give them careful and thoughtful consideration, and that they will not be overwhelmed by election year politics.

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

The PRESIDING OFFICER (Mr. THOMPSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FEINGOLD. Mr. President, I ask unanimous consent I be allowed to speak as in morning business.

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

IN DEFENSE OF THE CONSTITUTION

Mr. FEINGOLD. Mr. President, I rise today to speak about the U.S. Constitution and what I believe is the essential need to exercise extreme restraint in regard to amending this great document. As recent articles in a number of publications and newspapers have pointed out, this Congress, Mr. President, the 104th Congress, perhaps unlike any in recent memory, seems intent on amending the U.S. Constitution. I do not question the sincerity of those efforts. The history of our Constitution and those amendments that have been adopted, as well as the mechanism crafted by the framers for adopting amendments, counsels that caution govern any efforts to amend this great document, our Constitution.

Since its ratification in 1788, the Constitution of the United States has been the single greatest protector of individual rights known to man. It is superior to any of its predecessors, and has been the benchmark against which all other constitutions since adopted have been judged. Perhaps the greatest tribute to the U.S. Constitution, Mr. President, and the greatest tribute to those who drafted the document, is that in the 208 years since its ratification, the people of this Nation have only amended it on 27 occasions. This equates with only about one amendment every 7.7 years.

However, Mr. President, this figure is a little bit misleading when one looks closely at the actual history accompanying those 27 amendments. It becomes obvious that those specific instances where the people of this Nation have moved to amend their Constitution have actually been few and far between, and those efforts have typically only been in response to some fundamental deficiency or flaw in our democratic system of government.

As we look at the 27 amendments, Mr. President, for example, the first 10 amendments to the Constitution, the Bill of Rights, were adopted as part of an agreement to actually garner support for the passage of the underlying Constitution itself; 10 of the 27 were adopted at the very outset of our country. Anti-Federalists who opposed the Federal Constitution were opposed to its adoption unless and until a more explicit statement on the rights of man was added to the Constitution. The fervent belief that certain rights should remain squarely within the province of the individual manifests itself in the Bill of Rights.

While the Bill of Rights was adopted almost simultaneously with the Constitution, becoming effective in 1791, what the Bill of Rights did was set a tone which on most subsequent occasions has been followed. That tone was that constitutional amendments should be reserved for response to shortcomings in our democratic way of governance in general, not to attend to the emotion or issue of the day each time. I think this is evidenced by the adoption, following the Civil War of the 13th, 14th, and 15th amendments. These three amendments, much like the Bill of Rights, spoke directly to the rights and equality of men, and extended to African-Americans rights previously that were denied to them, denied to them under the original Constitution, and even under the original Bill of Rights.

Further, many of our constitutional amendments deal directly with the ability of citizens to participate in democracy, they go to the very core of whether everyone can participate. The 17th, 19th, 24th and 26th amendments improve citizen involvement in elections by allowing for the direct election of Senators, extending the franchise to women, abolishing the poll tax, and reducing the voting age. The essence of democracy itself, Mr. President, is participation. These amendments fostered that fundamental element of our Nation. For that reason, I think they were all probably appropriate uses of the unusual and unique ability to amend the Constitution.

Mr. President, obviously there have been other amendments albeit few rising to the level of the importance of the Bill of Rights and the Civil War amendments. However, I have noted these not to argue their importance, but to illustrate that throughout our history most amendments to the Constitution have been restricted to addressing systemic problems with our Government—problems which actually inhibit one's ability to participate in the benefits of democracy. In other words, these have to do with basic errors or problems that have arisen in our system that simply mean somebody cannot participate fully in our democracy. They have not, almost in every case, been amendments that have to do with one particular issue at a time that is dividing our country.

Of course, on one glaring occasion we did depart from this standard and we adopted the ill-fated 18th amendment—the prohibition amendment. The result of this misguided venture into social policy resulted 14 years later in the adoption of another amendment, 1 of the 27, the 21st amendment, which repealed prohibition. So that is 2 of the 27, a lousy idea that did not work, followed by the repeal of this venture into social policy.

Another aspect of our Constitution which argues for restraint in amending this document is found in the Constitution in article V. Article V establishes two methods for amending the Constitution. First, the Constitution may be amended by constitutional convention. The second method allows the Constitution to be amended if approved by two-thirds majority of both Houses of Congress, and then, of course, ratified by three-fourths of the States. These explicit methods for amendment were, in essence, a compromise between the unworkable unanimity requirement for amending the Articles of Confederation, one of the reasons that we had a constitutional convention, and the notion held by many of the Framers that some mechanism must exist to address potential shortcomings in the new Constitution. The compromise that is embodied in article V established a difficult but not impossible standard for amendment which, like the Constitution itself, I think, has served this Nation very well.

