Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 509, S. 442, the Internet tax bill:

Trent Lott, John McCain, Wayne Allard, Connie Mack, Gordon Smith, Paul Coverdell, Spencer Abraham, Mike DeWine, Conrad Burns, James Inhofe, Judd Gregg, Rod Grams, Craig Thomas, Olympia Snowe, Rick Santorum, and Larry E. Craig.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on S. 442, the Internet Tax Freedom Act, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

Mr. BYRD. Mr. President, the Senate is not in order. Will the Chair repeat what the question is upon which the Senators will be voting?

The PRESIDING OFFICER. The Senator is correct. The Senate is not in order.

By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on S. 442, the Internet Tax Freedom Act, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

Mr. BYRD. Thank you.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The result was announced—yeas 94, nays 4, as follows:

[Rollcall Vote No. 302 Leg.]

YEAS—94

Abraham	Daschle	Kempthorne
Akaka	DeWine	Kennedy
Allard	Dodd	Kerrey
Ashcroft	Domenici	Kerry
Baucus	Durbin	Kohl
Bennett	Enzi	Kyl
Biden	Faircloth	Landrieu
Bingaman	Feingold	Lautenberg
Bond	Feinstein	Leahy
Boxer	Ford	Levin
Breaux	Frist	Lieberman
Brownback	Graham	Lott
Bryan	Gramm	Lugar
Burns	Grams	Mack
Byrd	Grassley	McCain
Campbell	Gregg	McConnell
Chafee	Hagel	Mikulski
Cleland	Harkin	Moseley-Braun
Coats	Hatch	Moynihan
Cochran	Helms	Murkowski
Collins	Hutchinson	Murray
Conrad	Hutchison	Nickles
Coverdell	Inhofe	Reed
Craig	Inouye	Reid
D'Amato	Johnson	Robb
Roberts	Smith (NH)	Thurmond
Rockefeller	Smith (OR)	Torricelli
Roth	Snowe	Warner
Santorum	Specter	Wellstone
Sarbanes	Stevens	Wyden
Sessions	Thomas	
Shelby	Thompson	

NAYS—4

Bumpers	Gorton
Dorgan	Hollings

NOT VOTING—2

Glenn	Jeffords

The PRESIDING OFFICER (Mr. HUTCHINSON). On this vote, the yeas are 94, the nays are 4. Three-fifths of the Senators having voted in the affirmative, the motion is agreed to.

IMPEACHMENT INQUIRY

Mr. LEAHY. Mr. President, as we wind down this session, certainly this body and the other body have much on their mind regarding the actions of the House Judiciary Committee and the whole area of an impeachment inquiry. Every Member will have to speak for himself or herself in both bodies in deciding what they believe is or is not an impeachable offense.

Many times we speak about what is an impeachable offense without discussing what it is not. I ask unanimous consent to have printed in the RECORD an excellent article written in Sunday's Washington Post by Professor Sunstein, entitled ''Impeachment?'' I feel it will be helpful, as his writings usually are, on this issue.

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

[From the Washington Post, Oct. 4, 1998]

IMPEACHMENT? THE FRAMERS

(By Cass Sunstein)

We all now know that, under the Constitution, the president can be impeached for ''Treason, Bribery, or other high Crimes and Misdemeanors.'' But what did the framers intend us to understand with these words? Evidence of the phrase's evolution is extensive—and it strongly suggests that, if we could solicit the views of the Constitution's authors, the current allegations against President Clinton would not be impeachable offenses.

When the framers met in Philadelphia during the stifling summer of 1787, they were seeking not only to design a new form of government, but to outline the responsibilities of the president who would head the new nation. They shared a commitment to disciplining public officials through a system of checks and balances. But they disagreed about the precise extent of presidential power and, in particular, about how, if at all, the president might be removed from office. If we judge by James Madison's characteristically detailed accounts of the debates, this question troubled and divided the members of the Constitutional Convention.

