

SENATE—Monday, August 2, 1982

(Legislative day of Monday, July 12, 1982)

The Senate met at 11 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 Richard Halverson, LL.D., D.D., offered the following prayer:

O give thanks unto the Lord; call upon His name: make known His deeds among the people.

Sing unto Him, sing psalms unto Him; talk ye of all His wondrous works.

Glory ye in His holy name; let the heart of them rejoice that seek the Lord.—Psalm 105: 1-3

Father in Heaven, with Labor day recess, October recess, elections, and imminent adjournment in prospect, help the Senators not to put off what they ought to do individually and corporately. Help them to get done whatever they will wish they had done when the 97th Congress is over. Give them wisdom, and energy, to fulfill their mandate, and the courage not to sacrifice principle for political expediency. May they learn dependence upon Thee and thus be independent of all the forces which vitiate the common good. May they seek to "do justly, love mercy, and walk humbly with their God." (Micah 6:8) Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

THE JOURNAL

Mr. TOWER. Mr. President, I ask unanimous consent that the Journal of the proceedings of the Senate be approved to date.

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

SENATE SCHEDULE

Mr. TOWER. Mr. President, it is my understanding that there is a previous order that the Senate will resume consideration of Senate Joint Resolution 58, and that the pending business will be the Dodd amendment, following morning business.

The PRESIDENT pro tempore. The Senator is correct.

ORDER OF BUSINESS

Mr. TOWER. Mr. President, I will reserve the remainder of my time, and

I ask the distinguished minority leader to deliver himself of any comment he may have this morning.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

Mr. ROBERT C. BYRD. I thank the distinguished acting Republican leader.

Mr. ROBERT C. BYRD. Mr. President, I yield to Mr. PROXMIER such time as he may wish to consume out of my 10 minutes.

Mr. PROXMIER. I thank the distinguished Democratic leader.

The PRESIDENT pro tempore. The Senator from Wisconsin.

WOMEN IN THE MILITARY

Mr. PROXMIER. Mr. President, Air Force Maj. Gen. Norma Brown retired at the end of July as the highest ranking woman in the uniformed ranks of the Defense Department. She leaves behind a pattern of success and excellence that should encourage other women to follow in her path.

Until retirement, General Brown was the commanding officer of Chanute Air Force Base about 125 miles south of Chicago. According to a tribute to her published in the Chicago Tribune, General Brown left behind some highly unusual circumstances. As one enlisted man on the base is quoted saying:

You won't find anyone on this base who has anything bad to say about her and not having anything bad to say about the commanding officer—that's unique.

One of General Brown's most appealing characteristics is her common sense and understanding of the role that women can play in the All-Volunteer Force. She addresses the role of women head on:

In the Air Force, there isn't anything the women can't do side by side (with men).

and

There aren't any jobs women shouldn't do except the ones they can't do. All women can't do all things.

I might add that all men cannot do all things either. And that really is the point about the participation of women in the military. The issue is capability not gender. Some men can do the job. Some men cannot. We discriminate against men who cannot

meet qualifications for certain jobs. And the same is true of women. It is the ability to get the job done right that counts, not the gender of the individual.

As I often have said when asked about women in the military. "Are you any less dead if the hand that pulls the trigger is a woman's rather than a man's?"

Mr. President, I ask unanimous consent that the Chicago Tribune article of General Brown be printed in the RECORD.

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

[From the Chicago Tribune, July 30, 1982]

AIR FORCE'S SUPERWOMAN TO GIVE UP CHANUTE COMMAND

(By Eileen Ogintz)

She has a job that combines the duties of a mayor, a university president, a police chief, a corporate comptroller and a counselor.

And though she juggles all of her tasks with aplomb—and loves them all—she's going to give them all up gladly.

"I've never been bored in my life, and there's no way I'll be bored now," said Air Force Maj. Gen. Norma Brown, who by retiring at the end of this month is relinquishing her role as the military's superwoman.

Brown, 56, is the highest-ranking woman in the military—until Sunday, when she happily turns over her command at Chanute Air Force Base. With 10,000 persons on the base, about 125 miles south of Chicago, Chanute is among the nation's larger and one of the Air Force's key training sites.

Brown has been at the 2,300-acre base for the last 39 months. "And overall, the people here really don't want to see her go," said Airman Eric Schell, 20, who recently started a six-year Air Force hitch.

"You won't find anyone on this base who has anything bad to say about her, and not having anything bad to say about the commanding officer—that's unique," agreed Chief Master Sgt. Richard Marvin, liaison between the general and the enlisted men.

"She's the Air Force's No. 1 cheerleader," he added admiringly.

Brown never planned a military career—much less becoming a general. It all happened by chance.

A sharecropper's daughter from rural Madison, Fla., Brown attended college on a scholarship and then began teaching high school in Lake County, Fla., for \$200 a month.

"Teaching was great . . . and I was frugal, but I figured I'd be 206 before I was able to go back to school to get my master's," she said recently in an interview.

But at the same time she was so financially strapped, the Korean War had left the military strapped for new young officers. "I knew nothing about the military," Brown recalled. "I just knew this Air Force recruit-

ing sergeant in the Lake City Post Office. He said, 'Come, serve.' I asked how much the pay was, and he told me \$400 a month. I thought, 'Super. I could do that for three years.' The only reason I joined was to save money for school."

But that decision—made when she was 25—ended her teaching days forever and started a peripatetic career that took her around the country and around the world as she moved in personnel and administrative jobs from lieutenant to major to colonel to general.

Along the way, Brown, who is single, managed to find time to adopt two children and maintain a normal, if sometimes hectic, family life. Bunny, 19, now is a student at the University of Texas in San Antonio, where Tim, 18, also will enroll.

The general has a home in San Antonio and will live there after Aug. 1, gardening, golfing and reading and, she said, with "more things planned than I can do." Neither of her children, she added, has shown "a lick of interest" in the Air Force.

"Family is an important priority," she explained. "My kids understand long hours, but they also understand that if we're going on a picnic or for a bike ride, I'll be there."

Brown also understands long hours. She's often at her desk by 5 a.m. and still there after 6 p.m. "She does so much there's hardly anything left for me to do," joked her second in command, Col. Michael Moore, who is vice center commander. "I guess she pays the price in lack of sleep."

"I did just as well as a lieutenant as I do as a major general, Brown said. "To me, whatever assignment I'm doing is the most fun."

At Chanute, Brown oversees 10,000 people, 5,000 of whom are students learning everything from weather forecasting and firefighting to aircraft maintenance and missile training. Each year, 25,000 student airmen and officers are trained at the 65-year-old base, which is the Air Force's oldest technical training center.

"I'm lucky here if I know 15 percent of my people," she said. "That part isn't as much fun. I enjoy dealing with people rather than paper."

And, by all accounts, she's good at it. "In the year I've been here nobody has been turned away from her door," said Col. Moore. "She never turns anybody down. At the annual picnic, she spends the whole time talking to airmen and having her picture taken with them."

"She's had a big influence on women in the Air Force," agreed Master Sgt. Marvin. "They look up and see what she's done, and it gives them kind of a 'by golly, she did it; I can do it' attitude."

"In the Air Force, there isn't anything the women can't do side by side [with men]," Brown said. "There aren't any jobs women shouldn't do, except the ones they can't do. All women can't do all things."

And, she stressed, being a woman had nothing to do with her successful career—or with any sacrifices she might have made in her personal life for the sake of that career. "I didn't compromise," she said. "And I didn't work harder as a woman."

"I'm not sorry about anything," she added. "There's no way I could be more pleased than to have served the Air Force for 31 years. It's been good for me and I've been good for it. And now I'm going to do what I think someone should do if she has planned well for 31 years—what I want."

THE NUCLEAR WEAPONS LABS

Mr. PROXMIRE. Mr. President, on July 23, 1982, the Milwaukee Journal printed a remarkable article by Hugh E. DeWitt, a physicist at Lawrence Livermore Laboratory.

Without necessarily endorsing the arguments of Mr. DeWitt, it is important to take a look at some of his observations—coming as they do from one who has worked on the "inside" of a major nuclear weapons laboratory.

Mr. DeWitt argues that little is known about or publicly discussed with reference to the role of the two nuclear weapons design laboratories—Lawrence Livermore and Los Alamos. These are the organizations charged with the development of new nuclear weapons in response to directives from the President and Department of Defense.

Arguing that:

The great majority of scientists, engineers and military personnel involved in nuclear-weapons work sincerely believe that the main purpose of developing ever more diversified bombs is to make certain they are never used.

Mr. DeWitt nonetheless suggests that their institutional biases work against arms-control proposals.

He points to the directors of these labs as the leaders in persuading former Presidents to move toward a comprehensive nuclear test ban. Obviously, with a comprehensive ban, there would be much less work for the two labs.

He writes that:

After working 25 years at Livermore, I have reached the conclusion that our work . . . has actually lessened the security of the United States. . . . If peace through deterrence is the goal, the nuclear-weapons labs on both sides have completed their missions all too well.

Mr. President, I do not know Mr. DeWitt nor the background of his decision. Obviously, we need to maintain a nuclear capability in the defense of this country and that capability cannot exist without the contribution of our weapons labs. But I cannot help but sympathize with his reflection that the nuclear arms race "constitutes the worst threat faced by human civilization."

It is time that we move toward a comprehensive nuclear test ban—one that can be verified beyond reasonable doubt by the technical means at our disposal.

Mr. President, I ask unanimous consent that the article from the Milwaukee Journal be printed in the RECORD.

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

NUCLEAR ARMS BUSINESS KEEPS RACE GOING

(By Hugh E. DeWitt)

In the current national debate on nuclear arms, attention has been focused on the staggering numbers of weapons both superpowers possess, the continuing development

of new and more accurate delivery systems, and the specter of mutual annihilation. Unfortunately, little attention has been paid to the role of the nation's two nuclear-weapons design laboratories—Lawrence Livermore in Livermore, Calif., and Los Alamos in Los Alamos, N.M.—in promoting and perpetuating the arms race.

As a physicist at Livermore, I can state that these two institutions have had a pivotal role in a very large, stable and influential nuclear-weapons establishment that has one primary interest; development of ever more nuclear weapons and their incorporation into the American stockpile.

I do not doubt that the great majority of scientists, engineers and military personnel involved in nuclear-weapons work sincerely believe that the main purpose of developing ever more diversified bombs is to make certain that they are never used.

As a consequence, the labs are repositories of hawkish views of the world.

In serving their cause, most of the labs' directors have opposed not only nuclear-arms cutbacks but even test-ban treaties. In 1957, the chairman of the Atomic Energy Commission, Lewis L. Strauss, brought physicists Edward Teller and Ernest O. Lawrence to the White House to dissuade President Dwight D. Eisenhower from negotiating a test ban with the Soviet Union. Arguments were made that continued testing was vital for the development of clean (fallout-free) bombs for battlefield use in Europe, and that the Soviets could cheat by testing underground.

Similar arguments are still being used. In 1978, Secretary of Energy James R. Schlesinger took Harold Agnew, then director of Los Alamos, and Roger Batzel of Livermore to see President Jimmy Carter. Evidently they were persuasive enough to halt the movement toward a comprehensive test ban treaty, which at that time seemed very likely to be accepted by the Soviet Union.

After 25 years at Livermore, I have reached the conclusion that our work—development of new nuclear warheads and delivery systems—has actually lessened the security of the United States.

This nation has led the nuclear-arms race at every stage since World War II. This race constitutes the worst threat faced by human civilization. Now it has a new dimension of horror in the emerging view that tactical nuclear weapons can be used for fighting and winning limited nuclear wars. This belief, whether expressed in Washington or Moscow, is very dangerous nonsense. Since it is evident that further testing is unnecessary, the superpowers should endorse a test-ban treaty and persuade smaller powers to do the same.

If peace through deterrence is the goal, the nuclear-weapons labs on both sides have completed their missions all too well. The recent Soviet pledge of no first use of nuclear weapons is an important political gesture that can and should be matched by our government.

THE KKK VERSUS THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, what groups are most vigorous in their opposition to the Genocide Convention? Well, in the camp of the opponents we find extremist organizations such as the John Birch Society, and racist ones such as the American Nazi

Party which for obvious reasons is not disposed to condemn genocide. These fringe groups insist that the Genocide Convention is a Communist trick or part of the "United Nations Conspiracy." Perhaps most disturbing of these groups is the Ku Klux Klan, a particularly dangerous and repugnant manifestation of militant racism in America.

Only recently, U.S. District Judge Gabrielle McDonald ordered an end to Klan paramilitary activities in Texas. In her ruling, she noted "acts of racial intimidation, harassment, and terrorism," and the "military training programs" of the Klan "throughout the country." The private army in question had been conducting a campaign of fear against the peaceful immigrant Vietnamese fishermen of Galveston Bay.

As Judge McDonald wrote, these camps "which train people in the use of violence present a new and more serious threat to individuals' civil rights" and "can only serve to sow the seeds of future domestic violence and tragedy." She identified our vital interest in banning private armies that threaten to "result in lawlessness and destructive chaos."

In Alabama, the "Special Forces" of the Klan have marched down the main street of Birmingham in their combat uniforms and they train at a place they call Camp My Lai. Although this notorious camp is named to commemorate the massacre of Vietnamese villagers, the Klan activities there pose a menace to all nonwhite people, Jews, and anyone who fights racism.

In short, the Ku Klux Klan is the leading terrorist group in America today, and their latest preparations are geared for racist warfare. In light of their creed, it is not surprising that they denigrate the Genocide Convention. Clearly, they do not share the spirit of equality that underlies the treaty. They do not comprehend the right of peoples to be free from fear, free from violence, free from oppression. The Klan is, after all, living proof that prejudice is forever ready to ignite attacks on members of national, ethnical, racial, or religious groups. The Klansmen are averse to the treaty because they cannot appreciate the evil of genocide while they are blinded by the poison of bigotry.

We see on the one hand the Genocide Convention has been defamed by the Klan, the Nazis, and other reactionaries. On the other hand, the treaty has been endorsed by a host of respected labor, civic, and religious organizations: the American Bar Association, the YWCA, and B'nai B'rith, to name a few, as well as the Pentagon and all administrations since Harry Truman's. And where does the Senate stand on this issue? In this dispute, whose side are we on? Mr. President, I

think we all will feel more comfortable when the Senate has ratified this treaty, has repudiated the not-so-benign neglect urged by those inclined toward race hatred, and has adopted this fundamental commitment to simple justice.

ARMS SALES RESTRICTIONS SHOULD NOT BE RELAXED

Mr. PROXMIER. Mr. President, I wish to call the attention of my colleagues to reports which are circulating about the likelihood of this Congress easing up on the restrictions which we place on the sale of American-made military hardware of foreign countries.

A bill passed in the other body by voice vote on July 19 is the cause of this recent speculation. This bill, H.R. 6758, should not receive such casual treatment in the Senate. Its effects could totally eliminate any control the Congress has on arms sales to foreign governments. If the bill is enacted into law, it would permit U.S. commercial concerns to purchase military hardware directly from Defense Department arsenals, integrate the weapons into other items, and sell the finished products to "friendly" countries without seeking Pentagon or congressional approval. This would be a situation which I do not believe any Senator could tolerate.

Mr. President, I ask unanimous consent that an article in the July 30, 1982, edition of the New York Times entitled "\$1 Billion Sale of Artillery to India Appears Likely" by Richard Haloran be printed in the RECORD.

I hope that all Senators will read this article and consider the effects of enactment of H.R. 6758 such that it can be effectively debated and voted upon by the Senate.

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

\$1 BILLION SALE OF ARTILLERY TO INDIA APPEARS LIKELY

WASHINGTON, July 29.—A bill quietly enacted by the House of Representatives 10 days ago has begun to open the way for large commercial sales of American arms to foreign nations, including \$1 billion worth of artillery to India.

The immediate beneficiary of the measure, which seems likely to be approved by the Senate later this year, would be the Bowen McLaughlin York Company of York, Pa. The company, a spokesman said, has been negotiating with India to sell \$1 billion worth of artillery, ammunition and equipment.

The legislation was not directly connected with the visit of Prime Minister Indira Gandhi, but United States officials said arms sales to India would be discussed. The Reagan Administration has emphasized security assistance to friendly nations.

India has bought \$79 million worth of military equipment from the United States through the Government's foreign military sales program and \$44 million in arms under commercial export licenses, and has also re-

ceived \$90 million in military assistance since 1950, according to the Defense Department.

MORE ARMS ARE OFFERED

Pentagon officials said that the United States in recent years had offered to sell India more arms, including artillery, but that India had not responded. India has sought weapons from diverse sources, but principally the Soviet Union.

The Bowen McLaughlin York spokesman said the company had offered to sell to India 200 self-propelled 155-millimeter howitzers and 200 towed 155-millimeter howitzers, along with ammunition, spare parts and ancillary equipment. Howitzers of that caliber are replacing 105-millimeter howitzers as the standard artillery of the United States Army.

The self-propelled guns, with a crew of six in an armored, tracked carrier, can fire high explosive, chemical or nuclear rounds nearly 15 miles. The towed guns, with a crew of 13, can hurl projectiles more than 18 miles.

The initial sale, if the negotiations are successful, would be worth about \$200 million. But continuing sales, service, and spare parts would eventually make the contract worth about \$1 billion, he said.

In addition to India, the spokesman for Bowen McLaughlin York said, the company has begun discussions with Belgium, Canada, Egypt, South Korea, Nigeria and Norway.

The main feature of the arms sales bill would be to streamline the arms sale process, according to Congressional officials. The measure was introduced by Representative Bill Goodling, Republican of Pennsylvania, who represents the district in which Bowen McLaughlin York is situated.

The legislation would help other United States companies trying to sell weapons abroad as well. The bill permits the weapons makers to buy components from Government arsenals, assemble them into finished weapons and sell them under licenses approved by the State Department to a foreign government.

Previously, commercial arms makers were prohibited from selling arms with Government-made parts to foreign nations unless the buyer went through a long and cumbersome process of obtaining a foreign military sales agreement covering components made in Government arsenals.

Like foreign military sales by the Government, commercial arms sales must be approved by Congress. The State Department notifies the Congress of the pending sale, which goes ahead unless Congress vetoes it within 30 days.

Mr. Goodling said that under present rules "Government-owned and operated facilities cannot support commercial defense plants on a direct basis."

"This causes higher administrative costs," he said, "and makes the coordination of efforts between Government and non-Government plants to be cumbersome."

"In some cases," he continued, "the present method of doing business means the loss of contracts to United States facilities and ultimately is costing American jobs."

Representative Samuel S. Stratton, Democrat of New York, whose district includes the Government-owned Watervliet arsenal in Albany County, asserted that the proposed legislation would cut through red tape and increase sales and jobs.

The bill passed without objection.

Mr. PROXMIRE. Mr. President, I once again thank the Democratic leader and I yield the floor.

Mr. TOWER. Mr. President, I yield back the remainder of my time.

ROUTINE MORNING BUSINESS

Mr. TOWER. Mr. President, I ask that the Senate proceed to have a period for the transaction of routine morning business not to extend beyond 12 noon with statements made by Senators not to exceed 3 minutes therein.

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

Is there further morning business?

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

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

RECESS UNTIL 12:30 P.M.

Mr. BAKER. I am not accustomed, Mr. President, to arriving late in the Senate Chamber and I apologize to my colleagues for that late arrival today.

However, I found on leaving Tennessee this morning that the airport in my hometown was covered with fog and the visibility was zero and the ceiling was zero and nothing was operating. I suspect that is the same in other parts of the country, particularly in the Southeast, and that may account, Mr. President, for the fact that we have rather heavy absenteeism on both sides of the aisle.

In fact, Mr. President, it does not appear that we are in a position to proceed at this time with any significant debate on the matter at hand, nor is there any demand for morning business at this moment.

Therefore, Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 12:30 p.m. today.

There being no objection, the Senate, at 11:11 a.m., recessed until 12:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HAYAKAWA).

THE BURNING FACTORY

Mr. BAKER. Mr. President, this week's poem, "The Burning Factory," was written by Pat Therese Francis. Ms. Francis' works have appeared in Poetry Northwest, The North American Review, The Massachusetts Review, and The American Poetry Review. I ask unanimous consent that the poem be printed in the RECORD.

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

THE BURNING FACTORY

As children, my sister and I watched our grandfather grow senile. He would sniff the air and ask *Is something burning?* Our mother slapped us for laughing and said

he was remembering the factory fire he witnessed at sixteen when he was the youngest shoecutter in the city. *I can still smell that flesh, that cooked meat,* he'd say, as we grimaced and pedaled away on our bikes.

After a while, he began to wake up at night thinking he heard those screaming factory workers again,

but it always turned out to be a late driver, tires moaning as the car turned the corner, or a howling dog left out for the night.

None of us imagined my sister, the family beauty,

the one with the bright red laugh, would be pulled into breakdown after breakdown

as an adult. None of us knew she, too, would sniff the air, conflagrations more terrible than our grandfather's memories

searing the edges of her sleep. Things seem okay for a year or two, then she'll call, three thousand miles away, and I'll hear the factory workers' terror as it became clear they would not escape the fire cutting through her voice.

Each time it happens, I weep and shake as if it were the first, but I'm never sure if I cry for her madness, or just for the ordinary days of our childhood, the sweaty closeness

of living in one house, in one city, that our family

has lost. As my sister stutters into the phone, I cry

for the day my mother gave me a permanent

and I watched my sister's face like a mirror as the curlers came out,

and for Sundays when all seven of us, grandfather and all,

climbed into the Chevy Impala and went for a ride. If things had gone well for my father at work that week

he would turn up the radio on the way home

and we'd all sing as loud as we could while the orange sun spread out along the highway

like a distant and always benevolent fire.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business in which Senators may speak.

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

Mr. BAKER. Mr. President, the reason for that is our distinguished friend and colleague from West Virginia wishes to present remarks on the observance of a very special and unique anniversary date which is not often recognized, but which is an important part in the history of our Nation.

At the conclusion of his remarks, I anticipate the Chair will close morning business if there is no further need for it. In any event, I ask unanimous consent that time for routine morning business not extend beyond the time of 1 p.m.

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

Mr. BAKER. The Senate will resume consideration of Senate Joint Resolution 58 following the conclusion of morning business. I understand that the Dodd amendment is either now pending or will be called up by the distinguished Senator from Connecticut.

Mr. DODD. If the distinguished majority leader will yield, it will be called up.

Mr. BAKER. Mr. President, I anticipate that as soon as we can clear it on both sides, a unanimous-consent agreement may be desirable to stack votes until sometime tomorrow. There are a number of absentees on both sides of the aisle. While this is done as a matter of accommodation, it is done because it is a matter of concern to both the majority and the minority leaders.

I now yield the floor, Mr. President, so the Senator from West Virginia can be recognized.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I am appreciative, as always, for the courtesies and continued cooperation of the able majority leader of the Senate, (Mr. BAKER) extended not only to me but to the 99 Senators on both sides of the aisle with whom he serves.

THE DECLARATION OF INDEPENDENCE WAS SIGNED 206 YEARS AGO TODAY

Mr. RANDOLPH. Mr. President, one of the most significant documents in world history was created 206 years ago today. It began, "When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another," and then continuing, "We hold these Truths to be self evident, that all Men are created equal."

Mr. President, we celebrate the Declaration of Independence on July 4. The 56 delegates on that date approved the creation of the Declaration of Independence.

The Declaration was formally approved and signed on August 2, 1776. Today is actually the true anniversary of the signing of the 56 delegates.

This is a hallowed document. I hope we read it often. I would hope teachers have children read it, and, college professors, could do well, especially in political science, to have students study it.

The document ends: "And for the support of this Declaration, with a firm Reliance on the Protection of Divine Providence, we mutually pledge

to each other lives, our Fortunes, and our Sacred Honor."

Mr. President, we should make no mistake about that statement. It was not mere rhetoric to be incorporated in a sentence. The signers knew they were committing an act of defiance against the British crown, and that King George would likely demand immediate death for all persons who were involved, if the American revolution failed.

John Hancock—and some people have rather amusingly said he wanted his name in big letters so that people would know he was signing—showed absolutely no fear when he wrote his name in large, bold letters as the first signer. He had a reason. I now quote. He declared "There, King George can read my name without spectacles and may now double his reward of 500 pounds for my head."

Ben Franklin observed, "We must all hang together. If we do not, we shall all hang separately."

William Ellery, of Rhode Island, scanned the faces of his fellow delegates. He wanted to see how they reacted to what they were doing. He later wrote these words: "I was determined to see how they all looked as they signed what might be their death warrants." He added: "Undaunted resolution was displayed on every countenance."

John Adams later wrote that, "If anyone felt fear, he did not reveal it to others."

Perhaps Stephen Hopkins, of Rhode Island, best typified the spirit of the signers of the Declaration of Independence. Mr. President, Hopkins was afflicted by palsy. He had great difficulty in even writing his name. As he did so, he said, "My hand trembles, but my heart does not."

That was in explanation of his shaky signature. He did not want to be misunderstood.

The signers were men in the best sense of the word—men of wealth, of substance, of determination, of spirit. Yet they risked their lives and all that they possessed as they began to tell the story to the world of freedom. Most of all, I think they gambled in a sense on the loss of their sacred honor.

There were good reasons for the signers of that day to be concerned with reprisals from the British. The enemy singled them out for the harshest type of vengeance. Sometimes we forget. Five of the fathers of our Constitution were captured. They were imprisoned. They were broken in health, but never in spirit, when finally released. Others including Thomas Jefferson—narrowly escaped from British pursuit—and the properties, the lands, the homes of these signers were especially marked for destruction.

Benjamin Harrison, a Virginia plantation owner, saw his land plundered, saw it burned, as were the homes of

George Clymer, Dr. John Witherspoon of New Jersey, and Philip Livingston of New York. Others of that group of signers had family members, practically all of them, imprisoned and abused. Several died as a result of the terrible treatment they received.

Did the signers consider their sacrifices worthwhile? That is an important question for us to raise, even now, 206 years later. Not a single signer of the 56 ever indicated that he had made a mistake.

An important factor of the action of those signers is expressed in our question. Do we feel today that they were right? They felt, Mr. President, that they were right. In the intervening years, 206—we emphasize the number, 206—do we feel it in this Chamber, on Capitol Hill, in the White House, in the places of business, in the marts of trade, on the main streets and the Wall Streets or the countryside, the lovely mountain lanes that wind in and out of Preston County, where I talked yesterday, in the annual festival in the little community. It was named Independence in memory of the signers. What do people think, even though they do not always speak? In West Virginia I felt again that those families meeting in warming Kinship, do believe the signers did right.

America is at once the youngest and the oldest democracy in the world. Unless we as individuals, are prepared to husband often, yes, to guard often, our freedoms and our constitutional rights, what happens to us? We cannot be given the opportunity, perhaps, to do it as daringly as did these men.

In 1960, John Kennedy was elected President of the United States. Months later he created a study commission saying it was appalling, the lack of the use of the American ballot by men and women on election day. In 1960, when he had been chosen, 63 out of every 100 registered, qualified voters, men and women, went to the polls. What have we done in the intervening 20 years? Twenty years later, Mr. President, when our Chief Executive occupying the White House today—Mr. Reagan—was a candidate, with others, for the Presidency of the United States, was it 63 percent, I say to the able Senator from South Carolina (Mr. THURMOND) it was 53.4 percent of the qualified registered Americans who were at the polls. Other earnest Senators in the Chamber also know the facts.

I shall not name States. That is not my purpose. But there were several States of the Union, Mr. President, where less than one-half of the registered, qualified voters cast their ballots in November 1980.

I offered a constitutional amendment, in 1942, with the cooperation of other Members of Congress, for 18-, 19-, and 20-year-old youths to be per-

mitted to cast their ballots in the elections of this country. I was a Member of the House of Representatives. I thought then that we needed these young people to participate actively in the process of decisionmaking in this country. They were moving into the battlelines at 18 as we were in war. Yes, I remember 1942. Only one State gave the right for its youths under 21 to vote—the State of Georgia.

I talked with the dynamic Governor of Georgia, Ellis Arnall, about the constitutional amendment that I had introduced. I asked him if he felt it had been good for the State of Georgia to have youth vote. He replied in the affirmative.

I requested, if his schedule permitted, that he come to Washington, D.C., and testify before the House Judiciary Committee on the need for a constitutional amendment so that, nationwide, through the State legislatures, after we had—if we did—acted affirmatively in Congress. He was very affirmative, very enthusiastic, and he came to Washington, D.C.

Do I recall disappointment at the hearing? I certainly do. The Senator from South Carolina knew well the chairman of the Judiciary Committee of the House of Representatives. I served by his side. His name was Emanuel Celler of New York. Of all the members of the committee, he was the only member present for the hearing. There are times when we count. There was a total of 11 men and women at the hearing. I do not say there was a general lack of interest. There was on this occasion. I was perhaps downcast, but I realized that you do not always succeed at the beginning.

Year after year, Congress after Congress, I introduced our constitutional amendment to provide not only the opportunity but, more importantly, to charge young people with the responsibility of the use of the ballot in all elections.

The years go by more quickly than we like to think. It was 1971 when we voted in this Senate for a constitutional amendment.

In the House and in the Senate, we had the necessary two-thirds vote, which we must have, not Members but those present and voting, to send a constitutional amendment to the States.

The date was March 23, 1971, and the vote was 401 to 19 in the House of Representatives. Earlier, on March 10, the Senate voted unanimously for the constitutional amendment. The vote was 94 to 0, with six Members not voting.

The vote was almost unanimous.

Mr. President, I ask unanimous consent to have printed in the RECORD the rollcall vote in 1971 for the constitutional amendment.

There being no objection, the roll-call vote was ordered to be printed in the RECORD, as follows.

[No. 18 Leg.]

YEAS—94

Aiken, Allen, Allott, Anderson, Baker, Bayh, Beall, Belmont, Bennett, Bentsen, Bible, Boggs, Brock, Brooke, Buckley, Burdick, Byrd, Va, Byrd, W. Va. Cannon, Case, Chiles, Church, Cook, Cooper, Cotton, Cranston, Curtis, Dole, Dominick, Eagleton, Eastland, Ellender.

Ervin, Fannin, Fong, Fulbright, Gambrell, Goldwater, Griffin, Gurney, Hansen, Hart, Hartke, Hollings, Hruska, Hughes, Humphrey, Inouye, Jackson, Javits, Jordan, Idaho, Kennedy, Long, Magnuson, Mansfield, Mathias, McClellan, McGee, McGovern, McIntyre, Metcalf, Miller, Mondale, Montoya.

Moss, Nelson, Packwood, Pastore, Pearson, Pell, Percy, Prouty, Proxmire, Randolph, Ribicoff, Roth, Saxbe, Schweiker, Scott, Smith, Sparkman, Spong, Stennis, Stevens, Stevenson, Symington, Taft, Talmadge, Thurmond, Tower, Tunney, Weicker, Williams, Young.

NAYS—0

NOT VOTING—6

Gravel, Harris, Hatfield, Jordon, North Carolina, Mundt, Muskie.

Mr. RANDOLPH. Mr. President, I knew its time had come. In 90 days, in the shortest period of time ever used by the States for ratification a constitutional amendment was brought came into being.

In 90 days, think of it, a constitutional amendment had been approved by the necessary 38 States. It moved back to Washington, D.C. It does not take the signature of the President to make it law. The act of ratification of the States completes the process.

I thought then, at long last, the young people of America would be at the polls voting.

In 1980, those 18-, 19-, and 20-year-olds who voted for a President of the United States was 22 percent. I am not a carping critic. I think, and in a sense pray, that this can be changed. I commend certain young men and women on the college and university campuses as they have formed Convention 2. They are fanning out across this country doing everything that they can do to reverse that tragic figure of 1980 in 1984.

State after State, voting less than one-half of its registered voters, Mr. President. I shall not name the States. The record does not need to be placed here because there is no unkind reference that I make, but there it is. It is not wrong for me to say, however, that West Virginia was not one of those States. We had 71 percent of the men and women eligible to vote in West Virginia at the polls in 1980.

I realize that this is a rather wide-ranging speech that I make today, but it is not a symbolism of which I speak in this Chamber. Yes, it was 206 years ago today that the signers, as I have said, affixed their signatures, one of

them saying, because he had palsy and wanted to explain his shaking hand, "My hand trembles but my heart does not."

And today, what of our hearts? What of our hands?

Are we the great country, the good country, the worthwhile country that was brought into being 206 years ago today by 56 men who signed? Yes. Perhaps I am convincing myself—that we can lift our spirit, strengthen our vision, deepen our dedication and be worthy descendants of those men. America can again prove it is a shining example of men and women participating in government. That we actually are working at the job—diverse opinions, yes, but not divisive opinions talking together, laboring together.

If there is value to what I have spoken today, it will be through the printed record to more men and women and young people.

The PRESIDING OFFICER (Mr. HAYAKAWA). I thank the distinguished Senator from West Virginia for those deeply felt remarks. I take them to heart. I am grateful for his reminder of the signers of the Declaration of Independence. I am grateful for his reminder of the many of us, including young people, not recorded at the polls. I am grateful for his tremendous concern about our failures to do our duty as citizens, and I hope that we all take the reminder to heart. I thank the distinguished Senator from West Virginia.

Mr. RANDOLPH. I am very appreciative of the generous expressions of my esteemed colleague (Mr. HAYAKAWA).

Mr. THURMOND. Mr. President, I ask unanimous consent to proceed for 1 minute.

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

Mr. THURMOND. Mr. President, I commend the able Senator from West Virginia (Mr. RANDOLPH) for taking the time to speak on the Declaration of Independence.

The Senator from West Virginia is a fine historian in his own right, and occasionally he speaks on items of history which I think are very beneficial to the American people. He has shown a special interest in young people, too. Those are two qualities about him that I have always admired, among many others: his deep interest in young people and his knowledge and appreciation of the history of this country.

The Declaration of Independence was signed, and following that, from the time the Treaty of Paris was signed, ending the Revolutionary War in 1783, until 1787, we had a very unstructured form of National Government. That is when the Constitutional Convention met in Philadelphia, in 1787.

There, in the heat of summer, they came up with the finest form of government that the mind of man has ever conceived—just like the Declaration of Independence, in which they pledged their lives, their fortunes, and their sacred honor.

I think everybody should read the Declaration of Independence at least once a year, to see what courage those people showed. They were the very epitome of courage. Everyone should also read the Constitution, which is not long—neither document is long—and see the kind of Government that was set up, which has given the people of this country more freedom, more opportunity, and the highest standard of living than any other nation has ever enjoyed in all history.

I commend the able Senator from West Virginia for the discourse he has presented this morning.

Mr. RANDOLPH. I thank the presiding officer and I thank the Senator from South Carolina for their very gracious words.

Mr. DODD. Mr. President, I do not want this opportunity to pass without commending the distinguished Senator from West Virginia for his comments. I particularly commend him for taking the time before this body to remind us and to remind others of the importance of Signers Day and what it means to all of us, what it has meant to each succeeding generation and, Lord willing, what it will mean to generations yet unborn in this country.

The Senator from West Virginia also made reference to the 26th amendment, dealing with the right of 18-year-olds to vote. I join him and the distinguished Senator from South Carolina in deploring the fact that so few people do exercise their franchise. In the last election, for example, the percentage of those between 18 and 21 who voted hovered around 16 percent, which is a staggeringly low figure.

Mr. RANDOLPH. Mr. President, will the Senator yield.

Mr. DODD. I yield.

Mr. RANDOLPH. Mr. President, I am aware of the intense interest of my colleague from Connecticut in this subject matter, and I am very grateful for his words. I had the privilege of serving with your father in this body.

Mr. DODD. I thank the distinguished Senator from West Virginia.

THE HELSINKI FINAL ACT: 7-YEARS LATER

Mr. HATCH. Mr. President, yesterday, August 1, 1982, marks the seventh anniversary of the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki by 33 leaders of European countries—East, except Albania, and West—plus Canada and the United States. As the title of this international agreement

indicates, the final act recognizes the truism that world security depends on peaceful cooperation between governments. The Helsinki accords, however, go beyond this truism to acknowledge that a secure government is founded on respect for the fundamental rights and freedoms of its citizens. All 35 states which signed the Helsinki final act agreed to a certain code of conduct which places human rights pledges side by side with the more traditional elements of international cooperation, such as agreements in the military and economic spheres, and arrangements for cultural and educational exchanges.

It is partially due to the Final Act code of behavior that East and West have come to see more clearly not only what we share, but also what divides us. We have moved from a naive willingness to overlook essential differences between us—as manifested in the dream of détente—to a realistic desire to set the record straight, both in arms control and in human rights.

On this occasion, I would like to focus upon one aspect of the Helsinki process: The increasingly hypocritical stance adopted by the Soviet Union both in international and domestic affairs, as it flouts many of its Helsinki pledges. Its brutal invasion and occupation of Afghanistan continues—indeed, the Soviets recently stationed thousands more troops there—while the Soviet Union loudly proclaims its love for peace. There is clear evidence that the Soviet military was directly involved in the planning and imposition of martial law on the people of Poland—Soviet Marshall Kulikov was in Poland on December 13, 1981. Yet the Soviet Union is loud in its protestations that no nation has the right to interfere in the internal affairs of another sovereign state.

Traditionally, however, the Soviet Union is at its most hypocritical in the contradiction between what it preaches abroad and what it practices at home. Soviet human rights policies fly in the face of its solemn Helsinki pledges in such areas as the rights of religious believers and ethnic minorities. In May, the Soviet Union hosted a meeting of world religious leaders in Moscow, while its discriminatory laws systematically deny the rights of 100 million Soviet citizens who profess some adherence to religious belief. Millions of Ukrainian Greek Rite Catholics cannot practice their faith because they belong to an outlawed church. The Soviet Union, which is the fifth largest Muslim country in the world, professes its support for Palestinian self-determination while denying that right to its own Muslim minorities, the Crimean Tatars and Meshki, who are exiled from their historic homelands. Hundreds of Soviet Baptists, Pentecostals, Adventists, and Jehovah's Witnesses are imprisoned in

the U.S.S.R. for attempting to practice their faith. The world well knows the shameful way in which the Soviet Union treats its Jewish population.

I would like to turn to another area of Helsinki rights the socioeconomic rights of Soviet citizens. In rejecting criticism of its human rights record, Soviet officials routinely assert that Soviet socialism provides for all the material needs of its citizens. Although Soviet propaganda claims that unemployment is a phenomenon unique to the West, not only is there unemployment in the U.S.S.R., but there is no unemployment compensation. The Soviets tout their free medical care and education, yet, such services are paid for by all Soviet citizens via hidden taxation which skims off an estimated 50 percent of the wages of Soviet workers. The Soviets claim that their system is uniquely egalitarian, yet high party officials have unique access to goods and services which are totally unavailable to the average Soviet citizen. While the Soviets feed important foreign visitors, such as the Reverend Billy Graham, on caviar and other delicacies, food rationing is in effect for most Soviet citizens. Dozens of Soviet labor rights activists, such as Anatoly Marchenko and Aleksei Nikitin, are isolated from family and friends in Soviet camps and psychiatric hospitals. In what may be a tacit admission of guilt, Soviet authorities—in flagrant violation of Helsinki commitments—resumed intensive jamming of Western radio broadcasts in August 1981.

I have given this cursory summary of Soviet hypocritical positions, Mr. President, in the hope that the West can draw some needed lessons. We must deal with the Soviets on issues of global significance, such as arms control, but we must never hesitate to call their bluff. Helsinki has provided a very effective forum for doing just that.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. on tomorrow.

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

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that after the recognition of the two leaders under the standing order and any special orders that may be provided there be a brief period for the transaction of routine morning business to extend not past 10:50 a.m. in which Senators may speak for not more than 2 minutes each.

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

ORDER FOR RESUMPTION OF CONSIDERATION OF SENATE JOINT RESOLUTION 58 AND TIME LIMITATION AGREEMENT ON DODD AMENDMENT

Mr. BAKER. Mr. President, I ask unanimous consent that at 10:50 a.m. the Senate resume consideration of Senate Joint Resolution 58 at which time the Dodd amendment will be the pending amendment and that there be a time limitation at that time of 10 minutes, notwithstanding the time that may be used today for the debate of this measure, and that it be equally divided and at the hour of 11 a.m. a vote occur on or in relation to the Dodd amendment.

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

ORDER FOR STACKING OF ROLLCALL VOTES SUBSEQUENT TO VOTE ON THE DODD AMENDMENT

Mr. BAKER. Mr. President, I ask unanimous consent further that any other rollcall votes which may be ordered today be stacked and occur immediately after the Dodd amendment in the sequence in which they were ordered without intervening debate, motion, or point of order.

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

Mr. BAKER. Mr. President, I expect the Senate will continue to debate amendments today and that other amendments can be taken up and disposed of during the course of the day short of a rollcall vote.

The rollcall votes by reason of the order just entered will occur on tomorrow beginning with and continuing after disposition of the Dodd amendment.

BALANCED BUDGET—TAX LIMITATION CONSTITUTIONAL AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Senate

Joint Resolution 58, which will be stated by title.

The legislative clerk read as follows:

A joint resolution (S. J. Res. 58) proposing an amendment to the Constitution altering Federal fiscal decisionmaking procedures.

The Senate continued with the consideration of the joint resolution.

UP AMENDMENT NO. 1167

(Subsequently numbered amendment No. 2009.)

(Purpose: To provide for a statutory basis for a budget that requires that any increase in outlays be financed by an equivalent increase in revenues, and for other purposes)

Mr. THURMOND. Mr. President, I believe the distinguished Senator from Connecticut wishes to bring up an amendment.

Mr. DODD. Mr. President, I sent to the desk an amendment in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. GORTON). The amendment will be stated by title.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. DODD) proposes an unprinted amendment in the nature of a substitute numbered 1167.

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

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

The amendment is as follows:

On page 2, beginning with line 1, strike out through the end of the matter on line 14 on page 4 and insert the following:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) (1) notwithstanding any other provision of law, and except as provided in paragraph (2), it shall not be in order in the Senate or the House of Representatives to consider any concurrent resolution on the budget for any fiscal year beginning after September 30, 1982, or any amendment thereto or any conference report thereon if—

(A) the adoption of such concurrent resolution as reported;

(B) the adoption of such amendment; or

(C) the adoption of the concurrent resolution in the form recommended in such conference report, would cause—

(i) the appropriate level of total budget outlays set forth in such concurrent resolution for such fiscal year to exceed the appropriate level of total budget outlays set forth for the preceding fiscal year in the most recently agreed to concurrent resolution on the budget for that preceding fiscal year; or

(ii) the recommended level of Federal revenues set forth in such concurrent resolution for such fiscal year to be less than the recommended level of Federal revenues for the fiscal year preceding that fiscal year set forth in the most recently agreed to concurrent resolution on the budget for that preceding fiscal year.

Notwithstanding paragraph (1), a concurrent resolution on the budget for a fiscal year may—

(A) provide for an amount of budget outlays for such fiscal year in excess of the ap-

propriate level of total budget outlays for the fiscal year preceding that fiscal year set forth in the most recently agreed to concurrent resolution on the budget for that preceding fiscal year if the concurrent resolution on the budget for such fiscal year also—

(i) provides for an amount of revenues for such fiscal year in addition to an amount of revenues equal to the recommended level of Federal revenues for the fiscal year preceding that fiscal year set forth in the most recently agreed to concurrent resolution on the budget for such preceding fiscal year, which is not less than such amount of excess budget outlays; and

(ii) identifies the source of such additional amount of revenues and proposes changes in law to achieve such additional amount of revenues; or

(B) provide for a reduction in the recommended level of Federal revenues for such fiscal year below the recommended level of Federal revenues for the preceding fiscal year set forth in the most recently agreed to concurrent resolution on the budget for that preceding fiscal year if the concurrent resolution on the budget for such fiscal year also—

(i) provides for a reduction in budget outlays for such fiscal year below the appropriate level of total budget outlays for the fiscal year preceding such fiscal year set forth in the most recently agreed to concurrent resolution on the budget for such preceding fiscal year, in an amount not less than the amount of the reduction in revenues for such fiscal year; and

(ii) identifies the program or activity in which such reduction in budget outlays is to be made and proposes changes in law to accomplish such reduction in budget outlays.

(3) Any additional amount of revenues contained in a concurrent resolution on the budget pursuant to paragraph 2(A)(i) shall only include additional revenues which will result from proposed changes in law. Any reduction in budget outlays contained in a concurrent resolution on the budget pursuant to paragraph 2(B)(i) shall only include reductions in budget outlays which will result from proposed changes in law.

(b) Subsection (a) may be waived by a two-thirds vote of the Members of each House of Congress, duly chosen and sworn.

Sec. 2. (a) Notwithstanding any other provision of law and except as provided in subsection (b), the Budget transmitted pursuant to section 201(a) of the Budget and Accounting Act, 1921, for the ensuing fiscal year shall not contain—

(1) an estimate of total budget outlays for such ensuing fiscal year which exceeds the appropriate level of total budget outlays for the fiscal year in progress set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year in progress; or

(2) an estimate of total revenues for such ensuing fiscal year which is less than the recommended level of revenues for the fiscal year in progress set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year in progress.

(b) Notwithstanding subsection (a), the Budget transmitted pursuant to section 201(a) of the Budget and Accounting Act, 1921, for the ensuing fiscal year may—

(1) contain an estimate of budget outlays for such ensuing fiscal year in excess of the appropriate level of total budget outlays for the fiscal year in progress set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year in progress in such Budget also—

(A) contains an estimate of revenues for such ensuing fiscal year in addition to an amount of revenues equal to the recommended level of Federal revenues for the fiscal year in progress set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year in progress, which is not less than the amount of such excess budget outlays; and

(B) identifies the source of such additional estimated revenues and proposes changes in law to achieve such additional estimated revenues; or

(2) contains an estimate of a reduction in revenues for such ensuing fiscal year below the recommended level of Federal revenues for the fiscal year in progress set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year in progress if such Budget also—

(A) contains an estimate of a reduction in budget outlays for such ensuing fiscal year below the appropriate level of total budget outlays for the fiscal year in progress set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year in progress, in an amount not less than the amount of the reduction in revenues for such ensuing fiscal year; and

(B) identifies the program or activity for which such estimated reduction in budget outlays is proposed and proposes changes in law to achieve such estimated reduction in budget outlays.

(c) Any additional estimated revenues which, pursuant to subsection (b)(1)(A), are contained in the Budget transmitted pursuant to section 201(a) of the Budget and Accounting Act, 1921, shall only include additional estimated revenues which will result from proposed changes in law. Any estimated reduction in budget outlays, which, pursuant to subsection (b)(2)(A), are contained in any such Budget shall only include estimated reductions in budget outlays which will result from proposed changes in law.

Sec. 3. For purposes of this Act—

(1) the term "budget outlays" has the same meaning as in section 3(1) of the Congressional Budget and Impoundment Control Act of 1974; and

(2) the term "concurrent resolution on the budget" has the same meaning as in section 3(4) of such Act.

Sec. 4. (a) The provisions of the first section and section 3 of this Act are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

Mr. DODD. Mr. President, we are engaged in a debate on another constitutional amendment. These are rare debates in the Halls of Congress. If we could prioritize the significance of debates, I suppose the debate surrounding a constitutional amendment is one of the most important functions, if not the most important function, that we can perform in this body. The signifi-

cance of that document as it has helped us chart the course of the Nation over almost 200 years makes that clear. It is with that in mind that I offer this amendment in the nature of a substitute to the pending business.

What I offer, Mr. President, is a substitute which is a statute and not an alternative constitutional amendment.

Anyone who has read the economic news recently knows why we have been debating Senate Joint Resolution 58, proposing a constitutional amendment to require a balanced Federal budget. It is clear that the persistent deficits which have characterized our national budget for decades are now so swollen and out of control that economic recovery is virtually impossible.

Three related news items tell the story best. First, last Monday, CBO Director Alice Rivlin testified that the deficits over the next 3 fiscal years would range between \$140 billion and \$160 billion annually. That would add almost a staggering half-a-trillion dollars to our national debt.

Second, Assistant Secretary of Treasury Beryl Sprinkel acknowledged last Wednesday that the Treasury expected to borrow \$100 billion during the last 6 months of 1981. That would be—by a substantial margin—a new record; investors and analysts immediately warned that the competition for funds would surely send interest rates on another dizzying climb.

Third, polster Lou Harris last week released the results of a survey of public attitudes toward the current economic situation. A plurality of Americans, it showed, now believe the United States is in an economic depression. For the people who are living through it, this has ceased to be a downturn or a slump or even the deepest and longest recession since the 1930's. Americans are now calling our problem what it is: a depression.

It is not hard to understand the frustration which those events engender. Nor is it hard to understand the pressure we feel to do something about it. In fact, it is more than understandable—it is correct. We do have to do something. A continuation of the present course is intolerable. Business as usual is no longer acceptable.

Certainly, the resolution before us is a function of that frustration and that need to act. But as I have listened to the debate on Senate Joint Resolution 58 over the past weeks, it seemed to me that we have lost sight of our initial objective. There has been remarkably little discussion of what this resolution will do to get us out of our current disastrous position.

Sometimes, a matter takes on a life of its own, regardless of fact or logic or rational argument. That is what I believe has happened to the business at hand. We have been debating the scope of judicial review in economic

policy and relations between the executive and legislative branches and the nature of the Constitution. All of these are vital issues and they ought to be thoroughly ventilated if a constitutional amendment is to be properly considered.

But they are not the issues that the American people really care about or that the current crisis compels. We need to refocus. We need to get back to the question that dominates economic concern here, today, in the real world: How to control deficits.

Mr. President, as I mentioned I am not in any way suggesting that these issues should not be debated thoroughly. In dealing with any constitutional proposal, they must be properly considered.