While article V protects the people from constitutional uncertainty and alteration based solely upon the will of an ever-changing political majority, it also provides an avenue for amendment when it is truly necessary.

The result of this has been to preserve the Constitution as it was intended to be. With only 27 amendments, it remains a general statement of principles used to help define a new nation, as opposed to a step-by-step method of governance.

In so doing, I think article V has prevented the U.S. Constitution from simply becoming littered with a flurry of well-meaning but unnecessary amendments. Article V has prevented the Constitution from evolving into a document that would be almost unrecognizable in terms of length and scope to the Framers, who drafted it over 200 years ago. This is the really important thing, Mr. President, because it points out the fundamental distinction between a Constitution and ordinary statutes.

There is a big difference in our system. As I understand it, there is less of a difference in the system in England. There, there is no written Constitution; Parliament is supreme. Technically speaking, Parliament can pass any law, and it then becomes the supreme law of the land. We have broken that system. We chose to have a simple, brief document that was greater than the legislature, that was greater than a parliament, that was greater than a Congress. It is the notion of a limited written Constitution. That is the difference between us and the English system. And, in fact, it was part of the reason, in my view, why the revolution was fought. Our citizens wanted a document over which no legislative body had supremacy, except for in the very unusual circumstances that were

outlined in article V, or a combination of a very significant supermajority of Congress and very significant supermajority of States together would have to be the only ones that could ever amend that document.

As Prof. Kathleen Sullivan pointed out recently in an article cleverly entitled, ''Constitutional Amendmentitis'':

> The very idea of a Constitution turns on the separation of the legal and the political realms. The Constitution sets up the framework of the Government. It also sets forth a few fundamental political ideals (equality, representation, individual liberties) that place limits on how far any short-term majority may go. This is our higher law. All the rest is left to politics.

Mr. President, let there be no doubt that had this standard that Kathleen Sullivan very eloquently stated had not prevailed throughout our history, the fundamental character of our Constitution would be greatly diminished today.

In the course of our history, it is estimated that nearly 11,000 amendments to the Constitution have been introduced. Had not our predecessors and the standards embodied in article V combined to reject the vast majority of these efforts, it is uncertain what our Constitution might look like today. It, obviously, would not look anything like the Constitution. You probably could not find anything in there that the Founding Fathers had put together. It would not be, as Chief Justice John Marshall argued, a framework of the great outlines of our society.

So let us say that throughout our history people had proposed in each legislative session and gotten through a constitutional amendment about things like school prayer or balancing the budget, or flag burning—I am sure there would have been a variety of social concerns that each session of our Congress would have tacked onto the Constitution. Let me tell you something else because I believe in the whole Constitution. I think our first amendment would not look anything like it does today. I also think that the second amendment to the U.S. Constitution, which I believe in, and which protects the right to bear arms, might not be there either.

See, that is what happens when you start down this road. When anybody gets a bright idea, instead of trying to pass a bill that can be changed without going through the constitutional process, somebody says, ''Let us do a constitutional amendment.'' Well, that is the greatest threat to our basic liberties than anything we can do legislatively—whether it be the right to free speech or a person's right to simply have a firearm if they want to go hunting. Somebody could try to get rid of that. If we go down this road, there is no end to it.

It is with this Nation's reluctance to amend the Constitution in mind that I rise today to voice my concern that the lessons of our constitutional history have been lost in the 104th Congress. I have had the honor of serving on the Senate Judiciary Committee for a little more than a year now, along with the Presiding Officer. And in that time the full committee has voted on three amendments to the Constitution, and, in the near future, as many as four more may be forthcoming.

To date in the 104th Congress, over 135 constitutional amendments have been proposed. But what is more troubling is that the 104th Congress has voted on more amendments to the Constitution than any of its predecessors in recent history. The other body has voted on four amendments, while this body has voted on two and debated a third. As the distinguished retired Judge Abner Mikva wrote in the Legal Times recently, ''The 104th Congress has taken floor action on more constitutional amendments than any other Congress in the last 30 years.''

I note that an amendment to require a supermajority to raise taxes was brought to the House floor recently solely because it was tax day—April 15. They knew they were not going to win on that vote. That was well known. It was brought to the floor simply so that proponents could stand up on tax day and make speeches. The thought that an amendment to the Constitution could be offered solely because it offers a good sound bite opportunity seems to be a little indefensible. I think it is a departure from the time when the Framers met in Philadelphia, guided only by a tenuous opportunity to craft a framework to guide a new Nation.

