

simple transfer payments or social programs. Apparently, whatever three-fifths of the membership of future Congresses think, the proponents of this amendment believe that in no case should the United States invest more than 10 percent of its budget in "major public physical capital investments." Otherwise, I see no reason for this amendment. It is surely a mistake to put such limits on future Congresses.

Second, the loophole problem is aggravated by the fact that there is no standard definition of a capital budget. For example, in President Clinton's proposed fiscal year 1995 budget, OMB lists four broad categories of programs that may or may not be considered capital expenditures—OMB, Analytical Perspectives, Proposed fiscal year 1995 Budget, p. 114. Even within those four broad categories there are questions about what programs should be included. The amendment's attempt to cure the definitional problem only raises new definitional problems. The definition given is circular. And just what does "major public physical capital investment" mean? Each term is subject to substantial debate. It is particularly inappropriate to place capital budgeting in the Constitution when there is no agreement on what constitutes a capital budget.

Third, the Constitution is not the place to set budget priorities. The balanced budget amendment seeks to create a process in which programs compete for a limited pool of resources. A constitutional amendment should be timeless and reflect a broad consensus, not make narrow policy decisions. This exemption creates in the founding document a new constitutional budget subdivision with a percentage cap and a procedural limitation on using it. We should not place technical language or insert statutory programs into the Constitution and undercut the simplicity and universality of the amendment.

Fourth, a capital budget exemption is unnecessary. Total Federal spending has generally been above 20 percent of GDP, and less than 4 percent of Federal outlays are for nondefense physical investment, one of the possible definitions of "capital investment". Given the relatively small and constant share that such capital expenditures have in a very large Federal budget, there is no need to remove capital expenditures from the general budget.

One example illustrates the lack of need for a capital budget. Although President Eisenhower initially proposed that the Federal Interstate Highway System be financed through borrowing, Congress decided to keep it on budget and finance it through a gas tax at the suggestion of Senator Albert Gore, Sr. We are unlikely to have a capital expenditure of this magnitude again. But if we do there is no reason to create an exemption for such investment or to limit the percent of the budget that goes for such investment.

Fifth, capital spending should compete in the budget like all other spend-

ing. The balanced budget amendment seeks to foster an atmosphere in which Congress prioritizes spending options. Senate Joint Resolution 1 does not prevent the creation of a separate operating and capital accounts, but any implementing legislation which creates such separate accounts must leave the total budget in balance, since implementing legislation cannot subvert the clear mandate of the amendment. And such accounting techniques should not subvert prioritizing function of the amendment. The proposed exemption allows the entire budget to be used for noncapital investment, like simple transfer payments, and then allows a 10-percent increase in Federal spending—and debt to fund it—for capital investments. The General Accounting Office saw the fallacy implicit in this exemption when it said, "The choice between spending for investment and spending for consumption should be seen as setting of priorities within an overall fiscal constraint, not as a reason for relaxing that constraint and permitting a larger deficit."

To the extent that the three-fifths vote requirement for capital investments replicates the general provisions of the balanced budget amendment, this amendment is simply pointless. To the extent it goes further, it is a meritless straitjacket on the competition between legitimate spending options in the overall budget process.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:14 p.m.

Thereupon, at 12:39, p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. STEVENS).

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

The PRESIDING OFFICER. The pending business is House Joint Resolution 1, the balanced budget amendment.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you, Mr. President.

Mr. President, in 1992, I campaigned for the Senate as a supporter of the balanced budget amendment. I was an original cosponsor of the amendment voted on in the last Congress, Senate Joint Resolution 41, and I am an original cosponsor of the amendment being considered today. Yet, despite my consistent, outspoken record on this issue, my backing of the balanced budget amendment surprises some people.

In fact, Mr. President, I would add that I went to mass on Sunday, and the social justice committee had:

Senator Moseley-Braun is a possible "no." Please contact her to be against this amendment.

So I want to clarify the record, and I want early on to take this opportunity to tell those of you in this body and my constituents listening at home on C-SPAN why I so strongly believe it is imperative that Congress pass the balanced budget amendment and without delay.

I come from a working class family. My father was a Chicago police officer. My mother was a laboratory technician. We were not what you would call wealthy, or upper-middle class. We did not have a lot of material goods, and my parents couldn't afford to send us to fancy private schools. My parents had to keep track of every dollar to keep us fed, clothed, and housed. Yet, like hundreds of thousands of other children of working class families in this Nation, I was able to get ahead in life, to succeed, because the sacrifices my parents made provided me with the opportunity to do better.

I was able to get a first-rate education by attending quality public schools on the south side of Chicago. I got my first job when I was just 15 years old. To earn extra money for college, I worked as a clerk at the Chicago Post Office. I attended the University of Illinois at Chicago, and then the University of Chicago Law School, because student loans were available to help me pay the tuition. All of these opportunities—opportunities that would not have been available without local, State, and Federal Government assistance—gave me the tools I needed to achieve in life.

The fact that the public—through Government—helped broaden my opportunities is part of what led me to choose a career in public service. I ran for the Senate in 1992 for the same reason I ran for the State legislature in 1978—because I am fundamentally committed to ensuring that future generations have the same opportunities I enjoyed. Every child born in this country—whether black or white, whether rich or poor—should have the chance to achieve his or her dreams. Every person should have a chance to contribute to society, to the maximum extent their talent or ability will allow.

Government should play an active role in expanding people's opportunities. The Government should be able to invest in technology and infrastructure, in job creation and training, and in education, in order to raise the people's living standards. The Government should help unemployed Americans get back on their feet, it should help those who want to work to find jobs, it should ensure that high-quality, affordable health care is available to all Americans, and it should protect our environment. Government is not the enemy of society; it should be a partner, an instrument of the people's will, and a facilitator of our public interests. But if the Government does not get its fiscal house in order—if we

don't act now to stop our runaway deficit spending—the Government will have little money left to provide for the public interest. Only the holders of the Treasury bonds will be assured of any Government assistance.

I am going to tell a story today that some in this body may have heard before. Back in 1991, when I was being urged by a number of people to run for the Senate, I sat down with my son, Matt, to discuss the issue. Matt is now 17. He was 15 at the time. As you know, Mr. President, running for office is a tremendous strain on a family; I did not want to make a decision that big without discussing it with Matt first. And, during the course of that conversation, he said something I will never forget. He said, "You know Mom, your generation is the first one that has left this world worse than you found it."

Now, as you can imagine, those words were like a knife to my heart. The thought that Matt might be right sent a chill down my spine and the notion that my generation would leave the world worse off than we found it gave me the push I needed to get involved in running for the Senate. And I am bound and determined to use my tenure in the Senate to prove Matthew wrong, to show him that his generation will have more opportunities and a better life than my generation. I want him to know that the American dream is alive and well—and that his future is a bright one. That is why I am fighting to see that the balanced budget amendment becomes part of the U.S. Constitution.

Mr. President, I was privileged to have served as a member of the President's Bipartisan Commission on Entitlement and Tax Reform—the so-called Kerrey-Danforth Commission. Some might say that serving on the Entitlements Commission was more of a curse, but I welcomed the challenge. Serving on the Commission allowed me to take a close look at our current budget trends, and at how those numbers will affect our ability to meet important priorities, like retirement security, and health care security, not just for current recipients, but for Matt's generation and beyond.

The final report of the Commission, issued last December, confirmed what most of us already know: Unless we get the deficit under control, we will be leaving our children—and our children's children—a legacy of debt that will make it impossible for them to achieve the American dream of living a better life than their parents.

I would like to take a moment to discuss those numbers. There have been and there will be a great many facts and figures talked about here in the debate on the balanced budget amendment. I know, frankly, that numbers have a tendency to make people's eyes glaze over. I want to discuss some of the numbers because they are so profoundly important to our future as a country and to the kinds of opportuni-

ties that will be available to future generations.

Most Americans, or I hope most, know that, thanks to the 1993 budget approved by this Congress, the budget submitted by President Clinton, Federal budget deficits are declining in the short term. The deficit is projected to remain under \$200 billion through 1998. That would place it at about 2.5 percent of the economy—its lowest level since the 1970's. We can and should be proud of that, Mr. President. The 1993 budget deal represented a serious attempt to attack the deficit, and our economy has benefited as a result of it.

What Americans do not know is that after 1998, unless we change course, the deficit will begin rising again rapidly, reaching \$400 billion by 2004. As early as 2012—and again when you say 2000, it sounds like a long way off, but we are only talking 5 years from now, to the turn of the century. In 2012, entitlement spending and interest on the national debt alone will consume all tax revenues collected by the Federal Government, leaving nothing at all—nothing—for defense spending, housing, Head Start, education, protection to the environment, transportation, and science research. Nothing.

What is driving this trend, Mr. President? Despite what people would like to believe, frankly, the catalyst behind our growing budget deficit is not \$600 toilet seats or Air Force generals taking \$200,000 plane rides. There is no line item in this budget labeled "fraud, waste, and abuse" that we can line out and get rid of; nor is the deficit growing due to the amount the Congress spends for the Corporation for Public Broadcasting or for food stamps or anything else that seems to consume the conversation on talk radio.

What we spend at home is actually lower now as a percentage of our economy than it was 25 years ago. If you examine a brief snapshot of the 1994 budget, this becomes clear. In 1994, the Federal budget allocated approximately \$270 billion for defense spending, \$335 billion for Social Security spending, \$155 billion for Medicare, and \$95 billion for Medicaid. All other entitlement programs combined total \$185 billion, while interest on the national debt consumed \$210 billion.

Discretionary domestic spending, which is often blamed again in popular conversation with leading the country to the brink of financial ruin, accounted for approximately \$250 billion.

Mr. President, I do not mean to imply that the \$250 billion we spent on discretionary items in 1994 is not a lot of money or that there is not room in that figure for further discipline and cutting. But we have to be honest with ourselves and with the American people. In light of the amount of money and percentage of the Federal budget we are spending on all of the programs I listed above, discretionary spending alone cannot bear the sole blame for our budget deficits. If we want to get ourselves out of the hole we have dug

ourselves into, we cannot focus exclusively, or even primarily, on discretionary spending.

So where are the problems? What drives this budget deficit? Why is it so persistent? In a nutshell, there are two major problems: The rapidly rising costs of medical care, and the changing demographics of the American population are the most important forces driving the Federal budget.

Based on current trends, Federal health care expenses will triple as a percentage of the economy by 2030. Federal health care costs, which consist primarily of Medicare and Medicaid, grew at rates exceeding 10 percent for 5 years in a row. While they are currently growing at slightly lower rates due to changes in the private sector, those rates, frankly, are still unaffordable. Due to the rapid growth, the Medicare hospital insurance trust fund will go broke by 2001.

Clearly, this is a far more serious problem than just welfare reform, which makes up 1 percent of the Federal budget. AFDC and food stamps are not growing anywhere near the rate Medicare and Medicaid are. In fact, AFDC benefits, again, have declined by more than 40 percent in real terms since 1970. That is not to suggest that we do not need to reform our welfare system; we do and we will. But anybody who suggests that the budget can be balanced by reforming welfare is being less than honest with the American people.

The Chicago Tribune recently ran an editorial on the subject of health care, underscoring the need to control health care costs if we are to get serious about the balanced budget. I would like to quote briefly from that piece.

It stated:

But if this Congress is serious about bringing the Federal budget into balance, something must be done to stem the still-rising cost of health care. Health reform isn't mentioned in the Contract With America, but unless some changes are made, several of the GOP's other goals will prove beyond reach.

Mr. President, I think the first goal will prove to be out of reach. If we do not control health care costs, we will not be able to achieve a balanced budget.

Rising health care costs are not the only problem we have to contend with. We must also confront the second leg of this dilemma, which is the "graying" of America, due both to longer life expectancy and the aging of the baby boomers.

When the Social Security system was established, the average life expectancy was 61 years old; now it is 76 years old. We cannot ignore this because the Social Security benefits are funded primarily by payroll taxes on current workers. As our population ages and as the baby boom generation retires, there will be fewer workers to support more retirees. While in 1990 there were almost five workers for each retiree, in 2030 there will be less than three. What

this means is that if current trends remain unchanged, the Social Security trust fund will begin to pay out more than it takes in by the year 2012. By 2029, the fund will have exhausted all of its previously accumulated surpluses.

Mr. President, there is simply no way to get around the fact that our present spending trends are not sustainable in the long run. In 1963, mandatory spending, which is the combination of entitlement programs and interest on the national debt, comprised 29.6 percent of the Federal budget. By 1983, that number had almost doubled, to 56.3 percent.

Ten years later, in 1993, mandatory spending was 61.4 percent of the annual budget. Let me underscore that. Today, mandatory spending—entitlements plus interest on the national debt—comprise almost two-thirds of the entire Federal budget.

What about the future? If we do not act now, by the year 2003, which is only 8 years from now—and again, these numbers sound further out than they are—mandatory spending will comprise 72 percent of the Federal budget, 58.2 percent for entitlement programs and 13.8 percent for net interest on the debt. Obviously, if we are spending 72 percent of the budget on mandatory spending, there will not be much left over for defense, education, and infrastructure.

The budget deficit also has disastrous implications for our private savings. Countries that save at higher rates grow faster and have a more rapid increase in the standard of living than countries that save at lower rates. In the United States, as our budget deficits and national debt grow, our private savings decline, we limit our investments, our productivity, and our economic growth and, therefore, our job production.

Since the 1960's, private savings have dropped from more than 8 percent of the economy to around 5 percent of the economy. At the same time, Government deficits have risen from less than 1 percent of the economy to more than 3 percent of the economy. As a result, the supply of savings available for private investment—our net national savings—has dropped from more than 8 percent of the economy in the 1960's to less than 2 percent today. This is particularly harmful for us with regard to our international competitiveness in this new global economy.

In today's increasingly global economy, our major industrial competitors are saving and investing at a much greater rate than we are. Japan's national savings from 1983 to 1992 totaled approximately 18 percent of its gross domestic product, while the European Community's savings totaled around 8 percent. If we want to stay competitive in the global marketplace, we can and we must do better; again, another reason to support the balanced budget amendment.

Mr. President, earlier, I mentioned that AFDC benefits have declined since 1970. The significance of that fact

should not be lost. We are spending ourselves into a deeper and deeper hole, and yet people who need help from Government are not better off as a result.

I live less than 2 miles from the Robert Taylor homes in Chicago, a public housing development on the south side of the city. I grew up in the shadow of that development.

Just last week, a study was released that showed that 9 of the top 10 poorest neighborhoods in the country were located in public housing in Chicago. And I know my senior Senator saw the study. It was shocking. Included in that number were three neighborhoods in the Robert Taylor Homes. That is not something to be proud of. In fact, it is disgraceful, and it is especially distressing to me, because I am third generation Chicagoan. I love the city. I know the people who live and work in those developments. I know they want the opportunity to get ahead and to have a chance to lead productive lives.

The study that I mentioned, which was based on per capita income information taken from the 1990 census, underscores why I so firmly believe that Congress must adopt this balanced budget amendment.

