.

The national debt today is over $4.6 trillion. Every American's share of that debt, Members of the Senate, members of the general public, any American child born as we speak, at this very moment his or her share of that debt is $17,000.

The average national debt as a percentage of GNP was 50 percent in 1981 to 1992. It is projected from 1993 to 1998 to be 70 percent.

Foreign holdings of U.S. debt are over $500 billion. Over 70 percent of the outstanding Federal marketable securities mature within the next 5 years.

This year the Government will spend over $200 billion on interest payments, over $200 billion on interest alone. That is over $500 million in interest every single day. By the year 2004 we will be spending, if we continue along the current lines, $334 billion a year in interest on the debt.

So the Federal Government by that time will be spending more on interest on the debt than on national defense. The Federal Government spends more on interest on the debt than on the combined budgets of Commerce, Justice, State, Education, Labor, Interior, Transportation, NASA, and EPA. By 1996 interest payments are expected to surpass Social Security as the single largest Government expense. That is a crisis. And it continues to get worse because as long as we are deficit spending and adding to the debt, and as long as we carry the debt, we continue to add to that debt with interest. And until we begin to buy the debt down, get the balanced budget, and begin to buy that debt down, we continue to increase the debt.

Yes; it is a crisis. Yes; it is. By the year, we could be looking at a $6 to $7 trillion debt, and if we begin to project this out exponentially, we can see that we are headed for disaster. Anybody can see that. It is not that complicated.

For example, when the national debt gets to $15 trillion, which it could very well do within the next 15 to 20 years, very easily $15 trillion, if we borrow at 7 percent—and it could be much higher, doubtful it will be much lower, but it could be much higher—that is $1 trillion a year in interest on the national debt every year. A trillion dollars. We throw around figures of millions, billions, and trillions around here. I asked a couple of people if anybody knew what comes after trillion. Is it quadrillion? I do not know. Does anybody know? It is unbelievable the way we throw these numbers around. It is not just those of us debating on the floor of the Senate today that recognize that this is a crisis. The American people recognize it.

Harry Figgie recognizes it in his book, "Bankruptcy 1995." It is a little bit early; it is not going to happen in 1995. But it is going to happen pretty quickly if we do not do something about it. Let me just quote a couple of lines from the Figgie book. He compares the debt to a hockey stick, and we see the toe of the hockey stick and we go straight up the shaft. Well, in the first 200 years of America, we are down here on the hockey stick. But in the next 20, we are going to go right up the hockey stick shaft, straight up with the debt, to projecting as high as $15 trillion to $20 trillion in the next 20 years.

We have a problem in here. We heard it from many of the speakers who preceded me. The question is: Do we have the guts to say no to the special interests and make the necessary decisions to balance the budget? The point is that we are not doing that. We can argue—and Senator STEVENS was eloquent in his comments about defense, and I agree with what he said about defense. We have gone too far in the defense budget. We have to set the priorities within the limits of a balanced budget. What are we going to spend it on? Environment, Social Security, defense? We have not made the decision. Are we going to do it within the con-

fines of a balanced budget like the rest of us do in our families and our businesses? Here is what confronts the people in here when they try to make their decision. They use it as an excuse. Quoting from Figgie's book:

Easy enough to say, critics counter. Tell that to doctors, farmers, Social Security recipients, single mothers, defense contractors, and Amtrak riders—all of the interest groups who may have good cause to resist sacrificing their own benefits for the greater good.

I think that is an excuse, because I believe all of those people understand that if we lose this country economically, they lose. They understand it. You know what they want us to do? Tell them the truth, be honest about it. It is easy to say how much money I can give my constituents. It is a little more difficult to say how much I cannot give them. A good, old-fashioned dose of honesty and integrity and candor is what the American people want, and they are not getting it.

Now, Bobby Kennedy is one I do not normally quote, and I am sure Senator CRAIG does not normally quote him. I am sure many of my colleagues who oppose this amendment will quote and have often quoted him in this body. He said, paraphrasing: "If not now, when? If not us, who?" Who is going to do it? Who is going to make the decision, and when are we going to do it? It is always tomorrow. It is always "we can do it tomorrow." We do not need an amendment. But that is not good enough. It is not good enough.

Figgie also says:

One thing is certain in these troubled time: What we do now will determine what happens to us later—both as individuals and as a Nation.

Little time remains for us to act, and, even then, our actions must be decisive, bold, and radical if they are to be proven effective.

Forestalling the demise of our country requires the commitment and participation of all of us—now.

That is what the constitutional amendment is: now. We need it now. That is how bad the situation is.

Is the balanced budget amendment a cure-all? No. It will not solve our fiscal problems overnight. But it will force us under the Constitution to make decisions that we now refuse to make because we do not have to. It will inject a healthy dose of responsibility and accountability into the budget process. It will force every Member of Congress to cast a rollcall vote to waive the balanced budget requirement so that he or she is on record; it will force every Member to cast a rollcall vote to increase the debt so they can be on record; and it will force Members of Congress to stand up and say they think this program or that program is so important that we should make future generations pay for it. It will compel us to do what we should have done for the last 25 years, which is to cut wasteful Federal spending.

See, that is the problem. It is a selfish act that we commit around here almost daily, with the spending that we do, because it is not our money that we are spending. It is our future generation's money, our kids' money. Most of us, I think, if we were honest, would look in the mirror in the morning and say: I would certainly like to leave the things I have been able to gain in life—my home, my property, personal effects—to my children. But do we really want to leave them our debt? Is that what you dream about? Do you want to leave them the mortgage on your home, the debts you owe, or would it not be better to leave them debt-free and leave them your home? I think it is the latter. But that is not what we are doing.

It is a crisis. It is a crisis. There are going to be those who are going to use the argument that we are going to raise taxes if this amendment passes. That is possible, but that is possible now. The question is: Do we have to raise taxes to cut spending, or do we have to cut spending to encourage economic growth? We have taxed this economy into stagnation. More taxes will only cost jobs and worsen the deficit. It is time for both parties to face the facts and reduce the size of Government.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 54 seconds remaining.

Mr. SMITH. Will the Senator yield me another 5 minutes?

Mr. CRAIG. I am happy to yield an additional 5 minutes.

Mr. SMITH. Mr. President, let me again, one last time, quote from Harry Figgie, who spent a great deal of time studying this problem. Frankly, it ought to scare all of the people in this country. But it sums up, I think, in a very specific way, the way I feel about the crisis we are now in. This is what he says, and, again, I am paraphrasing here a bit from his book:

They are killing our country, and by now you know who I mean. You understand how serious our plight is and that we have very little time—a few months, a year at the most—to mobilize the citizens and the leaders of our country to take up the fight against deficit spending and the mounting debt that otherwise will destroy the United States as we know it.

I emphasize the word "destroy," because that is exactly what we are doing.

Again, he says:

Get it out of your mind that economic and political collapse can't happen in this country, or that we can deal with it once it happens. It can and * * * will happen here unless we stop it now. You can't beat cancer once you've died * * *

The one point I have tried to stress more than any other in this book is that the responsibility for raising the alarm and goading public officials into action is ours—yours and mine.

My emphasis here is that the American people are goading us to this amendment, and rightfully so. They want this amendment. They want it because we are not exercising fiscal restraint.

Again, Figgie says:

What price are you willing to pay to save your country? Middle-class Americans have a choice. They can pay a modest price now or they can wait a few more years and lose everything they've ever had.

"We should be ashamed," Figgie says.

Probably speaking, debt isn't even our problem. Our deficits and debt are simply tools that our ever-eager-to-please politicians use to provide their constituents with what we say we want. By piling borrowing upon borrowing, we've been able to spend money that we don't have on projects and programs that most of us wouldn't condone if we had to pay for them with real tax dollars.

And, in conclusion, he says:

I am also saddened when I see what has happened to politics in the United States. Many people—nearly half of us, to judge by recent voter turnouts—have opted out of the process.

Have opted out.

In the face of interest group and corporate lobbying, too many people think the single citizen has no voice. But a single citizen does have a voice. Senators and Congresspeople tell me that as few as 200 calls or letters from constituents for or against a particular bill will often influence their votes.

I am not sure I agree with him there. But the point is if you do not think it is your responsibility to get involved in putting pressure on people in Government to change this system, then you are going to lose your country.

There is debate as this debate continues, and you heard it before and you will hear it again over and over and over again, people will say we do not need this amendment. It is not necessary. We need fiscal restraint. We are going to cut everything that is of any importance or significance to us. We are going to lose everything.

On the contrary. We will lose everything without it. Without fiscal restraint when this country goes totally bankrupt, which has to happen, either that or hyperinflation—they are the only two options—what do we have then? Where do we get the money for Social Security, for defense, for Medicare, for Medicaid, for the environment, for education? Where do we get it when the country goes down the tubes economically?

Well, the answer is we will not have it to get.

Mr. President, this is a good amendment. It is a necessary amendment. I regret that it is necessary, but it is. And it needs to be passed by this Senate, hopefully by the House, signed by the President, and sent on to the States for ratification. I sincerely hope that happens. And I commend again my colleagues for their leadership in bringing this amendment to the floor and engineering it through the process.

Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from New Hampshire yields the remainder of his time.

Who yields time?

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER [Mr. REID]. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I ask unanimous consent that Senator DORGAN be allowed to address the Senate for a period of no greater than 5 minutes and that it not be taken from anyone's time under the unanimous-consent agreement.

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

TRIBUTE TO INDIAN HEALTH SERVICE DOCTORS

Mr. DORGAN. Mr. President, I appreciate very much the courtesy of my colleague. I will be very brief.

I wanted to take the floor today to offer some honor to the memory of three people who were killed yesterday afternoon, and I do this only because this is at a time when public service is so often ridiculed by so many. I wanted to point out there are a lot of people in our Government who perform public service of an extraordinary nature around this country every day, day and night, often risking their lives to do so.

Yesterday afternoon, tragically a plane crashed in Minot, ND. Actually yesterday morning a plane crashed, a Cessna 401 crashed. It was actually on the airport property landing at Minot Airport in the snowstorm. It was carrying three Indian Health Service doctors who, on their regular round, were flying up from Rapid City to go to several reservations in North Dakota. Ruggles Stahn, Arvo Oopik, and Christopher Krogh were on their way and would have been this morning treating Indian patients at the Fort Berthold Indian Health Center in New Town, ND. Dr. Stahn was a control officer dealing with the subject of diabetes.

My late colleague, Congressman Lyland, and I had been to the New Town Reservation in North Dakota and had a hearing about the chronic, difficult problem of diabetes. They have diabetes 12 times the rate of the national average, not double, not quadruple, 12 times the rate of the national average on that Fort Berthold Indian Reservation.

As a result of that hearing, we got a model program on the Fort Berthold Indian Reservation, and Dr. Stahn would have been at that location this morning treating Indian patients had that airplane not tragically crashed.

I would just say, and I wanted to point out today, that these three doctors were flying in a snowstorm yesterday to perform their duties to provide health care to people who live often in difficult circumstances and do not always have the best health care. These three doctors are examples of public service that is performed by many in our Government on the streets in police forces, in fire departments, yes, in the Indian Health Service, and especially by these three doctors. I today wanted to pay tribute to their memory and say that many of us understand the commitment that many public servants make around this country, and I hope that the good work of Dr. Stahn, Dr. Oopik, and Dr. Krogh is work that will live in the memory forever of so many people they have helped for a long while.

INCREASE IN LOAN RATE OF WHEAT

Mr. DORGAN. Mr. President, in my remaining minute I will indicate that Secretary Espy announced just an hour or so ago something of significant importance to my State. Secretary Espy announced an increase in the loan rate of wheat of 13 cents a bushel. The Secretary announced that he was increasing the loan rate 13 cents a bushel to $2.58 a bushel.

That may not mean much to anybody who does not raise wheat or does not come from an agricultural State. It is a step, yes, a baby step, but a step in the right direction finally.

Loan rates have been for too long too low. We have collapsed in the last decades for a number of reasons.

This Secretary and this administration finally are moving in the right direction to try to improve farm income by increasing the loan rate.

I commend Secretary Espy. I would like to see a higher increase, but it is refreshing this morning to be able to say this Secretary at least has taken a step in the right direction for family farmers, and I hope that we can help them do ever more in the weeks and months ahead.

Mr. President, let me thank the managers of the bill for according me this opportunity to say a few words today about three doctors who tragically lost their lives yesterday.

I yield the floor.

The PRESIDING OFFICER [Mrs. MURRAY]. The Senator from West Virginia is recognized.

Who yields time?

Mr. BYRD. Madam President, I ask unanimous consent that I may consume as much time as I require without it being charged to the time on this amendment. I do not expect to speak more than 15 or 20 minutes at the most, and what I have to say will have nothing to do with the business before the Senate today.

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

The Senator will be speaking as if in morning business for up to 20 minutes.

THE BUZZARDS AMONG US

Mr. BYRD. Mr. President, I call attention to a news story that appeared in the Washington Post on February 19, 1994. The news story carries a headline "Now Preying in Stafford: The Birds. Vultures Attack Pets, Terrorize Humans With Hitchcockian Menace."

I will read excerpts from the story:

> With a loaded shotgun sitting next to her back door, Lynn O'Hara-Yates says she's living in terror of the dozens of black vultures that gather each morning on her back fence to stretch their wings, sharpen their talons and wait for lunch.
>
> When the first birds showed up in November, they were a curiosity. As their numbers multiplied, curiosity turned into concern despite assurances from state wildlife specialists and longtime residents that the huge birds wouldn't harm a living thing.
>
> In the last month, O'Hara-Yates has lost eight ducks from her pond, all of them picked clean to the bone. Her neighbor's cat, Stripe, was grabbed by the tail and carried 25 feet in the air for a distance of 100 yards. A vet stitched up the four talon holes in Stripe's body. Dogs and horses also have been attacked.
>
> "It's a nightmare," said Stripe's owner, Jeude Barrett. "And we can't do anything. . . . They have no fear."
>
> Vultures are federally protected animals and cannot be killed without a permit.
>
> Most of those spotted in Kings Grant are black vultures, which weigh about five pounds and have a wingspan of five or six feet. Black vultures are more aggressive than their cousin, the red-headed turkey vulture, and are common to the South, according to Paul Engman, a naturalist who works for the Fairfax County Park Authority.
>
> The birds, commonly called buzzards,

that is what we call them in West Virginia—

> prefer their food either dead or dying, Engman said, but on rare occasions they have been known to swoop down on live animals.
>
> Bob Thomas, an inspector with the Virginia Department of Agriculture and Consumer Services, has seen horses, lambs, pigs and newborn calves attacked.
>
> "Normally, they kill the calf before it even gets up. I've seen them standing in the fields by the dozens, walking around the cows, just waiting," he told the Fredericksburg Free Lance-Star newspaper.
>
> Thomas, who is working to rid the Kings Grant area of its vultures, said he understands residents' concerns. "I would not be comfortable with a 2-year-old child playing around them," he said. "When they're hungry, meat's meat."
>
> Now she (O'Hara'Yates) is applying for her own license to kill. But even if she doesn't get it, she's armed and ready. "What else can I do?" she said. "One of us is going to give up, and it's not going to be me. We'll do what we have to do."

Now, having prefaced my remarks by this news story, let me say that I come to the floor this morning to express my utter disgust with the antics of personnel connected with ABC's Prime Time program.

This morning, while I was walking my dog just before my breakfast, I was pounced upon by ABC reporter Chris Wallace and his camera crew, whose desire for a story far exceeded his regard for privacy and decency.

Generally speaking, I have great respect for the profession of journalism

and for the reporters that I come in contact with through my work here in the Senate. While I realize we are all reliant on the good journalism skills of reporters to obtain an accurate accounting of the issues of the day, it is exactly this type of behavior—this type of crude, rude behavior—that taints the perception of all reporters and creates a pervasive attitude of sleaziness and intimidation.

Madam President, I was majority leader during the years 1977, 1978, 1979, and 1980. I was minority leader through the years 1981, 1982, 1983, 1984, 1985, and 1986. And I was majority leader then again in 1987 and 1988, since which time I have been the chairman of the Appropriations Committee and President pro tempore of the United States Senate.

I have always been available to the press. I am available to the press when I go to West Virginia. I respect the press. Over all of these years, my relations have been good with the press.

I said to Mr. Chris Wallace, when he accosted me out in front of my house—he and his crew were on the sidewalk which borders my front yard, and they wanted to ask me about appropriations for the FBI facility in West Virginia —I stated that I did not have interviews at my house. I said, "The place to interview me is at my office. That is where I do my work. I do not have any interviews here."

And he persisted, just kept on persisting, wanting to ask a question, another question. I said, "I'm not going to break up my few hours at home for your convenience." And I repeated it: "The place for interviews with me is my office."

So then he wanted to know how to go about arranging an interview, and he mentioned my press secretary's name. I said, "Yes, call her." He said, "Well, will you give us an interview?" I said, "I do not know. I do not know what my schedule is. I have been very busy working on the balanced budget amendment."

So he understood that there would not be an interview there and that if there was going to be an interview it would be at my office, and he knew my press secretary's name.

Well, I came on to the office. I did not get into my office, but out here just in front of the Capitol, as I was about to come in the door of the next floor below, here they were.

He did not wait to call my secretary and try to get an appointment after our little meeting in front of my house. He did not give me time to get into my office. He did not pursue calling my secretary and seeing if an appointment could be set up. He meets me at the door down here.

He wanted to know if I would answer some questions. I said, "No, not now." He asked if he could have an appointment during the day, or some such. I said, "I don't know. I have been busy."

"Well," he said, "we have been trying to get an interview with you."

I said, "I have been busy. I have been very busy in the balanced budget amendment debate." I said, "You don't have any sense of propriety to come out to my house. We had no appointment set up out there for an interview, but you come out to my house. You have no sense of propriety."

"Well, will you see us?"

I said, "Yes, I will."

"Well, when?"

I said, "I cannot state at the moment when."

Madam President, though I had agreed after this morning's travesty to see Mr. Wallace, in retrospect I have decided against it. I was reminded when I got into my office that I had sent a statement yesterday to Mike Wallace—not to Mike Wallace. I have always thought well of Mike Wallace, the father of Chris Wallace. And I think, I really think that Mike Wallace would have been ashamed of his son's persistence in this rude, crude manner; coming to my house and then rushing to the Senate, rushing up to the Capitol. He got here before I did, wanted an interview out there. He did not wait, as I say, to try to set it up.

And so my staff reminded me that we had sent a statement to Chris Wallace yesterday. I want to read the statement, and it is as follows:

The Emergency Supplemental Appropriations Bill signed into law on February 12, 1994, was a complex piece of legislation. It was technically three bills rolled into one.

Title I contained over $10 billion for emergencies relating to the disasters in Los Angeles and in the Midwest, and to peacekeeping costs connected with U.S. operations in Somalia and Bosnia. The emergency designation assigned to these costs were not offset and will add to the deficit. Title II was a routine supplemental for fiscal year 1994 which represented program adjustments recommended by the President and Members of Congress. This title totaled $1.04 billion and was more than offset by the $3.26 billion in spending cuts contained in Title III of the bill.

The funding for the FBI was included in title II of the bill and thus does not add to the deficit. There were deep concerns over the low attrition levels at the agency, and its ability to hire personnel to operate the new fingerprint identification center [which is at Clarksburg, WV]. Quite frankly, the FBI was in danger of building a state-of-the-art facility without the employees to run it. At a time when crime is the number one concern of the American people and when Congress and the President are searching for solutions to this epidemic [of crime], it would be foolhardy to deny our policemen one of the few new [high-tech] weapons in the crime fighting arsenal. This new fingerprint record system will support all law enforcement officers [throughout the Nation] and [will] provide a revolutionary advancement in fighting crime and drugs. The funding in this bill will assure Federal, State, and local authorities the tools that are necessary to help apprehend repeat offenders and is crucial if violent, recidivist criminals are to be removed from our [Nation's] streets. To do otherwise would be wasteful and do a disservice to the law abiding citizens of this country.

Now, Madam President, as I say, in retrospect, I have decided against an interview with Mr. Wallace because I do not believe that my views on that program will get a fair airing, and would more than likely end up on the cutting room floor. I, therefore, have decided to take my case to the place where I know it will be heard unedited.

Earlier in the week, Mr. Chris Wallace was told by my staff that I would be unable to grant an interview because of my involvement in the current debate on the constitutional amendment to balance the budget. And so in lieu of this, as I say, I provided "PrimeTime" with a statement regarding their program on the earthquake supplemental, and I have read that statement. Chris Wallace admitted to my staff earlier this week that the motivation for this program was ratings driven. It seems that last week, "PrimeTime" aired a new program but lost the ratings competition to CBS's coverage of the Olympics. Having learned that lesson, this week "PrimeTime" will air a repeat program so this program on the earthquake supplemental will be an attempt to regain "PrimeTime's" position in the ratings game and will air next week, when the competition from the Olympics will no longer exist.

Freedom of the press—we have been talking a great deal about the Constitution lately—freedom of the press is one of the rights enshrined in the Bill of Rights, a right codified to protect the press against oppression by government or other legal forces in society. But increasingly, the behavior of certain segments of the press, like the behavior of "PrimeTime" that I just talked about here, that behavior leads me to wonder if we do not now need an additional amendment guaranteeing citizens freedom from the press—freedom from the press.

The pursuit of headlines, or worse, the pursuit of sensation, now leads some reporters and certain media types to violate the rights and the privacy of other citizens without any sense of shame or propriety. They have absolutely no sense of shame, no sense of propriety. They are like the buzzards that I read about earlier—buzzards. Apparently no excess, no savagery—no respect for others, no limits on behavior—is too much in the chase for headlines or air time. And if ever that phrase "freedom of the press" in the Constitution is amended and weakened, it will be because of just such buzzards as these and their predatory tactics that will bring down this retribution upon their heads. And when that happens, we all will suffer.

The moment has arrived for the media to reassess their behavior—reassess their behavior. I have seen them. I have seen them on television when a widow is attending the funeral of her husband. And they will press that cam-

era right up into her face and all the people in the land can witness the grief, the tears that roll down the cheeks of that poor woman. I have seen this time and time again, and I have said to my wife, "Have they no shame? They are vultures."

I am not talking about all the press. I am talking about such rude predators as I came in contact with this morning. Of course, the camera crews cannot help it. They have to go where Chris Wallace says. They have to go where they want them to go.

So the moment has arrived, as I say, for the media to reassess their behavior and for those charged with responsibility for the news industry in our society to take a long, long look at their own values and ask themselves anew: Where do we draw the line in seeking truth before we cross the border into barbarism? And if that is not barbarism, then I do not know what is.

Frankly, I am completely disgusted with the type of journalism programs like "PrimeTime" displays, and I am even more disgusted with the tactics used to fabricate a sensational story.

I have always, as I say, been available to the press. My office tries to answer press questions to the best of our ability. But I resent and deplore this type of unreasonable press intimidation.

"Mr. Wallace, that camera over there may mean everything to you. It does not mean anything to me, and you are not going to intimidate me. You and your cameras are not going to intimidate this Senator."

I think it is about time that Senators stood up and deplored this kind of invasion of privacy, this kind of head hunting, this kind of vulturism.

I will not be pushed into playing this game just to promote some tawdry, tacky, pseudo-news show's ratings. You know what is at the bottom of the ratings? Money. Money. They are always talking about Senators' salaries. What about theirs? We are elected by the people. They are not elected by the people. We are elected by the people, and we work and we try to work in the service of our country. They are interested in ratings—ratings. What will be the most spectacular thing we can do?

They did not bother to call my press secretary back yesterday after they had received my statement. They did not bother to call her back and say, "Well, we need more than this." She never heard from them again. And they come out to my house—come out to my house. Vultures. Buzzards. I do not know what my little dog Billy may have thought of them. But from the way he seemed to want to get away from you, he must have been ashamed of your tactics.

"I am a public person, Mr. Wallace. But even a public person has a right to walk his dog in peace in the morning without being attacked in the front yard of his home before breakfast by vultures, by reporters like you and cameras."

I thank Senators for their patience. I apologize for imposing on their time.

BALANCED BUDGET AMENDMENT

The Senate continued with the consideration of the joint resolution.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, it is my understanding—I apologize to my friend from Oregon—that Senator BYRD controls 1 hour and 11 minutes; Senator CRAIG, 1 hour and 30 minutes; Senator REID, 1 hour and 49 minutes; Senator SIMON, 1 hour and 39 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. All four of us are on the floor, and I wonder if we could, because there are a number of Senators under respective times waiting to come sometime during the day, I am wondering if we could, among ourselves, work out blocks of time so we can tell those who want to speak when they can come rather than waiting around in quorum calls. Would that be convenient for everyone?

Mr. BYRD. Let me respond to the Senator. I am not prepared just now to speak on the budget balancing amendment. I will tell you why. At least 2 nights this week I had less than 3 hours of sleep. I have been spending my time studying for the floor debate. I was up last night. I was prepared to come to the floor this morning and meet with a gentleman to discuss, what? To discuss the balanced budget amendment. This is a constitutional scholar I wanted to meet with. I have not met with him. I spent the entire day up until 12:30 since I came to my office on this tawdry matter. That is why I am not prepared.

I would suggest the other Senators go ahead and let their colleagues speak and use their time, and I will catch mine toward the end of the day or during the afternoon at some point.

Mr. REID. All of us, the three other managers would be, of course, willing to work around your schedule. So you just let us know. We will go ahead and work out the time among ourselves.

Mr. BYRD. I thank the Senator.

Mr. REID. Why does not Senator PACKWOOD go ahead on Senator CRAIG's time, and while he is doing that, we will try to work something out.

Mr. CRAIG. Madam President, before I yield 20 minutes to the Senator from Oregon, let me say in relation to the comments of the Senator from West Virginia a moment ago, that as we debate the Constitution, one thing that is profound in it that we all understand very well, these are unique privileges that our Founding Fathers outlined and enshrined for all citizens. But one thing our Founding Fathers were so clear in stating as they enshrined those rights is that along with those rights come responsibility. It appears this morning that the latter, the responsibility of the right, was not adhered to.

I now yield to the Senator from Oregon.

Mr. PACKWOOD. Madam President, in addition to the 20 minutes—and I have spoken to the chairman of the Appropriations Committee—I would like to ask unanimous consent to proceed for 10 minutes on the same subject he was talking about in relation to the experiences I also had recently.

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

Mr. REID. Madam President, I have no objection to the Senator from Oregon proceeding, but I want everyone to know, the other Senators listening that there will be no more unanimous consent agreements relating to morning business. We have to get on with the balanced budget amendment, and if people want to come and talk—I have no problem at all, as I indicated, with the chairman and the ranking member of the Finance Committee—but in the hours to come, we want to get the balanced budget amendment out of the way, and if Senators have other subjects to speak on, they can do it at the end of the day. From this Senator, there will be no more unanimous-consent agreements.

EXPERIENCES WITH THE PRESS

Mr. PACKWOOD. Madam President, I thank the Senator. I wonder if the Senator from West Virginia recalls the old radio show "Can You Top This?" where they would tell jokes and someone else would tell another joke and see if they can top it. I had a similar experience from yours.

I actually know where the Senator from West Virginia lives. I have a good friend who lives around the block. I drive by your house with some regularity, so I can picture exactly where you were and what happened. It was probably barely light. It was early in the morning.

I have had similar situations happen to me over the past 3 or 4 months, only getting at me is much more difficult than getting at Senator BYRD because his house is a normal suburban house with a public sidewalk, I judge, about 15 to 20 feet from your front door. I live in a townhouse in a complex that has a gate with security, and my townhouse is about 300 yards from the edge of the sidewalk. To get there, you have to traverse 300 yards of private property that you are not supposed to be on unless you have permission.

On Halloween, at about 8:30 or 9 o'clock at night, I was going home, got

out of my car, and literally from behind a bush jumps a television crew and a television commentator like goblins, turning on the light and shouting at me. It did not frighten me, but it surprised me, stunned me. I was not expecting somebody to be jumping out from behind the bushes. And I paid them roughly the same heed that the Senator paid Mr. Wallace this morning.

A few weeks later, I was taking—I go to work quite early, about 6 o'clock in the morning—I was taking out my garbage. It was garbage day. And as I walked out the door, there are two television crews, again 300 yards on private property, photographing me, asking questions. I answered none. But I did see myself on television carrying out my garbage for disposal before I went to work.

That is bad enough. To get on this property, as I say, you have to have permission, and it used to be relatively easy to get. As you go by the gate, there is a little division. On one side, it says "residents," and if you have a sticker you can drive by. On the other side, you are closer to the guard, and if you are not a resident you are supposed to stop and get permission to go on.

Because of the efforts of the press to get on, they have had to close off the right-hand side of the entry for the residents and force everybody to go by and stop at the guard shack in order to keep out the press who attempt to get on by a variety of devious devices, some of which I will mention.

On one occasion, a press truck came—very clearly a press truck—and tried to get on, and a very efficient guard said, "No, you are not here to visit anybody; I am sorry." The truck went away. They were not very smart. They came back in about a half an hour claiming to be a plumber coming to fix one of the tenant's plumbing, and the guard recognized it as the same truck and again turned them away.

Worst of all perhaps, there is a tenant who lives in the same complex who works for the local CBS affiliate, and that reporter has been giving permission to her fellow reporters to claim that they are coming to visit her, when they are not; they are coming to photograph me. And they are using that artifice to get onto the property.

Now, this is exactly the kind of conduct that the Senator from West Virginia is talking about. It is the kind that all of us at one time or another have to put up with but perhaps never to the degree the Senator and I have experienced in this situation.

It is demeaning. It is demeaning to them. I suppose not so much to you and me, but it is demeaning to them. And the Senator and I can recall a different era when the press was quite polite, and if they wanted to interview you, they would call, and the Senator, like I, would meet with them, talk with them. But this kind of conduct is perhaps what causes journalism to rank not much above or, on occasion, below us in terms of public esteem. They are not up there with the clergy and up there with pharmicists. They are down with us.

I just wanted to sympathize with what the chairman of the Appropriations Committee said today and say that I have gone through it also. I understand the irritation, and I appreciate what he has said today. I fully understand it.

Mr. BYRD. Mr. President, I thank the Senator. Most of the press is still polite today.

Mr. PACKWOOD. I agree.

Mr. BYRD. It is a few bad actors that cast a cloud upon all the others.

I thank the Senator.

Mr. PACKWOOD. I thank the Chair. If I did not use up my 10 minutes, I will yield it back.

BALANCED BUDGET AMENDMENT

Mr. PACKWOOD. I will go ahead now and speak on the balanced budget amendment with a certain sense of deja vu. I am paraphrasing, but I think it was Oliver Wendell Holmes who said the history of the law is experience, not logic.

Many times when you think things through logically, you know exactly how they should work, only they do not work out that way. And you end up basing many of your judgments on experience, not logic.

Until about 10 or 12 years ago, I was an opponent of the balanced budget amendment because logic told me we should be able to have a rational fiscal policy without the compulsion of a constitutional amendment; that we were mature men and women, we understood the consequences of our actions, we knew that what we were doing was wrong, and we would right it.

My first experience into this was not a constitutional amendment so much as a bill that we had before Congress in 1972, a bill that actually passed the House.

Picture the situation. It is 1972. We are working on the fiscal year 1973 budget. There is a possibility that spending in the following year may exceed $250 billion—may. I did not say deficit. I said spending. The deficit might be someplace between $15 and $35 billion, and we thought that was outrageous. And so a bill was passed in the House of Representatives to delegate to President Nixon the power to cut the Federal budget almost where he wanted if it exceeded $250 billion. It passed the House of Representatives, Wilbur Mills then chairman of the Ways and Means Committee being the principal person who was pushing it.

It came to the Senate, and we had an extraordinary debate on the Senate floor as to whether or not Congress wanted to delegate its power over the purse to the President. It was not so much an argument about the constitutional amendment to balance the budget. We had not yet reached the Draconian necessity for that. We thought we could take care of it ourselves. But should we delegate it to the President.

I was opposed to delegating it to the President. We had a long debate on this issue, and I ask unanimous consent to place in the RECORD at this stage both the speech I gave in the Chamber and the notes from which I worked to give the speech.

I ask only for those who read it to realize there is a typographical error in the CONGRESSIONAL RECORD as it was printed. It makes reference to a Charles I of England and his calling the Parliament together in 1622. He actually did not ascend the throne until 1625 and he called it in 1629. So whenever you read that, just remember it is an error in printing.

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

[From the Congressional Record, Oct. 13, 1972]

TEMPORARY INCREASE IN THE DEBT LIMIT

The Senate continued with the consideration of the bill (H.R. 16810) to provide for a temporary increase in the public debt limit and to place a limitation on expenditures and net lending for the fiscal year ending June 30, 1973.

Mr. PACKWOOD. Mr. President, I had intended earlier in the day to speak at length on this issue, but the hour is late, and I will not take up the time of the Senate with the rather lengthy speech I had prepared to deliver.

I ask unanimous consent at this time that the speech I would have read in its entirety be placed in the Record at the conclusion of my remarks, along with a historical analysis prepared by my legislative assistant, Stan Heisler, backgrounding the subject.

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

(See exhibit 1.)

Mr. PACKWOOD. Mr. President, this issue of a debt ceiling that we are considering and probably are going to vote on in the next hour or two has not been a significant issue before this Congress before perhaps 6 weeks ago. When it was in the House of Representatives, it was not seriously regarded, apparently, until the chairman of the Ways and Means Committee took it seriously and apparently met with the President, and then that bill was passed by the House.

Earlier tonight, the Senator from Minnesota (Mr. Humphrey) spoke upon some of the constitutional issues that we face. When most of the other speakers tonight have spoken, it has not been on the substance or merits of the issue that the Senator from Minnesota raised. We have talked about pragmatics. We have talked about whether the President or Congress is at fault for the $25 billion or $30 billion or $35 billion or $40 billion deficit, but we have not really examined this issue in as much depth as I think the junior Senator from Minnesota and some of the others of us would like to see it examined.

We spend a year in a presidential campaign. We talk about the environment and

population stability. We talk about spending in the campaign. We spent 6 or 7 weeks on the floor talking about the direct election of the President. Last week we spent a week talking about consumer protection. We talked about busing. In both cases we could not get any action because we could not break a filibuster.

Some of those issues have been talked about for years.

Yet the issue we are on tonight is of greater significance to the Senate and the country. This entire issue has been discussed in the news media for over 20 years. Yet we are going to rush it through without sufficient consideration of what we are doing or perhaps the background as to why we ever got to where we are and why this power we are so anxious to give away to the President adheres in the Congress at all.

I am not altogether impressed necessarily with the consistence of some Members of this body who say we are guilty of giving our power away to the President. I think it would be a lot better if we did not give away our power to the President in all kinds of actions that we take here.

I do not think we really became concerned about giving away our power to the President until the Vietnam war. Regardless of what our feelings may have been about Vietnam 10 years ago, regardless of whether we would have opposed or supported it, most of us now, I think, regret that we ever got into it at all.

If one can point to any single thing that caused Congress to start thinking about giving away its powers, it was the Tonkin Gulf resolution, passed with only two dissenting votes in this body, cast by former Senator Morse and former Senator Gruening. As this war began to go badly and as the light did not appear at the end of the tunnel, as we were told it would, we began to have second thoughts about why the Senate had given away such power. We began flagellating the President, to whom we had given the power, and saying he should not have done the things he did.

Whether or not he had the power under the Tonkin Gulf resolution, I am not sure, but with this feeling of self-guilt setting in, we began to take back some of the power. We repealed the Gulf of Tonkin resolution a couple of years ago, which was a good step. We passed the Church-Cooper amendment, prohibiting the introduction of American troops into Cambodia, Laos, and Thailand. That was a good step.

Then, in April of this year, we passed the war powers bill, which would have very severely limited the power of the President to send troops overseas. That bill is still in conference. It appears to be a casualty because of failure of the conferees to agree. It appears that it will not come out in this Congress.

But after we had done those things, we sat back. Have we really started to take back the power we have given to the President?

My fellow Senators, we have not really scratched the surface. Let me read the Formosa resolution, which is still on the books. It reads as follows:

"That the President of the United States be and he hereby is authorized to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing and protection of such related positions and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores."

We voted on that. We voted to repeal that resolution. It failed by a 43 to 40 vote. We have left on the books a loop hole big enough to allow any President to drive 10 Mack trucks through if he wants to take us into a war in Asia.

Then the Senator from Minnesota mentioned the Middle East resolution, which is still on the books. We have not had the courage to vote on whether that resolution should be left on the books. It has been on the books since 1957. It states:

"the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism:"

Whatever that means. I think what it means is that the President wants to say that if Syria is controlled by international communism, we can probably bomb Damascus. We have left it on the books. So when we start talking here tonight about how holy we are, and "Don't give the President this power to cut expenditures to $250 billion" and "Isn't it time we took this back to ourselves," let us just begin to wonder, what about the others?

What about the Spanish bases, and the extension of a five-year executive agreement whereby we are going to pay the Spaniards $400 million, as far as I can figure it out, without so much as concurrence by Congress? Or the bases in the Azores, or the naval base we are going to take over from the British in Bahrain, where we have never had a military base before of any kind, and I do not know what kind of agreements we have entered into? Congress has not been asked whether we think it is wise, and apparently we are not going to be asked.

But I know what will be said. This is foreign relations. Apparently throughout history the President has had some sort of paramount position in foreign relations, and it is therefore argued that Congress should not impinge too much upon the Executive's power in foreign affairs and should not bother itself too greatly with how the Executive chooses to run foreign policy.

But let us take a look at the last 3 years, domestically, at what we have done. We would think at least in the area of domestic affairs Congress would want to keep its power. But what have we done with the Post Office? We used to run the Post Office—badly and politically. Now we have given it away to the President, and he runs it through the U.S. Postal Service, and it is run just as badly.

Mr. PASTORE. Even worse.

Mr. PACKWOOD. Even worse. I thank the Senator from Rhode Island. But we have given all that away. It is no longer our responsibility.

What about the wages for all the white-collar workers in the executive branch? We used to have a comparability board that reported to us, and we decided whether or not to raise their wages.

We changed that a year and a half ago, and now the board is the President's agent, and reports to the President what the salaries should be. And the President has two alternatives. He can send along the recommendations of his agents to Congress just as he got them, and they go into effect automatically—we cannot even veto them. Or, if the President does not like the salaries, he can send his alternative schedules to Congress, and either house of Congress can veto those. But do you know what happens then? If either house vetoes the alternative suggestions, the recommendations of the President's agent go into effect. In neither event does Congress have anything it can do about it.

But neither of those concessions holds a candle to what we have done with wage and price controls. I was privileged to be a member of the Banking, Housing and Urban Affairs Committee when the suggestions came along that we should undertake the responsibility of delegating to the President the power to set wage and price controls. One of the witnesses who came to testify was Arthur Burns, Chairman of the Federal Reserve Board.

As I listened to Dr. Burns and others who testified before him, I thought to myself, "why should this power of whether or not to administer wage and price controls, the decision whether to have them, if we have them, when to have them, and what to control, have to be delegated to the President? Why cannot Congress make that decision? Why can we not at least say that until Congress passes a concurrent resolution there will be no wage and price controls?"

Dr. Burns said it would be very simple. Then Charlie Walker, the Under Secretary of the Treasury, testified. I asked him some questions in the same vein as Dr. Burns: Why could we not add an amendment so that before the President could institute wage and price controls, Congress would have to at least pass a resolution directing him to do so?

Charlie Walker said that would be very simple. Then Representative Reuss of Wisconsin testified, and I posed much the same question to him.

Perhaps he was more realistic—and I am afraid that is where the problem, unfortunately, lies.

He said that Congress could do it and Congress should do it, but Congress probably will not do it, and so we must give the authority to the President.

That did not satisfy me. I drew up an amendment which would have prohibited the President from instituting wage and price controls without a prior concurrent resolution from Congress. It was a simple amendment, which said:

"Whenever the Congress shall by concurrent resolution determine that the public interest requires the imposition of general controls affecting all industries and segments of the economy, the President may issue such orders and regulations as he deems appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970."

I sent the amendment off to Charlie Walker, and asked, "Could I have your opinion about it?"

Two or 3 days later, I got a letter back from the then Secretary of the Treasury, John Connally. Connally's letter said:

"This letter is in response to your request for Administration views on your proposed amendment to H.R. 4246, "To extend until March 31, 1973, certain provisions of law relating to interest rates, mortgage credit controls, and cost-of-living stabilization.

"As we understand your amendment . . . institution of a general wage-price control program would have to be preceded by adoption of a concurrent resolution by the Congress.

"We support your amendment. It provides a workable mechanism with the safeguards we have consistently advocated with respect to such powers, namely, that general wage-price controls should not be instituted by the Chief Executive—short of an all-out national emergency—without a further mandate from the Congress."

I offered the amendment on the floor. It failed 41 to 30 in this body, and we gave away to the President the most significant domestic economic power we can give away; for until we have come to the situation we are considering tonight, we did not even want the power. When the administration was not even asking for it, we gave it away.

But as I look at everything that has gone before, it pales into insignificance in comparison with what we are considering tonight. Because, for all of the powers this Congress has, we have only two great ones. One is the power to tax; the other is the power to spend. It is through those two powers that we are able to transmute the rhetoric of politics into the actuality of policy. If we give either one of those powers away, we are giving away our ability to affect the priorities and the policies of this Nation.

The thing that bothers me, as I see us approaching this issue, is that I feel we have no appreciation for why we have this power.

All one has to do is look at English history, where we got most of our laws and the bulk of our interpretations, to see that for almost five centuries the predominant battle between the king and parliament was over only two things: Who had the right to tax and who had the right to control expenditures.

It started with the Magna Carta, and that is a significant document, because up until that time the king was entitled only to feudal dues. All nobles were entitled to a certain type of feudal dues, and it did not require any type of authorization. But prior to the Magna Carta, the king tried to tax the barons with taxes that were not customary and the barons did not like it, and forced him to sign the Magna Carta, which said that he could not levy any taxes on them, other than the customary, normal feudal dues without their consent.

That was the start. And you know why the king, from time to time, would have to come to the national council which finally came to be the Parliament? It is no different now than it was 800 years ago. He would have to call them together because the normal feudal dues that he was entitled to as a matter of right did not give him enough money to fight wars.

So every time he wanted to fight a war, he would call parliament together, and he would plead for money; and if he was a popular king or the war was popular, they would give him the money he requested. If it was an unpopular war or an unpopular king, they probably would not vote him the money. Or even if he was popular and they liked the war, but Parliament felt they had any of a variety of grievances against the king to which the king had not paid enough heed, they would come together, dally and delay, or give the king less than what he wanted, until he would meet with the parliamentary leaders and they would come to some kind of conclusion about their grievances.

It was a gradual development through this evolutionary process, with the kings wanting to go to war and Parliament saying, "Okay, but not until we get this grievance met, or not until you stop trying to assess illegal taxes or forced loans or benevolences will we try to get you the money."

If they had strong kings and weak parliaments, the king would dominate, or if, as finally under the Lancastrians, they had a strong Parliament and weak kings, the parliaments dominated.

Finally the showdown came in the 16th century, when the Stuarts came to the throne, who believed in the "divine right of kings" and were not going to have any truck with Parliament. James I was first, but he died. Then Charles I came on the throne, and he could not stand parliament, and finally decided in 1622, that he was going to abolish it. He did not call Parliament together for 11 years, until 1640. And do you know why he called it then? Because he had gone to war with the Scots, they had beaten him in the Battle of Newburn, and were knocking on the doors of London. Nothing could be more humiliating to an Englishman than to be defeated by the Scots.

So he called Parliament together to ask for money to fight the Scots; only at this stage Parliament had had it, not only with the Scots but also with the King. So, instead of giving money, it passed a bill of attainder, impeaching one of the King's ministers and sentencing him to death. The civil war started afterward, and Parliament won, and the King was captured and executed, which was unheard of in that day and age.

England went for 11 years as a republic, but finally, in 1660, it restored the monarchy. But by this time an uneasy but understood truce existed. There were no written documents, but it was understood that the King could not spend nor tax without parliamentary acquiescence.

So, for 25 years, under Charles II, things went along reasonably smoothly.

When James II came to the throne in 1685, he did not have his father's tact or diplomacy. He was a Scotch Catholic and was determined to try to return his country to Catholicism. But his country was principally Protestant. So in 3 short years Parliament threw him out and invited William of Orange to come from Holland and become King.

They passed the Declaration of Right, which, with one or two very minor changes, became the Bill of Rights in 1689. Under that document, henceforth, every king of England, every queen of England served at the sufferance and the will of Parliament. They had no power to tax, no power to spend.

By 1689, a hundred years before our Constitutional Convention, England had settled upon itself who was going to have the power to tax and the power to spend, and it was Parliament.

So when we get to our Constitutional Convention—you can search the Federalist Papers or the debates and you will find that there was very little discussion about who shall have the power to spend and tax. Nobody seriously thought anyone other than Congress should have it. No one seriously thought the President should have any power at all in terms of setting fiscal policy. They very clearly set it forth in Article I, section 8, of the Constitution: "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common defense and general welfare of the United States." And article I, section 9: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law." Here it is, in simple and straight language. What happened? We went from the time of our Constitutional Convention all through the 1800's with Congress perfectly able to draw budgets, determine priorities, and raise money.

In the First Congress, Alexander Hamilton, who was the first Secretary of the Treasury, tried to come forth with an Executive budget, and Congress rejected it. We did not have an Executive budget in this country until 1921, when we passed the Budget and Accounting Act. Of course, the President obviously had a hand in talking with his Cabinet heads; but every department submitted its budget and it was sent to Congress, and Congress made the decision.

We can do it again, if we want to. When people say, "It is beyond us. That was 1921. We were talking about a budget of $3 or $4 billion. We cannot do it now with a budget of $250 billion. Nobody in Congress can fathom that"—I say that is baloney.

Every parliamentary democracy in the world today manages to come up with legislative budgets. A few of them have executives, but they are weak executives. In England, France, Germany, and in the Scandinavian countries there are legislative budgets, and the majority party is able to determine how much they can raise and spend. They come to the parliament with it and debate it, but it is a legislative budget. If it can be done in any other country in the world, why can it not be done in this country?

The fact that we have not done it in the last 10 or 20 years is no reason why we cannot do it again.

The reason why I worry about this bill tonight is that it is not the first time we have toyed with the idea of delegating fiscal matters to the President. Senators will recall that in the late 1950's and early 1960's there was support for a bill to give the President power to raise or lower taxes by 10 percent. It was even endorsed by two of the major newspapers on the east coast that most of us read. Congress kindly did not adopt it.

In 1968, we got the first of our debt ceilings, another in 1969, and another in 1970; but they were really porous. We put enough exceptions in them so that they really were not debt ceilings, especially one which said there shall be a debt ceiling except for those things Congress appropriates over the debt ceiling. That was not much we had to worry about. We had given away no power.

But now we Senators are sitting here like a child on the beach with his sand castle, watching the waves come in; and as the tide comes in, the waves come closer, and now, for the first time, tonight, we are seriously toying with giving away half of the significant power that Congress can have.

I look at us and I say, "Why the dickens do we do it? Why are we willing to give away this power?" I can only come up with two reasons. One is that we really do not want it. We really do not want it.

I see nothing in the legislation about the Post Office, wage and price controls, the Formosa resolution, and the Middle East resolution to convince me that we want the power to make the decisions in this country. It is easy to give the power to the President. Let him make the tough decisions; we will not have to do it. Let him decide where to spend $2 or $3 billion. We will sit back, and if it is unpopular, we will criticize him. We will say, "What a foolish mistake. Any man in the White House who would do that should be defeated. We would not have done it. But, of course, we do not have the power. We have given it to the President." If he happens to make a popular decision and cuts something nobody likes, we applaud him, and we all get reelected together. In neither event have we had to make the prospective decisions and the tough ones as to what to cut ahead of time.

In addition to not wanting it, I think we have gotten in the habit in Congress of saying "Can't—can't be done." We cannot run the Post Office. We cannot determine wage and price policies. We cannot determine where military bases ought to be placed overseas. We cannot set executive salaries. We cannot fathom the Federal budget. So we delegate it to the President.

Well, "can't, can't, can't," to my mind, is just an excuse for "don't want to." "Can't" is an excuse to avoid the onerous and unpleasant task of leadership, because leadership is no fun. It is a lonely job, and you make decisions in isolation. You make decisions that you later wish you had not had to make. So we delegate the leadership because we say it cannot be done.

Let me make clear that I am not a defender of Congress. I spoke earlier about the argument we had back and forth about who was responsible for the deficits, and we say we have trimmed appropriations, and we do. We trim appropriations every year after we pass authorizations the year before, requiring the President to double his budget, and then we trim it.

I think this Congress is fiscally corrupt. I do not think we have the discipline or courage to raise the taxes or lower the expenditures; or, at least, nothing I have seen since I came to the Senate in 1969 would convince me that we have the ability, capacity, wisdom, or discipline to do it.

So we are faced with a Hobson's choice: Either we delegate these powers to the President in order to save the country from Congress, or we keep the powers in Congress and perhaps run the country into bankruptcy. What it amounts to is a choice between a fiscally irresponsible Congress and a totally irresponsible Congress. If I have to make a choice between the two, I will choose the fiscally irresponsible Congress, because anything we do that is wrong, if we keep the power, we can right. Once we give it away we have no capacity to right it; and, frankly we have no course of complaint if we once give it away.

When President Kennedy was a Member of this body, he was appointed chairman of a committee called the Committee on the Senate Reception Room. For the life of me, I do not know the history of why the committee was created. But one of the things the committee undertook was to determine the five greatest Senators of all time. There pictures are now in the Reception Room.

The committee picked two people out of this century, Bob Taft and Bob LaFollette, and three out of the last century, Daniel Webster, John C. Calhoun, the great southerner, and Henry Clay, who is perhaps by historical acclaim the greatest Senator of all time. It is interesting that Clay, Calhoun, and Webster all served in the Senate at about the same time. They served in that little Senate Chamber down there across the hall from the Senate Disbursing Office, which I am delighted to see we are going to restore under the Legislative Appropriations Act of 1973 which we passed. The room is kind of dusty. It is not used any more, but if we go down there and sit quietly in the room, we can, with any degree of imagination, almost hear the Clays, the Calhouns, and the Websters arguing the great issues of those days: The Missouri Compromise, the Kansas-Nebraska Act, the Tariff of Abominations where they argued about the opening of the West, the Bank of the United States, and the theory of nullification so eloquently argued in the Webster-Hayne debates. The theory of nullification, if it had prevailed, would have meant the dissolution of this country. It was a theory that finally led to the War Between the States.

Mr. President, as I think about those men, I cannot help recalling the banquet at the Indian Queen Hotel in Washington in 1830. It was a Jefferson Day Banquet and the Democrats were celebrating Thomas Jefferson. Andrew Jackson was President then and he was, of course, trying to put down the theory of nullification if he could. Calhoun was there. He was actually Vice President but that was through a quirk of the electoral college process, which allowed a man who ran second to be the Vice President, although Calhoun said he would much rather be a Senator than a Vice President.

When the banquet reached the time appropriate for the toast, Jackson rose and looking squarely at Calhoun proposed:

"Our Federal Union—it must be preserved."

Calhoun rose to the occasion. He raised his glass and said with feeling:

"The Union—next to our liberty—the most dear."

Those were great men and great times. They did not agree among themselves. The enmity among Clay, Webster, and Calhoun is legendary. But they almost spanned 50 years, the length of time those three men served here. They had many bitter battles but they all agreed on one thing; they agreed on the fact that the policies of this country were going to be made on the floor of Congress and not in the White House. It was not that they were unaware of the dangers of usurpation of Executive power, because Clay said in 1840:

"In my deliberative opinion, the present distressed and distracted state of the country may be traced to the single cause of the action, the encroachment, and the usurpations of the Executive Branch of the Government."

So, they were aware of the problems. They are not new. Only we face graver problems now. The President has not tried to steal our power. We want to give it away.

Congressional power is like chastity, it is seldom lost by force because it is usually given up voluntarily. We will give up our power here tonight, if we vote for this bill.

Short of physical or mental limitations that God places on any man, there is nothing that cannot be done by man if he believes it. God did not bless or circumscribe the President with any greater physical or mental limitations than he did us. Anything he can do as a President, we can do as a Congress—if we want to. But we must have the will and the capacity to do so.

There is no reason today why we cannot appropriate money sufficient for ourselves and for the committees to come forth with a legislative budget.

There is no reason why the distinguished majority leader cannot come forth with a Democratic budget, and there is no reason why our distinguished minority leader cannot come forth with a Republican budget.

Even Senator McGovern has a budget and he is only a candidate. So, it can be done.

I am simply saying: Why are we not willing to do it? Why, after we have spent—as I look around this Chamber, some of us are only 2 or 4 years in national politics, but there are others here who have spent 30 years of their adult lives in the service of their country, who ask the voters to delegate to them the power to make the policies of this National—why are we so wild to hand over our power to someone else?

Mr. President, I tell you what will happen if we adopt the Jordan amendment. It will not be a cure-all. Twenty years ago, in politics, the cry was of the 5 percenters. What we will have if we pass the Jordan amendment will be the cry of the 10 percenters. Everyone will have a favorite project and will come on the floor of the Senate and want to get his appropriation increased 10 percent to take care of the 10 percent cut that will be made in the budget by the Executive. Everyone will do the best he can, whatever committee it may come from that has jurisdiction over it, to get his particular little bailiwick, whether it be veterans, or social security, put into the "uncontrollable items" list, so that it cannot be cut at all.

We will find some way to weasel around the Jordan amendment, some way to increase the appropriations enough so that when they are cut 10 percent it will still be too much. So, I fear, instead of an 8-month experiment, we will find it too easy so that we will say education needs $10 million more, so make it $20 million. Housing needs $20 million so make it $40 million, and we can go out and tell the people that the President is the one that has got to cut the budget and he does not have any humaneness or understanding of the problem so that we blame it on him. We can go out and say to the poor, "We want to try to help you. It is that man in the White House that does not have any sympathy for you."

Mr. President, let me make it clear that by that time, Congress will be reduced to passing on minor matters of trivia. The Senate will be called upon from the time to time to confirm judges and ambassadors and that will be the sum total of the function of this body, if we adopt the Jordan amendment, or if we adopt the committee position.

When Benjamin Franklin was leaving the Constitutional Convention, walking down the steps of Independence Hall, a woman, Mrs. Powell, came up to him and said: "Dr. Franklin, what have we got—a republic or a monarchy?"

Benjamin Franklin replied: "A republic, if you can keep it."

We are all going to be celebrating the 200th anniversary of this Nation in 1976. I am curious whether we will be celebrating 200 years as a Republic, or as year three of an Executive monarchy.

Can we keep it?

That choice is ours.

I hope that the Senate will opt on the side of the republic.

Mr. President, I yield the floor.

EXHIBIT 1

A REPUBLIC OR A MONARCHY?

(By Senator Bob Packwood)

Mr. President, we are approaching the closing days of the 1972 presidential election. Many issues have been raised and discussed. Among those are Vietnam, the economy, environmental problems, race relations, equal rights for women, and numerous others. Some of these were issues in 1968. Some were not. Some might still be issues in 1976 but the greater likelihood is that most of the issues of 1972 will be but dim memories in 1976. For if there is any one constant in history, it is that the only constant is change.

We are at this moment in the United States Senate, however, facing an issues that transcends all others. That issue, and how we decide it, will be more important to the future of this country than how we decide all other specific issues combined. That issue is who will decide the main policies of this country—the Congress or the President.

For the past decade, we've heard a great deal in Congress about the delegation of powers to the President. Much of this has stemmed from the tragic conflict in Vietnam. Regardless of our feelings a decade ago, most of us today realize that we'd be better off if we had never become involved in Vietnam.

If any specific vote can be pointed to as the vote which focused attention on delegation of power to the President, it would be the vote in 1964 on the Gulf of Tonkin Resolution. Whether or not under that Resolution Congress gave to the President authority he did not have is now moot, as the Tonkin Resolution has now been repealed. But, from the date of the passage of the Gulf of Tonkin Resolution onward, many in Congress have become troubled by the erosion of congressional powers and the increased authority and power of the President. As the war dragged on, self-guilt in the Congress, caused by the passage of the Tonkin Resolution, increased. Congress started to flagellate the President and to question the wisdom of the Tonkin Resolution specifically and executive power in general.

With much hoopla and breast beating, Congress, in June 1970, passed the Cooper-Church Resolution which prohibited funds from being used to introduce American ground combat troops in Laos, Thailand or Cambodia.

In July of 1970, we repealed the Gulf of Tonkin Resolution.

In April of 1972, the Senate passed the war powers bill substantially curtailing the power of the President to involve the United States in armed hostilities overseas, but that bill has yet to be enacted by the Congress.

Having accomplished all of the above, Congress sat back with a certain degree of smugness and prattled about its reassertion of congressional authority.

But what about the Formosa Resolution initially passed in 1955. That Resolution reads, ". . . The President of the United States be and he hereby is authorized to employ the armed forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing and the protection of such related position and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores." The Senate specifically refused to repeal that resolution by a vote of 43-40 on October 28, 1971.

Or consider the Middle East resolution passed in 1957. That resolution reads, ". . . the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against aggression from any country controlled by international communism . . ." Congress has never even voted as to whether or not we should repeal this resolution.

Under either the Formosa resolution or the Middle East resolution, the President, if he didn't already have the power, was certainly delegated the power by Congress to take whatever military action he wishes in those areas under the flimsiest of pretexts. If Congress wants to make sure that some future President doesn't get us into a war over Formosa, or the Middle East, they have done nothing to prohibit it by leaving these two resolutions on the books.

There are other examples. We've extended our lease on our bases in Spain for 5 years through an executive agreement which doesn't even require Senate ratification or congressional concurrence. In this executive agreement, we have agreed to pay Spain $400 million dollars. All of this without so much as a by-your-leave of Congress even though it is Congress that must find the money to fulfill the agreement.

We've extended our agreement with Portugal for the use of bases in the Azores—again without so much as a request for congressional acquiescence.

In addition we apparently, by executive agreement, intend to establish a naval base in Bahrain where we have never had a naval base before, nor for that matter, any military base of any kind in that country. Congress has never been asked whether or not we thought the establishment of this base was in our national interest. It may be. It may not be. But, apparently it is going to be established without asking for the benefit of Congress' thought on the matter.

Now it might be said that all of these matters involve foreign policy, and that constitutionally the President is given paramountcy in foreign affairs and within reason ought to be able to conduct the foreign policy of the nation as he chooses. It is therefor argued that Congress should not impinge too much upon the executive's power in foreign affairs and should not bother itself too greatly in how the executive chooses to run foreign policy.

I don't agree with that premise. But, putting it aside for the moment, without arguing for or against it, one might at least suppose that Congress in the area of domestic matters would be concerned with maintaining its preeminence in deciding what policies shall be followed in running this country.

But what have we seen in the last few years. Well, to begin with—take the Post Office. Congress used to run the Post Office—politically and badly, now, Congress has delegated its authority to run the Post Office to the United States Postal Service, governed by a board of directors, appointed by the President. And now, instead of the Post Office being run politically and badly—it's just run badly. But don't complain to Congress anymore about bad mail service, because, you see, it's no longer our responsibility.

Congress used to set the salaries of the workers in the Executive Branch of the Federal Government. Now, we've given that away also. Today the President receives reports from various boards, appointed, I might add, by the President. These boards recommend what the salaries of the employees in the Executive Branch ought to be. The President passes along these recommendations to Congress. They go into effect automatically. No longer does Congress have to worry about setting the policy as to what the wages in the Executive Branch should be.

