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Senate

(Legislative day of Thursday, March 16, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Lloyd John Ogilvie, D.D., offered the following prayer:

Let us pray:

Almighty God, Sovereign of this Nation and Lord of our lives, we begin this day by remembering Benjamin Franklin's words to George Washington at the Constitutional Convention:

''I have lived, sir, a long time, and the longer I live the more convincing proofs I see of this truth: that God governs in the affairs of men. If a sparrow cannot fall to the ground without His notice, is it possible that an empire can rise without His aid? I believe that without His concurring aid, we shall succeed no better than the builders of Babel. We shall be divided by our partial local interests; our projects will be confounded * * *.''

Gracious Lord, we join our voices with our Founding Forefathers in confessing our total dependence upon You. We believe that You are the author of the glorious vision that gave birth to our beloved Nation. What You began You will continue to develop to full fruition and today the women and men of this Senate will grapple with the issues of moving this Nation forward in keeping with Your vision. It is awesome to realize that You use us to accomplish Your goals. So keep us mindful of the eight words of God-centered leadership: Without You we can't; without us You won't. Think Your thoughts through us; speak Your truth through our words; enable Your best for America by what You lead us to decide. In Your holy name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished acting majority leader is recognized.

Mr. GRASSLEY. I thank the Chair.

SCHEDULE

Mr. GRASSLEY. This morning the time for the two leaders has been reserved, and there will now be a period for morning business not to extend beyond the hour of 10 a.m. At the hour of 10 a.m., the Senate will resume consideration of S. 4, the line-item veto bill. Pending to the line-item veto bill is a substitute amendment on which a cloture motion was filed yesterday. Therefore, a rollcall vote will occur on that cloture motion tomorrow. However, rollcall votes are possible during today's session of the Senate.

FILING OF AMENDMENTS UNTIL 1 P.M.

Mr. GRASSLEY. Mr. President, I now ask unanimous consent that notwithstanding the recess of the Senate today, Members have until 1 p.m.—and that is today—to file amendments to the substitute amendment to S. 4.

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

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, are we in morning business?

The PRESIDENT pro tempore. The Senate will now go into morning business.

Mr. GRASSLEY. Mr. President, am I on the order for morning business?

The PRESIDENT pro tempore. Under the previous order, the Senator from Iowa [Mr. GRASSLEY] is recognized to speak for up to 10 minutes.

Mr. GRASSLEY. I thank the Chair.

INTEGRITY OF THE DEPARTMENT OF DEFENSE BUDGET

Mr. GRASSLEY. Mr. President, you are chairman of the Senate Armed Services Committee. I do not often have an opportunity to speak when the distinguished Senator from South Carolina, also the chairman of the Armed Services Committee, is in the chair. I am in the middle of a series of speeches on the defense budget, and I know that the Senator from South Carolina is very much for a strong national defense. I am also for a strong national defense. But I have some questions about the amount of money we ought to spend and whether or not it has been used in the most well-managed way. And so I am addressing that issue.

So today I wish to resume my presentation on the integrity of the Department of Defense budget.

(Mr. DEWINE assumed the chair.)

Mr. GRASSLEY. Mr. President, yesterday I provided some background information on how I got involved in defense issues in the early 1980's and have been involved with them since. I talked about how the spare parts horror stories convinced me that President Reagan's defense buildup would lead to waste on a massive scale. I talked about how the spare parts horror stories drove me to the job of watchdogging the Pentagon.

Today I wish to begin discussing the accuracy of the Department of Defense budget and accounting data. Each year, Congress debates the Department of Defense budget for days. I do not expect this year to be much different. In fact, the debate may intensify. It may intensify because some of my Republican colleagues are bent on pumping up the defense budget again by billions of dollars. I am flat baffled by their proposal. I do not understand it. They want to start back up the slippery slope toward higher defense budgets

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

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when there is no reason for doing it. The Soviet threat is gone. The cold war is over. The defense budget should be leveling off, not going up. But I do not intend to debate that issue today. That is better debated when we are working on the appropriations and authorization bills for the Department. My purpose today is to suggest that we cannot make meaningful decisions on the defense budget until we get more reliable information.

I wish to talk about the soundness then of the Department of Defense information base. I wish to talk about the integrity of Secretary Perry's budget. The Department's financial records are the foundation for this budget. Like a house or building, if it is going to stand the test of time and if the building is going to serve its intended useful purpose, then a budget's foundation must likewise be built upon very solid rock.

Secretary Perry's accounting and budget numbers should be accurate and complete. Sadly, however, every shred of evidence I have tells me that Mr. Perry's budget structure is built on sand.

Do they understand that? I believe they do. I believe that there are some people over there intent upon changing this, who right this very minute are working toward doing that. But the point is that job is a long way from being done, because it is in such a sad state of affairs. We are going to be called upon in the next couple months to make a decision whether to spend $50 billion more than what the President proposed on defense. I do not see how we can make that decision with the information on which the budget structure is formed if this is all built on a foundation of sand. I will document the basis for that assertion in a moment.

Mr. Perry's financial records, the Department's budget books and accounting books are in a shambles. Mr. Perry has no way of knowing which numbers are true and which are false.

Inaccurate and misleading budget numbers erode our process of checks and balances, and they undermine accountability.

Bad information leads to bad decisions and hence bad Government.

The accounting books should provide a full and accurate record of how the money was spent, what was purchased, and how much each item cost.

The accounting books should provide a historical record of past expenditures.

The budget, by comparison, is supposed to tell us what is needed in the coming year in the way of money and material.

The future years defense program, or FYDP, in turn, projects the future consequences of our budget decisions. All these books—the future year's defense program, the budget, as well as accounting book—should hang together.

The books should be bound together by a common thread—accurate, consistent data.

The budget should be hooked up to the accounting books, and the future year's defense program should be hooked up to the budget.

The books need to hang together for one very simple reason:

Much of what will be bought and done in the years ahead were bought and done last year and the year before.

If we do not know what we bought last year and how much it cost, it will be impossible to figure out what we need next year. You cannot craft a good budget with bad numbers. It is as simple as that.

There is no way to escape from this commonsense principle. If we do not know what last year's defense program cost, then how in the world can Mr. Perry figure out what he needs down the road—in the outyears?

That is it in a nutshell.

In the simplest terms, if we do not know where we have been and where we are, we cannot possibly figure out where we are going. We may be lost.

Mr. President, all the DOD budget chains are broken. The essential links between the accounting records and the budget, and the budget and the future year's defense program, are busted. We have mismatches within mismatches within mismatches.

Now, this is a very complicated subject, and my conclusions could be controversial. They could be challenged.

So it is important that I document my sources.

But I would like to warn my colleagues, these issues are not laid out in one single source. I have drawn on many different sources.

I will cite the main ones. There are others but the main ones are as follows:

First, U.S. General Accounting Office, ''Financial Management: Status of Defense Efforts To Correct Disbursement Problems.'' (AIMD–95–7. October 1994.)

This work is continuing at the request of myself and Senators ROTH and GLENN. I have used some updated data on disbursements and unreconciled contracts that does not yet appear in published reports.

Second, DOD inspector general, ''Fund Control Over Contract Payments at the Defense Finance and Accounting Service—Columbus Center.'' (Report No. 94–054. March 15, 1994.)

Third, U.S. Senate, Committee on Governmental Affairs. (Hearing on DOD Financial Management. April 12, 1994.)

Testimony by Comptroller General Bowsher and Senator GLENN provided most of my information on overpayments to contractors.

Fourth, DOD inspector general, ''Consolidated Statement of Financial Position of the Defense Business Operations Fund for Fiscal Year 1993.'' (Report No. 94–161. June 30, 1994.)

Fifth, U.S. General Accounting Office, ''Defense Business Operations Fund: Management Issues Challenge Fund Implementation.'' (AIMD–95–79. March 1995.)

Sixth, U.S. General Accounting Office, ''Future Years Defense Program: Optimistic Estimates Lead to Billions in Overprogramming.'' (NSIAD–94–210. July 1994.)

The GAO's evaluation of the FYDP is continuing at the request of Senator ROTH and myself. The ongoing work has two objectives:

Evaluate the data and methodology presented in Mr. Chuck Spinney's latest study, ''Anatomy of Decline'' and the role of DOD's Office of Program Analysis and Evaluation [PA&E]; and

Review the fiscal year 1996 FYDP.

Seventh, this is also by Chuck Spinney: ''Anatomy of Decline.'' Office of Program Analysis and Evaluation, Department of Defense. February 1995.

In order to save time, I will not make a detailed reference every time I draw data from one of these sources.

Instead, I will try to identify the source in a more general way as I go along.

Mr. President, that concludes my statement for today.

I will continue with more evidence tomorrow and Thursday and Friday.

I yield the floor.

The PRESIDING OFFICER. Under the previous order the Senator from Alabama [Mr. HEFLIN] is recognized to speak for up to 10 minutes.

The Senator from Alabama.

Mr. HEFLIN. Mr. President, Senator FEINSTEIN wishes to make some remarks. In the event her remarks are not begun or finished when the hour of 10 arrives, I ask unanimous consent that time for morning business be extended to allow her to complete her remarks.

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

The Senator from Alabama is recognized.

Mr. HEFLIN. I thank the Chair.

(The remarks of Mr. HEFLIN pertaining to the introduction of S.J. Res. 31 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. Under the previous order the Senator from California [Mrs. FEINSTEIN] is recognized to speak for up to 10 minutes.

Mrs. FEINSTEIN. I thank the Chair.

(The remarks of Mrs. FEINSTEIN pertaining to the introduction of S. 580 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

MEMORIALIZING JAMES LARRY BROWN OF PINE LEVEL, NC

Mr. FAIRCLOTH. Mr. President, I rise to pay tribute to James Larry Brown who died suddenly 2 weeks ago at the young age of 40.

Larry, as he was known by friends and family, was born and raised in

Johnston County, NC, and spent his entire life in that tight-knit community. The hundreds of people who mourned his untimely death offer testimony to his character and the value of his life that ended without warning.

As a young boy he sang in the choir at Carter's Chapel Baptist Church at Sunday services and for the sad occasion of a fellow parishioner's funeral. In 1970, when he was 16 years old, he sang at the funeral of Tammy Denise Woodruff, a 3-year-old child whose life was cut short. Each time he visited the grave site of that little girl who was buried next to his mother, Lyda Mae, he wept for her. Tammy's gravestone read ''Picking Flowers in Heaven.'' Larry now rests next to her. The compassion he felt for a little girl he didn't even know is the finest example of the compassion Larry Brown felt toward all human beings.

Larry wasn't a renowned scientist, an outspoken community activist, or a political leader. Larry was an ordinary man who lived and worked in his community for his entire life. He was the type of man that you would want as a brother, as a father, as a neighbor and as a friend. Whether he knew you for 20 years or for 20 minutes, he would be there offering a shoulder to cry on, a helping hand, or a $20 loan he never expected to be repaid.

Some of his neighbors knew him as Vicki's father, Mr. Larry, the one who was always there working for the North Johnston High School Band Boosters to help them raise money and organize activities so the high school could continue developing young minds and souls through music. Other Pine Level residents knew him as Megan's daddy, a devoted softball fan who never missed a single game his daughter played. Parents and friends at the softball game always turned to Larry to find out the score at any given point in time. He always knew the answer because he kept the score in the soil beneath his lawn chair which he would put in place at the start of the day's first game and not remove until all the games were over. He was every child's playmate and every parent's confidant. Most everyone knew him as a friend.

He married Colleen Kenney in 1975 after they met on a blind date when her family moved from Wisconsin to North Carolina. They would have celebrated their 20th wedding anniversary this October and both Larry and Colleen were looking forward to spending the rest of their lives together. Colleen, Pine Level's Girl Scout troop leader, relied on Larry to help her with the tremendous task of helping these girls grow and learn about life, responsibility and the importance of community service. It was a task he did well and with great dedication.

Almost as much as Larry loved his family, his friends and his community, he loved the University of North Carolina Tar Heels. He was known throughout Pine Level, Smithfield and Selma as one of the most devoted Heels' fans in the State, never missing a game on television and invariably purchasing his cars and clothing in the Carolina Blue colors of the Tar Heels. He engaged in good hearted rivalry with his neighbors who were fans of the NC State Wolfpack, gaining a reputation as not only a practical joker but also as a good sport. Larry loved to laugh and loved to make others laugh—one of his extraordinary talents.

While family and friends were his first priority, Larry gained a reputation as a sympathetic, understanding and effective manager at Data General and at Channel Master in Selma were he was working when he died. Those that he worked with in the present and well over a decade ago were struck by his death and came to pay him tribute. While working to support his family over the past 20 years, he was also able to complete his bachelors degree at the Atlantic Christian College. His graduation day, just a few years ago, was a proud day for his family. It was supposed to be just the beginning.

James Larry Brown will be missed by all who knew and loved him. However, we are comforted in our loss by the knowledge that his was a life worthwhile, filled with compassion and kindness. We can only hope that his life and sudden death will make us better people.

CELEBRATING THE 19TH AMENDMENT

Mr. D'AMATO. Mr. President, I rise today to recognize the 75th anniversary of the passage of our Nation's 19th amendment. As my colleagues know, this important amendment placed in law the right for women in the United States to vote and is now a cause to celebrate the contributions and achievements of women.

The right to vote is indeed a precious right that we as Americans sometimes do not appreciate. Until 75 years ago, our forefathers did not recognize that this right also applied to women. Women fought hard to secure this right. The 19th amendment has since become a turning point symbolizing the remarkable contributions of women to our Nation's past, present, and future.

It is not an understatement that this amendment was the impetus for women to actively participate in politics, science, education, and commerce. Once opportunities were presented, women have, through hard work, excelled in their chosen professions.

This anniversary, therefore, marks the rise of women into positions of leadership. Women's History Month recognizes the achievements and the contributions of these prominent members of our past such as Susan B. Anthony and Elizabeth Cady Stanton. This becomes especially important as we look to our future.

Mr. President, it is in New York that Women's History Month has special meaning given that the formal beginning of the suffrage movement began with a convention in Seneca Falls, NY. Today, Seneca Falls is the home of the Women's Rights National Historical Park and its history serves as an inspiration to all. I am pleased to lend my voice to celebrate this anniversary.

THE REGULATORY MORATORIUM BILL

Mr. STEVENS. Mr. President, I wish to take a moment to describe the effect of the amendment I authored and which is now part of the committee substitute for S. 219, the regulatory moratorium legislation.

My amendment modifies the definition of ''significant regulatory action'' to include ''any action that withdraws or restricts recreational, subsistence, or commercial use of any land under the control of a Federal agency, except for those actions described under paragraph 4 (D) and (E).'' The effect of this amendment is to impose the moratorium contained in the bill on any action by a Federal agency to withdraw or restrict commercial, recreational, or subsistence use of Federal lands.

The actions described in paragraph 4 (D) and (E) are ''any agency action that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity relating to hunting, fishing, or camping'' and ''the granting of * * * a license, * * * exemption, * * * variance or petition for relief * * * or other action relieving a restriction * * *.'' In other words, a Federal agency may continue to manage these activities, even if the management action involved would restrict the public's use of Federal lands. This means that a Federal agency may close wildlife refuges to duck hunting, limit the number of people permitted in the National Parks to the number of campsites available, or prohibit trawling in certain areas to protect crab and halibut.

In addition, my amendment defines ''public property'' to mean ''all property under the control of a Federal agency, other than land.'' This definition is necessary because the bill provides that the moratorium shall not apply if the President finds that ''the action is * * * principally related to public property * * *.'' Without this definition, the President could circumvent the purpose of my amendment by simply finding that the closing of Federal lands to grazing or of a National Forest to timber harvests is ''principally related to public property'' because the principal ''public property'' under the control of the Forest Service are National Forests. By limiting the definition of ''public property'' to ''all property * * * other than land'' my amendment would allow the President to exclude from the moratorium any action related to managing public property like motor pools, warehouses, and other buildings—including

public toilets—in short, any action other than to restrict land use.

Some have said this amendment goes too far. I think it does not. The President has plenty of exceptions that allow him to escape the impact of my amendment. There are exceptions for national security, law enforcement, health and safety, and international trade, among other things. And in the final analysis, it is the President who makes the final call as to what regulations are impacted by this law. The intent of my amendment is clear—I want to put a halt to agency actions that needlessly restrict the use of public lands.

Mr. President, I commend my colleague from Delaware, Senator ROTH, and his committee staff, particularly Frank Polk, Paul Noe, and Mickey Prosser for their efforts in reporting this regulatory moratorium legislation.

PRESIDENT CLINTON IMPLEMENTS THE VIOLENCE AGAINST WOMEN ACT

Mr. KENNEDY. Mr. President, earlier today, President Clinton took a major step toward effective implementation of the new Violence Against Women Act, which was enacted as part of the omnibus crime control law last year.

President Clinton established a new Violence Against Women Office at the Department of Justice, and appointed former Iowa Attorney General Bonnie Campbell as Director of the Office. Ms. Campbell was the first woman to hold the office of attorney general in Iowa, and in that capacity, authored one of the Nation's first antistalking laws.

President Clinton also announced $26 million in State grants and a toll-free domestic violence hotline. I was proud to be a strong supporter of the act and to be the Senate sponsor of the hotline.

I commend the President for taking this important step in the fight to end violent crimes against women. The rates of violent crimes committed against women continue to rise. Nationwide a woman is beaten every 15 seconds. Three to four million women a year are victims of family violence. In Massachusetts last year, a woman was murdered every 16 days, and in this year alone, 17 women have been murdered as a result of domestic violence.

It is clear that far more needs to be done to stop this violence. One of the most effective measures is to improve our methods of law enforcement and do more to prosecute and convict the perpetrators of these crimes.

The Violence Against Women Act provides $1.6 billion over the next 6 years to combat such violence. Included in those funds are grants to States to train and hire more police and prosecutors for domestic violence or sexual assault units, open new crisis centers for victims, hire advocates and crisis counselors, and improve lighting for unsafe streets and parks.

These grants are a critical part of a comprehensive new effort to combat violence against women. Police need better training, so that they will make arrests when the situation warrants. Prosecutors need better training in how to work with victims, using victims' advocates when possible. Judges need to understand that domestic violence and other attacks against women are serious crimes. Often, when women are abused or beaten, the police, prosecutors, and judges fail to take the crimes seriously enough. As a result, many women are reluctant to call the police or seek help in other ways. These grants will help States address these problems.

This new law is the first comprehensive Federal effort to deal with violence against women. It protects the rights of victims. It makes it a Federal offense to cross State lines to abuse a fleeing spouse or partner. It gives victims of violent crime or sexual abuse the right to speak at the sentencing hearings of their assailants. It prohibits those facing a restraining order on domestic abuse from possessing a firearm.

I am particularly gratified by the restoration of the national, toll-free domestic violence hotline, which will be administered by the Department of Health and Human Services. Before the hotline was shut down for lack of funds in 1992, it averaged over 180 calls a day, or 65,000 calls a year, during the 5 years it was in operation. The hotline is a lifeline for women in danger. The nationwide system will enable any woman in trouble to call an 800 number and be advised by a trained counselor on what to do immediately and where to go for help in her area.

I commend President Clinton for his leadership in implementing this law, and I look forward to working with the administration to continue to fight to end the tragedy of violence against women.

IS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, the impression simply will not go away; the enormous Federal debt greatly resembles that well-known energizer bunny we see, and see, and see on television. The Federal debt keeps going and going and going—always at the expense, of course, of the American taxpayers.

A lot of politicians talk a good game—when they home to campaign—about bringing Federal deficits and the Federal debt under control. But so many of these same politicians regularly voted for one bloated spending bill after another during the 103d Congress—which could have been a primary factor in the new configuration of U.S. Senators as a result of last November's elections.

In any event, Mr. President, as of yesterday, Monday, March 20, at the close of business, the total Federal debt stood—down to the penny—at exactly $4,842,719,633,258.54 or $18,383.05 per person.

The lawyers have a Latin expression which they use frequently—''res ipsa loquistur''—''the thing speaks for itself.'' Indeed it does.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. KYL). Morning business is closed.

LEGISLATIVE LINE-ITEM VETO ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 4, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 4) to grant the power to the President to reduce budget authority.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 347, to provide for the separate enrollment for presentation to the President of each item of any appropriation bill and each item in any authorization bill or resolution providing direct spending or targeted tax benefits.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 5 minutes as if in morning business off the bill.

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

TELECOMMUNICATIONS DEREGULATION AND COMPETITION: ITS IMPACT ON RURAL AMERICA

Mr. DORGAN. Mr. President, when Congress passed the Communications Act in 1934, telephones were a novelty. Sixty years later, most Americans have affordable telephone service, thanks largely through a universal service system of support mechanisms. This is a success story.

Universal service has been a success because policymakers had the foresight to understand that market forces, left to their own devices, would not serve every American. Support mechanisms are necessary to ensure that every American could have access to phone service and electricity. This was true in building a nationwide phone network and it will be true in the future to deploy an advanced telecommunications network.

Today we stand at the advent of a telecommunications revolution that promises to bring an explosion of economic activity and growth in rural America that will rival the delivery of electricity to farms in the early part of the century. The information age promises to bring opportunity to previously disadvantaged areas. Until now, geography has been, a disadvantage for rural America. Much of the

business growth and development in America happens to occur in major urban centers out of geographic necessity, leaving rural America at a significant disadvantage. The telecommunications revolution is quickly changing all that, making a rural community in North Dakota as close to Manhattan as the Hudson River.

Satellites, fiber optic cable, digital switching devises and other technological developments make it possible for voice, video, and data transmission to occur effectively and immediately between two locations thousands of miles apart. This means jobs, economic development, and opportunity unprecedented in rural areas that have historically been struggling to build a promising future.

On the eve of our consideration of new major national telecommunications policy, I am concerned that issues essential to rural America may be overshadowing by the battles between the industry titans, like the regional Bell operating companies, long distance carriers and national cable networks. We cannot forget to do what is right for all, and not just a few, Americans.

There is an obsession and worship of competition and deregulation these days. After all, a free market driven by competition comprises the economic fabric on which our Nation was built. At the same time, however, the country has always understood that these principles are not always in everyone's best in interest. This dichotomy is of significant note as we chart the development of our Nation's telecommunications policy and its impact on rural America.

The structure and the economics of the telecommunications industry is as complicated as scholastic philosophy. Our Nation already possesses a quality integrated telephone network that most Americans can access and enjoy the benefits of coast-to-coast communications. However, few understand and the complex interaction and coordination that is required to connect the hundreds of local phone companies and long distance carriers. Although most Americans know the difference between local and long distance phone calls, few understand and appreciate the complexities of how long distance and local phone companies interconnect.

For example, I would guess many Americans are not aware that the seven regional Bell operating companies [RBOC's] are not the Nation's only local exchange carriers [LEC's]. Many Americans are surprised to learn that there are hundreds of LEC's throughout the Nation. In fact, there are approximately 1,400 small cooperative and commercial systems serving people and communities throughout rural America. These small and rural LEC's originated to bring service to areas considered unprofitable and undesirable by the industry's early leaders.

Together, these small and rural LEC's provide telecommunications service to approximately 6.6 million rural Americans. Their combined service areas cover some 1.7 million square miles and represent approximately 1 million route miles of infrastructure. While they serve about 5 percent of the U.S. population, their service areas encompass 40 percent of the Nation's land area. On average, their investment totals approximately $2,500 for each subscriber. And, for the most part, the services they provide are equal or superior to those offered by the industry giants.

With these facts in mind, it should come as no surprise that these low-density, high-cost areas are not natural candidates for competition and need support to deliver affordable service. They are neither magnets for capital nor market-stimulating sources of revenues and profits. Yet, despite the challenges these small and rural LEC's face, they consistently provide universal service to their constituency. This is possible only through sound public policy that has historically recognized rural is different.

That's what we really need to focus on today. Rural areas are different. This does not suggest that competition should be rejected for rural areas. Rather, we need to understand that competition in rural and high cost markets needs to be structured differently in rural areas. Universal service support is critical and the introduction of competition must be addressed with carefully constructed policy—not blind obedience to competition and deregulation.

There are two cardinal rules I want to impress upon my colleagues today. The first rule is that telecommunications reform must protect and preserve universal service support. Without such support, the future of rural telecommunications is a guaranteed disaster rather than a promise for opportunity. The second cardinal rule is that competition in rural areas needs to be structured appropriately and it is imperative that safeguards be in place to ensure an orderly transition to a competitive marketplace.

PROTECTING AND PRESERVING UNIVERSAL SERVICE

A recent study entitled ''Keeping Rural America Connected: Costs and Rates in the Competitive ERA'' reveals how the rural telecommunications marketplace could be devastated without universal service support. Specifically, it shows that rates would skyrocket to the point that many rural Americans would be forced to simply decline service.

For example, the study demonstrates that without universal service support, local monthly rates would increase by $12.84 on average. Monthly toll rates would climb by $18.43. The combined monthly increase would average an astounding 72.3 percent. And these are study-wide averages; the effects in some States are even worse.

Maintaining universal telecommunications service must remain our highest priority. Any emerging national policy must embrace the concept of an ongoing and evolving universal service mandate. Moreover, such policy must ensure that universal service initiatives are financially sustained by all market providers.

Some have argued in favor of reducing, and in some cases, eliminating, the level of universal service support. This is flagrantly inconsistent with this Nation's 60-plus year commitment to universal service for all Americans. Congress and the administration alike have set many ambitious goals for the Nation's telecommunications industry—goals that can be met only if we are willing to make a renewed commitment to support, not abandon, the policy of universal service.

The objective of introducing competition in local phone service is to drive prices toward cost. In contrast, current practice reflects the long-established national policy goal of setting rates at levels that maximize subscription and use. That policy has proved very effective, enabling all of us to reap what economists call the ''external benefits'' of broad access to the Nation's public switched network.

The largest LEC's want to base their rates on cost in order to confront their onrushing competitors more effectively. That is certainly understandable. They are large enough to make such pricing work for both themselves and their subscribers. Nevertheless, it does not necessarily make economic sense to force similar arrangements on small, rural LEC's. Cost-based pricing by rural LEC's would lead to dramatic rate increases for rural consumers. The value of a phone in Regent, ND is the same as the value of a phone in New York City. The only way to prevent rate increases is to offset them through universal service cost recovery mechanisms. This clearly points out the importance of establishing strong universal service support mechanisms prior to permitting the modification of the industry's rate structure scheme.

Rural areas must have access to telecommunications capabilities and services comparable to those in urban areas. To ensure this, Congress, the FCC, and the telecommunications industry have established a number of support mechanisms, including geographic toll rate averaging, lifeline and linkup programs, local rate averaging, and the rural utilities service's, formerly REA, telephone loan program. These programs and policies have made state-of-the-art telecommunications technologies available to rural Americans. In return for these supports, LEC's agree to serve every resident in their service area who wants to be served. In many cases, it would have been impossible for LEC's to serve the entirety of sparsely populated service areas without support.

COMPETITION IN RURAL MARKETS

The second cardinal rule is that blind allegiance to competition will hurt rural telecommunications delivery. The fact is that competition—without conditions—does not serve rural markets. Airline deregulation is but one example. In a deregulated environment, airlines have chosen not to serve many rural areas. Why? Because the economics of competitive industry do not drive service into rural areas.

The fundamental premise in the telecommunications reform legislation we considered last year—and that is emerging this year—is that competition will lead to lower rates and encourage investment. In most cases, this is the correct approach. Competition should be introduced into all aspects of telecommunications. When the old Ma Bell was divested of its local monopolies, separating long distance and manufacturing services into competitive markets, competition lead to lower long-distance prices and a flood of new equipment into the marketplace. Nobody can question that consumers have benefited from the emergence of hundreds of long distance companies and the thousands of new products that were borne from a competitive equipment manufacturing industry. Consumers have benefited from allowing competition in long distance and manufacturing industries and I am confident that consumers will also benefit under competitive local exchange service. Introducing competition into local telephone service can produce the same positive result—but only if it is done right and a one-size-fits-all approach is not taken.

If unstructured competition is permitted in rural markets and competitors are allowed to cherry pick only the high revenue customers, serious destruction of the incumbent carrier, who is obligated to serve all customers, including the high cost residents, will occur. A local telephone exchange is like a tent and if a competitor is permitted to take out the center pole, the whole tent collapses. Larger markets may be able to sustain some cherry picking, but in smaller rural markets, the results could be higher residential rates.

The fact is that competition can be destructive in markets that cannot sustain multiple competitors. A blind allegiance to competition could result in higher costs and diminished services for rural Americans. The question is not whether or not competition should occur in rural areas. Rather the question is how can the rules of competition be structured to ensure that rural consumers continued to relieve quality, affordable service. Without caution, we could be setting the stage for competition to jeopardize the national public switched network— and universal service—that almost all Americans enjoy today.

Unstructured competition could lead to geographic winners and losers. We must not agree to any policy that creates a system of information-age haves and have-nots. I cannot and will not support public policy that leaves rural Americans reeling in its wake. An unrestricted competitive and deregulatory telecommunications policy will not work in rural America. Such policy in fact threatens higher, not lower, consumer prices. Such policy in fact threatens less, not more, consumer choice. And such policy in fact will cost taxpayers more, not less, when it forces existing LEC's out of business.

Telecommunications reform should not adopt a one-size-fits-all policy of competition and deregulation for the entire Nation. Competition and deregulation cannot work as a national policy without rural safeguards.

I am not interested in giving telephone companies a competitive advantage over other telecommunications carriers. But I am interested in ensuring an affordable, high-quality telecommunications network in rural America. The cable industry and electric utilities want to compete in the local exchange market and phone companies want to compete in cable. I support breaking down the barriers that prohibit these industries from competing in each other's businesses. However, we must adopt safeguards that are in the interest of rural consumers who must be our first concern. Only with safeguards are all rural Americans guaranteed to receive the high-quality, affordable telecommunications service they deserve. That's the bottom line. New telecommunications policy must be about rural consumers.

In exchange for universal service support mechanisms, telephone companies serving rural and high-cost areas have undertaken the obligation to serve areas that market forces would leave behind. The only reason why thousands of Americans living in rural areas have phone service is because our existing policies require certain carriers to provide that service. In addition, necessary support mechanisms to ensure that service are available so that service can be provided at an affordable rate. It seems to me that if competition is going to enter into rural and high-cost areas, competitors ought to be required to undertake the same responsibilities. Let's not close the door to competition—but let's require competitors and incumbents alike to carry the same burdens. This is the only way we can have fair competition in rural areas.

The fact is that U.S. telecommunications policy has always recognized local exchange service as essential to the well-being of all Americans. The same cannot be said of cable TV or other related services. The key point here is that we must not adopt any policy that would jeopardize the provision of essential local exchange service. And we must certainly not adopt any policy that would alter current policy so dramatically that the interests of rural consumers would suffer.

CONCLUSION

In summary, preserving universal service is sound public policy. Universal service benefits the entire Nation, not just rural areas. As we pursue new telecommunications policy, we must also ensure that real, effective mechanisms remain in place to preserve and advance universal service. It is equally important to provide rural safeguards to ensure that competition results in positive benefits for rural consumers. The conventional wisdom of free-market economics generally does not apply to the different conditions in rural America where low population density and vast service areas translate to less demand and higher costs.

Telecommunications reform legislation is one of the most comprehensive and significant pieces of legislation that many of us will work on in our congressional careers. Not only does billions of dollars hang in the balance between some of the largest corporations in the world, but more importantly, the affordability and effectiveness of a central element of economic and social life of Americans is at stake—an advanced telecommunications network. I urge my colleagues to address this legislation with an understanding and appreciation for the complexities involved and not to resort to easy ideological solutions. There is too much at stake. Not only do all Senators have a common national goal to promote the development of an advanced telecommunications network, but we share the same responsibility to ensure that all Americans have access to that network—regardless of their geographic residence.

LEGISLATIVE LINE-ITEM VETO ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I now move to S. 4, debate on the line-item veto.

The PRESIDING OFFICER. The bill is pending.

CLOTURE MOTION

Mr. MCCAIN. Mr. President, I send a cloture motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 4, the line-item veto bill:

Bob Dole, Trent Lott, Dan Coats, Slade Gorton, Robert Bennett, John McCain, Ted Stevens, James Inhofe, Mike DeWine, John Ashcroft, Craig Thomas, Bob Smith, Alfonse D'Amato, Mitch McConnell, Larry Pressler, Don Nickles, Pete Domenici.

Mr. MCCAIN. Mr. President, as my colleagues are aware, that is the second cloture motion that has been filed at the desk.

Mr. President, after discussion with the majority leader, I think it would be well to inform my colleagues that we anticipate a cloture vote on Wednesday, tomorrow, at some point, at the discretion of the majority leader, and then again on Thursday and, if necessary, another one on Friday.

I remind my colleagues that the bill is under consideration. It is open for amendments. We welcome amendments at this time. I remind Members that first-degree amendments must be filed by 1 p.m. today in the event of a cloture motion.

Mr. President, in discussions with the majority leader, he has informed me that, if necessary, we would stay, in order to complete consideration of this bill in a timely fashion, that we would plan on staying in late both tonight, tomorrow night, and Thursday night, if necessary. Hopefully, that is not necessary. Hopefully, we can pass a cloture motion and close off debate in 30 hours, of course, with relevant amendments that are germane to be considered at that time.

I also point out that, in the event there are amendments that are not ruled specifically germane to the bill, the Members should file those by 1 p.m. today.

Mr. President, it is clear the intentions on this side of the aisle, and with the majority leader's help, that we do not intend to drag this debate out for weeks. We intend to dispose of the issue. It has been brought up on numerous occasions, dating back to 1985. As short a time ago as last year, a sense-of-the-Senate resolution basically encompassing most of the provisions of the DOLE substitute was voted on, and the issue is clear and will not require extended debate in the view of the majority leader and those on this side of the aisle.

Let me just point out, in the 99th Congress, a hearing was held in committee and the motion to proceed was filibustered. There are 53 current Members of the Senate who were here then. It has been reintroduced every Congress since then. Additionally, in 1990, on July 25, the Senate, the Budget Committee, favorably reported this bill, and finally during the 103d Congress, the Senate voted on a sense of the Senate regarding this issue.

I also remind my colleagues that the bill is very short. It is five pages and one sentence long. It does not require a great deal of time and effort to digest it. It is, I think, rather simple, rather brief, especially compared with bills that we dispose of that are of much greater length on a routine basis around here.

Obviously, Mr. President, there will be questions about this bill. There will be amendments, hopefully, that will help define this legislation. We do not view it as perfect. But the fundamentals associated with it are, in my view, important and unchangeable.

Those are based around the following assumptions:

First, that it would require a two-thirds majority in both Houses in order to override the President's veto. In my view, that is the fundamental principle behind the line-item veto and one that is not negotiable.

Second, the separate enrollment aspect which allows the President to eliminate pork using his constitutional authority by a simple veto as each piece of legislation is divided up into separate bills. Now, there will be a lot of discussion about that, Mr. President. There was the last time, in 1985, when it was brought up.

I point out that I went to see the enrolling clerk to be briefed on the mechanics of separate enrollment. We did a little experiment where we took the Commerce, Science, and Justice bill, which is the largest appropriations bill that was passed last year, just as a trial run, and we broke it up into some 500 pieces of separate enrolled legislation.

I think to ask the President to sign a bill 500 times is a chore. I also believe that to allow tens of billions of dollars of wasteful and unwanted spending to be included, tucked into various appropriations bills, is a far more serious and grievous error.

In another provision of the bill is the sunset provision, which would sunset this line-item veto authority after 5 years. I was not particularly happy about that provision, Mr. President, but there are those on both sides of the aisle that view this for what it is—a significant shift in authority from the legislative to the executive branch.

There are concerns about abuse of this power. So they want an opportunity to review the results of the enactment of this legislation after a 5-year period.

Frankly, I think that that is appropriate. That is another aspect of it.

The final aspect of it, Mr. President, that is going to be debated and be significantly involved is the targeted tax benefits. The targeted tax benefits allows the President to eliminate specific targeted tax benefits. These are rightful shots for transition benefits that help but a few that are not applicable to the general population.

The bill states clearly, and I quote from the legislation:

> (5) The term ''targeted tax benefit'' means any provision:
>
> (A) estimated by the Joint Committee on Taxation as losing revenue within the period specified in the most recently adopted concurrent resolution on the budget . . .
>
> (B) having the practical effect of providing more favorable tax treatment to a particular taxpayer or limited group of taxpayers when compared with other similarly situated taxpayers.

What that means, Mr. President, is that we are trying to avoid the so-called transition rules in which tax breaks are included for favored individuals or companies. We are trying to avoid things like what happened—and I quote from a New York Times article of May 20, 1994:

> A case in point is a provision that would allow some homeowners who rent their homes for a brief period to continue to escape taxes on their rental income. . . .
>
> Since 1976, income from homes and apartments rented for 15 days a year or less has been tax free. No one now in Congress knows for sure, but the word in tax circles for years is this was put into the law for the benefit of people who live in and around Augusta, GA, and who rent their homes for thousands of dollars each April for the Masters golf tournament. At the time that the measure went into the Tax Code, Herman E. Talmadge, Democrat of Georgia, was the second-ranking Senator on the Finance Committee.
>
> This year, to raise money to offset various tax cuts, the House decided to abolish the 15-day rule. But one narrow exception was provided. The rent would still not be taxable if the home was in an area where there was not enough hotel or motel space to accommodate visitors at a particular event. . . .
>
> The folks in Atlanta who are planning housing for the 1996 Olympics this summer are quite pleased with the outcome.

Mr. President, we cannot do that anymore. There is going to be an argument to expand this provision to basically any tax provision in the tax law, in tax bills that are passed.

I think that would be very dangerous. I believe that if we did that, then that would give the President of the United States the ability to veto things like home mortgage deductions, medical expenses deductions, child care tax credit, exclusion from income of employer-provided health care benefits, earned income tax credit, personal exemption, special exemption for the blind, special exemption for the elderly, et cetera, including charitable contribution deductions and State and local tax deductions.

The bill is intentionally narrowly focused on targeted tax benefits to prevent the same kind of abuses that have become rampant in the appropriations process.

I want to point out again and again and again, Mr. President, two-thirds versus a simple majority is the crux of this bill.

We asked for an opinion by the Congressional Research Service on the constitutionality of separate enrollment. There is a Congressional Research Service memorandum to the Honorable DAN COATS from Mr. Johnny H. Killian, who is a senior specialist in American consultant law. The subject is separate enrollment bill and the Constitution.

It is a little long, but I think it is important enough to ask unanimous consent that it be printed in the RECORD, and I ask unanimous consent to print it in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, March 20, 1995.

To: Hon. Dan Coats. Attention: Megan Gilley.

From: American Law Division.

Subject: Separate enrollment bill and the Constitution.

This memorandum is in response to your request for a constititional analysis of the draft substitute for the various item veto-rescission proposals now pending in the Senate. Briefly, your substitute would direct that the appropriations committees, the authorization committees in designated cases, and conference committees in designated cases to include within their bills reported to the House of Representatives or the Senate a level of detail on the allocation of an item of appropriation (or other authority) as is proposed by that House such as is set forth in the committee report accompanying such bill. The substitute then provides for separate enrollment of the designated bills, once passed by both Houses in identical language, as is detailed below.

Discussion here is of particular problems relating to passage of the separated bills, insofar as constitutional issues are raised. We do not deal in this memorandum with the larger issues of separate enrollment and the item veto.[1] In a considerable amount of published material since the preparation of the two memoranda, cited in n. 1, separate enrollment has not been dealt with, the controversy exciting much of the writing being the dispute over the assertion that the President already has the power of item veto if he would but use it.[2] Discussion of that subject we also pretermit. It is to the constitutionality of the mechanics of the proposal's implementation that we turn.

Under the proposal, once an appropriations bill and any authorization bill or resolution providing direct spending or targeted tax benefits has passed both Houses of Congress in the same form, the Secretary of the Senate (if the bill or joint resolution originated in the Senate) or the Clerk of the House of Representatives (if the bill or joint resolution originated in the House of Representatives) would cause the enrolling clerk of such House to enroll each item of appropriation or covered authorization as a separate bill or joint resolution. The separately enrolled measure is to be enrolled without substantive revision, is to conform in style and form to the applicable provisions of chapter 2 of title 1 of the United States Code, and is to bear the designation of the measure of which it was previously a part plus such other designation as to distinguish it from the other items separately enrolled from the same bill. The critical provision then is the following excerpted section.

''A measure enrolled pursuant to [this act] with respect to an item shall be deemed to be a bill under clauses 2 and 3 of section 7 of article I of the Constitution of the United States and shall be signed by the Speaker of the House and the President of the Senate, or their designees, and presented to the President for approval or disapproval (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.''

Constitutional difficulty for the separate-enrollment proposal may be raised by the effectuation of this section. At present, when both Houses have passed a bill in the same form, it is presented by the last House acting on it to a specially appointed clerk for enrolling. Bills and joint resolutions are enrolled, and the enrolling clerk is to make no change, however unimportant, in the text of a bill or joint resolution, although the two Houses may, by concurrent resolution, authorize the correction of errors when enrollment is made. Following enrollment, the Speaker of the House of Representatives and the President of the Senate sign the bill, and it is then presented to the President.[3]

How is it, then, it may be asked, that separate bills, which in their subsequent form have not passed both Houses, may be deemed bills that have passed both Houses and are then properly presented to the President? It is not possible to make a definitive answer to this question. Sound precedent is lacking. However, one may, on the basis of existing precedents and general principles derived from the rule-making powers of both Houses, develop two possible resolutions to the quandary that will be suitable in form for each House to make its own constitutional determination.

Each House of Congress is empowered to ''determine the Rules of its Proceedings,'' Art. I, §5, cl. 2. The authority is quite broad and leaves much to the discretion of each House, but it is not limitless. *United States* v. *Ballin*, 144 U.S. 1 (1892). In that case, the House of Representatives had adopted a rule to break the obstruction of some Members who would deny the existence of a quorum to do business by, though present, refusing to vote or otherwise indicating their presence for purposes of determining a quorum. The rule authorized the Speaker to have the names of nonvoting Members recorded and the Members counted and announced in determining the presence of a quorum. When the rule was challenged, by those asserting that a bill was not passed with a sufficient quorum present, the Court rejected the attack.

''The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional constraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.'' Id., 5.

Inasmuch as the Constitution required a quorum to do business but prescribed no method of making the determination of the existence of a quorum, ''it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact.'' Id., 6. The Court then listed several methods the House might have used. ''Any one of these methods, it must be conceded, is reasonably certain of ascertaining the fact, and as there is no constitutional method prescribed, and no constitutional inhibition of any of those, and no violation of fundamental rights in any, it follows that the house may adopt either or all, or it may provide for a combination of any two of the methods.'' Ibid. *Ballin*, thus, stands for the proposition that the power of the Senate and the House of Representatives is quite broad and that the Court will defer in large measure; but by its phrasing, the Court clearly said that it has power to review rules and their application, if there are constitutional inhibitions in existence or if private rights are alleged to be abridged.

That judicial review of congressional rules may be an expansive power is illustrated by *United States* v. *Smith*, 286 U.S. 6 (1932), an opinion by Justice Brandeis. *Smith* concerned the meaning of a disputed rule of the Senate. The Senate has confirmed an appointee to the FPC, the President had been notified, the commission was signed, and Smith took office. The Senate then requested that the nomination be returned for reconsideration; upon the President's refusal, the Senate nonetheless voted again and refused confirmation. The Senate relied upon a role that it construed to authorize such reconsideration.

''The question primarily at issue,'' the Court said, ''relates to the *construction* of the applicable rules, *not to their constitutionality*,'' Id., 33 (emphasis supplied). The supposed *Ballin* limits were passed. ''As the construction to be given to the rules affects persons other than members of the Senate, the question presented is of necessity a judicial one.'' Ibid. While the Court purported to give great deference to the Senate's construction of its rules, it read the text of the rules, the history and precedents, and the mischief attendant on the Senate's construction to interpret the rules as precluding reconsideration of the appointment. Id., 35–49.[4]

Other cases to be noticed are *Christoffel* v. *United States*, 338 U.S. 84 (1948), and *Yellin* v. *United States*, 374 U.S. 109 (1963), both relating to the practice of investigating committees in following House rules, *Christoffel* involved the question whether the fact that a quorum existed at the beginning of a hearing created the presumption that a quorum continued throughout, including when perjured statements were made, as the house contended. The Court held that it must be shown that a quorum was actually present when the perjury was committed. In *Yellin*, the Court set aside a contempt-of-Congress conviction, because it found the committee had failed to follow its rules, rejecting the argument that under the congressional interpretation of the rules the rules were followed.

The Court of Appeals for the District of Columbia Circuit has long emphasized that the rulemaking clause ''creates a 'specific constitutional base' which requires [the courts] to 'take special care to avoid intruding into a constitutionally delineated prerogative of the Legislative Branch.'' *Vander Jagt* v. *O'Neill*, 699 F.2d 1166, 1173 (D.C.Cir. 1982) (quoting *Harrington* v. *Bush*, 553 F.2d 190, 214 (D.C. 1977)), *cert. den.*, 464 U.S. 823 (1983); *Metzenbaum* v. *FERC*, 675 F.2d 1282, 1287 (D.C.Cir. 1982). Nevertheless, the *Vander Jagt* court dismissed the action, brought by minority-party Members of Congress to contest the party distribution of committee seats, only because it felt the Members had alternative routes to political relief. In *Gregg* v. *Barrett*, 771 F.2d 539 (D.C.Cir. 1985), after dismissing Members as plaintiffs in a suit challenging the accuracy of the Congressional Record, the Court reached the merits of the suit on behalf of private plaintiffs, although it decided against them. And, quite recently, in *Michel* v. *Anderson*, 14 F.3d 623 (D.C.Cir. 1994), the court reviewed on the merits (finding constitutional) the changes in House rules permitting delegates from the territories and the District of Columbia to vote in the Committee of the Whole, subject to revoting in certain instances.[5]

Thus far, we have established that the rule-making power of each House is broad and is entitled to judicial deference, although if there is a constitutional barrier to a particular rule or impairment of a private right there may well be a judicial remedy. We must, therefore, turn to the exercise of the rule-making power of each House in the specific context of the enactment of the separately-enrolled bills.

Footnotes at end of article.

Beginning that consideration leads us to *Marshall Field & Co.* v. *Clark*, 143 U.S. 649 (1892), decided the same Term as *Ballin*. In *Clark*, certain parties challenged the validity of a tariff law, authenticated by the Speaker of the House and the President of the Senate as having passed Congress, signed into law by the President, and furnished to the Public Printer by the Secretary of State as a correct copy of the law. It was contended that the bill had not been passed because congressional documents showed that a section of the bill, as it finally passed, was not in the bill authenticated by the signatures of the two officers and approved by the President. The holding of the Court was that the judiciary may not look behind the authenticating signatures of the Speaker of the House and the President of the Senate. Its reasoning requires lengthy quoting.

''The argument . . . is, that a bill, signed by the Speaker of the House of Representatives and by the President of the Senate, presented to and approved by the President of the United States, and delivered by the letter to the Secretary of State, as an act passed by Congress, does not become a law of the United States if it had not in fact been passed by Congress. In view of the express requirements of the Constitution the correctness of this general principle cannot be doubted. There is no authority in the presiding officers of the House of Representatives and the Senate to attest by their signatures, nor in the President to approve, nor in the Secretary of State to receive and cause to be published, as a legislative act, any bill not passed by Congress.

''But this concession of the correctness of the general principle for which the appellants contend does not determine the precise question before the court; for it remains to inquire as to the nature of the evidence upon which a court may act when the issue is made as to whether a bill, originating in the House of Representatives or the Senate, and asserted to have become a law, was or was not passed by Congress. Id., 669–670.''

The challengers asserted that courts should recur to the journal required to be kept by the Constitution. Art I, §5, cl. 3. But the Court denied that the journal was the best, if not conclusive, evidence upon the issue of whether a bill, in the same form, was, in fact, passed by the two Houses of Congress. The purpose of the requirement was not related to this function, and there was no express requirement in the Constitution relating to this question and others pertaining to bills and joint resolution for inclusion in the journal. These and other matters were left to the discretion of Congress. To what should the courts look?

''The signing by the Speaker of the House of Representatives and by the president of the Senate, in open session, of an enrolled bill, is an official attestation by the two houses of such bill as one that has passed Congress. It is a declaration by the two houses, through their presiding officers, to the president, that a bill, thus attested, has received, in due form, the sanction of the legislative branch of the government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, receives his approval, and is deposited in the public archives, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in conformity with the Constitution.'' Id., 672.

Upon the correct interpretation of *Clark* and the convergence of *Clark* and *Ballin*, we suggest, may be found the solution to the issue of the validity of the passage of a series of bills after the passage of the one bill from which the many bills are extracted. The difficulty is that it is not clear what the correct interpretation of *Clark* is; below, we set out three possibilities and evaluate them.

First, *Clark* may be read as simply holding that the ''best evidence'' of whether a bill had passed both Houses may be found in the signatures of the Speaker of the House and the President of the Senate. The Court would not allow challengers to use the Journal or other legislative evidence to counter the attesting signatures. In a very recent decision, the Court, in part, casually adopted this reading of *Clark*, but it did so in a footnote that also ambiguously appears to go beyond that simple explanation. *United States* v. *Munoz-Flores*, 495 U.S. 385, 391 n. 4 (1990).[6] Inasmuch as that footnote is relevant here and will be relevant in a subsequent portion of this memorandum, we here quote the entire pertinent parts of the footnote.

''[*Clark*] concerned ''the nature of the evidence'' the Court would consider in determining whether a bill had actually passed Congress. Id. [143 U.S.], at 670. Appellants had argued that the constitutional Clause providing that ''[e]ach House shall keep a Journal of its Proceedings'' implied that whether a bill had passed must be determined by an examination of the journals. . . . The Court rejected that interpretation of the Journal Clause, holding that the Constitution left it to Congress to determine how a bill is to be authenticated as having passed. Id., at 670–671. In the absence of any constitutional requirement binding Congress, we stated that ''[t]he respect due to coequal and independent departments'' demands that the courts accept as passed all bills authenticated in the manner provided by Congress. Id., at 672. Where, as here, a constitutional provision is implicated, *Field* does not apply.''

Should *Clark* be taken to be simply about what is the ''best evidence'' that a bill passed both Houses, then in practically all instances the attesting signatures will be decisive. However, respecting the proposals for a separate enrollment following adoption of a single bill and its division into many bills, with these multiple bills being ''deemed'' to have passed both Houses, it is possible that the courts would adopt a different view. Because both Houses have adopted rules that expressly provide for a separate enrollment, deeming, and the attestation signatures, the courts could exercise judicial review to consider on the merits the rules and their comportment with the Constitution, viewing the signatures of the two officers as essentially irrelevant in the context of this particular situation.

Adoption of this reading of *Clark*, with an exception, would not void the rules thus adopted. It would simply mean that the courts would review the rules on the merits.

Second, *Clark* may be read much more broadly than merely as a best evidence rule. The paragraph quoted in full above from *Clark* does not read as if it is a decision placing a burden of persuasion on some person or at some point. Rather, the passage has the flavor of a ''political question'' approach to a constitutional issue. ''The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated. . . .'' *Clark*, supra, 143 U.S., 672, See *baker* v. *Carr*, 369 U.S. 186, 217 (1962) (Identifying the features that identify political questions, including ''the impossibility of a court's undertaking independent resolution [of an issue] without expressing lack of respect due coordinate branches of government''). See also *INS* v. *Chadha*, 462 U.S. 919, 941 (1983) (quoting *Baker*); *Nixon v. United States*, 113 S.Ct. 732, 735 (1993) (quoting two of the other standards of *Baker*). Indeed, in *Baker*, itself, the Court viewed *Clark* as a political question case.[7] The political-question doctrine is ''essentially a function of the separation of powers.'' *Baker* v. *Carr*, supra, 217.

Baker, of course, is qualified in a number of respects. ''Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility.'' *Powell v. McCormack*, 395 U.S. 486, 549 (1969). In that case, the action of the House of Representatives in excluding a Member-elect from office was reviewed and overturned, because the Court determined that there was a constitutional provision governing resolution of the matter, a clause establishing exclusive qualifications that the House had violated. See also *United States v. Munoz-Flores* supra, 495 U.S., 389–396 (refusing to find a political question bar to judicial resolution to whether a revenue-raising measure did not originate in the House of Representatives, as required by the origination clause).

Nonetheless, the political-question doctrine remains alive if restrained in the courts. For example, in *Nixon* v. *United States*, supra, 113 S. Ct., 735–740, the Court refused to review, using the political-question doctrine, a claim by an impeached federal judge that the Senate had used invalid procedures in trying him. Under the impeachment clause, Art. I, §3, cl. 6, ''[t]he Senate shall have the sole Power to try all Impeachments.'' Under a rule of the Senate, a special committee of Senators is appointed to ''receive and report evidence.'' After hearings, the committee submits a transcript and summary of its proceedings to the Full Senate, which then conducts a trial. Nixon argued that the special-committee procedure denied him a trial before the full Senate. Applying two standards from the *Baker* list, the Court found that the word ''sole'' in the clause was a textual commitment of authority to the Senate to act *alone* without court review; further, the Court found the word ''try'' in the clause was sufficiently indefinite to cabin the Senate's discretion, thus using the lack of judicially-manageable standards factor of *Baker*. See also id., 738–739 (referring to other *Baker* factors).

Superficially, the application of the political-question doctrine in this context is contrary to *INS* v. *Chadha*, supra, 462 U.S., 940–943. That decision denied that a challenge to the legislative veto presented a political question, and on the merits the Court went on to hold that for a congressional measure to have legal effect outside Congress it must be acted on bicamerally and when passed in identical terms by both Houses must be presented to the President. The Court provided a truncated version of the quotation from *Clark*, which we quoted above, to reject the argument that the issue presented a politcal

question. It did not consider the issue of the effect of attesting signatures by the two congressional officers, and it could not have done so because only bills and joint resolutions are enrolled, signed, and presented to the President. The simple resolution before the Court in *Chadha* was not enrolled, signed, and presented to the President, and neither was the concurrent resolution in question in two-House legislative vetoes.[8]

Chadha, thus, was a case in which by statute congressional actions having legal impact outside Congress were provided for in which, in some instances two-House actions were authorized, in others one-House actions, and none of the resolutions or concurrent resolutions was presented to the President. *Chadha* is, therefore, of no precedential value in this context, although it must be considered below.

If, under the political-question doctrine, courts will not look behind the attestation signatures of the Speaker and the President of the Senate, then Congress may provide for ''deeming'' the passage of the separated bills without fear of judicial review. This situation does not mean that Congress is free of constitutional constraints. Members of Congress take an oath, identical to the one taken by judges, to support the Constitution, Art. VI, cl. 3, and Members of Congress must determine for themselves that a measure upon which they are voting is constitutional, *United States* v. *Munoz-Flores,* supra, 495 U.S., 390–391, just as the President must before he signs a bill. But it does mean that Congress' constitutional determination is not susceptible to judicial invalidation.

When Congress studies the constitutionality of a proposal, it performs essentially the same analysis as a court does, and we now turn to the issue of the merits.

Third, assuming the inapplicability of the political-question doctrine, when either a court or Congress evaluates the validity of the deeming mechanism, what should the decision be?

Beyond question is the proposition that a measure must be passed in the same form by both Houses before it is presented to the President for his action; no bill not meeting this qualification can become law. *Clark,* supra, 143 U.S. 669–670, *INS* v. *Chadha,* supra, 462 U.S., 943, 944–946, 948–951, 956–959. And that is precisely the question presented by this proposal. A bill has passed both Houses in identical terms, and it is then subdivided into a series of bills excerpted out of the larger bill by an enrolling clerk acting pursuant to the rules of the two bodies. If the separately-enrolled bills are not again presented to both Houses for a vote, perhaps an en bloc consideration, has the bicameralism requirement been met.

That each House has the power to make the rules for its own proceedings is a substantial authority, as *Ballin* certainly demonstrates. There, the Constitution required a quorum to do business, but the Constitution was silent with respect to how a quorum was to be determined. Members present declined to answer to a call of the roll to permit a determination that a quorum was present, and the House of Representatives simply provided that they would nonetheless be counted.

When the House of Representatives or the Senate determines its rules of proceeding, the *Ballin* Court instructed us, ''[i]t may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained.'' *Ballin,* supra, 144 U.S., 5. Within this capacious concept, what provision of the Constitution would the ''deeming'' provision violate? We certainly cannot point to any fundamental right that is abridged. The constitutional constraint that is applicable is the first section of Article I, which sets a bicameral requirement for the exercise of lawmaking. But Congress in the proposal does not disregard the bicameralism mandate. A bill in identical form has passed both Houses. Then, a functionary, the enrolling clerk, follows instructions embodied in the rules and separates out of this bill a series of sections identical to the sections contained in the larger bill and enrolls these sections into separate bills; these bills are signed by the Speaker of the House and the President of the Senate, and these bills are then presented to the President for his signatures or his vetoes.

One can readily see that the question is much more narrow than the mere issue whether Congress can pass a law that has not cleared both Houses in identical versions. A bill has passed both Houses in an identical version. The separately enrolled bills, *taken together,* are identical to that initial bill. If Congress should conclude that this two-step process comports with the constitutional requirement of bicameral passage of a legislative measure, in what way has a constitutional restraint been breached?

If the ''deeming'' procedure is invalid, the validity of the deeming feature of Rule XLIX of the House of Representatives is highly suspect. Under that Rule, adoption by the House of Representatives of the conference report on the concurrent resolution on the budget, or on the concurrent resolution itself if there is no conference report, is deemed to be a vote in favor of a joint resolution setting a statutory limit on the public debt, different than the limit then in effect, and the joint resolution is engrossed and transmitted to the Senate. There is no precise equivalency between the Rule and the proposal; yet, there is sufficient identify to present the same constitutional question.

In some respects, as we briefly touch on below, the appropriations committees, and perhaps some legislative committees, may have to alter how they report bills that are to be subject to this process, inasmuch as to continue the present mode of bill drafting would require the enrolling clerk[s] to exercise too much judgment, too much discretion,in breaking down the bills, with the result that to make sense of some sections designated as separate bills, these bills would not be identical to the bill previously passed. This reservation is meant only to suggest that some separate enrollments might present an as-applied constitutional challenge. We are here concerned with the facial constitutional questions.

Issues of validity could also be influenced in determination by two other factors. That is, first, Congress is not seeking to aggrandize itself or to infringe on the powers of another branch. Instead, the procedure would be, in effect, and act of self-abnegation, a giving-up of some degree of congressional power and influence in order to enlarge the power and influence of the President and to lodge in him the burden of deficit reduction. Second, to forestall the argument that Congress might have invalidly given up too much power, might have over-balanced presidential power, it must be observed that these rules are entirely an internal matter, subject to alternation by simple resolution at any time in either House. There is no irrevocable conveying away.

Finally, as we suggested above, it may be necessary for the appropriations committees to revamp the mode of reporting bills. In addition to the necessity to achieve identify between the original bill and the separated bills, to leave to the enrolling clerk[s] too much discretion might violate the principle, found in some cases, that Congress may not delegate its legislative power to its Members or its officers and employees. The legislative power is a collective one to be exercised by Congress itself and not by delegates. *Metroplitan Washington Airports Auth.* v. *Citizens* for the Abagtement of Aircraft Noise, 501 U.S. 252, 271–277 (1991). The details of this revamping remain open for consideration.

In conclusion, we have argued that the deeming procedure may present a political question unsuited for judicial review and thus that Congress would not be subject to judicial review. We have considered, on the other hand, that the courts may find they are not precluded from exercising authority to review this proposal. If the proposal is reviewed by the courts, and even if it is not, we have presented an argument leading to sustaining the deeming procedure as not in violation of the principle that a bill, in order to become law, must be passed in identical versions by the House of Representatives and the Senate. Because of the lack of available precedent, we cannot argue that any of the three versions of the argument is indisputably correct; indeed, there are questions about all three. In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

JOHNNY H. KILLIAN,
Senior Specialist,
American Constitutional Law.

FOOTNOTES

[1] In an older memorandum Killian, *Constitutionality of Empowering Item Veto by Legislation,* CRS, Jan 4, 1984, and as shorter follow-up memorandum, Killian, *Constitutional Questions Raised by S. 43 in Establishing Item Veto,* Jan, 15, 1985, reprinted in *Line Item Veto,* Hearings before the Senate Committee on Rules and Administration, 95th Cong., 1st Sess. (1985), 10–20, we discussed at some length the question of the line-item veto and whether it could be conferred on the President by statute, concluding that only through a separate-enrollment device would such a conferral be valid constitutionally. In those memoranda, we raised and discussed but were unable to decide the questions now being treated. The longer memorandum also appears, in essentially the same form, in *Item Veto: State Experience and Its Application to the Federal Situation, House* Committee on Rules, 99th Cong., 2d Sess. (Comm. Pr. 1986), 164.

[2] E.g., Rappaport, *The President's Veto and the Constitution,* 87 Nw., U. L. Rev. 735 (1983), which also cites a considerable number of articles on both sides of the issue.

[3] Constitution, Jefferson's Manual and Rules of the House of Representatives, H. Doc. No. 102–105, 102d Cong., 2d sess. (1993), §§573–574; 7 L. Deschler's Precedents of the United States House of Representatives, H. Doc. No. 94–661, 94th Cong., 2d Sess. (1977), ch. 24, §14.

[4] Compare *Missouri Pac. Ry. Co.* v. *Kansas,* 248 U.S. 276 (1919), in which, although it found justiciable an issue regarding a congressional rule, the Court deferred much more to the legislative construction than it did in *Smith.*

[5] See *United States ex rel. Joseph* v. *Cannon,* 642 F.2d 1373 (D.C.Cir. 1981) (dismissing suit under False Claims Act based on use of senatorial employees in political campaigns on the ground that Senate had developed no standards by which court could determine whether Act had been violated, reserving question whether it could enforce Senate rules even if consensus had been reached), *cert. den.* 455 U.S. 999 (1982); *Ray* v. *Proxmire,* 581 F.2d 998, 1001 (D.C.Cir.) (finding a Senate rule created no private cause of action and reserving whether a Senate rule ever could), *cert. den* 439 U.S. 933 (1978).

[6] The Court was responding to a concurrence by Justice Scalia that adopted a broad reading of *Clark,* in which he would have declined to reach the merits of an origination clause challenge to a law and would have instead accepted the attesting signatures of the Speaker of the House and the President of the Senate as showing that the bill, bearing a House of Representatives designation, had in fact originated in the House. Id., 408. The origination clause is Art. I, §7, cl. 1.

[7] ''In *Coleman* v. *Miller,* [307 U.S. 433 (1939)], this Court held that the questions of how long a proposed amendment to the Federal Constitution remained open to ratification, and what effect a prior rejection had on a subsequent ratification, were committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial

grasp. Similar considerations apply to the enacting process: ''The respect due to coequal and independent departments,'' and the need for finality and certainty about the status of a statute contribute to judicial reluctance to inquire whether, as passed, it complied with all requisite formalities. [Citing *Clark*, supra, 143 U.S., 672, 676–677; and also *Leser* v. *Garnett*, 258 U.S. 130, 137 [1922] (applying *Clark* to refuse to look behind certifications by two States that they had ratified a constitutional amendment; official notice ''is conclusive upon the courts)].

[8] See *Consumers Union* v. *FTC*, 691 U.S. 575 (D.C.Cir. 1982), *affd. sub nom. Process Gas Consumers Group* v. *Consumer Energy Council*, 463 U.S. 1216 (1983).

Mr. MCCAIN. Mr. President, I will read the concluding paragraph and urge my colleagues to read the entire opinion. Mr. Killian obviously is a well-known and well-respected specialist on American constitutional law. He states in the final paragraph:

In conclusion, we have argued that the deeming procedure may present a political question unsuited for judicial review and thus that Congress would not be subject to judicial review. We have considered, on the other hand, that the courts may find they are not precluded from exercising authority to review this proposal. If the proposal is reviewed by the courts, and even if it is not, we have presented an argument leading to sustaining the deeming procedure as not in violation of the principle that a bill, in order to become law, must be passed in identical versions by the House of Representatives and the Senate. Because of the lack of available precedent, we cannot argue that any of the three versions of the argument is indisputably correct; indeed, there are questions about all three. In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

I want to repeat, again:

In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

There will be views expressed by my colleagues that, indeed, there is a question about constitutionality, and they may argue that that is a reason for opposing this legislation. I will respect their views. I, however, will not agree.

Mr. President, in this morning's Washington Times, there is an article by Mr. Stephen Moore, who is the director of fiscal policy studies at the Cato Institute. As we all know, the Cato Institute is a well-regarded organization and one that is dedicated to many causes, including fiscal responsibility.

Mr. President, I will read some parts of this article because I think it is important, and I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Times, Mar. 21, 1995]

SHARPENING THE BUDGET SCISSORS

(By Stephen Moore)

This week the Senate begins debate on the line-item veto for the president, Taxpayers have been demanding this act of fiscal sanity for at least 15 years.

Now, there they go again, Just when it appeared that the line-item veto would become a reality, several moderate Senate Republicans are lining up with liberal Democrats to submarine the effort by insisting upon a line-item veto with a dull blade. Yet the experience of the states—where 43 governors have line-item veto authority—indicates that weakened versions of this budget cutting instrument are almost the equivalent of no-item veto at all. The GOP needs to band together to block this fraudulent alternative and rally behind the toughest measure possible—the Coats-McCain bill.

Once during the last year of the Reagan administration I was asked to testify on the line-item veto before the House Judiciary Committee. It was a miserable experience. One Democrat after another savaged the idea as nothing more than a blatant partisan power-grab. There message was unmistakable: Reaganites are trying to pull an end run around the Democrat-controlled Congress because they can't win at the polls.

In hindsight, it is understandable why House Democrats thought that way. Republicans seemed to have a permanent electoral padlock on the White House, while the notion of a GOP Congress seemed as improbable as the Speaker of the House and the chairman of the Ways and Means Committee being ejected from office in the same year. How ironic that the first president to snip spending with the new veto scissors may well be Democrat Bill Clinton, and he will be empowered to do so by a Republican-controlled Congress. So much for the partisan power-grab argument.