The point I was trying to make is that such questions as judicial review, the relationship between the executive and the legislative branches of government, and so forth should not be the substance of the debate. The question is how do we deal with the present problem of the deficits.

But yet over the past several weeks it seems we have spent more time arguing fine points of constitutional law in the Chamber rather than the issue before us.

That is why I suggest that we should refocus on the question that dominates the economic concern today in the real world outside of this Chamber, and that is how to control these deficits. What is the best vehicle, what is the way way of doing that?

I believe, Mr. President, there is an effective, practical, and immediate step we can take to tame runaway deficits.

That is why I am offering this statutory substitute to put new Federal spending on what I call a pay-as-you-go basis.

Let me, if I may, briefly explain what my amendment does. Basically what I am proposing as a substitute to Senate Joint Resolution 58 is a statutory proposal. Its principle, "pay as you go" would permit total outlays for a given fiscal year to exceed total outlays in the preceding fiscal year only if revenues were increased by the same amount.

Similarly, total revenues for a given fiscal year could be reduced from the level for the preceding fiscal year only if outlays were reduced by that amount.

What it means, in effect, is that total outlays and total revenues are not required to balance but changes in the levels of outlays and the levels of revenues should be in balance.

The so-called uncontrollable spending increases would be covered and such increases would have to be financed either through the reductions in other spending, increases in revenues, or a combination of the two if such increased spending yielded an in-

crease in outlays over the preceding fiscal year.

This substitute would also require that the President submit a budgetary message to Congress which conformed to pay-as-you-go criteria; in effect, his budget as it is sent up to Congress would also have to meet the same test that Congress would have to meet.

That is the sum and substance of this amendment.

There are other technical provisions in it, but basically it says that Congress on a yearly basis must provide the necessary revenues for expenditures that we decide we are going to make, that if we reduce our revenues for whatever reason then there must be a commensurate reduction in spending as well.

At the heart of my amendment is an elementary principle, Mr. President. From now on any new Federal spending would be barred unless Congress provided equivalent new revenues or commensurate spending cuts.

In short, it would mandate as an absolute condition of enactment that we pay for what we decide to buy.

If President Reagan convinces us, for instance, that \$150 million more is required for military weaponry, fine. But we are going to have to pay cash. The credit card is no longer going to be honored.

If we decide that our cities need a new program of Federal assistance to survive, that is fine, as long as we pay the bill when it comes, not at some undetermined point in the future.

There are a number of ways in which this approach, I believe, is superior to that contained in Senate Joint Resolution 58, but one of them is paramount above all else.

Pay as you go would permit us to begin our attacks on deficits immediately and it would let us win the war on deficits in the very, very near future.

The Congressional Budget Office estimates that if we begin applying pay-as-you-go principles to spending now, the deficits would be eliminated in 3 years. In fact, we would be in a surplus to the tune of over \$27 billion by 1985.

Mr. President, I have placed here on the easel on the floor a chart which spells this out as clearly as I possibly can.

Let me briefly describe this chart to my colleagues; I will leave it available here for the remainder of the day for other Senators who may come over so they can see it. The figures it uses are CBO figures. They are not my statistics or those someone else made up along the way. These are numbers of the Congressional Budget Office.

We see on the bottom red dotted line, the most recent estimates by CBO as to what the deficits are going to be this year, fiscal year 1983, fiscal year 1984, and fiscal year 1985.

Mr. President, as you can see deficits go up to \$151 billion, \$160 billion, and then \$158 billion over the next 3 years.

The next figures are above a dashed line, and that line represents what the budget resolution estimated our deficits would be.

As you can see, there is a marked difference between the most recent estimates and what the estimates were at the time the budget resolution was adopted. It showed the budget to be roughly \$60 billion in deficit by 1985.

The straight red line that runs up is how CBO estimates our deficits would be reduced in fiscal year 1983 and fiscal year 1984. It also shows in fiscal year 1985 a \$27.5 billion surplus.

These figures may be modified somewhat as estimates vary, but generally those are fairly definitive.

What makes my amendment different from the constitutional amendment or even the statutory proposal that is being offered by others of my colleagues which would require a balanced budget immediately is that mine does it in steps.

What it says is that starting from a base year—and in this particular example we have taken the year 1982 as the base—for any new increases in spending Congress has to come up with the commensurate revenues to pay for those changes. It does not try to wipe out the deficit all at once, but for those changes we would have to come up with the equivalent revenues.

That would permit the normal economic growth that occurs as a result of economic expansion and the increase in the numbers of taxpayers in this country, to first erode and then actually wipe out the deficits. That is the conclusion that the CBO has drawn: by fiscal year 1985 we will actually find ourselves in a surplus.

Again these are not figures based on dubious estimates of sales of public lands or estimated revenues from oil and gas leases. This is just saying, "Let us pay for that which we decide we want to spend."

In addition, these numbers reflect our willingness to use the Reagan economic budget proposals. I did not assume changes in the President's economic program, even though I have opposed a number of steps in his program. His program is held intact to see what the numbers would produce.

There is nothing magical, Mr. President, about either the approach or the calculation. All that is required is to forgo spending we are unwilling to pay for. If you are willing to spend the money for something you believe in, then you should be willing to stand up and propose to raise the revenues for it. That is not what we have been willing to do recently. If you are for a military spending increase, of \$147 billion then you ought to have the courage to say, "I am going to raise taxes

to come up with the revenues to pay for it."

If you happen to think student loans or urban development programs, or other priorities are important, then you ought to be willing to stand up and pay for them. I am willing to do that. I have my agenda, every Senator has his or hers. But we ought to set our priorities collectively so there are not 535 separate budgets when we go back to our respective constituencies. We should have the discipline to set priorities in a budget proposal which enjoys at least the support of a majority in this Chamber.

The amendment, as I mentioned, would place an absolute cap on the deficits. Any revenue growth resulting from economic expansion would then erode the existing deficit, and could begin to chip away eventually at the national debt itself.

How does that immediate impact compare with a constitutional amendment's effect?

The plain fact is that none of the staggering deficits we can foresee today is likely to be affected in the least, in the very least, by the Senate's approval of Senate Joint Resolution 58.

Enacting a constitutional amendment is by deliberate design, a cumbersome and time-consuming process. The recent experience with the equal rights amendment should tell us something in this regard. Despite lopsided majorities of public support, a decade was insufficient to win enactment of ERA.

There is no reason to expect the situation will be any different with a balanced budget amendment. This is hardly a concept with unanimous support. Expert opinion clearly is, at the very least, divided. Strong organized opposition exists.

In the most positive of circumstances one cannot foresee ratification until the middle or late 1980's. Remember that the effective date of Senate Joint Resolution 58 would be the second fiscal year after that. What it comes down to, Mr. President, is that the resolution before us is a guide for fiscal policy in the 1990's, not an answer to the devastating deficits of the 1980's.

The real reason for this amendment, Mr. President, is, therefore, that it works faster, is more pragmatic and more effective in dealing with the problem everyone agrees is the major blockage to economic health—crippling deficits.

It would start now, not next decade.

It would provide a workable mechanism for ending the deficits, not just a promise that it will be done.

It would produce a surplus within 3 years.

In addition, Mr. President, I believe the approach I am suggesting is proce-

durally superior to amending the Constitution. I say that for two reasons:

First, it makes far more sense to deal with economic policy in a statute than by tampering with the Constitution. That statement has already been made over and over again in this debate—and for good reason. We all, I think, understand that the U.S. Constitution, should continue to serve in its time-honored role as a blueprint of representative government and guarantee of individual freedom.

It would be dangerous precedent, in my judgment, to use it as a vehicle for social and economic theories or policies, however desirable or useful those policies may be. To trivialize the Constitution in that manner runs the risk of altering its nature and distorting its purpose.

Mr. President, at this point in the RECORD I ask unanimous consent to have printed an editorial that appeared in the New York Times yesterday entitled "Constitutional Con." This editorial, I think, lays out very clearly the pitfalls with the proposal for amending the Constitution to deal with this economic problem.

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

[From the New York Times, Aug. 1, 1982]

CONSTITUTIONAL CON

The President, once a baseball broadcaster, now sounds like Leo Durocher, the former Dodger manager. Durocher watched with mounting anger one day as his third baseman let one, two, three ground balls through his legs. When it happened again, Durocher went out to play third himself. The very next ball bounced through his legs. He slammed the mitt down and shouted to the offending fielder, "You've got this position so knotted up that no one can play it right."

Last week, it was the President who threw down his mitt. The subject was Federal deficits. They weren't of such concern in February when he proposed a \$98.6 billion deficit for 1983. Better that, he said, than to touch his planned tax cuts. They "must not be tampered with in a vain attempt to cure deficits in the short-run."

But Mr. Reagan is plenty worried about the deficit now. So is Congress. The deficit will be closer to \$160 billion than \$98 billion. Who's to blame? Don't look at me, Mr. Reagan says with some heat. Blame the Democrats. Why, they gave the country 19 deficits in the last 20 years. They got the game so knotted up that no one can play it right.

Still, not to worry. The President has a magical solution: "The American people understand that we need fundamental reform. . . . They want this Government to draw the line and to pass, without delay, a constitutional amendment making balanced budgets the law of the land."

What tempting simplicity! Congress insists on behaving like an alcoholic, then ban cocktails. The trouble is the amendment stashes a bottle behind the sofa. It can't work.

The balanced budget amendment comes up for Senate action this week. Students of government—including conservatives—re-

ject it as ignorant economics, destructive law, foolish administration and cynical politics. They are right.

The proposal would require Congress to adopt balanced budgets each year. Exceptions would be made for war or when 60 percent of both houses approved. Spending could increase no faster than the growth in "national income."

Why is it ignorant economics? Because the United States should not want to balance the budget every year; it should want to balance the economy. In a recession spending for unemployment and other benefit programs goes up. That's desirable counter-cyclical effect; it's sensible to run a deficit then. Otherwise, the economy would nose dive. If the amendment were in effect now, there would be five million more unemployed.

Why is the amendment destructive law? Because it would stuff the Constitution with baloney. As Professor Burke Marshall of Yale Law School wrote on the Op-Ed page recently, "It trivializes the Constitution to try, for the first time to write into it what are essentially economic and social legislative policies." These are fluid policies, not of permanent constitutional weight. The sponsors know that. This would be the first amendment ever which Congress had the power to waive.

Why is the proposal foolish administration? Because there's no way to make it work. Congress wouldn't even know if it was obeying. Consider the immense variations between the forecasts used when a budget is enacted and the outcome 18 months later. As Rudolph Penner, the conservative economist, has observed, the 1981 budget was balanced on paper for much of 1980—but there was finally a deficit of \$58 billion.

Why is the proposal politically cynical? Because it is meaningless in practical terms. The President says that the amendment "could have a very profound effect," but Republican leaders have a very different view. "Frankly, it doesn't do a thing," says Senator Baker, the majority leader. "I don't think it would have any practical impact" says Senator Dole, the Finance Committee chairman.

If there are so many arguments against the amendment, why is the President for it? The only reason we can think of is that Mr. Reagan regards the voters as ignorant, docile and gullible, ready to thrill to the illusion of "balanced budget" but never grasp the reality of this wretched proposal. In short, he thinks they will be fooled. So, evidently, do a lot of Congressmen.

That's all the more reason for thoughtful citizens to stand up and say, No, we will not try to fool and we will not be fooled; a fraud's a fraud. Free people do not govern themselves by pretending to strap on a permanent straitjacket. They do it by making hard choices as they arise. The balanced budget amendment is not a constitutional matter at all. It's just a con.

Mr. DODD. Mr. President, I believe we can accomplish the objective better with the flexibility and degree of specificity possible in a statute that is not present in a constitutional amendment.

The failure of earlier statutes, for example the so-called Byrd-Grassley amendment, to lead to balanced budgets did not reside in their statutory nature. The problem was that they lacked both direction as to how the

balance was to be achieved, and effective enforcement provisions.

Those same flaws can gut a constitutional amendment. As a matter of fact, Senate Joint Resolution 58 is riddled with these same loopholes. The artificial distinction it draws between planned and actual deficits is an open invitation to hide foreseeable deficits under the fig leaf of grossly optimistic forecasts. The absence of any enforcement provisions, the failure to delineate how to bring the budget into balance, the clear intent of the legislative history to exclude the Federal courts from entering the process in order to evaluate and prescribe remedies for correcting violations of the terms of the resolution, all of these must insure that this amendment will be honored far more in the breach than in the observance.

It is ironic, Mr. President, that we are told over and over again not to worry: "Don't be concerned about it, because it really is not going to do anything at all." In fact, the distinguished majority leader, as well as the chairman of the Committee on Finance were quoted in the editorial I have placed in the RECORD as telling us not to get upset about this whole thing. It really does not do anything at all. We are going to go right back to what we have been doing. We have enough holes in this proposal to drive a Mack truck through. It does not make much difference.

I would say with all due respect to those making those comments that amending the Constitution, regardless of how little effect it may have on the problem we are apparently trying to address that when you amend the Constitution of the United States it is a matter of import. It is a matter of significance. To suggest somehow that because it is not going to achieve the intent its sponsors may claim is to demean that vital importance of the U.S. Constitution.

If we want to eliminate deficits, the answer, I would suggest, is not to rely on the moral force of constitutional guidance but to imbue whatever provision we adopt with the mechanisms it needs to work.

The amendment I am offering permits exceptions only by a deliberate policy decision of Congress and prohibits enactment of spending legislation which breaches its terms. In short, it does what has to be done to achieve fiscal discipline, not merely wish for it.

The second procedural advantage of the amendment is that it maintains the budgetary process as a shared function. It acknowledges, as does current law, that both the President and Congress have legitimate and important roles to play in formulating and implementing a national budget. It does so by requiring the President to conform his annual budget to pay-as-

you-go principles. If the President wishes to expand an existing program or create a new one he should, of course, be able to do so. We should not prohibit him from proposing that. But he or she must also bear the concomitant responsibility to recommend a way to pay for the incremental costs of those suggestions. This provision does nothing more or less than require that the President and Congress be governed by the same philosophy and procedural guidelines in their mutual fight to reduce the Federal deficit. That is a far more constructive approach, I would add, with all due respect, than what is being offered by Senate Joint Resolution 58, where a responsibility of a President to help produce a balanced budget is not required.

Under the terms of that resolution, which binds only Congress, there could be massive disparities between the President's budget and the requirements faced by Congress.

My amendment would minimize that possibility, put them on an equal footing, and reduce the chances for inter-branch conflict or impasse.

The last thing I wish to say about this amendment that I am proposing, Mr. President, is that I believe its enactment would foster a more honest assumption by Congress of its responsibility to bring a measure of fiscal sanity into the Federal budget process.

I pointed out a moment ago that there are those who are trying to ally the concerns that many of us have that the constitutional amendment which would be dangerous in many ways. Not the least of these is that for the first time in our history we would be able to waive the prohibitions or waive the provisions of a constitutional amendment by a two-thirds vote.

I would only ask my colleague: Could you imagine the reaction if, by a two-thirds vote, we could waive the first amendment, for instance? None of us would support such a provision.

But Senate Joint Resolution 58 proposes that, by a two-thirds vote, we could waive the provisions of a constitutional amendment.

We heard moments ago the distinguished Senator from West Virginia talk about the depressing percentages of those who participate in the electoral process in this country. I mentioned shortly thereafter that some 16 percent of 18- to 21-year-olds vote despite the fact that we have the 26th amendment in place. Connecticut, I might add, my home State, was one of the first five States on March 23, 1971, to adopt and ratify that constitutional amendment.

Now we seem prepared to raise false expectations. There is a good possibility that on Wednesday at noon the U.S. Senate is going to adopt a constitutional amendment. I would gather

that, based on the political momentum behind this, the House might do so, also. Some 30-odd States have already at least suggested this, or something like it, is what they want to do.

At the same time, knowledgeable people are telling us that it really is not going to do anything at all. After we promise people in this country that we are going to balance the budget, that we are really going to take care of our economic problem, the fact of the matter is we are not. The danger we risk, of course, is raising false expectations about what we are going to accomplish.

If that is the case, we will then turn around and see voter participation fall off dramatically even further and we are going to wonder why and wonder what happened, the answer will be that we offered a panacea, I would suggest, a simplistic one, that would not do what its proponents claimed it would do at all.

Currently there is a built-in incentive for legislators to assume that not only existing programs but new spending proposals can be funded without biting the bullet of increasing taxes.

If we do not want to face the music of raising taxes, there is an easy way out. Just assume that inflation will be a little lower—and then COLA's—the cost-of-living increases—based on the CPI will not cost that much. Assume that unemployment will decline—and the amount expected in tax receipts from productive workers will grow. Assume that interest rates will moderate and payments on the debt will go down. Every favorable assumption will mean that without new costs we can have new benefits.

The amendment would have the effect of curtailing that temptation. Revenue growth would be reserved for paying off the deficit and national debt. It could not buy new public goods and services, so there would be no incentive to exaggerate in that regard. Actual costs of programs would be built into the outlay baseline each year so that any benefit derived from underestimating costs would be, at best, short-lived and we would have to face the music of raising revenues in the following budget anyway.

In other words, putting Congress on a pay-as-you-go budget strikes a blow for truth in budgeting as well.

On an even more fundamental level, enacting this amendment would send, I think, a persuasive signal to the American people that Congress is serious about reining in runaway deficits. I do not believe that Senate Joint Resolution 58 does that. Let me tell you why.

When you come right down to it, the constitutional amendment before us does not represent a shift in congressional fiscal attitudes but a continuation of them. Just as various Congresses have deferred the problems of

continuing deficits and a burgeoning national debt to future ones, so we are leaving to whomever occupies this Chamber 8 or 10 or 12 years from now, the mandate to bring the budget into balance. We are leaving them the job of paying interest on the one-half trillion dollars in additional debt we will pile up over the next 3 years. If we are serious about eliminating the deficit, we should begin to pay as you go; to first cap the deficit and then reduce it. If we are not serious, if business as usual is our real aim, we can tell our successors: "You will have to do what we lacked the political courage and personal discipline to do ourselves."

I hope we will have the foresight and responsibility to bite the bullet ourselves and not postpone a solution once again.

Mr. President, I would also like to send to the desk an editorial which appeared in an NBC broadcast by Mr. John Chancellor on July 23, 1982, endorsing this proposal. I ask unanimous consent that a transcript editorial comment be printed in the RECORD at this point.

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

CHANCELLOR, NBC, JULY 23, 1982

A lot of people including the President are beating the drum this week for a Constitutional amendment that some day, maybe, would sort of require a balanced budget. There's a better way: a plan floating around the Congress that would balance the budget in three years. Guaranteed.

It's the pay-as-you-go budget proposal, offered to the House of Representatives by George Miller, Democrat of California, an ingenious and practical plan.

Here's how it would work: first, it would freeze government spending at its present level.

So if the Congress wanted to spend more on defense, it would have to spend less on something else, such as spending on social programs. Or if the Congress wanted to spend more on defense and social programs, it would have to reduce nondefense spending. All within a frozen total budget. If the Congress wanted to spend more than that, it would be forced to bite the bullet and raise taxes. Fiscally sound, if politically dangerous.

The beauty of this is that it would make Members of Congress directly accountable for the money they spend. Everybody would have to stand up and be counted. And, with spending frozen, the natural growth of the economy would increase tax revenues and balance the budget.

The Congressional Budget Office confirms that the plan would lower the deficit by fiscal year 1984, and produce a glorious surplus of 27 billion dollars in 1985. Think of that!

Congressman Miller's pay-as-you-go budget plan was defeated in the House last May, voted down by most Republicans and a few Democrats. Senator Christopher Dodd is going to ask the Senate to approve it instead of the Constitutional amendment to the budget.

Pay-as-you-go is a better way than tinkering with the Constitution. Let's see what the Senate does with it.

Mr. DODD. Mr. President, I should note, as well, that this proposal that I am offering today was offered in the other body during the consideration of the budget resolution. It was offered by my good friend and distinguished Congressman, Representative GEORGE MILLER of California. At the time he offered that proposal, it garnered, I believe, 189 votes on the floor of the House of Representatives. Only three votes came from the other side of the aisle and all the rest came from my side of the aisle.

In that debate, I think at that time people realized that the idea had soundness; that it was going to force the kind of debate in Congress that we have not had, on the essentiality of debating alternatives and making choices when we set priorities.

Mr. President, that is why I offer this statutory proposal as an alternative to the constitutional amendment, and have tried to demonstrate by this graph the practical immediate effects that it would have.

Mr. President, I would also like to have printed in the RECORD a letter from Mrs. Alice Rivlin of the Congressional Budget Office dated May 21, 1982, to Congressman MILLER. It spells out the figures that I presented here in this chart.

I ask unanimous consent that the letter from Mrs. Rivlin dated May 21, 1982, be printed in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,

Washington, D.C., May 21, 1982.

HON. GEORGE MILLER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: Pursuant to the request of the House Committee on Rules, the Congressional Budget Office has reviewed your amendment in the nature of a substitute to H. Con. Res. 345, as reported, with respect to its effect on reducing the budget deficits projected in the bipartisan baseline for fiscal years 1983-1985. These baseline deficits were calculated at \$182.0 billion for fiscal year 1983, \$216.0 billion for fiscal year 1984, and \$232.5 billion for fiscal year 1985.

Based on the economic assumptions and other estimating methods used for the bipartisan baseline, CBO estimates that your amendment would lower the budget deficits to \$109.4 billion for fiscal year 1983, and \$57.4 billion for fiscal year 1984, and provide a surplus of \$27.5 billion for fiscal year 1985.

We are providing a copy of these estimates to the House Committee on the Budget and the House Committee on Rules.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. DODD. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, my distinguished friend from Connecticut is offering another amendment here in the form of a statute instead of a constitutional amendment. Now if he wishes to offer a statute, that can be done. I am sure there is great merit from a statutory standpoint in the amendment he offers.

But, Mr. President, what we are considering here is a constitutional amendment. We have stated on the floor here that for the last 21 years the budget has not been balanced but one time. For the last 25 years, the budget has not been balanced but two times.

Now you might say, "Well, a statute would make it tougher; have two-thirds or whatever you want to, that will take care of it."

Mr. President, it will not do it. I call to the attention of the distinguished Senator from Connecticut the fact that in 1978, the distinguished Senator from Virginia, HARRY BYRD, JR., and later, the distinguished Senator from Iowa, CHARLES GRASSLEY, combined to enact into law an amendment to an IMF loan program authorization measure requiring that beginning with fiscal year 1981, the last fiscal year, total budget outlays of the Federal Government—and catch these words—"shall not exceed its receipts." And that is the public law today. That is Public Law 95-435, section 7. But it was not obeyed. Congress has not obeyed it.

A statute passed today can be superseded by a new statute passed tomorrow. What we want to do is to nail this thing down, nail it down so the Congress cannot spend more than they take in unless three-fifths of both bodies vote to do that.

Again, in 1979, a provision in a measure to increase the public debt limit stated that, "Congress shall balance the Federal budget." That was Public Law 96-5, section 5.

Under this legislation, the congressional Budget Committees were required to propose balanced budgets for fiscal year 1981 and subsequent years.

Did they do it, Mr. President? No; they did not do it. They did not do it for 1981 and have not done it for 1982. There is your statute that is on the books now. It has not been obeyed because they passed a later statute. This will be a similar situation.

Mr. President, we want more than a statute. The people of this country want more than a statute. The people of this country want a constitutional amendment to bind the Congress not to spend more than it takes in unless both bodies by three-fifths of a vote decide to do that.

You might say, "Well, why the necessity for that?"

Mr. President, that is the general sentiment of the people of this country. Let me read you some organizations that have come out for a constitutional amendment, not a statute. You have the two statutes I just mentioned. You may have others.

Here are some organizations that have come out for a constitutional amendment:

LIST OF ORGANIZATIONS FOR A
CONSTITUTIONAL AMENDMENT

American Bakers Association.
American Council for Capital Formation.
American Gear Manufacturers Association.
American Subcontractors Association.
Associated Builders and Contractors.
Chamber of Commerce of the United States.
Citizen's Choice.
Independent Baker Association.
National Association of Homebuilders.
National Association of Manufacturers.
National Association of Temporary Services.
National Cattlemen's Association.
National Federation of Independent Business.
National Knitwear Association.
National Lumber and Building Material Dealers Association.
National Screw Machine Products Association.
National Taxpayers Union.
Steel Services Center Institute.
United States Jaycees.
National Association of Wholesaler Distributors and Affiliated Organizations.
Air-Conditioning and Refrigeration Wholesalers.
American Dental Trade Association.
American Jewelry Distributors Association.
American Machine Tool Distributors' Association.
American Supply Association.
American Surgical Trade Association.
American Traffic Services Association.
American Veterinary Distributors Association.
Appliance Parts Distributors Association, Inc.
Associated Equipment Distributors.
Association of Footwear Distributors.
Association of Steel Distributors.
Automotive Service Industry Association.
Aviation Distributors & Manufacturers Association.
Bearing Specialists Association.
Beauty & Barber Supply Institute, Inc.
Bicycle Wholesale Distributors Association, Inc.
Biscuit & Cracker Distributors Association.
Ceramic Tile Distributors Association.
Ceramics Distributors of America.
Coated Abrasives Fabricators Association.
Cooperative Food Distributors of America.
Copper & Brass Servicenter Association.
Council for Periodical Distributors Association.
Council of Wholesale Distributors American Institute of Kitchen Dealers.
Distributors Council, Inc.
Door & Hardware Institute.
Drug Wholesalers Association.
Electrical-Electronics Materials Distributors Association.
Explosive Distributors Association, Inc.
Farm Equipment Wholesalers Association.
Flat Glass Marketing Association.
Fluid Power Distributors Association, Inc.

Food Industries Suppliers Association.
Foodservice Equipment Distributors Association.
General Merchandise Distributors Council.
Hobby Industry Association of America.
Independent Medical Distributors Association.
The Irrigation Association.
Institutional & Service Textile Distributors Association, Inc.
International Ceramic Association.
Machinery Dealers National Association.
Mass Merchandising Distributors Association.
Material Handling Equipment Distribution Association.
Monument Builders of North America-Wholesale Div.
Motorcycle Industry Council.
Music Distributors Association.
National American Wholesale Grocers' Association.
National Appliance Parts Suppliers Association.
National Association of Aluminum Distributors.
National Association of Chemical Distributors.
National Association of Container Distributors.
National Association of Decorative Fabric Distributors.
National Association of Electrical Distributors.
National Association of Fire Equipment Distributors.
National Association of Floor Covering Distributors.
National Association of Manufacturing Opticians.
National Association of Marine Services, Inc.
National Association of Meat Purveyors.
National Association of Plastics Distributors.
National Association of Recording Merchandisers, Inc.
National Association of Service Merchandising.
National Association of Sporting Goods Wholesalers.
National Association of Textile & Apparel Distributors.
National Association of Tobacco Distributors.
National Association of Writing Instrument Distributors.
National Beer Wholesalers Association.
National Building Material Distributors Association.
National Business Forms Association.
National Candy Wholesalers Association.
National Commercial Refrigeration Sales Association.
National Electronic Distributors Association.
National Fastener Distributors Association.
National Food Distributors Association.
National Frozen Food Association.
National Grange.
National Independent Bank Equipment Suppliers Association.
National Industrial Belting Association.
National Industrial Glove Distributors Association.
National Lawn & Garden Distributors Association.
National Locksmiths' Suppliers Association.
National Marine Distributors Association.
National Paint Distributors, Inc.
National Paper Trade Association, Inc.

National Plastercraft Association.
 National Sash & Door Jobbers Association.
 National School Supply & Equipment Association.
 National Solid Wastes Management Association.
 National & Southern Industrial Distributors Associations.
 National Spa and Pool Institute.
 National Truck Equipment Association.
 National Welding Supply Association.
 National Wheel & Rim Association.
 National Wholesale Druggists' Association.
 National Wholesale Furniture Association.
 National Wholesale Hardware Association.
 North American Heating & Air-conditioning Wholesalers.
 North American Wholesale Lumber Association, Inc.
 Optical Laboratories Association.
 Outdoor Power Equipment Distributors Association.
 Pet Industry Distributors Association.
 Petroleum Equipment Institute.
 Power Transmission Distributors Association, Inc.
 Safety Equipment Distributors Association, Inc.
 Scaffold Industry Association.
 Shoe Service Institute of America.
 Specialty Tools & Fasteners Distributors Association.
 Spring Service Association.
 Steel Service Center Institute.
 Textile Care Allied Trades Association.
 Toy Wholesalers' Association of America.
 United Pesticide Formulators & Distributors Association.
 Wallcovering Distributors Association.
 Warehouse Distributors Association for Leisure & Mobile Products.
 Watch Materials & Jewelry Distributors Association.
 Water and Sewer Distributors Association.
 Wholesale Florists & Florist Suppliers of America.
 Wholesale Stationers' Association, Inc.
 Wine & Spirits Wholesalers of America, Inc.
 Wood Heating Alliance.
 Woodworking Machinery Distributors Association.

Mr. President, I think these speak for themselves. I think these show how the people of America feel.

I am convinced that the people of this country want a constitutional amendment. They have shown so in the polls that have been taken; they have shown it by a big majority in the polls that have been taken.

Mr. DODD. Will the Senator yield?

Mr. THURMOND. These are the companies that have endorsed this.

Mr. DODD. If my friend will yield, I missed one or two of those. I wonder if the Senator would like to go over that list again.

Mr. THURMOND. Would the Senator like me to read the list again?

Mr. DODD. I thank the Senator for yielding. I am only being facetious.

Mr. THURMOND. Mr. President, I just want to say that the people of this country are sick and tired of their Congress spending more than they take in. How are they going to stop it? We have tried the statutory approach. It did not work. We tried budget procedures; they have not worked.

The only recourse left is to pass a constitutional amendment. That is the only recourse that I know. The people of this country, as I said, by the polls have shown they strongly favor a constitutional amendment.

The debt has increased over a trillion dollars, a trillion-and-a-quarter, almost, by the end of this year. The interest rates have gone higher because of the large Federal debt.

Mr. President, I just want to say that we cannot keep on going as we are going. We have to have more fiscal responsibility. We have to have more fiscal restraint. That is exactly what we are trying to do here today, place fiscal restraints on the Congress.

Congress has shown that it is not willing to restrain itself. Any Member who has been a Member of this body or a Member of the House of Representatives knows the pressures brought in here. The people in this city, the lobbyists, the people from their home States that come here, all the demands, all the pressures on Members of Congress are tremendous, they are just tremendous. Congress has not shown the restraint necessary in the past and the fortitude to stand up and say, no, no, no. We must have a balanced budget mandated by the Constitution.

That is the reason we have this amendment, Mr. President. We have this amendment here to mandate—mandate—that Congress balance the budget. That is the only way we are ever going to get it, in my judgment.

I have been here for 28 years and I have seen Members come and go. I have seen them vote sometimes when, down in their hearts, I felt they knew they should not vote for something. But the pressure on them was so great that they did not resist. Members of Congress have held up their right hands and sworn to uphold the Constitution of the United States. We believe they will do it. If they do not, action can be taken to force that action if this constitutional amendment passes.

Mr. President, I want to say further that this amendment of the Senator from Connecticut does not reverse the inclination of Congress to incur deficits or raise taxes whenever it wishes. I say further that this amendment is too complicated, too complex, too unnecessary.

If the distinguished Senator wants to offer it as a separate statute he will have a chance to do it. I am sure if he can go before the appropriate committee and convince them that this should be done, then it will be considered. But this is no place, here, to try to kick this constitutional amendment out the window and bring in a complex, complicated statute which will not work.

Mr. President, I hope the Senate will see fit to turn this action down; that

is, to substitute a statute for a constitutional amendment. We think it is inadvisable, we think it is unwise. We feel it would be a great mistake for that to be done.

Again, Mr. President, I say the people of this country, by a large majority of the voters, have asked Congress, have gone on record through polls as requesting that a constitutional amendment to stop this big spending go into effect. That is exactly what we are trying to do. That is the action we are trying to take. For that reason, I hope the amendment of the Senator from Connecticut will be defeated.

Mr. DODD. Mr. President, may I ask, how much time remains under the agreement?

The PRESIDING OFFICER. The Senator from Connecticut has just over 58 minutes left. The Senator from South Carolina just over 73 minutes.

Mr. DODD. I thank the Chair.

Mr. President, if I may, I should like to address the arguments in opposition to this amendment that were raised by my good friend, the distinguished Senator from South Carolina. First, let me take the last point.

The distinguished Senator from South Carolina listed for 6, 7, or 8 minutes here the names of various associations and organizations all across this country who are supporters of the constitutional amendment approach. We were fortunate, as the distinguished Senator from South Carolina knows, to have a speech this morning, given during the morning business period, by the Senator from West Virginia commemorating today as Signers' Day. It was actually on August 2, 1776, that the 56 signers of the Declaration of Independence put their names to paper pledging their lives, their property, and their sacred honor.

I was moved, as I sat listening to my good friend from South Carolina, to wonder what it would have been like on August 2, 1776, in Independence Hall, if we discussed there the adoption of the Constitution of the United States in the terms being used today. We are the trustees, if you will, of that historic moment, determining whether or not there ought to be yet another amendment to the Constitution. I wonder what it would have sounded like on that day, August 2, 1776, if John Hancock, standing before the assembled hall, listed off various associations and groups and people who were opposed to or in favor of various aspects of the Constitution of the United States.

This is not the centerpoint, obviously, of the argument of the Senator from South Carolina, but we have come to believe in this country that the sum of special interests equals the national interest. We seem to believe that if you add up a list of all the vari-

ous groups and associations—and God knows, they exist in legion—that should determine the outcomes. Debate does not really focus much on merit any more. One side has its list, the other side has its list. It is a competition of lists.

I have my own list here, a long list of organizations and individuals, who say that a constitutional amendment is a terrible idea. But that is not where the debate ought to center. We should not be engaged in the listing of organizations and associations. It is unfortunate, I believe, that as we are talking constitutional amendments, the most serious debate we can have in this Chamber, or normal legislation, we are reeling off lists of organizations as somehow an argument in favor of or in opposition to the validity of an idea. It is a precedent that has been established in the most recent past and, unfortunately, is being used too often.

Let me step back, if I may, to the substantive arguments on the so-called Byrd-Grassley amendment, which I referred to in my opening remarks. The Senator from South Carolina is absolutely correct, there is a statute on the books offered by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) and his coauthor, now the distinguished Senator from Iowa (Mr. GRASSLEY). But there is absolutely no enforcement provision in that at all, nor is there any mechanism for showing how the Byrd-Grassley proposal should take effect. It is a good idea in a bad statute.

I am suggesting today, a statutory alternative that would contain the enforcement provisions and establish the mechanism lacking in earlier versions.

The distinguished Senator from South Carolina demonstrated one of my own points. We are really not debating economic policy, nor have we been over the past several weeks; we are debating constitutional law. We are debating the nature of the Constitution, including for example, the relationship between executive and legislative branches, the power of the judiciary to interpret provisions of this amendment that we are about to adopt, and so on. We have talked about all the ramifications normally associated with constitutional law and very little, indeed, about what kind of economic structure we are going to provide to deal with the pressing problem we are confronted with: deficits.

I also point out to my distinguished friend from South Carolina that the constitutional amendment as now proposed is so filled with loopholes that it is hardly worth the paper it is written on. Note, for instance, that it distinguishes between planned deficits and accidental deficits.

Now, can you not hear the debate that will ensue in the years ahead? "Well, you see, this is an accidental deficit. It wasn't a planned deficit.

Therefore, the constitutional amendment does not apply."

I will make a prediction this afternoon, Mr. President, that if this amendment is adopted by this Chamber and by the House of Representatives and ratified by three-fourths of the States, we will have a proliferation of accidental deficits. We will have accidental deficits year in and year out for the foreseeable future, and we will not have done a thing to solve the problem at hand.

We also must note the other loopholes. There is no enforcement in the constitutional amendment. In fact, in the report language we say the courts cannot get involved.

Well, how do you enforce a constitutional amendment if the court of last resort, the Supreme Court, cannot interpret a constitutional amendment? How do you achieve any result? That creates a massive problem for us.

I will try to be brief, Mr. President, and not take the time of all of my colleagues, but there are six points that illustrate the fundamental differences between Senate Joint Resolution 58, the constitutional amendment approach to balance the budget, and the statutory proposal that Congressman MILLER offered during the consideration of the budget resolution in the other body and that I am offering to do as an alternative to the constitutional amendment.

(Mr. COCHRAN assumed the chair.)

Mr. DODD. The six points have to deal with appropriateness, with timing, with practicalities, with involvement of the executive branch, with honesty, and with effectiveness. Those are the six points.

In terms of appropriateness, simply stated, economic doctrine, no matter how valid, does not belong in the Constitution of the United States. That document must be a blueprint for representative government and a guarantee of individual freedoms. That is what it is designed to do. To freight it with social or economic theories trivializes the Constitution.

I might point out to my colleagues, Mr. President, that prior experiments with both the issue of slavery and prohibition, efforts to incorporate economic theory in the Constitution had to be repealed. They demonstrated the folly of that approach.

A flexible statute is a proper procedural way I believe to deal with this issue.

The second point is timeliness. The recent experience with ERA proves how time consuming, burdensome, and potentially futile it can be to try to alter the Constitution. To win two-thirds of both Houses and ratification by three-quarters of the States is an undertaking for a decade of work, not a session of Congress. So no matter what is being said here today, do not let anyone be deceived; it will be at

least 1990 before we really are going to be dealing with this issue. To assume somehow that we are going to have this back before us in the coming months is folly.

In short, Senate Joint Resolution 58 is a pledge of fiscal responsibility, as I mentioned earlier, in the 1990's and not an answer to the deficits we face in the 1980's.

PRACTICALITY

The problem with Senate Joint Resolution 58 is that it tells us where we want to go but not how to get there. It provides no process, it has no mechanism for achieving a balanced budget, only a requirement that we do so. And that hardly helps.

There is not a Member of Congress, Mr. President, who would not favor eliminating the deficits. The question is how do you accomplish it? That is what we should be debating. Pay as you go provides that mechanism. It does not promise to erase the deficit overnight but, rather, to eliminate it in incremental stages by requiring that new expenditures be matched by new revenues. It caps the deficit and then allows any revenue growth, natural economic growth to chip away at the existing deficit and the national debt.

Does my distinguished colleague, the Senator from Washington, wish me to yield for purposes of debate?

Mr. GORTON. Will the Senator from Connecticut yield for one or two questions on the subject?

Mr. DODD. I am delighted to yield.

Mr. GORTON. A few moments ago, while the Senator from South Carolina was opposing the amendment before the Senate at this point, he averted to the proposition which has been used against not only this amendment but other amendments and proposals to solve the very real problem we have with unbalanced budgets by statute rather than by a constitutional amendment. The Senator from South Carolina did so by pointing out that there is on the books now a statute resulting from a bill, or a proposal, I believe, sponsored originally by the Senator from Virginia (Mr. BYRD) requiring a balanced budget each and every year. The Senator from South Carolina quite rightly pointed out that that statute has been honored in the breach rather than the observance.

My inquiry at this point to the Senator from Connecticut is whether or not there is not a profound difference between his proposal, and for that matter between the proposal of the Senator from Maryland, as to a statutory approach and the statute used as the bad example here in that the proposal of the Senator from Connecticut and that of the Senator from Maryland, unlike the law on the books now, is essentially self-executing? Does not the proposal of the Senator from Con-

necticut change the rules of both the House and the Senate so that a point of order would lie to be raised by any individual Member against a procedure which violates the terms of the statute? Therefore, is not the amendment before the Senate now self-enforcing in the sense that it will be followed unless and until it is succeeded by another specific statute on the subject, passed by both Houses and signed by the President of the United States?

Mr. DODD. I say to my good friend from Washington—I thank him for his question—that he is correct. Incidentally, I have very judiciously avoided in this proposal amending the Budget Act. I have amended the Budget and Accounting Act of 1921 and I have offered also a freestanding statute. I have specifically cast this substitute in that way because of the potential of the point of order that could be raised at this particular time. So I have very carefully avoided any direct amendment of the Budget Act itself so as to escape that particular problem.

And the Senator is correct in a very important respect. I tried to make the point—I am not sure he was in the Chamber at the moment I did—that the approach offered by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.), as well as the distinguished Senator from Iowa (Mr. GRASSLEY) did not provide any enforcement or any mechanism for achieving its goal. It stated what ought to be the intent of Congress. But unless you have the mechanism to effect the goal then it is not self-executing. In fact, the present law, the Budget Act itself, does not require, in effect, balancing the budget each year. It merely says the targets we lay out must be met. Of course, we have seen those targets in the past create deficits. What I am proposing in the long run is that the Budget Act incorporate the prohibition of expenditures exceeding revenues for a given fiscal year by more than they did the previous year. We would, in effect, be paying for what we decided to add on.

I add as well, since the Senator has raised the point, that there is a distinction between what I am offering and what the distinguished Senator from Maryland and the distinguished Senator from Montana are offering in the sense that my amendment deals with budget deficits incrementally. It says, in effect, that we are going to pay for the changes that occur in any fiscal years beyond a base fiscal year.

For the purposes of this chart over here, I have used fiscal year 1982 as the base year. In effect, then, we have, whether you believe the budget resolution figures of CBO figures, anywhere from \$105, \$110, to \$150 billion in deficits this year.

I do not suggest that we can take care of all of that all at once. But I do believe that any changes in fiscal year

1983 in spending could be met by an incremental change in revenues to meet those expenditures. Furthermore, if that is done year after year, the normal growth of the economy, the increased number of taxpayers, would in effect eat away at that deficit over a period of years. By 1985, it would create a surplus.

My amendment provides the mechanism and the enforcement for that to be done. It was not done, despite the good intentions of the Senator from Virginia and the Senator from Iowa, to provide the kind of time they proposed in the balanced budget.

Mr. GORTON. Is it accurate to say that if the proposal of the Senator from Connecticut were adopted, it would, in fact, unlike present law, be enforceable unless and until it were normally repealed by an amendment signed by the President?

Mr. DODD. The Senator is correct.

Mr. GORTON. A second question: As to those seeking the best solution to this problem, why does the Senator from Connecticut feel that his proposal is superior to that of the Senator from Maryland or the Senator from Montana, which, of course, does follow the pattern of the resolution which is on the floor now by requiring a supermajority for certain acts on the part of Congress? Why does the Senator from Connecticut feel this to be a better approach, or does he feel either to be appropriate?

Mr. DODD. There is a significant distinction. One might draw the conclusion that because we are both talking about statutes—the Senator from Montana and the Senator from Maryland do so as I do—that they are very similar.

There is an important difference, however. I am saying that beginning with fiscal year 1983, for any additional funds you want to spend in any part of the budget, commensurate revenues must be provided. Do it by taxes or budget cutting, any way you want, but for any change, there must be the revenues to meet that expenditure requirement.

The Senator from Maryland and the Senator from Montana, in effect, require the same result that the constitutional amendment being proposed, Senate Joint Resolution 58 seeks, but they would do it by statute. They seek an immediate balancing of the budget, regardless of the size of the deficit. I think both those proposals fail for the practical reasons I have identified. I do not think it is possible. I have offered, I think, a far more realistic approach. If you are truly interested in balancing the budget, it makes far more sense to do it incrementally than to suggest that somehow we are going to come up with \$151 billion in the next 3 or 4 months, either by a tax increase or budget cutting.

Mr. GORTON. I thank the Senator, and I apologize for the interruption.

Mr. DODD. I thank the Senator for his questions.

I will move on to the fourth, fifth, and sixth points as to why I believe this is the sounder approach than that proposed by the constitutional amendment.

Earlier, I mentioned Presidential involvement. Under the proposed constitutional amendment, there is no Presidential requirement to submit a balanced budget. It directs Congress to do that, but the President does not have a matching responsibility. My statute requires that the President also operate under the pay-as-you-go principle. When the President sends his budget message to Congress, the pay-as-you-go procedure would be invoked. Obviously, if we are going to have a good working relationship between the executive and legislative branches, then that point is absolutely essential.

The fifth point is honesty, and I say this with all due respect to the distinguished Senators who have proposed this proposition and those who are co-sponsors of it. When I talk about honesty, I am not referring to them. I have no question about their integrity or honesty. It is really a question of how honest we are being in what we are promising the American people in connection with Senate Joint Resolution 58.

I remind my colleagues that Senate Joint Resolution 58 purports to be an assumption, at long last, by Congress of a responsibility to bring deficits to an end. That is what the proponents argue. I would reply, that it does not do what the proponents claim it does.

To a real extent, we are in the current mess because successive administrations and successive Congresses have deferred to future generations the task of paying for current expenditures. The constitutional amendment is doing the same thing. It does nothing to reduce today's deficit or next year's or the next year's after that. Instead it places on the shoulders of some future Congress, whose composition we can only speculate about, the burden of doing something we are unable or unwilling to do today—not 1990 or 1991 or 1992—but right now. In a real sense this is a truth-in-budgeting opportunity for this Congress.

The last point is effectiveness, and in importance that should be the first one. The ultimate standard for evaluating the issue before us is how well the proposal works to reduce or eliminate deficits.

Not only is Senate Joint Resolution 58 a program for the dim future, but also, there is no assurance that it will work even then.

The distinction between planned deficits and accidental deficits is something which I predict will occur year

after year. We will get into the accidental deficit syndrome. I can hear the new charge: "You have had more accidental deficits than we have had over the past 20 years." We can expect as a matter of course unreasonably favorable distortions in economic forecasts which, when they fail to materialize, will produce deficits. That will become standard operating procedure.

Also, the 60-percent waiver is a relatively low threshold for permitting exceptions. The absence of any strict enforcement provision, penalty for violation, or procedure for meeting the goals undermines the chances for balance.

In short, this constitutional amendment exhibits the same flaw that is responsible for the failure of the statute already on the books offered by the distinguished Senator from Virginia and the distinguished Senator from Iowa. There is no enforcement mechanism or program for achieving the balance they both favor.

The committee report makes clear that the courts should not be involved with the constitutional amendment in enforcing the provisions of Senate Joint Resolution 58. That creates a dilemma: Either the courts avoid involvement, in which case there is no way to enforce the terms, or they do intrude in matters of economic policy where they should not have to make the broad policy judgments that should be required by Congress. In contrast, pay as you go sets up a workable mechanism that would produce a surplus within 3 years.

For the reasons stated—appropriateness, timeliness, practicality, involvement of the executive branch, the honesty and effectiveness of the proposal that I believe the statutory incremental approach dealing with deficit offers, I urge my colleagues to support this amendment.

Mr. HART. Mr. President, will the Senator yield for a question?

Mr. DODD. I am glad to yield.

Mr. HART. Mr. President, I am persuaded by the argument of the Senator from Connecticut, and I believe his amendment has great merit. I hope our colleagues consider it very carefully as an alternative to the constitutional amendment.

The Senator, in his remarks, did comment on the fact that the proposed constitutional amendment calls for the raising of revenues now or cutting other current operating expenses to pay for investments in the future of the country. This is an argument about which the Senator from Colorado is concerned deeply, and he intends to offer his own amendment regarding that very shortly, which makes the distinction between the amount of money we spend every year for what can be called operating expense versus those for capital investment.

Does the Senator from Connecticut not believe that there is a difference in public spending between the commitment of the Congress of the United States to build an aircraft carrier or the construction and maintenance of an interstate highway system or bridges and dams or water projects, or the basic capital infrastructure of this country, versus the annual funding of school lunch programs or health programs or investments of that kind, which one might, I think, generally refer to as the kind of operating costs of a government year by year?

Mr. DODD. I thank the Senator for raising the question, and I thank him for his kind comments about this proposal.

I happen to believe there is a distinction between capital expenditures and consumption expenditures. In effect, capital expenditures in many instances actually can return dollars to the Treasury one way or the other. It may not do it as rapidly as we wish, but there is some benefit that comes back as a result of the expenditures having occurred in the first place.

Mr. HART. Over a long period of time of 15, 20, 25, or 30 years.

Mr. DODD. The Senator is correct.

They thereby represent a national asset, in effect, that may encourage economic growth in a community and business investment in an area where high unemployment exists. There are all sorts of positive ramifications. I do believe that distinction does exist and should exist.

Mr. HART. Is the Senator from Connecticut aware of the fact that almost all businesses, certainly those that the Senator from Colorado is aware of or familiar with, as well as most of the States, in effect, keep two sets of books, one for operating expenses, that is, the cost of running the business or the government year by year; the other for capital investments in the future of that business or that State over a long period of time. In keeping a capital expenditure account, the normal way of treating that investment is to amortize it over large periods of time, over a long number of years, in effect, the useful life of that investment?

Mr. DODD. I believe the Senator is absolutely correct.

Mr. HART. So, in the judgment of the Senator from Connecticut, does it make any sense for one of the largest enterprises in our country, if not the largest enterprise, I guess, the U.S. Government, to keep its books as if every dollar that it spends every year is a current expense or an operating expense for that current year?

Mr. DODD. That is correct.

I add to point out to my good friend from Colorado that I have offered legislation, in effect, which would allow for the establishment of a capital budget. There is no dollar expenditure

in that proposition. The first thing it calls for is an inventory of the present status of our infrastructure. Once that inventory is established, we could establish some sort of a capital budget to begin to deal with those problems of sewers, water facilities, highways, bridges, and so forth, which I might point out to my friend, as I know he well knows, are deteriorating at a staggering rate in this country. Today we are not providing for their proper maintenance at the State, local, or Federal level.

Mr. HART. The Senator from Colorado is pleased to hear of the sponsorship of that legislation by the Senator from Connecticut.