Example upon example of such delegation can be compiled. Some of it minor, some of it major. But the most sweeping and dramatic power that Congress has recently delegated to the President is in the field of wage and price controls—the most critical power over the private lives of all of us. We have delegated this power so broadly to the President that he has virtually a carte blanche to set the wage and price policies of this Nation—at his sole discretion.

When Congress was first considering the matter of whether to establish wage and price controls, the matter was referred to the Banking, Housing and Urban Affairs Committee which I'm privileged to be a member. Numerous witnesses testified. As I listened to the witnesses, I began to think to myself, why can't the specific decision as to when and whether there should be wage and price controls be decided by Congress. Why did we have to delegate to the President the decision when to institute them or if to institute them. I posed this question to Dr. Arthur Burns, the Chairman of the Federal Reserve Board who was then testifying:

PACKWOOD. "I have some misgivings about yielding this power to the President. Is there any reason why the legislation we chose to enact cannot leave with Congress the discretion as to whether or not to trigger the policy decision to institute wage and price controls?"

Dr. BURNS. "It could be done through a triggering device."

PACKWOOD. "It would not be that difficult a piece of legislation to enact, would it?"

Dr. BURNS. "I would think that a triggering device could be written into legislation, a device that would work reasonably well."

Another witness was Charles Walker, the Under Secretary of the Treasury, and I posed essentially the same question to him as follows:

PACKWOOD. "Let me ask you the same question I asked Dr. Burns. While I have misgivings about giving the power to the executive to make the decision to impose general controls, I don't argue with giving the executive the authority to administer such controls.

"Would it be relatively easy to draw a piece of legislation which would enable Congress to quickly trigger the policy decision as to whether or not we should institute either general or specific wage and price controls and also providing for the administration to administer them?"

Dr. WALKER. "I think it would be."

Finally, Congressman Henry Reuss from Wisconsin was testifying. He agreed that Congress ought to exercise this power rather than the President, but he didn't have much hope or faith that Congress would. I questioned him as follows:

PACKWOOD. "What you are saying is that Congress could do it; Congress probably should do it, but in all likelihood Congress probably will not do it?"

Mr. REUSS. "A fair statement."

I had an amendment drafted that would reserve to Congress the power to specifically decide when and whether we should have wage and price controls. That amendment read:

"Whenever the Congress shall by concurrent resolution determine that the public interest requires the imposition of general controls affecting all industries and segments of the economy, the President may issue such orders and regulations as he deems appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970."

I mailed the amendment to Under Secretary Charls Walker, and asked for his comments and suggestions. In a few days, I received a letter from Secretary of the Treasury, John Connally. He indicated that the administration supported my amendment. They did not want the power to institute general wage and price controls without a further mandate from the Congress. He indicated that I was free to use that letter in support of my amendment on the floor of the Senate. That letter, dated April 30, 1971, reads as follows:

"This letter is in response to your request for administration views on your proposed amendment to H.R. 4246, 'To extend until March 31, 1973, certain provisions of law relating to interest rates, mortgage credit controls, and cost-of-living stabilization.'

"As we understand your amendment . . . institution of a general wage-price control program would have to be preceded by adoption of a concurrent resolution by the Congress.

"We support your amendment. It provides a workable mechanism with the safeguards we have consistently advocated with respect to such powers, namely, that general wage-price controls should not be instituted by the Chief Executive—short of an all-out national emergency—without a further mandate from the Congress.

* * * * *

"We have been advised by the Office of Management and Budget that there is no objection to the submission of these views.

JOHN CONNALLY."

I offered the amendment on the floor of the Senate and it was defeated by a vote of 41–30 on May 3, 1971. When the Senate, on a silver platter, was handed the opportunity to limit the President's power in the field of wage and price controls and to reserve unto Congress the final decision as to when and if wage and price controls should be instituted, the Senate refused to accept the opportunity. They preferred to give away the power.

Well, all the powers that Congress has delegated to the President, be they in foreign affairs or domestic affairs, pale into insignificance when we consider the matter now under discussion.

Congress has only two great powers—the power to tax and the power to spend. It is through the exercise of these two great powers that much of the rhetoric of politics is transmitted into the fulfillment of policy. Now Congress is seriously considering delegating to the President the power to cut all Federal expenditures over $250 billion—wherever he wants to cut them. The President is a good and able man. I support his re-election and I'm certain that he will be overwhelmingly re-elected. But no President should have this power.

Justice Oliver Wendell Holmes once said: "A page of history is worth a volume of logic." This statement should be considered carefully by those in this body who contemplate delegating the power of over-spending to the President.

America received most of her concepts of government from England. One of the most controversial of all subjects in the history of England was the issue of who would have the power to levy taxes and to appropriate money—the Parliament or the King.

The battle started in 1215 with Magna Carta. Under this document, King John was forced to sign an agreement with the nobles that he would levy no extraordinary taxes (as distinct from the customary feudal dues to which the king was entitled as a matter of right) without the consent of the nobles. From that date onward for almost five centuries the battle waged back and forth between king and the parliament. Parliament was at its strongest when the king wanted to wage war. The king's normal feudal dues simply would not produce enough revenue to wage war.

The king was, therefore, forced to go to parliament from time to time and ask them to assess taxes for the starting or continuance of a war. If the king or the war happened to be popular with parliament, they would normally acquiesce. If the king or the war was unpopular, it was quite common for parliament to be quite miserly in providing funds. And even if the war or the king was popular, if parliament felt that it had other grievances to which the king had given little heed, parliament might delay or appropriate less than the king requested until the king would meet with parliamentary leaders to discuss the grievances about which parliament had complained.

In spite of the efforts of parliament, it was not uncommon for the king to attempt to levy what parliament regarded as illegal or unconstitutional taxes. Under the Lancastrian monarchs, parliament was greatly strengthened because the kings respected the growing power of parliament and didn't seriously attempt to undermine or circumvent it. But, under the Yorkist and Tudor monarchies, arbitrary taxes, "forced loans", and "benevolences" and other illegal methods of extracting revenue without parliamentary consent were attempted.

The showdown arrived with the era of the Stuarts (James I, 1603 to 1625; Charles I, 1625 to 1649; Charles II, 1660 to 1685, and James II, 1685 to 1688). In the era of James I and Charles I, not only did the normal contest between the king and the parliament over the power to tax continue, but fused into the dispute was the rise to power in England of the Puritans and Oliver Cromwell.

Parliament became more and more truculent. Not only would the members of parliament refuse on most occasions to authorize the taxes requested by the king, but in addition, members would make speeches on the floor of the parliament assailing the king and his ministers. Parliament attempted to impeach ministers. The king, in turn, imprisoned members of parliament.

In the 1640's, the century's long battle erupted into a bitter and bloody civil war. Cities divided against cities. Nobles chose sides between the King and parliamentary forces. Members of Parliament were imprisoned, their estates forfeited and on occasion their lives lost. Finally in 1649, the parliamentary forces led by Cromwell and his new model army, were completely victorious; the King was captured and executed. England ceased to become a kingdom and became a republic with Cromwell at its head.

But Cromwell proved in the long run to be the leader in not of the entire country nor even of all the parliamentary factions. Instead Cromwell's power rested narrowly on a zealous band of religious fanatics known as Puritans. What they tried to impose upon England was an anathema to everything that that great country ever wished or ever willed. Cromwell died in 1658. In 1660, the monarchy was restored and Charles II became King.

The House of Stuart was restored, however, with not constitutional guarantees. The supremacy of Parliament was not declared in any formal document nor was the King required to acknowledge that his powers were limited or derived from the people. And while in form and law, the King was supreme—in fact, he was no subservient to Parliament.

During the reign of Charles II (1660 to 1685) there was a de facto truce between the King and Parliament. The King refrained from imposing taxes or levies without parliamentary consent and the Parliament, in turn, granted the King greater privileges and liberties than they had been willing to grant to either James I or Charles I.

On Charles II's death, however, James II ascended to the English throne. But where Charles II had adjusted to the parliamentary system, James II did not. James II lacked Charles II's tact and diplomacy. He assumed the crown with the full intention of exercising arbitrary authority. He attempted to discard the law. He attempted to bring Roman Catholicism back to an England that was now thoroughly Protestant. Immediately, an intense and bitter battle started between the King and Parliament. The King imprisoned some members of Parliament. In a short span of 3 years, the situation became so tense that James was driven from the throne.

William of Orange was invited by Parliament to come to England to assume the throne. William came and jointly assumed the throne with Mary, the daughter of James II. But at least, Parliament had proved itself supreme, William and Mary were crowned subject to the conditions expressed in "the declaration of right."

These set forth innumerable parliamentary grievances and asserted parliamentary powers. With slight changes "the declaration of right" was enacted by Parliament as the Bill of Rights. William and Mary, therefore, ruled England at the sufferance and at the will of Parliament. They had limited powers and, most importantly, were subservient to a Parliament which had complete domination over the power to tax and the power to spend. The bill of rights said specifically.

"That levying money for or to the use of the crown by pretense or prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal."

The Bill of Rights is—without question—one of the most crucial documents in Anglo-American constitutional history. For it marked the end of a struggle which had taken almost five centuries. As the great historian, Maitland observed, with the passage of The Bill of Rights "one great chapter of England history has been closed." Or as Shepard Morgan in his history of parliamentary taxation in England said:

"With the passage of the Bill of Rights the principle was vindicated that Parliament rather than the Crown has the power to tax. . . . The corollary principle that Parliament has the power to appropriate supplies for specific purposes and that it can demand an accounting for the money so appropriated were accorded general acquiescence then and thereafter." (The History of Parliamentary Taxation in England by Shepard Morgan, New York: 1911; pp, 307, 308).

The passage of the English Bill of Rights in 1689 occurred almost a 100 years before our constitutional convention. By the time we held our constitutional convention and started discussing the theories of separation of powers, there was relatively little debate on the power of the purse—that is the power to tax and the power to spend. There was relatively little debate because to everyone involved the question had been irrevocably settled. Congress was to have the power of the purse and no one seriously disputed it, challenged it, or thought that any other conclusion should be reached. To insure that Congress would be the ultimate repository of the power of the purse, the constitutional convention enacted article 1, section 8, of the Constitution which says:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

and article 1, section 9:

"No money shall be drawn from the Treasury, but in consequence of appropriations may be law."

The issue of legislative fiscal supremacy could not have been made more clear than it was in the first Congress. Alexander Hamilton, the first Secretary of the Treasury, tried to persuade the Congress to allow the President to establish an executive budget. The effort was rejected out of hand by the Congress. As one author has observed:

". . . jealousy between the legislative and executive branches of the Government became so intensified that Congress sought executive decentralization in budgetary matters . . . thus budget making became an exclusively legislative function in the National Government and as such it continued for more than a century." (Public Budgeting, by A. E. Buck, p. 17)

No—American blood has never been spilled, brother has not been turned against brother nor the President against Congress over the issue of taxing and spending, because nobody, and I re-emphasize, nobody including Presidents, thought the President should have that power.

During the entire nineteenth century, Congress alone determined the budgetary priorities of the United States. As is required by the constitution, fiscal matters originated in the House of Representatives. As a matter of fact, until 1865, the ways and means committee of the House was responsible both for taxation and appropriations. In 1865, the House appropriations committee was created to consider appropriations and in 1867, the Senate followed suit. But, regardless of the method of handling fiscal matters in the Congress, it is fair to say that it was exclusively handled in Congress.

Even into the twentieth century, Congressional Supremacy of budgetary matters continued. As a matter of fact, there was no executive budget until 1921. Up to that time, although the executive obviously had a hand in determining what the budget recommendations of each of its cabinet departments would be, the various recommendations from all departments were simply given to the Secretary of the Treasury and he in turn presented them to Congress. It was Congress that estimated revenues, set priorities and determined appropriations.

Then in 1921, Congress enacted the budget and accounting act of 1921. This act was not designed to give the President the power to determine the policies of this country, but rather to give the President the power to administer the Government—the fiscal power of planning and oversight—the power that any executive officer of a corporation has to run the corporation.

And, what do we see today? We stand here in the Senate of the United States, considering the possibility of giving the President the power to limit all Federal expenditures over $250 billion. We are considering saying: "Cut where you want, Mr. President. It doesn't matter what Congress thinks our national priorities should be. You do whatever you want to limit Federal expenditures to $250 billion. It's beyond us."

The suggested $250 billion expenditure ceiling is not the first time Congress has toyed with the idea of delegating fiscal powers to the President. In the late '50's and early 1960's, the idea was in vogue of delegating to the President the power to raise or lower the tax rates in the United States by as much as 10% a year. Fortunately, this suggestion received short shrift from Congress. Then in 1968, the Congress passed the first of its so-called expenditure ceilings. This ceiling, however, was not a firm ceiling. First, "uncontrollable" programs were exempt. Secondly, a two billion dollar cushion was allowed. So a ceiling that was originally enacted to be $180 billion dollars in 1960, totalled $185 billion.

A ceiling was again tried in 1969, but the exemptions enacted with the ceiling were sufficiently porous that the effect was no ceiling at all. A similar attempt in 1970 was equally unsuccessful Thus the efforts in 1968, 1989, and 1970 were illusory. There were too many holes to call these genuine expenditure ceilings. But the efforts may have, unfortunately, foretold the future. Like an incoming tide, the waves of an expenditure. ceiling crept ever closer to surrounding the fiscal powers of Congress.

Now, Mr. President, we stand on the threshold of the decision which may make the difference as to how this country is governed in the future. We soon will vote on whether or not to give the power to control spending to the President.

Why does Congress give away this power? Why does Congress not hold this power unto itself? I can find only two reasons. First, its easier to give it away. That way we don't have to make the tough decisions prospectively. We can wait until the President makes them and then we can applaud or criticize him as we choose, depending upon public opinion. If he makes an unpopular decision, Congress can stand back and say—that was a foolish thing for the President to do.

Congress would not have made such a terrible decision. And if the President happens to make a decision that is popular, Congress can come forward and applaud the President, exclaim how wise we all are, bask in the collective glory of the popular decision, and hope that we'll all be re-elected together. But in either event, Congress has no responsibility, because we will have given that power to the President.

The second reason we give away these powers is that we say to ourselves "it can't be done." We "can't" really run the post office well, if at all. We "can't" make decisions about military bases overseas. We "can't" set the wages for government employees. We "can't" determine when or whether to institute wage and price controls. We "can't" fathom the Federal budget and how to control Federal expenditures, so we must delegate that power to the President. "Can't"—can't—can't." Well, Mr. President, "can't" is just an excuse to avoid the onerous and rather unpleasant task of leadership. It's not that Congress can't answer these questions—it's just that Congress has no desire to.

Mr. President, the intricacies and mysteries of the Federal budget are not beyond us. It is self-evident that every parliamentary democracy in this world manages to estimate government income, set priorities, determine appropriations and put it all into a document called a budget.

Most of these democracies don't even have the independent executive and those that do usually have a weak executive totally dependent upon the legislative branch of government. The making and fashioning of taxation and expenditures in most free countries of the world are done by the legislative body, not by an executive, and if it can be done in those countries, it can be done here.

Mr. President, I am the first to fault Congress. We are fiscally corrupt. Left to Congress, we will probably succeed in bankrupting this Nation. We haven't the discipline and courage to either expand revenues or trim expenditures. We don't like to raise taxes and we're reluctant to cut appropriations. The answer is said to be, "delegate the power to the President." Mr. President, this is a Hobson choice—leave the power with a Congress with no discipline or delegate it to the President to save the country from Congress and the devil with what may be the ultimate consequences of the delegation. It's the unfortunate choice between a fiscally irresponsible Congress and a totally irresponsible Congress.

When Jack Kennedy was a member of this body, he headed a commission to determine the five greatest Senators of all time. The committee heard experts from all over the United States. It weighed and sifted recommendations from the best scholars in the field of American Government this country could produce. And finally the Commission named the five greatest Senators of all time. Two were from this century—Bob Taft of Ohio and Bob La Follette of Wisconsin—and three out of the last century—Daniel Webster, perhaps the greatest orator in the history of the Senate, John C. Calhoun, the great southerner and Henry Clay, who is perhaps by historical acclaim, the greatest Senator of all time.

It is interesting that the latter three, Clay, Calhoun and Webster, all served in the Senate at about the same time. They served at a time when that small room across from the Senate disbursing office was the Senate Chamber. I'm happy to see that the Legislative Appropriations Act of 1973 provides for the restoration of this beautiful old Senate Chamber. But even in its present rather disheveled condition, a person can go into that room and sit quietly and with any degree of imagination can hear the Clays, the Calhouns, and the Websters debating the great issues of those days. The Missouri Compromise, the Kansas-Nebraska Act, the tariff of abominations, the opening of the West, the Bank of the United States, and perhaps most importantly, the theory of nullification so strongly championed by Calhoun and so eloquently argued in the Webster-Hayne debates. This theory of nullification was, of course, the precursor of the eventual War Between the States.

The theory of nullification produced an extraordinary struggle between the congressional forces led by Calhoun who supported nullification and President Andrew Jackson who opposed it with all his might and main.

There perhaps could have been no more illustrative and dramatic moment in the history of our country than at that small banquet at the Indian Queen Hotel in Washington in 1830. President Jackson and Calhoun were at the banquet. Calhoun and his supporters were determined to use the banquet as a vehicle for furthering nullification. Jackson was equally determined that no such effort succeed.

When the banquet reached the time appropriate for toasts Jackson rose and looking squarely at Calhoun, proposed the following toast:

"Our Federal Union—it must be preserved!"

Calm and reposed, Calhoun rose, gazed with determination at the President and raised his glass and said:

"The Union—next to our liberty—the most dear."

These were great men facing momentous decisions. These were men aware of the dangers of executive power and the possibilities of the loss of Congressional prerogative. Henry Clay was quite disturbed about it when he said in 1840:

"In my deliberate opinion, the present distressed and distracted state of the country may be traced to the single cause of the action, the encroachment, and the usurpations of the executive branch of the government."

Yes indeed these were great men—striding these corridors—sitting at some of the very desks we now use—debating the critical issues of their day. But while these men may have been divided in their opinions they were united on one thing. And that was that the policies of this country should be made on the floor of Congress—not in the White House.

Today, the problem is not that the executive is trying to steal our powers. The graver problem is that we are prepared to give them away. Congressional power is like chastity. It is seldom lost by force. It is usually yielded voluntarily. We sit here a timid and tremorous little band, too undisciplined to exercise our prerogatives and too unwilling to exercise our authority.

It's time to return to the courage and conviction of the Clays and the Calhouns and the Websters—to determine for ourselves as a Congress what the policies of this country should be.

It does require courage and determination, and most of all it requires leadership. We can make the policies of this country. Short of the physical and mental limitations that God imposes upon man, there is nothing that man cannot do if he believes in it. And Congress is nothing but man combined into a legislative body for the purpose of governing a country.

The only thing that distinguishes us as members of the House and Senate from the rest of our citizens is that we have been elected to a position of political leadership, and the minimum that the voters of this country have a right to expect is leadership. It's incredible that the members of Congress, who have spent the better part of their adult lives asking the voters of their respective constituencies to delegate to them the power to determine the policies of this country, should now run from the chance to make those decisions. Decisions, I might re-emphasize, that Englishmen died for, so that policy might be made in parliament rather than by a king. Decisions that a Clay, Calhoun or a Webster would never delegate to a president. They would be aghast at what we are contemplating and they would be ashamed to be associated with such an act.

We can delegate this power to the President, and having done it once this year, we'll surely do it again the year after that, and the year after that, and the year after that. Once having told the President that he spend only $250 billion, the last restraints are off Congress. We can then appropriate $260, or 70 or 80 or 90 billion dollars without care. The responsibility will no longer be ours. We can then, with total abandon, go back to our constituents and tell them that we tried to appropriate $10 billion dollars for housing, but the President cut it. We can tell educators that we tried to appropriate $30 billion dollars for education, but the President cut it. He's the one that has no heart or humaneness, no understanding of the problems of this country. We can say it in perfect safety because we know we can never be called to account for our actions. And after four or five years of making these reckless statements, Congress will then gradually wither into a moribund instrument, called forth from time to time to confirm ambassadors and judges and to pass routinely upon matters of trivia.

I'm reminded of that fateful day long ago in Philadelphia as Benjamin Franklin emerged from the constitutional convention in Independence Hall. A woman, Mrs. Powell, anxiously approached Dr. Franklin and said: "Well doctor, what have we got—a republic or a monarchy?" "A republic," replied Benjamin Franklin, "If you can keep it."

We will soon be celebrating the 200th anniversary of that republic. During those years, we have undergone much change. But, throughout, we have jealously guarded the principles upon which this republic was built and has flourished.

Can we keep it? Will 1976 mark the celebration of 200 years of a glorious republic or year 3 of an executive monarchy? The decision is ours. What do we want: A republic or a monarchy?

HISTORICAL ANALYSIS OF ENGLISH HISTORY

(Prepared by Stanley D. Heisler, Legislative Assistant to Senator Packwood)

Congressional control of taxation and the purse strings of government is not new—it is largely derived from England.

Prior to the rise of Parliament, the medieval English king was expected to pay for his government and his personal household from revenues received from his own estates, from feudal dues, etc. Taxation—as we now know it—was only resorted to on extraordinary occasions. Indeed, Maitland notes that "it is not until the very end of the Anglo-Saxon time that we hear of anything that can be called a tax."

After the Norman conquest, Maitland enumerates seven different sources of royal revenue:

In the first place there were the demesne lands of the crown. The remnant of the old folk land had become *terra Regis*, and this constituted the ancient demesne, Then escheats and forfeitures were constantly bringing to the King's hand new demesne lands. Apart from his being the ultimate lord of many manors—he was by far the largest landowner of the kingdom. Secondly, there were his feudal rights—rights which had steadily grown in some directions, if they had been diminished in others . . . Thirdly, the profits of justice in the King's court must have been very considerable. Under John the sale of justice had become scandalous. By the charter, he promised to sell justice to none—but without exactly selling justice, there was much profit to be made by judicial agencies; fees could be demanded from litigants, and in the course of proceedings, civil as well as criminal, numerous fines and emercements were inflicted. Fourthly, the King had many important rights to sell, in particular the right of jurisdiction, and though the more far sighted of the Kings dreaded and checked the growth of proprietary jurisdiction, there was always a temptation to barter the future for the present. The right to have a market was freely sold, and many similar rights. Pardons again were sold. The towns had to buy their privileges bit by bit. What is more, the grantee of any privilege had in practice to get the grant renewed by every successive King. That the King was bound by his ancestors' grants might be the law, but it was law that no prudent man would rely on. Offices too, even the highest offices of the realm, were at times freely bought and sold—this does not seem to have been thought disgraceful. Fifthly, a good deal could be made out of the church—when a bishop died, the King took the temporalities, the lands, of the see into his own hand, and was in no hurry to allow the see to be filled; this however was an abuse. Sixthly, the King had a right to tallage the tenants on his demesne lands were found many of the most considerable towns . . . Lastly, somehow or another, the process is obscure, the King had become entitled to certain customs duties: Magna Carta recognizes that there are certain ancient and right customs (antiquae et recate consuetudines) which merchants can be called upon to pay, and with these it contrasts unjust exactions, or maletolts. To all this we may add that the obligations of tenure supplied the King with an army which could be called up in case of war.

(The Constitutional History of England by F.W. Maitland, pp. 92–94)

However, in the reign of King John, taxes were so oppressive that the barons were driven to revolt. The result was Magna Carta.

Magna Carta was, in essence, a treaty between the King and the barons. And, though it antedated Parliament, in a very real sense, it was a Parliamentary document. For it established, if not the right, at least the unremitting claim of the community of the realm to be consulted in matters of high policy and in the demand that no extraordinary taxation (as distinct from customary feudal dues) should be levied without consent.

Though Magna Carta spelled the beginning of the end of absolutism—arbitary rule lingered on, in one form or another, for another four and a half centuries.

During the reign of Henry III, it became customary for the National Council to grant money to the King. On January 24, 1218 "suctage" or "shield-money" was exacted by the National Council. Also, one writer has found a note of a land tax levied by the National Council on January 9, 1218.

(The History of Parliamentary Taxation in England by Shepard Morgan P. 77).

The above appear to be the very earliest instances of general taxation in England through the National Council.

In 1224, England was at war with Phillip II for the possession of Poictou. But, as the taxes were insufficient to fund Henry III's war effort, the King demanded that a tax be placed on moveables. The Barons on the National Council refused to consent to the tax unless the King should "of his own natural and good will" renew Magna Carta. The King yielded and re-issued Magna Carta. And, this re-issue took the form of a contract between the barons and the King—as it stated that:

"The archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and all persons of the realm, give the fifteenth part of all moveables to the King for this concession and granting of liberties."

(Quoted in The History of Parliamentary Taxation in England, P. 80.)

This is likely the first—but certainly not the last—conditional grant of taxation of the King of England. Indeed, there were instances in the thirteenth century when the Council refused to make any grant of taxation on the King's request. In 1232, for instance, the Earl of Chester—speaking for the barons—objected to a request for money with which to carry on the war with France because the barons had served in France themselves.

In 1242, as England was on the brink of war with France, Henry III summoned the National Council. But realizing that the King sought more revenue, and

"That the King had so often harassed them in this way on false pretenses . . . they made oath together that at this council no one should on any account consent to any extortion of money to be attempted by the King."

(Quoted in The History of Parliamentary Taxation in England by Shepard Morgan, Pp. 84–5.)

When the Council met, it refused to raise money as the King requested on the grounds that he had engaged in the war without asking their advice and that he had so often extorted large sums of money from them.

But though the Council refused Henry III's demand for revenue, he induced the barons individually to give him what he had been unable to induce the Council to give him.

In 1224, Henry asked the Council to raise funds to fight a war in Scotland. Being unwilling to make an unconditional grant of revenue, the Council appointed a committee of twelve to respond to the King's demand. The Committee complained of the King's nonobservance of Magna Carta, of the King's reckless expenditure of money, and demanded the appointment of a justiciar and a chancellor. However, as the King would not submit to this compulsion, he refused the petition and ordered the Council to reassemble in 1245. The nobles then expressed their willingness to grant him revenue, provided that in the meantime the King would choose proper counselors and institute reforms. The nobles insisted that whatever money was granted to the King should be expended not by the King, but by a committee of twelve nobles for the King's benefit. But Henry III refused to agree to these terms and the Council adjourned

In 1245, during Henry III's absence in Gascony, the Regents—Queen Eleanor and Earl Richard Cornwall—broadened the base of the Council by summoning two knights from each county to meet with the Council. The Knights were to be chosen by the counties themselves, probably in the county court, since there the machinery of election already existed. In 1246, at the assembly of the National Council in London, the name "Parliament" was first applied to it.

At the Parliament of 1255, the magnates of the realm were summoned to Westminister. This was necessary because in 1254, in an effort to secure the crown of Sicily for his son, Henry III had agreed to pay the Pope 90,000 Pounds. But the Parliament refused to grant this money to the King because all the members of the Parliament had not been summoned, according to the terms of Magna Carta.

At the first Parliament of 1258, the barons refused to help Henry III pay an installment on the 90,000 Pounds he owned the Pope. The barons, led by Simon de Montfort, attacked the King for reducing the realm to destitution by mortgaging it to the Pope, and for granting such enormous favors to his followers that it was now impossible to shake off even such insignificant enemies as the Welsh. The barons insisted that they intended to put an end to the King's excesses. They demanded that the King sanction the appointment of a committee of twenty-four "by the whole of Parliament on behalf of the community" which would have complete control over the Exchequer and full power to reform the government.

The King relented and chose twelve persons and the barons chose twelve more to compose the committee. The committees began by drawing up a set of articles known as the Provisions of Oxford, by which all the powers of government were placed in their hands. In effect, this put the kinship into a commission. All important administrative officials—i.e. the chancellor, justiciar and treasurer—were appointed by and responsible to the barons. The sheriffs were likewise under control of the Council

However, in actual operation, the Provisions of Oxford were unsuccessful. The provisional government lasted for a year and a half from its creation in June, 1258, without interruption. Thereafter, it continued for four years with a number of breaks until 1263, when the civil war began between Simon de Monfort and the King.

In 1261, Pope Alexander VI absolved Henry III from his oath to obey the Provisions of Oxford and excommunicated all those who opposed the King's absolution.

This all but brought about the impending civil war. In 1263, Louis IX of France agreed to arbitrate the dispute between Henry III and the barons. In the famous Mise of Amiens, Louis decided in favor of Henry III. The result was civil war.

At the Battle of Leives, in May, 1264, Simon de Montfort defeated and captured Henry III and his son, Prince Edward. In January, 1265, de Montfort summoned a Parliament to London, including the barons and ecclesiastics and two knights from the shires and two burgesses or citizens from each larger town. This led to de Montfort's fame as: "The founder of representative government in England."

In calling to the Parliament elected representatives of the boroughs, de Montfort completed the formation of the English Parliament on substantially the same basis on which it operates today.

De Montfort's action outraged many of the barons and he quarreled with his principal supporter, the Earl of Gloucester. In May, 1265, Prince Edward escaped from his captors and was joined by Gloucester. In August, 1265, Simon de Montfort was defeated and killed in the Battle of Evesham. De Montfort's death was followed by Henry III's restoration to the throne. On Henry's death in 1272, his son Edward I became King.

Edward I was a wise and prudent monarch. And, as one historian has written:

"It was in the reign of the valiant and sagacious Edward I that our Parliamentary institution and the civil law began to advance by rapid strides."

Edward I's first Parliament met in April, 1275. This Parliament consisted, not only of the prelates and barons but of four knights from each county and four burgesses from each borough. This Parliament enacted the first statute of Westminster which was composed of 51 articles including a provision for regulating the feudal aids which were required upon the knighting of the lord's son or the event of the marriage of his daughter. Twenty shillings on the knight's fee and 20 shillings from each parcel of land held in socage yielding 20 pounds a year would be the maximum rates.

This same Parliament also made a grant of customs duties on wool, wool-felts, and leather. The grant of a duty on wool by Parliament has great significance to the constitutional history of England because, in granting this customs duty, Parliament assumed the power of assenting to a tax which previously had been considered within the prerogative of the King himself.

The knights of the shire were summoned to Edward's second Parliament which met in October, 1275. This Parliament granted the King a tax on movables.

In 1282, Edward I was involved in a war to conquer Wales. Finding himself in financial difficulty, Edward initially sought to avoid calling a Parliament by negotiating with individuals for the money he needed to carry on the war. But as these private offerings were insufficient, the King decided to call his second Parliament.

On November 24, 1282, the King issued writs to the sheriffs, ordering them to send to Northampton or York—as the case may be—on January 20, 1283:

All freeholders, not already with the army capable of bearing arms and holding lands of more than 20 pounds annual value; Four knights from each county having full power over the community of the same county; and two men from each city, borough and market town having like power for the community of the same.

The knights and burgesses—meeting at Northampton granted a tax to the King. At York, the knights and burgesses also made a grant to the King. In this manner the King discovered that it was easier to raise his revenue through a Parliament than through private solicitations.

Four years later, on October 8, 1294, King Edward I being in need of money—both to suppress a rebellion in Wales and for his projected expedition against Phillip the Fair for the recovery of Gascony—again summoned Parliament to meet at Westminster on November 12. This Parliament granted Edward I a tax.

The following year, 1295, is a landmark in Parliamentary history. For, in this year, Edward I summoned the first full and model parliament in English history. This Parliament was so constituted as to represent, and have the power to tax, the entire nation.

Edward I summoned the Model Parliament on the theory that "what touches all, by all should be approved." It met on November 27, 1295. Each of the estates met by itself and each made its grant to the King independently of the others. The barons and the knights of the shire gave Edward an eleventh of their moveables, the clergy a tenth, and the burgesses and citizens a seventh. One author has remarked that this is probably the first instance where three estates taxed themselves in different proportions.

But Edward I's financial problems grew with the passage of time. To raise money to carry on his extensive wars, Edward I needed massive infusions of revenue—which he raised by arbitrary exactions from all classes of his subjects—both lay and clerical. The clergy resisted these taxes, under the bull of Pope Boniface VIII, Clericis Laicos, which forbade—under pain of excommunication—the payment of any tax, whatever, on the revenues of the church to a layman.

However, Edward I's outlawry of the clergy in January, 1294 and the temporary confiscation of the estates of the see of Canterbury which followed, compelled the clergy to abandon their untenable position and to yield to the King's demands.

The merchants were also upset with the King at this time, because the King had taxed them heavily and seized their wool (as wool was most readily convertible into currency). The barons were irritated by the King's flagrant disregard of the many provisions of Magna Carta and the Charter of the Forest.

Edward I next summoned a "Parliament" to meet at Salisbury on February 24, 1297-but invited only the baronage without any bishops or representatives of the Commons. The King proposed that the barons should go to fight in Gascony. But the barons refused and—on their refusal, the King threatened to confiscate their lands and give them to those who would go. The assembly broke up.

On May 15, Edward I issued writs for a general military levy on all the landowners of the kingdom, the value of whose lands exceeded 20 Pounds. The barons were to assemble in London on July 7, prepared to go to France. However, the barons violently opposed this unconstitutional tax.

As he was still in need of money to finance this war, Edward I induced an irregular assembly of some of the barons and others who had attended the military summons to make a grant of an eighth from the barons and knights and a fifth from the towns. Edward

ordered the collection of the eighth and fifth and directed the seizure of all the wool in the kingdom-promising to pay for it as soon as he was able.

As the King was prepared to embark for the continent, a bill of grievances prepared by the barons was presented to him. The barons complained of the heavy taxes which reduced them to poverty; that they were not treated according to law and custom; that the provisions of Magna Carta and the Charter of the Forest had been breached; and that the tax on wool was too heavy.

Rather than answer the remonstrance, the King sailed to Flanders leaving his son—the Prince of Wales—as regent. But as soon as the King had sailed, the barons entered the Exchequer and forbade the barons there to seize the wool or collect the taxes until the charters had been confirmed. The barons were supported by a large military following and by the citizens of London.

Assessing the gravity of the situation, the Prince of Wales called a full Parliament—at which knights of the shire attended as representatives of the commons as well as the lay and clerical baronage. The Confirmatio Cartarum was published on October 10, 1297 and immediately sent to the King at Ghent, and there confirmed by him on November 5. The former tax of an eighth and a fifth were annulled and a new grant of a ninth was substituted.

The Confirmatio Cartarum was not merely a re-issue of Magna Carta and the Charter of the Forest. It also enacted a series of new provisions intended to deprive the Crown, in the future, of its assumed right of arbitrary taxation. The most critical parts of this covenant are clauses 6 and 7. After enumerating, in the fifth clause, the illegal taxes and exactions of Edward I, the 6th clause declares:

"Moreover we have granted to us and our heirs, as well to archbishops, bishops, abots, priors and other folk of holy church, as also to earls, barons and to all the community of the land, that no business from henceforth will we take such manner of aids, mises, nor prises from our realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed."

Clause 7 relates to the new duty on wool—"the Maletote"—and provides that:

"The King shall never take this nor any other without common consent and good will; saving to us and our heirs the custom of wool, skins and leather granted before by the commonalty."

This "Confirmation of the Charters" of 1297 is of crucial significance to English constitutional history. One author has observed that as a part of the foundation on which the English constitution was built, the Confirmation is hardly less important than Magna Carta itself.

(Constitutional History of England, by George Buxton Adams, p. 190).

The significance of this Charter rests on the fact that it established the exclusive right of Parliament to tax the people of England—except for the collection of the customary feudal dues.

It has been written that:

"The articles generally represented the gain of a struggle extending over a period of eighty-two years; and while verbally they seemed to indicate but little advance over John's Great Charter, in reality they were infinitely more important as there was a power now behind them with due machinery for their enforcement.

(History of the English Parliament, Vol. I by G. Barnett Smith, p. 162).

In 1307, Edward I died. Six months later, on February 25, 1308, the new King was crowned. But, where Edward I was strong and prudent, his son—Edward II—was weak and inept.

The oath which Edward II took in French (as he was not familiar with Latin) was of great constitutional importance, for it not only recognized the limitation of the Royal power by existing laws, but that the power to alter these laws and enact others could only be exercised with the consent of the people. In fact, Edward II's oath was unusually stringent. The last of the four promises required of the King was this:

"Sire, do you grant to hold and to keep the laws and righteous customs which the community and the realm shall have chosen, and will you defend and strengthen them to the honor of God, to the utmost of your power.

Edward answered:

"I grant and promise."

Edward II didn't call on Parliament until April, 1309. It was fully attended by the clergy, lords, burgesses and knights. The Commons granted the King a twenty-fifth of their movables, on condition of a redress of grievances which were detailed in eleven articles.

Two of the eleven articles dealt with taxation. The first complained of the abuses of purveyance, and the seizure of articles of food, the imposts on wine, cloth, and merchandise. The second dealt with the New Customs which Edward I had provided for in the Carta Mercatoria in 1303. The king agreed to these conditions.

In 1327, Edward II was deposed by a revolution. He was succeeded by his son, Edward III, then only 14-years old. The new King took the same stringent oath that his father had taken earlier.

The regularity with which Edward III summoned Parliament had a decisive impact on English constitutional history—for it strengthened the power of the House of Commons by affording them an opportunity for its frequent exercise. As Edward III was perpetually involved in wars, he was repeatedly compelled to ask Parliament to raise money to pay for them. Thus during the fifty years of his reign, forty-eight sessions of Parliament were held.

In spite of the Confirmation Cartarum, Edward I, occasionally Edward II, and Edward III continued to levy arbitrary taxes of every kind. The Commons, however, by their continual remonstrances, their conditional grants and their liberal subsidies, succeeded in establishing its control over direct taxation.

In 1332, because rebellion had broken out in Ireland, the King assigned commissioners to tallage—a tax levied at a feudal lord's arbitrary discretion upon more or less servile dependents, who had neither the power nor the right to refuse—the cities, towns and royal demesnes throughout England. But Parliament met three months later, on September 9, 1332, and persuaded the King to revoke these commissions to collect tallage. Parliament then offered, as a substitute, the grant of a fifteenth from the shires and a tenth from the towns. In accepting this grant, Edward III promised for the future that he would not lay such a tallage.

"Except as was customary in the time of our ancestors, and as he might rightly do."

Paralleling the struggle against tallaging the royal demesne, was the contest with the King in matters of custom on wool. In 1303, Edward I established the Nava Custuma ("New Customs") on wools and other articles.

This was annulled by the Ordinances of 1311 but renewed by Edward II in 1322 and confirmed on the accession of Edward III, who later—with his Council—imposed other similar taxes. Repeatedly, the Commons petitioned against these exactions or attempted to set up a precedent in its favor by granting a similar tax. It was not until 1340 that Parliament succeeded in controlling this illegal tax.

On January 20, 1340, Parliament met. The Lords offered to grant the King "the tenth sheaf, the tenth lamb, and the tenth fleece, payable in two years" and the Commons granted the King 30,000 sacks of wool—on condition that the King accept certain articles drawn up by them. (In the event that the King rejected the articles, they offered a free gift of 2500 sacks of wool).

Edward did reject them and called a new Parliament which met on March 29, 1340. Instead of a tenth, the prelates, barons and knights of the shire granted the king the ninth sheaf, fleece and lamb for two years. The towns granted a ninth of goods and the rest of the nation a fifteenth. In addition, a custom of forth shillings was granted on each sack of wool, on each three hundred wool-fells, and every last of leather. But the grants were conditional: the King had to accept the articles prepared by the Commons. The king finally accepted them and the articles were re-drafted into statutory form.

The statute pertaining to the duty on wool provided that:

"And for this grant, the King by the assent of the prelates, earls, barons, and all others assembled in Parliament, hath granted, that from the feast of Pentecost that commeth in a year, he nor his heirs shall not demand, assess, or take, nor suffer to be take more custom of a sack of wool of any Englishmen but half a mark of custom only; and upon woolfells and leather the old custom . . . And this establishment lawfully to be holden and kept, the King hath promised in the presence of the prelates, earls, barons, and others in his Parliament, no more to charge, set, or assess, upon the custom, but in the manner as afore is said."

The second statute is much more sweeping. It stated that:

"We . . . will and grant for us, and our heirs, to the same prelates, earls, barons, and commons, citizens, burgesses, and merchants . . . that they be (not) from henceforth charged, nor grieved to make common aid, or to sustain charge, if it be not by the common assent of the prelates, earls, barons, and other great men, and commons of our said realm of England, and that in the Parliament; and that all the profits raising from the said aid, and of the words and marriages, customs, and escheats, and other profits rising of the said realm of England, shall be put and spent upon the maintenance of the safeguard of our said realm of England and of our wars. . . ."

These statues are crucially important to the constitutional history of England for they clearly enunciated the principle that Parliament was the sole authority for levying taxes on the nation at large.

As one writer has observed:

"The promise of Edward to abide by the recommendation of Parliament in the matter of the subsidy on wool, was an admission by the King that not he but they had final control over the laying of customs duties. Thus was established the principle to be defended and likewise to be questioned in the future. That Parliament alone had the power to lay a tax on wool. . . . (Also), by the statute which provided that no charge or aid should be levied but by consent of Parliament, tallage died a legislative death. And not only was this statute aimed at tallages

but as well at every species of unauthorized taxation."

(The History of Parliamentary Taxation in England by Shepard Morgan; NY-1911; Pp. 178-9).

After the enactment of the vital statutes of 1340. Parliament was willing to bargain with the King for the control of his customs duties. But problems developed because, at this time, Parliament could not yet enforce this right, but rather could only petition the King for redress. And, the King frequently assented to Parliamentary petitions and then broke his word. For instance, in 1340, Edward III received a grant from Parliament of forty shillings on a sack of wool, for a year and a half, on condition that he would abolish the maletolt—Maletolt was "evil tolls"—i.e. unconstitutional duties or taxes.

In 1342, the King procured a duty of forty shillings per sack of wool from the merchants without the consent of Parliament and issued orders for its collection. Parliament balked at this because it realized that the tax fell not on foreign merchants but upon English wool growers. Edward III then declared that the price of wool would remain fixed, pursuant to an act of Parliament, and that consequently the foreign merchants would have to pay the tax. Commons agreed to this and granted the King a duty of forty shillings on a sack of wool for three years.

After the passage of three years and the revocation of the act fixing the price of wool, as the King had no authority to continue the duty, Parliament petitioned against its continuance. When the King replied that he had secured the approval of the barons and of the merchants for the duty, and that he had already pledged the revenues to be raised by the duty to his creditors, the House of Commons—finding that it couldn't win their point—contented themselves with the belief that having established the principle, they could at anytime demand the implementation of it, and extended the duty for another two years.

In 1348, the Commons presented a remonstrance to the King, asserting that the wool subsidy was, in actuality, a land tax. Parliament then granted a fifteenth for three years on condition that the subsidy of wool should cease in three years, and that for the future "no such grant should be made by the merchants." The language was all encompassing: no "imposition, tallage or charge by way of loan or in any other manner," was to be laid "without the grant and assent of the commons in Parliament." Edward III accepted the grant and the conditions.

However, in 1362, arbitrary exactions on wool received the attention of the Commons and the statute passed in that year provided that thereafter no subsidy should be set on wool without the assent of Parliament. But notwithstanding these explicit and repeated assertions that Parliament had the sole right to levy the subsidy on wool, Edward at times continued to exact the maletolt. The matter arose again in 1371 and was met with a similar statute.

As Parliament's power grew, so too did its faculty to supervise the expenditure of money so raised—which would later evolve into the "power of the purse". In 1237, during the reign of Henry III, William of Raleigh had suggested to the National Council that it appoint a committee with whom the proceeds of a grant of taxation be deposited and by whom the money be expended. One writer has suggested that the reason this proposal was not taken was perhaps, "due to the ignorance of the baronage" of its ramifications.

(The History of Parliamentary Taxation in England by Shepard Morgan, pp. 184-5)

Parliament never asserted the power to supervise the expenditure of money during the reign of Edward I, because he was too strong; or during the reign of his son, Edward II, because the power of the Crown was for a time delegated to others. But during the reign of Edward III—primarily because of his endless and extravagant military expenditures—Parliament demanded a voice in the disposition of public funds. In 1340, a Parliamentary Committee was appointed to examine the accounts of the collectors of the last grant of taxation to the King. In the words of the statute, the committee was assigned to see that the "profits of the said realm of England shall be put and spent upon the maintenance of the safeguard of our said realm of England, and of our wars."

(Quoted in The History of Parliamentary Taxation in England, by Shepard Morgan, p. 185).

The following year, Parliament appointed commissioners for the same purpose. The 1341 act said:

"The great men and commons of the land pray, for the common profit of the King and themselves, that certain persons be deputed by commission to audit the accounts of all those who have received the wool of our said lord, or other aid granted to him; and also of those who have received and paid out his money, as well beyond the seas as in the realm from the commencement of his war until now; and that the rolls and other remembrances, obligations and other things made abroad be delivered into the chancery, to be enrolled and recorded, just as was wont to be done heretofore."

(Quoted in The History of Parliamentary Taxation in England, by Shepard Morgan, p. 185).

In time, this power of Parliamentary oversight evolved into the "power of the purse". In 1344, for instance, Parliament demanded that the money granted should be spent solely for the purpose for which it had been asked. In 1348, it granted money specifically to defend England against Scotland. And, in 1353, a subsidy on wool was granted which could only be applied to fighting the war.

In fact, all of these acts were the starting point of Parliamentary (and Congressional) appropriations. And, though the Parliamentary appropriations we now perceive did not exist at this time, the foundations for the appropriations process were firmly laid by the end of the fourteenth century.

On Edward III's death in 1377, his eleven-year-old grandson—Richard II—assumed the English throne. Parliament took full advantage of Richard II's youth. It not only solidified its power that no money could be levied or laws enacted without Parliament's consent and that the administration of government was subject to their inspection and control but it also secured two vital rights which were first established in the reign of Edward III—viz. the right to examine public accounts and appropriate supplies and the right to impeach the King's ministers for misconduct.

At Richard II's first Parliament in 1377, grants of two fifteenths and tenths were made for the prosecution of the French war on the express condition that two persons be appointed as Treasurers, to receive the money granted to the King and to spend it "for the said wars and for no other work."

(Quoted in The History of Parliamentary Taxation in England by Shepard Morgan; p. 185).

Richard II's next Parliament met in 1378. The House of Commons demanded that it be allowed to examine the public accounts. The King ordered the governmental accounts produced with the understanding:

That this shall not in future be considered a precedent or an inference that this should have been done otherwise than by the personal volition and command alone of our said lord the king . . ."

(Quoted in The History of Parliamentary Taxation in England by Shepard Morgan, p. 192).

In 1379, as England was in imminent danger of invasion, Richard II called on Parliament to raise the needed money. It is significant that this year, the King voluntarily, without reservation and without waiting for a petition from Parliament, informed the Commons that the Treasurers were prepared to show them "in writing their receipts and expenditures made since the last Parliament."

(Quoted in The History of Parliamentary Taxation in England by Shepard Morgan, p. 193).

In 1380, a similar committee, with more extensive powers, was appointed. Thus, it became apparent that by 1380, the right of the Commons to investigate the accounts and appropriate the supplies was clearly established.

However, during this period, the expenses of the wars in France and Scotland and the ordinary expenses of government were so great that the Royal treasury was bare. Indeed, the King had even pawned the Crown Jewels. To remedy this problem, the House of Commons set up a poll tax and continued the duty on wool. But as the new tax was the equivalent of a laborer's weekly earnings, it ignited a political explosion. Indeed, the poll tax of 1380 has been termed the last precipitating cause of the great Peasant Revolt of 1381.

The bloody rebellion was quelled within a short time, but it had taught the members of Parliament what can happen when the weight of taxation burdens the people.

From 1389 to 1397, Richard was a model monarch—ruling within the constitution and allowing Parliament to control both taxation and the expenditure of public money. But in 1398, Parliament granted Richard II a custom on wool for five years, tunnage and poundage for life and a duty on wool, woolfells and leather for life. Further, Parliament gave the King a tenth and a half and a fifteenth and a half for a year and a half. And, if this wasn't enough, Parliament recklessly delegated its authority to eighteen members chosen from the whole body—ten lords temporal (six to be a quorum), two earls as proctors for the clergy, and six members of the House of Commons. As one commentator has observed:

"The committee consisted of persons devoted to the King's interests, and its powers were so indefinitely expressed that it completely usurped the rights of the legislature, and exercised all the powers and functions of a full parliament."

(History of English Parliament, Volume I, p. 237 by G. Barnett Smith).

Whatever Parliament's intention, these actions had the effect of installing Richard II as an absolute monarch. The cumulative effect of this delegated authority was to destroy the limitations which Parliament had so painstakingly placed on the King's prerogative.

But Richard's despotism sealed his fate. He banished the Dukes of Hereford and Norfolk. And then seized the estates of John of Gaunt—in spite of his promise to secure them to Hereford in the event of his father's

death. Richard II's tyranny incited Henry of Lancaster to action. While Richard II was in Ireland, Henry led a revolt against the King. With no difficulty, he raised an army of 60,000 men. On Richard's return to England, he resigned his throne—and Parliament accepted his resignation.

Richard's fate—much like that which awaited Charles I and James II—resulted from his failure to understand the developing constitutional history of England. As one writer has observed:

"The trouble with Richard was that he did not go to school to (learn) history. Parliament was putting into practice what it could learn from the experience of its predecessors. Richard, swept with a desire, intense and perhaps insane, to wield the septre of absolutism, was blinded to what he might have read, and underwent the consequences."

(The History of Parliamentary Taxation in England by Shepard Morgan, p. 202.)

Henry of Lancaster was crowned Henry IV on October 13, 1399. The new King chose not to buck the tide of increasing Parliamentary authority. Indeed, during the reigns of the three Lancastrian Kings, the power of the Parliament was more complete than ever before—fuller than it would be until the Bill of Rights was enacted in 1689. Parliament voted the taxes, appropriated money to the King and examined public accounts. Indeed, instances of direct taxation without Parliament's assent were very rare under the Lancastrian kings.

An example of the freedom Parliament enjoyed under the Lancastrians was the Common's attempt to make the granting of appropriations dependent upon the redress of grievances a regular Parliamentary procedure. In 1401 the House of Commons asked that the King respond to their petitions before they granted supplies. The King resisted firmly and the Commons relented for the time being, but the practice gradually became established.

In 1410, Henry IV asked Parliament for permission to collect a tenth and a fifteenth annually, whenever Parliament was not in session. But Parliament had learned the effect of such a grant from Richard II and was resolved never again to foster the rise of a tyrant. Accordingly, it refused the King's request.

When Henry IV died in 1413, his son—Henry V—acceded to the throne. Though his reign lasted less than a decade, he proved to be a wise King and a brilliant soldier. And though the taxation during his reign was heavy, Parliament willingly granted taxes to the King to fight France.

When Henry V died at the age of thirty-five, his son and heir—Henry VI—was barely a year old. Henry VI won the dubious distinction of being one of the only Lancastrians to attack Parliament's supremacy in taxation. In 1425, while the King was still a child, his uncles—the Duke of Bedford and the Duke of Gloucester—as regents, united with other lords and announced in Parliament that, with the advice of the justices, a tax granted upon certain conditions by the House of Commons in the previous Parliament should be collected and levied by the King—notwithstanding any conditions in the grant. The Commons, though, firmly established their undoubted right by making a fresh grant and restating the former conditions with the following explicit addition:

"No part thereof be beset ne dispendid to no othir use, but only in and for the defense of the seid roialme."

(Quoted in English Constitutional History by Thomas Pitt Taswell-Langmead, p. 207.)

The War of the Roses—the intermittent civil and dynastic war between the Houses of York and Lancaster—was responsible for the fall of the Lancastrians and the accession of the Duke of York to the throne in 1461. As one writer summed up the reign of the three Lancastrian kings:

"The right of Parliament as against that of the King to control taxation was enunciated again and again, not only in the instance of direct taxation, including the levies of tallage, but in the case of the customs, as indicated in the legislation prohibiting the maletolt.

"But the enunciation of powers of Parliament was not followed by complete and undisputed exercise of the rights so enunciated. The Kings clung to what they deemed their ancient prerogatives and more than once over-stepped the law. The Yorkists and Tudors showed a disposition somewhat less amendable."

(The History of Parliamentary Taxation in England by Shepard Morgan p. 212.)

While the Lancastrians respected the taxing powers of Parliament, the Yorkist and Tudor monarchs continually assailed them. Parliament granted Edward IV tonnage and poundage and a duty on wool for life in 1465. Besides this, Parliament granted the new Yorkist King frequent fifteenths and tenths.

But, not content with Parliament's generous grant, Edward initiated a new method of extracting money from his subjects, without the consent of Parliament—called "benevolences". The benevolence was a "gift" made to the King by individuals or groups, ostensibly out of charity, but really under coercion. This means of extortion differed from the "forced loans" of Richard II only in that the King incurred no obligation for repayment.

Apparently no objection was made in Parliament to this unconstitutional tax. Edward IV also raised additional revenue by reviving obsolete statutes and laying fines for breaches of them. He also collected ancient debts due the Crown. This enabled Edward IV to rule England as an absolute monarch. He raised revenue in violation of the English Constitution and the clear weight of precedent. During his rule not a single statute was enacted in redress of grievances. And, amazingly, Parliament seemed to acquiesce to the King's assertion of his prerogative. Edward IV surely set back the development of English constitutional history.

Upon Edward IV's death in 1483, the crown passed to his son—Edward V. But the twelve year old King lost his crown in two months to his scheming uncle, Richard III. Richard III received a grant from Parliament in 1484 of tunnage and poundage and a duty on wool for life. But as his reign ended with his death on Bosworth Field the next year, he didn't have an opportunity to emulate the despotism of either Richard II or Edward IV.

However, Parliament spoke out against benevolences during Richard III's reign. The address which was presented to Richard in 1483, when he was invited to assume the throne said:

"For certainly wee be determined, rather to aventure and committe us to the perill of oure lyfs and jepardye of deth, than to lyve in suche thraldome and bondage as we have lyved long tyme heretofore, oppressed and injured by Extorcions and newe Imposicions, ayenst the Lawes of God and Man, and the Libertee, old Police and Lawes of this Realme, wheryn every Englishman is enchanted."

(Quoted in English Constitutional History by Thomas Pitt Taswell-Langmead, Pp. 232–3.)

Further, Richard III's first and only Parliament in 1484—declared benevolences illegal and said that they were to be "dampened and annulled forever."

(Quoted in The History of Parliamentary Taxation in England by Shepard Morgan p. 217.)

Henry VII—the first of the Tudor kings—won his crown at the Battle of Bosworth. During his reign—and that of the other Tudor monarchs—Parliament didn't increase its powers; but, rather, it lost ground.

Though Henry VII ruled for nearly a quarter century, he only called seven Parliaments—and six of the seven met within the first eleven years of his reign. Henry's first Parliament gave him a grant of tonnage and poundage and a duty on wool for life. In 1491, Henry VII resorted to benevolences to raise needed revenues. And, in 1495, Parliament turned its back on the precedents and made this benevolence lawful ex post facto. It further impowered the King to enforce the promises of those who had promised money but not yet paid it. The act points up the validity of Maitland's observation that:

"Under the Tudors the danger is of a different kind—it is not so much that the King will tax without Parliamentary consent, but that Parliament will consent to just whatever the King wants and will condone his illegal acts."

(The Constitutional History of England By F.W. Maitland, p. 181).

Like Edward IV before him, Henry VII revived ancient statutes and rigorously exacted fines for every violation of them.

Henry VII was succeeded by his son, Henry VIII, in 1509. His first Parliament granted him tunnage and poundage for life, but with the distinct proviso:

"That these grants be not taken in example to the Kings of England in time to come."

(Quoted in English Constitutional History by Thomas Pitt Taswell-Langmead p. 256)

The four following parliaments granted Henry VIII liberal subsides to wage the war with France. But in 1523, Cardinal Wolsey committed a severe breach of Parliamentary privilege. Since the time of Henry IV it was the custom that the King should not know of the progress of a grant of taxation until the House of Lords and Commons had agreed on the grant. Wolsey reversed this process.

He went to the House of Commons with all his following:

"With his maces, his pillars, his pole-axes, his cross, his hatte, and the great seal too * * *"

(Quoted in the History of Parliamentary Taxation in England by Shepard Morgan, p. 223)

Wolsey asked the Commons for 800,000 Pounds, collected over four years and to be raised by a 20% property tax on everyman's lands and goods. He addressed the House of Commons and it debated the question for fifteen days. At the end, Parliament granted the King a graduated property tax, much smaller in amount and to be paid over four years.

As a consequence of this action, Henry VIII did not summon the next Parliament for seven years. In the meantime, the King raised needed revenues through "forced loans" and "benevolences". The forced loan of 1522 required every man to swear to the value of his possessions and to contribute a ratable portion according to such declaration, on the King's promise of repayment out of the next subsidy granted by Parliament.

In 1526, commissions were issued for the collection of a sixth from the goods of the

laity and a fourth from the clergy. This demand was unanimously resisted. The people knew enough law to know that these exactions were illegal. The clergy led the movement against the tax, asserting that:

"The king could take no man's goods without the authority of Parliament."

(History of Parliamentary Taxation in England by Shepard Morgan, p. 255)

The royal commissions were forcibly resisted in several counties and open rebellion erupted in Suffolk. The effect of this was to force Henry VIII to withdraw the commission.

As his "forced loan" scheme had failed, Henry VIII now demanded a voluntary benevolence. However, the people of London objected so strenuously to this, as it was illegal under the statute of Richard III, that it also had to be withdrawn.

In 1544, Henry VIII again sought a "forced loan" from all persons who earned 50 Pounds or more a year. Parliament was so subservient to Henry VIII in this that a statute was enacted granting the King all sums borrowed from his subjects since 1542, with a further provision that any money which his Majesty should have already paid in discharge of these debts, should be refunded by the creditor or his heirs.

Henry VIII died in 1547. He was succeeded by his son, Edward VI, who died a child. Edward was followed by Mary. After Mary's five year reign, Queen Elizabeth I ascended to the throne.

Though Queen Elizabeth's rule was despotic, she was loved by the people of England. And, Parliament granted her taxes with great liberality. She exacted "forced loans" from the wealthy—but endeavored to repay them as soon as possible. Elizabeth circumvented Parliament by raising revenue through the grant of monopolies—based upon the right of the Crown to assure an inventor the exclusive benefits of his invention or innovation.

The importance of the Yorkish and Tudor monarchs is that though they did little to advance Parliamentary supremacy in taxation and spending—they did not destroy whatever progress had been made. And, the later effort of the Stuart Kings to end Parliamentary supremacy was responsible for the establishment of permanent parliamentary control over taxation and appropriation.

James I—the first of Stuart Kings was a staunch advocate of the "Divine Right of Kings." He earnestly believed that a King was appointed by God and responsible only to him. His subjects could not resist the King's commands, as that was a sin. James I felt that, as God's deputy on Earth, he was above Parliament, above the laws of England and above the people. He believed that it was his duty to see to the welfare of his subjects, for God would hold him accountable for his stewardship. But beyond that point he had no responsibility. Whatever privileges Parliament possessed, the courts possessed, or any individual possessed, were theirs by grace of the King, and were not held by any right. Clearly a conflict between such a monarch, on the one hand, and Parliament and the courts on the other was brewing.