Now opponents have shifted gears. Today, we hear two new objections to the line-item veto—both of which are also wrong. The first argument is that the line-item veto would involve a huge and unprecedented power shift in the direction of the White House. Powerful Senate appropriators Robert Byrd and Mark Hatfield are endlessly preaching that message.

But history disproves it. The line-item veto is only a partial restoration of the rightful budgetary powers of the president, which were stripped from the executive branch by the 1974 Budget Act. That act took away the president's right to impound funds—a power that was exercised routinely by every president from Thomas Jefferson through Richard Nixon. Jefferson first employed the power to refuse to spend appropriated funds in 1801 when he impounded $50,000 for Navy gunboats.

The Founders believed that the president, as the head of the executive branch and therefore responsible for executing the laws and spending taxpayer funds judiciously, had unilateral authority not to spend money appropriated by Congress if that spending was unnecessary.

Impoundment was an extremely powerful White House authority that was exercised often for nearly 200 years. Presidents Roosevelt, Kennedy, Johnson and Nixon used the impoundment power rountinely—and in some years used it to cut federal appropriations by more than 5 percent. In one year, Richard Nixon impounded more than 7 percent of domestic appropriations.

In 1974 Congress stripped the president of his lawful impoundment powers and instead gave him two very weak substitutes: the deferral and rescission authorities. But rescissions require Congress affirmatively to approve a presidential request not to spend money. Most rescissions are simply ignored by Congress and never even voted on. Thus through congressional in action, they are killed. Twenty-six billion dollars of Ronald Reagan's rescissions were slain in that fashion.

The second criticism of the line-item veto is that it won't affect the level of spending or the debt. To test that supposition, the Cato Institute recently surveyed 118 governors and former governors about what budget process measures Washington should adopt to help balance the budget. Sixty-seven of the respondents were Republicans, 50 were Democrats, and one was an independent. Since 43 states have the line-item veto, governors are in the best position to assess its value. Some governors, such as Tommy Thompson of Wisconsin, have relied heavily on the line-item veto to cut expenditures and balance the budget.

The major findings of our survey were as follows:

Sixty-nine percent of the governors described the line-item veto as ''a very useful tool'' in helping balance the state budget.

Ninety-two percent of the governors believe that ''a line-item veto for the president would help restrain federal spending.''

Eighty-eight percent of the Democratic governors believed the line-item veto would be useful.

Then we asked the governors why they supported or opposed the line-item veto. Here are some of the more interesting responses we received:

Hugh L. Carey, the former Democratic governor of New York, said, ''I support the line-item veto because it is an executive branch function to identify budget excesses and wasteful items. It is an antidote for pork.''

Massachusetts governor William Weld wrote, ''Legislators love to be loved, so they love to spend money. Line-item veto is essential to enable the executive to hold down spending.''

Ronald Reagan said, ''When I was governor of California, the governor had the line-item veto, and so you could veto parts of the spending in a bill. The president can't do that. I think, frankly—of course, I'm prejudiced—government would be far better off if the president had the right of line-item veto.''

Mike O'Callaghan, the former governor of Nevada, and a Democrat, was the most concise: ''The line-item veto is a tremendous tool for saving money.''

Critics are right when they complain that the line-item veto won't balance the budget. But a useful way to determine potential budget savings from the line-item veto is to look at rescissions that have been ignored by Congress in recent years. If those had been approved, savings would have been $5 billion to $10 billion a year in less shark research, lower sugar subsidies, and fewer grants for obscene art.

And for those who still doubt the virtue of the line-item veto, perhaps the most compelling case for this surgical tool is made by Messrs. Byrd and Hatfield. Their violent opposition should provoke a deep appreciation for the value of these new fiscal scissors.

Mr. MCCAIN. Mr. President, Mr. Moore's article begins:

This week the Senate begins debate on the line-item veto for the President. Taxpayers have been demanding this act of fiscal sanity for at least 15 years.

Now, there they go again. Just when it appeared that the line-item veto would become a reality, several moderate Senate Republicans are lining up with liberal Democrats to submarine the effort by insisting upon a line-item veto with a dull blade.

Mr. Moore wrote this article before we, all 54 Republicans, agreed to vote for cloture to cut off debate on this issue.

Yet the experience of the States—where 43 Governors have line-item veto authority—indicates that weakened versions of this budget-cutting instrument are almost the equivalent of no-item veto at all. The GOP needs to band together to block this fraudulent alternative and rally behind the toughest measure possible—the Coats-McCain bill.

He goes on to say:

Now opponents have shifted gears. Today, we hear two new objections to the line-item veto—both of which are also wrong. The first argument is that the line-item veto would involve a huge and unprecedented power shift in the direction of the White House. Powerful Senate appropriators . . . are endlessly preaching that message.

But history disproves it. The line-item veto is only a partial restoration of the rightful budgetary powers of the President, which were stripped from the executive branch by the 1974 Budget Act. That act took away the President's right to impound funds—a power that was exercised routinely by every President from Thomas Jefferson through Richard Nixon. Jefferson first employed the power to refuse to spend appropriated funds in 1801 when he impounded $50,000 for Navy gunboats.

Mr. President, time after time on this floor, and I am sure during the course of this debate I will point out again, it is not a coincidence that up until 1974, revenues and expenditures on the part of the Federal Government basically were in sync. There were times of war when we ran up huge deficits, but after those emergencies subsided, we again brought the budget into balance. It was in 1974 when the two began to diverge to an incredible degree.

I want to point out again, and it is not coincidental, in 1974, the entire annual deficit for that year was $6 billion. The entire national debt was $483 billion. Now in 1994, the annual deficit is $203 billion, about half of what the overall accumulated debt was, and the estimate of the total debt between 1974 and 1996 has risen from $483 billion to $5.299 trillion.

There is a direct correlation between the passage of the Budget Impoundment Act of 1974 and the exploding deficit and annual deficit and debt.

The Founders believed that the President, as the head of the executive branch and therefore responsible for executing laws and spending taxpayer funds judiciously, had unilateral authority not to spend money appropriated by Congress if that spending was unnecessary.

Impoundment was an extremely powerful White House authority that was exercised often for nearly 200 years. Presidents Roosevelt, Kennedy, Johnson, and Nixon used the impoundment power routinely—and in some cases used it to cut Federal appropriations by more than 5 percent. In 1 year, Richard Nixon impounded more than 7 percent of domestic appropriations.

In 1974, Congress stripped the President of his lawful impoundment powers and instead gave him two very weak substitutes: the deferral and rescission authorities. But rescissions require Congress affirmatively to approve a Presidential request not to spend money. Most rescissions are simply ignored by Congress and never even voted on. Thus through congressional inaction, they are killed. Twenty-six billion dollars of Ronald Reagan's rescissions were slain in that fashion.

The second criticism of the line-item veto is that it won't affect the level of spending or the debt. To test that supposition, the Cato Institute recently surveyed 118 Governors and former Governors about what budget process measures Washington should adopt to help balance the budget: 27 of the respondents were Republicans, 50 were Democrats, and 1 was an Independent. Since 43 States have the line-item veto, Governors are in the best position to assess its value. Some Governors, such as Tommy Thompson of Wisconsin, have relied heavily on the line-item veto to cut expenditures and balance the budget.

The major findings of our survey were as follows:

Sixty-nine percent of the Governors described the line-item veto as ''a very useful tool'' in helping balance the State budget.

Ninety-two percent of the Governors believed that ''a line-item veto for the President would help restrain Federal spending.''

Eighty-eight percent of the Democratic Governors believed the line-item veto would be useful.

Then we asked the Governors why they supported or opposed the line-item veto.

And some of the responses were very interesting.

I will not go through all of those answers, Mr. President except to say the article concludes by saying:

Critics are right when they complain that the line-item veto won't balance the budget. But a useful way to determine potential budget savings from the line-item veto is to look at rescissions that have been ignored by Congress in recent years. If those had been approved, savings would have been $5 billion to $10 billion a year in less shark research, lower sugar subsidies, and fewer grants for obscene art.

And for those who still doubt the virtue of the line-item veto, perhaps the most compelling case for this surgical tool is made by [others]. Their violent opposition should provoke a deep appreciation of the value of these new fiscal scissors.

Mr. President, I wish to address for a moment the issue of the constitutionality of several issues that are raised here, and there are a number of them. I will save some of them, but I wish to talk about the aspect of the constitutional objection, the objection that it is unconstitutional because it would change the Constitution, specifically the veto power, by act of Congress. The response is as follows:

Article I, Section 5 of the Constitution permits this procedure. Nothing in article I, section 7 is violated by this procedure. Under this proposal, all bills must be presented to the President. He may sign or veto all bills. He must return vetoed bills with his objections. Congress may override any veto with a two-thirds majority of each House.

Under article I, section 5, Congress possesses this power to define a bill. Congress certainly believes that it possesses this power since it and it alone has been doing so since the first bill was presented to the first President in the first Congress. If this construction of article I, section 5 is correct, the definition of a bill is a political question and not justiciable. ''Prominent on the surface of any case held to involve a political question is found a textually demonstrable Constitutional commitment of the issue to a coordinated political depart.'' Baker v. Carr, 369 U.S. 186 (1962). ''A textually demonstrable constitutional commitment'' of the issue to the legislature is found in ''Each house may determine the Rules of its Proceedings.'' If Congress may define as a bill a package of distinct programs and unrelated items, it can define distinct programs and unrelated items to be separate bills. Either Congress has the right to define a bill or it does not. Either this proposal is constitutional or the recent practice of Congress in forming omnibus bills containing unrelated programs and nongermane items is constitutionally challengeable. If the latter, the President would be well advised to bring such suit against the next omnibus bill.

Mr. President, there have been about 3 days of debate now. We are going into our 4th day. I have talked a great deal. The other side of the aisle has not chosen to talk too much about it. I urge my colleagues to take note of the fact that we are now open for amendments. If there are amendments, I urge my colleagues on both sides of the aisle to bring forth those amendments so they can be debated and voted on. And as I said, again, it is the intention on this side of the aisle expressed by the majority leader to dispose of this issue this week by means of cloture votes. At the same time, as to any substantive amendments and proposals, I believe there is sufficient time for them to be considered and voted on.

I note the presence of the Senator from Nebraska in the Chamber.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. INHOFE). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, first of all I want to thank the Senator from Arizona, along with the Senator from Indiana, who has shown such leadership in this area for so many years. I welcome the opportunity to assist in the effort.

Mr. President, the debate is now joined on the line-item veto and we are hearing the arguments for and against. It has been joined before. It has been discussed many times in this body. Hopefully, this time it will pass. I think the time has come. The American people demand it and the country needs it.

It has been said that the line-item veto or enhanced rescissions will not in and of itself balance the budget. And that is certainly true. It will require a President who is willing to use the tool that is given to him, and use it firmly. And, I might add, it will also require a President who will not use it simply to reprioritize his own programs over those programs of the Congress.

But while we are debating the likely effectiveness of this issue, I think it is important that we remember why we are engaging in this debate at all, why the line-item veto is brought up again year after year in this body, the reason for its overwhelming popularity among

the American people and even the reason that for many people in this country it has now become a virtual battle cry.

Mr. President, the short answer is that it is because we as a people are struggling mightily in this country, some might even say desperately, for ways to restrain Congress from irresponsible spending, for ways to stop Congress from continuing down the road of fiscal irresponsibility and the eventual bankruptcy of the United States of America.

Congress, in times past, has shown that it cannot restrain itself. We continue to look at $200 billion deficits every year as far as the eye can see. We have debated in this body, over a period of 60 years or more, the need for a balanced budget. We have reached almost unanimous consensus, even in the debate over the balanced budget amendment, that, yes, indeed, we must move toward a balanced budget, we must exercise some fiscal restraint. Year after year over that period of time, we have passed resolutions calling for a balanced budget. We have required the President to submit budgets to Congress that were in balance. We even passed a law in 1979 making it the law of this land that the budget be balanced by 1981. And, of course, when 1981 rolled around, another substantial deficit. Even our own laws were ignored by us.

In 1981, Congress was concerned, the entire Nation was concerned, as the debate turned toward the fact that we were approaching a $1 trillion debt in this country. Those were dire circumstances.

Now we are approaching a $5 trillion debt. Not only have we failed legislatively, Mr. President, but we have proven that we cannot restrain ourselves by means of a constitutional amendment. The balanced budget amendment failed in this body, even though it enjoyed the overwhelming support of the American people.

Appeals to self-interest and fear and shortsightedness carried the day once again in this body. Social Security, the last refuge of those in Congress who panic at the very thought of putting the lid on the pork barrel, was trotted out once again, even though we all know that the greatest threat and the only threat to Social Security is to continue down the road of deficit spending, is to do nothing and maintain the pattern that we have maintained in this Congress for so many years, because we all know within a few years, it is going into the red and we must have the farsightedness to address that now.

This is part of what we are about today, Mr. President. Now, having failed legislatively, having failed to adopt a constitutional amendment, the American people are saying that we should at least give the President of the United States the opportunity to have the most egregious, the most unnecessary, and the most wasteful spending measures made a little bit more difficult—not to make them impossible—to make them a little bit more difficult by requiring Congress to come up with a two-thirds majority vote if they want to pass it. I suggest to you that this is, indeed, a modest proposal in light of the dire economic circumstances that we find ourselves in as a nation.

And so for the second time in less than a month, we come together on the floor of the Senate to debate whether or not we have the courage to take the first step toward economic responsibility and recovery or whether, once again, we are going to fail ourselves, fail our constituents and fail the next generation. We simply must do better.

For 33 of the last 34 years, the Federal Government has run deficits and our elected officials have not had the will to change that course. Our Federal Government has run a deficit every year for the past 25 years—an entire generation—and we have not taken steps to break this insidious, this persistent pattern. It took our Nation more than 205 years to reach a $1 trillion national debt, but it only took another 11 years to quadruple it. And still we lack the will.

Now, for the next 5 years at least, the President has proposed annual budgets in excess of $200 billion a year. This means for the next 5 years, the Nation will accumulate another trillion dollars of debt, debt that is stifling investment, cutting into productivity, debt that has changed us from a creditor nation to a debtor nation.

Our economic growth has been anemic and one day surely, as night follows day, if we continue this course of action, America will decline as a great power. The first warning shot of that decline perhaps has already been fired.

I am sure that we have all noted with concern the precipitous drop in the dollar against the German mark and the Japanese yen since the failure of Congress to pass the balanced budget amendment. I submit to you that this is no accident. For decades, the U.S. dollar has been the standard against which the value of all other currencies in this world are measured. For many nations, it has served as a reserve currency. As such, the dollar is used as a storehouse of value in exchange for goods and services the world over. Investors buy the dollar because the U.S. economy has had a long reputation for reliability and for stability. Important commodities, such as oil, are priced in dollars. Any country that wishes to import oil must pay in dollars. We have been fortunate in this respect because of the high value placed upon the dollar in making it attractive as an investment vehicle and, thus, giving us our ability to, in large part, finance our national debt with foreign dollars.

When our debt was a small percentage of the gross national product, we could afford deficit spending and the inflation that it produced, but now our mounting deficits scare away capital and the value of the dollar. My distinguished colleague from Colorado, Senator BROWN, demonstrated recently in stark relief before the Senate Banking Committee the fall of the value of the dollar against the yen and the mark when the President announced the Mexican bailout. But more importantly, he showed the clear and unmistakable drop in the dollar's value when the balanced budget amendment was defeated in the Senate of the United States. That drop occurred for only one reason—one reason and one reason only—and that is that the world's investors lost faith in the political leadership of this country to act as wise stewards of America's Treasury.

That loss of confidence, manifested by the recent drop in the dollar, will have an inflationary impact on our economy. Goods will become more expensive as the price of imported components rise. Americans traveling abroad will find it to be increasingly expensive. Finally, the drop in the dollar's value will likely cause interest rates to rise and further exacerbate our budget deficit.

We are deluding ourselves if we think that simply because of our great wealth and natural resources that we are immune from economic loss and that our reputation for economic stability and growth will make us immune. We cannot continue to draw on this much foreign investment to finance our deficit indefinitely, and we only have to look to our neighbors to the south to give us some indication of what can happen.

Mr. President, we are all aware that we have a system of checks and balances in this country, a system of separation of powers, and that there is a constant pulling and tugging between the executive and the legislative branches of Government for power and authority, and sometimes in our history, even ascendancy. This is right and proper because this was one of the most fundamental parts of the framework that our Founding Fathers put together in the operation of our Government.

Some say that the line-item veto would give too much authority to the President and take that system out of balance in favor of the President. However, I think that in viewing history that we must conclude on the contrary that the current legislation before this body would bring things more into balance.

In fact, the 1989 report of the National Economic Commission has suggested that ''the balance of power on budget issues has swung too far from the executive toward the legislative branch.''

Virtually all Presidents have impounded funds as a routine matter of their executive discretion to accomplish what they believe is efficiency of management and Government. In the 1950's and 1960's, disputes arose over the impoundment authority—in fact, disputes have gone back much further

than that—but during that particular period of time in our history, which resulted from the refusal of several Presidents to fund certain weapons systems, for example, to the full extent authorized by Congress. President Johnson made broad use of impoundment authority during his administration by deferring billions of dollars on spending in an effort to restrain inflationary pressures on the economy during that period of time.

Conflict over the use of impoundment has greatly increased, of course, during the Nixon administration. A moratorium was placed on many things that are currently on the table again and being debated and discussed. Ironically enough, subsidized housing programs, community development activities, certain farm programs—all were either suspended or eliminated altogether during that period of time by President Nixon.

However, by 1974, the Congress of the United States found not only a weakened President Nixon because of Watergate but, because of that same scandal, a weakened Presidency, and employing a vacuum, Congress moved in and asserted itself and responded by passing the 1974 Budget Control and Impoundment Act, which greatly diminished the President's authority to impound funds.

So while this may be only one of many reasons—and it certainly is—I think it not inappropriate to point out that since that time, we have not had a balanced budget in this country. Since the President's rescission now does not go through unless Congress actually votes within 45 days to support him, few rescissions actually occur anymore.

According to the General Accounting Office, in the past 20 years since this Budget Act was passed, there have been 1,084 Presidential rescissions reflecting a total of $72.8 billion. Congress has agreed with only 399, or about 23 billion dollars' worth.

That is why we are here today to consider this legislation, to finally put some teeth into the rescission process. After 20 years in which we have managed to cut only about $1 billion a year, time for amending the 1974 act, I submit, is long overdue. We must finally provide some recourse for the Nation's Chief Executive to reduce spending that is actually sinking America $200 billion more in debt. This legislation obviously is not a cure-all or a panacea, not for everything that ails us. In reality, it is perhaps little more than a few sandbags in the dike. But it is a beginning. It is a movement by Congress in the right direction for a change. It is a step forward.

Mr. President, the current legislation is a result of many years of hard work by many people. I have already recognized Senator MCCAIN, Senator COATS, Senator DOMENICI, and others who have worked on this so hard—Senator STEVENS on our side and several from the other side of the aisle.

I think what we now have is a true bipartisan piece of legislation. It represents already much compromise and much accommodation to the legitimate concerns that have been expressed by Members on both sides of the aisle. Now I think it represents a real opportunity to finally inject some discipline into the budgetary process. It has been needed for a long time. It does some things, from my understanding and review of the history, which have not been done before, which have not been submitted at this stage of the process before. For instance, it covers any increase in any budget item. There has been criticism in times past that proposals have only covered discretionary spending. And as we all know, discretionary spending is becoming a smaller part of the overall budget—I think now down to around 16 percent. This proposal would also cover mandatory spending. As far as the future is concerned, it also reaches targeted tax benefits that have the practical effect of giving tax breaks to limited groups of taxpayers.

Now, this is an opportunity that we cannot afford to miss. Following on the heels of the agonizing and divisive defeat of the balanced budget amendment, the 104th Congress needs to recover and go on down the road, Mr. President. There is much that this Congress can accomplish if it does not dissolve into shortsightedness and partisan bickering. This is a time and a place and a legislative proposal where we can come together and put that to an end. If it is true that every journey starts with one step, then let this measure before us serve as that first step toward real budgetary reform.

I yield the floor.

Mr. COATS. Mr. President, I thank the Senator from Tennessee for his statement in support of the line-item veto. He has only been here a few months, but already he has been a powerful voice for change in this institution. It is change which I believe the taxpayers and constituents that we represent called for in the November elections. They want a change in the way we do business. They want a change in the way Congress represents them, a change in the mechanics. They are tired of hearing promises delivered from this floor over and over and over again that, yes, give us another chance; we will do better next time.

What we are seeking to do with this line-item veto proposal is change fundamentally the way we make decisions and the way that we spend taxpayers' dollars. The effort that Senator MCCAIN and I and others have been working on for so long appears to be reaching a point where we will be making a final decision as to whether or not we will bring that fundamental change to this body.

The substitute which Senator DOLE offered last evening on this floor was the result of days and weeks of some very tough negotiations involving Members who have had a history of involvement with the appropriations process, with the tax writing process, with the entitlements process, with the spending process of this Congress.

We took an idea, a concept that has been discussed, as I indicated on this floor yesterday, for nearly a century, that is enjoyed by 43 Governors, that has been called for, asked for, requested by, with one exception, every President of this entire century.

The request is simply to allow the President a check and balance against a practice that Congress has been engaging in which allows Members of the legislative branch to attach to major pieces of legislation, most of which they are pretty confident the President has little or no choice of signing, specifically targeted items, specifically designated items that go to provide a benefit for a particular class of individuals, small group of individuals, which cannot be defined in any sense in the national interest.

It may have been something that was generally accepted and overlooked in the past as we were running budgets which were roughly in balance. It was seen as a way of, I guess, making the process work here: You support this for me; I will support that for you, or I need to take this back home to let the constituents know that I am looking out specifically for them.

At a time when our annual deficits are running $200 billion or more, at a time when our national debt is reaching staggering proportions, nearly $5 trillion, we can no longer afford to practice business as usual. The vote which will eventually occur on this item is a vote for one of two courses. One course is business as usual. The other is for a change in the way business is done, for a discarding of the status quo.

For my colleagues who are in the process now of studying the final proposal that was put forth and is the result of several weeks of negotiations, let me just explain that it is not all that complicated. It is only five pages and one line of language which essentially takes the line-item veto concept—that is, the two-thirds vote that is necessary to override a decision of the President of the United States which will be granted to him, the authority of which will be granted to him to line-item out specific spending requests or items that increase spending, send them back to the Congress, and if the Congress wants to reinstate those, it will require a two-thirds vote.

That is the core concept of line-item veto—veto, the process of overriding a decision, that process which involves a two-thirds vote, and it is embodied in the Constitution of the United States. We are incorporating that into this process. We are then applying that principle of two-thirds to the various functions of spending that take place as we write legislation.

Originally, the McCain-Coats proposal only addressed appropriated

items, items that came out of the Appropriations Committee that affected discretionary spending. As Senator STEVENS has correctly pointed out, we were targeting then the line-item veto procedure to too narrow a slice of spending. We were applying it to an area under the control of the Appropriations Committee, which admittedly carried what most would describe as pork-barrel, pork-spending items, but which only went to a portion of our entire budget. Senator STEVENS suggested that that ought to be expanded, and we looked for ways to do that. Interestingly enough, we reached back into a process that has been debated at length on this Senate floor. It goes back a decade or more.

We reached back to a process which has been suggested by prominent members of the Democrat Party, led by committee chairmen who have eloquently debated the rationale behind the need for the process called separate enrollment but which also can be described as line-item veto, and we used that as the basis for putting together this new legislation that was introduced yesterday evening by the majority leader, Senator DOLE. We took that process and we applied it to a broader range of spending, so now not only will appropriations bills be subjected to line-item veto, but we will also subject other portions of the budget to line-item veto. We have included direct expenditures, expenditures of dollars, that occur outside the appropriations bills, including the appropriations bill process but also go to authorizations which provide for new spending.

We have expanded it to new entitlements. We are not changing the law in terms of benefits that are currently available under the law to new enrollees or to current enrollees within the entitlement programs, but we are saying, if there is an attempt to expand that program as it currently exists into new spending, then it will be subjected to the President's new authority, should this bill pass, new authority to line-item veto that.

Again, Congress could come back and with a two-thirds vote override the President's decision, but obviously it will be much harder for Congress to enact new spending. And we have expanded this to include what we call targeted tax benefits. There is tax pork as well as spending pork. Often what is described as the pork barrel involves not just appropriated items but tax breaks targeted for specific groups of people, specific individuals, a specific business entity within a broader group, so it is directed to help a particular targeted group, not the group as a whole.

This would not allow the President to veto a broad tax deduction on the books, or a broad tax provision such as mortgage interest deductions, such as real estate tax deduction, such as some of the deductions that Americans now enjoy under the Tax Code. But it would go to those specifically targeted items that often are added somewhere along the line in the tax-writing process and go, not to benefit a large group, but go to benefit a very specific targeted interest.

So the bill has been expanded considerably. It has a much broader scope than it had before. It applies a discipline to the process that is currently not available. It has a provision under the tax provision and has a provision available to Senators that, if they do not agree with the way in which a bill is brought forward and enrolled and think there is something that has been excluded, they can raise a point of order on this floor. Under that point of order they can subject that particular item to the separate enrollment procedures which would allow it then to be subject to the line-item veto of the President.

So, if a Senator does not believe that new entitlement spending or targeted tax benefits have been fully identified in a reported tax bill or an appropriations bill, the Dole amendment provides a means by which those Senators can challenge the bill. If the Senator's point of order is sustained, the relevant committee would then have to flush out or pull out that particular provision and enroll it separately before the bill could be in order on the floor.

So we have addressed that question that has been raised about: What if the bill slips something in but does not separately enroll it and a Senator believes it should be separately enrolled? We provided a process for that.

Finally, let me state, because the questions have been raised: We are not exactly sure how all this will work and we are a little bit nervous about the authority we are giving to the President; should we not test the idea? I suggest the idea has been tested. It has been tested for a century by our Governors in working with our legislatures. But in order to accommodate that concern, we have put a sunset in this bill so Congress can revisit this new authority, can examine it on the basis of how it applies, and if it wants can modify it or, of course, even repeal it. So it does contain a sunset. It will provide a test period to see how well it works.

Madam President, I suggest we will never know how fully effective the line-item veto power to the President will be, in terms of accomplishing real spending cuts, because it will fundamentally change the way we think and behave. That fundamental change will mean that items which would have been attached to appropriations bills or would have been incorporated in the tax bills will not be, because of the fear that they will be exposed to public scrutiny before it finally becomes law.

It is shining the light of public scrutiny on our debate, on how we write our legislation, and it is requiring a separate vote by Members in support of or in opposition to a particularly targeted item that does not benefit the national interest or the group as a whole but only goes to benefit a particular individual or a particular entity. It is that process which will, I believe, prevent most of what has taken place in the past that we find so egregious. So we will never be able to total up the amount of money that we have saved for our constituents and for the taxpayer because the line-item veto will have accomplished its purpose—its purpose being to prevent this kind of activity from taking place in the first place; to prevent the kind of embarrassment that we go through on an annual basis when we discover the items that have been slipped into the appropriations bills, slipped into legislation, slipped into tax bills at the last minute in conference, behind closed doors, late at night, and then presented in a massive bill with a limited time period for debate in the House of Representatives and an urgency because of the end of the session or whatever might occur—the urgency to get the legislation on the President's desk and signed.

The President then looks at this massive bill and says: Ninety or ninety-five percent of what is in here is what is beneficial to this country, what I want to support. But you are forcing me—as President Truman said, ''blackmailing me''—into either accepting the whole bill with the egregious provisions or rejecting the whole bill. And the emergency we are under, the timeframe we are under, requires that I have little choice except to not reject the whole bill.

That is what we are offering here today. I trust my colleagues will look at it carefully. I hope we can gain their support. It has the support of the sponsors of the bill and the vast majority of Republicans. It has support, I believe, of Democrats who have been prominent in helping us advance this concept. And we look forward to advancing it, hopefully, this week, and putting it on the President's desk soon—something we should have done a long, long time ago.

Madam President, with that I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Madam President, I offer my congratulations to the distinguished Senator from Indiana on the bill that has come before the Senate, the new line-item veto bill. Many of the provisions in the line-item veto bill that is before the Senate are provisions that were embodied in the original bill that I introduced and the distinguished Senator from Indiana cosponsored. The Dole bill does include a sunset provision, as I understand it. After 5 years we will be able to see whether this bill actually does tip the balance between the executive and the legislative branches of Government. It, as I understand it, also includes separate enrollment, which is the way the bill deals with the constitutional question in addition to the sunset.

The bill, as I understand it, also includes tax expenditures and does so in a way that is broader than the original

House bill. As I understand it, it essentially says that the President can veto tax expenditures that have the practical effect of benefiting a particular taxpayer or limited class of taxpayers when compared with other similarly situated taxpayers. While there is some ambiguity, I take this provision to have a broad interpretation.

I might offer an amendment during the course of the debate to clarify that this provision should be interpreted broadly, or I might through the course of the debate, in hearing what other Senators say about it and my own interpretation of the amendment, decide not to offer such an amendment. But I do think that it is a step far in the right direction. This is really an opportunity to bring tax expenditures into the line-item veto in a significant way, and allow the President of the United States not only to veto those pork projects that are in the appropriations process but also to look at every tax bill that often is dotted with special interest provisions or attempts to expand special interest provisions that are already in the Code and strike those lines with a line-item veto.

So, Madam President, when we have the cloture vote on Wednesday, I intend to vote for cloture. And I hope that we will be able to dispense with this bill by the end of this week and move on to other matters. I think this is an important measure.

I look forward to working with the distinguished Senator from Indiana who has been a good colleague throughout this process. I compliment him on the bill that has come before the Senate.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Madam President, I want to thank the Senator from New Jersey for his remarks and commend him for his longstanding efforts on behalf of the line-item veto concept.

The Senator from New Jersey has talked to me on numerous occasions about expanding the original concept of the bill that Senator MCCAIN and I have proposed to include—not just appropriated items but also tax expenditures. He, as a member of the Finance Committee, detailed for me the process of what most would consider tax pork that occurs as tax bills are written. It is not just the appropriations process.

I am pleased that we could address this issue in this bill as an amendment introduced last evening by the majority leader. I say to the Senator from New Jersey our goal, I believe, is the same—to address the same items that he attempts to address. I hope that as we debate through this and work through this we can clarify that so that Members know exactly what we are after. It is hard to get the exact words in place so that we understand just exactly how this applies to tax items. But I believe that the targeted tax expenditures which are targeted in the Dole amendment very closely parallel what the Senator from New Jersey has tried for so long to accomplish.

So we look forward to working with him. I thank him for his support.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call roll.

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

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

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:32 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ABRAHAM].

LEGISLATIVE LINE-ITEM VETO ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. ABRAHAM). The pending question is amendment No. 347 offered by the majority leader to the bill S. 4.

LEAVE OF ABSENCE

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I have to attend a meeting in Delta Junction, AK, pertaining to Fort Greeley on Friday, March 24. I ask unanimous consent that I be excused from attendance in the Senate from 3:45 on Thursday, March 23, until the Senate convenes on March 27.

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

The Senator from Idaho.

Mr. CRAIG. Mr. President, this afternoon I rise in support of S. 4, the Legislative Line-Item Veto Act.

What is now ongoing is, in my opinion, the long overdue and what I hope is a historic debate toward resolution of this very important issue.

Let me recognize both Senator COATS and Senator MCCAIN, as well as Chairman PETE DOMENICI and Majority Leader DOLE, for their willingness to work together to bring us to a point of compromise that I think has produced a line-item veto product in S. 4 that can pass the Senate, work through the conference with the House, and ultimately be placed on the President's desk with the degree of confidence I think we now have that he will sign it.

This is one of those items that an overwhelming majority of the citizens of our country say they agree with. It is certainly something that most Senators have agreed with in principle, and now that we have been able to refine it, we have a product that I think the majority can support.

The issues, of course, were the two-thirds override: What kind of authority would the President have in the ability to veto and in our ability to react to that veto? I think it has to be a tough vote, a supermajority vote. The idea of a simple majority, while I supported a concept like that a year ago, now clearly, if we can get the tougher version, we ought to do so.

The idea of separate enrollment or rescission is an issue that has been discussed. To extend the line-item veto authority in new, direct entitlement spending as well as appropriations is another issue that we had to work our way through. And, of course, to extend the targeted tax benefits, again, is another one of those issues that I am extremely pleased to see that we have been able to deal with.

Let me first talk about the majority versus the two-thirds override which is really at the heart of all of this. It is the heart of the division of authority and responsibility and the power associated with that authority. As I have mentioned, I have supported both approaches in the past, but I have always argued in doing so it was extremely important that the Congress of the United States pass the strongest possible line-item veto. In fact, as Senator MCCAIN read earlier yesterday, that is exactly what the President has now said publicly he wants—the the strongest possible product that the Senate of the United States or the Congress collectively can yield.

Last year's House passed a majority override. This year, an overwhelmingly bipartisan House, by a majority of 294 to 134, passed the two-thirds override, an important signal from that new Republican House.

Now that Senators know we are firing with what all of us know are real bullet votes, it is an opportunity to get our two-thirds. That is the product at hand now. That is why I am extremely pleased that we can deal with it.

The second issue I mentioned, the idea of separate enrollment versus rescission—as I say, I have sponsored both and cosponsored both because, whether I was in the majority or whether I was in the minority, I have always argued that we had to get to the President's desk and into his power some form of line-item veto. The stronger versions were always greatly appreciated by this Senator, but at the same time I felt it was critically important that we move the issue. Now my preferences lie clearly with a strengthened rescission approach. It is simpler. In enrollment, transmission to the President, and at signing of a law, it could be used as a scalpel instead of the idea of a butcher knife, because rescissions can reduce as well as zero out an item. I think that is the way we want to handle this.

But I will vote for a separate enrollment—or I would have, if that had been

the case. We think that is not going to be.

It should not sacrifice the good at the altar of the perfect. We have worked out what can be called near perfect on this issue, and I am pleased that all of the Senators came together to strive to build the compromise. The only line-item veto that will become law is the one that we can send to a conference with the House and work out our differences on. From what I am hearing from some of my former colleagues in the House, we can get that done now with the work product that we are debating here at this time.

Separate enrollment was a second-best approach. That still makes it definitely preferable to the status quo. Senator BRADLEY and Senator HOLLINGS have introduced a version of that concept. The Senate Budget Committee reported one out several years ago. The Senate considered a separate approach in 1985. It is not mysterious, last-minute kind of work. It is simply the kind of product that had to be looked at as we worked our way through the differences with this kind of legislation.

Opponents can have it both ways, I guess, in their arguments. Some of those who criticized us for defending a balanced budget amendment as reported from the committee now are complaining that the committee-reported bill may be changed on the floor. We now have built a majority consensus so that kind of issue will not have to be worried about or dealt with as we work our will in the final debate, moving through cloture, I hope, to final passage.

At a policy lunch today the leader, Leader DOLE, mentioned it was possible we could get to a unanimous-consent agreement that would not take us through cloture. I hope that will be the case. This ought not be a contentious debate, or protracted. When an overwhelming majority of the American people want their Government to perform in a certain way, then we ought to make every effort to get that done. And certainly both Senators MCCAIN and COATS, working with the other Senators mentioned, I believe have tried to accomplish that. And S. 4, I think, clearly embodies that kind of effort on the part of the Senate.

Extend it to targeted tax benefits, the other issue I have mentioned. It is important to remember that taxing and spending are fundamentally different kinds of things. When Congress reduces someone's tax burden we are not giving out something that is the Government's, although there are some here who would like to argue, when we talk about this kind of thing, that somehow it is taking money away from the Government. I strongly argue taxpayers' money is theirs in the first instance. It is a majority issue of Government, when Government decides to ask the citizens of this country to give a certain amount of their hard-earned effort in behalf of Government. But the idea that we are giving something back, to me has always been an astounding attitude on the part of many in Congress. I simply have argued the opposite and always will continue to do so.

I believe in a free society it is the citizens who govern and not the government. In this instance, I think we are caught in a debate of that kind of argument when we deal with the differences.

It is why I support the concept of a flat tax and always have. The line-item veto should extend to the tax side of the budget, and that is what we are trying to do now. If it is limited to a veto over narrowly targeted tax benefits—in other words, tax pork—then we ought to look at that. That is what this ought to do and that is exactly what we will be attempting to accomplish. Generally applicable tax relief, like rate reduction, indexing, or deductions or exclusions that apply to all taxpayers who are similarly situated, should not be the subject in some instances of a line-item veto. It should apply only in cases where similarly situated taxpayers within a group are targeted directly and are arbitrarily dealt with in tax legislation.

Let us debate substance in this instance and quit playing the politics of this. Let us pass a bill and send to the conference and to the President a document that truly works with the kind of issues we deal with and gives the President substantive participation in the processes of budgeting. I hoped what happened on the balanced budget amendment is not going to happen here. It now appears we have been able to strike a compromise that will allow it. But there is also something else important to remember. Balanced budget amendments require two-thirds votes. This will require a majority of the Senate voting in favor of this.

If we had been able to solve the problem of cloture, if we have been able to pass through that now with a unanimous-consent agreement—and I hope we can get there in the next few hours—let me tell you, it is going to be awfully important in resolving this issue and showing the American people the Congress of the United States and the Senate can be responsive to the issues at hand.

Promoting fiscal responsibility—that really is the issue underlying all that we do with the line-item veto. In 1974, from then until October 1994, the President requested 1,084 rescissions totaling $72.8 billion. Of the 1,084 rescissions, Congress approved 399, or about 37 percent. That amounted to $22.9 billion or 31 percent of dollar volumes requested.

Alone, a line-item veto process is not going to be enough to balance the budget. But it is widely estimated it can save at least an additional $10 billion a year in the current budgeting scenario. To paraphrase Senator Everett Dirksen: $10 billion here and $10 billion there, and pretty soon we are talking about real money.

Interestingly enough, while we might forget that, thank goodness, the taxpayers and the American public have not forgotten it. That is why the line-item veto constantly over the years has increased in popularity as a concept and an important device for the executive branch of Government to have.

Does it yield exclusive power to the President or to the executive branch? Absolutely not. But what it does, whether it is a Republican President or Democrat President, it gives that President the opportunity to single out some of the budgeting and expenditure activities that have gone on here on this Hill far too long. The special project of the special Senator, knowing full well that project alone could not come to the floor and sustain itself with a majority vote of the Senate itself, but because it has been tucked away in an appropriations bill, because it was give a little here and get a little from another Senator—that game has been played for years. And literally hundreds of billions of dollars have been spent for very questionable projects in individual States that should never have been allowed. That is the goal of a line-item veto. That alone would save us billions of dollars a year, but that is not the only goal of a line-item veto. The other goal is for the President himself or herself to participate directly, to deal with broader issues, if they will, to cause the targeting of the debate when it comes to the expenditure of tax dollars in ways that simply have not been targeted.

I have served in State government where Governors had line-item vetoes. I have had to go against a veto, take it to the floor of the State Senate in Idaho, and argue why we ought not to sustain the Governor's veto in many instances.

Let me tell you. It really works to refine your thinking. It forces you to do your homework. It forces that issue to the floor in a laser kind of direction of the conference or in this instance the Senate's attention on a given legislative issue, a given appropriation issue. All of us who have served here for any length of time know very clearly that when many of these appropriation bills come to the floor they are very large in nature, and the balance on them that has been created is oftentimes very precarious.

So the question of legislative accountability, as I have been talking about, has to be one of the other most important issues in bringing about a line-item veto. As I have said, many of these appropriations bills involve hundreds of pages of detail, and it is virtually impossible for every Senator and for all staff to read every bill, every page, every area of fine print.

Certainly, if it has happened to me once, it has happened to me many times over the course of my years in

serving Idaho both in the House and in the Senate to go home and to hold a town meeting and to have someone come and say, ''Senator, did you know that in that bill you just passed there was that provision in it?'' In all fairness I have to say, ''You know, I did not know that. If I had known it, it might have changed my vote or it might have changed the attitude in which I dealt with a given issue.'' That is the responsibility that comes about as a result of giving the President the kind of authority that is now offered in S. 4, this very critical piece of legislation.

Very simply, that is why the American people by an overwhelming majority have supported this concept.

So as we have worked out our differences in dealing with the style of vote, and the way we handle different items that target the President's attention and his authority under the line-item veto, in all fairness, Mr. President, I am extremely proud of the work that we have been able to do and what I think will show on the final vote to be a very bipartisan issue.

One of my voters in Idaho said the other day, ''Well, Senator, do you really think this is the time to give the President a line-item veto? I mean he is a Democrat, you know.'' I laughed and said, ''There is no good time, and there is no bad time. I have always supported this idea, and if it is good enough for Ronald Reagan and George Bush, it is good enough for Bill Clinton, and all of the other Presidents who will serve after them.'' Why? Because it is good public policy. It is the right thing to give the executive branch of Government because it fine tunes, it brings about accountability, and it causes the Congress of the United States and the Senate to do its homework in the kind of detail that we have not been producing in the past.

In the final analysis, when I mentioned that 1,084 rescissions that Presidents have asked for and the 300-plus that we have been able to agree on, and the tens of billions of dollars that have been saved, and the more that will be saved by the kind of effort that we are involved in today, that is the bottom line. That is the bottom line we all strive for. That is why this line-item veto embodied in S. 4 is good public policy.

I hope that we can work out the necessary unanimous consent so that we do not have to march down the road of a cloture vote and that we can then bring ourselves to the finality of the debate and final passage. But in the end, if we cannot, then I will certainly support cloture. It is time we bring this issue finally to the floor for debate or for a vote, and I hope we can accomplish that.

I yield the remainder of my time.

Mr. COATS. Mr. President, I thank the Senator from Idaho for his comments, for his support, and for this effort. I appreciate the contributions that he has made over the past several years in attempting to deal with this.

Mr. President, I note the Senator from West Virginia is on the floor. I certainly have no immediate requests for time at this point. I would be happy to yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from West Virginia [Mr. BYRD] is recognized.

Mr. BYRD. Mr. President, I suppose one of the evils that was included in Pandora's box was the evil of the common cold, and I seem to have been stricken with that virus for the present.

At last, we have seen unveiled the amendment which is the product of the frenetic efforts of our Republican friends to come up with something of a line-item veto nature behind which they could rally a majority of their Members. Even a cursory examination of the amendment will compel one to say, with, Macduff, ''Confusion now hath made his masterpiece.''

I think it is prudent to reflect with some care and detail on this far-reaching measure. I find the transfer of power from Congress to the President, which would occur if this amendment were adopted and implemented, a disturbing proposition. Mr. President, I fully realize that when a Senator starts to talk about the shifting of power from the legislative branch to the executive branch, his words, in great measure, fall upon deaf ears insofar as his colleagues are concerned. One may talk until he is blue in the face, though he may have lungs of brass and a voice that will never tire, he simply cannot get within the eardrums of a good many of the Members of this body if he happens to be talking about separation of powers and checks and balances. They pay little or no heed to what is being said. Consequently, I daresay that what I have to say today will probably be treated in the norm. That is, it will not be listened to by many Senators. Those who may happen to pass by a TV screen and may hear it will nevertheless pay little attention to it. Even if they were to sit in front of me here in a chair and listen raptly, it would have no impact upon them.

I am sorry to say that we have come to such a state in the U.S. Senate that we are not disturbed when measures come before this body the effect of which would be to transfer power from the elected representatives of the American people, in the legislative branch, to the Chief Executive. But that is one thing this is all about.

This is not a line-item veto measure. It may be called that, as a duck may be called a goose or a guinea pig or a chicken. But the duck is still a duck, and all may call this a line-item veto who wish to call it that. But it is not a line-item veto. Nevertheless, if it is enacted, the shift of power will have taken place. The only good thing I can say about the amendment that has been offered by the distinguished Republican leader is that it does have a sunset date.

Consequently, there will come a time when the Senate, if it has learned anything in the meantime, will perhaps make a determination not to go down that fateful path again and renew the life of this measure. I do not denigrate those who support this measure. I know that the distinguished Senator from Indiana [Mr. COATS] and the distinguished Senator from Arizona [Mr. MCCAIN] have long labored in this vineyard, and undoubtedly they believe in what they are doing. They believe it is the right thing to do for the country and the right thing to do in the effort to get some kind of control over our massive deficits. So I do not in any way cast aspersions on them. We differ. We differ in our philosophy, I suppose. We probably differ in our concept of the Senate and the part that it is to play in the universe of institutions created by the Constitution.

I think it is prudent to reflect with some care, as I say, on the details of this far-reaching measure. I do find it a disturbing proposition to contemplate the transfer of power from Congress to the Executive. The power we are talking about here is the control over the purse. I will not belabor the Senate with the long history of the people of the British Isles, the long history of the English people, who fought for centuries to bring about the logic of that power over the purse in the hands of the elected representatives of the people of England, the reposing of that power over the purse in Parliament. I have not sought to belabor that point at this time. I think that that, like almost anything else one may say on this subject, would probably go unheard, even though there may be those with ears who might otherwise listen. The fact that our Framers drew upon the experience of the colonists and the States, which in turn had drawn upon the experience of Englishmen for centuries, really means nothing in the waiting ears of most of today's Members of this body.

Few people attach any, or certainly not very much, significance to the checks and balances and separation of powers which our Framers constructed. Few people attach any significance to the purpose of that separation of powers. Few understand that that mechanism grew out of the experiences of centuries of time in the motherland of most of our forebears.

So it might be a waste of time to attempt to dwell upon those things, except if one wishes that the record, which will last a thousand years, will still be read by some, at least, who do work in the research field and may find it of interest accordingly. But to most of us here today, most of us who serve in this body, we do not pay much attention to history. History is bunk, as Henry Ford was supposed to have said. And I gather that most of my colleagues look at history in about the same fashion.

But the time will come when there will be those of posterity who will look back and see the record. They will know where the parting took place and where the delinkage occurred.

The power of the purse, which has been lodged in the legislative branch for over 200 years, would, in considerable measure, be shifted to the executive branch, and specifically to the Office of Management and Budget.

That is where the power is going to go, to the Office of Management and Budget.

One needs only to recall the words of David Stockman a decade ago when asked, at the American Enterprise Institute Conference on the Congressional Budget and Empowerment Control Act, what the line-item vetoes effect on the Federal deficit would be. In a burst of candor, David Stockman replied: ''Marginal, if at all.'' Mr. Stockman amplified his answer by saying: ''Line-item veto is about political power and political control. It can be used for lots of things. It would be great for the director of OMB.'' David Stockman's words could not be more true, and when applied to this amendment, they hit the nail right on the head—right on the head.

There are those who say, ''Well, the States have the line-item veto. Why not give the President the line-item veto?''

There are those who, as former Governors, say, ''I had the line-item veto when I was Governor. Why not let the President have the line-item veto?''

Mr. Reagan said when he was Governor of California, ''I had the line-item veto. Now give me the line-item veto as President of the United States.''

Well, I think the problem with that is that being Governor of a State is one thing; being President of the United States is an entirely different thing.

I have in my hand what we know of as the ''West Virginia Blue Book''—the ''West Virginia Blue Book.'' Well, in this ''West Virginia Blue Book,'' there are many items of interest, but the thing I shall point to today is the Constitution of the United States of America. It is printed in the ''West Virginia Blue Book.'' And in the ''West Virginia Blue Book,'' it covers all of 15 pages. That is it. That is the Constitution of the United States of America—15 pages in length. Right here.

It is 60 pages in length—60 pages for the constitution of West Virginia; 15 pages for the Constitution of the United States.

The constitution of the State of West Virginia goes into much detail about numerous and sundry items that are of interest to the State of West Virginia, of interest to a State.

And I daresay that there being 50 States, I would assume there are 50 constitutions of 50 States in this country. And I would also assume that not one of those other constitutions, not one of the other 49 constitutions, is the same, precisely, as the constitution of my State of West Virginia. They are all different.

Any high school student who is worthy of graduating from high school understands that the State government and Federal Government are two different things. Each operate in a separate sphere. The State is supreme in its sphere. The Federal Government is supreme in its sphere. Two far different entities, and one is not to be confused with the other.

The Constitution of the United States provides certain powers for the Congress: ''To borrow money on the credit of the United States.'' That is a power of the Congress.

Let me read just a few of the section 8 powers, section 8 of article I of the Constitution of the United States.

> The Congress shall have Power To Lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.

Now not one of the 50 States' constitutions have that proviso in it. Not one.

''The Congress shall have Power . . . To borrow money on the credit of the United States.''

''The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.''

Not one of the 50 States, not one, provides that power upon the government of the State.

''The Congress shall have Power . . . To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; To coin money''—no State in this country may coin money. Prior to the creation of this Republic, States could coin money in America. Under the Articles of Confederation, the States could coin money. But no longer. Only the Federal Government.

''The Congress shall have power . . . To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.''

I know it is old fashioned to read the Constitution any more around here. Before it is finally relegated to the rare book section of the Library of Congress, I would advise my friends to come to me and get a copy of this Constitution. I carry it in my pocket. This is the Constitution of the United States. It cost me 15 cents. It is a little worn now. I think it costs $1 now, but this one only cost me 15 cents. I have several copies of these which I will give to any Member of the Senate who supports this line-item veto. I will be especially happy to give it to them. Come and get a copy of the Constitution and read it. See the difference in the State governments vis-a-vis the Federal Government.

> To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
>
> To establish Post Offices and post Roads.

And so on and so on.

> To declare War . . .
>
> To raise and support Armies . . .
>
> To provide and maintain a Navy.

These people argue about Governors having the line-item veto, give it to the Governors; why not give it to the President of the United States?

> To provide and maintain a Navy . . .
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof.

And so the Framers deliberately created this system of separation of powers and checks and balances.

Now, at the State level, the system is not so clearly and delicately delineated, as it is at the Federal level. There is a system of separation of powers at the Federal level. There is a system of checks and balances at the Federal level. One can stand and talk until he is blue, until his gills turn blue and we will still have Senators saying, ''Well, the Governors have line-item veto; this is just process.'' Well, it may be just process, but it is part of the constitutional system of checks and balances and separation of powers and it is worth fighting over.

I cannot conceive of a reelection for the U.S. Senate being so close that I would be defeated because I voted against the line-item veto. I cannot conceive of that, and if it is, then so be it. I believe, having taken an oath to support this Constitution 13 times in going on 49 years now, I believe in that oath. I believe in supporting and defending this Constitution, and that entails the defense of the separation of powers and checks and balances. We cannot do that with a wink and a nod. We cannot just brush it aside and say, ''Oh, that's process. The Governors have it, we ought to let the President have it.''

I know that there are a lot of Governors who believe that that is a sufficient argument to make and that it is defensible. But I say read the Constitution of the United States. Read the Federalist Papers. There are 85 of them. About two-thirds were written by Hamilton; about a third by Madison. Some of them are in dispute as to who is the author, Madison or Hamilton. Five were written by John Jay. No. 2, 3, 4, 5 and I believe No. 64 were written by John Jay. Read them.

One cannot really fully understand this system which was created by the Framers, among whom were Hamilton and Madison, without reading the 85 Federalist papers. It is the most marvelous exposition of this system of Government that one may find anywhere under the Sun. And we are about to lightly toss away this power over the purse, which is the critical balance wheel in the system of checks and balances.

The novel approach of this amendment—and this is a novel amendment, a novel approach—the novel approach of this amendment would empower the enrolling clerk of the body in which an

appropriations measure originated to dissect the bill or joint resolution item by item, paragraph by paragraph, section by section and then create bills and joint resolutions—so-called bills and joint resolutions—for each of those items, add to them fictitious enacting clauses—fictitious enacting clauses—and send the composite products to the President as though these items were legislative measures passed by both the House and the Senate in the format in which they are presented.

For those who have the patience to listen and who may really care—and I do not expect all my colleagues to be in that category, and perhaps I cannot blame them. Because I feel so strongly and so deeply about this, a common cold will not keep me from speaking. Oh, that my voice would carry to the hills or the mountains, and though I had to be brought into this Chamber on a stretcher, I would still fight for this Constitution and its system. It is not a process. Process. This is the Constitution we are talking of here. This is the constitutional system that we are about to imperil.

This amendment that has been brought in by the distinguished majority leader—and he is a distinguished majority leader, a very distinguished majority leader—this amendment provides, in essence that a bill—this is a bill. This bill is H.R. 4506. It is a bill that passed the Congress in the 103d Congress, the second session. It is an act making appropriations for energy and water development for the fiscal year ending September 30, 1995, and for other purposes. We would refer to this as the energy water bill. It is not a very lengthy bill.

This bill that is 43 pages—43 pages—includes the Senate amendments. This bill came over from the House. H.R. 4506 came to the Senate from the House, and the Senate acted to amend the bill in certain places. There is the bill as passed by the Senate and the House.

Now, the bill went to conference so that the differences between the two Houses could be resolved. When the bill came back from conference, this is what it looked like. This is the conference report to accompany H.R. 4506, making appropriations for energy and water development for the fiscal year ending 1995, and for other purposes. And so I hold in my hand this conference report. This means conferees from both Houses sat down in conference, spent several hours, perhaps days, in resolving the differences between the two Houses in connection with this bill, H.R. 4506.

This conference report lays out in minute detail the items of appropriation, setting forth the budget estimate on each item and the conference agreement on each item. There they are, hundreds of them.

Now, when this conference report was agreed on by both Houses, then the act went down to the President for his signature. This conference report did not go to the President for his signature. He could not look into the conference report and veto items in that conference report because the conference report does not go to the President.

He looks at the bill. Here is the final public law, Public Law 103–316, August 26, 1994, and it is composed of—I have not counted the number of pages in it—17 pages. That is the final product. If someone wants to see the final act making appropriations for the Department of Defense, Department of the Army, Corps of Engineers, and so on, they would ask for Public Law 103–316, 103d Congress. There it is. That is the product of months of work, starting with this bill which is sent over from the House, amended in the Senate, going to the conference, with the conferees bringing back to each House this conference report, and it went down to the President. He signed it. This is the final product. That is public law.

Now, at the State level, under the State constitutions, the State laws, most of the bills making appropriations at the State level are set forth by items in the bill that is to go to the Governor's office, and the Governor can line item this out, strike through it with his pencil, put his initial there; go down to this item, strike it out, and put his initial there; go down to the next item, strike it out, and put his initial there. He has line-item vetoed several of the provisions in that bill.

Well, I have already shown why the President cannot line-item veto here. In the first place, he does not have the constitutional authority to line-item veto, never had it, does not have it today. But the items are not set forth in such minute detail, even if he had it. Most of the items are set forth in large sums of moneys. To find out what is in each sum, one goes to the conference report to find out the details.

Now comes this amendment which says that any appropriation bill, once the amendment is agreed to, that hereafter becomes law, any appropriation bill that comes to either body that does not have each of these items set forth in the bill may be sent back to the committee unless there is a waiver by three-fifths of the persons elected and sworn. So every bill will now have each of these items, each item in the bill. When it goes to conference and comes back, the conference report, if the conference report which heretofore I have had in my hand as representing the conference report on H.R. 4506 comes back at a future time, the bill to which it relates will have to have every item, every item enumerated therein.

And then what would happen? Well, now, this is sleight of hand. If I ever saw sleight of hand, this is it in its rawest form. This bill will be sent back to the clerk, the enrolling clerk of the body in which the bill originated. Appropriations bills by custom, not by the Constitution but by custom, originate in the other body. They originate in the House of Representatives.

Consequently, the bill, once the conference report is agreed to in both bodies, will be sent back to the enrolling clerk of the House of Representatives where the bill originated, and that enrolling clerk in the House of Representatives will break out each item, each unnumbered paragraph, each section, and enroll each item, each section, each paragraph as a bill. It will be kind of a cut-and-paste operation. In order to speed up the process, I assume that the clerk will have a lot of preprinted forms, and those preprinted forms will have on them, ''Be it enacted by the Senate and House of Representatives of the United States of America and Congress assembled.'' That will all be already printed on the form. And then the clerk must in the wee hours of midnight—he will undoubtedly have others help him—there in the subterranean caverns of this massive Capitol, the enrolling clerk with his helpers will break that bill down into those hundreds of little pieces and each will be deemed to have been a bill passed by both Houses. And each of those so-called bills or joint resolutions will then be signed by the Speaker of the House and by the President pro tempore of the Senate, or their designees, and sent to the President, to the White House.

Now, let me just show you what this would have meant in the case of this one bill, H.R. 4506. Remember, this is the bill that came to the Senate. This is the final product, the conference report. There it is, the conference report, setting forth all the paragraphs, sections, 116 pages. Now, that bill was enrolled and sent down to the President. Here it is. That is the public act, 16 pages.

But now for the enrolling clerk to have broken down that bill into each item, here is what it would have looked like. This is it. Ipso facto, the enrolling clerk waves the magic wand, the enrolling clerk of the House of Representatives waves a magic wand over that bill, and here is what we have: more than 17 pounds of so-called bills—there are over 2,000 of them—that go to the President for his signature.

Here is one of the bills. Here is another one. These are all to be sent down to the President after having been enrolled by the clerk of the originating House—which, as I say, in this instance it will be the other body. Each of those will go to the President.

Does anyone in this Chamber believe that the President is going to sit down and look at those and decide which he will sign and which he will not? No. Those will be handed over to the Office of Management and Budget and those fine, unelected, unidentified, nameless, anonymous bureaucrats—and they are all good people—will take a look at those and they will determine which of these, or somebody will determine and give to the President—determine those that ought to be signed, those that ought to be vetoed.

Let us see what the Constitution says. Let us see what the Constitution says about bills. This is article I, section 7, clause 2. This is the Constitution. This is not the so-called Contract With America. This is the Constitution of the United States. This is the way it has appeared for 206 years. There has been no change in this language in 206 years. That is the same language that was there when Washington became President; when Adams became President; when Jefferson and Madison and Monroe became President; when John Quincy Adams became President, the same language; and Andrew Jackson, William Henry Harrison—no, Van Buren, Van Buren—he found it written just like that. Then Harrison, then Tyler, Polk, Taylor, Fillmore, Pierce, Buchanan, Lincoln, Andrew Johnson, and Grant. They found the same language. Never a change.

Johnson, Grant, Rutherford B. Hayes, Garfield, Chester A. Arthur, Cleveland, Benjamin Harrison, Cleveland again, McKinley, Roosevelt, William Howard Taft, Wilson.

I was born in the administration of Woodrow Wilson. He had the same language—it has not been changed. It was not changed. That is the same language that has been there all the time.

Wilson, Harding, Coolidge, Hoover, Roosevelt found it—not a blemish, not a stain. Just like it was when George Washington said when he had to sign a bill he had to sign it all. There was not any line-item veto in it.

It has not been changed since Roosevelt. Truman did not change it, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter. Reagan wanted a line-item veto. But that is it. It withstood the trials of time.

The War of 1812; the war with Mexico, 1848; the Civil War, Spanish-American War; World War I, World War II, Korean war, Vietnam war, the Persian Gulf war. All of the panics and depressions, the panic of 1837, 1857, 1873, 1893, 1907, 1929, and 1930. This language has served throughout all of American history.

And what does it say? It says:

> Every Bill, which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States . . .

Let us read that again.

> Every Bill, which shall have passed the House of Representatives and the Senate . . .

That indicates to me that when something reaches the President's desk that is called a bill, it is something that shall have passed the House of Representatives and the Senate. It cannot possibly mean something that was enrolled by the enrolling clerk of the House of Representatives. Can any Member truthfully say that if this legislation had been adopted prior—this amendment by Mr. DOLE—had been adopted prior to the passage of this energy water bill, can any one of us say that we voted for this bill? Can we say we voted for that bill? Can we say we voted for this bill? No. I never saw it. That bill did not pass both Houses. That bill did not even pass one House.

Each of these little billettes will have to carry a designation on it that will distinguish it from each of the other 2,000 little billettes. So I suppose this would be H.R. 4506 (1). The next one will be H.R. 4506 (2). The next will be H.R. 4506 dash, or parenthesis, 3.

Finally we would get to H.R. 4506–1909, H.R. 4506–2001.

Then, to make believe that each of these passed the House of Representatives and the Senate is like looking at the noonday Sun and saying it is midnight, without a star in the sky.

This is tomfoolery. I cannot believe that we Senators in our generation are going to fall for this kind of sleight of hand.

This is public law here, H.R. 4506. Where are we going to find the public law on H.R. 4506 when it is broken down into over 2,000 little make-believe bills that have been enrolled by an enrolling clerk who is not answerable to the voters and sent down to the President? Where is the public law? Show me the public law.

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves, he shall sign it . . .

What is the antecedent of ''it''? The antecedent is ''bill.'' If it is 2,000 little ''it's,'' how is he going to sign ''it''?

> but if not he shall return it, with his objections to that House in which it shall have originated . . .

Obviously, one item, one bill, is being contemplated by the Framers. They are saying you cannot past two bills with the same number at the same time.

> If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law.

We are going to have over 2,000 laws in one bill, and some bills will contemplate more laws than that. Some not as many, but some more. We just cannot be in control of our mental faculties if we are going to look at this monstrosity and vote for it. We surely cannot be kidding anybody but ourselves.

Have we read the Constitution lately? From the very beginning, S. 1 in 1789 was the Judiciary Act. It was a Senate bill. It started out in the Senate. Its number was S. 1. That created the judiciary. And ever since bills have been denominated S. 1 or H.R. 1. Resolutions are S. or S. Res. 1 or S. Con. Res. 1 or S.J. Res. 1, depending on whether they are simple resolutions or concurrent resolutions or joint resolutions. This has been the style from time immemorial going back into the colonial legislatures, going back into the British Parliament. It has been ever thus.

The passage of a single appropriation bill by both Houses would be followed by a cut-and-paste operation in the office of the enrolling clerk of the originating body, and out of the wee hours of the night, the fructifying wet pen, the scissors and paste and the whiz of the computer of the enrolling clerk and his staff, would pour out a vast litter of mini-bills, or ''billettes,'' not a single one of which had been passed by either body of Congress.

Each of these is going to have a fictitious enacting clause on it.

The genuine bill, adopted by both Houses, will have been kidnapped, and subjected to the prostitution and mutilation of a cut-and-paste operation which may rightly be termed ''a getter of more bastard children than war's a destroyer of men.'' Hundreds of little orphan bills—nobody is going to claim these little orphan bills by the enrolling clerk. ''And where did you come from?'' ''I came out of the enrolling clerk's office.'' Who enacted this bill? Who will lay claim to have enacted this bill? What Senator will lay claim to have voted on this bill? Not I. Not one of these bills will have passed the House and the Senate or the House or the Senate, not one.

Hundreds of little orphan bills will then make their way to the Speaker's desk and to the desk of the Senate President pro tempore to be laboriously signed and sent in a seemingly endless stream to the Oval Office, there to be signed or vetoed by the President.

I tell you, I am glad this was not the practice when I was President pro tempore of the Senate. Signing all of those bills will be a never-ending job in itself. It will keep the President pro tempore busy just to sign those bills.

Whatever else one may call it, this amendment will certainly prove to have been a prolific one, and the period of incubation or gestation which it will have created will put to shame that of the guinea pig or rabbit or a mouse. This multiple mutation of the legislative process will boggle the mind.

We surely cannot be in our senses. We are about to take leave of our senses to vote for this piece of junk. This is not a line-item veto. Why do we not bring on the line-item veto? Let us vote for a constitutional amendment to give the line-item veto. Let the people decide to give the line-item veto to the President.

As compared with the line-item veto, in the raw sense, this amendment is a thing of unnatural deformity—''nothing but mutation, ay, and that, from one bad thing to worse.''

It is a proposal which represents a significant abdication of power by the legislative branch in favor of the executive branch.

It is an indication of power. We are becoming not only fools but lazy fools. Just turn it all over to the President. Abdicate our power. Give it to the man downtown. Bow down to power. Bow down to power. Remember what David Stockman said. This is a ''power play.''

It is a pale substitute for really doing something substantial about the alarming budget deficits.

The amendment would also strengthen the House of Representatives at the expense of the Senate.

Do we want to do that to the Senate?

Consequently, the House of Representatives would determine the format of the measure that is sent here and would determine how these measures would be broken apart into items or paragraphs or sections. Great power to the President. More power to the Speaker. Great power to the Director of the Office of Management and Budget. And all resulting in diminished authority of the U.S. Senate. Senators all know that when appropriations bills come to the Senate, the Senate has a right to amend them. The two features about the Senate which, more than all others, make the Senate the premier upper body in the world are the ability to amend and the ability to speak at length. Now when appropriation bills come to the Senate, the format will have been laid out by the other body. When all of these little ''billettes,'' these little illegitimates that cannot really point to any parent—they cannot point to a parent bill because the bill that passed both Houses no longer exists. Where does it go? What does the enrolling clerk do with it? Does he keep it? Does it go to the Archives? Does it go to the Department of State? What happens to that bill? All of these little illegitimates—I could call them bastards, but I will not do that; I will call them illegitimates. All of these flow down to the President in a stream. Let us say the President vetoes 75 of these 2,000. He vetoes 75 and they all come back. Where do they go when they come? Do they go back to the Senate? How many would say they go back to the Senate? They go back to the body in which they originated. Of course, these did not originate anywhere. They originated in the enrolling clerk's office. But they would go back to the House of Representatives. The House would determine whether or not it will vote to override the veto. If the House does not vote to override the veto, then the Senate does not get a crack at it at all.

We all know that the Senate does add to the bills that come from the House by way of amendments. Some of the little ''billettes'' that the President would amend, some of these little illegitimate offspring that the President would decide to veto, would have originated in the Senate because the Senate has a right to amend. Do you think the Senate is going to get a second crack at that? Why, no. The House undoubtedly will not attempt to override a veto that the President has attached to one of these ''bills,'' which originated in the Senate.

This is an amendment by ROBERT C. BYRD that originated in the Senate. That is supposed to be called a bill under this amendment. It originated here. But it is not going to be sent back to the Senate. It is going to go to the House because it will have a House number on it—H.R. 4506, in this case. This number will be H.R. 4506–219, which originated in the Senate. It was an amendment added by the Senator from Nebraska [Mr. EXON]. But it will not come back to the Senate. The House will decide whether or not there will be an attempt to override that veto, and if the House decides not to attempt to override it, the Senate does not get a second crack at it.