The people living in the Robert Taylor Homes and in the developments mentioned in that study are not better off than they were in 1969, which was the last time that this country had a balanced budget. In fact, they are worse off. They have become more isolated, and less connected to jobs and the American dream, less able to access and afford an education. They have fewer opportunities.

Perhaps if we had been able to take the \$800 million we spend each day on interest, and directed it instead to improve the lives of those residents, this situation would not seem so hopeless. But, in order to halt this downward spiral, we have to get our budget problems under control. And that is another reason I support this balanced budget amendment.

Consider another set of facts. Just yesterday, the National Center for Children in Poverty released a study showing that a quarter, fully a quarter, of American children under the age of 6 were living in poverty in 1992. Even more shocking, nearly three out of five of those children had working parents. Despite the stereotypes you hear about on the nightly news, less than one-third of the children living in poverty have families that rely entirely on public assistance. The bulk of these children have parents who work. All of our spending has not done those children, or their parents—most of whom are working, scrimping and saving and trying to get ahead—has not done them much good. Without our massive deficits, if we did not have to devote such a substantial amount of our budget to interest on the national debt, the Government could help these people find better jobs. These are people who want to work; but, because we have gotten

ourselves into such a hole with our lack of fiscal discipline, the Government cannot give them the hand that they deserve.

I have heard many opponents of the balanced budget amendment question the need to tackle the deficit immediately. America is not, they maintain, in the midst of a budgetary crisis. In the short term—the next 7 years—that is perhaps true. The country can probably continue on its current irresponsible path for a few years into the next century. But, after that, it will no longer be possible to ignore the basic demographic and health care cost trends driving the increases in Federal spending. We simply will not be able to continue on our current path, and expect the Federal Government to function as a partner of the people well into the next century. And, if we wait to act until crisis comes, any action we take will be that much more painful, and that much less effective.

Again, a quick glance at our current budget provides ample reason why we must act now, instead of waiting for the crisis to hit full blown. The entire Federal deficit for the current fiscal year—estimated at \$176 billion—represents the interest owed on the huge national debt run up during the 1980's. This year, and next year, the budget would be balanced if not for the reckless supply-side economics that caused the deficit to balloon from its 1980 level of about \$1 trillion to its current level of more than \$4.7 trillion. If we had acted in 1980 to tackle the deficit, rather than adopting approaches that merely fed its rapid growth, the problems we face today—in terms of demographics, and the aging of the baby boomers—would seem much more manageable. In 1980, interest on the debt was \$75 billion—that is a lot of money, Mr. President, but it is nowhere near the \$950 billion we currently pay. How much better off we would be if, in 1980, Congress had possessed the courage to make the difficult choices, and balance the budget. Not passing the balanced budget amendment will not make our problems go away. Our ability to meet our priorities will be much greater if we enact the balanced budget amendment now, if we tackle the tough problems now, instead of waiting until the country is on the brink of financial ruin. If we need any convincing about the need to address the deficit now, in 1995, we should just look at the consequences of our failure to address it then, in 1980.

The Entitlements Commission concluded last December without issuing any specific recommendations to Congress, to the dismay of some. Nonetheless, I believe the Commission was a real success, for outlining in painstaking detail the truth about our budget future, and the consequences of not facing it honestly. I would also add that this report was adopted by a strong bipartisan vote of 30 to 1, which is quite remarkable, when you think of the wide variety of personalities and

viewpoints that served on the Commission. What that bipartisan vote told me was that all of us, Democrat and Republican alike, know what the problems are, and know we need to act now to get them under control. If nothing else, the balanced budget amendment will help end the conspiracy of silence surrounding our Nation's fiscal problems, and ensure that we no longer have the ability to ignore the facts that are staring us in the face. Instead, it will guarantee that we face those facts, sooner rather than later.

Mr. President, given the level of public concern about our growing budget deficits, I was surprised that the Commission's final report did not receive more media attention than it did. I attribute that lack of interest to the difficulty of putting cold, hard, incomprehensible numbers into real, human terms. People hear what we are saying when we talk about the deficit being a certain percentage of the economy; that does not necessarily mean they know what the numbers actually mean.

To paraphrase Alan Greenspan, chairman of the Federal Reserve System, it is hard to get people—or the media—interested in a problem whose symptoms are hard to detect and whose full-blown effects seem to be years or decades away.

But the final report of the Kerrey-Danforth Commission should not be of interest solely to economists and policy wonks. These numbers have a real effect on us all. We need to communicate to ordinary Americans how the fiscal bottom line affects them; we have to put the sometimes incomprehensible into real, human terms.

The senior Senator from Illinois, my Senator, PAUL SIMON—to whom the country owes a great debt of gratitude for championing this issue—often refers to a study by the New York Federal Reserve Board, that looked at what the budget deficit cost America during a 10-year period from 1978 to 1988.

According to the study, during that 10-year period, our country lost 5 percentage points of growth due to the deficit. According to the Congressional Budget Office, each percentage point of growth translates into approximately 650,000 jobs. Let me repeat that—650,000 jobs. In other words, our country would have created an additional 3.75 million jobs during that period, if not for the Federal budget deficit.

Another way to make these numbers more real to ordinary Americans involves looking at what we spend in interest. Every dollar that the Federal Government spends on interest payments on the Federal debt squeezes out funds that could otherwise be used to increase the productivity of society. Currently, the Federal Government is spending \$800 million every day for interest payments on the national debt.

Think about that—\$800 million that could otherwise be used for Head Start, for housing programs, for our battle against crime and drugs, to create jobs,

or to repair our crumbling infrastructure—every day.

In total, in 1994, we spent \$203 billion to service the national debt—an amount equal to 14 percent of total Government outlays. We can not afford to waste this precious capital on financing the Government debt. We are, essentially, paying bond holders with money that could otherwise be used to help working people get ahead.

Many opponents of the balanced budget amendment argue that Government should be allowed to deficit-spend in order to continue investing in infrastructure, jobs, education, and the like. I agree that public investment is a necessary and proper Government function. But I disagree that deficit spending is the most effective way to accomplish that.

In 1966, when our deficit totaled \$3.7 billion, 2.6 percent of our budget went toward funding long-term investment. Now, with our budget deficit about to hit \$268 billion, our long-term investment has shrunk to 1.8 percent of the budget. The reason, I think, is obvious—more and more of our funds must be devoted to paying interest on the debt, leaving less and less for investment.

There are many other negative consequences, of course, of chronic Government borrowing. When households and businesses have to compete with the Federal Government to obtain loans, the increase in demand pushes interest rates up. Government takes scarce capital that would otherwise be available to the private sector for job creation, investment in infrastructure, or even savings. Deficits have a chilling effect on private initiative. To quote one of our Founding Fathers, Andrew Jackson:

Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens, and will find * * * additional means for the display of individual enterprise.

We would all do well to heed his words today.

Mr. President, the opponents of H.J. Resolution 1 have a great many arguments to support their view that a balanced budget amendment is unwise. I do not doubt the sincerity of their opposition, for their ranks include a number of Senators with whom I usually find myself in agreement. I greatly respect their view; however, I simply cannot agree with them. I would like to take a minute to discuss why.

I know I have taken a couple of minutes already. I would like to finish. This is such an important issue. I know the Senator from Louisiana is waiting, but I would like to make a complete statement today.

First and foremost, opponents of House Joint Resolution 1 state that we should not be tinkering around with the Constitution. Well, I could not agree with them more. The years I spent studying law at the University of Chicago gave me a deep appreciation for the Constitution. I believe the U.S. Constitution to be the finest exposition

of democratic principles ever written. I make that statement fully aware that, in its original form, the Constitution included neither African-Americans nor women in its vision of a democratic society. But it changed to better realize the promise of America. The beauty of the Constitution is that it can, through a deliberate, cumbersome, and sometimes painful process, be amended to reflect the changing realities, and meet new challenges faced by our Nation. This current problem—the problem of our growing fiscal disorder—is too important not to act on today. Who could be opposed to affirmatively stating in the Constitution that current generations must act responsibly, so that future generations will not be forced to bear the burden of their irresponsibility? What could be more important than the fiscal integrity of our Nation? As another of our Founding Fathers, Thomas Jefferson once said:

We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.

Why is that proposition not important enough to be included in the Constitution?

Mr. President, it is argued that matters of fiscal policy should not be included in the Constitution. I believe that proposition frankly ignores the fact that the Constitution deals with fiscal policy in a variety of ways. I will mention just a few of them here: Article 1, section 7, provides that all bills for raising revenue shall originate in the House of Representatives; article 1, section 8 provides that Congress shall have the power to lay and collect taxes, duties, imposts, and excises, and to pay the debts of the United States; it further provides that Congress has the power to borrow money on credit, to coin money, and to fix the standard of weights and measures. Section 8 includes the power to punish those who produce counterfeit money, to appropriate funds for the support of the Armed Forces, and to enact uniform laws on the subject of bankruptcy.

Article 1, section 9 of the Constitution provides that no money shall be drawn from the Treasury but in consequence of appropriations made by law, and mandates that a regular statement and account of receipts and expenditures of all public money shall be published from time to time. Article 1, section 10, forbids the individual States from coining money. Article 6 provided that all debts contracted before the Constitution was adopted would be valid against the United States. Clearly, fiscal measures are part of the Constitutions's main text.

Fiscal issues are also mentioned in various amendments. The 16th amendment, of course, grants Congress the power to collect income taxes. The 14th amendment, in section 4, states that neither the United States nor the States may assume or pay any debt incurred in aid of insurrection or rebellion against the United States. There

are other provisions I could mention, but these are sufficient to refute the contention of opponents of the balanced budget amendment, that monetary issues should not be dealt with in the Constitution.

Nor do I accept the argument that budget deficits are a temporary problem, and will not always need to be dealt with; we should not, opponents argue, write into the Constitution an amendment that will become irrelevant and outdated once we get our current situation under control. Nothing would make me happier than to believe that our current budgetary deficits are only temporary, and are not something that future generations will have to contend with. That, however, Mr. President, is not the case. We are here today precisely because we have not previously had the discipline to voluntarily achieve the goals of House Joint Resolution 1.

Opponents of House Joint Resolution 1 also argue that there are times when the Federal Government needs to run a budget deficit. This, of course, reflects a Keynesian notion of economic policy; that in times of economic downturn, the Federal Government must act to stimulate economic activity through deficit spending. To that argument, I would simply respond that House Joint Resolution 1 does not prevent the Government from spending its way out of a recession if it chooses to do so; it merely provides that three-fifths of the Congress must affirmatively vote to do so.

But more importantly, I would say to my colleagues that there is a great deal of difference between the Federal Government stimulating economic activity by spending during a recession, and our current situation. The Federal budget has not been balanced since 1969. During the past 25 years, we have enjoyed substantial periods of economic growth—our economy has not been in a recession, it has been growing, over most of the past 25 years. But we did not balance the budget in the good years either. Our current fiscal policy reflects more than recessionary spending; it is regular, habitual, undisciplined, deficit spending—and it must stop.

Last year I had the honor of reading George Washington's "farewell address to the nation" on the floor of the Senate. This is something that one freshman Member a year gets a chance to do. Really, a singular honor. In that address, Mr. Washington left us with some words of wisdom that, I believe, support the notion of a balanced budget amendment. I would like to quote those here today:

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering, also, that timely disbursements, to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasion of expense, by my vigorous exertions, in times of peace, to discharge the

debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear.

These words, which are ceremoniously repeated each year in the Senate, underscore what the balanced budget amendment stands for: that borrowing money to pay the Government's debts, and running a budget deficit, should not be impossible, but should be an extraordinary event, done only when an overwhelming percentage of the Congress thinks it wise. While running a budget deficit may be necessary at times, it is not good fiscal policy to do so on a consistent basis. The Congressional Budget Office, the General Accounting Office, and a multitude of distinguished economists have all warned that our continued deficit spending will result in lower productivity and deteriorating living standards. It should require more than a simple 51 votes to deficit spend. The three-fifth requirement reflects that reality.

This is not, I might add, a subversion of the principle of majority rule. I do not believe in unduly restricting the ability of Congress to function. I would not have supported this amendment if it had, for instance, provided that taxes could be raised only upon a three-fifth vote of both Houses. But the three-fifth requirement to run a budget deficit really preserves the constitutional principle of no taxation without representation. By running budget deficits, we are saddling future generations, people who have no vote today, with the burden of paying for our inability to get our fiscal house in order. As it now stands, every man, woman and child now owes at least \$18,000 to pay off the Federal debt. Without action, that number will only grow. We are literally borrowing from our grandchildren to pay today's expenses. Permission to do so ought to, in my opinion, require consensus and a supermajority vote.

And it is not unprecedented. Again, there are a number of places in the Constitution that specifically provide for supermajority votes: article 1, section 3 provides for a two-third vote of Senators to convict in an impeachment proceeding; section 7 provides that a two-third vote of both Houses may override a Presidential veto; article 2, section 2, requires the Senate to approve treaties by a two-third vote; and, of course, two-third of both Houses of Congress must vote to approve a constitutional amendment—to name just a few.

Another argument against the balanced budget amendment is that Congress doesn't have to amend the Constitution to balance the budget; it merely needs to make the difficult choices needed to reach that goal. I agree. The opponents are correct on that score. But the simple fact of the matter is that, absent a constitutional amendment, Congress has not proved itself capable of making the tough choices necessary to get the Federal

budget under control. In 1986, before I came to Congress, the Senate came within one vote of passing the balanced budget amendment. At the time, the Nation was \$2 trillion in debt. Now, in 1995, that number is over \$4.7 trillion. We had, and blew, our chance to resolve the issue when it was easier to resolve. We need to act now, before the crisis hits.

Likewise, the Gramm-Rudman-Hollings provision, in theory, was supposed to balance the budget by 1991, before I even reached the Senate. Obviously, that never quite happened. So I would assert that history adequately demonstrates the fallacy of the argument that Congress will balance the budget absent a constitutional amendment.

Yet another argument offered by balanced budget amendment opponents is that the amendment will be unenforceable. I believe that elevating the balanced budget requirement to constitutional status will, in and of itself, be enough to guarantee that the provision is upheld. Every single one of us in this body has taken an oath to uphold and defend the Constitution of the United States. The American people expect, as they have every right to, that the officials to whom they entrust the Constitution will not betray that public trust.

Nor do I believe that the amendment will unduly involve the Federal judiciary in matters of fiscal policy. House Joint Resolution 1 provides that "the Congress shall enforce and implement this article by appropriate legislation * * *." In other words, Congress is directed to enact legislation to make the amendment work. That can include, if necessary, action to limit the remedies a court could grant in a case brought under the balanced budget amendment.

In addition, courts have already developed a number of doctrines which will limit the type and number of lawsuits that may be brought under the act. First and foremost, all litigants must have standing in order to bring a claim. This generally requires potential plaintiffs to show they have suffered an injury in fact, that was caused by the alleged unlawful conduct, and that is redressable by the court. Courts have been extremely reluctant, with one or two notable exceptions, to confer standing to litigants based on their general status as taxpayers.