I as well introduced proposals of that sort over the past 3, 4, or 5 years.

I do not believe amendments of this sort or debate that we are having this week and had last week on a constitutional amendment to balance the budget are going to make any sense in any responsible businesslike fiscal way until we begin to distinguish between what, in effect, are the costs of running the Government every year versus those which are long-term investments in the infrastructure of this country, including its national defense.

I thank the Senator.

Mr. DODD. I thank again the Senator for his comments and questions. Certainly his contribution over an extended period of time to the economic debate in this Chamber and outside of this Chamber has played a significant role in this whole question. I do not think any of us really is 100 percent for sure what the answer is. But it is clear that both questions—infrastructure and deficits require that we act rationally and intelligently. There is such frustration out there. I get in my home State, as I am sure all my colleagues do, when are you going to do something about these deficits, when are you going to get the economy back on track again?

I think that what we are going through is an effort to deal with that frustration level. It becomes the responsibility of this Chamber not only today but historically to try to temper the frustration by dealing with the problems intelligently and rationally, thinking carefully about the implications of what we do. There is a manageable, intelligent, rational way of getting us out of problems.

Bumper stickers and sloganeering are not going to do it. Just by promising people we are going to balance the budget in 1990 and then go about business as usual with accidental deficits, planned deficits, and a lot of shell and pea games—that is what we are going to be playing—really will do this Chamber a disservice, I will make the point again. I am really frightened about the false expectations we will rouse. People may believe, I presume,

the end of this week that Congress is finally going to answer the balanced budget problems when in fact time will tell us that we have not.

So, Mr. President, I urge favorable consideration of this proposal.

Mr. President, at this point I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DODD. I thank the Chair.

Mr. President, I reserve my time.

The PRESIDING OFFICER. Who yields time?

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from South Carolina yield?

Mr. THURMOND. I am pleased to yield to the able Senator from Virginia such time as he may require.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, I feel that the proposal offered by the able Senator from Connecticut has merit. It will not, however, in my judgment, or should not, take the place of the constitutional amendment.

I think it has merit, and I feel that the Senator from Connecticut is rendering the Senate a service in bringing it before the Senate.

But we have traveled the road of a balanced budget statute before. On the statute books today is legislation which states that beginning with fiscal year 1981 total expenditures of the Federal Government shall not exceed the total receipts. That is a part of the law now. It applied not just to 1981 but the law says beginning with fiscal year 1981 that statute shall be the law.

In 1981, as we all know, there was a large deficit. This year, fiscal year 1982, the deficit will exceed \$100 billion and, of course, the budget deficit that Congress is working on now, in my judgment, will approach, \$150 billion.

So, while I think the proposal offered by the able Senator from Connecticut has merit, it has the same defect or problem, whichever way one wishes to express it, that the Byrd-Grassley proposal had; namely, that Congress can if it wishes, ignore its own law and disobey its own law, refuse to obey its own law, and that is what Congress has done in the last 2 years.

What I wish to see happen is that this Senate and this Congress adopt and submit to the States the proposed constitutional amendment brought to this Chamber by the Judiciary Committee and then follow that up, because it will take a while before the States ratify the constitutional amendment, with a proposal similar to the one offered by the Senator from Connecticut or the Senator from Maryland, either of those proposals, to

be on the statute books as an interim plan until the constitutional amendment is ratified.

I strongly oppose, however, having the proposal of the Senator from Connecticut as a substitute for the Judiciary Committee's constitutional amendment, but I do not know of any way to bring discipline to Congress insofar as spending is concerned other than by a constitutional mandate.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I inquire if anyone wishes to speak for this amendment or against this amendment, and if not I think both sides could yield back their time except 10 minutes each tomorrow. We would reserve 10 minutes to each side.

The majority leader requested that be done, and I ask unanimous consent then that 10 minutes out of our time be reserved tomorrow to each side and that otherwise we may now yield back our time.

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

Is there objection?

Mr. DODD. Mr. President, reserving the right to object, I think, if I am not mistaken, the distinguished majority leader has already made provision for the request which does basically what the distinguished Senator from South Carolina would wish.

Mr. THURMOND. The only thing was I do not know whether he wanted it to come out of this time. Since we both have time left, I just thought we would take it out of the time tomorrow.

Mr. DODD. I have no objection.

Mr. THURMOND. I will be pleased to yield to the able Senator from Arizona.

Mr. DECONCINI. I think the order, if I can address the Chair, is for 10 minutes equally divided.

The PRESIDING OFFICER. The Senator is correct.

Mr. DECONCINI. Does the Senator from South Carolina want to make it a different time?

Mr. THURMOND. I want to keep it at 10 minutes to a side.

Mr. DECONCINI. That makes it 20 minutes.

The PRESIDING OFFICER. The order is for 10 minutes equally divided, 5 minutes to a side.

Mr. THURMOND. That is fine. If it suits the Senator from Connecticut, that would be fine with me, 5 minutes to a side.

Mr. DODD. Yes.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 28 minutes.

Mr. DODD. I ask unanimous consent that the distinguished Senator from Colorado (Mr. HART) be added as a co-sponsor of this substitute amendment.

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

Mr. DODD. Mr. President, I really do not have any other point to make. I thank my distinguished friend from South Carolina for being here and engaging in this debate. As I understand it, we will have a recorded vote, which has been requested, and that vote will occur tomorrow at—

The PRESIDING OFFICER. Eleven a.m.

Mr. DODD. I yield back the remainder of my time.

Mr. THURMOND. That is my understanding of the time of the vote tomorrow. Each side will have 5 minutes prior to the vote.

I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. THURMOND. Mr. President, we are ready to take up any other amendments anybody has. Does the distinguished Senator from Colorado have an amendment? The distinguished Senator from Maryland told me he may have an amendment. I understand he is on his way, so I suggest the absence of a quorum until he gets here.

The PRESIDING OFFICER. On whose time?

Mr. THURMOND. Equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. DECONCINI. Mr. President, it is my understanding the Senator from Arkansas still has time on one or two of his amendments.

Mr. BUMPERS. I have 1 hour on one amendment and 2 hours on another amendment. I ask unanimous consent that I may be permitted to take 10 minutes off the 2-hour amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I would like to ask the proponents of this constitutional amendment two or three questions that are troubling me.

First, section 2 of the amendment provides that the total receipts for any fiscal year may not exceed the rate of growth in the national income for the preceding year.

This means, for example, that if in the preceding year national income grew at a rate of 5 percent, the rate of revenue growth in our statement may not exceed 5 percent from the preceding year. I think we can agree on that, can we not?

We are making a constitutional record here and I think it is extremely important that the record be clear on some of these important questions. I ask the Senator from Arizona if that is a fair statement of the provisions of section 2.

Mr. DeCONCINI. That is my understanding.

Mr. BUMPERS. My next question is: What if gross national income declines the preceding year by 5 percent? Does that mean that the statement that we adopt, which must be balanced, must project a decrease in revenues of 5 percent?

Mr. HATCH. If the Senator will yield, it is my understanding that just as the formula works when the revenues go up, it would also work as they go down.

Mr. BUMPERS. Mr. President, it troubles me when the Senator says it is his understanding. This needs to be clarified. I cannot find anything in the committee report that clarifies this question.

Is it fair for me to assume, and is it the Senator's intention for this record, for all future generations to understand that we may not project revenues more than national income for the preceding year; that is, as a percentage growth rate, even if the national income is down the preceding year?

Mr. HATCH. On page 48 of the report, the committee defines "increase" as used in section 2 of the amendment. This definition may possibly be somewhat unclear. While the concept of "increase" may be positive or negative as it refers to an increase or decrease in the rate of national growth during the base period, it would clearly not preclude the Congress from choosing to set a level of receipts in its budget or statement less than the maximum permissible level of receipts.

In other words, should the economy grow by a 5-percent rate during the base period, the maximum level of increase in budget receipts, without the need for the required vote, would be 5 percent.

Mr. BUMPERS. I say to the Senator that is something—

Mr. HATCH. Let me finish first. I want a chance to answer the question as completely as possible because we have given great thought to this.

Should the economy decline at a 5-percent rate during the base period, the minimum level of decrease in budget or statement receipts, without the need for the required vote, would be 5 percent. Thus, the term "increase" denotes the idea of change with respect to the evolving level of national growth. With respect, however, to the maximum permissible level of receipts, normal arithmetic concepts would obviously control.

Mr. BUMPERS. I assume that the Senator's answer is that if the national income declines in the preceding year, Congress must cut revenue projections by a similar amount?

Mr. HATCH. That is right, unless Congress votes affirmatively to do otherwise.

Mr. BUMPERS. Unless Congress votes to do otherwise?

Mr. HATCH. That is right.

Mr. BUMPERS. The third question is: Let us assume that the national growth rate is, in fact, up 5 percent and that is the formula we are going to use for projecting revenues. In establishing the annual statement, which is in balance, we project a 5-percent increase in revenue, but as the year goes on the economy begins to catch fire and revenues are up actually 10 percent. What happens then? We are technically in violation of the amendment.

Mr. HATCH. No; Congress would not have to do anything because Congress has met its obligation under the amendment. The amendment requires only that planned levels of outlays in the statement not exceed planned levels of receipts. There is no absolute requirement that actual receipts cannot fall below actual outlays.

Mr. BUMPERS. Section 2 states:

Total receipts shall not increase by a rate greater than the rate of increase in national income.

Mr. HATCH. That refers to the "statement" that Congress must adopt.

Mr. BUMPERS. We are not talking about outlays here. We are talking about receipts.

Mr. HATCH. That is right. But that particular language refers to the "statement" of receipts which Congress must calculate based upon the formula enumerated within the amendment itself. If, for instance, the economy heats up and there is an increase in revenues, fine. There is no obligation upon Congress to raise or cut taxes.

Mr. BUMPERS. It seems to me you are saying section 2 does not mean what it says.

Mr. HATCH. No.

Mr. BUMPERS. We have adopted a statement.

Mr. HATCH. Right.

Mr. BUMPERS. And, it is my opinion that the drafters of this section intended that the United States not ever relieve the taxpayers of a greater share of revenues than that share reflected in the national income for the preceding year. Is that the purpose of this section?

Mr. HATCH. If, in fact, there were unexpectedly high or unexpectedly low revenues, Congress would not be bound by the statement. There are three fiscal norms inherent in Senate Joint Resolution 58—planned receipts cannot exceed the formula set forth in

section 2; planned outlays cannot exceed planned receipts; and actual outlays cannot exceed planned outlays. There is no fourth fiscal norm that actual receipts not exceed planned receipts.

Mr. BUMPERS. What are we going to do with the extra money? Let us assume that we have \$50 billion more coming in than we projected and \$50 billion excess in the rate of growth for the preceding year. What do we do with the money?

Mr. HATCH. The extra receipts might be used to retire the debt.

Mr. BUMPERS. Automatically.

Mr. HATCH. Unless Congress voted otherwise, since it could not spend them for any other outlay. Outlays would continue to be limited, even if unexpected revenues were raised.

Mr. BUMPERS. Why does the amendment provide that the receipts cannot exceed a certain percentage of the national income?

Mr. HATCH. We do not say that. We have rejected that proposition in committee. All we say here is that receipts, or taxes, cannot increase as a share of the economy without an affirmative vote.

Mr. BUMPERS. I understand, but if the Senator is correct that revenues can be any amount they happen to be, if the economy is red hot and revenues are far in excess of what we projected when we originally had the balanced statement, why do we have the statement that revenues cannot exceed the growth rate?

Mr. HATCH. In part, because the permissible level of receipts also serves to define the permissible level of outlays. Such level of outlays, under the amendment, must be absolutely maintained by Congress.

Mr. BUMPERS. The outlays are taken care of in section 1.

Mr. HATCH. That is right, but there is obviously an inextricable relationship between sections 1 and 2.

Mr. BUMPERS. We know outlays may not exceed revenues. But in section 2 you say revenues also have a limit. I want to be sure that the Senator is speaking for the committee and all the proponents of this because I think the record needs to be made crystal clear on this point.

Mr. HATCH. I think the Senator has done a service in raising this issue. I think it is already clear. The statement of receipts must be made in accordance with the provisions of the amendment. Should the receipts actually grow at a rate faster than what the statement says, then the Congress can use the surplus to pay the debt or to accommodate added expenditures if they affirmatively vote to do so.

Mr. BUMPERS. Or they could cut taxes?

Mr. HATCH. They could. They could use them for any purpose they

like. The real key is that the actual outlays cannot exceed the planned outlay figure of the statement of receipts and outlays.

Mr. BUMPERS. So what you are saying is that section 1 is absolutely mandatory that outlays not exceed receipts.

Mr. HATCH. It is absolutely mandatory in that actual outlays cannot exceed planned outlays.

Mr. BUMPERS. But section 2 is sort of permissive, that even though revenues are not supposed to exceed the rate of growth in the national income for the preceding year, if they do, it is OK.

Mr. HATCH. The receipts level in section 2 helps to define the permissible level of the outlays in section 1 that can be spent by the Congress.

A primary purpose of the limitation on receipts is to prevent the outlays from exceeding the rate of growth of the prior year.

Mr. BUMPERS. Mr. President, I ask unanimous consent that an additional 5 minutes on my second amendment be used for this same purpose.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BUMPERS. There are two more questions I would like to ask and I would like to get a yes or no answer. First, what you are saying is there is absolutely nothing in section 2 that requires Congress to cut taxes if revenues exceed the growth rate of the national income for the preceding year under section 2 of the amendment.

Mr. HATCH. Congress of course has to make a good-faith estimate. If unexpectedly high or low levels of actual receipts result, there would be no absolute obligation to conform them with planned levels of receipts.

Mr. BUMPERS. We make a good-faith estimate in the year preceding the year we are voting on. We are going to make a good-faith estimate this year on what revenues will be for 1983. During 1983, if the amendment were in effect, if revenues vastly exceed our projections, and they vastly exceed the rate of growth in the national income, there is nothing in section 2 which mandates that Congress refund that money or to cut taxes, is there?

Mr. HATCH. The purpose of the amendment—

Mr. BUMPERS. I know you stated previously that we could start paying off the national debt.

Mr. HATCH. The Congress is to make a good-faith effort on estimating receipts. If Congress has made that good-faith effort and the receipts are in excess of the planned receipts, then Congress may very well choose to cut taxes.

Mr. BUMPERS. But there is nothing mandated in this amendment as to

what Congress must do with this excessive revenue?

Mr. HATCH. Unless they vote to do so.

Mr. BUMPERS. We can spend it; we can apply it to the national debt; we can give it away; or we can cut taxes. You are saying that there is nothing in this amendment that dictates to us how we do it.

Mr. HATCH. Basically, the Senator is correct. There are a variety of options under the amendment.

Mr. BUMPERS. Why is section 4 in the amendment?

Mr. HATCH. Could you please elaborate?

Mr. BUMPERS. There is a statement in section 4:

Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principal.

Why is that provision in the amendment?

Mr. HATCH. I think it is self-explanatory. If you have surplus receipts, they can be used for the repayment of debt principal and not be treated as outlays.

Mr. BUMPERS. This can be done anyway because outlays still would not exceed revenues.

Mr. HATCH. That is correct. In other words, total outlays would include all outlays of the United States except those for repayment of debt principal.

Mr. BUMPERS. If we did want to spend that surplus on debt, we would not be in violation of this.

Mr. HATCH. You would not be. I might add that this would not include spending on interest. Section 4 refers only to the principal.

Mr. BUMPERS. On page 48 of the committee report there is the following statement: "The rate of increase in statement receipts may be expressed symbolically as $r = [R(y) - R(y-1)] / R(y-1)$."

Can the Senator tell me in layman's language what that means?

Mr. HATCH. That means if you start in the base year at 100, GNP and during that year GNP grows to 120, then the rate of growth is 20 percent. The receipts in the statement could not exceed that rate of growth unless Congress voted appropriately to allow that growth.

Mr. BUMPERS. Tell me what each one of those letters means and how you work that formula.

Mr. HATCH. $R(y)$ would equal $120 - R(y-1)$ would equal 100. Thus, $120 - 100 / 100 = 20$ percent. The formula simply describes a rate of growth.

Mr. BUMPERS. Little r represents the rate of growth. Is that right?

Mr. HATCH. That represents the absolute level of GNP or NNP or whatever aggregate economic indicator is chosen.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BUMPERS. I will have to take the rest of the time for my other amendment.

Mr. HATCH. Thank you.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I wonder if there is anyone who wishes to bring up an amendment? I see the Senator from Montana is on the floor.

Mr. President, the distinguished Senator from Montana is going to speak on the Mathias-Baucus amendment at this time.

MATHIAS-BAUCUS AMENDMENT

Mr. BAUCUS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAUCUS. Mr. President, I have an amendment of which Senator MATHIAS is the primary sponsor. It is my understanding that that amendment is up next. May I speak in his absence on that amendment before he formally presents it to the Senate, as long as I ask unanimous consent that the time be charged against the amendment when it is laid down?

The PRESIDING OFFICER. If there is no objection to that request by the Senator to have the time charged against his amendment.

Mr. BAUCUS. I make that request, Mr. President.

Mr. HATCH. As I understand it, Mr. President, it is the right of the Senator to make that request. I have no objection.

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

Mr. BAUCUS. I thank the Senator from Utah. I thank the Chair.

Mr. President, the amendment sponsored by Senator MATHIAS and myself is a statutory version of the pending constitutional amendment.

Mr. President, when it comes to fiscal matters I am a conservative. When it comes to amending the Constitution, I am also a conservative. I think amending the U.S. Constitution is a very serious matter. I do not think we should rush to amend the Constitution to solve every social ill that comes along.

However, I do believe Congress must act to bring Federal spending under control. That is why I am pleased to join with Senator MATHIAS in introducing the Fiscal Responsibilities Act as a substitute to Senate Joint Resolution 58. This legislation proposes what I believe is the correct way to impose constructive restraint on the burgeoning Federal budget.

The measure uses two basic procedures to accomplish this objective: First, no deficit spending could be enacted unless both Houses of Congress have agreed to deficit by three-fifths votes. Second, each Member of Con-

gress would be required to vote for or against any tax increase greater than the percentage increase in the gross national product—including the tax increases brought on by inflation.

In essence, the measure will insure that Congress decisively confronts proposed increases in Federal taxation and Federal spending.

The measure would require the submission of an alternative budget if the administration's proposed budget contains a deficit. The submission of an alternative budget is critical, since it would permit Congress quickly and directly to consider and evaluate the option of adopting a balanced budget.

Later, during consideration of any concurrent budget resolution or conference report on such a resolution, a second requirement is applied. If the percentage of proposed Federal revenues compared to the estimated gross national product exceeds the percentage for the previous year, a separate vote must be taken on the question whether the increase should be accepted.

In this manner, Congress will be forced to address an issue of concern to the taxpayers and the voters of this country—the growth of Federal spending beyond growth in the economy.

Last, if Congress decides to approve a deficit budget, it can do so under this proposal. But, a three-fifths majority vote of both Houses would be required. I believe this extraordinary majority requirement properly places the presumption in favor of a balanced budget. It would still be possible to use deficit spending if economic exigencies required it. However, the burden of establishing the need for a budget in balance would be placed on its advocates—not its opponents.

In the past, some have suggested that the U.S. Constitution might be amended to require balanced budgets. I have not taken this point of view lightly. But, I have concluded that such material is not appropriate for inclusion in the Constitution. The Constitution should—and does—contain the broad principles by which we govern ourselves. Lockstep economic policies—no matter how critical—do not belong there and are properly matters to be addressed by the Congress as our economic circumstances change. As Federal Reserve Chairman Paul Volcker has commented, at the very least we should test proposals in our statutes first before we place them in the Constitution.

So, I am pleased to offer this statutory approach with Senator MATHIAS for the consideration of our colleagues. It requires us to stand up and be counted—to cast a clear and decisive vote on budgetary restraint and balance.

I am under no illusion that this legislation will solve all our economic

problems. It will not. But, it represents an important first step.

Congress must address the public's demand for restraint on Government spending and appropriately balanced budgets. We must address it this session. Our proposals permit these principles to go to work this year—on the very next Federal budget. I urge my colleagues to support it as a constructive alternative to Senate Joint Resolution 58.

When we in this body address and examine the major issue that is before us—that is, the pending constitutional amendment to balance the budget—it is clear that there are many, many unanswered questions. We do not know precisely how it will operate. We do not know how we are going to resolve many of the issues and questions that it raises.

Many Senators have pointed out that it would be very easy for Congress to avoid the requirements of the constitutional amendment even if it is adopted and becomes a part of the Constitution.

Congress could find ways to get around the requirements of the amendment by engaging in "off-budget" expenditures. Or Congress might redo the Tax Code. Congress and the President could phony up economic projections—they could be over-optimistic or overpessimistic with respect to next year's revenues and next year's receipts, next year's interest rates, next year's inflation rate, next year's growth rate, next year's employment rate—you name it.

All of those factors—the interest rate, the employment rate, the growth rate—are very, very involved and are integral parts of determining next year's receipts and next year's expenditures.

For example, we all know that for every 1-percent increase in national unemployment, there is a \$20 billion additional cost to the Treasury. It is essentially a loss of receipts because men and women are not working, but there are costs for unemployment compensation and benefits and other programs which total up to about \$25 billion. So if we estimate next year's unemployment rate to be 8 percent rather than 7 percent or 9 percent, that may represent a \$25 or \$50 billion difference in the Federal Treasury.

The same applies to estimating interest rates, growth rates, inflation rates for next year. Congress, therefore, might be tempted—sorely tempted—in its effort to "balance the budget" to fudge or in some way shade some of those estimates.

What I am saying is that, fundamentally, it is very easy for Congress to get around the dictates of a constitutional amendment and that is why so many questions have been raised about it.

Because of all of these questions, it is my view and the view of the Senator

from Maryland, that we should not write in stone provisions to balance the budget. We all know how difficult it will be to change the constitutional amendment once it is adopted as part of the Constitution. It would require another two-thirds vote by each House of the Congress and another ratification by two-thirds of the States—a very cumbersome way to change a law. Given all the questions being asked about this amendment, it is likely that it will need to be changed to deal with problems that may arise. That is precisely why we should not write it in the Constitution—certainly not at this time. Rather, we should adopt the same provisions to balance the budget, by statute, not by constitutional amendment.

I say we should do it by statute for a number of reasons. No. 1, because I, along with every other Member of this body, feel we should move much more quickly to balance the budget. An unbalanced budget does contribute in large part to the high rates of inflation that we are now experiencing. Those rates do choke off recovery and speed the demise of many small businesses. They prevent farmers and ranchers from generating the income they need, and contribute to the basically high interest rates which are very burdensome and are pushing the economy to lower depths each year.

I suggest that, yes, we must balance the budget. I strongly support congressional adoption of procedures that will help us move in that direction, and provide us some much needed discipline.

Second, because of the potential problems, I think that we must be cautious in how we go about putting in place these new procedures. If we do not like the way the procedures are working we are stuck with them if they are in the Constitution. It seems, therefore, that it would make more sense for us in this body and in the other body to experiment with, to work with, the proposed procedures requirements to balance the budget. We could do so much more easily, if we adopt them as a statute.

We can always amend the statute if it needs to be amended. We can add some provisions if they need to be added. In adopting a constitutional amendment to "balance the budget" we will not have such luxuries. We should be acting with more caution and be much more circumspect about it, so we act prudently, solidly, and with good, sound reasoning.

Mr. President, I might also point out that many eminent economists, many eminent Americans who spend their lives trying to figure out what makes our economy tick, agree that it is probably unwise to lock this provision in the Constitution. Chairman Paul Volcker, Chairman of the Federal Re-

serve System, in fact, not too long ago, in a letter to the former chairman of the Senate Subcommittee on the Constitution, Birch Bayh of Indiana, so states. He basically states that it would be unwise to lock into the Constitution a provision to balance the budget. Rather, he suggests, that we should experiment with the approach and do so by the statutory process rather than by the constitutional amendment process.

Mr. President, I have that letter dated February 29, 1980, to Senator Bayh, former chairman of the Constitution Subcommittee. It is a letter from Paul Volcker, Chairman of the Federal Reserve System, and I ask unanimous consent to have printed in the RECORD that letter.

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

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,

Washington, D.C., February 29, 1980.

HON. BIRCH BAYH,

Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN BAYH: I am pleased to reply to your recent letter in which you asked the Federal Reserve to study the fiscal and budgetary impact of S. J. Res. 126, a proposed Constitutional amendment for a balanced budget. Let me begin by emphasizing my agreement that there is a need to achieve better discipline over the budget process. A budget surplus has been realized only once in the past two decades, and federal outlays as a percentage of GNP have increased from 18.5 percent in 1960 to a projected 22.4 percent in 1980. It is my belief that, if we are to bring about an end to inflation and create an environment in which private enterprise can thrive, the growth of federal outlays must be slowed and brought into better balance with revenues in the years ahead.

As described in your letter, S. J. Res. 126 would provide for greater fiscal discipline by imposing two restrictions on the budget-making process: (1) budgeted expenditures would not be permitted to exceed receipts unless this provision were overridden by a three-fifths vote of the Congress; and (2) the ratio of receipts to national income would not be permitted to exceed the ratio recorded in the immediately preceding year, unless the Congress were to enact a law overriding this restriction. Your letter requested an analysis of the amendment under assumptions that: (1) the Congress does not override either restriction; and (2) the Congress abides by the balanced budget restriction but not necessarily by the restriction on growth of receipts.

A review of the experience of recent years suggests that the restrictions in the amendment could have a substantial effect on the course of budgetary policy. As can be seen in the enclosed table, the ratio of receipts to national income has tended to creep upward during the past two decades. The average ratio in the 1960's was considerably below that in the 1970's, and the figure for 1979 was exceeded only once—in 1969 when revenues were boosted by an income tax surcharge to help finance Vietnam-related expenditures during a period of very robust aggregate demand. A receipts restriction likely would have required significant tax

cuts in the past few years as revenues were raised by the interaction of inflation and the progressive tax structure.

The table also indicates that outlays as a percent of national income have trended upward. The spending ratio jumped in 1975 when the economy was in recession and fiscal policy was aimed at promoting recovery. Nonetheless, the ratio failed to return to earlier levels in the latter years of the 1970's—even during the Vietnam War period. The restrictions imposed by the proposed Constitutional amendment probably would have led to lower spending in this recent period, contributing thereby to restraint of inflationary forces.

While it appears fairly clear that the two restrictions would have proven beneficial during the past few years, they might at times have hindered efforts by the Congress to counter instability in the economy through the use of fiscal policy. For example, the tax cuts and expenditures increases that were enacted to counter the recession in 1975 would have been ruled out. They also would have prevented the passage of the surtax that was used to curb inflationary demand in 1969.

Adherence to the two restrictions would also tend to blunt the automatic stabilizing influence that the budget currently exerts on economic activity. Because of the progressive nature of our income tax system, tax revenues tend to rise faster than national income, a process that tends automatically to curb inflation-induced increases in nominal income. The restriction on receipts, of course, would require the Congress to cut tax rates in such situations, in order to hold the ratio of tax receipts to national income to the ratio established in the preceding year. Under the proposed amendment, a personal tax cut of about \$11 billion would be required in 1980 to hold the ratio of income tax liability to national income at the same level as it was in 1979. In my view, a tax cut of this magnitude would tend to exacerbate our inflationary problems.

The automatic tendency of the budget to reduce the severity of a recession would also be seriously curtailed by the restrictions. When nominal income declines, federal receipts drop even more rapidly (again because of the progressive federal tax structure). In response to such a development, adherence to the balanced budget restriction would require the Congress to legislate a similar cutback in expenditures, and this would reinforce the contractionary pressures in the economy. The Congress could, of course, minimize the required decline in outlays by raising tax rates enough to offset the effects of income tax progressivity, but this too would add to contractionary pressures.

Because expenditures in a number of programs, such as unemployment compensation, tend to rise automatically in a recession, the proposed budget restrictions would place a great deal of pressure on the more controllable budget categories—such as defense procurement—during economic downturns. The deficit and revenue restrictions could as a consequence tend to distort priorities within the budget and perhaps create "start-stop" inefficiencies in the more controllable programs.

In addition, taking the automatic stabilizing influences out of the budget would naturally place a greater burden on discretionary policy, which, as I noted above, would also become more tightly restrained on the fiscal side. The result would be to create pressures for greater reliance on the use of

monetary policy for stabilization purposes. Such a one-sided approach to stabilization policy may not be desirable. It might in some circumstances lead to greater volatility in credit market conditions and could make it more difficult to deal simultaneously with domestic and international economic problems.

I would note one major area of ambiguity in the proposed amendment. The Congress, in attempting to set balanced receipt and outlay totals, would have to base its deliberations on a very preliminary estimate of national income for the preceding year and on a projection for the coming year, both of which are subject to substantial error and frequent revision. It is not clear from the proposed amendment whether the Congress would be required to revise its budget in cases where the economy's performance did not correspond with the forecast used in preparing the budget. Such important matters should, I would think, be clarified before the amendment is passed on.

Over the longer run, I am concerned that Congress would be tempted to circumvent the restrictions by placing more activities off budget and by creating more federal loan guarantee and tax expenditure programs. Certainly, such a development would be undesirable and would seriously undermine the entire budget process.

Your letter also requests a discussion of the amendment under the assumption that Congress abides by the restriction against deficits but not by the restriction on the receipts. In this instance, the progressive nature of the tax structure would permit receipts to grow faster than national income, and thus the budget would tend to retain some of its automatic stabilization characteristics during inflationary periods. Some restraint on expenditure growth would still be provided by the three-fifths vote required to approve a deficit.

To summarize, the restrictions on budget policy contained in S.J. Res. 126 could well exert a considerable influence on budgetary policy and would represent a source of fiscal discipline. However, certain potential problems must be considered. In periods of economic instability, the restrictions, if strictly adhered to, would impose rigidities on the budgetary process that would diminish the budget's potential for acting as a stabilizing influence on the economy. The proposal also could lead to distortions and inefficiencies in achieving budget priorities, would place greater emphasis on monetary policy as a stabilization policy device, and would encourage a diversion of federal activities into off-budget programs.

Having expressed these concerns about the proposal under the assumptions that one or both of its restrictions are not overridden, let me go on to say that in my view this proposal is preferable to some others, specifically because it does leave the Congress with some flexibility to adjust to changing circumstances. Once this flexibility is taken into account, it can be seen that at the core of the proposal are requirements for a three-fifths vote of Congress to authorize a budget in deficit (rather than the current simple majority) and for the Congress to take special and explicit note when it approves a budget in which receipts (and perhaps outlays) are expected to rise faster than national income. Both of these aspects of the proposed amendment deserve careful consideration.

If the Congress does finally conclude that additional restrictions on the budget process such as those outlined in this proposal are

desirable, I would suggest that they be first tried out by incorporating them in the Congressional budget process. A simple step in this direction under the present budget process might be to require that any concurrent budget resolution involving a budget deficit require a three-fifths majority vote. An explicit vote on target ratios of receipts and expenditures to GNP or national income also could be easily incorporated into current budget procedures. In this way, unforeseen problems could be identified before the more profound and less easily reversed step of amending the Constitution is taken.

The achievement and maintenance of discipline over Federal spending is an absolute necessity if inflation is to be brought under control. I would hope that unduly rigid—and perhaps unsustainable—rules can be avoided. However, our recent history does increasingly suggest the wisdom of exploring means for introducing greater discipline into the budgetary process.

Sincerely,

PAUL A. VOLCKER,
Chairman.

RELATIONSHIP OF FEDERAL RECEIPTS AND OUTLAYS TO
NATIONAL INCOME

Fiscal year	National income		
	Receipts as a percentage	Outlays as a percentage	Budget surplus or deficit (-) as a percentage
1960	22.8	22.7	0.07
1961	22.9	23.7	-.82
1962	22.5	23.1	-1.60
1963	22.7	23.7	-1.02
1964	22.5	23.7	-1.18
1965	21.6	21.9	-.30
1966	22.0	22.6	-.64
1967	23.4	24.8	-1.36
1968	22.5	26.2	-3.69
1969	23.3	24.8	-1.43
1970	24.7	25.0	-.36
1971	22.9	25.7	-2.79
1972	23.2	25.8	-2.60
1973	23.0	24.5	-1.47
1974	24.0	24.4	-.43
1975	24.2	28.0	-3.89
1976	23.2	28.3	-5.12
1977	24.2	27.2	-3.04
1978	24.1	27.0	-2.93
1979	24.8	26.2	-1.47
AVERAGE RATIOS			
1960-1964	22.7	23.4	-.90
1965-1969	23.0	24.1	-1.10
1970-1974	23.6	25.1	-1.53
1975-1979	24.1	27.3	-3.29

Mr. BAUCUS. Mr. President, let me read the operative paragraph. It is on page 4 of that letter from Paul Volcker.

If the Congress does finally conclude that additional restrictions on the budget process such as those outlined in this proposal are desirable, I would suggest that they be first tried out by incorporating them in the Congressional budget process; i.e. not by constitutional amendment.

Mr. President, there are many other economists who have the same view.

Often we in this body joke that there are right-handed economists and there are left-handed economists and, depending upon your personal philosophy and your point of view, you can always find an economist to support your economic viewpoint. I think, regrettably, that too often is true; economic views are all over the lot. But when it comes to a constitutional amendment to balance the budget, the

majority of economists agree that it is unwise to lock such a philosophy into the Constitution. The majority of economists feel that it is not wise; that, rather, we should adopt a statutory approach or, more fundamentally, Members of the House and Senate should exercise a little more gumption, a little more courage and get the job done by balancing the budget.

One economist, Mr. Rudolph Penner from the American Enterprise Institute, recently suggested that it is unwise to balance the budget. Do you know why? Because, he favors an economic theory that has come into vogue in the last 2 or 3 years, supply-side economics. If you are a true supply-side advocate, you cannot be for a constitutional amendment to balance the budget. If you are a true supply-side advocate, you have to lower taxes in order to let the economy work its will—more productivity, more investment, more jobs, more income and, therefore, the deficit disappears. That is the theory of the supply-side economics.

To those who are advocates of supply-side economics and at the same time advocate a constitutional amendment to balance the budget, I say you cannot have it both ways. You just cannot do it, unless in cutting tax receipts by a very significant amount in order to let supply-side economics take hold you also cut spending by such drastic amounts.

Let us look at last year's tax bill. The Economic Recovery Tax Act cut receipts by \$750 billion over 5 years, \$750 billion. Theoretically, Congress could have cut expenditures by \$750 billion over that same 5-year period, but the Congress did not. In fact, the President did not even recommend it. As a rough estimate, the President recommended spending cuts in the neighborhood of about \$300 billion, \$310 billion, \$320 billion, \$330 billion over that same period. Why? Because under the theory of supply-side economics, the deficits will disappear over 2 years because people are going to save that tax savings; they are going to invest it; it is going to enhance productivity, create more jobs and, therefore, the economy is, according to theory, going to take off and deficits will then disappear.

So, I say, when a new economic theory comes along, like supply-side economics, if we have a constitutional amendment to balance the budget, all of those who want to put in place this new economic theory could not do so because the constitutional amendment to balance the budget was in the constitution.

I suggest, therefore, that when new economic theories come along, Congress can and should decide which economic theories it wants to put in place and which ones it does not want to put in place. With the constitutional amendment to balance the budget, we

have very strict limits placed on us. It would be a very significant impediment. Again, the underlying reason for our amendment, a statutory approach, is that when a new theory comes along, Congress will be able to accommodate such a theory if it feels it is appropriate to do so.

Mr. President, the point I am making underscores the problem of locking in stone a provision to balance the budget; that is why we should attempt to balance the budget by adopting statutory procedures because they can be more easily adjusted to accommodate changing economic conditions.

Let me address another point, point No. 2.

Point No. 2 is simply this: If the underlying constitutional amendment is adopted, it probably will not go into effect for 4 or 5, 6, who knows how many, years. The amendment that the Senator from Maryland and I are offering today will go into effect immediately.

Mr. President, we cannot wait 5, 6, 7 years for interest rates to come down. We cannot wait 5, 6, 7 years, for deficits to be brought under control. We cannot afford it. I suggest that those who advocate balancing the budget by a constitutional approach but oppose the statutory approach that I am advocating are trying to have it both ways. We just cannot do it. If you are truly an advocate of balancing the budget sooner, it seems to me that one has to be for the approach the Senator from Maryland and I are taking, which is the approach which requires Congress to act much more quickly.

It is for all these reasons, Mr. President, that I think we in Congress should exercise the courage and the will to do what we think is right under our responsibilities, and that is to get this budget process in order with a statutory approach, which leads me to my final point.

It is legislators, it is the men and women who sit in this body and the other body, who balance budgets, not constitutions. The main underlying reason I hear for the constitutional approach is we cannot control ourselves. There is an institutional bias here for creating deficits. That is the fundamental underlying reason that advocates put forth for the constitutional amendment.

Mr. President, let me say that if Congress does not have the courage, the intestinal fortitude to do what it thinks is right today, what guarantee is there that Congress would have the courage, the intestinal fortitude to do what is right later, assuming this constitutional amendment is placed in the Constitution? We all know with absolute certainty that if Congress wants to find a way to get around the requirements of this constitutional amendment, it will do so. In fact, it is

my view that it is not so much the structure or the flow charts or the parliamentary procedures which dictate solutions; rather, the imagination and the willpower and the creativity and the ambition of men and women which dictate results; it is the people who are more important than the flow charts or the constitutional amendments. I very firmly believe that if we adopt the underlying constitutional amendment, we will be fooling the American people; we will be in some sense talking out of both sides of our mouth. Are we telling the American people, "Don't worry, things will be OK when this goes into effect in 4, 5, 6, 7 years?" I daresay the vast majority, in fact, every Member of this body, knows in their own mind that it is a bit of a charade. If Congress does, in fact, want to unbalance the budget, even if this amendment is adopted, Congress will find a way to do so.

It is going to make a mockery of the process. It is going to undermine the Constitution. It is going to cause less public respect for this process, for this body, and for the Constitution, rather than more respect for the process, for this body, and for the Constitution.

It is for all those reasons that I suggest, with every ounce I can summon, that we be careful. We can rush to balance budgets, but let us not rush to amend the Constitution. Let us not lock in stone something that is fundamental and something which may come back to haunt us and cause even more problems than we have today.

I reserve the remainder of my time.

Mr. THURMOND. I yield to the distinguished Senator from Arizona such time as he may require.

The PRESIDING OFFICER. Does the Senator from South Carolina yield time from the bill?

Mr. THURMOND. I yield time from the amendment.

The PRESIDING OFFICER. The amendment is not pending. The amendment has not been called up, but the Senator from Montana had unanimous consent.

Mr. THURMOND. Mr. President, I ask unanimous consent that the time I am about to yield to the Senator from Arizona and the time that was used by the Senator from Montana be charged to the amendment, when it is called up.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Arizona.

Mr. DeCONCINI. I thank the Chair, and I thank the distinguished chairman of the Judiciary Committee.

Mr. President, I compliment the Senator from Montana for bringing forth this idea. Though I disagree that this is the place to do it, I do agree with the Senator that we should do it. We should have adhered to the amendment which mandate a bal-

anced budget, which was enacted into law 4 years ago. That amendment was authored by the distinguished Senator from Virginia, who joins us this afternoon.

As the Senator from Montana knows, as well intentioned as many of us were who voted for that, we have not lived by it and adhered to it. That is my concern today.

I would be more than happy to vote for this amendment if it were not in the nature of a substitute to the constitutional amendment. I would do what I could to see that we adhered to it. I think that if this body adopted the Mathias-Baucus amendment, as we adopted the Byrd amendment several years ago, we would attempt to live by it, but history proves intent and the ultimate result often differ. We intended but we have not lived by the Byrd amendment. Our huge deficits of today are the result.

My concern is that if we adopted this as a substitute and if it became the law of the land, we would still be faced with the same proposition we are faced with now, each time appropriation and authorization bills come forward.

That leads me to the conclusion that the only step we can take is to adopt a constitutional amendment.

I agree with the Senator from Montana: Tinkering with the Constitution or moving quickly to change it because of social or economic ills that may be here today, or for a short period of time, is not in the best interests of our Nation.

However, we are not talking about something that has just arisen. We have all heard the statements time and time again as to how many years we have had an unbalanced budget. We are in a crisis position. Had we adopted this 5 or 10 years ago, when the national debt was below a trillion dollars, or 10 years ago, when it was below \$400 billion, and if it had been ratified by now, maybe we would not find ourselves saddled with the debt we now face.

It is for those reasons that I have to oppose the distinguished Senator from Montana, who offers an alternative approach to a constitutional amendment, but one which I wish would be pursued on its own merits. I believe that many of the cosponsors of this amendment, some 62 in number, would join the Senator from Montana and the Senator from Maryland to attempt once more to put this idea into statute.

The question is raised: "If Congress violated the statute passed in 1978, authored by the distinguished Senator from Virginia, isn't it likely to violate a constitutional amendment on the same subject?" I do not think so. But the reason why I do not think so is that Congress will hold the mandate of the Constitution in much greater

esteem than mere statute which we can change at any time.

This body and the House will have to finally determine our priorities within a framework of fiscal soundness. If there were economic and social urgencies that had to have expenditures in excess of receipts, Congress will have an opportunity to do it. How much better it would be if we were operating under that process than what we are operating under today.

I am sure the Senator from Montana joins me in expressing that everybody wants a balanced budget. But a funny thing happens—every year—when it comes to the end of the year, we do not get a balanced budget. We need the mandate of the Constitution to force us to balance the budget because we would never do it otherwise.

I wish that every Member of this body, one time or another, in one period of 12 months or less, would not vote for deficit dollars, would not vote to increase the national debt, would not vote to authorize more money than is projected to be coming in. It just goes on and on. It is well intended and for what seem like good reasons. Who can object to spending deficit dollars for national security? Not this Senator. On the other hand, who can suggest that we not spend deficit dollars for foreign assistance? I can; others cannot. They feel it is in our national interest and national security, and consequently the majority have cast votes to spend in those areas. I have been in the majority on one and the minority on the other.

The point is that we are caught in a situation that we, as a body, cannot resolve without the severity—and I call it that—of an amendment to the Constitution that would prohibit deficits unless it was clearly the will of the people that a deficit could be justified.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Mr. President, I ask unanimous consent that I may proceed, with the time to be taken from the amendment.

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

Mr. BAUCUS. A parliamentary inquiry, Mr. President. How much time do I have remaining?

The PRESIDING OFFICER. One hour and 12 minutes.

Mr. BAUCUS. I thank the Chair.

Mr. President, the first point made by the distinguished Senator from Arizona is that we already have a statute in place. He is right; we do. It is a good point.

With all respect to the Senator from Virginia, who I think is one of the finest Members of this body and who had the foresight to see this problem long before most Members of this body, the difference is that Congress has not had any alternative. Either

Congress agrees 100 percent with the amendment offered by the Senator from Virginia, which requires a balanced budget, or it does not. It is all or nothing; it is black or white; it is yes or no.

When Congress is faced with high rates of inflation and with high unemployment levels and when many Members of this body advocate supply-side economics and want to cut \$750 billion out of revenues and not cut the same out of expenditures, Congress has to face whether it is going to agree to the 100-percent solution offered by the distinguished Senator from Virginia or whether it is not going to agree with it. Well, Congress decided not to. Because of high unemployment rates, because of upward pressures on social security and other entitlement programs, and because some people want to cut taxes \$750 billion over 5 years, Congress decided it did not want a balanced budget.

If the amendment offered by the Senator from Maryland and myself were adopted, it seems to this Senator at least that Congress would be facing a more realistic alternative. Congress could decide by three-fifths vote whether it wanted an unbalanced budget or whether for various reasons Congress wanted an unbalanced budget. There is some leeway in our approach. It is a workable process.

I am, therefore, suggesting with all respect to the Senator from Virginia that the statutory amendment process offered by the Senator from Maryland and myself is much more workable. It is much more realistic. Therefore, Congress will honor this approach more than it did the amendment offered several years ago by the Senator from Virginia. The amendment offered by the Senator from Virginia was not as workable and did not have the three-fifths requirement for deficit spending. It just was a difficult statute to work with.

So I am, therefore, suggesting that the statutory approach offered by the Senator from Maryland will by and large meet this objection.

Mr. President, the Office of Management and Budget as near as I can tell is not for the underlying constitutional amendment.

Mr. President, I have a letter written to the former chairman of the Subcommittee on the Constitution of the Committee on the Judiciary, Senator Bayh, from Mr. James McIntyre and Mr. G. William Miller—Mr. McIntyre was a former Director of the Office of Management and Budget and Mr. Miller a former Secretary of the Treasury—in opposition to a constitutional amendment approach to balance the budget, and I ask unanimous consent to have printed in the RECORD that letter with the underlying materials.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., February 28, 1980.
Hon. BIRCH BAYH,
Chairman, Subcommittee on the Constitution,
Committee on the Judiciary, U.S.
Senate, Washington, D.C.

DEAR SENATOR BAYH: This is in response to your request for an analysis of the budgetary and fiscal impact of S.J. Res. 126, currently before the Senate Judiciary Committee.

S.J. Res. 126 would amend the Constitution of the United States in an attempt to promote fiscal responsibility by requiring a balanced Federal budget and limiting the growth of revenues. The Administration strongly favors a balanced Federal budget and reducing tax burdens as national security, energy security, and economic conditions permit. However, these goals can be accomplished within the context of the budget procedures of the Administration and the Congress without the serious problems raised by a Constitutional amendment.

We attach a staff report discussing the fiscal and budgetary impacts of the proposed amendment. We are very concerned about the restrictions this amendment would put upon fiscal policy and on the ability of the Federal Government to respond to emerging national problems. The revenue limitation would force major undesirable changes in the structure of our tax system and would be extremely difficult, if not impossible, to administer. Finally, the amendment raises issues and contains concepts and terminology that are inappropriate for inclusion in the Constitution.

In short, we believe that the Constitutional amendment proposed in S.J. Res. 126 would be extremely unwise with respect to both fiscal policy and budgetary policy. We urge that it not be favorably reported or proposed for ratification.

Sincerely,

JAMES T. MCINTYRE, Jr.,
Director, Office of
Management and Budget.
G. WILLIAM MILLER,
Secretary of the Treasury.

ANALYSIS OF S.J. RES. 126

S.J. Res. 126 would amend the Constitution of the United States in an attempt to promote fiscal responsibility by requiring a balanced Federal budget and limiting the growth of revenues. The Administration strongly favors a balanced Federal budget when national security, energy security, and economic conditions permit. However, these goals can be accomplished within the context of the budget procedures of the Administration and the Congress without the serious problems raised by a Constitutional amendment. The Constitutional amendment proposed in S.J. Res. 126 would be extremely unwise with respect to both budgetary policy and economic policy.

One of the great virtues of the Constitution is its continuing relevance as the fundamental instrument of our government after nearly 200 years. The Constitution has retained its vitality and relevance because it has not been excessively encumbered by concepts, terminology and provisions that change with the passage of time. S.J. Res. 126 is replete with concepts which are continuously changing and which are inappropriate for the Constitution. We should strongly resist enshrining terms such as "national income," "Federal Government

expenditures" and the like in the Constitution.

FISCAL IMPACT

S.J. Res. 126 is objectionable because of the damage it would inflict upon the Federal Government's flexibility to conduct fiscal policy. If the Congress did not override the balanced budget provision when the economy was weak, recessions could be deepened or turned into full-scale depressions.

At present there are a number of "automatic stabilizers" in the Federal budget. These programs, which include unemployment insurance, food stamps, AFDC and Social Security, and the progressive tax structure, play a major role in limiting cyclical movements in the economy. S.J. Res. 126 would require the Congress to take offsetting, procyclical, and destabilizing actions when these automatic stabilizers went into effect, unless these offsetting actions were avoided by a controversial and time-consuming three-fifths vote of each House of the Congress. The automatic stabilizers now have the advantage of automaticity and timeliness. This proposal would make them subject to delays that would reduce their effectiveness, or make their effects perverse. The result would surely be more cyclical instability in the economy. This constraint on fiscal policy would also tend to place an unduly heavy burden on monetary policy, with the potential for excessive monetary growth in the long-term.

Simulations with several macroeconomic models indicate that, had the unrealistically large cuts required to approximate a balanced budget been made in FY 1975 and in FY 1976, the unemployment rate would have been about 12 percent in 1975, almost half again as high as the rate that was actually experienced. Absolute budgetary balance would not have been achieved without causing a deeper recession. While the balanced budget requirement in S.J. Res. 126 does not actually mandate balance after the fact, it would push the economy in the direction of higher cyclical unemployment.

Failure to override the provisions of both Sections 1 and 2 would severely circumscribe the role of government in many areas. The amendment would tend to reduce the share of Federal receipts and spending continually over time and, with rising real defense spending, put intense pressure on many or most domestic programs. Of course, it is impossible to predict what programs would be reduced or eliminated to meet the restriction, but major cuts would have to be made. There would be great pressures to shift the burden of Government to the States and localities by curtailing grant programs. It would also be difficult to respond to the need for Federal Government services that the rising proportion of the elderly in our population will inevitably raise in the future. In particular, it would become exceptionally difficult to maintain adequate retirement and health programs if the limitations intended by this amendment were kept in place.

BUDGETARY IMPACT

S.J. Res. 126 requires that a projected Federal budget deficit be permitted only after approval by a three-fifths majority vote in each House. The terminology of this section is ambiguous. It refers to "expenditures," a term from the national income and product accounts, which differ from outlays, the spending term currently in use in Federal Government budgeting. It also refers to appropriations bills affecting expenditures, although appropriations bills typically refer

only to budget authority and not to outlays in any specific year. They never refer to "expenditures."