I do not know about other Senators, but I am not in favor of subordinating the Senate to the other body. The Framers meant for the two bodies to be equal, each to play its own role. There were checks and balances between the two Houses. There will not be any checks and balances here in this situation. The Senate will not be a player.

So let us take a look at this marvel of legislative fecundity.

This is an amendment on which there is no committee report and in connection with which there are no printed hearings. That is the amendment that was offered yesterday by Mr. DOLE and immediately a cloture motion was thrown in, to bring it to a vote. That is what we have come to now in this body. We bring in an amendment which is a brand new bill, which the Members of the minority had nothing to do with insofar as helping to shape it. It is offered and a cloture motion is offered on that amendment, and that means we have to vote up or down, one way or the other, on the cloture motion the following day but one, meaning tomorrow in this case.

No printed hearings. No committee report. The amendment comes before us much like Minerva, who sprang from the brain of Jove, or Aphrodite, who sprang from the ocean foam. It is the product of a collective fertile mind, and from it will flow fertile confrontations, fertile vetoes and, in all likelihood, it will undoubtedly prove to be a fertile field for exploitation by the lawyers of the country.

It requires each item of any general or special appropriation bill or any joint resolution making supplemental, deficiency, or continuing appropriations that is agreed to by both Houses of Congress to be separately enrolled as separate bills or joint resolutions for presentation to the President. Any appropriations measure that passes both Houses of the Congress will be turned over to the enrolling clerk of the House in which the appropriations measure originated, to be then enrolled as a separate measure for each item in the appropriations bill. Each of these little orphan bills—Little Orphan Annie is going to feel put upon when she sees all these multitude of orphan bills running down to the White House—each of these little orphan bills shall bear the designation of the parent measure of which it was a ward prior to such enrollment, together with such other designations as may be necessary to distinguish each little baby bill from the other hundreds of measures enrolled pursuant to the provisions of the amendment. Each appropriations ''billette'' will contain one item in the original bill and each of these little offspring will be deemed to be a bill under clauses 2 and 3 of section 7 of article I of the Constitution of the United States. Each shall be signed by the Speaker of the House and the President of the Senate, or their designees, and presented to the President for approval or disapproval in the manner provided by the Constitution for bills and joint resolutions generally.

We will take a look at the phraseology of the Constitution on the chart to my left again.

Article I of section 7 of the Constitution provides that, ''Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States''; note that the Constitution refers to ''every bill which shall have passed'' both Houses of Congress shall be presented to the President for his approval or rejection. But this amendment now reads, in part, on page 4 of the amendment:

> A measure enrolled pursuant to paragraph 1 of subsection (a) with respect to an item shall be deemed to be a bill under clauses 2 and 3 of section 7 of article I of the Constitution of the United States—''shall be deemed to be a bill.''

Well, the Constitution does not say that every bill which may be deemed or which shall be deemed to ''have passed'' the two Houses. It clearly states that every bill which shall have passed. We do not deem it to have passed. We do not consider it to have been passed. We do not think of it as something that has passed. We do not look upon it as something which otherwise may have passed. It is something that passed. Every bill which shall have passed the House of Representatives and the Senate shall be presented to the President for his signature.

Under this rogue amendment, not a single one of the bogus bills enrolled by the clerk of the originating House of Congress will have ''passed'' either the House or the Senate, to say nothing of both Houses. Not a single Senator nor a single House Member will have voted on the cut-and-paste so-called bill which goes to the President. Hundreds of mini-bills will flow from a single appropriation bill or joint resolution, and not one of these ''fictions'' will have ''passed'' the House and Senate in accordance with the requirements of the Constitution. Not one will be a ''bill'' in the traditional sense of the word; each will be ''deemed to be a bill.''

Each will be ''deemed'' to be a bill; each will be pretended to be a bill. Not one will be a bill in the traditional sense.

It will be claimed that this odd construction is in keeping with section 5 of article I of the Constitution which provides that each House may determine the rules of its proceedings.

So there will be those who will say, ''Well, in view of the fact that under the Constitution each House may determine the rules of its proceedings, it is within the power and authority of each House to determine what is a bill. And if the House and Senate want to deem something to have passed, well, that is within the rules of the body.''

But certainly, the Framers could not have intended that any interim rules of the two Houses could invalidate the clear instructions of the Constitution with respect to the passage of a bill.

So if, within our internal rules, we may decide to ''deem'' a certain piece of paper as being a bill, surely the internal rules of the two Houses can never supersede or override the clear language of the Constitution itself which says, ''Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States.''

So the Framers could not have intended that any internal rules of the two Houses could invalidate the clear instructions of the Constitution with respect to the passage of a bill.

Now if a bill may be ''deemed'' to have passed both Houses, then might not the first clause of section 7, article I, be also ''deemed'' in its thrust?

Let us read the first clause of section 7, article I.

> All Bills for raising Revenue shall originate in the House of Representatives.

Now, if Congress may deem this to have been a bill passed by both Houses, why could not Congress deem this to be a revenue bill that was deemed to have originated in the House of Representatives? If Congress may deem a piece of paper enrolled by the clerk of either body, which no Member of the Senate or the House has ever seen, if that may be deemed a bill and be deemed to have passed both Houses, then why not deem this tax revenue measure which originated in the Senate, why not deem it to have originated in the House? That would be as much a use of the internal rules of the Senate as would be the case in the former instance.

There are those who say that, what Congress gives Congress can take away. True. But when Congress seeks to take back this giveaway of its powers, it must be prepared to produce a two-thirds vote in both Houses to override a Presidential veto. This is a lose-lose proposition, as far as Congress is concerned. Appropriations for national defense and for the national welfare would be determined by unelected, unidentified bureaucrats in the Office of Management and Budget, who would determine, for the President, which of the orphan measures may be considered worthy of his signature and which should be the victims of his wet veto pen. No matter what pretty face one may attempt to put on this hydra-headed monster, practically speaking, it will result in a massive shift of power over the purse from the legislative branch to the executive branch.

I know that means little or nothing to some of the Members of this body who have sworn to uphold and support and defend the Constitution of the United States. I realize that means nothing. But, nevertheless, it is there.

The Constitution should not be demeaned and debased by this kind of slight-of-hand work that would result from this amendment.

It is nothing less than legislative sleight-of-hand, and no self respecting Member of the Congress should allow himself or herself to participate in this emasculation of the Constitution to which we have all sworn an oath to support and defend.

The great name of Thomas Jefferson has been frequently used in this Chamber over the past several weeks during the debate on the balanced budget amendment to the Constitution. Let us see what Thomas Jefferson has to say with respect to the passage, the enrollment, and presentation of a bill to the President.

Mr. President, I do not have in my hand a copy of the manual of parliamentary practice by Thomas Jefferson, but I have one downstairs in my office. The title of it is ''A Manual of Parliamentary Practice for the use of the Senate of the United States.'' It is by Thomas Jefferson, first edition, 1801.

On page 73 of Jefferson's manual, it is stated, ''After the bill is passed, there can be no further alteration of it in any point.''

Now those who have been invoking the great name of Thomas Jefferson throughout the debate on the balanced budget amendment to the Constitution, let them hear. Jefferson, in his manual, states, ''After the bill is passed, there can be no further alteration of it in any point.'' And for his authority, Jefferson cites William Hakewill, who prepared a manual entitled ''The Manner and Method How Laws are there Enacted by Passing of bills, collected out of the Journal of the House of Commons,'' 1671. Thus, a bill, as contemplated by this amendment, stripped out of the parent measure and enrolled by the enrolling clerk, presumably on a predetermined form, with a fictitious enacting clause, flies in the face of tradition, custom, and parliamentary practice coming down to us from time immemorial, from the British Parliament, the Colonial Legislatures, the American States that existed before the Constitution, and the practices of 206 years of legislative history under the Constitution. This is nothing less than legislative heresy, and ''With new opinions, divers and dangerous, which are heresies, and, not reform'd, may prove pernicious.'' It is a pernicious amendment, and it is bound to have pernicious effects, if it is written into law.

Let us now take a look at rule XIV of the Standing Rules of the Senate and determine whether or not each of the so-called bills and joint resolutions will have complied with the provisions of rule XIV.

Rule XIV, paragraph 2, reads as follows:

> Every bill and joint resolution shall receive three readings previous to its passage, which readings on demand of any Senator shall be on three different legislative days . . . and the Presiding Officer shall give notice at each reading whether it be the first, second, or third.

Now, are we to pretend, Mr. President, that each of these little illegitimate ''billettes'' which are going to be sent down to the President for his signature, does anyone here have the gall to say that each of these will have been read three times? Well, that is what rule XIV says with regard to bills and joint resolutions. It says:

> Every bill and joint resolution shall receive three readings previous to its passage, which readings on demand of any Senator shall be on three different legislative days.

Paragraph 3, rule XIV, Standing Rules of the Senate:

> No bill or joint resolution shall be committed or amended until it shall have been twice read, after which it may be referred to a committee.

Mr. President, not one of these 2,000 little ''billettes'' will have been referred to a committee. Not one will have been twice read. Not one will have been once read. Not one will have been three times read. Not one will have seen the inside of a committee room, and it will be sure they will see the inside of the enrolling clerk's committee room. He might be able to take them home at night, over the weekend, do his work at home, get a pair of scissors, scotch tape, or old-fashioned library glue and take home some of these pre-prepared forms and enroll the bills. Do it at home.

> No bill or joint resolution shall be committed or amended until it shall have been twice read, after which it may be referred to a committee.

Paragraph 4:

> Every bill and joint resolution reported from a committee, not having previously been read, shall be read once . . .

Not one of these little orphans will have been reported from a committee. And so rule XIV will not be complied with.

> Every bill and joint resolution reported from a committee, not having previously been read, shall be read once, and twice, if not objected to, on the same day, and placed on the Calendar in the order in which the same may be reported.

Not one of these will ever see the calendar. Not one will ever be on that calendar, and we can thank heavens for that, because if all these appeared on the calendar, the calendar itself would weigh, with 13 appropriations bills if they all land on there at the same time toward the close of the fiscal year, the Calendar of Business would be thicker than this stack of bills. That would be an illegitimate calendar made up of illegitimate little bills.

Paragraph 5:

All bills, amendments, and joint resolutions shall be examined under the supervision of the Secretary of the Senate before they go out of the possession of the Senate . . .

Not according to this amendment. They are not going to be examined under the supervision of the Secretary of the Senate. They are going to be examined under the supervision of the clerk of the other body. The Senate will turn over everything to the other body. Let the enrolling clerk of the other body, because that is where the bills are going to originate, let the enrolling clerk in the other body do the enrolling; let him do the cutting and pasting, gluing together. The Secretary of the Senate can take a walk. He will not have anything to do with it.

It says:

. . . All bills and joint resolutions which shall have passed both Houses shall be examined under the supervision of the Secretary of the Senate, to see that the same are correctly enrolled . . .

The Secretary of the Senate is not going to do that under this amendment. Under this amendment, the clerk of the other body will see that they are correctly enrolled.

. . . and, when signed by the Speaker of the House and the President of the Senate, the Secretary of the Senate shall forthwith present the same, when they shall have originated in the Senate, to the President of the United States.

Well, most of these will not have originated in the Senate.

Reading from paragraph 7:

When a bill or joint resolution shall have been ordered to be read a third time, it shall not be in order to propose amendments, unless by unanimous consent, but it shall be in order at any time before the passage of any bill or resolution to move its commitment; and when the bill or resolution shall again be reported from the committee it shall be placed on the Calendar.

When a bill or resolution is accompanied by a preamble, the question shall first be put on the bill or resolution and then on the preamble . . .

So, Mr. President, if there is a preamble on each of these bills—the preamble on the parent bill, I presume, would have to be on each of the little mini-bills, and the question would have been first on the bill and then on the preamble.

No Senator can, of course, say with a modicum of truth and honesty any vote occurred on that bill or preamble.

So much for the Standing Rules of the Senate.

Perhaps that can bear further study on a later date.

The hundreds of little counterfeit bills and joint resolutions will not have received three readings prior to their passage, nor will they have been examined under the supervision of the Secretary of the Senate to see that they have been correctly enrolled.

Simply put, what this amendment does is to require the enrolling clerk of the House, or the Senate, to take appropriation bills as well as direct spending bills and those containing certain targeted tax benefits and break those bills down into numerous parts after they have been passed by both Houses. How many parts would depend on how many numbered sections and unnumbered paragraphs the enrolling clerk found in the complete bills.

To make matters worse, however, section 2 of the amendment requires that any appropriation measures reported by the Committees on Appropriations of the House and the Senate must contain the ''level of detail on the allocation of an item of appropriation as is proposed by that House such as is set forth in the committee report accompanying such bill.'' The same requirement would be placed on conference reports, as well. These requirements could be waived or suspended in the House or Senate only by an affirmative vote of three-fifths of the Members of that House duly sworn or chosen. Similar requirements would apply to tax expenditure and direct spending bills.

What this means, Mr. President, is that the Appropriations Committees would be required to place into each bill all of the literally hundreds and in some cases thousands of items that are now contained in the committee reports and the conference report, whereupon each of these items would then be separately enrolled and become a separate law.

This process fails to recognize that unlike those of States, which are highly itemized, Federal appropriation bills generally contain a number of large appropriations, with the details of how the funds are to be spent set forth in the accompanying reports. This practice has worked well and is favored by the executive branch because it enables agencies to respond to budgetary changes during a fiscal year by moving funds from one area to a more pressing area. This process of reprogramming funds is conducted pursuant to well-established procedures which ensure that the Federal Government can carry out its responsibilities within the general purpose specified in each account.

For example, the Energy and Water Development Appropriations Act for fiscal year 1995 contains a lump-sum of $983,668,000 to cover general construction for the Corps of Engineers. The statute identifies 34 specific projects, totaling $120,126,500. Most of the detail, however, is contained in the conference report, which I have shown, instructing the Corps of Engineers how to spend the nearly $1 billion. Because the instructions are in a nonstatutory source and not a public law, the agency can shift funds within the lump sum in response to their needs—often requiring approval from review committees.

Yet, under the pending proposal, reprogrammings will no longer be possible. Rather, every item listed in appropriations conference reports would be considered an ''item'' and, as such, would be separately enrolled. If that were done, then all of these items would be frozen in their own separate laws and it would be illegal to shift funds from one area to another without a change in statute. This would mean a large increase in congressional workload. For every mid-course correction needed by every agency of Government, the President would have to seek legislation and we would have to enact every shift in funds. Imagine how inefficient and cumbersome this would be.

I asked our Appropriations Committee staff to count up the number of ''items'' there are in each of the fiscal year 1995 appropriations acts and conference reports which would have to be separately enrolled under the pending amendment. Senators will recall that, under section 2(c)(1) of the amendment, it will not be in order to report an appropriation conference report that fails to contain the level of detail of an item of appropriation such as is set forth in the statement of managers accompanying that report. This means that every appropriation now named in these statements of managers will have to be placed in the conference report and, subsequently be separately enrolled and sent to the President as a separate minibill which, if the President signs it, will become a separate law.

One of the 1995 appropriation acts with the largest number of items is the Energy and Water Development Appropriation Act.

And as I have already demonstrated, the law is 17 pages in length and the statement for which every item has been provided is 116 pages in length.

These two documents—the Public Law and the conference report containing the statement of managers—are the culmination of months of hearings, of subcommittee and full committee markups, of passage by the House and Senate, and of a conference to settle the differences between the two Houses. After all that work, and after adoption of the conference report and the amendments in disagreement, this appropriation bill finally became a public law and it is being carried out pursuant to this conference report and statement of the managers.

Mr. President, as I have already shown, this stack of paper has been prepared for the Energy and Water Development Appropriation Act for 1995 in conformance with Mr. DOLE's proposal. And just in case there may be some Members or staffs or people out there in TV land, this is the energy and water—I cannot say bill. These are the 2,000 odd bills that would be enrolled by the clerk of the other body and sent down to the President and which in fact constituted the one bill, which had only 16 pages, which is referred to as Public Law 103–316 that is the energy and water appropriation bill. That is it, 17 pounds—17 pounds.

Each of those would have to be signed by the President pro tempore and the Speaker of the House, and each would have to be signed by the President, unless he decided to veto them or not sign them and let them go into law without his signature. He might ease

his workload by following that course of action.

Each of the items contained in that public law, which I hold in my hand—right here—itemized in the tables of the conference report have been enrolled separately pursuant to section 4 of the amendment that has been offered by the distinguished majority leader. Each item of appropriation will have to be separately signed by the Speaker of the House and by the President of the Senate, and so instead of that one public law and that one conference report we will have over 2,000 public laws for just one appropriation act.

Mr. President, is this not sheer madness? Sheer madness. All 12 of the other appropriation acts will face similar requirements. The estimates are that if the amendment offered by Mr. DOLE had been in effect for fiscal year 1995, the Agriculture Appropriation Act would have been broken down into 757 separate acts; the Commerce, Justice, State, and Judiciary Appropriation Act would have been broken down into 924 acts; the District of Columbia Appropriation Act would have been broken down into 165 little enrolled bills which later became acts, public laws; the Energy and Water Development Appropriation Act as I already have said would have been broken down into 2,000 acts; the Interior Appropriation Act would have been broken down into 1,000 separate acts; the Labor, Health and Human Services, Education Appropriation Act would have been broken down into 200 acts; the Transportation Appropriation Act would have been broken down into 750 acts; the Treasury, Postal Service Appropriation Act would have been broken down into 479 acts; the Defense Appropriation Act would have been broken down into 2,000 acts; the Military Construction Appropriation Act would have been broken down into 225 acts; the Foreign Operations Appropriation Act would have been broken down into 225 acts; the VA/HUD Appropriation Act would have been broken down into 800 acts; and the Legislative Branch Appropriation Act would have been broken down into 100 acts.

Perhaps we should call them actlettes, 100 actlettes.

That comes to a total of 9,625 minibills, or billettes or actlettes, or public lawlettes—public lawlettes, 9,625 that would have been necessary in 1995 rather than the 13 annual appropriation acts under which we are currently operating.

So, here we will have passed 9,625 public laws and I would have gotten credit for only voting on 13 of them—13; 13 rollcall votes. I answered every one of them, yet there would have been 9,625 separate legislative acts, not one of which passed the House or the Senate, to say nothing of both Houses.

Since most of the annual appropriation bills are not finalized until the last few days before the beginning of the fiscal year to which they apply, one can see that this proposal, if enacted, would succeed in bringing the appropriation process to a virtual standstill. It would also be next to impossible for the President to approve these thousands of bills before the beginning of the fiscal year, because there would be no practical way to process that many bills, get them signed by the Speaker and the President of the Senate, sent to the White House, and signed by the President in such a short time.

Therefore, what we would be setting up is a more complicated process under which a President and a Congress, through no fault of their own, would not be able to complete its work in a timely fashion. We would be virtually guaranteeing a return to government by continuing resolution.

But, on the other hand, think of the increased media attention it will bring to bill-signing ceremonies.

I have been down at White House on a few occasions, a few occasions. I have attended bill-signing ceremonies. The distinguished Senator from Nebraska has been there on bill-signing ceremonies. We stand there behind the President. We might even get up against him so we can say to our grandchildren, this coat—this coat touched the President's coat. See? This coat touched the hem of his garment. And the President signs the bill, just a little bit at a time, and hands back the pen; signs another little portion and hands back the pen.

I take that pen home and have it framed and I am able to tell my grandchildren that there is a pen that the President used in signing such and such a bill. Yes, the pen, he gave it to me. I never would have thought it, this boy from the hill country—I never thought I would be in the White House, never would have thought I would have been in the Oval Office. And here, just to think of it, here is a pen that the President signed the bill with and gave it to me.

''Aren't you proud of your grandpa? Aren't you proud of your grandfather?''

My, what I have been missing, though. I have only had a few of those pens.

Now think of the increased media attention that would be given to one of those bill-signing affairs. For just the Energy and Water Development Appropriation Act the President would have to sign all these 2,000 little minibills. That would become an all day affair; let us go down there for a whole day, the whole day. You would have to go down to the White House early in the morning with the subcommittee chairman, in this case it would be Mr. DOMENICI, and Mr. JOHNSTON.

We would go down with the subcommittee chairman and ranking member, leading the honored guests along with their House counterparts. The President and appropriate members of the Cabinet would greet the congressional delegation out on the White House lawn—would you say? Out at the Rose Garden. They would be all lined up out there in the Rose Garden. Up would drive one of these 16-wheelers, a big truck. It would back its way up to the gate and they would start unloading all those pens to sign those bills.

After a photo-op, the President would take out his first of many pens and begin to sign this stack of 2,000 or so bills into law. He would hand out pens to the gathered congressmen. There might be 24 separate laws for New Mexico projects, so Senator DOMENICI would get 24 pens. Perhaps Louisiana would have 32 projects and, therefore, 32 laws. So, Senator JOHNSTON would get 32 pens, and so on.

This process of signing over 2,000 minilaws would take quite some time. There would probably have to be a lunch break, followed by more signings in the afternoon. The President would say ''You boys''—he would call us boys. I would not think anything of it, he calling me boy. My mom used to call me boy. She would say, ''ROBERT, you be a good boy. I'll always pray for you.'' He would say, ''You boys come back this afternoon after lunch and we will finish signing these bills.'' Of course we would be back because we would not want to miss out on our pens.

I expect he would draw a good deal of attention. It would become a very popular ritual for Congress and the President alike.

Now, let us look at what happens when a President decides he does not——

Mr. EXON. Will the Senator yield for a brief question?

Mr. BYRD. Yes.

Mr. EXON. I have been listening with great interest. The Senator left out whether or not he has made any calculation as to what the cost to the taxpayers would be, for all of those pens? Do you have any estimation of what that would be, in dollars, at the present time? Or is that just a minor matter?

Mr. BYRD. It is not a minor matter. We put it on the computer and the computer blew up. We tried to get that information out of the computer and the computer blew up.

Mr. EXON. Gone.

Mr. BYRD. Gone.

Mr. EXON. More expenses to the taxpayer. I thank my friend from West Virginia.

Mr. BYRD. I thank the Senator from Nebraska. I am sorry he has decided to retire, after this term. We will miss him and he will miss receiving all those pens. He will miss traveling down to the Rose Garden, having the President hand him all those pens, for items that are in the bill for Nebraska.

Seriously, I do say I shall miss him. He is a stalwart Member and one who is forthright always with what he says. He has a backbone, the courage of his convictions.

Now let us look at what happens when a President decides he does not care to sign a number of these many

thousands of appropriation bills. In this case, those unsigned bills must be returned to the House of Congress which originated them. In the case of appropriation bills, the overwhelming majority will have originated in the House of Representatives. Therefore, any of these thousands of annual appropriation bills which the President returns unsigned will go to the House of Representatives. Under article I, section 7, clause 2 of the Constitution, the House of Representatives will then have total control of whether, and if so, when to schedule a veto override vote. Let us say, for example, that a President decides that he will not sign 5 percent of these thousands of appropriation bills. The other 95 percent are fine—they get the blessing of the President's unelected advisers. But these same advisers recommend, and the President agrees, that 5 percent of them should not be signed. That is not an unlikely scenario. The President's OMB personnel will have scoured every one of these thousands of bills and they are likely to find reasons to send a number of them back to the House of Representatives; in this example 5 percent, or several hundred of the bills are returned. What happens next? Under the Constitution, that will be left entirely up to the House of Representatives. If the House decides not to schedule a veto override vote on any or on all of these returned bills, that is the end of it. The Senate will have no say in the matter. Are Senators prepared for that state of affairs? Are you prepared, Senators, to have to beg the House to take up a vetoed bill?

I say to the Senator from Michigan, the able Senator from Michigan [Mr. LEVIN], are you prepared to go over to the other body and beg the House to take up that vetoed bill so that you at least get a vote in the other body on the item that is of importance to your State?

Mr. President, this amendment, in the opinion of various scholars, would be, in all likelihood, unconstitutional. For example, in recent testimony before the Senate Judiciary Committee, Mr. Walter Dellinger, Assistant Attorney General of the U.S. Department of Justice, made the following statement:

> As much as I regret saying so . . . [the] proposal for separate enrollment also raises significant constitutional issues, you know, that would atomize or dismember one of these large appropriations bills into its individual items which the President could then sign. I think it is either invalid under the clause, in my view, or, at a minimum, it raises such complicated questions under the Presentment Clause that it is a foolhardy way to proceed because if we and all of our predecessors are right, I think that which has to be presented to the President is the thing that passed the House and the Senate, and that which passed the House and the Senate is the bill they voted on on final passage, not some little piece of it or a series of little pieces of it. So I have doubts about it.

That was Mr. Walter Dellinger, constitutional scholar, speaking.

Mr. President, although the bill before us today is being touted by its sponsors as a line-item veto bill, that description is not correct. This bill would not give the President line-item veto authority. The only way for Congress to confer such power is through an amendment to the Constitution. It cannot be done by mere statute. Therefore, a fundamental thing that needs to be said about this bill is that it is not, in any way, shape, or form, a line-item veto measure.

We could not give the President a line-item veto. Congress could not pass that power on to the President. Only the people could do that by way of constitutional amendment. But we could be just as effective in shifting the power of legislative branch over the purse to the President by way of a statute. That is what is about to occur.

Indeed, I question why, if not for partisan political reasons, anyone would tell the American people the Senate is considering a line-item veto bill, when, in fact, we are not?

In fact, we are not. That kind of misinformation does nothing but confuse, mislead, and further alienate an already cynical public. So Senators can disabuse themselves of that notion right from the start. No one is going to be able to go home, and, in all honesty, claim political favor by telling the voters they were for or against the line-item veto.

Instead, what we have before us is a separate enrollment bill, an enormously different creature. In short, what we have here is a slice-and-dice approach to legislating.

I have been in the legislative branch for 49 years. I have never seen anything like that.

Semantics aside, though, what the proponents of this measure have presented to the Senate is a piece of legislation that would set up a logistical nightmare, that would create an unworkable process, and that is obviously not well thought out. This is the product of a desperate political compromise aimed at getting anything through Congress which can be mislabeled line-item veto.

Logistics are not, however, the only problem. In fact, they are not even the most serious. What is fatal to this measure, as it would be with any type of separate enrollment procedure, is that the entire scheme is unconstitutional—unconstitutional. My colleagues and I have been in this business for years. This is my seventh term. I am in my seventh term. Seven times I have asked the people of West Virginia to return me to the U.S. Senate, and three times in the other body prior to my coming to the Senate, two times in the State House and once in the State Senate. In all of those years, not once have I ever met a creature like this, a bill that is not a bill, but call it a bill; and we deem that it is passed in the House and the Senate.

What is fatal is that this bill is not constitutional, in my judgment.

Anyone who reads the plain language contained in the first and seventh sections of article I of the Constitution will see this to be true. For those who I suggest are attending a matinee and who arrived late on the scene, let me read again. Read the words, those two sections and one will see why this measure violates the supreme law of the land.

Article I, section 1, states:

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

So there are 25 words that state where legislative power under the Constitution will vest. It will vest in a Congress of the United States which shall consist of a Senate and a House of Representatives. All legislative power will repose in this branch, this legislative branch.

With those 25 words, the very first sentence of the Constitution, the Founding Fathers established the doctrine of separation of powers.

We find in section after section, article after article, paragraph after paragraph, following on that first section of the first article the doctrine of separation of powers laid out in great detail.

They explicitly placed all legislative powers in a Congress. The power to fashion the laws that guide this Nation, the power to repeal those laws as we see fit, and the power to amend a bill as it makes its way through the two Houses of Congress, those powers reside here in the Congress. The Constitution does not confer those powers upon any other individual, or upon any other branch of government.

The President is not licensed by those powers, by those words, to legislate.

All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a House and a Senate and a House of Representatives.

The Constitution does not confer those powers upon any other individual, upon the President, upon any enrolling clerk, or upon any other branch of government. The President is not licensed by those powers to legislate. He alone cannot pass a bill. The President alone cannot repeal a bill. The President alone cannot amend a bill. Only the Congress has such power.

May I say to the distinguished Senator from Nebraska, and the able Senator from Michigan, that under this bill things will have changed.

Under this amendment, the President would be given legislative power. Do you believe that? He will have been given legislative power. Now, if I hope to get an amendment added to the bill, I send to the desk an amendment, the clerk reads the amendment, and the question is then on the amendment by the Senator from West Virginia. If the Members of the Senate, or the majority thereof, support my amendment, it is added to the bill. That is not enough. That amendment has to be agreed to in

the other body. So I cannot amend a bill; I can only be an instrument in the amending of it. I alone cannot amend a bill. It requires a majority of both Houses to support the instrument which I send to the desk in the form of an amendment.

But under this amendment which Mr. DOLE has introduced, and which is cosponsored by several Republican Senators, the President alone can—by his hand alone—repeal a bill. Here is a section of the bill that is sent to the President by the enrolling clerk. Here is another section of the bill. Here is another item of the bill sent down by the enrolling clerk. The President may, by his wet veto pen, strike that one. He has amended that bill by his veto pen. He may strike that one. That is a whole section. He amended that bill—one man alone. And if two-thirds of both Houses do not override him, then he has altered that bill; he has amended it just as surely as I would have amended the bill by sending a piece of paper to the desk, having a number on it and striking from the bill that particular section. One man will have the power that only a majority of both Houses on the hill here could have in amending a bill.

So he will have been given the power, unilaterally and selectively, to change what had previously been passed by the legislative branch. Through a separate enrollment procedure, the President becomes the legislative equal with the House and Senate, because he would have the power to amend. No longer would the Congress be the sole legislative body in our tripartite system. That is why this bill implicitly vitiates the separation of powers, because it hands to the executive branch one of the most important characteristics of legislative power.

The ability to amend legislation, and the right of extended debate, are the two most important features that set the U.S. Senate apart from every other legislative body in the world. This is the only upper Chamber that has essentially unlimited amendment and debating powers. With very few exceptions, which we ourselves have instituted, the Senate can take any bill passed by the House of Representatives and change that bill any way the Members think necessary and proper. But under the process contained in this bill—I will call it a bill; it is a substitute bill introduced by the majority leader—under the process contained in this bill, the President would share that power. If he were to veto even one of the thousands of bills created as a result of separate enrollment, he would have altered the original bill agreed to by the House and Senate. And that original bill, may I say to the Senator from Nebraska, that original bill, may I say to the Senator from Michigan—if the amendment stricken by the President had been stricken by the Senate or by the House, the bill may never have passed, because it would have been altered. Yet, the President can do that if the substitute bill is agreed to. He would not have vetoed the entire bill; he will have altered the bill. He would have vetoed only a portion of it, thereby amending the underlying bill.

How does that situation square with the words in article I, section 1 of the Constitution, that ''all legislative powers'' herein granted ''shall be vested in the Congress of the United States.'' The ability to amend is a legislative power, and all legislative powers are to be vested in the Congress of the United States. How, then, can anyone stand here and say they see no infraction of the clear mandate contained in the Constitution? How can it be claimed that a President who can amend has not been given legislative power?

The U.S. Supreme Court, in its landmark ruling in the 1952 case of Youngstown Sheet and Tube Company versus Sawyer, the steel seizure case, spoke to the argument perfectly. The Court said:

> In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.

Mr. President, recommending laws and vetoing laws are the only two lawmaking functions that constitutionally confer to the President, according to the Supreme Court. They did not include the power to amend. They did not say the President is authorized to selectively amend what has previously been passed by the Congress. All the Constitution allows, as interpreted by the Court, is the vetoing of laws.

In addition, this question of procedure, as it pertains to the separation of powers, is hardly academic. It goes to the very heart of our constitutional form of government. Again, I refer my colleagues to the words of the Supreme Court. In its 1982 ruling in INS versus Chadha, the Court noted that:

> Explicit and unambiguous provisions of the Constitution prescribe and define the respective functions of the Congress and of the Executive in the legislative process.

Those provisions, the Court said, ''. . . are integral parts of the constitutional design for the separation of powers.'' Thus,

> It emerges clearly that the prescription for legislative action in Article I, sections 1,7, represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.

But in no way would this new process coincide with the ''single, finely wrought and exhaustively considered, procedure'' contained in article I.

Separated powers, and the system of checks and balances that maintain the separation, were not an abstract or fleeting concept to the men who framed our Constitution in Philadelphia. The doctrine is writ large throughout the entire document. It is fused into every article, every section, and nearly every clause of that great charter. One need only read the Constitution to understand how fervently our Founding Fathers embraced separated powers. But with this measure, we say those ideals are not really important, that they do not matter. I am not prepared, as others may be, to declare myself so wise as to be willing to undo what was so finely done more than 200 years ago.

As such, all Senators effectively lose the power of their vote. We would be creating a glut of little ''its''—note that in the Constitution it refers to ''it,'' ''it,'' ''it''—the pronoun with the antecedent ''bill.'' ''It.'' There is not going to be any ''it'' with an appropriation bill that passes if this amendment by Mr. DOLE is ever adopted. There will be hundreds and hundreds of little ''its.'' Read the bill. Read it and see how each of us gives up the right to vote on any of the new bills.

We will not have voted on a single one of them. Not one of the bills that goes to the President will have been voted on by Mr. LEVIN. Not one. This amendment by Mr. DOLE does not say where the original bill will be kept. Nobody knows what happens to it.

The enrolling clerk in the House presumably can just throw it in the wastebasket.

Read the bill. Read it and see how each and every one of us gives up the right to vote on any of the new bills.

Mr. President, what this charade amounts to is a colossal non sequitur. It simply does not make sense. On the one hand, we are being told that a bill is a bill, which means the President can veto it. On the other hand, though, the sponsors turn right around and claim that a bill is not necessarily a bill—it can be ''deemed'' to be a bill—so it does not need to be passed by the House and Senate. Which is it? When does a bill become a bill? How can the sponsors of this legislation tell us that any of those new bills are not really a bill? How can they claim that the process created under separate enrollment is a constitutional process? They cannot.

Even the authors of this legislative sorcery agree that, on its own, the separate enrollment process cannot meet the test of constitutionality. Again, I implore Senators to read this measure which is now pending before the Senate. Read section 4(b), starting on page 4, line 8. It says, and I quote:

> A measure enrolled pursuant to paragraph (1) of subsection (a) with respect to an item shall be deemed to be a bill under Clauses 2 and 3 of Section 7 of Article 1 of the Constitution of the United States and shall be signed by the Speaker of the House and the President of the Senate, or their designees, and presented to the President for approval or disapproval (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.

So here, Mr. President, we have a clear acknowledgement, an absolute declaration from the very people who

wrote this bill that the process that they want to codify is unconstitutional. They are not talking about bills. They are talking about counterfeit measures that are deemed to be bills.

So this is an absolute declaration from the very people who wrote the bill that the process they want to codify is unconstitutional, that it does not meet the standard set up under article I of the Constitution.

The authors say, right there in that passage, that ''a measure enrolled pursuant to paragraph (1),'' which means taken out and separately enrolled, ''shall be deemed to be a bill.''

Now, what does the dictionary say that ''deem'' means? Deem means to consider—considered to be a bill; to be considered. We will just pretend that it is a bill, may be thought of as a bill, but when you strip all that language away, it is not a bill. If it were a bill, it would not say it may be ''deemed'' to be a bill.

The authors say right there that ''a measure enrolled pursuant to paragraph (1),'' which means taken out and separately enrolled, ''shall be deemed to be a bill'' for purposes of the Constitution.

So how can any of my constituents hold me responsible for the enactment of any one of these little billettes, these little illegitimate offspring of unknown parents? How can anyone hold me responsible for having voted for them, those thousands of new little ''its'' that were created through the separate enrollment process, that are going to be ''deemed'' to be bills? What the sponsors are admitting in that language is that those new bills are not, in fact, really bills. They readily concede, right there in their own legislation, and in their own words, that all those new little ''its'' are not bills.

If a piece of legislation that comes about as a result of being separately enrolled is an actual bill, then why is it necessary to have it ''deemed'' to be a bill. The answer is that the deeming is required because none of those minibills are, in reality, legal, constitutionally enacted bills. And the authors of this measure know that fact.

I can assure my colleagues that none of this is some misguided conclusion arrived at as a result of applying a radical new interpretation to the Constitution. This is not judicial logic gone awry. Quite the opposite. It is the considered judgement of renowned scholars that a separate enrollment procedure is unconstitutional on the grounds that it violates the presentment clause as written in Article I, section 7, clause 2.

The truly sad fact in all of this, is that we do not need to proceed along these lines. We do not need to trample on the Constitution to accomplish what is intended. We have an alternative option, which everyone agrees is constitutional. The bill originally introduced by Senators DOMENICI and EXON, S. 14, would accomplish the goal of guaranteeing the President a vote on his rescission proposals. And, most importantly, it would do it through a process which does not sacrifice to the alter of political expediency the sacred tenets contained in the United States Constitution.

S. 14 would have allowed the President to go through any appropriations bill and any tax bill containing targeted tax expenditures and excise those items he felt were unwarranted. The Congress would then have been forced to vote on each of those proposals. It would not have created an unworkable process. It would have maintained the separation of powers. It would have been constitutional. But for some reason, the authors of the bill before us do not want that. They are not satisfied with the procedure in S. 14. In short, they are apparently not happy unless we ravage the most important constitution ever laid down in writing.

The procedure which is set forth in this amendment is not, in my opinion, in agreement with the words of the Constitution which govern the passage of a bill. It is not in agreement with those words. The Constitution, in article I, section 7, clause 2, says that a bill shall have passed both Houses before it is presented to the President. It is interesting to note that those who wrote the Constitution in clause 2 referred to a bill, whereas in clause 3 of section 7 of article I, they wrote of resolutions, orders, and votes. In other words, they covered the entire legislative landscape. They knew exactly what they were doing.

Whatever the particular vehicle—whether it be a resolution, or vote, or an order. Of course, orders do not go to the President for his signature; votes do not go to the President for his signature; resolutions do not go to the President. So whatever the particular vehicle, it had to travel the same legislative course outlined in clause 2 for a bill. In other words, whatever it is, it has to be passed by both Houses and presented to the President. He may then sign it, veto it, or let it become law without his signature, or he may give it a pocket veto, depending on the circumstances.

Furthermore, nothing in the pending amendment would deal at all with the more than $400 billion of lost revenue each year that results from existing tax expenditures. I know Senators have heard the proponents of this proposal say that it is very broad. They say it will cover everything—appropriation bills, direct spending bills, and bills containing tax preference items. But is that true? The answer is no.

All any Senator has to do is read the language of the amendment. It reads as follows, as it related to entitlements and targeted tax benefits in section 2(b)(1) on page 2 of the amendment:

A committee of either the House or the Senate shall not report an authorization measure that contains new direct spending or new targeted tax benefits unless such measure presents each new direct spending or new targeted tax benefit as a separate item and the accompanying committee report for that measure shall contain such level of detail including, if appropriate, detail related to the allocation of new direct spending or new targeted tax benefits.

So, there you have it. This proposal will not touch one dollar—not one thin dime—of any existing direct spending program or any of the 124 existing tax expenditures. Not one dollar. Not one dime. Not one copper penny. The problem is, you see, that once these tax breaks are written into law, they rarely get reviewed again. And, nothing in the amendment that is before the Senate will require that these existing tax breaks should be looked at and made subject to veto by the President, just like annual appropriation bills.

These are the tax dollars that are lost to the Federal treasury due to special provisions contained in the Federal Tax Code. These various provisions allow deductions, exemptions, credits, or deferrals of taxes and, in effect, reduce the amount of tax paid by those who qualify for such items. The word ''expenditure'' is used to highlight the fact that these tax preference items are, in many respects, no different than if the government would write a check to the different individuals or businesses who qualify for them.

The plain truth is that tax expenditures are nothing more than another form of government spending. Unfortunately, they receive little, if any, scrutiny because they are not subject to the annual authorization or appropriation processes that other programs are subjected to. Rather, once they are enacted into law, tax expenditures rarely ever again come under congressional scrutiny. In fact, in a June 1994 report on this issue, the General Accounting Office found that almost 85 percent of 1993 revenue losses from tax expenditures were traceable to provisions enacted before 1950, while almost 50 percent of those losses stem from tax expenditures enacted before 1920.

Because these tax breaks have largely escaped congressional review, many have simply outlived their economic usefulness. But until they come under the same scrutiny as other Federal spending, we will not know for sure which ones should be modified or eliminated and which ones should be kept.

We do know that, like entitlement spending, tax expenditures are projected to grow dramatically over the next several years. In a committee print issued in December 1994 by the Senate Budget Committee entitled, ''Tax Expenditures, Compendium of Background Material of Individual Provisions,'' the aggregate cost of these provisions will equal $453 billion for fiscal year 1995 and will rise each year thereafter to a total of $568.5 billion in fiscal year 1999.

The cumulative increase for those 4 years will equal $283.9 billion. That level of increase dwarfs the total amount that is spent each year on our

entire domestic discretionary budget which amounts to only $225.5 billion for fiscal year 1995 and is not projected to grow at all over the next four years. In fact, to the contrary, it appears that domestic discretionary spending will be called upon to suffer even further cuts below a hard freeze than are already contemplated under OBRA 1993.

When one considers that this area of the budget alone, namely, tax expenditures, escapes the deficit-cutting axe that is being faced by discretionary spending and hopefully to the area of entitlement spending as well, it is little wonder that special interest groups find these tax breaks to be very appealing.

I am not saying that all tax expenditures are bad. In fact, many serve a worthwhile public purpose. The earned income tax credit has benefited many hard-working Americans by lifting them out of poverty and has enabled them to be able to support their families. A number of others—such as those for charitable contributions, home mortgage interest deduction, as well as a number of others—clearly serve a useful purpose and are in the national interest. But I am convinced that a number, perhaps a large number, of the more than 120 separate tax expenditures in current law could be either modified or eliminated altogether.

In its June 1994 report on this subject, the General Accounting Office recommended that tax expenditures should be further integrated into the budget in order to highlight the vast resources lost to the Federal Government by these tax breaks. Moreover, these expenditures should have to undergo periodic program reviews within the congressional tax-writing committees. One way to ensure such scrutiny would be to sunset most tax expenditures, thus requiring the reenactment of those that are still worthwhile at regular intervals. But, as I have shown, this amendment fails to do that.

And I am fully prepared to work with my colleagues in attempting to enact legislation that would improve the existing rescission process and would guarantee that a President's rescission proposals get considered and voted upon—just as the proposal that was authored by Mr. DOMENICI and Mr. EXON would have done—and, further, that any savings resulting therefrom be applied only to deficit reduction. What I am unwilling to do is to support any legislation that does not adequately guard the constitutionally granted congressional power of the purse.

I believe that the separate enrollment measure is constitutionally flawed and would so encumber the existing appropriations and rescission processes as to make it impossible for Congress and the President to meet their responsibilities of enacting the annual appropriation bills by the beginning of each fiscal year.

Finally, and critically important, Mr. President, this amendment will not result in any deficit reduction whatsoever. None. Zilch. The reason that is the case is because nothing in the amendment reduces Federal spending. Under this amendment, any savings that might result from vetoes of items in appropriation bills, or from vetoes of new direct spending or new tax breaks, will not go toward deficit reduction. Instead, those savings can simply be spent on something else. That is the case because, unlike S. 14 or the Democratic alternative, which Mr. DASCHLE will present, nothing in the Dole proposal reduces the allocations of committees by the amount of the savings that will result from the vetoes. Incredible as it may seem, the substitute does not apply any of these spending cuts toward reducing the deficit. The authors of the proposal, therefore, have chosen to allow all spending reductions under their ''Separate Enrollment and Item Veto Act of 1995'' to be respent, rather than be applied to deficit reduction.

So, Mr. President, I urge my colleagues to defeat this proposal and to vote for the Democratic alternative that will be presented by the distinguished minority leader, which many of us will cosponsor, and which will apply all of its savings from budget cuts to deficit reduction.

I thank Senators who have patiently waited, and I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I appreciated the comments of the Senator from West Virginia. I have been anticipating his arrival on the floor to debate this issue. It is an important issue. It deserves full discussion and debate.

We began this latest discussion, of course, on Thursday evening of last week. Senator MCCAIN and I discussed our proposal at length and then, of course, we debated on Friday and all day Monday, and now it is Tuesday.

Last evening, the majority leader offered an amendment to the original proposal, offered by Senator MCCAIN and myself, which, in this Senator's opinion, substantially strengthens the effort which we are undertaking by expanding the scope of the line-item veto to include not just appropriations, but targeted tax expenditures, any new direct spending and new spending in entitlements that change the law which currently exists. It does not mean that new enrollees are not subject to the benefits of entitlements as they currently exist on the books. But it means that if attempts are made to expand those categories and to provide new spending, they are also incorporated.

These were suggestions offered by Members of the Congress, in particular Senator STEVENS of Alaska, Senator DOMENICI of New Mexico. We negotiated these changes. Many of these ideas originated in years past, some of them offered by Senators from the other party.

I do not intend to take a great deal of time in responding to the comments of the Senator from West Virginia. However, there are several points I wish to make.

The Senator from West Virginia began his presentation by citing—and I believe I am correctly quoting him—the ''frenetic efforts of Republicans'' to bring a measure to the floor. Yes, there was considerable negotiation, but it is negotiation upon a core and a base of discussion around a concept which has been very much a part of the history of this body.

Recent history, of course, in the last decade or so has shown that a number of attempts have been made to bring line-item veto to a vote in this body. All of them have been unsuccessful. There have been a number of votes, all falling short of the necessary votes to either waive provisions of the Budget Act or to break an attempted filibuster of the effort.

So we have not been able to achieve 60 votes to bring the matter to full debate and vote. But the concept of separate enrollment has been discussed before on this floor at length and voted on, at least in a procedural way. The underlying concepts of either enhanced rescission or a process described as line-item veto or a discussion of line-item veto, all of this has been very much a part of the debate and discussion that has been present on this floor during the past decade. But the concept of line-item veto goes back historically much further than that.

In fact, it was in 1876 that then Representative Charles Faulkner of West Virginia introduced for the first time the line-item veto concept. It was referred to the Committee on the Judiciary where it there died, and since that time about 200 line-item veto bills have been introduced. In fact, in nearly every succeeding Congress a proposal has been offered in varying forms but all centered around the same basic premise, and that is will this legislative body cede to the President some semblance of authority to provide a check and balance against the spending power exercised by this body.

Now, as the Senator from West Virginia has enumerated, we are all well aware of the provisions of the Constitution article I, section 7, which outlines the procedures by which the legislature passes legislation and by which the President approves it. And of course, article I, section 7 clearly grants to the President the power to reject what the Congress has proffered to him, or perhaps return is a better word. It says that ''If any bill shall not be returned by the President within 10 days after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it.''

But it also says that the President may ask this body to reconsider what it has done and send back to us bills that we have forwarded to him and it will require two-thirds vote of each body, both the House and the Senate,

in order to overturn what the President has done.

So the constitutional authority for the President to veto or reject or return, however you want to phrase it, what this legislature has presented is obviously well established as a part of the Constitution. But the separate question is do we want to go one step further in allowing the President the right within the legislation sent to him to line item items back to this legislature, to look at the legislation that we send to him and give the President the opportunity to say I will accept this portion but not that portion. I will accept most of what you sent but I want you to reconsider that separate portion.

That really is the question before us. As I said, there have been nearly 200 attempts to do that. Most of those have died in committee. Very few have been reported, and those that have were mostly reported with adverse recommendations.

Our Founding Fathers discussed this issue. They were concerned about the balance of power between the respective branches. That is why I believe they wrote the veto power in the Constitution to the President. But they were concerned about the unchecked power, the unbalanced power of the legislative branch over the executive branch. In the Federalist Paper No. 73, it was Hamilton who had this to say about the executive veto.

> The first thing that offers itself to our observation is the qualified negative of the President upon the acts or resolutions of the two houses of the legislature; or, in other words, his power of returning all bills with objections to have the effect of preventing their becoming laws, unless they should afterwards be ratified by the two thirds of each of the component members of the legislative body.

Mr. BYRD. Will the Senator yield? Will the Senator yield for a question?

Mr. COATS. I would like to be able to give my statement and then I will be happy at the end of that to yield. I know the Senator would have many questions. I do not want to spend an excessive amount of time because there are other Senators waiting to speak. If I could go through my statement and then address the question, I would prefer to do that.

Mr. BYRD. Very well.

Mr. COATS. Presidents throughout our history have asked for the line-item veto. It goes all the way back to Ulysses Grant. It was President Truman who said:

> One important lack in the Presidential veto power, I believe, is the authority to veto individual items in appropriations bills. The President must approve the bill in its entirety or refuse to approve it or let it become law without his approval.

He later went on to say that it was a form of ''legislative blackmail''—those are his words, legislative blackmail—when the legislature sends to him a bill it otherwise knows needs to be approved by the President or else the Government will cease to function or else important appropriations for the provision of our national defense or for the meeting of national emergency will have to be vetoed by the President or accepted in whole even though it contains items which the executive feels are not in the national interest and bear no relationship to the legislation that is sent to him.

It is that practice that brings us to this point. It is the practice of a Congress which has discovered that under the powers granted to it by the Constitution rests and resides what I would term as an abusive power, a power that does not go toward meeting the needs embodied in the original appropriation or the original bill that is sent to the President but which goes toward placating or pleasing an individual parochial interest and is attached even though it is totally irrelevant to the purpose for the original appropriation, attached because, as President Truman said, we can hold this over the President's head knowing that he needs this particular expenditure in order to meet a pressing national need and his choice is limited to accepting the whole or rejecting the whole.

It was in 1974 that this Congress stripped the President of his executive power that was being exercised to impound funds, the power that was exercised routinely from every President from Thomas Jefferson to Richard Nixon. In fact, it was Jefferson who first employed the power to refuse to spend appropriated funds in 1801 when he impounded $50,000 that was appropriated for Navy gunboats. And it is the particularly egregious practice, in this Senator's opinion, of loading up otherwise necessary appropriations with items that are deemed unnecessary, that necessitates, through line-item veto power, a check and balance for the President, a restoration of the check and balance power that allows someone—in this case the Executive—to put a question mark on what we have done and to say, ''If you really believe that is a necessary item, you have the constitutional power to override my objection by a two-thirds vote.''

What that does is it sheds the light of public exposure, public debate, and individual vote—an individual yea or nay on a particular item—so our constituents, those we represent, have the ability to examine how we have handled their tax dollars so that they can hold us accountable, either favorably or unfavorably, for our actions, not on a massive bill as a whole but on an individual item.

No longer will we be allowed the excuse of saying, ''Yes, I voted for that particular measure, not because it contained the items you object to, but because it had such a pressing national interest that it overrode the specific objections.''

Our constituents say, ''But why did you not protest that particular item?'' Frequently we find that particular item was buried deep within a bill that was rushed to the floor to meet some national emergency or was added in conference and brought back in a way that, under our rules, is not amendable.

So what we are attempting to do with this process, with this concept of separate enrollment, what we are attempting to do is to provide the President with presentations from the legislature which are specified, item by item by item, which the President with his able staff and with the resources at their disposal can easily examine. They can look at these items which do not comport with the thrust of the legislation presented and send them back here for our review and, if we so choose, our overriding that particular veto.

As opposed to the statement that the Senator from West Virginia made about his fight to save the constitutional system, I would argue that line-item veto is a fight to save the constitutional system, it is a fight that honors what the Framers of our Constitution and what our Founding Fathers attempted to achieve: a system of checks and balances. It is difficult for this Senator to believe that the Founding Fathers of this country, the Framers of the Constitution, intended that we would present the Executive with a continuing resolution embodying every penny of spending for this entire Federal Government and place it on the desk of the President at the end of a session—sometimes it is after we have adjourned that it arrives at his desk, although we are still here in pro forma to finalize the formal adjournment—and say, ''Mr. President, take it or leave it. The entire budget of the United States of America sits on your desk in one piece and your choice is to take it all or reject it all.''

I would claim that is an abuse of the spending power, an abuse of the power of the purse, an abuse of the Constitution, an abuse of what the Founding Fathers intended as the way that body should act—act responsibly.

The Senator from West Virginia has said that when all is finally said and done, when we take Public Law 103–316, Making Appropriations for Energy and Water Development for the Fiscal Year Ending September 30, 1995, and for other purposes—that all we send to the President is this nice, neat little several-page piece of legislation. And that is a much neater process than sending to the President the stack of separately enrolled bills. In one sense it is, because it is much easier to read through this small, little booklet than it is to peruse through that stack of bills.

But what we have here and what we present to the President is something that is so general that it is very difficult to itemize out all that it accomplishes. It is a very neat way for Members to say, ''I did not know what was in the final product.''

Under title I of this particular act that I am reading, it appropriates, in

one section here, ''$181,199,000 to remain available until expended, of which funds are provided for the following projects,'' in the amounts specified. And then it lists about 10 projects. But that $181 million actually goes to fund an additional 326 projects. So, when the President looks at this, it is extremely difficult to determine which items are going to receive the specific expenditures and which ones are not. Of course, it is impossible for him to examine the legislation and come to the conclusion that there are portions of this that should not be spent because he is forced to accept the entirety or reject the entirety. He has no power, no authority, granted to him to send back items that he does not deem necessary.

The Senator from West Virginia talked about the process as a cut-and-paste operation, conducted in the wee hours of the night with clerks assigned from perhaps the Government Printing Office helping enroll the separate bills. That is the way it used to be done. That is the way, I would say to the Senator from West Virginia, that enrollment of legislation used to be conducted.

It would be a mechanical problem—not an insurmountable one but a mechanical problem—as we used to do it. But we do not do it that way anymore. Modern computer technology has arrived in the Senate and arrived at the House.

I spent some time with the enrolling clerk asking him how he now goes about this process. He said, ''Well, it is very easy.'' He showed me a computer sitting on his desk about this wide and about that high. He showed me a software package which is called XyWrite, and he said, ''We now do in a matter of minutes what used to take us hours, and we now do in a matter of a few hours what used to take days.'' He said, ''While I have authority to bring over people from the Government Printing Office, I never have to call them anymore because the miracle of modern technology allows us to separately enroll items literally with a push of a few buttons. What used to take dozens if not hundreds of hours now can be done literally in minutes.''

So it is not a mechanical problem. It is something that is easily processed and easily handled by the enrollment clerk. The House clerk has the same technology as the Senate.

The question of do we cede power to the enrolling clerk I do not believe is valid any longer either because, as the enrolling clerk explained to me, he does not have the authority. It is not vested in him to make a determination as to what should be enrolled or what should not be enrolled. It is the purview of the appropriators or those who write the bill to define the items of expenditures in those bills. And the power of the enrolling clerk only goes to enrolling that particular separate item. To the extent that we are sloppy in our efforts, that would raise a question as to what ought to be enrolled. But I am confident that, if we understand that each item in a particular appropriation or a tax bill or other item of legislation is going to be separately enrolled, we will make sure it is separately enumerated in the legislation that we send down to the enrolling clerk. Any ambiguity relative to a question mark on enrollment can easily be resolved by our own efforts.

As Senators know, the expansion of this legislation incorporates targeted tax expenditures. The Senator from West Virginia is absolutely right when he cites that the problem and the dimension of the problem that we face does not fall solely on the shoulders of the appropriations process to the discretionary account. In fact, I believe it is less than 20 percent of the budget. In recognition of that, part of the process in negotiating the amendment that was offered by the majority leader was to expand the scope of the veto power of the President, individual item veto power of the President, to incorporate new spending, new spending in the entitlement functions, targeted tax spending where specific tax—what I call tax pork—is incorporated in tax legislation which goes not to serve a broad interest or a broad classification like charitable deductions, like mortgage interest deductions, items that the Senator from West Virginia mentioned, but go to please or to satisfy a particular narrow interest, an individual interest or a specific interest within a class rather than to the class itself. That is defined in this bill. That will now be brought into this bill.

That is an idea that was brought forward by the distinguished Senator from New Jersey, Senator BRADLEY, who offered that last year on this floor. So we have incorporated that idea. It is a good idea. It immeasurably improves and expands the scope of the line-item veto. And we have added expenditures which would be added under the category of new expenditures to entitlement programs. It does not change the law relative to entitlement programs—as to who is eligible and what benefits they are eligible for. But, if this Congress changes the benefits provided under the entitlement and expands those and that results in increased expenditure, that too would be subject to the President's veto. So we have expanded it far beyond the original provisions of just applying it to the appropriations process.

I would like to conclude by making some points on the constitutional question because that is a valid question and one which I believe Members need to address.

Under article I, section 5, each House of Congress has unilateral authority to make and amend rules governing its procedures. Separate enrollment speaks to the question of what constitutes a bill. It does nothing to erode the prerogatives of the President as that bill is presented. Under the rulemaking clause, our procedures for defining and enrolling a bill is ours to determine alone.

There is precedent provided in House rule 49, the Gephardt rule. Under this rule the House clerk is instructed to prepare a joint resolution raising the debt ceiling when Congress adopts a concurrent budget resolution which exceeds the statutory debt limit. The House is deemed to have voted on and passed a resolution on the debt ceiling when the vote occurs on the concurrent resolution. Despite the fact that a vote is never taken, the House is deemed to have passed it.

The American Law Division of the Congressional Research Service analyzed separate enrollment legislation and indicated the following:

> Evident, it would appear to be, that simply to authorize the President to pick and choose among provisions of the same bill would be to contravene this procedure. In separate enrollment, however, a different tack was chosen. Separate bills drawn out of a single original bill are forwarded to the President. In this fashion, he may pick and choose. Formal provisions of the presentation clause would seem to be observed by this device.

Laurence Tribe, who is a distinguished constitutional professor of law, who is frequently quoted on the Senate floor more often by Democrats than Republicans, but nevertheless is a respected constitutional scholar, has also observed that this measure is constitutional. He recently wrote, and I quote:

> The most promising line-item veto idea by far is that Congress itself begin to treat each appropriation and each tax measure as an individual bill to be presented separately to the President for his signature or veto. Such a change could be effected simply and with no real constitutional difficulty by a temporary alteration in the congressional rules regarding the enrolling and presentment of bills.

He went on to say:

> Courts construing the rules clause of article I, section 5, have interpreted it in expansive terms, and I have little doubt that the sort of individual presentment envisioned by such a rules change would fall within Congress' broad authority.

The distinguished Senator from Delaware, Senator BIDEN, during his tenure as chairman of the Senate Judiciary Committee, wrote extensive additional views in a committee report on a constitutional line-item veto. He wrote about a separate enrollment substitute which he offered. And I quote from Senator BIDEN.

> Under the separate enrollment process instituted by the statutory line-item veto, the items of appropriation presented to the President would not be passed according to routine lawmaking procedures. Congress would vote on the original appropriations bill but would not vote again on the separately enrolled bills presented to the President. And the absence of a second vote on the individual items of appropriation has raised questions of constitutionality. For the following reasons, such concerns are unfounded:
>
> One, this does not change congressional authority. Each House of Congress has the power to make and amend the rules governing its internal procedures. And, of course,

Congress has complete control over the content of the legislation that passes. Thus, the decisions to initiate the process of separate enrollment to terminate the process through passage of a subsequent statute, to pass a given appropriations bill and to establish the sections and paragraphs of that bill, are all fully within Congress' discretion and control.

That is exactly the process which is presented in Senator DOLE's amendment. We, the Congress, have complete control over the content of the legislation we pass. Thus, the decisions to initiate the process of separate enrollment, or to terminate that process through passage of a subsequent statute, or by a sunset provision, which this DOLE amendment contains, and to establish the sections and paragraphs of the bill, which we have the authority and the power to do, all are fully within our control and discretion.

Quoting again from Senator BIDEN:

A requirement that Congress again pass each separately enrolled item would only be a formal refinement, not a substantive one. It would not prevent power from being shifted from Congress to the President, because under the statutory line-item veto, Congress will retain the full extent of the legislative power. Nor would it serve to shield Congress from the process of separate enrollment, because Congress will retain the discretion to terminate the process.

If we pass the whole, surely we pass the parts. How can we argue that having passed an appropriation bill that covers spending for certain functions of Government—let us say the Commerce Department—it does not incorporate the separate items of spending listed within that bill? To argue otherwise is to say that Congress, in passing the whole, does not pass the separate items. And it seems to me that a more legitimate process—if you are concerned with that question—is to separately enroll the items. Then there is no doubt that we have passed those separate items. So passing the whole incorporates the parts.

Senator BIDEN said:

The second reason why he believes the constitutional concerns are unfounded relates to House rule 49, the statutory limit on public debt.

I will refer to that later.

Rule 49 of the House of Representatives empowers the enrolling clerk of the House to prepare a joint resolution raising the debt ceiling, when Congress adopts a concurrent resolution on the budget, exceeding the statutory limit on the public debt. This procedure, which has been in existence since 1979, provides a clear precedent for the separate enrollment of items of appropriation. The House never votes on the joint resolution. Nonetheless, the House is deemed to have voted on the resolution because of its vote on the concurrent resolution. House rule 49 states, in part:

The vote by which the conference report and the concurrent resolution on the budget was agreed to in the House shall be deemed to have been a vote in favor of such joint resolution upon final passage in the House of Representatives. The committee report continued to elaborate on that by saying House rule 49 has not been found unconstitutional because of its modification of routine rulemaking procedures. It is transmitted to the Senate for further action and presented to the President for signature.

This process has been in effect for a decade. Despite the absence of a separate vote by the House on the joint resolution, there have been no constitutional challenges.

The American law division has supplied me with a number of cases which further elaborate these points. In United States versus Balan, decided in 1892, the Court articulated the power of the Congress to determine its rules of proceeding. It said:

The Constitution empowers each House to determine its rules of proceedings.

That is the Court speaking.

It may not by its rules ignore the constitutional constraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations, all manners of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. It is no objection to the validity of a rule that a different one has been prescribed and enforced for a length of time. The power to make rules is not one which, once exercised, is exhausted. It is a continuous power, always subject to be exercised by the House and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.

So is that not what we are doing? Are we not exercising that continuous power articulated by the Court to make our rules? Once exercised, that power is not exhausted, as the Court said. It is always subject to be exercised. In this case, the Court was referring to an action by the House. Obviously, it could apply to the Senate equally.

So it is not impeachment of the rule to say that some other way would be better, more accurate, or even more just. Who is to say that this method is not more accurate? I believe it is more accurate. It is certainly more accurate than the 10- or 12-page bill presented to the President for his signature, which does not begin to enumerate the actions of this body. You can pore through this and not begin to understand how the taxpayer' dollars are going to be spent. But if we separately enroll, every Member of this Congress will have at his or her disposal, immediately, exactly how dollars are spent, exactly how projects are funded and which projects they are. They will be able to pull pieces of paper out and say, ''I do not think this is the way we ought to deal with the taxpayer's expenditures.'' And the light of day will be shed on our actions. I think that is a more accurate and a more just way of being held accountable to the very people that send us here to deal with the allocation of their hard-earned dollars.

Killian asks:

Within this capacious concept, what provision of the Constitution would the ''deeming'' provision violate? We certainly cannot point to any fundamental right that is abridged. The constitutional constraint that is applicable is the first section of article I, which sets a bicameral requirement for the exercise of lawmaking. But Congress in the proposal does not disregard the bicameralism mandate. A bill in identical form has passed both Houses. Then, a functionary, the enrolling clerk, follows instructions embodied in the rules and separates out of this bill a series of sections identical to the sections contained in the larger bill and enrolls these sections into separate bills; these bills are signed by the Speaker of the House and the President of the Senate, and these bills are then presented to the President for his signatures or his vetoes.

One can readily see that the question is much more narrow than the mere issue whether Congress can pass a law that has not cleared both Houses in an identical version. The separately enrolled bills, taken together, are identical to that initial bill. If Congress should conclude that this two-step process comports with the constitutional requirement of bicameral passage of a legislative measure, in what way has a constitutional restraint been breached?

The issue of validity could also be influenced in determination by two other factors. That is, first, Congress is not seeking to aggrandize itself or to infringe on the powers of another branch . . . second . . . it must be observed that these rules are entirely an internal matter, subject to alteration by simple resolution at any time in either House. There is no irrevocable conveying away.

2. There is some question about whether the judiciary will review this case at all. There is some precedent to indicate that the judiciary may construe separate enrollment as a political question unsuited for judicial review.

Marshall Field v. *Clark* (143 US 649 (1892):

The signing by the Speaker of the House of Representatives and by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two House of such bill as one that has passed Congress. It is a declaration by the two Houses, through their presiding officers, to be President, that a bill, thus attested, has received, in due form, the sanction of the legislative branch of the Government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, receives his approval, and is deposited in the public archives, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. . . . The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in conformity with the Constitution.

Judith Best, a distinguished political scientist summed up these arguments well. She said:

Under article I, section 5, Congress possesses the power to define a bill. Congress certainly believes that it possesses this power since it and it alone has been doing so since the first bill was presented to the first President in the first Congress. . . . The definition of a bill is a political question and not justiciable. ''Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department. (*Baker* v. *Carr*, 369 US 186 (1962)) A ''textually demonstrable constitutional commitment'' of the issue to

the legislature is found in Each House determine the Rules of its Proceedings. If Congress may define as a bill a package of distinct programs and unrelated items, it can define distinct programs and unrelated items to be separate bills. Either Congress has the right to define a bill or it does not. Either this proposal is constitutional or the recent practice of Congress in forming omnibus bills containing unrelated programs and ungermane items is constitutionally challengeable.

Mr. President, despite the best efforts of those who oppose line-item veto in any form to characterize this bill as unconstitutional, I am confident that separate enrollment clearly passes the constitutional hurdle. Both conservative and liberal constitutional scholars agree; the American Law Division of CRS and the former chairman of the Senate Judiciary Committee have spoken clearly to its constitutionality.

If I thought that we would win the votes of those who are committed to kill the statutory line-item veto by passing a constitutional amendment, I would offer that amendment. However, I strongly suspect that the very same Senators who are raising constitutional concerns would fight just as hard against granting the President line-item veto authority through a constitutional amendment. The real issue at hand is not constitutionality, but Congress' willingness to change.