Mr. JOHNSTON. Will the Senator yield at that point?

Ms. MOSELEY-BRAUN. Yes.

Mr. JOHNSTON. Is not that language about the Congress acting to enforce the amendment by appropriate legislation identical to the language found in section 5 of the 14th amendment, and that has not prohibited the courts from issuing literally thousands upon thousands of orders under the 14th amendment, so why would it under this amendment?

Ms. MOSELEY-BRAUN. I thank the Senator from Louisiana. He is correct.

The 14th amendment does have similar language, but I would point out also that in the first instance the distinction and the difference—I mean legislating or litigating now, but I would think, first, the issue of standing would matter. You have to show individual and direct harm to have standing in a court case brought under this amendment and certainly under the 14th amendment.

The case law has evolved differently with regard to Federal taxpayers' rights rather than someone complaining of a violation of their civil rights, for example.

In addition, the Federal courts have a longstanding practice of avoiding controversies that involve a political question. In determining what constitutes a political question, the courts will generally examine three factors: First, whether the issue in the case is one that is generally committed to other branches of government; second, the lack of judicially discoverable and manageable standards for evaluating the controversy; and third, the need for a single pronouncement on the issue. The fact that any plaintiff which brought suit under the balanced budget amendment would have to overcome these two hurdles—the doctrine of standing, which we discussed already with regard to the 14th amendment, and the political question doctrine—should be more than sufficient to limit the Federal court's involvement in matters of budgetary policy.

As a matter of legislative history perhaps, we should take up at some other time that it is very clear it is not our intention that the Federal courts be involved in budgetary policy matters upon the passing of this amendment.

I want to take one moment to discuss the right-to-know amendment, which will be offered by the distinguished minority leader, Senator DASCHLE. The Right to Know Act simply provides that Congress must give the States a list of how we propose to balance the budget before the States vote on ratification. Along with 41 of my Senate colleagues, I signed a letter to the majority leader, Senator DOLE, urging he act to ensure that the American people know what is in the Federal budget, and what it will take to bring the budget into balance—and even more importantly, to keep it in balance. It seems to me that this is nothing more than full disclosure. The Right to Know Act provides for the same thing that the entitlement commission accomplished with its interim report—a full accounting to the American people of where we are, where we need to go, and how we can get there.

There have been suggestions that adopting the Right to Know Act will kill the balanced budget amendment because the American public does not have the stomach for the tough choices we face. Frankly, I believe that argument does a real disservice to the American public. People want Congress

to level with them; they are tired of the cynical manipulations, the smoke and mirrors, that have been used to obscure our fiscal disorder in the past. The people know that getting our fiscal house in order will not be easy, and certainly will not be painless, but the long term consequences of not acting are far worse than any short-term pain. So I support that initiative, and I will vote for its adoption when it is offered on the Senate floor.

However—and I would like to make it very clear—if the Right to Know Act fails to be adopted, that will not mitigate my support for the balanced budget amendment. Opponents of the balanced budget amendment have had plenty of time to propose their version of what should be cut, and by how much, in order to balance our books. The fact is, they have not. I do not fault them for that, Mr. President, and I agree with them that the States should have as much information as possible before they decide to ratify this amendment; but Congress cannot accept any excuse for further delay on this front. The time to act is now.

Mr. President, I have every confidence that the balanced budget amendment will soon be passed by the Senate. I hope that this debate, therefore, will serve as a "call to arms" for everyone who truly cares about the future of our country to come together and begin a dialog on the tough choices ahead.

As we begin this dialog, however, it is critically important that we leave all choices on the table—nothing can be off limits if we truly want to succeed. That includes examining our tax laws; we cannot succeed unless tax reform is part of the agenda. We need to simplify the Tax Code. We need to eliminate unfair and inefficient tax breaks that are known as tax expenditures. After all, tax expenditures result in treating taxpayers with the same income differently, depending on whether or not they qualify for the expenditure. They are every bit as much a spending program as those whose funds are directly distributed by the U.S. Treasury. Again to quote from George Washington's farewell address:

*** It is essential that you should practically bear in mind, that towards the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant ***

Fiscal honesty means we have a duty to make sure the American people can take a look at both sides of the Federal balance sheet, both the spending side and the revenue side. Building a consensus for the decisions necessary to balance the budget—and keep it balanced—means making sure the American people know what businesses and investors pay taxes and what does not, and why, just as much as it means knowing where their tax money is spent.

We cannot expect to succeed in our task if we begin by declaring individual programs or tax expenditures off lim-

its. As we move forward, we have to keep our eyes on the prize. The issue is not saving each and every individual program, but instead defining what objectives are important to us as a nation—and how we can most effectively accomplish those objectives. What is important is not which programs job training funds come from. What is important is that people who need job training assistance are able to get it, and are therefore able to get or hold the kinds of jobs that can help turn the American dream into an American reality. Likewise, we should not be concerned with who will administer housing grants. What is important is the goal—ensuring that every American has access to decent, affordable housing—and seeing that the goal can be achieved in the most efficient, productive manner. We all know that not every program administered by the Federal Government actually works it is no secret. By keeping everything on the table, we can keep our promises and keep what works, get rid of what does not, and therefore devote our scarce financial resources in a more effective, productive manner.

Finally, Mr. President, I would like to take head on the political implications of this debate, because it is an important political question for the Congress. I am not a signatory of the Contract With America. Indeed, I agree with Senator BYRD; the only contract with American that matters to me is the U.S. Constitution.

But I want to be clear that this issue is not a partisan one. It reflects philosophical differences that have little to do with party lines. The senior Senator from my State of Illinois, Senator SIMON, has been one of the chief advocates of the balanced budget amendment for years. Senator SIMON's liberal credentials are without question. He is, and has always been, a Democrat—he was at one time even a candidate for our Presidential nomination. So this is not a Republican versus Democrat debate.

Nor is this a battle of the conservatives against the liberals. I am proud to call myself a liberal, for the simple reason that I believe government has a positive and constructive role to play in promoting the public good. I do not believe government is the enemy of progress. I believe it can promote progress. In my lifetime, I have seen first hand the positive contributions a commitment to the American dream of equality and opportunity can make. I would not be here today but for the struggles of people of good will to make the American dream a reality. And it is precisely because I so value their struggles that I believe we must take the steps that a commitment to providing opportunity requires. We have a duty to use our decisionmaking power in a manner that preserves freedom and opportunity for all Americans, not only in this generation, but in generations to come.

Poor people and working people and those most in need of Government assistance are not helped by the deficits and out-of-control spending habits we cannot seem to shake. It is interesting as I listen to the debate that swirls around the issue of the balanced budget amendment and Social Security, the reason that debate is so intense is that current recipients of Social Security—and even those of us in the baby boom generation who will be in that system soon—too soon, in the not so distant future—have an absolute expectation that Social Security will provide for us in our retirement. The same can not be said for those in our younger generations. When you speak to people who are my son Matthew's age, they have absolutely no faith that Government will be there for them when they need it, that it will help them enjoy retirement security or affordable health care or a high standard of living.

And why should they, Mr. President? Since my son was born in 1977, we have never seen a balanced budget. Mat has no idea what it means to live under a Federal Government that spends within its means. His generation has heard politician after politician promise to balance the budget, yet has only seen the deficit skyrocket.

That cynicism grows deeper and deeper every day, despite pronouncements that a brighter day is just around the corner. The fact is, with current budget trends, a brighter day is not around the corner. What lies ahead, if we fail to act, is slower economic growth, greater debt, fewer options and higher taxes. Generation X's pessimism will be affirmed if we do nothing.

The time has passed for us to realize that by failing to act, we are indeed making a choice—a choice that involves throwing away most of our options for dealing with our fiscal problems. The only way we will be able to turn current budget trends around is to face reality with the help of the balanced budget amendment.

Every generation of Americans has been able to address and resolve the challenges unique to their time. That is what makes this country great. Our current fiscal challenges are daunting, but I am convinced that—with passage of the balanced budget amendment—we can save our ability to invest in people, and we can protect our capacity for humane government. Getting our fiscal house in order will give us the freedom to invest in people. That is what this country is all about. That is what this debate is all about, and I urge my colleagues to support this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Louisiana.

Mr. HATCH. Will the Senator yield for just one moment?

Mr. SIMON. Mr. President, I believe my colleague has not yielded the floor. I think my colleague from Illinois still has the floor.

The PRESIDING OFFICER. The Senator from Louisiana was recognized.

Mr. JOHNSTON. Mr. President, I did not want to cut off the Senator from Illinois. I thought she had finished her speech. Did she?

Ms. MOSELEY-BRAUN. Senator SIMON wanted to ask me a question and he had risen to ask me a question.

Mr. JOHNSTON. Mr. President, I will yield for the purpose of Senator SIMON asking a question.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. I thank my colleague. First, her eloquent statement illustrates why I am proud to have her as a colleague in the U.S. Senate.

I do not know if she is aware that Data Resources, Inc., one of the major econometric think tanks just a few days ago came out with a statement saying, and this is in line with her talking about jobs, that if we balance the budget by the year 2002, we will create 2.5 million more jobs in our country. And they also say here, by 2002, half the savings in our budget simulation come from lower interest costs. They project a 2.5-percent drop in interest rates. What that would do for our economy.

Then if I may also, just while I have the floor, because she mentioned this, and knowing the concern that my colleague has for people in the Robert Taylor Homes—it is some massive housing project, I thought she might be interested.

Congressman JOE KENNEDY of Massachusetts, one of the cosponsors in the House, said in a statement a few days ago on the floor of the House: People come up to him and say listen, JOE, you are a liberal Democrat. How can you possibly be for a balanced budget amendment? Is it not going to cut the very programs that much of your family and others have stood for for generations?

And then JOE KENNEDY replies:

I say to them that those very programs that stand up for the working people, the poor and the senior citizens of this country, have suffered the worst cuts over the course of the last 15 or 20 years in this country as a result of budget deficits. Look at the housing budget, cut by 77 percent over the course of the last 15 years; look at those who have press conferences who say they want to protect fuel assistance for the poor. Look at what happened to the fuel assistance program—cut by 30 percent.

Then he goes on to a number of others and then this final line that Congressman JOE KENNEDY says:

Do we see the bellies of our poorest children filled as a result of interest payments on the national debt?

I think that is a powerful way to respond there. I really appreciate it.

If my colleagues—I am not sure who I am getting yielded from—

Ms. MOSELEY-BRAUN. I have no further comment except to say I very much appreciate the Senator's leadership in this, and the patience of my colleagues. The statement took a little longer than I expected. I did want to

make it because this is the beginning part of what is probably one of the most historic debates this Congress has seen in a very long time.

I feel honored to be a part of it. Again I thank the Senator for his leadership and I yield the floor.

Mr. SIMON. It was an excellent statement and if I could respond to the question my colleague from Louisiana asked earlier about implementation language, he mentioned the 14th amendment.

This amendment has two other things I think are of interest. No. 1, section 6 says, "Congress shall enforce—" and, No. 2, "The history of State governments."

Mr. President, 48 of the 50 States have some similar provision—not identical but somewhat similar.

There simply has not been a history of litigation in State courts. I was just looking at Colorado the other day. In the history of Colorado, there has not been a single court case on this.

I yield the floor.

Mr. JOHNSTON. Mr. President, I yield for a unanimous-consent request to the Senator from Utah.

Mr. HATCH. Can I modify that for just a bit so I can compliment the distinguished Senator from Illinois as well. I certainly want to compliment her for her strong, persuasive statement. We appreciate the leadership she has provided on this issue as well as others.

I miss her on the Judiciary Committee. I want everybody to know she played a tremendous role there. But I thank her.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, 3 weeks ago I rose on the floor of this Senate to announce I would not be running for reelection. Today I rise, with the luxury of not having to face another election to the U.S. Senate, to oppose this amendment in its present form.

I do so, first of all, because I believe this amendment violates the social contract. The social contract was a concept formed in the 18th century by French philosophers, principally Jean Jacques Rousseau, who came up with this concept which in turn inspired Thomas Jefferson and the people who wrote the Declaration of Independence and the Constitution. It was founded on the thought that there should be government by consent of the governed. A social contract where the people, understanding the issues, gave to their elected officials the right to make decisions on their behalf.

Why does this violate the social contract? Because we have here a pig in a poke in which the American public are asked, in effect, to trust us and we or the courts will later tell you what the program is. A balanced budget is not self-defining. A balanced budget can be balanced in many, many ways, some of

which are good and some of which are not so good.

Alan Greenspan, the chairman of the Fed, was before the Budget Committee just last week. I asked him about various ways that the budget could be balanced. Some, he said, would be bad for the economy. Some would be good for the economy. And the fact of the matter is, we do not know how this budget would be balanced. It could be balanced through taxes, and I wonder how many of my colleagues on the other side of the aisle would sit still for a budget balanced solely through taxes? I would guess they would all oppose it. The American people would oppose it.

I wonder how many on my side of the aisle would like a budget balanced by cuts in Social Security and Medicare; in other words, senior citizens programs. I suspect not that many. One reason it violates the social contract is that people in our country do not understand the budget and how it is made up.

On Wednesday, November 16, the New York Times printed an article which in turn reported the results of an exit poll done by Harvard University and the Kaiser Family Foundation. In this poll, people were asked, "What is the biggest program in the Federal budget?" Twenty-seven percent of the respondents said foreign aid; 19 percent said welfare. In other words, almost half of the people said that two of the really smaller programs make up the biggest part of the Federal budget. The fact of the matter is foreign aid is less than 1 percent of the budget. AFDC—otherwise called welfare—is also only little more than 1 percent of the budget.

As this article goes on to say, quoting from the article, it says:

*** the Harvard polling expert who helped conduct the survey said that unless policymakers tried to educate people on the budget we are going to have a heck of a time having a national debate on the deficit.

Here we are. There has been very little done to educate the public on what we are really talking about. The public thinks, I believe—and this poll indicates—that all you have to do is cut welfare and foreign aid and maybe waste, fraud, and abuse, and you have the problem solved. You do not have to deal with taxes, you do not have to deal with Medicare, you do not have to deal with Medicaid—all of those things.

What would the American people do when faced with the facts? Many of us are trying very hard to get those facts out to the American people. I do not believe they are going to be as enthusiastic about this amendment once those facts are trotted out. Indeed, Representative ARMEY, the majority leader in the House, said, "We cannot tell the American people about how we are going to balance this budget. Their knees would buckle." Can you imagine, Mr. President, the cynicism of saying that if we have a social contract, if we have the facts known by the American people, they would be against this matter, and therefore we cannot tell them? It is like a candidate running for office

who says, "Vote for me now, and I will tell you what my platform is later."

