

of military service in Northern Ireland and North Africa exemplify his commitment and dedication to the United States of America. It is with great pleasure that I join his many friends in the Bronx who will be honoring Mr. Schwartz this summer for being the first man to repair mechanical watches in combat.●

THE COMING BUDGET SURPLUS

● Mr. KYL. Mr. President, with the federal government apparently on the verge of running its first unified budget surplus in nearly 30 years, many people are beginning to ask what comes next? What should happen to the budget surplus when it materializes? Should we spend it? Should we begin to pay down the national debt? Or should we provide hard-working Americans with meaningful, long overdue tax relief?

Before we try to answer those questions, it would be worthwhile to recall how we got here. Remember, it was not that long ago—in fact, it was as recently as February of 1995—that President Clinton submitted a budget that would have locked in annual deficits in the range of \$200 billion for the foreseeable future. A unanimous Senate rejected the Clinton budget on May 19, 1995. And from that point on, the debate took a fundamental turn from whether to balance the budget, to how to balance it.

During the last three years, we have begun to slow federal spending growth. We eliminated 307 mostly small federal programs. But perhaps the most decisive factor has been what we did not do. We did not impose another large tax increase on already overtaxed families and businesses. And that gave people enough room to do things to invigorate the economy.

In fact, the economy has outperformed just about everyone's expectations, producing tens of billions of dollars in unanticipated revenues to the Treasury to close the budget gap. When the budget agreement passed last year, for example, unified budget deficits were projected to go from \$67 billion in fiscal year 1997 to \$90 billion in fiscal year 1998. But as it turns out, the fiscal year 1997 deficit came in at only \$22 billion, and it is projected to amount to just \$5 billion in the current year. The unexpected turnaround is due almost entirely to the economy's performance, and it comes in spite of the substantially increased spending allowed by the 1997 budget agreement.

Whatever we ultimately decide to do with a unified budget surplus—and I would caution that projections of a surplus are just that, projections—we ought to be sure that it sustains the economic growth that has gotten us to where we are today.

Mr. President, the suggestions that have been made about how to handle a budget surplus generally fall into four categories: Apply it to new or existing federal spending programs; use it to strengthen and improve Social Secu-

rity for future generations; apply it toward the national debt; or return it to the American people in the form of tax relief.

OPTION ONE: INITIATE NEW SPENDING PROGRAMS

The first option is to spend any surplus, and there is no shortage of suggestions about how to do that. With deficits seemingly behind us, the thought of lavishing readily available funds on new government programs is tempting to many. President Clinton is proposing the creation of dozens of new programs, costing \$125 billion over the next five years. That is in direct contradiction to his pledge to save Social Security first.

There are good reasons to be cautious about creating any new spending programs. For one thing, a surplus has yet to be posted. We should not commit to spend what we do not have.

Moreover, we are all aware of the instability now being experienced by Asian economies, and some of that could spill over into our own economy in the coming months. To some degree, United States markets have already felt the effects of the Asian problems.

Just as the fast-growing economy has produced billions of dollars in additional revenue for the Treasury during the last year, any slowdown in the economy could take billions of dollars out of the equation. If we cannot ensure that any new programs have a dependable revenue stream to support them, we will be back into deficit very quickly.

SOCIAL SECURITY

Mr. President, millions of Americans, myself included, listened intently to what President Clinton had to say about Social Security in his State of the Union address. What we heard—or what we thought we heard—was a declaration by the President to reserve any budget surplus that might emerge in the next few years to shore up Social Security for future generations.

It was a statement that drew widespread praise from the public. But now it turns out that what we heard is not, according to White House spokesmen, what the President really meant. The Washington Post put it this way in a February 4 report: "the ringing simplicity of Clinton's call to 'save Social Security first' gave way to a fog of bewildering budget-speak from the administration's top economic advisers."

It turns out that the President is not proposing to reserve the surplus for Social Security at all. First, it is worth noting that his budget would spend the surplus that is generated this coming year by the Social Security system itself. In other words, President Clinton takes an estimated \$93 billion out of the Social Security trust fund, issues the retirement program a set of IOUs, and uses the money, not for retirees today or in the future, but to pay for other programs run by the federal government.

Second, as I mentioned a few moments ago, he would diminish the size of the other surplus we are talking

about—the unified budget surplus—by proposing to spend it on a whole host of new government programs costing \$125 billion over the next five years.

Is that really putting Social Security first? It seems to me that that is a plan for putting it last—or at least way, way down the list of things to do with a budget surplus.

If we really want to save Social Security, we ought to get back to what most people thought Social Security was supposed to be: A safe and secure account where their contributions could be deposited and where they could grow to produce a nest egg for their retirement years. A unified budget surplus will make it easier to get to a system where money is put into individual Social Security retirement accounts for each citizen so that the money will actually be set aside for him or her. This would put Social Security reserves completely off limits to the federal government so they could not be squandered on other programs.

