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Senate

(Legislative day of Wednesday, February 22, 1995)

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

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

PRAYER

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

In Psalm 89 we read:

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

Let us pray:

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

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

RESERVATION OF LEADER TIME

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

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

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

The assistant legislative clerk read as follows:

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

The Senate resumed consideration of the joint resolution.

Pending:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOGNITION OF THE DEMOCRATIC LEADER

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

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

(Mr. KYL assumed the chair.)

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

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

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

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

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

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

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

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

In section 7, it says:

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

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

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

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

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

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

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

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

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

Senator Danforth went on to say:

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

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

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

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

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

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

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

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

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

Catastrophic, Mr. President—

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. Does the Senator yield time?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

Mr. GRAMM. What about 15?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The distinguished minority leader.

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

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

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

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

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

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

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

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

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

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

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

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

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

(Disturbance in the visitors' galleries.)

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

Thank you.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

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

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

AMENDMENT NO. 274

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are four important arguments for protecting Social Security:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The letter concludes by stating:

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

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

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

AMERICAN ASSOCIATION OF RETIRED PERSONS

Washington, DC, February 23, 1995.

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

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

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

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

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

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

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

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

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

Sincerely,

HORACE B. DEETS.
Executive Director.

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

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

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

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

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

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

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

Sincerely,

MARTHA A. MCSTEEN,
President.

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

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

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

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

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

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

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

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

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

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

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

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

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

FOOTNOTES

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

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

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

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

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

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I will vote for this honest balanced budget amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

He explained that—

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

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

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

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

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

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

Mr. President, I move to table the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 300, AS MODIFIED.

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AN INVITATION TO DISASTER

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

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

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

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

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

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

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

UNBALANCED IDEA—A RISKY BUDGET AMENDMENT

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

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

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

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

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

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

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

THE URGENCY OF POLITICAL COURAGE

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

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

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

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

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

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

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

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

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. BUMPERS. I thank the Chair.

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

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

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

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

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

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

I yield the floor.

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

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

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

IT DOES NOT REDUCE THE DEBT OR THE DEFICIT

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

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

PROPONENTS' DEBT TRACKER CHART

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

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

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

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

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

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

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

IT WILL SHIFT BURDENS TO STATE AND LOCAL GOVERNMENTS

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

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

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

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

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

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

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

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

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

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

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

IT WILL HURT CHILDREN'S PROGRAMS

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

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

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

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

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

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

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

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

IT WILL ENCOURAGE BUDGET GIMMICKRY

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

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

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

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

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

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

IT IS LOADED WITH LOOPHOLES

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

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

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

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

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

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

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

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

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

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

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

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

IT MAY HARM THE ECONOMY

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

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

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

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

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

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

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

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

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

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

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

IT INVITES CONSTITUTIONAL CLASHES

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

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

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

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

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

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

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

IT ERODES THE FUNDAMENTAL PRINCIPLE OF MAJORITY RULE

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

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

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

Madison warned that:

> In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: The power would be transferred to the minority.

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

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

IT WILL RESULT IN DISTRESSING SURPRISES

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

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

What will this implementing legislation say?

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

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

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

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

draft a substantive behavioral policy into the Constitution.

IT IS NOT CONSTITUTIONALLY NECESSARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDMENT NO. 300, NUNN AMENDMENT, AS MODIFIED

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

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

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

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

Mr. Barr went on to suggest that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State legislators are calling for its adoption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This vote is real this time.

This vote counts.

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

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

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

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

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

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

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

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

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

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

AMENDMENT NO. 300, AS MODIFIED

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

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

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

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

AMENDMENT NO. 291

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

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

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

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

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

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

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

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

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

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

I yield the floor.

THE BALANCED BUDGET CONSTITUTIONAL AMENDMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Do we trust the people with that debate?

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

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

This Senator trusts the people.

FUNDAMENTAL RIGHTS, LIMITS ON GOVERNMENT

A constitution—

Protects the basic rights of the people;

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

Sets forth just the essential procedures to do these things.

House Joint Resolution 1 fits squarely within that constitutional tradition:

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

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

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

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

THE DEBT IS THE THREAT

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

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

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

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

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

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

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

THE BBA IS THE BEST HOPE FOR ECONOMIC SECURITY

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

We should do the same.