The Common Law courts were strongly opposed to James I's concept of absolutism. Led by Sir Edward Coke—a noted author, Chief Justice of the Court of Common Pleas and later Chief Justice of the Court of King's Bench—many influential judges and lawyers insisted that the Common Law controlled the King's royal prerogative. They asserted that the rights of both Kings and Parliament were derived and limited by precedent.

The Common Law courts did not, however, early accept Coke's view of the King's limited powers. This fact is pointed up by Bate's Case (2 St. Tr. 371; 1606). As King James I needed more revenue to pay for the necessary expenses of the state, instead of applying to Parliament, he acted on his own prerogative and imposed a duty of five shillings per hundredweight on imported currants—over and above the duty which was set on them by the Statute of Tunnage and Poundage.

John Bate, an English merchant trading with the East, refused to pay the duty. Bate was brought to trial before the Court of Exchequer. The judges were unanimous in approving of the King's right to impose the extra duty on his own prerogative. However, as it was to later develop, this was in incorrect statement of the Common Law.

The right of earlier sovereigns to raise and lower tariff duties by proclamations had been established. But the right had been limited to trade regulation, to secure protection or retaliation and fair trade. As one distinguished English constitutional historian has written:

"In using it not for such purposes but to raise revenue, James was assuming an important constitutional power which the precedents did not warrant. It was perhaps natural, however, that a court of law, bound normally by the letter of precedents rather than by the remote consequences which might be involved, should decide as it did." (Constitutional History of England by George Buxton Adams (Holt, 1938).)

Bates's Case is representative of the conflicts between the Crown and Parliament that dominated England for the next eight decades. The King would stretch a precedent to cover a substantial increase in royal power, and the courts held that the precedent justified the new application. On the basis of the decision in Bate's Case, for instance, James I shortly afterwards issued a new "Book of Rates" in which heavy additional duties were placed on a great number of imports.

However, Parliament did not sit idly by as the King imposed new and unlawful taxes. In 1610, the Commons objected to the schemes James I had used to raise more royal revenue. It enacted a bill providing that no new duty could be imposed without the consent of Parliament; but the House of Lords rejected it.

King James then forbade the Commons to continue. The Commons thereupon refused and announced that they would proceed to "a full examination of the King's alleged prerogative powers regarding taxation." As James had tired of Parliament's haggling and at its delay in granting money to him, he dissolved Parliament in February 1611 and didn't call a second Parliament until April 1614.

But, James I's second Parliament was inflamed over the King's imposition of new taxes without Parliament's consent and unanimously enacted a bill denying the King's right to impose taxes on his own initiative. As Parliament refused to grant the King the taxes he desired, James dissolved it in June before it had voted him any taxes—and sent four members of the House of Commons to the Tower in punishment for their conduct.

James I's third Parliament did not meet until January, 1621—and during the decade from 1611 to 1621, when no Parliament except that of 1614 which did nothing, had met, James resorted to a host of extra-legal means of raising revenue. "Forced loans" were used, old debts and fines were ruthlessly collected, titles were sold and a new title of baronet was created.

The outbreak of the Thirty Years' War between the Catholic and Protestant states of Germany (whose leader, Frederick, the Elector of the Palatinate, was James' son-in-law) incited England to go to the aid of the Protestants and the people bitterly opposed the King's policy of securing peace in Europe through an alliance with Spain. As Spain's invasion of the Palatinate in 1620 signaled that England's involvement in the conflict was imminent, James summoned Parliament to meet at the end of January, 1621 to provide for a war if it should prove necessary.

When Parliament met, James asked that it appropriate 500,000 Pounds for an army. Parliament appropriated 160,000 Pounds for the King and then began to debate their grievances. Led by Sir Edward Coke, Commons attacked the granting of industrial patents to courtiers; it impeached the Lord Chancellor—Francis Bacon—for accepting bribes; and it placed "The Great Protestation" in their Journal which declared that the Commons' privilege were "the ancient and undoubted birthright and inheritance of the subjects of England."

This infuriated the King. He ripped the "Great Protestation" from the Journal and then dissolved Parliament. Two leaders of the House—one of them Sir Edward Coke—whom the King had earlier dismissed from the post of Lord Chief Justice for refusing to accept his commands—were imprisoned. Another member—John Pym—a wealthy landowner who sat for a small Wiltshire borough, was placed under house arrest.

As James I couldn't wage war with Spain without Parliament's granting him taxes to raise an army and buy supplies, he sent his son and The Duke of Buckingham to Madrid in 1623 to arrange a marriage with the Infanta. But when the negotiations broke down they returned to England hot for war. James now called the Parliament again.

James' fourth Parliament was summoned in 1624 and unlike the earlier Parliaments of his reign, it felt more friendly toward the King. This Parliament was determined to fight a war against Spain in the Elizabethan manner and it was eager to assist the Protestant cause in Germany. The House of Commons voted 300,000 Pounds for the war against Spain but, as it concluded that the King was often spending money for purposes against its wishes, Commons devised a scheme for parlimentary control, not only of its levying but of its spending. Therefore, to ensure the proper expenditure of money, the Subsidy Bill contained a clause whereby money was paid into the hands of commissioners appointed by the House of Commons, to be expended by them upon direction of the council of war.

James I's death in 1625 brought his son Charles I to the throne. As he was eager to wage war with Spain, he asked his first Parliament for a large grant of money for that purpose. However, as the Commons were resolved to abolish the abuses of Royal prerogative it refused to vote adequate funds to fight Spain.

The House of Commons immediately made it clear that they intended to debate foreign affairs and religious reforms as they didn't want to take any chance on Charles dissolving Parliament as soon as it had granted him the needed taxes. Instead of granting tonnage and poundage duties to the new King for life—as had been the custom of two centuries—the Commons gave them for one year only. In fact, Charles didn't get this income

at all as he later dissolved Parliament before the House of Lords had passed the bill.

The second Parliament of Charles I met from February to June, 1626. The House of Commons proceeded to prepare for the impeachment of the Duke of Buckingham—the King's favorite minister—whom it believed responsible for the worst abuses. The King told the Commons that he would not permit Buckingham to be impeached and informed them that their first business was the granting of supplies and that he would not permit his servants in high posts to be impeached for they merely acted at this command. The Commons refused to grant supplies until their grievances were redressed.

On May 8, the impeachment of Buckingham was brought up to the House of Lords by the managers for the Commons. Two of them were immediately thrown into the Tower for things they said in their speeches—and the Commons resolved to do no further business until the release of their members. The King yielded with reluctance, but when the Commons resolved that tonnage and poundage could not legally be collected unless granted and that no supply would be voted until Buckingham was removed, the King dissolved his second Parliament on June 15.

Clearly since Charles' accession to the throne, Parliament had assumed a new place of power in the state. Not even the relatively powerful parliaments of the Lancastrian era, or of James I showed the same spirit. But Charles' Parliament felt themselves on a par with the King. They were resolved to do battle with the sovereign on equal terms—for the passage of time had given Parliament formidible weapons: the levying of taxes, the power of impeachment and the various other privileges of Parliament.

As the Commons had once again refused to vote the King supplies for the war, he had to find a way to meet the necessary expenses of government. Charles I now pawned the Crown jewels and mortgaged Crown lands. He began to levy tonnage and poundage without Parliamentary consent and tried to exact the revenue denied to him by levying a "forced loan" which, again, was taxation without Parliamentary sanction. The "forced loan" was widely resisted, whereupon a number of knights and rich men were arrested under royal warrants for their refusal to pay, while soldiers were quartered with the King's poorer subjects.

Chief Justice Carew, who refused to find these "forced loans" legal, was dismissed from office. After this, the Court of King's Bench granted Writs of Habeas Corpus to five knights who had been imprisoned by the Crown for refusing to contribute to the "loan." but, though the Writ was granted, the Warden of the Fleet refused to release the prisoners because he declared that he was acting on a warrant from two members of the Privy Council ordering that the knights be held "by special order of his Majesty."

This precipitated a grave constitutional crisis. The prisoners, upon being informed that they were not entitled to bail asserted that the ancient rights of the subject set forth in Chapter 39 of the Magna Carta were at stake. They contended that freedom from arbitrary arrest was basic to English liberty. But the knights were not released, and Chief Justice Hyde held in the Case of the Five Knights (or Darnel's Case) that:

"If no cause of the commitment be expressed, it is to be presumed to be a matter of state which we cannot take notice of."

Thus, the constitutional question of whether Charles I could imprison his subjects without cause was, for the time, left unsettled.

After flagrantly violating the liberties of his subjects in unexampled fashion, Charles was compelled—by the necessities of the war with France—to call another Parliament which met on March 17, 1628. Among the members of the new House of Commons were no fewer than twenty-seven of the men who had been imprisoned by orders of the King for refusal to pay the "forced loan."

When Charles I addressed Parliament, he concentrated upon the grave dangers that England faced in the war with France and Spain. He declared that it was their duty to find a speedy way of supplying the government's needs and that if they failed to do so, he would have to use those other means which God hath put into my hands, to save that which the follies of particular men may hazard to lose.

But Parliament paid no attention to the King's urgings. Instead of making even a small grant, the House of Commons immediately set to work to reform the abuses before granting a tax. However, unlike earlier Parliaments, this concentrated not on the King's ministers—but on the King's misinterpretation" of the constitution which Commons felt threatened to establish absolute government. The Commons—and the nation—were greatly inflamed about four specific grievances: illegal taxation, arbitrary imprisonment, the billeting of soldiers on individuals and punishment by martial law. The Commons put their grievances to the King in the Petition of Right.

In the Petition of Right, the Commons did:

Humbly pray your most excellent Majesty that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax or such like charge without common assent by act of Parliament.

The King reluctantly agreed to consent to the Petition of Right. And, though it was of little or no immediate practical value, "* * * the historical and constitutional meaning of the Petition of Right stands in line with the more important Magna Carta of 1215 and the Bill of Rights of 1689 * * * It stated principles and precedents and it became a precedent itself in the long assertions of the powers of Parliament and the supremacy of law in England." (A Constitutional and Legal History of England by Goldwin Smith (New York; 1955) P. 320.

As another noted scholar has written of the Petition of Right, it was: * * * the first attempt made since the beginning of the struggle between King and Parliament to draw a definite line between prerogative and law, to fix with some exactness the point where the power which is above the law shall end and where the reign of law shall begin. This it attempts to do, not as to a general matter but in specific particulars. That in doing this it reduces the King's prerogative powers and sets new limitations to them is quite in harmony with the spirit of past constitutional growth." (Constitutional History of England by George Burton Adams (NY; 1938) P. 295).

After Charles I accepted the Petition of Right, the Commons voted him money. But relations between the King and Parliament had by no means healed. They soon clashed on the question of tunnage and poundage—which the King had exacted without the consent of Parliament and the Commons was determined to place the grant upon its true constitutional basis. A bill was then prepared granting tunnage and poundage, but it was delayed to remonstrate against the King's illegal collection of tunnage and poundage duties. To prevent this Charles brought the session to an end.

When the second session of Charles' third Parliament opened six months later, Commons was still incensed with the King and proceeded in its battle against unlawful taxation. Fuel had been added to the fire by the proceedings against certain merchants who had refused to pay the duty. Their goods had been distrained, and when the owners sued on writs of replevin, the courts found for the Crown holding that the King's right had been established beyond question in the Case of Bate—which had arisen two decades earlier.

In order to prevent the Parliament from further remonstrating against the King's claim to tunnage and poundage, Charles at first ordered a short adjournment and then a longer one. But this time, Commons was in no mood to go home until it had placed its opinions on record. The House of Commons accordingly voted against adjournment.

When the Speaker declared that he had the King's orders to leave his chair, he was forcibly held down by two members, while the door was locked to prevent members who wished to go from leaving. The House then passed resolutions providing that:

(1) Whoever advised the collection of tunnage or poundage without Parliamentary consent should be considered "a capital enemy of the kingdom and commonwealth."

(2) Whoever voluntarily paid tunnage and poundage thus levied should be considered a traitor to the liberties of the land.

After these resolutions were passed, the Commons voted to adjourn.

The King was outraged at the Commons' action. He accused the Commons of attempting to exert a universal, overswaying power which belongs only to me and not to them.

The King dissolved Parliament on March 10, 1629—and it would not meet again for eleven years. The King was determined to govern England "by those means God put into my hands."

Charles moved swiftly to punish the leaders of the opposition. Nine members of the House of Commons were arrested, sent to the Tower and their papers seized. When they sought a Writ of Habeas Corpus, the prisoners learned that they were detained under the King's order. At their trial, the prisoners pleaded the privileges of Parliament and declined to make any other pleas. The court found that they should each be imprisoned at the King's pleasure.

As no adequate grant of taxes had been made by any of his three Parliaments and he no longer dreaded the checks which might be imposed by Parliament, the King proceeded to govern England without Parliament. He continued his illegal levies of tunnage and poundage. He revived such obsolete customs as the compulsory distraint of knighthood and forest fines based upon Henry II's Assize of the Forest of 1184. He expanded his extensive sale of monopolies—soap, fisheries, the vintner's company, etc. He collected feudal dues whenever he could.

But the most important discovery of new revenue was the revival and extension of "ship money." In medieval times this had been a levy imposed in times of national emergency on the port towns of England by which these ports were asked to provide ships for the navy. Charles' first writ for ship money was issued in October, 1634 and it was near enough to the tradition practice not to lead to serious opposition. It called upon port towns to furnish ships of war, but of a size which were only found in London, or in lieu of these to levy a sum of money sufficient to cover the cost of one. As one author

has observed: "The demand was a transition from ancient precedent to a practically undisguised tax." (Constitutional History of England by George Burton Adams (New York, 1938) P. 301).

The Lord Mayor of London at first resisted the writ. But it was soon acceded to with little opposition.

When the second writ appeared in August, 1635, it was extended to all the Kingdom on the ground that as the support of the navy concerned the safety and defense of all, so all should contribute to that end. It then became clear that ship money had become a general tax on the people of England. For, whereas the earlier writs only demanded the actual equipment of ships, the latter writs directed the sheriffs to assess every landowner and other inhabitatnts—according to his particular means—and to enforce the payment by distress.

Considerable resistance developed to the second writ. It was felt that ship money had become, in fact, a tax levied without Parliamentary grant—violating the Petition of Right.

The third writ was issued in October, 1636, and like the second extending the levy to the whole kingdom made it plain to everyone that the King had discovered a method of annual taxation which could be used to finance the government.

And, it soon became evident that if the King could lay such a tax upon alleged grounds of national necessity—determined by himself alone—that there was no limit to this arbitrary taxation. And, believing that the writs of ship money were clearly an unconstitutional tax, many persons resisted them. But by far the most celebrated case was that of John Hampden. In 1637, the sum of 4500 Pounds was demanded from Buckinghamshire. John Hampden—a cousin of Oliver Cromwell—refused to pay twenty shillings assessed upon his land in the parish of Stoke Mandeville. Hampden was tried before the Court of Exchequer in November, 1637.

Hampden was eloquently defended by Oliver St. John who argued against the tax alleging that it violated the Magna Carta, the statutes of Edward III, the Petition of Right and there was no national emergency as England was not actually engaged in a war at that time. But the judges found for the King. Two judges decided in favor of Hampden on technical grounds and three judges found for him on all counts. But the remaining seven held against him. One judge wrote that:

"The King pro bono publico may charge his subjects, for the safety and defense of the kingdom, notwithstanding any act of Parliament, and a statute derogating from the prerogative doth not bind the King; and the King may dispense with any law in cases of necessity."

Further, another judge wrote that:

"No act of Parliament can bar a King of his regality—therefore acts of Parliament to take away his royal power in the defense of his kingdom are void."

But, though Hampden had lost the case, he had won a place in the hearts of the people of England for resisting the hated tax. The trial galvanized the resistance of the people to the tax. But, in spite of popular resistance to it, the King succeeded in financing the government without Parliament for eleven years. As one writer has observed:

"The financial dependence of the King on Parliament, which was at that date the only thing making a meeting of Parliament necessary, seemed for the moment at least to be successfully overcome."—Constitutional history of England by George Buxton Adams (New York, 1938, P. 304-5).

For a period, Charles I's arbitrary measures were successful and it appeared that Parliament would never again be summoned to Westminster. During this period Charles and Archbishop Laud endeavored to reconstruct the Church of England according to the aristocratic ideas of the high church party—which had the effect of ending religious and political liberty in England. And, the ensuing persecution of the Puritans drove many to America.

The oppressive policies of Charles I are of more than passing interest to Americans because they generated the basic constitutional ideas which the English Puritans brought to America and which—in a century and a quarter—became the bedrock on which the American Constitution was fashioned.

As Charles was apparently successful in reconstructing the Church of England, he endeavored to do the same thing to Scotland by crushing Presbyterianism in Scotland. In the summer of 1637, Charles and Archbishop Laud sought to impose a version of the English Book of Common Prayer on the Church of Scotland. But the Scots were too thoroughly devoted to Presbyterianism to accept this. When an attempt was made to read services from the Book of Common Prayer in Edinburgh, riots broke out. The Scots set up a resistance group known as "The Tables" and the Scottish Covenant was drafted inviting the Scottish Protestants to swear the resist to the death these religious innovations. To meet the Scottish resistance, Charles was compelled to raise an army—which placed too great a strain on his make-shift finances.

When the Chancellor of the Exchequer informed him that the Royal Treasury was empty, Charles sought a contribution from London and then from the entire nation and loans were requested. Another obsolete levy upon the counties for the support of a military force—"coat and conduct money"—was revived. But every levy was resisted and failed to raise the needed revenue.

Therefore, the King bowed to necessity and called what became known as the "Short Parliament"—which met on April 13, 1640. But it soon became evident that the members of the House of Commons sympathized with the Scots and would do nothing until their many grievances were redressed. The King pressured Commons to vote an immediate grant of money to allow him to prosecute the war—and to settle their grievances later. The House of Lords voted that appropriations should come before grievances which the Commons rejected as a "high breach of privilege." The King then offered to give up ship money in return for a grant of twelve subsidies. But the Commons balked at this too—holding the collection of ship money to be a crime and the judgment against Hampden an infamy; which they would never assent to.

When Charles was convinced that they could not be moved, he dissolved the Parliament, after a three week session in which nothing had been done. But, though Parliament accomplished little of a tangible nature, it learned how strong it was against the King and it learned that the bulk of the English people were united behind them.

After the dissolution of the "Short Parliament", the King imprisoned some members of the House of Commons and the sheriffs ruthlessly proceeded to collect ship money and coat and conduct levies. The King seized pepper from the warehouses of the East India Company and bullion from the London goldsmiths. The Lord Mayor and aldermen of London were coerced into making a "loan." A convocation—which supported the King's Scottish policy—tried to support a general benevolence; two attempts were made to get a loan from Spain in return for help against the Dutch; it was proposed that the coinage be debased and it was planned to seize Spanish bullion deposited in the Tower for coinage. But all these efforts were of no avail. They generated very small sums while the expenses of government skyrocketed.

Meanwhile, the army which had been raised posed a critical problem. It was undisciplined, poorly supplied, and scarcely paid at all. It had to be quartered on the country and martial law had to be rigorously enforced—both in violation of the Petition of Right.

Finally, in August of 1640, the Scots crossed the border. When the two armies confronted each other at Newburn—near Newcastle—a mere cannonade dispersed the English ranks. Newcastle surrendered to the Scots and once more the King was forced to come to terms with them.

As the historian Thomas Pitt Taswell-Langmead has observed:

"After the defeat at the ford of Newburn-on-Tyne, the English army, disheartened, undisciplined, and disaffected, had retreated to York, leaving the counties of Northumberland, and Durham to be possessed by the victors. 'The game of Tyranny' observes Macaulay, 'was now up. Charles had risked and lost his stake. . . . His army was mutinous, his treasury was empty; his people clamoured for a parliament; addresses and petitions against the government were presented. Strafford was for shooting the petitioners by martial law; but the King could not trust the soldiers.'"—(English Constitutional History by Thomas Pitt Taswell-Langmead; P. 440.)

At the end of August, 1640, twelve peers petitioned the King "to summon a Parliament within some short and convenient time." But in a last-ditch effort to avoid summoning Parliament, Charles seized on an old precedent. As the National Council had once performed some of the functions of Parliament—and as it had continued to meet long after Parliament had been established—the King issued writs for a meeting of Peers at York on September 24, 1640. The Great Council met and concluded a treaty with the Scots, by which they were to hold the two northern counties until a definite peace was made and to receive 25,000 Pounds per month for their expenses. The Council also pledges the security of the Peers to a loan to fill the King's sagging coffers.

But, as this expedient proved inadequate to solve the King's staggering problems, King Charles reluctantly called his fifth Parliament—the so-called "Long Parliament." It met at Westminster on November 3, 1640.

The entire House of Commons stood united in their opposition to the King. Roughly sixty percent of the members of the previous "Short Parliament" were reelected. As one historian has observed:

"The King addressed the Commons in an unusually conciliatory speech, but the Stuart tyranny had gone too far, and the Lower House was absolutely bent upon redress. Neither can the men who came to this Parliament with such a resolve be blamed, for it depended upon them whether people and Parliament should recover their ancient liberties, or become the mere vassals of the Sovereign."—(*History of the English Parliament* By G. Barnett Smith; Volume I, Page 399)

And, in a large sense, it was the Long Parliament which framed the basic constitu-

tional ideals upon which the American Republic was fashioned.

Under the leadership of John Pym and John Hampden, the House of Commons struck first at the King's advisors—by impeaching the Earl of Strafford. Strafford was accused of subverting "the fundamental laws", of "exercising tyrannical and exorbitant power." When it became clear that Strafford would never be found guilty of high treason by the judicial process of impeachment before the House of Lords, the Commons turned to condemn him to death by a Bill of Attainder. The bill passed both Commons and Lords. Realizing that he, too, was in peril, the King signed the Bill and on May 12, 1641, over 200,000 people saw Strafford executed.

Meanwhile, Parliament acted to make arbitrary rule impossible in the future. First, to protect itself against a possible "untimely adjourning, proroguing, or dissolving" by the King, it provided that a Parliament could not be dissolved without its consent. Second, in the Triennial Act, it established that Parliament was to meet once every three years, whether or not it had been summoned by the King.

Ship money was next attacked and declared illegal—and the judgment against John Hampden was annulled. The collection of tunnage and poundage duties without the consent of Parliament was made unlawful). Compulsory knighthood and the abuse of forest fines were prohibited.

However, in November, 1641, Parliament prepared the Grand Remonstrance which recited the wrongdoings of Charles I, and set forth what had to be done to remedy national grievances and set forth further demands. For example, it proposed that the King's ministers should be "such as Parliament may have cause to confide in." This Grand Remonstrance passed Commons by a majority of only eleven out of over 300. This angered Charles I and he directed the Attorney General to lay articles of impeachment for treason before the Lords against five members of the House of Commons. And, though the men escaped before they could be arrested, this greatly inflamed the passions of the people and hastened the drift toward civil war.

But, before the civil war actually broke out, Parliament presented its final demands to the King in the so-called Nineteen Propositions. By the terms of the Nineteen Propositions, the privy councillors, the principal officers and judges of the state, the tutor's of the King's children, all were to be appointed only with the approval of Parliament. It asked the King to put royal forts and castles under Parliamentary control, to dismiss his military forces; to take away the votes of all Roman Catholic peers, and to promise that his children would not conclude any marriage not approved by Parliament.

Charles refused and the civil war began—to be terminated in a little over two years. After the Presbyterians had been expelled from Parliament, the remainder (known as the "Rump") tried the King for treason and sentenced him to death.

What followed were eleven years of military despotism. After Cromwell's death, the dead King's son, Charles II, was placed on the throne. The House of Stuart was restored to the throne, but with no constitutional guarantees. The supremacy of Parliament was not declared in any formal contract, nor was the King required to acknowledge that his powers were limited by, or derived from, the people. Indeed, there was nothing of a constitutional character to even indicate that Charles I had been deposed. And, though, in form and law, the King was supreme—he was now, in fact, subservient to Parliament.

Charles II's first Parliament granted him the proceeds of the Customs for life. Parliament abolished the feudal incidents, e.g., wardship, marriage and knight's service, and the three feudal aids: knighting the King's son, ransoming the King, and furnishing a dowry for his eldest daughter. Parliament made up for the revenues lost by abolishing these by granting the Crown an hereditary tax on beer and some other liquors.

The year 1665 marked the reassertion of legislative control over the spending of the public money, viz., the practice of Parliamentary appropriations. Prior to this time, the King went to Parliament with requests for money. But, generally, once the money was raised, the King could spend it as he wished.

Sir George Downing amended the Subsidy Bill of 1665 to provide that the money raised in accordance with the Bill be applicable solely to the prosecution of the Dutch War—and that money could not be paid out by the Exchequer save by special warrant stating that as the purpose of the payment.

In 1667, Parliament solidified its control of the purse strings of England by appointing a Parliamentary commission to examine the public accounts in order to determine that the funds raised in the Supply Bill of 1665 were, in fact, spent solely for the Parliamentary designated purpose. This Parliamentary commission later expelled the Treasurer of the Navy from the House of Commons for spending public money without a warrant.

As one author has observed:

"The bill was the natural consequence of the liberty of appropriation enjoyed under the Commonwealth. The exercise of the principle of appropriating supplies in detail was not carried to its full extent until after 1689. Its importance is difficult to overestimate. It placed the executive power in a position of perfect dependence upon the bill of Parliament, for the money requisite for any administrative act was to be forthcoming only in accordance with the previously expressed intent of Parliament."—(The History of Parliamentary Taxation in England by Shepard Morgan; New York: 1911; Pp 304-5).

Another writer has written:

"The foundation was securely laid for the changes that followed after his expulsion. Modern Anglo-Saxon legislatures have considered the practice of appropriations, now extended to even minute items of expense, to be one of the most essential sources of their power and have guarded it with the utmost care. It is a check upon government policy not by calling a minister to account for what he has done, but by rendering action which is not approved of impossible in advance. The full establishment of the right of appropriation should probably be regarded as the last step in the creation of so great a power in Parliament over the executive that resistance was hardly possible . . . "—(Constitutional History of England by George Buton Adams, New York: 1938, P. 349).

On Charles II's death in 1685, James II acceded to the English throne. But where Charles II had been willing to adjust to the Parliamentary system, James II was not. James II lacked Charles II's tact and diplomacy. He assumed the Crown with the full intention of exercising arbitrary authority—as had the earlier Stuart Kings. He attempted to bring Roman Catholicism back to England.

Prior to calling his first Parliament James II had collected customs duties by proclamation—i.e. without Parliamentary sanction. But, in spite of this poor beginning, the Parliament—which was overwhelmingly royalist—granted him a large revenue for life and seemed ready to do anything else within reason which the King wished. But this spirit of harmony didn't last long.

Primarily because of his zealous desire to restore England to Catholicism, James clashed with Parliament. In 1685, Parliament balked when the King asked that a large standing army be raised in which Roman Catholics were to hold key positions. Instead of complying with the King's request, the Commons gave the King less than he sought and attempted to impose conditions. This infuriated the King to the extent that he committed a member of the Parliament to the Tower for saying: "We are all Englishmen and not to be frightened out of our duty by a few high words."

Refusing to tolerate such criticism, the king dismissed his first, and only, Parliament.

These and other outrages so inflamed the nation that in November, 1688, William of Orange was invited to come to England. An advisory "assembly" was called to assume the provisional government of England pending the calling of a Parliament—composed of the Lords and of the members of the House of Commons which last met in the Parliament of Charles II. The assembly advised the calling of a convention Parliament, and letters were issued for the holding of Parliamentary elections. The convention Parliament met on January 22, 1789, and remained in session until August 20, and later continued its work in a second session.

On February 13, 1689, William and Mary were crowned subject to the conditions expressed in the *Declaration of Right*. That same day, the Convention Parliament declared itself to be the Parliament and its acts valid law.

The *Declaration of Right* with some slight changes was—in the second session of Parliament—incorporated into the *Bill of Rights*. Specifically, the *Declaration of Right* enumerated the arbitrary acts of James II and declared each of them specifically to be illegal.

On October 25, 1689, the *Declaration of Right* was enacted by Parliament, in statutory form, as the *Bill of Rights*. It stated that King James "did endeavor to subvert and extirpate . . . the laws and liberties of this kingdom . . . by levying money for and to the use of the crown, by pretense of prerogative, for other time and in other manner than the same was granted by Parliament." Then followed the absolute assertion "that levying money for or to the use of the crown by pretense or prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal."

The *Bill of Rights* is—without question—one of the most crucial documents in Anglo-American constitutional history. For, it marked the end and summed up the results of a struggle which had lasted for over four centuries. As Maitland observed, with the *Bill of Rights* "one great chapter of English history had been closed."

Clearly the impact of the *Bill of Rights* was not limited to England. It had as great an impact on the British colonists who came to America—who had suffered as much in their charters and in their free governments from the absolutism of Charles I and James II as had the people of England. And, reacting from British experience—and from their own experience under British rule—the Framers wrote into our Constitution the exclusive

function of Congress to impose taxes and to control public expenditures by appropriations.

As one author has observed:

"With the passing of the Bill of Rights the principle was vindicated that Parliament rather than the crown has the power to tax. . . . The corollary principle that Parliament has the power to appropriate supplies for specific purposes and that it can demand an accounting for the money so appropriated were accorded general acquiescence then and thereafter."—(The History of Parliamentary Taxation in England by Shepard Morgan; New York: 1911; pp. 307–8).

[Resumption of Senate Proceedings]

The PRESIDING OFFICER (Mr. Bentsen). The question is on agreeing to the amendment of the Senator from Idaho (Mr. Jordan).

Mr. MCCLELLAN. Mr. President, I just want to make a brief statement about this.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. MCCLELLAN. Mr. President, I have prepared a comparable amendment, not identical, to be introduced and would have possibly offered it had I the opportunity to do so. However, during the afternoon, I was engaged in a conference with the House members of the Appropriations Committee on the Supplemental Appropriation bill. I would prefer to have had the amendment I prepared to the one of the Senator from Idaho (Mr. Jordan), but it will have to go to conference if it is adopted and some moderate change would be made in conference if it is found advisable to do so. Since it does have the basic approach that I have in the amendment that I intended to offer, I intend to support this amendment.

Now I want to say at this time that I will have serious difficulty voting for the House bill just voted for the $250 billion limitation.

I am reluctant, most reluctant, to vote for a measure and confer upon the Chief Executive the power to completely reject and to strike from the bill what Congress, on any project or program that Congress, in its judgment and wisdom, has established and authorized under the law.

For that reason, Mr. President, I hope that the senator's amendment will be agreed to.

While I have this moment, Mr. President, I would like to say to the Senate that immediately after action on this amendment, if I can get the floor, I intend to offer an amendment, adding a new title to the bill.

It will be noticed in this bill that provision has been made for a joint committee to deal with the study from now until some time next year. That would be a temporary committee. And that committee's functions and duties would expire.

Mr. PROXMIRE. Mr. President, will the Senator yield at that point?

Mr. MCCLELLAN. I yield.

Mr. PROXMIRE. Mr. President, I am very interested in the Senator's proposed committee.

However, I would like to tell the Senator that at about 2:30 this afternoon I was to be recognized. And I understood that I was the next one to follow the Jordan amendment. I will not take very long.

Mr. MCCLELLAN. Mr. President, I am very sorry. The Senator understands that I have not been on the floor. If that is the order, of course, I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I would be happy to yield to the chairman of the Appropriations Committee if he desires. However, I would prefer it if I could proceed.

Mr. MCCLELLAN. No. I will confer with the Senator about this in the course of our voting. However, in the meantime I intend to advise the Senate that I shall offer an amendment to add a new title, and the new title will be practically identical to a bill that the Senate passed on eight different occasions to create a Joint Committee on the Budget, not temporary, but permanent. I have added one thing to its duties, and that is that after performing the duties already provided in that bill, that it submit its recommendations with respect to a ceiling each year in the budget on the amount of appropriations we should make.

I hope that amendment will be adopted. I have just taken this moment to make mention of my purpose to support the distinguished Senator's amendment. And I think that it may need some small modifications, at least in conference. But I shall support it. And I would hope that the Senate would agree to it. At least, we passed this bill eight times, and the House only rejected it one time, and only rejected it by 15 votes. That is the first time they considered it. They never could get to a vote before that because it was opposed by the chairman of the Appropriations Committee of the House primarily. Now that the House has awakened to the necessity for some kind of committee, for some kind of study, and for some kind of additional service that is necessary for the Congress to ably and properly and effectively perform its duties, I think it is time to consider the bill that the Senate has already passed eight times. I think it is perfectly appropriate that that measure be adopted as an amendment and add a new title to the bill.

Mr. PASTORE. It was my privilege for the past several years each time the distinguished Senator, the chairman of the Appropriations Committee, introduced his bill for a joint committee, to cosponsor that particular legislation. As I understood, it was not exactly a study. It was not a study at all. But here we are dealing with $250 billion every year, which is a tremendous amount of money. It comes to the committee under 12 different titles, and there is no coordination.

We do not know once we have appropriated the money just how the money is being spent. We have no facilities, no faculties, to follow that money to make sure. The only opportunity we have is when they come up again, to ask them how they spent the money last year. We have to take their word for it.

After all, the Office of Budget and Management has a continuance of operation. They can follow these things through with the administration. But we have no facilities, no faculties at our disposal.

What the Senator did suggest was that we would have a joint operation with the House, that we would have proportional steps in there, that once we appropriate money, we make sure that the money has been used for the purpose for which it was appropriated. That was the purpose of his bill.

Mr. MCCLELLAN. That was one of the purposes. We hear only the appropriations on most every bill, with one or two exceptions, like Public Works. But we hear primarily from agencies that want the money to spend, but there is no way for us to check against the immediate intentions they say they have and the information they submit to us.

While I have the floor, I would like to suggest to my colleagues that this bill to which I have referred and that has passed a number of times had many cosponsors. In the 87th Congress it had 67 cosponsors. In the 88th Congress, it had 77 cosponsors. In the 90th Congress it had 66 cosponsors. So at least nearly two-thirds of the Senate have cosponsored the bill each time in the past.

Now, I do hope tonight, or when this amendment is offered, that I will have the support of my colleagues who have heretofore been very well advised as to what this proposal will do and the need for it.

Mr. BENNETT. Will the Senator yield to me?

Mr. MCCLELLAN. I am glad to yield.

Mr. BENNETT. As the manager of the bill, I think I am prepared to accept the amendment of the Senator. I would like to see it. I would appreciate the opportunity to look at a copy of it. By the time the Senator is ready to offer it, I think we would probably be willing to accept it without question.

Mr. MCCLELLAN. I will be glad to do that. I would like to suggest one thing to be added to the bill, other than technical amendments not necessary to meet existing law. This clause has been added to the bill. This is under subsection (2) of some section of the bill—the duty of the committee:

"Recommended to the appropriate standing committees of the House of Representatives and the Senate such changes in existing laws as may effect greater efficiency and economy in government."

And we added at that point:

"(b) a ceiling for expenditures and net lending under the budget of the United States Government for the fiscal year."

Mr. BENNETT. May I see that?

Mr. MCCLELLAN. Yes. This is the only one I have before me now. It is one I shall want to introduce.

Mr. BENNETT. After the Senator from Wisconsin is recognized. I will be glad to discuss it with the Senator.

Mr. MCCLELLAN. That is the only substantive change made in the bill as it passed the Senate.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. MCCLELLAN. I yield.

Mr. CRANSTON. Mr. President, I am delighted that the chairman of the Committee on Appropriations lends his support to the Jordan amendment. The Jordan amendment is the way we can have a ceiling without delegating the authority of this body to the executive branch.

The distinguished Senator from Oregon (Mr. Packwood) made an eloquent, articulate address on this topic, and it is a very important topic.

I believe, contrary to his conclusions, that the Jordan amendment gives us the opportunity to behave in a fiscally responsible way while retaining our power.

The Senator went through a long history respecting the abdication of power.

Mr. President, behind the Jordan amendment is the Percy amendment, which I have been privileged to cosponsor. It does set a procedure where we can have a solid, constructive, prudent approach to this matter, to set a ceiling that takes into account what we can expect to come in and take out, and put that together in an overall budget, which is what the Senator from Oregon discussed.

TEMPORARY INCREASE IN THE DEBT LIMIT

The Senate continued with the consideration of the bill (H.R. 16810) to provide for a temporary increase in the public debt limit and to place a limitation on expenditures and net lending for the fiscal year ending June 30, 1973.

Mr. JAVITS. Mr. President, I shall be brief. I wish to put the Senate in mind of another point which has been made, in addition to

the very, very moving address of the Senator from Oregon. I think we all liked it so much because he does not speak too often and it was really a great speech. Many of us feel he is entitled to our sincere congratulations.

He put me in mind of talk in the corridor that whatever we pass will go right down the hatch in conference and we will be right back here with a $250 billion ceiling, which is just like the administration asked for and which passed the other body.

So I express the hope, as one Senator, that when I vote "yea" on the Jordan amendment, because I agree with the Senator from Georgia, the Senator from California (Mr. Cranston) and many other Senators that this is the way to do it under present circumstances and because the people have a say, in this, too, and I think they have a right to feel as they do about expenditures and taxes, that we are going to stay with this and we should. By the size of the vote we serve notice that conference reports coming back here with these provisions dropped down the nearest hole are not going to find favor in the Senate.

Mr. President, that is one of the things that the speech of the Senator from Oregon should inspire in us all. This is not just a vote that we are not for giving up our powers on this amendment, but these things have a way to come back in a final way with lots of feeling.

I hope Senators will vote with the understanding that when they vote this way on the Jordan amendment they will vote so that there votes will not be meaningless. I hope very much the size of the vote and the conviction of the Senate will carry that message.

Mr. SCHWEIKER. Mr. President, I rise to strongly associate myself with the remarks of the Senator from New York (Mr. Javits). As a cosponsor of the amendment of the Senator from Idaho (Mr. Jordan) I believe this is a very important basic principle. I certainly concur with the thoughts of the Senator from Oregon.

I though the Senator made some very fine statements, explicit points, and pertinent principles. I differ with him slightly. I feel that the way to do the things that he wants to do is to vote for the Jordan amendment, to stand up and vote on that measure. Nevertheless, I commend him and I join with the Senator from New York (Mr. Javits) in saying that if this body expresses its favor with the Jordan amendment, and I hope for that, I could not vote for a conference report which would come back and incorporate the House approach, which is the reason the Senator from Oregon so well outlined it. I associate myself with the Senator from New York because that could be the issue.

I believe the Senator from Idaho (Mr. Jordan) has the votes to win that basic issue. I hope it does not stop there. The conferees should take this into account in conference because it is a gut issue and as a gut issue I am going to vote down any conference report that goes back to the House approach of giving away economic responsibilities.

Mr. GRAVEL. Mr. President, I share the same views as my colleague. I, too, went over to my colleague from Oregon and congratulate him on a fine speech. In fact, I can say that during my service here it is the finest speech I have heard in this Chamber. I have heard better rhetoric but I have heard no better grasp of history or better logic of an important problem affecting this Nation. So I am going to pay him what to my mind is the ultimate compliment, when I hear something very good. I say to him that he persuaded me. I was going to vote for the Jordan amendment; I am now going to vote against it.

It is not to often in the legislative process that minds are really changed in this Chamber, because of the operation of the system. But I was persuaded, I went up to my colleagues from Oregon and I asked what solution he had. I understand the Jordan amendment. It is a tinkering process to get to another goal. Of course, it is true, and I understand the statement of the Senator from New York and the statement of the Senator from Pennsylvania, that we are going to continue that quid pro quo; we will go for that if something does not occur; but that is the way erosion usually takes place, with one simple act.

I asked the Senator from Oregon what his solution was. He said he was going to vote against the Jordan amendment. Then, he was going to vote against the whole piece of legislation. That strikes me as logic because there is no way we will get into trouble if we do not hold things down.

I do wish to address a question to a member of the committee. What would happen if we voted this down? I address that question to the Senator from Utah (Mr. Bennett), who has just returned to the floor.

Mr. BENNETT. One week after October 31 the Federal Government would be unable to pay its bills. It could not meet its obligations. The dollar would die in the world market because nobody could trade it. We would have about 1 week's flow; 1 week's money in the bank. After that week the Federal Government would be bankrupt, unable to pay its bills, and I cannot conceive that any Senator would want to take the responsibility for voting for that.

I have been in the Senate a long time and I know there are always votes against the debt limit. Remember that the debt limit is the basic objective of this bill—the spending ceiling is the secondary objective. I know many Senators are going to vote against the debt limit in this bill—I suppose praying in their hearts that enough of us will vote for it so that this event will not take place, but there is not any question about it. This is what would happen.

Mr. GRAVEL. If my colleague will excuse my ignorance, I would like a little information as to how this would be precipitated. What would really happen?

Mr. BENNETT. The debt limit would fall from $450 billion to $400 billion on that day. We already have more than $400 billion of debt outstanding—something like $435 billion. That debt outstanding is represented by bonds that constantly need to be renewed. Some of them are notes that have to be renewed every week. We could not renew another note. Then all we could do would be to float around on the amount of money in the bank. That would last until about election day, and then the Federal Government would grind to a halt.

It could not pay its bills, it could not pay its salaries. The dollar would drop in the world market so precipitously that no one can imagine the debacle it would create.

Mr. GRAVEL. How much are we shy between now and the end of the fiscal year if we leave the debt where it is right now?

Mr. BENNETT. I will answer that question. The Treasury says they need a limit of $465 billion to get us through the fiscal year, but if we let the bill die, the Federal debt limit drops back to $400 billion. That would be disastrous. We do not have a continuing debt ceiling of $450 billion. We only have a ceiling of $450 billion to the end of October. Then it drops to $400 billion.

Mr. GRAVEL. So if we do not get it, what is it we are talking about? A difference of $15 billion?

Mr. BENNETT. I cannot tell the Senator to the day. We probably would have to be back here in February or March to pass it again.

Mr. GRAVEL. Suppose on Monday we pass a ceiling we have now? What is the ceiling now? $450 billion? Is that not what the ceiling is now?

Mr. BENNETT. Yes.

Mr. GRAVEL. What catastrophe would be visited upon this occasion if that were to occur?

Mr. BENNETT. That would take us to about March, and then we would face the same situation.

Mr. GRAVEL. Which would mean it would put the responsibility on the rest of us. Is that right?

Mr. BENNETT. I have been through this many, many times in my 22 years in the Senate. We come up to this point, we argue about it, and we rail about the fact that the Government should not go into debt, but we eventually face up to the fact that none of us wants the responsibility of letting the Government go bankrupt.

Mr. GRAVEL. I want to assure my colleague that I do not want to let the Government go bankrupt, but I like the concept that my colleague from Oregon has enunciated, and I am not reluctant to take the responsibility of lowering taxes or raising taxes to raise money. I want to make my vote meaningful in that direction. If that means voting against this amendment and voting against them all, that may be the way to do it.

What happens if we continue the debt ceiling at $450 billion?

Mr. PACKWOOD. Mr. President, if the Senator will yield, I would like to propound a question to my friend from Utah. Could not we do better simply by deleting title II of this bill, which is the debt limitation, and send that out from Congress?

Mr. BENNETT. No. It would have to eliminate the $465 billion.

I am reminded that it automatically drops to $400 billion. If we want to keep going as we are now, we have to replace the $465 billion figure with the figure of $450 billion.

Mr. GRAVEL. This is title I.

Mr. PACKWOOD. That is title I of the bill.

Mr. BENNETT. Yes.

Mr. GRAVEL. I address myself to my colleague from Oregon. If we wanted it to stay the same, we would substitute for title I a provision saying we raise the debt ceiling to $450 billion. That would be a check on the administration and protect us. Is that correct?

Mr. PACKWOOD. These sections are severable. Title II has the debt limitation. That could go. We could amend title I to make it whatever we wanted.

Mr. GRAVEL. That would give us some control, because that would give us a $15 billion hammerlock on the administration, which we are giving away now.

Mr. BENNETT. It would not have that effect. It would merely bring us back that much sooner to face the same problem. We have already faced it twice this year. This is the third time. If we put it off until March, we will have to come back in March.

Mr. GRAVEL. What is the problem we are facing? Is it the fact that we are spending money?

Mr. BENNETT. No, that is not the problem. The problem is that full faith and credit of the United States dies because we can no longer sell any bonds.

Mr. GRAVEL. But my colleague overlooks one thing. I say this humbly. The full faith

and credit is attached to borrowing money to spend money on projects. That is what the $15 billion is for.

Mr. BENNETT. No.

Mr. GRAVEL. What are they borrowing for if it is not to spend money?

Mr. BENNETT. Because we already have a debt of $450 billion. We turn it over. It is not like a continuing debt such as one might have in a bank for 20 years. It is represented by hundreds of issues. It is represented in large part by notes which are floated for 90 days or 6 months.

Mr. GRAVEL. I confess I do not have the brain power or understanding, but if we are borrowing money just to tread water, then we can tread water with $450 billion. If through some device the interest is creeping it up and making it $465 billion, then obviously that increase is all due to an increase in the interest. I do not think that is the case, because we are supposed to be servicing the debt by appropriating money for it. Where is that $15 billion?

Mr. BENNETT. That comes from increased appropriations which the Congress has already made, and they have got to be met. Congress has appropriated the money. We have to have it. That is a part of the problem. The other part is that we have accumulated a debt over many years. I cannot think of the year when we had no Federal debt.

Mr. GRAVEL. Was not this debt contributed to by a deficit this year?

Mr. BENNETT. Yes.

Mr. GRAVEL. Will not this debt be contributed to by a deficit next year?

Mr. BENNETT. Yes.

Mr. GRAVEL. What is the best way to get our hands on that deficit? It is to stop the spending. Is that right?

Mr. BENNETT. Yes.

Mr. GRAVEL. A good conservative, however, in my mind, if a person is fiscally responsible, is not going to let them run wild by raising the ceiling. That is the first grip we could get on this problem.

Mr. BENNETT. Unfortunately, that does not work.

Mr. GRAVEL. Why?

Mr. BENNETT. Because it is not an effective brake. It does not say to the American people, "We are going to stop spending when we reach this point." It says to all the people who own bonds, including people who own savings bonds, "Your bonds are no longer worth anything, because we cannot redeem them."

Mr. GRAVEL. I do not understand that, and I do not think I can accept it at face value. Does the Senator mean to tell me that $15 billion is all the money that is going to redeem bonds?

Mr. BENNETT. Look——

Mr. GRAVEL. I am prepared to vote for $450 billion, which is what we have now. All I am suggesting is the possibility of continuing that. The Senate is telling me they need another $15 billion to redeem bonds that people are going to put up.

Mr. BENNETT. No. I have to go back and start all over again. We now have a debt ceiling of $450 billion, which permits the Treasury to borrow what it needs.

Mr. GRAVEL. Up to that amount.

Mr. BENNETT. Up to $450 billion. All the money that Treasury is borrowing is represented by bonds that are outstanding. Does the Senator follow that?

Mr. GRAVEL. I follow that, but let me ask one point. In that $450 billion we already have covered the deficit of this year, which was over $20 billion. Was it not?

Mr. BENNETT. No; we do not have it covered, because this is the fiscal year of 1973, and to cover that deficit we have got to have the additional $15 or $16 billion, in the opinion of the Treasury. They are the people we have to trust in these matters.

Mr. GRAVEL. That is money we have appropriated. That is the point I am trying to make. It accounts for that increase?

Mr. BENNETT. But in the management of the debt, which is another part of the function of the Treasury, these outstanding bonds keep coming due every day or two.

Mr. GRAVEL. I realize that, and I realize that we must meet our obligations, but I am not sure by the Senator's argument, that we have to increase the debt to meet the bonded indebtedness. Our indebtedness today is $450 billion. If we raise the ceiling, that is raising spending.

Mr. BENNETT. Let me go back further. I have said that if we keep it at $450 billion—and we can—that simply means we will be back in February or March to raise it again. What we have already appropriated will carry us to another crisis, and we will have to raise the debt ceiling to take care of the deficit that will accumulate during the fiscal year 1973.

Mr. HUMPHREY. Will the Senator yield?

Mr. GRAVEL. I am happy to yield.

Mr. HUMPHREY. I am beginning to get the sense of this debate. For a period of time it was somewhat difficult, but what I believe I am hearing is that Congress cannot adjourn and there will be no problem in the next 3 months.

Mr. BENNETT. No, no.

Mr. HUMPHREY. Wait a minute. This Congress could adjourn——

Mr. BENNETT. This Congress could not adjourn without having to come back on October 31, because on October 31 we will be $50 billion over the authorized debt ceiling.

Mr. GRAVEL. Perhaps I can help the Senator from Minnesota. If we took title 1 and just made it the status quo—that is, left it at $50 billion, which would give us a ceiling of $450 billion, which is what it has been and then throw the rest of this away—we would still have some power left.

Mr. HUMPHREY. That is exactly what the Senator from Minnesota was getting at: that we could leave the debt ceiling at what it is. Instead of inserting the figure $65 billion, it would be $50 billion, and it would carry us through until March.

Mr. BENNETT. The Senator is correct. It will be $450 billion on January 1. On January 15 we will be over the $450 billion.

Mr. HUMPHREY. So before the new Congress would come into operation or session——

Mr. BENNETT. That is right.

Mr. HUMPHREY. We would have, as a matter of Government, to default on the payments.

Mr. BENNETT. That is right. We would have to be called back.

Mr. GRAVEL. Would not that depend on the revenues received between now and then? If the economy were in good shape, obviously the revenues would increase.

Mr. BENNETT. That is based on past estimates by the Treasury Department of the revenues that will be available between now and then. But I do not think we can take that chance and say that revenues will be better.

Mr. CRANSTON. Will the Senator yield?

Mr. GRAVEL. I yield.

Mr. CRANSTON. We are talking about two ceilings. One is the ceiling on the debt, and we will have to keep upping that until we get a ceiling on spending. Once we get a ceiling on spending and get a budget that takes into account what is incoming and what is outgoing, then we will not have to get together on the ceiling or deficit. We will finally get the deficit in hand. But we will not get it in hand without a ceiling. That is why I am supporting the Jordan amendment.

Mr. BENNETT. But we cannot go home until this bill expires. We would destroy the credit of the United States, and we cannot leave the debt limit at $450 billion, unless we come back before January 15 and go through the same exercise.

Several Senators. Vote, vote.

Mr. PACKWOOD. Mr. President, regardless of the outcome, whether the Jordan amendment is voted up or down, I will offer an amendment to strike title II of the bill, which is the expenditure ceiling.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

SEVERAL SENATORS. Vote, vote.

Mr. AIKEN. If the Jordan amendment is approved by a sizable majority, then I suggest that when we go into conference, after the conferees have been appointed, they be instructed to stock with the amendment. That will save them a lot of time on rejecting an undesirable conference report, which I feel will not be passed.

I hope the Jordan amendment will be adopted and that the Senate sticks with it. Such action will save us hours before the end of the session—possibly several days.

Mr. BUCKLEY. Mr. President, I am deeply troubled by the proposal that the Executive should be delegated the authority to cut expenditures at will in order to maintain a $250 billion ceiling on Federal spending during the current fiscal year.

I am troubled, in large part, because it represents a delegation of congressional authority which could establish a most dangerous precedent. But I am even more troubled by the abdication of fiscal responsibility, on the part of the Congress which has made the proposed delegation probable and even necessary.

We are caught on the horns of the proverbial dilemma. On the one hand, we are faced with the fact that the Congress has shown no disposition to exercise that self-restraint which is essential to avoid adding new fuel to our inflationary pressures. The political and social consequences of a significant rise in the rate of inflation are simply too serious to ignore. They will not be alleviated by asserting prerogatives which on the record the current Congress will not exercise. On the other hand, we run the danger of establishing a practice which is subject to the gravest abuse by a future President and which will merely encourage a further abdication of fiscal responsibility by future Congresses.

This lack of self-discipline on Capitol Hill forces us to consider alternatives each of which poses substantial dangers. And in this there is a lesson. The Constitution will safeguard our liberties only so long as each branch of our Government will face up to its responsibilities.

On balance I would approve a delegation of budget-cutting authority to the President within reasonably narrow limits. This is why I have voted for the Taft amendment. I must oppose the Jordan amendment, however, because of its mechanical rigidity. I simply do not feel that it is prudent to require one reciprocal percentage cut in each of the nonexcluded categories of expenditures.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

So the amendment of Mr. Jordan of Idaho was agreed to.

Mr. JORDAN of Idaho. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PASTORE. I move to lay that motion on the table.

Mr. PACKWOOD. The reason for that debate was a long history in the speech as to the battle in England of Parliament to gain control of spending. And a thumbnail history of it is roughly as follows.

The King normally had enough revenues, crown revenues without consent of Parliament to run the royal household, to run the kingly duties, but the King never had enough money to make war. So whenever he wanted to make war, he would have to go to Parliament and ask it to pass taxes or revenues of some kind to make enough money to make war. And if the King was popular, the Parliament would often do it. Or if war was popular, it would do it. But in doing it, they would gradually put riders in the bill to correct some grievance that Parliament had in terms of the kingly exercise of prerogatives, and they often related to his efforts to raise money by what Parliament thought were extracurricular methods.

Over the centuries and finally culminating in 1689 in the English Bill of Rights, the Parliament finally gave itself the full power of the purse, which is why, 100 years later when we adopted our Constitution, there was almost no debate about the issue of who had control of the purse. Congress did. It was not a significant factor in the debates when we adopted our Constitution.

There is no question but that Congress still has that power. We can argue all we want—how long have we heard this argument the President says, well, Congress cannot spend any money, or this country cannot spend any money Congress does not appropriate. And then somebody else will say appropriations have been cut every year above the level that the President wanted. And then somebody else will say, yes, that is because Congress 2 years ago passed some kind of an authorization compelling the President to ask for more money that he did not want to ask for, and then we cut it 5 percent and say we cut what he asked.

That argument can go back and forth as long as we are here. Both the President and Congress are at fault. Both Republicans and Democrats are at fault. And there is no point in finger pointing at the President or finger pointing at the Congress, one or the other, and saying it is your fault; no, it is your fault; it is your fault; it is your fault.

This is what we are up against and why I finally changed my mind on the constitutional amendment, and it was experience, not logic. In a democratic society—and we are that—it is difficult, well-nigh impossible, for elected officials to say no unless they are compelled to say no.

Take the health reform bill we are considering, for example. Every single group that has any tangential connection to the delivery of health wants to be included in the basic benefit package. They may have the most tangential connection, but they are convinced they are the linchpin to the delivery of health services so they come to us and they lobby us. And all of us, being decent and nice people, not wanting to say no, say, "I will consider your position."

Finally, 10 or 15 groups, all of which want to be included, have come to us and, not wanting to say no and not having enough money for all of them, we probably include them all but say we will only pay these particular groups 50 percent of their bills, when everyone else gets 100 percent and that way it fits within the money alloted. In a year or two they come to us and say why are we only getting 50 percent when they are getting 100 percent? We say that is not fair; you should get 100 percent, so the spending compounds and goes on.

I am not saying we are any worse sinners than anybody else. It is I think human nature when somebody comes up to you and asks for your help, you like to help them. You do not want to say no, get out of here; I do not agree with you. At worse, if that is what you are thinking, you probably finesse it. You finesse it with your neighbor; you finesse it with your constituents. You say thanks very much; I appreciate it. That is a very well-reasoned argument. I will give it consideration. They go away thinking you have agreed with them.

That is why we are in the situation that we find ourselves. We have said yes to everybody. We have said yes to Social Security recipients, yes to Medicare, yes to Medicaid, yes to defense for a long period of time, although defense is now not the factor that is driving the deficit. It may have been at one time, but it certainly is not now.

I will cite the statistics you have heard in one form or another, or take four programs: Social Security, other Government civilian retirement, military retirement, and Medicare-Medicaid. Those four plus interest: Those four, plus interest, in 1963 were 24 percent of our budget. In 1973, they were 37 percent; those four, plus interest. In 1983, 47 percent; 1993, 56 percent. Absent any change in the law, in the year 2003, they will be 69 percent of all the money we spend. That means one of two things. Either all other programs get squeezed—Amtrak, education, the Environmental Protection Agency, the Forest Service, airport safety, and everything else gets squeezed—or we raise taxes to pay for it, or we borrow.

The latter is what we have been doing most of the time because we did not want to say no to Amtrak, we did not want to say no to the Forest Service, and we did not want to say no to the EPA. So we borrowed. The only restraint we have had at all in the last 6 years was the budget agreement made between the Congress and President Bush in 1990 and then extended again last year that put caps on what could be spent. That is the only restraint we have had. And those do not apply to the entitlements. They are exempt.

So I have come, out of experience, to the conclusion that we need a balanced budget amendment to compel us to do what we know we should do. I do not think even those who are going to vote against this amendment will disagree with the conclusion of what is trying to be reached.

We know what we should do. But by experience we have proven ourselves and Presidents incapable of doing it. Or do we have temporary moments of euphoria when the deficit goes down a bit? Yes. But over the years, is that euphoria justified year after year? No. Not a bit.

So I congratulate the Senator from Illinois [Mr. SIMON], and the Senator from Idaho [Mr. CRAIG].

Are there defects in this amendment? I have listened to the arguments. I suppose there are defects in everything we do. If I were king of a government, I am not sure I could draft it better. Will it work exactly as we hope it will work? Will the courts do exactly what we think it will do? There is no guarantee. But ask yourselves: What is the alternative? Because it is not perfect in somebody's eyes, does that mean we do nothing and go on with what we are doing, or do we say we cannot do that? So let us try this. The risk of doing nothing and continuing on our present path is worse than the risk that the amendment might not be perfectly drawn.

So I am happy to support it; have been happy to support it for the last 10 years. I have been here long enough that I came to that conclusion, not out of logic but out of experience, that decent as most Members of Congress are—I find them decent in the House and Senate—and decent as most constituents are, everybody sees the world in their eyes. Their eyes is that we should balance the budget but not at their expense.

How many times have you gone to the civic club lunch and somebody gets up, and says, "You cannot run this place like you ought to." He says, "You borrow money," to which I first used to say, "Yes. You can run your business like we run the Government, if the bank will loan you money forever and only ask you to pay the interest. You can run your business at a loss forever." Most businesses cannot do that.

Then I will say to the person, "All right, how many people in the room favor a balanced budget amendment?" Ninety-five percent put up their hands. "How do you think we should balance

the budget? Raise taxes?" "No. Oh, no. Do not raise taxes." "Cut spending? How many want to cut spending?" Ninety-five percent. "Where should we cut? Social Security?" "Oh, no, no, no, not Social Security." "Medicare?" "Heavens no. That does not even pay for prescription drugs now." We cannot cut Medicaid. "Highways? Highways are terrible." "No, not highways."

You start going down the list of where you are going to cut. You know where we are going to cut? Waste, fraud, and corruption. That is where. That is going to balance the budget by getting rid of all the waste, fraud, and corruption. Except when you look at Social Security and you realize that their administrative costs are less than 2 percent—Social Security, not the Medicaid part. The pension part is a relatively automatic program. How long did you work? How much did you make? How old are you? Here is your check. It goes up automatically with the Consumer Price Index, and there is not much discretion. We can administer that program very effectively.

Is there any waste, fraud, and corruption in that program? I do not think so. Is there any waste, fraud, and corruption in Medicare? There we have cuts in fraud in Medicare more on the part of the providers than the consumers, and it is a more difficult program to administer because there is more discretion in it. But if you ask the average citizen if there is waste, fraud, and corruption in Medicaid, they would say, "No, I do not think so." Medicare? Not many people say so. Interest on the debt? We have to pay that. We would be sued if we did not pay that.