Is there anything more fundamental to the choices of America, to the future of America, than who pays for the balanced budget? Who pays? Mr. President, there are vast differences in who pays. Just in the last Congress this Senate went a long way toward reducing that deficit. In fact, both under the Bush and under the Clinton programs the budget deficit as a percent of the gross national product is coming down from 5 to 2.3 percent, almost half of the deficit as a percent of gross national product, which is the appropriate measure to use. The deficit has come down by that much. But what a controversial matter that was in the last Congress. In fact, not one single Republican voted for the Clinton program because it involved taxes. It is, in fact, Mr. President, a fundamental choice. And the American people ought to be involved in that fundamental choice.

How is it going to be done? How is it going to be balanced? Well, the Treasury Department was asked by the chairman of the National Governors Association to do a State-by-State breakdown making assumptions that the Contract With America would be passed and asked what the effect on each State would be.

I can tell you, Mr. President, for my State of Louisiana, it showed that we were more heavily impacted than any other State. They concluded that we would have \$2.1 billion per year in lost funding for Medicaid, \$129 million per year in lost highway trust funds, \$66 million per year in lost welfare—AFDC, that is—\$444 million per year in lost funding for education, job training, the environment, and housing and other areas, and that, "Louisiana would have to increase State taxes by 38.2 percent across the board to make up for the loss in grants."

That is what the Treasury Department concluded. They were not asked to make that judgment for my State of Louisiana but for all States. I invite all Senators to look at the State-by-State breakdown and the assumptions that were made. Some of my colleagues in the House from my State when faced with these figures said, "Oh, that is scare talk. That is scare talk. It is not to be." Mr. President, it involves assumptions, no doubt, and they may not be exactly accurate. I do not claim that they are exactly accurate. I do say that they are mathematically correct, that they assume that you are going to get to a balanced budget, and that you use today's figures about the economy.

I can tell you this, Mr. President. No one else has put out any other alternative. So if this is not correct, I say to my colleagues who criticize the Treasury study, tell us what your program is. That is why we are so anxious to find out what that program is.

I confidently predict when the word gets out there across America as to what this is going to mean, it is not

only going to not be popular, but it is going to be wildly unpopular.

I well remember the catastrophic health care debate around here where, to solve a problem, the American Association of Retired Persons, AARP, proposed a program and we adopted it in this Senate, a highly subsidized program for senior citizens and catastrophic health care under which the richest American would have to pay a maximum of \$600 a year. We passed it, I think, unanimously, or maybe there were one or two votes against it; not many. And within a year, because of the outcry across America, both Houses repealed it in record time. That was \$600. Mr. President, when senior citizens see the size of Medicare cuts that are going to be required under this, they are going to rise up as one.

Social Security is not off the table here. Social Security is right there on the table. It is right there in the cross hairs. What everyone is asking by voting for the balanced budget amendment is to say, make us do it. We really want to cut Social Security and we want to cut Medicare. Make us do it so we can blame it on somebody else, the courts or whoever.

Mr. President, we are told here today that there is some language in this amendment that prevents the courts from enforcing this amendment.

I can not find that language. Mr. President, it permits the Congress to implement this amendment by appropriate legislation, which is the same language you have in the 14th amendment. I believe that same language is in the 15th amendment as well.

Congress, as far as I can recall, never used that under the 14th amendment. It is permissive and it does not make any requirement. But we are told that there are two bases on which the Court would not get into this. First is that it was a political question. Mr. President, I think the Court has long since abandoned that political question. You remember the one-man-one-vote decision. That was, for many, many years a political question in this country. The Supreme Court refused to take jurisdiction, and they finally did take jurisdiction and ruled for one-man-one-vote. I think the proclivity of the Supreme Court to avoid political questions has long since left, and I think properly so.

Second, we are told there would be no standing to sue under this. If that is the intent of Congress, it is very easy to deprive anyone from access to the Court. But that is not the intent here, Mr. President. It is very plain. It is a constitutional amendment. There is a Federal statute giving jurisdiction to courts to raise constitutional questions. And surely somebody has a right to raise a constitutional question. We have that under the 14th amendment. Why would you not have it under this? And if there is no access to the Court, who is to enforce? If what we are after is some requirement from some outside force to make us do what we would

otherwise not do, if the Court cannot do it, then who can? Then where is the compulsion? Then what is the point?

We can do this right now, Mr. President. If this amendment does not mean that the courts have jurisdiction to enforce it, it does not mean anything more than the present law says, because the law now says you must have a balanced budget.

Mr. President, I believe that this also violates the principle of majority rule. By requiring 60 votes to have an unbalanced budget, you give enormous power to the minority. This is an old ploy, Mr. President. We have it in our State, where in order to raise taxes you must have, I believe, a two-thirds vote. And what happens when you have to have taxes? That one-third of holdouts have a shopping list which is always long, usually very expensive and, in the end, they finally get the votes because they have to have the revenues. But in the end, it amounts to bad policy. Not only does it violate the principle of majority rule, but it calls for making deals with the holdouts.

Mr. President, if we get into the shape where you have to do it, where you have to have the 60 votes and everybody recognizes it, you will be able to get it done, but probably at great cost to the taxpayer, both in money and in bad policy.

Mr. President, if, as I contend, the courts very plainly have jurisdiction here to order up a balanced budget, then how are they going to do it? The occupant of the chair is a lawyer of some distinction, and I know he has dealt with constitutional questions before. I believe what the Court would do is to order an income tax surcharge and say the Congress has *X* amount of time within which to come up with an alternative to balance the budget; otherwise, the surcharge will go into effect. Why do I believe that? Because the Court does not have access to the huge amount of staff it would take to determine the effect of budget cuts. It takes tremendous sophistication, computer models, and knowledge, to know what the spend-out rates of various cuts would be, how they impact upon the public in general, and how they impact upon the budget.

I do not believe the Court is going to get in there and say, well, we need to cut the National Park Service by 5 percent; we are going to exempt the IRS because we need those people; we are going to cut Medicare by *X* percent. One thing we found out about health care, this huge, growing part of the budget, is how complicated it is. The Court is not going to deal with those kinds of cuts. Do you think the Court is going to get in and say we need to cancel the remaining part of the B-2 bomber program, and we are going to allow the F-16 to go forward, and we are going to have one less division, and we are going to close this many bases? They are not going to do that, Mr. President. They do not know how to do

that. If they took 2 years within which to make a decision, they could never come up with that judgment.

So what are they really going to do? If they conclude, as I believe they would, that you cannot get the 60 votes and that you have violated the balanced budget, the simple thing is an income tax surcharge. You do not have to know about the income tax program. You do not have to be an expert on that. You simply say a surcharge. All of the rules that are in effect right now, you let them go on, and you put a surcharge equal to the amount of that deficit. It may be a huge one; it may be a punishing kind of thing. But they would then lob the ball right back into the Congress.

I sincerely believe, Mr. President, that is what the Court would do. I have thought about this thing a lot. That is what I would do if I were on the Court, because there is no other alternative. If you say the Court is not going to get involved in it, again, Mr. President, what is the point? If the Court is not going to enforce it, then it is up to the Congress—well, it is up to the Congress right now. So what does this add? I say to those who would argue with me that the Court has no jurisdiction; why do you not put that in the amendment? I can give you the language for it off the top of my head within about 10 words: No court shall have jurisdiction to order the budget to be balanced.

That is all we have to say if that is what we mean. And if it is so fundamental, why do we not say it? Because that is not what it means? Of course, it means that the Court can enforce it. If we do not know the answer to that fundamental question, then I say this is the most ambiguous constitutional amendment, perhaps, we have ever had, and there has been a lot of ambiguity. This particular ambiguity would be very easy to clear up if in fact it is ambiguous, and I believe it is.

Mr. President, virtually everyone is for the balanced budget, but there are vast differences in how to do it, and there are also vast differences in the timing of when it is done.

All economists—a conservative economist, a liberal economist, and all the rest—will agree on one thing, and that is that you ought to take bigger bites out of the deficit when times are good and lesser bites out of the deficit when times are bad. In other words, as the Federal Reserve Board is meeting today and tomorrow, talking about raising interest rates, why are they talking about raising interest rates and why have they raised them over these last few months? Very simple. Because they believe the economy is overheating. They point out that unemployment rates are at not historic lows, but very low rates. They are worried that that low unemployment will spur inflation in wages and in commodity prices. So the rumor is that they are going to raise interest rates an-

other half, maybe three-quarters of a point.

This would be a good time to take some big bites, therefore, out of the deficit. When you get into a recession, Mr. President, it is not the time to take big bites out of the deficit. And everybody, virtually all economists, agree on that. But this amendment puts you irrevocably, indelibly, inexorably on this glidepath—some would call it a crash path—to a balanced budget, without knowing how in the world we are going to do it.

And it may be, Mr. President, that you will have maybe 50 Senators who want to raise taxes, maybe 50 Senators who want to cut Medicare, maybe 40 Senators who want to cut Social Security. You may not be able to agree, and you lateral that ball right over to the Supreme Court, who will decide it for us in the way that I believe they would, which is with an income tax surcharge.

Mr. President, the Congress can, in fact, balance the budget right now or put us on the glidepath. We can do it under Gramm-Rudman and set forth a spending glidepath that is enforceable, that calls for sequestration if we violate it, that calls for 60-vote points of order if we violate that. That is really all we have to do. I mean, that is an elaborate procedure which, once agreed upon, is much more clear, much less ambiguous than a constitutional amendment would be, because you know exactly how it is to be enforced; to be enforced by sequestration, which exempts certain programs, and does not exempt other programs. And it is self-enforcing. The whole mechanism is enforcing.

Now, why would we not do that? Well, it may be, Mr. President, because, as Mr. ARMEY says, the public's knees would buckle if they knew the truth—the public's knees would buckle if they knew the truth. What an incredible statement for this Congress to make; that if the public knew how we were going to do this thing, they would not like it and they would not be for it.

What happened to that old axiom of government with the consent of the governed? Oh, we are told that the Congress has not done anything. Mr. President, where have my colleagues been these last 2 or 3 years, when we brought the deficit down from 5 percent to 2.3 percent of gross national product? Did we think we achieved that without any pain or any disagreement here?

Mr. President, we achieved a lot in terms of reducing that deficit. It can be done. It is hard to do, of course. But it can be done. And the American people were involved in that. Maybe they did not like the way it was done. I did not like the way it was done. I had a different idea about how it should be done. But the majority ruled and it was done, and it can be done now without this constitutional amendment.

Mr. President, we all know that the deficit is coming down but that forecasts show that, in the future, the deficit is due to go up rapidly again because of the projected increases in medical programs, particularly Medicare and Medicaid.

That means that we in the Congress are going to have to take rather heroic steps in order just to stay even with the board; in other words, to keep the deficit from going up, much less balancing the budget, we are going to have to take rather heroic steps.

Now, how difficult will those steps be? I do not know, Mr. President. I suspect they will be rather difficult.

But I can tell you this: that those steps, combined with an automatic deficit reduction down to a zero constitutional amendment, which cannot be avoided except by supermajorities, at least if we go into a recession or slowdown, might make it virtually impossible for us to act. In other words, we do not know what we are in for in terms of the coping with this Medicare problem. We just do not know.

The difficulties we had in the last Congress in trying to figure out how to deal with the medical crisis in this country and how to project costs and how to project savings from certain steps and certain legislation were terribly difficult. No one could ever agree. Some said it was going to cost more; some said it was going to cost less.

But we are going to have to not only do that to conquer that question of turning around the increase in Medicare spending, but we are going to have to balance the budget at the same time, no matter what.

That is why, Mr. President, taking out the flexibility that this Congress ordinarily has to act by majority vote is a very, very bad idea. The timing is simply bad. The political timing is good.

You know, the American people have finally woke up to the balanced budget issue. They seemed to be unaware of it during the 1980's when the debt was going from a little over \$900 billion to almost \$4 trillion at the start of this administration. They seemed to be relatively unaware of it at that time. Now they have become aware, since it has come down from 5 percent of GNP down to 3.2 percent of GNP by the end of this year; now they are aware of it.

It does not mean that it is not still a problem. But it does mean to say that political polls, as to who is for and who is against a balanced budget, are ephemeral gauges that go up and down and do not take into account that the American people do not yet know how it is going to be done.

Mr. President, we ought to involve the American people in this biggest of all social contracts. We have heard this term "Contract With America." It was an ingenious political device. I stand in admiration of it. Some parts of it I support. But it was an ingenious political device which conjured up the idea that the Congress and the American public

ought to have an agenda, that they ought to vote on that agenda by electing their representatives, vote for what they get and get what they vote for. And that was brilliant.

Mr. President, this is a bigger contract with America than that which is contained in the so-called Contract With America, because it involves the future of everyone. It is a question of who pays. It can be done by means testing and maybe that ought to be the way we ought to do it.

Maybe we ought to say that everybody who makes over X dollars has to pay twice as much for their Medicare. Maybe we ought to say if you make over \$50,000 a year, you do not get Social Security, whatever the formula is. Means testing is clearly one of those ways to do it. It has been discussed a lot.

I wonder how many people out there in America, how many senior citizens, have thought about how much means testing has to be done. And remember catastrophic health care and the reaction to that. Or it could mean taxes. And we know how the American public feels about taxes. Or defense. You know, the American public says, "Gosh, we need a strong national defense." Or we could eliminate some of these programs.

But I suspect, Mr. President, that the American public is in for a rude awakening when they find out how little money you can get out of the welfare program. I think we ought to have welfare reform. But virtually everything that is talked about with welfare reform costs more money.

Orphanages? Mr. President, what do you think orphanages would cost? Right now, you know, the babies stay at home with mama and you give mama a check. But if you had to build the orphanage, acquire the property and build the orphanage, get the staff to operate the orphanage, and not only do that but take care 24 hours a day of these kids in loco parentis, as we say, the cost of that, Mr. President, would be—maybe it would not be as expensive as Boys Town; I understand Boys Town costs \$70,000 or \$80,000 a year. They have a lot of special counseling there. But if we have just the garden variety orphanage, it will cost a lot more than welfare does. Job training, I am for it. But anybody who thinks we can have job training and then have day care for the mothers—and we are going to be a lot cheaper on that than the present welfare program—has not taken out the calculator to figure this thing out. There is not a lot to be saved in welfare. We need to reform it, but there is not a lot to be saved. There is certainly not a lot to be saved in foreign aid.

I want to see my colleagues who are for cutting aid to some of our great friends out there—I am not—countries like Israel, which are so strong in promoting the American interests all throughout the Middle East. I am not for cutting that program. It is less than 1 percent of the budget.

Mr. President, in conclusion, and I apologize for speaking so long, but it is an important issue. This is an issue where we need a Contract With America. This is an issue where we need a social contract. We need a major debate where the American public is told about how this will be done, at least what is the approach; maybe not how every dollar over a period of 7 years is going to be cut in every single program, but how is it going to be done in approach. Is it going to be a means testing approach? If so, what is that going to mean to those senior citizens out there?

Is it going to be cuts in Medicare? For example, copayments? And how big would those copayments have to be? How much do we pay each time we go to a doctor? Should senior citizens not know that? Should they not know that, Mr. President? What will happen if they wake up—all the Senators have voted for the balanced budget amendment, and then I can see them. It will be just like in catastrophic health care. They will call up and say, "We did not know that that is what was meant. We did not know, Senator, that is what you had it mind." I remember those calls on catastrophic health care.