This may be the best thing to do with a unified budget surplus.

OPTION THREE: BEGIN TO PAY DOWN THE NATIONAL DEBT

Mr. President, there are those who say that we should not spend any surplus revenues that may arise, nor reserve them for Social Security, but begin to pay down the debt instead.

The federal government has not run a unified budget surplus since 1969, so the fact that it may do so next year is indeed significant. But I would caution that we are not yet at the point that we can actually begin to pay down the debt—at least in the sense that most people think of. The fact of the matter is that the national debt will continue to rise, even though we are about to enter an era of surpluses. Why?

We are only on the verge of running a surplus in the unified budget—what we get when we total up all government revenues and expenses, including Social Security revenues and expenditures. If borrowing from Social Security and other trust funds were removed from the calculation, the Clinton budget would show not a surplus of \$9.5 billion for fiscal year 1999, but a deficit of \$95.7 billion.

With borrowing comes the obligation to repay. That is, the IOUs that are issued to the Social Security trust fund must be repaid as the needs of the retirement system dictate. This is one reason that the President's budget forecasts the debt rising from \$5.5 trillion this year to \$6.3 trillion by 2003.

We have a long way to go before we balance the budget without relying on Social Security, and so the first order of business must be federal spending restraint. That is why we should reject President Clinton's call to spend billions of dollars to start dozens of new programs. When we get to the point where we can balance the budget without relying on Social Security, the debt will stop growing, and then we can think about starting to shrink it.

But here is the more fundamental point: it seems to me that if our only

focus is on paying down the debt, we will fail in our ultimate duty to the American people. At best we will merely perfect a mechanism for collecting the taxes and paying the debts of a government that still regulates too much, spends too much, and taxes too much. Milton Friedman has said that he would rather have a smaller budget that is out of balance, than a larger budget that is in balance. I think he is right.

It is more important, in my view, to aim first to limit government spending, reduce taxes, and foster a less intrusive federal government. The fact that we achieve balance only by relying on Social Security and other trust funds is indicative of a government that is still operating far beyond its means.

A final point. Jack Kemp has suggested that keeping taxes higher than they need to be simply to run budget surpluses to slow the amount of debt we are accumulating puts the "cart of austerity ahead of the horse of economic growth." I think his point is a valid one. The absolute size of the debt is not nearly as burdensome as its size relative to the overall economy. In other words, as long as the budget is in balance or near balance, the country's true debt burden is going to shrink by virtue of a growing economy.

The focus ought to be on maintaining a healthy and growing economy that produces good new jobs, more opportunities for everyone to get ahead, and the resulting capability to meet federal budget requirements and actually pay down the debt over time.

OPTION FOUR: PROVIDE BROAD-BASED TAX RELIEF

That gets to the fourth option: Tax relief. We know from recent experience that a strong economy can turn the unified budget from deficit into surplus, so long as we also exercise some modest restraint over federal spending. So a thriving economy is one of the keys to solving our Nation's long-term budget problems. It is a thriving economy that will make it much easier to safeguard Social Security and Medicare for the generations to come.

But with the favorable short-term budget outlook so dependent upon economic growth, and no significant pro-growth policy changes to prevent the already lengthy expansion from petering out, many of us believe that it will be difficult, if not impossible, to ever realize the extra revenues that we are depending on for the budget to stay in balance once it gets there.

Federal Reserve Board Chairman Alan Greenspan gave this advice to the Budget Committee in early February: He told us to view the surplus very cautiously, avoid new spending, adhere to spending caps, and focus on growth-oriented tax cuts, like lowering marginal income-tax rates and reducing capital-gains taxes.

So, Mr. President, regardless of what happens to a unified budget surplus, it would be prudent to invest in economic growth, and the best way to do that would be to reduce income-tax rates for

all Americans. This would help the economy by lowering the tax on each additional dollar earned—something that will stimulate work, saving, and investment. This, in turn, will lead to more jobs, better pay, more opportunities for all Americans, and ultimately more revenue for the Treasury.

If the political climate is such that across-the-board income-tax rate reductions cannot be accomplished this year, then providing marriage-penalty and death-tax relief may be the best alternative for helping millions of hard-working families, while promoting economic growth.

Mr. President, in early December, Congressman JOHN SHADEGG and I hosted a town hall meeting in Scottsdale, Arizona, to discuss taxes with our constituents. Half the session was devoted to reform of the Internal Revenue Service. The other half focused on tax reform.

Most of the people we heard from expressed frustration with the federal government's propensity to try to pick winners and losers—that is, to target tax relief to select groups of Americans. That is what President Clinton is proposing again this year. The consensus was in favor of broad-based relief so that everyone has a chance to do better—singles as well as married couples, retirees as well as students, families with children as well as those without. People also cried out for simplification. Last year's attempt to provide tax relief resulted in an additional 821 changes in the Tax Code. It is just too complex.