So do I understand the ramifications of this amendment, if it works? Again, I am not going to try to second-guess what the courts may do 5 years now. Do I understand the ramifications? Yes. Do I understand that, if it passes, we will have to raise taxes or cut programs or a combination of both? Yes, I understand that. Am I prepared to cut programs? Yes. Where? I have said it for the last several years. I will say it again. I think our retirement programs—military retirement, civilian retirement, Social Security—need to be restrained. And we should not be raising them by a cost of living every year.

I think our health programs have to be dramatically restrained. And perhaps the most discouraging comment I have heard about the President's program was given not by a supporter, but by somebody who certainly thought it was not bad, Dr. Reischauer, head of the Congressional Budget Office, when he was testifying. He indicated what the effect of the President's program would be. This is where he said the premiums are taxes, and it made some of the President's supporters mad that they were being called taxes. But they are in essence.

He testified more or less favorably about the President's program. Then he made this statement: If this program goes into effect, the President's health reform program, and everything works right, why, then the percentage of our gross national product that we spend on health in 10 years will be 19 percent instead of 20 percent. We are currently spending 14 percent. And if everything the President proposes works right, we go from 14 to 19 percent of our gross national product spent on health.

Our health outlays will have to be trimmed. That means there may be some services we now pay for that we cannot pay for, and we may have to ask consumers to pick up more of the costs. Yes. That is where I would like to start before I consider tax increases although I do not write off tax increases as a possibility. We have done it in conjunction with cuts.

So Madam President, let me say again that I have reached my decision on experience, not logic. My experience is that Republicans and Democrats, Presidents and Congress, will continue to spend and increase the deficit so long as we are governed by the present Constitution, or until the country goes bankrupt, which has happened in most other civilized countries in their history. I assume it could happen to us. It has happened to most countries in the world. Then you repudiate your debt and start over. And for a long time you are on a balanced budget because nobody will loan you money. I hope it does not come to that.

I hope this amendment is adopted. There is ample period of phasing in of this amendment to meet its requirements—assuming it works, as we hope it will. There is ample time to meet the requirements. It is not like we are passing it and saying tomorrow, find out how you are going to narrow a $200 billion deficit.

If we are forced to it, can we do it? Yes. If we are not forced to it, will we do it? No.

So, Madam President, I hope this Congress will pass this. I have no doubt that the States will ratify it in a very short period of time, even though they may know that some of the things we may cut are gifts and grants and matching funds that we now give to the States.

I congratulate the Senator from Illinois and the Senator from Idaho again. They have done a yeoman's job on this. I wish them good luck, and I hope they have 67 votes.

Mr. SIMON. Madam President, I simply want to commend the Senator from Oregon. The reality is that we have to simply face up to this thing. The Senator has learned, as he says, from experience, that we have to do this. We just cannot let these things go up endlessly. In fact—if the page can take this over to Senator PACKWOOD—this is from OMB's four volumes that we get with the budget. If you look at that graph there, it says "Lifetime Net Tax Rates Under Alternative Policies." I was born in 1928, and I end up with about 30 percent. I assume the Senator was born around 1940.

Mr. PACKWOOD. 1930.

Mr. SIMON. You are in the same category.

This was put together by OMB to show what a great thing they have done. Down here it says "future generations." Before we passed reconciliation last year, column 1 says that 93 percent of lifetime earnings would go for taxes. Then after we pass reconciliation, it is 82 percent; and then in the next two columns, if you assume health care reform and you assume the optimistic economic scenario of the administration, in 10 years, without a down blip at all, future generations will pay 66 to 75 percent of their net lifetime earnings in taxation.

Mr. PACKWOOD. If the health bill works.

Mr. SIMON. If it works.

Madam President, as my colleague from Oregon knows, that just is not going to happen. What we will do before we get there is we will do what countries have done historically, from ancient Florence down to Germany after World War I, and others: We will start printing money. We will devastate savings and retirement funds and everything. I think the Senator from Oregon has hit the nail on the head in his comments. I simply commend him for what he has said.

Mr. PACKWOOD. I thank my good friend.

Mr. SIMON. Madam President, I suggest the absence of a quorum, and I ask unanimous consent that the time of the quorum call be divided among Senator CRAIG, Senator REID and myself, but not Senator BYRD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. GRASSLEY. Madam President, I ask unanimous consent to speak as in morning business for 8 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator is recognized.

FRAUD IN PUBLIC CONTRACTING

Mr. GRASSLEY. Madam President, today I will speak for a few minutes on the topic of public contract fraud.

The taxpayers got good news Tuesday when the Supreme Court let stand

the court of appeals' ruling in U.S. ex rel. Kelly versus Boeing that the whistleblower provisions of the False Claims Act are constitutional. That should settle the issue once and for all. Congratulations to Senate legal counsel Michael Davidson and assistant Senate legal counsel Claire Sylvia for their outstanding advocacy on the side of Congress and the taxpayers.

I had hoped the new Justice Department would step in and advocate the constitutionality of whistleblower lawsuits, but I am still waiting for Attorney General Reno and her assistants to follow up on their confirmation hearing promises to consider reversing the hostile neutrality of the previous administration.

This and other matters have caused me concern that the new administration is no more committed to an aggressive stance on public contract fraud than the previous two administrations were. That concern was compounded on Wednesday, when Attorney General Reno and President Clinton nominated Defense Department general counsel Jamie Gorelick to be second-in-command of the Justice Department. I am concerned that this nomination signals an administration willingness to let the fox guard the chicken coop when it comes to fraud on the taxpayers.

Ms. Gorelick has a fine reputation as an effective lawyer and bar activist. What concerns me is how she earned that reputation—by specializing in getting defense contractors off the hook for fraud against the United States. Ms. Gorelick spent the last 12 years working as outside counsel for companies like General Electric, Teledyne, and United Technologies. I have always been uncomfortable with the revolving door between the Justice Department and the public contract defense bar. In this instance, I am concerned that Ms. Gorelick has campaigned so hard and so long for the contractors' side of fraud issues that she will find it difficult to turn around and zealously protect the interests of taxpayers. I am anxious to hear the extent to which she will recuse herself from issues that affect the former clients in the defense industry, or her former colleagues in the public contract bar.

My concern about how Ms. Gorelick will handle fraud matters as Deputy Attorney General is heightened by the fact that her current office—Pentagon general counsel—is currently advocating positions on a major fraud statute which favor the defense industry over the taxpayers. I look forward to her confirmation hearing in order to discuss these issues in detail.

The Judiciary Committee is presently considering housekeeping amendments to the whistleblower provisions of the False Claims Act. Under the act, better known as the "Lincoln law"—after its enactment in 1863 to deal with fraud by Civil War arms manufacturers—private citizens with knowledge of fraud can sue the culprit on behalf of the United States, and share in the Government's recovery. Since Representative HOWARD BERMAN and I got amendments enacted in 1986 which revived the act, the Lincoln law has brought $588 million back into the Treasury. The Government now recovers more money through these whistleblower lawsuits than through suits initiated by the Justice Department.

Not surprisingly, Defense contractors hate the whistleblower law. They hate it because it is very effective at exposing their fraud. The law allows honest employees who don't want to be party to their employer's fraud, and who find the Federal bureaucracy lackadaisical in its representation of the taxpayers, to act as citizen attorneys general and make their employers accountable for the fraud.

When we enacted the amendments to the Lincoln law in 1986, I knew we would be hearing from the Defense contractors down the road. It has finally happened. The contractors and their slick lobbyists have descended on Capitol Hill. They are breaking out the crying towels, complaining about how hard it is to cope with the whistleblower lawsuits. A coalition of major defense contractors is pushing for a series of amendments which would emasculate the Lincoln law. They are also pushing a bill to streamline procurement law—which is another way of saying they want to gut much of the procurement reform legislation of the 1980's.

These same companies have paid out more than a half-billion dollars in penalties and settlements for fraud in just the past 3 fiscal years—a quarter of which comes from whistleblower lawsuits alone. My message to the contractors is: Stop the fraud, instead of blowing money on billable hours in futile efforts to gut the Government's antifraud tools.

While I expect companies who feed at the public trough to lobby to weaken fraud statutes, I am always surprised at the extent to which the administration, be it Republican or Democrat, seems more interested in protecting contractors than protecting taxpayers. But my experiences with the Reagan administration, the Bush administration, and now the Clinton administration have all shown me that's the case. The Defense Department is out to protect its contractors, and the Justice Department is out to protect the Defense Department. Which brings me back to Ms. Gorelick.

The Defense Department has been pressing within the Government for amendments which would significantly weaken the Lincoln law—amendments nearly identical to those promoted by the defense industry. I want to know from Ms. Gorelick why lawyers in her office have been advocating amendments which would gut the whistleblower law. I want to know whether she has directed these efforts, whether she agrees with the positions advocated by her office, and whether she will press the same antiwhistleblower agenda when she gets to DOJ.

This is especially important given the current lack of leadership on these issues at DOJ. While the Attorney General and her chief deputies all pledged to reverse the previous administration's hostility to whistleblowers, their actions speak louder than their words. So far, the Department has shown itself to be more responsive to the antiwhistleblower sentiments of career lawyers burrowed into the bowels of the civil division, and to the defense industry's protectors at the Pentagon.

I want the change in leadership at the Justice Department to accomplish a change in policy on fraud and whistleblowers, not a step back in the other direction.

I yield the floor.

BALANCED BUDGET AMENDMENT

The Senate continued with consideration of the joint resolution.

The PRESIDING OFFICER (Mr. ROBB). Who yields time?

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho [Mr. CRAIG].

Mr. CRAIG. Mr. President, I yield to the senior Senator from Virginia 10 minutes.

The PRESIDING OFFICER. The Senator from Virginia [Mr. WARNER], is recognized for up to 10 minutes.

Mr. WARNER. Mr. President, I thank the managers of the bill.

Mr. President, I am in somewhat of an awkward position in that I had hoped to submit this amendment yesterday. Unfortunately there was a unanimous-consent request of which I was not aware and I accept the responsibility for not having gotten the amendment in a timely manner. At an appropriate time in the course of this debate, I will try to prevail on the managers and, if necessary, the Senate as a whole to consider the wisdom of this amendment.

Mr. President, the balanced budget amendment, which I support, provides some flexibility with respect to Federal budgeting in time of war.

Section 5 of the proposed constitutional amendment says that:

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

It also says that those provisions:

> 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.

In subsequent debate, I will point out the very few instances in which—cer-

tainly in recent history—this country has declared war, despite the numerous military engagements we have been involved in short of such a formal declaration of war. Lives and limbs and the dollars of our Nation can be spent in military engagements, and have been spent in military engagements many times, without the Congress of the United States declaring war.

That is the specific problem that I find with the underlying balanced budget amendment, which hopefully can be addressed with respect to my amendment.

I am concerned that providing budget flexibility only in the situation of war—that is, where actual conflict has already commenced—is too tight a restriction to serve the Nation's security interests. My amendment would provide wartime flexibility also during a national security emergency declared by either the President or the Congress.

Mr. President, there is a whole framework of laws that have grown up in this area describing what constitutes a national security emergency, and in subsequent debate I will specifically bring to my colleagues' attention those laws and what they are. My amendment tries to make this overall budget amendment, the constitutional amendment, comport with this recent body of law that has grown up here in recognition, Mr. President, of the fact that Congress does not declare wars as it did in times past.

If the balanced budget amendment provided budgeting flexibility only when a war had already commenced, as written, it would be just too late, I say most respectfully to the authors. Modern wars are high-tech, fast-moving, come-as-you-are affairs. In other words, we fight such wars, defend freedom and security, with what we have in our arsenals at the time that conflict arises, with the men and now the women that are in uniform and that are trained, and with the Guard and the Reserves, which are a very important adjunct to our overall national defense.

Once a war has begun, it is too late, with today's technology, to start building ships and planes and ordering the equipment that our brave men and women in uniform need.

We need to provide some budgeting flexibility there for periods of tension or increased threat that may occur in the period before a war breaks out, which would assure that our Armed Forces could prepare and ready themselves to either fight the war or hopefully deter it.

And may I depart on that point?

Very often, our President recognizes the opportunity to deter war, to stop it before it starts, by declaring a national emergency, by augmenting our overall national security, be it calling up the Guard or Reserve, or ordering the materials beforehand, and letting that send a signal to deter that war before it starts.

I just simply say, in all due respect to the distinguished author and managers of the joint resolution, I think the balanced budget amendment is drawn too tightly, and it takes away from the Commander in Chief of the Armed Forces of the United States the opportunity to deter and take such steps that might avoid war, to give him the flexibility to do what he or she, as the case may be, thinks appropriate to deter, through diplomacy and other means, to protect American interest—again, a way to avoid a war as is written into this amendment.

Accordingly, I propose that the budget flexibility that applies under the balanced budget amendment in wartime also should apply in time of national security emergency. We do not, of course, want to simply delegate broad authority to a President to claim, as a matter of just a passing moment with him, that a situation is a national security emergency and thereby escape the fiscal discipline imposed by the balanced budget amendment.

We do not do that, I say to the distinguished author. My amendment would not do that.

My amendment would provide a mechanism that if the President declared a national security emergency for the purposes of the balanced budget amendment, and Congress were to disagree with that declaration, we could, by joint resolution, override the President's waiver for the balanced budget amendment. Thus my amendment includes a set of checks and balances.

In short, while I would give the President the authority to trigger the balanced budget amendment in the event of a national security emergency, my amendment reserves to the Congress the power to decide whether the balanced budget amendment would continue to apply during such period.

So, Mr. President, at the appropriate time, I will discuss this amendment with the managers and hope that I can have it considered by this body as part of this debate. I regret not having included it yesterday in the unanimous consent agreement.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois, [Mr. SIMON].

Mr. SIMON. As the Senator knows, we have an agreement and it would take unanimous consent to permit the Warner amendment to be adopted.

I ask a page here if you could take this to Senator WARNER.

This is from the GAO report of June 1992. This has obviously changed some, slightly. But if you will look at their projections from 1990 down, take a look at defense spending in 1990, 24 percent, you see the squeeze that takes place in defense down to 8 percent.

You know, when you talk about what is the threat to defense in the future, it is this growing cancer of interest, because we are just not being fiscally responsible.

I join Senator WARNER in wanting a strong, adequate, mobile defense. I look forward to working with him. But I just wanted to point that out, because it is one of the realities that we have to face in the future.

Mr. WARNER. Mr. President, I thank the distinguished manager.

Mr. President, I ask unanimous consent to proceed for another 8 minutes, if that is agreeable.

The PRESIDING OFFICER. The Chair would assume that the request would have the time chargeable to the Senator from Idaho.

Mr. WARNER. Mr. President, would it be possible to ask unanimous consent to proceed in morning business for 6 minutes?

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. If I could respond to my friend from Virginia, we have been debating this balanced budget amendment and all day long we have had people coming over to speak in morning business and we have not debated the balanced budget amendment.

I stated earlier today that we had to get to the balanced budget amendment. So I am constrained to object.

How long does the Senator wish to take?

Mr. WARNER. Mr. President, I simply wish to speak on behalf of a group that attended a meeting with the President of the United States this morning to discuss several key issues. But if it is going to be totally disruptive, I could possibly summarize my remarks in 2 minutes. I think I have maybe 2 minutes, Mr. President, under my current time allocation.

The PRESIDING OFFICER. The Senator has 1 minute and 37 seconds remaining on the time yielded to him by the Senator from Idaho.

OUR INTELLIGENCE SYSTEM

Mr. WARNER. Mr. President, a group of us from the leadership met with the President this morning with reference to the very serious case involving our intelligence system. We had a thorough discussion on that.

This Senator has not spoken out, even though I am vice chairman of the Intelligence Committee, about the Ames case. And I will continue to withhold my thoughts on it because, believe me, we should maintain a tight lip for fear that somehow a statement made by, say, a person in my position on the Intelligence Committee or others could jeopardize the criminal procedures to which these two defendants, the Ames family, should be accorded under the laws of this country.

It would be a double tragedy if, for some reason, through statements made or other actions, we would jeopardize the criminal process in this case so that due process is not fully met and accorded these individuals.

I do not say it on behalf of the individuals. I say it on behalf of this country. This has been a tragic case and it would be a double tragedy if somehow they got off as a consequence of statements.

I would also add that I recommended to the President and the group at this meeting that it is incumbent upon myself, the chairman of the Intelligence Committee, and our two counterparts in the House, together with other members, such as Senator COHEN, who has taken an initiative in this area, to draft a law which will change, perhaps not completely, the manner in which we currently—could I ask of the managers another 1½ minutes?

Mr. SIMON. I yield 1½ minutes of my time to Senator WARNER.

The PRESIDING OFFICER. The Senator is recognized for an additional 1½ minutes chargeable to the Senator from Illinois.

Mr. WARNER. I thank the distinguished manager.

Let me repeat the statement.

It is incumbent upon those of us who have the responsibility over the respective Intelligence Committees of the two bodies to work with the administration in drafting a statute which will change, perhaps not completely, but change the manner in which we maintain a check and balance on our own persons in that system—not a wholesale invasion of their personal lives. But if a U.S. citizen is going to serve in the intelligence business, voluntarily, then I think they will have to consider, particularly in these most sensitive portions of our intelligence like counterintelligence, they will have to accede to a greater degree of monitoring of their personal lives so as to preclude ever again the American public awakening to see individuals in these high positions, such as the Ames family, conducting their lifestyle as has been reported.

I felt the meeting was a very encouraging one on several aspects. It is a continuing opportunity for this body to consult with the President and his chief advisers on matters of great sensitivity to this country.

I thank the Chair and I thank the managers.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, I yield myself as much time as I may consume.

The PRESIDING OFFICER. The Senator is recognized accordingly.

Mr. SIMON. Mr. President, just commenting on the last item that Senator WARNER commented on, way back when, I served in military intelligence in the Army. I do not think there is any question that the CIA has to monitor the personal finances of people who work for the CIA. If there is anyone who is working for the CIA and is showing a very lavish lifestyle, serious questions have to be asked. That is just basic in intelligence, but the basics have not taken place.

BALANCED BUDGET AMENDMENT

The Senate continued with the consideration of the joint resolution.

Mr. SIMON. Mr. President, since 1980, we have spent $1.7 trillion, I regret to say—$1.7 trillion—on interest. In the next 5 years, we will spend $1.7 trillion on interest. We have to change those habits. We spend $800 million a day on interest. That would pay for more than the entire annual Federal budget for Amtrak.

That would be about the same as the annual budget for the FDA. These are fiscal 1994 figures.

That is one-fourth of the annual budget for our WIC Program that provides so much help to so many women and infants.

It is 44 times the annual operating budget for Yellowstone National Park, which we spend each day in interest for which we get nothing other than higher interest rates.

And one-forth the annual budget for Head Start, for interest; we get nothing for it.

Clearly, we have to do something. With all due respect for my friend from Nevada, the Reid amendment will not do anything. The Reid amendment, in fact, if it had been in effect all these years would not have reduced the deficit one dime. This morning's New York Times, in an article by Adam Clymer, says,

> The substitute version—

referring to the Reid version—

> was intended to serve as a political figleaf that would allow some Senators to vote for the measure and then, after its near certain defeat, vote against the original version and still tell constituents they had supported a balanced budget amendment.

That is the story right there. That is what it is, otherwise, the sponsors would not have requested that we have to have 67 votes to adopt the amendment. It is the first time we ever had that kind of request.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. SIMON. I will be happy to yield for a question.

Mr. FORD. Mr. President, the Senator from Illinois, my distinguished friend, is accusing me as a cosponsor of the Reid amendment as being a stalking horse. I assure him that I am not. I intend to get every vote for that resolution that I possibly can. So I do not care what is read in the paper or what you read into the RECORD. I want my personal record to be there that I am not giving you or anybody else cover to vote for this amendment. If you want to vote for the amendment, which I think is better than yours—and I am not shopping it to see if I can get something on it to get a few more votes.

I just want to clear the record, Mr. President, regardless of what you read in the newspaper—we just heard our distinguished President pro tempore fuss a little bit about the news this morning.

I just wanted everybody to know this is not a cover for everybody. This is a legitimate resolution that is put forward for my colleagues to consider. If they like it better than the Simon resolution, well and good. If they do not, we will just take our chances. But I am not a cover for anybody here to vote for this resolution by Senator REID, myself and Senator FEINSTEIN and Senator CONRAD, to give them cover so they will not have to vote for the Simon resolution.

Mr. SIMON. Will my colleague from Kentucky, and I am pleased to serve with him, and we served as lieutenant governors way back when——

Mr. FORD. You will be telling how old we are. Be careful.

Mr. SIMON. Will my colleague recall any other time we had an amendment offered where the sponsors of the amendment requested that there had to be a 67-vote approval for the acceptance of the amendment?

Mr. FORD. This is a stand-alone resolution. I have never heard of any other constitutional amendment being shopped around like any other piece of legislation to see what you would like to have so I can get enough votes. You call ours a budget amendment light, or something. I am not more lighter than you are. You do not have enough votes. You are light; you do not have enough votes for adoption of your amendment yet. If you are going to call ours light and start making light—l-i-g-h-t—of it then I think I ought to be here to defend myself, and I will be in a few minutes.

Mr. SIMON. Mr. President, when I referred to his budget amendment light, I was not referring to the votes, but I was referring to the substance of it. When the amendment says that you have to balance estimated outlays and estimated receipts rather than real outlays and real receipts, that is fairly significant.

When the amendment also says you can have a capital budget and for State governments and local governments, that frequently is necessary. At the Federal level, we have no project that requires that. The biggest project in the history of humanity has been the Interstate Highway System. Because of a Senator by the name of Albert Gore, Sr., we did not, as President Eisenhower requested, issue bonds. But Albert Gore, Sr., said, "Let's have a tax increase and do it on a pay-as-you-go basis."

That is what we ought to do. That is what GAO has suggested. We ought to divide within the budget investment and operating expenses, but they make very clear it would be a disaster for the country to start down the business of saying, well, capital projects—that means highways, airports, all kinds of things that would be there.

This amendment by my friend from Nevada has no muscle, has no teeth. We are going to gum the deficit down with this one. It has no teeth at all. Our amendment says if you want to increase the debt, you have to have a three-fifths majority. That is tough. Senator BYRD says it is too tough. I think it is realistic. I think it has to be tough, otherwise it becomes meaningless.

Finally, this proposed amendment mentions the Director of the Congressional Budget Office in the constitutional amendment. It talks about the Federal Disability Insurance Trust Fund in the constitutional amendment. The Constitution does not mention the Secretary of State or Secretary of Defense or other offices. We should not be doing that.

In just 2 final minutes I want, Mr. President, to talk about something else. I do not recall whether the Presiding Officer was here when we had the New York City crisis. But people said: "How come someone did not warn us?" And then they had to make dramatic cutbacks. Some of the programs for the poor, for example, were cut back 47 percent.

We are here warning you right now for the Nation—and unlike New York City, which has the umbrella of the Federal Government, there is no umbrella for the United States of America. Yes, there is the International Monetary Fund if we had minor problems, but not for a country that is one-fifth of the world's economy.

To my friends who are in opposition to my amendment, I would like to speak very directly. Among the labor unions—and I have, by and large, voted with labor unions. Sometimes we have differed, but by and large, I have been a strong supporter because philosophically I agree with it—I can understand why ASFME, some of the governmental unions oppose this because there will be some diminution of the numbers of people working for the Federal Government. I do not think there is any question about that. That is true short term. Long term, I think those employees will be well served by this so that we do not spend the money on interest and we can be spending the money on other projects. But I can understand that.

But for the construction unions and the industrial unions, they get absolutely nothing out of this continued deficit. When the New York Federal Reserve Bank study says we lost 5 percent GNP in 1978 to 1988 because of the deficit and CBO says 1 percent is 650,000 jobs, that is 3¼ million jobs. I cannot tell you how many of those jobs are UAW jobs or Steelworkers or in the construction trades. But there is no question we lost hundreds of thousands of union jobs because of that deficit.

When the Wharton School of Economics a week ago yesterday, in their report, says if this is adopted, their prediction is that 30-year bonds will drop from 6.5 percent to 2.5 percent, that would be a bonanza for home construction and industrial investment in this country. Clearly, among the major beneficiaries if this is passed are those who are members of the industrial unions and the construction unions.

Then when we spend money on interest—and this past year, past fiscal year we spent $293 billion. That is more than the total budget was when I was elected to the House of Representatives. Of that amount, much of it we spend here, but it is not countercyclical, like money we give, for example, to someone on Social Security. Someone on Social Security who receives $800 is going to spend $800. Someone who receives money from a Treasury bill will spend it if it is a wise investment. But if things look like they are shrinking, the economy is shrinking a little bit, they hold on; they save it. Plus 17 percent of those holdings are held by foreign individuals and foreign governments, and that is the public acknowledgement. There are those in addition to that 17 percent who, primarily because of domestic laws in their countries, hide it, but 17 percent is there for sure.

That means of the money we spend for interest, about $60 billion every year goes overseas or to other countries. That is money that does not create any jobs in this country. That is just a drain on our country. It is a drain that we ought to stop.

In terms of those who fight for those who are less fortunate, for the poor in our country, the reality is, as the GAO points out, as interest grows as a larger and larger part of the pie, that squeezes out our ability to respond to the needs of the poor.

In the Concord Coalition study—and I have to say I have been impressed. While I do not agree with every recommendation they make, I have been impressed with the solid work they do in their economic studies—they say because of the deficit we have not had the industrial investment we should and the loss in productivity has cost us to the point where today the average American family gets $35,000 a year. If we had not had the deficits, it would be $50,000 a year. And again, 3.75 million jobs. If we had something up here to create 3.75 million jobs, we would be overwhelmed with people fighting for it.

I think it is important that we continue our effort to save those jobs, and the only way you are going to do it I think is with a balanced budget amendment.

Look at the area of education. In the last 12 years, in inflation adjusted dollars, education has been minus 8 percent while interest has gone up 91 percent. What if 12 years ago we had had a balanced budget amendment? I think education would have grown. Certainly interest would not have grown as it did. It would have given us the flexibility to do some things.

Finally, for senior citizens, because there is a concern, we are protecting, according to Bob Myers, the Chief Actuary for 23 years of the system—and I just read a statement by Senator MOYNIHAN, a letter to the editor he had in the Washington Post where he said he really learned a great deal about the Social Security System from Bob Myers—Bob Myers says the only way to protect Social Security trust funds is to have a balanced budget amendment.

I think we have to do the responsible thing. I think we need a constitutional amendment. I believe we are heading for one. Whether we are going to do it next Tuesday or not, I do not know. I hope we do the responsible thing and pass it Tuesday.

I was on a program last night with my colleague from Nevada, Senator REID, and he said it is coming. I would keep in mind what Senator HATCH said on this floor yesterday and what Senator BROWN of Colorado said the other day, that if we do not pass a moderate constitutional amendment as I have proposed here, together with many of my colleagues, the next one that passes may be much tougher than this. We have something I think is balanced, it is in the best interests of the country, and I hope we will do the responsible thing and pass it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I yield 20 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for up to 20 minutes, the time chargeable to the Senator from Nevada.

Mr. FORD. Mr. President, I thank the Senator from Nevada for allowing me this time.

I support a balanced budget amendment and always have. The borrow and spend policies of the past must not continue. We all know that. The ability to expand our economy and provide job opportunities for this and future generations, much less provide for a nation that can function beyond simply servicing its debt, absolutely depends upon bringing the deficit under control. I think that my friend from Illinois would agree with this sentiment and I agree in principle with his amendment. I think that the Senator

has done the Nation a great service by his tireless work on behalf of this serious matter. However, there is room for improvement in most things including, the original language of Senate Joint Resolution 41.

It is the job and the responsibility of the Congress to control the spending of our Nation. Unfortunately, we have abandoned this role, to a large degree, by running large budget deficits during normal times. By normal times I mean not during war, or recessions. This practice is not only fiscally irresponsible, but with the huge debt we are now passing along to our children, it has become morally irresponsible as well. We as a congress and, being the representatives of the people, as a nation must begin to regain control of our spending policies. We need something that forces us to do this. An amendment to the Constitution would do just that. While one law can be changed by passing another law, this legislation would make fiscal discipline mandatory.

However, the Congress must not pass the buck once again by relinquishing control of the budget all together. Congressional control must be maintained and our amendment does just that. Deficit spending by itself is not the problem. The problem is chronic deficit spending in good times not just bad ones. Furthermore, we are not borrowing at the present time to rebuild infrastructure by building roads, airports, or an information super highway. Nor have we been borrowing for the last 30 years to bring a faltering economy out of recession or prepare for war. We have had the need from time to time during that period and during these periods, borrowing represents sound fiscal policy. During times of war or economic downturn, these policies help the economy and help our Nation as a whole. But this is not what we have been doing at all. What we have been doing is borrowing to pay the interest on previous debt.

Let me put this in terms that every American can understand. When a company decides to expand or buy more efficient equipment, it generally borrows the money, knowing that this investment will more than pay for itself in the future. The profit earned is used first to pay off the loan and the extra is kept as income. The key word in all of this is invest. Investment as our President has been saying for some time is good, it provides benefits in years to come. We invest a great deal of money on the Federal level, upwards of $200 billion. This money is well spent and will pay dividends to our children and their children. When we build a highway, it increases economic efficiency and activity, real dividends that pay off in real jobs and increased incomes. Congress should not cut off its nose to spite its face. Our amendment protects this vital investment portion of spending. It keeps responsibility with the Congress and gives us the flexibility that we need during hard times and the discipline we need during the good ones to manage the budget in a responsible manner.

Let me get back to my example of a business borrowing to expand or upgrade its facilities. Bad fiscal policy is when all of the profits earned from the improvements are frittered away on other expenses, and the loan is never repaid. When this happens, the situation goes downhill fast. If the belt is not tightened and the loan is not paid off, the company, no matter what, will go bankrupt. It can borrow more money for a time but eventually it must pay off its loans or the banks will eventually turn that company down. We are a nation that is getting perilously close to that last loan. We are borrowing not to invest for growth, but instead simply and irresponsibly to pay off interest on past loans. All the while our debt continues to mount and we have nothing to show for it. This is the type of behavior that must be stopped and our amendment is the prescription for this sickness. It stops the bad borrowing but keeps the Congress in control of investing in our Nation's future.

Our Founding Fathers placed the country's purse strings under the explicit control of the Congress. Our amendment keeps the control here. The judicial branch of Government has no business deciding on what program should be cut or what revenue should be raised. That is our responsibility. Our amendment keeps that responsibility right where it belongs. I won't talk on this point too long because, I think there is complete agreement among us on this point. However, I cannot stress enough that we in the Congress must make the hard choices, and if we do not our amendment calls for an internal solution. Should this happen, this legislation calls for uniform cuts; with everyone and every program paying equally. That is fair and just and it would be a congressional action.

Let me speak on another matter of grave concern to many of our citizens. That is the sanctity of the Social Security system. Many years ago, our Nation made a pact with its people to help them in retirement, whether that be in old age or by disability. Our amendment respects that agreement, in fact it reinforces it, makes it stronger, safer and more secure. This amendment has a lot to do with responsible action and nowhere is that needed more than on dealing with Social Security. It is exempt from our amendment, thus securing and fortifying its position as a separate trust fund. Neither receipts nor outlays will be counted as part of the budget under this provision. As my friend, and colleague from North Dakota [Mr. DORGAN] has pointed out, "the Social Security system is not causing the deficit." Its revenues and surpluses should not be used to mask the deficit nor should its outlays be counted as part of expenditures. Our proposal protects the sanctity of this most vital program.

In closing, I would like to stress just how strongly I favor a balanced budget amendment, but it must be the right amendment and our amendment is it. I have supported and continue to support my colleague from Illinois in his efforts to control Federal spending, however, our proposed changes make this a more honest and more workable amendment. Surpluses in trust funds whether it be for airports, Social Security or highways, will not be used to mask the true size of the deficit. And, equally important, it will allow Congress to maintain the flexibility needed during wars or recessions while protecting our capital investments and curtailing our practice of borrowing to pay interest on past loans.

Mr. President, I do not think anyone in this body with certainty can tell us what will happen in the future if we have a balanced budget amendment to our Constitution. I do not think we can say with certainty. And so with uncertainty, we get all the horror stories. And all the horror stories if this does not pass; something is going to happen. If it does pass, some other things are going to happen.

The implementing legislation that is required, if and when a balanced budget amendment passes, will give us some idea and eliminate some of the uncertainties, but that will be the legislative branch prerogative to pass the implementing legislation. So I wish to kind of put a little oil on the water if I can as to all the uncertainties we have been hearing about in the last few days.

We also hear the horror stories that if the Simon amendment passes, the courts will become the legislative body. Well, we scurried around and I guess now you have the Danforth amendment included in the Simon amendment, because the horror story was that the courts would then become the legislative body of this land. They would tell us what new taxes to impose and what programs to cut or what all new taxes and no programs cut or programs cut and no new taxes. So under the Simon original amendment the courts would have had jurisdiction over the legislative body. So we scurry around and find an amendment that will basically eliminate it. Not good enough. Not good enough because the Reid amendment says only the legislative body.

Well, then we hear we have no way to say to those of us who will make a vote, have discipline because the courts will not. So whichever way you go, you can find somebody on the other side.

It reminds me when I was president of a civic organization, and we had a question that was bothersome to me. I

turned to the legal counsel for the civic organization, and I said, "Which way should we go on this?" He said, "Mr. President, go either way and we will make a heck of a case out of it." And so that is what I think we find here. Go either way and we will make a case on it.

We eliminate the worry of the courts telling the legislative body that is elected by the people what to do and what not to do, and that was our idea which was finally accepted by the so-called Simon amendment.

In 1983, the Social Security Program was in horrible shape. Everyone in this body understands that we were in real trouble with Social Security. But we all came together in a bipartisan way and corrected the problem with Social Security in outyears. Now they say the only way that you can save Social Security is a balanced budget.

Well, we are still collecting out of my check every month, and I suggest my distinguished colleague from Illinois is having his taken out every month. I do not know what that has to do with a balanced budget except if it is out there you can use it to help balance the budget.

So what the Reid amendment says is that after we have gone through the 1983 labor to fix the Social Security question, we have included in this amendment that we would not touch Social Security. On this floor you hear it. "Don't touch Social Security." Now we are trying to say a balanced budget saves it. That is the only way because they do not have this exclusion in this amendment. In the cloakrooms you hear talk, "We have to save Social Security." And over the lunch table we hear it, "We should not destroy Social Security." So the Reid amendment or resolution has taken care of that problem.

Do you know something, Mr. President? You can sympathize with me over this a little bit. I have heard for days now, and really for years: If 40-some-odd Governors can operate under a balanced budget, why cannot Federal Government? Well, Mr. President, I had the privilege, as you did, given me by the people of my State to serve as Governor. I even had the line-item veto. And the Kentucky Constitution states that the Governor—nobody else—the Governor must reduce expenditures if it is determined that the State would have a shortfall. But if you want to raise taxes, you have to call a special session for the purpose of raising taxes.

Now we hear that we do not want to operate like Governors. We just want to use them as operating under a balanced budget. We are going to give you an opportunity to say that you do not want to operate like Governors. You just want to use them as an image out there that operates under a balanced budget because Governors must operate under a balanced budget. Then we think that is good. But we do not want the Federal Government to do that.

Let us follow the State procedure, if it works. And it is simple. I operated, as I said earlier, under this procedure. We had an operating account and a capital account. I never vetoed a budget. I never exercised the line-item veto in 4 years. And I left $300 million in surplus. Pretty good, I thought, a lot better than we are doing here. We had the operating account and we had the bond issue. We have T bills here. Whatever the legislative process is, after the amendment is approved or disapproved, if it is, right now they are a little bit light. They call our amendment light. But they are light in votes, and they are struggling now to try to figure out a way to get some more. They are condemning our proposal because it has, in my opinion, more common sense in it than theirs.

So we had our operating account. We had our bond issue. We had the payments to be made out of the operating account. We paid it. We had a balanced budget. We had a surplus. Our estimates were pretty good.

If we had not gotten the agreement, as we now have, to vote next Tuesday at 3 o'clock, and then 4 hours later on the second amendment, we would have had the opportunity to vote on each one of those amendments to the Simon amendment, because many in this Chamber felt the Simon amendment did not include the exclusion of the courts. That is one. Social Security is another. You would have the operating and capital construction accounts to vote on up or down. And we would have had to vote on each one of those separately. We would delay moving towards a balanced budget, and the delays would have been, I think, helpful to those that oppose a balanced budget.

Mr. President, I interrupted the distinguished Senator from Illinois [Mr. SIMON], awhile ago when he was reading from the newspaper that this amendment is just a stalking horse to give cover to those who want to vote for a constitutional amendment that probably will not pass, and then that gives them a reason to vote against Senator SIMON.

Let me clear everybody's mind. I am for a balanced budget amendment. And I intend to vote for a balanced budget amendment, and maybe two before next week is over. But some ideas around here might just be worth looking at for a moment. There might be a moment. If you look into the future and how we are going to operate, this may be a pretty decent idea to try.

I hear that, "Oh, well, if we are going to vote for this, we will not have to do anything for 7 years." I thought we were under a budget constraint now. I thought we had caps on our budget now. I thought this was the third straight year of deficit decline, unprecedented in the last 31 years since Harry Truman. I thought we would have to continue to do that even though we required 2001 to have the budget balanced or begin that process.

I think this is a way we can do this to accommodate most people, rather than take the position that it is this way or nothing. I come from the State of Henry Clay. Henry Clay was a great compromiser. Henry Clay described compromise as "negotiating hurt"—negotiating hurt. You had to give up something most of the time that you really did not want to, and it hurt to give it up. But for the sake of progress, for the sake of bringing a consensus together, compromise is a pretty good thing.

So, we offer to the colleagues in the Senate the ability to say, we are not going to disturb Social Security. I do not care what you say about a balanced budget as long as you take it out of your paycheck and put it into a Social Security account. That is where it belongs.

We talk about capital construction of the highways. We are taxing now and not spending it. We are not spending it. We have billions; a $15-, $17-, $18-billion surplus in the highway account. We are not spending it.

Talk about airports capital construction; 10 percent of every ticket that is purchased goes into the airport improvement trust fund. There is $7, $8 billion in there not building airports. What is a balanced budget going to do for that? We are already charging the tax.

We can have our operating account. We can have our capital account. Some say that we ought to balance the Federal budget like we do our house account or our budget at home. We have an operating account at home. That operating account is the amount of income we have. We buy a car.

We can buy a car, maybe not a luxury car, but one within our means and what we can pay for. We decide we want to buy a house, and it may not be a mansion, but it is what we can pay for. What we should have in an operating account is our income. We make those payments on those capital investments that we have, and we keep our operating account balanced. I do not see anything wrong with it. If Governors operate that way—and some are beating their chests saying if Governors can do it, we can do it—here is how Governors do it. I operated under it. I understand it. I had a veto of the budget; I had the line-item veto; all of those, when I was Governor. We operated out of an operating account and out of a capital account. It was in the budget. We made our payments and we had a surplus.

I do not understand why that is not at least tickling the interest of some folks. But we are rigid right now. "It is ours or nothing." Well, you may just get nothing, with a capital "N." And

you are light right now on votes. If you are light on votes, why not look at something that will be workable, because you will get some votes for this one. With the others, you might just pass this amendment. But the way you are going now, you are light by several votes.

My colleague keeps talking about taxes. I do not know that this brings new taxes. That one does. That is all I have heard is "the courts imposing taxes." Yes; we will have to pay taxes. For the Simons resolution, the report was $570 in new taxes per individual in my State. If you want it, I will get it and give it to you. Everybody quotes the paper around here. I will give you an article out of the paper. They do not necessarily have to be true, but we sure do quote them. So all of this propaganda is being put out.

So I hope that those who are so rigidly stuck to one amendment could at least give this one a little read; look at it a little bit. We take care of depression; we take care of war; we take care of those things. I think it is important that we have the opportunity to put something in place. If you are going to tinker with the Constitution now, give the Constitution something that will work. Give it something that you think would have a chance of working. And then the implementing legislation will set up the procedure whereby we use the operating account, and what is the capital construction, and how do we pay for it? Do we use T-bills for capital and pay the bills off?

We heard the Senator from Illinois say that it was Albert Gore, Sr. that said pay as you go and put on new taxes, and President Eisenhower was saying let us bond it and pay the bonds off. That was a difference of opinion then. So we taxed the payoff; rather than having an operating fund to pay off capital construction, pay off the bond issue.

So I hope that we will give this very serious consideration. I will have other things to say before the vote comes next Tuesday, and I welcome any cosponsors. We have had many come to us this morning to talk about it. We have picked up a good many votes today. We are further away from passing this amendment than Senator SIMON is, but if we combined our efforts, we would pass it.

You say I am a stalking-horse? No; I am not a stalking-horse. You say I am trying to give people cover. No; they are not getting cover from this one. We have a legitimate proposal to be given to the colleagues in the U.S. Senate, that they can go back home and say: I voted for a Constitutional amendment to balance the budget that is doable.

The other one is, you either eliminate or increase taxes, or both. I do not think this one puts you in the posture of raising taxes. That is a great, great difference, in my opinion. I have been listening very carefully as to raising taxes and how much new tax it is going to cost to pay for the Simon resolution, and I think it is time we take a step back and look at an opportunity now to have a balanced budget amendment. I do not have the words to get you out on the edge of the seat or the ability to say, boy, that is it. I just do not have that ability.

I do believe sincerely that we have an amendment that is important, an amendment that should be considered, and maybe, just maybe, we can put our two groups together and say that we have a resolution here that could be doable; it is workable, and we could vote for a balanced budget, and the future of Senator SIMON's unborn grandchildren will be saved.

I yield the floor.

Mr. REID. Mr. President, if I can ask my friend from Idaho a question. It is my understanding that Senator MURKOWSKI is going to speak now.

Mr. CRAIG. I believe he is en route.

Mr. REID. Senator CONRAD is in the building. We have arranged for Senator MURKOWSKI to go first, but if he is not here, perhaps Senator CONRAD can speak first.

I ask that the time run against the three floor managers.

The PRESIDING OFFICER. Who yields time?

Mr. FORD. I suggest the absence of a quorum, with the time divided one-third/one-third/one-third among the floor managers.

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. REID. 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. REID. Mr. President, I yield 30 minutes to the Senator from North Dakota.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator from North Dakota [Mr. CONRAD] is recognized for up to 30 minutes.

Mr. CONRAD. I thank the Chair and I thank the Senator from Nevada.

I thank him for the time. But more than that, I thank him for authoring this amendment which I think is now the only amendment that has any chance of passing this Chamber.

Mr. President, the other day I took the floor and explained to my colleagues why I believed there had to be specific changes to the Simon balanced budget amendment for it to have a chance of passing.

It is well known that I am one of the swing votes with respect to this question. Senator REID from Nevada is recognized as one of the swing votes, and there are others, on the question of whether or not any balanced budget amendment would pass the Senate of the United States.

Let me make clear I believe there is a need for a balanced budget amendment. I believe there is a need because when I look at what has happened over the last decade, I conclude that additional pressure is needed for us to finish the job of getting our fiscal house in order.

Mr. President, I have brought with me several charts to illustrate that point.

This chart shows the deficits from 1980 to the year 2004 as a percentage of our gross domestic product. And it shows during this period what happened during the Reagan and Bush years when deficits escalated dramatically and we went up to having deficits that were running over 6 percent of gross domestic product.

Last year we put in place a budget deal that dramatically reduced deficits as a percentage of our gross domestic product. Real progress was made, but, Mr. President, I say to my colleagues, look at what happens as we get past 1996, 1997, and 1998. Then we see the deficit again start to increase as a percentage of our gross domestic product. I think it is an indication that more must be done.

Let me go to the next chart, Mr. President, that shows the gross debt of the United States. I have taken a very long timeframe because I think this is instructive, and I hope people around the country will have a chance to learn what has happened with respect to debt in this country's history.

We saw back in 1940 that our debt in comparison to the size of our economy, our gross domestic product, was just over 50 percent. Then we went into the war years, and debt in comparison with the size of our economy skyrocketed. The United States took on more and more debt as we financed the Second World War, and we left that war with debt to gross domestic product of over 120 percent.

Mr. President, that was the high watermark. Once World War II ended, the United States entered into a period in which debt in relationship to the size of our economy fell consistently. For nearly 40 years, almost without interruption, the debt of the United States dropped in relationship to the size of the economy until we got to the Reagan years, and then we saw the debt start to grow dramatically in relationship to the size of our economy. And look what happened. It shot up. We had gotten down to 34 percent in terms of gross debt compared to the domestic product of this country, and then it skyrocketed until we got over 70 percent.

As a result of last year's budget agreement, we have stopped the growth in relationship to the size of our economy.

So, much was accomplished last year but not enough, not enough because

you can see we are looking at an uptick, and that is going to grow as those deficits compared to the size of our economy grow as a result of the CBO's prediction of what happens once we get past 1998 and 1999. That is why it makes sense to put more pressure on the process to hold down the growth of deficits, to hold down the growth of debt.

Mr. President, yesterday a fatal error was made, I believe, by those advocating the Simon amendment. The fatal error was to agree to limit amendments to the Simon-Craig underlying balanced budget amendment. I had urged the day before not to limit amendments, do not limit amendments, because there are fatal defects with what is before us from the Simon-Craig coalition.

Mr. President, let me just say the situation that we confront now leaves us with a Simon balanced budget amendment and a Reid balanced budget amendment. In my judgment, the only balanced budget amendment that has any hope of passing this body is the Reid balanced budget amendment.

I hope my colleagues are listening.

I think most vote counters know the Simon-Craig amendment as it is before us will not pass. It will fall 3 to 5 votes short. The only amendment that has a possibility of getting 67 votes in this Chamber is the amendment that has been offered to us by Senator REID of Nevada.

Why is that the case? Mr. President, I believe it is the case because central to the Simon amendment is a raid on the Social Security Trust Funds in order to provide for a balanced budget. This is the Achilles' heel of the Simon-Craig amendment. In fact, it is really misnamed. It is not just a balanced budget amendment. It is a loot of the Social Security trust funds in order to get a balanced budget amendment. That is the Achilles' heel of what has been put in front of us by Senator SIMON and Senator CRAIG.

Let me just point out why I say what they have offered us is a loot of the Social Security trust funds balanced budget amendment.

Mr. President, Social Security is included in the Simon balanced budget amendment that is before us today. It assumes that we will balance the budget by using the Social Security trust funds surplus.

This chart, Mr. President, shows the surplus in Social Security that is anticipated over the next years, from 1993 to 2004. Look at what the amendment contemplates that is before us from Senator SIMON and Senator CRAIG. It says we are going to take $47 billion of surplus from Social Security in 1993; $62 billion in 1994; $70 billion in 1995; $76 billion in 1996; $84 billion in 1997. That is how we are going to balance the budget. We are going to use the Social Security trust funds surplus to balance the budget.

I hope my colleagues are listening, and I hope they are realizing the implications of what is before us. This is the same old shell game—we are going to use the trust funds to balance the budget.

I will tell you there are an awful lot of Social Security recipients out there who are going to be mighty surprised to find out that when they go to the cupboard to get their Social Security check, the cupboard is bare, and the cupboard is bare because the trust funds have been systemically looted to balance the Federal budget.

Mr. President, we have been doing that and we have been doing that for too long. That cannot be enshrined in the Constitution. That is why the other day I urged my colleagues to permit further amendments to the Simon-Craig underlying balanced budget proposal, because Social Security needed to be taken out for that amendment to have any chance to pass, in my judgment.

Senator REID has done that. Senator REID's proposal does not use Social Security trust funds to balance the budget. They are specifically precluded.

Mr. President, I think all of us remember just a few years ago a President of the United States addressing a joint session of Congress and saying to the Members there, "Don't mess with Social Security." Remember that? He got a standing ovation from all the Members. Oh, how soon we have forgotten, because now we are contemplating a constitutional amendment that would loot the Social Security trust funds in order to provide a balanced budget; in my judgment, a profound mistake and one that will prevent the Simon-Craig amendment from ever passing this Chamber.

Mr. President, that is why I say there is only one balanced budget amendment that has any chance of passing this Chamber and that is the Reid balanced budget amendment.

First, it does not loot the Social Security trust funds in order to provide a balanced budget.

Mr. RIEGLE. Will the Senator yield briefly just for one moment on that point?

Mr. CONRAD. I am happy to yield.

Mr. RIEGLE. I thank the Senator.

I want to commend him for the great importance of his comments at this time. I think the threat to the Social Security trust funds is one of the great dangers in this so-called balanced budget proposal.

The Senator is exactly right in pointing out that under the guise of balancing the budget or trying to, over the last few years, we have been looting the Social Security trust funds and in effect using those balances within the structure of the budget to appear to be paying for other things that have nothing to do with Social Security. And it is wrong that we do that. I think the Senator from North Dakota performs a great service to the country by laying this out. I thank him and commend him.

Mr. CONRAD. I thank the Senator from Michigan.

I just might say, the Senator from Michigan, who serves on the Budget Committee with me, may recall that one night we were in session in the Budget Committee and I asked my colleagues, "What makes us the same as Reverend Jim Bakker?"

I think many of my colleagues remember, Rev. Jim Bakker—Jim and Tammy, who used to have the PTL show on television—is now in a Federal prison. I asked my colleagues why he was there. And there was sort of a silence as people were trying to recall the events that led to his incarceration. And I reminded them that he is in a Federal jail for raising money for one purpose and using it for another. That is why Jim Bakker is in jail.

Under that test, all of us could be in a jail because we have gone out and told the American people we are raising money for the Social Security trust funds, we are running surpluses, so when the baby boomers retire we are ready to pay the bill. But, do you know what? There is no money in the trust funds. There is a piece of paper.

Mr. RIEGLE. Stack of IOU's.

Mr. CONRAD. A stack of IOU's. There is a chit. There is a chit that says, "Well, we will pay you back in the by-and-by, but right now we are using the money for some other purpose."

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

Mr. CONRAD. I am happy to yield.

Mr. REID. Senator FORD, the senior Senator from Kentucky, answered the question here earlier and I want to ask you the same question.

A newspaper reported that those supporters of this amendment were a stalking horse for the leadership. Recognizing the background and the personality of the Senator from North Dakota, are you a stalking horse for the leadership on this amendment?

Mr. CONRAD. I think the leadership would be mighty surprised to find me to be a stalking horse for them on almost any subject. I am somebody that is viewed as very independent around here.

I am a stalking horse for one thing. I truly want to accomplish a mechanism to hold down budget deficits and to move us towards a balanced budget, but to do it in a way that does not endanger the economy of this country, does not harm future economic growth, does not use the Social Security trust funds as a mechanism to balance the Federal budget. I have been opposed to that from day one.

Mr. SIMON. Will my colleague yield?

Mr. CONRAD. I am happy to yield to my good friend.

Mr. REID. As long as it is on the time of the Senator from Illinois.

Mr. SIMON. I would be happy to have it charged to my time. I appreciate the caution of my colleague from Nevada.

The Senator from North Dakota has been a stalwart on the Budget Committee in terms of these things.

Is the Senator from North Dakota aware of the statement by Bob Myers, the actuary for 23 years for the Social Security system, that says the balanced budget amendment that I have introduced is the only protection that the Social Security system can have?

Mr. CONRAD. I am.

If I might just say, on my time, I think he is right with respect to a balanced budget amendment. Of course, he wrote the letter—and I have read the letter, read it carefully—he wrote the letter before the Reid amendment was available to us.

I have enormous respect and real affection for my colleague from Illinois. He has been someone who, by the way, has been rather consistent in his view that we should not use Social Security trust funds to balance the budget.

Mr. SIMON. We agree.

Mr. CONRAD. I know he has been put in a difficult situation here by being part of a coalition of others having different views. I just say to you, I believe this deeply: I think at this juncture, the only balanced budget amendment that has a chance of passing this body is the Reid amendment.

As I said the other day, I was very hopeful that the Simon-Craig amendment would have remained open for amendment so that some of these things could have been addressed. That did not happen. I understand perhaps the reason for it.

But I say to you now, I believe the tide has changed. I believe if one sits down and carefully thinks about where we are, the only chance to pass a balanced budget amendment is the Reid amendment.

Mr. SIMON. If my colleague would yield just once more here.

Mr. CONRAD. I am happy to.

Mr. REID. On the time of the Senator from Illinois.

Mr. SIMON. On my own time, yes, Mr. President.

In terms of doing statutorily what the Senator is suggesting, I would strongly favor that and I have favored it for some time. But to do it in terms of a constitutional amendment, I believe, is unwise for several reasons; one of them being the reality that starting in the year 2024 Social Security is not running a surplus, but a deficit. That means that anyone 35 years of age or younger right now would, if this amendment were adopted, be in some jeopardy.

So I favor statutorily doing that. I do not favor blocking that off in terms of the Constitution because of the long-term implications.

And then I would finally say, the need to pass something. When Senator RIEGLE says it is just a slip of paper that is there, that is what is there for Social Security trust funds right now, called U.S. bonds.

And where are we headed? Every other nation, when we go down that road, every other nation has monetized the debt, had hyperinflation. The most recent example is Mexico. In 1988, they had a 12.5-percent deficit relative to GDP. They had 114 percent inflation. That 114 percent inflation means cutting the Social Security trust funds in half, cutting savings in half, and everything else.

So we are talking about something that is calamitous for the future of our country and, I regret to say—and I have great respect for my colleague from Nevada—that because of the loopholes in the amendment of my colleague from Nevada, I do not think if, it had been in effect for the last 12 years, that it would have saved one dime.

Mr. CRAIG. Will the Senator yield on my time?

Mr. CONRAD. If I might just complete my thoughts, and I will be happy to yield again.

Mr. CRAIG. If you can yield to me on my time, I would like to ask a question.

Mr. CONRAD. Mr. President, we can come back to that. I very much would like to complete my statement and thoughts because I have spent a great deal of time soul searching on this question.

I am convinced at this moment that no balanced budget amendment will be adopted by this Chamber other than the Reid amendment. I think I can count the votes. The Simon amendment is not going to achieve the necessary votes, and it will not because of certain defects.

The first of them I have identified as the Social Security problem. We can talk about 2024. What is happening right now has significant implications for 2024. The Social Security trust funds are running huge surpluses and, under the terms of the amendment that is before us from Senator SIMON and Senator CRAIG, they will use these surpluses to balance the budget. That is, I believe, a profound mistake. Using trust funds to balance the operating budget is a mistake and it is a mistake that will continue until at least the year 2015 or 2020, and beyond that it is hard to project.

Mr. CRAIG. Will the Senator yield on that point? That was the point I wanted to cover.

Mr. CONRAD. I would like to come back because I have a number of other points. I would very much like to come back and hear the thoughts of the Senator.

Let me talk about a matter I addressed the other day with respect to another defect that I see in the Simon-Craig amendment that I think will cause it to fail. That is the matter of using estimates. The Simon amendment in section 6 provides that Congress can implement the balanced budget amendment by the use of estimates.

We have had a bitter experience with estimates. This chart shows the problem with estimates. Gramm-Rudman-Hollings 1985 versus Gramm-Rudman-Hollings 1987 versus the actual deficit. Gramm-Rudman-Hollings for 1985 is in blue; Gramm-Rudman-Hollings for 1987 is in green; and the red bar is the actual deficit. Look at the experience we have had.

For 1986, blue bar: That is what Gramm-Rudman-Hollings said we would experience by way of deficits. That was the law. Instead, the red bar shows what we experienced. Instead of $172 billion of deficits, well over $200 billion, $221 billion.

For 1987: They were pretty close.

For 1988: You can see the variance. Gramm-Rudman-Hollings 1985 predicted; Gramm-Rudman-Hollings 1987 is this level; here is the actual deficit.

Let us go to 1990, where you see the real disparity. Gramm-Rudman-Hollings of 1985 said we would have a deficit of $36 billion that year, and we had a $221 billion deficit. For 1991, the 1987 Gramm-Rudman-Hollings predicted deficits of about $64 billion. Instead, we were approaching $270 billion of deficits.

Mr. SIMON. Will my colleague yield?

Mr. CONRAD. Not at this point, but I will be happy to yield later.

The point is, Mr. President, estimates are the Achilles' heel here. We can make any kind of estimate around here—any kind of estimate. We will bring back the old "rosy scenario" and we all know what will happen. The President will send up a budget that will overestimate the revenue and will underestimate the expenditures, and it will say that we are in balance and we will not be.

Mr. President, that is a very serious problem with respect to the Simon-Craig amendment. I might add, the Reid amendment suffers from some of this same trouble because it, too, uses estimates. I tried very hard to get that part of it changed with respect to the Reid amendment. I failed on that. But I believe that is an Achilles' heel of the Simon amendment. At least, in the Reid amendment, there is a provision that calls for the Congress to institute a system that would allow us to look back and institute across-the-board cuts if the estimates are off. That will provide an enormous incentive not to phony up the estimates.

No. 3: In the Simon-Craig amendment, there is no provision for recession. It would be a serious economic mistake for us to implement a constitutional amendment that would re-

quire a supermajority to take the steps necessary to emerge from a recession. The worst thing in the world you can do if you are in recession is to cut spending and raise taxes. That is the worst thing you can do. That has the potential of turning a recession into a depression.

Mr. President, the Reid amendment wisely has provided an exemption for when we are in recession, and a recession not determined by Congress but a recession determined by the nonpartisan Congressional Budget Office Director based on a specific definition of recession.

The fourth point: The Simon-Craig amendment has no provision for a capital budget. We have heard a lot of talk on this floor that the States almost uniformly have a balanced budget requirement, but what budget are they balancing? They are balancing, almost without exception, their general fund operating budget. In fact, I am told by GAO that 48 States provide for their balanced budget requirement to apply to their operating budget. In practice, according to GAO, it does not apply to their capital budget.

Somebody watching me will say, "What is he talking about; operating budget, capital budget? Why don't they balance all the budgets?" Probably the easiest way to explain it is, when you buy your home, you do not pay for it all within 1 year. You have a mortgage, and that makes economic sense because that house is not going to depreciate, is not going to lose value over time. In fact, it is going to add value over time, in all likelihood. So issuing a mortgage and paying it off over time makes sense. The same is true of governments—State government and Federal Government. When it acquires capital assets, it should not be required to pay cash on the barrelhead for long-lived assets. That does not make economic sense.

The Reid amendment addresses that specific problem. It provides for a capital budget, just the way the States have a capital budget, that is treated differently for the purposes of a balanced budget amendment.

I was talking at noon today to the distinguished Senator from Kentucky, who is former Governor of the State of Kentucky. I asked him: "Senator FORD, when you were Governor of Kentucky, did you have a balanced budget requirement?" He told me he did. And I asked him: "Did you have a capital budget?" And he told me, yes, he did. I asked him if the balanced budget requirement applied to the operating budget or the capital budget? And he said quite clearly, the operating budget.

That is the way the States operate, and if people want to talk about a balanced budget amendment that is the same as what the States have, more than 40 of the States have provisions for a capital budget and they balance their operating budget. Why? Because it makes economic sense. What is before us in the Simon-Craig amendment does not have that provision.

Again, I just want to say, I implored my colleagues the other day: Do not close your minds to the prospect or the possibility of allowing other amendments to the Simon-Craig balanced budget amendment because there are problems with it that we could have an opportunity to correct so we would strengthen it.

Yesterday, a decision was made to shut it down and not have any more amendments. I believe that was a mistake. I believe that killed the chance for the Simon-Craig amendment to be adopted by this Chamber, at least this year.