Now, I think the American public ought to be entitled to know what we are going to do, to know what the plan is and involve them in the debate. We do not have to rush into this thing. It is one of the most important debates we have ever had. Involve them in that debate. Tell them at least the broad outlines of what we will do, what will it cost Mr. or Mrs. or Ms. Senior Citizen. Do you know what I really believe? I really believe the senior citizens are right in the cross hairs. They are in the scope. They are in the sights. And get ready, senior, because you will have to pay for this thing. To a very large extent, it is our senior citizens who will pay for the balanced budget amendment.

Medicare is going to be No. 1. Mr. President, we made cuts in Medicare in the past. They have not really hurt. Right now the Government pays about 70 percent of the doctor's bill or the hospital bill on the average on Medicare. But those doctors and the hospitals had accepted that 70 percent. What do they do? They pass it on to the other people. "Cost-shifting" it is called. Passed on. Passed on to those who have insurance and to those who can pay. Everybody knows that that is so.

There are, however, limits to that cost shifting, I suspect, and I am told by experts that we are right at the limit on cost shifting. In other words, we start cutting Medicare just on these block cuts more than we have now, and we will have doctors who will refuse to treat, hospitals who will refuse to accept patients, and we are going to have to make the changes in Medicare. Copayments, increases in premiums, or rationing of medical care, or other means.

In fact, the Speaker of the House just yesterday said we need a fundamental reexamination of Medicare. What did he mean? What did he mean, Mr. President? We do not know. But I think Medicare is important enough to the American people that we should be told that fundamental thing before we go in and adopt a balanced budget amendment which may require that fundamental restructuring of Medicare in such a way that the seniors are going to have to pay for this balanced budget amendment.

We are not talking about small decreases in expenditures. We are talking about \$1.5 trillion between now and the year 2002. We are talking about cuts so huge that it would require a fundamental restructuring in Medicare, probably a fundamental restructuring in Social Security if those things are on the table. What else is there? What else is there?

Mr. President, I oppose this balanced budget amendment, certainly in the form that it is now. It is a ticket to the Supreme Court with an order for an income tax surcharge. It is an invitation for the senior citizens of this country to pay for it with huge, massive cuts in Medicare, probably Social Security. My State of Louisiana—according to the Treasury Department, is going to be impacted more than anybody. They say it would require a tax increase of 38.2 percent across the board. How many people in my State, if this is true, would be for this 38.2-percent tax increase?

Maybe that is not so. Well, if they did not make the right assumptions, tell Members what the assumptions are. Tell Members what those assumptions are. Then, if I know how it will be done and we sort of have that debate out there with our people, I could well be for it, because everyone, including me, is certainly for the balanced budget in concept. But not this way. Not "vote for me now" and I will tell you what the platform is later. Not putting at risk the fundamental future of senior citizens in these fundamental programs that we have in this country. It is the wrong way to do it, Mr. President.

I hope as this debate proceeds we will get some of these answers. How are we going to do it? Does the court have jurisdiction? Does anybody have standing? Just what is the plan? That is what we need in order to have a contract with America and to have a social contract with the people of this country.

I yield the floor.

Mr. SIMON. Mr. President, I just want to take 5 minutes to respond briefly to my colleague from Louisiana, for whom I have great respect. As a matter of fact, I have cited Senator JOHNSTON as an example of why term limits are a mistake, even though he has decided that he is going to leave this body.

Just very briefly. On the question of the courts imposing taxes, there has

only been one example of that in our history and that is the Jenkins case in Kansas City. That was because Congress was silent. On this, we say Congress shall implement, and we will spell that out. We will make clear this is not the jurisdiction of the courts.

Mr. JOHNSTON. Would the Senator yield at that point?

Mr. SIMON. Mr. President, I yield.

Mr. JOHNSTON. Under the 14th amendment, courts run prisons, courts run schools, courts have even required taxes. What was the name of the case where the courts required taxes to equalize taxes between school districts in a State? They do that all the time. Section 5 of the 14th amendment says that the Congress may implement this amendment by appropriate legislation. Same language as we have here. What is the difference?

Mr. SIMON. Mr. President, I think there are two differences. No 1, section 6, first of all, spells out "Congress shall enforce." Congress shall enforce, not the courts shall enforce.

Second, when we talk about equity—

Mr. JOHNSTON. Does it say the courts may not enforce?

Mr. SIMON. No. We say Congress shall enforce and Congress shall implement. But we have not in terms of equity. In terms of taxation, the courts may get into a school case.

There is only one case where the courts have imposed taxes on people, as far as I know, in the history of our country and that is the Jenkins case. In the Jenkins case the law is silent. They moved into an area where there was no law. Here we are going to, I assume—and Senator HATCH and I certainly are in agreement on this, and I am sure Senator JOHNSTON would be—make clear, very explicitly, this is our jurisdiction. And in terms of enforcement, because that is the problem, then, when we say we cannot increase the debt limit without a 60-percent vote, that is very tough enforcement, as Attorney General Barr testified.

Mr. JOHNSTON. May I ask my dear friend. Section 6 says, Congress shall enforce and implement this by appropriate legislation. It does not say the courts lack jurisdiction to enforce the amendment. Every other amendment of the Constitution, my friend would agree, can be enforced by the courts, can they not?

Mr. SIMON. Yes. And we do not prohibit any kind of court involvement. But, the history of this in States that have these kind of provisions is that there have rarely been any court cases. That is the history of it.

That is the history of it. The Senator and I took one oath when we stood down there, as the Presiding Officer did just a few weeks ago, to uphold and defend the Constitution. I do not think we are going to take that lightly.

Mr. JOHNSTON. My friend would agree that the courts are not prohibited from enforcing this amendment, and that in every other amendment the

Court has jurisdiction to enforce, and they do get involved in every other amendment, do they not?

Mr. SIMON. If the Senate should say the heck with the Constitution, we are not going to pay any attention to this—and I cannot conceive of our doing that—then it is possible in some way the courts will get involved. But it is interesting in that last time, if I may just finish here, we had one of our colleagues who attacked us on the same basis, and then very reluctantly—and I think I speak for Senator HATCH on this, too—we accepted the Danforth amendment which was more precise on this about the courts not being involved, and then the same Senator got up and said I have a constitutional amendment that is meaningless. If my colleague from Louisiana will assure me that he will vote for the amendment if he gets those words in there that he would like, I am willing to take a look at it.

Mr. JOHNSTON. Let me ask, because it is at least as fundamental a question as there is here, do we agree, if I may get involved with the distinguished floor manager—

Mr. SIMON. Sure. I yield time to my colleague from Utah also.

Mr. JOHNSTON. The courts would have jurisdiction to enforce the amendment?

Mr. HATCH. I do not think they do. As a matter of fact, I cannot see any way that the courts would find standing or justiciability, and I think they will invoke the political question doctrine, especially since we say Congress has the obligation and the right and power to enforce it.

Mr. JOHNSTON. Is that the clear intent of the authors, that the courts may not enforce it?

Mr. HATCH. Clear intent.

Mr. JOHNSTON. Why do you not say so? It is very easy, very sparing words.

Mr. HATCH. We do not because it is a true constitutional amendment and, frankly, there are those on the other side who I think will argue that the courts ought to have some control. We just want to avoid that particular argument.

Mr. JOHNSTON. Would not my friend agree—

Mr. HATCH. Some say no matter what you do the courts do not have control but they ought to. The majority say, well, we do not want the courts to have any control or have any interest in this and then we wind up, we wind up on both sides of the issue. Frankly, what we did is—

Mr. JOHNSTON. Would not my friend agree with me that this is at least ambiguous—

Mr. HATCH. I do not think it is. I do not think it is when you—

Mr. JOHNSTON. Political doctrine? The Senator remembers the one-man-one-vote case, Baker versus Carr?

Mr. HATCH. Sure.

Mr. JOHNSTON. For many, many years one-man-one vote was considered by the Court to be a political question.

And the Supreme Court in Baker versus Carr changed that judgment and said it is no longer political; we are going to order one-man-one-vote.

Now, what is there inherent in this that makes it a political question?

Mr. SIMON. If I may respond, on the one man-one-vote case, which grew out of the State of Tennessee, there was no explicit jurisdiction claimed solely by the legislative bodies. And here we are going to claim that we have the jurisdiction.

If I may respond just to a few other points that my friend from Louisiana made, he said—and a lot of my colleagues will disagree with what I have to say here, probably including my good friend from Utah. The Senator said, "This is a good time to take good bites out of the deficit"—I wrote down the Senator's words—talking about the Federal Reserve Board. But the reality is we are competing with each other trying to get a tax cut right now.

Mr. JOHNSTON. The Senator is not competing with me. I think that is terrible policy, and I know my President is for it and I know Contract With America is for it. But it is absolutely the wrong time to be doing that.

Mr. SIMON. I could not agree more with my friend from Louisiana, and if we had a constitutional amendment requiring a balanced budget, we would not be talking about it here. That is one of the realities.

Mr. JOHNSTON. In the Contract With America, it has both a tax cut and a constitutional amendment to balance the budget.

Mr. SIMON. If the Senator is expecting me to defend the Contract With America, I am not about to do that.

Mr. JOHNSTON. No, but the Senator said we would not be talking about it, and they are talking about it and they are in control.

Mr. SIMON. But my friend from Louisiana has just illustrated why we need the balanced budget amendment. It is absolutely ridiculous to be talking about a tax cut when we have these huge deficits. But we can do that because it is popular, and so we are going to go out and we will go back home and make speeches how we cut taxes—absolutely nutty to be doing that right now. And so I think the Senator has made the point.

When the Senator said we can do it on our own, that is the same speech we heard here in 1986 when it lost by one vote in the Senate. The total Federal debt then was \$2 trillion. Now it is \$4.7 trillion. And if we make the mistake of turning it down again, if we have a chance before we have economic chaos, it will be \$9 trillion and we will have hurt the economy much, much more.

In terms of the Social Security trust fund, the Senator said the seniors are in the cross hairs—every group is being told. And those figures the Senator got from Treasury, they are about as inaccurate as any figures that I can imagine.

Mr. JOHNSTON. Where are they wrong? I hope they are wrong. Where are they wrong?

Mr. SIMON. They are wrong. And I think, I might add, in the course of this debate the Senator will have plenty of examples of why they are wrong, and I am going to be one who will spell it out.

Mr. JOHNSTON. Is it the mathematics or is it the assumptions?

Mr. SIMON. Yes. And I will spell that out. But let me just say the Senator mentioned seniors are in the cross hairs on Social Security. Bob Myers, the chief actuary for the Social Security system for 21 years, said it is absolutely essential for the Social Security trust fund to pass this. Without this, we are headed toward monetizing the debt. And as you look at the history of nations, I think that is very, very clear.

Then, finally, the Senator mentioned about responding on recessions. I would say there are two arguments here. One is used by Fred Bergsten, you probably remember, former Assistant Secretary of the Treasury, who says we are really strapped; we cannot respond to recessions as we should now. What we ought to do is have a 1- or 2-percent surplus and then give the President the authority to initiate programs immediately in areas where you have unemployment above X percent.

I think that is a very valid argument. But the National Bureau of Economic Research at Cambridge has issued a study by two University of California economists who come to this conclusion.

Discretionary fiscal policy does not appear to have had an important role in generating recoveries. Fiscal responses to economic downturns have generally not occurred until real activity was approximately at its trough.

Mr. JOHNSTON. Is he one of those who disagreed that the New Deal helped bring us out of the Depression?

Mr. SIMON. All I know is the economists are from the University of California.

Mr. JOHNSTON. There are some people who believe in the flat Earth, too.

Mr. SIMON. I would add one other point, and I think most economists are in agreement on this point here that they make. At least I have had a lot of reading on that. But the other point is where we have extended unemployment compensation—and I have been looking at this—when we have had recessions, in every case but one, in 1982, we have had way more than the 60 votes that this constitutional amendment would require.

Anyway, I thank my colleague from Louisiana for his discussion. Obviously, we do slightly disagree on this constitutional amendment.

I yield the floor.

Mr. HATCH. If the Senator will yield?

The PRESIDING OFFICER (Mr. CRAIG). The Senator from Utah.

Mr. HATCH. We in our report make it very clear. We say:

The committee believes that S. J. Res. 1 strikes the right balance in terms of judicial review. 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 . . ." The committee agrees with former Attorney General William P. Barr who stated that there is . . .

And then he went on to make it clear the courts will not.

Mr. JOHNSTON. If I may ask, is the Senator saying the Supreme Court is going to follow this judicial history?

Mr. HATCH. Maybe Justice Scalia will not but the other Justices will. And I think even Justice Scalia will because he will consider the law as it exists. Because, you know, the courts can only enforce constitutional amendments—really only where there is "standing." That is—

Mr. JOHNSTON. Who decides whether there is standing?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Let me define it. I believe my colleague has the floor but I am trying to respond to him. That is the "case in controversy" requirement of Article 3, which requires litigants to show harm. No one can show harm under Section 6 of this amendment. Since *Frothingham versus Mellon*, that was in the 1920's, the Court held that in order to have standing, a litigant must show particularized harm in budget and tax structures.

The case that the Senator is referring to, the one man one vote case, is *Reynolds versus Sims*. In that case, in the one man one vote case, the Court believed that in that case, in that particular case, the litigant could show particularized harm so the Court did finally decide it on that basis.

Now, the difference between that and here, is that there the Court was working on a fundamental right to vote, a fundamental right to have your vote weighed, a fundamental right to have your vote count. And you go right down the line on the fundamental right to vote.

Mr. JOHNSTON. If the Senator will yield now—

Mr. HATCH. If I could just add one more sentence. I just want to get this all out in one or two or three paragraphs.

As an example of a constitutional situation where standing will not lie, litigants literally cannot sue or complain about the President's control over foreign policy. They just cannot. So I wanted to get that one point out.

But, yes, the Court will pay attention to this. Yes, the Court will pay attention to section 6 of this amendment. And, yes, it is almost—I do not see any way that you could show standing and show that kind of particularized harm that you could show in *Reynolds versus Sims*. It was not hard for the Court to

make that transition and decide Reynolds versus Sims the way it did. Some may disagree with the decision. Some may say that, yes—as the Senator did—for a fairly long period of time they treated the whole issue as a political question. But there is a far greater difference between deciding a fundamental right like the right to vote and enforcing a constitutional amendment that makes it very clear that Congress has the power to enforce and to take care of the details of the amendment itself.

Now, what is important here, in my opinion, is that—I value my friend from Louisiana. He knows it. We have been friends for the whole time I have been here. I have respected the work that he has done in the Senate. I hate to see him leave. And I think the Senate will be not as good a place once he does leave.