Mr. President, let me state that the real reason we are here is that this body, this Congress, this legislature, has been unable to responsibly exercise the authority and power given to them on behalf of the people of the United States, or a reasonable exercise of expending the money, which we require them to send to the Federal Government.

In 1994 we spent an average of $811.7 million a day on interest payments. That is $33.8 million an hour, $564,000 a minute. Those interest payments are due because this Congress did not have the courage or the will to go before the taxpayer and demand payment up front at the time of expenditure for items which it passed. And we have, over the past 20 years, and I point the finger of blame at every Member of this body, including myself—we have seen the national debt increase in the last 15 years from under a trillion dollars to nearly $5 trillion, a more than 500 percent increase.

Because we have not had the courage to go to the public and say, ''If we are going to pass this program, which is pleasing to many, we are going to have to ask you to pay for it as the money is expended.'' And we have, in the process, passed on to future generations a staggering debt burden which, as the Congressional Budget Office has enumerated, adds a crushing debt load which will provide a stagnant standard of living for future generations, which will place a burden on them that we have not had placed on our own shoulders.

I believe what we have done borders on or, if not, is outright immoral. I am not the first person to say that. Distinguished Americans have said that. They have warned about that, and now they have observed us doing it. It is grossly unfair for us to enjoy the fruits and the blessings of this country without having to pay for them. A lesson that each of us tries to teach our children has been ignored by this Congress, and that is that debt will ultimately crush you. It will ultimately destroy your hopes and your dreams.

Those items that we have deemed part of the American dream, at least that are part of the vision and dreams for most of us—owning our own home in which to raise our family, having the wherewithal to educate our children, providing for their needs, their necessities, whether it be transportation, clothing or food—those dreams and visions are going be infinitely harder for future generations because we have failed to act responsibly, because we have failed to honestly face the taxpayer and honestly exercise the responsibilities they have given to us, because we have had a very convenient excuse, and that is we can postpone the day of reckoning, we can postpone the day of payment to a future Congress, to a future generation.

To those who say that all we need do is stiffen our backbones and exercise will, I say it has not been done. It has not been done in 55 out of the last 63 years and for 25 straight years it has not been done. For one reason or another, there is always an excuse to postpone it, usually past the next election. It is a natural human tendency which we all fall prey to and that is a tendency to avoid a very fundamental, basic principle of not having more than you can afford, of being able to pay for it up front. But because the Federal Government is allowed to float debt, because the Federal Government, unlike other institutions, has a convenient out, we are able to tell our constituents that they can have it all now and somebody else will pay for it later. That is why we are here.

Now, in my opinion, we failed to enact the structural reform necessary to change the way we behave, and that was the balanced budget amendment. I regret that that failed by one vote. The line-item veto is another structural reform that changes the way we behave. It is almost as if we are trying to save ourselves from ourselves.

That is why I felt the balanced budget amendment was necessary because, despite all the promises—and I have been here through the budget deals and through the tax deals and through the promises—that we are going to get it right the next time, despite all that, we fail. We fail because it is so much easier to say yes than it is to say no, because of that natural human tendency of wanting to go home and say yes to the group that will vote in the subsequent November election on whether or not they want us to stay here, who will be pleased if we say yes and will be very unhappy if we say no.

And so that natural human tendency overcomes all of our best intentions. And each year, then, we fail to step up to the responsibilities of making the hard choices. Oh, we make some hard choices, but they are just trimming at the margins.

So I have believed for a long time that the only way we are going to accomplish what all of us, I believe, deep down in our hearts know we need to accomplish is to put in place structural changes which will either force us to accomplish that or make it much more difficult to continue past practices.

The balanced budget amendment would have forced us to accomplish that. We would have had to put our left hand on the Bible and our right hand in the air and each time swear to uphold that Constitution. And that Constitution would have required us to balance the budget. It would have liberated us. It would have liberated us from the pressures of constituencies, from special interests, from lobby groups. We could have looked them in the eye and said, ''Yes, that is a worthy idea, but you are going to have to sell it to the taxpayer, because I am constitutionally bound to not spend more than we take in. You are either going to have to suggest a reduction in an offsetting program or you are going to have to suggest a tax increase that will pay for it. But, by the end of the session, we have to balance the books.''

What a liberation that would be. We ought to self-liberate. That is what I hope we will do now that we have not passed the balanced budget amendment.

I hope we will realize and understand the gravity of the impact of this debt. As Thomas Jefferson said:

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

I hope that we will take that to heart and that we will summon the will to accomplish that end.

The line-item veto is a pale shadow in comparison to the balanced budget, but it is the only other game in town—the only other game in town other than what we have been doing for 25 straight years, and that is running deficits; despite our promises, despite our rhetoric, despite our best intentions, the only other game in town that changes the way in which this body operates, that provides a check on the way we do things, a balance on the way we do things that makes it more difficult for us to continue this practice of saddling future posterity and generations with unnecessary debt as a result of spending that goes to the narrow interests rather than national interests.

And so what is before us now is the second attempt in a month or so to fundamentally change the way we do business.

Some will argue for the status quo, saying that we are constitutionally bound. I do not accept that argument. Neither do other respected constitutional experts.

Some will say that we are tradition bound. What a tradition. Who can defend the tradition of a $5 trillion debt? Who can possibly defend the way that we have done business when faced with such staggering debt?

So the line-item veto, as I said, is just a shadow of what might have been accomplished under a balanced budget amendment, but, nevertheless, an important tool, an important tool to end the practice or at least to make the practice substantially more difficult than the practice that has been the traditional course of action here for perhaps the history of this body, but certainly since 1974 when we took away the President's right of impoundment.

It is a tool we need. It is a tool we need because it forces us to be honest legislators, to own up to the individual item that somebody has proposed and to defend it. And if it is defensible, if it is meritorious, then it will pass. It will gain the votes and the support of the Members of this body.

If it is not, it will fail. My guess is that many will not see the light of day because those items are items that we know cannot generate a majority of support, otherwise they would be brought as individual items to this floor.

We will never know the full impact of line-item veto because most of the items that would have been vetoed will never be put on the bills in the first place. We will not risk the embarrassment of the appropriation or the special tax break that will be labeled ''spending pork'' or ''tax pork.'' Most will not risk that embarrassment of having the President call out that separate bill and stamp ''veto'' on it and send it back here and bring it up for debate and for a vote. We know in our hearts it would never achieve a majority, let alone a two-thirds vote.

So line-item veto will not be measured in the amount of money that it saves in the future. Only we know in our hearts and in our minds what items we might have attached if we had not had line-item veto. Those are the broader reasons, Mr. President. We can argue the technicalities. We can argue as we always do that, yes, I support the concept but not this bill, not this definition.

Well, we have been going through and saying this now for more than a decade. I do not know what perfect piece of legislation lies out there. All I know is it is not offered. We have wrestled and wrestled with this. We want something that is real, something that has teeth, something that makes it harder for Congress to spend. Not 51 votes. We want two-thirds, something that allows the President to know exactly what it is we have done.

We do not want a 14-page bill sent to him that incorporates in its first paragraph, 326 separate items. We would like those items defined, in detail. A little extra work, yes. But we are not quill and pen any more. We are computerized. We have the technology to do this, to do this easily, to do this accurately, to do this fairly, to do this justly.

Mr. President, I would hope our colleagues would conclude that the time is now, the time to make a structural change, to make a difference, is now. If we postpone this, if we continue to postpone it, we simply will have a much more difficult task in the future.

So, let Members at least, having failed a balanced budget amendment, let Members at least pass line-item veto so that we can say, ''We did something different. We made some change in the way we do business.'' So that we do not have to go home and say ''Despite the mandate of them, despite the burden of the debt, despite the speeches that each Member has given about the insidiousness of the debt and uncontrollability of this debt we did nothing structurally different. We did nothing to change the way we did business.''

Does any Member want to go home and say that? This is our chance. This is our time. I urge support for the amendment by the Senator from Kansas, the majority leader, Senator DOLE.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. BROWN). The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I asked the Senator from Indiana to yield. He did not wish to yield.

He had two opportunities to vote for deficit reduction packages—and I will be very brief—in 1990 and again in 1993.

Did he vote for either of those deficit reduction packages? The opportunity was there to cut the deficits by a total of around $900 billion in both bills, 1990 and 1993. Did the Senator vote for either of them?

Mr. COATS. Mr. President, if the Senator from West Virginia will yield, first of all I apologize to the Senator for not yielding. I guess I got carried away with my own rhetoric and conclusion. I forget I promised the Senator from West Virginia that I would yield for a question. I trust he will accept my apology for that.

The question the Senator from West Virginia has propounded to me is: Did I vote for the 1990 or the 1993 budget resolution? The answer to that is no.

I would like to explain why I did not. Because this Senator believes that my constituents from Indiana have been taxed enough. And both of those resolutions contained substantial increases in taxes, as well as spending cuts. It was the philosophy of some who offered those resolutions that our deficit ought to be attacked by a combination of tax increases and spending cuts.

It is this Senator's opinion that we have taxed the taxpayers enough, and that we ought to attack the deficit on the basis of spending cuts—this Government has grown too large—and that our first priority ought to be to reduce the scope and size of Government and to reduce expenditures. Only then consider the possibility of an increase, if it is needed, to address the balanced budget amendment.

So, if the vote was on a measure as we have had a number of votes, to just reduce spending, this Senator is more than happy to vote for it. But not if it includes raising taxes.

Mr. BYRD. Mr. President, the Senator has answered my question. The answer is, he did not vote for either of those packages, which together saved upward of $900 billion, would reduce the deficits by almost $1 trillion over 5-year periods. He did not choose to vote for either of them and he says, ''Because they contained tax increases.''

Well, tax increases are one of the tools that has to be on the table, in my judgment, if we are going to consider reducing the deficits. Nobody likes to vote for tax increases. I do not like to. I have voted for tax increases, I have voted for tax cuts. I would much rather vote for tax cuts.

But tax increases is one of the options that we may have to use if we relieve the burden of debt that is going to be placed upon our children and grandchildren by virtue of our using the national credit card for the last dozen to 15 years. We may have to use that option to increase taxes.

Now, the distinguished Senator refers to the Gephardt rule. The Gephardt rule has never been adjudicated by the courts. We do not know how the courts would hold on the Gephardt rule.

Furthermore, I might suggest that if we can deem, in the words of the amendment that has been offered by Mr. DOLE, if we can deem, and I read the language therefrom, ''a measure enrolled pursuant to paragraph one of subsection (A) with respect to an item shall be deemed to be a bill under clauses 2 and 3 of section 7 of article I.''

Mr. President, the distinguished Senator from Indiana says that we ''may deem'' such measure to be a bill under clause 2 and 3, and he says that we may do that based on article I, section 5, which leaves to the two Houses the judgment of determining their own rules, but I would hope that the Senator would not argue that the Senate or the House under the cloak of article V, the determining of the rules that the House and Senate could supervene a clear clause in the Constitution of the United States.

Neither House can create a rule that would in itself, violate the Constitution of the United States, or supervene it, or take precedence over it. All rules of the House and Senate—even though the House and Senate are given the power and authority under article I,

section 5, to determine the rules of—all Senate and House rules must fall if inconsistent with the Constitution of the United States.

Now, if a bill enrolled pursuant to paragraph 1 of subsection (A) with respect to this item shall be deemed to be a bill, if one of these little ''billettes'' may be deemed to be a bill, if the Constitution said ''Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States''; if we can deem that and thereby avoid the requirements of the Constitution, I wonder if we might not just deem an appropriation bill that passes the House of Representatives, just deem that it has passed the Senate?

Any appropriation bill that passes the House, why not just deem it to have passed the Senate and go home? It would seem to me to be just as appropriate to deem an appropriations bill that has passed the House, deem it as having passed the Senate, as to deem the section or a paragraph or an item in the appropriations bill, deem that to be a bill.

There is one final suggestion I have. The distinguished Senator spoke of the qualified negative which the constitutional Framers gave to the President, and they did reject the idea of giving the President an absolute negative, an absolute veto. They gave him a qualified veto. But in practice, it would seem to me that if the pending amendment becomes law, it could, in effect, be the same as giving the President an absolute veto for this reason:

Let us say that the several States in the Northeast—Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and so on—let us say that those States were able to get something into an appropriations bill that was very vital to the Northeast region. Suppose the President vetoed that item or those items from the bill and sent those bills back to the House of Representatives where they originated. Well, obviously, the votes of all the States in the Northeast, when added together, in the House of Representatives would fall far short of being sufficient to override a Presidential veto. The small States would be hard put to corral the votes necessary to override a Presidential veto of items that affected the small States.

West Virginia has three votes in the House and, in effect, then, it would seem to me that the President, in exercising his veto under the amendment that has been offered by Mr. DOLE, would, in practice, as far as practicality is concerned, be exercising an absolute veto. Small States should look at this amendment with great concern. Perhaps the States of California, Texas, Florida, Michigan, New York, Indiana, and Illinois could come together and marshal enough votes among themselves to at least uphold a Presidential veto, sustain it.

But the President could take that bill and knock out items that were of importance to the smaller States, and it would be very, very difficult, if not impossible, for the small States to garner the support in the House of Representatives to override that veto. They would not be able to produce the two-thirds vote. So, in essence, it gives to the President an absolute veto, which the Framers discussed but rejected.

Mr. President, I have had more than my share of time here this afternoon. I apologize to those other Senators who have been waiting. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. I believe the next Senator is the Senator from California. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, this is a very short statement. I do appreciate the opportunity to make it. I rise today in support of the substitute amendment to S. 4.

For more than 100 years now, arguments both pro and con have been made revolving around whether a President should or should not have a line-item veto. As a matter of fact, since 1876, more than 200 resolutions have been introduced on this subject. Presidents, Democratic and Republican, have asked for this special blue pencil. This President has asked for the strongest possible bill, and I believe that there are several Democratic Senators prepared to vote for this legislation.

Basically, the arguments on a line-item veto are either philosophical or constitutional. But regardless, the trend on many levels has clearly been toward a stronger chief executive in both State and local jurisdictions.

Today, 43 States have a line-item veto, and mayors of cities, big and small, as well as county executives, are being granted this authority.

In California, the latest city to grant a line-item veto to a newly strengthened mayor is Fresno, a major city with a population of 667,000 people in California's Central Valley breadbasket. The Fresno mayor will have this authority beginning in 1997.

In Maryland, the State legislature is this year considering granting this authority to the county executive.

In California, the line-item veto has been used 254 times in the last 4 years. The Governor has had this authority since 1908, and a recent survey found that 92 percent of all current and former State Governors believe that the line-item veto would help curb spending.

Before New Jersey Gov. Christine Todd Whitman signed a $15 billion supplemental budget into law this past year, she used the blue pencil to cut $3.17 million from the bill.

The most powerful line-item veto is probably that provided in Wisconsin, where the Governor cannot only veto lines but also individual words. Governor Thompson has used it over 1,500 times since 1987, sometimes to change actual policy. It is my understanding that this is not the case in the legislation being considered today.

Virtually all businesses' and corporations' CEO's or CFO's have this authority. But the President of the United States, who runs the largest combination of major governmental enterprises in the world, does not have this authority.

Today, the President has little recourse to fine tune a budget passed by the Congress, except to shut down entire segments of the Government by vetoing an entire appropriations bill.

In 1992, the General Accounting Office estimated that a line-item veto could have pared $70.7 billion in pork-barrel spending between 1984 and 1989. That is just 5 years. If in the next 5 years a similar amount could be cut, then the line-item veto will have done its job.

Enacting a line-item veto will, of course, give the Executive more authority, and I recognize that that is a problem for some. And even though a President may not use that power frequently, the threat of such action may be the impetus needed to force Congress to be more responsible in the formulation of the budget.

I believe the line-item veto will increase positive relations between the executive and legislative branches because Members will no longer have the ability to insert special projects that have little overall merit in appropriation bills without the concurrence of the Chief Executive. The line-item veto can force executive-legislative cooperation and agreement before the bill reaches the White House for signature or veto.

It also encourages caution on the part of the Chief Executive who would use it sparingly in order to prevent his veto from being overridden. Really, what a line-item veto is all about is deterrence, and that deterrence is aimed at the pork barrel. I sincerely believe that a line-item veto will work.

In our caucus today, some papers were passed around which showed a paragraph from a bill involving the Patent and Trademark Office, and there were several subsets attached—items which were certainly not reflected in the paragraph of the bill. One of these stated:

> * * * of which not to exceed $11 million shall remain available until expended for furniture and furnishings related to new space alteration and construction projects.

Now, if I were President, I would say to my staff—take a look at this. Does the Patent and Copyright Office really need $11 million in furnishings? I think it is worth a look.

Mr. LEVIN. Will the Senator yield on that?

Mrs. FEINSTEIN. I certainly will.

Mr. LEVIN. I was the one who circulated this paper. This has nothing to do with the Patent Office. This had to do with the Federal courts, which

shows the problem with the pending substitute before us, which is there is no way of telling from the bill that will be submitted to the President what it relates to. It is just language pulled out of bills and you do not even know what it relates to. The Senator is saying that this was from the Patent Office.

Mrs. FEINSTEIN. Let me respond to that. The fact is, I do not care what department it is; any $11 million item for furniture should certainly be looked at a second time, whether it is courts or agricultural offices or Interior or anything else.

Mr. LEVIN. If the Senator from California will yield further, this language was language which the computer produced, and the Senator from Indiana handed the computer to State, Commerce and Justice appropriations. And the Senator from Indiana said, gee, that computer does it simply, fairly, accurately, and the Senator from California said that this related to the Patent Office. And in fact it has nothing to do with the Patent Office.

Mrs. FEINSTEIN. Let me apologize. The papers were passed out together at our caucus, and I made perhaps the mistaken and inadvertent, but not surprising, conclusion that since they were passed out together they related to one another.

Now, if I might finish my statement——

The PRESIDING OFFICER. The Senator from California has the floor.

Mrs. FEINSTEIN. I believe that what a line-item veto essentially does is encourage caution on the part of both the Chief Executive and the legislative body. I think the time has come for fiscal discipline. As I said, I sincerely believe the line-item veto can help us achieve that goal.

Let me give an example. When I was mayor of San Francisco, the budget did not correspond with the size of the Federal budget, but there were 52 departments, and the budget was over $1 billion. Yet, it was very difficult to get down to the actual line items. There was one line for salaries. As a chief executive, I really had no opportunity to go through every salary to make judgments about how many people should be continued and how many people should not.

A line-item veto gives the chief executive this opportunity, and I think the blue pencil is a necessary tool of government for a Chief Executive in a modern day.

I also believe that tax breaks and appropriations should be treated similarly. They may be two different items, but the results are very much the same: they benefit a small segment of the population at the expense of the greater good of all the people. Regardless of the item, they both reduce the amount of money in the U.S. Treasury.

Currently, debates are raging at every level of government about the institution of a line-item veto. Maryland, as I said, is now debating it. Fresno, CA, has just granted it. I believe that the people of this country understand the benefits of a line-item veto and are expanding the use of it. I believe we ought to give this power to our President.

So I am very pleased to be able to support the legislation before this body.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I just want to make an announcement to my colleagues on both sides to know what the program is for the remainder of the evening.

The distinguished Democratic leader has given me a list of potential amendments which numbers 33 on that side, 4 on this side, for a total of 37, and I am not in a position to say that is an agreement that we would want to agree to. So I would just suggest tonight, if somebody wants to debate the bill, it is all right to have the debate, but we are not going to take up any amendments tonight. And then I will meet with our leadership tomorrow morning on this proposal.

I do not see how we are going to complete 37 amendments between now and Friday morning. Many will probably be the same amendment we have had time after time after time in an effort to delay and delay and delay action on a bill that ought to be passed around here in 2 or 3 days. It is something we debated 7 times in the past 8 years. But I know Members have a right in the Senate to offer all the amendments they want. And if we cannot get cloture, why, I assume they can offer all the amendments they want. But I do not think it would be in the interest of anybody to start off and suggest we are going to finish by Friday when we have 37 amendments with no time agreement on a single amendment. It is the same thing we have done all year long—throw in all the amendments you can think of, clean out the garbage can, whatever, and then put them on a list and say take it or leave it. My view at this time is to leave it. If anybody wants to make speeches on the bill or on any amendment tonight, there will be no disposition of any amendment tonight.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I am sorry to hear what the leader has just said. We were prepared to offer an amendment. There have been those of us in the Chamber today who have not had a chance to talk. Some people do not follow the usual order around here, but I was prepared to yield to my colleague from Illinois for the purpose of offering an amendment.

Do I understand that the leader is saying he does not want any amendments offered as of now?

Mr. DOLE. I do not object to an amendment being offered; there just will not be any vote tonight if the Senator from Illinois would like to offer an amendment, if somebody else would like to offer another amendment.

Mr. EXON. I have listened to the statement made by the leader, and I would simply say that we are prepared to move ahead on these things as quickly as possible. This is a very important piece of legislation, and I have listened to a lot of talk today that some people misconstrue what most of us on this side want to do, and that is pass some acceptable version of the line-item veto or enhanced rescission proposal.

So we are not being dilatory. I do not think anybody is filibustering. There has been no threat of a filibuster. I hope, for the purpose of moving ahead now, to show we want to get things done—as soon as the Chair thinks it appropriate, I would appreciate him recognizing the Senator from Illinois for the purpose of offering an amendment to get on with what we think the request of the majority leader is. Let us get going on offering the amendments.

Mr. DOLE. I will just take 1 additional minute. Again, everybody has the right to offer amendments. We certainly learned that this year. We have voted on the same amendments time after time after time. I bet half of them are right on here again. Everybody out trying to make points: Social Security, children, or somebody else—offering these amendments.

That is a right we have on both sides of the aisle, but we do not have to take a week just because Friday is coming. We do not have to say we cannot finish this bill before Friday. We have a lot of work to do if we are going to have any Easter recess around here.

We have a list of ''must do'' legislation. There comes a point when you must get it done. I think if we can finish this bill on Thursday, start on either the supplemental appropriation, the second supplemental or the modified bipartisan measure on regulatory reform—not the moratorium but the 45-day review period, which I think Senator REID and Senator NICKLES are working on—then after that, we have the self-employed tax deduction, which is going to be very important to our constituents. Tax time is coming. We need to pass that early next week. Then we have the second supplemental with billions of dollars in there for FEMA, among other things. Then we have a couple of conference reports on the first supplemental; and then on paper simplification.

My view is, if we do not push on this one we are—and if we do a couple of amendments tonight, that would only leave 35.

My view is, certainly if the Senator from Illinois wants to offer an amendment, he can do that tonight. But I suggest we then have the vote on that amendment tomorrow, and we will just start and see how far we can go until we have a cloture vote tomorrow sometime.

Mr. SIMON. Will the majority leader yield?

Mr. DOLE. I will be happy to yield.

Mr. SIMON. Let me just explain, the amendment I hope to offer simply calls for expedited judicial review. It is identical to an amendment that was accepted on the House side.

I think, whether you are for or against this bill, it makes sense. I believe it would be acceptable to both sides but I at least want to lay it down tonight and then, if there is not agreement tonight, then we can agree on it tomorrow.

Mr. DOLE. Is the Senator going to send the amendment to the desk?

Mr. DASCHLE. If the Senator will yield?

Mr. SIMON. If the Senator will yield for that purpose.

The PRESIDING OFFICER. Does the Senator from Kansas yield?

Mr. DOLE. I yield the floor.

Several Senators addressed the Chair.

Mr. DASCHLE. Mr. President, I did not hear all the words of the distinguished majority leader, but I did hear the end of his comments.

Let me say again, as I have said to him personally: it is not our desire to hold up this piece of legislation. Our desire all along has been to work in good faith with the Republican majority. We have consulted with a number of our colleagues, all of whom have indicated their amendments are relevant.

I am somewhat surprised myself, frankly, with the list of amendment. I had indicated publicly I did not think the list was going to be as long as the list is. But I have given the assurance to the majority leader that we desire to finish this bill this week. We have also indicated that our message to all Members would be that they would have to offer their amendments prior to 10 o'clock on Thursday. That is an excellent guarantee.

We have also indicated that the amendments that we intend to offer would be relevant. These have not necessarily been offered in the past, and I hope we could find some way to accommodate all Senators here. If we have to go to a cloture vote, we will go to a cloture vote. But the issue, if we go to a cloture vote, will be whether we, as a minority, have the opportunity to be heard on a very important issue, and to offer all relevant amendments.

We only received this amendment yesterday evening. It is a substitute that was laid down yesterday. We have not been given an opportunity today to even offer an amendment. There will be no votes on amendments tonight.

So I hope that everyone shows some accommodation, and some willingness to cooperate. We are doing our best. We may be able to get that list down even some more. But I hope we can continue to work in good faith. And let me emphasize to the majority leader and to others, I think if we do work in good faith, we can accommodate all Senators in a responsible way.

But to lay down this substitute, then to file cloture, then to tell us that we cannot even offer amendments—most of which or all of which should be relevant—in my view is just unacceptable. I hope in the end we can deal with this in a reasonable way. I am sure that we can.

With that, I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, we may have an opportunity overnight to go back and shorten the list some. I cannot believe there are 37—34 amendments on that side of the aisle. First there were 40; then they reduced it to 34. I cannot believe all those amendments. I think there may be some legitimate amendments. There are probably a half dozen, but I do not think there are 34.

Maybe we can come back and take another look. We now have three amendments or four amendments on this side of the aisle. The important thing is, it is not just this legislation. We took 4 or 5 weeks on the balanced budget amendment. We listened to—everybody got to offer their Social Security amendment on the other side. They tried to make that the issue. Many people who voted for the balanced budget amendment last year, the identical measure, stood right here and voted no this year. There were a couple of minor changes.

We do not want to go through that process again. You are either for or you are against a line-item veto, and we ought to find out. Those who are for it on both sides—not everybody is for it on this side. But those who are for it on both sides, I think, would want us to move ahead and get on to the next piece of legislation if, in fact, we are going to have a recess, which would come when, if it happens? April 7.

But there are some things we need to do. I understand today there is some treaty the administration wants us to do that may take some time.

So we are trying to accommodate the administration. In fact, the line-item veto is something the President says he is for. He said today at the White House they did not mind these separate enrollments. They have a lot of pens at the White House. They make good souvenirs. If there are a lot of enrollments, they could have a lot of signing ceremonies. That is what, in effect, Mr. McCurry said, the President's press spokesman, I think, on that line-item veto.

So we would be happy to work with the leader overnight. But I say to the Senator from Illinois, if he wants to offer the amendment, he certainly has every right. If somebody else wants to offer an amendment, Senator MCCAIN said he would stay here until 8, 9, 10 o'clock, so we could stack some of those votes if they are not subject to second-degree amendments and have those votes tomorrow morning.

We do not want to keep anybody from offering amendments. I just do not want to try to do this this evening.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, let me emphasize to Senators on our side of the aisle that I hope we could offer some amendments tonight. Now, I understand the majority leader to say if we have the ability to vote on them, let us do that. Let us move ahead.

But there are really two issues here. The first issue is whether or not the Democratic minority will have the right to offer amendments to be heard on any one of a number of bills that may come before us. I do not think the Republicans in the past have been any more willing to accept the majority laying down a bill, cutting off debate, and not allowing amendments, especially those that may be germane or relevant, from being considered and debated upon and ultimately voted on.

That is not how we should do business here. What I thought we did was to try to work out arrangements whereby both the majority and the minority would have the opportunity to offer amendments in a reasonable way, and to have votes on those amendments and ultimately work through the legislative process. If we are precluded from doing that, then in my view we have no choice but to vote against cloture and to drag this process out as long as we must. Nobody wants to do that. But I think I can say for many members of the Democratic caucus that we will do that if that is our only recourse.

Second, let me just say this is not just a question of a line-item veto. Obviously, there are legitimate differences of opinion with regard to what is the most appropriate form of a line-item veto. There are differences on both sides of the aisle. Our hope is that we can work through those differences and come up with a meaningful piece of legislation that will enjoy broad bipartisan support. But whether we have broad bipartisan support depends upon whether or not there is bipartisan cooperation. It is not just a vote on a line-item veto. It is a vote on various concepts involving line-item veto or line-item rescission and I am fairly optimistic that ultimately as we work through these amendments, and as we work through the course of the week, that we can come to some ultimate closure on this issue in a way that would allow everyone here to feel good about our progress.

So I hope cooler heads can prevail, and that we can truly accomplish all that both the majority leader and I and others have expressed a desire to do this week.

Mr. MCCAIN. Will the Democratic leader yield? I would like to say that the distinguished Democratic leader that I am prepared to stay here. We are prepared to consider amendments. I hope all of our colleagues on both sides of the aisle understand that.

It is my understanding that the majority leader would like to stack those votes tomorrow, which I hope is acceptable to the Democratic leader. I hope we can move forward, and hopefully by tomorrow perhaps we can find, as we usually do, that some of those amendments that are on that list are not necessary so we can achieve the goal that both of us seek.

I fully understand and appreciate the desire and commitment of the distinguished Democratic leader to protect his and the rights on that side of the aisle.

Mr. DASCHLE. Mr. President, I will not belabor this point. Let me state one last reminder to my colleagues. If we have an agreement, that agreement will entail, at least as it stands now, an understanding that all Senators would have to file their amendments no later than Thursday morning. That leaves tonight and tomorrow and Thursday morning up to a time certain to offer amendments. So if Senators are serious about offering these amendments, I hope they will come to the floor tonight as late as it takes. This is an opportunity to present your amendments. Come to the floor tomorrow. But take advantage of what I think is an effort on both sides of the aisle to accommodate Senators with serious suggestions and proposals as to how to improve this piece of legislation. If we do that, I am sure the distinguished Senator from Arizona is correct. We can reach some agreement tomorrow as to how to dispose of this bill in a way that will accommodate all Senators.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I want to briefly thank the distinguished Democratic leader for his patience. I want to thank the Senator from California for a very important statement, and frankly one that I think has gotten a lot of very important messages associated with it. I appreciate her support of the line-item veto. I appreciate also the patience of the Senator from Michigan and the Senator from Illinois.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. I assure my colleagues I will just take a few minutes.

AMENDMENT NO. 393

(Purpose: To provide for expedited judicial review)

Mr. SIMON. Mr. President, I send an amendment to the desk in behalf of myself and Senator LEVIN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself and Mr. LEVIN, proposes an amendment numbered 293.

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

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

The amendment is as follows:

At the appropriate place in the pending amendment, insert the following:

SEC. . JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Any action brought under paragraph (1) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives or the Senate to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—

Notwithstanding any other provisions of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—

It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

Mr. SIMON. Mr. President, I believe this is an amendment that will be acceptable to both sides. But my colleagues will have overnight to look at it and make a determination. It is identical to the language that is in the House. It says that any Member of Congress may bring the question of constitutionality before the Federal court, and a panel of three judges will make a determination of its constitutionality and then it can be appealed directly to the U.S. Supreme Court.

What we do not want is to live in limbo. We have people like John Killian of CRS and Prof. Larry Tribe of Harvard who believe it is constitutional. You have others like Louis Fisher of CRS and Walter Dellinger, who believe it is not constitutional. I do not know who is right. The courts have to make that determination. But we ought to know as quickly as possible whether it is constitutional. My sense is it will pass, and it is clearly going to be signed by the President. Let us find out whether it meets constitutional test.

That is what we are asking. And that very simply is what the amendment does.

I thank the President. I thank my colleagues for yielding, and particularly Senator LEVIN who was here on the floor before I was.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I rise in support of the amendment offered by the Senator from Illinois. It is a very good one, and a very timely one. This amendment is simply good and prudent planning.

The distinguished Senator from West Virginia has detailed our real concerns with the separate enrollment concept advanced by the Republican substitute. Legal scholars can debate whether the separate enrollment violates the clause of the Constitution. That would be affected regardless of where the Senate comes out on this issue of separate enrollment. It is a constitutional question.

I hope that all can agree that we do not want a constitutional cloud hanging over what I think we will eventually pass in the form of whatever kind of line-item veto or enhanced rescission we come up with here in our debate on a final vote. We do not want that cloud hanging over forever.

The pending amendment simply allows a speedy resolution of this constitutional issue. It does not allow a legal challenge to hang over all the bills for years upon years. Let us provide an expedited judicial review, which the Senator from Illinois suggested. As I understand it, it is identical to what was passed in the House of Representatives.

Possibly this is something that can be passed by a voice vote, since I know of no objection to it on this side of the aisle.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I appreciate the intentions of the Senator from Illinois. I am in agreement, except with one caveat; that is, that the opening paragraph of the amendment says any Member of Congress may bring an action in U.S. District Court for the District of Columbia for declaratory judgment and injunctive relief on the ground that any provision of this act violates the Constitution.

I have not seen the House language, I say to my friend from Illinois. But I am concerned about any provision of the act which is unconstitutional, and whether the entire act would be unconstitutional, if that was the intent of the amendment. If it was the intent of the amendment, would a severability clause added to the amendment be acceptable to the Senator from Illinois?

Mr. SIMON. Mr. President, if my colleague will yield, Mr. President, I am sure we can work that out. If the Senator's staff will work with my staff overnight, I think we are reaching a point of agreement.

Mr. LEVIN. Will the Senator from Arizona yield briefly?

My understanding is that language tracks the Gramm–Rudman judicial review language as well. That may be helpful as a precedent as you review this overnight.

Mr. McCAIN. I thank the Senators from Illinois and Michigan.

I would like to ensure—and I think the Senator from Illinois is in agreement with me. If one minor provision of the act is declared unconstitutional, I would not want the entire act to be declared unconstitutional. I know what the opponents of this legislation are trying to get at. It is primarily separate enrollment. I understand that. If it were declared unconstitutional, then obviously, the entire act would be out. If it is a minor aspect of it, I would like to not see the entire legislation knocked out.

So I look forward to working with the staff of the Senator from Illinois overnight, and obviously with the good counsel of the Senator from Michigan. I hope we can work that out during the course of the evening.

I thank the Senator.

Mr. SIMON. I thank my colleague from Arizona.

Mr. McCAIN. Mr. President, we will not accept the amendment at this time until we get the language worked out and also in keeping with the wishes of the majority leader that we not do any amendments this evening. But I also would like to assure the Senator from Illinois that I think it is entirely fair and justified to see an expedited review of this legislation.

I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

Mr. EXON. Madam President, I have been listening all afternoon to the excellent presentation by Senator BYRD from West Virginia and learned a great deal. I think we would all agree that the Senator from West Virginia is a very talented and experienced constitutional lawyer. I thought he brought up some excellent points today, and I simply say that I think it is very important that the Congress listen to somebody with the experience of Senator BYRD and not get ourselves into a situation where we, once again, try, and maybe this time pass, some version of a line-item veto and then have it promptly set aside by the courts. None of us want that. There have been a lot of arguments back and forth, and I will submit for the RECORD at this juncture a statement by Walter Dellinger in front of the Judiciary Committee in January of this year which disagrees with the holding of Senator BIDEN of the Judiciary Committee, the former chairman, with regard to this concept of enrollment.

I ask unanimous consent that that be printed in the RECORD at this point.

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

EXCERPT OF MR. DELLINGER'S TESTIMONY BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION, JANUARY 1995

As much as I regret saying so, I think that Senator Biden's proposal for separate enrollment also raises significant constitutional issues, you know, that would atomize or dismember one of these large appropriations bills into its individual items which the President could then sign. I think it is either invalid under the clause, in my view, or, at a minimum, it raises such complicated questions under the Presentment Clause that it is a foolhardy way to proceed because if we and all of our predecessors are right, I think that which has to be presented to the President is the thing that passed the House and the Senate, and that which passed the House and the Senate is the bill they voted on on final passage, not some little piece of it or a series of little pieces of it. So I have doubts about it.

Mr. EXON. Mr. President, during the extensive debate that has gone on now since 2:15 this afternoon, a lot of things have been talked about. I simply emphasize once again that, as far as this Senator is concerned, I am working very hard and have been for many years to try to come up with something that we can generally agree on, get it passed, hoping it is constitutional. I go way back to 1986 when the then Indiana Senator, Dan Quayle—the predecessor to Senator COATS, who was in the chair most of the afternoon—and I combined at that time on what was called the pork-buster bill. That launched one of the first recent initiatives trying to do something about putting some brakes on some of the pork that goes into the bills.

So, therefore, I wanted to march shoulder to shoulder, as I did with the chairman of the Budget Committee, Senator DOMENICI, this year in introducing S. 4. And then came, of course, S. 14, which came after S. 4. It was introduced by Senator MCCAIN and others. We held a very interesting hearing on that. It now seems that many of the things embodied in S. 4 have changed to the new concept offered by the majority leader last night. I think some significant changes were made that brings the proposal that is now before the body much, much closer to S. 14, which Senator DOMENICI and myself introduced under the number S. 14.

So I think we are making progress. I think we are going to pass something now. But I certainly hope that we recognize and realize that nothing is perfect, and the substitute offered last night, which I understand has been agreed to by most of the Senators on that side of the aisle in the majority, is something that we are looking at. I think some changes would be in order, and I certainly hope that we will not dismiss out of hand the detailed presentation made by Senator BYRD today. The points he made, I thought, were tremendously important, and we should take a look at that.

I am not sure where and when it came after the introduction of S. 4 and S. 14, which were the two principal bills in this area, that had nothing about actions of an enrollment clerk. I am not sure yet how that has become such a centerpiece. I hope that those on that side of the aisle will at least listen to those of us here who would like to suggest and have a vote on what we may think would be a better way that would keep us, hopefully, away from the courts intervening and saying that we have done something unconstitutional.

I simply say that I believe there are some concerns with regard to an enrollment clerk. I listened to the Senator from Indiana this afternoon talk about how computers could be used to expedite this process and it would not be as laborious as indicated in the presentation by Senator BYRD. I wonder if we recognize that the Constitution probably does not allow computers to sign bills or ''billettes,'' as they were called today by Senator BYRD in his rather extensive debate.

When you start talking about this enrollment proposition, I do not believe that the Framers of the Constitution ever envisioned that an enrollment clerk would be involved in such an intricate way. If the enrollment clerk would be required to enroll all of these bills separately, given that, we also have to recognize that the Speaker of the House of Representatives, the President pro tempore of the Senate, and the President of the United States all have to sign these. I suspect and would hope that we would not have changed the system so much that we do not require the signature of those key officers, as established in the Constitution, and that they can sign through a computer. It might well be that we have advanced to the point where the computer can sign the name of the President of the United States. But I suspect that that might be somewhat suspect from a constitutional standpoint.

I simply say, Mr. President, that all we are trying to do here is to move ahead aggressively. Let us have an open debate. Let us not try to shut off debate, because this is a very important matter. Certainly, when you are talking about matters like this, matters that we debate at some length regarding the constitutional amendment to balance the budget—an item, by the way, on which this Senator sided with those on the majority side of the aisle. I still think constructive debate, dialog and discussion is part of the Senate process, and we should not try to move as quickly on everything as does the House of Representatives.

I remind all that the U.S. Senate is not the House of Representatives. If there is one thing that was made clear by the Framers of the Constitution, they felt that the U.S. Senate should be the more deliberative body. That does not mean we should be so deliberative that we get nothing done. Nor does it mean that we have to race down the track like they do in the House of Representatives to meet some magic 100 days that I think means little, if anything, if we are going to properly

discharge our duties in the manner in which we have traditionally done it in the U.S. Senate.

I was extremely disappointed by the vote on the balanced budget amendment. However, we cannot spend the rest of the session licking our wounds and assigning blame. The world did not come to a screeching halt because the balanced budget amendment failed to carry the day. We continue to run deficits and we continue to pile up debt. It is time to move forward on a bipartisan basis. It is time to balance the budget with or without a balanced budget amendment.

Oftentimes, during the balanced budget amendment, I found people talking by each other, as I thought we did to some extent this afternoon. I was here all afternoon. I listened very carefully to the Senator from Indiana. I thought the Senator from Indiana was setting up a straw man and knocking the straw man down, because I have not seen anybody on this side of the aisle or that side of the aisle who has been up talking against the concept, at least, of enacting some kind of enhanced rescission line-item veto. Call it what you will.

So I hope that we are not going to be talking a great deal during this debate assuming that there are people on this side of the aisle that are trying to stop this. I assure you, Mr. President, and I assure all Members on both sides of the aisle that I see no determination on either side of the aisle of a filibuster.

But I do see a desire to thoroughly think things through and then move ahead.

But back to the situation at hand. A long time ago, I hitched my wagon to fiscal discipline and responsibility. I certainly do not plan to switch horses because of one setback in the form of the constitutional amendment to balance the budget.

Nebraskans care more about what we leave than what we take. I do not choose to leave other's children or my grandchildren trillions of dollars in debt.

I will not leave them a Nation where we spend 17 cents of every tax dollar for interest on the debt. I will not rob them of thousands of dollars that they will have to pay to service the debt even before we begin to start reducing the principal. That is what the debate on the balanced budget amendment and it is what the debate here is all about—how do we best do these things in a fashion that gets them done?

I will not cheat them, my children or grandchildren, out of the legacy they so richly deserve. We must do everything in our power to blot out the red ink.

I am a realist, though, Madam President. The legislation before the Senate today will not break the back of the deficit, and we should all understand that. It will not cause the mountain of debt to vanish into thin air. But it will rein in pork-barrel spending, and that is an enormous step in the right direction.

Madam President, there is a common thread between this legislation and the balanced budget amendment. When we debate either measure, this Chamber sounds like a revival tent of sinners repenting. Senators vow to refrain from wasteful spending.

I say, ''All evidence to the contrary.'' We have been out of control and spending abounds. The only thing in short supply is self-restraint.

Revenue acts are chocked full of special interest tax credits and expenditures. Appropriations bills are larded with pet projects that cost the taxpayer billions of dollars. There are groaning with pork that is carefully tucked away—so carefully placed that the President cannot extract it without bringing down the entire bill.

Our colleagues have become quite skillful in slipping in these projects. The President has a tough choice to make. Will the President veto an appropriations or revenue bill just to get rid of the pork?

My colleagues know the drill and how it works. The President brings out the scales and weighs the good against the bad. More often than not, the President holds his nose and signs the bill.

The obvious solution is to grant the President the line-item veto, more properly called, I suspect, an ''expedited'' or ''enhanced'' rescission authority. That is what we are about and I think that we are going to accomplish it this time.

Suffice it to say, there are few in this body and even fewer in the House who have firsthand experience with or have ever experienced a line-item veto. It is my hope that the limited few, with firsthand experience, will be listened to.

Today, 43 of the 50 State Governors have some form of veto authority. As Governor of the State of Nebraska, I was privileged to have that line-item veto. It was an invaluable weapon in my arsenal to control spending by my State legislature.

I think the President of the United States, President Clinton and all the Presidents that come after him, should have a line-item veto authority so that they can take similar action, as I think the President of the United States can and should do if we can do it in a fashion—and I emphasize, Madam President, if we can do it in a fashion—that is not on its face constitutionally suspect.

I have long believed that the President should have this power. All but two Presidents in the 20th century have advocated some type of line-item veto authority. President Clinton strongly supports it.

On the first day of the 104th Congress, I joined in introducing the legislative line-item veto proposal, known as S. 14. This bipartisan compromise was cosponsored by the distinguished Republican and Democratic leaders, the chairman of the Budget Committee, Senator DOMENICI, and Senators BRADLEY, CRAIG and COHEN. The original S. 14 stood in stark contrast to some of the other line-item veto proposals.

I am not saying that ours was perfect and I do not think others were.

S. 14, though, would have forced Congress to vote on the cancellation of a budget item proposed by the President. However, it needed only a simple majority of both Houses of Congress to override the President's veto. This proposition was a viable alternative if it was still a fact, as I suggest it was and maybe still is, that S. 4 as introduced would fall to a filibuster. I do not think any of us wanted that.

S. 4, as originally introduced, would be the legislative equivalent of shooting oneself in the foot, in my view. If we are serious about reducing the deficit, tax expenditures should be included in any line-item veto legislation. Anything else would be a half measure. The significantly revised S. 4 that has been introduced by the Republican leader as of yesterday has come a considerable distance towards addressing the concerns that this Senator had with that portion of S. 4. But S. 4 also had a lot of good things in it.

Mr. President, a little history, I think, is in order. On February 3, 1993, the Budget Committee held a hearing on the impact of tax expenditures on the Federal budget. What we found was rather startling. At that time, tax expenditures were projected to cost more than $400 billion and were slated to increase to $525 billion by the year 1997. Today, tax expenditures are $450 billion and are projected to rise to $565 billion in 1999.

Like entitlement programs, tax expenditures cost the treasury billions of dollars each year. And like entitlements, they receive little scrutiny once they are enacted into law. Even though they increase the deficit like mandatory programs, tax expenditures escape any sort of fiscal oversight. Indeed, by masquerading as tax expenditures, a program or activity that might not otherwise pass congressional muster could be indirectly funded. Certainly I would say that we have to take a look at these things and a close look.

Office of Management and Budget Director Alice Rivlin correctly summed up the situation, and I quote:.

> Tax expenditures add to the Federal deficit in the same way that direct spending programs do.

If we are willing to subject annual appropriations to the President's veto pen, then that same oversight should be granted to the President on tax expenditures. Pork is pork. We should be willing to say ''no'' to both spending pork and tax pork. The revised S. 4 finally recognizes some of its earlier shortcomings, in the view of this Senator.

For too long, many of our colleagues have clung to the thin reed that we can

solve the deficit by cutting only appropriated spending. Unfortunately, the reed has given way and we are sinking in an ocean of red ink.

In spite of the pay-as-you-go provisions of the 1990 Budget Enforcement Act, entitlement spending is the largest and fastest growing part of the Federal budget. The terrible truth is that entitlement or mandatory spending is projected to grow from about 55 percent of the Federal spending in the current fiscal year to 62 percent in the year 2005.

The surge occurs in Federal health care programs. They are the only programs that will grow at a rate significantly faster than the economy, increasing from 3.8 percent of the gross domestic product in fiscal year 1995 to 6 percent of GDP in 2005.

On the other hand, discretionary spending, which currently makes up only about one-third of all of the Federal budget, has been significantly curbed. It is expected to decline as a percent of the economy over the same time period.

However, we cannot take much comfort in this success story. As much as we cut away at the fat and well into the bone in appropriated spending, we get to a point of diminishing returns. We will not be able to balance the budget if we rely essentially only on appropriated spending, as anyone who understands the budget process knows. Sooner or later we must look the deficit squarely in the eye and make some tough and painful choices. Entitlement spending and tax expenditures are two that we can no longer avoid.

The new found Republican realism about a sunset provision in the amended S. 4 is helpful in improving chances to pass the legislative line-item veto. This is a brandnew legislation that is untried and untested. The sunset provisions will allow Congress to look at any glitches and problems that may arise. If for some reason the line-item veto does not perform to our expectation, we can trade it in and start anew.

I also have been stressing that the only way to bring down the deficit is on a bipartisan basis. I support the line-item veto legislation, but some of my colleagues have doubts. A sunset provision will ease some of those concerns because this bill will not be carved in stone. We will be able to revisit the bill at a day certain and make some changes if necessary.

During markup, I offered several sunset provisions that failed on party line votes. I am pleased that the majority has reconsidered.

The legislative line-item veto does not exist in a vacuum. We must revisit the entire Budget Act in 1998. That is when the caps and other major provisions, including the one that creates a 60-vote point of order and the system of sequesters, expires. What better time to reexamine the legislative line-item veto?

Madam President, I have finally had an opportunity to review the majority party substitute version of the line-item veto legislation. I must say at the outset that I am extremely disappointed by the manner in which this bill was brought to the floor and how the majority party apparently hopes to force this bill through very quickly.

As the majority leader knows and as the chairman of the Senate Budget Committee knows, there are many on this side of the aisle who would like to see a line-item veto bill pass this Senate. I think it will. We have been working on a bipartisan basis to do so. As evidence of the bipartisan effort, I note that the majority leader and the minority leader were cosponsors of S. 14 as introduced by Chairman DOMENICI and myself. As a long-time supporter of the line-item veto legislation, I am very encouraged that this topic is finally being debated on the floor of the Senate.

I hope and trust that the majority leader will back off of some of the tactics and the ''hurry up'' actions that have been so far demonstrated.

I am reminded of what the great historian Barbara Tuchman wrote about the 14th-century knights of war:

> They were concerned with action, not the goal—which was why the goal was so rarely attained.

If we can have a free and open debate, absent hardball politics, and if we can keep our focus on the attainable goal and not just partisan reactions, we can prevail.

Madam President, I have some concerns regarding the substitute that is before the Congress, although I think it is a vast improvement over what we have considered previously. Although I understand the need for changes and compromises, this bill raises some questions that I think need to be fully explored.

For example, the majority party has chosen to vest in the enrolling clerk the power to divide up appropriations bills into many, perhaps hundreds, of pieces. How might such a procedure actually work in practice? Is such a procedure realistic? Legislative drafters already are coming up with ways to get around this bizarre mechanism.

There are many other troubling questions regarding the substitute, but I think they can be corrected if we can work together, at least corrected to satisfy this Senator and most on this side of the aisle.

For example, what is to prevent the Congress from enacting provisions that do not take effect until other specified provisions take effect? Or, what about a provision that spends $80 million if, and only if, a second provision spends $20 million, but suspends $100 million if the second provision is not enacted? What about a provision that funds every item specified in a separate piece of legislation?

The majority substitute does not allow the President to veto these provisions effectively. The legislative process may end up the victim much more so than all would like to see.

The measure before Members raises constitutional questions as well, as Senator BYRD so eloquently pointed out earlier today. It would be very unfortunate if after all of these years the Congress was finally successful in passing a line-item veto, only to have it declared unconstitutional by the U.S. Supreme Court. Other proposals such as S. 14 do not have that potential Achilles heel.

There are also issues which the substitute does not address that I think it should. I believe that most Members would agree as they look at the measure objectively. For example, the President cannot—I emphasize cannot—reduce any amount. The President can only sign or kill it. He cannot scale it back to a more reasonable amount. Under S. 4, the President had that option of reducing the amount.

In closing, let me say, Madam President, what about the goal of reducing the deficit? S. 14 wisely includes a lockbox to ensure that any money saved in rescission goes to reduce the deficit. The Republican substitute includes no deficit reduction lockbox. I think it should. And I think when my friends on that side of the aisle take a look at that, they will agree.

In conclusion, then, I believe the substitute needs further consideration, although I am disappointed by the process used by the majority leader to force a cloture vote immediately—supposedly tomorrow—to cut off debate on this important matter. I am encouraged that the substitute bill has moved in the right direction by including tax expenditures, which previous versions of that did not. Yet it is far from a perfect bill and could be improved by addressing some of the concerns that I have mentioned and others that will be addressed by Senator LEVIN and other of my colleagues.

Mr. President, in the hours and days ahead, I hope we can put aside overheated rhetoric and partisanship on the legislative line-item veto. No Senator has a monopoly on all of the issues. No Senator is all right or all wrong. No Senator has all the answers.

I hope that we can accommodate as many views as possible during the upcoming debate. If we stay on this track, Madam President, we will pass a legislative line-item veto—or call it what you will—that is as good as a promise that I think we can do in keeping faith with the American people. I thank the Chair.

I yield the floor.

Mr. MCCAIN addressed the Chair.

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

Mr. MCCAIN. I will be very brief. I have a lot of responses to the statement from Senator EXON, but I think for the record, it might be interesting to point out that I count 22 of the 34 amendments from that side come from Senator EXON.

One, sunset in 1997; sunset in 1998. When I see the amendments, I understand the frustration of the majority leader. I can assure the Senator from Nebraska there may be changes made to this bill. One thing I can assure the Senator from Nebraska. We will not change the two-thirds majority required to override the President's veto.

If there is anything that is clearly unconstitutional, it is to call a veto a majority vote by one House. I would be more than happy to respond to the other remarks of the Senator from Nebraska after the Senator from Michigan and then the Senator from Wisconsin finish their statements.

I also finally state unequivocally, the Senator from Indiana on the floor here was not setting up any straw men. The Senator from Indiana has been involved in this issue with me for 8 years. The Senator from Indiana does not set up straw men.

I have watched the debate, and the Senator from Indiana has conducted, I thought, a very illuminating and important debate between himself and Senator BYRD. Senator BYRD, as always, does an outstanding job, and I am proud of the outstanding job defending his point of view and his perspective that the Senator from Indiana conducted himself in such fashion. I am proud. I reject any allegation that he sets up any straw men.

I yield the floor.

Mr. EXON. Madam President, if I could correct just one impression that the Senator from Arizona said about the filing of amendments.

As a manager of the bill, I filed a whole series of amendments before 1 o'clock today, which I had to do to protect this side from a whole series of important matters that we thought were necessary on this side.

I simply advise my colleague from Arizona that as of the breakdown, the Senator from Nebraska has only four amendments, and I think we will dismiss two of those, which gives the manager of the bill only two amendments. And I think, by any measure, that is reasonable.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, first let me comment on a couple of the points the Senator from Nebraska made in which I concur. He indicated most, if not all of us, support some form of line-item veto, and I think he is right. I think that just about every Member of this body wants to give the President greater control over individual items in appropriations bills. I am one of those. I happen to support S. 14. I think it is constitutional, which is very important to me, and I think it gives the President additional power without running into the clear provisions of the Constitution relative to the presentment clause.

I also agree with the Senator from Nebraska when he says not to rely too much on line-item veto to cure our budget problems and our deficit problems. It has proven historically not to be a significant cure in States when it comes to the amount of money which has been vetoed by Governors. It is a deterrent. That is worth something, clearly.

We, at one point, submitted a budget, I believe, to President Reagan and said, ''If you had line-item veto, what would you veto?'' And I think his total vetoes came to be about 1 or 2 percent of the deficit that year, a very small percentage of the deficit. So it is not a major cure for willpower.

It may or may not do some good, depending on how the President uses it. It actually can do some harm if he uses it wrong. Nonetheless, the Senator from Nebraska is correct that it is not going to significantly reduce the deficit. It may help somewhat slightly, but do not rely on it too heavily.

Further evidence of that is the fact that the President controls every line of the budget that he submits to the Congress. Each line in those budgets is a line which has been approved by the President or the President's staff.

During the 12 years of the two Reagan administrations and the Bush administration, six times out of the 12 years, the appropriations in Congress exceeded those requests. Six times Congress reduced appropriations below the level requested by those two Presidents.

If you look at the average appropriations level that the Congress appropriated compared to the appropriations requested by the President, again, where the President has control over every line, in the Reagan years, the average appropriation by Congress was $1.7 billion less than requested by President Reagan, and the appropriations during the Bush years were $3.7 billion less than the appropriations requested by the President.

So we cannot just say Congress has been the source of the deficit problem. It has been a joint problem. Presidents, as well as Congress, have contributed to it at least equally—at least equally. And if you look at averages, slightly more by the executive branch than by the legislative branch. So when we talk about those add-ons, those back-home projects, that does not explain the deficits that we have run up during the 1980's. It is much deeper than that. It is much more complicated than that, and if we think line-item veto is going to cure it, we are making a mistake, because it will not. Will it help? I think it could.

In my book, it has to be constitutional or I cannot vote for it. S. 14 is constitutional and I am able to support that and vote for it as a substitute to the substitute when we get to it. But the Dole substitute before us, I believe, is unconstitutional and is unworkable.

Before the Dole substitute was presented to us, we had two line-item veto bills reported out of the Budget and Governmental Affairs Committees, two different line item vetoes. One was an enhanced rescission and one was expedited rescission. One clearly constitutional, one of debatable constitutionality.

But now we have a third one, a very different bill than was reported by either the Budget or the Governmental Affairs Committee.

The top constitutional experts of the Clinton administration and the Bush administration do not probably agree on a whole lot, but they do agree on one thing. As much as they want to see the enactment of a line-item veto, because both President Bush and President Clinton want line-item veto, both their top constitutional experts have serious constitutional problems with this separate enrollment approach which is now before us. I think it is fair to say that both—and I am going to read their words —believe that this approach is unconstitutional.

The Constitution, as Senator BYRD has gone through this afternoon, establishes the method by which laws are enacted and by which they are repealed. It specifies a bill becomes a law when it is passed by both Houses of Congress, signed by the President, or if the bill is vetoed by the President, when that veto is overridden by a two-thirds vote in each House.

The substitute before us purports to create a third way by which a law can be made, by giving the Clerk of the House of Representatives and the Secretary of the Senate the power to enroll and to send to the President for his signature bills that have never passed either House of the Congress.

Madam President, I do not believe that we can or should seek to override constitutionally mandated procedures by statute. We cannot do it if we wanted to, but we should not do it and should not try to do it.

Article I, section 7 of the Constitution says that each ''bill which shall have passed the House of Representatives and the Senate shall be presented to the President for signature.''

The Constitution does not say that pieces and parts of bills passed by the Congress may be presented to the President for signature. It does not say that line items or paragraphs or subparagraphs of bills passed by the Congress shall be presented. It says that bills passed by the Congress shall be presented to the President for signature.

Lewis Fisher of the Congressional Research Service explained the problem several years ago when he testified relative to an early version of this separate enrollment approach, and this is what Dr. Fisher said.

He said under that bill:

> The enrolling clerk would take a numbered section or unnumbered paragraph and add to it an enacting or resolving clause, provide the appropriate title and presumably affix a new Senate or House bill number. Such a bill, in the form as fashioned by the enrolling clerk, and submitted to the President would not appear to have passed the House of Representatives and the Senate.

In other words, the bill that is presented, or the bills, the wheelbarrow full of bills that is presented to the President, has not passed the Senate and the House. It is different from the bill that we passed. It is bits and pieces of a bill that we passed, and that is the problem with the Dole substitute before us. It purports to give to the Clerk of the House of Representatives or to the Secretary of the Senate the power to attest and to send to the President for his signature bills which have not been passed by the House or the Senate.

Under the Constitution, a bill cannot become law unless that bill has passed both Houses of Congress.

Madam President, I have no doubt that the Congress could, after passing an appropriations bill, take that bill up again, divide it into 100, 200, even 1,000 separate pieces and pass those pieces again as freestanding measures. Those separate bills then would have been approved by the Congress and could be sent to the President for signature. I even suppose that we could adopt some form of streamlined procedures for consideration of these separate parts, these separate pieces of legislation.

While that approach would result in the President spending hours and hours signing various pieces of a single appropriation bill, it at least would be constitutional. We would have adopted the same bills that the President is signing. But the bill before us contains no requirement for any consideration of the separate measures by the Senate and the House. Rather, it directs the enrolling clerks to create such separate bills and to send them to the President as if—as if—passed by the Congress.

The Supreme Court held in the Chadha case that the legislative steps outlined in article I of the Constitution cannot be amended by legislation. We cannot amend article I of the Constitution by legislation. We may want to do it. We may have a good motive in doing it. Our goal may be important and great. But we cannot amend the Constitution by legislation. And this is what the Chadha Court said:

> The explicit prescription for legislative action contained in article I cannot be amended by legislation. The legislative steps outlined in article I are not empty formalities. They were designed to assure that both Houses of Congress and the President participate in the exercise of lawmaking authority.
>
> The bicameral requirements—the presentment clauses, the President's veto, and the Congress' power to override a veto—were intended to erect enduring checks on each branch and to protect the people from the improvident exercise of power by mandating certain prescribed steps. To preserve those checks and to maintain the separation of powers, the carefully defined limits on the power of each branch must not be eroded.
>
> With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.

Madam President, President Clinton favors a line-item veto. His top aide, the top official of the administration on matters of constitutional law, Assistant Attorney General Walter Dellinger, testified earlier this year that the enhanced rescission bill introduced by the Senator from Arizona would probably be found to be constitutional, a conclusion with which I happen to disagree but nonetheless the top constitutional lawyer in this administration found that the approach of Senator MCCAIN would likely be found to be constitutional.

However, even Mr. Dellinger could not find a way to get around the constitutional problems with the Dole substitute now before us. The separate enrollment approach, Mr. Dellinger testified, runs into the plain language of the presentment clause in article I. This is what Mr. Dellinger said:

> As much as I regret saying so, I think that the proposal for separate enrollment also raises significant constitutional issues. I think it is either invalid under the presentment clause or at a minimum it raises such complicated questions under the presentment clause that it is a foolhardy way to proceed.

This is the sentence that I now want to emphasize of Assistant Attorney General Dellinger.

> If we and all our predecessors are right—we and all of our predecessors in that office are right—
>
> that which has to be presented to the President is the thing that passed the House and the Senate and that which passed the House and the Senate is the bill they voted on final passage, not some little piece of it or a series of little pieces of it.

Now, on March 16, just a week ago, in a memorandum to Judge Mikva, White House Counsel, Dr. Dellinger, reiterated the constitutional problems with the amendment now before us, with the Dole substitute, and this is what he said.

> On what seems to us to be the best reading of the presentment clause, what must be presented to the President is the bill in exactly the form in which it was voted on and passed by both the House of Representatives and the Senate rather than a measure or a series of measures that subsequently has been abstracted from that bill by the clerk of the relevant House.

That is the top constitutional official in the administration, in this administration that wants line-item veto. That is what they have concluded. The best reading of the presentment clause says that the bill going to the President has to be the same bill in the same form that we passed.

He went on to state—but, of course, this constitutional question is open to debate like all constitutional questions, I presume. He also said that it would have a better chance to be ruled constitutional if it made some provision, in this approach, for Congress to take up the separate bills and to pass them en bloc.

The substitute before us, Madam President, contains no such provision to address the constitutional infirmity that Mr. Dellinger pointed out.

Now, President Bush has also been a strong advocate of line-item veto, but the top constitutional law expert of his administration also has taken the position that separate enrollment is unconstitutional. Former Assistant Attorney General Timothy Flanagan testified before the Judiciary Committee as follows:

> One type of line-item veto statute would attempt to avoid the problem of the Constitution's all-or-nothing approach to Presidential action on bills by providing that after a bill had passed the House and Senate, individual titles or items of the bill would be enrolled and presented to the President as separate bills.
>
> Such an approach suffers from a number of constitutional defects. First and foremost, the Constitution plainly implies that the same bill upon which the Congress voted is to be submitted to the President. If the Constitution's text is to be read otherwise to permit the presentment requirement to be met by dividing a bill up into individual pieces after Congress has passed it and before presentment, then there is no logical reason why the opposite process could not be permitted. Congress could require individual appropriation bills as well as others to be aggregated into a giant omnibus bill before presentment to the President as a single opus.

And again this is what President Bush's top constitutional lawyer in the Justice Department is telling us. He concluded:

> In my view, the Constitution permits neither result but requires that the bill be presented to the President as passed by Congress.

As passed by Congress.

So the top constitutional experts, Madam President, of both this administration and the prior administration agree that the separate enrollment approach taken by this substitute has great constitutional problems.

Now, the amendment before us attempts to address the constitutional problems with the separate enrollment approach by stating that each, each of the separate bills enrolled and sent to the President ''shall be deemed to be a bill under clauses 2 and 3 of section 7 of article I of the Constitution.''

Now we are going to amend the Constitution by a statutory deeming process, and how convenient.

I suppose we could pass other laws, under this theory, which contravene the Constitution, and deem those provisions to be constitutional as well. We do not have that power. We did not have it before Chadha, when the Supreme Court wrote that we cannot amend the Constitution by legislation. And we do not have it after Chadha.

It does not do any good to deem separate measures as bills. The question is not whether they are bills in an abstract sense, the question is whether they are bills ''which shall have passed'' both Houses of Congress as required by the Constitution.

These bits and pieces, the product of disassembling a bill, these parts have not passed either House in that form

and may never have passed either House in that form. No amount of deeming, as convenient as it is, can change that.

The Constitution does not say that pieces and parts of bills passed by the Congress may be presented to the President. It does not say that line-item vetoes or paragraphs or subparagraphs of bills passed by Congress shall be presented to the President. It says that the actual bills passed by Congress shall be presented to the President for signature.

This may all sound like process and a technicality, but it is the essence of what we do around here. A vote for a bill is not the same thing as a separate vote on each of its provisions. The bill is a whole and we finally vote on it as a whole. We all vote for bills. I think every one of us has said on the floor of this Senate or on the floor of the House or in a speech somewhere: I do not agree with every provision in this bill but I am going to vote for it because on balance there are more good provisions than bad provisions.

When we, as Members of the Senate, vote for final passage of a particular bill, we are not voting on each provision as though standing alone. We are voting for the whole. And the reality is—our real world is—that if we chop up a bill into its component parts for the President to sign we would be creating very different bills from the one bill that actually passed the Congress.

Let me just take the supplemental appropriations bill that we just passed. This was a defense supplemental appropriations bill that was adopted last week. By my count, there are approximately 78 separate items in this bill and that does not include suballocations, which would make it a much larger number of items. But just not including suballocations, I think there are 78 separate items in this bill. Each of these would be enrolled under the Dole substitute before us. That includes 12 paragraphs of appropriations for military personnel, 20 paragraphs of rescissions—20 paragraphs of rescissions of DOD appropriations—and 18 paragraphs of rescissions of non-DOD funds. There are also 20 general and miscellaneous provisions in here, in this bill we just passed, which would have to be enrolled separately under the amendment before us.

I voted for this supplemental bill. I did not vote for each of those 78 items separately and I would not have voted for a lot of those separately. Under the approach that is before us now, the President would be voting—each separate 78, the President would be deciding on whether to sign 78 separate bills, whereas we did not vote separately on 78 separate bills, and a whole bunch of those may not have passed as 78 separate bills. And the whole bill may not have passed had some of those 78 separate items not been included in the bill.

If we had a separate vote on each of the separate items in the defense appropriations bill, some might have passed, some might not have passed. But we did not do that. We voted on the package. If we had voted again on each of these items separately, the final outcome might have been very different. Some may have voted for the final bill, this full bill, specifically because of the inclusion of specific items in the package. That may have actually won the vote of some of us. We do that all the time. ''Unless these provisions, 1, 10, 30, and 38, are in this bill, I cannot vote for it.'' If those items were in separate bills, some of us may have chosen not to vote for this single supplemental appropriations bill.