Mr. President, that is why I believe, as we meet today, the only amendment that has any chance of being adopted by this body is the Reid amendment, and I am quick to acknowledge the prospects are mighty slim, because those who are the advocates of the Simon-Craig amendment probably are not going to budge, just as they would not budge to allow amendments. That means we will not get enough people, who really do want to see a balanced budget amendment to the Constitution, to vote for one.

There is a fifth issue that I identified the other day as being a serious matter, and that is allowing the courts into this whole process. I think it would be a profound mistake to allow the courts of the United States to write the budgets for the country.

Judges are not elected by anyone. Federal judges are appointed; they are not elected. This country believes in having elected people make budget decisions. The Reid amendment excludes the courts specifically and completely from involvement in this process. Can you imagine the possibilities here, Mr. President, if we allow the courts into the process? Why, we will have the 1994 budget decided by probably 1996 or 1997.

Mr. President, I would be quick to acknowledge the Simon-Craig forces have altered their amendment to in large measure exclude the courts. There is still a provision that will allow court determinations on the question of whether or not there is an unbalanced budget. I think we would be better off without that. The Reid amendment specifically and completely precludes the courts from being involved.

The PRESIDING OFFICER. The Senator has spoken for 30 minutes.

Mr. CONRAD. Can I have 2 additional minutes?

Mr. REID. The Senator can have 5 minutes.

Mr. CONRAD. I thank the Senator from Nevada.

We have a weekend here to think this over. I hope we use that time wisely. Right now, we are on a collision course that is going to lead nowhere. Right now, we are on a course that is going to mean the defeat of the Reid amendment and the defeat of the Simon-Craig amendment and will have raised the issue, but we will not have advanced the ball.

Mr. President, there is another possible outcome. The other possible outcome is that people decide we really do need to do something about holding down the growth of debt in this country, that the only amendment that has a chance of passing is the Reid amendment, and that all of us who want to see something done should come over and support the Reid amendment.

The reason, again I say to my colleagues, I believe the Reid amendment is the only one that has any chance of passing is because it does not loot the Social Security trust funds to balance the budget. It does not do that.

It has a provision for dealing with the problem of using estimates. It has an exclusion for a time of recession. It has a provision for a capital budget just like over 40 of the States do that have a balanced budget provision. That makes simple economic sense.

Finally, Mr. President, it excludes the courts so we do not find ourselves in an absurd situation of having the Federal courts deciding the budget of the United States. No one ever elected a judge. No judge in this country, no Federal judge is elected by the people. The House of Representatives, the Senate of the United States, the President of the United States were elected by the people to make those decisions, and we should make them. The buck stops here.

Mr. President, I have thought long and hard about this question. I have enormous respect for the Senator from Illinois. I have worked closely with him on the Budget Committee. I have grown not only to respect his efforts in this regard but to admire him as a person. I also have affection and high regard for the Senator from Idaho. He is sincere about what he is doing. I, too, am sincere. I have reached a conclusion that may be different from the conclusion they have reached. My conclusion is that the only chance to pass a balanced budget amendment is the Reid amendment that is before us on Tuesday next.

I hope those who really do want a balanced budget amendment will think over the weekend. Are they going to make what they view as the best the enemy of the good, or are they going to support an amendment that might actually pass? Are we going to have an issue, or are we going to have an amendment? That is the question.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, if the Senator will yield just for a moment,

someone has handed me a quotation from Leon Panetta. I do not ascribe to this. But Leon Panetta said, "There are going to be some Members who are going to have an alternative proposal in order to give them cover to come out against the Simon proposal." This is the Seattle Post Intelligencer, February 18.

Two questions to my colleague.

Mr. CONRAD. Maybe if I could just answer on the first one——

Mr. REID. This is on Senator SIMON's time, right?

Mr. SIMON. This is on my time, right.

Mr. CONRAD. I can only speak for myself. I think there are those who have that agenda. It is not mine. I am persuaded that the amendment that is before us on the Senator's side cannot win. It is going to fall three to five votes short. It is going to fail, I believe, because of the reasons I outlined. Virtually all of those are addressed in the Reid amendment. I say to you, I implore you to think about passing that Reid amendment. It is the only one, I believe, that now has a chance.

I understand the stalking-horse. Frankly, there are those who have that agenda. I think we should be quick to acknowledge there are some. Not Senator REID, I can tell you that. Not Senator FORD, I can tell you that. They want a balanced budget amendment as much as I do. I think they have reached the same conclusion. There are fatal defects. And, again, I am not sure why the decision was made to foreclose amendments. I understand there is a difference of opinion on that side. But I think once that decision was made, the only balanced budget amendment that has a chance is the Reid amendment.

Mr. SIMON. Two questions. One is those estimates that the Senator has, is it not true where they are way off, those are multiyear estimates?

Mr. CONRAD. Yes.

Mr. SIMON. The reality is particularly if we fail with three-fifths to extend the debt ceiling, those estimates are going to be very, very tight.

Then on the recession, is the Senator from North Dakota aware that since 1962 we passed 11 economic stimulus programs, each one of which has received over 60 votes?

Mr. CONRAD. Yes. Let me say, if I can respond first on the question of estimates; were these actual multiyear estimates? Yes. Were they flawed? Yes. We have seen in every year the estimates flawed. Yes. If we have this balanced budget amendment as outlined by the Senator from Illinois pass, do I believe there will be games played? Absolutely. I saw it every year of Gramm-Rudman, every year the administration came up here with "old rosy scenario" in which they overestimated the receipts. They underestimated the expenses in order just to meet the Gramm-Rudman restriction.

Mr. SIMON. The Reid amendment relies on estimates infinitely more than our amendment, because we have the discipline, the teeth, of saying if you want to raise the debt, you have to have a three-fifths vote.

Mr. CONRAD. Let me be very clear. I tried to be clear in my statement. The Reid amendment also has estimates. I argued against that. I think the use of estimates is a mistake in the one amendment of the Senator from Illinois, as well as his. When I looked at the rest of the Reid proposal, I think it is far superior, and it is the only one that has a chance of passing.

In addition, Senator REID does have the provision to address the question if estimates are wrong. It is not as much as I might like to have, but I say to the Senator on these other grounds that the only one that has a chance of passing at this point, I believe, is the Reid amendment.

Mr. REID. Mr. President, before the Senator from Illinois leaves——

Mr. CRAIG. I have a person waiting who has been here now for a time ready to speak. I will yield 1 minute of my time, and 1 minute only. Let us move.

Mr. REID. I ask Senator SIMON: Are you saying that your estimates are better than mine?

Mr. SIMON. No. What I am saying is, we provide that estimates can be used. But we also provide that revenue has to match outlays, which the one of the Senator from Nevada does not provide; and, second, we provide that if you want to increase the Federal debt, it requires a three-fifths vote. That means that there is real teeth. Those teeth are not in the version of the Senator from Nevada.

Mr. REID. We will discuss this later, Mr. President.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, before I yield to the Senator from Alaska, let me make one brief comment about the figures in the Social Security trust funds that the Senator from North Dakota has talked about.

Mr. President, those trust fund dollars are not here today. They are borrowed out and used to fund current activities of the Government. The reason he chose the year 2003 is that is when he and I are ready, or getting very close to being ready, for our Social Security checks, what happens at that time? The actuarials say some very real things happen at that time. Taxes have to go up to pay for it or budgets have to be cut.

So let us not use the straw or the stalking-horse, whichever one must call it, about the Social Security issue. It is false to in any way argue that either one of these proposals puts the Social Security trust fund in jeopardy. If in the year 2003 this Congress does not choose to raise taxes to fund the checks at that time, those trust funds are in jeopardy. The Senator from North Dakota serves on the Budget Committee, and he knows that. So let us not play games with the Social Security issue.

I now yield 10 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, we would all agree we have the deepest respect with regard to the efforts of Senator REID and those that are supportive of the Reid substitute amendment.

Furthermore, Mr. President, I think we have to recognize that some say we should learn by history, some say in reality we do not learn much. We have heard explanations given of Gramm-Rudman 1, Gramm-Rudman 2, the 1990 budget agreement. But the American people are absolutely bewildered by this witchcraft of budgeteering that is occurring.

The American public looks at their lifestyle in relationship to their checkbook, the reality that they will write a check, and they have enough money to cover that check. And the fact that the Government somehow, through this witchcraft, carries on and accumulates debt.

Now the American public is being told that the interest on that debt is having to be borrowed, and they are asking, where is Congress? And it appears Congress puts forth a convoluted effort to address any alternative other than reducing spending. We have seen the administration's efforts to increase taxes but not reduce spending. But we are faced with an extraordinary opportunity here for the first time to do something that would mandate self-discipline.

My colleagues suggest that we should have the self discipline. We certainly should. But we do not. Otherwise, we would not have accumulated $4.5 trillion worth of debt.

I come from a banking background. I know that interest goes on, night and day. I have said this time and time again. It is like having a horse that eats while you sleep. Now we are borrowing money to pay the interest on the debt, which is 14 percent of our total budget and growing.

Mr. President, I speak in opposition to the substitute offered by the distinguished Senator from Nevada, and I urge my colleagues to reject this transparently flawed substitute. It will never bring us even close to achieving a balanced budget. I will tell you why.

The reason is that it exempts capital investments. I will tell you what those capital investments are, because they are truly staggering, and that is an extraordinary loophole. But first, I would like to draw a picture of today's reality.

I have said it before. The Government is broke. The reason that we have that $4.5 trillion debt, the reason we are today borrowing more than $200 billion just to cover the cost of interest on the debt, is that Congress has always, always, always, found loopholes to avoid the hard decisions needed to balance the budget. We all agree on that. How long can it last? Tomorrow? The next day?

Well, we have seen what has happened to some of the South American countries. We have seen what double-digit inflation did in this country in the seventies. Remember December of 1980. Remember what the prime rate was, Mr. President? The rate at that time, the prime rate, 20.5 percent, inflation running at 11 percent. So for those who say it cannot happen, it has happened. It could happen again.

We have seen the disintegration of the monetary system of many South American countries as a consequence of too much debt, and the inability to pay that debt.

Some of the opponents of the balanced budget amendment contend that it would make it impossible for the Government to respond to an emergency or crisis because outlays and receipts will always have to be in balance. But our amendment, the amendment of the Senators from Idaho and Illinois, is not inflexible.

My colleagues should not generalize about it. They know that in any economic emergency, Congress, by three-fifths majority, can waive the balanced budget requirement.

Mr. President, in the past 5 years, Congress has provided emergency funding in response to numerous natural disasters—earthquake, hurricanes, and floods. Three weeks ago, we passed the largest disaster relief bill in our history—more than $7 billion—to help the victims of the California earthquake.

In every instance where we have provided emergency benefits, some of us supported using offsetting spending cuts, which I think was the responsible thing to do to ensure that the emergency spending would not increase the deficit. And in every case, every single case, Congress rejected these offsets.

Where is the self-discipline? We face emergencies, but we are not willing to make offsetting spending cuts. What do we do? We simply add it to the deficit because it is very convenient to pass the cost on to future generations.

But the American public is starting to wake up and say, hey, how long, how far? They are becoming very concerned.

I maintain that if you left this question to the public, they would say take the medicine now, drop the budgetary witchcraft that is going on. The public understands the revenue stream that comes in. They understand the expenditures. But they do not understand how you can keep spending, because they know if they try that, their checks are going to bounce.

The constitutional amendment that we are debating now would allow Congress to meet any emergency. I am confident that Members of future Congresses will not allow this amendment to prevent us from providing emergency assistance. However, it may put a greater degree of pressure on some Members to find offsetting ways to pay for those emergencies instead of always putting such spending aside and outside the scope of the budget.

Mr. President, during the recent debate on aiding the victims of the California earthquake, I proposed, as an alternative to public funding of Presidential elections, that we have a checkoff on our IRS return. The checkoff would provide the individual American taxpayer with the opportunity of simply checking $3 to go for disaster relief instead of public taxpayer funding for Presidential elections. Well, we had a bit of a bipartisan debate on that and ultimately we failed in that effort. But the point is, Mr. President, that was a way to offset some of the efforts and tribulations associated with disasters such as we have with earthquakes, floods, and hurricanes.

Mr. President, I have heard it said that operating a Government with a balanced budget amendment would somehow harm citizens of the Western States. It is true moving from a $200 billion a year deficit to a zero deficit is not going to be easily done. East, west, north, south, I do not care where you come from. We are all going to feel the pain of withdrawal from our 33 years of addiction. For 33 years we have been running a deficit, out of the last 34.

The American people understand tough medicine. They would rather take it sooner than later. People are ready to make the sacrifice. I have served as chairman of the Veterans Committee, and ranking on that committee.

The veterans have told me they will take an equitable cut, as long as it is equitable—across the board, fair, and equal. I think most Americans are willing to make that kind of a sacrifice. The only way to reduce spending will be to set priorities, saving the most important programs, and cutting the least important ones.

My greatest concern for the West is not the specter of a balanced budget amendment kicking in in the year 2001, but the budget that was delivered to Congress just a few weeks ago. Under this administration, some say the West may not have anything to worry about by 2001, because much that has been taken away from us under the current system has occurred. The only difference is that under a balanced budget amendment, maybe we would not see the same rise in funding for regulatory programs such as the increase for the EPA, which we cannot afford now. It is amazing to me that the majority of the Members cannot understand the merits of having some balance in that Environmental Protection Agency. We should be considering a cost benefit or risk analysis in the process of decision-making, but we cannot seem to come to that.

Without a balanced budget amendment, programs important to the West are being cut right and left. We borrow money to pay for the creation and enforcement of new regulations. The Department of Interior is letting Park Service personnel go by the hundreds and hiring hundreds of lawyers.

Mr. President, I think we can maintain a strong defense under a balanced budget. We can implement a strong resource development policy under a balanced budget, and we can take care of core Government functions like aviation and the Postal Service. Those of us who care about these core functions believe the only way to protect it for our children is to reduce deficit spending now. We must address the realities associated with the increased interest costs we are going to face in a few years, when our interest costs are going to be more than our current military budget.

Mr. President, it is mandatory that we have a healthy country to meet our obligations. It is mandatory that we tell our environmental friends that we need a healthy economy to meet our environmental obligations. I have said the country is broke. If we do not get our finances in line by addressing entitlements, mandatory spending, and distinguish low-priority programs from crucial Government programs, we are going to be looking at cutting the Coast Guard, the Federal Aviation Administration, and Defense.

Mr. President, I want to return to the primary issue before us today: Why we need to change the Constitution to address the deficit crisis. I will run through three charts briefly, because they show the history of the budget agreement failures in the last 10 years. It is interesting to note that every genuine effort made here has failed. During that period, we have had budget summits, reconciliation bills, tax increases, sequesters, minisequesters, and all of those efforts failed to achieve their intended goal—a zero deficit—for the simple reason that we held entitlements off the table and found more loopholes and excuses for not doing the one thing that actually would have worked: Cutting Federal spending.

Chart one shows the promise. Remember Gramm–Rudman 1, which was adopted in 1985? As you can see, Gramm–Rudman was supposed to bring us down to a zero deficit over this 6-year period from 1985 to 1991. From a projected high of $172 billion, the deficit was supposed to come down by $36 billion a year to zero in 1991.

In reality, by 1991, instead of a zero deficit, we had a $269 billion deficit. That is history lesson No. 1.

History lesson No. 2: In the second chart, I have shown the revisions we made in Gramm-Rudman in 1987. We were all enthusiastic about it. In that year, we revised the original target. Quite frankly, this agreement was an even more astounding failure than the original Gramm-Rudman, which certainly was not the fault of the Senators involved but of the Congress. We found enough ways to get around the law. When the deficit was supposed to be $100 billion in the year 1990, in reality, it turned out to be double that. It was supposed to be $100 billion but, in reality, it was $221 billion. Then we move over to 1991. The deficit was supposed to be $64 billion. Instead, there was over a 400-percent increase, and it was up to $269 billion. In 1992, the deficit was supposed to only be $28 billion, and headed down. But, in reality, it was up 1,000 percent to over $290 billion.

Of course, by 1990, it was clear that none of the targets would be even remotely met. So at that time, President Bush entered into a summit agreement and made the mistake of breaking his no-tax pledge. I happened to be down at the White House at the time he made that decision. He was genuinely convinced that if he allowed the tax increase, Congress would respond and reduce spending. It did not work.

The third chart shows how the deficit was supposed to come down by that agreement in 1990. Unlike the earlier budget agreements, this time the deficit targets were allowed to be adjusted and the deficit targets did not include off-budget trust fund balances. This chart shows that, by 1995, the on-budget deficit was expected to be only $83 billion. In fact, the chart shows the actual deficit is nearly 270 percent higher, at $225 billion, over here. Here is the actual deficit, and here was the projected deficit.

Why did all these agreements fail? Because we allowed spending to increase by more than 53 percent, from $990 billion to more than $1.5 trillion. I would also note that these agreements failed because we, in Congress, decided to create budget exemptions for more than 135 different programs. We simply exempted them. We exempted the economic development revolving fund, the check forgery insurance fund, and the Higher Education Facilities Loan and Insurance Program—and that is just 3 of 135 programs we exempted from the cuts.

Mr. President, that is Congress' sorry budget control track record for the past 10 years. The bottom line: Interest payments increased 57 percent, from $136 billion to $213 billion; and the national debt, in 10 years, more than doubled, from $2.1 trillion to more than $4.5 trillion.

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If these trends are not reversed, interest will consume upward of $365 billion—$1 billion for each day—and the national debt will more than double to $9 billion in 10 years. That is our past record of trying to correct this problem. This is why the only solution to the problem is to change the Constitution. It is evident that history speaks for itself.

Mr. President, let me talk very briefly about the Reid substitute. When I first read the language of this amendment I was reminded of the Potemkin villages that the Russian Tsars used to allow foreign guests to visit. These villages gave the visitor the false impression that Russian peasant life was rich and bountiful when, in fact, they were merely facades for show like a Hollywood set. These villages were designed for one and only purpose—to deceive the foreign visitor.

The same can be said of this proposed substitute except in this case it is not the foreign guest, but the American public that is being misled. If this amendment is adopted, we will effectively have abandoned any hope that our Nation's debt and deficit will ever be controlled. For this amendment is so transparently flawed, that it is impossible to believe that it is being offered as a serious alternative to our amendment. If this substitute is adopted, it will be proof positive that this institution will stop at nothing to avoid facing our fiscal responsibilities.

The central element of this substitute is the requirement, and I quote: "the operating funds of the United States for any fiscal year shall not exceed total estimated receipts to those funds for that fiscal year * * *." And in defining operating funds, the substitute excludes so-called capital investments.

What are capital investments, Mr. President? Providing a Federal grant for constructing a bridge would surely qualify. And so would a new aircraft carrier. But the Federal Government makes many more investments that yield long-term benefits to our Nation. In a section of the President's budget, the administration provides its definition of investment outlays. Let me quote from the President's budget:

> Investment outlays are outlays that yield long-term benefit. They take several forms and are made for many purposes. They can be direct Federal outlays or grants to State and local governments. They may be aimed at improving the efficiency of internal Federal agency operations or at increasing the Nation's overall stock of capital for economic growth. They can be for physical capital, which yields a stream of services over a period of years, or for research, development, education, and training, which are less tangible but also increase income in the future or provide other long-term benefits.

Here is the crunch, Mr. President. Capital investments are outlays that yield long-term benefits. They take several forms. They are made for many purposes. They can be direct Federal outlays or grants to States and local governments. They may be aimed at improving the efficiency of internal Federal agency operations. It is wide open. It means just about anything the Government can justify.

So, as anyone can see, the capital investment exception contained in this substitute could be used to effectively take all Government spending off the table for balanced budget purposes. Would anyone in this body disagree that the Head Start program should be considered an investment in our human capital? Of course, it should.

Mr. President, we are down to a time where we must start making the tough decisions. If we do not make them now, the medicine is going to be worse later.

I encourage my colleagues to support the balanced budget amendment because I am absolutely convinced this is almost the last chance we have. If we do not take it now, it is simply going to elude us. The fact is that we have amended the Constitution only 17 times, out of necessity. This is another necessity. The survival of our economic system is at stake here because nothing else has worked.

Thank you. I thank my colleagues and particularly my friend from South Carolina who has been so patient.

I yield the floor.

Mr. CRAIG. Mr. President, let me thank the Senator from Alaska for his outstanding statement.

I now yield to the great Senator who is the original sponsor of this issue, this very important constitutional amendment, Senator STROM THURMOND, such time as he may consume.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I wish to commend all Senators who have joined in on the underlying resolution, Senate Joint Resolution 41. I especially commend Senator SIMON, Senator HATCH, and Senator CRAIG for their great work and tireless efforts on this important issue.

Mr. President, I am compelled to rise in reply to the earlier remarks against the balanced budget amendment by various distinguished Senators.

As everyone in this Chamber and the Nation realizes, there is no greater supporter of a strong national defense than I am. I have supported our military forces in war and peace, while in uniform, and as a civilian for over 70 years. I am always vitally concerned about threats to our defense capability and our defense budget. In my judgment, one of the greatest threats to the long-term security of this Nation is an ever-growing budget deficit. We must have the capability to meet military and economic threats in the 21st century and we may not be able to do so if we bankrupt ourselves now.

It is obvious we will not discipline ourselves without a balanced budget

amendment. Therefore, we must ensure the essential discipline through this amendment.

Let me quote from yesterday's edition of Roll Call, where 250 economists endorsed the balanced budget amendment. I repeat, 250 economists—professionals who closely study economic trends, who know budgets up and down—endorsed the balanced budget amendment.

I want to quote from their brief remarks:

Why do we need the Balanced Budget Amendment now, when no such constitutional provision existed for two centuries? The answer is clear. Up until recent decades, the principle that government should balance its budget in peacetime was, indeed, a part of our effective constitution, even if not formally written down. Before the Keynesian-inspired shift in thinking about fiscal matters, it was universally considered immoral to incur debts, except in periods of emergency (wars or major depressions). We have lost the moral sense of fiscal responsibility that served to make formal constitutional constraints unnecessary. We cannot legislate a change in political morality; we can put formal constitutional constraints into place.

Mr. President, there should be no doubt that we must structure the amendment so that national defense will not be disproportionally hit and that all elements of the Federal budget, including entitlements, be subject to fiscal discipline and responsibility.

Our long-term security is based upon the overall strength of this Nation—moral, economic, and military. In order to sustain our greatness and continue global leadership, these elements must be balanced.

I wish there were another way, but it appears that only with the balanced budget amendment can we sustain the greatness of this Nation.

We have not balanced the Federal budget in 31 years—I repeat, in 31 years, 31 long years. This is proof of the necessity to mandate a balanced budget. The only way to effectively accomplish this is through a constitutional amendment.

Mr. President, the big spending has to stop. How are you going to stop it? We can mandate it. That is the way to stop it. We can compel it. That is the way to stop it. We can require it. That is the way to stop it.

I remember years ago Senator Harry Byrd successfully shepherded a bill through the Congress to achieve a balanced budget, and before the year was out, it was nullified by subsequent legislation which pushed appropriations above the budget.

You just heard the remarks by the distinguished Senator from Alaska, Senator MURKOWSKI, about the Gramm-Rudman-Hollings amendment. One thing has been tried after another. Nothing has worked. You cannot stop it. You have to compel the Congress to do it. They have been spending, spending, spending for years and years.

How are you going to stop it? There is no way to stop it unless you compel them to do it. That is what this amendment does. This constitutional amendment makes the Congress stop spending more than they take in.

I say now is the time, now is the year to adopt a balanced budget amendment. Do it now and not put it off. And do not give excuses. Other proposal have too many loopholes which would swallow up the requirement of a balanced budget. That is hogwash. It will not do it. Our underlying proposal, Senate Joint Resolution 41, is the effective way to balance the budget.

The PRESIDING OFFICER (Mr. MATHEWS). The Senator from Illinois.

Mr. SIMON. Mr. President, will my colleague from South Carolina yield for one question?

Mr. THURMOND. I am glad to yield.

Mr. SIMON. The Senator from South Carolina made the point about our defenses in his opening remarks. As the ranking member on the Armed Services Committee, is it not true that it is impossible to be strong militarily if you are weak economically?

Mr. THURMOND. Absolutely. If we are going to keep a strong defense, we have to provide for it through the economy. We have to stop spending more than we take in or we cannot continue to provide for defense. If we want to protect this country, we have to stop spending more than we take in so we can provide for defense.

Mr. SIMON. I thank my colleague and I appreciate his leadership.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me thank my colleague from South Carolina for a truly outstanding statement from his years of experience here. It was spoken very clearly that this Congress cannot demonstrate its fiscal will unless it is compelled to do so.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I am going to speak now. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Nevada has 53 minutes.

Mr. REID. Thank you very much. I would ask my two colleagues to agree that Senator BYRD can speak at 4:10 and use his time.

Mr. SIMON. No objection.

Mr. REID. Mr. President, the Reid amendment, the amendment that was offered yesterday on my behalf, Senator FORD's behalf, and that of Senator FEINSTEIN, is a balanced budget amendment, but it is one that is not balanced on the shoulders and backs of senior citizens around the United States. It is a balanced budget amendment that is realistic. If a State were asked to live by the Simon amendment, they would all be bankrupt. They could not live the way that the Simon amendment proponents are asking this Government to live.

I mentioned and I mention again that the States have, as Governors have long acknowledged, capital operating budgets. It is a system that works well.

My amendment wants to treat the Federal Government like States are treated. That is not unrealistic. And that includes Social Security being off budget. States have their pension liabilities generally off budget. The State of Illinois, if they were asked to live by the Simon amendment, would be bankrupt before anybody else because they have the largest unfunded pension liability of any State in the Union, I have been so advised.

If we asked an individual family to live by the Simon amendment, only the very wealthy in this country could have a home, unless they wanted to rent it, or could have a car, because you would have to pay cash for it.

Mr. President, the Federal Government over the years has not done a good job of matching expenditures with income. And that is too bad.

This is no better illustrated than by what happened during the years of Presidents Ronald Reagan and George Bush. Now, they tried an experiment—and they were supported most of the time by the Congress—and it was a dismal failure.

We have done pretty well this past year, not great; we have a long way to go. But we have the lowest percentage of deficit to gross national product since 1979; the best in 15 years. Not great, but OK.

There are other good things happening, too. The President has appointed the Kerrey-Danforth Commission. This is a bipartisan commission. Senator KERREY is a Democrat from Nebraska; Senator DANFORTH a Republican from Missouri. They have a significant number of people on this panel that the President has selected, people who are from the private sector.

This is not going to be a quick Government fix that is being contemplated but, quite the contrary, this Kerrey-Danforth Commission is going to review entitlement programs and other mandatory programs and look at alternative approaches to the current tax system. I think that is a laudatory goal.

Some of the people on the commission from the private sector are Bob Denham, chairman and CEO of Salomon Brothers; Ms. Karen Horn, chairman and CEO of Bank One out of Cleveland; Mr. Pete Peterson, chairman of the Blackstone Group; Mr. Richard Trumka, president of the United Mine Workers. There are people from State and local government, like the mayor of Tampa, FL, Sandra Freedman, and the Governor of the State of Colorado, Ray Romer.

I think what is being done is great. We are trying to do something about

having this Government meet its financial responsibilities.

Health care: We all know we have to do something about health care. Health care is bankrupting our country. This year, health care costs in America will go up over $100 billion; not $100 million—over $100 billion. We will not get health care that is one bit better, but it will cost us $100 billion. Total health care costs in our country will exceed $1 trillion this year. Now, if we did something about health care costs, we would do a great deal about bringing spending under control.

So, we are doing some good things. But we are not doing enough, and I acknowledge that. That is why I have offered my amendment—an amendment that is realistic; one that, if passed, we could charge down this slope and do a good job. It is not something that is so unrealistic that it is only to give people cover. Many people who are supporting the balanced budget amendment know that it will never happen, know that it will not help. They have drafted something so difficult, so unrealistic, that they can just say, "Well, it did not pass, but I am for a balanced budget amendment."

I cannot believe that the sponsors of the Simon amendment would not have a Social Security exclusion. Sometimes you lose the ability to understand why things happen.

In 1990, there was a sense-of-the-Senate resolution here that said that Social Security should be off budget. Ninety-eight Senators voted to take it off budget. It is off budget. But yet, we know that now the Simon people are thinking, "Well, we will do it by legislation." Unrealistic again.

So we need to proceed with a realistic budget amendment. As so clearly stated by my friend from North Dakota, Senator CONRAD, we need to do more than have budget by sound bites. Little, quick, catchy tunes that the TV stations love and the newspapers pick up. We need to have a realistic amendment, and that is what we have, a balanced budget amendment.

I am very disappointed. I frankly thought that my friends on the other side of the aisle would like my amendment. But I was disappointed to read an AP wire story by David Espo that quotes my friend from Idaho, the senior Senator from Idaho, that he and other Republicans would vote against REID's amendment.

Let us have my amendment. It is realistic. If it passed, we could do something to balance the budget. It would happen quickly. But we do not need to balance the budget on the backs of senior citizens.

I had here a chart yesterday talking about my amendment and Senator SIMON's amendment. I will talk about it again today.

First, my amendment excludes Social Security. We have heard a lot here that the Senators who were sponsoring the Simon amendment say they are going to take care of Social Security; if you do not believe it, we will give you a quote from a man by the name of Myers.

Well, let me give you a quote by a man by the name of Ball. There is nobody in the country—and I say no one without any reservation—that knows more about Social Security than Mr. Robert Ball. He served as Commissioner of the Social Security System under three Presidents, under President Kennedy, President Johnson, and President Nixon. Here is what Mr. Ball said about Mr. Myers and of the promises of those that are seeking the Simon balanced budget amendment that they will somehow save the senior citizens through legislation. During hearings last week he said:

> In fact, I do not think any of us has a reasonable way of knowing what future Congresses would do. And we are talking about a constitutional amendment which will stand perhaps forever, at least a long, long time. And to judge that they will not take actions that are permitted and quite with great pleasure to take them because of what Mr. Myers characterizes as reasons for not moving, I think he is really quite naive.

He says, this will not happen, that they will not touch Social Security after a budget balancing amendment is passed, because it would be against integrity, logic, and fair play. It would, but the pressures would be extraordinary. I believe it would put at great risk the monthly benefits of 42 million people who are currently receiving benefits and the benefits of millions more who are working and building credits for future benefits.

In 1993 alone, 134 million earners worked under Social Security. Practically every American family has a major stake in the program.

You see, Mr. President, this is not just a program for people with white hair. This is a program for every American family. It is hardly a special interest group to be defending Social Security.

Mr. Ball continues:

> The program today keeps 15 million people out of poverty and millions more from falling into near poverty. But what is frequently overlooked is it is much more than a poverty program. It is the only retirement program for 6 out of 10 workers—

60 percent—

> in private industry and the base on which private pensions are built for the other 4 out of 10.

The other 40 percent.

> Social Security is family insurance as well as a retirement plan, life insurance protection under Social Security.
>
> It pays nearly 3 million children each month. And, of course, there is also protection against loss of income because of disability.
>
> The protection of young families is very significant. All this protection; retirement, survivors, and disability insurance, would be put at risk, if this constitutional amendment were passed, in my judgment.
>
> The amendment provides a great opportunity for those who favor cutting Social Security and radically restructuring it. Social Security is self-financed and responsibly financed. It has had no part in creating the deficit and the staggering debt. It has always paid its own way.

Now, anybody come here and tell me this amendment is a stalking-horse for the leadership. I am offended that people would say that. This is an amendment that protects the Social Security system of our country, and my friends on the other side of the aisle, rather than spitting it to the New York Times, should be spitting it to the senior citizens of this country and work to pass this amendment.

Second, this amendment that I am sponsoring with Senators FORD and FEINSTEIN has a separate capital budget, as I mentioned. It would treat our budget like the very successful programs we hear the Governors brag about all the time. Should we have less? Our implementing legislation says if we do not do it, we will assign an officer of this branch of Government to make across-the-board cuts.

Third, we have a recession exemption that is also reasonable. If there are two quarters of less than 1 percent growth, then we can spend and/or reduce taxes and keep us out of the depressions that faced this country all last century and the first part of this century. Since 1929, we have avoided depressions because of the ability of the Government to help in times of crisis. Where we went wrong is we did not save our money during the eighties when we had economic times so good and there was not a war.

Also, I want to talk about another very important difference between my amendment and that of Senator SIMON. I have not called their amendment a phony, I have not called it a sham and the other words that they have tried to spin on the people who have offered this amendment and the people who support this amendment. But I will just tell you the facts without any illustration of what term of art could describe it.

The amendment offered by my friend from Illinois and others, everyone should understand, has in it the words "fiscal year" without any definition. What does that mean? Can you change it legislatively 1 day each year, 1 month each year? This amendment is worthless because the legislative body could change it, as has been done around here with paying people their retirement benefits, you can stall it off for a quarter, a month, a year, a couple days. My amendment does not allow that. We define the starting date. We say the first Monday in February. You cannot change that by legislation. It is a defined time. It is not broad and generalized like fiscal year.

Mr. President, I talked a little bit yesterday about newspapers. I want to do a little more today. I want to do it because I ran out of time and did not have time to cover all of the articles

regarding the Simon amendment. It is best illustrated I guess by the cartoonist Walt Kelly who does Pogo. They quote him in the Las Vegas Sunday newspaper on the 20th of February of this year by saying: "We have met the enemy and he is us"—talking about the fact that the amendment is not what it is supposed to be.

Dr. Albert Johns, a former professor at UNLV and other institutions around the country, who writes a column called "Action Seniors," wrote a column on the 13th day of February that said this:

Many Members of Congress today nurture the idea that by supporting a balanced budget they can change Social Security from an entitlement program to a welfare benefit program.

Everyone listening, everyone who is so dead set to vote for Simon in spite of the damage to the seniors, should listen to what Dr. Johns says. Not only is he a newspaperman, but he is a scholar.

This would enable them to use Social Security funds to balance the budget by taking benefits away.

U.S. News & World Report on the 28th day of this month says, among other things, talking about the Simon amendment:

The appreciation of Keynesian fiscal flexibility is commendable, but it hardly disguises the amendment's enormous shortcomings. Advocates point to the States, 49 of which require balanced budgets.

We have talked about that. U.S. News understands a State's balanced budget is not the Simon amendment balanced budget.

Legal challenges would inevitably follow every House and Senate vote, turning the judicial branch of Government into an adjunct of the legislative branch. Many scholars on the left (Laurence H. Tribe of Harvard Law School) and right (former Appeals Court Judge Robert H. Bork) seem to think a balanced budget amendment is positively wacky.

Talking about the Simon balanced budget amendment:

* * * however, [the amendment] lets those boys and girls in Washington off the hook. Its principal Senate sponsor, Paul Simon of Illinois, admits as much. "In politics," Simon says, "it is easier to duck a difficult decision than to face it."

The article goes on:

Did you elect your Congressman and your Senators to make the easy calls? If you did not vote, vote against anyone who supports this larcenous abdication of congressional responsibility?

These are not my words, these are from Michael Ruby of the U.S. News & World Report.

The Nevada Appeal in its July 15 edition says:

In a scant half page, an impressive collection of the Nation's top legal scholars from universities like Harvard, Yale, Stanford and Chicago sum up the case against the balanced budget amendment to the Constitution. From Laurence Tribe and Archibald Cox on the left to Robert Bork and Charles Fried on the right, the 17 jurists blast the amendment * * * as a serious mistake.

It goes on to say:

Yet another form of false compliance, the jurists' letter cites the amendment would create "a permanent incentive to accomplish national objectives through mandates and regulatory burdens on State and local governments and the private sector * * * Despite the superficial appeal, the balanced budget amendment would exacerbate distortions already present in the political system without curing the Federal Government of overcommitment. For that, the only antidote is political will.

That is what the Reid amendment is about.

The Washington Post, on February 22 of this year says the people that are sponsoring this amendment, the Simon amendment:

* * * resisted even the most modest proposal by the President last year to cut Social Security costs by subjecting the larger share of benefits to the income tax.

They claim to be shocked by the proposal the President and others have now made to curb health care costs, what the indignant critics say would be tantamount to rationing.

It goes on to say that this is just a bad idea.

We have, from the San Francisco Chronicle, dated February 13:

The balanced budget vote in the Senate will probably be another squeaker. Senators Feinstein and Boxer can vote for democratic government and economic responsibility by helping to put a stake through the heart of this brain-dead proposal.

The Salt Lake Tribune, February 18, 1994:

Conservatives could beat their gums for it without having to vote against a single appropriation dear to the special interests of their State. A liberal could protect his seat from attack by the usual forces calling him a tax-and-spend liberal.

And in any event, the amendment and its true meaning would be litigated to the outer limits of the Supreme Court's competence and desire to set fiscal policy.

Now, we know the nightmare that this amendment which Senator SIMON has offered would create in the courts. They have attempted to alleviate it by the amendment they offered. They claim one of the merits of this amendment is that it has been around so long. It is interesting they would wait until the last minute to amend it.

Of course, they had to amend it because of the way it is written, litigation would be the byword of the day. I would also suggest that the amendment they have offered does not solve those problems.

The Baltimore Sun has also editorialized on the 6th of February, saying a number of things about the Simon amendment.

The proposed amendment is a phony.

That is a quote from the Baltimore Sun.

It presents to legislators a chance to propose procedures for cutting the deficit while offering them ample opportunity to slip-slide away when it comes to actually raising taxes or cutting spending.

It is somewhat ironic that the latest effort to pass this unsavory amendment comes just after the release of a Clinton budget that shows some progress in holding down the size of the deficit. More, much more, needs to be done about the deficit, especially in the entitlement area. But one would think this is not the moment to change the Constitution.

The Seattle Post Intelligencer, in its edition of the 9th of February of this year, said about the Simon amendment:

Two thousand years ago, as Senate Appropriations Committee Chairman Robert Byrd tells it, the Roman Empire fell because the Senate transferred its control of the purse strings to Rome's imperial rulers, and thus lost its power to prevent dictatorial errors and excesses.

But Byrd has made a crusade of protecting the American political system against what he sees as a similar fatal Senatorial mistake, in the modern form of a constitutional amendment to mandate a balanced budget.

Byrd stands alone, like Horatius defending the bridge over the River Tiber against the Etruscan army, holding back an enemy that marches inexorably onward.

Perhaps we can draw hope from the fact that Horatius was victorious against great odds. He held the invaders at bay long enough for the Romans to destroy the piling holding up the bridge into the city. When the bridge collapsed, he dived into the river and swam to safety. Or so legend has it.

Mr. President, I hope we defeat the Simon amendment and support the Reid amendment, an amendment that is reasonable, an amendment that is logical, an amendment that they have lived by. An amendment that would allow our citizens, if it were given to them, to live by. That is what this is all about.

The Reading Eagle, Reading, PA, last year, in November said:

Bright-eyed liberals and bushy-tailed conservatives may like the sound——

Talking about the Simon amendment—

of their well-meaning oratory on the matter. But theirs is not the way America is going to choose.

The balanced budget amendment looks to us like an unnecessary, undesirable impossibility—a tiger by the tail dressed up to look like a wise old owl.

Now, we have heard comments, facetious in nature, that our amendment relies on estimates. Of course; so does theirs. The difference between theirs and ours is that ours has a mechanism for enforcement; theirs does not. Capital budget? Yes, we have a capital budget. They do not. And I am proud of the fact that the sponsors of this amendment have a provision for an operating and a capital expenditure budget. States do it. They do it well. We can do it well.

I guess they want more—maybe I have put not enough in my amendment. Maybe it needs more. Well, I think we have to be very careful what we put in the Constitution, and I have

been very, very careful what I have proposed to put in the Constitution. I followed the admonition and advice given by Justice John Marshall in the famous McCulloch versus Maryland case, where he said:

A Constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves * * * [W]e must never forget that it is a constitution we are expounding.

Justice John Marshall, the most famous Supreme Court Justice ever in the history of the United States.

There have also been comments that this amendment is political cover. Political cover was invented by the proponents of the Simon amendment, according to a few of the newspapers I have presented from around the country. My amendment, offered by the Senator from Nevada, the Senator from Kentucky, and the Senator from California, is a fair amendment. It allows us to carry on with the affairs of this country and to balance the budget the way the States balance their budgets, and not on the backs of senior citizens and others who depend on Social Security. So that is where the political cover is. They are in the wrong bedroom, Mr. President.

There has been some criticism, especially with the press, as to why we would have CBO make the estimates. Who is going to make their estimates? The same CBO worked pretty good when they came out critical in certain areas of the President's health care package. My friends from the other side of the aisle jumped for joy.

Well, we know CBO. Reischauer and all the directors we have had, whether there has been a Democratic President or a Republican President, have been fair and honest. That is why they are in my amendment.

My amendment retains the integrity of the Constitution of the United States but, as the Framers of our Constitution intended, reserves fiscal policy to those who are elected by the people to carry out fiscal policy. It retains a requirement that three-fifths of the Congress must approve deficit spending.

But we have an additional burden in the Simon amendment that I think is quite interesting. On the debts we have incurred, even debts that this Government already owes, they want a three-fifths vote. That is wrong.

My friends on the other side of the aisle said, well, that is easy. It is not easy to get 60 votes to do something in the Senate. For example, last year alone there were 30 attempts to waive the budget act. Waiving the budget act requires 60 votes. Of those 30 waivers, two succeeded. Of course, you now not only have three-fifths here, you have three-fifths in the other body. A 60-percent requirement is a serious enforcement. That is why my amendment does the possible. It requires three-fifths to deficit spend, but not three-fifths to extend debt this country has already incurred.

I ask unanimous consent that those budget act waivers be printed in the RECORD.

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

1993 BUDGET WAIVERS

No. and date of action	Object of waiver	Section of 1974 Budget Act	Result (and vote)	Congressional Record Page Nos.
(1) Mar. 3, 1993	S. 382 (H.R. 920), "Emergency Unemployment Compensation Amendments of 1993" Domenici et al. Amendment No. 67.	Section 306	Rejected (44–55)	S2294–S2295
(2) Mar. 10, 1993	S. 460 (H.R. 2) "National Voter Registration Act of 1993," McCain et al. Amendment No. 73.	do	Rejected (45–52)	S2601–S2602
(3) Mar. 31, 1993	H.R. 1335 "Emergency Supplemental Appropriations Act of 1993," Kohl/Shelby Amendment No. 287.	do	Rejected (52–48)	S4083
(4) May 14, 1993	S. 714 "Thrift Depositor Protection Act of 1993" (Gramm/Mack/Brown), Amendment No. 365.	do	Rejected (43–53)	S5908
(5) June 22, 1993	H.R. 2118 "Supplemental Appropriations Act of 1993" (Roth et al.) Amendment No. 487.	Section 311	Rejected (39–59)	S7568
(6) June 23, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Mitchell/Bumpers), Amendment No. 502.	Section 305(b)(2)	Rejected (54–44)	S7702–S7720
(7) June 23, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Dole et al.) Amendment No. 506.	Section 410	Rejected (43–55)	S7721–S7736
(8) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Sasser/Mitchell/Dodd) Amendment No. 510.	Title III	Rejected (54–43)	S7830
(9) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Roth et al.) Amendment No. 525.	Section 310(d)(2)	Rejected (56–42)	S7874
(10) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Dole et al.) Amendment No. 536.	Section 310(G)	Rejected (48–50)	S7892
(11) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Bryan et al.) Amendment No. 543.	Section 305(b)(2)	Rejected (52–45)	S7913–S7919
(12) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Domenici/Nunn) Amendment No. 544.	Section 313(b)(1)(A)	Rejected (53–45)	S7920
(13) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" Amendment No. 542	Section 313(b)(1)(A)	Rejected (53–45)	S7920
(14) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Graham/Moseley-Braun/Harkin) Amendment No. 548.	Section 310(d)(2)	Rejected (15–83)	S7921
(15) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Agriculture Committee)	Section 313(b)(1)(A)	Rejected (38–60)	S7922
(16) June 24, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Bryan Amendment No. 551).	Section 936	Rejected (20–78)	S7922
(17) June 25, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Bumpers Amendment No. 545).	Section 305(B)	Agreed (69–29)	S7923
(18) June 25, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (DeConcini/Sasser/Feingold) Amendment No. 555.	Section 305(b)(2)	Rejected (55–43)	S7923
(19) June 25, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Gramm Amendment No. 557).	Section 313(b)(1)(A)	Rejected (55–43)	S7924
(20) June 25, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Burns et al.) Amendment No. 558.	Section 310(d)(2)	Rejected (46–52)	S7925–S7927
(21) June 25, 1993	S. 1134 "Omnibus Budget Reconciliation Act of 1993" (Hutchison Amendment No. 513).	Section 305(b)	Rejected (58–40)	S7930
(22) Aug. 4, 1993	H.R. 2267 "Emergency Supplemental Appropriations for Relief from the Major Widespread Flooding in the Midwest (Durenberger Amendment No. 764).	Section 306	Rejected (35–64)	S10327–S10341
(23) Aug. 6, 1993	H.R. 2264 (S. 1134) Omnibus Budget Reconciliation Act of 1993" (McCain constitutional pt. of order).	Section	Rejected (44–56)	S10655–S10681
(24) Oct. 5, 1993	H.R. 2750 "Department of Transportation and Related Agencies Appropriations Act, 1994" (Warner Amendment No. 1015).	Section 602(b)	Rejected (35–63)	S12917–S13044
(25) Oct. 26, 1993	H.R. 3167 "Unemployment Compensation Amendments of 1993" (Hutchison/Shelby et al.), Amendment No. 1081.	Section 311(a)	Rejected (50–44)	S14319
(26) Oct. 26, 1993	H.R. 3167 "Unemployment Compensation Amendments of 1993" (Moynihan)	Section 12	Rejected (59–38)	S14326
(27) Oct. 27, 1993	H.R. 3167 "Unemployment Compensation Amendments of 1993"	Section 311	Agreed (61–39)	S14487
(28) Oct. 27, 1993	H.R. 3167 "Unemployment Compensation Amendments of 1993" (Bumpers Amendment No. 1084).	Section 311	Rejected (36–61)	S14496
(29) Oct. 27, 1993	H.R. 3167 "Unemployment Compensation Amendments of 1993" (Gramm Amendment No. 1087).	Section	Rejected (58–39)	S14515
(30) Oct. 27, 1993	H.R. 3167 "Unemployment Compensation Amendments of 1993" (McCain Amendment No. 1088).	Section 302(f)	Rejected (46–51)	S14515

Mr. REID. Mr. President, I also want to talk for a little bit about statements that have been made: Well, the Reid amendment, I cannot believe anybody would ever carry it out. I do not think we are serious about it. I do not think they would really go through on what they say they would do if the amendment passes. And it is only wishful thinking.

We can go back to one of the sponsors of the Simon amendment, Senator HATCH, who yesterday made the following statement:

> I do not think there is a person in this body who would not be interested in living up to his oath of office, which requires fealty to the Constitution of the United States, who would not take it seriously and who would not realize that the game is up around here, and that we have only 7 years on a glidepath to reach a balanced budget.

It is interesting. I am sure Senator HATCH does not mean that his glidepath is more moral than our glidepath or that his glidepath is somehow more genuine than our glidepath. I think, if you submitted this to the American public, they would overwhelmingly support the Reid-Ford-Feinstein balanced budget amendment. Why? Because it is not a game. We are exempting, as the Senate said we should in a 98-to-2 vote, Social Security. It treats us like their own States are treated.

Senator HATCH went on to say:

> I have to tell you, I cannot imagine a Member of this body, if this resolution passes both Houses of Congress, who would not take their responsibilities very, very seriously to start that day and do what is right.

He is talking about his amendment. Does he think any less of ours if it passed? I hope not.

He said:

> Furthermore, to say that by putting our declaratory judgment language in the amendment we are preventing enforcement also could be construed as an insult to every Member of Congress * * *.

So I will not belabor the point other than to say we believe that the amendment that we have offered is realistic, it is doable, and my friends on the other side of the aisle, rather than carping about this amendment, should be glad that it is offered and should join the supporters.

As Senator CONRAD has indicated, the Simon amendment is not going to pass. The amendment is doomed. Why not join in this amendment? With their support, this amendment would pass. It would march us down the road to economic recovery more quickly.

There has also been a statement made: How could the unanimous-consent agreement ever have been reached that would require 67 votes to pass my amendment? Well, Mr. President, this particular amendment, if adopted by a majority vote, would ultimately require 67 votes to pass. So as the advertisement says, you can pay me now or you can pay me later. I have to get 67 votes to pass my amendment. The Senator from Illinois, who is so well respected in this body, wanted a vote on his amendment. I believe he is entitled to a vote on his amendment. I did not feel that, through parliamentary maneuvers, I should somehow think to take away an up-or-down vote on the Simon amendment. Perhaps that could have been done. I do not think that would have been fair, for lack of a better term. So what we have here is an up-or-down vote on the Reid amendment and an up-or-down vote on the Simon amendment.

The point I am making, Mr. President, is that, as Senator SIMON's staff said to my staff yesterday, may the best amendment win. I believe the best amendment should win. If the Simon amendment is not going to pass, that leaves the possibility of only one amendment to prevail. I think they should join and support this amendment.

Like the Simon amendment, this amendment requires the Federal Government annually to balance operating expenses with its revenues. It allows flexibility during time of war or threat to the national security. It must take effect by the year 2001.

Where my amendment differs is in areas that I believe are truly justified.

It allows the creation of a separate capital budget. It allows flexibility during times of economic recession. It preserves Social Security as a separate trust fund.

And, this amendment specifically protects the fundamental constitutional policy of the balance of powers.

In short, Mr. President, this amendment is pragmatic while being proactive, enforceable but not unworkable, and it is responsible without being reckless.

Mr. President, I, like everyone in this Chamber, have watched and listened to the senior Senator from Illinois. He was a Lieutenant Governor of his State. I was a Lieutenant Governor of mine. He was elected first. I came later. He was then elected to the House. He came first. I came later. He was elected to the Senate. He came first. I came later. I have followed Senator SIMON on many, many things. I have the greatest respect and admiration for him and his family, his integrity, and however we decide on this amendment, it is not going to change that. His record is already written in the history books of this country.

But in spite of the great integrity that he has and the reputation he has, and as much as I would like to support him on this issue. I cannot. I have tried. I have searched my conscience. I have searched my mind separate and apart from my conscience. I have delved as much as I can into my heart.

I cannot support the Simon amendment because it is flawed. I think that over this weekend the supporters of the Simon amendment should, in unison, join in the Reid-Ford-Feinstein amendment and make a balanced budget a reality. This would go to the House and pass like corn flakes early in the morning.

Mr. President, I am hopeful that we can pass this amendment. I believe that it is the right thing to do for the Senate of the United States and the right thing to do for this country.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, I yield myself such time as I may consume.

Mr. President, as I said yesterday on the floor of the Senate—and I do not think the Senator was here when I mentioned it—I have great respect for my colleague from Nevada. He is one of the best Members of this body. But I think he is offering, in the words of USA Today, his amendment as a weak substitute.

I think that is in fact what it is. It has so many loopholes that it is not going to get us where we have to go.

Let me deal specifically with the criticisms that he makes of my amendment. No. 1, on the courts. It is interesting that we get criticized no matter what we do on this one. If you have the possibility of the courts intervening, people say the courts are going to get enmeshed. If we adopt the Danforth amendment, as we have done, to severely limit court involvement, they say it is meaningless. The reality is that even without the Danforth amendment, court involvement would be minimal, because the courts have made clear that they do not get involved in what are called "political questions."

The concern has arisen because of the Jenkins case in Missouri, where the courts said to a school district: In order to comply with an integration order, we are going to impose a tax here. That arose under the 14th amendment. There is no such likelihood here, even without the Danforth amendment. And the best illustration was when our former colleague, Senator Barry Goldwater, and several Members of this body, went to the U.S. Supreme Court on the agreement that President Carter made with the People's Republic of China and in effect abrogated a treaty that we had with the Republic of China, with Taiwan. Senator Barry Goldwater said that you cannot do this, this is illegal. Candidly, I think Barry Goldwater had a very good legal point. But the Supreme Court said that we are not going to get involved in a case that is between the executive and the legislative; that is a political question. And that is, of course, what we have here. If there was any question, that has been clarified by the Danforth amendment.

My friend from Nevada says we have the lowest deficit to GDP we have had since 1979. That is true, but you look at those projections, and they go up and

up and up and up from here on out. And that spells trouble with a capital "T". As you look at other countries, countries that have had high deficits relative to GDP have ended up monetizing their debt—just printing money. You can take a gamble that we will be the first country in history not to do that, but it is a huge gamble with the future of our country.

On Social Security. In the Budget Committee, I have been the champion of Medicare, which is the part of Social Security that comes before the Budget Committee. Retirement does not come before the Budget Committee because it is automatic. I have been the champion of that. I do not believe we should be attacking Social Security retirement. That is not the cause of our deficit. But to pretend that the Reid amendment will protect Social Security is simply not a reality.

If, under the Reid amendment, you were to come in and say, OK, let us reduce Social Security taxes 1 percent and increase income tax 1 percent, that would be perfectly possible. You know, there are all kinds of ways of evading that, or increasing the income tax paid on Social Security. There are all kinds of things that could be done. The reality is that the protection for Social Security rests in this body, with the Members here, who will do what we can —and I think we will—to protect Social Security. I have made clear that I prefer not using that surplus in determining the balance. I am willing to say that in a sense-of-the-Senate or in a statute, but not in the Constitution, for one reason, this provision recognizes a surplus right now. But that surplus is not a permanent thing. Starting in the year 2024, the Social Security trust fund goes into deficit, and that means anyone under the age of 35 would not be protected.

At the invitation of my friend from Nevada, I met with the University of Virginia soccer team, and one of the stellar members of that team is his son. I was pleased to meet his son, as well as the coach. And, obviously, next to his son, the most outstanding member of the team, I discovered, was from the State of Illinois. But every one of those members——

Mr. REID. His name is Mike Fisher.

Mr. SIMON. From Batavia, IL.

Mr. REID. He started every game this year.

Mr. SIMON. Before we know it, we are going to have a discussion on the University of Virginia soccer team.

Mr. REID. It would be a lot more fun than this, would it not?

Mr. SIMON. Every one of those bright young men on that team will not be protected by this Reid amendment, because of the deficit situation. We cannot adopt a constitutional amendment that anticipates we are going to have a surplus into the indefinite future. Clearly, we ought to do what we can to protect Social Security.

Finally—and I saw Senator BYRD on the floor a moment ago, and I know he wants to take the floor—I point out that we simply have to stop borrowing from our children and our grandchildren. When Senator Paul Tsongas testified last week before my subcommittee, he said, "This is a moral issue. What right do we have to borrow from our children in order to satisfy our present desires?"

In terms of the media that he quoted, it is interesting there is a gradual movement—slow, I admit—but a gradual movement of economists and media over to the side that we have to do something here. Senator Tsongas testified last week that if someone is against this, they are either part of the media or in academia. Well, that is not quite true, but it has kind of been historically true. But there is gradual movement in what I think is the right direction.

Finally, my friend from Nevada says that his resolution has a mechanism for enforcement.

I will read this:

> The Congress may by appropriate legislation delegate to an officer of Congress the power to order uniform cuts.

We can do that now.

We do not need a constitutional amendment to do that. The mechanism of enforcement that we have in our amendment, which the Presiding Officer, Senator MATHEWS, is a cosponsor of, the mechanism that we have in our amendment says if you want to raise the debt ceiling of the Federal Government you need a three-fifths vote. That has muscle. That has teeth. What we need is something that is meaningful.

There is no question that if my amendment passes we are going to have a little pain. Senator Tsongas described our situation as a debt addiction. I think that is correct. And just like a drug addiction or alcohol addiction, to get rid of the addiction is going to take a little bit of pain. It is going to pinch us a little bit. But not getting rid of the addiction is going to cause us infinitely more pain, and to suggest that we ought to do something that looks like we are doing something but really is not substantial, I do not think we ought to play those kinds of games with the public or with ourselves.

I hope we can pass my amendment. I hope the Reid amendment is defeated and that we can do what we ought to do for future generations of this country.

Mr. President, I do not know if Senator BYRD is going to address the Senate.

Mr. REID. Perhaps we should suggest the absence of a quorum. He said he would return shortly. I do not think he decided for sure if he is going to speak.

Mr. SIMON. If it is all right with Senator REID we will divide the quorum call three ways.

Mr. REID. Excluding Senator BYRD.

Mr. SIMON. Senator REID and myself, but not on Senator BYRD's time, and I so ask unanimous consent.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, I know that some of my colleagues are very troubled about this constitutional amendment—and I am directing my comments toward the amendment that is authored by Senator SIMON and several other Senators.

As I talk with some of my colleagues, I know they are wrestling with the decision, and some say to me that they are very concerned about the debt and the deficit and the interest on the debt. And, of course, I understand that. I think we can handle that problem. It will take some time.

We did not get into this mess exactly overnight. A little less than one-fourth of the total debt accumulated over a period of 192 years, dating from the beginning of the Republic in 1789 and continuing through 39 administrations, up until Ronald Reagan, the beginning of his Presidency in 1981.

And, of course, that was a period of time in which we paid off the debts of the Revolutionary War—remember, we had to go into debt in fighting that war—paid off the debts of the Revolutionary War; fought the War of 1812 against the British; the war with Mexico, 1846 to 1848; the Civil War, 1861 to 1865; the Spanish-American War, 1898; World War I, during which I was born; World War II, the Korean war; the Vietnam war; all of these wars, the panics and recessions throughout the 19th century, and the Great Depression in the early thirties, throughout all of these events, costly as they were, we had accumulated a debt amounting to a little under $1 trillion when Mr. Reagan became President and was sworn into office in January 1981.

During those next 12 years, under the Reagan and Bush administrations, the debt increased three times; in other words, it had quadrupled from, let us say, $1 trillion to $4 trillion.

How much is $1 trillion? Counting at the rate of $1 per second, it would take me—I say me, because I learned under the old math, not the new math—so it would take me 32,000 years to count $1 trillion. A lot of money.

And so, it took a long, long time to accumulate this debt of now roughly $4.5 trillion. It is not going to be easy. We cannot wipe out the deficits in one

single year without imposing upon our country a terrible trauma, which would be counterproductive, which would turn the economy on its head and put millions of people out of work. It would also create reverberations throughout the world.

So we have to go about it in an orderly, careful, thoughtful way. I think that President Clinton and the Congress started down that road, took up where the 1990 summit left off, the 1990 summit, which was held during the Bush administration. And we injected into the budget, into budget policy, some real discipline—real discipline. At the 1990 summit we said we have to have pay-as-you-go, pay-as-you-go. If the committees of the Congress create new entitlement programs, they are going to have to find some way to pay for them. If they are going to increase this program they are going to have to decrease something else. That is what we meant by pay-as-you-go. If they are going to cut taxes on the one hand, they are going to have to increase taxes on something else, or they are going to have to pay for that in one way or another. So that was discipline. I insisted on that at the budget summit.

I also insisted on 60-vote points of order in this Senate on certain budgetary, fiscal, appropriations matters, and that has been an excellent disciplinary tool which has forced us to avoid breaching the allocations, breaching the caps, and I perceive this as the right way to go. We will have to take similar actions in the future. We will have to do more.

Therefore, I say, let us continue down that road and we will eventually get control of the deficits. That is what we are seeking to do. And at the same time we will do it in a way that will not throw our economy into a tailspin.