But I hope the Senator will continue to discuss this with us, if not on the floor at least off the floor. Because I am interested in satisfying people around here. Our problem is, as everybody knows, that we have 535 Members here. If he and I could sit down and write this amendment it might be a little bit different. In fact, he did participate in helping to get us to this point on the amendment. If the Senator from Idaho and I sat down and wrote it, it might be a little bit different. The fact of the matter is, a bunch of us have sat down over a 12-year period and have written this and it is the best consensus amendment, best bipartisan amendment we can do that might possibly cause us to start being serious about some of the deficiencies of Government, which I think the distinguished Senator from Louisiana has outlined quite well.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, my friend has outlined the emerging state of the law on the question of standing to sue. The issue of standing to sue goes all across the law and provokes about as many decisions as any area of the law that I know about.

Suffice it to say it is emerging, dynamic, and changeable. And—as is the question of a political question.

In Reynolds versus Sims, and Baker versus Carr, formerly political questions, they changed on that issue. There they were enforcing the 14th amendment, which said nothing about voting rights and which traditionally had been left to the States. So this was a change.

This amendment specifically deals with a question of unbalanced budgets. My friend says no taxpayer is particularly harmed by this. You should have heard the eloquent speech—as maybe he did—of my colleague from Illinois, who talked about her child and future deficits. You would think, to hear that, it is the most fundamental issue for our progeny and our families that there is. And I believe the Court would find that standing to sue.

What I find to be objectionable, among other things, I say to my friend, is this is deliberately ambiguous. It is deliberately ambiguous because there are those Senators who say the Court has to have the final club in the closet otherwise this does not mean anything. And there are others who say we do not want to get the Court mixed up in this because we do not want the Court to order taxes. So we leave it deliberately vague, ambiguous, to be decided by some future Supreme Court.

I believe that is the height of irresponsibility. It is not a difficult task from the standpoint of statutory draftsmanship. We could literally draft it here within 5 minutes on the floor of the Senate. I would say “No court shall have jurisdiction to enforce this amendment.”

That is simple, straightforward and unambiguous. If that is what we mean it ought to be said. It is not one of those difficult things to define like “outlays and expenditures and receipts.” That is what I read from section 6 here, is that the Congress shall enforce and may—what does it say—may define outlays and receipts? What does it say? “Estimates of outlays and receipts,” define those. That is because they are not self-defining.

But a jurisdiction of a court is fundamental and it is the Congress who needs to make that choice. Is it an enforceable amendment or not an enforceable amendment?

How can we be debating something as fundamental as a balanced budget amendment and not know whether the Court can enforce it or not? How could we do that? That boggles the mind. That is the question. Can they enforce and how can they enforce? That is the question. We do not answer it.

Mr. HATCH. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I believe, if my colleague looks at facts, he looks at the law, he looks at the Court, there is really no question that the courts cannot enforce this.

Will there be—

Mr. JOHNSTON addressed the Chair.

Mr. HATCH. Let me just finish, if I can. The Senator seems to be making an argument that there is a mere possibility. I suspect we have to agree, there may be a mere possibility argument here.

Mr. JOHNSTON. I think it is probable. I think it is clear.

Mr. HATCH. The standing and political question doctrines are longstanding doctrines—

Mr. JOHNSTON. Every other amendment is enforceable.

Mr. HATCH. Not really. They are unlikely to change. In the case of Reynolds versus Sims, most people believe the Court made the right decision there. I do not know of any constitutional scholar—there may be some—but I do not know of any major constitutional scholar who would think the Court made the right decision if it

interferes with this, nor do I know anybody on the Court who feels that way.

Mr. JOHNSTON. Why do you not say it? I do not believe—

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. I do not believe that judgment is clear at all. I think it is probable that the Court can enforce this—probable.

Reasonable minds can disagree. But why leave it deliberately vague, deliberately ambiguous?

Mr. HATCH. We do not think it is ambiguous.

Mr. JOHNSTON. I will tell you why it is left deliberately vague. Because there are some who are for it and some who are not for it and they want to leave it up in limbo.

Mr. President, this is a Constitution we are amending. Why can we not say what it means?

Mr. HATCH. Did the Senator address a question to me?

Mr. JOHNSTON. I will close with this because I have taken too long.

My point is that it is a Constitution we are amending. It can be clarified simply and clearly as to whether the Court can enforce. It is the most fundamental question, and we ought to decide here on the floor of the Senate.

Mr. HATCH. Mr. President, I am concerned about the Senator's feelings. I do not see a way in the world that the Court is going to find standing here, or even justiciability, let alone interpret the political question doctrine any other way than it has through all of the century, two centuries, of existence. To be honest, I just do not see how that is going to be.

So we are interested in continuing dialog, and I will be interested in chatting with my friend and seeing just what he feels on this even further. But to make a long story short, again this is a bipartisan consensus amendment.

Is it perfect? No. But it is as close to perfect as we can make it, and have a two-thirds majority in each body willing to vote for it.

The Bill of Rights does not. None of them provide for judicial review. They certainly do not do it explicitly. We will put it this way. Only where one shows standing can one litigate. In the first amendment cases, for instance, one cannot sue to protect the right of third parties. These are tough areas of the law. I think the Senator did well to raise this issue. It has been raised in every debate I have ever had on this. But I just do not see constitutional experts on his side of the question.

We will certainly discuss it with him and continue this dialog because we do want to get a balanced budget constitutional amendment passed, if we can.

Let me put into the RECORD at this point some answers to the arguments of the distinguished Senator from Louisiana on the standing, on the justiciability, and on the political question doctrine.

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

BALANCED BUDGET AMENDMENT JUDICIAL ENFORCEMENT ISSUES

Opponents argue that enforcement of the BBA will result in undue interference by the Federal Judiciary in the budget process.

Response. Opponents are incorrect. Certainly the better view is that enforcement suits would be dismissed on (1) standing, (2) justiciability, and (3) political question grounds.

1. Standing: The latest Supreme Court pronouncement on the standing doctrine is contained in *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130 (1992). There, the Court made clear that standing is a constitutionally mandated Article III prerequisite for commencing a federal action and has three elements: (1) the plaintiff must have suffered an "injury in fact" which is concrete, particularized, actual and imminent and not hypothetical, (2) there must be a causal connection between the injury and conduct complained of—e.g., the injury must result from the actions of the complained of party and not a third party, and (3) it must be likely, as opposed to speculative, that the injury is "redressable" by a favorable court decision.

Turning to the three-part test, it is doubtful that a plaintiff could demonstrate the "injury in fact" prong because it is well settled that a mere interest in the constitutionality of a law or executive action is noncognizable.

Moreover, it is doubtful that a litigant could prove that the challenged law is the provision that "unbalanced the budget." In fact, such an allegation would be a "generalized grievance" which the Court has found noncognizable. *E.g., Frothingham v. Mellon*, 262 U.S. 447 (1923).

As, to the third prong, "redressability", this prong subsumes justiciability and the political question doctrine, which I will discuss in a moment. Suffice it to say that as to this prong it is doubtful that a judicial remedy exists which would not violate the separation of powers doctrine.

The question of standing, of course, involves both taxpayers and members of Congress. With regard to Taxpayer Standing specifically, the Court, in *Flast v. Cohen*, 392 U.S. 83 (1968), 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 had 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 two counters to this argument: (1) the Supreme Court has in application severely restricted the *Flast* doctrine; indeed, the Court seems to limit *Flast* to Establishment Clause situations. See *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464 (1982), and (2) 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* and that the "redressability" prong cannot be met by taxpayer-plaintiffs. This conclusion is supported by the *Lujan* decision itself, whereby taxpayer standing cases are discussed in content of concrete harm.

The final possible route to standing in cases challenging the BBA, congressional standing, also seems to have little chance of success. It must be pointed out that the Su-

preme Court has never addressed the question of congressional standing and that the Circuit courts are divided on this issue. However, the D.C. Circuit recognizes congressional standing in the following limited circumstances: (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), and (3) substantial relief cannot be obtained from fellow legislators through the enactment, repeal or amendment of a statute ("equitable discretion" doctrine). *Reigle v. Federal Open Market Committee*, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981). Although there is an argument to be made that in certain limited circumstances (e.g., where Congress ignores the three fifths vote requirement to raise the debt limitations) the voting rights of legislators are nullified and therefore there would be standing, the court would probably invoke the equitable discretion doctrine to dismiss the action. This "legislative exhaustion" requirement apparently does not take into account considerations of futility. In other circumstances challenging the enforcement of spending measures, Members of Congress would be subject to the same exacting standards as citizens.

Even if litigants could satisfy this standing requirement, courts would very likely dismiss their actions on the grounds that their claims were nonjusticiable political questions. The Court is *Baker v. Carr*, 369 U.S. 186 (1962), 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"). See, e.g., *Nixon v. United States*, 113 S.Ct. 732 (1993).

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 would, of course, interfere 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 by the Constitution.

Concerning the justiciability prong, the BBA does indeed contain "process" standards; however, it is doubtful that standing could be found to enforce such standards.

(Judicial Taxation) Some have also raised concern that the BBA would give the courts the power or authority to raise taxes. This concern, I believe, relies on a recent Supreme Court decision, *Missouri v. Jenkins*.

In *Missouri v. Jenkins*, 495 U.S. 33 (1990), the Court in essence approved of a lower court remedial remedy of ordering local, 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.

Would the balanced budget amendment allow a federal court to order Congress to raise taxes to reduce the budget? The answer is no. First, *Jenkins* is a Fourteenth Amendment case. Under fourteenth Amendment ju-

risprudence, federal courts may issue remedial relief against the States. The Fourteenth Amendment does not apply to the federal government.

Second, 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. See *Reigle v. Federal Open Market Committee*, 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 legislators which enacted the statute", citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 175-80 (1803)). That official, however, cannot be ordered to raise taxes, because he or she does not have the authority to do so.

Finally, under Section 6 of the BBA, the enforcement mechanism, Congress could limit the type of relief granted by federal courts to declaratory judgments and thereby limit court intrusiveness into the budget process. This authority arises out of Article III's delegation to Congress to define and limit the jurisdiction of lower federal courts.

Mr. HATCH. Mr. President, let me also just take a few minutes on something that I think deserves more of a response.

I would like to speak on an important issue in this debate. This is an issue which was already debated last week, and on which the Senate has already voted.

Last week, amendments were offered on an unrelated bill regarding exemption for Social Security on the balanced budget amendment. Last week, the Senate voted twice on two approaches to protecting Social Security, and the votes were clear. It is the considered judgment of the Senate that we will protect Social Security from benefit cuts and tax increases enacted to balance the budget in any legislation implementing the balanced budget amendment. This body has already voted on that. We have ruled on that.

This proposal, which was introduced by Senator KEMPTHORNE, was supported by an overwhelming vote of 83 to 16. An amendment introduced by Senator HARKIN, which suggested that we exempt Social Security from calculations for meeting the balanced budget requirement in the discussion itself, failed by a vote of 62 to 38. The Kempthorne approach, which suggested we protect Social Security from benefit cuts and/or tax increases in legislation implementing the balanced budget, is clearly the most appropriate way to protect Social Security and is overwhelmingly supported by this body. However, an amendment has once again been introduced, and probably another one of many more which seeks to exempt Social Security from the balanced budget amendment in the Constitution itself.

Many of those who wish to exempt Social Security make the rhetorical point: "We should not balance the budget on the backs of the elderly." Aside from the fact that this amendment takes the unprecedented step of

referring to a statute in the Constitution itself or bringing a statute into the Constitution itself, the irony is that exempting Social Security from the balanced budget amendment would create an overwhelming incentive to do just exactly that. Let me be clear.

The effect of this exemption will be exactly the opposite of its intended objective. If that exemption is granted by this body, it would focus budget pressures on the Social Security trust fund that could destroy the viability of the Social Security Program. If balancing the budget will create tremendous pressure—and it will—all that pressure will flow through whatever escape hatch is opened in the balanced budget amendment. Whatever is exempted from the balanced budget rule will be that escape hatch. If Social Security is made the escape hatch by this exemption, the total force of pressure of balancing the budget will fall on Social Security.

For the life of me, I cannot imagine anyone trying to protect Social Security trying to do it this way. There will be overwhelming pressure to either redefine as many Government spending programs as possible as "Social Security," endangering its original entitlement benefit purpose, or to literally pull the funds out of the Social Security trust funds to balance the budget. In fact, there would be nothing to stop Congress from borrowing as much money as it wanted from the Social Security trust fund to finance any other Government programs Congress wants to finance.

How can anybody argue that we should exempt it out of the balanced budget amendment when 83 of us in this body voted to make sure that Social Security is protected in the implementing legislation? After all, that is why you have implementing legislation. That is why we have this section 6 in this amendment.

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

To deny that would be a denigration of the whole Senate, or at least those 83 who voted that we will take care of it in the implementing legislation.

It is a slap in the face to all of us, as though we did not mean it. An exemption from the balanced budget amendment says to Americans: Give us in Congress a loophole in the balanced budget requirement and we will figure out later how big that loophole will be. It says to Social Security recipients: Trust us in Congress not to use your Social Security through this loophole to fund other programs.

I do not know about you, but I do not trust Congress if there is a loophole through which they can drive any kind of social spending under the guise that they change the definition of Social Security.

I do not think our seniors would like it either, when they find out how bad it is. Does anyone believe that Congress can resist a chance to spend other peo-

ple's money when it is given a blank check like this? That is why we have the debt problem we do now. If those amendments on Social Security, exempting Social Security, become attached in this amendment, that exemption would be a loophole you could drive any kind of spending truck you want to through. And it will not be long until the whole convoy of spending trucks and approaches will go right through that loophole. In other words, the balanced budget amendment would not be worth the paper it is written on. As politically attractive as that amendment may appear on the surface, it is misconceived and will serve to harm rather than help senior citizens.

The motivation for exemptions like this is to ensure that Social Security benefits will not be cut. This concern is misplaced for two reasons.

First, passage of the balanced budget amendment does not in any way mean that Social Security benefits will be reduced. It only requires Congress to choose among competing programs, and there are thousands of them in the Federal system right now that we wonderful Members of Congress created. And Social Security, everybody here knows, will compete very well.

It will be the No. 1 Super Bowl spending victor, and there is no use kidding about it; everybody knows that. An approach like the Kempthorne amendment in the Senate, overwhelmingly approved, is the best way to respond to this concern. It specifically would hold Social Security harmless. That is, Social Security would be protected from benefit cuts and tax increases, enacted for the purpose of balancing the budget.

Ironically, the proposed exemption from the balanced budget amendment does nothing to respond to this concern. Nothing in that amendment would protect Social Security recipients from either benefit cuts or tax increases. Those who say we are raiding the trust funds now to pay for the programs may be right, but exempting Social Security will only make that problem worse by making it the sole source of deficit spending. This will create a positive incentive to run a deficit in the Social Security trust fund, simply because you will be able to then, to offset revenue increases elsewhere in the budget.

Second, the biggest threat to Social Security is our growing debt and concomitant interest payments. Debt-related inflation hits especially hard on fixed incomes, and the Government's use of capital to fund debt slows productivity and income growth.