Let me just give a couple of examples. Section 108 of the defense appropriations bill contains a requirement for a report on the cost and the source of funds for military activities in Haiti. This is a separate section of the bill, section 108. Under the substitute before us, it would be separately enrolled and the President could veto it. But some of us may have voted for the funds provided in this bill for operations in Haiti only because there was another provision in this bill requiring a very important report. Would the appropriation have passed without the reporting requirement? We do not know. We did not vote on it.

Section 106 of this bill contains defense rescissions. Those rescissions are intended to pay for the appropriations that are made in the bill. We are rescinding some previous appropriations in order to pay for some current appropriations. Under the amendment before us, each of the rescissions would be separately enrolled and sent to the President for signature. The President could veto any or all of the rescissions. But how many of us would have voted for the appropriations if they were not paid for by the rescissions? Would the appropriations have passed without the rescissions? That is a very basic point. That was a matter of real contention, as to whether or not we should be appropriating money in this supplemental unless we were defunding, unappropriating, rescinding previous appropriations. Would that bill have passed without those rescissions? We do not know. We did not vote on that.

Under the substitute before us, the President will decide whether to sign separately the rescissions and the appropriations. That is very different from what we voted on, one package with both.

The supplemental appropriations bill that we passed last week was actually a rather simple bill as appropriations measures go. We routinely pass appropriations bills that contain hundreds, even thousands of items. Here is a quick listing of last year's appropriations bills, how many items they had, not including what are now called suballocations. I will get to that issue in a moment. But without getting even to pulling apart paragraphs, just looking at paragraphs themselves, numbered or unnumbered, without subdividing paragraphs into suballocations, last year's appropriations bills had the following number of items: Commerce, Justice, and State had 214; Defense, 262; Transportation, 150; foreign ops, 150; Agriculture, 160; Treasury-Postal, 252.

I will stop there, and I ask unanimous consent the list be printed in the RECORD.

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

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

Commerce, Justice and State Appropriations—214
Defense Appropriations—262
Transportation Appropriations—150
Foreign Operations Appropriations—151
Agriculture Appropriations—162
Defense Construction Appropriations—45
Veterans Affairs, HUD, and Indep. Agencies—174
Treasury, Postal Service Appropriations—252
Legislative Branch Appropriations—114
District of Columbia Appropriations—86

Mr. LEVIN. Madam President, I am told one of the omnibus appropriations bills that passed the Congress in the mid-1980's had over 2,000 line items. Again, I think that is without those suballocations, so we could multiply that significantly.

Some of the items, by the way, some of the items in appropriations bills increase spending levels. We know that. That is what is usually thought of when we increase spending.

But other items in appropriations bills decrease spending levels or they set conditions on spending or they prohibit spending for certain purposes. We have provisions in appropriations that reduce or limit spending. Those are rescissions. There are also conditions placed on expenditures, and prohibitions, again, for spending for particular purposes.

If those provisions are placed in separate sections, as they frequently have been in the past, they could be vetoed under the substitute before us. The President could use the line-item veto to actually repeal, to stop, the prohibitions on spending that we put in the appropriations bills. That would increase spending. They are not uncommon. Limitations on appropriations or on rescissions are not uncommon. We have plenty of them just voted on. Yet, a line-item veto could be used. When used against rescissions or prohibitions on limitations, it could end up increasing spending and not cutting spending.

The bottom line is that Members who vote for an appropriations bill usually do not support every item in it. We do not vote on each of those items separately. We would not know what the result would be if we cast such votes on each item separately. We finally vote on an entire packet. That is the bill that we pass, and that is the bill that must be sent to the President under the Constitution. I believe that in an appropriations bill of any size, each of

us likes some of the provisions and dislikes others. That balancing is the essence of the legislative process. It is what enables us to legislate. In many cases, it is what enables us to cut appropriations.

For instance, I may be willing to accept a significant cut in a program that affects my State because I know that a sacrifice will be shared, because I know that in the bill it causes a cut in a program that is good for my State where other programs that benefit other States are being cut in the same bill. That does not mean that I would have voted for the cut on the one appropriation involving my State as a freestanding measure. It is because the pain is distributed as part of a package so that we are often able to support an overall measure.

The Constitution says one thing that is so critical to this substitute. Only those bills which shall have passed the Senate and the House of Representatives are to be sent to the President for signature. The substitute before us says something quite different; that the President would get pieces of bills that we have passed instead of the bills themselves. That approach is plainly at odds with the requirements of the Constitution, and we should reject it.

Madam President, I do not know if there are others who are waiting to speak. I have some additional points that I want to make on the practical problems with the enrollment process that relate to an amendment that I will be offering tomorrow. I am wondering if I might ask my friend from Wisconsin about how long he expects to be, if I may ask unanimous consent to make that inquiry.

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

The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I think roughly half an hour.

Mr. LEVIN. Madam President, I will try to conclude in about 10 minutes and then give my friend some time.

The PRESIDING OFFICER. The Senator may proceed.

Mr. LEVIN. Madam President, the majority leader said yesterday that the Senate would have an easy time adopting this substitute. One of the reasons was that most of its provisions have been considered by the Senate and passed. There is a lot of new language in the substitute. It is worth taking some time to analyze that new language. For example, the first half of the substitute is devoted to points of order against any appropriations bill that fails to include in the bill language detail that is in the committee report. I do not think that has been proposed before.

We tried to check the separate enrollment approach. I do not believe that has ever been part of the bill before. I do not think it has been considered by the Senate. If I am wrong, I will stand corrected. But it is going to have a significant impact on the appropriations process. It is going to be much more rigid. We are going to have much lengthier, cumbersome appropriations bills. But, nonetheless, whether it is good or bad, it is different from what we have had before.

But I want to focus on a different provision. That is the definition of the term ''item.'' This provision is the key to the entire bill because an ''item'' is what must be separately enrolled. That is the test of whether or not the enrollment must be made separate by the clerk. There is some very significant new language in this substitute which again, to the best of our ability, does not appear in previous legislation that we have considered.

The term ''item'' means (a) with respect to an appropriations measure; No. 1, any numbered section; No. 2, any unnumbered paragraph, or, No. 3, any allocation or suballocation of an appropriation made in compliance with section (2)(a) contained in a numbered section or an unnumbered paragraph.

It is those words ''allocation or suballocation'' which are the new material. The earlier bills referred to items as being either numbered sections of a bill or unnumbered paragraphs of a bill. So the enrolling clerk could take any numbered section or any unnumbered paragraph and separate it out and enroll it. That is what has been considered in these bills today relative to separate enrollment. But now in the substitute before us we have an additional thing that has to be subdivided out. That is something called an allocation or a suballocation of an appropriation that is contained in either a numbered section or an unnumbered paragraph.

How do we break the allocation or suballocation out of a bill and enroll it as a separate bill? We do not have to wonder totally about that because the Senator from Indiana has already asked the enrolling clerk to put together a sample appropriations bill for us based on last year's Commerce-State-Justice appropriations bill and has asked the enrolling clerk to take that actual bill and to subdivide it according to this substitute. That is what the Senator from Indiana called a trial run. He is a very, very thorough and a very thoughtful Senator and took the time to go to the enrolling clerk and say, ''Here, take last year's State-Justice-Commerce appropriations bill and apply the approach that is used in the substitute to that bill.''

He explained on the floor the other day—and he explained again this afternoon—that we have all kinds of new technology. We can use computers. We can punch buttons, and we can subdivide bills in pieces. We do not have to have the enrolling clerks in green eyeshades who are trying to figure out what is going on and type things out in longhand. We have computers. ''Modern technology'' is what the Senator referred to; ''miracle of modern technology.'' It is no longer a difficult process. He used the words ''easy, accurate and fair.'' I believe those are his words. I hope I am quoting him correctly. He quoted the enrolling clerk last week. He said it is at least 1,000 times faster than the old system with today's technology. Then he said he asked the enrolling clerk to do a trial run. He took the largest bill that we passed, State-Justice-Commerce and Judiciary, and asked him to separately enroll it.

Well, the stack of paper which we got from the enrolling clerk was pretty thick. Here is a copy of the way it came out. This is what we sent to the President last year. This is what goes to the President this year. The pamphlet was about 50 pages long. There are 582 bills in here, or items. This is just one appropriation bill. This is a 3-inch-thick stack. Mind you, this is not a 3-inch bill. This is 582 bills here that go to the President—each separate, signed by the Speaker, signed by the President of the Senate, sent to the President for signature. But that is only the writer's cramp part of it. That is interesting, but that is just hours and days of the President's time.

Another interesting question is what is in these pieces of paper, this trial run, this bill, that was said to be so successful by our friend from Indiana. What is the product when you punch the computer and come out with 582 pages, when you suballocate a paragraph, you rip out a paragraph, and you get a bill that can stand on its own, with four corners? We tried looking at that. Here is one of the bills. The Chair has good eyes, but I am afraid this is far away. I will read it. It has all the formal headings, and it sure looks like a bill. If you took a quick glance at that, you would say it is a bill. It has fancy writing at the top; it is italicized. All good bills are italicized. ''103d Congress, second session, in Washington,'' and then it says, ''An act making appropriations for the Department of Commerce, Justice, and State, related agencies * * * be it enacted * * * the following sums are appropriated out of the Treasury''—and then you get to the text of the bill. What looks like a bill is incomprehensible. This is the text of that bill. It says, ''of which $200,000 shall be available pursuant to subtitle (b) of title I of said act.''

That is the bill the President is supposed to sign in this test run. What act? This act? No, not this act. If you go back to the bill which no longer exists, which has been cut up like a salami into all these slices, then you can figure out that they are not relating to this act. It is some other act. It is the crime bill of last year. The computer generated this in a successful trial run. Hundreds of pages are just like this.

(Mr. SANTORUM assumed the chair.)

Mr. MCCAIN. If the Senator will yield, has the Senator ever examined the appropriations bills that are normally passed through here and tried to ascertain which funds went where, under what circumstances, and maybe he can explain why it takes days, weeks, sometimes months, to figure

out who got what money under what circumstances? I suggest—and I ask the Senator from Michigan if that is more complicated than that is, since I have spent a lot of years trying to figure out where the pork goes in appropriations bills and it has taken weeks and months for experts to figure it out. I think it might be easier to figure it out that way. All they have to do is pick up the phone and ask, ''What is that $200,000 or $300,000 for?'' And then they can respond.

Mr. LEVIN. Where do you look to find out?

Mr. MCCAIN. You call up the people who wrote the bill.

Mr. LEVIN. The bill——

Mr. MCCAIN. It is far better, in my view, to have a single line there than the pork that is hidden away and tucked into little areas of the appropriations bills which sometimes people never ever find.

Mr. LEVIN. I tell my friend that at least you can find them if you look. In this bill you cannot find them. That is the bill.

Mr. MCCAIN. That is the bill. That applies to a certain section, which all you have to do is ask, ''What does it apply to?'' If the President asks that and it applies to a piece of pork, he can say, ''Fine, I will veto that.''

Mr. LEVIN. That is the whole bill. It says, ''$200,000 shall be available pursuant to subtitle (b) of title''——

Mr. MCCAIN. Yes, and they might say, ''Well, it is a special project in Michigan.'' And the President might say, ''Fine, thanks. Now I know that, and I will veto it.''

Mr. LEVIN. There is no way of knowing if it is a special project. This is the entire bill.

Mr. MCCAIN. All they have to do is ask.

Mr. LEVIN. If I can say to my friend from Arizona, when the computer split up this appropriations bill into these pieces, this is the bill which the President signed. He can ask day and night for all the information he wants. That is what the bill says. In an appropriations bill now, sure it may take you some time to figure out what the crosswalks are, but you can find out from that bill and the conference report for that bill exactly what it is. In this, 571 bills that are going to the President, each one a separate bill, and it is gibberish, you cannot figure out what that is.

Mr. MCCAIN. If I can respond to my colleague, and I know we are skirting the rules of the Senate. All I have to do is ask, ''What section is that under; what part of the entire bill was enrolled by the enrolling clerk?'' There was a bill that was enrolled, and what does that apply to? I think that is pretty easy. I thank my colleague for his patience.

Mr. LEVIN. My understanding is that the whole bill is not enrolled by the clerk. I am wondering whether the Senator is saying the bill, before it was disintegrated, was enrolled.

Mr. MCCAIN. It was passed by both Houses. So all I had to do was pick up the bill and say, ''See what was in it.'' That is not really difficult.

Mr. LEVIN. My question of my friend was, Was the bill that was passed ever enrolled?

Mr. MCCAIN. Portions were enrolled that have appropriations associated with them, obviously. But the bill as passed is available for reference to be looked at to find out where that applies to. In my view, that is far better than looking through bills. And I have spent hours in fine print, and we find out we are spending $2.5 million to study the effect on the ozone layer of flatulence in cows, and nobody knew it was in there until long after it was spent. That is what we are trying to stop here by having a single bill there that says exactly what that is being spent for. All you have to do is go back to the original legislation that was passed and you will know—the President will know whether or not to veto it.

Mr. LEVIN. My question is, When the Senator says the legislation that was passed, the legislation no longer exists, and would my friend agree that what he called ''the bill, as passed'' was never enrolled? Would he agree?

Mr. MCCAIN. I would agree that the relevant portions of the bill that were going to be signed into law were enrolled.

Mr. LEVIN. Would the Senator agree that the bill as passed—passed as one bill—was never enrolled as a bill?

Mr. MCCAIN. No. I agree that the relevant portions that are important to the taxpayers of America were enrolled in each separate bill. Again, I thank my friend from Michigan.

Mr. LEVIN. Mr. President, let us go back to what goes to the President. That goes to the President. It is without meaning. Nobody can look at this bill. This is now a bill. This is no longer a part of a bill. This is the bill. Nobody looking at that is going to be able to say what it means. One is going to have to go back to a bill, which no longer exists, and was never enrolled, to try to figure out what that means. Let me go into some more detail as to what the complications are when one does that.

This is another line that comes out of the bits and pieces of Commerce, State, Justice. This goes to the President. This is the bill. This is it. It is one of 572 bills that go to the President. It reads, after the italic and all of the other stuff—this is the total text:

. . . of which $6 million is available only for the acquisition of high performance computing capability.

If he signs that, that is the law of the land. That is a law. The $6 million is available only for this. That is a limitation on something. It is a limitation on the expenditure of funds.

What is it or what was it a part of?

Let us go back and look at what that was a part of. That was part of the Patent and Trademark Office appropriations, State, Commerce, Justice, which said the following, ''For necessary expenses of the Patent and Trademark Office provided by law, including defense of suits . . . $83 million to remain available until expended.''

That is another bill, by the way. That goes to the President just that way.

Now, if the President signs the $83 million, he then, if you look back at the bill that was passed but never enrolled, gets to this section: ''Of which $6 million is available only for the acquisition of high performance computing capability.''

That is a restriction on the money. That is a restriction on the $83 million. It is a limit. If this is vetoed, then he has greater use of the $83 million, not less.

This is an example where an appropriations bill's limitation, restriction, limits the use of money, does not enlarge it.

And so, now what? Now we have an appropriation of $83 million and if the President signs that, if he does not want to be limited in that way, he now has $83 million to spend without any limit. That is supposed to be an elimination of pork, to give the President $83 million unlimited instead of $83 million with a restriction on it?

And then the one that I discussed with the Senator from California. This is a bill that goes to the President. The total bill, total text: ''Of which not to exceed $11 million shall remain available until expended for furniture and furnishings related to new space alteration and construction projects; and''.

That is the text of a bill that goes to the President of the United States. The Senator from California said, ''Well, gee, the President should probably veto that. We do not need new furniture and furnishings.''

This says no more than $11 million, not to exceed $11 million. This is a restriction on how much money will be spent on furniture. This does not say that $11 million must be spent. It says not to exceed. It is exactly the opposite of how the Senator from California interpreted this. And that is the problem of giving this kind of gibberish to the President. There is no context.

In trying to give the President more power, we are creating an approach here which is going to be so cumbersome, so empty, such a void, so much of an unrecognizable mishmash, hundreds and hundreds and hundreds of bills to the President like this.

By the way, a lot of Governors have the line-item veto. A lot of States have the line-item veto. I do not think there is one State in the United States which has a separate enrollment approach. If there is, I would like to know about it.

This makes it impossible to know what you are signing. The bill that passed the legislature, in this case the Congress, no longer exists. It was not enrolled as a bill. It was split up, sliced like a salami, sliced into bits and

pieces, and the bits and pieces go to the President. And somehow or other, the President is going to figure out the context.

Well, I think we can do a lot better than that as a legislative process. That is not what this process is all about.

Again, this is not my summary here. This is not my test case. This is a real test case of the Senator from Indiana, who gave a real bill to an enrolling clerk and said, ''Apply the Dole approach, the separate enrollment approach, with these suballocations''—I emphasize the word ''suballocations,'' because that is what these are —''and apply it to a real bill.'' That is a test case, said to be successful. ''Punch a computer button, folks. It will solve our problems for us.'' It is going to create a lot more problems than we solve.

I have no doubt that we could craft 582 separate bills that actually put together the right allocations and suballocations and the right conditions so that it all made sense and the bills could then really be signed or vetoed independent of each other. They really could be bills. They would not just be like pieces of a puzzle thrown up into the air and then coming down in 582 pieces. We could do that. We could actually craft 582 bills. It would be a lot of work, but it is doable. But it is not doable this way.

It would probably take a lot of effort of the Appropriations staff working around the clock for weeks to do it. We would then all have to review it carefully to make sure that they really did it right. Are the right conditions attached to the right appropriations?

There is a name for that process. It is called legislation. That is what the name of that process is: legislation. It is something that we do as Members of Congress. It cannot be done by an enrolling clerk and it cannot be done by a computer.

So I say to my colleagues, wherever you are on this subject, whether you are sure you are for the substitute or not, get a copy of this separately enrolled document which the Senator from Indiana got produced from the enrolling clerk. Get a copy of it before you vote on the substitute before us, because whichever way you are voting on it, this is what we are going to be producing for ourselves if it passes. And we ought to be very careful.

It is worth taking the time to analyze this process and to make sure, in trying to give the President additional power, we are not creating total uncertainty, total confusion, total chaos and, I think, at the end of the game, probably, instead of reducing expenditures, perhaps increasing expenditures.

I yield the floor.

I took much more than the 10 minutes I said I would take at the end.

I thank my friend from Wisconsin for his patience.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I thank my friend from Michigan for a very intelligent and persuasive argument.

I am sure, as the Senator from Michigan mentioned, he knows that the legislation will be written differently. The process will change. In fact, this whole line-item veto is a change in the process.

The Senator from Michigan knows very well that in envisioning the separate enrollments taking place that there will be legislation written in a different fashion so that they will be clear. Even if they are not totally clear, the President of the United States can ask what it applies to before he signs or vetoes a bill.

Finally, I found it interesting that the President of the United States, in his comments today, did not find it a difficult task. In fact, he said, I believe, that he looked forward to having lots of signing pens and does not view with such alarm the process or obstacles that he may face as outlined by the Senator from Michigan.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Chair, and I thank the managers.

I ask unanimous consent that the Simon amendment be temporarily set aside so I can offer two amendments.

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

AMENDMENT NO. 356

(Purpose: To amend the Congressional Budget and Impoundment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation)

Mr. FEINGOLD. Thank you, Mr. President. I send amendment numbered 356 to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 356.

Mr. FEINGOLD. Mr. President, I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

At the end of the pending amendment #374, add the following:

SEC. . TREATMENT OF EMERGENCY SPENDING.

(a) EMERGENCTY APPROPRIATIONS.—Section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not adjust any discretionary spending limit under this clause for any statute that designates appropriations as emergency requirements if that statute contains an appropriation for any other matter, event, or occurrence, but that statute may contain rescissions of budget authority.''.

(b) EMERGENCY LEGISLATION.—Section 252(e) of the Balanced Budget and Emergency Deficit Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not designate any such amounts of new budget authority, outlays, or receipts as emergency requirements in the report required under subsection (d) if that statute contains any other provisions that are not so designated, but that statute may contain provisions that reduce direct spending.''.

(c) NEW POINT OF ORDER.—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

''POINT OF ORDER REGARDING EMERGENCIES

''SEC. 408. It shall not be in order in the House of Representatives or the Senate to consider any bill or joint resolution, or amendment thereto or conference report thereon, containing an emergency designation for purposes of section 251(b)(2)(D) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 if it also provides an appropriation or direct spending for any other item or contains any other matter, but that bill or joint resolution, amendment, or conference report may contain rescissions of budget authority or reductions of direct spending, or that amendment may reduce amounts for that emergency.''.

(d) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 407 the following new item:

''SEC. 408. Point of order regarding emergencies.''.

Mr. FEINGOLD. Thank you, Mr. President.

This amendment is based upon legislation, S. 289, the Emergency Spending Control Act of 1995, which I introduced on January 26 with the Senator from Arizona [Mr. MCCAIN], the manager of the bill before the Congress, as well as the Senator from Kansas [Mrs. KASSEBAUM], the Senator from California [Mrs. FEINSTEIN], and the Senator from Colorado [Mr. CAMPBELL].

This is a measure which had passed the other body in the 103d Congress by an overwhelming vote, and was designed to limit consideration of nonemergency matters in emergency legislation.

The Washington Post, in an editorial dated August 22, 1994, called this legislation ''a good idea.'' And it is a good idea.

The line-item veto legislation before Congress is intended to allow the President to remove pork-barrel spending from appropriations bills. This amendment is designed to prevent some of that pork from getting into appropriations bills in the first place.

Anyone who has watched the congressional appropriations process at any length knows exactly what we are talking about. An emergency appropriations bill begins moving through the legislative process and it is almost as if a red alert is sounded that a fast-moving appropriations vehicle is on the launch pad.

What happens, Mr. President, is staff begin drafting legislative language to insert some project that did not get funded in the regular appropriations bill or got left out in the conference

committee cutting floor, to insert into this bill.

In some cases, the proponents simply do not want to wait for a regular appropriations bill to present their arguments on behalf of an item. They just see this opportunity of an emergency bill to shortcut the whole process.

Mr. President, that is the way things have operated in Congress for many years. That is the way the Federal dollars have poured into special projects that might not otherwise be able to compete for limited Federal funds. That is the way that public confidence in our ability to achieve fiscal discipline has been eroded over the years.

Mr. President, it is time that we stop this abuse of the legislative process. Emergency spending bills should be limited to what they are supposed to be for—emergency spending. They should not become vehicles for an odd assortment of spending projects.

As the Washington Post said in its editorial last year, there should be no ''hitchhikers in an ambulance.'' Specifically, Mr. President, my amendment limits emergency spending bills solely to emergencies by establishing a new point of order against nonemergency matters other than rescissions of budget authority or reductions in direct spending, spending in any bill that contains an emergency bill or an amendment to an emergency measure or a conference report that contains an emergency measure.

Mr. President, as an additional enforcement mechanism this amendment adds further protection by prohibiting the Office of Management and Budget from adjusting the caps on discretionary spending or from adjusting the sequester process for direct spending and receipt measures for any emergency appropriations bill if the bill includes extraneous items other than rescissions of budget authority or reductions in direct spending.

Mr. President, though this proposal, like the underlying line-item veto measure, can help in the fight to reduce the deficit, I want to stress that process rules themselves do not solve the deficit problem. No rule can—whether it is a procedural rule of the Senate, a statute, or even a constitutional amendment.

The only way we can lower the deficit is through specific policy action. Still, Mr. President, the budget rules can help Members maintain the kind of discipline that is necessary to achieve our goals of deficit reduction.

Mr. President, I am delighted that the main coauthor of this amendment, or the bill that led to this amendment, is the manager on the majority side, Senator MCCAIN, who called me after the election and said, ''Aren't there some reforms items we can work on together?'' And this is one of the first we chose to work together on.

In general, Mr. President, the rules require that new spending—whether through direct spending, tax expenditures, or discretionary programs—be offset with spending cuts or revenue increases.

However, the rules provide for exceptions in the event of an emergency, and I think, rightly so. The deliberate review through the Federal budget process, weighing one priority against another, in some cases may not permit a timely response to an international crisis, a national disaster, or some other emergency.

In other words, Mr. President, we do not ask that earthquake victims find a funding source before we send them aid. Mr. President, the emergency exception to our budget rules designed to expedite a response to an urgent need has become something very different. It has become a loophole, abused by those trying to circumvent the scrutiny of the budget process.

These abuses have taken essentially two different forms: First, declaring some expenditure to be an emergency that is truly not an urgent or unexpected matter. A second approach is adding nonemergency matters to emergency legislation that is receiving the special accelerated consideration that appropriate emergency measures are supposed to get.

Mr. President, this amendment does not prevent every abuse of the emergency spending exceptions to our budget rule. In fact, it is only aimed at the second problem I just identified. That is, adding those nonemergency matters to emergency legislation. This proposal will not stop Congress and the President from declaring a matter to be an emergency thus funding it by adding it to the deficit when it is not truly urgent or unexpected.

I am not saying we should not do that. I am saying that is something we must address in the future.

In fact, we saw this recently as last year when the Department of Defense's continuing peacekeeping operation in Somalia, Bosnia, Iraq, and Haiti were declared emergencies, suddenly with the costs added to our Federal budget deficit.

In most cases, those operations had been ongoing for significant periods of time. They were not sudden, urgent, or unforeseen costs which would have justified circumventing budget rules.

I offered an amendment last year during floor consideration of H.R. 3759 to strike these questionable provisions. Although there were only a handful of votes for this amendment, a number of Members expressed concern about whether such spending was appropriately tied to the California earthquake emergency. The basic problem is that when these spending items are packaged together on a fast track, it is difficult to separate questionable items for fear of jeopardizing the entire measure which is supposed to respond to some very immediate human needs in places such as California after the earthquake.

Although this amendment does not address this particular problem, it is aimed at limiting the abuses surrounding emergency measures by helping to keep those measures clean of extraneous matters on which there is not even an amendment to make an actual emergency designation.

When the appropriations bill to provide relief for the Los Angeles earthquake was introduced last session it officially did four things: Provided $7.8 billion for the Los Angeles quake, $1.2 billion for the Department of Defense peacekeeping operations that I mentioned, $436 million for Midwest flood relief, and $315 million more for the 1989 California earthquake.

Mr. President, it went a lot further than that. By the time the Los Angeles earthquake bill became law it also provided $1.4 million to fight potato fungus, $2.3 million for FDA pay raises, $14.4 million for the National Park Service, $12.4 million for the Bureau of Indian Affairs, $10 million for a new Amtrak station in New York. I guess we got on the wrong side of the country on that one.

Mr. McCAIN. Will the Senator respond to a question?

Mr. FEINGOLD. I am happy to respond.

Mr. McCAIN. Is the Senator from Wisconsin saying the San Andreas fault extended all the way to New York City?

Mr. FEINGOLD. Apparently, under a new geographical approach used by the Senate on this bill. We are hoping to change that.

Mr. McCAIN. I thank the Senator.

Mr. FEINGOLD. To continue the litany, including the Amtrak station in New York, we not only had a geographical amazement with regard to our continent, we had $40 million for the space shuttle in the California earthquake bill, $20 million for a fingerprints lab, $500,000 for the U.S. Trade Representative travel office, and $5.2 million for the Bureau of Public Debt.

Mr. McCAIN. Does the Senator say $20 million for a fingerprints lab?

Mr. FEINGOLD. That is what I understand.

Mr. McCAIN. Where is the location of that fingerprints lab?

Mr. FEINGOLD. I guess more the eastern side of the United States than the west.

Mr. McCAIN. I thank the Senator.

Mr. FEINGOLD. Although nonemergency matters attached to emergency bills are still subject to spending caps established in the current budget resolution as long as total spending remains under those caps, as the Senator well knows, these unrelated spending matters are not required to be offset with spending cuts.

In the case of the Los Angeles earthquake bill because the caps have been reached, the new spending was offset by rescission, but in my view those rescissions might otherwise have been used for deficit reduction. We lost an opportunity for deficit reduction of those offsets because they had to be

used to offset the items I have just listed that did not belong in the California earthquake bill.

Moreover, by using emergency appropriations bills as a vehicle these extraneous proposals avoid the examination through which legislative proposals must usually go to justify Federal spending.

If there is truly a need to shift funds to these programs, an alternative vehicle—a regular supplemental appropriations bill, not an emergency spending bill—is what should be used.

Mr. President, the amendment I am offering today will end that kind of misuse of the emergency appropriations process. It is a reasonable first step toward cleaning up our emergency appropriations process.

Adding nonemergency extraneous matters to emergency appropriations not only is an attempt to avoid legitimate scrutiny of our normal budget process, it can also jeopardize our ability to actually provide relief to those who are really suffering from a disaster to which we are trying to respond.

Just as importantly, adding superfluous material to emergency appropriations bills degrades those very budget rules on which we rely to impose fiscal discipline. Mr. President, I think that only encourages further erosion of our efforts to reduce the deficit.

This amendment that I am offering today to the line-item veto proposal passed the other body in the last Congress with overwhelming bipartisan support, first as a substitute amendment on a vote of 322 to 99, and then as amended by a vote of 406 to 6.

So I urge my colleagues to support this effort to end this abusive practice. As I indicated in my opening remarks, this amendment is both consistent with and complementary to the underlying bill. It is an attempt to impose a prior restraint on Congress so that this kind of spending is not added in the first place to an emergency spending bill.

This amendment is an attempt to make a fundamental change in the way Congress has done business in the past. Slipping pork projects into appropriations bills may at one time have been the hallmark of a successful legislator, but I hope in this new era of fiscal constraint it is time that this practice ended. I hope that this amendment will receive the broad bipartisan support that it surely deserves.

I wish to conclude this part of my remarks by again thanking the Senator from Arizona for his work with me on this and for his rather effective questioning during my presentation.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I congratulate the Senator from Wisconsin on this amendment. I think it is a very important one. I say with some modesty, Mr. President, I believe that I have come over the years to have a degree of expertise on pork-barrel spending. I have found over the years that perhaps one of the most egregious abuses of the legislative process is the issue which the amendment of the Senator from Wisconsin addresses. That is, when we have a genuine emergency which requires near immediate action because it is clear that there are American citizens who need help, and it is our responsibility as a Congress to cooperate with the executive branch and provide that much-needed emergency relief—in the case that the Senator from Wisconsin was describing, the terrible and tragic earthquakes in California—all too often we discover it is used as a vehicle for pet projects, appropriations which have no relation to the emergency, bear no relation to the emergency, and in fact are an egregious abuse and misuse of the taxpayers' dollars.

I would suggest, if the Senator from Wisconsin took the time, he and I could go back through virtually every emergency appropriations bill over the past 10 or 15 years and would find similar abuses, some of them a bit amusing.

As I mentioned, San Andreas fault stretched all the way to New York City in one case and, of course, fingerprint labs would probably not have been appropriated in that fashion, at least without some discussion and debate.

But the point is that rather than look back and criticize, as I know neither the Senator from Wisconsin nor I wish to do, it is time to look forward, and that is to enact the amendment of the Senator from Wisconsin to prevent it in the future, so there will not be any temptation involved.

I thank the Senator from Wisconsin not only on this bill but a variety of other issues where he has worked on legislation which would restore, to some degree anyway, the image that the American people want to have of this body, one that is responsible with their tax dollars, behaves responsibly, and is not going to act in a fashion that makes them lose their confidence in their ability to trust our Government.

Mr. President, I suggest to the Senator from Wisconsin that on this amendment it is possible it may be accepted. I have obviously some objections to a voice vote at this time. But I know that the Senator from Wisconsin may want the yeas and yeas, and that is perfectly acceptable. But I might suggest that he wait until tomorrow to ask for the yeas and nays in case it happens to be acceptable. It may save time of this body.

So I assure the Senator from Wisconsin, if it is objected to, I would also make sure that the yeas and nays are ordered and it not be disposed of on a voice vote without his permission.

Mr. President, I yield the floor.

Mr. FEINGOLD. Mr. President, I thank the Senator from Arizona. That sounds like a very reasonable approach to this amendment. I hope it can be accepted.

I wish to again thank him for his willingness and effort to work on a bipartisan basis, and also for his personal efforts and the efforts of his staff over the years to identify those pork projects. I think it is one of the reasons that these kinds of amendments have a chance of prevailing in this environment.

Mr. President, I ask unanimous consent to set aside my first amendment so that I can call up my second amendment.

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

AMENDMENT NO. 362 TO AMENDMENT NO. 347

(Purpose: To express the sense of the Senate regarding deficit reduction and tax cuts)

Mr. FEINGOLD. Mr. President, I have a second amendment No. 362 pending at the desk that I call up and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself and Mr. SIMON, proposes an amendment numbered 362 to amendment No. 347.

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

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

The amendment is as follows:

At the end of the pending amendment No. 347, add the following:

SEC. . SENSE OF THE SENATE REGARDING DEFICIT REDUCTION AND TAX CUTS.

The Senate finds that—

(1) the Federal budget according to the most recent estimates of the Congressional Budget Office continues to be in deficit in excess of $190 billion;

(2) continuing annual Federal budget deficits add to the Federal debt which soon is projected to exceed $5 trillion;

(3) continuing Federal budget deficits and growing Federal debt reduce savings and capital formation;

(4) continuing Federal budget deficits contribute to a higher level of interest rates than would otherwise occur, raising capital costs and curtailing total investment;

(5) continuing Federal budget deficits also contribute to significant trade deficits and dependence on foreign capital;

(6) the Federal debt that results from persistent Federal deficits transfers a potentially crushing burden to future generations, making their living standards lower than they otherwise would have been;

(7) efforts to reduce the Federal deficit should be among the highest economic priorities of the 104th Congress;

(8) enacting across-the-board or so-called middle class tax cut measures could impede efforts during the 104th Congress to significantly reduce the Federal deficit, and;

(9) it is the Sense of the Senate that reducing the Federal deficit should be one of the Nation's highest priorities, that enacting an across-the-board or so-called middle class tax cut during the 104th Congress would hinder efforts to reduce the Federal deficit.

Mr. FEINGOLD. I thank the Chair. I also ask unanimous consent that Senator SIMON of Illinois be added as a cosponsor to this sense-of-the-Senate amendment having to do with tax cuts.

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

Mr. FEINGOLD. I thank the Chair.

I rise now to urge my colleagues to support the amendment that I have offered with the Senator from Arkansas [Mr. BUMPERS] and the Senator from Illinois [Mr. SIMON], expressing the sense of the Senate that reducing the Federal deficit should be one of the Nation's highest priorities, and that enacting an across-the-board, so-called middle-class tax cut during the 104th Congress would actually hinder efforts to reduce the Federal deficit.

I have argued against broad tax cuts on a number of occasions, and I am especially pleased to be joined by the Senator from Arkansas and the Senator from Illinois in this effort. And I might note that the manager of the bill on the minority side, Senator EXON, was one of the first people to identify the absurdity in the rush to tax cuts. He has been a very key leader on this issue, both in his own right and as the ranking member of the Budget Committee.

All of these Senators are passionate advocates for deficit reduction. I am also pleased to see that many others share our concern that broad tax cuts will impede our efforts to reduce the deficit.

Today's Washington Post featured a story that included a number of statements from colleagues in which they expressed their concerns about broad tax cuts at this time. The ranking member of the Finance Committee, Mr. MOYNIHAN, of New York, was quoted as saying that deficit reduction was the issue and that tax cuts were out of order. With his usual eloquence, the senior Senator from New York has nicely summarized the matter in two short statements. Mr. President, deficit reduction is the issue and tax cuts are out of order.

Mr. President, the underlying measure before us proposes to enhance the ability of the President to pare down spending by exercising something like a line-item veto authority. In great part, this measure is before us because of those continued budget deficits. Although we certainly will not balance the budget simply by granting the President some form of a line-item veto authority, many of us do feel that such authority can in a small way help alleviate some of the pressure on the deficit.

Mr. President, the amount of pork that the President can trim from our budget pales in comparison to the effect a broad middle-class tax cut will have on our deficit or that our resistance to such a tax cut could have on reducing the deficit.

The President's budget proposes $63 billion in tax cuts. If the only change we made to that budget was to eliminate those tax cuts, we would save not only that $63 billion but another $9 billion in interest costs for a total savings of $72 billion in additional deficit reduction. In fiscal year 2000 alone, we could lower the deficit by $24 billion more than is projected, achieving nearly $4 billion in deficit reduction just from interest savings.

Mr. President, forgoing the tax cuts imposed by the Contract With America produces even more telling results. If we just could resist the tax cuts called for in the Contract With America, we would save this country over $200 billion and about $20 billion in interest costs alone.

Assuming those tax cuts were offset with spending cuts, doing nothing more to the budget than forgoing those proposed tax cuts could reduce the deficit by $80 billion in fiscal year 2000 and we would be approaching an annual deficit of $114 billion.

Mr. President, at this point I am delighted to ask unanimous consent that the senior Senator from Nebraska, Senator EXON, also be added as an original cosponsor of the sense-of-the-Senate resolution.

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

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I want to compliment my friend and colleague from the State of Wisconsin. Let me just make a brief statement in support of the amendment he is offering. The numbers speak for themselves, I suggest. The Joint Committee on Taxation has estimated that the tax cuts in the so-called Contract With America will worsen the deficit by over $700 billion over the next 10 years. Added to that the Congressional Budget Office has estimated that we will need to cut spending by $1.2 trillion to balance the budget over the next 7 years. What this means is that if we want to cut taxes as proposed in the Contract With America, we will have to make some pretty dramatic additional cuts in spending.

My position is that I am all for tax cuts but we have to cut the deficit first, then consider what we can do, if anything, about tax cuts.

I thank my friend from Wisconsin. I think it is a good amendment.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I thank the Senator from Nebraska. He is the perfect person to be describing the specifics of what this does about reducing our Federal deficit. Nobody knows the issue better. I can only say my only regret is that the Senator has chosen not to seek reelection. I think his being here in the next 6 years would be one of the keys to eliminating this Federal deficit, but we will certainly be delighted to have the benefit of his great skills in the area of deficit reduction over the next several months.

Does the Senator have a question?

Mr. MCCAIN. I thought the Senator was finished. I am sorry.

Mr. FEINGOLD. I will continue just a brief time longer.

Mr. President, let me take a couple of other points on this matter of the sense-of-the-Senate resolution.

Some proponents of these tax cuts argue that they have to be a high priority because the American people are insisting on them. The Senator from Louisiana [Mr. BREAUX] a distinguished member of our tax-writing committee, had a very good response to this contention.

In today's Washington Post he was quoted as saying, ''We do not have a lot of people marching on Washington asking for tax cuts.''

The Senator from Louisiana hit the nail on the head. There is no great demand for tax cuts, but there is widespread support for us to cut spending and to use those savings to reduce the deficit.

I have been speaking out on this issue for several months now, basically since November 8 when I first saw the Republican contract and then after I saw the President's proposal on December 15. I took issue with the President's proposed tax cuts last December on the day he announced them, and I did so because I felt tax cuts were just not fiscally responsible right now.

I concede that I would be tempted to make this argument even without strong support from my constituents. Sometimes that is part of this job. The voters elect you to make some tough calls, not to constantly stick out your finger to test the political winds before every vote. On this issue, the people of Wisconsin have been overwhelmingly supportive. They realize what they would get back in lower taxes—a meaningful amount to many people—was simply not worth the devastation it would cause our Federal budget. In just the last few weeks, the phone calls and letters to my office have been running 7 to 1 in favor of reducing the deficit over cutting taxes. Here are just a few of the things they have been saying.

A gentleman from Janesville wrote:

> As popular as a ''middle class tax cut'' may be, this is not the time for such action. . . . I urge you to keep your eye on the prize. Concentrate your efforts on balancing the budget and then, begin to pay down our national debt. Please, do not make this process more difficult by returning a pittance to this over taxed citizen.

A woman from Prairie du Sac wrote:

> . . . any tax cut at this time would be pure folly. . . . Reducing the deficit must be the number one priority of this Congress now and for many years to come. Our country's economy is dependent on this. . . .

And a gentleman from Minong, just a few miles from the Minnesota border, wrote this to me:

> It's not that I don't believe the middle class deserve a tax cut. I just don't think we can afford to cut taxes when we can't cover our budget right now. . . . When we are out of debt, then the time has come to grant tax cuts. Not before.

My office has received hundreds of calls and letters that are similar to these.

And, though I do not presume to speak for the constituents of other Members, I think this view is widely shared outside Wisconsin as well.

A USA Today/CNN poll published on December 20 found that 70 percent of those polled said if Congress is able to cut spending, then reducing the deficit is a higher priority than tax cuts.

A Washington Post-ABC News poll from January 6 showed that people favored deficit reduction over tax cuts by a 3-to-2 margin.

And in a column in today's Washington Post, James Glassman notes that an NBC-Wall Street Journal poll found only 13 percent of respondents said taxes were the ''most important economic issue facing the country'' while nearly three times as many said it was the deficit.

Mr. President, while polling often can be one-dimensional measures of opinion, there was nothing one-dimensional about the response to the field hearings of the House Budget Committee on this matter.

The crowds that attended those hearings showed clear, vocal majorities supporting deficit reduction over tax cuts.

Mr. President, it is frustrating to hear constituents, who could certainly use the money, urge Congress to make deficit reduction a higher priority than tax cuts, and then watch the rush to see who can propose the bigger tax cut.

In his column, Mr. Glassman calls upon Republicans to immediately shelve their plans to cut taxes this year and instead devote all their energy to cutting spending.

I will add that I think both Democrats and Republicans should shelve plans to cut taxes.

Let us focus on the task of identifying spending that can be cut, and then use the savings we achieve from those cuts to reduce the deficit.

Mr. President, I ask unanimous consent that copies of the column by James Glassman, and the story headlined ''Senate GOP Prepares to Invalidate Tax Provisions of House 'Contract,'" both from today's Washington Post, be included in the RECORD at this point.

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

[From the Washington Post, Mar. 21, 1995]

SHELVE THE TAX CUTS

(By James K. Glassman)

Republicans should immediately shelve their plans to cut taxes this year and instead devote all their energy to cutting spending.

Don't get me wrong. I think taxes are too high. They now consume a bigger share of the average family's expenses than housing, food, clothing and medical costs combined. High taxes are a drag on economic growth and a license for government to increase wasteful spending. And our current tax system bears much of the blame for the shamefully low U.S. savings rate.

For these reasons, tax reform is a necessity, and a flat tax or a consumption tax is almost certainly the best answer. But such changes can't possibly be approved in 1995—or even 1996. Americans need a full-scale debate, preferably during a presidential campaign.

Instead of building support for major reform later, the Republican strategy this year is to enact a typical Christmas-tree tax bill, festooned with baubles for businesses, investors, retirees and middle-class families. President Clinton introduced his own, smaller tax cut plan in February.

Tax relief is normally a crowd pleaser, but not today. On fiscal matters, Americans seem to have just one thought in mind: Balance the budget. Only 13 percent of respondents to an NBC-Wall Street Journal poll said taxes were the ''most important economic issue facing the country'' while nearly three times as many said it was the deficit.

''They aren't thinking taxes now,'' says Kellyanne Fitzpatrick of the Luntz Research Cos. of Arlington, the firm that helped House GOP leaders draw up the Contract With America. ''People are vehement about having spending cuts first.''

Politicians are at last starting to notice how the public is ordering its priorities. On Capitol Hill last week, I found no members who were truly enthusiastic about tax cuts. Economists aren't clamoring for them either. With gross domestic product rising nicely, the cuts aren't needed as a short-term economic stimulus; on the contrary, they'll probably boost inflation.

So the logical conclusion is to forget taxes entirely for this year. Unfortunately, the Contract has a mind of its own.

Last week, the tax-relief bill passed the Ways and Means Committee on a party-line vote. It includes a reduction in the capital-gains rate, a tax credit of $500 per child for families earning up to $200,000, a revival of IRAs, a modest credit to make up for the ''marriage penalty'' on two-earner couples and a few other goodies. Over the next five years, the changes in the bill will make the deficit a total of about $190 billion larger than current projections.

The bill is scheduled for a vote in the House next week, and already dozens of Republicans are asking House Speaker Newt Gingrich to scale it back. They know that, based on projections by the Congressional Budget Office, we can allow federal spending to rise another $350 billion between now and 2002 and still balance the budget—but only if we refrain from reducing tax revenue.

If the tax bill passes, it goes next to the Senate Finance Committee, whose chairman, Sen. Bob Packwood (R–Ore.), has indicated that his panel would give it a frosty reception. Packwood is a big thinker who almost certainly would prefer reforming the whole tax system—but only after spending is cut, a step he believes will lead to lower interest rates as the government's borrowing requirements fall.

Either a consumption tax or a flat tax would remedy two of the greatest problems of the current system—that it's too complicated and that it imposes marginal rates so high they discourage investing. The flat tax also has an amazing appeal that many politicians have overlooked: Americans at all income levels believe it's more fair than what we have now; they suspect that fat cats use loopholes to avoid their fair share.

Under the flat tax proposed by House Majority Leader Dick Armey (R–Tex.) earlier this year, a married couple making less than $26,200 would pay no federal income tax. Beyond that, the rate would be 17 percent on all income, with no deductions allowed.

A flat tax could easily be linked by law to a balanced-budget requirement: At the start of each year, Congress would have to set a single rate (whether it's 17, 18 or 22 percent) that would bring in enough revenues to cover federal expenses. That would be as powerful a deterrent to overtaxing and overspending as any constitutional amendment.

Fitzpatrick says that Luntz has conducted polling nationwide and focus groups in three cities, and the results are clear: ''The flat tax is a big home run for everybody.''

She added, however, that Americans are so intent on balancing the budget that ''some people in the focus groups actually complained that they themselves would pay zero under a flat tax. They want to contribute something to balancing the budget.''

Gingrich would be nuts to ignore that kind of sentiment. He should postpone the tax-relief vote indefinitely, concentrate on spending cuts and lay the groundwork for Republicans to run on a flat-tax platform next year—unless Clinton is cleaver enough to beat them to it.

[From the Washington Post, Mar. 21, 1995]

SENATE GOP PREPARES TO INVALIDATE TAX PROVISIONS OF HOUSE 'CONTRACT'

(By Eric Pianin and Dan Morgan)

Senate Republicans have begun moving on several tracks to rearrange key tax and spending provisions of the House GOP's ''Contract With America.''

Senate Finance Committee Republicans emerged from a weekend retreat with their Democratic colleagues resolved to block passage of the House GOP's $188 billion tax cut package and to put off action on tax reliefs proposals until Congress completes work on the major deficit reduction this summer.

Finance Committee Chairman Bob Packwood (R–Ore.) said yesterday that Congress would reduce the deficit by ''an immense magnitudes beyond what people believe is possible,'' but that major tax reductions along the lines advocated by House Republicans were not in the cards.

''To the extent that we can both reduce the deficit to zero over seven years and have tax cuts, so much the better,'' Packwood said in a speech to the national Association of Manufacturers. ''But I don't thing we should put the priority of tax cuts first and then reducing spending later.''

House Republican leaders plan to complete work on their tax package—including both a $500-per-child tax credit for families making up to $200,000 a year and a sharp reduction in the capital gains tax—before Congress leaves for the Easter recess. Nearly 100 Republicans plan to deliver a letter to the House GOP leadership today, urging that the credit be targeted to families making a maximum of $95,000 a year.

However, an aide to House Speaker Newt Gingrich (R–Ga.) said such a change is unlikely.

Sen. Daniel Patrick Moynihan (N.Y.), the ranking Democrat on the Finance Committee, who attended the weekend retreat, said Democrats and Republicans generally agreed that ''deficit reduction was the issue'' and that ''tax cuts were out of order.''

Sen. John Breaux (D–La.), another committee member at the retreat, said, ''We do not have a lot of people marching on Washington asking for tax cuts.''

But committee member Sen. Charles E. Grassley (R–Iowa) predicted that some ''modest'' tax relief would emerge from Congress later this year to satisfy the demands of Sen. Phil Gramm (Tex.), a Republican presidential candidate, and other conservatives sympathetic to the House tax proposals.

''They [the tax cuts] don't have to be as great as the House wants and they must be oriented toward the family,'' Grassley said.

The Senate also may put its imprint on a recision bill passed last week by the House that would pare $17.1 billion from spending that had been approved in the current budget. Cumulatively, the bill would reduce congressional ability to make spending commitments by $40 billion to $50 billion over five years.

The House legislation exempted defense and military construction accounts, but Sen. Mark O. Hatfield (R–Ore.), who chairs the Senate Appropriations Committee, said yesterday that he has directed that those accounts be screened for possible cuts as well.

Some Democrats and Republicans say deficit reduction should take precedence over everything, including tax cuts and increases in Pentagon spending, or the spending cuts could be branded as imprudent and unfair.

The liberal-leaning Center on Budget and Policy Priorities concluded that 63 percent of the House cuts are in programs for low-income families and individuals. Hatfield suggested yesterday in an interview that military spending could not be ''disconnected'' from the deficit problem any more than the tax cut issue could be.

''They're asking people to make sacrifices at the same time they're saying military spending must escalate,'' he said.

On Sunday, House Budget Committee Chairman John R. Kasich (R–Ohio) said House Republican leaders had agreed to freeze defense spending at the current $270 billion for at least the next five years, rather than increasing it.

Hatfield, who was attacked by senators within his own party for casting the lone Republican vote against the balanced budget amendment, indicated that the size of the Senate's spending recision package would be in the same ''ballpark'' as the House-passed version, but with different spending cuts.

In addition to possibly tapping defense and military contruction, Hatfield said the Appropriations transportation subcommittee that he chairs probably would make deeper cuts than the House did.

''We'll never balance the budget on the baseline of discretionary spending,'' Hatfield said, referring to the one-third of the total budget that does not cover interest on the debt or Social Security, Medicare and other such ''entitlement'' programs.

Speaking to reporters after his speech to the manufacturers association, Packwood said that he agreed with Republican budget committee leaders in the House and Senate that the budget could be balanced by 2002 merely by slowing the growth of spending by $1 trillion or more, but that ''nothing is sacred,'' including Social Security and other entitlement programs.

''I have said all along Social Security should be on the table,'' he said, but ''we haven't crossed that yet.'' Packwood said that while cuts in Social Security benefits have been ruled out by Republican leaders, his committee would consider trying to eliminate a bias in a formula that overstates cost-of-living adjustments in Social Security payments.

Mr. FEINGOLD. Mr. President, I understand the majority leader intends to stack votes on amendments offered tonight for some time to be determined and I ask unanimous consent, on the amendment I just proposed, it be in order to ask for the yeas and nays.

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. FEINGOLD. Mr. President, I will defer the request for the yeas and nays on the first amendment in response to the suggestion of the manager, the Senator from Arizona. I thank both the managers for their kindness and cooperation in my opportunity to offer these amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I ask for the regular order with regard to the Simon amendment No. 393.

Mr. MCCAIN. Mr. President, I object.

Mr. President, I had not finished with the debate on the amendment.

Mr. EXON. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I just want to briefly respond to the amendment of the Senator from Wisconsin. I know there will be objection on this side, as he knows. The so-called Contract With America was clear on the point that middle-income Americans—middle-class Americans—deserve a tax cut. I understand the Senator from Wisconsin's zeal to balance the budget. I appreciate it. I believe I share it.

I would like to point out that in 1950, a median-income family of four in America—that is a man, woman, and two children—sent $1 out of $50 of their income to Washington, DC, in 1950. In 1990 that same family of four, median-income American family, sends $1 out of every $4 to Washington, DC, in the form of taxes. Then, when you put on State and local taxes, they rapidly jump up into the 40 percent bracket. If we do not add another entitlement program between now and the turn of the century, if we do not add one penny to Federal spending, that number will be $1 out of every $3.

I say to my friend from Wisconsin, we cannot afford to lay this burden on middle-income Americans or we will see the disappearance of middle-class America. They are staggering under a crushing tax burden. I believe it makes it much more difficult to both reduce the deficit and enact tax cuts, but I, frankly—maybe the Senator from Louisiana has not heard of people marching on Washington, saying ''cut taxes.'' Around April 15 there will be people marching on my office and calling my office when they file their income taxes again this year and find out that, again, their taxes have gone up and it will now require, I believe the date is May 15, to which they will work in order to pay their State and local and Federal taxes before they start earning a penny for themselves and their families.

I understand very well what this $4.8 trillion debt, now projected by 1996 to be a $5.2 trillion debt, can do to America. But I also know what a crushing tax burden means to the average American family which is bearing an enormous burden and that burden has contributed significantly to the most startling and, in my view, alarming polling number, polling statistic, that we got out of the 1994 elections. That is that the majority of Americans who voted in the 1994 election do not believe that their children will be better off than they are. They believe that for a variety of reasons, I say to my friend from Wisconsin. But one of the reasons they say that is that they do not believe they will have enough income to provide for their children's futures.

The essence of the American dream, as most of us know it, is that people came to this country, worked hard, put in sweat and blood and tears in order to ensure the future generations—their children—would have a better opportunity than they.

I say to my friend from Wisconsin, that is not the case anymore. One of the reasons for that is because they see so many of their hard-earned dollars going to Washington and to State and local taxes, so they do not believe they will be able to afford to pay for their medical bills, their children's education, and the other necessities that are required for people, not only for the rest of their lives but to ensure the future of their children.

But I do not disagree with the Senator from Wisconsin about the daunting task we face when we say we are both going to reduce the deficit and the debt and at the same time relieve the tax burden on middle-income Americans.

Mr. President, I apologize for interrupting the Senator from Nebraska. I just wanted to respond to the Senator from Wisconsin on this amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I will be very brief. I had an opportunity to speak, but this may be the only debate on this amendment the way this is structured.

Let me make two quick points. First of all, I am pleased to note this is a nonpartisan issue. Everyone watching should be aware things are not breaking down on a partisan basis. There is a disagreement on the Republican side and there is a disagreement on the Democrat side whether we can go with tax cuts. I think it is heartening for people to realize the Senate can function in this way and we can resolve the issue on other than a Democrat or Republican basis, and I hope that is the way this tax cut debate will continue.

The other point I would just make in response to the Senator from Arizona is that I am also willing to examine the impact that this issue of tax cuts and deficit reduction has on the bottom line for American families. I had a meeting yesterday in Wisconsin with a business advisory group, and the business men and women there were absolutely convinced that doing the tax cut, rather than using the money for deficit reduction, would mean that the actual budgetary picture of those individual families would be worse with the tax cut, for two reasons. One, they believed if we do not reduce the deficit as dramatically as we can right now, in other words not using the tax cuts, that the interest we have to pay on the Federal debt will inevitably cause them to have less money of their own because so much of our national economy will be going toward paying the

horrible burden that the interest on the debt already causes.

The other point was very specific. Their belief was that the increase in interest rate that will occur because of the failure to deal with the deficit, and possibly because of the tax cuts, could generate an inflationary effect and would mean a greater increase in their costs monthly in the form of interest on car payments and home payments.

So I think the Senator's analysis is a fair approach, not just the macroeconomic one of what happens to the whole society and our deficit, but the macroeconomic issue of what happens to those individual families. I hope, as we go on this debate, that we will look at it from both points of view. Both are central to this issue.

I thank the Chair. I yield the floor.

Mr. EXON. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is amendment 393 offered by the Senator from Illinois.

AMENDMENT NO. 393, AS MODIFIED, TO AMENDMENT NO. 347

(Purpose: To provide for expedited judicial review)

Mr. EXON. Mr. President, the Senator from Illinois and the Senator from Arizona have been working on the language of the Senator's amendment on judicial review that was debated briefly an hour or so ago. Senator SIMON has given me language that he believes addresses the concerns of the Senator from Arizona regarding severability. Senator SIMON asked me to seek to modify his amendment to reflect the changes.

So, Mr. President, on behalf of the Senator from Illinois, I send a modification of his amendment numbered 393 to the desk, and I ask that it be so modified.

The PRESIDING OFFICER. Is there objection? The amendment is so modified.

The amendment (No. 393), as modified, to amendment No. 347, is as follows:

At the appropriate place in the bill, insert the following:

SEC. . JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that a provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Any action brought under paragraph (1) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives or the Senate to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—

Notwithstanding any other provisions of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—

It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

(d) SEVERABILITY.—

If any provision of this Act, or the application of such provision to any person or circumstance is held unconstitutional, the remainder of this Act and the application of the provisions of such Act to any person or circumstance shall not be affected thereby.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Illinois, as modified.

The amendment (No. 393), as modified, was agreed to.

Mr. EXON. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

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

AMENDMENT NO. 402 TO AMENDMENT NO. 347

(Purpose: To provide a process to ensure that savings from rescission bills be used for deficit reduction)

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nebraska [Mr. EXON] proposes an amendment numbered 402 to amendment No. 347.

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

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

The amendment is as follows:

At the end of the matters proposed to be inserted, insert the following:

SEC. .

(a) Not later than 45 days of continuous session after the President vetoes an appropriations measure or an authorization measure, the President shall—

(1) with respect to appropriations measures, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each out year by the amount by which the measure would have increased the deficit in each respective year;

(2) with respect to a repeal of direct spending, or a targeted tax benefit, reduce the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 by the amount by which the measure would have increased the deficit in each respective year;

(b) EXCEPTIONS.

(1) This section shall not apply if the vetoed appropriations measure or authorization measure becomes law, over the objections of the President, before the President orders the reduction required by subsections (a)(1) or (a)(2).

(2) If the vetoed appropriations measure or authorization measure becomes law, over the objections of the President after the President has ordered the reductions required by subsections (a)(1) or (a)(2), then the President shall restore the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 or the balances under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the positions existing before the reduction ordered by the President in compliance with subsection (a).

Mr. EXON. Mr. President, let me just briefly address this because I had talked briefly about it earlier. This amendment would add to the bill what is called a lock box to insure that any and all savings achieved as a result of the line-item veto under the bill would go to deficit reduction. This is simply a truth-in-advertising amendment. All this amendment does is to ensure that, if you promise deficit reduction in a veto, you actually have to deliver deficit reduction at the end of the day.

I have nothing further on the amendment at the present time. I assume we will have, if it is not accepted, probably a vote on it on tomorrow.

Mr. MCCAIN. Mr. President, I am in support of the concept of this amendment. I think clearly any savings should go to reduce the deficit. There are objections on this side of the aisle at this time.

So I withhold approval. But hopefully some of those objections can be satisfied before being voted on tomorrow.

I agree with the Senator from Nebraska that any savings should go to deficit reduction rather than expenditures on other Government programs.

Mr. EXON. Mr. President, I thank my colleague from Arizona.

Mr. MCCAIN. Mr. President, it has been a long day for the Senator from Nebraska. I will try to be relatively brief. I do not believe there are any more amendments proposed for tonight.

I would just like to make some additional comments and then proceed to wrap up, since we will be beginning at the hour of 9:30 in the morning, it is my understanding.

Mr. President, I wanted to discuss this issue that has been heavily argued today as far as the constitutionality of separate enrollment. Earlier today, he included in the RECORD a statement from Mr. Johnny Killiam, who is the senior specialist on American constitutional law in the Congressional Research Service. The subject of this memorandum is the separate enrollment bill and the Constitution. I am not going to read the entire thing. I would like to again repeat the concluding paragraph of his 12-page dissertation on the constitutionality of separate enrollment.

He says:

In conclusion, we have argued that the deeming procedure may present a political question unsuited for judicial review, and, thus, that Congress would not be subject to judicial review. We have considered, on the other hand, that the courts may find that they are not precluded from exercising authority to review this proposal. If the proposal is reviewed by the court, and even if it is not, we have presented an argument leading to sustaining the deeming procedure as not in violation of the principle that a bill in order to become law must be passed in identical versions by the House of Representatives and the Senate. Because of the lack of available precedent, we cannot argue that any of the three versions of the argument is indisputably correct. Indeed, there are questions about all three. In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

What Mr. Killiam has said—and it is a very in-depth and in some ways esoteric discussion—various cases have appeared before the Supreme Court, and he argues at the end of his dissertation that there are arguments that lead in favor of the constitutionality of separate enrollment, but it could be subject to judicial review.

And his last sentence, I think, is probably the most operative, where he said:

In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

I also say to those who are concerned about the constitutionality of this issue, the Simon amendment—and a similar amendment was adopted by the House of Representatives—will call for expedited judicial review. We will find out. I am not using that as an argument for somebody who feels there is a clear constitutionality problem here and believes it is unconstitutional to therefore vote for this legislation just because it is going to receive judicial review. But I am saying to those who may have some doubts that this issue will be resolved and resolved in a very short period of time.

I also want to take a few minutes to quote from Judith Best, who has been a well-known expert on this particular issue. It is a very short quote. This part of her dissertation, entitled ''The Constitutional Objection.''

The objection is that the proposal is unconstitutional—

Meaning separate enrollment is unconstitutional.

because it would change the Constitution, specifically the veto power, by act of Congress alone. The response is as follows: Article I, section 5 of the Constitution permits this procedure. Nothing in Article I, section 7 is violated by this procedure. Under this proposal, all bills must be presented to the President. He may sign or veto all bills. He must return vetoed bills with his objections. Congress may override any veto with a two-thirds majority of each House. Under Article I, section 5, Congress possesses the power to define a bill. Congress certainly believes that it possesses this power, since it alone has been doing so since the first bill was presented to the first President in the first Congress. If this construction of Article I, section 5 is correct, the definition of a bill is a political question and not justiciable. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment to issues to a coordinate political department. A textually demonstrable constitutional commitment of the issue to the legislature as found in each House may determine the rules of its proceedings. Congress may define as a bill a package of distinct programs and unrelated items to be separate bills. Either Congress has a right to define a bill or it does not. Either this proposal is constitutional or the recent practice of Congress informing omnibus bills containing unrelated programs and nongermane items is constitutionally challengeable. If the latter, the President would be well advised to bring such suit against the next omnibus bill.

I think, basically, Professor Best lays it out there. The Congress has a right to determine what a bill is. The Congress may define as a bill a package of distinct programs and unrelated items. And her argument, which I support, is that therefore the Congress of the United States can define a single enrollment which was part of a package as a bill as well.

But we will probably have much more debate on that in the couple of days ahead. I want to express again my admiration for Senator BYRD, the Senator from West Virginia, for his erudite and compelling and well-informed arguments. I watched a great deal of the debate today between the Senator from Indiana and the Senator from West Virginia. I think it was edifying, and I think many of my colleagues had the opportunity to observe them. I think most of the arguments concerning constitutionality, enrollment, and other aspects of the line-item veto were well described. I, again, express my admiration for the talent and enormous knowledge that the Senator from West Virginia possesses.

Again, I want to emphasize again that a lot of time has been taken, and more time will be taken on the floor on this issue. This is a fundamental and structural change in the way we do business. I believe it deserves thorough ventilation and debate. At the same time, I believe we can probably bring it to a close. I thank the Senator.

UNANIMOUS-CONSENT AGREEMENT

Mr. MCCAIN. Mr. President, I ask unanimous consent that at 10:30 a.m. on Wednesday, Senator BRADLEY be recognized to offer an amendment on tax expenditures on which there be the following time limitation prior to a motion to table, with no second-degree amendments to be in order prior to the motion to table: 30 minutes under the control of Senator BRADLEY, 15 minutes under the control of Senator MCCAIN.

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

MORNING BUSINESS

Mr. MCCAIN. I ask unanimous consent that there be a period for morning business.

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

REPORT ON THE EXPORT ADMINISTRATION ACT—MESSAGE FROM THE PRESIDENT—PM 35

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States:

To the Congress of the United States:

In accordance with section 3(f) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1862(f)), I am pleased to transmit to you the Annual Report of the National Science Foundation for Fiscal Year 1993.

The Foundation supports research and education in every State of the Union. Its programs provide an international science and technology link to sustain cooperation and advance this Nation's leadership role.

This report shows how the Foundation puts science and technology to work for a sustainable future—for our economic, environmental, and national security.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 21, 1995.*

REPORT OF THE NATIONAL SCIENCE FOUNDATION FOR FISCAL YEAR 1993—MESSAGE FROM THE PRESIDENT—PM 36

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources.

To the Congress of the United States:

1. On August 19, 1994, in Executive Order No. 12924, I declared a national emergency under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*) to deal with the threat to the national security, foreign policy, and economy of the United States caused by the lapse of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*) and the system of controls maintained under that Act. In that order, I continued in effect, to the extent permitted by law, the provisions of the Export Administration Act of 1979, as amended, the Export Administration Regulations (15 C.F.R. 768 *et seq.*), and the delegations of authority set forth in Executive Order No. 12002 of July 7, 1977 (as amended by Executive Order No. 12755 of March 12, 1991), Executive Order No. 12214 of May 2, 1980, Executive Order No. 12735 of November 16, 1990 (subsequently revoked by Executive Order No. 12938 of November 14, 1994), and Executive Order No. 12851 of June 11, 1993.

2. I issued Executive Order No. 12924 pursuant to the authority vested in me as President by the Constitution and laws of the United States, including, but not limited to, IEEPA. At that

time, I also submitted a report to the Congress pursuant to section 204(b) of IEEPA (50 U.S.C. 1703(b)). Section 204 of IEEPA requires follow-up reports, with respect to actions or changes, to be submitted every 6 months. Additionally, section 401(c) of the National Emergencies Act (NEA) (50 U.S.C. 1601 *et seq.*) requires that the President, within 90 days after the end of each 6-month period following a declaration of a national emergency, report to the Congress on the total expenditures directly attributable to that declaration. This report, covering the 6-month period from August 19, 1994, to February 19, 1995, is submitted in compliance with these requirements.

3. Since the issuance of Executive Order No. 12924, the Department of Commerce has continued to administer and enforce the system of export controls, including antiboycott provisions, contained in the Export Administration Regulations. In administering these controls, the Department has acted under a policy of conforming actions under Executive Order No. 12924 to those required under the Export Administration Act, insofar as appropriate.

4. Since my last report to the Congress, there have been several significant developments in the area of export controls:

BILATERAL COOPERATION/TECHNICAL ASSISTANCE

—As part of the Administration's continuing effort to encourage other countries to implement effective export controls to stem the proliferation of weapons of mass destruction, as well as certain sensitive technologies, the Department of Commerce and other agencies conducted a range of discussions with a number of foreign countries, including governments in the Baltics, Central and Eastern Europe, the Newly Independent States (NIS) of the former Soviet Union, the Pacific Rim, and China. Licensing requirements were liberalized for exports to Argentina, South Korea, and Taiwan, responding in part to their adoption of improved export control procedures.