In fact, most constituents favor scrapping the entire Tax Code and starting over with an entirely new tax system—one that puts taxpayers' interests ahead of the interests of accountants, lawyers, and lobbyists. A majority of the Arizonans who attended the Town Hall meeting appeared to favor a national sales tax. But there is a lot of support for the flat tax as well.

Therein lies our dilemma. While public sentiment appears to be strongly in favor of a fundamental overhaul of the Tax Code, significant public consensus has yet to emerge in favor of a single-rate or flat tax over a sales tax or some alternative. And given President Clinton's lack of support for any fundamental tax reform, it is likely to take a broad public consensus, the likes of which we have not seen in recent years, to drive such a tax overhaul through Congress and past the President's veto pen. Comprehensive reform will take time to accomplish.

In the meantime, though, we can take a big step in the direction of fundamental reform by providing broad-based tax relief to the American people. Income-tax rate reductions would be best, but we ought to go as far as we can this year. Marriage-penalty and death tax relief are other good places to start.

A FEDERAL SPENDING LIMIT

Mr. President, the chairman of the House Ways and Means Committee recently recommended that we not only

provide tax relief, but also set a goal of limiting federal revenue to no more than 19 percent of Gross Domestic Product (GDP)—that is about 0.9 percent less than where revenues are today. The growing debt under the Clinton budget and the dozens of costly new programs the President is proposing are evidence of the need to limit the government's burden on hard-working Americans. Obviously, a tax limit would also have to be coupled with a requirement that the government balance its books.

Establishing such a limit is an idea that I have advocated for some time, although I think a better and more direct approach would be to limit federal spending instead of revenue.

It has proven notoriously difficult to accurately project what federal revenues will be from year to year. And even if we could accurately predict revenues, keeping them within the limit would no doubt require near constant tinkering with the Tax Code—something that ought to be avoided if we are interested in simplifying compliance and returning some stability to the tax laws.

But we can limit spending. And that is the cornerstone of the Balanced Budget/Spending Limitation Amendment that I have proposed over the years. Voters in my home state of Arizona overwhelmingly approved a spending limit as part of our state's constitution in 1978. It is a home-grown idea that would work well in Washington, too.

The spending limitation amendment I propose would limit spending to 19 percent of GDP, which is roughly the level of revenue the federal government has collected for the last 40 years. There are also statutory approaches to establishing such a limit.

Balance the budget and limit spending, and there is no need to consider tax increases. Congress would not be allowed to spend the additional revenue that is raised. Link federal spending to economic growth, as measured by GDP, and an incentive is created for Congress to promote pro-growth economic policies—that is, policies that lead to more jobs and better pay, more opportunities for small businesses. The more the economy grows, the more Congress is allowed to spend, but always proportionate to the size of the economy.

CONCLUSION

Mr. President, we need to be straight with the American people when we talk about a budget surplus. It has yet to materialize, so we should not attempt to spend what we do not have. Paying down the debt is not really an option, since the debt will keep growing as a result of continued borrowing from Social Security and other trust funds. We still have a long way to go to balance the budget without Social Security.

We can, however, begin to protect Social Security from spendthrift politicians by considering ways of putting

Social Security contributions off-limits to the government in individual Social Security accounts. And we can invest in broad-based tax relief that will help fuel economic growth so that we not only have the means to safeguard Social Security and Medicare for future generations, but the resources to balance the budget without relying on Social Security.

The healthy and growing economy of the last year did what the big tax increases of 1993 and 1990 could not do. It has produced the surge in revenues that has nearly closed the gap between government revenues and expenditures. And it has validated what many of us have said for some time: Reduce the tax burden imposed on the American people, and the economy will flourish and produce the revenues we need to solve our budget problems.

Let us really put Social Security first, and let us provide broad-based tax relief. Those objectives should top our agenda for the year.●

JUDICIAL VACANCIES

● Ms. MOSELEY-BRAUN. Mr. President, today, my colleague from Illinois, Senator DURBIN, and I are recommending that President Clinton nominate David Herndon and Jeanne Scott for federal judgeships in the Southern and Central Districts of Illinois. David Herndon has been a highly respected Illinois Circuit Court judge since 1991. Prior to that, he practiced for 14 years, developing a real expertise in complex litigation. Jeanne Scott has served as an Illinois state judge for 18 years. She is currently the Division Chief for Civil cases in Sangamon County. She has a sterling reputation as a dedicated and fair judge. She will be the first female federal judge in the history of the Central District of Illinois. It is therefore an appropriate moment for me to say a few words about a matter of critical importance: the exceptionally large number of judicial vacancies in our federal court system.