Jefferson said:

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

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

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

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

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

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

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

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

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

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

Mr. HATCH. And the other side?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No. 1:

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

No. 2:

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

No. 3:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I thank the Chair and yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

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

Mr. NUNN. I thank my friend from Utah.

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

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

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

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

Former Attorney General Nicholas Katzenback has noted:

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

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

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

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

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

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

My concerns are based upon three considerations.

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

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

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

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

THE LEGISLATIVE HISTORY OF THE BALANCED BUDGET AMENDMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTRASTING VIEWS ON THE ISSUE OF JUDICIAL INTERVENTION

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

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

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

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

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

Professor Fried also observed that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In his letter, Professor Sunstein notes:

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

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

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

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

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

STATUTORY LIMITATIONS ON JUDICIAL REVIEW MUST BE GROUND IN THE CONSTITUTION

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

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

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

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

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

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

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

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

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

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

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

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

THE RESPONSIBILITY OF CONGRESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

CASS R. SUNSTEIN.

STANFORD LAW SCHOOL,
February 24, 1995.

Re proposed balanced budget amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

KATHLEEN M. SULLIVAN.

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

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

BALANCED BUDGET AMENDMENT AND JUDICIAL REVIEW

I. PRELIMINARY COMMENTS

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

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

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

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

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

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

II. STANDING

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

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

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

A. Citizen suits

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

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

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

B. Taxpayer standing

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

C. Congressional standing

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

[1] Footnotes at end of article.

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

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

III. JUSTICIABILITY AND THE POLITICAL QUESTION DOCTRINE

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

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

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

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

IV. THE CONCERN OVER JUDICIAL TAXATION

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

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

V. STATUTORY PROTECTION OF CONGRESSIONAL POWER

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

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

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

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

VI. PRESIDENTIAL IMPOUNDMENT

A good deal of the ''standing'' examples you provided in your floor statement are really concerns over presidential impoundment.[39] I want to initially say that there is nothing in H.J. Res. 1 that authorizes or otherwise allows for impoundment. Nor is it the intent of the amendment to grant the President any impoundment authority under H.J. Res. 1. Indeed, H.J. Res. 1 imposes one new duty, and corresponding authority, on the President: to transmit to Congress a proposed budget for each fiscal year in which total outlays do not exceed total receipts.[40]

In fact, there is a ''ripeness'' problem to any attempted impoundment: up to the end of the fiscal year the President has no plausible basis to impound funds because Congress under the amendment has the power to ameliorate any budget shortfalls or ratify or specify the amount of deficit spending that may occur in that fiscal year.

Moreover, under section 6 of the amendment, Congress must—and I emphasize ''must''—mandate exactly what type of enforcement mechanism it wants, whether it be sequestration, rescission, or the establishment of a contingency fund. The President, as Chief Executive, is duty bound to enforce a particular requisite congressional scheme to the exclusion of impoundment. That the President must enforce a mandatory congressional budgetary measure has been the established law since the nineteenth century case of *Kendall* v. *United States ex rel. Stokes*, 37 U.S. (1 Pet.) 54 (1838).[41] The *Kendall* case was given new vitality in the 1970s, when lower federal courts, as a matter of statutory construction, rejected attempts by President Nixon to impound funds where Congress did not give the President discretion to withhold funding.[42]

The position that section 6 implementing legislation would preclude presidential impoundment was seconded by Attorney General Barr at the recent Judiciary Committee hearing on the balanced budget amendment. Testifying that the impoundment issue was in reality incomprehensible, General Barr concluded that ''the whip hand is in Congress' hand, so to speak; under Section 6 [the] Congress can provide the enforcement mechanism that the courts will defer to and that the President will be bound by.''

What we have here then, is an argument based on a ''mere possibility'' or fear of impoundment. I strongly believe that the President is not given any new authority under the BBA to impound funds, and that the mandatory enforcement implementing legislation would preclude any real impoundment possibilities. This was all but conceded by Assistant Attorney General Dellinger in his testimony on the BBA before my Committee. I also want to emphasize that because section 6 of the amendment allows Congress to rely on estimates, the fact that there might be some budgetary shortfall in a given fiscal year's budget does not necessarily render that budget out of compliance with the BBA.