AUSTRALIA GROUP

—The Department of Commerce issued regulations to remove controls on certain chemical weapon stabilizers that are not controlled by the Australia Group, a multilateral regime dedicated to stemming the proliferation of chemical and biological weapons. This change became effective October 19, 1994. In that same regulatory action, the Department also published a regulatory revision that reflects an Australia Group decision to adopt a multi-tiered approach to control of certain mixtures containing chemical precursors. The new regulations extend General License G–DEST treatment to certain categories of such mixtures.

NUCLEAR SUPPLIERS GROUP (NSG)

—NSG members are examining the present dual-use nuclear control list to both remove controls no longer warranted and to rewrite control language to better reflect nuclear proliferation concerns. A major item for revision involves machine tools, as the current language was accepted on an interim basis until agreement on more specific language could be reached.

—The Department of Commerce has implemented license denials for NSG-controlled items as part of the ''no-undercut'' provision. Under this provision, denial notifications received from NSG member countries obligate other member nations not to approve similar transactions until they have consulted with the notifying party, thus reducing the possibilities for undercutting such denials.

MISSILE TECHNOLOGY CONTROL REGIME (MTCR)

—Effective September 30, 1994, the Department of Commerce revised the control language for MTCR items on the Commerce Control List, based on the results of the last MTCR plenary. The revisions reflect advances in technology and clarifications agreed to multilaterally.

—On October 4, 1994, negotiations to resolve the 1993 sanctions imposed on China for MTCR violations involving missile-related trade with Pakistan were successfully concluded. The United States lifted the Category II sanctions effective November 1, in exchange for a Chinese commitment not to export ground-to-ground Category I missiles to any destination.

—At the October 1994 Stockholm plenary, the MTCR made public the fact of its ''no-undercut'' policy on license denials. Under this multilateral arrangement, denials notifications received from MTCR members are honored by other members for similar export license applications. Such a coordinated approach enhances U.S. missile nonproliferation goals and precludes other member nations from approving similar transactions without prior consultation.

MODIFICATIONS IN CONTROLS ON EMBARGOED DESTINATIONS

—Effective August 30, 1994, the Department of Commerce restricted the types of commodities eligible for shipment to Cuba under the provisions of General License GIFT. Only food, medicine, clothing, and other human needs items are eligible for this general license.

—The embargo against Haiti was lifted on October 16, 1994. That embargo had been under the jurisdiction of the Department of the Treasury. Export license authority reverted to the Department of Commerce upon the termination of the embargo.

REGULATORY REFORM

—In February 1994, the Department of Commerce issued a *Federal Register* notice that invited public comment on ways to improve the Export Administration Regulations. The project's objective is ''to make the rules and procedures for the control of exports simpler and easier to understand and apply.'' This project is not intended to be a vehicle to implement substantive change in the policies or procedures of export administration, but rather to make those policies and procedures simpler and clearer to the exporting community. Reformulating and simplifying the Export Administration Regulations is an important priority, and significant progress has been made over the last 6 months in working toward completion of this comprehensive undertaking.

EXPORT ENFORCEMENT

—Over the last 6 months, the Department of Commerce continued its vigorous enforcement of the Export Administration Act and the Export Administration Regulations through educational outreach, license application screening, spot checks, investigations, and enforcement actions. In the last 6 months, these efforts resulted in civil penalties, denials of export privileges, criminal fines, and imprisonment. Total fines amounted to over $12,289,000 in export control and antiboycott compliance cases, including criminal fines of nearly $9,500,000 while 11 parties were denied export privileges.

—Teledyne Fined $12.9 Million and a Teledyne Division Denied Export Privileges for Export Control Violations: On January 26 and January 27, Teledyne Industries, Inc. of Los Angeles, agreed to a settlement of criminal and administrative charges arising from illegal export activity in the mid-1980's by its Teledyne Wah Chang division, located in Albany, Oregon. The settlement levied criminal fines and civil penalties on the firm totaling $12.9 million and imposed a denial of export privileges on Teledyne Wah Chang.

The settlement is the result of a 4-year investigation by the Office of Export Enforcement and the U.S. Customs Service. United States Attorneys offices in Miami and Washington, D.C., coordinated the investigation. The investigation determined that during the mid-1980's, Teledyne illegally exported nearly 270 tons of zirconium that was used to manufacture cluster bombs for Iraq.

As part of the settlement, the Department restricted the export privileges of Teledyne's Wah Chang division; the division will have all export privileges denied for 3 months, with the remaining portion of the 3-year denial period suspended.

—Storm Kheem Pleads Guilty to Nonproliferation and Sanctions Violations: On January 27, Storm Kheem pled guilty in Brooklyn, New York, to charges that he violated export control regulations barring U.S. persons from contributing to Iraq's missile program. Kheem arranged for the shipment of foreign-source ammonium perchlorate, a highly explosive chemical used in manufacturing rocket fuel, from the People's Republic of China to Iraq via Amman, Jordan, without obtaining the required validated license from the Department of Commerce for arranging the shipment. Kheem's case represents the first conviction of a person for violating section 778.9 of the Export Administration Regulations, which restricts proliferation-related activities of ''U.S. persons.'' Kheem also pled guilty to charges of violating the Iraqi Sanctions Regulations.

5. The expenses incurred by the Federal Government in the 6-month period from August 19, 1994, to February 19, 1995, that are directly attributable to the exercise of authorities conferred by the declaration of a national emergency with respect to export controls where largely centered in the Department of Commerce, Bureau of Export Administration. Expenditures by the Department of Commerce are anticipated to be $19,681,000 most of which represents program operating costs, wage and salary costs for Federal personal and overhead expenses.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 21, 1995.*

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 2:15 p.m., a message from the House of Representatives, delivered by Mr. Schaefer, one of its assistant legislative clerks, announced that the Speaker has signed the following enrolled bill:

S. 1. An act to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. THURMOND).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on March 21, 1995, she had presented to the President of the United States, the following enrolled bill:

S. 1. An act to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes.

REPORTS OF COMMITTEES SUBMITTED DURING RECESS

Pursuant to the order of the Senate of March 20, 1995, the following report was submitted on March 20, 1995, during the recess of the Senate:

By Mr. PACKWOOD, from the Committee on Finance, with an amendment in the nature of a substitute:

H.R. 831. A bill to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes (Rept. No. 104–16).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN:

S. 580. A bill to amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures; to the Committee on the Judiciary.

By Mr. FAIRCLOTH:

S. 581. A bill to amend the National Labor Relations Act and the Railway Labor Act to repeal those provisions of Federal law that require employees to pay union dues or fees as a condition of employment, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATFIELD (for himself and Mr. BROWN):

S. 582. A bill to amend title 28, United States Code, to provide that certain voluntary disclosures of violations of Federal laws made pursuant to an environmental audit shall not be subject to discovery or admitted into evidence during a Federal judicial or administrative proceeding, and for other purposes; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 583. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for two vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. ROBB (for himself, Mr. CRAIG, Mr. AKAKA, Mr. HARKIN, Mr. ROCKEFELLER, Mr. LUGAR, Mr. DEWINE, Mr. STEVENS, Mr. COCHRAN, Mr. WELLSTONE, Mr. FORD, and Mr. KERRY):

S. 584. A bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962; to the Committee on Armed Services.

By Mr. SHELBY:

S. 585. A bill to protect the rights of small entities subject to investigative or enforcement action by agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. LAUTENBERG:

S. 586. A bill to eliminate the Department of Agriculture and certain agricultural programs, to transfer other agricultural programs to an agribusiness block grant program and other Federal agencies, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself, Mr. HEFLIN, Mr. DOLE, Mr. THURMOND, Mr. GRASSLEY, Mr. SIMPSON, Mr. KYL, Mr. EXON, Mr. CRAIG, Mr. FORD, Mr. LOTT, Mr. ASHCROFT, Mr. BAUCUS, Mr. BOND, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. COVERDELL, Mr. D'AMATO, Mr. FAIRCLOTH, Mrs. FEINSTEIN, Mr. GRAMM, Mr. GRAMS, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MURKOWSKI, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. ROTH, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. WARNER, and Mr. BREAUX):

S.J. Res. 31. A joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN:

S. 580. A bill to amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures; to the Committee on the Judiciary.

THE ILLEGAL IMMIGRATION CONTROL AND ENFORCEMENT ACT OF 1995

Mrs. FEINSTEIN. Mr. President, I rise today to introduce, and now send to the desk, the Illegal Immigration Control and Enforcement Act of 1995. This bill incorporates many of the concepts in the immigration package that I introduced in the last session of Congress. New proposals have been added, however, after consultation with many, including California's law enforcement officials and others interested in curbing illegal immigration.

Mr. President, I offer this legislation not to compete with Senator SIMPSON's S. 269, which he introduced on January 24, but rather to complement it. Little in this bill is duplicative of Senator SIMPSON's legislation. I am convinced that, combined, these two bills could offer a strong, straightforward program to stop illegal immigration.

There simply is no time to lose. The crisis of illegal immigration continues in California and throughout the Nation.

Too many people are still able to illegally cross our borders, and too few States, most notably California, carry the burden of having to support, educate, and often incarcerate the hundreds of thousands who enter this country illegally each year.

There is no doubt in my mind that our border enforcement has improved in the last 2 years and I want to thank this administration for an unprecedented commitment to that end. I am equally convinced, however, that steps already taken have been insufficient to fully address the problem.

Despite its major flaws and probable unconstitutionality, proposition 187 in California was overwhelmingly approved by voters last November. The message was clear: Stop illegal immigration. If Congress does not heed this warning, I fear an even more serious backlash nationwide against all immigrants, including those who want to come to our country legally.

IMPACT ON CALIFORNIA

One reason proposition 187 passed by such a large margin is that Californians know the impact of immigration on our State. According to 1993 INS statistics, 45 percent of the Nation's illegal immigrants are now in California. That means between 1.6 and 2.3 million illegal immigrants now reside in our State; 15 percent of California's State prison population—or almost 20,000 inmates—is comprised of incarcerated illegal immigrants; 45 percent of all persons with pending asylum cases reside in California; 35 percent of the refugees to this country claimed residency in California in 1993; and almost 30 percent of the legal immigrants in this have country chosen to live in California.

According to the Governor of our State, illegal immigration in fiscal year 1995–96 will cost California an estimated $3.6 billion, including an $2.66 billion for the federally mandated costs of education, health care, and incarceration. By anyone's estimation, that is a staggering sum, and a tremendous burden on just one State.

THE NEED FOR IMMIGRATION REFORM

I believe our Federal response to the problem of illegal immigration must address four key goals: First, control illegal immigration at the border; second, reduce the economic incentives to come to the United States illegally; third, deal swiftly and severely with document forgers and alien smugglers; and fourth, remove criminal aliens from our Nation's prisons and jails, while assuring that their sentences are served in their countries of origin.

BORDER CONTROL

This legislation requires that at least 700, and up to 1,000, new Border Patrol agents be hired in each of the next 3 fiscal years. It differs from the crime bill in one critical respect. The crime bill authorized the hiring of up to 1,000 new agents in each of Fiscal Years 1996, 1997 and 1998. This bill further requires that a minimum of 700 agents per year be hired. It thus adds a floor to the crime bill which will assure that no fewer than 2,100 new agents, and up to 900 support personnel, will be on board by the end of Fiscal Year 1998 for a total of 7,082 Border Patrol agents.

It mandates the hiring of sufficient INS border inspectors to fully staff all legal crossing lanes at peak periods. The bill also provides for improved border infrastructure and Border Patrol training.

REDUCING INCENTIVES

Second, this legislation substantially expands existing employer sanctions and wage and hour law enforcement programs to reduce the biggest incentives for undocumented persons to come to this country, namely jobs.

Central to this effort is the creation of a counterfeit-proof work and benefits authorization verification system. Any employer—and any provider of federally funded benefits—ought to be 100 percent certain that a candidate is here legally. A counterfeit-proof verification system is the only way this can be achieved.

In addition, this bill dramatically increases the civil fines for anyone who knowingly hires, recruits, or refers illegal aliens for hiring. This is important because today the civil penalties for illegally hiring an illegal immigrant are very low. Fines range between just $250 and $2,000—per alien hired—for a first offense.

This bill would increase that range from $1,000 to $3,000 for the first offense.

Second offenses would carry per alien fines of between $3,000 and $7,000, and third or later offenses would cost $7,000 to $20,000 per alien—that is more than double the current $3,000 to $10,000 liability.

It dramatically increases the criminal penalties for a pattern or practice of hiring illegal immigrants. This bill doubles the maximum criminal fine, and triples the maximum jail sentence, for anyone who facilitates a fraudulent application for benefits by an unlawful alien by counterfeiting the seal or stamp of any Federal agency. If this bill is enacted, the new maximums will be $500,000, or 15 years in jail, or both.

It provides for additional INS and Department of Labor inspectors to enforce existing laws and provides for the hiring of additional assistant U.S. attorneys to more aggressively prosecute these crimes.

SMUGGLING AND DOCUMENT FRAUD

Shutting down false document mills, counterfeiters, smugglers, and smuggling organizations is the third priority at the core of this legislation.

Smugglers and forgers will find this to be a very tough bill indeed. This legislation broadens current Federal asset seizure authority to include those who smuggle or harbor illegal aliens, and those who produce false work and benefits documents.

It imposes tough minimum and maximum sentences on smugglers, and it imposes those penalties for each alien smuggled. At the moment, penalties are assessed per transaction, no matter how many illegal immigrants a smuggler takes across our borders.

This bill increases the penalty for smugglers in the event that an alien is injured, killed, or subject to blackmail threats by the smuggler.

It makes it easier to deport so-called weekend warriors—legal permanent residents, green card holders, who are in the United States, smuggle illegal immigrants for profit, and then try to use their immigration status to avoid being deported from the United States.

It dramatically increases penalties for document forgers or counterfeiters. First offenders will be sentenced to 2½ to 5 years, 5 to 10 years with any prior felony conviction, and 10 to 15 years with two or more prior felonies. Currently, document forgers can receive as little as 0 to 6 months for a first offense.

CRIMINAL ALIENS

This legislation is intended to once again signal that the President must have the authority, by treaty, to deport aliens convicted of crimes in this country for secure incarceration in such aliens' home countries.

Although we have prisoner transfer treaty agreements with many nations now, they are subject to the consent of the prisoner to be transferred. If the prisoner does not consent, he is not transferred.

This legislation eliminates that obstacle. It also would speed up the deportation process and make more criminal aliens deportable by broadening the definition of an aggravated felony for which aliens may already be deported to include document fraud crimes not now independent grounds for deportation; it classifies as aggravated felonies certain offenses punishable by 3 years, rather than for which an alien has actually been sentenced to 5 years or more. As a result, it would definitely increase the number of criminals who would qualify for deportation as having committed aggravated felony.

In addition, courts would have the authority to require that, in order to receive a sentence of probation rather than a prison term, an illegal alien convicted of a crime would be required to consent to being deported as a condition of probation. This would give prosecutors the option of ejecting from the country relatively low-level offenders after trial without going through an additional, and often lengthy, deportation hearing.

SPONSORS OF LEGAL IMMIGRANTS

Before concluding, let me note just one other feature of the bill which pertains to immigrants who have lawfully come to the United States on the basis of a citizen's—usually an immediate relative's—sponsorship. The legislation would require anyone who sponsors a legal immigrant for admission to the United States to make good on their promise of financial support should the

legal alien require assistance before becoming a citizen.

In addition, past proposals to strengthen sponsorship agreements typically exempted sponsors from liability for medical costs.

This legislation would make sponsors responsible for the costs of medical care, requiring them to obtain health insurance for the immigrant they have sponsored. The insurance would be of a type and amount to be specified by the Secretary of Health and Human Services, and would be required to be purchased within 20 days of an immigrant's arrival in this country. A safety valve is built into the bill, however, for sponsors who die, or who become impoverished or bankrupt.

BORDER CROSSING FEE

This bill also provides a funding mechanism for this package with a border crossing fee of $1 per person, which could yield up to $400 million per year. The border control, the infrastructure, the training, the additional narcotics abatement efforts provided in this bill all could be underwritten by such a fee.

CONCLUSION

In conclusion, Mr. President, immigration is too much at the core of what America means to each of us individually, and to our society collectively, to politicize and polarize the coming debate. If we are to map common ground together, it is the spirit of compromise that must prevail. We owe America—America the Nation and America the idea—no less.

I look forward to continuing to work closely with the chairman of my subcommittee, Senator SIMPSON, with Senators KENNEDY and SIMON, and with all of my Republican colleagues on the subcommittee to present the full Judiciary Committee and the Senate with the best possible comprehensive illegal immigration legislation as quickly as possible.

By Mr. HATFIELD (for himself and Mr. BROWN):

S. 582. A bill to amend title 28, United States Code, to provide that certain voluntary disclosures of violations of Federal laws made pursuant to an environmental audit shall not be subject to discovery or admitted into evidence during a Federal judicial or administrative proceeding, and for other purposes; to the Committee on the Judiciary.

ENVIRONMENTAL AUDIT PRIVILEGE LEGISLATION

● Mr. HATFIELD. Mr. President, with the recent changes in Congress, we are presented with an important opportunity to take a fresh look at many aspects of our Federal legal and regulatory system. A return to federalism is underway including a movement to allow greater flexibility in administering Federal programs. I support a full review of the Federal regulatory straitjacket we have helped create and believe that greater flexibility should be extended to both the public and private sectors of this Nation.

As my colleagues know, it is difficult to have a conversation these days with a business leader or a local government official without the topic turning to the increasingly onerous burden of Federal regulations—particularly environmental regulations. It is now clear the many of our laws and regulations designed to ensure a safer environment are now having the unfortunate effect of discouraging sound environmental practices.

The legislation I will introduce today makes the point that the Federal Government should encourage responsible actions by businesses with incentives and flexibility, rather than through threats and penalties. Given the limited resources available for environmental enforcement and monitoring, it is vital that companies self-police and be willing partners in the implementation of the Nation's environmental programs. There is no other way to protect our people, our communities, and our environment.

In an effort to advance this idea, I am introducing the Environmental Audit Privilege Act. I am pleased to be joined in this effort by my friend from Colorado, Senator HANK BROWN.

This legislation will create new incentives for companies to police their own environmental actions by establishing a limited legal privilege for businesses that voluntarily audit their compliance with environmental laws and promptly proceed to correct any violations discovered.

In 1993, Oregon became the first State to codify a privilege for environmental audits. Under the Oregon law, an internal environmental audit, undertaken voluntarily, cannot be used against the company in a trial or administrative action, unless efforts to comply were not promptly initiated and pursued with reasonable diligence or the privilege was invoked for fraudulent purposes. The Oregon law garnered support not only from the business community, but also from the Oregon Department of Environmental Quality and the State attorney general. These supporters have told me of the positive effects this law has had in Oregon.

Six other States have created a similar privilege, including Colorado, Indiana, Kentucky, Arkansas, Illinois, and Wyoming. Nearly two dozen other States are considering bills to create an environmental audit privilege. Supporters of these State provisions argue that their efforts are undermined by the absence of a Federal counterpart. To avoid the State privilege, a litigant must simply file suit in Federal court, where it is possible the State privilege will not be recognized.

The legislation I put forward today is an extension of legislation I introduced in the 103d Congress which was based solely on the Oregon law. A new section has been added to this bill as a result of the very constructive efforts of Senator BROWN. This new section is based on a worthy idea pioneered by the State of Colorado.

The audit privilege portion of my bill strikes an equitable balance between protecting a company's right to self-police and ensuring that businesses comply with environmental regulations. There are clear limits on the privilege, however. The privilege would cease to exist if used for fraudulent activities or if waived by a company. Furthermore, the privilege is moot if the company does not promptly act to achieve compliance when a violation is discovered in an audit. This factor ensures a strong incentive for companies to immediately correct any potential or real problem in their activities.

Even if the company proceeds immediately to correct a violation, the privilege is not absolute. The privilege only extends to information in the audit report, not to the violation itself. It would not bar enforcement action for environmental violations; no environmental law is decriminalized nor are enforcement agencies barred from pursuing action. This protection does not prevent an agency or an injured party from pursuing legal action against a violator on the basis of independent evidence of the violation.

Oregon's law has expanded employee involvement, which has made audits more complete and accurate, and it has helped employees connect their daily jobs with environmental compliance. It has also created new incentives for companies to independently pursue compliance while encouraging businesses to adopt more systematic approaches to examining and correcting their environmental activities.

Last, but by no means least, lawyers are no longer needed in Oregon to shield audit documents under the attorney-client privilege. Companies can now feel secure in keeping records, and they have had much greater success in dealing with chronic problems. Removing lawyers from audits substantially reduces the cost of auditing and improves the frankness of information flowing within companies.

The legislation I am introducing today also includes a very important section which I will refer to as voluntary disclosure. This section provides protection for companies that wish to step forward and voluntarily disclose inadvertent violations of environmental laws that come to light through the conduct of a voluntary environmental audit. Again, these provisions are based on a law first passed in the State of Colorado. It has been a pleasure to have worked with Senator BROWN and his fine staff over the past several months to reach agreement on this important section of the bill.

Under this section, if an audit reveals a previously unknown environmental violation, the company will be immune from administrative, civil, or criminal penalties if it: First, promptly and voluntarily discloses the violation to the regulatory agency; second, takes prompt steps to correct the problem; and, third, fully cooperates with the

regulatory agency. As with the privilege, this protection does not prevent an agency or an injured party from pursuing legal action against a violator on the basis of independent evidence of the violation.

While Oregon did not include such provisions in its law, I believe providing protections for voluntary disclosures is a meritorious idea, and one certainly worthy of the full consideration of the Senate. As one of my colleagues recently noted, sunlight is an excellent disinfectant. Thus, while the privilege portions of this bill allow an environmental audit to remain secret, the voluntary disclosure provisions would give the public access to this important information and would require any violations be addressed promptly.

Last week, President Clinton announced his plans to encourage environmental audits as part of a package of regulatory reform measures. I want to commend the President and those at EPA who have recognized the benefits of encouraging companies to engage in this type of self-analysis. I believe both business profitability and the environment will benefit from these efforts, and I look forward to working with the administration on the legislative side of this effort.

I am aware the administration has serious misgivings about codifying and audit privilege and has raised questions about the voluntary disclosure protection in this bill. I admit this is an issue that excludes great common sense appeal upon first glance, but which certainly grows more complex with each level of further analysis. While I am not a lawyer, my further analysis leads me to the conclusion that this idea is sound and that the Nation would benefit from the debate this legislative proposal will inevitably generate.

Self-enforcement by responsible companies is vital to the success of our environmental objectives. It is a fact that most companies want to police themselves. Not only is it morally correct, it is also consistent with a total quality management approach to business management, for companies to take a proactive approach to environmental safety. It makes business sense and is less costly for a company to find and rectify a violation than it is to face regulatory, civil, or criminal action. Incentives for self-enforcement will help free up the very limited resources of Federal and State environmental and enforcement agencies, allowing them to pursue the most severe, egregious, and dangerous violations of our environmental laws.

Federal policy must promote the delicate balance between protecting our environment and allowing business to flourish. The Environmental Audit Privilege Act will provide companies with greater flexibility and with incentives for compliance with environmental protection regulations. Such protections will signal an important step toward ensuring the success of our businesses and of our environmental programs.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Voluntary Environmental Audit Protection Act''.

SEC. 2. VOLUNTARY SELF-EVALUATION PROTECTION.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 179—VOLUNTARY SELF-EVALUATION PROTECTION

''Sec.
''3801. Admissibility of environmental audit reports.
''3802. Testimony.
''3803. Disclosure to a Federal agency.
''3804. Definitions.

''§ 3801. Admissibility of environmental audit reports

''(a) GENERAL RULE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an environmental audit report prepared in good faith by a person or government entity related to, and essentially constituting a part of, an environmental audit shall not be subject to discovery and shall not be admitted into evidence in any civil or criminal action or administrative proceeding before a Federal court or agency or under Federal law.

''(2) EXCLUSIONS.—Paragraph (1) shall not apply to—

''(A) any document, communication, data, report, or other information required to be collected, developed, maintained, or reported to a regulatory agency pursuant to a covered Federal law;

''(B) information obtained by observation, sampling, or monitoring by any regulatory agency; or

''(C) information obtained from a source independent of the environmental audit.

''(3) INAPPLICABILITY.—Paragraph (1) shall not apply to an environmental audit report, if—

''(A) the owner or operator of the facility that initiated the environmental audit expressly waives the right of the person or government entity to exclude from the evidence or proceeding material subject to this section;

''(B) after an in camera hearing, the appropriate Federal court determines that—

''(i) the environmental audit report provides evidence of noncompliance with a covered Federal law; and

''(ii) appropriate efforts to achieve compliance were not promptly initiated and pursued with reasonable diligence; or

''(C) the person or government entity is asserting the applicability of the exclusion under this subsection for a fraudulent purpose.

''(b) DETERMINATION OF APPLICABILITY.—The appropriate Federal court shall conduct an in camera review of the report or portion of the report to determine the applicability of subsection (a) to an environmental audit report or portion of a report.

''(c) BURDENS OF PROOF.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a party invoking the protection of subsection (a)(1) shall have the burden of proving the applicability of such subsection including, if there is evidence of noncompliance with an applicable environmental law, the burden of proving a prima facie case that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence.

''(2) WAIVER AND FRAUD.—A party seeking discovery under subparagraph (A) or (C) of subsection (b)(3) shall have the burden of proving the existence of a waiver, or that subsection (a)(1) has been invoked for a fraudulent purpose.

''(d) EFFECT ON OTHER RULES.—Nothing in this Act shall limit, waive, or abrogate the scope or nature of any statutory or common law rule regarding discovery or admissibility of evidence, including the attorney-client privilege and the work product doctrine.

''§ 3802. Testimony

''Notwithstanding any other provision of law, a person or government entity, including any officer or employee of the person or government entity, that performs an environmental audit may not be required to give testimony in a Federal court or an administrative proceeding of a Federal agency without the consent of the person or government entity concerning the environmental audit, including the environmental audit report with respect to which section 3801(a) applies.

''§ 3803. Disclosure to a Federal agency

''(a) IN GENERAL.—The disclosure of information relating to a covered Federal law to the appropriate official of a Federal agency or State agency responsible for administering a covered Federal law shall be considered to be a voluntary disclosure subject to the protections provided under section 3801, section 3802, and this section if—

''(1) the disclosure of the information arises out of an environmental audit;

''(2) the disclosure is made promptly after the person or government entity that initiates the audit receives knowledge of the information referred to in paragraph (1);

''(3) the person or government entity that initiates the audit initiates an action to address the issues identified in the disclosure—

''(A) within a reasonable period of time after receiving knowledge of the information; and

''(B) within a period of time that is adequate to achieve compliance with the requirements of the covered Federal law that is the subject of the action (including submitting an application for an applicable permit); and

''(4) the person or government entity that makes the disclosure provides any further relevant information requested, as a result of the disclosure, by the appropriate official of the Federal agency responsible for administering the covered Federal law.

''(b) INVOLUNTARY DISCLOSURES.—For the purposes of this chapter, a disclosure of information to an appropriate official of a Federal agency shall not be considered to be a voluntary disclosure described in subsection (a) if the person or government entity making the disclosure has been found by a Federal or State court to have committed repeated violations of Federal or State laws, or orders on consent, related to environmental quality, due to separate and distinct events giving rise to the violations, during the 3-year period prior to the date of the disclosure.

''(c) PRESUMPTION OF APPLICABILITY.—If a person or government entity makes a disclosure, other than a disclosure referred to in subsection (b), of a violation of a covered Federal law to an appropriate official of a Federal agency responsible for administering the covered Federal law—

''(1) there shall be a presumption that the disclosure is a voluntary disclosure described

in subsection (a), if the person or government entity provides information supporting a claim that the information is such a voluntary disclosure at the time the person or government entity makes the disclosure; and

''(2) unless the presumption is rebutted, the person or government entity shall be immune from any administrative, civil, or criminal penalty for the violation.

''(d) REBUTTAL OF PRESUMPTION.—

''(1) IN GENERAL.—The head of a Federal agency described in subsection (c) shall have the burden of rebutting a presumption established under such subsection. If the head of the Federal agency fails to rebut the presumption—

''(A) the head of the Federal agency may not assess an administrative penalty against a person or government entity described in subsection (c) with respect to the violation of the person or government entity and may not issue a cease and desist order for the violation; and

''(B) a Federal court may not assess a civil or criminal fine against the person or government entity for the violation.

''(2) FINAL AGENCY ACTION.—A decision made by the head of the Federal agency under this subsection shall constitute a final agency action.

''(e) STATUTORY CONSTRUCTION.—Except as expressly provided in this section, nothing in this section is intended to affect the authority of a Federal agency responsible for administering a covered Federal law to carry out any requirement of the law associated with information disclosed in a voluntary disclosure described in subsection (a).

''§ 3804. Definitions

''As used in this chapter:

''(1) COVERED FEDERAL LAW.—The term 'covered Federal law'—

''(A) means—

''(i) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

''(ii) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

''(iii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

''(iv) the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.);

''(v) title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.);

''(vi) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.);

''(vii) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

''(viii) the Clean Air Act (42 U.S.C. 7401 et seq.);

''(ix) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(x) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.); and

''(xi) the Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.);

''(B) includes any regulation issued under a law listed in subparagraph (A); and

''(C) includes the terms and conditions of any permit issued under a law listed in subparagraph (A).

''(2) ENVIRONMENTAL AUDIT.—The term 'environmental audit' means a voluntary and internal assessment, evaluation, investigation or review of a facility that is—

''(A) initiated by a person or government entity;

''(B) carried out by the employees of the person or government entity, or a consultant employed by the person or government entity, for the express purpose of carrying out the assessment, evaluation, investigation, or review; and

''(C) carried out to determine whether the person or government entity is in compliance with a covered Federal law.

''(3) ENVIRONMENTAL AUDIT REPORT.—The term 'environmental audit report' means any reports, findings, opinions, field notes, records of observations, suggestions, conclusions, drafts, memoranda, drawings, computer generated or electronically recorded information, maps, charts, graphs, surveys, or other communications associated with an environmental audit.

''(4) FEDERAL AGENCY.—The term 'Federal agency' has the meaning provided the term 'agency' under section 551 of title 5.

''(5) GOVERNMENT ENTITY.—The term 'government entity' means a unit of State or local government.''.

(b) TECHNICAL AMENDMENT.—The analysis for part VI of title 28, United States Code, is amended by adding at the end the following:

''179. Voluntary Self-Evaluation Protection ..... 3801''.

SEC. 3. APPLICABILITY.

This Act and the amendment made by this Act shall apply to each Federal civil or criminal action or administrative proceeding that is commenced after the date of enactment of this Act.

SUMMARY OF HATFIELD/BROWN VOLUNTARY ENVIRONMENTAL AUDIT PROTECTION ACT

The ''Voluntary Environmental Audit Protection Act'' amends Title 28 of the U.S. Code by adding Chapter 179 entitled ''Voluntary Self-Evaluation Protection.'' The purpose is to protect environmental audits and provide qualified penalty immunity for voluntary disclosures made as a result of conducting environmental audits. The Act consists of the following four sections:

A. § 3801. ADMISSIBILITY OF ENVIRONMENTAL AUDIT REPORTS

Generally, environmental audit reports prepared in good faith are not subject to discovery and are not admissible in any federal administrative or judicial proceeding.

Exclusions: The protection against admissibility does not apply to documents or information: Required to be collected, maintained or reported under environmental laws; available due to the agency's own observation, sampling or monitoring; or available from an independent source.

Waiver: Waiver can only occur by an express waiver by the owner or operator of the facility that initiated audit.

Inapplicability: The protection is not applicable if: An environmental audit report shows non-compliance with an environmental law and the entity does not promptly initiate actions to achieve compliance and pursue those actions with reasonable diligence, or the protection is claimed for a fraudulent purpose.

Determination of Applicability: A federal court determines the applicability of the protection in an in camera review of an audit report or portion of an audit report.

Burden of Proof: The person or government entity invoking the protection has the burden of demonstrating its applicability and if there are instances of non-compliance, that appropriate efforts to achieve compliance have been initiated. The party seeking discovery of the audit report has the burden of proving that the protections were waived or that the privilege was invoked for a fraudulent purpose.

Other Statutes/Requirements: The Act does not affect any existing statutory or common law rules of evidence, discovery or privilege (such as attorney-client privilege and work-product doctrine).

B. § 3802. TESTIMONY

Any person that performs an environmental audit is not required to give testimony relating to the audit in an administrative or judicial proceeding. This applies to officers and employees of the person or government entity as well as the person or government entity itself.

C. § 3803. DISCLOSURE TO A FEDERAL AGENCY

The Act defines a disclosure as ''voluntary'' if: it arises out of an ''environmental audit'' (as defined); it is made promptly after learning of the information; actions are undertaken to achieve compliance; and the person or entity making the disclosure provides additional relevant information as requested by the appropriate agency.

Involuntary Disclosures: Otherwise voluntary disclosures will not be voluntary if the person or government entity has committed repeated violations of federal or state environmental laws or orders during the three years prior to the disclosure.

Presumption of Voluntariness: Disclosures are presumed to be voluntary, and unless rebutted, the person or government entity is immune from administrative, civil or criminal penalties for the violation(s) disclosed.

Rebuttal of Presumption: The federal agency has the burden of rebutting the presumption of voluntariness of the disclosure.

D. § 3804. DEFINITIONS

''Covered Federal Law'' includes FIFRA, TSCA, the Clean Water Act, the Oil Pollution Act of 1990, the Safe Drinking Water Act, the Noise Control Act, RCRA, the Clean Air Act, CERCLA, EPCRA and the Pollution Prevention Act of 1990, and any regulations or permits issued thereunder.

''Environmental Audit'' is a voluntary and internal review, assessment, evaluation or investigation that is initiated by the person or government entity, carried out by the person or government entity or its employees to determine compliance with any covered Federal law.

''Environmental Audit Report'' generally includes any reports, findings, opinions, observations, and conclusions relating to an environmental audit.

''Government Entity'' means any unit of state or local government.

OVERVIEW OF STATE ENVIRONMENTAL AUDIT PRIVILEGE LAWS

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Issues	AR [1]	CO [2]	IL [3]	IN [4]	KY [5]	OR [6]	WY [7]
Environmental Audit Report: Requires documents comprising environmental audit report to be prepared as a result of an environmental audit and labeled ''Environmental Audit Report: Privileged Document.''.	Yes	No	Yes	Yes	Yes	Yes	Yes
Voluntary Disclosure:							
Immunity or reduction in penalties for voluntary disclosure	No	Yes	No	No	No	No	Yes
Immunity from criminal charges for voluntary disclosure	No	Yes	No	No	No	No	No
Waiver of Privilege:							
Expressly	Yes	Yes	Yes	Yes	Yes	Yes	Yes
By implication	Yes	Not stated	Not stated	Yes	Yes	Yes	Yes

OVERVIEW OF STATE ENVIRONMENTAL AUDIT PRIVILEGE LAWS—Continued

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Issues	AR [1]	CO [2]	IL [3]	IN [4]	KY [5]	OR [6]	WY [7]
By failing to file a petition for in camera review or hearing (# of days to file petition after filing or request for the environmental audit report).	Yes (30 days)	Not stated	Yes (30 days)	Yes (30 days)	Yes (20 days)	Yes (30 days)	Yes (20 days)
By introduction of any part of the environmental audit report by party asserting the privilege	No	Not stated	Not stated	Not stated	Yes	Not stated	No
Privilege is lost if:							
Asserted for fraudulent purposes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Material is not subject to the privilege	Yes	Not stated	Yes	Yes	Yes	Yes	Yes
Material shows evidence of non-compliance and efforts to achieve compliance were not promptly initiated and pursued with reasonable diligence.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
In a criminal proceeding, the legal official has a (need, substantial need, compelling need, or compelling circumstances) requiring the otherwise unavailable information.	Not stated	Yes	Not stated	Yes	Yes	Yes	Yes
Burden of Proof:							
Party asserting the privilege has burden of proving privilege and reasonable diligence toward compliance.	Yes	Yes [8]	No [9]	Yes	Yes	Yes	Yes
Party seeking disclosure has burden of proving fraudulent purpose	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Legal official or party seeking disclosure has burden of proving conditions for disclosure	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Provision for disclosure of only the portions of the environmental audit report relevant to the issues in the dispute.	Yes	Not stated	Yes	Yes	Yes	Yes	Yes

[1] Enacted February 17, 1995. Effective 90 days after the legislative session ends. Act No. 350 of the 1995 Session.
[2] Effective June 1, 1994. Colorado Revised Statutes Section 13–25–126.5.
[3] Effective January 24, 1995. Illinois Public Act 88–0690.
[4] Effective July 1, 1994. Indiana Code 13–10.
[5] Effective July 15, 1994. Title XVIII, Kentucky Statute § 224.01–040.
[6] Effective 1994. Or. Rev. Stat. § 468.963.
[7] Enacted February 18, 1995. Effective July 1, 1995.
[8] Party asserting privilege has burden of proving a prima facie case.
[9] Party asserting privilege has burden of proving privilege, but adverse party has burden of showing lack of reasonable diligence toward compliance.

SUMMARY OF 1995 STATE AND FEDERAL LEGISLATIVE INITIATIVES FOR THE ENVIRONMENTAL AUDIT PRIVILEGE

[1995 Coalition for Improved Environmental Audits—Revised Mar. 10, 1995]

State and legislative status	Reference No.	"Environmental Audit Report" label required on privileged document?	Immunity for voluntary disclosure?	Immunity includes criminal charges?
Arizona: Approved by Senate. Sent to House	S.B. 1290	NO	YES	YES
Arkansas: Signed into law on 2/17/95	Act No. 350 of 1995 Session	YES	NO	NO
Georgia: Introduced in Senate	S.B. 244	NO	NO	NO
Hawaii:				
Introduced in House	H.B. 390	YES	NO	NO
Introduced in Senate	S.B. 1304	NO	YES	YES
Idaho: Approved by Senate. Sent to House	S. 1142	YES	YES	YES
Kansas: Approved by Senate. Sent to House	S.B. 76	YES	YES	YES
Massachusetts: Introduced in House	H. 3426	NO	NO	NO
Mississippi: Bill passed both Houses. Returned to Senate for concurrence 3/7/95	S.B. 3079	NO	YES [1]	YES
Missouri: Bills introduced in House and Senate	H.B. 338	NO	YES	YES
	S.B. 350	NO	YES	YES
	S.B. 363	YES	YES [1]	NO
Montana: Introduced in House	H.B. 412	YES	YES	YES
Nebraska: Introduced to Legislature	L.B. 731	NO	YES	YES
New Hampshire: Introduced in House	H.B. 275	NO	YES	YES
New Jersey: Bills introduced in Assembly and Senate	A.B. 2521	NO	YES	YES
	S.B. 1797	NO	YES	YES
North Carolina: To be introduced in larger regulatory reform proposal		NO	NO	NO
Ohio: A bill similar to S.B. 361 of 1994 to be introduced		NO	YES	YES
Oklahoma: Introduced in House	H.B. 1388	YES	YES	YES
South Carolina: Introduced in Senate	S.B. 15	NO	YES	YES
Tennessee: Introduced in Senate	S.B. 1135	YES	YES	YES
Texas:				
Introduced in House	H.B. 2473	YES	YES	YES
Senate bill to be introduced	S.B. _____	YES	YES	YES
Utah: Bill passed both Houses 3/1/95. Sent to Governor	S.B. 84	NO	NO	NO
Virginia: Bill passed both Houses 2/16/95. Sent to Governor	H.B. 1845	NO	YES	NO
West Virginia: Bills introduced in Senate and House	H.B. 2494	NO	NO	NO
	S.B. 362	NO	NO	NO
Wyoming: Signed into law on 2/18/95	Act No. 26 of 1995 Session	YES	YES [1]	NO
Federal: Introduced in the House on 2/24/95 with 6 co-sponsors	H.R. 1047	NO	YES	YES

[1] Voluntary disclosures warrant either de minimis or reduced penalties.

Note: Other States with proposals not yet introduced: Alabama, California, Florida, Michigan, and Minnesota.

ASSOCIATED OREGON INDUSTRIES,
Salem, OR, March 17, 1995.

Re legislation for a Federal environmental audit privilege.

Hon. MARK O. HATFIELD,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: I understand you are favorably inclined to introducing legislation this Congress for a federal environmental audit privilege. Your bill would be modeled along the lines of the law Associated Oregon Industries pushed through the Oregon legislature in 1993. On behalf of Associated Oregon Industries' 2,400 primary members and 14,000 associate members, I applaud you efforts to actively pursue a federal law protecting environmental audit reports.

Oregon's environmental audit privilege was signed into law by Gov. Barbara Roberts on July 22, 1994. Oregon's law is the first of its kind in the nation. Since enactment, other states have adopted similar laws.

As a whole, Oregon industry works hard to comply with today's complex and voluminous environmental laws. Perfect compliance at all times, however, is a virtually unattainable objective for large facilities. Compliance is made all the more difficult when reports, generated during a company's voluntary environmental audit, are not confidential. Prior to Oregon's law, environmental agencies could obtain such audit reports and use them against a company in an enforcement action. By making environmental audit reports privileged. Oregon's law protects companies from ''hanging themselves'' as long as actions are taken to correct any violations found.

Though Oregon's regulated companies are reacting positively to the new state protections, Oregon's new law does not complete the protection circle. The Environmental Protection Agency is not bound by Oregon's environmental audit privilege and occasionally inspects Oregon companies. This is why a federal environmental audit privilege is needed.

Thank you for your efforts. I look forward to working with you.

Sincerely,

JAMES M. WHITTY,
Legislative Counsel.

PORT OF PORTLAND,
Portland, OR, March 20, 1995.

Hon. MARK O. HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: On behalf of the Port of Portland, I want to express the Port's strong support for the environmental auditing privilege and voluntary disclosure bill that you are sponsoring.

The Port conducts periodic environmental audits at all of its facilities. The enactment of a federal environmental auditing privilege and voluntary disclosure provision will encourage many more businesses, especially medium- and small-sized businesses, to start environmental auditing. By limiting the fear that their voluntarily prepared environmental audit reports will be used against

them in enforcement proceedings, your bill will spur this auditing activity.

In addition to the environmental audit report evidentiary privilege, I understand your legislation includes a voluntary disclosure component to protect persons who discover inadvertent environmental violations from criminal or civil penalties, if they report the violations to the proper authorities and remedy them promptly. We believe this voluntary disclosure provision is as important as the environmental auditing privilege. We are pleased to see that your bill includes both of these elements.

Your environmental audit privilege and voluntary disclosure legislation should result in more companies conducting environmental audits and in a substantial overall increase in compliance with environmental requirements. Thank you for your efforts. Please let me know if there are steps we can take to support passage of this measure.

Sincerely,

DAVID LOHMAN,
Director, Policy and Planning.

LITTON CORP.,
Arlington, VA, March 14, 1995.

Hon. MARK O. HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: I am writing on behalf of Litton Industries, Inc. to express Litton's strong support for the environmental auditing privilege and voluntary disclosure bill that you are co-sponsoring with Sen. Brown, and that we understand you intend to introduce imminently.

Litton is a leader in worldwide technology markets for advanced electronic and defense systems, and a major designer and builder of large, multimission combat ships for the U.S. Navy and allied nations. Litton employs approximately 30,000 people at numerous facilities across the country, including approximately 200 people in our Grants Pass, Oregon facility.

Litton conducts periodic environmental audits at all of its U.S. facilities. The enactment of a federal environmental auditing privilege and voluntary disclosure provision will encourage many more businesses, especially medium- and small-sized businesses, to start environmental auditing programs, without fear that their voluntarily prepared environmental audit reports will be used against them in enforcement proceedings.

In addition to the environmental audit report evidentiary privilege, we understand that your legislation includes a voluntary disclosure component which protects persons who discover inadvertent environmental violations, report the violations to the proper authorities, and remedy them promptly from criminal or civil penalties. Litton views the voluntary disclosure provision to be as important as the environmental auditing privilege, and we are gratified that your bill will include both of these elements.

Litton believes that your environmental audit privilege and voluntary disclosure legislation will result in more companies conducting environmental audits, and in a substantial overall increase in compliance with environmental requirements. Litton commends and will support your environmental audit privilege and voluntary disclosure bill. We believe that it represents a superior approach to environmental compliance because it emphasizes improved environmental quality rather than increased environmental enforcement. Thank you for your efforts.

Sincerely,

MARK V. STANGA,
Environmental Affairs Counsel.

ONTARIO PRODUCE,
March 17, 1995.

Senator MARK O. HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: I would like to give my support for your bill providing for a federal environmental audit privilege similar to the Oregon law. It would allow businesses to realistically correct problems without creating more problems for themselves.

Very truly yours,

ROBERT KOMOTO.

AT&T,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: We at AT&T were pleased to learn that you plan to introduce a bill establishing a privilege for environmental audits and a limited ''safer harbor'' for those who voluntarily correct and disclose environmental infractions.

AT&T has a strong record of environmental compliance, has performed environmental self-audits for many years, and is continuously improving its environmental compliance management systems. AT&T has played a strong role in protecting our environment through voluntary reductions in materials usage and recycling.

Environmentally responsible companies such as AT&T, which perform voluntary self-assessments, are presently placed in the uncomfortable position of creating documents in the course of their voluntary compliance efforts which government agencies and special interest groups will try to use against them in penalty actions and citizen's suits.

Similarly, enforcement agencies often assess large penalties as a consequence of a responsible company's voluntarily disclosure of an environmental infraction discovered through voluntary audits and self-assessment processes and voluntarily corrected. Absent these voluntary audit and self-assessment procedures, such violations would likely continue uncorrected, undisclosed, and unpenalized. Thus, current enforcement policy works as a disincentive to voluntary compliance, and thus works against the environment.

AT&T salutes your efforts to legislatively remedy this problem. AT&T would fully support a bill that would, under appropriate conditions, protect environmental audits from disclosure and create a safe harbor for companies that have voluntarily discovered, corrected, and disclosed environmental violations to the government.

We look forward to working with you, your staff, and other interested parties toward the enactment of such legislation. Such legislation would add a measure of fairness to the enforcement process and would remove disincentives to engage in voluntary audits, compliance management, and disclosure activities.

By eliminating some of the inequities and disincentives in the current enforcement scheme, we believe Congress will cause a higher level of voluntary compliance by American business with concomitant benefit to our environment.

Very truly yours,

NORM SMITH.

GEORGIA-PACIFIC CORP.,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: Georgia-Pacific Corporation is very supportive of the need for the Congress to enact an environmental audit protection bill. The State of Oregon has passed legislation to afford legal protection to the environmental audits we perform in our manufacturing facilities to help us in compliance with a host of environmental permits (air, water, solid waste, hazardous materials).

The corporation is moving aggressively to increase the audit program at every location to accomplish not only basic compliance, but more importantly to elevate the importance of environmental performance in the daily operation of our mills and plants. We are ranking environmental performance on an equal status of employee safety.

The potential misuse of this information in third party litigation is a major problem. We have experienced such misuse in Mississippi in connection with our water discharge permit at paper mill. If public policy demands proper compliance and monitoring, it should encourage—not discourage—more auditing by companies. We have been disappointed by EPA's own policy on environmental audits that discourages auditing.

A number of States have enacted or are considering legislation this year. However, this public policy should be uniform nationwide. Thus, G–P's strong support for audit protection legislation. G–P management in Oregon has advised us of your interest in leading such legislation. Because of your knowledge of our company in the State and your responsible record on environmental issues, we strongly urge you to take a leadership role on environmental audits.

I can assure you that should you introduce legislation to afford appropriate protection to environmental audits, G–P will not only be appreciative of this effort, but we will work very hard in support of your effort with other Senators.

Sincerely,

JOHN M. TURNER,
Vice President.

THE GEON CO.,
Cleveland, OH, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: The Geon Co. strongly supports the Voluntary Environmental Audit Protection Act, which we understand will be introduced tomorrow. This Act will benefit not only responsible members of the regulated community, but the public as well, by encouraging companies to implement strong and effective environmental auditing and oversight programs.

It has been our experience that most potential compliance problems are discovered and corrected through voluntary self-audits. The fear of discouraging past compliance problems, especially when they may give rise to huge potential civil penalties, is a very real disincentive to proactive compliance programs that rely on internal and external self-audits.

Although the U.S. EPA has claimed that voluntary self-disclosure issues can be addressed as a part of its enforcement policies and that legislation is unnecessary, we have, unfortunately, first-hand current experience that the EPA has been woefully remiss in adopting or even pursuing any enforcement policies that affect the purpose to which your bill is addressed, and those policies the EPA has recently proposed would fall far short of their state objectives.

We believe that current EPA enforcement policies often single out for punishment environmentally responsible proactive companies, which are thereby placed at a competitive disadvantage with their less proactive competitors.

Sincerely,

WILLIAM F. PATIENT,
Chairman of the Board,
President and Chief Executive Officer.

POLAROID CORP.
Cambridge, MA, March 15, 1995.

Re support for environmental audit privilege and voluntary disclosure legislation; The Voluntary Environmental Audit Protection Act.

Hon. MARK HATFIELD,
US Senate, Hart Senate Office Building, Washington, DC.

HON. SENATOR HATFIELD: Polaroid Corporation wishes to express its support for legislation that you and Senator Brown intend to introduce which will allow for a Federal Environmental Audit Privilege and for Voluntary Disclosure Protection. Polaroid is a worldwide manufacturer of various Imaging Products, and the majority of its manufacturing facilities are located in the Commonwealth of Massachusetts.

Polaroid believes that the fundamental policy justifications underlying the proposed ''Voluntary Environmental Audit Protection Act'' are consistent with this nation's laudable goals of encouraging higher levels of responsible environmental protection rather than simply continuing the promotion of ''command and control'' style environmental regulations. The substantial and measurable levels of environmental improvement that have been achieved in the United States over the past twenty-five years are, in large part, the result of the combined actions of the US Congress, the administrative agencies of the Executive, and American Industry. But new, more positive and cost effective incentives than those needed in the 1970's and 80's are required to enhance environmental protection and improve environmental performance in the 1990's. Polaroid supports this legislation and your actions involved in introducing and overseeing its passage.

Sincerely,

HARRY FATKIN,
Division Vice President,
Health, Safety & Environmental Affairs.

ENVIRONMENTAL AUDITING ROUNDTABLE,
North Ridgeville, OH, March 16, 1995.

Hon. MARK HATFIELD,
US Senate, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN HATFIELD: Following are the views of the Environmental Audit Roundtable on the ''Voluntary Environmental Audit Protection Act'' that you and Senator Brown are introducing. The intent of the bill is to encourage environmental auditing for compliance and effective management systems to ensure compliance and continual improvement.

The EAR, representing over 800 members, is the largest body of professional Environmental Health and Safety Auditors in the world.

As a general rule, our organization should be silent on activity that are external to the auditing process unless those activities promotes improvement in audit quality. We believe the concept of improving disclosure through a privilige mechanism will improve the quality of the audit process in the followng ways:

1. Removing the fear of penalty when non compliance is inadvertent will promote disclosure between the auditors and the audited entity.

2. The concept will encourage implementation of Environmental Audits.

3. The concept will facilitate the flow of information from the regulated community to the agency with regard to understanding and implementing environmental regulation. For small and medium size enterprises that do not have large EH&S staffs it is essential that an open dialogue with state and federal agencies be promoted to assist in understanding and implementing regulations. In addition, this exchange of information will provide valuable feedback on ways in which to make the regulation more understandable and efficient. Under our current regime of command and control there is little or no information flow from the regulated community to the agencies because the consequences are unpredictable.

4. The International Standards Organization (ISO) will be issuing a series of standards in early 1996 that could revolutionize the approach for managing and improving environment performance. Linkage between our national regulatory scheme and this international effort will depend on the agencies ability to communicate with its regulated customers. The concept of disclosure will elevate the level of communication.

In conclusion EAR believes that the legislation will promote environmental dialogue at all levels and improve the quality of the audit process. We believe the current regulatory mechanism of police and fine should be replaced with a cooperative program of disclose and correct. Legislation that promotes information exchange between state and federal agencies and their regulated customers creates fertile fields for innovative solutions and continual improvement.

Regards,

RONALD F. BLACK.

PHILIPS ELECTRONICS CORP.,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: Philips Electronics is pleased to support your legislation known as the Voluntary Environmental Audit Protection Act. This legislation makes eminent sense in that it removes the threat of unreasonable penalty for an action of good faith to correct certain situations arising from noncompliance with environmental law. Philips Electronics and the vast majority of U.S. manufacturers strive to be good corporate citizens with respect to environmental and other laws. Your legislation will create an enforcement atmosphere that will encourage such good corporate citizenry. We thank you for your leadership.

Philips Electronics North America Corporation employs nearly 30,000 Americans engaged in the manufacture and sale of consumer and industrial electronics products and electronic components under the brand names of Philips, Magnavox and Norelco. Annual sales of more than $6 billion rank Philips among the top 100 U.S. manufacturers.

Sincerely,

RANDY MOORHEAD.

COLLIER, SHANNON, RILL & SCOTT,
Washington, DC, March 15, 1995.

Re Senator Hatfield's and Senator Brown's audit and disclosure protection legislation.

Hon. MARK HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: On behalf of the Coalition for Improved Environmental Audits (''CIEA''), we write in support of your proposed legislation for environmental audit and voluntary disclosure protection. We applaud your efforts in conjunction with Senator Brown to introduce this legislation into the Senate. CIEA was formed to support legislative initiatives for the protection of environmental audits and voluntary disclosures; therefore, we wholly support your efforts to establish a qualified self-examination privilege that helps encourage companies to conduct comprehensive audits by reducing the risk that the audits will be used against them in enforcement proceedings. CIEA membership includes corporations and trade associations committed to establishing useful and effective environmental auditing programs. CIEA member companies own and operate facilities throughout the United States and welcome your proposed legislation to encourage and protect comprehensive environmental audits at their facilities.

CIEA supports your efforts to introduce legislation that establishes a federal environmental audit privilege and immunity for voluntary disclosures. The privilege will encourage corporations to establish useful and effective environmental auditing programs. The conditional immunity described in Section 3803 of the proposed legislation will encourage corporations to conduct candid assessments and timely remediation of any noncompliance with environmental laws. Recognition of a qualified environmental audit privilege and immunity provision will enhance compliance with environmental regulations without harming the ability of enforcement officials to prosecute significant wrongdoers.

U.S. industry can rely on a commitment made through legislation. Therefore, your federal legislation for the environmental audit privilege and voluntary disclosure protection allows U.S. industry to conduct environmental audits without the fear that the audit will end up being used against them. Now that federal legislation for the environmental audit privilege is moving forward (and seven States have enacted similar statutes) EPA should establish policy that reinforces this legislation.

The CIEA membership appreciates the opportunity to support your forthcoming legislation for the environmental audit privilege and voluntary disclosure immunity. We believe a reasoned discussion of the issues of environmental audit privileges will result in the passage of your bill, which will encourage and improve corporate environmental compliance.

Sincerely,

JOHN L. WITTENBORN,
STEPHANIE SIEGEL,
Counsel to the Coalition
for Improved Environmental Audits.

THE BFGOODRICH CO.,
Akron, OH, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN HATFIELD: The BFGoodrich Company wishes to express its support for legislation that you and Senator Brown are introducing—''The Voluntary Environmental Audit Protection Act.''

The BFGoodrich Company provides aircraft systems, components and services and manufactures a wide range of specialty chemicals. BFGoodrich manufactures in seven countries and operates an international network of sales offices and aircraft service centers with our Corporate headquarters in Akron, Ohio.

Because of the Company's international presence, we are exposed to a wide variety of environment, health and safety requirements. In order to ensure compliance with these requirements, our Company conducts environment, health and safety audits worldwide.

Only in the United States do we have a system where responsibly managed organizations suffer severe punishment for maintaining a review process to ensure compliance. Our current system is subject to the whim of U.S. EPA interpretations in the different regions of our nation. This does not allow for certainty in interpretation or fairness in enforcement.

Your proposed legislation, along with the legislation already enacted in those states that have chosen a new approach for the regulated community, will establish a mechanism where those who are sincere in trying to improve the environment will benefit—while those who continue to disregard good practices will be subject to the full enforcement of the law.

Your legislation is forward-looking and compatible with international programs. It will encourage our government agencies to focus their efforts on those who truly require oversight while encouraging greater disclosure of information and communications from the regulated community. Moreover, it will provide regulatory agencies with information to improve programs and better measure performance.

BFGoodrich supports your proposed legislation and actions aimed at introducing and overseeing its passage.

Sincerely,

JON V. HEIDER,
Executive Vice President and General Counsel.

CORPORATE ENVIRONMENTAL ENFORCEMENT COUNCIL,
Alexandria, VA, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN HATFIELD: On behalf of the members of the Corporate Environmental Enforcement Council (CEEC), I want to express to your support for legislation that you and Senator Hank Brown are introducing, ''The Voluntary Environmental Audit Protection Act.''

CEEC is an organization of 18 member companies comprised of corporate counsel and management from a wide range of industrial sectors that focuses exclusively on civil and criminal environmental enforcement public policy issues. CEEC's membership includes: AT&T, The BFGoodrich Company, Caterpillar, Inc., Coors Brewing Company, DuPont, Eli Lilly and Company, Hoechst Celanese Corporation, ITT Corporation, Elf Atochem, North America, Inc. Kaiser Aluminum & Chemical Corporation, Kohler Company, 3M, Owens Corning, Pfizer, Inc., Polaroid Corporation, Procter and Gamble, Textron and Weyerhaeuser Company.

We commend you and Senator Brown for this legislation because it is constructive environmental legislation. You have recognized that environmental audits are valuable management tools for improving environmental compliance, that they are good for the environment, and that they will enhance all of our collective efforts to improve environmental performance.

Mr. Chairman, we thank you and Senator Brown, and your staffs, for developing this important legislation and stand ready to work with you to see it become law.

Sincerely,

CARL A. MATTIA,
Chairman of the Board; Vice President, Environment, Health and Safety, The BFGoodrich Co.

COORS BREWING CO.,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: We are pleased to support you and Senator Brown in your efforts to enact the Environmental Audit Disclosure Protection Act.

Environmental audits are proven management tools. They provide the opportunity for companies and public facility operators to take a close critical look at their operations, determine compliance with the thousands of complicated, often confusing and overlapping environmental regulations and statutes now on the books and fix any problem discovered. In Colorado with the passage of a bill in 1994 that is very similar to yours, we are creating a climate of some certainty, wherein a company or facility operator knows what kind of enforcement treatment to expect before investing in expensive and time consuming environmental audits and then disclosing results to state regulatory authorities. We strongly believe this certainty, albeit limited, goes a long way toward promoting self-initiated audits.

However, that same certainty must be applied at the Federal level to allow the Colorado statute, and others like it, to be fully effective and widely utilized. That is why your bill is so important. The debate over proper Federal legal controls over the extent, form and utilization of voluntary self audits and the use of the information obtained has been a matter of controversy among regulators in Washington who hold unchallenged power and control under the current command and control system.

Stanley Legro, EPA's Chief Enforcement official from 1975–77, wrote an interesting article entitled ''Self Audits and EPA Enforcement'' in the Environmental Forum, December 1994. The article follows this letter. To paraphrase Mr. Legro, he says in order to reach the next plateau to improving the quality of the environment there must be a shift from the current enforcement mentality to providing incentives to increase compliance. In moving to that next plateau Mr. Legro says he ''favors maximizing incentives for voluntary self audits.''

We believe that your bill as drafted embraces Mr. Legro's thoughts by striking an appropriate and constructive balance between many of the relevant competing interests involved. The bill provides protection for responsible entities against being punished for doing the right thing without impending enforcement against those who flaunt environmental laws. It is truly refreshing without impeding enforcement against those who flaunt environmental laws. It is truly refreshing to see legislation that benefits the environment, benefits responsible industry, protects against abuses, imposes no costly mandates and doesn't spend a dime of taxpayers' money. Indeed, it may even reduce the need for, and expense of, certain enforcement resources.

Coors looks forward to assisting you and Senator Brown to secure early enactment of this legislation.

Respectfully yours,

ALAN R. TIMOTHY,
Director, Federal Government Affairs.

[From the Environmental Forum, December 1994]

SELF AUDITS AND EPA ENFORCEMENT

(By Stanley W. Legro)

The high degree of interest in the public meeting held by EPA on auditing last summer is strong evidence of the continuing importance of this vital subject. Indeed, it may be fair to say that the subject of auditing necessarily raises the most fundamental issue affecting the EPA: What is the role of enforcement in achieving the agency's primary purpose for being?

The debate about voluntary self-audits and the use of the information obtained has been ongoing since the earliest days of the EPA. It was a hotly debated subject during my tenure as the agency's chief enforcement official from 1975–77. It continues to be a hotly debated issue today. Its long tenure and the agency's inability to come to closure on a decision are to a large extent attributable to the difficult policy choices involved.

The fundamental issue is whether the EPA's primary purpose to improve the quality of the environment is best achieved by providing positive incentives for voluntary compliance and remediation or by punishing, for past actions or omissions, those who have failed to meet their responsibilities to preserve and maintain the quality of the environment. These are not easily separable.

During the nascent stages of the agency, strong enforcement actions and substantial punishments for violators were necessary to convince both the public and those in regulated industries that environmental laws were to be taken seriously and that failure to comply could have serious consequences. During my tenure, there was still a substantial questioning among many in the regulated communities as to whether these environmental requirements were a passing fad that might be repealed by the next Congress and whether the EPA really meant business. An emphasis on vigorous enforcement was vital to send an unequivocal answer to those questions.

With the hindsight of time, I am convinced that the decision made then was the right one, emphasis on vigorous enforcement to send the clear message that or country had made a decision to improve the quality of the environment, and that those who tried to thwart the effort would face severe consequences. While our country still has much left to do, the progress to date is proof of the wisdom of choosing robust enforcement.

Today, we are faced with a somewhat different situation which, I believe, calls for a different emphasis. One should not gainsay the vital continuing role of vigorous enforcement. We must begin by leaving no doubt whatsoever that anyone who intentionally or recklessly harms or endangers the quality of our environment, no matter how long after the fact the transgression is discovered, should—indeed must—be subject to the full force of the law.

Nevertheless, now there is a high degree of awareness of the existence of environmental laws and regulations in general, as well as the specific requirements for compliance, among the regulated communities as well as among the public. There is relatively little incidence of knowing or intentional actions or omissions which harm or degrade the environment. From my present perspective, a much bigger barrier to continuing substantial progress is awareness of environmental problems on the ground so that appropriate remedial actions can be promptly commenced and effectively accomplished in a timely manner.

This brings us to environmental audits. What is the best balance between the carrot and the stick to achieve the best overall results? I recommend that today, while the stick should always remain within easy reach, the emphasis must be shifted to providing incentives for broad scale voluntary compliance. In my opinion, the emphasis today should be on those measures that will encourage environmental audits and the benefits which they can produce in the real world.

Accordingly, I suggest that the results of environmental audits should not be used by the EPA (or state or local) enforcement authorities to seek penalties for any past acts or omissions unless it is shown that such acts or omissions were intentional with knowledge that they would or were likely to result in serious harm to the environment or were reckless.

At the same time, I recommend that the results of environmental audits be provided to the agency, and that they serve as a benchmark for future remediation and correction of practices, processes, and existing pollution which they have revealed. In other words, prospectively the results of environmental audits will be used to set a high standard, but one that is fair because it offers an opportunity to take those actions which would avoid or alleviate the environmental harm.

If the EPA discovers a violation by its own inspection or as a result of information received from a third party, I believe that it should pursue vigorously all remedies available. However, if the discovery is a result of a voluntary audit and is timely reported first to the EPA by the source, policy considerations weigh in favor of encouraging voluntary self audits and prompt follow-up corrective actions.

We also need to consider the nature and extent of privilege, the right to confidentiality for the results of environmental audits. Some jurisdictions have adopted this approach. I have researched and considered the issue at length. It is my conclusion that the use of a privilege approach by the EPA is an unsatisfactory solution which does not protect the environment nor provide maximum incentive to initiate self audits. (However, it is vital to have a privilege from disclosure to private parties and to any state or local officials who refuse to join in the recommended EPA approach.)

From the perspective of the EPA, the purpose of this, as any other policy, is to improve the environment. The agency seeks to provide incentives for self audits to discover and to commence prompt and effective remedial measures. The self audit is merely a means; without assuring that the audit results are put to use, the policy fails. The remedial measures are the end. A privilege approach gives no assurance that problems discovered will result in remedial actions taken. Indeed, the privilege approach may actually discourage prompt remedial measures in many cases.

From the perspective of the corporate executive, the privilege approach is also unsatisfactory for at least two reasons. First, some information resulting from the audit is likely to be subject to mandatory disclosure under certain environmental laws and securities laws. Such partial disclosure will often lead to investigations or audits that independently uncover most, if not all, of the information for which the privilege is claimed. Second, and even more important from the point of view of a corporate official deciding whether to undertake a voluntary self audit, a privilege does nothing to eliminate liability for past violations; a self audit increases the availability of evidence to authorities to prove those violations. For these reasons, a privilege approach would not be the best policy for the EPA.

In sum, in order to maximize the incentives to conduct self audits and to apply the information obtained to realize the greatest environmental improvement, I recommend the following commitment by the agency's enforcement authorities:

The EPA will continue to apply the full penalties for past violations discovered by EPA inspections or by a means other than as a result of a voluntary self audit and timely reporting by the source. Penalties will not be assessed for past violations discovered by a voluntary self audit and voluntarily reported to EPA, unless the past violation was intentional or resulted from reckless conduct. Last, once a violation has been discovered and reported, the source will be required promptly to take prospective actions necessary to prevent a continuance or recurrence of the problem and to commence appropriate remedial measures to protect and restore the quality of the environment.