The initial draft of the Constitution took the form of resolutions presented before the 30-odd members on June 13. One read that the president could be impeached for ''malpractice, or neglect of duty,'' and, on July 20, this provision provoked extensive debate. The notes of Madison, who was representing Virginia, show that three distinct positions dominated the day's discussion. One extreme view, represented by Roger Sherman of Connecticut, was that ''the National Legislature should have the power to remove the Executive at pleasure.'' Charles Pinckney of South Carolina, Rufus King of Massachusetts and Gouvernor Morris of Pennsylvania opposed, with Pinckney arguing that the president ''ought not to be impeachable whilst in office.'' The third position, which ultimately carried the day, was that the president should be impeachable, but only for a narrow category of abuses of the public trust.

It was George Mason of Virginia who took a lead role in promoting this more moderate course. He argued that it would be necessary to counter the risk that the president might obtain his office by corrupting his electors. ''Shall that man be above'' justice, he asked, ''who can commit the most extensive injustice?'' The possibility of the new president becoming a near-monarch led the key votes—above all, Morris—to agree that impeachment might be permitted for (in Morris's words) ''corruption & some few other offences.'' Madison concurred, and Edmund Randolph of Virginia captured the emerging consensus, favoring impeachment on the grounds that the executive ''will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respects the public money, will be in his hands.'' The clear trend of the discussion was toward allowing a narrow impeachment power by which the president could be removed only for gross abuses of public authority.

To Pinckney's continued protest that the separation of powers should be paramount, Morris argued that ''no one would say that we ought to expose ourselves to the danger of seeing the first-Magistrate in foreign pay without being able to guard against it by displacing him.'' At the same time, Morris insisted, ''we should take care to provide some mode that will not make him dependent on the Legislature.'' Thus, led by Morris, the framers moved toward a position that would maintain the separation between president and Congress, but permit the president to be removed in extreme situations.

A fresh draft of the Constitution's impeachment clause, which emerged two weeks later on Aug. 6, permitted the president to be impeached, but only for treason, bribery and corruption (exemplified by the president's securing his office by unlawful means). With little additional debate, this provision was narrowed on Sept. 4 to ''treason and bribery.'' But a short time later, the delegates took up the impeachment clause anew. Mason complained that the provision was too narrow, that ''maladministration'' should be added, so as to include ''attempts to subvert the Constitution'' that would not count as treason or bribery.

But Madison, the convention's most careful lawyer, insisted that the term ''maladministration'' was ''so vague'' that it would ''be equivalent to a tenure during pleasure of the Senate,'' which is exactly what the framers were attempting to avoid. Hence, Mason withdrew ''maladministration'' and added the new terms ''other high Crimes and Misdemeanors against the State''—later unanimously changed to, according to Madison, ''against the United States'' to ''remove ambiguity.'' The phrase itself was taken from English law, where it referred to a category of distinctly political offenses against the state.

There is a further wrinkle in the clause's history. On Sept. 10, the entire Constitution was referred to the Committee on Style and Arrangement. When that committee's version appeared two days later, the words ''against the United States'' had been dropped, probably on the theory that they were redundant, although we have no direct evidence. It would be astonishing if this change were intended to have a substantive effect, for the committee had no authority to

change the meaning of any provision, let alone the impeachment clause on which the framers had converged. The Constitution as a whole, including the impeachment provision, was signed by the delegates and offered to the nation on Sept. 17.

These debates support a narrow understanding of ''high Crimes and Misdemeanors,'' founded on the central notions of bribery and treason. The early history tends in the same direction. The Virginia and Delaware constitutions, providing a background for the founders' work, generally allowed impeachment for acts ''by which the safety of the State may be endangered.'' And considered the words of the highly respected (and later Supreme Court Justice) James Iredell, speaking in the North Carolina ratifying convention: ''I suppose the only instances, in which the President would be liable to impeachment, would be where he had received a bribe, or had acted from some corrupt motive or other.'' By way of explanation, Iredell referred to a situation in which ''the President had received a bribe . . . from a foreign power, and under the influence of that bribe, had address enough with the Senate, by artifices and misrepresentations, to seduce their consent of pernicious treaty.''