S.J. Res. 126 would almost inevitably create strong pressures to produce spurious budget surpluses by changing budgetary definitions and practice, including moving programs off the budget. The Congress many times in the past has changed the way that certain items are treated in the budget, and many ambiguous and controversial conventions still remain. Even though the Resolution attempts to sidestep these definitional issues by providing that definitions in effect at the time the amendment goes to the States for ratification be preserved, it would increase the already strong incentives for evasion of current budget definitions and practices. If the Congress were to change budgetary procedures, in an attempt to circumvent the limitation, the courts would be forced to decide whether to acquiesce or to confront the Congress on legislated definitions of budget concepts. There is a need to change these definitions from time to time to reflect changing circumstances; the Judiciary is not the appropriate branch of government to resolve these issues.

S.J. Res. 126 would also create strong pressure for the government to resort to instruments which may be inefficient, but which do not involve budget outlays. In particular, loan guarantees and loan subsidies would be used to reduce immediate budget outlays to an even greater than at present, potentially causing additional uncontrollable outlays in the future. Similarly, inflationary and productivity-reducing government regulations would be substituted for spending programs in a number of areas. The probable effect of these changes would be to reduce the efficiency of the economy without actually reducing the role of government.

The provision of a balanced budget in S.J. Res. 126 is also likely to create false and unrealistic expectations. Passing a concurrent resolution projecting a balanced budget would probably satisfy the requirement the amendment would place upon the Congress. However, the actual surplus or deficit later realized in the budget will depend critically upon whether the economy performs in the manner assumed in the budget resolution and whether receipts and uncontrollable outlays have been correctly estimated. Large deficits could emerge without any change in tax spending policy if the economy performs worse than assumed.

Projecting the required budget balance raises two problems. It would create strong pressures to make unduly optimistic economic forecasts which would raise estimated receipts and reduce estimated outlays. At best economic forecasting is a very inexact art; this provision would also make it a much more political one.

It is also likely that this amendment would be viewed as guaranteeing a balanced budget. Expectations of a balanced budget would be raised that in all probability could not be satisfied in years when the economy was weak.

Section 2 of S.J. Res. 126, relating to receipts, raises further problems. It appears impossible to administer, and would require a set of tax laws radically different from those now in place. Section 2 requires that receipts as a proportion of national income not exceed that on the prior year without enactment of a bill involving a roll call vote of each House. However, unlike Section 1 which is prospective, Section 2 is retrospective, requiring the Congress to control

actual realized receipts, not just estimated receipts. In effect, the Congress would be required to know both actual receipts and actual national income in advance of the time that they can be known. While a final accounting of receipts is normally available within a few weeks after the end of a fiscal year, national income estimates are quite another matter. Under current procedures, estimates of national income are changed periodically as new information becomes available. Data from tax returns and census data provide information for revisions in the estimates of national income for several years after the period has passed.

If the amendment should be found to give taxpayers standing to sue the Federal Government for return of unconstitutional tax collections when congressional estimates of either receipts or national income turn out to have been in error, there would clearly be the potential for a large volume of litigation. The practical effect of the amendment, in order to avoid such consequences, would be to require a tax structure designed to produce receipts in each year well below the limiting proportion of national income set in the prior year. If Section 2 were not overridden, there would be a continuous decline in the share of receipts, and spending, in national income. The logical intent of the amendment would appear to be the withering away of the Federal budget.

The design of a tax system, which yield receipts which do not increase as a fraction of national income in the absence of legislated adjustments, would require many changes from our present tax system. In particular, it would be difficult to maintain a progressive rate structure without adopting some system that maintained constant average tax rates as national income changes. However, it is not clear that a method of making such adjustments which is efficient and equitable can be devised. In particular, such changes raise serious and complex questions with respect to the definition of income, and specifically the measurement of real income from capital, which are better addressed through the present system of *ad hoc* legislated adjustments of the tax system.

In short, S.J. Res. 126, while responding to political pressures of the moment, would be bad policy. It encumbers the Constitution. It is ambiguous. It raises false expectations. It cannot be effectively administered. It would force the Federal Government to deceptive budgetary devices and inefficient policy instruments. It would impair fiscal policy. And it might preclude the Federal Government from providing services that are needed.

Mr. BAUCUS, Mr. President, I have another memo here which is dated March 26, 1982, not the Carter OMB, but President Reagan's OMB. This memo is entitled "Inside OMB." It is dated March 26, 1982. The heading of this memo is as follows: "OMB Lists 10 Major Flaws of Constitutional Amendment for Balanced Budget."

Let me repeat: "OMB Lists 10 Major Flaws of Constitutional Amendment for Balanced Budget."

Let me read the first four that the OMB lists. This is the Office of Management and Budget under Mr. David Stockman of President Reagan's administration.

1. The Constitution is "not an appropriate vehicle" for requiring a balanced budget and

should not include a "potentially inflexible fiscal mechanism" that may not be easily adapted to changing economic circumstances.

That is point No. 1 in "Inside OMB," March 26, 1982.

2. An inflexible annual balanced budget policy tends to ignore the traditional "contractions and expansions . . . inherent in a free economy" and may therefore "create artificial policy choices;"

That is Point No. 2 in the memo from the Office of Management and Budget.

3. A balanced budget requirement would tend to drive up off-budget outlays, increase indirect fiscal spending and lead to other "novel budget devices" to circumvent the amendment.

Let me repeat that one because I think it is very crucial to the debate today.

A balanced budget requirement would tend to drive up off-budget outlays, increase indirect fiscal spending and lead to other "novel budget devices" to circumvent the amendment;

4. A balanced budget rule would not be technically enforceable since in some cases an end-of-year overrun would not be known until 20 days after the close of the fiscal year; and

As I said, Mr. President, there are actually six other reasons OMB lists in its view why it would be unwise to adopt a constitutional amendment to balance the budget.

Mr. President, I ask unanimous consent to have printed in the RECORD this memorandum.

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

OMB LISTS 10 MAJOR FLAWS OF CONSTITUTIONAL AMENDMENT FOR BALANCED BUDGET

An OMB internal staff report on the pros and cons of a constitutional amendment to balance the budget details 10 specific flaws facing such an amendment the first five labeled "generic concerns." The last five specifically attacking the joint resolution passed last year by Senate Judiciary (S.J. Res. 58) and awaiting full Senate action. The OMB document, reprinted below, was first referenced in an Evans & Novak column last week. OMB's chief concerns:

1. The Constitution is "not an appropriate vehicle" for requiring a balanced budget and should not include a "potentially inflexible fiscal mechanism" that may not be easily adapted to changing economic conditions would tend to drive up off-budget outlays, increase indirect fiscal spending and lead to other "novel budget devices" to circumvent the amendment;

4. A balanced budget rule would not be technically enforceable since in some cases an end-of-year overrun would not be known until 20 days after the close of the fiscal year; and

5. An annual balanced budget rule is "inherently biased toward higher taxes rather than lower spending."

The OMB memo detailed specific problems with the resolution, chief among them: 1. the tax limitation rule in the amendment—requiring that taxes not be increased by more than the percentage of GNP growth in the prior calendar—amounts to

shifting indexing from the IRS code to the Constitution; 2. the amendment is unbalanced in that it requires a 60 percent vote in each House to create a deficit but only 50 percent of each House to raise taxes; 3. the resolution could have a bias against defense, since defense holds more of the budget's controllable outlays; 4. the amendment could require "draconian" budget cuts to be taken mid-year if economic projections turn out to be more optimistic than economic reality; and 5. the amendment provides no mechanism "to rationally enforce the outlay limit in the resolution" OMB illustrates this point by describing in detail how FY 82 budget outlays would have had to be cut if the amendment had been in effect last year.

The Administration to date has taken no public position on the proposed amendment—sources say this is primary because the measure need not be signed by the President and therefore does not directly affect him—and sources this week indicated that it is unclear whether the Administration will take a firm stance. Some weeks ago it appeared Reagan planned to sit this one out, according to one source, but in the past several weeks numerous Administration officials, particularly in the Treasury Dept., have begun discussing the merits of such an amendment to the Constitution.

Congressional aides believe the amendment will enter front stage within the next two months, either because of the vote on the debt limit (some believe the amendment and debt limit may be linked as a means of getting the debt limit passed) or as more state legislatures vote for a constitutional convention—which Congress wants to avoid—but only a handful of state legislatures that have not voted on the measure are left in session. Congressional aides point out that if the debt limit bill is coupled with the constitutional amendment many congressmen will feel more comfortable by simultaneously voting for a balanced budget while they increase the debt ceiling, on the other hand, if the bills are coupled, it would take a two-thirds vote in each House to pass (a constitutional amendment requires a two-thirds vote for passage) and thus may hurt the chances for passing the debt limit, which would otherwise only require majority approval.

TEXT OF OMB PAPER ON PROBLEMS, OBJECTIONS TO BUDGET-BALANCING AMENDMENT

A. Generic concerns

1. The Constitution is not an appropriate vehicle for economic policy prescriptions (balanced budgets) nor should it be cluttered with potentially inflexible fiscal mechanisms that may not be appropriate to unforeseeable future circumstances.

2. An inflexible annual balanced budget policy rule may not be compatible with the business cycle "facts of life" which tend to produce automatic large deficits during recessions. During FY-82, the projected deficit increased by \$40 billion due to the recession induced fall of receipts and rise of unemployment-related outlays. As written, S.J. Res. 58 requires a super majority (60 percent) to create an annual deficit—yet consensus opinion for several decades has held that recession-induced deficits are either desirable or at least tolerable.

Since business cycle contractions and expansions are inherent in a free economy, the proposed policy rule would create artificial policy choices and political conflicts on a recurring basis, i.e., whether in the face of a contracting economy to: raise taxes; radically reduce spending until recovery raises

receipts; or achieve super-majorities to validate recession deficits.

3. A balanced budget requirement would exacerbate pressure for off-budget outlays, indirect fiscal spending and other novel budget devices outside the scope of any settled definition of "outlays." While S.J. Res. 53 covers conventional off-budget outlays such as those incurred by the Federal Financing Bank (FFB), it would not cover: loan guarantees (\$87.7 billion in FY-82); schemes to mandate fiscal outlays by private sector entities such as: mandatory employer-provided health insurance; mandatory employer-provided pension benefits in lieu of Social Security expenditures; and tax subsidy induced outlays to the extent that leveraging features exceed revenue loss.

4. As a general matter, the annual outlay limitation needed to enforce a balanced budget rule would not be technically enforceable under the ordinary range of experience. Under a \$100-billion annual outlay initiation, outlay overruns of the following magnitudes would not be technically realized until the final days of the fiscal year.

Overrun magnitude

Days before October 1:	Billions
24	\$50
19	40
15	30
10	20
5	10

Under most circumstances, verification of a realized overrun would not occur until the monthly Treasury cash statement was issued 20 days after the close of the fiscal year. Under almost all circumstances, no remedial action could be taken to reduce outlays in the last month.

Enforcement of the ceiling within the fiscal year, therefore, would require either elaborate accounting rules to monitor annualized spending rates and trigger enforcement early: a de facto policy of non-enforcement which could generate political cynicism; or judicial intervention to force the creation of within-year compliance machinery.

On the margin, monthly cash flow prediction and management is nearly impossible due to dozens of volatile outlay accounts such as: Commodity Credit Corp, insurance funds like FSLIC, banking operations like Farmers Home Administration, and grant payments mechanisms like the Departmental Federal Assistance Financing System.

5. Due to the difference in lag-time between policy action and cash impact, an annual balanced budget rule is inherently biased toward higher taxes rather than lower spending because: cash flow changes owing to tax policy can be enacted, implemented and realized in three months (e.g., 5 percent income tax surcharge); cash flow changes owing to spending policy require three months to three years to enact, implement and realize in most cases—or even longer, and the inherent dynamics of Congress will delay action on the balanced budget rule until close to the applicable fiscal year—thus steadily strengthening the case for a tax increase rather than spending cut solutions to the rule.

B. Concerns specific to S.J. Res. 58

6. S.J. Res. 58 seeks to overcome this inherent bias by merging a balanced budget rule with a tax limitation rule. However, the specific tax limitation rule (no automatic increase in taxes in excess of the previous year's growth in national income) applies only in the limited case of an un-indexed tax system. This is shown by comparing the

applicable revenue increase/national income relationships for the late 1970's and prospectively for the 1980's when indexing takes effect:

	[In fiscal years]					Average annual growth rate
	1976	1977	1978	1979	1980	
Old tax law						
Actual receipts	6.8	15.2	12.4	16.0	11.6	12.5
Base year GNP ^a	8.1	8.0	10.9	11.6	12.4	10.2
1983 1984 1985 1986 1987						
Current tax law—ERIA						
Projected current law receipts	4.3	7.7	10.0	8.4	7.5	7.6
Projected base year GNP ^a	11.5	7.9	11.5	10.2	9.7	10.2

^a Annual rate of growth.
^b The base year GNP growth rate under S.J. Res. 58 is the growth in GNP during the preceding calendar year. For fiscal year 1983, for example, the receipt growth would be limited to the rate of growth in GNP (or some other measure of national income) during calendar year 1981.

The tax limitation rule proposed in S.J. Res. 58 is thus very limited: It amounts to shifting indexing from the IRS code to the Constitution.

7. The tax limitation and balanced budget rules in S.J. Res. 58 are seriously asymmetrical: deficit creation or increases require a super-majority (60 percent) and tax raising requires only an ordinary majority. Consequently, a 41 percent minority for tax raising will have Constitutionally granted parliamentary superiority over a 50 percent majority favoring a combination of spending cuts and/or deficits.

8. S.J. Res. 58 could, but would not necessarily, have a bias against defense. By fiscal year 1986 defense outlays will account for \$311 billion of projected total controllable outlays of \$442 billion (excluding undistributed offsetting receipts) or 70 percent. While entitlements could theoretically be cut, the 47 percent share of controllable outlays will always be the first target if outlay reductions are required to achieve the balanced budget rule or enforce the outlay ceiling during the fiscal year.

9. Differences in the budget and economic outlook between the initial submission of the President's budget and the actual fiscal year results have been substantial in recent years. To offset outlay increases attributable to economic factors once the budget year has started requires draconian program cuts.

Increase in outlays from the initial budget submission due to changed economic factors

Fiscal years:	Billions
1980 (actual)	\$27.1
1981 (actual)	32.3
1982 (estimated)	25.9

After even one quarter of the fiscal year has elapsed, the following annual rates of program reduction are needed (on average) to achieve a \$10-billion reduction in current year outlays from controllable programs:

	Budget authority			Ratio
	Outlay cut	Program cut		
Defense	\$10	\$33		3.3:1
Defense (excluding military pay)	\$10	\$40		4.0:1
Non-defense	\$10	\$30		3.0:1

The table below illustrates that as the year progresses, increasingly more drastic

program cuts are needed to achieve fixed outlay reductions.

ILLUSTRATIVE \$10 BILLION REDUCTION IN DISCRETIONARY PROGRAMS

(In billions of dollars)

National defense	Beginning of year	1/4 of year gone	3/4 of year gone	Total outlays
Controllable outlay	\$117.4	\$88.0	\$58.7	\$182.8
Percent of controllable outlays affected by \$10 billion cut	8.5	11.4	17.0	N.A.
Budget authority deferred or rescinded associated with \$10-billion outlay cuts	\$17.4	\$28.9	\$52.0	N.A.
Civilian programs:				
Controllable outlays	\$71.5	\$53.6	\$35.7	\$542.5
Percent of controllable outlays affected by \$10-billion cut	4.0	18.7	28.0	N.A.
Budget authority deferred or rescinded associated with \$10-billion outlay cut	\$14.1	\$24.1	\$43.4	N.A.

10. In the real world, there is probably no way to rationally enforce an S.J. Res. 58 type outlay limit if actual fiscal year outlays exceed planned ceiling outlays to any appreciable extent. For instance, if the \$695 billion outlay ceiling voted for fiscal year-82 is taken as a test case, the January re-estimate of \$729.3-billion would present the following choices and options:

	Billion 1982
Outlay reductions necessary:	
Estimated fiscal year 1982 outlays	\$729.0
Resolution outlay ceiling for fiscal year 1982	695.0
Outlay reduction necessary	34.3
To achieve necessary outlay reductions:	
Start from estimated fiscal year 1982 outlays, 2d-4th quarter	535.1
Excluded from candidate list of possible outlay reductions:	
(a) Debt service requirements	62.5
(b) Outlays from prior year obligations	90.2
(c) UI compensation	21.2
(d) CCC—dollars already out the door	5.1
(e) IRS on the grounds that massive RIFs would cause a revenue hemorrhage	8.0
(f) Veterans hospital funding on the basis of the impact of cutting in such a personnel-intensive operation	8.0
(g) Payments for federal prisons	8.0
(h) FAA air traffic control (again a personnel-intensive operation)	8.0
Subtotal items that must be excluded from candidate list of possible outlay reductions	187.0
Remaining "available" outlays for reduction	348.1
Policy Iterations to Achieve reductions (48% of estimated total fiscal year 1982 spending):	
(a) Cancel general revenue payments beginning the 2d quarter	3.4
(b) Freeze all benefit indexes for the remainder of the year	5.1
(c) Medicare—limit the annualized level to three-fourths of the increase from 1981 to estimated 1982	1.8
(d) Medicaid—limit the annualized level to three-fourths of the increase from 1981 to estimated 1982	2
Subtotal	10.5
Remaining reductions needed	23.8
Remaining "available" outlays for reduction (gross of off setting receipts)	156.8
Defense	(92.4)
Nondefense	(64.4)
Pro-rated 15.2 percent reduction in remaining outlays:	
Defense	14.0
Nondefense	9.9

Illustrative Impacts: Revenue sharing accounts for 43 percent of total revenue in Arkansas; Disruption of hospital cash flow (Medicare) could cause massive shut-downs; Dollar defense program cuts (TOA) of \$46-billion would be needed resulting in grounding of ships, planes, and most other operations; Approximately 200,000 or about 28 percent of the federal non-defense workforce would be furloughed; and Most defense and civilian procurement and capital spending projects (highways, water projects,

etc.) would be suspended or drastically reduced.

C. Remedial suggestions

1. Escape clause language for within fiscal year outlay overruns attributable to economic factors (e.g., higher interest rates or recession). The following language would permit an ordinary majority to increase the outlay ceiling (create or add to the deficit) in such cases: "Provided that, such excess of outlays over receipts may be increased by a majority vote of the whole number of both Houses of Congress, directly solely to that subject, at any time during the fiscal year to which the statement of receipts and outlays is applicable, to the extent that Congress determines that such excess is attributable to actual or expected economic conditions that differ from those on which such statement was previously based."

2. Require a super-majority (60 percent) for tax increases above the national income growth rate. This eliminates the asymmetry and provides a permanent Constitutional hurdle to raising the tax claim on GNP above the rate extant as its effective date. However, it may also raise the probabilities of governmental break-down over fiscal policy (i.e., deadlocked 41 percent minorities).

3. Line item veto power to enhance outlay ceiling enforcement.

4. Develop a package of statutory implementation tools to mitigate technical and structural flaws of S.J. Res. 58. This might include: Presidential COLA suspension powers modeled after pay plan two-House veto; enhanced rescission powers (two-House veto); Independent Budget Concepts Commission to ensure that amendment not circumvented (non-binding moral force opinions); contingency stabilization fund to cover unavoidable deficits.

Mr. BAUCUS. Mr. President, if I may finish, and I shall be very brief, I have also a letter to Mr. Bayh, former chairman of the Subcommittee on the Constitution, dated March 7, from Alan Parker, Assistant Attorney General. It is a letter from the Department of Justice in opposition to a constitutional amendment to balance the budget. I ask unanimous consent to have printed in the RECORD that letter.

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

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C. March 7, 1980

HON. BIRCH BAYH,
Chairman, Subcommittee on the Constitution U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request of January 8, 1980, the Department of Justice strongly opposes the constitutional amendment proposed by S.J. Res. 126. As Secretary Miller and Director McIntyre have recently pointed out to you, this Administration believes that the constitutional amendment proposed in S.J. Res. 126 would be extremely unwise with respect to both budgetary policy and economic policy. We would, in addition, like to bring to your attention some of the legal problems that such an amendment might raise.

In the first place, section 1 forbids Congress to pass or the President to sign an appropriation bill which would cause the total expenditures for any year to exceed the expenditures of that year's budget. It is unclear how this section would operate. If the Congress did pass and the President did sign

such a bill, could a court order that the money not be spent? More likely, could a court determine, contrary to Congress and the President, that the limit on budget expenditures had been exceeded given the complex nature of the appropriation process? A constitutional crisis, as well as considerable administrative confusion, would be precipitated if, for example, the President ordered the Executive branch to spend money specifically appropriated under such a bill, and the money was in fact spent before suit was filed. See *State of Louisiana v. Brinegar*, 388 F. Supp. 1319 (D. D.C. 1975); *Bakalis v. Weinberger*, 368 F. Supp. 721 (N.D. Ill. 1973); *National Council of Community Mental Health Centers, Inc. v. Weinberger*, 361 F. Supp. 987 (D. D.C. 1973). Compare *United States v. Louisville*, 169 U.S. 249, 254 (1898), with *Weeks v. United States*, 406 F. Supp. 1309, 1328 (W.D. Ok. 1975), reversed on other grounds, 430 U.S. 73 (1976).¹

The same problem is evident in section 2. It would be difficult for a court to frame a remedy if federal receipts did exceed, even fractionally, the proportion collected the previous year. This could entail a massive factual determination and depending on how many suits were filed, one that might have to be repeated in numerous courts. Moreover, we are uncertain upon what basis a court might order the Treasury Department to refund money that had been legally collected. Without specific congressional authorization, officers of the United States may not dispose of United States property by, for example, remission of taxes. U.S. Const. Art. IV, § 3, cl. 2. See *Royal Indemnity Co. v. United States*, 313 U.S. 289, 294-45 (1941). And even if such authority were granted, it is unclear which parties would have claims for such refunds.

Additionally, section 2 refers to "receipts. . ." This language does not state the percentage that would be permissible during the first year that the amendment is effective—a year when the prior year's receipts would not have been collected in accordance with section 2. Interpretation of this section during the first year would be prone to confusion and error. Other sections of the Constitution have been written to avoid such transitional problems. Compare U.S. Const. Art. 1, § 3, cl. 2; amend. XVII, § 3; amend. XXII, § 1.

On a practical level, it is unclear how the requirement that a majority plus one of each house agree with each other on a balanced budget could be implemented. If no agreement is reached on any balanced budget (or if there are insufficient votes to achieve the three-fifths required for an unbalanced budget), section 1 will be violated but it is by no means apparent who is re-

¹ A second ambiguity in section 1 involves the initial implementation of the amendment and the expression in the first sentence "for each year." It might be appropriate to assume that in an amendment concerning budgets these words refer to each fiscal year, but section 5 states that the amendment will "take effect" on the first day of some calendar year. The considerable problems raised by the amendment would not, to say the least, be eased in a transitional fiscal year to which it only partially applied. It is also conceivable that the language "the Congress shall adopt" could be seen as displacing, with respect to budget bills, the provisions of art. 1, sect. 7 providing for presidential veto, particularly in comparison with section 2 in which it is clearly contemplated that congressional action would be subject to veto. On the other hand, there is no clear intent to take the surprising step of overriding article 1 in this regard.

sponsible for the violation or how the violation can be cured. It is unclear whether the positive injunction that a budget be adopted compels individual congressmen to vote for a budget they oppose and, if so, by whom and how it is determined which congressman must accede to which budget. Indeed, the provision may not be judicially enforceable at all, as courts cannot judicially establish budgets where Congress cannot agree.

Next, the amendment does not adequately define what is meant by "a budget," for example, whether it must be a single, omnibus bill, perhaps as amended, or whether it can be construed as an amalgam of whatever appropriations and revenue bills pass. If it can be an amalgam, and if total expenditures exceed revenues, the further question arises as to whether all the constituent bills must pass by a three-fifths vote, just the appropriations bills, or just some of the appropriations bills. Another potential question is, regardless of what a "budget" means, whether Congress can pass any appropriations acts at all before the budget. On the one hand, it could be said that such acts might be thought constitutional since, when the budget has not been established, individual appropriations acts cannot be said to cause expenditures to be over budget. An alternative interpretation might hold those appropriation acts unconstitutional, since they cannot be said not to cause expenditures to go over budget. Most probably such laws are in constitutional limbo until a budget is passed, which suggests that, as a practical matter, appropriation bills cannot be passed before a budget is adopted. This requirement could place considerable strain in the appropriation process.

Another problem with section 1 is to determine which bill "causes" expenditures to exceed the budget. An example may help to illustrate the complexities of interpreting this provision, and the uncertainty it would introduce into the budgetary process. Assume, for example, that the budget is \$9 billion, and bills A, B, C, D, and E each appropriate \$2 million. Bills A and B have become law prior to Day 1. On Day 1, both houses pass bill C. On Day 2, both houses pass bill D. On Day 3, bill E is passed by both houses, supported exclusively by congressmen who opposed either bill C or bill D and argue that the President should veto the bill they opposed. On Day 4, the President vetoes bill E. On Day 5, the President signs bill D. On Day 6, Congress overrides the veto of bill E, which becomes law. On Day 12, bill C, having been neither signed nor vetoed within 10 days, becomes law. The amendment leaves unclear which, if any, of these laws is unconstitutional and who, if anyone, has violated the amendment by which action. At any given stage in the process, the constitutionality of a given bill may be thought to turn on the outcome of subsequent action on any number of different bills and on the sometimes unpredictable happenstance of which bills become law first. In easily imaginable circumstances, the President could arguably determine the constitutionality of major bills by varying the order in which they are signed. A second anomaly illustrated by this example is that, while the amendment forbids the President to sign certain bills, it does not appear to forbid him to allow bills to become law without his signature. While this difficulty could be "corrected" by drafting the provision to require a veto in cases where the amendment currently forbids signing, a constitutional command that the President veto certain bills is both unprece-

dent and undesirable. For example, if a public works bill reached the President's desk prior to his receipt of an essential defense spending bill, the President could be obligated by such a command to veto the latter.

An alternative to the first-in-first-out system for determining which bill causes an over-budget expense might be that a bill "causes" expenditures to go over budget if it appropriates for any activity an amount in excess of the amount set forth for that activity in the budget. But this alternative is flatly inconsistent with the plain language of the amendment. Section 1 requires only a budget setting forth "the total receipts and expenditures of the United States," not one setting forth expenditures by category.

Section 3, which would permit Congress to waive the balanced budget requirement "with respect to any single year in which a declaration of war is in effect," is unclear in several respects. First, as with budgetary adoption under section 1, it is open to question whether any congressional waivers are subject to presidential veto. See footnote, pp. 1-2. Second, the reasonable intent of the section seems to be that if a major war lasts three years, a waiver can be passed in all three years. The literal language, however, is susceptible of several constructions, including one that would allow only one year's waiver per declaration of war.

Section 4, requiring that terms be construed in accordance with their meaning on the date the amendment is submitted for ratification, may raise questions at later dates that cannot now be foreseen. Such a provision could freeze archaic definitions into the interpretation of the Constitution.

The most fundamental problem with the amendment may lie with the very process of adopting a budget. If the legality of a budget turns on what "total receipts and expenditures" are in fact obtained during the year, then the constitutionality of a budget and of any spending could not be judged except after the fact. If on the other hand, a budget can be made on the basis of projected receipts and expenditures, then different, but still difficult, problems arise. First, there have been many disputes at all levels of government concerning what items are properly included as receipts and expenditures. Thus substantial constitutional issues will be posed by the choice of accounting principles engendering substantial litigation over the "proper" accounting method.

An even more troublesome problem is that any projections will necessarily rely on predictions of economic and demographic data. If the amendment were in effect today and Congress passed a budget that assumed a 12 percent inflation rate and 6 percent unemployment rate by the end of the year (or 7 percent inflation and 3 percent unemployment), the amendment leaves unstated whether the budget could be attacked on constitutional grounds as being based on "unrealistic assumptions." This problem too will create substantial uncertainty in the appropriation process and may give rise to extensive litigation.

Other difficult, and uncertain questions raised by the amendment concern the extent, if any, to which the terms of the amendment would be judicially enforceable. With respect to each of the ambiguities noted above with respect to the substance of the amendment, it would be, at best, an open question whether taxpayers would have standing to sue, and whether the cases would be otherwise justifiable. If taxpayers

are found to have standing under *Flast v. Cohen*, 392 U.S. 83, 102-103 (1976), the myriad of problems highlighted above would embroil both the budget as a whole, and specific appropriations in complex litigation, which could conceivably paralyze the operations of the federal government and the workings of the legislative process. And if so interpreted, the amendment's impact on the workload of the federal courts could be overwhelming.

For all of these reasons, the Department of Justice strongly opposes the constitutional amendment proposed by S.J. Res. 126.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

Mr. BAUCUS. Mr. President, finally, let me address one point, and I shall not dwell on it. It is a point that has been raised at a prior time in these proceedings, that is, the degree to which Congress by adopting a constitutional amendment will by definition be transferring economic policy decisionmaking from Congress to the Federal judiciary.

The question is the degree to which Congress, by adopting a constitutional amendment, will be transferring economic policy decisionmaking from Congress to the Supreme Court and to the lower Federal courts.

Mr. President, it is a point that worries me greatly. I know it worries any thinking Member of this body, and I am sure it is a point which greatly worried those who spent some time thinking about it.

But I ask unanimous consent to have printed in the RECORD a memorandum and a letter. The memorandum is to Senator Bayh and the letter is to this Senator, from the New York City Bar Association on this point.

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

NEW YORK CITY BAR ASSOCIATION,
COMMITTEE ON FEDERAL LEGISLATION,
February 25, 1980.

HON. BIRCH BAYH,
Chairman, Subcommittee on the Constitution, U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: On behalf of the Committee on Federal Legislation of the Association of the Bar of the City of New York, I have the honor to respond to your request for our comments on S.J. Res. 126, the proposed constitutional amendment requiring a balanced budget and limiting Federal spending.

We oppose S.J. Res. 126 for the same reasons we opposed earlier resolutions proposing similar amendments, as expressed in our May 1979 Committee Report (a copy of which is attached to this letter). Leaving aside the basic economic policy question of whether there should be a permanently balanced budget, on which we, as lawyers and not economists, take no position, we oppose budget-balancing by constitutional amendment for the following reasons:

(1) The proposed amendment would effect a fundamental—and in our own view unwar-

ranted—change in the character of the Constitution. It is unlike any existing amendment, both in form and substance. Except for the 18th and 21st amendments, adopting and then repealing prohibition, the amendment process has been sparingly used either to correct what Madison called “discovered faults” in the original governmental structure or to protect fundamental rights against governmental infringement. The purely social or economic policies which were the basis of the prohibition amendment and underlie S.J. Res. 126 reflect less basic, more transitory concerns which, however popular they may now be, do not warrant elevation to permanent constitutional status. As Justice Holmes cautioned seventy-five years ago, the “Constitution is not intended to embody a particular economic theory. . . .” These matters are best left to the legislative and political process erected by the Constitution itself.

(2) Congress and the President already have the full constitutional authority to balance the budget without the need for a constitutional amendment. The raising of such a policy to constitutional status, however, will create difficult problems of governance.

(3) S.J. Res. 126, if ratified, will likely involve the judiciary in the day-to-day workings of the budgetary process. The amendment will undoubtedly result in a host of lawsuits—annually recurring—challenging particular expenditures and appropriations and every attempt to raise or lower taxes. Our courts are ill-equipped to handle these matters, now generally excluded from their jurisdiction. More importantly, judicial involvement in the budgetary process, which is inevitable if the amendment passes, will radically alter, for the worse in our view, the present system of checks and balances among the three branches of government and add a new element of uncertainty to the entire process. No budget, no expenditure, no appropriation, no tax will be legal until approved by the Supreme Court—no doubt several years later.

(4) The “three-fifths” override provision of Section 1 of S.J. Res. 126 also poses difficult constitutional problems. It will be unique to the Constitution, which at present requires “super majority” votes in Congress only in rare situations affecting the basic separation of powers—such as overriding a presidential veto or convicting upon impeachment. The proposed amendment, however, would effectively undo the principle of majority rule which is basic to our constitutional scheme. Under S.J. Res. 126, if the government were already spending to the constitutional limit, military or other emergencies of any sort—indeed, any new government activity needing major additional expenditures—would require a three-fifths vote of the Congress. The potential for government chaos or for a tyranny of the minority defeating any controversial or new project would be immense. Just imagine how much more difficult it would be for our country to respond immediately to international crises if a small group in Congress can block emergency expenditures until their various minority demands—perhaps unrelated to the crises themselves—are fulfilled in exchange for the votes necessary to achieve the three-fifths super majority.

Moreover, the last sentence of Section 1 appears to prohibit any change in the budget once adopted. It seemingly prevents the government from responding at all to emergencies that arise once a fiscal year has begun.

(5) S.J. Res. 126 also presents serious drafting problems. Section 4 seeks to etch into constitutional stone forever the current budgetary terminology. Besides the endless litigation likely to be necessary in the future to determine what technical terms meant in 1980, the amendment will stifle all development, improvement and change in the budgetary process. Today's economic jargon may become future stumbling blocks to progress. Moreover, the current budgetary process is so flexible that, as one expert estimated, Congress could adopt a \$100 billion national health insurance program without adding a single dollar to the budget. Future congresses may be forced to resort to similar budgetary chicanery simply in order to keep the government functioning should the amendment prove economically unwise.

Moreover, Section 2 of the proposed amendment appears meaningless. It requires Congress to do explicitly what Congress now does implicitly. The formal roll call vote mandated by Section 2 of the S.J. Res. 126 will undoubtedly become no more than a ritualistic charade.

In sum, S.J. Res. 126, like its predecessors, remains too blunt a weapon, to paraphrase the *Wall Street Journal*, a wholly inappropriate means of solving the complex, uncertain and everchanging economic problems which confront our nation. Today's panacea, if elevated to constitutional status, is likely itself to become tomorrow's problem. For these reasons, we oppose the passage of S.J. Res. 126.

If you would like any further information on the matter, please feel free to contact us.

Respectfully,

STEVEN B. ROSENFELD,
Chairman.

BUDGET-BALANCING BY CONSTITUTIONAL AMENDMENT

(By the Committee on Federal Legislation)

Congress and state legislatures throughout the country are debating whether the United States Constitution should be amended to require the federal government to balance its budget. As this Report is written (May 1979), as many as 30 states have passed resolutions calling for a constitutional convention to propose a balance-budget amendment.¹ Several committees of both houses of Congress have scheduled hearings on which, if any, of scores of proposed amendments should be adopted.

The issue has important political as well as economic consequences. Both parties are internally divided over whether constitutionally-mandated fiscal restraints is appropriate or desirable; the issue threatens to loom large in the 1980 presidential primaries and election.² Lurking scarcely concealed beneath the budget question is the larger and more complex question of which economic theories and policies will best control inflation and unemployment, and the more fundamental debate over the proper size and function of the federal government and what role it should play in the economy.

This Committee has carefully considered these and other questions and has studied the various proposals for constitutional amendments. We take no position on the economic policy issue of whether the federal budget should be balanced or federal spending limited. We do, however, strongly believe that, assuming a balanced budget is desirable, a constitutional amendment requiring that result is not. To elevate such a

policy to permanent constitutional status is unwise and historically unsound and would fundamentally alter the principle of majority rule and the existing allocation of powers among the three branches of government. In our judgment, the economic policy issues raised in the current debate are best left to the political process where they can be resolved over time, unhampered by fixed or arbitrary constitutional strictures.

1. THE PROPOSED AMENDMENTS

Balance-the-budget amendments are not new. As early as 1939, states began petitioning Congress to call a constitutional convention to propose an amendment limiting the federal taxing power.³ The movement ebbed and flowed over two and one-half decades until, in 1963, proponents claimed that the requisite number of 34 states had passed calls for a constitutional convention. Since some of the resolutions were fifteen to twenty years old, twelve states had rescinded their applications and there were significant variations in the substance of the resolutions, the convention was never called.⁴

In 1957, the first state petition for a balance-the-budget constitutional convention was passed in Indiana. Several other states passed calls for budget limitation amendments in the 1960's.⁵ The current movement began earlier in this decade and has received great impetus from the well-publicized success last year of California's Proposition 13 “tax revolt” initiative.⁶

Literally dozens of proposed constitutional amendments requiring a balanced or restricted budget are currently pending in Congress. As of mid-February 1979, Time counted 65 separate versions.⁷ Although there are significant variations among the proposals, they fall into two major categories. Most would require that federal expenditures equal or exceed revenues in each fiscal year. Others would limit federal spending to a fixed percentage of national income or gross national product. The proposals generally provide a mechanism whereby Congress, usually by a two-thirds or three-fourths vote, and sometimes with the concurrence of the President, may override the budgetary limitations in times of war or “national emergency.” Several proposals additionally require that the national debt be retired over a specified period of time. The sixteen proposed amendments which are currently the subject of hearings before the Subcommittee on the Constitution of the Senate Judiciary Committee are representative of the breadth and scope of the various proposals.

The simplest and shortest proposals—one paragraph—are S.J. Res. 10 (introduced by Senator McClure) and S.J. Res. 13 (Senator Helms).⁸ S.J. Res. 10 would provide that “Congress shall assure” that the “total outlays” of the federal government in any fiscal year “do not exceed the total receipts.” Although Congress could suspend this requirement “for a period not to exceed one year” by a two-thirds vote of both houses, no standard is given to govern exercise of that power. S.J. Res. 13 is identical, except that the congressional override provision would be limited to “a grave national emergency” which must be declared by a three-fourths vote of both houses of Congress.⁹ S.J. Res. 4 (Senator Lugar) would require a two-thirds vote of both houses of Congress to pass any annual budget resolution in which the “appropriate level of total budget outlays” exceeds the “recommended level of Federal revenues.”

Footnotes at end of article.

Other pending resolutions are more elaborate. S.J. Res. 38 (Senators H. Byrd and Helms) and S.J. Res. 45 (Senator H. Byrd), drafted on four paragraphs, are similar to S.J. Res. 10 and 13 except that their override provisions would require a "national emergency," to be determined by a roll-call vote of two-thirds of all the members of each house of Congress. Likewise, S.J. Res. 11 (Senators Talmadge and Nunn) would mandate a balanced budget in each fiscal year, except during a state of war or a "national economic emergency" declared by only a simple majority of both houses of Congress, which are admonished to "take into consideration the extent and rate of industrial activity, unemployment, and inflation, and such other factors as they deem appropriate," S.J. Res. 36 (Senator Heflin) would provide that "Congress shall make no appropriation for any fiscal year if the resulting total of appropriations . . . would exceed the total estimated receipts" for that fiscal year. In case of "a national emergency," including a formally declared war, Congress, with the concurrence of the President, would be able to override this provision by a roll-call vote of 55% of all the members of each house.¹⁰ Congressional action would have to be completed within sixty days of a "special message" by the President or the introduction of a resolution sponsored by twenty-five percent of the members of either house. This amendment, unlike the others, would go into effect in the second fiscal year beginning after ratification.

S.J. Res. 2 (introduced by Senators DeConcini and Goldwater) and S.J. Res. 6 (Senator Stennis) are virtually identical and contain an elaborate enforcement mechanism to ensure a balanced budget. Section 1 of both proposals would provide that "In exercising its power under article I . . . and, in particular, its powers to lay and collect taxes . . . and to enact laws making appropriations, the Congress shall seek to assure that the [government's] total outlays . . . do not exceed the total receipts" during a given fiscal year. In case the budget does not balance, sections 2 and 3 would require the President, within twenty days after the close of each fiscal year, to "ascertain" the "total receipts" and "total outlays" and "determine the percentage rate of income tax surcharge" necessary to make up any deficit. The surcharge would automatically go into effect, without further congressional action, for the calendar year following the close of the pertinent fiscal year. Congress, however, could suspend the income tax surcharge for all or part of the year in "a grave national emergency," including a formally-declared state of war. S.J. Res. 2 would require a vote of two-thirds of all the members of such house for such a suspension, while S.J. Res. 6 would require three-fourths.

Several proposed amendments would require, in addition to a balanced budget, that the national debt be retired. S.J. Res. 7 (introduced by Senator Armstrong) would mandate, in addition to a balanced budget, that the national debt not be increased and that it be repaid within one hundred years following ratification, at the rate of 1/100 of the debt during each 10-year period. Likewise, S.J. Res. 16 (sponsored by Senators Wallop, Morgan and Thurmond) would require both a balanced budget in each fiscal year "and that the federal indebtedness is eliminated." This amendment, however, would take effect gradually: For the first fiscal year after ratification, receipts could

not be less than 95% of outlays. In the second year, receipts must total at least 98% of outlays. The budget would have to be balanced in the third fiscal year and, starting in the fourth year and for the next nineteen years, receipts would have to exceed outlays by five percent, the excess to be used to retire the federal debt. Congress would have only limited power to override these requirements in case of a "national emergency," declared by two thirds vote of all the members of each house: during such an emergency, expenditures could never exceed receipts by more than 10 percent and any indebtedness thereby created would have to be "extinguished" within three fiscal years.

S. J. Res. 46 (Senator H. Byrd) would require, in addition to an annual balanced budget, the retirement of the federal debt at the rate of 4% a year, beginning with the fifth fiscal year following ratification. Congress could, by two-thirds vote, incur new debt in a "national emergency," but such debt would have to be paid off within five years.

S. J. Res. 18 (sponsored by Senators Thurmond, Goldwater and Wallop) would involve the President in the constitutionally mandated budgeting process. Section 1 would require the President to transmit to Congress a proposed balanced budget by the fifteenth day after the start of each regular session, the budget would contain the President's estimate of receipts "under the laws then existing" and outlays (excluding trust funds) and proposals for additional taxes as necessary. Congress could not "authorize outlays to be made . . . in excess of the estimated receipts . . ." Section 2 would provide that, beginning with the fifth fiscal year after ratification and continuing for the next twenty years, 5% of the government's receipts "shall be available only to reduce the public debt." Congress, by three-fourths vote of all the members of each house, could suspend the provisions of Sections 1 and 2 "for periods, either successive or otherwise, not exceeding one year each" in case of "war or other grave national emergency."

As previously noted, several of the proposed amendments would set a fixed limit on federal spending, not necessarily combined with a requirement that the budget be balanced. The simplest such proposal is S. J. Res. 9 (introduced by Senator McClure). It would require that total outlays during any fiscal year (except for repayment of debt) not exceed 33 1/3% of the "average national income for the three prior calendar years." During a "national emergency or war" the limit could be exceeded, but "all expenditures" in excess of the limit would have to be approved by a roll call vote of three-fourths of all the members of each house, taken in the fiscal year during which the limit is exceeded. S. J. Res. 5 (proposed by Senator Dole) combines a balanced budget with a ceiling on federal spending. Under this proposal, Congress, by two-thirds vote of all the members of each house, could vote for a deficit budget in any year, but only if the budget was balanced in at least five of the preceding eight fiscal years. Any deficit generated in one fiscal year would have to be paid off in the next four years. This amendment further provides that, starting with the third fiscal year after ratification, both revenues and expenditures set forth in any budget resolution for a fiscal year could not exceed 18% of the "Gross National Product at the close of such fiscal year, as projected by the Director of the Congressional Budget Office." Congress could override this limita-

tion by roll-call vote of two-thirds of the members of each house "present and voting."

Finally, there is S. J. Res. 56 (introduced by Senators Heinz and Stone), an elaborate proposal for limiting federal spending developed by economist Milton Friedman and others.¹¹ Section 1 would provide that "[t]otal outlays . . . during any federal year shall not increase by a percentage greater than the percentage increase in the nominal gross national product" during the last calendar year. If the inflation rate exceeds three percent, the "permissible percentage increase" in expenditures would be reduced by "one-fourth of the percentage by which the inflation rate exceeds three percent." "Inflation rate" would be defined as the difference between percentage increases in the "nominal gross national product" over the "real gross national product" for a given year. "Total outlays" would include "both budget and off-budget outlays," but exclude redemption of the debt or emergency expenditures.

Section 2 would require that any surplus of revenues over outlays be used to retire the national debt. Under section 3, emergency outlays in excess of the limit for the current fiscal year would be authorized by a "declaration of an emergency by the President" and a two-thirds vote of both houses of Congress. Section 4 would allow the spending limit imposed by section 1 to be changed "by a specified amount" by a three-fourths vote of both houses of Congress.¹²

Section 5 and 6 would seek to prevent the spending limitation from adversely affecting state and local governments. Section 5 would require that, for the first six years following ratification, "total grants to states and local governments shall not be a smaller fraction of total outlays than in the last three fiscal years" prior to ratification. Thereafter, any reduction in the proportion of such grants to total federal spending would decrease the limit on total spending by an equivalent amount. Lastly, under section 6, the federal government could not require "directly or indirectly, that state or local governments engage in additional or expanded activities without compensation equal to the necessary additional costs."

II. THE ARGUMENTS FOR A CONSTITUTIONAL AMENDMENT

The proponents of a constitutional amendment limiting federal spending or requiring a balanced budget have put forth several arguments in support of their proposals:¹³

1. Deficit-spending is detrimental to the economy. The heart of the proponents' economic argument is that excessive federal spending is the major cause of inflation, which in turn, leads to unemployment, sluggish economic growth and decline of the dollar abroad. The ever-increasing national debt which is needed to finance governmental spending, it is argued, compounds the problem by "crowding out" private capital from the money market, thus siphoning off funds that would otherwise be available to business for capital improvement, a necessary component of economic growth.

2. The need for a flexible economic policy is overstated. Proponents reject Keynesian economic theory. They argue that the policy of "counter-cyclical" federal intervention in the economy (increasing expenditures and deficits in times of recession and decreasing them during periods of growth) simply does not work effectively any longer. Monetary policy and other devices, it is

claimed, provide sufficient tools for "fine-tuning" of the economy at most times.¹⁴ They point out that the amendments have "escape clauses" which would permit the additional spending or allow a deficit if necessary to deal with true emergencies.

3. *The growth of government should be checked.* The proponents argue that ever-increasing federal spending means the "steady, irresistible encroachment of the public upon the private sector."¹⁵ In words that echo the Jeffersonian dictum, "government which governs best governs least," the proponents assert that an amendment is necessary to "control government, control its power, control its interference, and control it by controlling its purse strings."¹⁶ Advocates of the spending limitation proposals particularly argue that such an amendment will curb the future size and power of the federal government.¹⁷

4. *Congress, if let alone, will not act.* The political pressures on Congress, say the supporters of these amendments, are too great and the incentives too few for Congress itself to exercise fiscal restraint. Congressmen, in their natural desire to be re-elected, will resort to deficit spending to provide immediate benefits to their constituents, organized and vocal "special interest groups," and entrenched federal bureaucracies. Rather than face up to the need for restraint, they argue, Congress will keep "disguising the costs [of spending] in the form of borrowing and inflation which are diffused over large numbers of the rest of society. Under such conditions, the incentives of the politicians clearly point toward ever-increasing spending with continued inflationary deficits."¹⁸ In the past twenty years the federal budget has been balanced only twice (in fiscal years 1960 and 1969), yet despite the current high rate of inflation, Congress has been unable to curb spending.¹⁹ Only the constraints imposed by a constitutional prohibition will halt this process.

III. THE ARGUMENTS AGAINST A CONSTITUTIONAL AMENDMENT

The opponents of a constitutional limitation on the federal budget have argued that an amendment, however drafted, is not desirable for the following reasons:

1. *A constitutional amendment will not eliminate inflation but may exacerbate economic ills.*²⁰ Opponents challenge the assertion that deficits are the major cause of inflation and argue that a mandatory balanced budget policy is much inferior to a flexible fiscal policy in controlling the economy. They point, for example, to a 1976 congressional staff study which concluded that if the federal budget had been balanced between 1965 and 1974—a period of economic growth followed by a recession and then by renewed growth accompanied by high inflation—the result would have been "substantial losses in output, and increases in unemployment, with very little, if any, improvement in inflation."²¹ Opponents stress that in times of recession, the government must be free to spend money to stimulate the economy to prevent recessions from worsening into depressions.

2. *A constitutional amendment is unenforceable.* The definition of the federal budget, opponents point out, is by no means clear. Many governmental expenditures for programs such as the Federal Financing Bank (which is expected to spend \$11 billion in fiscal 1980), for government-sponsored corporations, such as the Federal National Mortgage Association or the Student Loan Marketing Association, or for federal guarantee programs, are now generally consid-

ered "off-budget" and, by law and tradition, not included in congressional and popular discussions of expenditures and deficits.²² Similarly, tax subsidies and incentives, considered by many to be a form of "negative" governmental expenditure, are not included in budgetary decision-making.²³ The definitional problems, opponents argue, demonstrate that an imaginative and creative Congress could shift or hide expenditures in "off-budget" items so as to create the illusion of a balanced budget without the reality. As one study recently observed, it would be possible, for example, to create a \$100 billion national health insurance system without adding a single dollar to the budget.²⁴ On the other hand, to include these items in the budget only magnifies the problem of how to balance it.

3. *A mandatory balanced budget could cause great economic and social dislocations.* To achieve the amendment's purposes, opponents argue, federal spending would have to be cut dramatically or taxes increased sharply. To raise taxes significantly may not be politically or economically feasible. The expenditures most vulnerable to a cost-conscious Congress are likely to be those for many social service programs, including assistance to state and local governments. To reduce such spending, opponents argue, will only shift the economic and social burden now shouldered by the federal government to other levels of government.²⁵ Moreover, the end result may not be a significant reduction in the total public debt. Recently, say opponents of a constitutional amendment, the states have had combined surpluses that closely match the federal deficit.²⁶ To cut federal spending by reducing aid to states thus would not reduce the total amount of public debt, but only transfer it from Washington to the state capitals.