All policy choices must be measured against the standard of achieving the greatest amount of improvement in our environmental quality. Today, I believe the balance should favor maximizing the incentives for voluntary self audits. Voluntary environmental self audits, reporting past violations and pollution which requires remedial actions discovered by those audits to the EPA, and undertaking prompt and effective remedial measures offer the best opportunity to achieve our national policy objectives in the shortest period of time. This is the right policy choice for the EPA today.

AMERICAN FOREST & PAPER ASSOCIATION,
Washington, DC, March 20, 1995.

Hon. MARK HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: I want to express the support of the American Forest & Paper Association (AF&PA) for the efforts you and Senator Brown have undertaken with regard to granting a limited privilege to internal, voluntary environmental audits.

AF&PA is the major trade association representing the forest products industry in this country. We account for 7 percent of all U.S. manufacturing output and directly employ 1.6 million workers in the manufacture of forest and paper products and the recovery and recycling of paper. We contribute $49 billion in direct payrolls to local economies and rank among the top ten employers in 46 of the 50 states.

AF&PA member companies are regulated under a wide range of environmental programs, including the Federal Water Pollution Control Act, the Clean Air Act, and the Resource Conservation and Recovery Act. The Association strongly supports public policies that will serve to increase compliance with environmental laws by granting a limited protection for information developed by companies through voluntary, internal environmental audit programs. Some states, including Oregon and Colorado, have already enacted statutes providing such protections, and we believe the positive experience gained in these instances bolsters the case for a similar statute at the Federal level.

Accordingly, AF&PA strongly supports the leadership you and Senator Brown have shown in this field. Although we have not had the opportunity to analyze your draft legislation in detail, we believe that it will help to lay the foundation for a necessary Federal debate. As a matter of policy, such audits help to increase compliance with environmental safeguards, and should be encouraged. When our analysis of your proposal is completed, AF&PA will share that review with you and your staff. We look forward to working with you to expedite consideration of this important issue.

Sincerely,

B. ROLAND MCELROY,
Vice President,
Government Affairs.

ELF ATOCHEM NORTH AMERICA, INC.,
Arlington, VA, March 21, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

Subject: ''Voluntary Environmental Audit Protection Act'' to amend Title 28 of the United States Code.

DEAR SENATOR HATFIELD: On behalf of Elf Atochem North America, Incorporated, I am writing to express our strong support for the proposed ''Voluntary Environmental Audit Protection Act'' introduced by both you and Senator Hank Brown. Our company has developed a strong audit program which will be further strengthened with passage of this proposed legislation. The ability to move rapidly to fix problems and share concerns throughout the company, without the legal concerns that presently overshadow any audit program, will be greatly enhanced.

We are aware of the U.S. Environmental Protection Agency's (EPA) effort to amend its current audit policy. However, in our view EPA still takes the position that ''no good deed goes unpunished,'' by providing for penalties when a company voluntarily discloses violations that would not have been found but for the use of good environmental management through auditing.

For some time, our management has been actively involved in the conceptual issues concerning auditing and environmental management. Frank Friedman, Elf Atochem N.A. Senior Vice-President for Health, Environment and Safety, is author of the leading book on environmental management, ''A Practical Guide to Environmental Management'' (Fifth Edition 1995) published by the Environmental Law Institute. At EPA's request, Mr. Friedman was the lead-off speaker at the Agency's review of its audit policy in July 1994. In his testimony, Mr. Friedman counseled, as did many others, on the need ''for EPA to develop other indicators of enforcement success rather than just on the basis of the number of cases brought''.

There is no question that EPA should retain a strong enforcement program, but it is equally important that enforcement be put in context, namely, as a vehicle for assuring environmental compliance. If compliance is achieved voluntarily; if problems are disclosed and dealt with more rapidly, and more companies develop in-depth audit programs, then EPA's enforcement goals are readily achieved.

We also have, at this time, one important comment on the proposed legislation. Proposed Section 3803(b) limits voluntary disclosure if a company has ''committed repeated violations''. We assume this language applies to companies operating a single ''facility''. If not, such a provision disadvantages companies operating multiple facilities with respect to the audit disclosure protections provided in the proposed bill. In such cases, if a violation has occurred at one facility and a company wants to make certain that this will not occur elsewhere it will be penalized. We are sure this is not the intent of the bill and it should be clarified.

Again, we wish to commend you and your staff for the careful and thoughtful way in which this proposed legislation was crafted. The proposed bill recognizes that if companies have strong, voluntary auditing programs in place, compliance will follow. Because this legislation represents sound public policy that will advance protection of human health and the environment, Elf Atochem (as will, we are certain, other members of the regulated community) is committed to supporting passage of this legislation.

Sincerely,

CHARLES A. KITCHEN,
Director, Government Relations.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, March 1, 1995.

Hon. JOEL HEFLEY,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN HEFLEY: I am writing to express EPA's opposition to the environmental audit privilege/penalty immunity provisions currently contained in H.R. 1047. Our concerns include the following:

1. Environmental damage or even disasters caused by recklessness or gross negligence would go unpunished under certain provisions. Specifically, regardless of the harm inflicted on people or the environment, H.R. 1047 would eliminate all punishment for certain criminal and other violations if they are ''voluntarily'' disclosed. As we read H.R. 1047, a ''voluntary disclosure,'' for which total immunity from civil and criminal penalties is granted, includes information that is required to be reported—including notification of emergencies as well as routine reports, such as Discharge Monitoring Reports under the Clean Water Act. Truly ''voluntary'' disclosures should be encouraged, but not by granting blanket immunity for criminal and other harmful acts.

2. The bill encourages litigation that will further burden our already taxed judicial system. Specifically, the bill uses many vague terms for lawyers to argue over. For example, H.R. 1047 would allow violators to argue that many routine business activities are ''compliance evaluations'' simply to evade disclosure. This kind of litigation will drain both private and government resources and in some cases prevent quick action to address environmental emergencies—despite the exceptions in the bill.

3. The evidentiary privilege in this bill appears to go far beyond the attorney-client and work product privileges by potentially shielding from the government and the public virtually all factual information about environmental noncompliance—including facts underlying a self-evaluation that might be crucial in holding violators accountable for their actions. It appears that the privilege would apply to much more than just audit reports and over documents related to self-evaluations.

4. It makes sense to give substantial penalty reductions to those who come forward, disclose their violations, and promptly correct them. The penalty immunity provision in the bill, however, gives violators an unfair economic advantage over their law-abiding competitors because it does not allow federal and state governments to recover from the violator even the economic benefit they gained from their noncompliance.

As you may know, Administrator Browner asked the Office of Enforcement and Compliance Assurance last May to reassess EPA's environmental auditing policy to see if we needed new incentives to encourage voluntary disclosures and prompt correction of violations uncovered in environmental audits. Our review has been open and inclusive. In July 1994, and again in January 1995, we held public meetings, and an Agency auditing workgroup has met and continues to work with key stakeholders. We have involved industry, trade groups, state environmental commissions and attorneys general's offices, district attorneys' offices, and environmental groups. We have identified approaches that seem to have broad support among these groups.

Consistent with prior correspondence between several House members and Administrator Browner, we expect to announce the results of our reassessment process shortly. The issues surrounding environmental auditing, voluntary self-evaluations and voluntary disclosure are complex, and we are eager to share what we have learned with the Congress in hearings. We think it is crucial that the House take the time to hold appropriate hearings on the full range of views on these issues, and to consider alternative approaches that would have the support of a wide range of stakeholders. Unfortunately, H.R. 1047 falls far short of that mark.

I look forward to working with you and other members on these very important and complex issues.

Sincerely,

STEVEN A. HERMAN,
Assistant Administrator.

HOUSE OF REPRESENTATIVES,
Washington, DC, March 20, 1995.

Mr. STEVEN A. HERMAN,
Assistant Administrator, U.S. Environmental Protection Agency, Washington, DC.

DEAR MR. HERMAN: I am writing in response to your letter of March 1, 1995. While I appreciate the Office of Enforcement and Compliance Assurance taking the time to comment on H.R. 1047, I am disappointed that your letter merely recasts the unsubstantiated objections that the Environmental Protection Agency routinely has made for many years.

Let me respond to each of your specific concerns and take the opportunity to explain why protections for legitimate environmental audits and voluntary disclosures are critical for the public health and the environment.

1. You argue that the voluntary disclosure provisions would grant blanket immunity from criminal penalties and would include information that is required to be reported under environmental laws, such as Discharge Monitoring Reports, etc.

H.R. 1047 does not grant blanket immunity from prosecution. In fact, there is no immunity from prosecution, but simply immunity from administrative, civil and criminal penalties. Further, the immunity is not a ''blanket'' immunity; there are two important limitations. First, the presumption against imposition of penalties is a rebuttable presumption. If the presumption can be rebutted by the EPA (i.e., notice was not given promptly, the information was not learned as a result of an environmental audit or the problem is not corrected) then penalties can be assessed. Second, if a regulated entity has demonstrated a pattern of disregard for environmental laws, they are not eligible for penalty immunity for voluntary disclosures. In addition, information that is voluntarily disclosed that may be required to be reported under an environmental law would only be subject to the immunity if it was learned as a result of performing the environmental audit. This is a significant limitation.

2. Your letter states that the legislation will encourage litigation because it is vague and would allow violators to argue that many routine business activities are compliance evaluations to evade disclosure. You do not believe that the exceptions in the bill will prevent such evasion and, consequently, such litigation.

H.R. 1047 does not privilege any reports or data that are already required to be compiled or reported. Nor does it restrict EPA's ability to request additional data. The definition of a voluntary environmental self-evaluation is clear in the bill. To qualify, the evaluation must be initiated and carried out by the person for the purpose of determining compliance with environmental laws. The EPA itself has defined environmental auditing in its 1986 policy statement in broader terms. Thus, in this legislation, there are no vague terms behind which persons can hide to evade disclosure of anything that is already required to be reported. It is disingenuous for the EPA to suggest increased litigation as a reason to oppose this bill, when many EPA programs have just that effect.

3. You argue that the evidentiary privilege goes beyond the common law attorney-client and work product privileges.

While H.R. 1047 does provide a more expanded privilege than the attorney-client privilege, it does not protect the facts that are required to be provided to the EPA. The EPA still has complete access to the date and reports as it had before. Moreover, the EPA can still obtain additional information through investigations, information requests, sampling and monitoring, etc. Facts available to the EPA in documents required to be maintained by entities, reports that must be provided to the EPA and information obtained from independent sources are all still available to the EPA under H.R. 1047. Presumably, these are the facts the EPA believes are necessary to ensure compliance with environmental laws.

4. Finally, you argue that the penalty immunity in the legislation gives violators an unfair economic advantage over their law-abiding competitors because it does not allow federal and state regulators to recover the economic benefit gained from noncompliance. Your concern that a violator will derive an economic benefit is misplaced.

Under H.R. 1047, as soon as a person voluntarily discloses a violation, that person must promptly achieve compliance in order to receive penalty immunity. These steps include installing whatever equipment may be required. In cases where there are environmentally irresponsible companies that have avoided installing the requisite equipment, any economic benefit that they may have derived will surely be cancelled out—and then some—by having to quickly retrofit their plants to come into compliance. It will likely cost them significantly more to come into compliance at a later date than it did for their competitors who designed compliant systems from the outset. Further, how would the EPA propose to determine any such economic benefit while assuring the certainty required for companies to utilize the voluntary disclosure provisions? I believe this would be terribly difficult to predict with certainty.

In addition to the specific responses above, several other points must be considered regarding H.R. 1047. Administrator Browner has emphasized that ''enforcement is not an end in itself.'' She has noted that the EPA must change its ways; that the agency must do everything it can to focus on compliance, and that obstacles to compliance must be eliminated. H.R. 1047 does just that.

As the EPA recognizes, an environmental enforcement policy should not discourage compliance. Unfortunately, current EPA and Department of Justice policies do precisely that. Under the current enforcement scheme, responsible entities that work to achieve environmental goals find themselves exposed to greater liability than those in the regulated community who do less or do nothing at all.

The result of all this is that responsible members of the regulated community are discouraged from conducting self-evaluations and from voluntarily disclosing violations because of the tremendous risk of civil and criminal enforcement. This negatively impacts compliance which, in turn, negatively impacts public health and the environment. In the end, the environment is the loser.

Since the EPA's goal is compliance, not punishment, as stated by the president last Thursday in announcing his regulatory reform package, then surely it makes sense to

encourage compliance. This view is not without precedent at the federal level. Other federal agencies have recognized the need to encourage compliance, and have done so by implementing protections similar to those in H.R. 1047. The Federal Aviation Administration's policy serves as a perfect example that compliance should come first.

The FAA policy is designed to provide incentives for deficiencies to be identified and corrected by the companies themselves, rather than risk air safety by awaiting the results of an FAA inspection. In implementing the FAA policy, agency officials emphasized that ''aviation safety is best preserved by incentives . . . to identify and correct their own instances of noncompliance and invest more resources in efforts to preclude recurrence, rather than paying penalties''. Surely, environmental protection is at least as important as aviation safety and, therefore, deserves the same incentives to enhance compliance.

H.R. 1047 is critical because it provides incentives to maximize environmental compliance and allocates resources to compliance, not enforcement. I reiterate that intentional violators cannot benefit from the legislation. And while responsible members of the regulated community will indeed benefit in terms of receiving much needed protections and certainty, the real beneficiary of H.R. 1047 is the environment.

I look forward to your participation in this debate as the legislative process moves forward.

Sincerely,

JOEL HEFLEY,
Member of Congress.●

By Mr. STEVENS:

S. 583. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for two vessels; to the Committee on Commerce, Science, and Transportation.

VESSEL DOCUMENTATION LEGISLATION

● Mr. STEVENS. Mr. President, today I am introducing a bill to provide certificates of documentation for the vessels *Resolution* and *Perserverance.*

The hovercraft *Resolution,* Serial Number 77NS8701, and *Perserverance,* Serial Number 77NS8901, were built in 1983 and 1985, respectively, by British Hovercraft Corp. Limited in East Cowes, Isle of Wight, England.

They are 70 feet in length, and have a maximum operating weight of 32 tons.

The craft were sold to Hovertravel, a United Kingdom company, which operated the craft in a passenger ferry operation from the Isle of Wight, England.

The two hovercraft were sold by Hovertravel to the U.S. Navy in 1986 *Resolution,* and 1989 *Perserverance.*

They were modified by Textron in Panama City, FL to be used as training craft for U.S. Navy personnel to learn to operate hovercraft.

After being declared surplus by the U.S. Navy, ownership of the vessels now resides with Champion Constructors, Inc., a subsidiary of Cook Inlet Region, Inc. of Anchorage, AK.

Because the vessels were built in England, they are undocumented, and require a waiver of the Jones Act to be operated in the U.S. coastwise trade.

Champion Constructors, Inc. intends for the vessels to be used between points in Alaska transporting cargo and passengers.

It is my understanding that no other hovercraft of this type and size exist.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for each of the vessels RESOLUTION (Serial Number 77NS8701) and PERSERVERANCE (Serial Number 77NS8901).●

By Mr. ROBB (for himself, Mr. CRAIG, Mr. AKAKA, Mr. HARKIN, Mr. ROCKEFELLER, Mr. LUGAR, Mr. DEWINE, Mr. STEVENS, Mr. COCHRAN, Mr. WELLSTONE, Mr. FORD, and Mr. KERRY):

S. 584. A bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962; to the Committee on Armed Services.

PURPLE HEART LEGISLATION

● Mr. ROBB. Madame President, I introduce legislation which will correct an inequity that unfairly denies due recognition to some of America's worthiest veterans.

Specifically, this bill would entitle prisoners of war from War World I, World War II, and Korea to receive the Purple Heart Medal for wounds which were sustained while being captured or while in captivity. Currently, only those veterans who suffer wounds while being captured or in captivity after April 25, 1962, are eligible for the Purple Heart Medal.

While we might debate how best to recognize their sacrifice and hardship, one thing is abundantly clear; we should not differentiate between prisoners of war based solely on the date of the war in which they were captured.

Madam President, as a Vietnam veteran who has had the privilege of leading marines in combat, and as a member of the Senate's Select Committee on POW/MIA Affairs, I am acutely aware of the hardships endured by service personnel who have been captured by hostile military forces. All of these servicemen have suffered mental and physical abuse, and many were tortured, beaten and starved while in confinement.

Our prisoners of war from World War I, World War II, and Korea suffered various wounds and innumerable atrocities at the hands of their captors. Many continue to suffer from physical difficulties associated with their capture and confinement. The Purple Heart Medal would serve to put their service and sacrifice on par with the veterans of other wars, and will remind Americans of their sacrifices. It seems a fitting and overdue recognition.

Madam President, I ask unanimous consent that the text of the bill, the supporting resolutions of the Military Order of the Purple Heart and the Disabled American Veterans, and the letters of support from the DAV, American Legion, AMVETS, and the Jewish War Veterans of the United States, be printed in the RECORD. I would also like to thank my colleagues, Senators AKAKA, COCHRAN, CRAIG, DEWINE, FORD, HARKIN, KERRY, LUGAR, ROCKEFELLER, STEVENS, and WELLSTONE for joining me as original cosponsors of this bill.

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

S. 584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO AWARD PURPLE HEART.

(a) AUTHORITY TO MAKE AWARD.—(1) Subject to paragraph (2), the President may award the Purple Heart to a person described in subsection (b) who was taken prisoner and held captive before April 25, 1962.

(2)(A) Except as provided in subparagraph (B), an award of the Purple Heart under paragraph (1) may be made only in accordance with the standards in effect on the date of the enactment of this Act for the award of the Purple Heart to a person described in subsection (b) who has been taken prisoner and held captive on or after April 25, 1962.

(B) An award of a Purple Heart may not be made under paragraph (1) to any person convicted by a court of competent jurisdiction of rendering assistance to any enemy of the United States.

(b) ELIGIBLE PERSONS.—(1) A person referred to in subsection (a) is an individual—

(A) who is a member of the Armed Forces of the United States; and

(B) who is wounded while being taken prisoner or held captive—

(i) in an action against an enemy of the United States:

(ii) in military operations involving conflict with an opposing foreign force;

(iii) during service with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party;

(iv) as the result of an action of any such enemy or opposing armed force; or

(v) as the result of an act of any foreign hostile force.

(2) Any wound of a person referred to in paragraph (1)(A) that is determined by the Secretary of Veterans Affairs to be a service-connected injury arising from being taken prisoner or held captive under a circumstance referred to in paragraph (1)(B) shall also meet the requirement set forth in paragraph (1)(B).

(c) RELATIONSHIP TO OTHER AUTHORITY TO AWARD THE PURPLE HEART.—The authority under this Act is in addition to any other authority of the President to award the Purple Heart.

THE MILITARY ORDER
OF THE PURPLE HEART,
Springfield, VA, February 14, 1995.

JAMES CONNELL,
Department State Director,
Richmond, VA.

DEAR MR. CONNELL: I received a call from the Senator's office requesting a copy of the Resolution ''to authorize the award of the Purple Heart Medal.''

Enclosed is a copy of Resolution No. 94–038, passed by the Convention Body at the National Convention of the Military Order of the Purple Heart, in Des Moines, Iowa.

If I can be of further assistance, contact this office.

Sincerely,

EDMUND E. JANISZEWSKI,
National Legislative Director.

RESOLUTION NO. 94–038

Re to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962.

Committee: Legislative/Service.

Committee Action: Approve.

Whereas: Current law provides for the award of the Purple Heart Medal to POWs under certain circumstances, who were captured on or after April 25, 1962; and

Whereas: Senator Robb of Virginia has proposed a bill to award the Purple Heart Medal to POWs captured prior to April 25, 1962; and

Whereas: Presidents Kennedy and Reagan have issued Executive Orders allowing for the award of the Purple Heart Medal to civilians wounded under certain circumstances to include terrorists attacks; now, therefore be it

Resolved: That the Military Order of the Purple Heart support legislation proposed by Senator Robb, which is attached to this resolution; and be it further

Resolved: That the Military Order of the Purple Heart of the United States of America seek legislation, to negate the award of the Purple Heart Medal to any civilian under any circumstances; and finally be it

Resolved: That copies of this resolution be forwarded to the 62nd National Convention of the Military Order of the Purple Heart of the United States of America, for adoption by the delegates in assembly at Des Moines, Iowa, August 8th thru August 13th, 1994.

Submitted by Edmund F. Janiszewski, National Legislative Director, July 14, 1994.

Convention Action: Approved by Convention Body August 11, 1994.

DISABLED AMERICAN VETERANS,
Washington, DC, September 6, 1994.

Hon. CHARLES S. ROBB,
State Office of Senator Charles S. Robb, Richmond, VA.

DEAR SENATOR ROBB: Thank you for providing us with a copy of your draft bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962.

This measure has the support of the Disabled American Veterans. The delegates to our 1994 annual National Convention adopted a resolution (copy enclosed) supporting legislation for this purpose, and your draft bill is consistent with that resolution.

We appreciate the changes you made to address our concerns, and we appreciate your efforts on behalf of this deserving group of veterans.

Sincerely,

RICHARD F. SCHULTZ,
National Legislative Director.

NATIONAL INTERIM LEGISLATIVE COMMITTEE
RESOLUTION

AUTHORIZE THE PURPLE HEART MEDAL TO FORMER POWS OF WORLD WAR I, WORLD WAR II, AND THE KOREAN WAR FOR INJURIES RECEIVED DURING CAPTIVITY

Whereas, Title 32, U.S. Code, effective April 25, 1962, authorizes the award of the Purple Heart to prisoners of war for wounds or injuries sustained as a result of beatings and other forms of physical torture while in captivity; and

Whereas, prior to April 25, 1962, the Purple Heart Medal for former prisoners of war was only awarded to those who were wounded or injured in action prior to or at the time of capture or in an attempted or successful escape; and

Whereas, former prisoners of war of World War I, World War II and the Korean War were physically abused, beaten, tortured and placed on forced work details, without concern for their health by enemy guards and hostile civilians; and

Whereas, many of these servicemen, while in captivity, suffered from physical abuse, malnutrition and exhaustion, as well as received wounds and injuries as a result of direct and indirect action at the hands of their captors; NOW

Therefore, be it Resolved that the Disabled American Veterans in Nation Convention assembled in Chicago, Illinois, August 20–25, 1994, supports the enactment of legislation to provide the same consideration to the award of the Purple Heart Medal to former prisoners of war held captive prior to April 25, 1962, as afforded those captured after that date.

THE AMERICAN LEGION,
Washington, DC, August 29, 1994.

Mr. JIM CONNELL,
Deputy State Director, State Office of Senator Charles S. Robb, Richmond, VA.

DEAR MR. CONNELL: Members of the staff of the American Legion have reviewed Senator Robb's proposed bill authorizing award of the Purple Heart medal. You have satisfied the concerns we outlined in our March 31, 1994 letter and we have no objection to the proposed bill as it now reads. The Legion, however, still has no resolution recognized by the membership on this subject and therefore, cannot specifically and formally endorse the bill at this time.

In most cases dealing with presentation of military awards and decorations, we defer to the Department of Defense and their appropriate directives. If your proposed bill complements a service regulation you should encounter few objections.

Sincerely,

GERALD M. MAY,
Assistant Director,
National Legislative Commission.

AMVETS,
Lanham, MD, August 25, 1994.

Hon. CHARLES S. ROBB,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROBB: I am writing to express AMVETS' support for your bill to award the Purple Heart to certain military personnel who were taken prisoner before April 25, 1962.

We are pleased that your bill will recognize the sacrifices made by those who suffered at the hands of the enemy, whatever the period of conflict.

I would also like to express AMVETS' opposition to awarding the Purple Heart to civilians who suffer injuries because of terrorist action. While we in no way minimize anyone's suffering, there is a fundamental difference between the responsibilities incumbent upon each service member and their civilian counterparts. That alone justifies the limitation on the eligibility for the award.

Thank you again for working for America's veterans, and we look forward to working with you in the future.

Sincerely,

DONALD M. HEARON,
National Commander.●

By Mr. LAUTENBERG:

S. 586. A bill to eliminate the Department of Agriculture and certain agricultural programs, to transfer other agricultural programs to an agribusiness block grant program and other Federal agencies, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE AGRICULTURE MODERNIZATION ACT

● Mr. LAUTENBERG. Mr. President, I introduce the Agriculture Modernization Act. It would eliminate the Department of Agriculture, spinning off some programs to other parts of the Federal Government, and sell the two USDA buildings on the Mall.

This legislation acknowledges what we all know: the Great Depression ended 50 years ago and it's 1995. Many USDA activities should go the way of the WPA and other programs which, like the USDA's commodity price programs, were set up to deal with the devastation caused by the Depression. With recovery, they were disbanded.

House Budget Committee Chairman JOHN KASICH and Senate Majority Leader BOB DOLE have proposed eliminating four departments of government as part of their deficit reduction plan: Committee, Education, Energy, and Housing and Urban Development.

If we want to scale back government, and eliminate wasteful bureaucracies, the USDA is an excellent place to start. It is the most obsolete and bloated of all Cabinet departments. The USDA tops the list for personnel, budget, and subsidies to those who need them least.

In scaling back Government, let's start with a department that provides pork for agribusinesses that don't need it before we eliminate one that helps our children get an education and start on life.

In evaluating the Kasich-Dole proposal, it is important to understand that the USDA has 109,000 employees, more than the other four departments combined. Furthermore, USDA's $62 billion budget dwarfs the budgets of Commerce, Energy, Education and HUD. Indeed, it is almost as large as these four departments combined.

The Agriculture Modernization Act will eliminate wasteful programs in USDA. It will transfer important programs to agencies better suited to administer them, like HHS taking over the Food Stamp Program.

And it will put all the money spent on commodity programs into a block grant which will be phased out completely over 5 years. This will permit the States to help recipients of agricultural entitlement programs adjust to a scaling back, and then loss, of benefits.

This bill will reduce the deficit by approximately $25 billion over 5 years. The Republican leaders have laid out ambitious deficit reduction goals to slice $500 billion off the Federal budget in the next 5 years. They propose to accomplish this without touching Social Security.

That's going to mean very deep cuts. I'd like to see us start on subsidies to agribusiness and waste at USDA before we cut the safety net out from under our Nation's families and children.

The Department of Agriculture's time has come and gone. It began under President Abraham Lincoln. In the 1860's, 60 percent of Americans were farmers and the USDA had 9 employees. Now only 2 percent of Americans are farmers and USDA has 109,000 employees worldwide.

That's one bureaucrat for every five farmers.

The commodity programs began in the Great Depression, when we did not know if America could feed itself. When we didn't know if grocery stores would have food on their shelves.

But American agriculture is much different today. Our stores are stocked with inexpensive foods. And our most competitive commodities are fruits, vegetables, meats, and poultry that don't receive any price subsidies.

It's time to extend free market principles to agriculture.

There are 75,000 farmers with incomes over $250,000 per year who get an average of $26,000 in agricultural subsidies. My small businesspeople in New Jersey making a lot less don't get subsidies. And, the Republicans want to reduce the school lunch program, nutrition programs, take away summer jobs from kids, cut assistance to seniors and others for heating bills, and cut housing aid to AIDS patients, among others.

I say we should start with USDA. No more aid for dependent agribusinesses.

I support entitlement programs for kids and other groups in need. I think we should have a social safety net. But, agribusiness is not on my list of deserving beneficiaries.

This bill sets priorities for deficit reduction. We should start by cutting obsolete programs and programs that benefit those who don't need Government assistance.

Mr. President, I ask unanimous consent that an accompanying factsheet be inserted in the RECORD.

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

THE AGRICULTURE MODERNIZATION ACT OF 1995

This bill will eliminate the USDA in 1996. This will be accomplished by eliminating some programs, phasing out the commodity programs over five years and by transferring some agencies and functions to other departments.

PROGRAMS TO BE ELIMINATED

Market Promotion Program.
Export Enhancement Program.
Rural Telephone Program.
Rural Electricity Program.
Animal Damage Control Program.
Commodity Credit Corporation.

BLOCK GRANT—ADMINISTERED BY THE DEPARTMENT OF COMMERCE (PHASED OUT OVER FIVE YEARS)

All commodity programs including: Feed grains, wheat, rice, cotton, tobacco, dairy, soybeans, peanuts, sugar, honey, and wool.

DEFICIT REDUCTION

This legislation will save approximately $25 billion over five years, not including administrative savings resulting from transferring duplicative functions to other departments and agencies. See attachment for details.

PROGRAMS TO BE TRANSFERRED

Health and Human Services:
Food Stamps, School Lunch, WIC and other nutrition programs. Nutrition programs that are entitlements will remain so.
Food Safety and Inspection Service.
Food and Consumer Service.
Parts of the Animal and Plant Health Inspection Service.
Commerce:
Economic research and statistical programs.
Agriculture research programs.
Regulatory programs.
Economic development programs.
Parts of Animal and Plant Health Inspection Service.
Interior: Forest Service, Natural resource, conservation and environmental programs.
Treasury: Credit and loan programs.
FEMA: Crop insurance.
EPA: Rural Utilities Service Water and Sewer Programs.●

By Mr. HATCH (for himself, Mr. HEFLIN, Mr. DOLE, Mr. THURMOND, Mr. GRASSLEY, Mr. SIMPSON, Mr. KYL, Mr. EXON, Mr. CRAIG, Mr. FORD, Mr. LOTT, Mr. ASHCROFT, Mr. BAUCUS, Mr. BOND, Mr. BREAUX, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. COVERDELL, Mr. D'AMATO, Mr. FAIRCLOTH, Mrs. FEINSTEIN, Mr. GRAMM, Mr. GRAMS, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MURKOWSKI, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. ROTH, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, and Mr. WARNER):

S.J. Res. 31. A joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

Mr. HATCH. Mr. President, throughout our history, the American people have revered the flag of the United States as the symbol of our Nation. The American flag represents in a way nothing else can, the common bond shared by a very diverse people. Yet whatever our differences of party, politics, philosophy, race, religion, ethnic background, economic status, social status, or geographic region, we are united as Americans. That unity is symbolized by a unique emblem, the American flag.

As Supreme Court Justice, John Paul Stevens said in his dissent in the 1989 Texas flag-burning case:

> A country's flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas. . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

For over 200 years, this proud banner has symbolized hope, opportunity, justice and, most of all, freedom, not just to the people of this Nation, but to people all over the world. I believe that the American flag is equally worthy of protection as the ideals for which it stands.

This February 23 marked the 50th anniversary of one of the most dramatic moments in our Nation's history; the raising of the American flag on the Island of Iwo Jima by U.S. marines during World War II. That heroic image instantly came to symbolize the determination and courage of all of the brave Americans fighting in that great struggle for the very survival of America as a free nation. Fifty years later, it remains one of our Nation's most powerful images, reminding us that throughout our history, through the generations, from the Battle of Bunker Hill to Operation Desert Storm, on every continent and ocean, in every corner of the world, Americans have fought, and in many cases given their lives, fighting under this flag and for the Nation and the ideals it represents. By protecting that flag against acts of physical desecration, we honor their memory and their sacrifice.

I am proud to rise today to introduce a constitutional amendment that would restore to Congress and to the 50 States the right to protect our unique national symbol, the American flag, from acts of physical desecration.

Restoring legal protection to the American flag is not a partisan issue. Forty-three Senators, both Republicans and Democrats, have joined with Senator HEFLIN and myself as original cosponsors of this amendment.

Restoring legal protection to the American flag would not overturn the first amendment. Rather, it would overturn an interpretation of that amendment by the Supreme Court, in which the Court, by the narrowest of margins, five to four, held that flag burning was a form of protected free speech. Distinguished jurists regarded as great champions of the first amendment agreed that physical desecration of the American flag does not fall within the ambit of the first amendment. In the case of Street versus New York, then Chief Justice Earl Warren wrote:

''I believe that the States and the Federal Government have the power to protect the flag from acts of physical desecration and disgrace.'' Justice Abe Fortas wrote: ''The States and the Federal Government have the power to protect the flag from acts of desecration committed in public.'' Justice Hugo Black, generally regarded as a first amendment absolutist, stated: ''It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense.'' I believe the Court majority in the Texas versus Johnson case had it wrong; burning the flag is conduct and may be prohibited. This amendment would correct that error and restore to Congress and the State the power they historically had to protect the American flag from acts of physical desecration.

Restoring legal protection to the American flag would not place us on a slippery slope precisely because the flag is so unique as our national symbol. There is no other symbol, no other object, which represents our Nation as does the flag. Accordingly, there is absolutely no basis for concern that the protection we seek for the American flag could be extended to cover any other object of form of political expression.

Restoring legal protection to the American flag would not infringe on free speech. Freedom of speech is not and has never been absolute. We have laws against libel, against slander, and against obscenity. As a society, we can and do place limitations on both speech and conduct. The classic example is, of course, the prohibition against shouting fire in a crowded theater. You can't hold a demonstration in a courtroom. You can't make speeches using a bullhorn at 2 a.m. in a residential neighborhood. You can't destroy Government property or buildings as a means of protest. Right here in the U.S. Senate, we prohibit speeches or demonstrations of any kind, even the silent display of signs or banners, in the public galleries. I believe flag burning is in the same category as obscenity—conduct which is beyond the pale of acceptability even in a free society.

For many years, our flag was protected, by Federal law and laws in 48 States, from acts of physical desecration. No one can seriously argue that freedom of speech or freedom of expression was diminished or curtailed during that period. Restoring the protection of law to our flag would not prevent the expression, in numerous ways safeguarded under the Constitution, of a single idea or thought. It merely prevents conduct with respect to one unique, symbolic object, our Nation's flag.

The effort to restore legal protection to our national symbol is a movement of the American people. It has been initiated by grassroots Americans; 91 civic, veterans, and patriotic organizations, led by the American Legion, joined together in the Citizens Flag Alliance, working to build support across this Nation for a constitutional amendment to restore the historical protection of our flag. Forty-six States have passed resolutions urging Congress to send a flag protection amendment to the States for ratification.

Let this be clear: the Citizens Flag Alliance came to me, Senator HEFLIN, and other Members of Congress, before last November. We did not come to them. This effort is not generated from Capitol Hill. The Citizens Flag Alliance presented us with a report on their effort. They asked us for our support for their cause. We were pleased to agree. It is now up to Congress to heed the voice of the American people and pass this amendment.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 31

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

''ARTICLE —

''The Congress and the States shall have power to prohibit the physical desecration of the flag of the United States.''.

Mr. HEFLIN. Mr. President, I rise today in support of a constitutional amendment to prevent the desecration of the American flag. As an original cosponsor along with Senator HATCH and 42 of our colleagues, I urge our colleagues to join in protecting the sanctity of this symbol of our great Nation. As I have said before on the Senate floor, I feel that the Supreme Court's decision in Texas versus Johnson, incorrectly places flag burning under the protection of the first amendment. In my judgement, it is our responsibility to change that decision and return the flag to the position of respect it deserves.

Few people would disagree with the argument that the American flag stands as one of the most powerful and meaningful symbols of freedom ever created. In the dissent in Texas versus Johnson, Chief Justice Rehnquist states in his opening paragraph:

> For more than 200 years, the American flag has occupied a unique position as the symbol of our Nation, a uniqueness that justifies a governmental prohibition against flag burning in the way * * * Johnson did here.

Justice Stevens calls the flag a national asset much like the Lincoln Memorial. He states that:

> Though the asset at stake in this case is intangible, given its unique value, the same interest supports a prohibition on the desecration of the American flag.

I must agree with Chief Justice Rehnquist and Justice Stevens in their belief that the flag should be protected from such desecration. However, I believe that the flag also has a tangible value. I feel that the court could have expressed an opinion that would have allowed protection to both values, for in that case, the flag was stolen.

The flag holds a mighty grip over many people in this country. Its mystical appeal is as unique to every person as a fingerprint. Thousands of Americans have followed the flag into battle and thousands of these Americans have left these battles in coffins draped proudly by the American flag. Nothing quite approaches the power of the flag as it drapes those who died for it, or the power of the flag as it is handed to the widow of that fallen soldier. The meaning behind these flags goes far beyond the cloth used to make the flag or the dyes used to color Old Glory red, white, and blue. The flag reaches to the very heart of what it means to be an American. It would be a tragedy for us to allow the power of the flag to be undermined through the legal desecration of the flag. Allowing the legal burning of that flag creates a mockery of the great respect so many patriotic Americans have for the flag.

JUDICIALLY WRONG

As I have stated before, I feel on many different levels that the Supreme Court's decision was wrong. I feel it was wrong for me personally, it was wrong for patriotism, it was wrong for this country, but perhaps most importantly, this decision was judicially wrong.

I want to emphasize that although I am a strong believer in first amendment rights, I recognize that first amendment rights are not absolute and unlimited. There have been numerous decisions of the Supreme Court that limit freedom of expression.

Some of history's great protectors of the freedom of speech have agreed that the first amendment is not absolute. Many of these protectors have agreed that the flag is a symbol of such profound importance that protecting it is permissible. Later in this speech I will be quoting from some of the protectors of both the flag and the first amendment such as Supreme Court Chief Justice Earl Warren, Justice Hugo Black, Justice John Paul Stevens, and Justice Oliver Wendell Holmes.

In a landmark case reflecting the Supreme Courts long held belief that the freedom of expression is not absolute, the court in *Shenk* v. *United States*, 249 U.S. 47 (1919) stated that:

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic.

Justice Oliver Wendell Holmes stated that:

> The question in every case is whether the words [actions] used are used in such clear circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the Congress has a right to prevent.

Clearly the indignation caused by the Johnson decision and the fisticuffs which have broken out in flag burning attempts show that flag burning should not be protected by the first amendment. What if the flag burning had occurred in wartime? Certainly, a clear and present danger would be present.

Justice Stevens wrote in *Los Angeles City Council* v. *Taxpayers for Vincent* 466 U.S. 789 (1984) that:

> The first amendment does not guarantee the right to imply every conceivable method of communication at all times and in all places.

Arguments have been made that limitations on the freedom of expression refer only to bodily harm, however, the Supreme Court has recognized the need for individuals to protect their honor, integrity, and reputation when injured by libel or slander. See: *New York Times* v. *Sullivan*, 376 U.S. 254 (1964) (providing standards regarding the libel of public figures); *Time* v. *Hill*, 385 U.S. 374 (1967) (providing standards regarding libel of private individuals).

These holdings protect an individual's honor from defamation. I see no reason why the honor of our flag should not be protected.

Arguments have also been made that limitations on free speech involve only civil suits. However, the Court has continually upheld criminal statutes involving obscene language and pornography. There is: *New York* v. *Ferber*, 458 U.S. 747 (1982) (upholding a New York statute regarding child pornography); *Miller* v. *California*, 413 U.S. 15 (1973) (this case provides much of the current legal framework for the regulation of obscenity).

The U.S. Supreme Court has even upheld criminal statutes involving draft card burning. In *United States* v. *O'Brian*, 391 U.S. 367 (1968), the Court upheld the Federal statute which prohibited the destruction or mutilation of a draft card. In reaching this decision the Court expressly stated:

> [W]e cannot accept the view that an apparently limitless variety of conduct can be labeled ''speech'' whenever the person engaging in the conduct intends thereby to express an idea.

Certainly the people of America have a right to expect that the honor, integrity, and reputation of this Nation's flag should be protected. If draft card burning can be prohibited, surely burning the American flag can also be prohibited. Does a draft card have more honor than the American flag? Certainly not.

In an earlier decision involving the desecration of the flag, Chief Justice Earl Warren wrote in dissent in *Street* v. *New York*, 394 U.S. 577 (1969):

> I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace * * * however, it is difficult for me to imagine that, had the Court faced this issue, it would have concluded otherwise.

In this same case, Justice Hugo Black dissented stating:

> It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense.

I do not think that anyone can question that Hugo Black and Earl Warren were champions of the first amendment, but they recognized that the flag was something different, something special. The Supreme Court substantiated this view in *Smith* v. *Coguen*, 415 U.S. 566 (1974), when the majority of the Court noted that:

> [C]ertainly nothing prevents a legislature from defining the substantial specificity what constitutes forbidden treatment of the United States flags.

Finally I would like to quote from Justice Stevens in *Texas* v. *Johnson*, when he says about the flag:

> It is a symbol of freedom, of equal opportunity, of religious tolerance, and of good will for other people who share our aspirations. The symbol carries its message to dissidents both home and abroad who may have no interest at all in our national unity and survival.

I am a strong believer that the rights under the first amendment should be fully protected and do not feel that an amendment changing these rights should be adopted except in very rare instances. The Founding Fathers, in drafting article V of the Constitution, intended that if it would be extremely difficult to amend the Constitution, requiring a two-thirds vote of both Houses of Congress and a difficult ratification process requiring the vote of three-fourths of the States. The history of this country shows that only 27 amendments to the Constitution have been adopted and only 17 after the Bill of Rights—containing the first 10 amendments—were ratified.

Some may ask why have a constitutional amendment; why not try legislation? To those I would say the Senate has passed statutes concerning flag desecration. As a body we have tried to oppose the protection of flag desecration, but statutory law has not worked. We have a number of groups that have joined together to form the Citizen's Flag Alliance. There are about 90 organizations in this wide-ranging coalition. In addition, 46 States' legislatures have passed memorializing resolutions calling for the flag to be protected by the Congress.

In my judgment, we should heed this call and act decisively to ensure that the American flag remains protected and continues to hold the high place we have afforded it in both our hearts and history. The flag is indeed an important national asset which we must always support as we would support the country herself. In closing, I want to share with you the eloquent words of Henry Ward Beecher's work, ''The American Flag,'' which expresses this sentiment:

> A thoughtful mind, when it sees a national's flag, sees not the flag only, but the Nation itself; and whatever may be its symbols, its insignia, he reads chiefly in the flag the government, the principles, the truths, the history which belongs to the Nation that sets it forth.

Mrs. FEINSTEIN. Mr. President, I compliment my colleague on the Judiciary Committee and the Senator from Alabama for his very thoughtful statement and constitutional amendment. I would very much appreciate being listed as a cosponsor of that amendment.

I thank the Senator for his words because I think they were cogent. I also believe they reflect the views of the American people.

Mr. HEFLIN. I thank the Senator.

Mr. MACK. Mr. President, this past election demonstrated the desire of American citizens everywhere for change. People are frustrated with the direction in which this country has been heading and the skewing of priorities and values. One example of how standards and basic values are slipping was the 1989 Supreme Court ruling which permitted the desecration of our Nation's flag.

The American flag has always been a symbol of freedom and democracy throughout the world. It has guided thousands upon thousands of American service men and women as they have fought and died in defense of our basic freedoms.

The Court's decision struck at the heart of everything we hold dear in America. The flag is our most cherished symbol of liberty and is recognized throughout the world as an emblem of hope for those struggling for freedom. We should not condone its willful destruction.

Mr. President, I support the proposal for a constitutional amendment to protect the sanctity of the American flag. With this amendment, the first amendment can be upheld while we clearly declare our reverence for and dedication to our most cherished symbol of freedom—the American flag.

Mr. CRAIG. Mr. President, I am pleased to join my distinguished colleagues in proposing a constitutional amendment to protect the flag of the United States.

We Americans are not one race, nor are we one creed. We are an amalgam of the world's people come together to form a nation. And to symbolize that union, we have chosen a fabric that weaves together our many races, customs, and beliefs: the American flag.

No other emblem, token, or artifact of our Nation has been defended to the death by legions of patriots. No other has drawn multitudes from abroad with the promise of freedom. No other has inspired generations with the belief that life, liberty, and the pursuit of happiness are the birthright of every human being.

Old Glory holds a unique place in the hearts of Americans, and that is why they have requested—indeed, demanded—unique protection for it.

Several years ago, Congress attempted to fashion legislation for this purpose, but it just did not work.

Some people probably thought that was the end of the story. They were

wrong. The American people did not give up; they continued to debate and discuss this matter. And they succeeded in passing memorials in 43 States urging Congress to take action to protect the flag from physical desecration. Some of my colleagues may recall last year, on Flag Day, I placed those memorials in the CONGRESSIONAL RECORD for all to see.

Mr. President, the legislatures submitting those memorials represent nearly 229 million people—more than 90 percent of our country's population. They did not pass these memorials easily or swiftly. In legislature after legislature, the record shows these memorials were given serious and thorough consideration.

Now it is time for the U.S. Congress to match that resolve. Today, in response to the demand of the American people, we are offering this amendment. Mr. President, I urge all my colleagues to join us in supporting this necessary and appropriate measure to safeguard the flag of our Nation.

Mr. KEMPTHORNE. Mr. President, I rise today in strong support of efforts to protect the flag of the United States. I am pleased to join my colleagues in introducing a resolution proposing a constitutional amendment to prohibit the desecration of the flag.

Mr. President, the support for this amendment is, quite simply, overwhelming; 46 State legislatures have already passed memorializing resolutions requesting the Congress to pass an amendment to protect the flag. I am pleased to note my home State, Idaho, passed just such a resolution 2 years ago. In asking the Congress to present an antiflag desecration amendment to the States for ratification, the Idaho Legislature stated,

> . . . the American Flag to this day is a most honorable and worthy banner of a nation which is thankful for its strengths and committed to curing its faults, and a nation which remains the destination of millions of immigrants attracted by the universal power of the American ideal . . . .

Should not the symbol of this ideal be protected? Since 1777, when the Second Continental Congress passed a resolution describing what the flag of the fledgling Nation should be, the Stars and Stripes has stood for all that we hold dear. While great leaders of this Nation have come and gone, the flag has been an American constant. Through the Civil War, two World Wars, the Depression, and times of domestic crisis, Old Glory has flown proudly, serving as a symbol to all the world that freedom, justice, and liberty remain alive in the United States.

As a member of the Senate Armed Services Committee, I have had the opportunity to meet the men and women of our Armed Forces around the world. These individuals put their lives on the line regularly, so that we may live in peace and safety. And while they are serving us, the American public, they do so under the Stars and Stripes. For those who are stationed overseas, the flag represents the rights and freedoms which they stand prepared to defend, even while on foreign ground. It also stands for their home, the Nation which proudly awaits their return when their duties are done. For those who have finished their service to their country, the flag is a constant reminder that the ideals for which they fought still live, and that their sacrifices were not in vain.

In 1867, Senator Charles Sumner expressed his sentiments about the flag. His words, I think, are most appropriate to be repeated at this time. He said:

> There is the national flag. He must be cold, indeed, who can look upon its folds rippling in the breeze without pride of country. If in a foreign land, the flag is companionship, and country itself with all its endearments . . . White is for purity; red for valor; blue, for justice. And altogether, bunting, stripes, stars, and colors, blazing in the sky, make the flag of our country, to be cherished by all our hearts, to be upheld by all our hands.

Mr. President, how can we continue to uphold the flag to the honor it deserves if we allow it, the symbol for all for which this Nation stands, to be willfully desecrated and defiled? The courts have said we can not protect the flag by statute; our only remedy is to amend the Constitution. So, I stand here today to express my wholehearted support for the resolution which will be introduced today to propose just such an amendment. I hope my colleagues will join me in acting to protect our flag and all that it represents of our past, our present, and our future.

Mr. PRESSLER. Mr. President, I rise to announce my cosponsorship of a joint resolution to amend the U.S. Constitution to allow Congress and the States to prohibit the desecration of the American flag.

Having served two tours in the Vietnam war as a second lieutenant in the Army, our flag has a deep personal meaning for me. I experience a feeling of pride when I see the Stars and Stripes flying in front of a military base, on top of the U.S. Capitol Building here in Washington, or in a small town parade in South Dakota. I feel sick to my stomach when I think of its desecration by my fellow Americans.

The American flag is a dramatic living symbol of the principles for which this great country stands—liberty, due process, justice for all. Our flag is an emblem of the ideals which set our Nation apart from all others.

When someone willfully desecrates the flag, he or she is committing a malicious act of violence that incites those Americans who have dedicated their lives to uphold the values we cherish. It tramples the honor of millions of soldiers—men and women—who served, fought, and died to preserve the values which the flag represents. It strikes at the honor of the untold number of civilians who have worked in industries behind the lines to support our military forces.

Mr. President, in Johnson versus Texas (1989), the Supreme Court ruled that desecrating the flag is free speech protected by the first amendment. In response, Congress overwhelmingly passed the Flag Protection Act of 1989. However, the following year, in United States versus Eichmann (1990), the Court struck down this statute as an impermissible infringement on the first amendment.

I disagree with the Supreme Court's rulings. I believe it is entirely appropriate for Congress to enact legislation to protect from desecration the primary symbol of our great Nation. However, unless the Johnson and Eichmann decisions are overturned by a subsequent Court, it is clear that only a constitutional amendment will ensure the validity of any State or Federal statute banning flag desecration.

Opponents of our effort to protect the flag argue that free speech is among the most sacred rights enjoyed by Americans. They believe that this amendment limits their right to freedom of speech. I certainly agree with the need to vigilantly guard the first amendment. No other society on this planet is more tolerant of different viewpoints and opinions than America. But flag desecration is more than just speech. It is among those acts of public behavior so offensive and harmful that they fall outside of the protections of the first amendment.

For example, one of the famous limits of free speech is that one cannot shout ''fire!'' in a crowded move theater. Malicious and defamatory speech, such as slander and libel, also are not protected by the first amendment. Obscenity does not enjoy the protection of the first amendment. We do not permit people to freely deface a synagogue or church buildings in the name of free speech. Likewise, physical desecration of the flag through burning, trampling, or any other method is not free speech protected by our Constitution. It is offensive conduct that does not deserve protection by the first amendment.

I am therefore proud to join with my colleagues in supporting a constitutional amendment to protect the American flag. Since the Johnson ruling, 43 States have passed resolutions calling on Congress to pass a flag desecration amendment for consideration by the States. Mr. President, I urge my colleagues to carry out the clear will of the American people by supporting this resolution.

Mr. D'AMATO. Mr. President, generations of immigrants have surmounted incredible obstacles to reach our shores and experience true American freedom. Our Nation's flag has welcomed these weary travelers for hundreds of years. For these people, the U.S. flag is more than just a simple patchwork of cloth, it is the patchwork of our values, our beliefs, and our freedoms. It is our history.

During this history, many brave Americans sacrificed their lives for the flag. At Malmedy, Khe Sanh, Inchon, Iwo Jima, Kuwait City, and in numerous other places, Americans fought and

died for democracy, freedom, and justice. Indeed, our flag represents these virtues. It would be an insult to their memory if we allowed the continued desecretion of our flag. This practice must end, and end now.

Ms. SNOWE. Mr. President, I am proud to join Senators HATCH, HEFLIN, and others in cosponsoring the proposed constitutional amendment to grant to States and Congress the power to prohibit the physical desecration of the flag of the United States. Our flag occupies a truly unique place in the hearts of millions of citizens as a cherished symbol of freedom and democracy. As a national emblem of the world's greatest democracy, the American flag should be treated with respect and care. Our free speech rights do not entitle us to simply consider the flag as personal property, which can be treated any way we see fit including physically desecrating it as a legitimate form of political protest.

The flag is not just simply a visual symbol to us—it is a symbol whose pattern and colors tell a story that rings true for each and every American. The 50 stars and 13 stripes on the flag are a reminder that our Nation is built on the unity and harmony of 50 States. And the colors of our flag were not chosen randomly: red was selected because it represents courage, bravery, and the willingness of the American people to give their life for their country and its principles of freedom and democracy; white was selected because it represents integrity and purity; and blue because it represents vigilance, perseverance, and justice. Thus, this flag has become a source of inspiration to every American wherever it is displayed.

For these reasons and many others, a great majority of Americans believe—as I strongly do—that the American flag should be treated with dignity, respect, and care—and nothing less.

Unfortunately, not everyone shares this view. In June 1990, the Supreme Court ruled that the Flag Protection Act of 1989, legislation adopted by the Congress in 1989 generally prohibiting physical defilement or desecration of the flag, was unconstitutional. This decision, a 5-to-4 ruling in U.S. versus Eichman, held that burning the flag as a political protest was constitutionally protected free speech. The Flag Protection Act had originally been adopted by the 101st Congress after the Supreme Court ruled in its Texas versus Johnson case that existing Federal and State laws prohibiting flag burning were unconstitutional because they violated the first amendment's provisions regarding free speech.

I profoundly disagreed with both rulings the Supreme Court made on this issue. In our modern society, there are still many different forums in our mass media, television, newspapers and radio and the like, through which citizens can freely and fully exercise their legitimate, constitutional right to free speech, even if what they have to say is overwhelmingly unpopular with a majority of American citizens.

The constitutional amendment being introduced today has been carefully drafted to simply allow the Congress and individual State legislatures to enact laws prohibiting the physical desecration of the flag, if they so choose. It certainly does not stipulate or require that such laws be enacted. When considering the issue, it is helpful to remember that prior to the Supreme Court's 1989 Texas versus Johnson ruling, 48 States, including my own State of Maine, and the Federal Government had anti-flag-burning laws on their books for years.

Whether our flag is flying over a ball park, a military base, a school, or on a flag pole on Main Street, our national standard has always represented the ideals and values that are the foundation this great nation was built on. And our flag has come not only to represent the glories of our Nation's past, but it has also come to stand as a symbol for hope for our Nation's future. Mr. President, I urge my colleagues to support this important amendment.

Mr. FORD. Mr. President, there are many reasons for protecting the unique symbol of the American flag, from the basic liberties it represents to the promise of a better future. But some of the greatest reasons for protecting the flag occurred thousands of miles away from our own shores.

For example, 50 years ago, just days after American troops had claimed victory at Iwo Jima, six soldiers helped raise the American flag on the highest point of the island. You can see a soldier on the far left with both arms reaching skyward. It's unclear whether he's just released the flag pole, or if he's trying to touch the flag he fought so hard for, one last time.

And perhaps it was the last time he touched the American flag, for 26 days later, he died on the island he had helped claim.

The soldier was Pvt. Franklin Sousley of Kentucky, and his image in this famous photograph not only has frozen in time his historic efforts, but tied them inextricably to the symbolism of the American flag.

The flag that flew at Iwo Jima serves as a reminder of how war changes the course of a life, of a nation, of a world, so that even individuals who were never there, recognize that those hours of destruction and suffering have altered the future irrevocably.

But Private Sousley's outstretched arms also mirror the actions of the millions who've reached out for all that our flag symbolizes, from the basic liberties written into our Constitution to the dreams of a better future for their families.

That is why I believe so strongly that the physical integrity of the American flag must be protected. Back in 1989, the U.S. Supreme Court declared unconstitutional a Texas flag desecration statute, ruling that flag desecration was free speech protected under the first amendment.

In response to that decision, the Senate overwhelmingly passed the Flag Protection Act, which was also declared unconstitutional. The Supreme Court's action made it clear that a constitutional amendment is necessary for enactment of any binding protection of the flag.

Up to this point, neither House of Congress has been able to garner the two-thirds supermajority necessary for passage of a constitutional amendment. But because grassroots support for this amendment continues to grow, I have joined with Members on both sides of the aisle to again try passing this amendment. I am hopeful that this time we'll get the necessary votes.

Clearly no legitimate act of political protest should be suppressed. Nor should we ever discourage debate and discussion about the Federal Government. The narrowly written amendment gives Congress and the States the ''power to prohibit the physical desecration of the flag of the United States,'' without jeopardizing those rights of free speech.

Fifty years ago, the American flag flying over Iwo Jima literally meant life for the flyers of crippled B–29's who would have died at sea if they had not had the island to land on.

Today, the flag that hangs in schoolrooms, over courthouses, in sports stadiums, and off front porches all across America, has a bit of the battle of Iwo Jima woven into its fabric.

Mr. President, I would say that's something worth protecting.

Mr. THURMOND. Mr. President, I rise today as an original cosponsor of a proposed constitutional amendment authorizing the Congress and the States to prohibit the physical desecration of the American flag.

In June of 1989, the Supreme Court issued a ruling in Texas versus Johnson which allows the contemptuous burning of the American flag. Immediately after that ruling, I drafted and introduced a proposed constitutional amendment to overturn that unfortunate decision.

After bipartisan discussions with Members of the Senate and President Bush, the Senate voted on a similar proposal which I cosponsored. During this time, the Supreme Court ruled in U.S. versus Eichman that a Federal statute designed to protect the flag from physical desecration was unconstitutional. The Texas decision had involved a State statute designed to protect the flag.

On June 26, 1990, the Senate voted 58–42 for the proposed constitutional amendment, 9 votes short of the two-thirds needed for congressional approval.

Opponents of this proposed amendment claimed it was an infringement on the free speech clause of the first amendment. However, the first amendment has never been construed as protecting any and all means of expressive

conduct. Just as we are not allowed to falsely shout ''fire'' in a crowded theater or obscenities on a street corner as a means of expression, I firmly believe that physically desecrating the American flag is highly offensive conduct and should not be allowed.

The opponents of our proposal to protect the American flag have misinterpreted its application to the right of free speech. Former Chief Justice Warren, Justices Black and Fortas are known for their tenacious defense of first amendment principles. Yet, they all unequivocally stated that the first amendment did not protect the physical desecration of the American flag. In Street versus New York, Chief Justice Warren stated, ''I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace.''

In this same case, Justice Black, who described himself as a first amendment ''absolutist'' stated, ''It passes my belief that anything in the Constitution bars a State from making the deliberate burning of the American flag an offense.''

Mr. President, the American people treasure the free speech protections afforded under the first amendment and are very tolerant of differing opinions and expressions. Yet, there are certain acts of public behavior which are so offensive that they fall outside the protection of the first amendment. I firmly believe that flag burning falls in this category and should not be protected as a form of speech. The American people should be allowed to prohibit this objectionable and offensive conduct.

It is our intention with this proposed constitutional amendment to establish a national policy to protect the American flag from contemptuous desecration. The American people look upon the flag as our most recognizable and revered symbol of democracy which has endured throughout our history.

Mr. President, I urge my colleagues to join the sponsors and cosponsors of this proposed constitutional amendment to protect our most cherished symbol of democracy.

Mr. GRASSLEY. Mr. President, I am pleased to join the chairman of the Senate Judiciary Committee, Senator HATCH, and my other distinguished colleagues in cosponsoring this resolution to amend the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

Let me state from the outset, as I have stated before, this amendment will merely restore the power to Congress and the States to prohibit flag desecration—a power that we believe they have always had.

Unfortunately, the Supreme Court incorrectly interpreted the Constitution's first amendment. The Court failed to discern the difference between protected speech, and an act—a type of hate crime of physical desecration of the flag.

Therefore, our amendment does not tamper or tinker with the Constitution's Bill of Rights that protects speech.

But, Mr. President, for argument's sake, assume this amendment does tamper with the speech clause.

Let us ask ourselves a question. If we had to choose, should we amend the speech clause to: protect the American flag from acts of desecration; or protect our reelection to office by restricting the right of voters to hear words of opposition and opponents to speak against us—the incumbents?

I regret, Mr. President, that too many Senators have sided with incumbent protection instead of flag protection.

Remember, the Senate in 1990 fell 9 votes short of the 67 needed to pass a flag protection amendment to the Constitution because, by and large, it was argued that there is something very special, and untouchable about the speech clause.

Mr. President, you may be astonished to learn that 28 of the 42 Senators who voted against amending the speech clause to protect the American flag, had either sponsored, cosponsored, or voted to facilitate the passage of a constitutional amendment pegged the ''incumbent protection bill.''

This speech clause amendment was aimed at overturning the Supreme Court's Buckley versus Valeo decision. The Court said the first amendment speech clause is violated by restrictions on money used on political communication during campaigns.

So while these Senators supported incumbent protection, they strongly opposed flag protection.

Had only 9 of these 28 Senators had their priorities straight, the Senate would have passed the flag protection amendment 5 years ago.

And let us keep in mind, during the 200 years following 1789, over 10,000 constitutional amendments were introduced to the various Congresses.

In fact, in 1990, 525 out of 535 U.S. Representatives and Senators had sponsored or cosponsored amendments to the Constitution for everything under the Sun—from ERA to D.C. statehood.

So, the fact is, a vast majority of Congressmen and Senators do support amending the Constitution.

And more to the point at hand, many of those 28 Senators—who were happy to amend the speech clause to protect their incumbency, but joined in killing an amendment to protect the American flag—are still serving in the 104th Congress.

Mr. President, in fact, enough are still serving, that if they would change their priorities and their votes, this time our efforts to pass an amendment to protect the American flag will succeed.

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. STEVENS, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 39, a bill to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

S. 125

At the request of Mr. MOYNIHAN, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 125, a bill to authorize the minting of coins to commemorate the 50th anniversary of the founding of the United Nations in New York City, New York.

S. 216

At the request of Mr. HATCH, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 216, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 243

At the request of Mr. ROTH, his name was added as a cosponsor of S. 243, a bill to provide greater access to civil justice by reducing costs and delay, and for other purposes.

S. 262

At the request of Mr. GRASSLEY, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 332

At the request of Mr. CONRAD, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 332, a bill to provide means of limiting the exposure of children to violent programming on television, and for other purposes.

S. 351

At the request of Mr. HATCH, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 397

At the request of Mr. MCCAIN, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Colorado [Mr. CAMPBELL], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 397, a bill to benefit crime victims by improving enforcement of sentences imposing fines and special assessments, and for other purposes.

S. 412

At the request of Ms. SNOWE, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 412, a bill to amend the Federal Food, Drug, and Cosmetic Act to modify the bottled drinking water standards provisions, and for other purposes.

S. 434

At the request of Mr. KOHL, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 434, a bill to amend the Internal Revenue Code of 1986 to increase the deductibility of business meal expenses for individuals who are subject to Federal limitations on hours of service.

S. 440

At the request of Mr. WARNER, the names of the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of S. 440, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 448

At the request of Mr. GRASSLEY, the names of the Senator from New York [Mr. D'AMATO] and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of S. 448, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes.

S. 495

At the request of Mrs. KASSEBAUM, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 495, a bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes.

S. 508

At the request of Mr. MURKOWSKI, the name of the Senator from Maine [Ms. SNOWE] was added as a cosponsor of S. 508, a bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

S. 511

At the request of Mr. DOMENICI, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Oklahoma [Mr. INHOFE] were added as cosponsors of S. 511, a bill to require the periodic review and automatic termination of Federal regulations.

S. 530

At the request of Mr. GREGG, the names of the Senator from New Hampshire [Mr. SMITH] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

S. 571

At the request of Mrs. BOXER, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 571, a bill to amend title 10, United States Code, to terminate entitlement of pay and allowances for members of the Armed Forces who are sentenced to confinement and a punitive discharge or dismissal, and for other purposes.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the names of the Senator from Nevada [Mr. REID], the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

AMENDMENTS SUBMITTED

THE LEGISLATIVE LINE ITEM VETO ACT

DASCHLE (AND OTHERS) AMENDMENT NO. 348

(Ordered to lie on the table.)

Mr. DASCHLE (for himself, Mr. EXON, and Mr. GLENN) submitted an amendment intended to be proposed by them to amendment No. 347 proposed by Mr. DOLE the bill (S. 4) to grant the power to the President to reduce budget authority; as follows:

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Legislative Line Item Veto Act''.

SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED CANCELLATIONS OF BUDGET ITEMS.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding after section 1012 the following new section:

''EXPEDITED CONSIDERATION OF CERTAIN PROPOSED CANCELLATIONS OF BUDGET ITEMS

''SEC. 1012A. (a) PROPOSED CANCELLATION OF BUDGET ITEM.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act. An item proposed for cancellation under this section may not be proposed for cancellation again under this title.

''(b) TRANSMITTAL OF SPECIAL MESSAGE.—

''(1) SPECIAL MESSAGE.—

''(A) IN GENERAL.—Subject to the time limitations provided in subparagraph (B), the President may transmit to Congress a special message proposing to cancel budget items contained in an Act. A separate special message shall be transmitted for each Act that contains budget items the President proposes to cancel.

''(B) TIME LIMITATIONS.—A special message may be transmitted under this section—

''(i) during the 20-calendar-day period (excluding Saturdays, Sundays, and legal holidays) commencing on the day after the date of enactment of the provision proposed to be rescinded or repealed; or

''(ii) at the same time as the President's budget for any provision enacted after the date the President submitted the preceding budget.

''(2) DRAFT BILL.—The President shall include in each special message transmitted under paragraph (1) a draft bill that, if enacted, would cancel those budget items as provided in this section. The draft bill shall clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates.

''(3) CONTENTS OF SPECIAL MESSAGE.—Each special message shall specify, with respect to the budget item proposed to be canceled—

''(A) the amount that the President proposes be canceled;

''(B) any account, department, or establishment of the Government to which such budget item is available for obligation, and the specific project or governmental functions involved;

''(C) the reasons why the budget item should be canceled;

''(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect (including the effect on outlays and receipts in each fiscal year) of the proposed cancellation; and

''(E) all facts, circumstances, and considerations relating to or bearing upon the proposed cancellation and the decision to effect the proposed cancellation, and to the maximum extent practicable, the estimated effect of the proposed cancellation upon the objects, purposes, and programs for which the budget item is provided.

''(4) DEFICIT REDUCTION.—

''(A) DISCRETIONARY SPENDING LIMITS AND ADJUSTMENT OF COMMITTEE ALLOCATIONS.—Not later than 5 days after the date of enactment of a bill containing the cancellation of budget items as provided under this section, the President shall—

''(i) with respect to a rescission of budget authority provided in an appropriations Act, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and any outyear affected by the rescission, to reflect such amount; and

''(ii) with respect to a repeal of a targeted tax benefit, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect such amount.

''(B) ADJUSTMENT OF COMMITTEE ALLOCATIONS.—Not later than 5 days after the date of enactment of a bill containing the cancellation of budget items as provided under this section, the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

''(c) PROCEDURES FOR EXPEDITED CONSIDERATION.—

''(1) IN GENERAL.—

''(A) INTRODUCTION.—Before the close of the second day of session of the Senate and the House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under subsection (b), the majority leader or minority leader of

each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

''(B) REFERRAL AND REPORTING.—The bill shall be referred to the appropriate committee or (in the House of Representatives) committees. The committee shall report the bill without substantive revision and with or without recommendation. The committee shall report the bill not later than the seventh day of session of that House after the date of receipt of that special message. If the committee fails to report the bill within that period, the committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

''(C) FINAL PASSAGE.—A vote on final passage of the bill shall be taken in the Senate and the House of Representatives on or before the close of the 10th day of session of that House after the date of the introduction of the bill in that House. If the bill is passed, the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, shall cause the bill to be engrossed, certified, and transmitted to the other House within one calendar day of the day on which the bill is passed.