There is not a Senator, not one Senator who opposes the Simon amendment, who does not believe as fervently as any other Senator believes that we should get our deficits under control and bring down that interest on the debt and ultimately bring down the debt itself. We are told by our friends here that the way to do this is by constitutional amendment. No such amendment has ever been adopted by Congress and ratified by the States.

The Simon constitutional amendment—and when I say Simon amendment, he is the chief sponsor but, of course, I include the other Senators as well who are cosponsoring that amendment and who will support it. My friends who are troubled, who are wrestling with this matter, speak about how concerned they are about the deficits and say we have to do something. We have to do something. We have to force ourselves to do something. We have to have something that will discipline us. We have to force ourselves. So, they say, they do not want to continue down the road we are going, in which we are trying to methodically and systematically and in an orderly way deal with these deficits. I have confidence that we will deal with them.

So they do not want to pass that legacy on to their children. I am concerned about our children and our grandchildren as well. I also do not want to pass on to our grandchildren the legacy of a Constitution that is not what it was, a Constitution that is torn and rent. And I say to them, think about the Constitution you are passing on to your children. You will not be passing on the same Constitution to them that has come down to us after more than 200 years. It will not be the same Constitution and it will not be, in time, a representative democracy.

Why? Because this constitutional amendment takes away that majoritarian principle that undergirds our democracy and which undergirds any other democracy, that principle being: The majority rules.

This is a prescription for minority rule. A small minority in one House can thwart the efforts of the entire other body and the great majority in the body in which that particular minority may exercise its powers under this constitutional amendment. That small minority can extract from the majority and extract from the President of the United States whatever it wants to extract. It can get its pound of flesh. And, unless the majority, the overwhelming majority in both Houses knuckles under, yields, in order to placate that minority, then we will be unable to get the three-fifths majority to waive the Constitution in circumstances that may be exceedingly serious; unable to get the three-fifths necessary to raise the debt limit.

There are only five instances in the—I refer to the Constitution as the original Constitution that our Framers gave us—there are only five instances in which there is a supermajority requirement. I have named those already before: Overriding the President's veto, the expulsion of a Member in either body, approving the ratification of treaties, convicting a President or other Federal officer who has been impeached, and amending the Constitution.

There are three other instances, somewhat curious if you study them, in the amendments. I believe it is the 12th amendment, and the 14th amendment, and possibly the 25th amendment. Some of these have to do with quorums, and on another day I will deal with them in particular.

But the point here is we only have amended our Constitution 27 times; 10 of those times being referred to as the Bill of Rights, the first 10 amendments, and the remaining 17. Among the remaining 17, two have wiped each other out, the 18th amendment, the prohibition amendment, and the 21st amendment, which wiped it out, so there are two that wash each other. Or at least the second amendment washed out the first one. So actually we have only amended that Constitution 15 times, what amounts in essence to 15 times, following the first 10 amendments, the Bill of Rights.

Here we are about to amend it again and this time it is going to deal with fiscal policy. None of the others did it. No other constitutional amendment has dealt with fiscal policy.

So this is an extremely serious matter, and I will not go into the amendment in any further depth than I have today, which has not been very much. But I will say this: This amendment has great appeal out there in the country, a great appeal. Ask the American people if they favor a constitutional amendment to balance the budget. Yes, they favor it by a whopping majority—by a whopping majority.

Ask them if they want to cut Social Security payments? Oh, no, they do not want to do that in the main, or if they were to be asked whether or not they want to pay higher taxes, you will get a mixed answer on that one.

Or do they want to cut defense? There, again, it would be divided, and we will not see the great majority that we see who support a constitutional amendment to balance the budget.

Of course, people just are not aware as to what is really in this amendment. They do not have the time to study the Federalist Papers. The average American has to be concerned about the bread and butter on his table, sending his children to college, putting a new roof on the house, paying a mortgage off on the farm. They do not have time to go back and read the Constitution and the history of England and Montesquieu's history of the Romans, the Federalist Papers or Madison's notes at the convention. They do not have the time to do those things. And so it is understandable as to how they would feel.

Many of our Senators during campaigns promise to vote for a constitutional amendment to balance the budget, in the heat of the campaign. Senators do that thoughtlessly, undoubtedly. Many of them have come to me and have stated to me that they do not like this amendment. They do not think it is a good amendment. They think it is terrible, but they say that they committed themselves during the campaign to vote for a constitutional amendment on the balanced budget, therefore, they do not feel they can vote against this.

It seems to me that one needs to ask himself: Am I being truthful to my own conscience? Am I being faithful to the trust that is reposed in me? This is not to say that all Senators who support this amendment are not sincere. Some of them sincerely believe this is the only way to do it. I can understand

their frustration. I am frustrated also. The American people are frustrated.

So I do not say this with disrespect for any Senator, but I do know in talking with a good many Senators around here, several times I have encountered Senators who have said, "I promised in a campaign I would vote for a constitutional amendment."

We go up to that desk, hold up our hand before God and man and swear to support and defend that Constitution. Montesquieu said that when it comes to an oath, the Romans are the most religious people in the world. The Romans believed in keeping an oath and, during my several speeches last year on the history of the Romans, I talked about the keeping of the oath and how serious the Romans were about it, how Regulus, who was captured by the Carthaginians—I told the story of Regulus, the consul, who, even though he knew he was going to his doom upon his return to Carthage, told the Roman Senate that he would keep his oath with the Carthaginians they exacted from him when they sent him to Rome with other Carthaginians in the interest of having a peaceful cessation to the hostilities. And it seems Regulus took the position, he told the Roman Senate, when he gave his oath whether it was to a friend or to an enemy, he was going to keep his oath. So he knew he was going to be tortured to death and that is what happened.

So the Romans kept their oath. Therefore, it occurs to me that although I may make a commitment in the heat of a campaign, not having studied the matter sufficiently and later having the opportunity to study, to read history, to ponder over that Constitution and the oath that we take to support and defend it, then I should be able to look in that mirror and say: "I'm keeping my oath to the Constitution."

I have found that people—if one has to break a promise, if he will explain why he broke it, how the facts had changed or the facts were different from what he knew when he made the promise and the facts are these—I have found that the people are fair, they are reasonable, they are understanding, and I would say nine times out of 10, they will have more respect for that person for having done what he thought was best for his country rather than merely keep a promise that was an ill-spoken promise and one that was made without all of the facts at one's disposal.

I was opposed to the Panama Canal Treaty and so stated it in West Virginia. I wrote columns that appeared in my papers in which I said I was opposed to the Panama Canal Treaty. But when I studied the 1903 treaty and the subsequent treaties, when I studied the history and when I read every possible thing that I could get my hands on to read—I read "The Path Between the Seas" by McCullough. What a book—I came to the conclusion that it was in the best interest of the United States to ratify those treaties.

Consequently, as leader of my party in the Senate, and at that time majority leader in the Senate, I led the effort to approve the ratification of the treaties. Howard Baker was the minority leader. Without Howard Baker, without the support of the minority leader—on that occasion it was the minority leader and several Republican Senators—without their support, we could never have mustered the two-thirds vote that was required to approve the ratification of the treaties. We could not have done it. That was an act of sheer statesmanship.

If ever there comes a time when another one of those panels out in the reception room in the direction towards which I am pointing my finger—there are five great Senators who have their pictures out there on the panels—if ever there comes a time when another Senator's face is painted on those panels, I hope it will be Howard Baker's portrait, because he demonstrated real statesmanship—statesmanship. He went against the grain of his own party, I think, but he stood for what was best for America.

So there came times when I had to break what I had made as a promise, but I did it because I concluded after much study that it was the right thing to do, that it was in the best interest of my country, and today my conscience is clear. There are a good many people in my State of West Virginia who have never forgiven me for that, and they remind me of it every now and then. But that is the price we have to pay. We have to pay a price to be a Senator, to take the right stand.

And so, on the great issues that come before this country, truly great issues, it seems to me that we have an obligation to be intellectually honest with ourselves and with others and that we should think not so much of what is best for my political career or my being reelected but what is best for my country.

In 1982, I voted for a constitutional amendment to balance the budget—in 1982. In 1986, I voted against a constitutional amendment to balance the budget, because I had studied it more. I came to the conclusion that it was the wrong thing to do. And that constitutional amendment to balance the budget in 1986 was defeated by one vote, and my vote changed. I have never regretted it.

We have to live with ourselves, and mainly we have to think of this country. This is—as I say, it is kind of an alluring, an attractive amendment. It is easy to vote for. It does not cost anybody anything. It does not create one dime in revenue. It does not raise anyone's taxes one thin dime. It does not cost any program.

We do not have to balance the budget until 2001. And as a matter of fact, in 2001 we do not have to balance the budget. We do not have to ever balance the budget under this amendment because it says we do not in section 6:

> Congress shall enforce this amendment by appropriate legislation which may take into consideration estimates of outlays and estimates of receipts.

We will never balance the budget on that basis. The sixth section says do not believe what you see in the first section because you really do not have to balance it.

So it is a very attractive approach, and I can understand the appeal that it has out there in the country. But if we adopt that amendment, we are going to be sorry.

I say to the distinguished Senator from Nevada, I am sure that he has read about the Pied Piper of Hamelin, who on July 22, 1376, according to Robert Browning, appeared at a meeting of the town council, in the town of Hamelin on the Weser River, and the mayor and the town council were very much troubled about the rats in the town. The rats are killing the cats and chewing on the babies in cradles and getting into the cheese vats.

And so the mayor and the town council were about to be run out of town by the populace, and they were beside themselves as to how they might deal with this situation. And as they sat there, they heard a knock on the door, and who walked in but this tall, thin man dressed in a red and yellow coat with a scarf around his neck, red with yellow stripes. He had small blue eyes and a sharp nose and sharp face. He had a pipe tied onto his scarf. And all the time he was talking with the town council his fingers were, as it were, playing on that pipe. And he told them that he could get rid of these rats.

They said, "How much would it cost?" "1,000 gilders." "1,000 gilders? We will give you 50, 50,000 gilders if you can rid this town of these rats." And he told how he had rid other kingdoms of lice and various other vermin. "Oh, we will give you 50,000."

Out into the street he went. He started playing on that magic pipe, and the rats poured out of the buildings into the street—great rats, small rats, lean rats, brawny rats, brown rats, black rats, gray rats, tawny rats. They poured out into the street, and the Pied Piper just went right on down the street to the River Weser, and into the river all the rats plunged, except one old rat who was strong as Julius Caesar, and he lived to tell the tale.

So the Pied Piper came back to the meeting of the mayor and the town council. He said, "I want my money, 1,000 gilders." "A thousand? Oh, come on. Take 50"—I mean not 50,000 but 50—"gilders." He said, "I'm a busy man. I've got another job to do."

So out he walked. This time he played a different tune on that pipe,

and all the little feet came pattering, pouring into the streets—the children of the city. So down the road he went playing his tune, and he headed in the direction of Koppelberg Hill. And the mayor and the city council said, "Oh, he'll never get those children over that hill. That will stop them."

Well, Robert Browning tells us in his poem:

When, lo, as they reached the mountain-side,
A wondrous portal opened wide.
And when all were in, to the very last,
The door in the mountain-side shut fast.
Did I say, all? No. One was lame,
And could not dance the whole of the way.
And in after years, if you would blame
His sadness, he was used to say, -
"It's dull in our town since my playmates left.
I can't forget that I'm bereft.
Of all the pleasant sights they see,
Which the Pied Piper also promised me.

The moral of the story was if you have promised ought, keep your promise.

We are promising a great deal, more than we can keep in this amendment. It is going to be very disappointing if this amendment ever becomes a part of our Constitution. We, most of us here at least, will live to see that it was a terrible, terrible blunder. And what a legacy we will pass on to our children and grandchildren.

Mr. President, there is not a man or woman in this body who is not a politician. And everybody in here had to be a politician unless they were appointed. But politicians are naughty. We all play politics in here. There are times when we will vote one way or another on a matter that we think will help politically. I think I will vote this way about 50–50, or I am going to vote this way. Or I will vote with Mr. Clinton on this one or I will vote against Mr. Clinton on this one.

But when it comes to matters of this kind, a matter that goes to the very heart of the Constitution, to the heart of this Republic, then we wrestle and we are tormented at times in reaching a decision. This is not an ordinary vote. We cast this kind of vote very seldom.

As I said to a Senator yesterday, you are going to pass on a legacy to your children and grandchildren. And it will not be the same Constitution that the Framers wrote. And it is going to undermine that principle of majority rule. That is the underlying principle that tells us whether it is a democracy or not. Also, if you vote for this, you will be voting for something that is very destructive to the constitutional system of checks and balances and separation of powers.

I cannot speak for any other Senator. I can be no judge of any other Senator. I cannot get inside any other Senator's mind or heart. I can only deal with myself. And I am very concerned about this amendment.

"Oh, he is the chairman of the Appropriations Committee, and so and so is on his committee." Now, that is kind of tawdry to ascribe to another Senator who is on my committee the lack of willpower on his own. Milton speaks of Gods giving man the freedom of the will to exercise his will.

It is rather amazing. They used to tell ghost stories when I was a boy. And I was fascinated with those ghost stories. I speak about some of the ghost stories in connection with this Capitol in my books in the history of the Senate.

So I am hearing ghost stories when I hear these stories about, "Well, Senator BYRD is chairman of the Appropriations Committee, and Senators have to go to him to get things they want for their States," as though I would approach a Senator or even think of approaching a Senator in that way. It is demeaning to other Senators to ascribe to them a weakness such as that, that they would cast their vote on this amendment simply because they are on my committee and I am chairman of the committee, and therefore that they might be expected to suffer some retaliation. That is a joke. Those people are seeing ghosts. They are looking for something. They are seeing ghosts.

I am concerned because I love this Senate. I love the Constitution. I might support a particular amendment to the Constitution if it dealt with a prayer in schools. I believe in prayer. I believe in having prayer in schools. I believe in having prayer certainly at commencement, voluntary prayer by a student, and the majority of the students want to have a prayer. I see nothing wrong with that. As a matter of fact, I see a lot of good in it. I see a lot that has happened to our country that is bad since the Supreme Court decision dealing with prayer in schools. Whatever we take out of our schools today in another generation will be out of the country.

So I would amend the Constitution in one particular or another, but never, never would I again. As I say, I voted for a constitutional amendment in 1982 and against one in 1986. And I would never vote for it again, never because I believe in the constitutional system of checks and balances. I know too much about the history of the English people, about the history of the Romans, and about the history of our own country, about the Framers, about the Constitution. I know a lot more than I knew in 1982.

I believe, I am convinced, that if this amendment were to become a part of the Constitution, the power of the purse that has been vested by the Framers in the legislative branch would be gone. No longer would we have a tripartite government in which the three branches are coordinate and equal. The power would flow to the executive, or would flow to the judiciary, and as a consequence, in the final analysis, all three departments of power would be severely damaged.

I am reminded, may I say to my friend from Idaho, he is a fine debater, and he is a very dedicated Senator, dedicated to his convictions. He and I differ on this particular matter.

But I expect he read years ago Chaucer's "Canterbury Tales."

He nods his head in the affirmative.

Senator REID will remember that Chaucer was born around 1340 and died in 1400. He lived, therefore, during the remains of Edward III, who reigned from 1327 to 1377. He was followed by Richard II, who reigned from 1377 to 1399, and who was deposed by Parliament. Well, Chaucer, in the "Canterbury Tales," demonstrates a keen knowledge of England in the Middle Ages.

His story was a theme in which several persons who had gathered at the Tabard Inn, South Wark, would, on their way to the shrine of St. Thomas at Canterbury, each tell two stories. Chaucer died before he was able to finish what he had set out upon. But his "Canterbury Tales" aptly described life in England and the kinds of people. It included a cross-section of the people of England. There was the squire and the friar and the monk and the cook and the sailor, the knight, the wife of Bath, and the pardoner and the merchants and the physician.

I just want to refer to one tale this afternoon: The Pardoner's Tale. The pardoner was one of those preachers who was assigned to raising funds for a particular religious program or cause, and he would render indulgences in exchange for a contribution or financial gift. So he was a pardoner. Well, the pardoner told this tale, and it is apt here.

The pardoner told the story of three young men who were sitting in a tavern, and they were drinking, feeling their oats, making a good deal of noise, like some people do these days when they get too much in their cups—some when they do not get their cups. They heard a carriage go by with a bell, and it was bearing a corpse. So one of them said, "Knave, who is this who has died?" The knave responded, and so did the innkeeper, and said, "This is so and so. He was killed by an enemy called 'Debt,' and this enemy has been killing a good many people in the countryside. A thousand people have died in the last little while."

These three roisterers got up and said, "Let us go out into the streets and find this enemy called "Debt," who has been taking the lives of our friends. They came upon an old man with a cane. They asked the old man where they could find this enemy called "Debt," and he responded that if they go over there on the hill beneath that oak, they would find the enemy called

"Debt." They went to the hill, and under the big oak tree there they found a pile of gold. They sat down by the pile of gold and they talked among themselves. They decided that they ought to take this gold home, but they ought to wait until nightfall, lest some thief fall upon them and take the gold and take their lives at the same time.

One said to the other two, "Let us draw straws." They called them "cuts." They did not call them straws. I take it they were straws or some such. So they drew straws. The idea was that the one who drew the shortest straw would go into the nearby town and buy some bread and wine and they would have lunch, until night came on when they would take the gold away.

So the one who had drawn the particular straw went into town. After he had gone, the other two got together and they said, "Why should we divide this gold among the three? Why should it not be ours? We will just divide it two ways. When he comes back, I will embrace him as though in jest, and I will rive him with my dagger, and you do the same and we will just divide this gold between the two of us."

Meanwhile, on his way into town, the one ruffian was thinking to himself: "Why should that gold have to be divided among three? Why could I just not have it all?"

He, therefore, went to the nearest apothecary and said, "Give me your strongest poison, I have rats that are eating my capons, and there is also a certain polecat, and I want to kill them." He was told that there was a poison that just a grain of it would kill instantly. He bought some of the poison and went out into the street, and from a wine seller bought three bottles of wine. He opened the wine, and in two of the bottles he put the poison.

He made his way back to the tree. As they had said they would do, one embraced him and rived him with his dagger. The other did the same, and he fell dead on the pile of gold. The other two sat down to have the bread and wine. They opened the wine. They drank the wine, and they died with excruciating pain. They fell on the pile of gold. So all three died. They killed themselves.

I see in this amendment the poison which in the end will be destructive of all three branches of the Government. Courts will enter into the situation and the people will resent being taxed by the courts. They will resent the order of the courts, that the legislative branch raise the taxes, or they will resent the President of the United States using impoundment powers, using the line-item veto, using rescission powers to cut their Social Security, veterans compensation, military pay, military retirement, whatever; and the legislative branch, of course, will have its powers swept to the other two branches. So we end up with all three branches damaged.

Mr. President:

I saw them tearing a building down,
A group of men in a busy town;
With a "Ho, heave, ho" and a lusty yell,
They swung a beam and the sidewall fell.
I said to the foreman, "Are these men skilled
The type you'd hire if you had to build?"
He laughed, and then he said, "No, indeed,
Just common labor is all I need;
I can easily wreck in a day or two,
That which takes builders years to do."
I said to myself as I walked away,
"Which of these roles am I trying to play?
Am I a builder who works with care,
Building my life by the rule and square?
Am I shaping my deeds by a well-laid plan,
Patiently building the best I can?
Or am I a fellow who walks the town,
Content with the labor of tearing down?"

We are going to tear down something that is sacred to the memories of Americans, sacred to the memories of our forefathers. We are going to destroy it. It has taken years to build. Those Framers underwent sufferance, threats to their lives. They paid dearly—Washington at Valley Forge. It was not easy, and it took years for this Republic to grow, to become strong, to become the light of the world, the beacon to every heart who cherishes liberty.

But with one stroke, I can easily wreck in a day or two that which took builders years to do. We better think about what we are doing. We will be tearing down something that it took years to build.

Mr. President, on Monday, we will resume our discussions. On Monday, I hope that I will have an opportunity to trace in a somewhat cursory way the power of the purse. I would like to talk about how the English Parliament developed, and how over a period of centuries of struggle, the power of the purse was lodged in the hands of the people's elected representatives in Commons. That is important, in my view, to the discussion here.

I want to lay in the RECORD a bit of history because, after all, that is what influenced Montesquieu in great measure, the history of the Romans, the history of the English. And these two histories, it is my understanding, had the greatest influence on Montesquieu as he developed his political philosophy and system, political system, separation of powers, and checks and balances.

So I hope to do that on Monday. I do not know how this is going to come out in the end. We may prevail against the amendment; we may not.

It is a decision that could well affect every man, woman, boy, and girl in this country today, and the lives of millions who will come after us.

I want that record to show the history that brought us where we are, the history of this Republic, the history of the English struggle, the colonial experience, and how the Framers who knew Plutarch, who knew Polybius, who knew Tacitus, and who knew Cicero, who knew about classical Rome and knew about the English, I want the history of this debate to have that background because those who read that history a hundred years from today, and if we prevail they will be thankful. If we do not, they will know that we tried.

I thank my colleagues for being patient. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. REID. Mr. President, I have no more requests for time on my side.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I have no further requests for time on my side. But by unanimous consent, I would like to enter into the RECORD an editorial by David Gergen, a "Dear Colleague" letter signed by several Senators, an editorial by George Will of the Washington Post, a statement in behalf of Senate Joint Resolution 41 by the U.S. Chamber of Commerce, and also a statement by the Balanced Budget Amendment Coalition, a broad cross-section of American interest groups representing our citizens, from the small farmer to the blue-collar worker.

I ask unanimous consent they be printed in the RECORD at this time.

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

[From U.S. News & World Report, June 1, 1992]

BALANCE THE BUDGET—BY FORCE

(By David Gergen)

In one of his pithier observations, Winston Churchill once said that "Americans can be counted on to do the right thing, after they have exhausted all other options." The politicians of this country have now exhausted a raft of different options to bring our federal finances under control—deficit limits, tax increases, caps on domestic spending, cuts in defense spending—but the nation's budget remains shamefully out of whack. The time has come to recognize that the right thing to do is something we have long resisted: Amend the Constitution so that Congress and the president are required to balance the budget.

A balanced-budget amendment has always represented an indictment of our democratic system. It openly confesses that our elected representatives are incapable of making rational, tough-minded decisions on their own and must be strapped into a straitjacket by force of law. It says that as citizens, we are so unwilling to curb our appetites for more services and fewer taxes that we penalize any politician who demands self-discipline. As Sen. Phil Gramm of Texas says, "Everybody wants to go to heaven, but nobody wants to do what it takes to get there."

Yet for all inherent flaws and dangers of an amendment, an honest look at our past behavior and the future burdens we are imposing on our children makes a compelling case for its adoption. Isn't it better to accept a forced diet than to gorge ourselves to death? Consider: In the first 175 years of our republic, we balanced the budget or recorded a surplus 60 percent of the time. But since then, as government has exploded in size and

scope, we have balanced the books less than 4 percent of the time. In the first 20 decades of the republic, we accumulated a total national debt of $1 trillion; in the past decade, we more than tripled that amount. From 1950 to 1980, Washington's borrowing soaked up less than 10 percent of our national savings pool; since 1980, federal deficits have sucked in roughly two thirds of our private savings. As a result, our rate of gross investment has been too low (in recent years, half of Japan's as a percentage of gross domestic product), our interest rates too high, and now our job creation is too slow. Total interest payments on the national debt will climb in the next fiscal year to $315 billion, the largest single item in the budget; of that, Washington will send some $40 billion to foreign creditors, more than it will spend on educating our children.

Momentum is now building in Congress to pass Sen. Paul Simon's budget amendment before the July recess and send it forward to the states, where more than 30 have signaled an eagerness to embrace it. Opponents rightly charge that many in Congress are acting out of desperation, anxiously trying to appease voters with something—anything—before the anti-incumbent mood sweeps them from power. The true test to apply to a candidate this fall is not whether he favors an amendment but whether he also shows constituents what services he will cut and what taxes he will raise.

To reach balance will require wrenching changes, especially in federal services. Since 1979, contrary to popular myth, federal spending has shot up from 20 percent to 25 percent of GDP, a level we haven't seen since the aftermath of World War II. Double-digit inflation has pushed the cost of Medicaid and Medicare to $200 billion this year; these costs will escalate to $600 billion in a decade. A balanced-budget amendment will clearly bring a crunch in Medicare and Medicaid, prompting the biggest overhaul of health care in this century. As it decides where to cut, Washington must also decide what priorities may demand more resources. How, for example, will we become a more productive, cohesive nation unless we fully fund Head Start? Inevitably, we must face up to the prospect of higher taxes.

But we can no longer flinch from reality; we can no longer afford the illusion that we can borrow our way to prosperity. President Bush, who shares responsibility with the Democratic Congress for the dreadful state of our finances, should now work with Capitol Hill to ensure that an amendment to the Constitution is carefully and wisely drawn, that the country is fully informed of the consequences and that we move forward immediately—no more mañanas—to restore our financial solvency. Somehow 49 out of our 50 states have learned to live within laws requiring balanced books; surely Washington can do the same.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 24, 1994.

DEAR COLLEAGUE: During floor consideration of the Balanced Budget Amendment, Senators Simon and Hatch will modify S.J. Res. 41 to incorporate language clarifying the role of the judiciary of its enforcement. This modification will make absolutely no substantive change in the operation of S.J. Res. 41 but simply will provide an explicit assurance that the role of the courts will go no further than permitted under existing legal precedents.

We disagree with those who argue that passage of S.J. Res. 41 will result in the courts setting budget policy, but we have agreed that it would be beneficial to clarify the issue. The language that we plan to add to the amendment reflects our longstanding understanding of the role of the courts in enforcing the amendment. Courts would be limited to reviewing the actions of Congress and the executive and determining whether the amendment has been violated, leaving the policy decisions regarding what actions should be taken to the political branches.

This language responds to the concern expressed by Senators Danforth, Cohen, Domenici and Nunn that the courts will become too involved in budget policy, as well as the opposite concern that S.J. Res. 41 will be entirely unenforceable.

S.J. Res. 41 preserves the ability of Congress through implementing legislation, to further regulate the role of the courts in enforcing the amendment. Under Article III of the Constitution, Congress possesses authority to establish federal court jurisdiction and remedies. Thus, Congress can confer, deny, or limit court jurisdiction over cases arising under this amendment through statue. Congress can also pass legislation to provide for expedited adjudication.

The text of S.J. Res. 41 is reprinted on the back of this letter. If you have any questions, you may contact any one of us or Aaron Rappaport (Simon 4-5573), Larry Block (Hatch 4-7703), Damon Tobias (Craig 4-2752), Janis Long (DeConcini 4-8178), Thad Strom (Thurmond 4-9494) or Ed Lorenzen (Stenholm 5-6605).

Sincerely,

PAUL SIMON,
DENNIS DECONCINI,
ORRIN HATCH,
CHARLES STENHOLM,
LARRY CRAIG,
STROM THURMOND.

S.J. RES. 41 (AS MODIFIED)
(New language in italic)
ARTICLE—

"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. *The power of any court to order relief pursuant to any case or controversy arising under this article shall not extend to ordering any remedies other than a declaratory judgment or such remedies as are specifically authorized in implementing legislation pursuant to this section.*

"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 [1999] *2001* or with the second fiscal year beginning after its ratification, whichever is later.".

[From the Washington Post, Feb. 24, 1994]

ARGUMENTS OUT OF BALANCE

(By George F. Will)

Opponents of the constitutional amendment that would encourage—no more than that—balanced budgets rely on arguments that devour one another. They say the amendment is an inconsequential gimmick—and they say it would eviscerate government. They say the amendment is unnecessary because Congress can be trusted to act responsibly—and they say Congress cannot be trusted to respect the amendment if it is put into the Constitution.

The wizards in the White House, tightly in the grip of the conceit that the future is to them an open book, say the amendment would force grim choices costing the average Social Security or perhaps Medicare recipient at least $1,000 a year, and they have listed the annual cost of the amendment to each state. Vermont? $418 million. How does the White House know so much about choices the nation would make under a constitutional requirement to align revenues and outlays?

Besides, another argument made against the amendment is that instead of making grim choices, Congress would make a mockery of the Constitution. This argument, coming from members of Congress incapable of blushing, is: Trust us, not the amendment, to achieve fiscal discipline, because we are so untrustworthy we would treat the amendment as more loophole than bridle. "Emergencies" would be declared promiscuously, programs would be put "off budget," receipts and outlays would be redefined, cost and revenue projections would be cooked—in short, there would be even more of the trickery that now goes on.

Sen. Carl Levin, a Michigan Democrat opposed to the amendment, notes that it "relies on statutory definitions that can easily be changed," such as the definition of "fiscal year." He warns that Congress might redefine "fiscal year" to mean "eleven months or three years." Oh. Congress is so cynical, don't bother trying to bind it with constitutional fetters? Does Levin have such a low opinion of his colleagues that he thinks it would be easier to fiddle the meaning of "fiscal year" than to get 60 percent of both houses of Congress honestly to authorize a deficit, as the amendment allows?

The word "crisis" has become another classification used so casually that it no longer classifies. Even so, it is peculiar to say (as does Lloyd Cutler, who was counsel to President Carter) that there would be a "constitutional crisis" if an "emergency"—say, many hurricanes and earthquakes—necessitated spending that required a constitutional super-majority to authorize a deficit. If the "emergency" could not catalyze 60 percent of Congress, would it really be much of an emergency?

Opponents of the amendment warn that it deprives the government of "flexibility"

needed to adjust fiscal policy to stages of business cycles. Of course this argument cannot be used by opponents who say the amendment would be too porous to inhibit the government. And this argument requires faith in the government's aptitude for fine-tuning fiscal policy to "manage" the economy. And the people making this argument must explain this: Flexible government, unconstrained by a balanced budget requirement, has run deficits at every stage of every business cycle since the last balanced budget, in 1969, and President Clinton, who opposes the amendment, projects deficits far into the future.

When the deficit was around $300 billion, critics said the balanced budget requirement was ruinously Draconian. Now that the deficit has temporarily dipped below $200 billion, opponents say the requirement is unnecessary. And opponents say the projections of rising deficits by the end of the decade mean that the requirement soon would be ruinously Draconian.

Yes, if Congress passes the amendment, the states, which get about 20 percent of their money from Washington, might reject it. (Thirteen states can stop an amendment. That limit on majoritarianism is more substantial than the mild requirement of a 60 percent vote to run a deficit.) Yes, Congress might respond to a balanced budget requirement by stepping up its "spending by indirection"—imposing unfunded mandates on the states, regulating business, and so on. (Last year the Clinton administration regulations filled 69,688 pages of the Federal Register, the third highest total in history, behind only the last two Carter years.)

Which is to say, the balanced budget amendment can inconvenience legislative careerists but cannot make them virtuous. Which brings us to the source of the real passion against the amendment: deficit spending is, in effect, public financing for the campaigns of incumbents, enabling them to charge only 75 to 85 cents for every dollar of government they dispense. So the vote on the amendment is a referendum on a political style: borrow and borrow, spend and spend, elect and elect.

BALANCED BUDGET AMENDMENT: CONSTITUTIONAL ISSUES

The U.S. Chamber of Commerce, the nation's largest business federation, has endorsed S.J. Res. 41, the Balanced Budget Amendment to the U.S. Constitution. The Chamber believes that this measure, sponsored by Sens. Simon (D-IL), Hatch (R-UT) and Craig (R-ID), will help move the federal government toward fiscal responsibility. This paper discusses the most significant constitutional and legal questions raised by this landmark legislation, along with some of the conclusions reached by the U.S. Chamber.

IS A BALANCED BUDGET REQUIREMENT APPROPRIATE SUBJECT MATTER FOR THE CONSTITUTION?

Some commentators have argued that a balanced budget requirement is a mere rule of accounting, incompatible with the broad principles embodied in the Constitution. It is worth noting that the Constitution already contains several narrowly-focused economic and fiscal provisions, including the requirement of "a regular statement and account of the receipts and expenditures of all public money" (Article I, Section 9), and the requirement that "duties, imposts and excises . . .[be] uniform throughout the United States (Article I, Section 8).

Moreover, the Balanced Budget Amendment embodies two principle themes of the constitution: limitation on federal power, and protection of politically under-represented groups against majoritarian abuse. Thomas Jefferson, who perceived the inherent tendency of central government to expand, supported a constitutional prohibition of federal borrowing as a means of protecting individual liberty. For most of the nation's history, the growth of the federal government was held in check by an implicit policy against deficits, except during war or recession. In recent times, the erosion of this principle has created persistent structural deficits, removed the need to limit and prioritize programs, and led to an excessively large federal sector. The BBA requirement that federal operations be funded from current revenues restores an important principle of fiscal responsibility and limited government.

Likewise, the protection of groups with limited access to the political process has emerged as a major theme of Constitutional law.[1] Limitations have been placed on governmental actions which unfairly impact racial minorities, aliens and other "discreet and insular" groups.[2] Because future generations who will bear much of the burden of current policy lack input into the electoral process, it may be that their interests are undervalued in federal budget decisions. The Balanced Budget Amendment seeks to ensure that the vital interests of young and future Americans are reflected in the decisions of Congress, embodying a principle of fairness and political inclusion consistent with the best provisions of the Constitution.

Footnotes at end of article.

CAN THE DEFICIT PROBLEM BE SOLVED SHORT OF AMENDING THE CONSTITUTION?

Statutory attempts to impose fiscal discipline upon the federal government have failed, largely because Congress was able to change the rules in mid-game. The ambitious deficit reduction targets of the 1985 Gramm-Rudman-Hollings law were repeatedly modified when they conflicted with Congress' spending ambitions. Likewise, big-ticket items such as unemployment compensation payments and disaster relief are customarily designated as "emergency" spending, which exempts them from spending caps. Between 1980 and 1990, each year's actual spending exceeded the targets of that year's budget resolution by an average of $30 billion (the excess was $85 billion in 1990).[3]

Each statutory response to the deficit has shown the same vulnerability: hard-won budget rules can be waived or modified by a simple majority vote. Not surprisingly, a majority can usually be assembled to support more spending. The key advantage of a Constitutional amendment is that tough budgetary rules can be placed beyond the reach of simple Congressional majorities. The Simon/Hatch proposal requires yearly enactment of a balanced budget, unless Congress approves a specific deficit for that fiscal year by a three-fifths vote of each house. (A simple majority of each house can waive the balanced budget requirement during a time of war.) The supermajority requirement reflects the view that incurring a deficit should be an exceptional even that requires clear consensus. The Simon/Hatch Amendment commits future Congresses to avoid structural deficits, while providing them the flexibility to respond to true emergencies.

IS THERE ANY PLACE FOR STATUTORY SOLUTIONS?

While the Balanced Budget Amendment mandates a zero deficit by FY 99 (or the second fiscal year after enactment), it does not specify how to get there. The Chamber believes that enactment of a BBA will force Congress to take a close look at statutory mechanisms designed to reach that goal, and this will probably begin well in advance of final ratification by the states. In approving S.J. Res. 41, the Senate Judiciary Committee contemplated enactment of "legislation that will better enable the Congress and the President to comply with the language and intent of the amendment."[4] Additional budget process reforms may include tax and spending limitations, line-item veto authority, and the creation of an independent commission to recommend spending cuts. The BBA will thus lay the groundwork for further budget process reforms at the statutory level.

WILL CONGRESS AND THE PRESIDENT STILL HAVE THE FLEXIBILITY TO RESPOND TO NATIONAL EMERGENCIES?

The Simon/Hatch Amendment does not prohibit Congress from running a deficit in a given year; it merely requires that this decision be approved by three fifths of each house. This degree of consensus is required for many important decisions, including the approval of a treaty, and override of a Presidential veto. In the BBA, the three-fifths requirement reflects the view that incurring a deficit should be an exceptional event that is carefully scrutinized. At the same time, this provision allows Congress and the President the flexibility to respond to genuine emergencies. Should large-scale domestic problems such as recessions or natural disasters alter budget needs, it will be possible to assemble a three-fifths consensus that recognizes this. In the case of foreign aggression, the balanced budget requirement can be suspended by a simple majority vote of each house.

WILL THE AMENDMENT THRUST THE COURTS INTO AN INAPPROPRIATE ROLE OF CUTTING PROGRAMS AND RAISING TAXES?

Some commentators have raised questions about the enforcement of a Balanced Budget Amendment. A primary concern is that Congressional efforts to meet the balanced budget requirement would be challenged in the courts, and the judiciary would be thrust into the role of weighing policy demands, slashing programs and increasing taxes. On the other hand, there is a legitimate and necessary role for the courts in ensuring technical compliance with the amendment. The Chamber believes that these concerns can be reconciled in implementing legislation, which draws upon existing legal principles.

In general, the courts have shown an unwillingness to interject themselves into the fray of budgetary politics. The New Jersey Supreme Court observed that "it is a rare case . . . in which the judiciary has any proper constitutional role in making budget allocation decisions."[5] The judiciary has remained clear of most budget controversies through doctrines of "non-judiciability," including "mootness," "standing," and the "political question" doctrine.

A case is considered moot, and can be rejected by the court, if the matter in controversy is no longer current (this will be a factor in many budgetary controversies, such as those based on unplanned expenditures or flawed revenue estimates which become apparent near the end of the fiscal year). The doctrine of standing limits judicial access to parties who can show a direct injury over and above that incurred by the general public. The logic is that the grievances of the public (or substantial segments thereof) are the proper domain of the legisla-

ture.[6] The U.S. Supreme Court has held that status as a taxpayer does not automatically confer standing to challenge federal actions,[7] and has barred taxpayer challenges of budget and revenue policies in the absence of special injuries to the plaintiffs.[8] The political question doctrine is a related principle that the courts should remain out of matters which the Constitution has committed to another branch of government. The Supreme Court has held that a "political question" exists when a case would require "nonjudicial discretion."[9] This would be the case with many budgetary controversies, such as the choice to cut particular programs, which by their nature require ideological choices and the balancing of competing needs.

In contrast, courts have asserted jurisdiction over politically tinged controversies where they find "discoverable and manageable standards" for resolving them. In *Baker* v. *Carr*,[10] the U.S. Supreme Court reasoned that objective criteria guide judicial decisionmaking and limit the opportunity for overreaching. In the balanced budget context, the "discoverable and manageable standards" principle can help demarcate lines between impermissible judicial policymaking, and the needed enforcement of accounting rules and budget procedures.

In all likelihood, a strong framework of accounting guidelines will emerge from implementing legislation. The Senate Judiciary Committee has interpreted Section 6 of the bill to impose "a positive obligation on the part of Congress to enact appropriate legislation" regarding this complex issue.[11] Judiciary Committee staff on both the House and Senate side have indicated their intention that implementing legislation embrace stringent accounting standards that will minimize the potential for litigation. Should legitimate questions arise concerning the methods by which Congress balances the budget, these standards will also provide objective criteria which meet constitutional standards for judicial intervention.

The implementing package is also likely to establish guidelines for judicial involvement, defining what issues are judiciable and which parties have standing to challenge Congressional decisions. State budget officers, for example, could be given standing to contest unfunded federal mandates. These enforcement procedures, coupled with budget process and accounting guidelines, will operate against a backdrop of traditional legal principles to rationally limit judicial action. The effect should be to prevent judicial overreaching into legislative functions, while providing a check on Congressional attempts to evade the requirements of the BBA through procedural and numerical gimmickry.

FOOTNOTES

[1] See John Hart Ely, Toward A Representation-Reinforcing Mode of Judicial Review, 37 Md. Law Review 451 (1978).

[2] *United States* v. *Carolene Products Co.*, 304 U.S. 144 (1938), footnote 4.

[3] Source: The Economic and Budget Outlook, Congressional Budget Office (January 1993), p. 108.

[4] S. Rpt. 103-163, 103rd Congress, 1st Session (1993), p. 6.

[5] *Board of Education* v. *Kean*, 457 A.2d 59 (1982).

[6] *Flast* v. *Cohen*, 392 U.S. 83 (1968) (Harlan, J., dissenting).

[7] *Massachusetts* v. *Mellon*, 262 U.S. 447 (1923).

[8] *United States* v. *Richardson*, 418 U.S. 166 (1974) (plaintiffs challenged a statute allowing the CIA to avoid public reporting of its budget); *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976) (plaintiffs challenged a Revenue Ruling granting favorable tax treatment to certain hospitals as inconsistent with the Internal Revenue Code).

[9] *Baker* v. *Carr*, 369 U.S. 186 (1962).

[10] Id.

[11] S. Rpt. 103-163, 103rd Congress, 1st Session (1993).

[From the Balanced Budget Amendment Coalition]

AN OPEN LETTER TO MEMBERS OF THE U.S. SENATE

The undersigned organizations urge you to vote for and support the Balanced Budget Amendment, S.J. Res. 41, introduced by Senators Simon, Hatch, DeConcini, Thurmond, Craig and Heflin. This bipartisan proposal (with 55 total Senate cosponsors) has already passed the Senate Judiciary Committee on a 15 to 3 vote, the strongest committee action ever in support of this legislation. Senate floor consideration of S.J. Res. 41 is expected shortly.

The Framers of the U.S. Constitution assumed each generation of Americans would pay its own bills—and that the federal budget would, over time, remain roughly in balance. According to Thomas Jefferson, "we should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves."

In today's era of mass media, special interest politics, and expensive and sophisticated election campaigns, the checks and balances established 200 years ago are not up to the job of controlling the federal deficit. Recent Congresses and presidents have proven themselves incapable of acting in the broader national interest on fiscal matters. Whenever Congress considers spending cuts that could help balance the budget, only a few Americans are aware of it, and fewer still express their views about it. By contrast, those who stand to lose from budget restraint—typically the beneficiaries and administrators of spending programs—are well aware of what they stand to lose. They mount intensive lobbying campaigns to stop fiscal restraint.

This pro-spending and pro-debt bias has led to 24 straight unbalanced budgets. It took our nation 205 years—from 1776 to 1981—to reach a $1 trillion debt. Now, just 12 years later the debt is $4.4 trillion. Each year, interest payments rise as the overall debt grows. These payments are one of the fastest-rising items in the federal budget—they now account for virtually the entire deficit, all by themselves. A succession of statutory remedies has failed to stem this historic and highly dangerous turn of events.

S.J. Res. 41 is a sound amendment that has evolved through years of work by the principal sponsors. It provides the Constitutional discipline needed to make balanced federal budgets the norm, rather than the rare exception (once in the past 31 years), and it offers the proper flexibility to deal with national emergencies.

In addition to requiring a three-fifths majority vote to deficit spend or increase the federal debt limit, S.J. Res. 41 is designed to make raising federal taxes more difficult. It would require the approval of a majority of the whole number of both House and Senate—by roll call votes—in order to pass any tax increase. This adds accountability as well as an appropriate focus on spending restraint.

Unless action is taken now, federal debt and deficits will continue to cripple our economy and mortgage our children's future. We urge you to support S.J. Res. 41, the Balanced Budget Amendment.

Sincerely,

American Farm Bureau Federation.
National Association of Manufacturers.
Council for Citizens Against Government Waste.
International Mass Retail Association.
National American Wholesale Grocers' Association.
The Seniors Coalition.
U.S. Chamber of Commerce.
National Taxpayers Union.
Citizens for a Sound Economy.
American Legislative Exchange Council.
National Association of Home Builders.
National Cattlemen's Association.
Associated Builders and Contractors.
U.S. Business and Industrial Council.
Precision Metalforming Association.
Concerned Women for America.
National Association of Wholesaler-Distributors.
National Truck Equipment Association.
Dairy and Food Industries Supply.
Steel Service Center Institute.
Truck Renting and Leasing Association.
Door & Hardware Institute.
Independent Bakers Association.
American Machine Tool Distributors.
National Association of Plumbing-Heating-Cooling Contractors.
U.S. Federation of Small Businesses.
National Independent Dairy Foods Association.
National Roofing Contractors Association.
Southern Forest Products Association.
Nebraska Motor Carriers Association.
Iowans for Tax Relief.
National Taxpayers Union of Ohio.
Nebraska Taxpayers Association.
Arizona Federation of Taxpayers.
The Lincoln Caucus (AZ).
United Taxpayers of New Jersey.
Kansas Libertarian Party.
North Dakotans for Good Government.
The Christian Coalition.
Americans for a Balanced Budget.
The Gas Appliance Manufacturers Association.
Associated Equipment Distributors.
American Subcontractors Association.
American Association of Boomers.
American Tax Reduction Movement.
Motorcycle Industry Council.
National Association of Brick Distributors.
Automotive Service Association.
Lead or Leave.
American Supply Association.
American Bakers Association.
National Ready Mixed Concrete Association.
The Bankers Institute.
Tennessee Grocers Association.
Howard Jarvis Taxpayers Association (CA).
National Taxpayers United of Illinois.
North Valley Taxpayers Association (AZ).
It's Time (AZ).
Alliance of California Taxpayers and Involved Voters (CA).
Connecticut Taxpayers Committee.
Kansas Taxpayers Network.
Citizens Against Higher Taxes (PA).
Citizens for Constitutional Property Rights, Inc. (FL).
Tax Accountability '93 (IL).
Landlords United for Tax Relief (IL).
New Jersey Citizens for a Sound Economy.
Virginia Citizens for a Sound Economy.
Citizens for Limited Taxation (MA).
Protect Oregon Property Society.
Sacramento County Taxpayers' League (CA).
Orleans County Taxpayers Association, Inc. (NY).
Warwick Taxpayers Association (NY).
South Carolina Policy Council.
Kendall County Taxpayers League (TX).
Federation of Wisconsin Taxpayers Organizations, Inc.
Macomb County Taxpayers Association (MI).

St. Clair County Taxpayers Association (MI).
Tax Cap Committee (FL).
Homeowner-Taxpayer Association, Bexeter County (TX).
Taxpayer's Action Network of Sarasota County (FL).
Taxpayer's Action Network of Cook County (IL).
Central Florida Taxpayer's Action Network.
Routte County Taxpayer's Action Network (CO).
Berkley County Taxpayers Association (WV).
Citizens for Political Reform (WV).
Free Market Committee (TX).
Taxpayers United, Inc. (MI).
Angry Taxpayers Action Committee (IL).
Committee for Good Government (FL).
New York Citizens for a Sound Economy.
Citizens for Fiscal Responsibility (ME).
Florida Tax Watch, Inc.
Minnesota Taxpayers United.
Tucson Business Coalition (AZ).
Westchester Taxpayers Alliance (NY).
Voice of South Dakota Taxpayers.
United Taxpayers of Monroe County and Greater New York State.
Utah Taxpayers Association.
Citizens for Sensible Taxation (VA).
Committee to Eliminate Government Waste (MI).
Idaho State Property Owners Association.
Lampasas County Taxpayers Association (TX).
San Francisco Taxpayer's Action Network.
Waste Watchers, Inc. (CA).
Taxpayer's Action Group of Naples (FL).
Metairie Taxpayer's Action Network (LA).
Leasburg Taxpayer's Action Network (MO).
West Virginia Citizens Against Government Waste.
Concerned Citizens for West Virginia.
Tax Accountability Committee (NV).
Del Norte Taxpayers League (CA).
Napa City/County Taxpayers Association (CA).
Marin United Taxpayers Association (AL).
Taxpayers Education Association (CA).
Taxpayer's Action Network of Rochester (NY).
Association of Glenn County Taxpayers (CA).
Hands Across New Jersey.
United Taxpayers of San Diego (CA).
Florida Taxpayers Association (NY).
Greenwood Lake Taxpayers Association (NY).
Valley Central Taxpayers Association (NY).
Town Taxpayers Association (NY).
Pine Bush Taxpayers Association (NY).
Cornwall Citizens Alliance (NY).
Newburgh School District Taxpayers Association (NY).
Taxpayer's Action Network of Western New York (NY).
Taxpayers Association of Fort Worth and Parent County (TX)
Pennsylvania Leadership Council.
Granite State Taxpayers, Inc. (NH).
Concerned Taxpayers of Manchester (NH).
Humboldt Taxpayers League (CA).
Taxpayer Association of El Dorado County (CA).
Shasta County Taxpayers Association (CA).
Union Beach Taxpayer's Action Network (NJ).
Taxpayer's Action Network of St. Louis (MO)
Canton Taxpayer's Action Network (OH).
Paul Gann's Citizens Committee (CA).
Taxpayers Watchdog Committee (IN).
Alliance of California Taxpayers and Involved Voters (Santa Cruz).
Minisink Valley Taxpayers Association (NY).
Mt. Hope Taxpayers Association (NY).
Chester Taxpayers Association (NY).
Middletown Taxpayers Association (NY).
Taxpayers Action Group (NY).
Concerned Citizens of Greenville (NY).
Goshen Taxpayers Association (NY).
Council for Cincinnatians Against Government Waste (OH)
Cochella Valley Taxpayer's Action Network (CA).
Conservative Coalition (AR).
Nevada Taxpayers Association.

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

The PRESIDING OFFICER. Charged to the Senator from Idaho?

Mr. CRAIG. Yes.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator yields back the remainder of his time.

Mr. CRAIG. I yield back the remainder of my time.

Mr. REID. I think it would be permissible that we yield back the remainder of Senator SIMON's time.

Mr. CRAIG. Mr. President, the Senator from Illinois had left me with his time. I did not ask unanimous consent for it and do not think we will need it. I think that would be appropriate.

The PRESIDING OFFICER. Without objection, the time of the Senator from Illinois is yielded back.

All time has been yielded back.

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

The PRESIDING OFFICER. There is no time remaining to be charged, except the time of the Senator from West Virginia. The Senator from West Virginia has 7 minutes remaining. I would not want the time charged against his time.

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

I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yield back.

The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak therein.

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

TRIBUTE TO ED STEGNER

Mr. DANFORTH. Mr. President, in Missouri, Ed Stegner's name is virtually synonymous with conservation and responsible stewardship of our natural resources. His countless contributions to the cause of conservation will be recognized on March 11. For those who wish to leave the world better than we found it, Ed's career offers many lessons.

Ed Stegner was born on September 24, 1925, on a family farm near Bunceton, MO, in Cooper County. He now owns the farm where he was born and has added to the acreage. Wildlife management is his highest priority, particularly turkey and quail. He actively farms the land, demonstrating that wise use of the land is compatible with good habitat for wildlife.

He acquired many of his values as a child who learned to hunt, fish, and trap with his father and brother. He saw quickly that abundant wildlife requires good habitat.

He served as a gunner in the Army Air Corps in World War II, resuming his studies at Missouri University after the war, earning a bachelors degree in agriculture. After college, he taught vocational agriculture to veterans, contributing to the improvement of farming practices in our State.

In 1953, he joined the Conservation Federation of Missouri as its executive secretary, a title later changed to executive director. Since that time, he has been the principal representative of Missouri conservationists before the State legislature and Congress, and before State and Federal natural resource agencies. For most of his 40-year career, he was our only full-time advocate for wildlife conservation.

His many accomplishments include his chairmanship of the Governor's Wild Rivers Advisory Committee, as organizer of the Prairie Foundation, and as secretary of the Citizens Committee for Conservation, which secured passage of an ambitious new conservation program funded by a dedicated sales tax. Most of Missouri's environmental legislation bears the imprint of his active involvement.

He is a member of many professional and citizen conservation groups, and has been honored by many more. Of the numerous awards and recognitions that have come his way, none means more than his selection by the Missouri Conservation Commission as a master conservationist, an honor that is given sparingly.

Ed Stegner intends to use his retirement for his hobbies—hunting turkey and quail, and being an amateur dog trainer. I certainly wish him success in

creating time for these pursuits, but he should know that a great many people expect him to remain active in the conservation movement. When opportunities present themselves to help preserve Missouri's natural heritage, I feel certain that Ed Stegner will do what he has done his entire adult life: he will lend an able and expert hand to a very good cause.

DIERDRA LEIGH SHARPUS

Mr. McCONNELL. Mr. President, the media characterization of "Generation X" as a bunch of apathetic, angst-ridden, self-absorbed young people certainly did not apply to Dierdra "Dia" Leigh Sharpus. For Dia Sharpus, a can-do former intern of mine, anything was achievable. Nothing came easy, though hard work was embraced. She expected excellence from herself; and for that reason, success was inevitable.

Dia's was a face of the younger generation that most people had not yet seen, but those like me who had were heartened—even humbled. Her life was so remarkable that her death last week, at the age of 21, is particularly hard to accept.

The loss to family, friends, and colleagues—including those on my staff who worked with her—is deeply felt. Yet we will reflect on Dia's life, not with remorse, but rather with thankfulness that we were able to know her, and with appreciation for the boundless enthusiasm with which she lived.

My acquaintance with Dia began when she applied for an internship in my office in 1991. Having been initiated into public service myself as an intern for Senator John Sherman Cooper, I pay close attention to the internship program in my office. Dia was among the finest candidates we have had, and the youngest I have ever hired.

She was president of her sophomore, junior, and senior high school classes, student council representative, and managing editor of her school paper. Throughout her academic career, she had won several scholarships and awards.

Not surprisingly, Dia excelled as an intern while simultaneously handling full-time university studies. The longer you knew Dia, the more you expected of her—but never more than she expected of herself.

Last week, Kentucky and America lost one of their best and brightest. A young woman who was an exemplary human being as well as an outstanding student and staffer. Dia's life stands as testament to what is possible and admirable. Her life should give us hope.

THE 13TH ANNUAL WASHINGTON-IRISH ST. PATRICK'S DAY RUGBY TOURNAMENT

Mr. PELL. Mr. President, I rise today to bring to the attention of my colleagues the 13th Annual Washington-Irish St. Patrick's Day Rugby Tournament which will be held in Washington, DC in March.

For the past 13 years, competitors from local clubs, universities, as well as teams from different States and countries, have participated in this tournament. In the past, countries such as Australia, Great Britain, Canada, and Germany have been represented. But what makes this year's tournament different is that, of the more the 60 teams scheduled to participate, one will be from Russia.

The Pensa Rugby Football Club from Moscow, representing the Confederation of Independent States, will be the first such team to enter an organized rugby tournament in the United States. While they are in Washington, the Russian players will stay with the Washington-Irish Rugby Club players. Upon completion of the tournament, the 35-member Russian club will move on to games in Baltimore and New York before returning home.

I believe that the participation of the Russian team speaks well of the improving relations between our two countries. At a time when our athletes are competing in Lillehammer, it is important to recognize the role that sports play in building a greater understanding between citizens of different nations.

On a similar note, I was pleased to have the opportunity last summer to have a role in the World Scholar-Athlete Games which were held in Newport, RI. The Games—a junior Olympics of sorts—brought together more than 1,500 teenagers from every State of the United States as well as from 107 countries, to foster camaraderie and understanding among future world leaders through sport and cultural activities. I have long held the view, Mr. President, that only through closer contact with the citizens of other nations can we knock down the wall of ignorance and isolation. Hopefully, through programs such as the rugby tournament and the Scholar-Athlete Games, misconceptions about other cultures will diminish, or preferably be totally eliminated.

I salute the Washington-Irish Rugby Football club for their work in organizing and hosting this event.

RECOGNIZING RECIPIENTS OF THE GIRL SCOUT SILVER AND GOLD AWARDS AND THE BOY SCOUT EAGLE AWARD

Mr. CHAFEE. Mr. President, it is with great pleasure that I today pay tribute to the accomplishments of the Girl Scouts and Boy Scouts from Rhode Island. Once again from these fine organizations emerges an admirable group of young women and men who have distinguished themselves as leaders in their respective communities.

Since the beginning of this century, the Girl Scouts and Boy Scouts have provided thousands of youngsters each year with the opportunity to make friends, explore new ideas, and develop leadership skills, along with a sense of determination, self-reliance, and teamwork.

The Silver and Gold Awards represent the highest awards attainable by junior and high school Girl Scouts. These awards are presented only to those who possess the qualities that make our Nation great, namely; commitment to excellence, hard work, and genuine love for community service. Similarly, the Eagle Scout Award is an extraordinary award with which only the finest Boy Scouts are honored. To earn the award—the highest advancement rank in Scouting—a Boy Scout must demonstrate proficiency in the rigorous areas of leadership service and outdoor skills.

I am honored to ask my colleagues to join me in congratulating the recipients of these awards. Their activities are indeed worthy of praise. Their leadership benefits our community greatly and serves as role models for their fellow peers. If this group is representative of our future governance there is no doubt that our future will be in good hands.

Lastly, we must not forget the unsung heroes who continue to devote a large part of their lives to make all this possible. Therefore, I salute the families, Scout leaders, and Scouting organizations that have given generously of their time and energy in support of Scouting.

It is with great pride that I submit a list of the young women and men who have earned this award.

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

GIRL SCOUT SILVER AWARD RECIPIENTS, 1993

Bellingham, MA: Karen Rao.

Cranston, RI: Sarah Paine, Mary Anne Sivo, Amanda Toppa.

Cumberland, RI: Shannon Combs, Katrin Myrberg.

East Greenwich, RI: Heather Denny-Brown, Kimberly Gaffney, Julie Hendrickson, Jennifer Robinson, Kristen Swanson.

Hope Valley, RI: Jen Gamble, Jill Vaughn.

Johnston, RI: Sandra Shackford.

Narragansett, RI: Heather Damon, Jessica Festa, Kate Hohman, Renee Johnson, Jill Raggio.

Newport, RI: Mary E. Cooke.

North Providence, RI: Marissa Borrelli.

North Scituate, RI: Kate Donnelly.

Portsmouth, RI: Jessica Arent, Lindsay Correra, Camille Dumont, Andrea Hunt, Emily Lyons, Jane Lyons, Rebecca Richard, Anne Short, Cynthia Spain.

Providence, RI: Roseanne Suvajian.

Riverside, RI: Cochette Dollof.

Saunderstown, RI: Sarah Sewatsky.

Wakefield, RI: Meghan Higgins.

Warwick, RI: Kate Derby, Jennifer Laliberte, Erin Lutynski, Cristin Majkut, Melissa Murphy, Rachel Shannon, Laura Tanner.

West Kingston, RI: Brandi Kenyon.

West Warwick, RI: Heather LaBelle.
Woonsocket, RI: Kimberly Hebert.

GIRL SCOUT GOLD AWARD RECIPIENTS, 1993

Ashaway, RI: Stephanie Lewandowski.
Bradford, RI: Lori Kinsey.
Charlestown, RI: Allison Hitte.
Coventry, RI: Robin Triggs.
Cranston, RI: Melissa Rhynard.
Pawtucket, RI: Heather Carroll, Amanda Young.
Portsmouth, RI: Sarah McCarthy.