4. *Constitutional budget constraints will impede the government's ability to respond to economic and other crises.* Opponents of a constitutional amendment dispute the proponent's argument that a flexible fiscal policy is unnecessary and that existing monetary policy instruments are sufficient to "fine-tune" the economy.²⁷ Opponents also assert that the "national emergency" exemption contained in most proposed amendments may be illusory. Only a simple majority of Congress is necessary to declare war, but under the proposed amendments, two-thirds or three-fourths of Congress would have to approve paying for it. The difficulty of mustering such a large majority, even in times of crisis, could pose a significant barrier to effective government action when it is most needed. A high constitutional threshold, it is argued, would magnify the bargaining position of a small minority of Congressmen who could demand a high (and indeed, unrelated) price for their votes. On the other hand, government intervention in the economy, or any new governmental program which required additional spending, would be impossible, say the opponents, until a problem reached crisis proportions.²⁸

5. *A constitutional amendment will shift ultimate budget-making authority from the legislative and executive branches to the judiciary.* Since the courts are the final arbiters of the Constitution, the judiciary, which now plays little or no role in raising taxes and allocating revenues—and is not equipped to do either—will invariably be thrust deeply into the budgetary process if required to enforce an amendment in the face of congressional failure to comply, use of accounting sleights-of-hand, or a sudden

downturn in the economy causing revenues to fall.

Further, opponents argue, such an amendment raises the possibility of hundreds of lawsuits throughout the country being filed every year challenging each federal expenditure or appropriation on constitutional grounds. Even if such lawsuits and the prospects of disastrous confrontations between the Supreme Court and Congress or the President can be avoided,²⁹ the very exercise of judicial authority in the budgetary process will gravely undermine the congressional law-making function and could cause the erosion of respect for the judicial process.

6. *This is not a proper subject for a constitutional amendment.* The Constitution, opponents argue, establishes the basic structure of our government and guarantees fundamental rights to the people. It has not been and should not be amended to endorse a particular economic theory or program. A budget-balancing amendment, opponents argue, would be like the condonation of slavery in the original constitution or the short-lived prohibition amendment. It does not express the type of "broad and enduring ideal" to which the country can be forever committed. Its inclusion in the Constitution would only demean that document.³⁰

7. *The same result can be achieved through legislation.* Opponents argue that since the budget is entirely within the control of Congress and the President, those two branches now have all the authority they need to enact legislation requiring a balanced budget or limiting federal spending. Such legislation can be more precisely drawn than a constitutional amendment to take into account the nuances and distinctions inherent in the budgetary process.³¹ Opponents reject the argument that members of Congress are fiscally irresponsible. They note that Congress recently overhauled its budget-making procedures and each year is required to set a ceiling on appropriations.³² As a result, opponents say, Congress is taking its budget responsibilities seriously and shows a willingness to curtail spending.³³ Finally, opponents argue, if the present Congress and President cannot balance the budget, the most appropriate remedy is to elect others who can.

IV. THE COMMITTEE'S RECOMMENDATION

The Committee does not express any opinion on whether the federal budget should be balanced or federal spending limited. Nor can we express any opinion on the likely economic effects of pursuing such a fiscal policy. We note with concern, however, that the economic impact of the proposed constitutional amendments is by no means certain. The potential economic effects are hotly disputed by economists and politicians; there is no clear consensus, no common interpretation, no uniform view. This is an area where reasonable people can and do disagree. But as Justice Holmes cautioned nearly seventy-five years ago, dissenting in *Lochner v. New York*, the "Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*."³⁴ Economic policies are best left to the legislative and political process created by the Constitution itself, where the majority is enabled and expected to enact its consensus into law and to alter the law when the majority view changes.

More significantly, adoption of any of the proposed amendments would effect a funda-

mental—and in our view unwarranted—change in the character of the Constitution. The proposed amendments are unlike any other existing amendments both in form and in substance. Of the twenty-six amendments ratified since 1789, twelve protect the rights of individuals: amendments 1-10 (the Bill of Rights), 13 (prohibiting slavery) and 14 (prohibiting state infringement of due process and equal protection). Five amendments extend the right to vote: 15 (race), 19 (sex), 23 (District of Columbia residents), 24 (poll tax), and 26 (eighteen-year olds). Seven amendments, and a section of the 14th amendment, deal with the structure of government: 11 (judicial power), 12 (electoral college), 14 (counting former slaves in apportionment of House),³⁵ 16 (income tax), 17 (popular election of Senators), 20 (fixing dates of congressional sessions and presidential inaugurations; presidential succession), 22 (limiting presidential tenure), and 25 (presidential disability and succession).

This history shows that the amendment process has been sparingly used, almost always in order to correct what Madison called "discovered faults"³⁶ in the original governmental structure or to protect against governmental infringement of fundamental rights. The amendments, like the original Constitution, have carefully avoided endorsing specific programs or imposing restraints upon the government's freedom to act beyond the minimum necessary to protect individual liberty and preserve a federal system.³⁷

The only exceptions to this pattern are the 18th and 21st amendments, imposing and then repealing prohibition. The proposed budget amendments are more like the prohibition amendments than any other. Although they do not seek to achieve the same purposes, they act alike in that they do not state fundamental principles to which we firmly and irrevocably commit ourselves as a nation; nor do they correct errors in the constitutional structure of government or safeguard individual rights. Like the prohibition amendment, the proposed budget-balancing amendments reflect much less basic and more transitory concerns which, however popular they may now be, do not, in our view, warrant elevation to permanent constitutional status. The practical and policy issues raised by the amendments are best left to the political arena. The appropriate remedy for dealing with a spendthrift Congress is not a constitutional amendment, but the election of more frugal Congressmen.

Moreover, the proposed drafts are either so broad as to pose the difficult problems of implementation, interpretation and enforcement previously discussed, or so lengthy and full of technical jargon as to be wholly inconsistent with the rest of the Constitution.³⁸ Any such amendment is likely to result annually in a host of recurring lawsuits challenging particular federal expenditures or appropriations. Judges, even those on the Supreme Court, are poorly equipped to decide such questions as what the tax rate should be or which government program should be cut in order to balance the budget in the face of congressional or presidential inability or unwillingness to do so. Judicial involvement in such controversies—the only apparent means of enforcing such an amendment—would radically alter the present division of responsibility and power among the three branches of government and inevitably weaken both the courts and the Congress.

The override or exception provisions of the proposed amendments are themselves

unique and pose difficult constitutional problems. At present, no provision of the Constitution requires a three-quarters vote of Congress.³⁹ A constitutional requirement of two-thirds of either house of Congress is rare and applies only to votes affecting the basic separation of powers among the three branches of government: to override presidential vetoes (Art. I, Sec. 7), to convict following an impeachment (Art. I, Sec. 3), to expel a congressman or senator (Art. II, Sec. 2), to propose constitutional amendments (Art. V), and to resolve disputes over presidential disability (25th Amend.).⁴⁰ In all other matters, a simple majority suffices.

The proposed amendments would effectively undo this principle of majority rule. Under most of the proposals, if the government were already spending to the constitutional limit, war, military or other emergencies of any sort—indeed, any new government activity needing major additional expenditures—would require a two-thirds or even a three-fourths vote of the Congress. The potential for government chaos or for a tyranny of the minority defeating any controversial or new project would be immense.

In sum, the "blunt weapon"⁴¹ of a constitutional amendment is a wholly inappropriate means of solving the complex, uncertain and ever-changing economic problems which confront our nation. Today's panacea, if elevated to constitutional status, is likely to become tomorrow's problem.

As Alexander Hamilton cautioned nearly two hundred years ago:

"Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages . . . Nothing, therefore, can be more fallacious than to infer the extent of any power proper to be lodged in the national government from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity."⁴²

The Constitution has retained its effectiveness as our national charter because we have generally followed Hamilton's advice. The proposed budget balancing amendments do just the opposite: they would attempt to limit the illimitable and restrict the federal government's capacity to devise new solutions to as yet unforeseen problems.

For these reasons, the Committee opposes a constitutional amendment as the method of balancing the federal budget or limiting federal spending.

THE COMMITTEE ON FEDERAL LEGISLATION

Steven B. Rosenfeld, *Chairman*; Marshall Reil, Mark A. Belnick, James N. Benedict, Donald L. Borod, Howard Buschman, Halsey B. Collins, John Doar, Blair C. Fensterstock, Steven Finell, Charlynn Goins, Thomas V. Heyman, Kathleen Imholz, Lawrence M. Kaye, Robert J. Kheel, Daniel J. Kornstein, Victor Lewkow, Leslie Lupert, Otto Obermaier, Michael Oberman, Robert C. Sheehan, Jonathan Siegfried, Alan R. Sloate, Karen Weiner, Dennis R. Yeager, Carolyn Ziegler.

May 1979

FOOTNOTES

¹ The exact number depends upon who is counting. The National Taxpayers Union, a leading proponent of the constitutional convention approach, claims 30 states. *N.Y. Times*, Apr. 28, 1979, at 20, col. 1. Thirty-four states must petition Congress in

order for a convention to be convened under Article V of the Constitution. For a detailed discussion of the procedural questions raised by a constitutional convention, see ABA Special Constitutional Convention Study Committee, *Amendment of the Constitution by the Convention Method Under Article V* (1974) and Committee on Federal Legislation, *Proposed Procedures for Federal Constitutional Conventions* (S. 215), 27 RECORD OF N.Y.C.B.A. 327 (1972).

² See, e.g., *President Fighting Budget Convention*, *N.Y. Times*, Mar. 21, 1979, at A1, col. 6; *TIME*, Feb. 19, 1979, at 18-21; *Congress Seeks Handle on Spending Restraint Issue*, *Cong. Q.*, Feb. 17, 1979, at 267-70.

³ An excellent brief history of state resolutions calling for a constitutional convention can be found in B. Prager and G. Milmo, "Article V Applications Submitted Since 1789," which appears as Appendix B to ABA Special Constitutional Convention Study Committee, *supra* n.1, at 59-77 (hereinafter cited as Prager).

⁴ Prager at 73.

⁵ Prager at 68-69.

⁶ *Group Wants to Balance Nation's Checkbook*, *Cong. Q.*, Feb. 17, 1979, at 277-79.

⁷ *TIME*, Feb. 19, 1979, at 18, 21. Some fifty proposals are described (and criticized) in Memorandum from J. Scheu and I. Shuster to Sen. Muskie, Mar. 1, 1979, which is printed at 125 *Cong. Rec.*, S2443-45 (daily ed. Mar. 8, 1979).

⁸ The proposals are cited by their numbers in the current session of Congress (96th Cong., 1st Sess.).
⁹ By contrast, a declaration of war under Article I, Section 8 of the Constitution requires only a simple majority of Congress.

¹⁰ The amendment provides two ways to secure the concurrence of the President: the recommendation by the President in a "special message to Congress" of a "concurrent resolution" declaring a national emergency, or the passage by Congress of a "joint resolution" which requires Presidential approval.

¹¹ S.J. Res. 56 is a revised version of a proposal developed by the National Tax Limitation Committee, of which Dr. Friedman is a principal member. The full text of the original proposal is printed at 125 *Cong. Rec.* S975 (Feb. 1, 1979). See, *A Tax Group Urges Amendment Linking Spending to GNP Gain*, *N.Y. Times*, Jan. 31, 1979 at A12, col. 2-3.

¹² Under the original Friedman proposal, *supra* n. 11, three-fourths of Congress could not change the total spending limitation (which, in effect, is to amend section 1 of the amendment) without approval of a majority of state legislatures. The original proposal also contained a provision to govern judicial enforcement. Its section 7 would have limited standing to members of Congress suing in the District of Columbia federal district court. The only permissible defendant would have been the Treasury of the United States who would be given authority over all government spending if necessary to enforce a court order. The court, however, could "not specify the particular outlays to be made or reduced." Compliance with any court order had to occur within three fiscal years. 125 *Cong. Rec.* S975 (daily ed. Feb. 1, 1979).

¹³ The Committee expresses no opinion on the economic arguments for or against the proposed amendments; they are included herein in order to present a complete picture. The economic arguments in favor of a constitutional amendment are summarized in an August 1978 Report of Committee to Investigate a Balanced Federal Budget of the Democratic Research Organization (DRO) which is printed at 124 *Cong. Rec.* 11SS02-10 (daily ed. Aug. 16, 1978) (hereinafter cited as *DRO Report*).

¹⁴ *DRO Report* at 11SS07-08; N. Jacoby, *Why the Federal Constitution Should Require a Balanced Budget* (undated paper available from the National Taxpayers Union).

¹⁵ *DRO Report* at 11SS05.

¹⁶ 125 *Cong. Rec.* S975 (daily ed. Feb. 1, 1979) (remarks of Sen. Heinz).

¹⁷ For a description of the effects of a spending limitation amendment on the size of the federal budget, see 125 *Cong. Rec.* S4037-40 (daily ed. Apr. 5, 1979) (remarks of Sen. Heinz and Stone). See also Wicker, *Brown v. Budget*, *N.Y. Times*, Apr. 10, 1979, at A19, col. 5-6.

¹⁸ Davidson, *Requiring a Balancing Budget*, *Wash. Post*, Mar. 6, 1979 at A19, col. 1-3; N. Jacoby, *supra* n.13.

¹⁹ *Budget Receipts and Outlays, 1957-80*, *Cong. Q.*, Feb. 17, 1979 at 272; Roberts, *Congress and the Budget*, *N.Y. Times*, Apr. 26, 1979, at B10, col. 1-2;

Senate Defeats Attempt To Balance U.S. Budget, N.Y. Times, Apr. 25, 1979, at A24, col. 1.

²⁰The economic arguments against a constitutional amendment are summarized in a Congressional Research Service report, *Constitutional Limitations on the Budget*, which appears at 125 Cong. Rec. S2445-51 (daily ed. Mar. 8, 1979) (hereinafter cited as *CRS Report*). See also Silk, *A Budget Amendment Could Be the Wrong Easy Answer*, N.Y. Times, Mar. 11, 1979, § 4, p. 4, col. 1-3; Anderson, *The Budget and the Constitution: The Historical Experience*, Wash. Post, Feb. 12, 1979, at A19, col. 1-4.

²¹Joint Economic Committee, *Studies in Fiscal Policy: The Economic Impact of Alternative Fiscal Policies*, 94th Cong., 2d Sess. at 18 (Comm. Print 1976).

²²*CRS Report at S2447-48.*

²³*CRS Report at 2449*; Survey, *Federal Income Tax Reform, The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance*, 84 HARV. L. REV. 352 (1970).

²⁴*CRS Report at S2448.*

²⁵Editorial, *The Balanced Budget Boomerang*, N.Y. Times, Feb. 27, 1979 at A16, col. 1-3; *States' Push for Balanced Budget Presents Dilemma for Congress*, N.Y. Times, Jan. 29, 1979 at A15, col. 2-3. As much as 75% of federal expenditures are "uncontrollable under existing law," that is, they are required by prior legislative or executive action to pay for entitlement programs (e.g., social security, unemployment insurance, welfare), certain defense allocations, debt service and other items. *CRS Report at S2446, S2449-50.* These expenditures make discretionary social service programs and federal assistance to states and local governments particularly attractive targets.

²⁶Address of Sen. Edmund S. Muskie to National Press Club (Washington, D.C.), Feb. 13, 1979; 125 Cong. Rec. S1032 (daily ed. Feb. 5, 1979) (remarks of Sen. R. Byrd).

²⁷*CRS Report at S2450*; 125 Cong. Rec. S1032 (daily ed. Feb. 5, 1979) (remarks of Sen. R. Byrd); Silk, *A Budget Amendment Could Be the Wrong Easy Answer*, N.Y. Times, Mar. 11, 1979 § 4, at 4, col. 1-3.

²⁸*CRS Report at S2447*; Memorandum from J. Scheu and L. Shuster to Sen. Muskie, Mar. 1, 1979 printed at 125 Cong. Rec. S2443-45 (daily ed. Mar. 8, 1979).

²⁹The original Friedman proposal would attempt to avoid such confrontations by limiting standing only to members of Congress suing in Washington and by limiting the courts' authority to decide how to reduce expenditures. 125 Cong. Rec. S975 (daily ed. Feb. 1, 1979). See n. 12, *supra*.

³⁰Memorandum from Prof. L. Tribe to T. Kraft (Assistant to the Pres.), Jan. 17, 1979 at 3-5 (hereinafter cited as *Tribe Memorandum*).

³¹*Tribe Memorandum at 6.*

³²Congressional Budget Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (1974); Weaver, *Congress and Its Fiscal Role*, N.Y. Times, Apr. 14, 1979, at 7, col. 3-4.

³³Indeed, a statute enacted last year (Pub. L. No. 95-435, 92 Stat. 1053, § 7, 31 U.S.C. § 27) provides that "[b]eginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts." See *Senate Panel Votes Plan to Balance Budget in 1981*, N.Y. Times, Apr. 11, 1979, at A17, col. 1-3; *Budget Battle Opens in House Committee*, N.Y. Times, Apr. 3, 1979, at D2, col. 5-6; *CRS Report at S2447.*

³⁴*Lochner v. New York*, 198 U.S. 45, 75 (1905) (dissenting opinion).

³⁵Two other sections of the Fourteenth Amendment treat specific problems created by the aftermath of the Civil War. Section 3 disqualifies former Confederate officials from public office, and section 4 affirms the validity of the Union's War debt and invalidates the Confederacy's debt. In addition to this reference in section 4 of the 14th Amendment, the public debt is mentioned only two other times in the Constitution: Art. I, Sec. 8 ("The Congress shall have Power . . . to pay the Debts . . . of the United States") and Art. VI ("All Debts contracted and Engagements entered into" prior to the adoption of the Constitution shall be valid).

³⁶*The Federalist No. 43* (J. Madison) at 278 (Mentor Books ed. 1961).

³⁷*Id.*, *Reasons for the Repeal of the Eighteenth Amendment*, Address of Joseph H. Choate, Jr., before the N.Y. Civic Forum, Jan. 17, 1930: "Our Constitution is a frame of government. It creates Legislative, Executive and Judicial authorities, and distributes powers among them. Its fundamental

and unchangeable theory is that it creates a government of delegated power only, and is based on the representative system. As concerns legislation—rules of conduct—it comprises certain definite and limited grants of power to Congress to enact such rules, but does not—except for Prohibition—prescribe any rule whatever."

³⁸*Tribe Memorandum at 3-4.* Rovere, *Affairs of States*, THE NEW YORKER, Mar. 19, 1979, at 136, 138 (An amendment full of definitions "would come close to introducing algebraic formulas into a document that can at present be read at a sitting and understood . . . by any reasonably literate citizen. In contrast to it, the Constitution of the State of New York is so long and has been so often amended that it is difficult even for purists to recall what is in it and what is not.")

³⁹The only use of a three-fourths vote in the Constitution is the number of states necessary to ratify an amendment to the Constitution pursuant to Article V.

⁴⁰In addition, section 3 of the Fourteenth Amendment provided that a two-thirds vote of Congress was necessary to grant exemptions from the prohibition against holding public office imposed upon former Confederate officials.

⁴¹Editorial, *The New, New Federalism*, WALL ST. J., Jan. 10, 1979 at 22, col. 1.

⁴²*The Federalist No. 34* (A. Hamilton) at 207 (Mentor Books ed. 1961).

[Express mail]

JULY 21, 1982.

HON. MAX BAUCUS,
U.S. Senator,
Dirksen Senate Office Building,
Washington, D.C.

S.J. RES. 58 AND H.J. RES. 350

DEAR SENATOR BAUCUS: You have asked our Committee by July 22, 1982, to expand briefly on the statements in my letter to members of Congress dated June 18, 1982, to the effect that, despite barriers to judicial review posed by standing and political question doctrines, the proposed budget-balancing constitutional amendment is likely to involve the judiciary extensively in the budgetary process. This letter constitutes our response.

STANDING

Our Committee's October 1979 report, *Citizens' Standing to Sue in Federal Court*, states that "it is virtually impossible to rationalize the decisions of the [Supreme] Court in this area." This continues to be true, and it is therefore virtually impossible to predict how standing issues will be decided in suits brought under the budget-balancing constitutional amendment, if enacted. However, there is a substantial possibility that any taxpayer would have standing to challenge expenditures, appropriations or congressional determinations of definitions such as "national income" claimed to be in violation of the amendment. Moreover, given the fact that the budget-balancing amendment would be adopted for the very purpose of restraining Congress and the fact that countless citizens with different interests would challenge congressional action in court, it is all but certain that at least some plaintiffs challenging congressional action on the basis of the amendment will be held to have standing.

In *Flast v. Cohen*, 392 U.S. 83 (1968), the Supreme Court accorded to taxpayers standing to challenge the expenditure of federal funds to assist religious schools. The Court stated in *Flast* that taxpayer standing should exist where the taxpayer establishes (1) a logical link between his status as a taxpayer and the type of legislative enactment attacked and (2) a link between that status and the precise nature of the constitutional infringement alleged. In *Flast*, that test was held to be met because (1) plaintiff was

challenging an appropriation rather than a regulatory measure, and (2) the constitutional infringement alleged exceeded a specific constitutional limitation on the exercise of the congressional spending power, i.e., the establishment clause of the First Amendment.

While the Court has not yet extended *Flast* to cases not arising under the establishment clause, a strong argument can be made that *Flast* supports a taxpayer's standing to challenge appropriations or expenditures under a budget-balancing amendment. The budget-balancing amendment would be, even more clearly than the establishment clause, a specific constitutional limitation directed at the congressional spending power.

Even if *Flast* is not extended to cases under the new amendment, or if cases should arise to which the *Flast* doctrine is held inapplicable, it is possible that standing will be upheld in particular cases under the rationale of *Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970). In *Data Processing*, the court held that a plaintiff challenging governmental action may establish his standing by showing that (1) the challenged action has caused him injury in fact, economic or otherwise, and (2) the interest he seeks to protect is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Subsequent Supreme Court cases have applied the causation test with varying strictness—i.e., some cases seem to insist on a more direct causal connection than others—and have virtually ignored the "zone of interests" test. We cannot predict how *Data Processing* would be applied in a challenge to particular governmental action as a violation of a budget-balancing amendment. However, there is a likelihood that in some portion of the cases the courts will find that plaintiffs have standing on account of the injuries they sustained and the relationship between the interests sought to be protected by the plaintiff and the interests protected by the budget-balancing amendment.

POLITICAL QUESTIONS

The "political question" doctrine holds that certain questions arising under the Constitution are to be determined solely by the "political" branches of government—i.e., the executive and legislative branches—and not by the courts. The contours of the "political question" doctrine are amorphous and shifting. Among the relatively rare examples of questions that have been held to be political are some questions affecting the foreign relations of the United States (e.g., *Ex Parte Peru*, 318 U.S. 578 (1943)), questions arising under the constitutional provision guaranteeing to the states a republican form of government (e.g., *Pacific States Telephone & Telegraph Co. v. Oregon*, 223 U.S. 118 (1912)), and questions as to the procedures followed by states in ratifying amendments to the Constitution (e.g., *Coleman v. Miller*, 307 U.S. 433 (1939)). While it is very difficult to characterize political questions in general terms, we seriously doubt that all questions arising under the proposed budget-balancing amendment would be held to be political, particularly in light of the admission in the Report of the Senate Committee on the Judiciary (pp. 65-66) that judicial review of cases arising in the context of the proposed amendment is not prohibited, and ought to be allowed in the case of "the most serious and unambiguous violations."

In sum, we think it unlikely that either standing or political question doctrines would prevent extensive litigation in the federal courts under the proposed budget-balancing amendment, and the consequent involvement of the courts in the budgetary process. To hold that there can be no role for the courts would be, in effect, to hold that Congress and the President may ignore the amendment if they choose to do so—a conclusion we think the Supreme Court is unlikely to reach.

I hope that the foregoing will be useful. As you know, we appreciate your consideration of our views.

Sincerely yours,

JACK DAVID.

Mr. BAUCUS. Mr. President, I shall conclude by reading the summation paragraph in the letter from the New York City Bar Association which states as follows:

In sum, we think it unlikely that either standing or political question doctrines would prevent extensive litigation in the Federal courts under the proposed budget-balancing amendment, and the consequent involvement of the courts in the budgetary process. To hold that there can be no role for the courts would be, in effect, to hold that Congress and the President may ignore the amendment if they choose to do so—a conclusion we think the Supreme Court is unlikely to reach.

Mr. President, I agree with that paragraph. It is a further reason why I think it is unwise to cast in stone a constitutional requirement that will by definition transfer a substantial amount of economic policy decision-making from Congress to the Federal courts.

Mr. President, I thank the Chair and I thank the Senator from Maryland for his efforts in offering this amendment, and I reserve the remainder of my time.

Mr. MATHIAS. Mr. President, I thank the Senator from Montana.

The PRESIDING OFFICER. The Chair advises the Senator from Maryland that the amendment has not been laid before the Senate.

The Senator from Montana spoke under a unanimous-consent agreement to speak prior to the amendment being laid before the Senate.

AMENDMENT No. 1931

(Purpose: To provide a statutory basis for a balanced budget)

Mr. MATHIAS. Mr. President, on behalf of the Senator from Montana and myself, I call up amendment No. 1931, which had been debated previously and was temporarily put aside early last week.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS), for himself and Mr. BAUCUS, proposed as amendment numbered 1931.

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

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

The amendment is as follows:

On page 2, beginning with line 1, strike out through line 14 on page 4 and insert the following:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) title III of the Congressional Budget Act of 1974 is amended by inserting after section 301 the following new sections:

"LIMITATIONS ON OUTLAYS AND REVENUES

"SEC. 301A. (a) SPECIFICATION OF LIMITATIONS.—

"(1) Notwithstanding any other provision of this Act, it shall not be in order in the Senate or the House of Representatives to consider any concurrent resolution on the budget for any fiscal year beginning after September 30, 1982, or any amendment thereto or any conference report thereon if—

"(A) the adoption of such concurrent resolution as reported;

"(B) the adoption of such amendment; or

"(C) the adoption of the concurrent resolution in the form recommended in such conference report

would cause—

"(i) the appropriate level of total budget outlays specified in such concurrent resolution for such fiscal year to exceed the recommended level of Federal revenues set forth in such concurrent resolution for such fiscal year; or

"(ii) the recommended level of Federal revenues set forth in such concurrent resolution for such fiscal year to exceed the recommended level of Federal revenues set forth in the most recently agreed to concurrent resolution on the budget for the fiscal year preceding such fiscal year by a percentage greater than the percentage of increase in the gross national income which occurred during the calendar year ending before the first day of such fiscal year.

"(2) For purposes of paragraph (1), the budget outlays to be made during a fiscal year, the revenues to be received during a fiscal year, and the gross national income for a calendar year shall be determined on the basis of estimates by the Director of the Congressional Budget Office.

"(b) WAIVERS.—

"(1) The provisions of clause (i) of subsection (a)(1) may be waived in the Senate or the House of Representatives with respect to the consideration of a concurrent resolution on the budget or any amendment thereto of any conference report thereon if three-fifths of the Members, duly chosen and sworn, of the Senate or the House of Representatives, as the case may be, vote to waive such provisions with respect to the consideration of such concurrent resolution, amendment, or conference report.

"(2) The provisions of clause (ii) of subsection (a)(1) may be waived in the Senate or the House of Representatives with respect to the consideration of a concurrent resolution on the budget or any amendment thereto or any conference report thereon if a majority of the Members, duly chosen and sworn, of the Senate or the House of Representatives, as the case may be, vote to waive such provisions with respect to the consideration of such concurrent resolution, amendment, or conference report.

"(3) If a declaration of war is in effect in a fiscal year, the provisions of clauses (i) and (ii) of subsection (a)(1) may be waived in the

Senate or the House of Representatives with respect to the consideration of any concurrent resolution on the budget for such fiscal year or the next succeeding fiscal year, or any amendment thereto or any conference report thereon, by a majority vote of the Members of the Senate or the House of Representatives, as the case may be, present and voting.

"INCLUSION OF ALL FEDERAL ACTIVITIES IN CONCURRENT RESOLUTIONS ON THE BUDGET

"Sec. 301B. Notwithstanding any other provisions of law, the appropriate level of total budget authority and total budget outlays and the recommended level of Federal revenues set forth in any concurrent resolution on the budget shall include the budget authority and outlays for, and revenues and receipts from, all activities of all departments, agencies, establishments, and instrumentalities of the Federal Government, except revenues derived from borrowing and outlays for repayment of debt principal."

(b) Section 904(b) of such Act is amended by inserting "(except section 301A)" after "IV".

(c) The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 301 the following new items:

"Sec. 301A. Limitations on outlays and revenues.

"Sec. 301B. Inclusion of all Federal activities in concurrent resolutions on the budget."

(d) Section 201 of the Budget and Accounting Act, 1921, is amended by adding at the end thereof the following new subsection:

"(k) Notwithstanding any other provision of law, the President shall include in the Budget submitted under subsection (a) proposed budget authority and estimates of outlays and receipts for all activities of all departments, establishments, and instrumentalities of the Federal Government, except estimates of receipts derived from borrowing and estimates of outlays for the repayment of debt principal."

Mr. MATHIAS. Let me pose a parliamentary inquiry of the Chair.

The PRESIDING OFFICER. The Senator will state it.

Mr. MATHIAS. There was permission granted by unanimous consent to call up this amendment notwithstanding certain provisions of the Budget Act. It is my understanding that that permission has been preserved although the amendment was temporarily laid aside.

The PRESIDING OFFICER. The Senator is correct.

Mr. MATHIAS. This amendment which, I am proud to say, has been co-sponsored by the Senator from Kansas (Mrs. KASSEBAUM), and the Senator from Colorado (Mr. HART), would require a balanced budget. It would do so by statute rather than by amending the Constitution.

As would Senate Joint Resolution 58, it would require a three-fifths vote by both Houses of Congress to bust the budget.

Some have said the statutory approach will not have the force of a constitutional amendment. We simply

disagree. In fact, Senate Joint Resolution 58 itself has numerous safety valves to avoid introducing inflexibility into the budget process, and our amendment incorporates the same provisions. So one approach is not more likely to guarantee a balanced budget than the other.

I am delighted to see my friend and neighbor, the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.), in the Chamber because when we debated this amendment 2 weeks ago, we had some conversation about the statutory approach, and he took a somewhat pessimistic view because his own effort in this regard had not borne fruit to the extent he hoped it might.

I think the Senator from Virginia has deprecated his own efforts and his own success more than he should have because when he laid down the rule he was loud and clear and explicit and forceful. The original Byrd language in section 7, Public Law 95-435, the Bretton Woods Agreement Amendments Act, was just like the decalogue in the Bible, "Thou shalt not." That is what HARRY BYRD said, "Thou shalt not." The exact words were:

Beginning with fiscal year 1981 the total budget outlays of the Federal Government shall not exceed its receipts.

The Senator from Virginia will remember those words since they are his own words.

But what happened? What happened was that before we reached fiscal year 1981 there was a change, and the language was changed by act of Congress, and I quote:

The Congress reaffirms its commitment that beginning with fiscal year 1981 the total budget outlays of the Federal Government shall not exceed receipts.

"Reaffirms its commitment," what does that mean? Nobody will go to jail because he violated that language, nobody will be assessed any fine for violating that language. "Reaffirms its commitment," mushy, not the strong Biblical language of the original Byrd amendment, not the words of the decalogue, "Thou shalt not."

So it is not a fact the Byrd statutory approach failed. It is the fact that the Byrd statutory approach did not have a chance. It was construed as hortatory language, what we often call a sense-of-the-Senate, or sense-of-the-Congress, resolution.

If the original language of the Byrd amendment, the language of the decalogue, were enforceable, a single Senator or a single Representative could stop an unbalanced budget by saying:

Mr. President, I raise a point of order at this appropriation (or this authorization) as being in violation of law.

And our statutory approach would have the force of law. Of course, that leads to the question of why could not Congress just change the law if we adopted our amendment, this statuto-

ry approach? Congress could not change our amendment by a simple majority vote, I think, for practical considerations.

No. 1, those of us who are committed to this approach would make every effort in the Senate to prevent that result. The Senate rules require 60 Members to break a filibuster, and no more than that would be required by either the constitutional amendment approach or by the provisions of this amendment.

And that, of course, leaves out the consideration that for the next 3 years Ronald Reagan will veto any change in the law to that effect, and that is long enough to give this provision a fair chance to work.

For that reason we think the statutory approach would have just as much force as Senate Joint Resolution 58.

If both Senate Joint Resolution 58 and the Mathias-Baucus amendment had no safety valves—if they both required a balanced budget, no ifs, ands, and buts—then the constitutional approach would have a tremendous advantage. Only with great difficulty, by amending the Constitution all over again, could we change the requirement for balanced budgets. But under both Senate Joint Resolution 58 and our amendment we can waive the requirement with a three-fifths vote of both houses of Congress, so that the irrevocability of an amendment to the Constitution really becomes a point-less advantage.

It might be nice, or it might be emotionally fulfilling, to enshrine the notion of a balanced budget on a pedestal within the Constitution and, in effect, that is what the President of the United States said in his last press conference, that he thought the psychological effect would be good.

Well, Mr. President, I do not think the Constitution, the basic contract of our people, the framework for our society, is a place to look for psychological effects. I think we can look for psychological effects in acts of leadership on the part of statesmen, we can look for psychological effects in symbolic actions of leaders of government. But the Constitution is not the place to look for psychological effects. That is not the place where we go for symbols in lieu of substance. I think this psychological effect will not mean that we would be any more likely to balance the budget by a constitutional amendment than by a statute.

There have been some adverse comments about the constitutional amendment in the press and in the public, but that is centered really on two points: First, the amendment is so riddled with loopholes that it is worthless; and, second, that it sets a dangerous precedent that will cause great difficulties in the future.

The Wall Street Journal takes the first view. They see it as a copout, as a political stratagem, as a piece of paper that Congress will wave at the voter when they go home and try to explain their votes on a \$150 billion deficit, and the increase in the \$1 trillion national debt ceiling.

Some people see it as a toothless wonder. The American people think they are getting JAWS III when, in fact, all they are getting is GUMS I.

Well, when you are amending the Constitution, I think we have an obligation to be serious. We have an obligation to take Senate Joint Resolution 58 at face value and assume it will have an impact on the way we do business, to assume we will abide by the rules we are about to graft onto the organic law of the land. On that level I agree with Dr. Arthur Burns, former Chairman of the Council of Economic Advisers, former Chairman of the Board of Governors of the Federal Reserve System, who says "Do not fuss with the Constitution unless you know what you are doing."

And on that basis, I would say we should reject it now as premature and try the statutory approach first.

The Constitution is not a manual, a "how-to-do-it" manual that we consult on how to run the Government on a day-to-day basis. It is the statutes that do that. It is the departmental regulations that do that.

Instead, the Constitution designates the great actors on the political stage; it apportions political power; and it does so by very intricate formulas that might very easily be thrown out of whack by tinkering and patchwork.

This amendment could have unpredictable results on the balance of powers that the Founding Fathers built into the Constitution. Even with all of its loopholes and caveats, it would allow 20 States, representing only 9.32 percent of the population, to hold the Federal Government hostage in the Senate. And they could, in effect, shut down the Government. Less than 10 percent of the people would have this effect.

It would allow six States in the House of Representatives to hold the Federal Government hostage. It would set the scene for high stakes logrolling, the likes of which we have never seen before. As has been argued so ably by the Senator from New Hampshire (Mr. RUDMAN) and the Senator from Washington (Mr. GORTON), it will give the courts undefined new powers in the budget process.

It will be suspended in case of war but not in case of national emergencies, because we voted on that question several times. Will any kind of a little brushfire war do to suspend this provision? If we go to war with some remote third world country, are we in a state of war, and is the balanced

budget requirement suspended? Maybe we could find some client State that will constantly be at war with us. It conjures up memories of the "The Mouse that Roared." It is difficult to see just how this amendment will work out. We take all of these risks—and for what purpose?

There was a great Maryland journalist, known as the Sage of Baltimore, H. L. Mencken, who said that "For every problem there is a solution that is simple, easy, and wrong."

One of the strengths of our political system is self-restraint. The Senate itself embodies many unwritten but useful rules of conduct that have kept our Government chugging along for very close to 200 years. And one of these unwritten laws is the water's edge doctrine—where narrow partisan political maneuvering stops at the water's edge.

I thought that we always accorded to the Constitution of the United States at least that degree of respect that we accorded to foreign policy; that we place it above partisan political wrangling.

I think a vote for this amendment, for this substitute, for this statutory approach, would take the Constitution out of the politics of 1982, where it has no place, and will let future generations know that the U.S. Senate acted with prudence and wisdom and restraint, true to the role that the Founding Fathers had in mind when they created the U.S. Senate.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from Utah yield me time?

Mr. HATCH. I yield such time as the distinguished Senator from Virginia may require.

Mr. HARRY F. BYRD, JR. Mr. President, I am not one of those who feels that a balanced budget constitutional amendment is a panacea for all of the evils of the present budget process. The Senator from Virginia is not one who feels that the constitutional amendment mandating a balanced budget will necessarily and of its own solve the problem of overspending and the continued unbalanced budgets. But, frankly, Mr. President, I do not know of any other way to bring discipline to the Members of the Congress in regard to spending.

The Senator from Maryland stated in debate 2 weeks ago, and indicated again here today, and the Senator from Montana stated in debate today, that they feel that the balancing of the budget is a matter of will, a matter of congressional will. And they are totally right.

We in the Congress should have the will and should have the determination, should have the courage to live

within our means. But the record shows that such is not the case.

The Government of the United States has had a balanced budget once in 25 years—once in 25 years. There is no discipline on the part of the Congress when it comes to spending Federal funds. There is no mechanism in law today to bring a discipline to the Members of Congress in the handling of the tax funds of the hard-working men and women of our Nation.

That is why I think it is important and essential that we adopt this proposed constitutional amendment, which, if it becomes law, will mandate by the Constitution that the Government live within its means unless by a three-fifths vote it concludes not to do so.

Mr. President, Congress has made a mockery of its own laws. There is on the statute books today a law requiring a balanced budget. The Congress refuses to obey this law. There is not only one law, but two laws. One law was enacted in 1978 being applicable for the fiscal year beginning 1981. But a subsequent law was also enacted.

I invite the attention of the Senate to RECORD page H 9045, September 17, 1980. An amendment was offered by the gentleman from California, Mr. PASHAYAN. Mr. PASHAYAN said this:

Mr. Chairman, this amendment is being put on the floor here by myself in order to insure that a section of the 1978 law does not die by neglect.

The 1978 law to which he referred is the Byrd-Grassley amendment which was adopted in 1978.

Mr. PASHAYAN goes on to say:

In the 1978 act, Mr. Chairman, the Congress promised the American people to balance the budget beginning in fiscal year 1981, and that is in October, only a few days away. What this amendment simply does is to say that Congress reaffirms that commitment made in 1978 to balance the budget beginning in fiscal year 1981.

So, Mr. President, the entire Byrd-Grassley amendment was reenacted on September 17, 1980, plus an introductory phrase reaffirming the commitment of the Congress. I read the amendment which was approved in 1980. It says:

The Congress reaffirms its commitment that beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

So the entire Byrd-Grassley amendment was reenacted for the second time on September 17, 1980. There have been two statutes requiring a balanced budget enacted by the Congress and signed by the President, not one statute but two statutes requiring a balanced budget.

The proposal offered by the Senator from Maryland (Mr. MATHIAS) and the Senator from Montana (Mr. BAUCUS) is a proposal with merit. It is one that I could support if it were not offered as a substitute for a constitutional

amendment. I think it would make an excellent proposal as an interim, during the period between the time that the constitutional amendment takes effect and the present time. If it were offered as a piece of legislation separate from the constitutional amendment, the Senator from Virginia would be glad to support it. But the problem with the Mathias-Baucus proposal is that it is almost certain to meet the same fate that the other two statutes have met, one, the Byrd-Grassley amendment and the other the Pashayan amendment, both statutes mandating a balanced budget. The Congress in each case has refused to obey its own law, its own statute.

So I cannot support the Mathias-Baucus substitute because I do not believe it would be effective; it would not accomplish what I believe a large majority in the Senate wants accomplished, namely, a balanced budget.

I say again I think it has merit as a separate piece of legislation and as an interim position between now and the time the balanced budget constitutional amendment takes effect.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, does anyone else wish to speak on the amendment, pro or con?

Mr. President, I will take just about 2 minutes.

This is another amendment to substitute a statutory procedure for a constitutional amendment to balance the budget. I simply want to say that the statutory procedure has been followed, as I pointed out on the previous amendment we discussed.

The able Senator from Virginia was the author of the statute that would balance the budget for 1981 and subsequent years. Congress practically ignored it.

A statute passed today can be superseded by another statute tomorrow. What we want is a constitutional amendment to mandate the Congress to balance the budget. This amendment does not do that.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I would like to make one very brief point, which goes to the major argument the Senator from South Carolina and the Senator from Virginia are making. That is that the statutory approach does not have any effect, therefore, we should have the constitutional amendment.

Mr. President, I have not conversed with the Senator from Virginia on this point but I might point out to this body that while it is true that Congress did, by law, amend the original statute placed into law by the Senator from Virginia, theoretically, anyway, the Senator from Virginia or any

other Senator had the opportunity to talk about that change, to filibuster that change in the law.

We all know that it takes 60 Members of this body to vote cloture and close off a filibuster. What I am suggesting is whether we are talking about the statutory approach offered by the Senator from Virginia or the statutory approach offered by the Senator from Maryland and myself, or any statutory approach, as a practical matter it takes 60 Members of this body to invoke cloture, to choke off a filibuster. My point is that it is easy for Members of this body to prevent a change in the law and to prevent the 51 Members of this body voting by a majority vote to change the law.

It is not that easy to have a statutory change. First, the statutory change would have to pass this body; second, it would have to be changed by the other body, and, third, it would have to be signed by the President. It is not easy to change a statute if any significant number of Members of this body want to prevent the statute from being changed.

We all know that it is far easier to prevent a statute from being passed than it is to get a statute passed. There are so many roadblocks between introduction of a bill and signature by the President that any concentrated effort on the part of any one Senator or group of Senators to prevent a statute from being signed by the President would be fruitful and that bill would not become law.

So it is not easy to, by statute, change an underlying statute. In fact, anybody who wants to prevent the underlying statute from being amended finds it very easy to do so.

Mr. President, I therefore suggest that Members think twice before voting against a statutory approach. They should recognize that the statutory approach has teeth in it. As the Senator from Maryland pointed out if a statute is in effect and if a budget resolution or any other measure is before this body which has the effect of having expenditures exceeding receipts, any Member in this body can stand up and raise a point of order that Congress is violating the statute. Therefore, the pending matter, could not be considered until, under the rules, that point of order goes directly to the Senate and the Senate votes on it. So there would be a direct vote on whether Congress should let expenditures exceed receipts.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. ABDNOR). Who yields time?

Mr. THURMOND. Does anyone desire to speak for or against this amendment?

Mr. President, I do not hear anyone who wishes to speak on this amendment further. To the able Senator

from Montana, I suggest we yield back our time and we are going to stack the votes for tomorrow on these amendments.

Mr. BAUCUS. Mr. President, I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I yield back my time on the amendment.

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. THURMOND. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

ORDER OF BUSINESS

Mr. THURMOND. Mr. President, we are open for other amendments if anyone has an amendment to offer. The distinguished Senator from Nebraska indicated he wanted to offer an amendment. The distinguished Senator from Alabama (Mr. HEFLIN) indicated he may offer an amendment. The distinguished Senator from California (Mr. CRANSTON) indicated he may offer an amendment. If we could get those people over here, if the minority could notify those on that side of the aisle, it would help.

Mr. HARRY F. BYRD, JR. Will the Senator from South Carolina yield?

Mr. THURMOND. I am happy to yield.

Mr. HARRY F. BYRD, JR. The Senator from South Carolina, the Senator from West Virginia, and the distinguished majority leader (Mr. BAKER) are having difficulty getting amendments presented to this amendment. Time is running short. Personally, I do not want any amendment to this amendment. I think the way the Judiciary Committee, under the able leadership of the distinguished Senator from South Carolina, brought the amendment to the floor, it is an appropriate piece of legislation the way it is. But to those who do have amendments, and I understand there are some 27 or 28 still pending, it seems to me it would be wise to offer those amendments so they can be considered. As I understand the unanimous-consent agreement, a vote must be taken on the entire measure not later than noon on Wednesday, does it not?

Mr. THURMOND. That is correct, Mr. President.

Mr. HARRY F. BYRD, JR. I join with the Senator from South Carolina in urging that the amendments be presented, else the Senate will be confronted in the last few hours with amendments that may be presented but not debated, which is not a very good way to handle legislation.

Mr. THURMOND. Mr. President, I commend the able Senator from Virginia. He is exactly right. We think those who have amendments should come forward and present those amendments so they will not come up

at the last minute, when there will not be an opportunity for fair debate.

HART AMENDMENT NO. 1940

Mr. THURMOND. Mr. President, I understand that the Senator from Colorado (Mr. HART) is on the floor now. Does he have an amendment he wishes to bring up?

Mr. HART. Mr. President, it is my intention to offer an amendment but, due to parliamentary circumstances, I should like to ask unanimous consent that it be in order to take time off the time allocated for that amendment to present the arguments for it and reserve actual introduction or calling of the amendment up until tomorrow.

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. Mr. President, what is the number of the amendment?

Mr. HART. The amendment is printed amendment 1940, with a slight modification.

Mr. THURMOND. Mr. President, we have no objection to that. We shall be glad to accommodate the able Senator.

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

Mr. HART. I thank the Chair. I thank the distinguished floor manager.

Mr. President, tomorrow I shall send to the desk an amendment which is a slight modification of printed amendment numbered 1940. Pending that and under the consent agreement, I should like to go forward with arguments in favor of that amendment without actually calling it up; of course, with the understanding that the time taken for those arguments will count against the time agreed to on that amendment.

Mr. President, I ask unanimous consent that Mr. Jeff Blattner of my staff be granted the privilege of the floor during consideration of this amendment.

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

Mr. HART. Mr. President, one of the many problems with the proposed balanced budget constitutional amendment, presently under consideration, is the fact that it will reduce the ability of the Federal Government to finance capital expenditures, which are long-term investments in our economic and social infrastructure.

Our schools and our hospitals, our highways and our dams, are all built to last many, many years. Our education and training programs and our research and development projects provide the bulk of their benefits, not now, but many years in the future.

Under the so-called unified budgeting system currently used by the Federal Government, the annual budget statement that is presented to us and that we consider in our budget process, does not distinguish between oper-

ating expenses, such as salaries for Government employees and gasoline for Government vehicles, and capital expenditures, such as those used to build interstate highways or acquire lands for our national parks or to procure long-term weapons systems for our military services. In calculating total outlays, our current "unified" budget allocates the total cost of a capital investment over the 1 or 2 years it takes to pay for it, rather than the 5, or 10 or 20 years the asset will be in use. In addition, there is no requirement in the current process that the President and Congress undertake any systematic planning concerning which capital expenditures should be made in the future, and how those expenditures should be paid for.

Mr. President, I believe there is a better way: Responsible capital budgeting. A capital budgeting system distinguishes between operating expenditures, which are "expensed" on a current basis, and capital expenditures, which are treated as long-term assets to be financed on a "pay as you use basis"; that is, they are paid for over their useful lives. Virtually all of America's businesses use a capital budgeting system of some kind. According to Public Budgeting Systems, by Robert D. Lee, Jr., and Ronald W. Johnson, "virtually all municipalities and a large number of States have capital budgets." The Congressional Research Service found that, in 1979, all States distinguished between capital expenditures and operating expenditures in their budgets.

Mr. President, my own State of Colorado recently enacted its first capital investment budget. I ask unanimous consent that an article from the July 1982 issue of Public/Private, which describes that budget, be printed in the RECORD.

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

LAMM CREATES FIRST CAPITAL INVESTMENT BUDGET

Colorado's unprecedented growth, combined with recent federal cutbacks, is creating a critical need for investment in the state's infrastructure. In response to this, Governor Lamm created the state's first annual Capital Investment Budget and Five-Year Capital Investment Plan.

State government has taken several steps in the last few years to focus new attention on capital investment needs. The Annual Capital Investment Budget is the first comprehensive budget of this nature submitted to the legislature.

The budget calls for an additional \$52 million in 1982-83 for the construction of water storage projects; dam, highway, bridge, and railroad-crossing improvements; and sewage and water supply treatment facilities. The budget is part of a five-year plan to invest up to \$1 billion in Colorado's growth. In some cases, the projects will generate a revenue return for the state, such as in the construction of hydroelectric plants. But most of the projects will benefit Colorado's vital services.

As proposed, the state would generate revenue for the budget from the newly created two-cent gasoline tax, the General Fund surplus, severance tax trust assets, and transference of funds from the Water Resources and Power Development authority and the Colorado Water Conservation Board. The legislature recently defeated a proposed railroad-usage tax, which would have been another revenue source.

The continued weakening of the national economy, however, threatens to diminish the state's General Fund surplus which, in turn, might limit the proposed investments (see "Economic Review" in this issue). One-third of the capital investment budget is to be funded by the surplus.

The Governor has signed into law the first portion of the budget—\$25 million for the construction of water storage projects, which will be matched by federal funds. Colorado is the first state in the country to share the cost of water projects with the federal government. Other portions of the budget are in various stages of legislation.