Currently, there are 83 vacancies in the federal judiciary. This accounts for approximately one out of every ten federal judges. Twenty-five of the vacancies have been in existence for 18 months or longer and are therefore regarded as "judicial emergencies." Over one-third of the seats in the U.S. Court of Appeals for the Ninth Circuit are vacant. As of last year, the average number of days from nomination to confirmation was at a record high of 183.

Illinois presently has seven vacant judgeships. One of these, in the U.S. District Court for the Southern District of Illinois, dates back to November of 1992. Another, in the Central District, dates back to October of 1994. Two of the nominees for these vacancies are awaiting action by the Senate Judiciary Committee and two are awaiting action by the full Senate. In the Southern District, the chief judge went for more than a year without having time to hear a single civil case be-

cause his criminal docket was so full. In the Central District, major civil trials have had to be postponed because of the shortage of judges. Commenting on the imminent retirement of a third judge in his district, Marvin Aspen, the chief judge of the Northern District, recently told the Chicago Sun-Times that "if Congress does not move quickly . . . in a short time we could have a serious backlog." Last week, Judge Aspen called the number of judicial vacancies nationwide "an unprecedented scandal."

As Chief Justice Rehnquist stated in his 1997 Year-End Report on the Federal Judiciary, "Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary." The Chief Justice placed much of the blame squarely on the Senate. He said, "Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed during 1994."

By failing to move expeditiously on judicial nominations, the majority party in the Senate is failing to live up to its responsibilities to the American people. President Clinton has made 91 judicial nominations during the 105th Congress, but the Senate has confirmed only 39 of these individuals. As the Chicago Tribune editorialized last month, "If Republicans don't like the choices, let the Senate debate them and vote them down. Doing nothing, as the Senate has done lately, is cowardly and cynical."

Worse yet, it is affecting the quality of justice in the United States. The increase in the number of judicial vacancies in combination with the growth in criminal and civil filings has created a huge backlog of federal cases. According to Chief Justice Rehnquist, since 1990, the number of cases filed in courts of appeals has increased by 21 percent and those filed in district courts have grown by 24 percent. There was a five percent increase in the criminal caseload in 1997. This resulted in the largest federal criminal caseload in 60 years.

According to the Administrative Office of the U.S. Courts, the number of active cases pending for at least three years rose 20 percent from 1995 to 1996. According to the most recent data provided by the Department of Justice, there are more than 16,000 federal cases that are more than three years old.

Time magazine wrote last year that "some Republicans have as much as declared war on [President] Clinton's choices, parsing every phrase they've written for evidence of what they call judicial activism." This has discouraged qualified candidates from subjecting themselves to the confirmation process. For instance, last September, Justice Richard P. Goldenhirsch of the Illinois Court of Appeals, withdrew his

name from consideration for a federal judgeship, stating that, because of the "poisoned atmosphere of the confirmation process, my nomination would be pending for an indefinite period of time." He stated that the protracted nature of the process was "particularly unfair to the people of the Southern District of Illinois, who deserve a fully staffed court ready to hear their cases."

In condemning President Clinton's judicial nominations, one of my Republican colleagues described the judicial branch last year as being full of "renegade judges, [who are] a robed, contemptuous intellectual elite." And in explaining why the confirmation of a California appeals court judge had been delayed for two years, a senior member of the Republican majority stated, "If you want to blame somebody for the slowness of approving judges to the Ninth Circuit, blame the Clinton and Carter appointees who have been ignoring the law and are true examples of activist judging."

The President's record of judicial appointments belies any assertion that he has sought to stack the federal judiciary with the types of judges referred to by my colleagues. The New York Times commented last year that what "may be most notable about Clinton's judicial appointments may be reluctance to fill the court with liberal judges." The Times noted that a statistical analysis by three scholars "confirms the notion that the ideology of Clinton's appointees falls somewhere between the conservatives selected by [Presidents] Bush and Reagan and the liberals chosen by President Carter." The Times quoted an author of the study, Professor Donald Songer of the University of South Carolina, as stating that Clinton's appointments were "decidedly less liberal than other modern Democratic presidents." Professor Songer stated that, from an ideological standpoint, President Clinton's judges were most similar to judges selected by President Ford.

Republican members of the Senate thus cannot claim that they are safeguarding the judiciary from liberal jurists. Indeed, it is they who, in the words of Time magazine, are currently engaged in "what has become a more partisan and ideological examination of all judicial nominees." As my colleague from Vermont, Senator LEAHY, stated last September, the "continuing attack on the judicial branch [by Republican Members of Congress], the slowdown in the processing of the scores of good women and men the President has nominated to fill vacancies on the Federal courts around the country, and widespread threats of impeachment [against federal judges] are all part of a partisan ideological effort to intimidate the judiciary."

Mr. President, Chief Justice Rehnquist has called the independence of the judiciary "the crown jewel of our system of government." Our courts are