''(2) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

''(A) MOTION TO PROCEED TO CONSIDERATION.—A motion in the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(B) MOTION TO STRIKE.—During consideration under this subsection in the House of Representatives, any Member of the House of Representatives may move to strike any proposed cancellation of a budget item if supported by 49 other Members.

''(C) LIMITS ON DEBATE.—Debate in the House of Representatives on a bill under this subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill under this subsection or to move to reconsider the vote by which the bill is agreed to or disagreed to.

''(D) APPEALS.—Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

''(E) APPLICATION OF HOUSE RULES.—Except to the extent specifically provided in this section, consideration of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

''(3) CONSIDERATION IN THE SENATE.—

''(A) MOTION TO PROCEED TO CONSIDERATION.—A motion to proceed to the consideration of a bill under this subsection in the Senate shall be nondebatable. It shall not be in order to move to reconsider the vote by which the motion to proceed is agreed to or disagreed to.

''(B) MOTION TO STRIKE.—During consideration of a bill under this subsection in the Senate, any Member of the Senate may move to strike any proposed cancellation of a budget item if supported by 11 other Members.

''(C) LIMITS ON DEBATE.—Debate in the Senate on a bill under this subsection, amendments thereto, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

''(D) APPEALS.—Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

''(E) MOTION TO LIMIT DEBATE.—A motion in the Senate to further limit debate on a bill under this subsection is not debatable.

''(F) MOTION TO RECOMMIT.—A motion to recommit a bill under this subsection is not in order.

''(G) PLACED ON CALENDAR.—Upon receipt in the Senate of the companion bill for a bill that has been introduced in the Senate, that companion bill shall be placed on the calendar.

''(H) CONSIDERATION OF HOUSE COMPANION BILL.—

''(i) IN GENERAL.—Following the vote on the Senate bill required under paragraph (1)(C), when the Senate proceeds to consider the companion bill received from the House of Representatives, the Senate shall—

''(I) if the language of the companion bill is identical to the Senate bill, as passed, proceed to the immediate consideration of the companion bill and, without intervening action, vote on the companion bill; or

''(II) if the language of the companion bill is not identical to the Senate bill, as passed, proceed to the immediate consideration of the companion bill.

''(ii) AMENDMENTS.—During consideration of the companion bill under clause (i)(II), any Senator may move to strike all after the enacting clause and insert in lieu thereof the text of the Senate bill, as passed. Debate in the Senate on such companion bill, any amendment proposed under this subparagraph, and all debatable motions and appeals in connection therewith, shall not exceed 10 hours less such time as the Senate consumed or yielded back during consideration of the Senate bill.

''(4) CONFERENCE.—

''(A) CONSIDERATION OF CONFERENCE REPORTS.—Debate in the House of Representatives or the Senate on the conference report and any amendments in disagreement on any bill considered under this section shall be limited to not more than 2 hours, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

''(B) FAILURE OF CONFERENCE TO ACT.—If the committee on conference on a bill considered under this section fails to submit a conference report within 10 calendar days after the conferees have been appointed by each House, any Member of either House may introduce a bill containing only the text of the draft bill of the President on the next day of session thereafter and the bill shall be considered as provided in this section except that the bill shall not be subject to any amendment.

''(d) AMENDMENTS AND DIVISIONS PROHIBITED.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the question in the House of Representatives (or in a Committee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

''(e) TEMPORARY PRESIDENTIAL AUTHORITY TO CANCEL.—At the same time as the President transmits to Congress a special message under subsection (b)(1)(B)(i) proposing to cancel budget items, the President may direct that any budget item or items proposed to be canceled in that special message shall not be made available for obligation or take effect for a period not to exceed 45 calendar days from the date the President transmits the special message to Congress. The President may make any budget item or items canceled pursuant to the preceding sentence available at a time earlier than the time specified by the President if the President determines that continuation of the cancellation would not further the purposes of this Act.

''(f) DEFINITIONS.—For purposes of this section—

''(1) The term 'appropriation Act' means any general or special appropriation Act, and any Act or joint resolution making supplemental, deficiency, or continuing appropriations.

''(2) The term 'budget item' means—

''(A) an amount, in whole or in part, of budget authority provided in an appropriation Act except to fund direct spending programs and the administrative expenses social security; or

''(B) a targeted tax benefit.

''(3) The term 'cancellation of a budget item' means—

''(A) the rescission of any budget authority provided in an appropriation Act; or

''(B) the repeal of any targeted tax benefit.

''(4) The term 'companion bill' means, for any bill introduced in either House pursuant to subsection (c)(1)(A), the bill introduced in the other House as a result of the same special message.

''(5) The term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers. Such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.''.

(b) EXERCISE OF RULEMAKING POWERS.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (a), by striking ''and 1017'' and inserting ''1012A, and 1017''; and

(2) in subsection (d), by striking ''section 1017'' and inserting ''sections 1012A and 1017''.

(c) CLERICAL AMENDMENTS.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 1012 the following:

''Sec. 1012A. Expedited consideration of certain proposed cancellations of budget items.''.

(d) EFFECTIVE PERIOD.—The amendments made by this Act shall—

(1) take effect on the date of enactment of this Act;

(2) apply only to budget items provided in Acts enacted on or after the date of enactment of this Act; and

(3) cease to be effective on September 30, 1998.

DASCHLE (AND OTHERS) AMENDMENT NO. 349

(Ordered to lie on the table.)

Mr. DASCHLE (for himself, Mr. EXON, Mr. FORD, Mr. CONRAD, Mr. DORGAN, Mr. KOHL, Mrs. FEINSTEIN, Mr. BUMPERS, Mr. ROBB, Mr. KERRY, Mr. FEINGOLD, Mr. HARKIN, Mr. REID, Mr. HOLLINGS, Mrs. BOXER, and Mr. LEVIN) submitted an amendment intended to be proposed by them to amendment No. 347 proposed by Mr. DOLE to the bill S. 4, supra; as follows:

At the appropriate place, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Balanced Budget Act of 1995''.

SEC. 2. ENFORCEMENT OF A BALANCED BUDGET

(a) PURPOSE.—The Congress declares it essential that the Congress—

(1) require that the Government balance the Federal budget without counting the surpluses of the Social Security trust funds;

(2) set forth with specificity in the first session of the 104th Congress the policies that achieving such a balanced budget would require; and

(3) enforce through the congressional budget process the requirement to achieve a balanced Federal budget.

(b) POINT OF ORDER AGAINST BUDGET RESOLUTIONS THAT FAIL TO SET FORTH A GLIDE PATH TO A BALANCED BUDGET.—Section 301 of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new subsection:

''(j) CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.—

''(1) POINT OR ORDER.—It shall not be in order to consider any concurrent resolution on the budget (or amendment, motion, or conference report thereon) unless that resolution—

''(A) sets forth a fiscal year (by 2002 or the earliest possible fiscal year) in which, for the budget as defined by section 13301 of the Budget Enforcement Act of 1990 (excluding the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund), the level of outlays for that fiscal year or any subsequent fiscal year does not exceed the level of revenues for that fiscal year;

''(B) sets forth appropriate levels for all items described in subsection (a)(1) through (7) for all fiscal years through and including the fiscal year described in paragraph (A);

''(C) includes specific reconciliation instructions under section 310 to carry out any assumption of either—

''(i) reductions in direct spending, or

''(ii) increases in revenues.

''(3) NO AMENDMENT WITHOUT THREE-FIFTHS VOTE IN THE SENATE.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, motion, or conference report that would amend or otherwise supersede this section.''.

(c) REQUIREMENT FOR 60 VOTERS TO WAIVE OR APPEAL IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by inserting ''301(j),'' after ''301(i),'' in both places that it appears.

(d) SUSPENSION IN THE EVENT OF WAR OR CONGRESSIONALLY-DECLARED LOW GROWTH.—Section 258(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting ''301(j),'' after ''sections''.

BYRD AMENDMENTS NOS. 350–354

(Ordered to lie on the table.)

Mr. BYRD submitted five amendments intended to be proposed by him to the bill, S.4, supra, as follows:

AMENDMENT NO. 350

At the appropriate place insert the following:

SEC. . USE OF THE REDUCTIONS IN DISCRETIONARY SPENDING CAPS.

(a) CONGRESSIONAL BUDGET ACT.—

(1) BUDGET RESOLUTIONS AND LEGISLATION.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—It shall not be in order in the Senate or House of Representatives to consider any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1974.''.

(2) SIXTY VOTE POINT OF ORDER.—Subsections (c) and (d) of section 904 of the Congressional Budget Act of 1974 are amended by inserting ''301(j),'' after ''301(i),''.

(b) GRAMM-RUDMAN.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''(f) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—A decrease in the discretionary spending limits may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under this section.''.

AMENDMENT NO. 351

At the appropriate place insert the following:

SEC. . USE OF THE REDUCTIONS IN DISCRETIONARY SPENDING CAPS.

(a) CONGRESSIONAL BUDGET ACT.—

(1) BUDGET RESOLUTIONS AND LEGISLATION.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—It shall not be in order in the Senate or House of Representatives to consider any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1974.''.

(2) SIXTY VOTE POINT OF ORDER.—Subsections (c) and (d) of section 904 of the Congressional Budget Act of 1974 are amended by inserting ''301(j),'' after ''301(i),''.

(b) GRAMM-RUDMAN.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end of the following:

''(f) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—A decrease in the discretionary spending limits may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under this section.''.

AMENDMENT NO. 352

At the appropriate place insert the following:

SEC. . USE OF THE REDUCTIONS IN DISCRETIONARY SPENDING CAPS.

(a) CONGRESSIONAL BUDGET ACT.—

(1) BUDGET RESOLUTIONS AND LEGISLATION.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—It shall not be in order in the Senate or House of Representatives to consider any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1974.''.

(2) SIXTY VOTE POINT OF ORDER.—Subsections (c) and (d) of section 904 of the Congressional Budget Act of 1974 are amended by inserting ''301(j),'' after ''301(i),''.

(b) GRAMM-RUDMAN.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''(f) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—A decrease in the discretionary spending limits may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under this section.''.

AMENDMENT NO. 353

At the appropriate place insert the following:

SEC. . USE OF THE REDUCTIONS IN DISCRETIONARY SPENDING CAPS.

(a) CONGRESSIONAL BUDGET ACT.—

(1) BUDGET RESOLUTIONS AND LEGISLATION.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—It shall not be in order in the Senate or House of Representatives to consider any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1974.''.

(2) SIXTY VOTE POINT OF ORDER.—Subsections (c) and (d) of section 904 of the Congressional Budget Act of 1974 are amended by inserting ''301(j),'' after ''301(i),''.

(b) GRAMM-RUDMAN.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''(f) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—A decrease in the discretionary spending limits may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under this section.''.

AMENDMENT NO. 354

At the appropriate place insert the following:

SEC. . USE OF THE REDUCTIONS IN DISCRETIONARY SPENDING CAPS.

(a) CONGRESSIONAL BUDGET ACT.—

(1) BUDGET RESOLUTIONS AND LEGISLATION.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—It shall not be in order in the Senate or House of Representatives to consider any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1974.''.

(2) SIXTY VOTE POINT OF ORDER.—Subsections (c) and (d) of section 904 of the Congressional Budget Act of 1974 are amended by inserting ''301(j),'' after ''301(i),''.

(b) GRAMM-RUDMAN.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''(f) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—A decrease in the discretionary spending limits may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under this section.''.

HATCH (AND OTHERS) AMENDMENT NO. 355

(Ordered to lie on the table.)

Mr. HATCH (for himself, Mr. ROTH, and Mr. HEFLIN) submitted an amendment to amendment No. 347 proposed by Mr. DOLE to the bill S. 4, supra; as follows:

On page 3, line 21, after ''separately'' insert '', except for items of appropriation provided for the judicial branch, which shall be enrolled together in a single measure. For purposes of this paragraph, the term 'items of appropriation provided for the judicial branch' means only those functions and expenditures that are currently included in the appropriations accounts of the judiciary, as those accounts are listed and described in the Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1995 (Public Law 104–317)''.

FEINGOLD AMENDMENT NO. 356

Mr. FEINGOLD proposed an amendment to amendment No. 347 proposed by Mr. DOLE to the bill S. 4, supra; as follows:

At the end of the pending amendment No. 347 add the following:

SEC. . TREATMENT OF EMERGENCY SPENDING.

(a) EMERGENCY APPROPRIATIONS.—Section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not adjust any discretionary spending limit under this clause for any statute that designates appropriations as emergency requirements if that statute contains an appropriation for any other matter, event, or occurrence, but that statute may contain rescissions of budget authority.''.

(b) EMERGENCY LEGISLATION.—Section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence; ''However, OMB shall not designate any such amounts of new budget authority, outlays or receipts as emergency requirements in the report required under subsection (d) if that statute contains any other provisions that are not so designated, but that statute may contain provisions that reduce direct spending.''.

(c) NEW POINT OF ORDER.—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

''POINT OF ORDER REGARDING EMERGENCIES

''SEC. 408. It shall not be in order in the House of Representatives or the Senate to consider any bill or joint resolution, or amendment thereto or conference report thereon, containing an emergency designation for purposes of section 251(b)(2)(D) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 if it also provides an appropriation or direct spending for any other item or contains any other matter, but that bill or joint resolution, amendment, or conference report may contain rescissions of budget authority or reductions of direct spending, or that amendment may reduce amounts for that emergency.''.

(d) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 407 the following new item:

''Sec. 408. Point of order regarding emergencies.''.

BUMPERS AMENDMENT NO. 357

(Ordered to lie on the table.)

Mr. BUMPERS submitted an amendment intended to be proposed by him to the bill S. 4, supra; as follows:

At the appropriate place insert the following:

The Senate finds that, according to the Congressional Budget Office, the federal budget deficit will be $177 billion for fiscal year 1995;

That estimates from both the Congressional Budget Office and the Office of Management and Budget indicate that, without substantial reductions in federal spending and/or increases in federal revenues; annual federal budget deficits will remain at unacceptable levels;

That the congressional budget process, as embodied by legislation and Senate rules, requires that legislation which would reduce federal revenues be offset by legislation that either reduces mandatory spending or increases an alternative source of federal revenue by an equivalent amount;

That certain members of both political parties have proposed amending the congressional budget process to permit reductions in the discretionary spending caps contained in the annual budget resolutions to offset reduced revenue resulting from tax cuts;

That changing the congressional budget process to permit discretionary spending cap cuts to be used as an offset for tax cuts could actually cause the federal budget deficit to rise;

That reductions in federal spending should be used to reduce the federal budget deficit.

Now, therefore, it is the sense of the Senate that: the congressional budget process should not be amended to permit the use of ''savings'' associated with reductions in discretionary spending to offset lost revenues resulting from tax cuts.

HOLLINGS AMENDMENT NO. 358

(Ordered to lie on the table.)

Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 4, supra; as follows:

At the appropriate place insert the following:

SEC. .—CONGRESS SHALL NOT LEGISLATE AD HOC CHANGES IN ECONOMIC INDICATORS.

(a) PURPOSE.—The Congress declares it essential that the Congress shall not arbitrarily change economic indicators. Therefore:

(1) Economic indicators shall be devised by statistical agencies using the best scientific practice within the constraints of their budgets; and

(2) Congress shall not coerce Federal statistical agencies into making changes in economic indicators that are counter to the best scientific practice.

DASCHLE AMENDMENTS NOS. 359–360

(Ordered to lie on the table.)

Mr. DASCHLE submitted two amendments intended to be proposed by him to amendment No. 347. by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 359

On page 5 of the amendment strike all after 'taxpayers' on line 19 through 'taxpayers' on line 20.

AMENDMENT NO. 360

On page 5 of the amendment strike all after 'revenue' in line 14 through line 20 and insert the following: ''over the following 10 fiscal years.''.

BINGAMAN AMENDMENT NO. 361

(Ordered to lie on the table.)

Mr. BINGAMAN submitted an amendment intended to be proposed by him to amendment No. 347 proposed by Mr. DOLE to the bill S. 4, supra; as follows:

On page 5, between lines 3 and 4, add the following: ''any prohibition or restriction against expenditure, or''.

FEINGOLD AND OTHERS AMENDMENT NO. 362

Mr. FEINGOLD (for himself, Mr. SIMON, and Mr. EXON) proposed an amendment to amendment No. 347 proposed by Mr. DOLE to the bill S. 4, supra; as follows:

At the end of the pending amendment No. 347, add the following:

SEC. . SENSE OF THE SENATE REGARDING DEFICIT REDUCTION AND TAX CUTS.

The Senate finds that—

(1) the Federal budget according to the most recent estimates of the Congressional Budget Office continues to be in deficit in excess of $190 billion;

(2) continuing annual Federal budget deficits add to the Federal debt which soon is projected to exceed $5 trillion;

(3) continuing Federal budget deficits and growing Federal debt reduce savings and capital formation;

(4) continuing Federal budget deficits contribute to a higher level of interest rates than would otherwise occur, raising capital costs and curtailing total investment;

(5) continuing Federal budget deficits also contribute to significant trade deficits and dependence on foreign capital;

(6) the Federal debt that results from persistent Federal deficits transfers a potentially crushing burden to future generations, making their living standards lower than they otherwise would have been;

(7) efforts to reduce the Federal deficit should be among the highest economic priorities of the 104th Congress;

(8) enacting across-the-board or so-called middle class tax cut measures could impede efforts during the 104th Congress to significantly reduce the Federal deficit, and;

(9) it is the Sense of the Senate that reducing the Federal deficit should be one of the nation's highest priorities, that enacting an across-the-board or so-called middle class tax cut during the 104th Congress would hinder efforts to reduce the Federal deficit.

HOLLINGS AMENDMENT NO. 363

(Ordered to lie on the table.)

Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 4, supra; as follows:

At the appropriate place, insert the following:

"SEC. . PAY-AS-YOU-GO.

"At the end of title III of the Congressional Budget Act of 1974, insert the following new section:

"'ENFORCING PAY-AS-YOU-GO.

"'SEC. 314. (a) PURPOSE.—The Senate declares that it is essential to—

"'(1) ensure continued compliance with the deficit reduction embodied in the Omnibus Budget Reconciliation Act of 1993; and

"'(2) continue the pay-as-you-go enforcement system.

"'(b) POINT OF ORDER.—

"'(1) IN GENERAL.—It shall not be in order in the Senate to consider any direct-spending or receipts legislation (as defined in paragraph (3)) that would increase the deficit for any one of the three applicable time periods (as defined in paragraph (2)) as measured pursuant to paragraphs (4) and (5).

"'(2) APPLICABLE TIME PERIODS.—For purposes of this subsection, the term "applicable time period" means any one of the three following periods—

"'(A) the first fiscal year covered by the most recently adopted concurrent resolution on the budget;

"'(B) the period of the 5 fiscal years covered by the most recently adopted concurrent resolution on the budget; or

"'(C) the period of the 5 fiscal years following the first 5 years covered by the most recently adopted concurrent resolution on the budget.

"'(3) DIRECT-SPENDING OR RECEIPTS LEGISLATION.—For purposes of this subsection, the term "direct-spending or receipts legislation" shall—

"'(A) include any bill, resolution, amendment, motion, or conference report to which this subsection otherwise applies;

"'(B) include concurrent resolutions on the budget;

"'(C) exclude full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of the Budget Enforcement Act of 1990;

"'(D) exclude emergency provisions so designated under section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985;

"'(E) include the estimated amount of savings in direct-spending programs applicable to that fiscal year resulting from the prior year's sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, if any (except for any amounts sequestered as a result of a net deficit increase in the fiscal year immediately preceding the prior fiscal year); and

"'(F) except as otherwise provided in this subsection, include all direct-spending legislation as that term is interpreted for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.

"'(4) BASELINE.—Estimates prepared pursuant to this section shall use the most recent Congressional Budget Office baseline, and for years beyond those covered by that Office, shall abide by the requirements of section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985, except that references to "outyears" in that section shall be deemed to apply to any year (other than the budget year) covered by any one of the time periods defined in paragraph (2) of this subsection.

"'(5) PRIOR SURPLUS AVAILABLE.—If direct-spending or receipts legislation increases the deficit when taken individually (as a bill, joint resolution, amendment, motion, or conference report, as the case may be), then it must also increase the deficit when taken together with all direct-spending and receipts legislation enacted after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, in order to violate the prohibition of this subsection.

"'(c) WAIVER.—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

"'(d) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

"'(e) DETERMINATION OF BUDGET LEVELS.—For purposes of this section, the levels of new budget authority, outlays, and receipts for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

"'(f) SUNSET.—Subsections (a) through (e) of this section shall expire September 30, 1998.'"

BRADLEY AMENDMENT NO. 364

(Ordered to lie on the table.)

Mr. BRADLEY submitted an amendment intended to be proposed by him to amendment No. 347 proposed by Mr. DOLE to the bill S. 4, supra; as follows:

On page 5, strike lines 13 through 20 and insert the following:

"(5) the term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers but such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.

EXON (AND OTHERS) AMENDMENTS NOS. 365-366

(Ordered to lie on the table.)

Mr. EXON (for himself Mr. DASCHLE, Mr. FORD, Mr. CONRAD, Mr. DORGAN, Mr. KOHL, Mrs. FEINSTEIN, Mr. BUMPERS, Mr. ROBB, Mr. KERRY, Mr. FEINGOLD, Mr. HARKIN, Mr. REID, and Mr. HOLLINGS) submitted two amendments intended to be proposed by them to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 365

At the end of the bill, insert the following new title:

TITLE II—BALANCED BUDGET

SEC. 201. SHORT TITLE.

This title may be cited as the "Balanced Budget Act of 1995".

SEC. 202. ENFORCEMENT OF A BALANCED BUDGET.

(a) PURPOSE.—The Congress declares it essential that the Congress—

(1) require that the Government balance the Federal budget without counting the surpluses of the Social Security trust funds;

(2) set forth with specificity in the first session of the 104th Congress the policies that achieving such a balanced budget would require; and

(3) enforce through the congressional budget process the requirement to achieve a balanced Federal budget.

(b) POINT OF ORDER AGAINST BUDGET RESOLUTIONS THAT FAIL TO SET FORTH A GLIDE PATH TO A BALANCED BUDGET.—Section 301 of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new subsection:

"(j) CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.—

"(1) POINT OF ORDER.—It shall not be in order to consider any concurrent resolution on the budget (or amendment, motion, or conference report thereon) unless that resolution—

"(A) sets forth a fiscal year (by 2002 or the earliest possible fiscal year) in which, for the budget as defined by section 13301 of the Budget Enforcement Act of 1990 (excluding the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund), the level of outlays for that fiscal year or any subsequent fiscal year does not exceed the level of revenues for that fiscal year;

"(B) sets forth appropriate levels for all items described in subsection (a)91) through (7) for all fiscal years through and including the fiscal year described in paragraph (A);

"(C) includes specific reconciliation instructions under section 310 to carry out any assumption of either—

"(i) reductions in direct spending, or

"(ii) increases in revenues.

"(3) NO AMENDMENT WITHOUT THREE FIFTHS VOTE IN THE SENATE.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, motion, or conference report that would amend or otherwise supersede this section.".

(c) REQUIREMENT FOR 60 VOTES TO WAIVE OR APPEAL IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by inserting "301(j)," after "301(i)," in both places that it appears.

(d) SUSPENSION IN THE EVENT OF WAR OR CONGRESSIONALLY DECLARED LOW GROWTH.—Section 258(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting "301(j)," after "sections".

AMENDMENT NO. 366

At the end of the bill, insert the following new title:

TITLE II—BALANCED BUDGET

SECTION 201. SHORT TITLE.

This title may be cited as the ''Balanced Budget Act of 1995''.

SEC. 202. ENFORCEMENT OF A BALANCED BUDGET

(a) PURPOSE.—The Congress declares it essential that the Congress—

(1) require that the Government balance the Federal budget without counting the surpluses of the Social Security trust funds;

(2) set forth with specificity in the first session of the 104th Congress the policies that achieving such a balanced budget would require; and

(3) enforce through the congressional budget process the requirement to achieve a balanced Federal budget.

(b) POINT OF ORDER AGAINST BUDGET RESOLUTIONS THAT FAIL TO SET FORTH A GLIDE PATH TO A BALANCED BUDGET.—Section 301 of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new subsection:

''(j) CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.—

''(1) POINT OF ORDER.—It shall not be in order to consider any concurrent resolution on the budget (or amendment, motion, or conference report thereon) unless that resolution—

''(A) sets forth a fiscal year (by 2002 or the earliest possible fiscal year) in which, for the budget as defined by section 13301 of the Budget Enforcement Act of 1990 (excluding the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund), the level of outlays for that fiscal year or any subsequent fiscal year does not exceed the level of revenues for that fiscal year;

''(B) sets forth amounts for the deficit that for any fiscal year are equal to or less than the amounts set forth for the deficit for that fiscal year in the most recently adopted concurrent resolution on the budget;

''(C) sets forth appropriate levels for all items described in subsection (a)(1) through (7) for all fiscal years through and including the fiscal year described in paragraph (A);

''(D) includes specific reconciliation instructions under section 310 to carry out any assumption of either—

''(i) reductions in direct spending, or

''(ii) increases in revenues.

''(3) NO AMENDMENT WITHOUT THREE-FIFTHS VOTE IN THE SENATE.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, motion, or conference report that would amend or otherwise supersede this section.''.

(c) REQUIREMENT FOR 60 VOTES TO WAIVER OR APPEAL IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by inserting ''301(j),'' after ''301(i),'' in both places that it appears.

(d) SUSPENSION IN THE EVENT OF WAR OR CONGRESSIONALLY DECLARED LOW GROWTH.—Section 258(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting ''301(j),'' after ''sections''.

EXON AMENDMENTS NOS. 367–372

(Ordered to lie on the table.)

Mr. EXON submitted six amendments intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 367

At the appropriate place in the bill, insert the following:

SEC. .—CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET

(a) PURPOSE.—The Congress declares it essential that the Congress—

(1) set forth with specificity in the first session of the 104th Congress the policies that achieving such a balanced Federal budget would require; and

(2) enforce through the congressional budget process the requirement to achieve a balanced Federal budget.

(b) POINT OF ORDER AGAINST BUDGET RESOLUTIONS THAT FAIL TO SET FORTH A GLIDE PATH TO A BALANCED BUDGET.—Section 301 of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new subsection:

''(j) CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.—It shall not be in order to consider any concurrent resolution on the budget (or amendment, motion, or conference report thereon) that—

''(A) fails to set forth appropriate levels for all items described in subsection (a) (1) through (7) for all fiscal years through 2002;

''(B) for the unified Federal budget, sets forth a level of outlays for fiscal year 2002 or any subsequent fiscal year the exceeds the level of revenues for that fiscal year; or

''(C) relies on the assumption of either—

''(i) reductions in direct spending, or

''(ii) increases in revenues, without including specific reconciliation instructions under section 310 to carry out those assumptions.''.

(c) REQUIREMENT FOR 60 VOTES TO WAIVE OR APPEAL IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by inserting ''301(j),'' after ''301(i),'' in both places that it appears.

(d) SUSPENSION IN THE EVENT OF WAR OR CONGRESSIONALLY-DECLARED LOW GROWTH.—Section 258(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting ''301(j),'' after ''sections''.

AMENDMENT NO. 368

At the end of the bill, insert the following new section:

SEC. . SAVINGS ACHIEVED FROM LOWERING DISCRETIONARY SPENDING LIMITS MUST GO TO DEFICIT REDUCTION.

It is the sense of the Congress that any savings achieved from lowering or extending the discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974 must be devoted exclusively to reducing the deficit.

AMENDMENT NO. 369

At the appropriate place in the bill, insert the following:

SEC. .

It is the Sense of the Senate that discretionary spending cap reductions, under section 601 of the Congressional Budget Act of 1974, shall not be used to offset direct spending or revenue legislation.

AMENDMENT NO. 370

In the language proposed to be inserted, strike section 5(5) and insert ''(5) The term 'targeted tax benefit' shall have the same meaning as the term 'tax expenditure' as defined in section 3(3) of the Congressional Budget Act of 1974.''.

AMENDMENT NO. 371

In the language proposed to be inserted, strike section 5(5) and insert ''(5) The term 'targeted tax benefit' means a provision in any bill that provides special treatment to a particular taxpayer or limited class of taxpayers.''.

AMENDMENT NO. 372

In section 5(5)(B) of the language proposed to be inserted, strike ''when compared with other similarly situated taxpayers''.

EXON (AND DASCHLE) AMENDMENTS NOS. 373–374

(Ordered to lie on the table.)

Mr. EXON (for himself and Mr. DASCHLE) submitted two amendments intended to be proposed by them to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 373

Strike section 5(5)(A) of the language proposed to be inserted and insert ''(A) estimated by the Joint Committee on Taxation as losing revenue for any one of the three following periods—

''(1) the first fiscal year covered by the most recently adopted concurrent resolution on the budget;

''(2) the period of the 5 fiscal years covered by the most recently adopted concurrent resolution on the budget; or

''(3) the period of the 5 fiscal years following the first 5 years covered by the most recently adopted concurrent resolution on the budget; and''.

AMENDMENT NO. 374

In section 5(5)(A) of the language proposed to be inserted, strike ''within the periods specified in the most recently adopted concurrent resolution on the budget pursuant to section 301 of the Congressional Budget and Impoundment Control Act of 1974''.

EXON AMENDMENTS NOS. 375–386

(Ordered to lie on the table.)

Mr. EXON submitted 12 amendments intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 375

At the appropriate place in the matter proposed to be inserted, insert the following:

SEC. .

(a) Not later than 45 days of continuous session after the President vetoes an appropriations measure or an authorization measure, the President shall—

(1) reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each out year to reflect the amount contained in vetoed items.

(ii) with respect to a repeal of direct spending, adjust the balanced for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the amount contained in vetoed items.

(B) Exception: This provision shall not take effect if the vetoed appropriations measure or authorization measure becomes law.

AMENDMENT NO. 376

At the end of the matter proposed to be inserted, insert the following new section:

SEC. . LOCK BOX SENSE OF THE CONGRESS.

It is the sense of the Congress that any savings achieved through the veto of any items under this Act shall be devoted exclusively to deficit reduction.

AMENDMENT NO. 377

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Legislative Line Item Veto Act''.

SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED CANCELLATIONS OF BUDGET ITEMS.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding after section 1012 the following new section:

''EXPEDITED CONSIDERATION OF CERTAIN PROPOSED CANCELLATIONS OF BUDGET ITEMS

''SEC. 1012A. (a) PROPOSED CANCELLATION OF BUDGET ITEM.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act. An item proposed for cancellation under this section may not be proposed for cancellation again under this title.

''(b) TRANSMITTAL OF SPECIAL MESSAGE.—

''(1) SPECIAL MESSAGE.—

''(A) IN GENERAL.—Subject to the time limitations provided in subparagraph (B), the President may transmit to Congress a special message proposing to cancel budget items contained in an Act. A separate special message shall be transmitted for each Act that contains budget items the President proposes to cancel.

''(B) TIME LIMITATIONS.—A special message may be transmitted under this section—

''(i) during the 20-calendar-day period (excluding Saturdays, Sundays, and legal holidays) commencing on the day after the date of enactment of the provision proposed to be rescinded or repealed; or

''(ii) at the same time as the President's budget for any provision enacted after the date the President submitted the preceding budget.

''(2) DRAFT BILL.—The President shall include in each special message transmitted under paragraph (1) a draft bill that, if enacted, would cancel those budget items as provided in this section. The draft bill shall—

''(A) clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates; and

''(B) if the special message proposes to cancel direct spending, include a means to reduce the legal obligation of the United states to beneficiaries under the direct spending program sufficient to achieve the proposed reduction in direct spending.

''(3) CONTENTS OF SPECIAL MESSAGE.—Each special message shall specify, with respect to the budget item proposed to be canceled—

''(A) the amount that the President proposes be canceled;

''(B) any account, department, or establishment of the Government to which such budget item is available for obligation, and the specific project or governmental functions involved;

''(C) the reasons why the budget item should be canceled;

''(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect (including the effect on outlays and receipts in each fiscal year) of the proposed cancellation;

''(E) if the President proposes to cancel direct spending, a proposal for a means to reduce the legal obligation of the United States to beneficiaries under the direct spending program sufficient to achieve the proposed reduction in direct spending; and

''(F) all facts, circumstances, and considerations relating to or bearing upon the proposed cancellation and the decision to effect the proposed cancellation, and to the maximum extent practicable, the estimated effect of the proposed cancellation upon the objects, purposes, and programs for which the budget item is provided.

''(4) DEFICIT REDUCTION.—

''(A) DISCRETIONARY SPENDING LIMITS AND DIRECT SPENDING BALANCES.—Not later than 5 days after the date of enactment of a bill containing the cancellation of budget items as provided under this section, the President shall—

''(i) with respect to a rescission of budget authority provided in an appropriations Act, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and any outyear affected by the rescission, to reflect such amount; and

''(ii) with respect to a repeal of a targeted tax benefit or direct spending, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect such amount.

''(B) ADJUSTMENT OF COMMITTEE ALLOCATIONS.—Not later than 5 days after the date of enactment of a bill containing the cancellation of budget items as provided under this section, the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

''(5) EXCEPTION.—The President shall not propose to cancel budget authority provided in an appropriations Act that is required to fund an existing legal obligation of the United States, unless the legal obligation was established in that appropriations Act.

''(c) PROCEDURES FOR EXPEDITED CONSIDERATION.—

''(1) IN GENERAL.—

''(A) INTRODUCTION.—Before the close of the second day of session of the Senate and the House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under subsection (b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

''(B) REFERRAL AND REPORTING.—The bill shall be referred to the appropriate committee or (in the House of Representatives) committees. The committee shall report the bill without substantive revision and with or without recommendation. The committee shall report the bill not later than the seventh day of session of that House after the date of receipt of that special message. If the committee fails to report the bill within that period, the committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

''(C) FINAL PASSAGE.—A vote on final passage of the bill shall be taken in the Senate and the House of Representatives on or before the close of the 10th day of session of that House after the date of the introduction of the bill in that House. If the bill is passed, the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, shall cause the bill to be engrossed, certified, and transmitted to the other House within one calendar day of the day on which the bill is passed.

''(2) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

''(A) MOTION TO PROCEED TO CONSIDERATION.—A motion in the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(B) MOTION TO STRIKE.—During consideration under this subsection in the House of Representatives, any Member of the House of Representatives may move to strike any proposed cancellation of a budget item if supported by 49 other Members.

''(C) LIMITS ON DEBATE.—Debate in the House of Representatives on a bill under this subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill under this subsection or to move to reconsider the vote by which the bill is agreed to or disagreed to.

''(D) APPEALS.—Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

''(E) APPLICATION OF HOUSE RULES.—Except to the extent specifically provided in this section, consideration of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

''(3) CONSIDERATION IN THE SENATE.—

''(A) MOTION TO PROCEED TO CONSIDERATION.—A motion to proceed to the consideration of a bill under this subsection in the Senate shall be nondebatable. It shall not be in order to move to reconsider the vote by which the motion to proceed is agreed to or disagreed to.

''(B) MOTION TO STRIKE.—During consideration of a bill under this subsection in the Senate, any Member of the Senate may move to strike any proposed cancellation of a budget item if supported by 11 other Members.

''(C) LIMITS ON DEBATE.—Debate in the Senate on a bill under this subsection, amendments thereto, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

''(D) APPEALS.—Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

''(E) MOTION TO LIMIT DEBATE.—A motion in the Senate to further limit debate on a bill under this subsection is not debatable.

''(F) MOTION TO RECOMMIT.—A motion to recommit a bill under this subsection is not in order.

''(G) PLACED ON CALENDAR.—Upon receipt in the Senate of the companion bill for a bill that has been introduced in the Senate, that companion bill shall be placed on the calendar.

''(H) CONSIDERATION OF HOUSE COMPANION BILL.—

''(i) IN GENERAL.—Following the vote on the Senate bill required under paragraph (1)(C), when the Senate proceeds to consider the companion bill received from the House of Representatives, the Senate shall—

''(I) if the language of the companion bill is identical to the Senate bill, as passed, proceed to the immediate consideration of the companion bill and, without intervening action, vote on the companion bill; or

''(II) if the language of the companion bill is not identical to the Senate bill, as passed, proceed to the immediate consideration of the companion bill.

''(ii) AMENDMENTS.—During consideration of the companion bill under clause (i)(II), any Senator may move to strike all after the enacting clause and insert in lieu thereof the text of the Senate bill, as passed. Debate in the Senate on such companion bill, any amendment proposed under this subparagraph, and all debatable motions and appeals in connection therewith, shall not exceed 10 hours less such time as the Senate consumed or yielded back during consideration of the Senate bill.

''(4) CONFERENCE.—

''(A) CONSIDERATION OF CONFERENCE REPORTS.—Debate in the House of Representatives or the Senate on the conference report and any amendments in disagreement on any bill considered under this section shall be limited to not more than 2 hours, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

''(B) FAILURE OF CONFERENCE TO ACT.—If the committee on conference on a bill considered under this section fails to submit a conference report within 10 calendar days after the conferees have been appointed by each House, any Member of either House may introduce a bill containing only the text of the draft bill of the President on the next day of session thereafter and the bill shall be considered as provided in this section except that the bill shall not be subject to any amendment.

''(d) AMENDMENTS AND DIVISIONS PROHIBITED.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the question in the House of Representatives (or in a Committee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

''(e) TEMPORARY PRESIDENTIAL AUTHORITY TO CANCEL.—At the same time as the President transmits to Congress a special message under subsection (b)(1)(B)(i) proposing to cancel budget items, the President may direct that any budget item or items proposed to be canceled in that special message shall not be made available for obligation or take effect for a period not to exceed 45 calendar days from the date the President transmits the special message to Congress. The President may make any budget item or items canceled pursuant to the preceding sentence available at a time earlier than the time specified by the President if the President determines that continuation of the cancellation would not further the purposes of this Act.

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'appropriation Act' means any general or special appropriation Act, and any Act or joint resolution making supplemental, deficiency, or continuing appropriations but such term does not include any appropriations for social security;

''(2) the term 'direct spending' shall have the same meaning given such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 but such term shall not include spending for social security;

''(3) the term 'budget item' means—

''(A) an amount, in whole or in part, of budget authority provided in an appropriation Act;

''(B) an amount of direct spending; or

''(C) a targeted tax benefit;

''(4) the term 'cancellation of a budget item' means—

''(A) the rescission of any budget authority provided in an appropriation Act;

''(B) the repeal of any amount of direct spending; or

''(C) the repeal of any targeted tax benefit;

''(5) the term ''companion bill'' means, for any bill introduced in either House pursuant to subsection (c)(1)(A), the bill introduced in the other House as a result of the same special message; and

''(6) the term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers. Such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.''.

(b) EXERCISE OF RULEMAKING POWERS.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (a), by striking ''and 1017'' and inserting ''1012A, and 1017''; and

(2) in subsection (d), by striking ''section 1017'' and inserting ''sections 1012A and 1017''.

(c) CLERICAL AMENDMENTS.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 1012 the following:

''Sec. 1012A. Expedited consideration of certain proposed cancellations of budget items.''.

(d) EFFECTIVE PERIOD.—The amendments made by this Act shall—

(1) take effect on the date of enactment of this Act;

(2) apply only to budget items provided in Acts enacted on or after the date of enactment of this Act; and

(3) cease to be effective on September 30, 1998.

AMENDMENT NO. 378

In section 6 of the language proposed to be inserted, strike ''on September 30, 2000'' and insert ''at noon on January 20, 1997''.

AMENDMENT NO. 379

In section 6 of the language proposed to be inserted, strike ''2000'' and insert ''1998''.

AMENDMENT NO. 380

At the appropriate place in the matter proposed to be inserted insert the following:

SEC. . JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Any action brought under paragraph (1) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives or the Senate to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—

Notwithstanding any other provisions of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—

It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

AMENDMENT NO. 381

At the appropriate place in the bill, insert the following:

SEC. .—TO PROVIDE FOR 10 YEAR BUDGET RESOLUTIONS

(a) PURPOSE.—The Congress declares it essential that the Congress—

(1) set forth with specifity the policies that achieving such a balanced Federal budget would require; and

(2) enforce through the congressional budget process the requirement to achieve a balanced Federal budget by 2002 as well as the years thereafter.

(b) BUDGET RESOLUTIONS SHALL PROVIDE FOR 10 FISCAL YEARS.—

Strike the following provisions from section 301(a) of the Congressional Budget Act of 1974,:

''Content of Concurrent Resolutions on the Budget.—On or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1st of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1st of such year, and planning levels for each of the four ensuing fiscal years, for the following—''

and insert:

''SEC. 301. (a) Content of Concurrent Resolutions on the Budget.—On or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1st of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1st of such year, and planning levels for each of the nine ensuing fiscal years, for the following—''

Strike the following provision from section 302 of the Congressional Budget Act of 1974,:

''(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years, total

budget outlays and total new budget authority among each committee of the Senate which has jurisdiction over bills and resolutions providing such new budget authority.'' and insert the following:

''(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of social security outlays for the fiscal year of the resolution and for each of the 9 succeeding fiscal years, total budget outlays and total new budget authority among each committee of the Senate which has jurisdiction over bills and resolutions providing such new budget authority.''

Strike the following provision from section 302 of the Congressional Budget Act of 1974,:

''(2) In the Senate—At any time after the Congress has completed action on the concurrent resolution on the budget required to be reported under section 301(a) for a fiscal year, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report, that provides for budget outlays, new budget authority, or new spending authority (as defined in section 401(c)(2)) in excess of

(A) the appropriate allocation of such outlays or authority reported under subsection (a) or

(B) the appropriate allocation (if any) of such outlays or authority reported under subsection (b) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the fiscal year of the resolution or for the total of that year and the four succeeding years.''

and insert the following:

''(2) In the Senate—At any time after the Congress has completed action on the concurrent resolution on the budget required to be reported under section 301(a) for a fiscal year, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report, that provides for budget outlays, new budget authority, or new spending authority (as defined in section 401(c)(2)) in excess of

''(A) the appropriate allocation of such outlays or authority reported under subsection (a) or

''(B) the appropriate allocation (if any) of such outlays or authority reported under subsection (b) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the fiscal year of the resolution or for the total of that year and the nine succeeding years.''

AMENDMENT NO. 382

At the end of the matter proposed to be inserted, insert the following:

''It is the sense of the Congress that all concurrent resolutions on the budget should cover the upcoming 10 fiscal years.''

AMENDMENT NO. 383

At the appropriate place in the bill, insert the following:

SEC. . CONGRESS SHALL NOT LEGISLATE AD HOC CHANGES IN ECONOMIC INDICATORS.

(a) PURPOSE.—The Congress declares it essential that the Congress shall not arbitrarily change economic indicators.

(b) SENSE OF THE CONGRESS—It is the sense of the Congress that—

(1) economic indicators shall be devised by statistical agencies using the best scientific practice within the constraints of their budgets; and

(2) Congress shall not coerce Federal statistical agencies into making changes in economic indicators that are counter to the best scientific practice.

AMENDMENT NO. 384

At the end of the matter proposed to be inserted, insert the following new section:

SEC. . BALANCED FEDERAL BUDGET.

It is the sense of the Congress that beginning with the concurrent resolution on the budget for fiscal year 1996 all concurrent resolutions on the budget should set forth levels and amounts for all fiscal years through and including a fiscal year in which outlays do not exceed receipts, without counting the surpluses of the Social Security Trust Funds.

AMENDMENT NO. 385

At the end of the matter proposed to be inserted, insert the following new section:

SEC. . CBO BASELINE.

It is the sense of the Senate that the Senate Committee on the Budget, during deliberations on the Fiscal Year 1996 Budget Resolution and for the purpose of preparing the Committee report, use the current-law, capped baseline of the Congressional Budget Office for all revenue, spending, and deficit comparisons.

AMENDMENT NO. 386

At the end of the matter proposed to be inserted, insert the following new section:

SEC. . SENSE OF THE SENATE ON USE OF THE CBO BASELINE.

It is the sense of the Senate that the concurrent resolution on the budget for fiscal year 1996 should use the baseline used by the Congressional Budget Office in its evaluation of the President's budget.

MURKOWSKI AMENDMENT NO. 387

(Ordered to lie on the table.)

Mr. MURKOWSKI submitted an amendment intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

On page 5, between lines 12 and 13, insert the following:

''Any condition on an item of appropriation not involving a positive allocation of funds and explicitly prohibiting the use of any funds shall be enrolled with the item of appropriation.''.

MURRAY AMENDMENT NO. 388

(Ordered to lie on the table.)

Mrs. MURRAY submitted an amendment intended to be proposed by her to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

On page 5, line 7, after ''and'' insert the following: ''shall not mean appropriations authorized in a previously passed authorization bill; and,''.

PRYOR AMENDMENT NO. 389

(Ordered to lie on the table.)

Mr. PRYOR submitted an amendment intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

At the appropriate place insert the following:

''The President may not rescind any budget authority provided for social security.''.

WELLSTONE AMENDMENT NO. 390

(Ordered to lie on the table.)

Mr. WELLSTONE submitted an amendment intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

On page 5, delete lines 13 thru 20 and insert in lieu thereof the following:

(5) The term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers but such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.

SIMON AMENDMENTS NOS. 391–392

(Ordered to lie on the table.)

Mr. SIMON submitted two amendments intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 391

In the language proposed to be inserted, strike section 5(5) and insert ''(5) The term 'targeted tax benefit' shall have the same meaning as the term 'tax expenditure' as defined in section 3(3) of the Congressional Budget Act of 1974.''.

AMENDMENT NO. 392

Strike section 5 of the language proposed to be inserted and insert (5) The term ''targeted tax benefit'' means any provision ''(A) estimated by the Joint Committee on Taxation as losing revenue for any one of the three following periods—

''(1) the first fiscal year covered by the most recently adopted concurrent resolution on the budget;

''(2) the period of the 5 fiscal years covered by the most recently adopted concurrent resolution on the budget; or

''(3) the period of the 5 fiscal years following the first 5 years covered by the most recently adopted concurrent resolution on the budget; and.

''(B) having the practical effect of providing more favorable tax treatment to a particular taxpayer on limited group of taxpayers.''

SIMON (AND LEVIN) AMENDMENT NO. 393

Mr. SIMON (for himself and Mr. LEVIN) proposed an amendment to amendment No. 347 proposed by Mr. DOLE to the bill S. 4, supra; as follows:

At the appropriate place in the pending amendment, insert the following:

SEC. . JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Any action brought under paragraph (1) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives or the Senate to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—

Notwithstanding any other provisions of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered, and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—

It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

GLENN AMENDMENTS NOS. 394–398

(Ordered to lie on the table.)

Mr. SIMON submitted five amendments intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 394

At the appropriate place insert the following:

SEC. . EVALUATION AND SUNSET OF TAX EXPENDITURES.

(a) LEGISLATION FOR SUNSETTING TAX EXPENDITURES.—The President shall submit legislation for the periodic review, authorization, and sunset of tax expenditures with his fiscal year 1997 budget.

(b) BUDGET CONTENTS AND SUBMISSION TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

''(30) beginning with fiscal year 1999, a Federal Government performance plan for measuring the overall effectiveness of tax expenditures, including a schedule for periodically assessing the effects of specific tax expenditures in achieving performance goals.''.

(c) PILOT PROJECTS.—Section 1118(c) of title 31, United States Code, is amended by—

(1) striking ''and'' after the semicolon in paragraph (2);

(2) redesignating paragraph (3) as paragraph (4); and

(3) adding after paragraph (2) the following:

''(3) describe the framework to be utilized by the Director of the Office of Management and Budget, after consultation with the Secretary of the Treasury, the Comptroller General of the United States, and the Joint Committee on Taxation, for undertaking periodic analyses of the effects of tax expenditures in achieving performance goals and the relationship between tax expenditures and spending programs; and''.

(d) CONGRESSIONAL BUDGET ACT.—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end thereof the following:

''TAX EXPENDITURES

''SEC. 408. It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that contains a tax expenditure unless the bill, joint resolution, amendment, motion, or conference report provides that the tax expenditure will terminate not later than 10 years after the date of enactment of the tax expenditure.''.

AMENDMENT NO. 395

At the appropriate place insert the following:

SEC. . EVALUATION AND SUNSET OF EXISTING TAX EXPENDITURES.

(a) SUNSET OF EXISTING TAX EXPENDITURES.—All tax expenditures in existence at the time of enactment of this Act shall expire if not specifically reauthorized by the Congress before January 1, 2005. Any tax expenditure reauthorized under this Act at the same level of cost as the revenue baseline of the existing tax expenditure shall not be subject to the pay as you go requirements under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) BUDGET CONTENTS AND SUBMISSION TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

''(30) beginning with fiscal year 1999, a Federal Government performance plan for measuring the overall effectiveness of tax expenditures, including a schedule for periodically assessing the effects of specific tax expenditures in achieving performance goals.''.

(c) PILOT PROJECTS.—Section 1118(c) of title 31, United States Code, is amended by—

(1) striking ''and'' after the semicolon in paragraph (2);

(2) redesignating paragraph (3) as paragraph (4); and

(3) adding after paragraph (2) the following:

''(3) describe the framework to be utilized by the Director of the Office of Management and Budget, after consultation with the Secretary of the Treasury, the Comptroller General of the United States, and the Joint Committee on Taxation, for undertaking periodic analyses of the effects of tax expenditures in achieving performance goals and the relationship between tax expenditures and spending programs; and''.

AMENDMENT NO. 396

On page 4, line 22 strike the period following ''1985'' and insert the following:

'', except that it shall not include provisions estimated by the Joint Committee on Taxation as producing aggregate cost savings during the periods specified in the most recently adopted concurrent resolution on the budget pursuant to section 301 of the Congressional Budget and Impoundment Control Act of 1974.''

AMENDMENT NO. 397

On page 5, strike lines 13 through 20 and insert the following:

''(5) The term ''targeted tax benefit'' means any provision that has the practical effect of providing a benefit in the form of a different tax treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer of a class of taxpayers. Such provision does not include:

''(A) any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status; or

''(B) any provision affecting the deductibility of mortgage interest on ownership of occupied residences.''

At the appropriate place insert the following:

SEC. . ANNUAL PERFORMANCE PLANS AND REPORTS AND PILOT PROJECTS.

(a) BUDGET CONTENTS AND SUBMISSION TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

''(30) beginning with fiscal year 1999, a Federal Government performance plan for measuring the overall effectiveness of tax expenditures, including a schedule for periodically assessing the effects of specific tax expenditures in achieving performance goals.''.

(d) PILOT PROJECTS.—Section 1118(c) of title 31, United States Code, is amended by—

(1) striking ''and'' after the semicolon in paragraph (2);

(2) redesignating paragraph (3) as paragraph (4); and

(3) adding after paragraph (2) the following:

''(3) describe the framework to be utilized by the Director of the Office of Management and Budget, after consultation with the Secretary of the Treasury, the Comptroller General of the United States, and the Joint Committee on Taxation, for undertaking periodic analyses of the effects of tax expenditures in achieving performance goals and the relationship between tax expenditures and spending programs; and''.

BRADLEY AMENDMENTS NOS. 399–400

(Ordered to lie on the table.)

Mr. SIMON submitted two amendments intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

AMENDMENT NO. 399

In the pending amendment strike all after the first word and insert:

term ''targeted tax benefit'' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers but such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.

AMENDMENT NO. 400

At the appropriate place, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Spending Reduction and Budget Control Act of 1995''.

SEC. 2. JOINT RESOLUTION ALLOCATING APPROPRIATED SPENDING.

(a) COMMITTEE ON APPROPRIATIONS RESOLUTION.—Section 302(b) of the Congressional Budget Act of 1974 is amended to read as follows:

''(b) COMMITTEE SUBALLOCATIONS.—

''(1) COMMITTEES ON APPROPRIATIONS.—(A) As soon as practical after a concurrent resolution on the budget is agreed to, the Committee on Appropriations of each House shall, after consulting with Committee on Appropriations of the other House, report to its House an original joint resolution on appropriations allocations (referred to in the paragraph as the 'joint resolution') that contains the following:

''(i) A subdivision among its subcommittees of the allocation of budget outlays and new budget authority allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution.

''(ii) A subdivision of the amount with respect to each such subcommittee between controllable amounts and all other amounts. The joint resolution shall be placed on the calendar pending disposition of such joint resolution in accordance with this subsection.

''(B)(i) Except as provided in clause (ii), the provisions of section 305 for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of joint resolutions reported under this paragraph and conference reports thereon.

''(ii)(I) Debate in the Senate on any joint resolution reported under this paragraph, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

''(II) The Committee on Appropriations shall manage the joint resolution.

''(C) The allocations of the Committees on Appropriations shall not take effect until the joint resolution is enacted into law.

''(2) OTHER COMMITTEES.—As soon as practicable after a concurrent resolution on the budget is agreed to every committee of the House and Senate (other than the Committees on Appropriations) to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made—

''(A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction; and

''(B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

Each such committee shall promptly report to its House the subdivisions made by it pursuant to this paragraph.''.

(b) POINT OF ORDER.—Section 302(c) of the Congressional Budget Act of 1974 is amended by striking ''such committee makes the allocation or subdivisions required by'' and inserting ''such committee makes the allocation or subdivisions in accordance with''.

(c) ALTERATION OF ALLOCATIONS.—Section 302(e) of the Congressional Budget Act of 1974 is amended to read as follows:

''(e) ALTERATION OF ALLOCATIONS.—

''(1) Any alteration of allocations made under paragraph (1) of subsection (b) proposed by the Committee on Appropriations of either House shall be subject to approval as required by such paragraph.

''(2) At any time after a committee reports the allocations required to be made under subsection (b)(2), such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee's jurisdiction.''.

SEC. 3. AMENDMENTS TO APPROPRIATIONS BILL.

Section 302 of the Congressional Budget Act of 1974 is amended by—

(1) redesignating subsection (g) as subsection (h); and

(2) inserting after subsection (f) the following:

''(g) AMENDMENTS TO APPROPRIATIONS ACT REDUCING ALLOCATIONS.—

''(1) FLOOR AMENDMENTS.—Notwithstanding any other provision of this Act, an amendment to an appropriations bill shall be in order if—

''(A) such amendment reduces an amount of budget authority provided in the bill and reduces the relevant subcommittee allocation made pursuant to subsection (b)(1) and the discretionary spending limits under section 601(a)(2) for the fiscal year covered by the bill; or

''(B) such amendment reduces an amount of budget authority provided in the bill and reduces the relevant subcommittee allocation made pursuant to subsection (b)(1) and the discretionary spending limits under section 601(a)(2) for the fiscal year covered by the bill and the 4 succeeding fiscal years.

''(2) CONFERENCE REPORTS.—(A) It shall not be in order to consider a conference report on an appropriations bill that contains a provision reducing subcommittee allocations and discretionary spending included in both the bill as passed by the Senate and the House of Representatives if such provision provides reductions in such allocations and spending that are less than those provided in the bill as passed by the Senate or the House of Representatives.

''(B) It shall not be in order in the Senate or the House of Representatives to consider a conference report on an appropriations bill that does not include a reduction in subcommittee allocations and discretionary spending in compliance with subparagraph (A) contained in the bill as passed by the Senate and the House of Representatives.''.

SEC. 4. SECTION 602(b) ALLOCATIONS.

Section 602(b)(1) of the Congressional Budget Act of 1974 is amended to read as follows:

''(1) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES.—The Committee on Appropriations of each House shall make allocations under subsection (a)(1)(A) or (a)(2) in accordance with section 302(b)(1).''.

ABRAHAM AMEMDMENT NO. 401

(Ordered to lie on the table.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him to amendment No. 347 by Mr. DOLE to the bill, S. 4, supra; as follows:

On page 3, line 17, strike everything after word ''measure'' through the word ''generally'' on page 4, line 14, and insert the following in its place:

''first passes both Houses of Congress in the same form, the Secretary of the Senate (in the case of a measure originating in the Senate) or the Clerk of the House of Representatives (in the case of a measure originating in the House of Representatives) shall disaggregate the bill into items and assign each item a new bill number. Henceforth each item shall be treated as a separate bill to be considered under the following subsections.

''(2) A bill that is required to be disaggregated into separate bills pursuant to subsection (a)—

''(A) shall be disaggregated without substantive revision,

and

''(B) shall bear the designation of the measure of which it was an item prior to such disaggregation, together with such other designation as may be necessary to distinguish such measure from other measures disaggregated pursuant to paragraph (1) with respect to the same measure.

''(b) The new bills resulting from the disaggregation described in paragraph 1 of subsection (a) shall be immediately placed on the calendar of both Houses. They shall be the next order of business in each House and they shall be considered and voted on en bloc and shall not be subject to amendment. A motion to proceed to the bills shall be nondebatable. Debate in the House of Representatives or the Senate on the bills shall be limited to not more than 1 hour, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the bills is not in order, and it is not in order to move to reconsider the vote by which the bills are agreed to or disagreed to.''

EXON AMENDMENT NO. 402

Mr. EXON proposed an amendment to amendment No. 347 proposed by Mr. DOLE to the bill, S. 4, supra; as follows:

At the end of the matter proposed to be inserted, insert the following:

SEC. .

(a) Not later than 45 days of continuous session after the President vetoes an appropriations measure or an authorization measure, the President shall—

(1) with respect to appropriations measures, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each out year by the amount by which the measure would have increased the deficit in each respective year;

(2) with respect to a repeal of direct spending, or a targeted tax benefit, reduce the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 by the amount by which the measure would have increased the deficit in each respective year.

(b) Exceptions:

(1) This section shall not-apply if the vetoed appropriations measure or authorization measure becomes law, over the objections of the President, before the President orders the reduction required by subsections (a)(1) or (a)(2).

(2) If the vetoed appropriations measure or authorization measure becomes law, over the objections of the President, after the President has ordered the reductions required by subsections (a)(1) or (a)(2), then the President shall restore the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 or the balances under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the positions existing before the reduction ordered by the President in compliance with subsection (a).

NOTICES OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the full Committee on Energy and Natural Resources to consider the nomination of Daniel R. Glickman to be Secretary of Agriculture.

The hearing will take place Tuesday, March 28, 1995, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington DC. 20510. For further information, please call Mark Rey at (202) 224–2878 or Camille Heninger at (202) 224–5070.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT AND THE DISTRICT OF COLUMBIA

Mr. COHEN. Mr. President, I wish to announce that the Subcommittee on Oversight of Government Management and the District of Columbia, Committee on Governmental Affairs, will hold a hearing on Tuesday, March 28, 1995, on reducing the cost of Pentagon travel processing. The hearing will be at 9:30

a.m., in room 342 of the Dirksen Senate Office Building.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. COATS. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Tuesday, March 21, at 9:30 a.m., in SDG–50, to discuss the confirmation of agriculture Secretary-designee Daniel Robert Glickman.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. COATS. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on March 21, 1995, at 9:30 a.m., on telecommunications policy reform/cable rates, broadcast and foreign ownership.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. COATS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 21, 1995, at 10 a.m., to hold a hearing on S. 5 and H.R. 7.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. COATS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 21, 1995, at 2 p.m., to hold a hearing on S. 5 and H.R. 7.

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

SPECIAL COMMITTEE ON AGING

Mr. COATS. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet during the session of the Senate on Tuesday, March 21, 1995, at 9:30 a.m., to hold a hearing on the topic of health care fraud.

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

SUBCOMMITTEE ON AGING

Mr. COATS. Mr. President, I ask unanimous consent that the Subcommittee on Aging of the Committee on Labor and Human Resources be authorized to meet for a hearing on bringing title III into the 21st century, during the session of the Senate on Tuesday, March 21, 1995 at 10 a.m.

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

SUBCOMMITTEE ON ENERGY PRODUCTION AND REGULATION

Mr. COATS. Mr. President, I ask unanimous consent that the Subcommittee on Energy Production and Regulation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, March 21, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 10 a.m. The purpose of the hearing is to receive testimony on S. 92, a bill to provide for the reconstitution of outstanding repayment obligations of the Administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Colombia River Power System.

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

SUBCOMMITTEE ON INTERNATIONAL FINANCE

Mr. COATS. Mr. President, I ask unanimous consent that the Subcommittee on International Finance of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, March 21, 1995, to conduct a hearing on U.S. and Foreign Commercial Service.

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

SUBCOMMITTEE ON READINESS

Mr. COATS. Mr. President, I ask unanimous consent that the Subcommittee on Readiness of the Committee on Armed Services be authorized to meet at 2:30 p.m., on Tuesday, March 21, 1995, in open session, to receive a report on military capabilities and readiness.

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

SUBCOMMITTEE ON TAXATION AND IRS OVERSIGHT

Mr. COATS. Mr. President, I ask unanimous consent that the Subcommittee on Taxation and IRS Oversight of the Finance Committee be permitted to meet Tuesday, March 21, 1995, beginning at 10:30 a.m., in room SD–215, to conduct a hearing on the administration's proposal to impose capital gains tax on individuals who renounce their U.S. citizenship.

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

ADDITIONAL STATEMENTS

HOMICIDES BY GUNSHOT IN NEW YORK CITY

● Mr. MOYNIHAN. Mr. President, I rise today, as I have done each week of the 104th Congress, to announce to the Senate that during the past week, 10 people were murdered by gunshot in New York City, bringing this year's total to 130.

Three weeks ago, I shared with the Senate a letter from Sarah Brady, chairman of Handgun Control, Inc., and wife of James Brady, the former White House Press Secretary who was critically wounded in the assassination attempt against President Reagan. The letter contained the results of a joint study by the International Association of Chiefs of Police and Handgun Control, Inc., providing convincing evidence that the Brady law, which went into effect just over 1 year ago, is doing exactly what its proponents had anticipated: keeping guns out of the hands of criminals.

Today I would like to add to this the results of two other studies which further attest to the effectiveness of the Brady law. These studies, one conducted by the Federal Bureau of Alcohol, Tobacco and Firearms, and the other by CBS News, found that background checks mandated by the law have prevented as many as 45,000 people from illegally purchasing firearms.

This is no mean achievement. And it is only one of the benefits the Brady law has brought us. By substantially raising the fee for a Federal Firearms License, the law has also caused a significant decline in the number of licensed firearms dealers, which by 1993 had reached an astounding 284,000. Few are aware that prior to the Brady law, one could obtain a 3-year Federal Firearms License for just $30. Thanks to the Brady law, which raised that fee to $200, the number of federally licensed dealers has decreased by some 60,000 in just 1 year.

Mr. President, the Brady law will not in itself cure the problem of gun violence. But it is an important step in the right direction and it proves that we can make a difference in this fight.●

BETHEL COLLEGE WINS NATIONAL BASKETBALL CHAMPIONSHIP

● Mr. COATS. Mr. President, while the U.S. Senate discusses the most important issues facing our Nation, I rise today to talk about another issue that is near and dear to the hearts of the people in my State of Indiana. The Hoosier love for basketball has been captured on film and in folklore, and another chapter has been added to this rich Hoosier basketball history.

Bethel College, located in Mishawaka, IN, captured the NAIA Division II Men's Basketball National Championship. And this was no ordinary title game. The Pilots truly have added another thrilling page to the State of Indiana's basketball tradition.

The Bethel College Pilots played the championship game on the home court of their worthy opponent, Northwest Nazarene College. Just when it looked like the game was lost, Bethel senior Mark Galloway drilled a 3-point shot at the buzzer, sending the contest into overtime. Bethel then controlled the overtime, winning the national championship by a score of 103–95.

Along with his exciting game-saving shot, Mark Galloway finished as Bethel College's all-time leading scorer with 2,622 points.

Mr. President, the Bethel College Pilots, coached by Mike Lightfoot, finished the season with a 16-game winning streak and a record of 38–2, the best in school history. I know I speak for all basketball fans in Indiana when I salute the Pilots, and congratulate

Bethel College for their exciting championship season.●

GREEK INDEPENDENCE DAY

Mr. McCAIN. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Resolution 79, a resolution introduced by Senators SPECTER and LAUTENBERG regarding Greek Independence Day; further, that the Senate proceed to its immediate consideration, that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be placed at the appropriate place in the RECORD.

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

So the resolution (S. Res. 79) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 79

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was invested in the people;

Whereas the Founding Fathers of the United States of America drew heavily upon the political experience and philosophy of ancient Greece in forming our representative democracy;

Whereas these and other ideals have forged a close bond between our two nations and their peoples;

Whereas March 25, 1995, marks the 174th anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire; and

Whereas it is proper and desirable to celebrate with the Greek people, and to reaffirm the democratic principles from which our two great nations were born: Now, therefore, be it

Resolved, That March 25, 1995, is designated as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy''. The President is requested to issue a proclamation calling upon the people of the United States to observe the day with appropriate ceremonies and activities.

ORDERS FOR WEDNESDAY, MARCH 22, 1995

Mr. McCAIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Wednesday, March 22, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day; that the Senate then immediately resume consideration of S. 4, the line-item veto bill, and further, that at that time Senator THOMAS be recognized to speak and manage up to 60 minutes.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. McCAIN. Mr. President, I now ask unanimous consent that notwithstanding the provisions of rule XXII, the cloture vote on the Dole substitute amendment to S. 4 occur at the hour of 6 p.m. with the mandatory live quorum being waived.

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

ORDER OF PROCEDURE

Mr. McCAIN. For the information of my colleagues, although the cloture vote on the majority leader's substitute amendment will occur at 6 p.m. tomorrow, other amendments will be offered throughout the day. Therefore, rollcall votes can be expected. The Senate has reached an agreement with respect to the Bradley amendment for a total of 45 minutes beginning at 10:30 a.m.; therefore, a vote can be expected prior to 12 noon.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. McCAIN. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:08 p.m., recessed until, Wednesday, March 22, 1995, at 9:30 a.m.