James Wilson, a convention delegate from Pennsylvania, wrote similarly in his 1791 ''Lectures on Law'': ''In the United States and in Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments.'' Another early commentator went so far as to say that ''the legitimate causes of impeachment . . . can have referenced only to public character, and official duty . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subjects of impeachment.''

This history casts new light on the famous 1970 statement by Gerald Ford, then a representative from Michigan, that a high crime and misdemeanor ''is whatever a majority of the House of Representatives considers it to be.'' In a practical sense, of course, Ford was right; no court would review a decision to impeach. But in a constitutional sense, he was quite wrong, the framers were careful to circumscribe the power of the House of Representatives by sharply limiting the category of legitimately impeachable offenses.

The Constitution is not always read to mean what the founders intended it to mean, and Madison's notes hardly answer every question. But under any reasonable theory of constitutional interpretation, the current allegations against Clinton fall far short of the permissible grounds for removing a president from office. Of course, perjury and obstruction of justice could be impeachable offenses if they involved, for example, lies about unlawful manipulation of elections. It might even be possible to count as impeachable ''corruption'' the extraction of sexual favors in return for public benefits of some kind. But nothing of this kind has been alleged thus far. A decision to impeach President Clinton would not and should not be subject to judicial review. But for those who care about the Constitution's words, and the judgment of its authors, there is a good argument that it would nonetheless be unconstitutional.

Mr. LEAHY. Mr. President, I urge all Members to keep in mind the necessity to have a strong sense of history in whatever position they take on this matter. It is not something that is done for a 30-second spot on an ad, nor is it something that is done to determine the fate of any one of us in an election whether this year or subsequent years. Whatever we do affects the history and the course of the greatest democracy history has ever known.

In that regard, I believe Members will be wise to take the time to read an op-ed piece written by former President Gerald Ford from the New York Times on Sunday, October 4. After reading it, I was impressed enough to pick up the phone and call President Ford and speak to him at some length.

I had the privilege, when I was first a Member of the Senate, of serving with President Ford. I got to know him then. On many occasions in the 20 or so years since, I have been able to be with him or talk with him or seek his advice. I think what he says here is, again, very worthwhile. It may not be something that each Member would agree with. I find a great deal of merit in it. Again, President Ford speaks not only of the history involved, but of the country and of his own long experiences as a Member of the House. I commend every one of us to read President Ford's op-ed piece.

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

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

[From the New York Times, Oct. 4, 1998]

THE PATH BACK TO DIGNITY

(By Gerald R. Ford)

GRAND RAPIDS, MICH.—Almost exactly 25 years have passed since Richard Nixon nominated me to replace the disgraced Spiro Agnew as Vice President. In the contentious days of autumn 1973, my confirmation was by no means assured. Indeed, a small group of House Democrats, led by Bella Abzug, risked a constitutional crisis in order to pursue their own agenda. ''We can get control and keep control,'' Ms. Abzug told the Speaker of the House, Carl Albert. The group hoped, eventually, to replace Nixon himself with Mr. Albert.

The Speaker, true to form, refused to have anything to do with the scheme. And so on Dec. 6, 1973, the House voted 387 to 35 to confirm my nomination in accordance with the 25th Amendment to the Constitution.

When I succeeded to the Presidency, in August 1974, my immediate and overriding priority was to draw off the poison that had seeped into the nation's bloodstream during two years of scandal and sometimes ugly partisanship. Some Americans have yet to forgive me for pardoning my predecessor. In the days leading up to the hugely controversial action, I didn't take a poll for guidance, but I did say more than a few prayers. In the end I listened to only one voice, that of my conscience. I didn't issue the pardon for Nixon's sake, but for the country's.

A generation later, Americans once again confront the specter of impeachment. From the day, last January, when the Monica Lewinsky story first came to light, I have refrained publicly from making any substantive comments. I have done so because I haven't known enough of the facts—and because I know all too well that a President's responsibilities are, at the best of times, onerous. In common with the other former Presidents, I have had no wish to increase those burdens. Moreover, I resolved to say nothing unless my words added constructively to the national discussion.