Mr. HART. Mr. President, in Sunday's New York Times, Treasury Secretary Donald Regan was quoted as stating:

Perhaps the Federal government should have (a capital budget) whether it has a balanced budget amendment or not.

A capital budgeting system has the following major advantages over our current unified budgeting system:

It sets forth the real benefit and the true cost of the Federal Government of financing capital expenditures;

It facilitates comprehensive planning so that decisions about which capital expenditures should be given priority can be made intelligently;

It permits systematic analysis of how proposed capital expenditures should be financed; and.

Unlike Senate Joint Resolution 58, it will give America the flexibility it needs to rebuild our decaying public infrastructure.

Mr. President, the argument for a national capital budget was made quite articulately in a recent article by Pat Choate in the winter 1981 issue of Public Budgeting and Finance. I ask unanimous consent that the full text of the article be printed in the RECORD at this point.

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

THE CASE FOR A NATIONAL CAPITAL BUDGET

(By Pat Choate)

America's public facilities are too obsolete, too worn out and too limited to provide the necessary undergirding the Reagan Administration's economic renewal program will require. The inadequacies of the nation's public infrastructure will force reduction in present levels of public works-related community services such as fire protection, public transportation, water supplies, and secure prisons.

Although the deteriorated condition of public facilities is a major threat to our economic and social well-being, the United States lacks the basic tools necessary to formulate and institute effective remedial

action. The primary deficiency is the absence of a national capital budget. This article will describe the deteriorated condition of America's public facilities, its causes, possible remedial actions, and the central role of a national capital budget.

THE EXTENT OF PUBLIC FACILITIES DECLINE

While comprehensive and reliable information is unavailable, the partial information that does exist outlines the dimensions of the inadequate condition of the public facilities. For example, one of every five bridges in the United States requires major rehabilitation or total reconstruction. A fifth of the 42,500-mile Interstate Highway System is past its designed life, worn out and must be rebuilt. Half of the nation's communities are dependent on waste-water treatment systems that are operating at full capacity, and a third of all communities have water treatment systems in a similar condition. One half of Conrail's roadbeds and rails are so deteriorated that these facilities must either be rebuilt or abandoned. As many as 90 percent of the nation's 3,500 prisons are so limited and antiquated they must be rebuilt, often under judicial order.

When these and other inadequate public facilities essential to private sector investment, such as ports and publicly operated solid and toxic waste disposal plants, are considered, at least two-thirds and more likely three-quarters of our communities must be rated as unable to support modernized development unless major new investments are made in their public infrastructure.

Inadequate public facilities exist in all parts of the nation: urban, rural, suburban, north, south, east, and west. Essentially, the infrastructure deficiencies in the northeast and industrial midwest are related to the need for rehabilitation and maintenance of existing facilities that are past their designed life; while those of the south and west are primarily related to financing and construction of new facilities needed to support growing populations and economies.

THE CAUSE OF DECLINE

America's public infrastructure is obsolete, limited, and worn out for two basic reasons: (1) two decades of massive underinvestment, and (2) massive waste, misplaced priorities, and fraudulent uses of much of those limited funds that have been forthcoming. Specifically, in spite of mounting evidence of decline in the nation's public infrastructure, the real value of investment in public facility construction by all levels of government declined approximately 30 percent between 1965 and 1980. Moreover, the Reagan Administration intends to cut back public facilities expenditures by at least \$16 billion during fiscal years 1982, 1983, and 1984.

Massive waste, pork barrel politics, and misplaced investment priorities are endemic in American public works policy making and program administration. The darker side of public works administration—fraud—is less visible than waste and misplaced priorities, but apparently is just as prevalent. Indeed, in some areas, pay-offs, price-fixing, influence peddling defective work, exorbitant costs, and even extortion have almost become institutionalized. For example, on the basis of extensive field inspections, a special Massachusetts Corruption Commission reported the \$6.4 billion on the \$10 billion of Massachusetts state and county building construction during the 1968-80 period was defective and now requires repair. Because of defective workmanship

and materials, some facilities were so unsafe at the time of completion they have never been used. The cost of repair will be over \$2.1 billion. The *Tennessee Journal* reports that until 1979, architectural contracts for state construction were awarded on the basis of political contributions. In Oklahoma, a statewide pay-off scandal resulted in the indictment of 200 persons and the resignations of the commissioners in 60 of the state's 77 counties. One supplier confessed to more than 8,000 pay-offs over a period of 30 years. Much of this fraud was related to public works. Such examples are now found in almost all states and in many public works programs. Fraud is now so prevalent that its abatement must become a top priority of public management.

The Justice Department has launched a multistate investigation of price fixing and pay-offs. In 1980 that investigation resulted in indictments against 34 companies and 41 individuals in four states.

DISORDERED POLICYMAKING

In large measure the underinvestment, misplaced priorities, waste, and fraud associated with public works activities can be traced to disordered federal public works policies and the absence of federal oversight. The federal government plays a dominant role in the nation's public works activities because half of all financing for the construction of public works comes from the federal government, and federal grant-in-aid matching requirements and federal regulations set the ground rules for much of what is expended by state and local governments from their own sources.

The disorder in federal public works policies and administrative practices is extensive. Almost \$40 billion of annual federal public works expenditures are made in the absence of even the most basic information and policies. The United States has no inventory of the nation's public facilities; there is no assessment of the condition of existing public facilities; there are no standards for the services to be provided by basic public facilities; there are no investment priorities; there is no uniform estimate of future investment needs; there is no basic agreement between the federal, state, and local governments as to the allocation of public works authorities and responsibilities for specific types of projects, such as highways and parks, or for specific public works activities such as construction, maintenance, and operation; and there is virtually no oversight of federal public works expenditures.

Federal public works activities are managed in an ad hoc manner. The executive branch submits capital items as part of the budgets of individual programs or agencies, such as the Community Development Block Grant Program, with no recommendations on priorities, few specifics on use, and no identification of how federal expenditures fit into overall long-term federal and local public investment strategies. The executive budget does not include a cross-cutting analysis of public works expenditures or long-term estimates of associated construction, rehabilitation, operating, and maintenance requirements. No analysis is provided on the consequences of action or inaction.

In the Congress, public works activities are fragmented among many committees and subcommittees. There, as in the executive branch, ad hoc approaches are used: there are no long-term strategies, and no separate capital budget in the congressional budget process.

The disordered processes used by the Federal Government are not an accident. Rather, the confusions and lack of information inherent in existing approaches have been acceptable and politically useful to both the executive and legislative branches. Various presidents have not wanted a capital budget, because the articulation of a public works investment strategy would identify projects that are politically popular, and might divert funds from a growing menu of social programs. The political popularity of public works projects would make budget balancing even more difficult than it ordinarily is, since Congress has traditionally been willing to fund public works when it wouldn't consider softer social programs. Surprisingly, this attitude toward a capital budget was set forth in President Carter's January 1980 budget submission to Congress:

"The Federal Government has never produced a capital budget in the sense of one in which capital or investment type programs are financed separately from current expenditures. One major reason is that a capital budget could be misleading as a measure of the government's effect on the demand for economic resources. Another is that such a budget might favor programs with intensive expenditures for physical assets, such as construction, relative to other programs for which future benefits cannot be accurately capitalized, such as education or research. Likewise, physical assets might be favored relative to current operations in any given program, since deficit financing for capital would be easier to justify."

Because votes are swapped for pet projects, Congress continues to use ad hoc approaches. The House of Representatives has been the more resistant of the two branches of the Congress to rationalizing the Federal Government's public works activities. In 1980 and 1981, the Senate overwhelmingly passed bills to force coherent capital budgeting on the General Services Administration, but the House refused to pass such legislation. Neither house has passed legislation that would create an overall capital budget for the Federal Government.

As a consequence of incomplete and disordered federal public works practices, numerous policy and administrative problems exist. First, no comprehensive view is taken of the nation's public works needs, the role of the respective levels of government in meeting these needs, or how specific federal actions relate to each other.

Second, present approaches actually foster log rolling politics. In the absence of clearly documented needs and well-articulated priorities, the nation's public works expenditures are used as a medium of political exchange—votes are exchanged for support of specific projects that are "log rolled" through the legislative and appropriations processes.

Third, the short term is favored over the long term. In a log rolling environment, it is difficult to create and maintain a coalition that can sustain a long-term project, no matter how vital such a project may be. Irrespective of the merits of the Tennessee Tombigbee Project, the difficulties of creating and maintaining a political coalition for that project has required the active involvement of political leaders from that region for almost two decades—and the end is not in sight. Few political leaders are willing to make such a commitment. In the absence of long-term strategies and commitments, politicians tend to favor projects that can be

largely financed in one fiscal year. Unfortunately, many of the nation's most important public works challenges, such as rebuilding the Interstate Highway System, reconstructing Conrail, and assuring adequate supplies of clean water, will take a decade or more to complete.

Fourth, in the absence of a coherent national public works investment strategy which identifies needs and the means to meet them, aggregate public infrastructure investments cannot be systematically and thoughtfully considered against aggregate social and defense requirements. As public facility investments were ignored and deferred in the 1960s and 1970s in order that limited public funds could finance growing social expenditures, similarly public works investments will likely be ignored and deferred in the 1980s because of rising defense expenditures—particularly if these public facility needs are not clearly and systematically specified.

Finally, disordered federal public works practices create major obstacles to effective management of state and local public works. Since the federal government dominates state and local public works activities, its short-term focus, start and stop financing, log rolling politics, and bias to new construction over rehabilitation and maintenance expenditures makes coherent state and local policy making and program administration almost impossible.

A NATIONAL CAPITAL BUDGET

The federal government needs to bring coherence and order to its capital expenditures—irrespective of whether it increases or decreases public works funding. The first and most important step in this process is the creation and use of a national capital budget.

A national capital budget would consist of three essential components: (1) current and projected capital needs and expenditures, (2) current and projected operation and maintenance needs and expenditures, and (3) sources of financing.

The capital budget would identify capital investment needs and (1) proposed federal investment in facilities to be used by the federal government, and (2) proposed federal grant-in-aid financing of public works for state and local governments. Priorities would be identified. Current and future (perhaps up to ten years) investment projections are needed. To be useful for policy making and program management, this information would have to be disaggregated in a variety of ways, including:

1. A division of investments by types of facilities such as transportation, water treatment facilities, flood control facilities, and airports. This would be further divided by region or state. These two types of classifications could be used to prepare priority lists for investment by types of facilities and areas. To make decisions on these bases, the government would need analyses of the condition of existing facilities, data on quality of services provided, projections of future demand, and estimates of alternative future investment costs.

2. The identification of proposed public works investments by federal agencies. This would permit analysis of the roles of agencies when more than one makes the same type of investment. (For example, seven federal agencies now invest in water treatment facilities, each using its own policy and administrative criteria.)

3. The allocation of capital expenditures for new construction, rehabilitation, land

purchases, purchase of existing buildings, and other cases. (Such a breakdown would permit an identification of instances where existing programs favor new construction over rehabilitation, and would facilitate life-cycle costing.)

4. A distinction between economic development investments and public works for basic community services (for example, industrial parks versus creation of recreation facilities).

A national capital budget would include projections of the funds needed for operation and maintenance of federally financed public works—by programs, type of project, and area. Capital stock creates demands for operation and maintenance funds. To avoid deferring maintenance and to ensure the availability of funds to operate essential facilities, a number of cities, such as Cincinnati, Ohio, and Waco, Texas, will not consider new capital construction unless there is assurance of long-term operation and maintenance funds. Similar national standards are necessary for facilities whose construction and rehabilitation are wholly or partially funded by the federal government. We no longer can afford a "build it and forget" style of public administration.

A national capital budget would classify public works investments (i.e., construction, rehabilitation, maintenance, and operation) and identify the responsible level of government for financing specific categories of public works projects (roads, water supply, etc.), the specific activities associated with those projects (construction, rehabilitation, maintenance, and operation), and the sources of financing.

POLICY AND MANAGEMENT USES OF A NATIONAL CAPITAL BUDGET

A national capital budget would bring coherence to public works policy making and program management by providing a framework for legislative and administrative decisions.

A capital budget would permit public works policy making and program administration to be considered within a consistent framework. A national capital budget would provide a framework for analyzing significant issues in a systematic manner:

1. The aggregate requirement for domestic non-defense public works investment in the face of other pressing claims such as national defense and social programs.

2. The relationship of public works investments to national defense, social policies, and economic development objectives.

3. The impacts of government regulatory actions on public works investments and operations. For example, mandated investments to provide the handicapped with access to public transportation threaten to bankrupt some public transportation systems.

4. The consequences of allocating limited public works funds to new construction, rehabilitation of existing facilities, and operation/maintenance.

5. The social and equity issues associated with the distribution of public works funds among and between various regions.

Capital budgeting is a political process through which resources are allocated to meet a variety of objectives. The creation of such a budget would provide a framework in which the advocates for federal investments in public works could negotiate these potential expenditures with the many other claimants of federal funds.

Public works investments reflect past choices, decisions, bargains, compromises, and allocations which provide the founda-

tion for future actions. A capital budget could chronicle this important historical information. It could also be a basic statement about the future, specifying goals and the resources needed to attain those goals—a statement that can provide a foundation for effective planning by other levels of government and the private sector.

States and communities dependent on federal public works funding now operate on a year-to-year basis with the possibility that federal "commitments" will be altered or regulations changed. State and local governments need more certainty than a one-year federal budget. A capital budget would increase certainty. The private sector would also profit from improved certainty. For example, the private sector could have adjusted more efficiently to air and water control standards if in the early 1970's the federal government had more clearly specified its intentions.

The creation of any public facility also places a variety of demands on other public programs and services. A National capital budget could provide a mechanism for identifying and qualifying these demands.

Mr. HART. Mr. President, the definition of "total outlays" contained in Senate Joint Resolution 58 would prohibit the Federal Government from adopting a pay as you use capital expenditure budget. It would lock us into the current unified budget system, by defining "total outlays" as "all outlays by the Federal Government except those for payment of debt principal." Thus, the proposed balanced budget constitutional amendment would prohibit the Federal budget from distinguishing between capital expenditures and operation expenditures. It would prevent adoption of the sensible budgetary and accounting system used by most of America's businesses and many of its State and local governments.

Combining the requirement of a unified Federal budget with a prohibition against running a budget deficit, as the proposed constitutional amendment would do, will drastically reduce the capacity of the Federal Government to make the capital investments so necessary for this country's future. The proposed balanced budget constitutional amendment would make the Federal Government powerless to do what businesses routinely do to finance capital expenditures: borrow money to pay for capital investments and repay the loan over the useful life of the investments, which is a very basic and fundamentally sound accounting and financial principle.

To illustrate my point, consider the case of a new manufacturing business that needs an expensive piece of heavy machinery to start production. If the business were required to pay the entire cost of the machinery when it took delivery, and was forbidden to run a deficit—that is, to borrow—to do so, there is no way that business could afford the equipment necessary to start production, and therefore that business would just not get off the ground.

Mr. President, many of America's auto companies are in a situation similar to that of the country as a whole: They need to make substantial capital improvements if they are to have a prosperous future. If the auto companies were prohibited from borrowing for these kinds of expenditures during their lean years, they could not afford new technologies and research and development the need to compete in the world.

In a very perceptive column in the Washington Post recently, a very prominent businessman in this country, Mr. David J. Mahoney, the chairman of the board of Norton Simon, Inc., wrote, as follows:

If business used (the Federal Government's) system of accounting, the years of greatest capital investment for growing businesses would be the years of greatest deficit, or of markedly lower profits. For example, this type of accounting would have lowered AT&T's 1981 profits to \$9 billion from \$19 billion.

If the average American followed the Federal government's accounting methods, very, very few would ever be able to purchase a car or house.

Mr. President, I ask unanimous consent that the full text of Mr. Mahoney's insightful article be printed in the RECORD at this point.

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

[From the Washington Post]

WE'RE CHEATING OURSELVES

(By David J. Mahoney)

President Reagan and his senior advisers know it. Most members of Congress will admit it. The federal budget process, as we have come to know and love it, is dead. The current system has produced little except partisan rhetoric, fear, polarization and uncertainty about the future course of U.S. economic policy.

Since the passage of the Congressional Budget Act of 1974, there has been an unmistakable deterioration in the budget process. Today, the budget is a political football, often distorting the true relevance of deficits, debt and government spending. In less than a decade, we have succeeded in transforming the federal budget from a decisive instrument of national planning into a national fire hydrant for every cause and special interest group.

The current budget impasse is only a symptom of a deeper problem. The evidence is clear. Decisions are deferred and deadlines are not met. Budgets are repudiated and forecasts invalidated only days or weeks after submission.

With the budget process at its nadir, we have an opportunity and responsibility to devise a new system that, in the words of President Reagan, "befits the great government of a great nation."

The U.S. government's current "unified" budget system lumps operating expenses (salaries for civil servant, office supplies, etc.) with capital expenditures (public buildings, roads, land, etc.). The government makes no distinction between one type of expenditure and another. Construction of a capital asset such as a hospital for veterans, for example, adds to the deficit, whereas the

sale of land reduces the deficit. This is done even though the hospital, under normal accounting practices, would be treated as a long-term asset, not a deficit. Also, the government expends the total cost of that hospital over the one or two years it takes to construct the building—even though the hospital will be in use for 30 to 40 years, or longer.

If business used this system of accounting, the years of greatest capital investment for growing businesses would be the years of greatest deficit, or of markedly lower profits. For example, this type of accounting would have lowered AT&T's 1981 profits to \$9 billion from \$19 billion.

If the average American followed the federal government's accounting methods, very, very few would ever be able to purchase a car or house.

Today's "unified" budget is misleading in that it not only does not recognize the nation's capital assets, it encourages higher deficits by hiding future-year costs. And it provides no formal planning for the maintenance and replacement of America's vitally important public infrastructure. In an era of limited resources, such as today, a unified budget may also give the American people false information and choices that could lead us to abandon our commitment to education, jobs, health and a better life for the less privileged in our society.

Clearly, a change is needed. But to what? As a first step in rebuilding our federal budgetary system, I suggest our national leaders take a fresh look at an old idea—a capital budget.

Unlike the federal government, nearly all private corporations, state governments and most local governments use a capital budget. Under a capital budget, first proposed for the federal government by the 1949 Hoover Commission, expenditures are separated into current operating expenses and capital investments. Under a capital budgeting system, capital or investment-type programs are financed separately from current expense programs. Included in a capital budget would be current and future maintenance and construction capital requirements, sources of financing, and life-cycle costs.

For discussion purposes, let's assume that we transform the U.S. government into America, Inc., with a business-style balance sheet and capital budgeting system. There would be several surprises.

First, we would discover that America, Inc., has enormous assets that are not widely publicized or known. America, Inc.'s land holdings consist of 500 million acres—one-fifth of our nation's oil and gas resources, 50 percent of our coal, 80 percent of our oil shale, 50 percent of our uranium and 50 percent of our geothermal energy resources.

Unfortunately, no one really knows how much America, Inc.'s total assets are worth—we've never taken an inventory. Capital budgeting would force such an accounting, giving Congress and the president better information on our net worth on which to base national policy.

The second surprise we would discover is that America, Inc., like other large corporations, has a serious need to improve its capital investments program. America's public facilities are wearing out faster than they are being replaced. It is estimated that it will cost between \$2.5 and \$3 trillion over the next decade to maintain just the present level of services and public infrastructure.

Currently, the U.S. government has no system for planning or setting priorities for public works expenditures other than through wasteful and indefensible "pork barrel" politics. A capital budgeting system would establish a formal system of long-range planning to manage the public infrastructure necessary for private-sector growth rather than focusing on single projects advocated by individual politicians.

Third, a capital budget would give us a new perspective on America, Inc.'s debt and its "deficits." America, Inc.'s long-term debt today is about \$1.1 trillion—by any measure, a lot of money. But, rhetoric aside, how significant is a \$1 trillion debt? Historically speaking, it's not much to be concerned about. America's debt at the end of World War II was slightly larger than our gross national product. In the late 1950s, our debt was about 50 percent of GNP; by 1974, it was 25 percent of GNP. Today, \$1 trillion represents about 28 percent of GNP—hardly a figure to justify the current hysteria and hyperbole.

Deficit projections, ranging from \$92 billion to \$233 billion are a constant feature of the front pages and a favorite subject for speeches these days. The current "unified" accounting system distorts the significance of these numbers because it ignores our assets.

Don't misunderstand. I am not saying that deficits, particularly in the \$100 billion and up range are not important. They are important. They drive up interest rates, compete with private-sector borrowing, and prolong the recession, and they must be dealt with.

But, they must be dealt with in the perspective of America's total net worth. The deficit is not the single most important indicator of our national net worth. The rhetoric surrounding the deficits has caused many Americans to overlook and to doubt their country's real economic strength.

A capital budgeting system would provide a comprehensive and balanced picture of America. It would provide more openness in the budget process and more accurate accounting of total life-cycle costs. Decisions on proposed government expenditures could be made based on hard numbers, not on the politics of the moment.

Mr. HART. Mr. President, by prohibiting the Federal Government from financing its capital expenditures on a "pay as you use" basis, Senate Joint Resolution 58 will make it virtually impossible for the Federal Government to play its crucial role in rebuilding our Nation's decaying infrastructure.

Two tragic developments within the past month make clear that this Nation must commit itself to improving the condition of that infrastructure:

In my own State of Colorado, an 80-year-old, earthen dam burst, killing several campers and sending flood waters pouring through the scenic town of Estes Park; and

In Jersey City, N.J., an aqueduct broke, causing almost 300,000 residents to be without drinking water for 6 days.

In its cover story last week, Newsweek reported that "America's infrastructure—the vast, vital network of roads, bridges, sewers, and mass-

transit systems—is heading toward collapse." A recent front-page story in the New York Times described our Nation's infrastructure as neglected and decaying.

These articles reported the following sad facts about the state of our Nation's public facilities:

One-quarter of the Interstate Highway System is worn out and in need of resurfacing. The total repair bill is estimated at \$33 billion over the next decade.

One-half of Conrail's rails and roadbeds are seriously decayed.

A survey conducted by the Economic Development Administration showed that half of the communities in America cannot expand because their water treatment systems are at or near capacity. It will cost our Nation's cities \$75-\$100 billion to maintain those systems over the next 20 years.

One-fifth of the Nation's bridges are so deficient that they are either restricted or closed. The Transportation Department recently classified 45 percent of the Nation's highway bridges as deficient or obsolete. Replacing or repairing them would cost \$47.6 billion.

The Army Corps of Engineers found that nearly 3,000 dams in highly populated areas were unsafe; of these, 130 were found to be in danger of collapse.

In addition, another recent study found that nearly 90 percent of the Nation's 3,500 prisons are so limited and antiquated that they must be rebuilt, often under court order.

Mr. President, I ask unanimous consent that the full text of these articles be printed in the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From Newsweek magazine, Aug. 2, 1982]

THE DECAYING OF AMERICA

(No one noticed the spidery crack inching its way along the concrete casing of New York city's 65-year-old water tunnel No. 1. But one weekday morning, 600 feet below the Bronx, the steady torrent of water loosened one chunk of concrete, then another, then another, until an underground landslide closed the tunnel off. Manhattan's water trickled to a stop. Within minutes pumps in High-rise buildings, trying to compensate for the loss of pressure, caused a widespread blackout. Elevators stopped at mid-floor. Subway rolled dead, their antiquated electrical backup systems unable to handle the sudden load. Sewers backed up. Fires raged. Before rescue workers could come to their aid, thousands of panic-stricken New Yorkers headed for the only means of escape—the city's dilapidated bridges. Over-loaded with humanity and cars, the 73-year-old Queensboro Bridge cracked, groaned and toppled into the East River.)

That vision of urban apocalypse isn't far-fetched. America's infrastructure—the vast, vital network of roads, bridges, sewers, rails and mass-transit systems—is heading toward collapse. The decay is most acute in older industrial cities, but clogged highways and strained water systems also threaten to

strangle booming Sun Belt towns, and even in dusty rural communities, potholes batter chassis and jangle motorists' nerves. Two weeks ago, in one 24-hour period, an 80-year-old earthen dam burst in Colorado, sending a wall of water through the town of Estes Park, and a major aqueduct broke in Jersey City, N.J., leaving nearly 300,000 residents without drinkable water for six days. Says Robert Harpster, executive director of the Iowa League of Municipalities, "Our sewers leak like sieves, our mass transit is in bad shape and our roads look like the Ho Chi Minh trail."

Ever since the canal boom of the 1800s, public works have shaped the nation's character and accommodated its growth. But today one-quarter of the interstate-highway system is worn out and needs resurfacing. One-half of Conrail's rails and roadbeds are seriously decayed. Half of all American communities cannot expand because their water-treatment systems are at or near capacity. One-fifth of the nation's bridges are so dangerously deficient they are either restricted or closed. "We're living on our laurels of the 1950s and 1960s," says Transportation Secretary Drew Lewis. Agrees Pat Choate, co-author of "America in Ruins," a study of the crisis for the Council of State Planning Agencies: "We've been squandering a major part of our national wealth."

All told, the cost of needed repairs around the country could run as high as \$3 trillion. But the bills are coming due at a time when there is little money to spare. The Reagan Administration favors cutting Federal aid for highways, bridges and pollution-control projects and plans to phase out mass-transit operating subsidies by 1985, leaving state and local governments to pick up the slack. For their own part, many states and cities are already in fiscal *extremis* and will be forced to spend more and more scarce funds for simple operating costs as Federal aid to other programs diminishes. Money is even tighter where strict local tax-cut measures are in effect. Under Proposition 2½, for example, Massachusetts is devoting only .5 percent of its budget this year to maintenance and repair—a policy one expert on the state's budget, Mark Ferber, calls "penny-wise and pothole foolish."

At the same time, record interest rates have driven the cost of issuing municipal bonds—the traditional means of raising capital funds—prohibitively high. And other recent Federal policies have hardly helped. All Savers certificates, Individual Retirement Accounts, accelerated depreciation and "safe harbor" leasing laws have all reduced the incentives for individuals and corporations alike to invest in tax-exempt municipal bonds. "The U.S. Treasury is slowly choking the ability of states to raise money," charges Massachusetts bond counsel Francis X. Meany. Some economists warn that Reagan's plan to stimulate the growth of the private sector through tax cuts could backfire if the roads, bridges, rails and water systems that businesses depend on are allowed to collapse from too little government support.

HUMAN TOLL

Already the nation's decaying physical plant is costing Americans dearly. In Houston, for example, city planners estimate that motorists pay a "traffic congestion tax" of \$800 a year in time and gasoline wasted on the city's snarled expressways. U.S. Steel spends an extra \$1 million a year detouring its trucks around a closed bridge in Pittsburgh. TRIP (The Road Information Program), a highway industry group, esti-

mates that the aggregate cost to the private sector of bad roads and bridges is \$30 billion a year—for everything from broken axles to lost business. Even worse, the infrastructure crisis is exacting a heavy human toll. A recent Federal Highway Administration study found that spending an extra \$4.3 billion to fix dilapidated bridges and roads could save 48,000 injuries and 17,200 lives over fifteen years.

There are nearly as many reasons for infrastructure decay as there are potholes. Some of it stems simply from old age. Built largely in the 1950s, the interstate-highway system, for example, was designed to last only 25 years. Many roads, bridges and water systems are also bearing far greater burdens than they were ever expected to accommodate. Boston's six-lane Southeast Expressway, built in 1959 for 75,000 cars a day, is now an axle-crunching obstacle course that carries 150,000 cars daily. And everywhere, age and abuse have been compounded by neglect. Investment in public works by all levels of government has dropped by more than 25 percent since 1972 (chart, page 18). As the fiscal crises of the 1970s hit, many local officials balanced budgets by canceling preventive maintenance and deferring needed repairs. "In the choice between laying off police or maintaining sewers," says Lincoln, Neb., Mayor Helen Boosalis, "the sewers always lose."

Although billions of dollars have been spent on public works in recent years, the vast bulk of expenditures has gone not to maintain old facilities but to build ambitious new pork-barrel projects, often determined more by politics than actual need (page 18). Says E. S. Savas, Assistant Secretary for Housing and Urban Development, "Have you ever seen a politician presiding over a ribbon-cutting for an old sewer line that was repaired?" All too often the cost of such projects is wildly inflated by corruption on the part of construction firms, labor unions, public officials and organized crime—all at the taxpayers' expense (page 17). Meanwhile, the longer the repairs are put off, the costlier they become. "Deferred maintenance becomes reconstruction," says Choate's co-author, Susan Walter.

One big obstacle to good infrastructure maintenance is the very system that controls it. Responsibility for maintaining public facilities rests with more than 100 Federal agencies, as well as the 50 states, more than 3,000 counties and thousands of local agencies. In Cleveland four separate municipal departments share authority over hundreds of dilapidated bridges. In Eaton Rapids, Mich., city manager Dennis Craun has compiled a 120-page booklet of all the Federal regulations that pertain to a 90-year-old one-lane bridge that is not strong enough to carry trucks or buses—but is nevertheless listed in the National Register of Historic Places, and therefore cannot be destroyed. "I'm about at the point where I'd consider driving an 80,000-pound tanker over it," he says. "That would do the trick."

Citizen opposition has also stood in the way of preventive maintenance, since road, bridge and water-main work can be inconvenient as well as costly. But as the decay worsens, some citizens are taking the lead—and some deteriorating facilities have become key political issues. Last March women in Grosse Pointe Farms, Mich., got so fed up with the potholes on Detroit's Lakeshore Road that they donned hard hats and hockey helmets and fixed them. U.S. Representatives Barney Frank and Margaret Heckler are fighting a re-election

battle over a 76-year-old bridge in redistricted Fall River, Mass. Frank recently brought the chairman of the House Public Works and Transportation Committee to visit the bridge. Heckler brought Drew Lewis. "If this is what it takes to get action, I'll take it," says bemused Fall River Mayor Carlton Viveiros.

BUMPY RUG

Aware of the growing potency of pothole politics and the genuine dangers of serious breakdown, many city officials are belatedly fighting to save their public facilities—at no small cost to city coffers. Chicago's Mayor Jane Byrne has announced a two-phase, \$187.5 million plan to rebuild 22 bridges and viaducts, 90 intersections and 46 railroad crossings. New York City has embarked on a ten-year, \$34.7 billion program to renovate streets, bridges and mass transit and work has begun on a third water tunnel. In Pittsburgh Mayor Richard Caliguiri is devoting \$60 million of his city's \$225 million budget this year to maintenance projects—deferring work on recreation programs. "We can no longer sweep these problems under the rug," says Cleveland's director of public utilities, Edward R. Richard. "The rug is getting too bumpy."

A sampling of the nation's worst infrastructure problems:

HIGHWAYS

Still 1,500 miles short of completion, the once proud 40,500-mile interstate-highway system will need \$33 billion worth of repairs in the next decade. But the Federal Highway Trust Fund, which supported the system throughout the 1960's on ever-burgeoning revenues from the 4-cent-a-gallon Federal gasoline tax, has been sorely depleted with the advent of smaller, more fuel-efficient cars. Conditions are even worse on the larger network of primary and secondary roads. The U.S. Department of Transportation (DOT) estimates that the work needed to keep nonurban highways at current levels will cost more than \$500 billion over the next ten years—more than Federal, state and local governments combined spent on all public works in the 1970s.

CITY STREETS

It takes 100 pounds of asphalt to fill the average pothole, and the record-cold winter of 1982 left a plague of them—1 million, by some counts, in Chicago alone. But city officials are finding that it can also be costly to leave them unrepaired. Two years ago, after paying \$20 million in negligence claims, New York City enacted a pothole "prior notice" law, exempting it from responsibility for accidents caused by any street defect not reported at least fifteen days earlier. Not to be thwarted, a citizens group called Big Apple Pothole and Sidewalk Protection Corp. sent an army of workers out to document every crack and rut in Manhattan, Brooklyn and the Bronx.

BRIDGES

Nationwide, 248,500 bridges—45 percent of the total—are structurally deficient or functionally obsolete. But DOT estimates that needed repairs could cost as much as \$47.6 billion. Meanwhile, two Federal programs are supposed to provide for periodic inspections and aid to the most dangerous bridges, but a 1981 General Accounting Office report found that many national safety standards were not being met. Heavy trucks continue to barrel over the Mountain Avenue Bridge in Malden, Mass., for example, even though it was "posted" at a maximum of 6 tons in 1977.

MASS TRANSIT

Believe it or not, conditions on subways and buses are actually improving in many cities. Since 1979, when two Philadelphia buses caught fire on the road and only 26 of 108 subway cars were operating on the Broad Street line one night, the Southeastern Pennsylvania Transportation Authority (SEPTA) has raised capital spending from \$17 million to \$110 million and even brought aged repairmen out of retirement to teach a new generation of mechanics how to fix its 1920s car motors. New York City's Metropolitan Transportation Authority (MTA) has embarked on a five-year, \$5.8 billion renovation program, though frequent glitches with its new buses and subway cars have actually compounded maintenance problems in the vintage repair shops. Meanwhile, critics remain leery of the rescue plan, since the financing includes \$1.6 billion in bonds to be paid off by farebox revenues. MTA Chairman Richard Ravitch "may be known in the future for two things," says Gene Russianoff of the watchdog group Straphangers Campaign, "rebuilding the system and the \$3 fare."

RAILROADS

Tempers have been rising along with fares on U.S. commuter rails. In 1980 half the ridership of the Long Island Rail Road joined in a one-day strike, refusing to show their tickets. "We pay ransom for the privilege of being hermetically sealed in dirty, smelly cars," says Lorraine Pirro, a citizen adviser to New York's commuter rails, which will spend \$1.3 billion on capital improvements over the next five years. Many systems are saddled with ancient equipment never designed for stop-and-go commuter service. "Edison Cars," dating back to 1923 when Thomas A. Edison threw the first switch, still make up 10 percent of the New Jersey Transit Corp.'s fleet.

Commuter headaches will be compounded later this year when Conrail gets out of the commuter-rail business, leaving local transit agencies completely responsible for 210,000 riders daily. SEPTA officials warn that unless contracts and work rules are renegotiated (the average Conrail worker earns \$40,000 a year), they may have to close down the area's thirteen commuter lines. The precedents set by public takeover of bankrupt freight lines are not encouraging. In Michigan, for instance half of the 931 miles of freight track run by the state lies dormant in disputes over subsidies.

WATER AND SEWAGE SYSTEMS

Every day more than 1 million gallons of tap water disappear through leaks beneath the streets of Berwyn, Ill. In Milwaukee there were 170 water-main breaks in January alone. And in New York City, though the complete failure of one of the two giant water tunnels is unlikely, neither has ever been inspected. Experts say a breakdown of some kind is all but certain within the next twenty years. Sometimes made of brick, wood or cast iron and often more than 100 year old, America's sewer and water systems are subterranean time bombs. Choate estimates that 756 major urban areas will have to spend \$75 billion to \$110 billion to maintain these water systems over the next twenty years, and just meeting pollution-control standards will cost \$25 billion over the next five years.

DAMS

Like the earthen dam that burst in Colorado earlier this month, many U.S. dams are tiny, aged and privately owned—yet their collapse would jeopardize hundreds of lives

and homes. State and Federal officials didn't even know where many of the dams were until the 1977 collapse of a dam in Toccoa, Ga., spurred Jimmy Carter to send the Army Corps of Engineers out to survey them. In a four-year study the Corps counted 68,000 non-Federal dams. The Corps inspected nearly 9,000 dams in highly populated areas and found roughly one-third to be unsafe, with 130 in danger of imminent collapse. But even where repairs were ordered, they have often not been carried out, because the dams' owners either couldn't afford them or couldn't be found.

PUBLIC BUILDINGS

"Hardly a week goes by that we don't have some kind of roof problem at one of our 29 fire stations," says St. Louis budget director Jack Webber, whose city-hall roof nearly fell in on him last year. In New York City nearly half of the 1,087 public schools are at least 50 years old and many suffer rotted windows and outdated plumbing and electrical systems. Worse still are the nation's 3,500 prisons, as many as 3,000 of which need substantial renovation or expansion. In Texas 3,800 inmates of the state penal system sleep in tents for lack of space. In some states prisoners are being paroled early to ease overcrowding.

GROWING PAINS

Public works in Sun Belt cities have not kept up with population growth. In sprawling Phoenix a scant 36 miles of freeway now serve a population of 1.5 million, 97 percent of whom travel by car. Every day between 1970 and 1980, roughly 250 more cars joined Houston's expressways, and traffic there has become so chronically awful—with "rush periods" lasting twelve hours a day—that some executives now commute by helicopter (page 53). Texas planners figure it will take 300 miles of new freeway and 1,400 miles of streets, costing \$16.2 billion, to bring traffic conditions back to what they were in 1975.

Water is also a serious problem in the West and Sun Belt, where overtapping of ground resources causes more and more giant fissures and sinkholes. Meanwhile, the nation's ports have not kept up with the increasing demand for coal exports. At one point, 15 percent of the world's bulk coal was sitting useless at the port in Hampton Roads, Va., due to congestion in unloading.

SOLUTIONS

How will the staggering infrastructure needs be met? Proposed solutions range from a gigantic New Deal-style public-works program to increased user fees, but none will be easy. One of the most sensible ways of raising highway revenues, for example, would be to boost the Federal gas tax, which has been 4 cents a gallon since 1959. Transportation Secretary Lewis has proposed doubling the gas tax and raising levies on heavy trucks, to generate \$5 billion annually. But the powerful automobile and trucking lobbies oppose Lewis's plan to use \$1 billion of that revenue for mass transit, and President Reagan has vetoed the idea for now.

On their own, 31 states have raised state gas taxes and other fees in recent years and several are considering more road tolls. By charging an average of 2.4 cents per mile, for example, the 40-year-old Pennsylvania Turnpike pays for resurfacing 30 to 50 miles a year. Many communities are also raising rates for water and sewer services—systems experts say should be self-supporting. Often that requires creating a separate local agency, such as Boston's acclaimed five-

year-old Water and Sewer Commission. The danger critics warn, is that the proliferation of local agencies will diffuse accountability and multiply administrative costs.

Private businesses are also assuming a greater share of the burden—voluntarily or not. At the Sycamore housing development in Danville, Calif., where Proposition 13 prohibits raising taxes to pay for basic services, a local approval board is asking the developer to provide two new water tanks, a freeway interchange, a new elementary school and a new fire engine. The cost, of course, ultimately gets passed on to consumers: the town's decree is raising the cost of each new home there by \$15,000. Private donors are helping to renovate the crumbling Statue of Liberty and restore San Francisco's 107-year-old cable cars, which will shut down this September for twenty months of repairs. And in some cities business leaders are donating management expertise. "If Cleveland goes to hell, we all go to hell with it," says attorney Carlton Schnell, chairman of a coalition advising the city on its infrastructure needs.

DABBING

In desperation, local officials are experimenting with a wide variety of other revenue-raising schemes, including selling off public buildings. The Port Authority of New York and New Jersey is considering leasing vacant office space to raise funds for a "bank for regional development" that would lend money to local governments for infrastructure needs. Others are dabbling in "leveraged leasing." New York's MTA sold 620 buses and ten commuter-rail cars to Metro-media, Inc., at \$15.5 million over the cost. Metro-media will take the tax depreciation on the equipment and lease it back to the MTA, which will use the net gain for operating costs. Atlanta officials are considering an even more complicated plan. A local Lockheed plant would build a plane for a Japanese trading company, take payment in Japanese-made subway cars, then sell the cars to the transit agency for less than their usual cost.

On a larger scale, New York investment banker Felix Rohatyn has suggested a revival of the Reconstruction Finance Corp., which would issue \$25 billion in federally backed loans to cities to help maintain their facilities. Aware that the infrastructure crisis coexists with record-high unemployment, the House Education and Labor Committee has proposed a massive five-year, \$11 billion public-works program to provide jobs ranging from painting bridges to patching potholes. And a growing number of economists and lawmakers are calling for creation of a "national capital budget" that would fund infrastructure projects outside the Federal budget, where they are currently vulnerable to spending cuts.

Whatever the mechanism—higher taxes, higher user fees or higher consumer prices—the cost of repairing the nation's physical plant will inevitably come out of citizens' pockets. Already, the problems of decay and growth have pitted East against West, rural residents against city dwellers, truckers against straphangers and almost everyone against the Federal government.

CANOES?

Federal allocation formulas currently favor building urban, not rural, highways—even though the expense of clearing city land can push the cost per mile as high as \$500 million. Allocation formulas also favor "multiple use" waterways, rather than city water and sewer systems. "If I could figure

out a way to put canoeists down there, maybe our problems would be solved," jokes New York Mayor Ed Koch. Reagan's plan to phase out mass-transit operating subsidies while continuing to fund transit capital needs has angered people on both sides of the issue. And because of opposition, the Administration is likely to table its New Federalism plan for roads that would have returned to the states their share of Federal gas taxes—along with the responsibility for maintaining highways. "Based on the amount of money it generates in gas taxes, Montana would barely pay for the signs on its highways, let alone the highways," says Lewis. "You can say fine, don't build any interstates in Montana, but what do you do when you get to the Montana border—get a horse and wagon?"

In general, the Reagan Administration believes that state and local governments rely far too heavily on the Federal government for their infrastructure needs. "The fact that there are potholes all over America doesn't mean that it's time for the Federal government to pay for filling them," says HUD's Savas. Historically, the pattern has been for the Federal government to build major public works, but leave them to states and cities to repair—and some local officials are beginning to decide that they can't afford the Federal largesse. Cincinnati, for example, has adopted a policy of "planned shrinkage" of its physical plant where possible—even turning down Federal grants to concentrate its own funds on maintaining what it has.

SCALING BACK

As the national budget debate increasingly becomes one of guns vs. butter vs. asphalt, planned shrinkage may become the public-works policy of the future. Already, officials doubt that the interstate-highway system, as originally conceived, will ever be completed. The Federal government has indefinitely postponed building the once planned \$3 billion rail and road system for the congested Houston area and the proposed \$2.1 billion "people mover" in Los Angeles. Not a single road links Juneau to the rest of Alaska, but the cost of building one may be too high even for that oil-rich state.

What will such decisions mean for the boom towns of the future? And if older cities are allowed to decay and contract, can citizens who "vote with their feet," as Reagan has suggested, hope to find better conditions anywhere else? In past decades public works made America a nation of highways, of automobiles, of vital cities and water systems that are the envy of the world. Today's hard choices will determine the shape of America in the decades to come.

ALARM RISES OVER DECAY IN U.S. PUBLIC WORKS

(By John Herbers)

In Pittsburgh, the United States Steel Corporation contends that it is paying at least \$1 million a year to detour its trucks 26 miles around a major bridge that the state closed two years ago for lack of repair.

In Albuquerque, motorists are up in arms because sewer lines are crumbling under the streets, many of which have become impassable as the city struggles to make piece-by-piece replacements.

In Houston, the magazine *Texas Monthly* asserted that it had counted 1.5 million potholes in a city that is a center of great wealth.

In New York, broken water mains, subway failures and the deterioration of other fa-

cilities above ground and below have become so common that the seemingly mundane subject of "the infrastructure" has become a prominent issue for both the city and state governments.

News of a neglected and decaying infrastructure—public facilities such as water systems, sewers, streets, highways, bridges and rails, which undergird life and commerce in every community—has taken on a new prominence on the national scene at a time when the country is suffering from a recession, high unemployment, decline of much of its basic industry and the reduction of public services by governments at all levels.

The situation is similar to that of a family whose income has been cut, that is behind on the mortgage payments and unable to buy shoes for the children, and then learns that tree roots have plugged the drainage pipes, the furnace must be replaced and termites have weakened the foundation of the house.

In the urban policy report the Administration made public last week, President Reagan said he wanted to do something about the infrastructure problem but had not decided what.

Meanwhile, a bipartisan coalition is growing in Congress to force action by the national Government, partly on the ground that Mr. Reagan's goal of revitalizing American industry cannot be reached until something is done about inadequate public facilities. Many Democrats say that repairing public works would provide jobs for many of the unemployed.

One difficulty is that public works projects have been so fragmented between the various levels of governments that no one knows the extent of the decay, or how much money would be needed for repairs and new construction necessary to support the economy and quality of life at reasonable levels.

Only in the past year or so has the concern of policy makers about the neglect of basic public works grown urgent. Studies by George E. Peterson of the Urban Institute and by Pat Choate and Susan Walter of the Council of State Planning Agencies documented the inadequacy of public facilities, not only in older, fiscally troubled cities such as New York and Boston but in suburban and rural communities in every region of the nation.

Their findings have been confirmed and expanded by a number of Government agencies and by Congressional investigations. These are some of the more serious deficiencies cited:

"Obsolete and decaying bridges. The Transportation Department recently classified 45 percent of the nation's 557,516 highway bridges as "deficient or obsolete." Replacement or repair could cost \$47.6 billion, the department said.

"Crumbling highways. The 42,000-mile interstate system, begun in the 1950's and not yet completed, is deteriorating at a rate that would require reconstruction of 2,000 miles a year, in addition to a backlog of 8,000 miles in need of rebuilding that accumulated because of cuts in financing in recent years. The condition has contributed to costly traffic jams on the expressways of most major urban areas.

"Deteriorated rail facilities. The condition of roadbeds and rolling stock of Conrail and other rail systems is so poor that some officials say there are no reliable estimates available on the cost of replacement and repair. But frequent derailments and delays

in shipments attest to the need, according to a range of officials.

"Leaking water and sewer mains. The Urban Institute, in a survey of 28 cities, found that 10 of them, Cleveland, St. Louis, Pittsburgh, Tulsa, Philadelphia, Hartford, Kansas City, Mo., Cincinnati, Buffalo and Baltimore, were losing 10 percent or more of their treated water because of deteriorated pipes. And the survey did not include New York and Boston, with two of the leading all-time water-leaking systems. Probably a larger problem, from the standpoint of waste, is leaky sewers, in which ground water flows into the pipes, adds to the volume of sewage and greatly increases the cost of treatment.

"Shortage of capacity of many facilities. A survey conducted by the Economic Development Administration in 1978 showed that half of the nation's communities had wastewater treatment systems operating at full capacity, meaning they could not support new economic or population growth without costly new construction."

The estimates of need tend to become astronomical. Nationally the figures run into the trillions. Last fall, the New York State Legislature estimated that \$8 billion to \$10 billion a year would be needed in New York State for repairs, replacement and construction of the infrastructure, which would double current expenditures.

A more precise expression of need was published by the Joint Economic Committee on Congress, which said that New York City alone over the next few years would have to service, repair or replace 1,000 bridges, two aqueducts, one large water tunnel, several reservoirs, 6,200 miles of streets, 6,000 miles of sewers, 6,000 miles of water lines, 6,700 subways cars, 4,500 buses, 25,000 acres of parks, 17 hospitals, 19 city university campuses, 950 schools, 200 libraries and several fire houses and police stations.

The causes of neglect and decay are more easily documented than the extent of need. Mr. Choate, an economist and a former Federal official who is now the senior analyst for a giant corporation, said in a paper prepared for the House Wednesday Group, made up of moderate Republican representatives, that investments in capital projects had declined sharply.

"The nation's public capital investments fell from \$33.7 billion in 1965 to less than \$24 billion in 1980, a 30 percent decline," he wrote. "Public works investments dropped from \$174 per person in 1965 to less than \$110 per person in 1980, a 36 percent decline, and shrank from 3.6 percent of the gross national product in 1965 to less than 1.7 percent in 1980, a 54 percent decline."

In the 1960's and 70's, public works projects frequently were delayed so that the Government could finance such endeavors as the Vietnam war, social programs, education and space exploration. Nevertheless, the Federal Government assumed a much larger share of public works costs, which previously had been borne by state and local governments. In 1957, the Federal Government paid 10 percent of the costs. By 1980 its share had risen to 40 percent.

RESPONSIBILITY FRAGMENTED

The responsibility for maintaining public facilities, Mr. Choate pointed out, was fragmented between 100 Federal agencies, 50 state governments, 3,042 counties, 35,000 general-purpose governments, 15,000 school districts, 26,000 special districts, 2,000 area-wide units of government, 200 interstate

compacts and nine multistate regional development organizations.

But the Federal Government, the dominant player, never achieved any rational method for allocating the funds. Mr. Choate said Federal laws favored new construction over repairing of existing facilities.

Public works money, which often has been handed out for purposes of politics rather than need, became increasingly subject to waste and fraud, according to Mr. Choate and others. In 1980 alone, 219 state and local public officials were convicted of criminal abuse of public funds, a figure three times greater than the 1970 level.

At the same time environmental requirements enacted in the 1970's increased the need for higher expenditures for public works.

Many authorities say they believe, however, that the greatest cause for inadequacy of public facilities lies in the spread of the population and industry out of the central city to suburbs and remote communities around the nation.

Retired people moved in large groups into new communities, many in rural recreational areas; factories settled along the freeways and new urban development sprang up near them; state governments spread their colleges over once remote areas; people migrated from the old industrial cities to the South and West, where urban and rural sprawl was greatest; after the 1980 census the Federal Government designated 36 former small towns as metropolitan areas. All this new development required enormous amounts of capital investment for streets, curbs, water and sewer facilities, airports and other facilities.

DEMAND IN CITIES REMAINED

But the new growth did not lessen the demand in the thinned-out central cities. The infrastructures in old cities, which suffered heavy population losses, serve many vacant lots, half-empty buildings and closed factories and warehouses. But the facilities must usually be maintained as though they were being used at capacity.

At a recent conference on land use sponsored by the Engineering Foundation in Rindge, N.H., Phillip Finkelstein of the Center for Local Tax Research in New York pointed out that when the city government suggested that it could no longer afford to maintain basic facilities in the South Bronx, where many buildings had been abandoned, there was a storm of protest and the suggestion was dropped.