VII. OTHER CONCERNS

Finally, I want to address two additional concerns that you have expressed in your floor statement. First, I have to disagree with your statement that state balanced budget litigation is widespread. In fact, there are very few reported cases. We also have to take note that state balanced budget amendments are very different than H.J. Res. 1, in that there is usually a distinction made between state capital and operating budgets which sometimes results in litigation over the meaning of ''state debt'' and ''capital expenditure.'' Also, many state courts do not have standing or justiciability requirements as barriers to bringing a lawsuit.[43]

Finally, concerning the statements of noted experts, such as Judge Bork, that there could indeed be judicial enforcement of the BBA. My response is that Judge Bork—who is a very close friend—and whose contentions are contained in a letter of January, 1994, has greatly exaggerated fears of judicial activism in a BBA context. In fact, he admits that there would probably be no standing to bring a challenge to actions taken under the amendment. The substance of his argument is ''what if'' courts took jurisdiction; what would stop them from interfering in the budgetary process. He did not consider at all in his letter, however, the well-accepted precept that implementing legislation could curtail the excesses of judicial activism.

FOOTNOTES

[1] The other ''standing'' examples you provide for in your February 23 floor statement implicate presidential impoundment and will be addressed below.

[2] An issue prior to standing is identification of the proper party defendant. The appropriate defendant in a case involving the BBA is the person acting unconstitutionally under the law, almost always an executive branch official, since that branch is charged with the administration of the law. See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163–66 (1803); *Reigle* v. *Federal Open Mkt. Comm.*, 656 F.2d 873, 879 n.6 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981). Another issue is ''ripeness.'' Because under the BBA Congress may correct any budgetary shortfalls right up to the end of the fiscal year, potential plaintiffs are prevented from litigating until that time—another daunting hurdle litigants face in challenging congressional measures implementing the BBA.

[3] See, e.g., *Valley Forge Christian College* v. *Americans United, Inc.*, 454 U.S. 465, 475 (1982) (''We need not mince words when we say that the concept of 'Art. III standing' has not been defined with complete consistency . . . by this Court. . . .'').

[4] E.g., *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

[5] It also is now clear that standing is an Article III requirement that can not be waived by Congress or the courts. See *Valley Forge*, 454 U.S. at 488 n.24; *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41 n.22 (1976).

[6] 112 S.Ct. 2130 (1992). *Lujan* involved legal challenges to regulations promulgated under the Endangered Species Act of 1973. Conservation and environmental groups argued that standing inhered in anyone alleging an interest in studying or seeing endangered animals anywhere on earth and anyone with a professional interest in such animals. Suffice it to say that the Court held that there was no showing of ''injury in fact''.

[7] Citing, *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975) and *Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983).

[8] Quoting, *Simon*, 426 U.S. 26, 41–42.

[9] Quoting, *Simon*, 426 U.S. at 38, 43.

[10] E.g., *Frothingham* v. *Mellon*, 262 U.S. 447 (1923) (allegations that amount to a ''generalized grievance'' are not judicially cognizable.

[11] This too would therefore be a nonjusticiable ''generalized grievance''. See Id.

[12] Government is not under a duty to provide benefits, and, thus, Congress may cut or eliminate any program consistent with the protection of equal protection or individual rights. *Overton* v. *John Knox Retirement Tower, Inc.*, 720 F.Supp. 934, 937 (M.D. Ala. 1989).

[13] 392 U.S. 83 (1968).

[14] The test has suffered through application. The Court subsequently required detailed particularized pleading challenging specific spending measures promulgated under Article I, Section 8's Spending and Taxing Clause. These measures must violate specific provisions of the Constitution, See, e.g., *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208 (1974); *United States* v. *Richardson*, 418 U.S. 166 (1974). Litigants have not been successful in recent times applying the *Flast* test.

[15] See *Valley Forge*, 454 U.S. 464 (1982). Indeed, in *Flast*, Justices Stewart and Fortas perceived the nexus test as simply a means of limiting federal taxpayer's suits to Establishment Clause challenges. *Flast*, 392 U.S. at 114–15.

[16] In *Valley Forge*, 454 U.S. at 471–82, the Court implicitly views the *Flast* test as a measure of a taxpayer's constitutionally required actual injury.