1993 CLASS OF EAGLE SCOUTS

Barrington, RI: Richard James Wood, Stuart E. Kiely, Matthew David Mueller, Scott Cohen, Christopher D. Harrison.
Bristol, RI: Christopher A. Vedro, Derek M. Moitoso.
Caroline, RI: Sean S. McIntire.
Charlestown, RI: Michael R. Schipritt, Brian Wayne Rhodes, Andrew N. Deslaurier, Andrew Nathan Zalit.
Coventry, RI: Alan John McDonald, Craig Marcotte, Steven A. St. Pierre, Sean Anderson, John R. Degraide, Forest Handford, Aaron R. Becker, R. Seth Kelley.
Cranston, RI: Raymond A. Pontarelli, Jr., Joseph Jacob Ackroyd, Jeffrey D. Peckham, Franco S. Medeiros, James Edward Mullin, III, Matthew A. Voccio.
Cumberland, RI: J. Bradley Stump, Cristofor Mark Cataudella, Matthew Logan Kizlinski, Stephen E. Samek, David Kevin Coutu, Ryan Benjamin Billington, Christopher B. Contois, Richard G. Larouche, II.
East Greenwich, RI: William Radcliffe Thompson, Michael J. Schwendiman, Michael A. Hultquist, Glenn E. Russell, Timothy R. Bennett, Brian P. Derham, Todd Muffoletto.
East Providence, RI: Jason Charles Brehm.
Greenville, RI: Steven Michael Bailey, Derek Joseph Wagner.
Harrisville, RI: Jay Victor Langlais.
Johnston, RI: Jeremy Vincent Pistacchio, Mark Leonard VanRotz, Michael Rotondo.
Lincoln, RI: Bryan J. Gore.
Manville, RI: Joseph S. O'Garr.
Narragansett, RI: Daniel Alan Clarkin.
Newport, RI: William F. Augustus, Brenton V. Morris, John Bruce Stubbs.
North Kingstown, RI: Donald Bumgardner.
North Providence, RI: Bryan Joseph Myre, Dan Brady.
North Scituate, RI: Michael N. Desjarlais, Grant S. Wilson.
Pascoag, RI: Thomas Joseph Coleman.
Pawtucket, RI: Timothy Durst, Timothy D. Seward, Curtis Brown Rogers, Jeffrey J. Gomes.
Peacedale, RI: David Coleman.
Portsmouth, RI: Todd R. Gurney, Brian M. Lingerfelt, Richard A. Erwin, Jr., David R. Brown, Christopher M.C. Mulligan, Richard J. Ort, Robert L. Morris, Aaron Janssen, Samuel E. Johnson.
Providence, RI: Edison O. Santana, Brendan G. Elliott, Allen M. Cowett, Christopher Gargaro, James A. Prendergast, Jonathan Andrew Kosterlitz, Charles E. Kubbe, Jr., Robert A. Mercer, III, John E. McMullen.
Riverside, RI: Jeremy Ryan McDonald.
Rumford, RI: Robert Fregault.
Smithfield, RI: Douglas Youch.
Wakefield, RI: Jeffrey M. Robidoux, Kyle P. Higgins, David M. Williams, Jr., Joshua Martin, David Moretti.
Warwick, RI: Ryan Boulais, Robert L. Belluso, Jason S. Richards, Stephen T. Preiss, Brian Matthew Daniels, Edmund R. Coletta, Michael P. Toole, Jeffry T. Ross, Kenneth R. Flynn.
West Warwick, RI: Jonathan Joubert, Keith Forcier, Joseph Baris, III, Jamie Roy Villanueva, Doyle K. Delovio, Joshua J. Barrette, Lokahi Kealohi Delovio, Michael Eric Brown, Raymond J. Fields, Jr., Mark Kenneth Mitchell.
Westerly, RI: Gregory W. Latz, Thomas M. Grasso.
West Kingston, RI: Brian Patrick Betty.
Woonsocket, RI: Todd Desjardin, William M. Tharpe.
Connecticut:
Pawcatuck, CT: Michael Shawn Cryan.
Massachusetts:
North Dighton, MA: Brian J. Stone.
Rehoboth, MA: Curtis Killam, Matthew E. Killam.
Seekonk, MA: Jonathan Abell, Robert M. Cox, Stephen James Coyle, Michael P. Coyle, Ethan Philip Sluter, John T. Gaebe, David A. Fasteson, Nathan W. Foulkes.
Uxbridge, MA: Bertram H. Stewart, III, Jeffrey S. Thayer, Jeremy F. Stratton.

PAT KRAUSE

Mr. JOHNSTON. Mr. President, when I first came to the Senate, I was very fortunate in that Senator Henry M. Jackson convinced me to become a member of what was then the Committee on Interior and Insular Affairs and which later became the Committee on Energy and Natural Resources. Immediately upon joining the committee I became chairman of the Subcommittee on Territories and Insular Affairs, as had Senator Jackson several years before me. As Chairman, I had the unique experience of dealing with my counterpart on the House side, Congressman Phil Burton—an experience no one warned me about.

That history, however, is merely background on how I, and my staff, both in my office and on the committee, came to know one of the most decent and caring individuals we ever had the good fortune to meet. Pat Krause was brought to the staff of the House Interior Committee by Congressman Burton to be their territorial specialist during the 1970's and worked there for 15 years. Pat died on February 23 at the Washington Home, and I cannot really express how much we will all miss her.

There was never anything false or pretentious with Pat. She was warm and open, with a laugh that could shake the halls. She cared deeply about the residents of the territories and the trust territory. You always knew her concern was honest and sincere. Even after she left the House Committee she remained committed to the welfare of the residents of our territories and the close personal friendships which had developed with my staff continued. She was a truly decent and wonderful person and we will miss her very much. On behalf of myself and all those who knew her, I want to extend my sympathies to her sisters and brother. She was a remarkable person and we will treasure her memory.

HEBRON ATTACK MUST NOT DERAIL PEACE

Mr. PELL. Mr. President, this morning's news brought word of a horrible tragedy in the Middle East. A deranged Israeli settler—an American immigrant, wearing an Israeli military uniform—opened fire with an automatic weapon inside the mosque at the Tomb of the Patriarchs in Hebron. By early accounts, as many as 50 Palestinians have been killed, and 170 wounded.

This is the worst incident of Israeli-Palestinian violence in the Middle East since Israel and the Palestine Liberation Organization signed their Declaration of Principles last September. The mind-numbing number and severity of the casualties cannot help but have an impact on the negotiations between Israel and the PLO. It is the duty of the United States, Israel, and the Palestinians to ensure that the response to this incident does not spin out of control and lead to the derailment of the peace process.

The reaction of the United States and the Israeli leadership has been swift and appropriate. Secretary of State Christopher expressed horror at the news, saying that the violence "underscores the imperative of accelerating the negotiations to implement the Declaration of Principles." Israeli Prime Minister Yitzhak Rabin condemned the "loathsome criminal act," adding that "this is a difficult day for all of those Arabs and Jews alike, who seek peace." Rabin also was reported to have telephoned Arafat to express his condolences.

The Palestinians understandably are stunned by the slaughter. Already there are reports of unrest and rioting, despite the fact that Israel has placed a curfew on Hebron and sealed off Gaza. PLO Chairman Yasser Arafat was quoted this morning as saying the killings are "a real tragedy, and will make a very negative backfire on the whole peace process."

My sincerest hope is that Israelis and Palestinians both will recognize the very real possibility that the motivation behind this repugnant act was precisely to undermine the peace process. If Israelis and Palestinians allow themselves to be swayed off course in the emotional turmoil of the moment, it will only serve the cause of the enemies of peace. It will ensure the victory of extremism.

This is a time of sadness and mourning for the loss of innocent Palestinian life. I deplore the senseless killing, which is a further consequence of a generation subjected to hate and ignorance. But this morning's events cannot, indeed, must not, be allowed to sound the death knell of the peace process. That would be the biggest tragedy of all.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, as of the close of business on Thursday, February 24, the Federal debt stood at

$4,541,554,540,331.42, meaning that on a per capita basis, every man, woman and child in America owes $17,419.88 as his or her share of that debt.

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-2234. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Agriculture, Nutrition, and Forestry, to the Committee on Armed Services, to the Committee on Banking, Housing, and Urban Affairs, to the Committee on Commerce, Science, and Transportation, to the Committee on Energy and Natural Resources, to the Committee on Environment and Public Works, to the Committee on Foreign Relations, to the Committee on Governmental Affairs, to the Committee on the Judiciary, and to the Committee on Small Business.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-378. A concurrent resolution adopted by the Legislature of the State of Michigan; to the Committee on Appropriations.

"SENATE CONCURRENT RESOLUTION NO. 308.

"Whereas, the sea lamprey is a deadly and costly parasite that attaches to fish and eventually kills them. Years ago, the sea lamprey nearly destroyed the lake trout stock in Lake Michigan. It is now returning to its former strength after years of diligent effort and millions of taxpayers' dollars spent to fight it. This vampire-like parasite has the potential to destroy the sport and commercial fishing in the Great Lakes; and

"Whereas, in the summer of 1993, the Senate Standing Committee on Natural Resources and Environmental Affairs held hearings in Sault Ste. Marie concerning the reemergence of the sea lamprey problem. Committee members learned firsthand about the return of the sea lamprey and the importance of funding the control program for this dangerous invader. There are large numbers of lamprey in northern Lake Huron, many in northern Lake Michigan, and more threatening other Great Lakes; and

"Whereas, the Great Lakes Fishery Commission, a joint effort between the governments of the United States and Canada, has the ability to control sea lampreys. The commission treats 400 Great Lakes tributaries and some Great Lakes with poison that kills fledgling lampreys. In addition, the commission sterilizes male lampreys and uses in-stream devices to screen lampreys. These measures have successfully protected the fish in the Great Lakes from the brutal parasite. However, its 1994 budget is not sufficient to continue this effort completely and effectively. The United States government should provide the necessary funding to continue this successful project and to preserve and protect our precious Great Lakes; now, therefore, be it

"*Resolved by the Senate (the House of Representatives concurring),*

"That we memorialize the Congress of the United States to fully fund the sea lamprey control program; and be it further

"*Resolved,* That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan Congressional delegation, and the Great Lakes Fishery Commission."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 313. A bill to amend the San Juan Basin Wilderness Protection Act of 1984 to designate additional lands as wilderness and to establish the Fossil Forest Research Natural Area, and for other purposes (Rept. No. 103-230).

S. 455. A bill to amend title 31, United States Code, to increase Federal payments to units of general local government for entitlement lands, and for other purposes (Rept. No. 103-231).

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. DORGAN:

S. 1873. A bill to amend the Solid Waste Disposal Act to permit Governors to limit the disposal of out-of-State municipal and industrial waste in States, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. FEINSTEIN:

S. 1874. A bill to designate the U.S. Courthouse located at 940 Front Street in San Diego, CA, and the Federal building attached to the courthouse as the "Edward J. Schwartz Courthouse and Federal Building"; to the Committee on Environment and Public Works.

By Mr. DOMENICI (for himself, Mr. NUNN, Mr. THURMOND, Mr. ROBB, Mr. WARNER, Mr. STEVENS, Mr. LOTT, Mr. GRAMM, Mr. NICKLES, Mr. BOND, Mr. GRASSLEY, Mr. GREGG, Mr. BROWN, Mr. GORTON, Mr. DOLE, Mr. COHEN, Mr. COCHRAN, Mr. COATS, Mr. BURNS, Mr. COVERDELL, Mr. HATCH, Mrs. HUTCHISON, Mrs. KASSEBAUM, Mr. MACK, Mr. MCCAIN, Mr. D'AMATO, Mr. MURKOWSKI, Mr. ROTH, Mr. SIMPSON, and Mr. SMITH):

S. 1875. A bill to extend caps on defense and nondefense discretionary spending through fiscal year 1998; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have 30 days to report or be discharged.

By Mr. INOUYE (for himself and Mr. MCCAIN):

S. 1876. A bill to amend the Solid Waste Disposal Act to grant State status to Indian tribes for purposes of the enforcement of such act, and for other purposes; to the Committee on Indian Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DORGAN:

S. 1873. A bill to amend the Solid Waste Disposal Act to permit Governors to limit the disposal of out-of-State municipal and industrial waste in States, and for other purposes; to the Committee on Environment and Public Works.

INTERSTATE TRANSPORTATION OF MUNICIPAL AND INDUSTRIAL WASTE ACT OF 1994

• Mr. DORGAN. Mr. President, today I am introducing legislation that would provide States with the authority to regulate municipal and industrial waste being imported and deposited within their borders. The legislation I am introducing today is very similar to a bill that my colleague Senator COATS introduced last year which would grant States the authority to restrict imports of municipal waste. That bill, S. 439, the Interstate Transportation of Municipal Waste Act of 1993, only relates to municipal waste. I am a cosponsor of Senator COATS' bill because I believe that it is important that States should have a say with respect to imported waste that is being deposited within their borders. However, I believe that this authority needs to be applied to industrial as well as to municipal waste. That is the only distinction between the bill I am introducing today and S. 439: My bill applies to both municipal and industrial waste, whereas S. 439, only affects municipal waste imports.

Without congressional action, the States cannot impose restrictions on the interstate flow of waste originating in another State. The commerce clause of the Constitution gives the Congress, not the States, the power to regulate interstate commerce and that includes waste. The U.S. Supreme Court struck down State-imposed restrictions on receiving out-of-State waste as unconstitutional impediments to interstate commerce because Congress has not authorized such State action, thus, making it clear that States cannot impose restrictions on waste imports unless the Congress grants them the authority to do so.

The fact is that nearly every State in the Union exports and receives trash from other States. I do not believe that we should put an end to that. However, it is very concerning to me that rural communities, especially in the Midwest, are being targeted by large companies and Eastern States to dispose of their waste. It concerns me that they get the industry, the jobs, the economic growth and we get the trash. This does not seem right—especially if we are forced to accept this trade without any say in what gets hauled into our State.

Mr. President, I believe that the Senate needs to act in this area. It is just not fair that States cannot have a say in what goes on in their own backyard. I urge my colleagues to support not only my legislation but the legislation that Senator COATS introduced in the first session of the 103d Congress. I commend Senator COATS for his leadership in this area and I look forward to working with him and the rest of my colleagues in advancing legislation related to the interstate transportation of waste.

I ask unanimous consent that the full text of my legislation be printed in the RECORD.

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

S. 1873

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 "Interstate Transportation of Municipal and Industrial Waste Act of 1994".

SEC. 2. INTERSTATE TRANSPORTATION OF MUNICIPAL AND INDUSTRIAL WASTE.

Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"SEC. 4011. INTERSTATE TRANSPORTATION OF MUNICIPAL AND INDUSTRIAL WASTE.

"(a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL AND INDUSTRIAL WASTE.—

"(1) IN GENERAL.—

"(A) PROHIBITION ON DISPOSAL.—Except as provided in subsection (b), if requested in writing by both an affected local government and (if a local solid waste planning unit exists under State law) an affected local solid waste planning unit, the Governor of a State may prohibit the disposal of out-of-State municipal and industrial waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected local government.

"(B) PROCEDURE.—Prior to submitting a request under this section, the affected local government and solid waste planning unit shall—

"(i) provide notice and opportunity for public comment concerning any proposed request; and

"(ii) following notice and comment, take formal action on any proposed request at a public meeting.

"(2) EXCEPTIONS.—Beginning with calendar year 1994, in the case of landfills covered by the exceptions provided in subsection (b), the Governor of a State may—

"(A) notwithstanding the absence of a request in writing by the affected local government and the affected local solid waste planning unit, if any—

"(i) limit the quantity of out-of-State municipal and industrial waste received for disposal at each landfill of the landfills in the State to an annual quantity equal to the quantity of out-of-State municipal and industrial waste received for disposal at the landfill during the calendar year 1992 or 1993, whichever is less; and

"(ii) limit the disposal of out-of-State municipal and industrial waste at the landfills that received, during calendar year 1992, documented shipments of more than 50,000 tons of out-of-State municipal and industrial waste representing more than 30 percent of all municipal waste and industrial waste received at the landfill during the calendar year, by prohibiting at each such landfill the disposal, in any year, of a quantity of out-of-State municipal and industrial waste that is greater than 30 percent of all municipal and industrial waste received at the landfill during calendar year 1992; and

"(B) if requested in writing by the affected local government and the affected local solid waste planning unit, if any, prohibit the disposal of out-of-State municipal and industrial waste in a landfill cell in any of the landfills that does not meet the design and location standards and leachate collection and ground water monitoring requirements under the laws of the State (including regulations) in effect on January 1, 1994, for new landfills.

"(3) ADDITIONAL LIMITATIONS.—In addition to the authorities provided in paragraph (1)(A), beginning with calendar year 1997, the Governor of a State, if requested in writing by the affected local government and the affected local solid waste planning unit, if any, may further limit the disposal of out-of-State municipal and industrial waste as provided in paragraph (2)(A)(ii) by reducing the 30 percent annual quantity limitation to 20 percent in each of calendar years 1998 and 1999, and to 10 percent in each succeeding calendar year.

"(4) APPLICATION OF LIMITATIONS.—

"(A) IN GENERAL.—Any limitation imposed by the Governor of a State under paragraph (2)(A)—

"(i) shall be applicable throughout the State;

"(ii) shall not discriminate against any particular landfill within the State; and

"(iii) shall not discriminate against any shipments of out-of-State municipal and industrial waste on the basis of State of origin.

"(B) RESPONSE TO REQUESTS BY AFFECTED LOCAL GOVERNMENTS.—In responding to requests by affected local governments under paragraphs (1)(A) and (2)(B), the Governor of a State shall respond in a manner that does not discriminate against any particular landfill within the State and does not discriminate against any shipments of out-of-State municipal and industrial waste on the basis of State of origin.

"(5) PROCEDURE FOR EXERCISING AUTHORITY.—

"(A) INFORMATION FROM GOVERNOR DOCUMENTING QUANTITY OF WASTE.—The Governor of a State who intends to exercise the authority provided in this paragraph shall, not later than 120 days after the date of enactment of this section, submit to the Administrator information documenting the quantity of out-of-State municipal and industrial waste received for disposal in the State of the Governor during each of calendar years 1992 and 1993.

"(B) NOTICE AND COMMENT.—On receipt of the information submitted pursuant to subparagraph (A), the Administrator shall notify the Governor of each State and the public and shall provide a comment period of not less than 30 days.

"(C) DETERMINATION BY ADMINISTRATOR CONCERNING QUANTITY OF WASTE.—Not later than 60 days after receipt of information from the Governor of a State under subparagraph (A), the Administrator shall determine the quantity of out-of-State municipal and industrial waste that was received at each landfill covered by the exceptions provided in subsection (b) for disposal in the State of the Governor during calendar years 1992 and 1993, and provide notice of the determination to the Governor of each State. A determination by the Administrator under this subparagraph shall be final and not subject to judicial review.

"(D) PUBLICATION OF QUANTITY OF WASTE.—Not later than 180 days after the date of enactment of this section, the Administrator shall publish a list of the quantity of out-of-State municipal and industrial waste that was received during each of calendar years 1992 and 1993 at each landfill covered by the exceptions provided in subsection (b) for disposal in each State in which the Governor of the State intends to exercise the authority provided in this paragraph, as determined in accordance with subparagraph (C).

"(6) DESIGNATION OF AFFECTED LOCAL GOVERNMENT.—

"(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this section, the Governor of each State shall designate which entity listed in subsection (c)(1) shall serve as the affected local government for actions taken under this section.

"(B) FAILURE TO MAKE DESIGNATION.—If the Governor of a State fails to make a designation, the affected local government of the State shall be the city, town, borough, county, parish, or other public body created pursuant to the law of the State with primary jurisdiction over the land or the use of land on which the facility is located.

"(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-OF-STATE MUNICIPAL AND INDUSTRIAL WASTE.—The authority to prohibit the disposal of out-of-State municipal and industrial waste provided under subsection (a)(1) shall not apply to—

"(1) landfills in operation on the date of enactment of this section that—

"(A) received during calendar year 1992 documented shipments of out-of-State municipal and industrial waste; and

"(B) are in compliance with all applicable State laws (including any State rule or regulation) relating to design and location standards, leachate collection, ground water monitoring, and financial assurance for closure and post-closure and corrective action;

"(2) proposed landfills that, prior to January 1, 1994, received—

"(A) an approval from the affected local government to receive municipal waste and industrial waste generated outside the county or the State in which the landfill is located; and

"(B) a notice of decision from the State to grant a construction permit; or

"(3) incinerators in operation on the date of enactment of this section that—

"(A) received, during calendar year 1992, documented shipments of out-of-State municipal and industrial waste;

"(B) are in compliance with the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429); and

"(C) are in compliance with all applicable State laws (including any State rule or regulation) relating to facility design and operations.

"(c) DEFINITIONS.—As used in this section:

"(1) AFFECTED LOCAL GOVERNMENT.—Subject to subsection (a)(6), the term 'affected local government', with respect to a landfill or incinerator, means the elected officials of the city, town, borough, county, or parish in which the facility is located.

"(2) AFFECTED LOCAL SOLID WASTE PLANNING UNIT.—The term 'affected local solid waste planning unit' means a political subdivision of a State with authority relating to solid waste management planning in accordance with State law.

"(3) INDUSTRIAL WASTE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'industrial waste' means refuse (and refuse-derived fuel) generated by an industrial source, consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass, or any combination thereof.

"(B) EXCEPTIONS.—The term 'industrial waste' does not include—

"(i) any solid waste identified or listed as a hazardous waste under section 3001;

"(ii) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(iii) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from industrial waste and has been transported into the State for the purpose of recycling or reclamation;

"(iv) any solid waste that is—

"(I) generated by an industrial facility; and

"(II) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

"(v) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(vi) any medical waste that is segregated from or not mixed with industrial waste; or

"(vii) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(4) MUNICIPAL WASTE.—

"(A) IN GENERAL.—The term 'municipal waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, or institutional source, or any combination thereof, consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass, or any combination thereof.

"(B) EXCEPTIONS.—The term 'municipal waste' does not include—

"(i) any solid waste identified or listed as a hazardous waste under section 3001;

"(ii) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(iii) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste and has been transported into the State for the purpose of recycling or reclamation;

"(iv) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(v) any medical waste that is segregated from or not mixed with municipal waste; or

"(vi) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(5) OUT-OF-STATE MUNICIPAL AND INDUSTRIAL WASTE.—With respect to a State, the term 'out-of-State municipal and industrial waste' means municipal waste and industrial waste generated outside of the State. To the extent that it is consistent with the United States-Canada Free Trade Agreement, the North American Free Trade Agreement, and the General Agreement on Tariffs and Trade, the term shall include municipal waste and industrial waste generated outside of the United States.".

SEC. 3. TABLE OF CONTENTS AMENDMENT.

The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal and industrial waste.".●

By Mrs. FEINSTEIN:

S. 1874. A bill to designate the United States Courthouse located at 940 Front Street in San Diego, CA, and the Federal building attached to the courthouse as the "Edward J. Schwartz Courthouse and Federal Building;" to the Committee on Environmental and Public Works.

EDWARD J. SCHWARTZ COURTHOUSE AND FEDERAL BUILDING

● Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 1874

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States Courthouse located at 940 Front Street in San Diego, California, and the Federal Building attached to the courthouse shall be known and designated as the "Edward J. Schwartz Courthouse and Federal Building."

SEC 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the courthouse and Federal building referred to in section 1 shall be deemed to be a reference to the "Edward J. Schwartz Courthouse and Federal Building."

U.S. SENATE,
Washington, DC, February 25, 1994.

Hon. DANIEL PATRICK MOYNIHAN,
Chairman, Subcommittee on Water Resources, Transportation, Public Buildings and Economic Development, Washington, DC.

DEAR MR. CHAIRMAN: I was recently asked by U.S. Congresswoman Lynn Schenk of California and the judges of the District Court for the Southern District of California to introduce legislation renaming the courthouse and federal building in San Diego, California the "Edward J. Schwartz Courthouse Federal Building." I am honored today to introduce this legislation.

I believe that renaming the courthouse would be a fitting honor for Judge Schwartz in light of his long and distinguished service. Judge Schwartz started his career in 1959, when he was appointed by California Governor Pat Brown to the Municipal Court bench. In 1964, he was elevated to California's Superior Court. Four years later, in 1968, Judge Schwatz was nominated by President Johnson and confirmed by the United States Senate to serve on the U.S. District Court for the Southern District of California, making him the first judge appointed to this district. On November 20, 1969, Judge Schwartz became the Chief Judge, a position that he held until he achieved senior status in 1982.

During his tenure as Chief Judge, Judge Schwartz played an integral role in planning, supervising and constructing the federal courthouse and federal building. Under his leadership, California's Southern District has developed from a small vicinity of Los Angeles to one of the busiest districts in the nation. At the age of 81, Judge Schwartz continues to try cases today.

For the past 35 years, Judge Schwartz has selflessly devoted his life and career to the citizens of Southern California. I believe that the renaming of the courthouse in San Diego after Judge Edward J. Schwartz will not only honor him for his outstanding service to his court and this country, but will serve as a monument for his contributions to future generations. I hope that you will give this bill your consideration as soon as possible.

Sincerely yours,

DIANNE FEINSTEIN,
U.S. Senator.●

By Mr. DOMENICI (for himself, Mr. NUNN, Mr. THURMOND, Mr. ROBB, Mr. WARNER, Mr. STEVENS, Mr. LOTT, Mr. GRAMM, Mr. NICKLES, Mr. BOND, Mr. GRASSLEY, Mr. GREGG, Mr. BROWN, Mr. GORTON, Mr. DOLE, Mr. COHEN, Mr. COCHRAN, Mr. COATS, Mr. BURNS, Mr. COVERDELL, Mr. HATCH, Mrs. HUTCHISON, Mrs. KASSEBAUM, Mr. MACK, Mr. MCCAIN, Mr. D'AMATO, Mr. MURKOWSKI, Mr. ROTH, Mr. SIMPSON, and Mr. SMITH):

S. 1875. A bill to extend caps on defense and nondefense discretionary spending through fiscal year 1998; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have 30 days to report or be discharged.

FIREWALLS LEGISLATION

Mr. DOMENICI. Mr. President, today I am introducing legislation that would adopt separate caps on defense and nondefense discretionary spending through 1997.

This legislation would protect the defense budget.

The best advocate for this legislation is President Clinton. As he said in his State of the Union Address:

> Nothing is more important to our security, than our nation's Armed Forces.
>
> This year many people urged me cut our defense spending further to pay for other programs. I said no. The budget I send to Congress draws the line against further defense cuts. It protects the readiness and quality of our forces. Ultimately, the best strategy is to do that.
>
> We must not cut defense further. I hope the Congress, without regard to party, will support that position.

The defense levels in this legislation are identical to those in President Clinton's budget submission.

While I think the defense budget is being cut too quickly—this legislation

would protect the defense budget from additional cuts.

Last year we shifted a total of $3.2 billion from the defense budget to fund domestic programs.

This legislation would prevent these shifts for the next 3 years.

With this legislation, savings from further defense cuts could only be used for deficit reduction.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

DISCRETIONARY SPENDING LIMITS

[Dollars in billions]

	Fiscal year				
	1994	1995	1996	1997	1998
Clinton defense budget:					
Budget authority	261.748	264.165	255.873	252.569	
Outlays	280.580	271.087	261.564	256.972	
Nondefense:					
Budget authority	251.615	251.013	262.758	274.986	
Outlays	262.128	268.549	285.754	289.907	
Total discretionary spending:					
Budget authority	513.363	515.178	518.631	527.555	530.092
Outlays	542.708	539.636	547.318	546.879	547.055

By Mr. INOUYE (for himself and Mr. MCCAIN):

S. 1876. A bill to amend the Solid Waste Disposal Act to grant State status to Indian tribes for purposes of the enforcement of such act, and for other purposes; to the Committee on Indian Affairs.

SOLID WASTE DISPOSAL ACT AMENDMENTS OF 1994

• Mr. INOUYE. Mr. President, I introduce a bill that would recognize the important role that tribal governments must play in the enforcement of the Solid Waste Disposal Act on Indian lands. I am joined in this effort by my distinguished friend and colleague from Arizona, vice chairman of the Committee on Indian Affairs, Senator JOHN MCCAIN.

The purposes of this legislation are to acknowledge and affirm the inherent authority of Indian tribal governments to regulate the development, operation, and maintenance of solid waste and other waste facilities on Indian lands consistent with the Environmental Protection Agency's Indian policy and the overall Federal policy of Indian self-determination that arises out of the United States Government-to-Government relationship with the Indian Nations.

The Congress has attempted to improve the environmental quality of lands within Indian country by enacting provisions authorizing tribal government to assume primary responsibility in certain circumstances for implementing the full array of environmental laws, including the Clean Air Act, the Safe Drinking Water Act, and the Clean Water Act. This bill would simply extend the same status to tribal governments as that which is recognized under these other laws, by authorizing tribal governments to assume primary responsibilities for programs under the Resource Conservation and Recovery Act.

This bill will eliminate any confusion as to the authority of tribal governments to regulate environmental quality on Indian lands by clarifying that tribal governments are to be treated as States under the Resource Conservation and Recovery Act in the same manner as they currently are treated under all other major environmental acts.

Mr. President, this is an important bill. I call upon my colleagues to give this measure their careful review and favorable consideration.

Mr. President, I ask that the text of the bill and a section-by-section analysis appear in the RECORD.

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

S. 1876

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO GRANT STATE STATUS TO INDIAN TRIBES FOR ENFORCEMENT OF SOLID WASTE DISPOSAL ACT.

(a) DEFINITIONS.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) is amended—

(1) in paragraph (13)(A), by striking "or authorized tribal organization or Alaska Native village or organization,";

(2) in paragraph (15), by inserting after "State," the following: "Indian tribe,"; and

(3) by adding at the end the following new paragraphs:

"(42) The term 'Indian country' means—

"(A) all land within the limits of any Indian reservation under the jurisdiction of the Federal Government (including any right-of-way running through the reservation), notwithstanding the issuance of any patent;

"(B) all dependent Indian communities within the borders of the United States, including dependent Indian communities—

"(i) within the original territory or territory that is subsequently acquired; and

"(ii) within or without the limits of a State; and

"(C) all Indian allotments with respect to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

"(43) The term 'Indian tribe' means any Indian tribe, band, group, or community, including any Alaska Native village, organization, or regional corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) that—

"(A) is recognized by the Secretary of the Interior; and

"(B) exercises governmental authority within Indian country.".

(b) TREATMENT OF INDIAN TRIBES AS STATES.—Subtitle A of such Act (42 U.S.C. 6901 et seq.) is amended by adding at the end the following new section:

"SEC. 1009. INDIAN TRIBES.

"(a) IN GENERAL.—Subject to subsection (b), the Administrator may—

"(1) treat an Indian tribe as a State for the purposes of this Act;

"(2) delegate to an Indian tribe primary enforcement responsibility for programs and projects established under this Act; and

"(3) provide Indian tribes grant and contract assistance to carry out functions of a State pursuant to this Act.

"(b) ENVIRONMENTAL PROTECTION AGENCY REGULATIONS.—

"(1) IN GENERAL.—

"(A) TREATMENT.—Not later than 18 months after the date of the enactment of this section, the Administrator shall issue final regulations that specify the manner in which Indian tribes shall be treated as States for the purposes of this Act.

"(B) AUTHORIZATION.—Under the regulations issued by the Administrator, the treatment of an Indian tribe as a State shall be authorized only if—

"(i) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(ii) the functions that the Indian tribe will exercise pertain to land and resources that are—

"(I) held by the Indian tribe, the United States in trust for the Indian tribe, or a member of the Indian tribe (if the property interest is subject to a trust restriction on alienation); or

"(II) are otherwise within Indian country; and

"(iii) in the judgment of the Administrator, the Indian tribe is reasonably expected to be capable of carrying out the functions to be exercised in a manner consistent with the requirements of this Act (including all applicable regulations).

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—If, with respect to a provision of this Act, the Administrator determines that the treatment of an Indian tribe in the same manner as a State is inappropriate, administratively infeasible, or otherwise inconsistent with the purposes of this Act, the Administrator may include in the regulations issued under this section a mechanism by which the Administrator carries out the provision in lieu of the Indian tribe in an appropriate manner.

"(B) STATUTORY CONSTRUCTION.—Subject to subparagraph (C), nothing in this section is intended to permit an Indian tribe to assume or maintain primary enforcement responsibility for programs established under this Act in a manner that is less protective of human health and the environment than the manner in which a State may assume or maintain the responsibility.

"(C) CRIMINAL ENFORCEMENT.—An Indian tribe shall not be required to exercise jurisdiction over the enforcement of criminal penalties.

"(c) COOPERATIVE AGREEMENTS.—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and each State in which the lands of the Indian tribe are located may, subject to review and approval by the Administrator, enter into a cooperative agreement, to cooperatively plan and carry out the requirements of this Act.

"(d) REPORT.—Not later than 2 years after the date of enactment of this section, the Administrator, in cooperation with the Secretary of the Interior, the Director of the Indian Health Service, and Indian tribes, shall submit to Congress a report that includes—

"(1) recommendations for addressing hazardous and solid wastes and underground storage tanks within Indian country;

"(2) methods to maximize the participation in, and administration of, programs established under this Act by Indian tribes;

"(3) an estimate of the amount of Federal assistance that will be required to carry out this section; and

"(4) a discussion of proposals by the Administrator concerning the provision of assistance to Indian tribes for the administration of programs and projects pursuant to this Act.

"(e) TRIBAL HAZARDOUS WASTE SITE INVENTORY.—

"(1) INVENTORY.—Not later than 2 years after the date of enactment of this section, the Administrator shall undertake a continuing program to establish an inventory of sites within Indian country at which hazardous waste has been stored or disposed of.

"(2) CONTENTS OF INVENTORY.—The inventory shall include—

"(A) the information required to be collected by States pursuant to section 3012; and

"(B) sites located at Federal facilities within Indian country.".

(c) TECHNICAL AMENDMENT.—The table of contents for subtitle A of such Act (contained in section 1001 of such Act (42 U.S.C. prec. 6901)) is amended by adding at the end the following new item:

"Sec. 1009. Indian tribes.".

SEC. 2. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

Section 9508(c)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking "Except as provided" and inserting the following:

"(A) PURPOSES.—Except as provided"; and

(2) by adding at the end the following new subparagraph:

"(B) SET ASIDE FOR INDIAN TRIBES.—Notwithstanding any other provision of law, for each of fiscal years 1995 through 1999, the Secretary shall reserve an amount equal to not less than 3 percent of the amounts made available to States pursuant to subparagraph (A). Such amount shall be used only by Indian tribes (as defined in section 1004(43) of the Solid Waste Disposal Act) to carry out the purposes referred to in subparagraph (A).".

SECTION-BY-SECTION ANALYSIS OF S. 1876

SECTION 1. AUTHORITY TO GRANT STATE STATUS TO INDIAN TRIBES FOR ENFORCEMENT OF SOLID WASTE DISPOSAL

Section 1(a)—Definitions. This section amends the Solid Waste Disposal Act (42 U.S.C. 6903) with the three following changes: (1) deletes the phrase "unauthorized tribal organization or Alaska Native village or organization" from paragraph (13)(A) of the Act; (2) inserts the phrase "Indian tribe" after the term "State" in paragraph (15) of the Act; and (3) inserts two new definitions for the terms "Indian Country" and "Indian tribe".

Section 1(b)—Treatment of Indian Tribes as States. This section amends the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) by adding a new section to read "Sec. 1009. Indian Tribes".

Section 1009(a) states that the Administrator, subject to Sec. 1009(b), may (1.) treat an Indian tribes as a State for purposes of this Act; (2.) delegate to an Indian tribe primary enforcement responsibility for programs and project established under this Act; and (3.) provides that Indian tribes grant and contract assistance to carry out functions of a State pursuant to this Act.

Section 1009(b)(1)(A) instructs the Administrator, no later than 18 months after the date of enactment of this Act, to issue final regulations that specify the manner in which Indian tribes shall be treated as States under this Act.

Section 1009(b)(1)(B) instructs the Administrator to treat an Indian tribes as a State only if (1.) the Indian tribes has a governing body to carry out substantial governmental duties and powers; (2.) the Indian tribe will govern over exercises that pertain to land and resources that are held by the Indian tribe, or held in trust for the Indian tribe or member (if the property is interest is subject to a trust restriction on alienation) by the United States, or otherwise within Indian country; and (3.) the Administrator finds that the Indian tribe is reasonably expected to be capable of carrying out the functions in a manner consistent with the requirements of this Act and applicable regulations.

Section 1009(b)(2)(A) allows the Administrator to include a mechanism within the regulations issued pursuant to this Act which allows the Administrator to carry out the provisions of the Act in lieu of the Indian tribe, if the Administrator has determined that the treatment of an Indian tribe as a State in inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this Act.

Section 1009(b)(2)(B) states that nothing in this section permits and Indian tribe with primary enforcement responsibility for programs established under this Act to act in a manner that is less protective of human health and the environment than which is required of a State with similar responsibility.

Section 1009(b)(2)(C) directs that an Indian tribes is not required to exercise jurisdiction over the enforcement of criminal penalties.

Section 1009(c)—Cooperative Agreements. This section allows an Indian tribes and each State, where Indian land is located, to enter into cooperative agreements to plan and carry out the requirements of this Act, subject to review and approval of the Administrator.

Section 1009(d)—Report. Instructs the Administrator, in cooperation with the Secretary of the Interior, the Director of the Indian Health Service, and Indian tribes to submit to Congress a report, not later that 2 years after enactment of this section. This report shall include the following: (1) recommendations for addressing hazardous and solid waste and underground storage tanks in Indian country; (2) methods to maximize the participation in and administration of, programs established under this Act by Indian tribes; (3) an estimate of the amount of Federal assistance to carry out this section; and (4) a discussion of proposals by the Administrator concerning the provisions of assistance to Indian tribes.

Section 1009(e)(1) & (2)—Tribal Hazardous Waste Site Inventory. Instructs the Administrator to undertake a continuing program to establish an inventory of sites within Indian country where hazardous waste has been disposed of or stored. The inventory must list include the (1) information required to be collected by States pursuant to section 3012, and (2) the sites located at Federal facilities within Indian country.

Section 1(c)—Technical Amendment. This section instructs that the table of contents for subtitle A of the Solid Waste Disposal Act (contained in section 1001) be amended to add the new section: "Sec. 1009. Indian tribes.".

SECTION 2. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

Section 2 amends Section 9508(c)(1) of the Internal Revenue Code of 1986 to delete the phrase "Except as Provided" and insert in lieu of a new subparagraph to read "Section 9508(c)(1)(A) Purposes—Except as provided". This section also creates a new subparagraph (B), to read "Section 9508(c)(1)(B)—Set Aside for Indian Tribes". This section provides that notwithstanding any other provision of law, the Secretary shall reserve for Indian tribes an amount equal to not less than 3 percent of the amounts made available to States pursuant to subparagraph (A) for each the fiscal years 1995 through 1999 to be used to carry out the purposes referred to in subparagraph (A).•

• Mr. MCCAIN. Mr. President, I am pleased to join today with my good friend, the distinguished chairman of the Committee on Indian Affairs, Senator INOUYE, as a cosponsor of long-overdue legislation to amend the Solid Waste Disposal Act to authorize the Environmental Protection Agency to treat tribes as States. This legislation is similar to provisions which have already been included in the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act. These Federal environmental laws were all amended in the 1980's to provide for the treatment of tribes as States.

Unfortunately, when we first began enacting our national environmental laws we either neglected to include Indian tribal governments or included them as municipalities. This latter practice is completely inconsistent with our usual practice of maintaining a direct government-to-government relationship between the Federal and tribal governments. By the mid-1980's it was clear that tribal environmental concerns were being almost completely ignored by State and Federal officials. The States had demonstrated an unwillingness or inability to assist tribes and the Environmental Protection Agency claimed that it lacked legal authority to deal directly with tribal gov-

ernments. Since that time, considerable progress has been made toward assisting Indian tribal governments to develop and implement environmental regulatory programs. Under the Clean Water Act, over 40 tribes have been certified by EPA as eligible for treatment as States.

The Solid Waste Disposal Act is the only remaining major environmental law which fails to provide for the treatment of tribes as States. This has made it difficult for EPA and the Indian tribal governments to address a variety of solid and hazardous waste problems on Indian lands, including the problem of leaking underground storage tanks. The bill we are introducing today is intended to correct this situation. I urge all of our colleagues to join with us to ensure prompt enactment of this legislation.•

ADDITIONAL COSPONSORS

S. 1180

At the request of Mr. GRASSLEY, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to encourage the production and use of wind energy.

S. 1447

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1447, a bill to modify the disclosures required in radio advertisements for consumer leases, loans, and savings accounts.

S. 1651

At the request of Mr. D'AMATO, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1651, a bill to authorize the minting of coins to commemorate the 200th anniversary of the founding of the U.S. Military Academy at West Point, NY.

S. 1676

At the request of Mr. MACK, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 1676, a bill to provide a fair, nonpolitical process that will achieve $65,000,000,000 in budget outlay reductions each fiscal year until a balanced budget is reached.

S. 1860

At the request of Mr. DODD, the names of the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Texas [Mrs. HUTCHISON], the Senator from Arkansas [Mr. BUMPERS], the Senator from Wyoming [Mr. WALLOP], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1860, a bill to authorize the minting of coins to commemorate the 1995 Special Olympics World Games.

SENATE JOINT RESOLUTION 34

At the request of Mr. BROWN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Joint Resolution 34, a joint resolution proposing a constitutional amendment to limit congressional terms.

SENATE JOINT RESOLUTION 150

At the request of Mr. SARBANES, the names of the Senator from Oklahoma [Mr. BOREN] and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of Senate Joint Resolution 150, a joint resolution to designate the week of May 2 through May 8, 1994, as "Public Service Recognition Week."

SENATE CONCURRENT RESOLUTION 61

At the request of Mr. WOFFORD, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Concurrent Resolution 61, a concurrent resolution expressing the sense of the Congress in support of the President's actions to reduce the trade imbalance with Japan.

SENATE RESOLUTION 182

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of Senate Resolution 182, a resolution entitled "A Call for Humanitarian Assistance to the Pontian Greeks."

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Friday, February 25, beginning at 10 a.m. to conduct a hearing on mutual to stock conversions.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be authorized to meet during the session of the Senate on Friday, February 25 to resume consideration of the Graham substitute amendment to S. 1114, the Water Pollution Prevention and Control Act of 1994.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Friday, February 25, 1994, at 10 a.m. to hold nomination hearings on the following nominees: Mr. Thomas L. Baldini, of Michigan, to be a U.S. Commissioner on the International Joint Commission, United States and Canada; Mr. Charles R. Baquet III, of Maryland, to be Deputy Director of the Peace Corps; and Ms. Jeanette W. Hyde, of North Carolina, to be Ambassador to Barbados, and to serve concurrently and without additional compensation as Ambassador to the Commonwealth of Dominica, St. Lucia, and to St. Vincent and the Grenadines.

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

SUBCOMMITTEE ON SOCIAL SECURITY AND FAMILY POLICY

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Social Security and Family Policy Committee on Finance be permitted to meet today at 9:30 a.m. to hear testimony on welfare reform.

ADDITIONAL STATEMENTS

FACES OF THE HEALTH CARE CRISIS

• Mr. RIEGLE. Mr. President, I rise this morning in my continuing effort to put a face on the health care crisis before our country. Today I want to share the story of Rose Mallot, of Sterling Heights, MI. Rose has put off surgery to remove her ovaries because she does not have insurance to cover the medical costs.

Rose Mallot is 40 years old and works part time for a local newspaper. Last year she only earned $12,000. Rose has been uninsured for 3 years since she lost the coverage that she had through her former husband's employer. The newspaper that she works for does not offer health insurance to part-time workers, and Rose cannot afford the high cost of an individual policy which would cost hundreds of dollars each month. Even if she could afford her own policy, it would probably not cover her preexisting condition.

Rose's gynecologist has recommended on several occasions that Rose have her ovaries removed due to cysts that have formed on them. This procedure would cost $15,000 for hospitalization and physician charges—more than Rose's total income last year. Rose certainly does not have the money to pay for the surgery, nor does she have health insurance to cover the costs.

Rose sees her gynecologist regularly and pays discounted fees out-of-pocket. On one occasion, the pain of these cysts was so excruciating that she was forced to go to the emergency room for treatment. She received an injection to reduce her pain temporarily, but nothing could be done to address the cause of her pain. The emergency room treatment cost Rose $153—a cost that she must meet without the help of insurance.

In an attempt to reduce the size of the cysts, Rose has been taking a medication that costs $92 for 30 pills. Her doctor has prescribed that Rose take 4 of the pills each day, so her medication costs her almost $400 per month—about 40 percent of her income. Again, Rose does not have health insurance to cover these costs.

Luckily for Rose, the cyst growth seems to be controlled by the medication, and surgery is not an emergency at this point in time. But eventually Rose will need to get this problem taken care of.

Mr. President, the health care reform proposal that President Clinton has presented to this Congress would guarantee that Rose would always have health insurance coverage—regardless of her health condition or her marital status or her employment status. And it would guarantee that she would have a comprehensive set of benefits that would meet her needs—including prescription drug coverage.

Mr. President, we must pass health care reform legislation this year, and I am going to do everything I can to work with my colleagues to iron out our differences and pass a reform plan that guarantees comprehensive, affordable coverage to every American.•

COMMEMORATING THE 75TH ANNIVERSARY OF GRAND CANYON NATIONAL PARK

• Mr. McCAIN. Mr. President, this Saturday, February 26, marks the 75th anniversary of Grand Canyon National Park.

This historic occasion is important to people throughout the world but it's especially significant to the people of Arizona. As citizens of the Grand Canyon State, we take immense pride in the park and appreciate the awesome stewardship responsibility with which we, today's caretakers of the canyon, have been vested.

Anyone who has visited the Grand Canyon, beheld a sunrise at Navajo Point, hiked the back country on the Tanner Trail or run the rapids at Lava Falls understands what many scribes and poets have tried in vain to describe. Words pale before the indescribable. But, perhaps, John Wesley Powell, the Civil War hero who, in 1869, was the first intrepid soul to fully explore the Grand Canyon captured it best. He said, simply "The Grand Canyon is the most sublime spectacle on earth."

The 75th anniversary is an opportunity to reflect on what the canyon means to each of us. It's time for grateful remembrance of our forefathers who had the wisdom and foresight to recognize the value of the Grand Canyon and to make protection of its resources our guiding ethic.

We remember people such as John Wesley Powell; and President Benjamin Harrison, who, in 1876, as a Senator from Indiana, introduced the first bill to establish the canyon as a national park. We remember President Theodore Roosevelt under whose leadership conservation of the natural resources of the canyon was so nobly advanced; And, the flamboyant Henry Fountain Ashurst, the Arizona Senator, whose father perished in the Canyon, and who, in 1919, introduced the bill signed by President Woodrow Wilson creating Grand Canyon National Park 75 years ago. And, with fondness and gratitude, we remember the many other citizens and public servants who have dedicated their careers and their lives to seeing that the canyon should be forever grand.

As we remember and honor the past, it's also a time to take stock of the present—to examine how well we are meeting our responsibilities as today's stewards of the Grand Canyon. It's time to rededicate ourselves to preserve and protect the Grant Canyon for the next 75 years and beyond.

Proper stewardship of the canyon and its resources has never been simple or easy. Like a white-water rafting adventure on the Colorado River, the course is calm and subtle as some points and twisting and rough at others, but it is always well worth the trip.

Over the past several years, we have been confronted with a myriad of difficult and complex issues affecting the park. We have enjoyed success on a number of fronts but many challenges are ahead. There is much work to be done.

Safety issues and noise pollution associated with excessive overflights of the park demand our continued attention. In 1987, we passed the National Parks Overflights Act, which zoned the airspace over the canyon and established, in law, the groundbreaking goal of restoring natural quiet to the canyon environment. Visitors seeking peace and solitude in which to enjoy the canyon experience deserve the opportunity to do so without the incessant intrusion of aircraft noise. At time the Grand Canyon has seemed more like national airport than a national park.

We have made some progress. Flights below the rim have been banned and certain areas of the Canyon are off limits to aircraft, but much work remains to be done. The number of park overflights has increased since passage of the legislation, and we have not yet met our goal of "substantially restoring the natural quiet of the Grand Canyon."

We must press on until the goal is achieved. Quiet aircraft technology must be developed and brought on line by air tour operators as soon as feasible. Pending the transition to such technology, if we need to limit the number of overflights to assure public safety and restore the natural quiet to meet the goals of the law, then that's what we must do.

Clearly, there is a limit to the amount of traffic park airspace can accommodate before safety and natural quiet are compromised. We must endeavor to find that level and manage the airspace accordingly.

The Federal Aviation Administration and the National Park Service are reviewing canyon air regulations and will meet with air tour operators and others next month to begin updating the regulations. They should approach this work committed to meeting the standards and expectations codified in the National Park Overflights Act.

On another front, we must continue our efforts to protect air quality and visibility at the Grand Canyon. In 1992, an historic agreement was reached to control pollution from the Navajo Generating Station to improve and protect canyon visibility. But, there is more we can do.

Today, under the auspices of the Environmental Protection Agency and Grand Canyon Visibility Transport Commission, we are investigating other potential contributors to canyon pollution, including emissions from the Mohave Power Plant in southern Nevada, and haze creeping into the region from the Los Angeles basin. Studies on the impact of these sources and potential remedies will be completed next year. Sources that significantly impact canyon air quality should be cleaned up to protect the scenic vistas for which the Grand Canyon is world-renowned.

In the past few years we have made great strides in protecting the park's water-based resources and recreation. In 1992, we passed the Grand Canyon Protection Act to stop the damage caused by fluctuating water releases from Glen Canyon Dam-flows which were destroying Colorado River beaches, degrading recreation and harming fish and wildlife within the park.

As a result of the new law, water now flows from the dam in a manner that better protects downstream resources. The Department of the Interior will complete a final environmental impact study on dam operations by the end of the year.

The study will give us the scientific data we need to reconcile the dam with the need to preserve, protect and enhance the natural resources of the Grand Canyon National Park—as required by the Grand Canyon Protection Act. Our challenge now is to see that the good intentions and lofty goals of the law are matched by our actions to implement it.

Mr. President, overflights, air quality, Colorado River protection, are just a few of the challenges we still confront.

The world is a much different place than when Woodrow Wilson signed Senator Ashurst's bill establishing Grand Canyon National Park. In 1919, its first year as a National Park, the Grand Canyon was visited by just over 100,000 people, and operated on a budget of $40,000.

Seventy-five years later, over 5 million people from all over the world visit the Canyon yearly and the Park Service will employ 350 people and spend $12 million to manage the park.

Visitation is expected to double within the next 10 years.

Times will continue to change, but our stewardship responsibilities will not. They will only be made more complicated by the growing demand and encroachments of expanding civilization.

We are deciding how the future will look today. The National Park Service is currently crafting the Grand Canyon's general management plan which will guide the park into the next century on critical issues such as park user levels, land use, river management, back country management, services, infrastructure, transportation, staffing and funding, just to name a few.

Wisely, and most appropriately, our laws provide for and encourage public review and participation in park management planning. I hope that all concerned citizens will exercise their rights and responsibility to participate in the process as we debate the management plan and set the course for tomorrow.

The Grand Canyon is a shared resource and we have a shared responsibility to ensure a future for the park that is worthy of its place as the centerpiece of our natural heritage and one of the seven wonders of the world.

The general management plan, with its public participation process, will be a particularly constructive forum in which to debate and address the most critical issue facing the Grand Canyon—how to deal with increasing demand for the park and its impact on visitor experience and the canyon environment. There are as many ideas on this topic as there are commentators on the issue.

Some have suggested that controls should be placed on visitation in the near future through a visitor reservation system. Perhaps someday restricting the number of visitors may be necessary to ensure the visitor experience and the canyon environment remain world class. But, I do not believe that we are at that point today.

One of the prime directives of the National Park Service is to provide for the enjoyment of park resources for the American people. I fear that a reservation system is a burdensome, bureaucratic and premature answer to a problem that lends itself to a less onerous solution.

The primary problem with park crowding is that too many private vehicles clog the roads at certain times of the day and too many people are funneled into a small section of the park. It seems to me that the money and manpower necessary to implement a reservation system could be used more effectively to alleviate crowding by improving alternative transportation opportunities for visitors. We should give people more opportunity and incentive to park private vehicles outside of the park and use alternative transportation within.

In 1990, Congress ordered the Department of Transportation to conduct a study on alternative modes of transportation within national parks to alleviate crowding and to enhance visitor experience. That study will be completed shortly and could offer some valuable and timely alternatives.

Let's not lose sight of the fact that Grand Canyon National Park is over 200 miles long and has five public access roads on the south rim. In addition to alternative transportation, we should look at ways to disperse visitors by encouraging entry at points other than the main south rim entrance through Tusayan, where the vast majority of visitors congregate. In seems to me that with proper planning we could disperse visitation more widely and relieve crowding without constructing intrusive or unnecessary development in areas of the park that should remain as pristine as possible.

The Grand Canyon is a national shrine—a place where people seek solace and inspiration, to see the humbling work of ages and the awesome hand of God—to experience something much greater than themselves. Needing the Government's permission to visit the Canyon is like needing a reservation to go to church. It just isn't in keeping with the spirit of what the Grand Canyon is all about.

All options deserve to be debated by the public through the general management planning process and examined in the appropriate environmental studies before we take any steps to implement a reservation system which should be our last, not our first, resort.

Mr. President, the next 75 years at the Grand Canyon will surely be as challenging as the past. Before embarking on his trip to brave the unchartered rapids of the Grand Canyon, John Wesley Powell said,

> We are now ready to start on our way down the Great Unknown * * * We have an unknown distance to run; and unknown river to explore. What falls there are, we know not; what rocks beset the channel, we know not; what walls rise over the river, we know not.

Those words echo from the past, echo forth to appropriately describe our own journey into the future—the Great Unknown.

But, like Powell, with courage and determination, we, too, can negotiate the distance with honor and success and bequeath to the next generation a proud canyon legacy that ensures the Grand Canyon will remain "The most sublime spectacle on earth."

On this 75th anniversary, let's rededicate ourselves, as Theodore Roosevelt admonished—

> To keep the canyon for our children and our children's children, and for all who come after us, as one of the great sights which every American, if he can travel at all, should see.

I ask that the text of the law creating Grand Canyon National Park be printed at this point in the RECORD.

The text follows:

SIXTY-FIFTH CONGRESS. SESS. III

CHAP. 44.—AN ACT TO ESTABLISH THE GRAND CANYON NATIONAL PARK IN THE STATE OF ARIZONA

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the "Grand Canyon National Park," the tract of land in the State of Arizona particularly described by and included within metes and bounds as follows, to wit:

Beginning at a point which is the northeast corner of township thirty north, range one east, of the Gila and Salt River meridian, Arizona; thence west on township line between townships thirty and thirty-one north, range one east, to section corner common to sections one and two, township thirty north, range one east, and thirty-five and thirty-six, township thirty-one north, range one east; thence north on section lines to the intersection with Tobocobya Spring-Rowe Well Road; thence northwesterly along the southwesterly side of said Tobocobya Spring-Rowe Well Road, passing and in relation to United States Geological Survey bench marks stamped "Canyon" and numbered 6340, 6235, 6372, 6412, 6302, 6144, and 6129, through townships thirty-one and thirty-two north, ranges one east and one and two west, to its intersection with the section line between sections nine and sixteen in township thirty-two north, range two west; thence west along the section lines through townships thirty-two north, ranges two and three west, to its intersection with upper westerly rim of Cataract Canyon; thence northwesterly along upper rim of Cataract Canyon, crossing Hualapai Canyon and continuing northwesterly along said upper rim to its intersection with range line, township thirty-three north, between ranges four and five west; thence north on said range line, townships thirty-three and thirty-four north, ranges four and five west, to north bank of the Colorado River; thence northeasterly along the north bank of the Colorado River to junction with Tapeats Creek; thence easterly along north bank of Tapeats Creek to junction with Spring Creek; thence easterly along the north bank of Spring Creek to its intersection with Gila and Salt River meridian; township thirty-four north, between ranges one east and one west and between section six, township thirty-four north, range one east, and section one, township thirty-four north, range one west; thence south on range line between ranges one east and one west to section corner common to sections seven and eighteen, township thirty-four north, range one east, and sections twelve and thirteen, township thirty-four north, range one west; thence east on section lines to section corner common to sections seven, eight, seventeen, and eighteen, township thirty-four north, range two east; thence south on section lines to township line between townships thirty-three and thirty-four north, range two east, at section corner common to sections thirty-one and thirty-two, township thirty-four north, range two east, and sections five and six, township thirty-three north, range two east; thence east on township line to section cor-

ner common to sections thirty-one and thirty-two, township thirty-four north, range three east, and sections five and six, township thirty-three north, range three east; thence south on section lines to section corner common to sections seventeen eighteen, nineteen, and twenty, township thirty-three north, range three east; thence east on section lines to section corner common to sections thirteen, fourteen, twenty-three, and twenty-four, township thirty-three north, range three east; thence north on section lines to section corner common to sections one, two, eleven, and twelve, township thirty-three north, range three east; thence east on section lines to the intersection with upper rim of Grand Canyon; thence northerly along said upper rim of Grand Canyon to main hydrographic divide north of Nankoweap Creek; thence easterly along the said hydrographic divide to its intersection with the Colorado River, approximately at the mouth of Nankoweap Creek; thence easterly across the Colorado River and up the hydrographic divide nearest the junction of Nankoweap Creek and Colorado River to a point on the upper east rim of the Grand Canyon; thence by shortest route to an intersection with range line, townships thirty-three and thirty-four north, between ranges five and six east; thence south on said range line, between ranges five and six east, to section corner common to sections eighteen and nineteen, township thirty-three north, range six east, and sections thirteen and twenty-four, township thirty-three north, range five east; thence east on section lines to section corner common to sections sixteen, seventeen, twenty, and twenty-one, township thirty-three north, range six east; thence south on section lines to section corner common to sections eight, nine, sixteen, and seventeen, township thirty-one north, range six east; thence west on section line to section corner common to sections seven, eight, seventeen, and eighteen, township thirty-one north, range six east; thence south on section lines to township line between townships thirty and thirty-one north at section corner common to sections thirty-one and thirty-two, township thirty-one north, range six east, and sections five and six, township thirty north, range six east; thence west on township line to section corner common to sections thirty-four and thirty-five, township thirty-one north, range five east, and sections two and three, township thirty north, range five east; thence south on section line to section corner common to sections two, three, ten, and eleven, township thirty north, range five east; thence west on section lines to range line, township thirty north, between ranges four and five east, at section corner common to sections six and seven, township thirty north, range five east, and one and twelve, township thirty north, between ranges four and five east, to section corner common to sections seven and eighteen, township thirty north, range five east, and sections twelve and thirteen, township thirty north, range four east; thence west on section line to section corner common to sections eleven, twelve, thirteen, and fourteen, township thirty north, range four east; thence south on section line to section corner common to sections thirteen, fourteen, twenty-three, and twenty-four, township thirty north, range four east; thence west on section lines to section corner common to sections fifteen, sixteen, twenty-one, and twenty-two, township thirty north, range four east; thence south on section line to section corner common to sections twenty-one, twenty-two, twenty-seven, and twenty-eight, township thirty north, range four east; thence west on section lines to range line, township thirty north, between ranges three and four east, at section corner common to sections nineteen and thirty, township thirty north, range four east, and sections twenty-four and twenty-five, township thirty north, range three east; thence north on range line to section corner common to sections eighteen and nineteen township thirty north, range four east, and sections thirteen and twenty-four, township thirty north, range three east; thence west on sections lines to section corner common to sections fourteen, fifteen, twenty-two, and twenty-three, township thirty north, range three east; thence north on section line to section corner common to sections, ten eleven, fourteen, and fifteen, township thirty north, range three east; thence west on section lines to range line at section corner common to sections seven and eighteen, township thirty north, range three east, and sections twelve and thirteen, township thirty north, range two east; thence north on range line to section corner common to sections six and seven, township thirty north, range three east, and sections one and twelve, township thirty north, range two east; thence west on section line to section corner common to sections one, two, eleven, and twelve, township thirty north, range two east; thence north on section line to township line at section corner common to sections thirty-five and thirty-six township-one north, range two east, and sections one and two, township thirty north, range two east; thence west on township line to the northeast corner of township thirty north, range one east, the place of beginning.