"I don't think there is any way to do that with any degree of acceptability," he said, in reference to a suggestion that there be a contraction of public facilities in the cities.

American in 1982 are separated as never before by great stretches of pavement, communication and electric lines and water and sewer pipes. Many authorities are questioning whether the nation can any longer afford to maintain what it already has built and continue to provide for new communities.

LAND USE AT THE HEART

Harry E. Pollard, president of the Henry George School of Social Science of Los Angeles, said the way it is now, "A bus driver in order to collect one acre of people has to drive five acres to find them. And he has to drive past five miles of sewer pipe instead of one. It is a land-use problem. If you have to finance five miles for every one you will forever be in financial trouble."

According to a number of authorities, no national administration has succeeded in

bringing order to the chaos of public works spending. The Carter Administration, they said, was beginning to coordinate Federal spending so that priority could be established.

The Reagan Administration, according to those officials, abandoned the coordination but to some extent has stopped the use of Federal Funds for capital projects in new areas. For example, it refused to finance water treatment plants in new communities around Orlando, Fla. The rationale was that if people there wanted new communities they could finance them themselves.

FUTURE OF FEDERAL ROLE

Yet even high White House officials acknowledged that the Reagan Administration had no comprehensive policy on public works, except that it intends to drastically reduce the Federal role. Richard S. Williamson, assistant to the President for intergovernmental relations, said Mr. Reagan wanted to help the cities with their infrastructure problems, and he ordered that this concern be put in the Administration's urban policy report that went to Congress.

The report, however, sought to show that the picture was not so bleak as had been depicted. It pointed out that demand had lessened for schools and new highways and said many cities were moving on their own to step up capital projects. And it pointed to local innovations. New York, for example, had switched emphasis from new buildings to repairing streets, bridges, mass transit, water and sewage systems. Other cities, such as Boston, were putting the authority for public works in the hands of independent commissions for greater efficiency, while others, such as Cleveland, were enlisting private interests for help.

The Federal Government's role, the report said, was to gather information about more cost-effective methods of financing public works while "other aspects of Federal aid remain to be determined."

Meanwhile, members of Congress have stepped into the void. Some have been spurred by such reports as bridges being closed for long periods in Kansas City, Mo., while motorists drive blocks out of their way and school children in Altoona, Pa., having to leave their bus, walk across a bridge and wait for the empty bus to follow because the bridge can no longer support the weight of both children and bus.

PROPOSAL BY HOUSE MEMBERS

Two Pennsylvania Representatives, William S. Clinger Jr., and Robert W. Edgar, have been pushing legislation for a capital budget that would require the Administration to take an inventory of capital needs and assign priorities for spending on public works, as a first step toward long-term recovery.

They were joined in their effort by such diverse leaders as Speaker Thomas P. O'Neill Jr. and Representative Jack Kemp, the conservative Republican from Buffalo, who were among a number of Congressmen signing a letter to Mr. Reagan asking him to consider the idea. A similar bill has been introduced in the Senate by Christopher J. Dodd, Democrat of Connecticut.

Meanwhile, a number of Democrats around the country have taken up the issue on ground that rebuilding the nation's capital plant would fight unemployment.

In New York, Assembly Speaker Stanley Fink has made repairing of the infrastructure one of his major concerns and Governor Carey, in the recent legislative session, proposed increases in taxes and fees to help

pay the costs. The tax legislation, however, was defeated, in part because it was an election year. Officials on the national and state levels predict the issue will become more heated in the years ahead.

In response to questions about how the nation could let basic facilities decay to the extent that many authorities say they have, Maury Seldin, president of the Homer Hoyt Institute, a nonprofit foundation in land economics, and a professor at American University, said, "We as a nation are accustomed to living on uppers and downers."

He said that in recent years the nation had become accustomed to "taking a fix" for whatever bothers it without much thought to the long-range consequences, especially in response to various special interests that can command support for narrow goals, and policy is fragmented.

He called for a maturing of the political processes so that various interests could reach compromises for the overall good and "be willing to settle for a fair shake."

Mr. HART. The costs resulting from our decaying infrastructure—in wrecked lives from occasional disasters and higher expenses from everyday inconveniences—are enormous. Newsweek reported that:

In Pittsburgh, United States Steel spends \$1 million a year detouring its trucks around a closed bridge.

The Federal Highway Administration estimates that spending \$4.3 billion to repair worn out bridges and roads could save 480,000 injuries and 17,200 lives over 15 years.

And, a private industry group estimates that total cost to the private sector of bad roads and bridges at \$30 billion a year.

Mr. President, neither the Federal Government nor State and local governments have been making their share of needed capital expenditures.

A study prepared for the House Wednesday Group found that our Nation's public capital expenditures have fallen by 30 percent since 1965.

Chase Econometrics found that total Federal, State, and local spending on the public infrastructure has fallen by 25 percent in the last 10 years.

In his article that I have quoted, David Mahoney cites a study estimating that it will cost between \$2.5 and \$3 trillion simply to maintain America's existing level of public services and infrastructure over the next decade.

At the same time our public infrastructure is decaying, our public education system, which must prepare our children for the future, is suffering from neglect. Fewer students are taking fewer courses and spending fewer hours studying the subjects that will give them the skills they need to prepare for our country's future: math and science, foreign languages and communications, and additional subjects that will be needed as well. The Federal Government's commitment to research and development, and to teacher training and aid to education, has dropped sharply since the 1960's.

Mr. President, because Senate Joint Resolution 58 will handicap the Federal Government's ability to help America rebuild its decaying infrastructure, I am preparing to offer this statutory amendment in the nature of a substitute. This amendment would enact a statute, the Responsible Budgeting Act of 1982, which incorporates the concept of sound capital budgeting with the requirement of a fiscally responsible balanced budget.

The act would require that, beginning immediately, the budget statements transmitted by the President and adopted by Congress must contain data separating capital expenditures from operating expenditures in each budget category. The Office of Management and Budget currently prepares a document entitled "Special Analysis D: Investment, Operating and Other Budget Outlays," which contains much of this information.

Mr. President, I ask unanimous consent that the text of the February 1982 edition of "Special Analysis D" be printed in the RECORD at the conclusion of my remarks.

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

[See exhibit 1.]

Mr. HART. Beginning with fiscal 1986—long before Senate Joint Resolution 58 would become effective—the amendment I intend to offer would require that the Federal Government adopt a fiscally responsible budget. My amendment would require the following:

As I stated above, the budget would include data distinguishing capital expenditures from operating expenditures.

My amendment defines "capital expenditures" as outlays used for: the construction, acquisition or rehabilitation of a physical asset with a useful life of more than 1 year; research and development, including basic research; education, training or vocational rehabilitation; international development; or financial investments, including loans for terms of greater than 1 year. OMB estimated that capital expenditures amounted to \$146 billion in fiscal 1981 and \$148 billion in fiscal 1982.

Included in each budget would be an estimate of the annual capital benefit cost, which is the amount determined to represent the total capital expenditures incurred in a fiscal year which is properly allocated to that year. The

annual capital benefit cost would be calculated on a pay-as-you-use basis—that is, by determining the cost in present dollars of financing the capital expenditures over their useful lives.

Each year, the President would be required to transmit, and the Congress would be required to adopt, a budget in which total operating expenditures plus the annual capital benefit costs could not exceed total revenues.

The balanced budget requirement could be waived only if the President certified or a majority of both Houses of Congress found that a deficit was necessary to insure the national security or to remedy the effects of an economic recession or depression.

Each year, the President would be required to transmit to Congress a plan describing the capital expenditures to be made in that year and in the next 4 years, and providing for the payment for those capital expenditures in a manner consistent with sound principles of financial planning. Thus, my amendment would require the Federal Government to prepare a capital expenditure plan, a document routinely prepared by most of America's State and local governments.

During the interim period between passage of the act and the effective date of the balanced budget requirement, my amendment would require the President and the Director of the Congressional Budget Office to report to Congress on how the capital budgeting requirements established by the act should be implemented.

The following example illustrates one way the annual capital benefit cost could be calculated. The February 1982 Office of Management and Budget study estimated that Federal capital expenditures in fiscal 1982 would be approximately \$148 billion, out of total expenditures of \$725.3 billion. If the average useful life of those capital investments was 10 years, and in February 1982 10-year Treasury bills sold at 14.5-percent interest, the present value in 1982 of spreading the cost of the \$148 billion in capital expenditures over 10 years would be \$76.9 billion, which would be the annual capital benefit cost for 1982. Total operating expenditures in 1982, according to the OMB study, were \$577.3 billion. Thus, if the Responsible Budgeting Act were in effect in 1982, the sum of total operating expenditures, \$577.3 billion, plus the annual

capital benefit cost, \$6.9 billion, or a total of \$654.2 billion could not exceed OMB estimated total receipts for fiscal year 1982, which were \$626.8 billion. Thus, under my amendment, the total deficit would be \$27.4 billion.

Of course, Mr. President, it will be difficult to establish guidelines for the calculation of the annual capital benefit cost. Capital expenditures purchase a multitude of goods and services, which provide benefits over periods of varying duration. It is for that reason that my amendment does not require calculating the annual capital benefit cost until the fiscal 1986 budget. The President and the Congressional Budget Office are given 2 years to study the question before reporting back to Congress on how best to implement this requirement.

However, the fact that it is difficult to make the calculations necessary for rational budgetary decisionmaking is no reason not to require that they be made. The Federal budget process is now an enormously complex and intricate process. Very few people in this country have any idea how complex and how intricate that process truly is.

But, the problem right now, Mr. President, is not that the budgetary process is too complex to comprehend; the problem is that the process is not a comprehensive and intelligent means of making the long-range budgeting decisions, which are necessary if our country is to survive and prosper in the future.

Mr. President, much ado is made in the committee report on Senate Joint Resolution 58 about the fact that 39 of the States have constitutional provisions limiting their ability to incur budget deficits and 8 other States have statutory constraints on deficit spending. However, data prepared by the Congressional Research Service reveal that: 21 of the States typically borrow to finance capital outlays; and an additional 11 States borrow periodically for capital outlays.

Mr. President, I ask unanimous consent that a chart prepared by the Congressional Research Service analyzing which States with balanced budget requirements borrow for capital expenditures be printed in the RECORD at this point.

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

TABLE 5.—LIMITATIONS ON STATE DEBT AND DEFICITS AND CAPITAL OUTLAY PRACTICES

State or other jurisdiction	Debt limitation		Operating deficit restriction			
	Constitutional debt limit	May exceed limit by popular vote	Enactment phase		Execution phase	
			Budget must balance expense and revenue	Legislative appropriation must balance expense and revenue	Must reduce expense if revenue shortfall	Must tax to cover deficit
Alabama ¹	\$300,000		Constitution			
Alaska ²	N/R					
American Samoa	N/R					
Arizona ³	\$350,000		Statute	Statute	Statute	
Arkansas ⁴	(1a)	Yes	C, S	Yes	(1b)	

TABLE 5.—LIMITATIONS ON STATE DEBT AND DEFICITS AND CAPITAL OUTLAY PRACTICES—Continued

State or other jurisdiction	Debt limitation		Operating deficit restriction			
	Constitutional debt limit	May exceed limit by popular vote	Enactment phase		Execution phase	
			Budget must balance expense and revenue	Legislative appropriation must balance expense and revenue	Must reduce expense if revenue shortfall	Must tax to cover deficit
California ¹	\$300,000	Yes	Constitution		(2)	(2)
Colorado ²			Constitution	Constitution	Constitution	
Connecticut ³			Statute	Statute		
Delaware ⁴	N/R					
District of Columbia	N/R					
Florida ¹	V		C, S	Constitution	Statute	
Georgia ⁴	(3)		C, S	do	do	
Guam ⁵	N/R					
Hawaii ⁴	(4)		C, S		Statute	
Idaho ²	\$2,000,000	Yes	Constitution	Constitution		
Illinois ²			do	do		
Indiana ²	(5)		do	do		
Iowa ²	\$250,000		Statute		Statute	
Kansas ²	\$1,000,000	Yes	do	Constitution	do	
Kentucky ²	\$500,000	Yes	do			
Louisiana ²			Constitution	Constitution	Statute	
Maine ²	\$2,000,000	Yes	do	do	do	
Maryland ²			do	do		
Massachusetts ²			do	do		
Michigan ¹	(6)		Statute	Constitution	Constitution	
Minnesota ²	P		Statute		Statute	
Mississippi ²	N/R					
Missouri ²	\$1,000,000	Yes	Constitution		(7)	
Montana ²			Statute	Constitution		
Nebraska ²	\$100,000		do	C, S	(8)	(8)
Nevada ²	AV					Constitution
New Hampshire ¹	N/R					
New Jersey ²	1 Percent of approp.	Yes	Constitution	Constitution	Statute	Do.
New Mexico ²	N/R					
New York ²	V		Constitution			
North Carolina ¹			do		Statute	
North Dakota ²	AV		do	Constitution		
Northern Marianas	N/R					
Ohio ²	\$750,000		C, S	C, S	Statute	
Oklahoma ²			Constitution	(9)	Constitution	
Oregon ²	\$50,000; AV (P)		Statute	Constitution	Statute	Do.
Pennsylvania ²	(10)	Yes	Constitution	do		
Puerto Rico	N/R					
Rhode Island ²	\$50,000	Yes	C, S			
South Carolina ²				C, R	Statute	Do.
South Dakota ²	\$100,000		Statute	Statute	do	
Tennessee ¹			Constitution			
Texas ²			Statute	Constitution	Constitution	
Utah ²	AV			do	Statute	
Vermont ²						
Virgin Islands ²	X		Statute		Statute	Statute.
Virginia ¹	t (V for P)		do		do	
Washington ²			do		do	
West Virginia ¹	P	P	Constitution	Constitution	do	
Wisconsin ²	AU for P; (11)			do		Constitution.
Wyoming ²	AV, T		Constitution	do		

(1) Arkansas—All bond issues which are supported by full faith and credit must be approved by vote of people; (b) Responsibility of each agency and chief fiscal officer of State.
 (2) California—Deficits are covered by a reduction of expenditures and/or tax increase.
 (3) Georgia—Present and proposed debt service on bonded indebtedness may not exceed 15 percent of net revenue collections of previous fiscal year.
 (4) Hawaii—20 percent of the average of the general fund revenues of the State in the 3 fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to 18 1/4 percent of the average of the general fund revenues of the State in the 3 fiscal years immediately preceding such issuance.
 (5) Indiana—No debt except "to meet casual deficits in the revenue" payment of interest and defense. A deficit budget or appropriation is not considered a casual deficit.
 (6) Missouri—Constitution: Permissive, not mandatory.
 (7) Nebraska—In case of revenue shortfall statutory provisions allow for tax increase or government may call special session to reduce appropriations.
 (8) Oklahoma—Constitution limits appropriation ceiling to 5-yr average revenue increase.
 (9) Pennsylvania—Amounts to suppress insurrection, rehabilitate disaster areas; for capital projects not to exceed 1.75 times average of last 5 yr revenue.
 (10) Wisconsin—\$100,000 limit on casual debts.
 Code: N/R—No response. AV—Percentage of property value. T—Percentage of taxes. V—Popular vote required for any debt. R—Rule of House. S—Statute. C—Constitution. P—Specified purposes only.
 Source: National Association of State Budget Officers (1980).
¹ States which borrow periodically for capital outlays (i.e. large issues generally approved by a referendum or a constitutional amendment which are expended over a number of years).—11 (Alabama, California, Florida, Michigan, New Hampshire, North Carolina, Ohio, Tennessee, Utah, Virginia, and West Virginia).
² States which generally finance capital outlays from current revenues.—18 (Arizona, Arkansas, Colorado, Idaho, Indiana, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Washington, and of the 50 States, 16 include capital outlays in the State budget document: Arizona, California, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Texas, Utah, Wisconsin, and Wyoming).
³ States which typically borrow for capital outlays.—21 (Alaska, Connecticut, Delaware, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, and Wisconsin).
 Source: CRS review of State budget documents for fiscal year 1979. National Association of State Budget Officers Survey of State Budget Practices (1978).

Mr. HART. Mr. President, it is misleading to compare State balanced budget requirements with one imposed on the Federal Government. This point was made quite convincingly in "The Fiscal Survey of the States 1981-82," which was prepared by the National Governors Association and the National Association of State Budget Officers:

All states except Vermont have legal constraints against incurring deficits in their general operating budgets, and Vermont, like other states, has strong traditions favoring a balanced budget. Unlike the federal government, which has operated with an annual deficit for the past twenty years,

state government rarely incur deficits. However, comparisons between "state balances" and "federal deficits" can be misleading if they do not include an explanation of important differences in federal and state government finance. For example, state governments account for general operating funds and capital project funds in separate budgets; the federal government does not.

Although states normally avoid operating deficits, they do have debts associated with past capital projects. Total state debt outstanding at the end of fiscal year 1980 was \$122 billion. This debt would not be reflected directly in state operating budgets. It would be reflected indirectly as state operating budgets normally contain appropriations for debt service—payment of interest

and repayment of principal on outstanding bonds.

Mr. President, opponents of capital budgeting have argued that capital budgeting makes it easier to finance capital expenditures than operating expenditures and that therefore capital budgeting favors buildings and roads over people. That argument is wrong for three reasons:

First, the capital budgeting process created by my amendment will not make it easier to finance capital expenditures than operating expenditures. There will be no separate "pork-barrel" capital budget created by this amendment; it requires only that the

true cost of paying for capital expenditures be used in determining whether a deficit will result;

Second, Mr. President, capital assets are built and maintained by people for the use and benefit of people; and

Third, not all capital expenditures go for so-called "hard" projects like buildings and roads. Capital expenditures also finance education for our children and research to find cures for diseases that now cause untold pain and suffering.

In sum, the impact of my pay-as-you-use amendment will be to make it easier to make rational decisions about capital expenditures. But, Mr. President, my amendment will require that capital expenditures be paid for over their useful lives.

Furthermore, Mr. President, the budget document created by my amendment will still contain information concerning the actual cash balance—be it deficit or surplus—created by the Federal Government. I recognize that this data is of critical importance for the determination of the impact of Government borrowing on financial markets.

Thus, Mr. President, beginning with fiscal 1986—long before the constitutional amendment would be likely to become effective—my amendment would require the Federal Government to adopt a balanced budget. In addition, my amendment has a number of additional advantages over the proposed constitutional amendment:

It will require the President to transmit a balanced budget to Congress. For over 50 years, the President has been required by statute to submit a budget to Congress. The President has at his disposal all of the information necessary to prepare the budget document. He is the head of one of the two coequal political branches of the Government. It is only fair that the responsibility and the obligation for formulating a balanced budget be shared by the President and Congress.

Under my amendment, the balanced budget requirement may be waived when the President certifies, or a majority of both Houses of Congress finds, that a deficit is necessary to insure the national security or remedy the effects of an economic recession or depression. This provision gives our National Government the flexibility it must have to respond to the crises that inevitably arise. When those crises occur, our budget must not be held hostage by 40-percent-plus-1 of the Members of one House of Congress.

My amendment, will permit, but will not require, the Federal Government to engage in the responsible fiscal practice of borrowing to finance the cost of capital expenditures over their useful lives. Mr. President, our country's infrastructure is in a tragic state

of decay. The sudden collapse of bridges, roads, and dams have sadly become an all-too-frequent occurrence. We must reverse the trend of the last 16 years and increase our annual investment in our country's infrastructure. This constitutional amendment, if adopted, would handicap the Federal Government's ability to help rebuild our infrastructure and provide for our country's future.

Finally, and most important, Mr. President, my amendment is superior to Senate Joint Resolution 58 because it does not tamper with our Constitution. The details of the budgeting process are not a proper subject for inclusion in the Constitution; a budget is a political document, and a good budget can be adopted only if our country's elected officials exercise sound judgment and political courage. There is nothing in our Constitution that compels the Members of Congress to enact deficit budgets. Nothing we can put in the Constitution can prevent them from doing so.

Mr. President, the American public has justifiably grown tired of irresponsible Federal budgets. The supporters of the proposed constitutional amendment have correctly recognized that new measures are necessary to reform the budget process and restore the country to a sound fiscal footing. But the proposed balanced budget constitutional amendment needlessly and irresponsibly tampers with our Constitution. If passed, it would dangerously interfere with our country's ability to build and prepare for its future.

I, therefore, strongly urge my colleagues to support the amendment as an alternative which I shall offer.

Mr. President, every Member of the Senate has felt the intensity of our constituents' anger about ever-growing budget deficits and the sorry state of our economy. Every Member of this Chamber shares a commitment to take decisive action to curb Government deficits. But the proposed balanced budget constitutional amendment, Senate Joint Resolution 58, will not stop the parade of budget deficits or reduce our crushing interest rates and high unemployment. Mr. President, the proposal now before the Senate is bad law and bad economics, and bad politics as well.

Senate Joint Resolution 58 is bad law, Mr. President, because it needlessly tampers with our Constitution. The Constitution enshrines what Prof. Laurence Tribe called "the broad and enduring ideals" of our Nation. It establishes the ground rules of our democratic system and it protects our sacred freedoms. The Congress and the people have seen fit to amend the Constitution only 16 times since the adoption of the Bill of Rights in 1791. With the exception of the sad experience of the prohibition amendments, all of the previous constitutional

amendments have either improved the procedures of our democracy or extended the scope of constitutional protections. Our predecessors have recognized the wisdom of applying a very sage rule to our national charter: "If it ain't broke, don't fix it."

Mr. President, our Constitution is not broken. The supporters of this amendment would have us believe that there is a "structural bias" in favor of deficit spending in the Constitution. They would have us believe that because the impact of spending programs is sometimes "concentrated" on the few and the impact of taxes and deficits is sometimes dispersed among the many, the Constitution somehow inexorably compels the Members of Congress to engage in deficit spending.

Mr. President, nothing could be further from the truth. Whenever working Americans open their paychecks, the impact of high taxes is felt throughout the land. Whenever Americans shopping for a home cannot afford one because of inflation and high interest rates, the impact of deficit spending is felt throughout the land. Whenever Americans are laid off because employers cannot afford the improvements necessary to keep up with foreign competition, the impact of irresponsible fiscal policies is felt throughout the land. And now, Mr. President, the impact of the public's outrage about deficit spending is being felt in the Halls of Congress. Indeed, quite a few Members of this Congress do not want to face the voters this fall after supporting a \$100 billion deficit without voting for the concept of a balanced budget, Mr. President, that is overwhelming evidence of the responsiveness of the democratic system established by our Constitution. There is no "spending bias" in the Constitution; there is only a bias among some Members of Congress and the current resident of the White House against making the hard decisions needed to balance the budget. And that is a "bias" the voters can and will correct.

There are a number of other serious constitutional problems with Senate Joint Resolution 58. First and foremost, there are serious and unanswerable questions about the role of the courts in enforcing the amendment. The committee report concludes that:

Only as a final resort, and only under the most compelling circumstances (as for example, when the practices of either the Congress or the Executive undermine the ability of the amendment to be self-enforcing) is there anticipated to be a significant role for the judicial branch.

Mr. President, last fall, there appeared in the Atlantic Monthly an article indicating that the administration had been less than candid in preparing the revenue and outlay estimates it transmitted to Congress. If Senate Joint Resolution 58 becomes law and similar revelations appear,

will the budget process grind to a halt while a Federal district judge determines whether the administration's budget estimates are accurate? If so, I fear that Senate Joint Resolution 58 will drastically alter the separation of powers established by the Constitution and launch the country into periodic constitutional crises. If not, any administration or Congress can avoid the requirements of Senate Joint Resolution 58 simply by using phony budget figures. The answer to my question is by no means clear from the test of the amendment or from its legislative history. Mr. President, we cannot play Russian roulette with the Constitution.

Second, the provision requiring that three-fifths of the whole number of both Houses' vote to authorize a deficit will undermine the very principles of democracy enshrined in our Constitution. In times of national emergency, like the Great Depression or the Vietnam war, when our national interest demands that the Government engage in responsible deficit spending, 40 percent-plus-1 of the Members of one House can hold the budget hostage for concessions to narrow special interests, Mr. President, if that does not undermine the principle of majority rule, I do not know what does.

In addition, by allowing Members of Congress to vote against a budget deficit by simply absenting themselves for key votes, the "three-fifths of the whole" requirement will reduce the accountability of Members of Congress and reward political cowardice.

Lastly, the proposed constitutional amendment will interfere with Congress' ability to execute its constitutional authority "to make all laws which shall be necessary and proper for carrying into execution" the powers delegated to the Federal Government. In the landmark decision in *McCulloch v. Maryland*, the Supreme Court recognized the need to give Congress flexibility in exercising its authority under the Constitution. John Marshall, the great Chief Justice of the Court, described the necessity of including in the Constitution only the broad limits on Congress' powers:

The subject is the execution of those powers on which the welfare of a Nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a Constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs. To have the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by

immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can best be provided for as they occur.

Mr. President, we cannot write into the balanced budget amendment, or into the Constitution, all of the circumstances under which a budget deficit might be necessary to preserve the Nation's security or to dig us out of a depression. We cannot, and should not, attempt to do so.

Mr. President, Senate Joint Resolution 58 is bad economics for a whole host of reasons. Whenever actual outlays exceed those set forth in the budget and thereby cause a deficit, the proposed constitutional amendment will require a separate three-fifths vote of both Houses of Congress. As a result, the budget process will be made less flexible during economic and military crises when unanticipated expenditures are required and budgetary flexibility is needed most.

The proposed balanced budget amendment will aggravate, not cure, our economic problems. In inflationary times, revenues typically increase faster than national income. Senate Joint Resolution 58 will require the Government to reduce revenues in inflationary times and thereby fan the fires of inflation. In recessionary times, outlays typically increase faster than anticipated because newly-laid-off workers seek unemployment assistance. The balanced budget amendment would require Congress to cut total outlays in hard times, Mr. President, forcing Congress to engage in economic "triage" and aggravating the economic downturn.

Rather than improving the quality of our economic programs, Senate Joint Resolution 58 will actually make it harder to fashion responsible economic policies. The amendment will reduce our ability to make the capital expenditures that are essential investments in our country's future. Our schools and our hospitals, our aircraft carriers and our fighter planes, are all built to last for many, many years. Our education and training programs, our research and development projects, all provide substantial benefits many years into the future. It is sound and customary business practice to pay for capital investments over their useful lives. But the proposed balance budget constitutional amendment will drastically reduce our country's ability to finance capital investments in a businesslike manner. As a result, future generations will be robbed of the benefits of the capital expenditures our country must make to prosper. For that reason, later in the debate, I will offer an amendment in the nature of a substitute that incorporates the concept of responsible capital budgeting with a requirement of a balanced budget.

In addition, Mr. President, Senate Joint Resolution 58 will make it more difficult to make responsible economic policy because it contains a built-in incentive for Congress and the President to opt for increase regulation rather than increased taxes or expenditures. This is true because regulations shift the burden of paying for Government initiatives into private hands, beyond the reach of Senate Joint Resolution 58.

Finally, Mr. President, Senate Joint Resolution 58 is bad politics as well. It is bad politics first because it will not do what its supporters say it will: It will not balance the budget. Whenever total revenues fall short of those set forth in the budget, the amendment requires no action by Congress either to avert a deficit or to approve a deficit. More important, Senate Joint Resolution 58 will not balance the budget for the same reason debt ceiling legislation does not curb the Nation's debt. Both depend on Congress' self-restraint. Even if the constitutional amendment is adopted, Congress can still provide for a deficit, whenever it so chooses. Whether or not Senate Joint Resolution 58 becomes law, the only real check on Congress' ability to engage in deficit spending is the intelligence and persistence of America's voters. They are going to be mighty angry, Mr. President, if the Senate passes a balanced budget amendment and then turns around and adopts another hundred billion dollar deficit.

Senate Joint Resolution 58 is also bad politics because it would not take effect until 2 years after it is ratified, which could be up to 9 nine years after it is passed by Congress. The voters want responsible fiscal policies now, not 9 years in the future.

In conclusion, Mr. President, the proposed balanced budget constitutional amendment is a superficially tempting opportunity to answer the public's call for fiscal responsibility with vague, strong-sounding words about limiting Congress power to engage in deficit spending. But vague, strong-sounding words will not make Congress and the President adopt a fiscally responsible budget that will lower interest rates and revitalize the economy. What Congress needs is the political courage to make the tough economic decisions that will reduce the deficit—and the national leadership to explain those decisions to the American people. There is nothing wrong with our Constitution. The fault, dear colleagues, lies not in our laws, but in ourselves. Empty words in the Constitution will not make us pass a balanced budget. Only political courage can do that.

And as John F. Kennedy wrote, in "Profiles in Courage:" For courage, "each man must look into his soul."

Mr. HART. Mr. President, I yield the floor.

EXHIBIT 1

INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS

This analysis divides outlays between those of an "investment" or capital nature, and those devoted to "current" or operating purposes.

Investment-type programs yield benefits in future years through the acquisition of physical or financial assets, or through expenditures for less tangible long-term benefits such as education. They include: the construction, rehabilitation, and acquisition of physical assets; education, training, and vocational rehabilitation; research and development; international development; and financial investments such as loans. Outlays for investment-type programs are estimated to be \$155.3 billion in 1983.

Current programs provide benefits primarily in the year in which the outlays that finance them are made. They include: payments for retirement, disability, and other income maintenance; social services; payments (including subsidies) to agriculture, businesses, transportation systems, and other institutions that are not directly used by the institutions to purchase physical assets; payments for the repair, maintenance, and operation of existing physical assets; and regulatory, law enforcement, interest, and other operating costs of the Federal Government. Outlays for current programs are estimated to be \$631.6 billion in 1983.

Outlays or offsetting receipts that cannot be identified as either investment or current in nature are presented as unclassified.

INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS

(In billions of dollars)

	1981 actual	1982 estimate	1983 estimate
Investment-type programs.....	146.0	148.0	155.3
Current programs.....	530.8	597.0	631.6
Unclassified.....	-19.6	-19.6	-29.3
Total.....	657.2	725.3	757.6

The Federal Government has never had a capital budget in the sense of financing capital or investment-type programs separately from current expenditures. While the application of accounting concepts for capital budgeting is difficult for private sector entities, it is much more so for the public sector. For example, the Federal Government holds vast amounts of land and controls offshore areas; both have potential value as sources of either timber, oil, or minerals. These assets do not have a known or easily estimated market value. Defense procurement poses similar problems in using capital accounting. A capital budget would pose formidable accounting problems in the measurement of depreciation on Government property, especially weapons. Moreover, there would be severe problems in the use of a capital budget. It would be misleading as a measure of the Government's effect on the demand for economic resources. The deficit of a capital budget could not be used as an indication of the demands that Federal borrowing requirements place on the credit market. It might also suggest that programs with intensive expenditures for physical assets, such as construction, are better than those for which future benefits cannot be accurately capitalized, such as education or defense research and development. Like-

wise, physical assets might be favored relative to current operations in any given program because deficit financing for capital purposes could be easier to justify.

There are inevitable classification difficulties in preparing the kind of analysis presented here. In the case of a few programs—such as general revenue sharing—the recipients are free to utilize the funds for either investment-type or current purposes. In such cases, this analysis classifies the outlays in the category where most of the outlays are expected to occur.

Some programs could logically be put in more than one subcategory within these broader categories. For example, grants for construction of education facilities not only finance the acquisition of physical assets but also are an important element in the conduct of education and training. In cases such as this, the outlays are classified in the subcategory that is most "capital-like" and therefore appears first in the special analysis structure (the order goes from loans to construction and rehabilitation, acquisition of major equipment, conduct of research and development, etc.).

The classification structure used in compiling information for this analysis is designed primarily to distinguish investment-type outlays from current outlays. It does not provide a ready source of information on total outlays or other forms of assistance affecting particular sectors of the economy. For example, the category "aids to agriculture, commerce, and transportation" reflects current benefits, such as subsidies for operating expenses of air, water, and rail transportation activity. It does not include related subsidies for the construction of private merchant ships, which are investment-type outlays included under "acquisition of major equipment", nor does it include assistance provided by the Federal Government through loan guarantees, tax expenditures, or other methods. Although not measured in this analysis, guaranteed loans, tax expenditures, and other provisions of the tax code are methods by which the Federal Government can affect the type and amount of public and private investment. For example, federally guaranteed loans are substitutes for outlays or direct loans and can result in the creation of certain assets in place of others.¹

The four tables presented in this analysis divide outlays between investment-type and current uses according to the classification categories described below. Table D-1 divides outlays between national defense and civil programs. Table D-2 separates outlays by grants-in-aid,² loans, and other direct Federal programs. This table does not distinguish between defense and civil outlays. Tables D-3 and D-4 correspond to tables D-1 and D-2, respectively, and give further detail. Most of the off-budget outlays (shown as addendum items) are for loans and are, therefore, for investment-type activity.³

¹ Additional information on guaranteed loan programs and tax expenditures can be found in separate publications entitled Special Analysis F, "Federal Credit Programs" and Special Analysis G, "Tax Expenditures", respectively.

² Grants-in-aid are resources provided by the Federal Government in support of State and local programs of governmental service to the public. A separate publication, Special Analysis H, "Federal Aid to State and Local Governments," discusses grants-in-aid in greater detail.

³ See Part 6 of the Budget for a discussion of off-budget Federal entities.

The remainder of the text discusses in greater detail the components and rationale for classifying the various types of budget outlays. For each type of outlay classified in the investment category the manner is shown whereby that type yields benefits in the future, in the form of either physical or financial assets or other less tangible benefits. The remaining outlays (except for the allowances) are classified by definition as current.

Investment-type programs.—Total investment-type outlays are estimated to increase from \$148.0 billion in 1982 to \$155.3 billion in 1983. About \$2.9 billion in 1983 outlays are for loans and financial investments, \$90.2 billion are for the acquisition, construction, or rehabilitation of physical assets, and \$62.2 billion are for the conduct of education, training, research and development, and other investment-type programs. Defense investment-type outlays are primarily for the acquisition of major equipment and other physical assets, and for research and development. Civil programs, which amount for 40 percent of total investment-type outlays, are primarily for construction and rehabilitation of physical assets and the conduct of education, research, and development.

Loans and financial investments.—A loan creates a financial asset; if made at competitive market rates, the value of the asset equals to the outlay. For domestic loans, the Government's asset is matched by the liability of the private sector. Most Federal domestic loans finance the acquisition or improvement of either physical assets or human capital. This is especially true for loans in the commerce and housing credit, education, and transportation functions. Loans to foreign borrowers are an increase in financial assets held by the United States. Most foreign loans are for economic development programs or the promotion of U.S. exports, including military equipment and farm commodities.

Net loan outlays are estimated to total \$1.6 billion in 1983. This figure is less than the volume of new loans made in a given year because outlays for new loans are offset by loan repayments, or by sales of loans (so-called "loan asset sales") to the private sector or to the Federal Financing Bank. Budget outlays for financial investments are estimated to be \$1.3 billion in 1983 and almost entirely go to international organizations. Off-budget loans are estimated to be \$12.3 billion in 1983. Federal direct and guaranteed loan programs are discussed in greater detail in Special Analysis F, "Federal Credit Programs."

Physical assets.—The benefits provided by the construction and rehabilitation of physical assets, the acquisition of major equipment, and the establishment of commodity inventories are of a long-term nature. Budget outlays designed specifically to purchase such assets are treated as investment-type outlays regardless of whether the asset is owned by the Federal Government, or by State, local, or private entities. Total outlays for physical assets are estimated at \$90.2 billion in 1983; of this amount \$61.6 billion is for national defense. Most national defense outlays for physical assets are for the procurement of military equipment. A large portion of Federal outlays for nondefense physical assets is in the form of grant-in-aid to State and local governments, especially for construction programs such as highways, mass transit, and pollution control facilities. Outlays for the purchase of commodity inventories in 1982 and 1983 are

lower than in 1981 by approximately \$2.8 billion. This decrease is caused by legislation which shifted the purchases of oil for the strategic petroleum reserve to off-budget status. Off-budget investment-type outlays reflect a corresponding increase.

Conduct of research and development.—Outlays for research and development increase our base of knowledge and apply that knowledge for its future benefit to the Nation. Total outlays for the conduct of research and development are estimated at \$41.3 billion in 1983. Outlays for defense research and development are estimated to increase by approximately 20 percent over 1982 and are more than one-half of research and development outlays. Outlays for non-defense research and development are estimated to decrease by approximately 4 percent. Outlays for health, energy, and space technology research and development account for approximately one-half of non-defense research and development outlays in 1983. Additional information about Federal research and development programs is contained in Special Analysis K, "Research and Development."

Conduct of education and training.—Outlays classified in this category are designed to add to the stock of human capital by developing a more skilled and productive labor force. These outlays are largely for direct payments to individuals, such as scholarships, and grants to institutions and State and local governments. As with physical assets, the benefits accrue over a considerable period of time. Outlays are estimated at \$17.4 billion in 1983, of which \$7.5 billion are in the form of grants to State and local governments.

Collection of information.—This category includes outlays for collection of information, censuses, topographic or other natural resource surveys, and programs that benefit both the present and future by establishing a base of knowledge. Outlays are estimated at \$1.3 billion and \$1.2 billion in 1982 and 1983, respectively.

International development.—Foreign assistance for general international economic development is included in this category. These outlays, which are expected to benefit U.S. interests by enhancing the economic development of friendly foreign nations, are estimated to be \$2.3 billion in 1983.

Current programs.—Programs that provide benefits in the current year are divided into several subcategories briefly discussed below. Outlays classified as current may in part be used by their recipients for investment-type purposes. However, the principal effect of these outlays is to provide short-term benefits—such as unemployment compensation, and retirement and disability payments—rather than providing the means for future benefits. Total outlays for current programs are estimated to increase from \$597.0 billion in 1982 to \$631.6 billion in 1983 and are more than three-quarters of 1983 estimated budget outlays. About \$134.7 billion of current outlays in 1983 are for defense programs and \$496.9 billion for civil programs.

Outlays for "provision of benefits" is the largest category in the budget. Total outlays are estimated to increase from \$361.0 billion in 1982 to \$376.9 billion in 1983. Social security and other disability and retirement benefits are estimated to be \$222.1 billion of the total in 1983. The decrease in 1983 railroad retirement and disability benefits is due to the administration's proposal to restore the responsibility for railroad employee's pension benefits to the private sector. Other

major outlays in this category are for medicare, medicare, unemployment, and food and nutrition programs.

Current outlays for "social services and related programs" fund human development and child welfare services, and employment programs. Outlays in 1983 are estimated to be \$7.6 billion, of which \$6.0 billion are in the form of grants to State and local governments.

"Aids to agriculture, commerce, and transportation" are primarily for direct Federal activities, including price support, small business and transportation programs. Outlays for these programs are estimated to decrease from \$17.4 billion in 1981 to \$17.0 billion in 1982 and \$13.3 billion in 1983. Outlays in 1981 include a one-time payment of \$2.1 billion to the Penn Central Corporation for properties transferred to Conrail in 1976.

Other current outlays are largely for operation of the Federal Government, including: the repair, maintenance, and operation of physical assets (primarily defense related); regulatory and law enforcement activities; net interest; and other administrative or operating expenses. Because proprietary receipts from the public—such as receipts from the sale of power and other utilities, the sale of publications and reproductions, and the sale of timber and other natural land products—are offsets against the outlays to which they most nearly apply, net outlays for the operation of the Federal Government are negative in some cases.

Unclassified.—The unclassified category has been redefined to encompass activity not previously included. It now includes the undistributed offsetting receipts (except interest) and the allowances for unallocated budget savings. In addition, most payments from the government to itself and the associated offsetting collections have been moved to this category. This has been done to reduce the confusion involved in deriving the true program level in the categories discussed above. Outlays for this category in 1982 and 1983 are estimated to be -\$19.6 billion and -\$29.3 billion, respectively.

TABLE D-1. SUMMARY OF INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS

	1981 actual	1982 estimate	1983 estimate
[In millions of dollars]			
NATIONAL DEFENSE			
Investment-type programs:			
Construction and rehabilitation	2,833	3,561	4,501
Acquisition of major equipment and other physical assets	36,867	43,224	57,150
Conduct of research and development	16,946	20,384	24,453
Other investment-type programs	187	113	293
Subtotal, investment-type programs	56,832	67,282	86,397
Current programs:			
Provision of benefits	13,784	15,084	16,562
Repair, maintenance, and operation of physical assets	53,585	62,525	67,370
Other current programs	35,563	42,606	50,738
Subtotal, current programs	102,933	120,215	134,671
Total, national defense	159,765	187,497	221,068
CIVIL			
Investment-type programs:			
Loans and financial investments	5,678	5,433	2,931
Construction and rehabilitation	28,944	28,510	25,747
Acquisition of physical assets	7,495	3,561	2,788
Conduct of research and development	17,231	17,470	16,846
Conduct of education and training	26,124	22,419	17,298
Other investment-type programs	3,650	3,301	3,280
Subtotal, investment-type programs	89,122	80,695	68,890
Current programs:			
Provision of benefits	309,239	345,882	360,356

TABLE D-1. SUMMARY OF INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS—Continued

	1981 actual	1982 estimate	1983 estimate
[In millions of dollars]			
Social services and related programs	9,174	8,440	6,710
Aids to agriculture, commerce, and transportation	17,357	16,972	13,297
Repair, maintenance, and operation of physical assets	-711	-1,532	-2,967
General purpose fiscal assistance	7,092	6,733	7,015
Regulation, control, and law enforcement	7,823	7,493	7,138
Net interest	68,556	83,015	96,414
Other current programs	9,372	9,738	8,979
Subtotal, current programs	427,903	476,740	496,942
Unclassified	-19,585	-19,602	-29,262
Total, civil	497,439	537,833	536,570
Grant total	657,204	725,331	757,638
ADDENDUM			
Off-budget Federal entities (civil):			
Loans	20,999	16,419	12,295
Other investment-type outlays	2	2,848	2,801
Aids to agriculture, commerce, and transportation	3	422	606
Total, off-budget Federal entities	21,005	19,689	15,701

TABLE D-2. SUMMARY OF BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS

	1981 actual	1982 estimate	1983 estimate
[In millions of dollars]			
GRANTS-IN-AID			
Investment-type programs:			
Construction, rehabilitation, and acquisition of physical assets	22,219	21,659	19,468
Conduct of education and training	14,445	10,919	7,477
Other investment-type programs	354	276	217
Subtotal, investment-type programs	37,018	32,853	27,163
Current programs:			
Provision of benefits	39,421	41,355	39,211
Social services and related programs	8,059	7,425	5,966
Aids to agriculture, commerce, and transportation	1,458	1,225	904
General purpose fiscal assistance	7,133	6,777	7,074
Regulation, control, and law enforcement	684	583	441
Other current programs	990	1,002	660
Subtotal, current programs	57,744	58,367	54,255
Total, grants-in-aid	94,762	91,220	81,418
Loans	4,078	4,127	1,592
DIRECT FEDERAL PROGRAMS			
Investment-type programs:			
Construction and rehabilitation	9,954	10,829	11,140
Acquisition of major equipment and other physical assets	37,325	43,122	57,095
Acquisition of commodity inventories and other physical assets	6,640	3,247	2,482
Conduct of research and development	33,926	37,635	41,106
Conduct of education and training	11,688	1,508	9,892
Other investment-type programs	5,325	4,656	4,817
Subtotal, investment-type programs	104,858	110,998	126,532
Current programs:			
Provision of benefits	283,602	319,611	337,707
Social services and related programs	1,115	1,014	744
Aids to agriculture, commerce, and transportation	15,900	15,747	12,393
Repair, maintenance, and operation of physical assets	52,354	60,345	64,000
Regulation, control, and law enforcement	7,139	6,909	6,698
Net interest	68,556	83,015	96,414
Other current programs	44,424	51,947	59,403
Subtotal, current programs	473,091	538,588	577,358
Total, direct Federal programs	577,949	649,586	703,890
Unclassified	-19,585	-19,602	-29,262
Grand total	657,204	725,331	757,638

TABLE D-2. SUMMARY OF BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS—Continued

[In millions of dollars]			
	1981 actual	1982 estimate	1983 estimate
ADDENDUM (DIRECT FEDERAL PROGRAMS)			
Off-budget Federal entities:			
Loans	20,999	16,419	12,295
Other investment-type programs	2	2,848	2,801
Aid to agriculture, commerce, and transportation	3	422	606
Total, off-budget Federal entities	21,005	19,689	15,701

TABLE D-3. INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS

[In millions of dollars]			
	1981 actual	1982 estimate	1983 estimate
NATIONAL DEFENSE INVESTMENT-TYPE PROGRAMS			
Construction and rehabilitation of physical assets:			
Military construction	2,295	2,650	3,768
Family housing	102	185	3
Atomic energy defense activities	437	725	729
Subtotal, construction and rehabilitation of physical assets	2,833	3,561	4,501
Acquisition of major equipment:			
Procurement	35,191	41,325	55,144
Atomic energy defense activities and other	1,220	1,439	1,761
Subtotal, acquisition of major equipment	36,411	42,764	56,904
Other physical assets	455	460	246
Conduct of research and development	16,946	20,384	24,453
Other investment-type programs	187	113	293
Subtotal, investment-type programs	56,832	67,282	86,397
NATIONAL DEFENSE CURRENT PROGRAMS			
Provision of benefits:			
Retired military personnel	13,729	15,000	16,471
Other	55	85	91
Subtotal, provision of benefits	13,784	15,084	16,562
Repair, maintenance, and operation of physical assets:			
Department of Defense, Military	53,379	62,282	67,106
Other	206	243	264
Subtotal, repair, maintenance, and operation of physical assets	53,585	62,525	67,370
Other current programs:			
Military personnel	35,831	37,610	43,856
Allowance for civilian and military pay raises		5,081	4,285
Other national defense	-267	85	2,598
Subtotal, other current programs	35,563	42,606	50,738
Subtotal, current programs	102,933	120,215	134,671
Total, national defense	159,765	187,497	221,068
CIVIL INVESTMENT-TYPE PROGRAMS			
Loans:			
International affairs	2,904	2,583	3,289
Agriculture	-1,808	948	
Mortgage credit and thrift insurance	292	-149	-1,216
Aids to commerce	385	107	-75
Transportation	169	137	114
Disaster relief	1,100	-144	-414
Other community and regional development	141	46	83
Education	404	536	639
Other	501	72	-819
Subtotal, loans	4,088	4,137	1,602
Other financial investments:			
International development	1,330	1,139	1,293
Other	260	157	36
Subtotal, other financial investments	1,589	1,297	1,329

TABLE D-3. INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS—Continued

[In millions of dollars]			
	1981 actual	1982 estimate	1983 estimate
Construction and rehabilitation of physical assets:			
Highways	8,842	8,015	8,100
Mass transportation	2,593	2,726	2,410
Air transportation	776	809	748
Other transportation	131	132	121
Community development block grants	4,042	4,005	3,350
Other community and regional development	1,751	1,718	1,351
Pollution control and abatement	3,883	4,054	3,354
Water resources	2,356	2,284	2,192
Other natural resources and environment	1,326	1,374	1,137
Energy	2,279	2,228	1,872
Veterans hospitals and other health facilities	567	635	654
Other	417	530	456
Subtotal, construction and rehabilitation of physical assets	28,944	28,510	25,747
Acquisition of major equipment:			
Transportation	367	438	286
Other	573	-59	-79
Subtotal, acquisition of major equipment	940	379	207
Commodity inventories:			
Energy	3,352	491	565
Agriculture	990	423	
Other		29	
Subtotal, commodity inventories	4,342	943	565
Other physical assets	2,213	2,240	2,016
Conduct of research and development	17,231	17,470	16,846
Conduct of education and training:			
Foundation for Education Assistance:			
Higher education	6,253	6,227	5,524
Elementary, secondary, and vocational education	6,008	6,164	4,772
Other	277	306	302
Subtotal, Foundation for Education Assistance	12,538	12,693	10,597
Veterans readjustment benefits	2,304	1,959	1,647
Training and employment programs	7,755	4,343	2,248
Health training	1,123	986	908
Other education and training	2,404	2,437	1,898
Subtotal, conduct of education and training	26,124	22,419	17,298
Collection of information:			
Census Bureau	248	158	153
Other	1,218	1,099	1,017
Subtotal, collection of information	1,466	1,257	1,170
International development	2,184	2,044	2,110
Subtotal, investment-type programs	89,122	80,695	68,890
CIVIL CURRENT PROGRAMS			
Provision of benefits:			
Retirement, survivor, and disability benefits:			
Social Security:			
Retirement and survivor benefits	119,413	134,918	150,238
Disability benefits	16,853	17,662	18,415
Subtotal, Social Security	136,267	152,580	168,654
Civil Service:			
Retirement and survivor benefits	14,046	15,412	16,838
Disability benefits	3,158	3,438	3,718
Subtotal, Civil Service	17,204	18,850	20,556
Railroad retirement and disability benefits	5,294	5,328	
Veterans disability benefits	8,670	9,675	10,351
Other retirement and disability benefits	1,336	1,988	1,941
Subtotal, retirement, survivor, and disability benefits	168,771	188,420	201,502
Other provisions of benefits:			
Veterans pension benefits	3,755	3,940	4,014
Medicare	41,242	48,296	54,127
Medicaid	16,833	17,823	17,006
Other health benefits	1,032	1,236	1,691
Unemployment compensation	18,392	23,689	21,159