The way to protect Social Security is to support the balanced budget amendment and balance the budget so that the economy will grow. Senior citizens know this. They feel it. That is why a recent poll shows that an overwhelming 91.8 percent of seniors favor a balanced budget amendment. They want this country brought under control, too. They know that the viability of

their Social Security depends on whether we in Congress can get this budget balanced. They know it is the best way to protect their children and grandchildren and the best way to ensure that runaway deficits do not lead to runaway inflation, which hurts those on fixed incomes the most. It is harder on them, and it is especially hard on them.

Being a supporter of both the balanced budget amendment and Social Security, I believe this exemption that is asked for by some of our colleagues on the other side faces major concerns. I believe that the Senate has already voted on a better way to protect Social Security which would protect Social Security from benefit cuts and tax increases to balance the budget. This is the best and most appropriate way to protect Social Security for our seniors and our generation.

One last thought and then I will yield the floor to my colleague from Nebraska. If you do not think we raid trust funds around here, just look at last year's so-called anticrime trust fund. I know a little bit about that. I was on this floor for days and weeks on that issue. I went over to the House to help them with their problems and help to cut \$3 billion of pork barrel spending out of the trust fund that the House and conference committee had put in. We were successful.

When it went out of the Senate, our trust fund was \$22 billion. It was a trust fund set up to be paid for out of the reduction of 250,000 Federal workers. The purpose of it was to fight crime. By the time it got to the House and by the time it got through the conference committee—and I was on that conference committee—it was ignored on 30 amendments, and they had loaded up that trust fund with all kinds of pork barrel spending to make themselves look good. A trust fund to fight crime became a trust fund to spend and buy pork. If you do not think that will happen to Social Security, just exempt it in this amendment from being part of the total budget. And if anybody in this country believes that these two bodies here are not going to protect Social Security in the implementing legislation, then they have to be nuts. They have got to not understand basic reality in politics.

Constitutional amendments ought to read like constitutional amendments. They should not be legislative vehicles to protect anybody, except the American taxpayers and people, which is what this amendment will do. It is one of the few chances we have in the history of the last 60 years of profligate spending to do something about it.

This is it, folks. If we do not pass this balanced budget amendment, because of gimmicks like trying to exempt Social Security which, in turn, means the trust fund will be attacked by everybody who wants to spend all the time, and you cannot stop it around here, there will be a loophole that will make

the constitutional amendment worthless and meaningless, then we have to have rocks in our head.

So do not let anybody be deceived by these so-called valiant attempts to save Social Security. I guarantee you if we do not put a balanced budget amendment in place, Social Security is going to be in trouble just like everything else in the budget, because we will not be able to pay for it, because these people are not going to do the things that have to be done to make priority choices among competing programs until we have this balanced budget amendment, and this is it, folks.

This is 12 years of work; this is a bipartisan amendment. No Republican and no Democrat can claim total control or credit for this. All of us can. This is the chance to get there. If we miss this chance and miss this opportunity—and by no means do I think we are going to, because I think we will make it before the end—I shudder for the country and I shudder for our seniors, because they are going to be the people that are going to be hurt the most.

I yield to my dear colleague from Nebraska, and I appreciate his patience in letting me make these points.

Mr. EXON. Mr. President, my colleagues know that I am a long-time supporter of the balanced budget constitutional amendment.

We have tried numerous other remedies, but they have failed to restrain our buy-now-and-pay-later habits. We have only proved how clever we are in creating loopholes and dodging the spending limits. I believe that the balanced budget amendment is our only hope; it is our last hope to break the cycle of runaway Federal spending.

However, too many people deal with the balanced budget amendment in the abstract. They will not face up to the harsh reality that goes along with it. They are queasy about telling the American people about the sacrifices that will be involved. The real work begins after we pass the balanced budget amendment. Passage of the legislation is merely a prologue to the really tough decisions that we have to make. We will have to roll up our sleeves and begin in earnest to cut spending.

The problem, Mr. President, is this: We have a distorted picture of how much is available for us to cut. I will try in these remarks to let the sunlight of straight talk shine in, revealing fully and honestly our task. It was swept under the rug in the House. We must not allow that to happen in the Senate.

Mr. President, the spending pool looks much bigger and deeper than it really is. It would be prudent to test the waters before we dive in. It would be prudent for the people, their Governors, and their legislators, to know what is in the constitutional amendment. It is a far-reaching measure, and it is time we take off the blindfolds, open our eyes and take a look at it. We

find ourselves in such difficult straits because so much spending is placed off-limits. The pool becomes smaller and smaller and shrinks and shrinks. And one program after another is drained into a protected reservoir, not to be cut.

I want to take a few minutes to walk my colleagues through this daunting task of balancing the budget by the year 2002, the first year when the balanced budget amendment could take effect.

Let us start with some reference points. The Congressional Budget Office estimates that the projected deficit for the year 2002 will be \$322 billion. Under the CBO sample deficit reduction path, we would have to make \$1.2 trillion in savings over 7 years. Setting aside possible debt savings, we would need to cut \$259 billion in the last, the seventh, year.

Total spending for the year 2002 is estimated to be \$2.3 trillion. At first look, you might say we can certainly find \$259 billion in savings out of that.

The problem is that the size of the \$2.3 trillion spending pool is very misleading. Much of it has already been spoken for.

For example, \$344 billion is reserved for interest on the debt. We cannot do anything about that. We certainly cannot touch that money. It would cause financial chaos throughout the world. So after we take that out, we are down to \$1.9 trillion in spending. To bring us into balance, we would need to make a 13-percent across-the-board cut in spending. That does not sound too bad. But what about Social Security?

The Social Security bill for the year 2002 runs to \$481 billion. The Republican leadership in the House and Senate have stated that Social Security should not be used to balance the budget. That is a good argument, but, if we exclude Social Security and interest on the debt that I have just referenced, our spending pool from which to make cuts has shrunk to \$1.4 trillion. To bring the budget into balance now would require an 18-percent across-the-board cut.

Now, we come to a very important matter called defense, a major component of discretionary spending. I have expressed my concerns about the defense budget and the cuts that have been made and the hits that national defense has taken over the years. I believe that we are courting serious danger to national security if we cut any deeper into that program.

But, for the sake of argument, let us use a ballpark estimate of the President's 1996 defense budget in the year 2002, about \$275 billion. Now subtract that from our available spending pool and we are down to \$1.2 trillion. That translates into a 22-percent across-the-board cut in everything else to achieve a balance.

I am also hearing a great deal about tax cuts. That has been discussed on the floor this afternoon. I, too, favor cuts when we can afford them. But

right now, our priorities should be that deficit reduction must come first. How can we mention tax cuts and balanced budget amendment in the same breath? It strikes me as the height of irresponsibility.

But for a moment, let us assume that the tax cut in the House Contract With America is passed. In the year 2002, that represents \$97.7 billion drain on the Treasury, further shrinking that pool that I have been making reference to.

The tax cut increases the spending cut required to reach balance from \$259 to \$357 billion. We are headed in the wrong direction, Mr. President.

What about the across-the-board spending cut needed to achieve a balanced budget? If we pass the tax cut, it climbs to an incredible 30 percent of all remaining spending.

I could carry this exercise even further. If veterans programs were taken off the table, the across-the-board cut would rise to 31 percent. Remove military retirement, it is up to 32 percent. Take off civilian retirement, it is 34 percent. Subtract Medicare, it is 50 percent. And so on, and so on, and so on.

Mr. President, these are the facts. These are facts that I daresay few Members, if any, in the House took a look at and probably not too many here in the Senate have taken the time to look at them either.

Of course, I do not believe that we will ever reach the point where we will have to cut 50 percent from all other programs. That is absurd. But it does show that if we follow this hands-off approach, a small number of discretionary programs are going to take a very large and perhaps an unfair share of the cuts.

And what sort of programs are these that would be left for the up to 50 percent cuts? Everything from the Federal Bureau of Investigation, to the Women, Infants and Children feeding program, to Head Start, to cancer research, to keeping open the Grand Canyon and Yellowstone National Parks, and all of the other programs in between.

Mr. President, the point here is that the American people have a right to know what it will take to balance the budget. We should lay out the policies and actions that will be necessary to reach that goal and not hide behind some curtain and say, "We'll tell you about it later." We should do it before we vote on this legislation.

Mr. President, let me emphasize even further how difficult this task which this Senator supports is going to be.

I am going to read a portion now, Mr. President, of a letter that was recently handed to me from the Communication Workers of America that I think is very instructive, not only for Nebraska, but the other States that are mentioned in the Wharton deliberations and reports, on what would happen to Nebraska if the balanced budget amendment to the Constitution would pass. The letter reads:

DEAR SENATOR EXON: The Communication Workers of America (CWA) urges you to reject the federal balanced budget amendment, S.J. Res. 1, when this legislation comes before the Senate for debate and vote.

Enactment of this proposal would wreak havoc on the economy of Nebraska, according to a study conducted by Wharton Econometric Forecasting Associates (WEFA).

The WEFA study forecasts that enactment of a balanced budget amendment would cause a drop in personal income of \$6,900,000,000 (six billion, nine hundred million dollars) among residents of Nebraska by the year 2003. This is a decrease of 12.9 percent from the 1994 level.

Similarly disturbing, a balanced budget amendment would reduce employment in Nebraska by 29,300 jobs by 2003. This would increase Nebraska's unemployment rate by 2.6 percent.

The service sector of Nebraska's economy would be especially hard hit, according to the WEFA study.

On a national level, a balanced budget would bring about a loss of 6,400,000 jobs by 2003. Real Gross Domestic Product (GDP) would decline by 3.7 percent.

In conclusion, the balanced budget amendment would lay waste Nebraska's economy and damage America's well-being.

CWA requests that you vote against this misguided proposal. Attached is information documenting the negative effects that this legislation would precipitate.

Signed, Lou Gerber, Legislative Representative.

And attached to that is a copy from the Wharton School, "How a Federal Balanced Budget Would Affect Nebraska's Economy."

Behind that, after Nebraska's economy, there is a table that shows its similar effect on every other State in the Union.

I ask unanimous consent that this material be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. EXON. Mr. President, I ask further that, at the conclusion of my remarks, a sheet entitled "Across the Board Spending Cuts Required to Achieve the Balanced Budget in 2002," which I referenced in my remarks, be printed in the RECORD, also.

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

(See exhibit 2.)

Mr. EXON. Mr. President, let me comment if I can. How in the world could a Senator from Nebraska, after reading this work by the Wharton group, support a balanced budget amendment?

Well, No. 1, I have not had a chance to study this in great detail. Obviously, the organization that prepared this is a well-established, well-known, well-respected forecasting firm. I remember using their material way back 20 years ago when I was Governor of Nebraska. So they are not a fly-by-night outfit. They have evidently done a great deal of study and work. I know not what assumptions, Mr. President, they made in preparing this material because, obviously, they had to make some.

It is safe to say that what the Wharton people are pointing out here, while

I do not suspect it is going to have an adverse effect on Nebraska to the extent that they outline, is that the constitutional amendment to balance the budget will cause some pain, suffering, and hardship in Nebraska and every other State in the Union.

Another way of saying that, Mr. President, is we have to swallow some pretty sour-tasting medicine and hope that it can cure us from the spending spree that in the last 14 years has seen a series of multibillion-dollar annual deficits that are transferred at the end of the year over to the national debt.

In the last 14 years, the national debt of the United States has grown from under \$1 trillion to the present level of \$4.7 trillion, and it is going higher. Every person in the House and every person in the Senate knows that. We will have to raise the debt ceiling and borrow more money before the end of calendar 1995. Even if we balance the Federal budget by passage of the constitutional amendment to balance the Federal budget, it is obvious, Mr. President, that from now until the year 2002—when we intend to reach balance—our debt is going to continue to rise certainly somewhere near the \$7 trillion figure, because every projection that we have indicates that we are going to have multibillions of dollars in deficit for the next several years.

I started out by saying, Mr. President, that I was for a balanced budget amendment. I am for a balanced budget amendment even with the sour medicine, even with the hurt that it is going to cause my State of Nebraska. I am for it so long as everyone shares and shares alike as reasonably as possible. Then I believe that the people of the State of Nebraska would say, if we are treated fairly and if we are not picked on, if we have to swallow this pill to straighten out the fiscal mess of the Federal Government, let Congress do it and get it over with. Let's quit passing it along each and every year, as we have been doing since Hector was a pup, charging it off to our children and our grandchildren.

Mr. President, let me say in conclusion that I think we must do this. I think we must swallow the medicine. I think we must make the hard choices. But I think we should emphasize the people's right to know. If the Wharton School of Econometric Forecasts are not right, then we should have other people make a study as to what is right for Nebraska—and Iowa and North Dakota and South Dakota and Kansas and Colorado and California and Maine and Florida and Washington State, and everybody in between.

I am rising, Mr. President, to try to set a record straight, to tell the truth, to emphasize once again that passing a constitutional amendment to balance the budget, as was done so bravely in the House of Representatives last week, is the easy part of the ball game. The nitty-gritty, the line play, is what counts. I simply say, Mr. President, this Senator is going to be pushing for a constitutional amendment to balance

the budget, but at the same time I am going to be saying to my colleagues in the Senate on both sides of the aisle, we need to let the sunshine in. We need to take off the blindfolds. We need to tell the truth. Then and only then, do I think we would be able to marshal the support of the people of this country to make this work. Then and only then, Mr. President, can we expect the legislators of the 50 States to take a look at this with some knowledge and decide whether or not they want to ratify the amendment as three-fourths of them will have to do before this amendment becomes part of the Constitution.

Mr. President, I think we are on the right track. But I think the track should be bearing a train toward a balanced budget amendment that goes slow enough so that we can see the pit-falls on the side of the road. Mr. President, I urge support for a constitutional amendment to balance the budget with its pain and suffering and with its warts, so long as we tell the people the truth and let the sunshine in. I yield the floor.

EXHIBIT No. 1

[From the Coalition for Budget Integrity, Feb. 1994]

HOW A FEDERAL BALANCED BUDGET AMENDMENT WOULD AFFECT NEBRASKA'S ECONOMY

BBA'S IMPACT ON NEBRASKA

10 consecutive years of reduced personal income.

7 consecutive years of overall job loss.

The Service Industry would be particularly hard hit, suffering job losses for 9 years.

The Finance and Banking Industry would also face 9 years of job losses.

8 years of higher than necessary unemployment rate.

STUDY SHOWS HOW A FEDERAL BALANCED BUDGET AMENDMENT WOULD HURT EACH STATE'S ECONOMY

The second part of a two-part study done by Wharton Econometrics Forecasting Associates (WEFA) details the impact of a federal balanced budget amendment on individual state economies. The first part of the study, which was released on Monday, February 14th, analyzed the effects of a balanced budget amendment on the national economy over the next ten years (1994-2003). It found that in 2003 the nation's economic output would drop sharply, millions of jobs would be destroyed, the unemployment rate would soar, and taxes would be the highest in postwar U.S. history. In addition, state and local governments would be hit hard, collecting \$125.7 billion less in taxes in 2003 than they would without the amendment.