SEC. 2. That the administration, protection, and promotion of said Grand Canyon National Park shall be exercised, under the direction of the Secretary of the Interior, by the National Park Service, subject to the provisions of the Act of August twenty-fifth, nineteen hundred and sixteen, entitled "An Act to establish a National Park Service, and for other purposes": *Provided*, That all concessions for hotels, camps, transportation, and other privileges of every kind and nature for the accommodation or entertainment of visitors shall be let at public bidding to the best and most responsible bidder.

SEC. 3. That nothing herein contained shall affect the rights of the Havasupai Tribe of Indians to the use and occupancy of the bottom lands of the Canyon of Cataract Creek as described in the Executive order of March thirty-first, eighteen hundred and eighty-two, and the Secretary of the Interior is hereby authorized, in his discretion, to permit individual members of said tribe to use and occupy other tracts of land within said park for agricultural purposes.

SEC. 4. That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land and nothing herein contained shall affect, diminish, or impair the right and authority of the county of Coconino, in the State of Arizona, to levy and collect tolls for the passage of live stock over and upon the Bright Angel Toll Road and Trail, and the Secretary of the Interior is hereby authorized to negotiate with the said county of Coconino for the purchase of said Bright Angel Toll Road and Trail and all rights therein, and report to Congress at as early a date as possible the terms upon which the property can be procured.

SEC. 5. That whenever consistent with the primary purposes of said park the Act of February fifteenth, nineteen hundred and one, applicable to the locations of rights of way in certain national parks and the national forests for irrigation and other purposes, and subsequent Acts shall be and remain applicable to the lands included within the park. The Secretary of the Interior may, in his discretion and upon such conditions as he may deem proper, grant easements or rights of way for railroads upon or across the park.

SEC. 6. That whenever consistent with the primary purposes of said park, the Secretary of the Interior is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of said park upon such terms and for specified periods, or otherwise, as he may deem to be for the best interests of the United States.

SEC. 7. That whenever consistent with the primary purposes of said park, the Secretary of the Interior is authorized to permit the utilization of areas therein which may be necessary for the development and maintenance of a Government reclamation project.

SEC. 8. That where privately owned lands within the said park lie within three hundred feet of the rim of the Grand Canyon no building, tent, fence, or other structure shall be erected on the park lands lying between said privately owned lands and the rim.

SEC. 9. The Executive order of January eleventh, nineteen hundred and eight, creating the Grand Canyon National Monument, is hereby revoked and repealed, and such parts of the Grand Canyon National Game Preserve, designated under authority of the Act of Congress, approved June twenty-ninth, nineteen hundred and six, entitled "An Act for the protection of wild animals in the Grant Canyon Forest Reserve," as are by this Act included with the Grand Canyon National Park are hereby excluded and eliminated from said game preserve.

Approved, February 26, 1919.●

A RESPONSE TO RACISM

● Mr. LAUTENBERG. Mr. President, last November Khalid Abdul Muhammad made a speech at Kean College in New Jersey that set off a firestorm because of its ugliness and words of hatred and abuse. This speech has refocused national attention on the vast racial divides still evident in our country. On Monday, February 28, 1994, Mr. Muhammad will be back in New Jersey, to make a speech at Trenton State College. We don't know what he will say. But, his speech at Kean College and his reappearance in our State have sparked a debate on the appropriate response to hate speeches.

Mr. Muhammad's speech was false, racist, anti-Semitic, repugnant and a disservice to all Americans, as stated in the amendment the Senate approved earlier this month. It was far reaching in its venom. It was more than racist and anti-Semitic. It was anti-Catholic. It was antigay. It was antiwhite. It was vicious, divisive, and harmful.

This view of Mr. Muhammad's remarks, which were largely endorsed by

Mr. Farrakhan, is shared by most African-Americans. I have been contacted by many people in New Jersey, including a number of Moslems, many of them African-Americans, who reject Mr. Muhammad's remarks as inconsistent with their religion and their beliefs. Many secular African-American leaders have repudiated his remarks as well.

Mr. President, how shall we handle future attempts to spread such hatred on our college campuses? And how ought we react to the fact that much of the audience that listened to that abusive speech applauded it?

We have to expose the lies. We have to unveil the truth. We have to bare the hypocrisy of these accusations and not let their distortions stand. The accusations he made should infuriate the fair minded and all should reject the filth he spews.

We cannot prevent Mr. Muhammad or Mr. Farrakhan from speaking on college campuses, or from any platform in America. In our democratic society, we must respect and protect free speech. The Founding Fathers had great faith in an educated citizenry. They provided for an almost absolute right to free speech, counting on informed debate to quell those words and writings and speeches which were offensive or even potentially destabilizing. We've cherished these rights throughout our history, and honored them under difficult conditions—even during wartime.

A David Duke has the right to lecture on college campuses. So does a George Wallace. So does a Mr. Muhammad and a Mr. Farrakhan.

But, these liberties also carry responsibilities. They carry the responsibility to contest them and to speak out against them. Universities do not have to volunteer to give bigotry a platform. But if they choose to do so, they have an obligation: to underscore the factual and ethical flaws in the arguments to which their students are exposed.

They have a responsibility to live up to the standards of intellectual integrity which they pursue and seek to inculcate.

Students can issue invitations to speakers whose message is inconsistent with scholarly findings, intolerant of different points of view, and incompatible with a real search for truth. But when they do, the university and community of which they are a part have an obligation to make sure that their students are exposed to alternative views.

In New Jersey, under the leadership of the Council of Christians and Jews, we are planning a statewide forum to explore these issues. A number of colleges are already prepared to initiate or strengthen their own efforts in this area: The Richard Stockton College of New Jersey, for example, has an ongoing Community Human Relations Coalition which provides a forum for discussing these issues. In my judgment, these responsibilities go beyond disputing the premises of hateful speech. They extend to probing the issue of why such messages are so well received.

The Kean college audience Mr. Muhammad addressed was made up of less than 200 students. But those 200 students are among the expected to be leaders in the African-American community. They obviously have academic talent. They are getting an education that will prepare them for a successful professional and personal life. Yet many responded to Mr. Muhammad's speech of hate with cheers of approval.

We condemn Mr. Muhammad and his message. But we must also reach out to the students who were moved by his rhetoric of hate and attracted by his words of violence.

Mr. President, we must figure out why those words fall on receptive ears. We have to come to grips with the fact that some of our students liked what they heard.

Why? Why did they like what they heard? The answer is they are like other people—capable of prejudice. The answer is that the poverty, the racism, the hopelessness, they have witnessed in their communities has stoked anger—and it is a small step from anger to hatred. The answer is that many have been treated badly—and feel the system leaves them out. The answer is that they have seen racist statements made by whites—prominent whites in some cases—go unchallenged.

Mr. President, we need to condemn what was said in the strongest possible terms. But, in the end, we have to do more than condemn. We have to respond so that we prevent prejudice from taking seed and growing and bursting into a deadly bloom.

We have not found a way to reach the students who cheered Mr. Muhammad's speech. We have not been successful in dealing with their pain and their anger—which can easily spill over to violent episodes of rage and hatred.

That, Mr. President, is the hard part of what we have to do. We must condemn Mr. Muhammad's speech at Kean College. It was unacceptable. It was abhorrent and could not be left uncontested. But, we must also look ahead. Kean College has already taken steps to sponsor symposiums on hate and colloquiums on diversity. When Mr. Muhammad speaks at Trenton State tonight, the Mercer County community has plans for rebuttal speakers in conjunction with his visit.

That's good. But, it must be more than a sporadic effort. Unless we are resigned to continue moving apart, we need to start moving together. We need to make sure that racist slander shrivels under a constant light of critical examination. But we must also do more to bring our young people—all of our people—together.

We do that, Mr. President, by talking to one another. By establishing frameworks for real dialog; by sitting down at the same table to put a human face on the blurred portraits we have of one another. With its multiethnic and multicultural population, California has developed programs to promote understanding and empathy among young people of different ethnic groups. Students in ethnically diverse schools have been paired to expose them to other cultural practices and lifestyles. Los Angeles mandated a program like this for so-called skinheads convicted of bias crimes.

So, when Mr. Muhammad returns to New Jersey, he will find a different environment awaiting his arrival. His words will be challenged, if appropriate to do so, and placed in the glare of publicity. His visit will be followed by a forum to further promote tolerance.

Mr. Muhammad can only prevail if we respond to his attacks with silence. Or if we respond to his words of hate and violence with acts of hate and violence.

The response of the people of New Jersey and the Nation demonstrates that he will not prevail.

Mr. President, I am proud of the response in my State to these events. In New Jersey, we must continue efforts to improve race relations and address the root causes of prejudice and ethnic conflict. We are one of the most ethnically diverse States in the country. We need to learn to live together, work together, and be enriched, not embittered, by our diversity.•

STATEMENT ON THE CONFIRMATION OF WILLIAM J. RAINER TO BE CHAIRMAN OF THE BOARD, U.S. ENRICHMENT CORPORATION

• Mr. DODD. Mr. President, it gives me great pleasure to congratulate a good friend and a Connecticut standout, Bill Rainer, who was recently confirmed by this body as chairman of the board of the U.S. Enrichment Corporation.

I came to know Bill several years ago when he cofounded and became managing director of Greenwich Capital Markets, Inc., of Greenwich, CT, an investment banking firm specializing in Government securities. Under Bill's direction, Greenwich Capital grew from a fledgling newcomer to the competitive capital markets into a highly profitable and established player on Wall Street. This was no small feat during the 1980's, a period of turbulent markets and fierce competition.

Bill's experience building a successful start-up firm will prove an invaluable asset as he assumes leadership of the newly-formed U.S. Enrichment Corporation. He will face enormous challenges attempting to strengthen the financial underpinnings of our Federal enrichment program even as the U.S. share of these markets continues

to decline. The ultimate objective of these efforts, privatization of the U.S. Enrichment Corporation, will give the U.S. taxpayers a return of the substantial investment they have expended over the years on our enrichment activities.

I am confident that William Rainer will approach these challenges with the same measure of aplomb—and, ultimately, success—that he has displayed throughout his career. He possesses the right mix of experience and business acumen to lead the corporation through this transition. Perhaps just as importantly, however, Bill also is deeply committed to public service, and is eager to use his considerable skills and experience in service to the American people. I know that he will serve our citizens with integrity and distinction.

I thank the Chair for permitting me this opportunity to congratulate William Rainer upon his confirmation.●

STATEMENT ON THE NOMINATION OF STROBE TALBOTT

● Mr. GRAHAM. Mr. President, I rise today to express my concerns with the nomination of Strobe Talbott to be Deputy Secretary of State.

As a general principle, I give a presumption of correctness to nominations of the President for top level management positions. For this reason, I voted earlier this week to confirm the nomination of Strobe Talbott. He is well qualified and has the experience to effectively advance U.S. foreign policy. I must express my apprehensions of this vote, however, in light of Mr. Talbott's past views on the nation of Israel.

I remain firm in my opposition to unjustifiable condemnations of Israel and my commitment to the special relationship between the United States and Israel. I am, therefore, concerned with the article in Time in which Mr. Talbott wrote:

> Menachem Begin recognized that American Jews wield influence far beyond their numbers but he also knows there is considerable pent-up irritation in the U.S. with the power and the pro-Israel lobby which includes, of course, many non-Jews and that a significant body of American Jewish opinion opposes him.

I am further concerned with Mr. Talbott's characterizations of Israel as a "dubious asset" and "an outright liability to American security interests."

Mr. Talbott stressed in his confirmation hearings that many of these fragmentary references concerning Israel did not accurately characterize his current or past views. Although I believe Mr. Talbott, I will monitor his actions closely to ensure United States support for a strong and independent Israel.●

TRIBUTE TO ASSEMBLYMAN HARRY A. McENROE AND COUNTY CLERK PATRICIA McGARRY DRAKE

● Mr. LAUTENBERG. Mr. President, I rise today to commend the achievements of two outstanding New Jerseyans, Assemblyman Harry A. McEnroe of South Orange, and Essex County Clerk Patricia McGarry Drake of Newark.

As life-long residents of New Jersey, both Mr. McEnroe and Ms. Drake have demonstrated an outstanding commitment to serving the citizens of Essex County. They have each been honored in numerous ways by the county in which they serve, as well as various organizations in New Jersey.

Before his career as a New Jersey State assemblyman, Harry McEnroe served on the board of freeholders and as freeholder director of Essex County. In addition, he has an exemplary list of accomplishments in community service, including substantial contributions in developing New Jersey's solid waste recycling program. In the past, he has received the Irishman of the Year Award from the Friends of Brian Boru. Most recently, in his official capacity, McEnroe was awarded Legislator of the Year by the New Jersey Association of Counties.

Ms. McGarry Drake has also served the citizens of New Jersey with distinction. While working her way from clerk typist to county clerk, she developed a keen understanding of the services provided by the clerk's office and earned both the respect of her colleagues and the citizens she served. Most recently, McGarry Drake began her term as first vice president for the County Officers Association. Her list of honors includes the standard bearer of the P. McGarry Drake Civic Association, and the Irishwoman of the Year Award from the Friends of Brian Boru.

I pay tribute to both of these upstanding individuals and the many contributions they have made on behalf of the citizens of New Jersey.●

THE 76TH ANNIVERSARY OF ESTONIAN INDEPENDENCE

● Mr. RIEGLE. Mr. President, yesterday marked the 76th anniversary of Estonia's declaration of independence from czarist Russia. I rise today to commemorate this important date, and to offer my congratulations and continued support to the People of Estonia and the Estonian-American community here in the United States.

The Republic of Estonia first declared its independence on February 24, 1918, ending hundreds of years of foreign domination. The anniversary of this date is important in honoring the Estonian people for their resolve in building a free nation. It is equally fitting that we take this opportunity to recognize the long struggle Estonians face, and the many challenges that threaten Estonia's continued independence.

Despite the 1920 peace treaty that established the government of the Republic of Estonia as its legitimate governing body, Estonia again came under Soviet control in 1940 as a result of Russia's Ribbentrop Pact with Nazi Germany. For the next half century, Estonians were brutally repressed under Soviet domination, and it would not be until the end of the cold war that the Estonian people would regain control of their own country and their own future.

In 1991, Estonia once again declared its independence from the Soviet Union, reestablishing the autonomy it had sought 73 years earlier. The world was reminded during that tumultuous time of the strength and bravery of the Estonian people. The struggle of Estonia and its Baltic neighbors to withdraw from the Soviet Union heralded the collapse of the giant Soviet empire. Once their independence was achieved, the world looked proudly upon the Baltic nations symbols of the worldwide struggle for freedom.

The decades of foreign control were not without great cost to the Estonian people, however. The damage to the Estonian population is immeasurable—thousands were killed, deported, or otherwise brutally repressed. They are also struggling to cope with the massive and widespread environmental damage caused during the 50 years of Soviet rule. The years following independence have also been riddled with problems—Russian troops continue to occupy Estonia, and the treatment of ethnic Russians in Estonia remains a point of contention between the Estonian and Russian Governments.

The problems Estonians have faced have been daunting, but the ability of the Estonian people to meet these challenges head on is truly remarkable. In 1992, the first free elections were held in Estonia since its independence from the Soviets. The economy is also faring better than many of the former Soviet States, and is in fact one of the fastest growing in Europe. The Estonian currency is stable and inflation is low, and members of the European Union have authorized the negotiation of free-trade agreements which could result in a free-trade zone between Estonia and the European Union. Finally, Estonia has signed on to the Partnership for Peace plan which provides for cooperation with NATO members in maintaining security in Eastern Europe.

Mr. President, Estonian Independence Day this year is truly a celebration of a people who have overcome enormous challenges in establishing a free nation. It has only been through the courage, spirit, and perseverance of the Estonian people that they have finally succeeded. On this occasion, we must remind ourselves of the struggle

of the past 76 years, and the need for the international community to continue to support Estonia in its efforts to maintain its freedom. Let us commemorate this anniversary by pledging to continue to stand by the Estonian people as they work to achieve their goal of self-determination.●

STATEMENT ON THE NOMINATION OF CHIEF JUSTICE ROSEMARY BARKETT

● Mr. GRAHAM. Mr. President, on February 24, 1994, I spoke on the floor of the Senate regarding the nomination of Chief Justice Rosemary Barkett to the Eleventh Circuit Court of Appeals. For the RECORD, I submitted a copy of an opinion, Foster versus State, of the Florida Supreme Court. Unfortunately, a page was inadvertently left out during transcription. I ask for unanimous consent that the opinion be reprinted in its entirety in the RECORD.

The opinion follows:

EXHIBIT 1

[No. 76639, Supreme Court of Florida, Oct. 22, 1992, Rehearing Denied April 1, 1993]

CHARLES KENNETH FOSTER, APPELLANT, V. STATE OF FLORIDA, APPELLEE.

Defendant was convicted in the Circuit Court, Bay County, of murder and sentenced to death and he appealed. The Supreme Court affirmed, 369 So.2d 928. Denial of first and second postconviction motions were affirmed by the Supreme Court, 400 So.2d 1, and 518 So.2d 901, but resentencing was ordered. Denial of federal habeas corpus petitions was affirmed by the Court of Appeals, 707 F.2d 1339, 823 F.2d 402. On remand from resentencing, the Circuit Court, Bay County, Don T. Sirmons, J., entered sentence of death and defendant appealed. The Supreme Court held that: (1) defendant had not received ineffective assistance of counsel; (2) jury was adequately instructed on mitigating circumstances; (3) court properly overruled challenges for cause; but (4) sentencing order was defective for failing to state whether court had found certain mitigating circumstances to exist.

Affirmed in part and vacated and remanded in part.

Barkett, C.J., concurred in part and dissented in part and filed an opinion in which Shaw and Kogan, JJ., concurred.

Kogan, J., concurred in part and dissented in part and filed an opinion.

1. Criminal Law 998(21).

Successive postconviction motion may be dismissed if it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the failure to raise those issues in prior motion constitutes an abuse of process. West's F.S.A. RCrP Rule 3.850.

2. Criminal Law 998(21).

Postconviction motion alleging ineffective assistance of counsel was an abuse of process where there was no showing of justification for the failure to raise it in either of the two prior motions. West's F.S.A. RCrP Rule 3.850.

3. Criminal Law 641.13(6).

In view of defendant's confession, there was no reasonable probability that outcome of trial would have been different had counsel obtained additional evidence, so that defendant did not show ineffective assistance of counsel.

4. Criminal Law 996(3).

Witness' unavailability at resentencing hearing, so as to make her prior testimony admissible, was established by evidence that investigators had been unable to locate her or her former husband, that they had called a telephone number given to them a number of times and have left messages for the witness, who never returned the calls, and that attempts to subpoena her were unsuccessful.

5. Criminal Law 662.60.

Defendant's right to confrontation was not abridged when prior testimony of witness was admitted at resentencing hearing where court admitted the witness' cross-examination testimony in addition to her direct testimony.

6. Witnesses 837(4).

It was not an abuse of discretion to exclude evidence of witness' 1989 convictions when admitting at resentencing hearing testimony which she had given at the first trial in 1975.

7. Criminal Law 996(3).

There was no *Brady* violation by state's failure to provide defendant with mental health records of witnesses at resentencing hearing where the state denied having the records.

8. Homicide 357(3, 11).

Finding that murder was especially heinous, atrocious, or cruel, and cold, calculated, and premeditated, thus authorizing imposition of death penalty, was supported by evidence that victim was severely beaten prior to having his throat slit, that victim was pulled from vehicle by his genitals and stabbed in the throat a second time, that he would have lived 20 to 30 minutes after the wound was inflicted, that defendant then cut the victim's spine with a knife, and that victim would have lived three to five minutes after the spinal cord was severed. West's F.S.A. §921.141(5)(h, i).

9. Homicide 311.

Jury was adequately instructed that it could consider any relevant evidence in determining whether to impose the death penalty where court informed the jurors that they could consider, in addition to other factors, "any other factor of defendant's character or record and any other circumstance of the crime or offense," and defense counsel discussed mental health mitigation in detail.

10. Homicide 341.

Error in failing to give defendant's requested instruction containing an expanded definition of the aggravating factor that the homicide was heinous, atrocious, and cruel was harmless where defendants' killing of victim was especially heinous, atrocious, and cruel by any standard.

11. Jury 90, 105(1), 108.

Court was not required to strike for cause at resentencing hearing in capital murder prosecution juror who indicated bias against persons who have had numerous appeals, person who went to junior high school with defendant and "had a couple of fights" with him, and person who was allegedly predisposed to imposing death penalty for all premeditated murders.

12. Jury 108.

Court properly excused venire member who stated on voir dire before resentencing hearing in capital murder prosecution that she did not believe that she could vote to impose the death penalty in any situation other than murder within a prison setting.

13. Homicide 358(1).

In the absence of evidence that state's attorney acted with purposeful discrimination in seeking death penalty in defendant's case, court was not required to hold evidentiary hearing on claim that use of the death penalty in the county was racially discriminatory, based on statistical evidence indicating that persons whose victims were white were more likely to be charged with first-degree murder and convicted of first-degree murder.

14. Homicide 358(3).

Court's statement in sentencing order imposing death penalty in murder case that it had considered the evidence in support of mitigating factors and that the mitigating circumstances were outweighed by the aggravating factors did not demonstrate that it had determined whether the two statutory mental mitigating circumstances existed or whether any mitigating circumstances were found to exist or what weight was given to them, so that the sentencing order was defective; error was not harmless.

Richard H. Burr and Steven W. Hawkins of NAACP Legal Defense and Educational Fund, Inc., New York City, and Steven L. Seliger, Quincy, for appellant.

Robert A. Butterworth, Atty. Gen., and Mark C. Menser, Asst. Atty. Gen., Tallahassee, for appellee.

Per curiam.

Charles Kenneth Foster appeals the sentence of death imposed upon him after resentencing. He also appeals the denial of his motion for postconviction relief. Our jurisdiction is based upon article V, section 3(b)(1), Florida Constitution.

Foster was convicted of murder and sentenced to death in 1975. This Court affirmed the conviction and death sentence in *Foster* v. *State*, 369 So.2d 928, 929 (Fla.), *cert. denied*, 444 U.S. 885, 100 S.Ct. 178, 62 L.Ed.2d 116 (1979). The following facts are set forth in that opinion:

"Anita Rogers, 20 years of age, and Gail Evans, 18 years of age, met defendant and the victim, Julian Lanier, at a bar. They knew defendant, but the victim was a stranger.

"The girls, after a discussion, agreed to go to the beach or somewhere else to drink and party with the men. The victim bought whiskey and cigarettes, after which the four of them left in the victim's Winnebago camper. The victim was quite intoxicated and surrendered the driving chore to Gail. The defendant and the girls had planned for Gail to have sex with the victim and make some money. Gail parked the vehicle in a deserted area and, after some conversation concerning compensation, the victim and Gail began to disrobe.

"Defendant suddenly began hitting the victim and accusing him of taking advantage of his sister. Defendant then held a knife to the victim's throat and cut his neck, causing it to bleed profusely. They dragged the victim from the trailer into the bushes where they laid him face down and covered him with pine branches and leaves. They could hear the victim breathing so defendant took a knife and cut the victim's spine.

"The girls and defendant then drove off in the Winnebago and found the victim's wallet underneath a mattress. The defendant and the girls split the money found in the wallet and left the vehicle parked in the parking lot of a motel.

"The next morning Anita Rogers went to the Sheriff's Department and reported what had happened. . . ."—*Foster*, 369 So.2d at 928–29.

The trial court denied relief on Foster's first postconviction motion, and this Court affirmed. *Foster* v. *State*, 400 So.2d 1 (Fla. 1981). In addition, federal courts denied Foster relief on two federal habeas petitions. *Foster* v. *Dugger*, 823 F.2d 402 (11th Cir. 1987), *cert. denied*, 487 U.S. 1241, 108 S.Ct. 2915, 101

L.Ed.2d 946 (1988); *Foster* v. *Strickland*, 707 F.2d 1339 (11th Cir. 1983), *cert. denied*, 466 U.S. 993, 104 S.Ct. 2375, 80 L.Ed.2d 847 (1984). In *Foster* v. *State*, 518 So.2d 901 (Fla. 1987), *cert. denied*, 487 U.S. 1240, 108 S.Ct. 2914, 101 L.Ed. 2d 945 (1988), we affirmed the denial of Foster's second postconviction motion, but we granted his habeas petition and ordered resentencing due to *Hitchcock*[1] error.

On remand for resentencing, Foster filed a 3.850 motion. The trial court refused to continue the resentencing hearing until resolution of the 3.850 motion. Following the jury's 8-4 recommendation, the trial judge imposed the death penalty.[1] Thereafter, the court summarily denied the 3.850 motion without an evidentiary hearing.

We address first Foster's claim that the trial court erred in denying his 3.850 motion without an evidentiary hearing. Foster's motion alleged a violation of *Brady* v. *Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and ineffective assistance of trial counsel. The *Brady* claim centers around Foster's allegation that the state failed to disclose that it offered Gail Evans and Anita Rogers deals in exchange for their testimony at trial. Although the court did not hold an evidentiary hearing on this claim, Foster presented the evidence on which he relies to support the claim at a hearing on his motion, to preclude admission of Rogers' and Evans' 1975 trial testimony, Rogers' ex-husband testified that several years after the trial, Rogers told him that the state had promised not to prosecute her in return for her testimony.

In his claim of ineffective assistance of counsel, Foster asserts that trial counsel failed to discover that Rogers and Evans believed that Foster was "crazy" at the time of the attack. Had counsel been aware of this, Foster reasons, he would have pursued mental health defenses that would have precluded a finding of premeditated murder. He also alleges that counsel failed to discover, or alternatively the state failed to disclose, that Foster cut off the victim's penis during the course of the attack.

[1] This is Foster's third postconviction motion. A successive motion may be dismissed if it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the failure to raise those issues in a prior motion constitutes an abuse of process. Fla. R. Crim. P. 8.850. To overcome this bar, a movant must allege that the grounds asserted were not known and could not have been known to him at the time of the earlier motion. *Christopher* v. *State*, 489 So. 2d 22, 24 (Fla. 1986). The movant must show justification for the failure to raise the issues in the prior motions. *Id.*

[2] Foster alleged ineffective assistance of trial counsel in his initial postconviction motion. We rejected that claim on the merits.[3] *Foster*, 400 So. 2d 1. Foster has not previously raised a *Brady* claim. Although he alleges the discovery of new facts in order to avoid application of the abuse of process doctrine, he has failed to demonstrate or even allege that the facts could not have been known to him at the time of his earlier motions. We note that Foster has been represented by the same counsel since at least the time of the appeal of the denial of his first post conviction motion in 1981. Having failed to show any justification for his failure to raise the present claims in his earlier post conviction motions, the instant motion constitutes an abuse of process. *Spaziano v. State*, 545 So.2d 843 (Fla. 1989); *Tafero v. State*, 524 So.2d 987, 988 (Fla. 1987); *Booker v. State*, 503 So.2d 888, 889 (Fla. 1987); *Christopher v. State*, 489 S.2d at 25.[4]

[3] Even if there were no procedural bar, Foster's claim would not prevail. At trial, Foster made a witness stand confession in which he stated:

"I reckon I'll just cop out. I have done it, killed him deader than hell. I ain't going to set up here, I am under oath and I ain't going to tell no —— lies. I will ask the Court to excuse my language. I am the one that done it. They didn't have a damn thing to do with it. It was premeditated and I intended to kill him. I would have killed him if he hadn't had no money and I know I never told you about it, but I killed him."—369 So.2d at 929.

In light of Foster's confession, there is no reasonable probability that the outcome of the trial would have been different had any of the evidence Foster now asserts was not disclosed or not discovered been presented. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (one alleging ineffective assistance of counsel must show deficient performance and prejudice); *Hegwood v. State*. 575 So.2d 170, 172 (Fla.1991) (to establish *Brady* violation, one must prove that had the evidence been disclosed, a reasonable probability exists that the outcome of the proceedings would have been different).

[4] Gail Evans personally testified at the resentencing hearing. However, over Foster's objection, the court allowed the state to introduce the testimony of Anita Rogers from the 1975 trial. Foster claims that the court failed to conduct an appropriate inquiry into Rogers' unavailability before admitting her prior trial testimony and that the use of her testimony abridged his right of confrontation.

We find no error in the trial court's determination that Rogers was unavailable. According to the assistant state attorney, in 1989, in an effort to find Rogers, investigators from that office attempted to locate her ex-husband. They were unsuccessful. In late May of 1990, shortly before the resentencing proceeding, defense counsel gave the state attorney Rogers' address and telephone number in Tampa. The state attorney called the number several times. He left messages on an answering machine as well as with a man who answered the telephone and said that he was Rogers' former brother-in-law. Rogers never returned the phone calls. At the state attorney's request, the Hillsborough County Sheriff's Department attempted to subpoena Rogers but were unsuccessful. A deputy attempting to serve the subpoena was advised by someone at Rogers' address that she was out of town at an unknown location. This was sufficient to establish Rogers' unavailability for purposes of the resentencing hearing.

[5] Further, Foster's right of confrontation was not abridged. The court admitted Rogers' cross-examination in addition to her direct testimony. The court also allowed Foster to rebut Rogers' testimony with other witnesses. Under these facts we find no error in the admission of Rogers' trial testimony. *See Hitchcock v. State*, 578 So.2d 685, 690 (Fla.1990) (upholding the admission in resentencing proceeding of trial transcript where the state was unable to locate the witness and the court admitted the witness's entire trial testimony, including cross examination), *cert. denied*, —— U.S. ——, 112 S.Ct. 311, 116 L.Ed.2d 254 (1991).

[6] At resentencing, Foster sought to impeach Rogers' trial testimony by introducing evidence that she had been convicted of false reporting of a crime and grand larceny in 1989. The trial court excluded evidence of the convictions, apparently finding that the 1989 convictions were not probative of Rogers' truth and veracity at the time of the 1975 testimony. We find no abuse of discretion in the exclusion of this evidence. *Teffeteller v. State*, 495 So.2d 744, 745 (Fla. 1986). ("[I]t is within the sound discretion of the trial court during resentencing proceedings to allow the jury to hear or see probative evidence which will aid it in understanding the facts of the case in order that it may render an appropriate advisory sentence.").

[7] One day before the resentencing proceeding was scheduled to begin, Foster filed a motion pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, asking the court to require the state to disclose Rogers' and Evans' mental health records. The state attorney objected, indicating the state did not have the records and had no better access to the records than did defense counsel. Foster challenges the trial court's denial of his motion.

Foster has not shown a *Brady* violation. The state denied having the records. Further, Foster made no showing that he could not have obtained this evidence with reasonable diligence. *See Hegwood v. State*, 575 So.2d 170, 172. Foster cites no case for his proposition that it was the state's obligation, rather than his own, to obtain such records.

[8] Foster also claims that the trial court erred in finding the murder to be especially heinous, atrocious, or cruel[5] and cold, calculated and premeditated.[6] The court relied on the following evidence to find the aggravating factor of especially heinous, atrocious, or cruel;

"The circumstances of the killing indicate a consciousness and pitiless regard for the victim's life and was unnecessarily tortuous to the victim, Julian Franklin Lanier. The victim did not die an instantaneous type of death. The victim was severely beaten prior to death. His nose was fractured, his face was severely bruised and his eyes were swollen shut from edema from hemorrhage and swelling resulting from the beating. After beating the victim, the defendant took out a knife and told the victim 'I'm going to kill you; I'm going to kill you.' There is evidence that one of the girls present asked the defendant not to do it. The defendant then proceeded to stab the victim in the throat. There is evidence of a defensive wound to the victim's hand which indicates the victim attempted to fend off the knife as the defendant stabbed him in the throat.

"After stabbing the victim in the throat, the defendant grabbed the victim by his testicles, or genitals, in order to move the victim outside. The victim groaned or moaned and the defendant stabbed the victim in the throat a second time. This second wound cut the victim's internal and external jugular veins. The victim could have lived from 20 to 30 minutes after this wound was inflicted.

"Neither of these wounds to the neck severed the victim's vocal cords. There is evidence that the victim asked the defendant not to do it again before he was stabbed a second time.

"After the second stab wound, the victim was dragged into the woods where he was covered with bushes. The marks on the victim's body indicated to the medical examiner, that the victim was either alive or dead a very short time before he was being dragged. It is consistent with what happened next to assume the victim was alive.

"After the victim was covered in the woods, one of the girls accompanying the de-

Footnotes at end of article.

fendant reported to the defendant that she could hear the victim breathing. The defendant then went back to the victim, who was lying face down, uncovered him and cut the victim's spine with a knife. As described by one witness, there was no air coming from the body of the victim after she heard "the cracking" of the spine. The medical examiner indicated the victim could have lived 3 to 5 minutes after his spinal cord was severed."—This evidence establishes that the murder was especially heinous, atrocious, or cruel.

The trial court relied on these same facts to find the murder to be cold, calculated, and premeditated. In addition, the court relied on Foster's witness stand confession and Anita Rogers' trial testimony. Rogers testified that prior to the attack, Foster asked her to exchange class rings with him. Foster's ring bore the initial "K." He told Rogers that he wanted to switch rings because his ring would have left "K" impressions on the victim, thus identifying him as the perpetrator. As the prosecutor argued to the jury, if Foster had not intended to kill the victim, it would have made no difference if there were "K" impressions on the victim because he would have been alive to identify Foster. These facts establish the existence of a careful plan or prearranged design to kill.[7] *Rogers v. State*, 511 So.2d 526, 533 (Fla.1987), *cert. denied*, 484 U.S. 1020, 108 S.Ct. 733, 98 L.Ed.2d 681 (1988).

[9] Next, Foster claims that the jury charge and the prosecutor's closing argument limited the jury's consideration of mitigating evidence in violation of *Cheshire v. State* 568 So.2d 908 (Fla.1990) (state may not restrict consideration of mitigating circumstances solely to "extreme" emotional disturbances; any emotional disturbance relevant to the crime must be considered). The court gave the following special instruction:

"Among the mitigating circumstances which you may consider are the following. First, the crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.

"Second, that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

"Third, that the defendant had an abusive family background.

"Fourth, the defendant's poverty.

"Fifth, the physical illness of the defendant.

"Sixth, the defendant's love for and love by his family.

"Seventh, any alcohol or drug addiction of the defendant.

"Eighth, a troubled personal life including depression and frustration.

"Ninth, physical injuries suffered by the defendant.

"Tenth, the defendant's lack of childhood development.

"Eleventh, the effect of death of loved ones on the defendant.

"Twelfth, the learning disability suffered by the defendant.

"Thirteenth, the defendant's potential for positive sustained human relationships.

"Fourteenth, any other aspect of the defendant's character or record and any other circumstances of the crime or offense."

Foster argues that this instruction created a substantial risk that the jury believed that they could only find the mental health evidence to be mitigating if it rose to the statutory level. In addition to being given the quoted instruction, the jury was informed that it must consider any aspect of the defendant's character and background or any other circumstance presented in mitigation and that there was no limitation on the mitigating factors which could be considered. Viewing the instructions as a whole, we find no reasonable likelihood that the jurors understood the instruction to preclude them from considering any relevant evidence. *Robinson v. State*, 574 So.2d 108, 111 (Fla.), *cert. denied*,—U.S.——, 112 S.Ct. 131, 116 L.Ed.2d 99 (1991). Further, in closing argument, defense counsel discussed the mental health mitigation in detail. He argued that the evidence rose to the statutory level but nevertheless argued that Foster was clearly under an emotional disturbance even if it did not meet the level required by statute. Accordingly, we reject this claim.

Next, Foster asserts that the court erred in refusing to give certain jury instructions. The rejected instructions deal with the following subjects: (1) the determination of the aggravating factor of especially, heinous, atrocious, or cruel; (2) the determination of the aggravating factor of cold, calculated, and premeditated; and (3) the jury's pardon power. He also alleges that the jury instructions on these two aggravating circumstances were inadequate.

[10] The instruction given on heinous, atrocious, and cruel was the same as the one held to be inadequate in *Shell v. Mississippi*, 498 U.S. 1, 111 S.Ct. 313, 112 L.Ed.2d 1 (1990). Therefore, the court erred in failing to give Foster's requested instruction which contained an expanded definition of that aggravating factor. We conclude, however, that the error was harmless. As may be seen from that portion of the trial judge's order previously quoted, Foster's killing of Julian Lanier was especially heinous, atrocious, and cruel by any standard. The jury could not have been misled by the inadequate instruction. We further hold that the court did not abuse its discretion in refusing to give the other jury instructions which Foster had requested.

[11] Next, Foster asserts that the court erred in failing to strike three venire members for cause. He argues that: (1) Carol Ann Pope should have been excused because she indicated bias against persons who have had numerous appeals; (2) Thomas Martin should have been excused because he went to junior high school with Foster and the two of them "had a couple of fights"; (8) Marion Pelland should have been excused because she was predisposed toward imposing the death penalty for all premeditated murders. Foster exercised peremptory challenges to excuse these three jurors.

The test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law given to him by the court." *Lusk v. State*, 446 So.2d 1038–1041 (Fla.), *cert. denied*, 469 U.S. 873, 105 S.Ct. 229, 83 L.Ed.2d 158 (1984). The record does not support Foster's allegations regarding these potential jurors. We have reviewed the transcript of jury selection and do not find any basis for excusing these jurors for cause.

Next, Foster claims that the trial court improperly excused venire member Deluzain for cause in violation of the principles established in *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968), and *Wainwright v. Witt*, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985).

[12] A juror may be excluded in a death case if his views on capital punishment "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Adams v. Texas*, 448 U.S. 38, 45, 100 S.Ct. 2521, 2526, 65 L.Ed.2d 581 (1980). The record evinces Deluzain's inability to set aside her own beliefs in deference to the law. *Randolph v. State*, 562 So.2d 881, 337 (Fla.), *cert. denied*, 498 U.S. 992, 111 S.Ct. 538, 112 L.Ed.2d 548 (1990). She said that she did not believe that she could vote to impose the death penalty in any situation other than a murder within a prison setting. When asked whether she could set aside her feelings against the death penalty if the murder were sufficiently aggravated, she responded that she was not sure that she could. The trial court did not abuse its discretion in excusing her for cause.

[13] Further, Foster challenges the circuit court's refusal to allow him to show that the use of the death penalty in Bay County, Florida, is racially discriminatory. Foster moved to preclude the state attorney's office from seeking the death penalty in his case based on his assertion that the Bay County State Attorney's Office pursued prosecution much more vigorously and fully in cases involving white victims than in cases involving black victims.

In support of his claim, Foster proffered a study conducted by his counsel of some of the murder/homicide cases prosecuted by the Bay County State Attorney's Office from 1975 to 1987. Analyzing the raw numbers collected, Foster concluded that defendants whose victims were white were 4 times more likely to be charged with first-degree murder than defendants whose victims were black. Of those defendants charged with first-degree murder, white-victim defendants were 6 times more likely to go to trail. Of those defendants who went to trail, white-victim defendants were 26 times more likely to be convicted of first-degree murder. The court refused to hold an evidentiary hearing, finding that the alleged facts did not make out a prima facie claim of discrimination.

The United States Supreme Court rejected a similar challenge in *McCleskey v. Kemp*, 481 U.S. 279, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987). McCleskey claimed that the imposition of Georgia's death penalty was racially discriminatory in violation of the Eighth and Fourteenth Amendments. He relied on a statistical study, the Baldus study, which purported to show a disparity in the imposition of Georgia's death penalty based on the race of the victim and the race of the defendant. The raw figures collected by Professor Baldus indicated that defendants charged with killing white victims received the death penalty in 11% of the cases, but defendants charged with killing blacks received the death penalty in only 1% of the cases. Baldus further found that the death penalty was assessed in 22% of the cases involving black defendants and white victims; 8% of the cases involving white defendants and white victims; and 3% of cases involving white defendants and black victims. The figures indicated that prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims; 32% of the cases involving white defendants and white victims; 15% of the cases involving black defendants and black victims; and 19% of the cases involving white defendants and black victims.

After accounting for numerous variables that could have explained the disparities on other than racial grounds, the Baldus study found that defendants charged with killing white victims were 4.3 times as likely to receive a death sentence as defendants charged

with killing black victims. Black defendants were 1.1 times as likely to receive a death sentence as other defendants. As a black defendant who killed a white victim, McCleskey argued that the Baldus study demonstrated that he was discriminated against because of his race and the race of his victim.

The Court held that McCleskey "must prove that the decisionmakers in *his* case acted with discriminatory purpose." *McCleskey*, 481 U.S. at 292, 107 S.Ct. at 1767. The Court rejected McCleskey's claim because he offered no evidence specific to his own case to support an inference that racial considerations played a part in his sentence. The Court found the Baldus study to be insufficient to support an inference that the decisionmakers in McCleskey's case acted with purposeful discrimination.

Foster's claim suffers from the same defect. He has offered nothing to suggest that the state attorney's office acted with purposeful discrimination in seeking the death penalty in his case. See *Harris v. Pulley*, 885 F.2d 1354, 1875 (9th Cir. 1988), *cert. denied*, 493 U.S. 1051, 110 S.Ct. 854, 107 L.Ed.2d 848 (1990); *Byrd v. Armontrout*, 880 F.2d 1, 10 (8th Cir. 1989), *cert. denied*, 494 U.S. 1019, 110 S.Ct. 1326, 108 L.Ed.2d 501 (1990); *Kelly v. Lynaugh; 862 F.2d 1126, 1135 (5th Cir. 1988) cert. denied*, 492 U.S. 925, 109 S.Ct. 3263, 106 L.Ed.2d 608 (1989). The trial court was not required to hold an evidentiary hearing on this claim. *Harris*, 885 F.2d at 1375 (defendant not entitled to evidentiary hearing where he offered no proof that decisionmakers in his case acted with discriminatory purpose).

Foster argues that *McCleskey* does not foreclose his challenge because his evidence focuses solely on the practices of one prosecutor's office, whereas the Baldus study consisted of generalized statistics covering every aspect of Georgia's death penalty scheme. The *McCleskey* Court questioned whether a state "policy" of discrimination could be deduced by studying the combined effects of hundreds of decisionmakers.

The Court in *McCleskey* held that: [T]he policy considerations behind a prosecutor's traditionally "wide discretion" suggest the impropriety of our requiring prosecutors to defend their decisions to seek death penalties "often years after they are made." Moreover, absent far stronger proof, it is unnecessary to seek such a rebuttal, because a legitimate and unchallenged explanation for the decision is apparent from the record: McCleskey committed an act for which the United States Constitution and Georgia laws permit imposition of the death penalty.

". . . Implementation of these laws necessarily requires discretionary judgments. Because discretion is essential to the criminal justice process, we would demand exceptionally clear proof before we would infer that the discretion has been abused."—*McCleskey*, 481, U.S. at 296-97, 107 S.Ct. at 1769-70 (citations omitted).

The figures proffered by Foster do not constitute "exceptionally clear proof" of discrimination. *See Harris v. Pulley*, 885 F.2d at 1375. Foster's figures do not account for any of the myriad of nonracial variables that could explain the disparity. *See McCleskey*, 481 U.S. at 295, n. 15, 18 S.Ct. at 1769, n. 15 ("decisions whether to prosecute and what to charge necessarily are individualized and involve infinite factual variations. . . ."). Even assuming the validity of Foster's study,[8] the raw numbers analyzed by Foster do not show a significantly greater disparity than figures proffered by the Baldus study which had taken into account numerous nonracial variables.[9]

[14] Finally, Foster claims that the trial court's sentencing order fails to evaluate the proposed mitigating factors as required by *Rogers v. State*, 511 So.2d 526 (Fla. 1987), *cert. denied*, 484 U.S. 1020, 108 S.C. 733, 98 L.Ed.2d 681 (1988). In discussing the manner in which the trial court should consider mitigating circumstances in a case in which the state seeks the death penalty, we said:

"[T]he trial court's first task in reaching its conclusions is to consider whether the facts alleged in mitigation are supported by the evidence. After the factual finding has been made, the court then must determine whether the established facts are of a kind capable of mitigating the defendant's punishment, i.e., factors that, in fairness or in the totality of the defendant's life or character may be considered as extenuating or reducing the degree of moral culpability for the crime committed. If such factors exist in the record at the time of sentencing, the sentencer must determine whether they are of sufficient weight to counterbalance the aggravating factors."—*Id.* at 534.

In addressing mitigation in the sentencing order, the trial court first listed thirteen mitigating factors that Foster had offered for consideration. The court then stated:

"The Court must note that there is a conflict in evidence on the questions of whether the capital felony was committed while the defendant was under the influence of *extreme* mental or emotional disturbance and the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was *substantially* impaired (emphasis supplied)."

After discussing the conflict in the evidence, the court then concluded:

"The Court will therefore consider this conflict in the weight to be given these two factors in relating to the aggravating circumstances.

"The Court has considered the evidence presented in support of each of these mitigating factors and, in weighing these factors against the aggravating factors, finds that the aggravating circumstances outweigh the mitigating circumstances in this case."

While it is evident that the court considered the mitigating circumstances, we cannot tell whether the court determined whether either of the two statutory mental mitigating circumstances existed. In fact, we are unable to say whether the court found any of the mitigating circumstances to exist or what weight was given to them. Unlike *Rogers*, we cannot say that this defect in the sentencing order was harmless error.[10]

Accordingly, we vacate the sentence of death and remand the case for the trial judge to enter a new sentencing order following the dictates of *Rogers* and *Campbell v. State*, 571 So.2d 415 (Fla.1990).[11] *See Lucas v. State*, 568 So.2d 18 (Fla.1990). We affirm the denial of Foster's motion for postconviction relief.

It is so ordered.

OVERTON, McDONALD, GRIMES and HARDING, JJ., concur.

BARKETT, CJ., concurs in part and dissents in part with an opinion, in which SHAW and KOGAN, JJ., concur.

KOGAN, J., concurs in part and dissents in part with an opinion.

BARKETT, Chief Justice, concurring in part, dissenting in part.

I concur in the majority's resolution of all the issues except for Foster's claim regarding the discriminatory use of the death penalty in Bay County, Florida.

The majority concludes that Foster "has offered nothing to suggest that the state attorney's office acted with purposeful discrimination in seeking the death penalty in his case." Majority op. at 463. My disagreement is not so much with that statement as with a standard that requires showing something that is virtually impossible to show: *purposeful* discrimination. *McCleskey* v. *Kemp*, 481 U.S. 279, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987).

In *McCleskey*, the U.S. Supreme Court dismissed McCleskey's analogous federal equal protection claims, holding that a defendant must establish both "the existence of purposeful discrimination" and a "discriminatory effect" on that particular defendant. *Id.* at 292, 107 S.Ct. at 1767. I agree that under the federal precedent *McCleskey* would control this case.

Foster, however, claims a violation of the Equal Protection Clause of the Florida Constitution. Art. I, §2, Fla. Const. Despite the principles adopted in *Traylor* v. *State*, 596 So.2d 957 (Fla.1992), establishing the primacy of the Florida Constitution, the majority completely ignores Foster's state constitutional challenge. I believe that Foster's claim deserves full consideration.

Despite earlier transgressions,[12] Florida in recent years has clearly established its commitment to equality of treatment in the courts. *See, e.g., Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission* (1990 & 1991); *The Florida Supreme Court Gender Bias Study Commission Final Report* (1990). Indeed, while the U.S. Supreme Court was still requiring a defendant to meet the impossible burden of proving that discriminatory jury selection practices were employed systematically in a number of similar cases or contexts, *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965), this Court took the lead in *State v. Neil*, 457 So.2d 481 (Fla. 1984), *clarified by State v. Castillo*, 486 So.2d 565 (1986), and established guidelines under the Florida Constitution to guard against the racially discriminatory use of peremptory challenges.[13] The U.S. Supreme Court followed suit two years later in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), when it overruled the *Swain* standard and acknowledged that it imposed a "crippling burden of proof" that rendered a prosecutor's peremptory challenges largely immune from constitutional scrutiny. *Id.* at 92-93, 106 S.Ct. at 1720-21. The Court found that a prosecutor's use of peremptory challenges is subject to the constraints of the Equal Protection Clause when there is some basis for believing that the challenges are used in a racially discriminatory manner.[14]

The U.S. Supreme Court in *Batson* recognized the invidious nature of discrimination. *Id.* at 93-96, 106 S.Ct. at 1721-23. Justice Marshall, in a concurring opinion, noted that discrimination is not often blatantly expressed, and in many cases it is subliminal:

"A prosecutor's own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is 'sullen,' or 'distant,' a characterization that would not have come to his mind if a white juror had acted identically. A judge's own conscious or unconscious racism may lead him to accept such an explanation as well supported."—*Id.* at 106, 106 S.Ct. at 1728 (Marshall, J. concurring).

Studies of unconscious racism have shown that the perpetrator does not feel particularly punitive toward minorities, rather, he or she wants to remain distant and is less likely to feel empathy because of the distance. Sheri Lynn Johnson, Comment, *Unconscious Racism and the Criminal Law*, 78 Cornell L. Rev. 1016, 1020 n. 27 (1988). While soci-

ety has largely rejected blatant stereotypes and overt discrimination, more subtle forms of racism are increasing: "A burgeoning literature documents the rise of the 'aversive' racist, a person whose ambivalent racial attitudes leads him or her to deny his or her prejudice and express it indirectly, covertly, and often unconsciously." *Id.* at 1027–28 (footnotes omitted).

Discrimination, whether conscious or unconscious, cannot be permitted in Florida courts. As important as it is to ensure a jury selection process free from racial discrimination, it is infinitely more important to ensure that the *State* is not imposing the ultimate penalty of death in a racially discriminatory manner. The U.S. Supreme Court may eventually recognize that the burden imposed by *McCleskey* is as insurmountable as that presented by *Swain*. In the meantime, defendants such as Foster have no chance of proving that application of the death penalty in a particular jurisdiction is racially discriminatory, no matter how convincing their evidence.[15]

"Assuming, for the sake of argument, that unconscious discrimination exists, how can it be proven? As the U.S. Supreme Court recognized in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S. Ct. 555, 564, 50 L.Ed.2d 450 (1977), "[s]ometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." In cases involving jury pools, for example, the U.S. Supreme Court has recognized that a strict application of the purposeful discrimination standard generally required under the Equal Protection Clause is inequitable. *See Washington v. Davis*, 426 U.S. 229, 242, 96 S.Ct. 2040, 2048, 48 L.Ed.2d 597 (1976) (explaining the standard applicable to jury cases); *Castaneda v. Partida*, 430 U.S. 482, 493–96, 97 S.Ct. 1272, 1279–81, 51 L.Ed.2d 498 (1977). A prima facie case of intentional discrimination can be established by showing that representation of a minority in the jury venire falls below the population as a whole or by demonstrating that criteria are subjective and lead to exclusion or underinclusion. Once the prima facie case has been established, the burden then shifts to the State to rebut that case. *Partida*, 430 U.S. at 494–97, 97 S.Ct. at 1280–82; *see also Alexander v. Louisiana*, 405 U.S. 625, 92 S.Ct. 1221, 31 L.Ed.2d 536 (1972); *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970). This standard amounts to something considerably less than purposeful and deliberate discrimination; indeed, the Court in these cases has expressed a willingness to consider discriminatory impact, as evidenced by statistics, that cannot be traced to blatant or overt discrimination.

"I believe that statistical evidence of discrimination in capital sentencing decisions should similarly establish a violation of article I, section 2 of the Florida Constitution. "Statistical" evidence should be construed broadly to include not only historical analysis of the disposition of first-degree murder cases in a particular jurisdiction, but also other information that could suggest discrimination, such as the resources devoted to the prosecution of cases involving white victims as contrasted to those involving minority victims, and the general conduct of a state attorney's office, including hiring practices and the use of racial epithets and jokes. When racial bias, whether conscious or unconscious, exists in an environment where decisions about seeking the death penalty are made, all aspects of that bias should be available for evaluation by a court in reviewing evidence of discrimination.

"In crafting a standard for proving racial discrimination in death penalty decision-making under the Florida Constitution, it is appropriate to borrow from the *Neil* and *Slappy* peremptory challenge line of cases, which gives the trial court discretion to determine whether a prima facie case has been established. *See, e.g., Neil; Slappy; Wright v. Slate*, 586 So.2d 1024, 1027–28 (Fla. 1991); *Reed v. State*, 560 So.2d 208, 206 (Fla.), *cert. denied*, 498 U.S. 882, 111 S.Ct. 230, 122 L.Ed.2d 184 (1990). As in the area of peremptory challenges, a bright line test for determining whether racial discrimination in the decision to seek the death penalty has occurred would be counterproductive. *See Slappy*, 522 So.2d at 21–22. Racial discrimination in the capital sentencing process should be evaluated as a whole, and it is impossible to anticipate all of the circumstances in which it might be manifested. The trial court is in the best position to evaluate whether a party has demonstrated sufficient evidence of discrimination to warrant an inquiry.

"I suggest the following standard: A party asserting racial discrimination in the State's decision to seek the death penalty should make a timely objection and demonstrate on the record that the discrimination exists and that there is a strong likelihood it has influenced the State to seek the death penalty. Such discrimination conceivably could be based on the race of the victim or on the race of the defendant. Once the trial court determines that the initial burden has been met by the defendant, the burden then shifts to the State to show that the practices in question are not racially motivated. If the trial court determines that the State does not meet that burden, the State then is prohibited from seeking the death penalty in that case.

"Accordingly, because the majority has applied a federal constitutional standard in Foster's case that is impossible to meet and has missed the opportunity to craft a state constitutional standard such as that discussed above, I dissent from that portion of the opinion."

FOOTNOTES

1. *Hitchcock* v. *Dugger*, 481 U.S. 393, 107 S.Ct. 1821, 95 L.Ed.2d 347 (1987).

2. The trial court found three aggravating circumstances: (1) the murder was committed during the course of a robbery; (2) the murder was cold, calculated, and premeditated; and (3) the murder was especially heinous, atrocious, or cruel. Foster offered thirteen mitigating circumstances. The trial court found that the mitigation did not outweigh the aggravating circumstances.

3. In addition, we note that Foster raised ineffective assistance of counsel claims in his two federal habeas petitions. The claims were denied after evidentiary hearing and the denials were affirmed on appeal. *Foster* v. *Dugger*, 823 F.2d 402 (11th Cir. 1987), *cert. denied*, 487 U.S. 1241, 108 S.Ct. 2915, 101 L.Ed.2d 946 (1988); *Foster* v. *Strickland*, 707 F.2d 1339 (11th Cir. 1983), *cert. denied*, 466 U.S. 993, 104 S.Ct. 2375, 80 L.Ed.2d 847 (1984).

4. In addition, we note that the motion was filed outside of the limitations period established by rule 3.850. The motion fails to allege that the facts upon which his claims are based "could not have been ascertained by the exercise of due diligence." Fla.R.Crim.P. 3.850.

5. §921.141(5)(h), Fla.Stat. (1989).

6. §921.141(5)(i), Fla.Stat. (1989).

7. Foster also contends that the application of the cold, calculated, and premeditated aggravating factor to his crime violates the Ex Post Facto Clause because the factor did not exist at the time of this crime. We have repeatedly rejected this claim. *See Sireci v. State*, 587 *So.2d* 450, 454 (Fla. 1991), *cert. denied*,——U.S.——, 112 S.Ct. 1500 117 L.Ed.2d 639 (1992); *Zeigler v. State*, 580 So.2d 127 (Fla.), *cert. denied*——U.S.——, 112 S.Ct. 390, 116 L.Ed.2d 340 (1991); *Combs v. State*, 403 So.2d 418, 421 (Fla. 1981), *cert. denied*, 456 U.S. 984, 102 S.Ct. 2258, 72 L.Ed.2d 862 (Fla. 1982).

8. The weight to be given to the results of such a small statistical sample as this is questionable. *See McCleskey*, 481 U.S. at 295, n. 15, 107 S.Ct. at 1768, n. 15.

9. The figures indicating that of the defendants who went to trial, white-victim defendants were 26 times more likely to be convicted of first-degree murder than were black-victim defendants cannot be attributed to a decision by the Bay County State Attorney's Office and thus are not relevant here.

10. In view of our disposition of this issue, we do not address Foster's argument with respect to proportionality.

11. While *Campbell* did not become final until after the original sentencing order was entered, its additional requirements will obviously be applicable to any new sentencing order.

12. *See, e.g., State ex rel. Hawkins v. Board of Control*, 93 So.2d 354 (Fla.), *cert. denied*, 355 U.S. 839, 78 S.Ct. 20, 2 L.Ed.2d 49 (1957); *State ex rel. Hawkins v. Board of Control*, 83 So.2d 20 (Fla. 1955), *cert. denied*, 350 U.S. 413, 76 S.Ct. 464, 100 L.Ed. 486 (1956).

13. *See also State v. Slappy*, 522 So.2d 18 (Fla.) *cert. denied*, 487 U.S. 1219, 108 S.Ct. 2873, 101 L.Ed.2d 909 (1988) (holding that any doubt as to whether the complaining party has met its initial burden, should be resolved in that party's favor).

14. The U.S. Supreme Court recently held that the Equal Protection Clause also prohibits a criminal defendant from engaging in purposeful discrimination on the basis of race in the exercise of peremptory challenges. *Georgia v. McCollum*,——U.S.——, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992). This Court held in *Neil* that both the State and the defense may challenge the allegedly improper use of peremptories. 457 So.2d at 487.

15. In this case, Foster presented statistical evidence showing that even though blacks constituted 40% of the murder victims in Bay County cases between 1975 and 1987, all 17 death sentences that were imposed were for homicides involving white victims. Additionally, the study produced by Foster concluded that defendants whose victims were white were four times more likely to be charged with first-degree murder than defendants whose victims were black. Of those defendants charged with first-degree murder, white-victim defendants were six times more likely to go to trial, and of those defendants who went to trial, white-victim defendants were 26 more times likely to be convicted of first-degree murder. Other studies also suggest that discrimination may be resulting in harsher penalties for those who kill whites. *See, e.g.*, Bob Levenson & Debbie Salamone, *Prosecutors See Death Penalty in Black and White*, The Orlando Sentinel, May 24, 1992, at A1 (analyzing 283 first-degree murder cases prosecuted from Jan. 1, 1986, through Sept. 30, 1991, in Orange, Osceola, Seminole, Brevard, Lake, and Volusia counties, and finding that prosecutors sought the death penalty 27% of the time when white victims were involved and only 14% of the time when minority victims were involved).•

ORDERS FOR MONDAY, FEBRUARY 28, 1994, AND TUESDAY, MARCH 1, 1994

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m., Monday, February 28, that following the prayer, the Journal of proceedings be approved to date and the time for the two leaders reserved for their use later in the day; that the Senate then resume consideration of Senate Joint Resolution 41, the balanced budget constitutional amendment, with the time for debate on Monday extending until 7 p.m., with the time controlled as provided for under the provisions of a previous unanimous consent agreement; further that on Tuesday, March 1, the Senate stands in recess from 12:45 p.m. to 2:30 p.m., in order to accommodate the respective party conferences; that on Tuesday, March 1, the 40 minutes prior to the vote on passage of Senate Joint Resolution 41 be divided between the

majority and Republican leaders, with the Republican leader controlling the first 20 minutes and the majority leader controlling the 20 minutes immediately prior to the vote; with the 40 minutes being deduced proportionately from the sides controlling the debate time; further that Senator BYRD be recognized for up to 30 minutes immediately prior to the 20 minutes provided here for the Republican leader.

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

RECESS UNTIL MONDAY, FEBRUARY 28, 1994, AT 10 A.M.

Mr. REID. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 5:35 p.m., recessed until Monday, February 28, 1994, at 10 a.m.

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

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