[17] Compare *Harrington* v. *Bush*, 553 F.2d 190 (D.C. Cir. 1977) (congressman seeking declaratory and injunctive relief against C.I.A. for allegedly illegal activities lacks concrete injury requisite for standing), with *Harrington* v. *Schlesinger*, 528 F.2d 455 (4th Cir. 1975) (same facts, opposite result).

[18] *Reigle* v. *Federal Open Market Committee*, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981).

[19] See *Coleman* v. *Miller*, 307 U.S. 433 (1939) (state senators denied the efficacy of their votes when Lieut. Governor by statute was allowed to break tie vote by casting ballot); *Kennedy* v. *Sampson*, 511 F.2d 430 (D.C. Cir. 1974) (challenging illegal use of Presidential pocket veto).

[20] The *Lujan* ''redressability'' prong of its standing test essentially merges the justiciability and the political question doctrine. Accord *Valley Forge*, 454 U.S. 464 (1982) (where the Court makes clear that separation of powers consequences play a vital role in the standing calculus).

[21] See Bickel, The Supreme Court, 1969 Term—Foreword: The Passive virtues, 75 Harv. L. Rev. 40, 46 (1961).

[22] See Wechsler, Toward Neutral Principles of Constitutional Law, 73 Harv. L. Rev. 1,9 (1959).

[23] *Baker* v. *Carr*, 369 U.S. 186, 217 (1962).

[24] Id.

[25] See, e.g., *Nixon* v. *United States*, 113 S.Ct. 732 (1993).

[26] While the BBA does, indeed, contain some ''process'' standards (e.g., the requirement of a three-fifths vote in each chamber to increase the debt ceiling), it is doubtful that standing could be found to enforce even such standards.

[27] See Henkin, Is There a Political Question Doctrine?, 85 Yale L. J. 597 (1976) (where Professor Henkin argues that the political question doctrine boils down to the discretionary equitable power of courts not to dispense relief). See *Colegrove* v. *Green*, 328 U.S. 549 (1946) (courts have duty to avoid constitutional issues where resolution will clash with the political branches of government).

[28] Declaratory relief is available under the Federal Declaratory Judgment Act, 28 U.S.C. sections 2201–2202.

[29] Where, for instance, both Chambers of Congress ignore the constitutional majority provision to raise taxes, presents the measure to the President, and the President refuses to veto the subsequent unlawful measure. The aggrieved taxpayer who sees his pay check decrease could probably receive declaratory relief.

[30] See *Colgrove* v. *Green*, 328 U.S. at 552 (where Justice Frankfurter opines that declaratory relief should not be granted in situations where injunctions are inappropriate).

[31] 495 U.S. 33 (1990).

[32] This power was hotly contested by the dissenters in *Jenkins* and may not command a majority today.

[33] 495 U.S. at 67.

[34] See *Reigle*, 656 F.2d at 879 n.6 (''When a plaintiff alleges injury by unconstitutional action taken pursuant to a statute, his proper defendants are those acting under the law . . . and not the legislature which enacted the statute,'' citing, *Marbury* v. *Madison*, 5. U.S. (1 Cranch) 137, 175–80, (1803)). Illustrative of this point is *Powell* v. *McCormack*, 395 U.S. 486 (1969), where Congressman Adam Clayton Powell was ''excluded'' by the House from taking his seat. Powell sued the enforcement official—Speaker McCormack, under whose jurisdiction the Sergeant-at-Arms was—and not the House of Congress as a whole. In contrast, Members of Congress have absolute immunity to suit for actions taken on the floor of the Chamber when acting in a legislative capacity, such as voting for or against a measure. See U.S. Const. art. I, sec. 6 (''Speech or Debate Clause'').

[35] Section 6 of H.J. Res. 1 mandates that Congress promulgate enforcement legislation.

[36] E.G., the Norris-LaGuardia Act, 29 U.S.C. sections 101–115 (denial of court use of injunctions in labor disputes); the Federal Anti-Injunction Statute, 28 U.S.C. section 2283 (prohibition on enjoining state court proceedings); the Anti-Injunction Provisions of the Internal Revenue Code, Int. Rev. Code section 7421(a) (prohibition on enjoining the collection of taxes).