This much now seems clear: whether or not President Clinton has broken any laws, he has broken faith with those who elected him. A leader of rare gifts, one who set out to change history by convincing the electorate that he and his party wore the mantle of individual responsibility and personal accountability, the President has since been forced to take refuge in legalistic evasions, while his defenders resort to the insulting mantra that ''everybody does it.''

The best evidence that everybody doesn't do it is the genuine outrage occasioned by the President's conduct and by the efforts of some White House surrogates to minimize its significance or savage his critics.

The question confronting us, then, is not whether the President has done wrong, but rather, what is an appropriate form of punishment for his wrongdoing. A simple apology is inadequate, and a fine would trivialize his misconduct by treating it as a more question of monetary restitution.

At the same time, the President is not the only one who stands before the bar of judgment. It has been said that Washington is a town of marble and mud. Often in these past few months it has seemed that we were all in danger of sinking into the mire.

Twenty-five years after leaving it, I still consider myself a man of the House. I never forget that my elevation to the Presidency came about through Congressional as well as constitutional mandate. My years in the White House were devoted to restoring public confidence in institutions of popular governance. Now as then, I care more about preserving respect for those institutions than I do about the fate of any individual temporarily entrusted with office.

This is why I think the time has come to pause and consider the long-term consequences of removing this President from office based on the evidence at hand. The President's harisplitting legialisms, objectionable as they may be, are but the foretaste of a protracted and increasingly divisive debate over those deliberately imprecise words ''high crimes and misdemeanors.'' The Framers, after all, dealt in eternal truths, not glossy, deceit.

Moving with dispatch, the House Judiciary Committee should be able to conclude a preliminary inquiry into possible grounds for impeachment before the end of the year. Once that process is completed, and barring unexpected new revelations, the full House might then consider the following resolution to the crisis.

Each year it is customary for a President to journey down Pennsylvania Avenue and appear before a joint session of Congress to deliver his State of the Union address. One of the binding rituals of our democracy, it takes on added grandeur from its surroundings—there, in that chamber where so much of the American story has been written, and where the ghosts of Woodrow Wilson, Franklin Roosevelt and Dwight Eisenhower call succeeding generations to account.

Imagine a very different kind of Presidential appearance in the closing days of this year, not at the rostrum familiar to viewers from moments of triumph, but in the well of the House. Imagine a President receiving not an ovation from the people's representatives, but a harshly worded rebuke as rendered by members of both parties. I emphasize: this would be a rebuke, not a rebutal by the President.

On the contrary, by his appearance the President would accept full responsibility for his actions, as well as for his subsequent efforts to delay or impede the investigation of them. No spinning, no semantics, no evasiveness or blaming others for his plight.

Let all this be done without partisan exploitation or mean-spiritedness. Let it be dignified, honest and, above all, cleansing. The result, I believe, would be the first moment of majesty in an otherwise squalid year.

Anyone who confuses this scenario with a slap on the wrist, or a censure written in disappearing ink, underestimates the historic impact of such a pronouncement. Nor should anyone forget the power of television to foster indelible images in the national memory—not unlike what happened on the solemn August noontime in 1974 when I stood in the East-Room and declared our long national nightmare to be over.

At 85, I have no personal or political agenda, nor do I have any interest in ''rescuing'' Bill Clinton. But I do care, passionately, about rescuing the country I love from further turmoil or uncertainty.

More than a way out of the current mess, most. Americans want a way up to something better. In the midst of a far graver national crisis, Lincoln observed, ''The occasion is piled high with difficulty, and we must rise with the occasion.'' We should remember those words in the days ahead. Better yet, we should be guided by them.

Ms. LANDRIEU. Mr. President, I ask unanimous consent to speak in morning business for the next 20 minutes for the purpose of introducing a piece of legislation.