Throughout the course of many of the debates on amendments, the argument has been made that Congress should simply pass proposed amendments and let the people of the Nation decide their fate. However, to do so defies our sworn obligation to uphold the Constitution of this Nation. I fell into this trap here. I think many of my colleagues know of my strong desire to see campaign finance reform in this country. The way we do things around here, sometimes an amendment is tacked onto another bill. On one occasion, I actually voted for a sense-of-the-Senate resolution that would have started us down the road toward a constitutional amendment that would have overturned Buckley versus Valeo. It would have limited how much could be spent in campaigns. I understand how people feel when they are frustrated and want to turn to a constitutional amendment. I think I made a mistake, and I would not vote that way now because I realize that everybody has a bright idea about how to change the Constitution. We need to find a way to solve our problems and do our job without messing up the fundamental document that has helped make this country so great. So this session I am working on legislation, along with the Presiding Officer, where through the legislative process we will try to change the campaign system without changing the U.S. Constitution's first amendment. So all of us have fallen into this trap. This is not an attempt to suggest that it is only Democrats or only Republicans. It is just very tempting. But it is a mistake.

The Framers of the Constitution set a very high standard for amendment and explicitly intended that the Members of Congress play a significant role in adopting any changes to our national charter. In my estimation, Mr. President, this is a responsibility of the highest order and not one we should abandon.

In fact, what separates the U.S. Constitution from many State constitutions, which can go so far as to protect the right to due process and the right to fish in the same document, is that the Congress and the people must ratify amendments. We should remain mindful of the Framers' intent and the obligations each of us is sworn to uphold. In other words, we are not supposed to kick out constitutional amendments in the Congress and just say let everybody decide on it. That is not what was intended. It was intended that we should give it extremely close scrutiny, and in only very rare circumstances should we send constitutional amendments out for ratification.

Mr. President, if adopted, the amendments considered in the 104th Congress would signal the biggest single constitutional remodeling since the Bill of Rights. It is an effort which I believe is unnecessary and ill conceived. It is certainly not consistent with our history of constitutional amendment.

There can be little doubt that many great challenges lie before our Nation as we head toward a new century. However, the Constitution cannot provide the courage or answers we need to solve our problems, nor was it intended to do so. Ultimately, the responsibility for this Nation lies with the people, the people in this Congress and the people who send us here to do their work.

For over 200 years the Constitution has served this Nation well and it is essential to the continuing development of our young Nation that the Constitution remain a statement of general principles. In charting a different course, one which allows the Constitution to serve as the method of addressing each difficult challenge that faces this Nation, inevitably we sacrifice the integrity of this document.

We will lose the fundamental integrity of the Constitution which I believe underlies everything we do.

We must guard against the U.S. Constitution becoming what James Madison feared would be little more than a list of special provisos.

I hope that as we continue our work here in this highly political year we will bear Madison's concerns in mind as well as the history surrounding efforts to amend the Constitution. It is a history worth following. A history which defines not only the nature of this great document but also defines the fundamental character of this Nation. It is a history which has helped to ensure that this simple, yet brilliant,

document has remained the cornerstone of our freedoms. The spate of constitutional amendments considered during this Congress are at odds with this important precedent.

By departing from the fundamental notion that our Constitution establishes the framework or the great outlines of our society and seeking to use it to address specific problems, the Constitution will become something less than it was intended to be. We should quell our desire to amend this great document and address the problems that confront this Nation. Although they are many, none can truly be attributed to a constitutional deficiency.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. I thank the Chair.

(The remarks of Ms. MIKULSKI pertaining to the introduction of S. 1832 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

THE DEFEND AMERICA ACT

Mr. NICKLES. Mr. President, I am going to speak on the Defend America Act. First, let me state I am very disappointed that the Senate, one, had to file a cloture motion, and, two, was unsuccessful in obtaining cloture so we could at least take up the Defend America Act, debate it, discuss it and vote on it.

It is unfortunate the Democrats in the Senate today decided to filibuster even moving to consider legislation which would allow us to further develop systems capable of defending America. Even right now we are defenseless against intercontinental ballistic missiles. I want to compliment Senator DOLE for scheduling this for a floor vote, I compliment the House of Representatives for passing it, but I am displeased that the Senate was not able to consider this legislation.