[37] E.g., *United States* v. *Bitty*, 298 U.S. 393 (1908); *Lauf* v. *E.G. Shinner & Co.*, 303 U.S. (1938). Furthermore, the BBA does not create an individual ''right'' akin to the First Amendment's Free Speech Clause. As stated above, there is no right to a balanced budget much as the Twenty-first Amendment repealing prohibition creates no right to drink alcohol; the BBA is simply a procedural limitation on Congress' taxing, spending, and borrowing powers which creates a presumption in favor of a balanced budget that may be overcome by a three-fifths vote of the whole number of each House.

[38] E.G., the Emergency Price Control Act, which established a special Emergency Court of Appeals vested with exclusive authority to determine the validity of claims under that Act. The Court in *Yakus* v. *United States*, 319 U.S. 182 (1943), upheld the constitutionality of this limited judicial enforcement mechanism. Accord *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981) (upholding constitutionality of executive order, promulgated pursuant to congressional delegation of power, establishing Iranian-United States Claims Tribunal as exclusive forum to settle claims to Iranian assets).

[39] For example, you quote Walter Dellinger's example where a social security beneficiary would have standing to challenge a presidential order reducing benefits. The other Dellinger example given is a similar one, with welfare payments being substituted for social security payments, A twist is added, wherein a state would have standing to sue if a President does not impound funds. I, in all respect, believe these examples to be gross exaggerations of the law. First, a President must faithfully execute the law pursuant to his oath of office, and, therefore, must enforce these social spending programs. Second, neither a state nor an individual would have standing to challenge a spending program, as explained above. How are they individually harmed by the enforcement of the programs? Finally, and ironically, if the first example challenging impoundment somehow prevailed in litigation, it would be a vindication of congressional prerogatives over the budget.

[40] H.J. Res. 1, sec. 3.

[41] In *Kendall*, Congress had passed a private act ordering the Postmaster General to pay Kendall for services rendered. The Supreme Court rejected the argument that Kendall could not sue in mandamus because the Postmaster General was subject only to the orders of the President and not to the directives of Congress. The Court held that the President must enforce any mandated—as opposed to discretionary—congressional spending measure pursuant to his duty to faithfully execute the law pursuant to Article II, section 3 of the Constitution.

[42] E.g., *State Highway Commission* v. *Volpe*, 479F.2d 1099 (8th Cir. 1973).

[43] These factors were recognized by Asst. Attorney General Dellinger to me in a letter dated January 9, 1995, This letter also corrected a misstatement made to Senator Brown whereby Mr. Dellinger had erroneously contended that there was an avalanche of state litigation over their balanced budget requirements. Mr. Dellinger in the letter now admits that:

''Senator Brown is correct that there has not been a significant amount of litigation in the states interpreting their balanced budget provisions, and that this is a factor that weighs against the argument that there would be an avalanche of litigation under a federal balanced budget amendment.''

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Louisiana.

Mr. BREAUX. I thank the Senator for yielding his time.

Mr. President, my colleagues, amendments to the Constitution cannot be passed by the Congress alone. It is a partnership arrangement. The process must also include ratification by the various States. Three-fourths of the States, 38 States, must also join with the Congress in ratifying any proposed amendment to the Constitution before it comes part of the Constitution.

In order for me to justify not even voting to send this proposal to my State of Louisiana and the various other States for them to debate and to vote on this measure, I must be convinced that on its face this amendment is such bad public policy that it must die here in Washington. Is this amendment perfect? No, it certainly is not. Its faults are many and they raise serious concerns in a number of areas.

No. 1, can unelected Federal judges who are appointed for life raise taxes and cut programs to enforce this measure? The Nunn and Johnston amendments address this particular question. I understand that there are those this morning who are willing to correct it with the adoption of the Nunn amendment which would go a long ways to correcting this very serious problem. The question of how can the States cast an intelligent vote on ratification without having the right to know in advance, for instance what will happen to them if it is ratified, is a very serious concern that needs further debate and consideration. Are programs, such as those that have trust funds as a means of funding programs, like the Social Security Program, in danger of being cut under this amendment? There needs to be further discussion and further debate on that particular issue.