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

(The remarks of Ms. LANDRIEU and Mr. BREAUX pertaining to the introduction of S. 2566 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

CONCERN ABOUT THE DEVELOPMENTS IN KOSOVO

Mr. MCCAIN. Mr. President, this is a letter I sent to the President this morning concerning Kosovo. It reads as follows:

DEAR MR. PRESIDENT: I am writing because of my serious concern about developments in Kosovo. With a brutality that would be almost unimaginable were anyone else responsible for it, Slobodan Milosevic has subjected yet another innocent population to the bloody carnage of ethnic cleansing. The stark depravity of his actions gravely offends the basic moral values of Western civilization. Moreover, the conflict in Kosovo threatens the stability of Europe, as the prospects are quite real that it may eventually embroil other countries in the region in a larger war. More than once, the United States has warned Serbia that NATO will not tolerate its continued aggression against Kosovo. Serbia has ignored our warnings, thereby challenging the credibility of the United States, obliging us and our NATO allies to consider using military force to prevent further aggression against our values and interests in Kosovo.

Congress has reservations about such a course of action, however. While I am inclined to support military action, I understand the basis for my colleagues' reservations, and I believe it is imperative that prior to ordering any military strike on Serbia you take all necessary steps to ensure both Congress and the American people that the action is necessary, affordable, and designed to achieve clearly defined goals.

First, you must state clearly the American interest in resolving this terrible conflict; describe in detail the facts on the ground; identify all parties responsible for perpetrating the terrible atrocities committed in Kosovo while making clear that Serbia is indisputably the primary culprit; explain how our own security is threatened by Serbian aggression and justifies risking the lives of American pilots, and how the use of air power can prevent further aggression. You must also define for the public what will constitute the operation's success so that Americans know that air strikes were launched with a realistic end game in mind.

Second, you must convincingly explain to the American people why it is that we should be involved in a conflict that to many people seems to affect our interests indirectly, and that should be resolved exclusively by those countries most directly threatened by it—our European allies. As I am sure you appreciate, Congress and the public's frustration over Europe's lack of willingness to bear a greater share of the burden for maintaining peace in their own backyard is at an all time high, threatening the nation's consensus that our leadership in NATO should remain a priority interest for the United States. You could go a long way toward alleviating that frustration by ensuring that any ground forces that might ultimately be needed to keep the peace in Kosovo will be provided by European countries alone.

Third, should you order air strikes you must ensure the nation that they will be of sufficient magnitude to achieve their objectives. I hope you will view the following criticism in the constructive spirit in which it is offered. In the past, your administration has too often threatened and then backed down from the use of force, or authorized cruise missile strikes that amounted to little more than ineffective gestures intended, I suspect, to send a message to our adversaries, but because of their small scale interpreted by our adversaries as a lack of resolve on the part of the United States to defend our interests vigorously. Your administration's failure to support UNSCOM inspectors in Iraq has also greatly exacerbated our adversaries' lack of respect for America's resolve.

Finally, you should explain how you intend to find additional resources to fund the operation in order to alleviate well-founded Congressional anxiety regarding the over-extension of U.S. military commitments at a time when spending on national defense is woefully inadequate.

Mr. President, should you convincingly address the issues I have raised, which I believe you can do, I am confident you will have the support of Congress and our constituents for operations against Serbia. You will certainly have mine. I believe there exists a clear and compelling case for such an action that Americans will accept if you avoid the mistakes made in the past when your administration has attempted to build public support for the use of force. I urge to give these concerns your most serious consideration.

INTERNET TAX FREEDOM ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the pending Coats amendment be 20 minutes in length, 10 minutes on either side.

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

Mr. MCCAIN. I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

AMENDMENT NO. 3695

(Purpose: To exempt from the moratorium on Internet taxation any persons engaged in the business of selling or transferring by means of the World Wide Web material that is harmful to minors who do not restrict access to such material by minors)

Mr. COATS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Indiana (Mr. COATS) proposes an amendment numbered 3695.

Mr. COATS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 17, between lines 15 and 16, insert the following:

(c) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to engaged in the business of selling or transferring material by means of the World Wide Web to the extent that the person is—

(A) telecommunications carrier engaged in the provision of a telecommunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term ''by means of the World Wide Web'' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' means that the person who sells or transfers or offers to sell or transfer, by means of the World Wide Web, material that is harmful to minors devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income.

(C) INTERNET.—The term ''Internet'' means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol, to transmit information.

(D) INTERNET ACCESS SERVICE.—The term ''Internet access service'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.