It is unfortunate to think that we need to have 60 votes just to move to consider the Defend America Act. I am happy to cosponsor this act. I think it is good legislation, needed legislation.

It was part of the defense authorization bill that we passed last year that unfortunately President Clinton vetoed. He vetoed it for whatever reason. I think in the campaign he continued to refer to the strategic defense initiative, star wars. But for whatever reason, he leaves us defenseless against incoming intercontinental ballistic missiles, missiles that could have a nuclear warhead, missiles that could have a chemical warhead or a biological warhead. Right now we do not have defense capabilities.

Regrettably, the vote today was almost straight party line. We had all Republicans vote in favor of taking up this legislation. One Republican Senator was necessarily absent. We had one Democrat, Senator HEFLIN, that voted for it. I compliment Senator HEFLIN. I hate to see him leave the Senate. He has been one of the Senators I think that shows courage on occasion and says, ''I'm going to do what is right for this country.'' The Senator from Alabama, I compliment him for his vote.

What was right for this country was voting for the Defend America Act. We do need to develop capabilities to be able to destroy incoming missiles that we do not have today. President Clinton does not agree with that. And I am going to go through a statement that talks about what the Defend America Act does, and what it does not do, and why it is needed.

The Defend America Act of 1996 states clearly and simply the United States should be defended against limited, unauthorized or accidental ballistic missile attacks and calls for the deployment of a national defense system to protect America.

This bill does not violate any treaty. It only urges the administration to negotiate with Russia changes to the 1972 Anti-Ballistic Missile Treaty to allow for the deployment of an effective missile defense system.

If an agreement is not reached within 1 year after the bill is enacted, the President and Congress are to consider withdrawing from the treaty, as provided under article 15 of the treaty.

Why is the legislation needed? Currently the United States is undefended. We are defenseless against ballistic missile attack. Most people are surprised and even shocked to hear this. They are of the mistaken belief that the United States can defend itself against incoming ballistic missiles. They are wrong.

While the United States remains defenseless, Russia long ago recognized the value of missile defenses and deployed its own missile defense system around Moscow.

In the ultimate irony, the United States is now assisting Israel in acquiring its own missile defense system to protect Israeli citizens. I wish the Clinton administration could explain why it will help Israel defend its citizens against missile attack but refuse to protect Americans against missiles. That does not make sense. Maybe it makes good politics, but it does not make good policy.

Mr. President, the threats are real, and they are growing. It is clear that ballistic missile threats to the United States are growing from a couple of sources, unauthorized or accidental ballistic missile attacks from Russia and China and also from small dictatorships now fielding missile forces.

We may no longer think in terms of having to defend ourselves against a massive Soviet missile attack. Yet political instability and political uncertainty in Russia and China emphasize the need to guard against a possible unauthorized or accidental missile launch.

China has proven willing to threaten the use of ballistic missiles for political and military blackmail, as shown during the Taiwan Strait crisis in March of this year. One month before Chinese military exercises and its launching ballistic missiles into the Taiwan Strait, a Chinese official warned Charles Freeman, Deputy Chief of Mission at the U.S. Embassy in Beijing, that ''the United States would not intervene on Taiwan's behalf, because Americans would not be willing to sacrifice Los Angeles on Taiwan's behalf,'' as reported in the Los Angeles Times on January 27, 1996, page 5.

Recently, lower level Chinese officials made a not-so-veiled threat to American officials. Winston Lord, Assistant Secretary of State for East Asia and the Pacific, quoted these Chinese officials as saying the United States ''wouldn't dare defend Taiwan because they'd [China] rain nuclear bombs on Los Angeles,'' as reported in the Boston Globe, March 18 of this year.

Other ballistic missile threats exist or are also on the horizon. More than 25 countries currently possess, or are seeking to acquire, weapons of mass destruction—namely, nuclear, chemical, and biological weapons. Many countries that already have shorter range ballistic missiles are seeking to acquire more sophisticated, long-range ballistic missiles. Rather than defend Americans, the Clinton administration is rationalizing its inaction by hiding behind questionable intelligence estimates.

While recent intelligence estimates say that a new ballistic missile threat to the United States will not appear for the next 15 years, this analysis is flawed for several reasons. First, it focuses only on indigenous development and assumes that international trade does not exist. The Secretary of Defense, William Perry, recently admitted the intelligence community's estimate ''could be foreshortened if any of those nations were able . . . to get direct assistance from countries that already have [such systems], either sending them missiles, selling them missiles, or giving them important component or technology assistance.'' That was in his statement before the Senate