The second part of the study delineates even further how a federal balanced budget amendment would wreak havoc on each state's economy. As with the first part, the study assumes the federal budget would be balanced over a six year period ending in 2000 and would remain balanced thereafter. The balancing would be achieved by raising one dollar in taxes for every two dollars in spending cuts.

While the exact impact would vary from state to state, all states would suffer severe economic decline in 2003. Personal income would be, on average, 13.5% below what it otherwise is expected to be in 2003. For many states, that means a loss of between \$20-\$100 billion in personal income in that one year alone.

No state would be spared from serious job loss. On average, in 2003 the number of jobs would drop 135,000 per state below what WEFA otherwise predicts without a balanced budget amendment in place. For example, New York would lose 140,000 jobs, Tennessee would lose 168,000 jobs, Illinois would lose 190,000 jobs, Ohio would lose 232,000 jobs, Pennsylvania would lose 255,000 jobs, Florida would lose 521,000 jobs, Texas would lose 594,000 jobs, and California would see a loss of over 712,000 jobs in 2003.

The unemployment rate would rise in each state. In some states, it would climb by as much as eight percentage points or more above the rate WEFA forecasts without a balanced budget amendment.

The construction industry would be hurt badly. Housing starts would decline in all fifty states, in some states by forty thousand units or more in 2003 alone.

SUMMARY OF ECONOMIC EFFECTS IN 2003

State	Drop in personal income		Loss of jobs		Percent of unemployment rate would rise
	In billions	In percent	In thousands	In percent	
AL	-\$15.4	-12.7	-88.3	-4.4	+4.2
AK	-6.4	-23.6	-93.5	-21.9	+6.4
AZ	-18.2	-14.6	-130.9	-7.0	+8.8
AR	-7.3	-10.3	-54.0	-4.6	+2.6
CA	-148.0	-12.2	-712.5	-4.8	+5.7
CO	-17.6	-13.6	-104.3	-5.4	+3.3
CT	-17.9	-11.7	-63.6	-3.7	+3.5
DE	-3.0	-11.3	-15.6	-3.9	+3.6
DC	-18.2	-55.1	-241.8	-28.5	+13.3
FL	-73.6	-14.0	-520.9	-7.1	+5.0
GA	-35.2	-15.4	-312.0	-8.3	+4.8
HI	-6.3	-13.9	-52.6	-8.1	+2.2
ID	-4.6	-13.3	-24.8	-4.4	+3.2
IL	-52.3	-11.4	-190.4	-3.1	+2.2
IN	-20.0	-10.7	-108.5	-3.6	+2.1
IA	-12.9	-14.5	-59.0	-4.1	+3.3
KS	-9.0	-10.4	-42.5	-3.3	+2.2
KY	-13.7	-11.6	-100.1	-5.4	+4.1
LA	-17.7	-12.7	-121.3	-5.8	+2.9
ME	-4.5	-10.3	-24.0	-3.9	+3.5
MD	-30.2	-14.5	-186.4	-7.8	+4.8
MA	-20.9	-8.6	-24.9	-0.8	+2.2
MI	-33.2	-10.1	-152.1	-3.3	+3.0
MN	-16.2	-9.7	-86.1	-3.3	+2.4
MS	-10.3	-13.7	-82.7	-6.5	+3.5
MO	-22.5	-12.4	-98.8	-3.6	+1.8
MT	-1.9	-8.2	-11.0	-2.9	+3.2
NE	-6.9	-12.9	-29.3	-3.4	+2.6
NV	-7.1	-13.0	-59.0	-6.4	+7.5
NH	-5.3	-12.3	-29.0	-5.4	+9.4
NJ	-43.6	-11.8	-178.3	-4.5	+4.5
NM	-8.0	-16.7	-80.9	-10.8	+3.0
NY	-64.2	-8.0	-140.7	-1.6	+2.2
NC	-32.4	-14.2	-277.0	-6.8	+3.3
ND	-2.2	-11.2	-4.1	-1.3	+1.5
OH	-43.4	-11.8	-231.8	-4.2	+2.4
OK	-12.0	-12.0	-46.9	-3.2	+3.3
OR	-21.2	-21.4	-196.9	-13.0	+7.7
PA	-56.6	-12.9	-254.6	-4.5	+3.9
RI	-3.7	-10.1	-15.5	-3.2	+5.8
SC	-15.3	-14.2	-162.3	-8.4	+4.5
SD	-2.4	-11.2	-13.5	-3.7	+1.6
TN	-21.8	-13.0	-168.1	-6.2	+5.5
TX	-93.6	-14.3	-593.9	-6.2	+3.2
UT	-7.8	-13.9	-63.0	-6.0	+2.0
VT	-1.2	-5.4	-3.9	-1.1	+0.5
VA	-34.5	-13.8	-242.9	-7.0	+3.4
WA	-28.5	-15.1	-208.8	-7.7	+4.5
WV	-4.3	-8.0	-22.1	-2.8	+2.6
WI	-18.8	-10.9	-111.7	-3.9	+2.1
WY	-2.0	-13.9	-18.4	-7.5	+2.9

EXHIBIT No. 2

Across-the-board spending cuts required to achieve balance in 2002

[CBO estimates except where noted; dollars in billions].

CBO projected deficit for the year 2002	322
Savings required to achieve balance: (CBO 1/5/95 deficit reduction path):	
Policy savings (excluding tax cuts)	259
Interest savings	64
Total savings	323
Total spending for fiscal year 2002 (without offsetting receipts or deposit insurance)	2,298

Exclude net interest	-344
Spending w/o interest	1,954
Percent across-the-board cut	13
Exclude Social Security	-481
Spending w/o interest and Social Security	1,473
Percent across-the-board cut	18
Exclude defense (Preliminary estimate of President's FY1996 request)	-275
Spending w/o interest, Social Security and defense	1,198
Percent across-the-board cut	22
Assume \$97.7 billion in tax cuts in 2002 (Treasury estimate) increasing total policy cuts required for balance to \$357 billion	98
Percent across-the-board cut	30
Exclude Veterans programs (compensation, pensions and medical care)	-42
Spending w/o interest, Social Security, defense, and veterans' programs with tax cuts	1,156
Percent across-the-board cut	31
Exclude military retirement	-41
Spending w/o interest, Social Security, defense, veterans' programs, and military retirement with tax cuts	1,115
Percent across-the-board cut	32
Exclude civilian retirement	-51
Spending w/o interest, Social Security, defense, veterans' programs, and all federal retirement with tax cuts	1,065
Percent across-the-board cut	34
Exclude Medicare	-344
Spending w/o interest, Social Security, defense, veterans' programs, federal retirement and Medicare with tax cuts	720
Percent across-the-board cut	50

and the President to help balance the budget by redefining more programs as capital investments. A gimmick capital budget exemption could actually endanger capital investments as fake investments crowd out real capital investment.

Furthermore, the 10-percent limit ties the hands of future Congresses that may choose among the competing programs to fund more capital investments than this limits allows. With the talk of a need for infrastructure investment by my friends on our side, I am sure they would want to tie Congress' hands this way. A future Congress may justifiably decide to make greater investments in this area.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Washington.

Mr. GORTON. Mr. President, yesterday when I spoke on the subject of a balanced budget amendment, a vitally important subject which, without doubt, will occupy the next many days of debate in this U.S. Senate, I observed that Members' views on this subject fell into what seemed to be three categories.

One category, it seemed to me, consisted of those Senators on the liberal side of the political divide who were essentially uninterested in a balanced budget, who were defenders of the status quo, whose observation was that their priorities had, by and large, been met by Congress operating the way it does without the constraints of a constitutional amendment inhibiting unbalanced budgets, and that they would forthrightly defend the status quo as being far superior to a constitutional amendment on a balanced budget because such a budget was essentially undesirable in the United States.

The second category, which was really relatively small given our history, consisted of those Members who were genuinely interested in fiscal responsibility and in a balanced budget, but who felt it was wrong to lock constraints against an unbalanced budget into the Constitution of the United States. In that case, it was my opinion that the experience of the last 10 years, 20 years, 30 years, 40 years, showed to most the folly of such a pursuit; that neither statutes nor an abstract sense of fiscal responsibility ever seemed to motivate a sufficient majority in Congress at a sufficiently high degree of priority to be successful, and that that group carried a very heavy burden of proof as to how we could reach the goal of a balanced budget without changing the Constitution. And therefore this group of Senators would be relatively small.

And the third group, consisting of the majority of the Senate, who feel that a drastic remedy is in order, who feel indeed we are in something of a revolution, and that in order to satisfy the demands of the American people we should enshrine in the Constitution a provision which makes it much more

Mr. HATCH. Mr. President, I want to thank my colleague for the lucid and encouraging remarks. I appreciate his leadership in working toward balancing the budget and standing up so much on this issue. He is a prime cosponsor of this amendment. That means a lot to those Members who have been fighting so hard to get this constitutional amendment passed. So I want to just personally express my regard and comments.

Mr. EXON. I thank my friend and colleague from the great State of Utah.

Mr. HATCH. Mr. President I would like to respond to some of the remarks made earlier by our distinguished ranking member on the Judiciary Committee about capital budgets. The proposed exemption for so-called capital investments could help evade the purpose of the balanced budget amendment or make it substantially more difficult for future Congresses to make capital investments.

I have to confess that I am not certain of the purpose of the amendment as it is drafted, or at least as I anticipate it to be drafted. It appears to be a provision at war with itself. The first sentence seems to encourage capital investments by taking them out of the balanced budget rule. But the last two sentences seem to be designed to discourage capital investments.

Now, this provision opens up a loophole in the balanced budget rule and unduly limits Congress' ability to make capital investments. There would be a powerful incentive for Congress

difficult to act in a fiscally irresponsible manner, would of course put forward that point of view eloquently and well, I hope, and ultimately triumph.

Only 24 hours have gone by during the course of this debate since I made those observations, and I must confess, at least if I read or hear those who oppose this constitutional amendment correctly, I was wrong about the first two groups. To the best of my knowledge, no single person has come into this body—no Member has come into this body, no matter how liberal, no matter how much in favor of an activist and increasing Federal Government, to state in a forthright fashion that that Member does not believe that a balanced budget is a particularly good idea, or at least a high priority. All of those who object to this constitutional amendment have given lip service to the proposition that a balanced budget is desirable, whatever their record in the past in voting for or against those measures, those items which would lead us to that end.

So that first group, that status quo group—while I strongly suspect that it exists—seems, so far in this debate, unwilling to identify itself. We who believe a constitutional amendment to be necessary are challenged with the proposition that we cannot make such a request without coming up with a detailed roadmap as to how we are going to get there. In fact, it is demanded of us that we have binding legislation governing at least three future Congresses, stating precisely how we will get from this point to that without regard to changes in our economy, changes in our international situation, dangers in the world at least, or changes, for that matter, in the majority, in the direction of the Congress of the United States.

Personally, I think the demand is an absurd one. It is legally impossible for us to bind future Congresses by a statute. We will in fact come up with a budget this year which will include a very fine downpayment toward a balanced budget, but we must recognize that future Congresses can take us on a different course of action, even if this proposal becomes a part of our Constitution. Many of those who have spoken against the constitutional amendment, should they come back to power, may very well wish to increase taxes rather than decrease spending in reaching that goal.

But my point here this afternoon is just this. If in fact I was wrong in dividing the Members into three categories in the course of this debate and there are only two—those who believe the constitutional amendment on a balanced budget to be necessary and those who believe firmly and fervently that we ought to do it but ought to do it without a constitutional amendment—then is it not every bit the obligation of that second group to tell us exactly how they would reach a balanced budget day by day, year by year,

item-by-item, as it is for us to favor the constitutional amendment to do so.

It seems to me self-evident, if those who say the status quo is fine, that we must discipline ourselves to reach a balanced budget, are to prevail, and if they demand of those who want a constitutional amendment a road map, let us see their road map, too. How do opponents who wish to operate under the same system—under which we have operated throughout our entire history, and most particularly during the course of the last decade without coming close to balancing the budget—how do they propose that we do so? What reductions in spending over a 7-year period do they propose? What new taxes during that period of time do they propose? What changes in entitlements do they propose? In spite of their demand for that kind of detailed blueprint on our side, a map, we have so far received nothing but silence—lip service, statements about discipline, statements about what we ought to do, but not the remotest hint as to how a Congress, which has never been able to reach that goal under the present regime or in the past, can and should do so in the future.

Mr. President, I do not expect this request of mine to be honored. I believe it to be every bit as valid—in fact, more valid than their demand of us—as if when a constitutional amendment passes everyone will be in the same boat, its proponents, its opponents, the President of the United States, as well as the Congress of the United States. We will operate under different rules and under different circumstances.

We will be dealing with real issues, with real cuts, with real proposals for tax increases. But those who say we do not want to change the regime, we do not want to make that requirement, please vote no on this constitutional amendment. They, it seems to me, have an even more compelling, a greater, a more imperative duty, to say, if we retain the status quo, here is how we reach the goal we all share. That they have not done, Mr. President. That I will warrant they will not do, and their failure to do so will show the falsity, the bankruptcy of the demand that those who propose a constitutional amendment come up with—that, besides a few more.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PELL. 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. PELL. Mr. President, I ask unanimous consent that I may proceed as if in morning business.

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

RESPONSE TO THE MEXICAN FINANCIAL CRISIS

Mr. PELL. Mr. President, earlier today President Clinton announced that he was working to develop an alternative package for addressing the Mexican peso crisis. This comes as a welcome response to a situation that was worsening by the day, as financial markets reflected increasing pessimism that Congress would approve the loan guarantee package. It is unfortunate that we were unable to act more expeditiously to help stem the crisis, and I want to commend the President for recognizing that we would all suffer from further delay.

While the details of the new package have not yet been clarified, as currently proposed it would include a \$20 billion share from the United States Exchange Stabilization Fund, \$17.5 billion in credits from the IMF, and a \$10 billion short-term lending facility from the Bank of International Settlements. These aggressive but prudent measures should serve to shore up the Mexican peso as well as investor confidence in the Mexican economy as a whole.

Mr. President, without immediate action on the part of the United States and the world community, the short-term debt crisis in Mexico threatens to escalate into a full-scale recession that would negatively impact on all of us. Perhaps lost in the debate over the details of the financing mechanism was the fact that the United States and Mexican economies are now closely intertwined, and what happens there cannot help but affect us. Mexico is our third largest trading partner; American jobs and exports rely on Mexico's financial stability and growing prosperity. Politically, neither our immigration problems nor our war on drug trafficking can be adequately addressed without Mexico's active cooperation. We have been fortunate that across our long southern border is a friendly and stable ally. It is in our own self-interest to help ensure that a short-term debt problem does not become a lasting source of economic, political and social turmoil across the hemisphere.

I look forward to supporting President Clinton and urge my colleagues to do likewise.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENNETT. 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. BENNETT. Mr. President, I ask unanimous consent that I be allowed to proceed for up to 10 minutes as in morning business.

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