The answers to these questions are not clear and more debate, not less, must occur. It is an issue that has generated a great deal of justified emotion. National polls and polls of my State of Louisiana indicate that approximately 75 percent of American people support a balanced budget amendment. But the polls also indicate, at the same time, that they do not support the balanced budget amendment if it means that there will be cuts in Social Security, or there will be cuts in Medicare, or there are likely to be cuts in some other favorite program of our constituents.

I voted for a balanced budget amendment to the Constitution in the past as I believe the long-term debt of our Nation is a critical problem that, so far, we have been giving to our children and to our grandchildren. We have made good efforts on reducing the deficits, as we have in 1993 in adopting President Clinton's deficit reduction plan which cut the deficit by $500 billion over 5 years. I might add we made that very difficult decision without a single Republican vote. But more needs to be done, and if this amendment passes there will be many more and difficult decisions to make. It will not be easy.

I cannot vote to kill this effort today, here in Washington. Our States must be involved. They should have the right to bring this measure up in our State legislatures, debate it, and then have the right and indeed the obligation to vote on it. For me to vote no here in Washington is to say to my State of Louisiana, and the other States, that I know so much more than you on this particular issue that I now vote no so that you cannot vote at all. I will not do that. So today I will vote yes on the balanced budget amendment and send it to the States for ratification and consideration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

UNANIMOUS-CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that it be in order for me to move to table the following amendments en bloc, and the ordering of the yeas and nays be in order, with one show of seconds.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia

Mr. BYRD. Mr. President, I ask the Senator to clarify his request to make sure that the request does not include the tabling of several amendments listed en bloc.

Mr. HATCH. As I understand it, what we are trying to do is make sure the motions to table on each of these amendments will be in place. They can be called up separately.

I modify my unanimous-consent request to make that clear.

Mr. LEAHY. Reserving the right to object, then, now that the unanimous consent has been modified, will the Chair restate it, please?

The PRESIDING OFFICER. It is the Chair's understanding that the Senator has requested to move to table each individual amendment en bloc, and to order the yeas and nays en bloc, but that the votes would actually be taken individually. Is that correct?

Mr. HATCH. That is correct. I now move to table the following amendments.

Mr. LEAHY. I am still reserving my right to object.

Mr. HATCH. Sure.

Mr. LEAHY. Those votes would occur beginning this afternoon, is that correct?

The PRESIDING OFFICER. It is the Chair's understanding that they would take place this afternoon.

Mr. LEAHY. I have no objection.

Mr. HATCH. Mr. President, with that understanding I now move to table the following amendments and motion and ask for the yeas and nays: The Kennedy amendment No. 267, Nunn amendment No. 299, Levin amendment No. 273, Levin amendment No. 310, Levin amendment No. 311, Pryor amendment No. 307, Byrd amendment No. 252, Byrd amendment No. 254, Byrd amendment No. 255, Byrd amendment No. 253, Byrd amendment No. 258, Kerry motion to commit to budget committee.

The Nunn amendment is as modified.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Excuse me—that is right. I withdraw that last statement. Just the amendments I read the numbers for.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to personally chat with the distinguished Senators from Georgia and Louisiana. I have listened to their comments carefully and will agree that we would take the amendment of the distinguished Senator from Georgia, as modified—hopefully by a voice vote. It will save us all time but nevertheless to accommodate the distinguished Senator. And hope that would, of course, allow us to proceed from there.

Mr. NUNN. I thank my friend from Utah and my friend from Illinois, and also Senator CRAIG and Senator LOTT and others who have worked hard making this amendment acceptable.

The Senator from Washington State, Senator DORGAN, and I have had some conversations also. Some of the language in this amendment now as is modified has been suggested by the Senator from Washington.

Mr. President, I think this is enormously important, as I said. I will not repeat my remarks but I appreciate the fact that the managers of the bill have agreed to accept this amendment or to recommend its acceptance to the Senate. I urge my colleagues to vote for the amendment. Assuming as I do assume that the amendment will be part of this constitutional amendment, then I will vote for the final passage on the constitutional amendment and I urge my colleagues to join in that effort.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, there are a number of Senators who have expressed concerns about a voice vote on this amendment. Given the fact that it has been the subject of debate and people are on record on this amendment during the course of the last several weeks of debate, I suggest that we have a rollcall, just to provide Senators the opportunity to express themselves on this amendment.