TABLE D-3. INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS—Continued

[In millions of dollars]			
	1981 actual	1982 estimate	1983 estimate
Housing programs	7,548	9,520	10,089
Food and nutrition programs	15,706	15,015	13,317
Supplemental security income	6,452	7,073	8,028
Assistance payments program	7,203	6,671	5,412
Other	6,123	6,725	4,653
Subtotal, other provisions of benefits	124,285	139,988	139,495
Direct provision of services:			
Hospital and medical care for veterans	5,947	6,547	6,925
Other health services	1,092	972	915
Other	280	313	861
Subtotal, direct provision of services	7,319	7,831	8,702
Administrative expenses:			
Social Security retirement and disability	1,689	1,899	2,161
Medicare	1,247	1,255	1,225
Unemployment compensation and other	5,929	6,489	7,272
Subtotal, administrative expenses	8,865	9,643	10,657
Subtotal, provision of benefits	309,239	345,882	360,356
Social services and related programs:			
Human development services	2,793	2,247	2,350
Employment programs	1,476	1,085	508
Social services and child welfare services	2,571	2,912	1,974
Other	2,334	2,197	1,878
Subtotal, social services and related programs	9,174	8,440	6,710
Aids to agriculture, commerce, and transportation:			
Agriculture	4,650	5,551	2,714
Postal Service	1,343	619	500
Small business assistance	492	540	595
Mortgage credit and thrift insurance	1,111	1,538	1,785
Ground transportation	4,705	3,211	1,881
Air transportation	2,270	2,137	2,411
Water transportation and waterways	1,584	1,750	1,558
Other	1,202	1,624	1,854
Subtotal, aids to agriculture, commerce, and transportation	17,357	16,972	13,297
Repair, maintenance and operation of physical assets:			
Natural resources:			
Water resources	823	782	574
Conservation and land management	433	422	357
Recreation resources and other	668	783	885
Offsetting receipts	-1,485	-2,232	-3,219
Subtotal, natural resources	467	-246	-1,403
Energy (net of naval petroleum reserve and other receipts)	-1,295	-1,609	-1,684
Indian tribal receipts	-315	-349	-372
Other	433	673	492
Subtotal, repair, maintenance, and operation of physical assets	-711	-1,532	-2,967
General purpose fiscal assistance:			
General revenue sharing	5,137	4,570	4,567
Officer general purpose grants-in-aid	725	759	759
Shared revenues	1,230	1,404	1,689
Subtotal, general purpose fiscal assistance	7,092	6,733	7,015
Regulation, control, and law enforcement:			
Regulatory and inspection activities:			
Natural resources and environment	1,098	1,010	914
Transportation	860	858	907
Health	701	682	689
Energy	631	638	544
Agriculture	330	308	256
Savings institutions	-1,738	-1,830	-2,015
Tax collections	568	619	765
Other	832	832	632
Subtotal, regulatory and inspection activities	3,283	3,127	2,693
Law enforcement activities:			
Federal law enforcement	2,366	2,443	2,595
Federal litigative and judicial activities	1,479	1,377	1,406
Federal correctional activities	343	351	374
Other law enforcement assistance	353	196	71
Subtotal, law enforcement activities	4,540	4,366	4,445
Subtotal, regulation, control, and law enforcement	7,823	7,493	7,138

TABLE D-3. INVESTMENT, OPERATING, AND OTHER BUDGET OUTLAYS—Continued

	[In millions of dollars]		
	1981 actual	1982 estimate	1983 estimate
Net interest:			
Interest on the public debt	95,333	155,700	132,900
Other interest	-12,967	-16,605	-20,364
Interest received by trust funds	-13,810	-16,080	-16,122
Subtotal, net interest	68,556	83,015	96,414
General Administration:			
International affairs	1,176	1,829	2,107
Legislative branch	1,058	1,235	1,262
Other general government	2,946	3,163	3,079
Other	1,047	807	615
Subtotal, general administration	6,228	7,034	7,063
Other current programs:			
International security assistance	2,880	3,081	2,619
Allowances for civilian agency pay raises		376	743
Other	265	-753	-1,446
Subtotal, other current programs	3,144	2,704	1,916
Subtotal, current programs	427,903	476,740	496,942
Unclassified:			
Fraud, waste, and abuse		-1,000	-1,000
Employer share, employee retirement	-6,371	-7,560	-8,353
Offshore oil receipts	-10,138	-7,861	-18,000
Non-compulsory medicare premiums	-12,921	-18,194	-19,806
Other unclassified	9,845	15,013	17,897
Subtotal, unclassified	-19,585	-19,602	-29,262
Total, civil	497,439	537,833	536,570
Grand total	657,204	725,331	757,638

ADDENDUM

Off-budget Federal entities (civil):			
	[In millions of dollars]		
	1981 actual	1982 estimate	1983 estimate
Investment-type programs:			
Loans (see Table D-4)	20,999	16,419	12,295
Strategic petroleum reserve		2,834	2,775
Other investment-type programs	2	13	27
Subtotal, investment-type programs	21,001	19,267	15,096
Current:			
Aids to agriculture, commerce, and transportation:			
Postal Service	86	540	687
Railways	-47	12	9
Other	-36	-130	-90
Subtotal, aids to agriculture, commerce and transportation	3	422	606
Subtotal, current programs	3	422	606
Total, off-budget Federal entities	21,005	19,689	15,701

TABLE D-4. BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS

	[In millions of dollars]		
	1981 actual	1982 estimate	1983 estimate
GRANTS-IN-AID			
Investment-type programs:			
Construction and rehabilitation of physical assets:			
Highways	8,835	8,000	8,099
Mass transportation	2,593	2,726	2,410
Other transportation	469	475	374
Pollution control and abatement	3,881	4,050	3,350
Other natural resources and environment	277	305	196
Community development block grants	4,042	4,005	3,350
Other community and regional development	1,531	1,433	1,153
Other construction	194	248	176
Subtotal, construction and rehabilitation of physical assets	21,823	21,242	19,107
Acquisition of equipment and other physical assets	396	417	361
Conduct of research and development	251	220	193
Conduct of education and training: Employment and training assistance	6,778	3,322	1,531

TABLE D-4. BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS—Continued

	[In millions of dollars]		
	1981 actual	1982 estimate	1983 estimate
Elementary and secondary education	5,877	6,031	4,694
Other	1,790	1,566	1,253
Subtotal, conduct of education and training	14,445	10,919	7,477
Collection of information	103	57	24
Subtotal, investment-type programs	37,018	32,853	27,163
Current programs:			
Provision of benefits:			
Medicaid	16,833	17,823	17,006
Nutrition and food programs	4,581	4,103	3,961
Assistance payments	7,203	6,671	5,412
Housing payments and subsidies	4,015	4,754	4,884
Other	3,509	4,268	3,652
Administrative expenses: Unemployment compensation and other	3,281	3,737	4,296
Subtotal, provision of benefits	39,421	41,355	39,211
Social services and related programs:			
Employment programs	1,201	832	470
Human development services	2,707	2,168	2,270
Social services and child welfare services	2,571	2,912	1,974
Other	1,579	1,514	1,252
Subtotal, social services and related programs	8,059	7,425	5,966
Aids to agriculture, commerce, and transportation:			
Transportation	1,453	1,220	902
Other	4	5	2
Subtotal, aids to agriculture, commerce, and transportation	1,458	1,225	904
Repair, maintenance, and operation of physical assets	520	648	403
General purpose fiscal assistance:			
General revenue sharing	5,137	4,570	4,567
Shared revenues	1,230	1,404	1,689
Other	766	803	818
Subtotal, general purpose fiscal assistance	7,133	6,777	7,074
Regulation, control, and law enforcement:			
Law enforcement assistance	257	196	76
Other	427	388	365
Subtotal, regulation, control, and law enforcement	684	583	441
Other current programs	470	364	256
Subtotal, current programs	57,744	58,367	54,255
Total, grants-in-aid	94,762	91,220	81,418

LOANS

International affairs	2,904	2,583	3,289
Energy supply	100	97	119
Agriculture	-1,808	948	
Mortgage credit and thrift insurance	292	-149	-1,216
Commerce and housing credit	378	99	-83
Transportation	169	137	114
Small Business Administration, disaster loans	1,101	-144	-414
Education	404	536	639
Veterans	217	-41	-1,025
Other	321	-60	168
Total, loans	4,078	4,127	1,592

DIRECT FEDERAL PROGRAMS

Investment-type programs:			
Financial investments	1,589	1,297	1,329
Construction and rehabilitation of physical assets:			
National defense	2,800	3,522	4,454
Water resource projects	2,264	2,215	2,143
Other natural resources and environment	1,121	1,143	995
Energy	2,279	2,228	1,872
Transportation	446	480	497
Veterans hospitals and other health facilities	552	574	637
Other construction	492	667	543
Subtotal, construction and rehabilitation of physical assets	9,954	10,829	11,140
Acquisition of major equipment:			
National defense	36,411	42,764	56,904

TABLE D-4. BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS—Continued

	[In millions of dollars]		
	1981 actual	1982 estimate	1983 estimate
Other	914	358	191
Subtotal, acquisition of major equipment	37,325	43,122	57,095
Commodity inventories	4,797	1,403	811
Other physical assets	1,843	1,844	1,671
Conduct of research and development	33,926	37,635	41,106
Conduct of education and training:			
Assistance to veterans	2,533	2,178	1,899
Higher education	6,246	6,279	5,585
Elementary and secondary education	395	391	328
Employment and training assistance	911	934	640
Health training	672	549	437
Other	931	1,177	1,003
Subtotal, conduct of education and training	11,688	11,508	9,892
Collection of information	1,385	1,222	1,171
International development	2,351	2,138	2,317
Subtotal, investment-type programs	104,858	110,998	126,532
Current programs:			
Provision of benefits:			
Social Security retirement and disability	136,267	152,580	168,654
Other retirement and disability benefits	50,043	54,864	53,425
Medicare	41,242	48,296	54,127
Medical care for veterans	5,947	6,547	6,925
Other health	1,126	1,023	938
Unemployment compensation	18,392	23,689	21,159
Food and nutrition programs	10,841	10,493	8,990
Housing payments and subsidies	3,590	4,805	6,034
Supplemental security income	6,407	7,050	8,012
Earned income tax credit	1,318	1,254	1,180
Other	2,846	3,103	1,900
Administrative expenses:			
Social Security retirement and disability	1,689	1,899	2,161
Medicare	1,247	1,255	1,225
Nutrition and food programs and other	2,648	2,752	2,976
Subtotal, administrative expense	5,584	5,907	6,362
Subtotal, provision of benefits	283,602	319,611	337,707
Social services and related programs	1,115	1,014	744
Aids to agriculture, commerce, and transportation:			
Agriculture	4,650	5,551	2,714
Postal Service	1,343	619	500
Small business assistance	492	540	595
Mortgage credit and thrift insurance	1,109	1,536	1,785
Ground transportation	3,255	1,994	981
Air transportation	2,270	2,137	2,411
Water transportation and waterways	1,035	1,176	1,057
Other	1,746	2,194	2,350
Subtotal, aids to agriculture, commerce, and transportation	15,900	15,747	12,393
Repair, maintenance, and operation of physical assets:			
National defense	53,585	62,525	67,370
Other (includes offsetting collections)	-1,231	-2,180	-3,370
Subtotal, repair, maintenance, and operation of physical assets	52,354	60,345	64,000
Regulation, control, and law enforcement	7,139	6,909	6,698
Net interest	68,556	83,015	96,414
Other current programs:			
Military personnel	35,831	37,610	43,856
Allowance for Department of Defense pay raises		5,081	4,285
Other national defense	-309	-128	2,539
Allowance for civilian agency pay raises		376	743
Other	8,902	9,008	7,980
Subtotal, other current programs	44,424	51,947	59,403
Subtotal, current programs	473,091	538,588	577,358

TABLE D-4. BUDGET OUTLAYS FOR GRANTS-IN-AID, LOANS, AND DIRECT FEDERAL PROGRAMS—Continued

	1981 actual	1982 estimate	1983 estimate
Total, direct Federal programs.....	577,949	649,586	703,890
Unclassified:			
Fraud, waste, abuse.....		-1,000	-1,000
Employer share, employee retirement.....	-6,371	-7,560	-8,353
Offshore oil receipts.....	-10,138	-7,861	-18,000
Non-compulsory medicare premiums.....	-12,921	-18,194	-19,806
Other unclassified.....	9,845	15,013	17,897
Subtotal, unclassified.....	-19,585	-19,602	-29,262
Grand total.....	657,204	725,331	757,638
ADDENDUM (DIRECT FEDERAL)			
Off-budget Federal entities:			
Investment-type programs—Loans:			
International.....	1,940	2,644	3,709
Energy.....	4,899	5,740	5,919
Agriculture.....	5,790	1,066	-394
Mortgage credit and thrift insurance.....	4,164	3,473	1,031
Transportation.....	31	-42	-2
Community and regional develop- ment.....	1,200	1,307	947
Education.....	1,955	700	
Income security.....	810	1,224	969
Other.....	211	286	115
Subtotal, loans.....	20,999	16,419	12,295
Other investment-type programs:			
Strategic petroleum reserve.....		2,834	2,775
Other.....	2	13	27
Subtotal, other investment type.....	2	2,848	2,801
Subtotal, investment.....	21,001	19,267	15,096
Current:			
Aids to agriculture, commerce, and transportation:			
Postal Service.....	86	540	687
Railways.....	-47	12	9
Other.....	-36	-130	-90
Subtotal, aids to agriculture, commerce, & transportation.....	3	422	606
Subtotal, current.....	3	422	607
Total, off-budget Federal enti- ties.....	21,005	19,689	15,701

Mr. EXON. Mr. President, I ask unanimous consent that I may be allowed to proceed for not to exceed 10 minutes to discuss the amendment that is presently before the Senate without the time being charged.

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

Mr. EXON. Mr. President, I have been listening with great interest for the last several days to the debate, and a very interesting debate it is, about the constitutional amendment for a balanced budget.

I intend to offer tomorrow the following amendment. It is a very brief one. It is an amendment very much to the point, not unlike amendments that have been offered previously without success during this debate.

The amendment that I intend to offer has for the purpose and I quote:

To require the President to submit an advisory statement of receipts and outlays for each fiscal year to the Congress.

On page 3, between lines 12 and 13 insert the following:

SECTION 1. Prior to each fiscal year, the President shall transmit to the Congress a recommended statement of receipts and outlays for that year. If outlays are greater than receipts the President shall include a statement specifying the reasons why total

outlays for such fiscal year should exceed total receipts for such fiscal year. Such statement submitted by the President shall be used by the Congress in adopting the statement required in Section 2 of this article, in whatever manner the Congress, in its sole discretion, determines.

Remember the succeeding Sections accordingly.

That is the end of the quote from the amendment that I intend to offer.

Mr. President, there have been dire predictions made by those on both sides of the issue before us that indeed if the constitutional amendment of which I am a cosponsor becomes the law of the land dire consequences are going to occur.

I do not happen to agree with that because anyone who reads the amendment before us can readily understand that with a 60-percent vote in either or in both of the Houses we can do anything we want.

Likewise, that might be the Achilles' heel of the constitutional amendment for a balanced budget.

So I do not think anything is cut and dry here.

I still have enough confidence in the institution of Congress to believe that when there is a real emergency of any kind or when the Members of Congress feel that there is an emergency they will indeed have the courage to stand up and vote as they have on many occasions in the past when the vote that is cast here might not be the most popular thing to do.

Therefore, I feel that the constitutional amendment, while not perfect, is possibly a step in the right direction.

Having said that, though, Mr. President, I certainly concede Senators have made some very interesting arguments here, both from the standpoint of attacking this from a statutory provision, as I heard this afternoon. The Senator from Colorado just finished with a very interesting and thoughtful proposal, I thought. I think one thing that has not been sent out very loud and very clear to the American people is that this certainly is not a cure-all amendment.

I think this amendment is being given entirely too much play as the possible answer to our problems of ever-escalating deficits.

Before I came to the Senate, I served in a capacity as Governor of my State where we required a balanced budget—we did it for 8 years in a row—first, because we wanted to, and, second, because we had to under the State constitution.

It never caused the State of Nebraska to go into bankruptcy, but believe me, Mr. President, it put our feet to the fire, both myself as Governor and the members of the Nebraska Legislature, because very simply put it said that after the process has worked its course, after the Governor has submitted a budget, and after the legislature has changed that budget as it saw fit,

and after the legislature has either sustained or overridden the vetoes of spending measures that were sent back to it by the Governor, in the end we had the obligation to raise sufficient amount of taxes to pay for the expenditures that we had jointly authorized. In other words, put in a nutshell, for every \$100 we spent we had the responsibility to raise \$100 in taxes to make sure that the State of Nebraska did not go into debt.

That brings me back, Mr. President, for the very vital reason that I intend to offer the amendment that I read a few minutes ago to the Senate.

I hope the managers of this bill will not brush this aside, as they have brushed aside several other amendments along this line and others. It comes down to me, Mr. President, as a matter of sincerity. Are we sincere about balancing the Federal budget or are we going through game playing?

History might show that even if this is passed by Congress, even if the sufficient number of States ratify this constitutional amendment, in actual practice it might indeed be game playing and it might not work. I am willing to give it a chance though as long as we have fully debated the matter, which I think we have and will be doing in the next 2 days, and so long as those of us who feel sincerely about this have an opportunity to present to our colleagues something we feel is very important.

If we are sincere, and if this is ever going to be workable, if we honestly feel that in the future the constitutional amendment we are going to be voting on this week is going to do something, then I hope all of us will fully understand that it is not going to work unless we have total cooperation between the President of the United States, whoever he is, at whatever time, and those of us here on the Hill. Unless there is cooperation we are never going to achieve the goals we supposedly are advocating in propounding this constitutional amendment.

You can say, if you want, that it is not necessary that the President be involved in the budget-balancing process in the constitutional amendment. You may say that that can be handled afterward in the statutes.

If this amendment is as good as some people seem to think it is, and if it is really going to do something, then I see nothing wrong with requiring the President to at least send us recommendations for a balanced budget each fiscal year or spell out why he cannot do that. Indeed, the President of the United States last week, in response to a question that I put to him, sitting immediately across the table from him, about his objections to addressing the matter in the constitutional amendment that the President

be required to submit a balanced budget or an explanation of why that was not possible, the President of the United States, Ronald Reagan, said, "I think that is a good idea." Let me repeat, the President of the United States said that was a good idea.

There are several of us in this body who are cosponsors of this amendment who think it is a good idea if we are sincere. It would simply say that if this is going to work, and if it is important enough to submit this as a constitutional amendment to the States for ratification, it is also important enough to go the additional two steps, if you will, of spelling out in the constitutional amendment the legitimate responsibilities of the President of the United States, our Chief Executive Officer, which he has in working in cooperation with Congress.

I say these words today, Mr. President, only in hope that there will be a sufficient number of my colleagues listening who will have a chance to read this and see if they can find anything wrong with the wording I have recommended.

The PRESIDING OFFICER. The Senator's 10 minutes yielded to him by unanimous consent have expired.

Mr. EXON. I thank the Chair and I yield the floor.

Mr. HATCH. Mr. President, I rise in opposition to the amendment offered by the gentleman from Colorado (Mr. HART). Let me summarize my concerns:

First, it would substitute a simple statute for the present amendment and would be replete with the difficulties of such an approach.

Second, the same economic problems and economic difficulties arise from borrowing for capital outlays as for operating outlays. A deficit is a deficit, no matter what we call it. No matter what we describe it as, it will lead to higher future inflation, unemployment, or interest rates.

Third, it is important to clarify that Senate Joint Resolution 58 does not prohibit capital budgets; it would simply require that such a budget be subject to the same constitutional constraints as operating budgets.

Fourth, there is no effective means of distinguishing between capital outlays and operating outlays. One such rule of thumb would label a capital outlay as any expenditure which contributes to an asset having a useful life in excess of 1 year. By this rule, building and equipment outlays surely would qualify—but so would outlays for research, for education, and for medical care. These later items constitute a significant portion of the Federal budget.

Fifth, the private sector's use of capital investment reflects application of a profit criterion under which such expenditures are carried to the point of profit maximization for the firm, and

not beyond. No such criterion exists for the Federal Government and, therefore, there exists no comparable natural limit to the Federal propensity to spend even on an identified list of projects.

Sixth, private families will borrow for capital items: home and automobile. Such items represent one-time, infrequent purchases, with a family going into debt in 1 year and repaying that debt in future years. The analogy to Federal operations would be a deficit in the first year and continuing surpluses in subsequent years.

Seventh, the Federal Government undertakes capital outlays in every year. To argue that the Federal Government should create an exemption for capital outlays in the face of this continuing stream of expenditures would be to justify a continuing stream of deficits.

Consider a community which must build a new school, or replace an existing school, as a one time expenditure. One can argue that payment for the capital cost should be shared by the taxpayers over the useful life of the school.

By contrast, a growing community which must build a new school in every year sensibly pays for each school in full in the year in which built. Only in this way could the community's tax burden be stabilized over time.

The Federal Government is analogous to the growing community not to the single, one-shot outlay community. Every year is the occasion for items of capital outlays. Stabilization of the Federal tax burden generally requires payment in full during that year.

Eight, if the gentleman was genuinely desirous of a true capital budget, I would suggest that we might be getting something that he did not really want. Does he want a budget that would require the depreciation of highways and bridges and dams and buildings and office equipment and post offices? I doubt that he would. That is the implication of an honest and true capital budget.

Ninth, the proposed amendment does not contain adequate restraints on the budget procedures, thus opening up the possibility for some accounting sleight of hand and the opportunity for Congress to avoid its duty to balance the budget.

For these reasons, Mr. President, I oppose this amendment. It is clear to me that this amendment would only further delay our efforts to establish a balanced budget.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I just wondered would the Senator object to charging the time on his time on the amendment when he brings it up? We are going to take but a few moments.

Mr. EXON. When I addressed the Presiding Officer and sought unanimous consent from the Chair I asked that I be allowed to proceed without the time on the amendment being charged to either side, and I would prefer to let that stand.

Mr. THURMOND. That will be all right.

Mr. President, are there any more amendments to be brought up by anybody, pro or con? We are ready for any amendment if anybody would like to bring one up.

Mr. President, I suggest the absence of a quorum to be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I observe the appearance on the floor of the distinguished and able Senator from New York (Mr. MOYNIHAN). I understand he has an amendment and I would be very pleased to have him proceed with it.

AMENDMENT NO. 1928

Mr. MOYNIHAN. Mr. President, I call up printed amendment No. 1928.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an amendment numbered 1928.

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

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

The amendment is as follows:

On page 3, line 15, strike the "." and insert the following " , except that total outlays may exceed total receipts by the same percentage by which total outlays for national defense exceeds the total outlays for that purpose in the preceding fiscal year."

On page 3, line 17, strike the "." and insert the following " , subject to the exception stated above."

Mr. MOYNIHAN. Mr. President, this amendment in a sense, is a companion measure to one I proposed last Thursday, which provided that the proposed constitutional amendment would not be permitted to dismantle or significantly impair the entitlements individual citizens obtain under the Social Security Act.

Today, I turn to the question of national defense. In a modification of the printed amendment, it simply provides that total outlays may exceed

total receipts by the same amount by which total outlays for national defense exceed the total outlays for that purpose in the preceding fiscal year.

The elemental perception here is that expenditures for national defense—as the distinguished Presiding Officer who served so ably and gallantly as Secretary of the Navy will know and will be able to testify—are not, by their nature, subject to any easy extrapolation or steady progression one year from the next. The requirements of national security cannot be plotted as a series of planned and orderly outlays.

For example, could you imagine what outlays for defense in the United Kingdom will be this year, in the aftermath of the wholly unanticipated war in the Falkland Islands?

It is in recognition of the fact of life—that international conflicts cannot be part of economic forecasts—that the authors of this constitutional amendment have included the ominous and unsettling provision that we can suspend it by declaring war. It is—as it has been described in terms of genuine concern on this floor—a measure which almost provides an inducement to declare war. Indeed, at times, it creates the necessity. That is but one of many aspects that trouble us all.

Just by way of preface, I call the attention of the Senate to the most extraordinary defect in this whole proposal: It provides that Congress may suspend a constitutional amendment.

Our Constitution is a singular document. With the exception of Iceland, it is in modern terms the oldest written constitution in the world. It has been amended only 26 times, 10 of those times during the first Congress following its adoption. All but two of these amendments have treated the powers of Government (limiting them or in some very few cases redefining them), the procedures of Government, as in the case of the 11th amendment, or the rights of citizens.

The Constitution is principally an enunciation of the powers of Government and the rights of citizens. And it has been assumed that only through the amending process itself could those rights and powers be changed.

But now we introduce the altogether novel idea that a three-fifths vote of the Congress can suspend the workings of a constitutional amendment. How far are we from the idea that a three-fifths vote of the Congress might suspend the first amendment? You begin such things; you do not know where they will end.

There are further concerns, Mr. President, as one looks beyond the economic issues here and the near universal judgment of the economics profession that this amendment is bad economics.

And bad economics it is. On Friday, I introduced into the RECORD as a role of honor the names of the 1,028 economists who, in May 1930, wrote President Hoover urging that he not sign the Smoot-Hawley tariff. He proceeded to do so anyway. The Smoot-Hawley tariff fulfilled one-half the expectations of its sponsors: American imports did drop by two-thirds in 2 years. Unfortunately, American exports also dropped by two-thirds in 2 years, and the world plunged deeper into a worldwide economic depression which would end only with the most savage and destructive war mankind has known—a war which broke nations and all but wiped out civilizations.

It is bad economics. But, Mr. President, it is also bad government. Given the gross uncertainties of all budget projections, it openly invites evasion through the adoption of unrealistically optimistic assumptions about the course of the economy.

Tomorrow morning, Mr. Stockman is going to appear before the Budget Committee. And I am going to have to remind him of an exchange we had in February of 1981 in which I said, "How can you seriously say to the investors of this country and the economic forecasters, the planners, and the people of this country, that there is going to be a 4.2-percent increase in real GNP next year, fiscal year 1982, and a 5-percent increase in 1983?" And I said, "the Senate is concerned that you have projected rates of growth which are not rational." These rates, I warned, would not be met. And they have not been met. The temptation is there in government under the best of circumstances. Now we make it endemic, we almost institutionalized the impulse to dissimulate.

This amendment encourages bad government by ignoring all of the alternative ways by which Congress can seek to achieve public purposes outside of the Federal budget—by imposing regulations, output and input restrictions, loan guarantees, tax-free financing, and so on. The amendment would inevitably distort reasoned congressional deliberations and choice between those techniques and direct budgetary outlays.

Another point disturbs me; more bad government as well as bad economics. More than one of us, Mr. President, have called attention on this floor to the irony that it is an administration and Members of this Senate who most oppose—or who appear most to oppose—the intervention of the judiciary in American public affairs, who now are creating a situation in which the Supreme Court will have to determine the parameters of all budget decision. For example, what is the national income—since no one else can authoritatively say, as there is in fact no authoritative definition.

I would make the point that just as the great crash of the 1930's—following the folly of acts such as the Smoot-Hawley tariff—led to a huge expansion in Government, so will this amendment if it ever becomes part of the Constitution.

Regulations, instead of direct outlays, will proliferate. Do not worry about a depletion of the unemployment insurance fund and the budgetary implications of filling it; all you have to do is pass a law forbidding any employer to discharge any worker. Such laws do happen; they exist all over the world in economies which are typically in ruins. But why ought we create a situation in which we almost inevitably will force ourselves to make such things happen here?

As amendment inevitably distorts congressional choices between these regulatory techniques and direct budgetary outlays, the economic costs will rise. Since very often administrative, regulatory techniques provide the least efficient and the most inflationary ways to accomplish a public purpose, the amendment would, in my opinion, end up causing much more harm than good. It is simply not good government, in effect, to encourage Congress to resort to these less visible and often ultimately far more costly demands on our national economy.

Finally, the amendment fails totally to differentiate Government expenditures that represent investments in infrastructure, in technology, in human capital—in short, investments in increasing our national productive capacity—from those expenditures that are essentially consumptive in nature.

Distinguished American economists, such as Alfred Kahn, the Robert Julius Thorne professor of economics at Cornell University who served with such distinction in the previous administration, tell us that to the extent that the growth in Federal outlays has, in some measure, contributed to our economic ills in recent decades, this growth has reflected the disproportionately rapid rise in transfer payments.

This last week, Newsweek magazine devoted its cover story to "the crumbling of America," referring to our failure to maintain our infrastructure—a matter which the Committee on Environment and Public Works has been trying to quantify for as many years as I have served on that body.

Albert Sommers, the chief economist for the Conference Board, argues that Government investment outlays, as a percentage of GNP, are at the lowest point in 35 years. Let me repeat that, Albert Sommers the chief economist of the Conference Board—a body of great repute; in its 70th year as a reputable business-based research organization—argues that Government investment outlays have reached their

lowest point in 35 years, in relation to the Nation's GNP.

It is precisely these kinds of long-range outlays, the basis for long-term economic growth, that will most likely suffer from a measure such as this, based on a locked-in 12-month cycle which takes us back to the agricultural economies of the 13th century. We might as well be a 13th century parliament here, calculating what the harvest, the wool clip, and other such things that move on the annual 12-month cycles—as if industrialization had never occurred.

These matters are not issues of liberalism versus conservatism. It is neither uniquely liberal nor uniquely conservative to observe that the amendment would attempt to relieve Congress of its responsibility to make intelligent economic policies in conformity with the needs of the times.

Most importantly—because there cannot be a more important issue—it is the plain fact that this amendment would make managing our national defense so much more difficult.

Mr. President, at this point I ask unanimous consent, to modify my amendment, and I send the modification to the desk. Mr. President, this modification merely changes the term "percentage" on line 3 to the word "amount."

The PRESIDING OFFICER. The modification will be stated.

The legislative clerk read as follows:

On page 1, line 3, strike the word "percentage" and insert in lieu thereof the word "amount."

Mr. THURMOND. Mr. President, we have no objection.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 3, line 15, strike the "." and insert the following " , except that total outlays may exceed total receipts by the same amount by which total outlays for national defense exceeds the total outlays for that purpose in the preceding fiscal year."

On page 3, line 17, strike the "." and insert the following " , subject to the exception stated above."

Mr. MOYNIHAN. Mr. President, I would like to call the attention of the Senate to increases in outlays for national defense, experienced and projected, for the fiscal years 1980 to 1987.

In 1980, under the last administration's budget, defense outlays increased \$18.2 billion; in 1981, again under the budget of the previous administration, defense outlays rose \$23.9 billion over the preceding year. In 1982, defense outlays up another \$31 billion; in 1983 defense outlays to rise another \$32.3 billion; in 1984, \$34.1 billion more; in 1985, up by another \$43.1 billion; in 1986, \$46.4 billion more; and in 1987, defense outlays to go up by another \$44 billion over the preceding years.

Mr. President, there is not one of these years in which anyone could confidently state that national defense needs will be related in any way to the formula in this amendment—which essentially says that Federal outlays may not increase more than the rate of growth in national income, whatever that is (I do not know whether "whatever that is" is actually in the amendment, but we should have a parenthesis or an asterisk at the bottom, "whatever that is"). The needs of national security do not obey whatever economic forces determine the growth rate of whatever-it-is we are calling "national income" would that they did.

I say, it is not possible in any way to assume that in each or any of these years, and the years beyond, there will be anything like the increase in national income growth sufficient to provide for the projected—now agreed to by the administration—increases in national defense outlays.

Do not think of these as small sums. In 1983 there is a projected increase of \$32.3 billion in defense outlays, over 1982. The entire 100 aircraft B-1 bomber program is estimated to cost \$29 billion over the next 5 years. But there will be little or no-even negative-growth in national income in 1982. In short:

No B-1 bomber program under this constitutional amendment.

The administration has proposed a 149-vessel shipbuilding and conversion program, a program to be carried out over the 5-year period of 1983 to 1987 and a matter of special interest to the Presiding Officer. That program will cost an average of \$17 billion a year in additional outlays—less than half of the projected increase in defense outlays each of these 3 years. Balance the budget under the terms of Senate Joint Resolution 58, and it is not likely to be there.

May I say that the total funds for all operations and maintenance for the U.S. Navy and Marine Corps in 1983 is estimated to come to \$22.6 billion. That is equivalent to two-thirds of the increase in defense outlays in 1983 over 1982, which we can only have if the national income has increased in the proportion that makes it possible. Last year we learned the national income went down.

When national income goes down, either defense must go down, or social security must go down, or the rest of Government simply must be closed down. You will not have the funds in the budget. The Wharton Econometrics analysis of the impact of Senate Joint Resolution 58 on the budget and the economy showed that, under its provisions, if you did not cut defense and social security, you would have to abolish between 60 and 70 percent of all the Government. And if you do not abolish the rest of Government, you

must either imperil the defense of the Nation—at least that is the judgment of those responsible for defense—or shred the Government compact and the fabric of civility which the Social Security Act has brought to our country.

It is very easy to ignore these facts, if you wish, but they will catch up with you. You will look up one day and you face a military emergency that we have become incapable of meeting. The whole goal of orderly provision for the national defense, which this administration came to office talking about, will just disappear.

Might I quote from an OMB staff report to David Stockman:

S.J. Res. 58 could . . . have a bias against defense. By fiscal year 1986 defense outlays will account for \$311 billion of projected total controllable spending of \$442 billion, or 70 percent. While entitlements could theoretically be cut, the 47 percent share of controllable outlays will always be the first target if outlay reductions are required to achieve the balanced budget rule or enforce the outlay ceiling during the fiscal year.

Might I quote the President in this matter, from Newsweek magazine on November 16, 1981:

I did not come here to balance the budget—not at the expense of my tax-cutting program and my defense program. If we can't do it in 1984, we will have to do it later.

Now we have a constitutional amendment that will make him do it, and his tax-cutting program and his defense program will go by the board.

I just cannot imagine, Mr. President, that the elemental evidence of the difficulties we are going to make for ourselves, the very constitutional crises, can be ignored. It is one thing to face a budget problem; it is quite another to precipitate a constitutional crisis. And it is yet a third and most profoundly imprudent thing to amend the Constitution in such a way as to transform a budget problem into constitutional crisis.

Increasingly, we have heard the most respected analysts tell us what will happen to social security, what will happen to defense, or tell us that in the name of open and orderly approach to Government finance, we shall resort to every possible dissimulation and avoidance and even downright deception. We shall deceive ourselves, but we shall not deceive our people and we shall find that the legislative powers which article I of the Constitution resides in the Congress will, in effect, have crossed First Street and come to reside in the Supreme Court. And we shall have done this to ourselves.

In conclusion, Mr. President, I hope that those who care about the national defense program on which we are embarked will see the peril which this amendment creates. It would require a

sustained sequence of economic growth that we have never experienced in our lifetimes. When have we experienced 7 percent real growth for a year, much less a decade? When have we gone a decade without a year or more of decline in growth? It has never happened. This being so, we shall have to choose between social security, or the national defense, or the rest of Government.

Over the weekend, Mr. President, two powerful voices in my State were heard once again on this matter. The New York Times, on August 1, ran a long and powerful editorial called "Constitutional Con." It concluded that the balanced budget amendment is not a constitutional matter at all; it is just a con.

On the 30th of July, the much-respected and widely read journal, *Newsday*, commenting on our behavior on this matter, ran a equally powerful editorial entitled, "Congress Is Making a Bad Amendment Worse and Worse." Without wishing to deride or denigrate the office of the President or the present incumbent, it did make the telling observation that, when the President stood out on the West steps of the Capitol not long ago calling for us to proceed as we are now doing, he was telling the American people, in effect—and I quote *Newsday*—"There ought to be a law against what I'm doing."

Mr. President, surely the counsels of prudence and surely respect for our own experience say to us that we ought to summon the self-knowledge and the character to put this misguided matter aside. We ought to get on with what is a sufficiently crowded calendar of important legislative business, as we enter the month of August and the remaining last few weeks of this Congress.

I do not know what else might be said to persuade anyone. Many powerful points have been made on this floor.

In conclusion today, I would like to recall just one occasion from a past period of Government service which occurred to me.

It was in 1975. I was then our Ambassador to the United Nations. In a long afternoon of speeches in the General Assembly—an afternoon perhaps not dissimilar to this one—in an effort to keep myself alert I began to calculate. Of the 148 nations, as I recall, that were then members of the U.N.—their names are listed on a scoreboard on either side of the podium—I asked myself how many both existed in 1914 and had not had their form of government changed by force since 1914. The answer, Mr. President, was 8 out of 148. England, some members of the British Commonwealth, Sweden, and the United States. Eight nations and no other one of them could claim a Constitution written in the 18th cen-

tury and one which has endured so well, served so well, has been changed only when necessary and only when the rights of the people or the powers of Government were involved.

I see the President has raised his mighty gavel and with the inexorable force of time, brings these remarks to a close. I hope they have not been too extensive. I dare to think they may have some small influence.

I ask unanimous consent, Mr. President, that the two editorials I mentioned by printed in the Record at this point.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 1, 1982]

CONSTITUTIONAL CON

The President, once a baseball broadcaster, now sounds like Leo Durocher, the former Dodger manager. Durocher watched with mounting anger one day as his third baseman let one, two, three ground balls through his legs. When it happened again, Durocher went out to play third himself. The very next ball bounced through his legs. He slammed the mitt down and shouted to the offending fielder, "You've got this position so knotted up that no one can play it right."

Last week, it was the President who threw down his mitt. The subject was Federal deficits. They weren't of such concern in February when he proposed a \$98.6 billion deficit for 1983. Better that, he said, than to touch his planned tax cuts. They "must not be tampered with in a vain attempt to cure deficits in the short-run."

But Mr. Reagan is plenty worried about the deficit now. So is Congress. The deficit will be closer to \$160 billion than \$98 billion. Who's to blame? Don't look at me, Mr. Reagan says with some heat. Blame the Democrats, Why, they gave the country 19 deficits in the last 20 years. They got the game so knotted up that no one can play it right.

Still, not to worry. The President has a magical solution: "The American people understand that we need fundamental reform. . . . They want this Government to draw the line and to pass, without delay, a constitutional amendment making balanced budgets the law of the land."

What tempting simplicity! Congress insists on behaving like an alcoholic, then ban cocktails. The trouble is the amendment stashes a bottle behind the sofa. It can't work.

The balanced budget amendment comes up for Senate action this week. Students of government—including conservatives—reject it as ignorant economics, destructive law, foolish administration and cynical politics. They are right.

The proposal would require Congress to adopt balanced budgets each year. Exceptions would be made for war or when 60 percent of both houses approved. Spending could increase no faster than the growth in "national income."

Why is it ignorant economics? Because the United States should not want to balance the budget every year; it should want to balance the economy. In a recession spending for unemployment and other benefit programs goes up. That's desirable counter-cyclical effect; it's sensible to run a deficit then. Otherwise, the economy would nose

dive. If the amendment were in effect now, there would be five million more unemployed.

Why is the amendment destructive law? Because it would stuff the Constitution with baloney. As Professor Burke Marshall of Yale Law School wrote on the *Op-Ed* page recently, "It trivializes the Constitution to try, for the first time to write into it what are essentially economic and social legislative policies." These are fluid policies, not of permanent constitutional weight. The sponsors know that. This would be the first amendment ever which Congress had the power to waive.

Why is the proposal foolish administration? Because there's no way to make it work. Congress wouldn't even know if it was obeying. Consider the immense variations between the forecasts used when a budget is enacted and the outcome 18 months later. As Rudolph Penner, the conservative economist, has observed, the 1981 budget was balanced on paper for much of 1980—but there was finally a deficit of \$58 billion.

Why is the proposal politically cynical? Because it is meaningless in practical terms. The President says that the amendment "could have a very profound effect," but Republican leaders have a very different view. "Frankly, it doesn't do a thing," says Senator Baker, the majority leader. "I don't think it would have any practical impact" says Senator Dole, the Finance Committee chairman.

If there are so many arguments against the amendment, why is the President for it? The only reason we can think of is that Mr. Reagan regards the voters as ignorant, docile and gullible, ready to thrill to the illusion of "balanced budget" but never grasp the reality of this wretched proposal. In short, he thinks they will be fooled. So, evidently, do a lot of Congressmen.

That's all the more reason for thoughtful citizens to stand up and say, No, we will not try to fool and we will not be fooled; a fraud's a fraud. Free people do not govern themselves by pretending to strap on a permanent straitjacket. They do it by making hard choices as they arise. The balanced budget amendment is not a constitutional matter at all. It's just a con.

[From *Newsday*, July 30, 1982]

CONGRESS IS MAKING A BAD AMENDMENT WORSE AND WORSE

The effort to pass a constitutional amendment requiring Congress to balance the budget seems to get more ludicrous by the day.

One reporter at Wednesday's White House news conference pithily characterized President Reagan's support for the amendment as "standing up there on the steps of the Capitol, presiding over the biggest budget deficit in history and telling the American people, in effect, 'There ought to be a law against what I'm doing.'"

Even the balanced-budget amendment, as now written, wouldn't be a law against what Reagan is doing. This week the Senate turned down an attempt to prohibit a president from proposing a budget in which prospective spending exceeds estimated revenues. So if the amendment passes in its present form, Congress will have to adopt a balance budget even though the president won't have to submit one.

The balanced-budget mandate is a bad idea in any case, but without the rejected provision it's even worse. Unless a president is bound by the same budget-balancing rules

that apply to Congress, the field is wide open to all sorts of political shenanigans and fiscal irresponsibility.

But this President evidently doesn't care for predetermined ceilings. He confirmed Wednesday that he doesn't feel bound by the limits on military spending in fiscal 1984 and 1985 that he had agreed to last month as part of a negotiated 1983 budget package.

Call it hypocrisy or chutzpah, but the contradictions are starting to sink in.

The balanced-budget amendment's sponsors in the Senate are scrambling to find new backers and to keep their own ranks from thinning. Meanwhile the amendment is being encumbered with language intended to make it easier to evade. One result is to render it increasingly meaningless; another is to make it so ambiguous as to invite endless disputes and litigation.

For example: The amendment, as it now stands, doesn't merely require a balanced budget; it also prohibits Congress from allowing federal tax receipts to grow at a faster rate than the national income. But it's not easy to determine the national income—certainly not months in advance when budget drafters are already hard at work. So anyone who thinks taxes are going up faster than income can probably find a lawyer willing to sue and a judge willing to agree.

Just think of the possibilities: injunctions, appeals, conflicting studies and economic forecasts. Why, the whole government could grind to a halt while different layers of the federal court system ponder the vagaries of taxes and income.

Surely this isn't what Congress or the country wants—much less what the Founding Fathers intended.

Mr. MOYNIHAN. I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MOYNIHAN. I thank the distinguished Presiding Officer. I ask unanimous consent that the vote on this matter take place tomorrow in what I believe to be the now agreed-upon sequence of previous amendments that have been debated today.

Mr. CHAFEE. That would be the result of the previous agreement.

Mr. MOYNIHAN. I thank the Chair for his courtesy. I thank the distinguished President pro tempore for his thoughtful attention to the remarks I have made.

Mr. THURMOND. Mr. President, I yield to myself such time as may be required.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, this amendment takes defense spending out for special treatment. In other words, if defense spending increases in the prior fiscal year, then the statement of receipts and outlays must reflect that amount of increase. I wonder, why pick on defense spending? Senate Joint Resolution 58 makes no preference for one kind of spending over another. I simply want to say that what we have done in this amendment is merely provide that the out-

lays will not exceed the receipts. In the event that Congress wants to spend more on defense or spend more on food stamps or spend more on water projects or anything else, that is a matter to be allocated by Congress. Congress must determine on its own what its spending priorities are going to be. We should not try to do that in the Constitution.

We do not think that has a place in this constitutional amendment. No one program has a revered place in this constitutional amendment. Congress is going to make the decisions as to how outlays are to be spent. The only thing we want to do is keep the expenditures and outlays to a level no greater than receipts. In that case, Congress should make the decision as to how they wish to spend this money themselves, but we do not think that that should be put in a permanent constitutional amendment. For that reason, we oppose the amendment and we hope it will be defeated.

Mr. President, I yield to the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, I thank my colleague from New York and my colleague from South Carolina.

The PRESIDING OFFICER. Does the Senator from South Carolina yield back his time on the amendment?

Mr. THURMOND. Mr. President, I yield back my time on the amendment. I believe the Senator from New York used all his time, so that will complete debate on the amendment.

The PRESIDING OFFICER. The Senator is correct.

The Senator from Kansas.

UP AMENDMENT NO. 1168

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk on behalf of myself and the Senator from Colorado (Mr. ARMSTRONG) and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself, and Mr. ARMSTRONG, proposes an unprinted amendment numbered 1168:

In section 2, on page 4, line 3, strike the words "a majority" and insert the words "three-fifths."

Mr. DOLE. Mr. President, I am proposing an amendment to Senate Joint Resolution 58, along with the Senator from Colorado (Mr. ARMSTRONG). The point of this amendment is to eliminate any possible risk that the constitutional amendment as drafted would skew matters in favor of tax increases to balance the budget, rather than spending restraint. Let me explain why this might be a concern.

Under section 1 of the amendment a three-fifths vote is required to adopt a deficit budget, and the President and Congress are to insure that the agreed-upon outlay totals are adhered to. But the amendment, because of section 2, also functions as an effective

check on the excessive growth of Government. That is because section 2 requires receipts to remain no higher than a constant level as a percentage of national income, while section 1 requires that receipts and outlays be in balance. Receipts may fall unexpectedly, but outlays have to be held in check.

This means the section 2 limitation is crucial to the amendment. Section 2 allows the receipts level to increase in line with national income, or faster than national income if Congress so votes by an actual majority of both Houses. This means there can be no unlegislated tax increases, such as were the general rule before we adopted the tax indexing provisions so forcefully advocated by Senator ARMSTRONG in last year's tax bill. I was also involved in that effort, and I think it is the best thing in tax policy we have done; and I think Senate Joint Resolution 58 meshes very well with our new commitment to abolish bracket creep.

POTENTIAL PROBLEM

Mr. President, there is a potential problem in that the vote required to run a deficit is tougher than the vote required to raise the level of taxation. This means there could be a tendency under the amendment to follow the lines of lesser resistance and balance the budget through higher taxes. I know that is not a result anyone wants, but the risk is there. If our goal is to adopt new procedures that will check both deficits and the growth of Government, we ought to seriously consider requiring a three-fifths vote under section 2, as under section 1. The Dole-Armstrong amendment gives us that opportunity.

A three-fifths vote to raise the level of taxation would not be a radical measure. For years we allowed the level of taxation to rise automatically with no vote at all, and few Members complained. This change would help redress the balance. In addition, keeping revenues constant relative to the prosperity of the Nation—which will be the normal rule under Senate Joint Resolution 58—is hardly an outrageous or undesirable thing. It should prove to be a helpful discipline for both Congress and the people. In addition, there is no reason why we should not require an unusual consensus to raise the receipts level. Just as we will do with respect to running a deficit. In cases of extreme urgency we should be able to muster the votes to do what is needed to cover the contingency, either through borrowing or taxation: Obtaining the necessary votes will be an appropriate test of that urgency.

MARGIN OF DIFFERENCE

Mr. President, I believe our amendment would be a useful change. I do not want to suggest, however, that the amendment as it stands is not an effective, forceful, and carefully crafted

approach to the very difficult problem of imposing constitutional restraints on fiscal behavior. As the Senator from South Carolina (Mr. THURMOND) and the Senator from Utah (Mr. HATCH) both know, I have been active in the formulation of this amendment and I have supported the present requirement in section 2 for an absolute majority vote. It seems to this Senator, however, that the time is such that we may reasonably consider a tougher vote in section 2. We do not want to send a signal, to financial markets or to the American people, that we may go soft on Federal spending. I do not believe we would, under the amendment, but the risk is there, although it may be a marginal one.

I know very well why the amendment stands as written—it may be difficult to get a consensus on the change I am proposing, and this is, after all, a bipartisan, consensus amendment. That is what we have been working for many years. I do not want to upset the consensus, nor, I am certain, does the Senator from Colorado. But let us see if there is a consensus for the change we are proposing; if the amendment fails, I am confident that Senate Joint Resolution 58 will be an effective and constitutionally appropriate check on fiscal irresponsibility, but if our amendment prevails, we may have that much clearer a message to send to the American people and American business: We are committed to long-term tax restraint, as we are committed to long-term fiscal responsibility. The amendment, I agree, already says that, but our addition might add a useful margin of difference. We all know that the business community needs every indication it can get that we are prepared to be responsible, and committed to be responsible for years to come.

Mr. President, having just gone through a rather difficult exercise in this Chamber with reference to taxation, we find that there are some people who do not want to vote for tax reform, with that matter still before the Congress. We are starting the conference tomorrow on the revenue increase and spending reduction proposal passed by the Senate by a vote of 50 to 47, in which we increase revenues by about \$99 billion, but we increase those revenues largely through tax compliance, about \$30 billion of the package. Some of the commentators have said this is a tax increase, and I guess technically they are right; if you have not paid any taxes and now you have to pay taxes because of this new provision, that will be a tax increase.

I would rather characterize that as tax compliance. I think it is preferable to characterize that as requiring people who have not paid any taxes to pay some taxes so that others who may be overtaxed are not asked again to pay more.

In the tax bill passed by the Senate, in addition to about \$30 billion in tax compliance, there is an equal amount in so-called closed loopholes. Closing loopholes has been in the Tax Code for a number of years, including a couple that were passed in the Tax Recovery Act of last year, the 1981 proposal, safe harbor leasing as a prime example.

We have attempted to modify some of these provisions which in the view of many, and particularly the objective viewers of tax policy, provided too generous benefits to some in business and to some in the upper income level, so we have addressed that very sensitive, but I think very real, problem.

As I said at the outset, I hope, as we are addressing the discussion of Senate Joint Resolution 58, as we address what may happen if we pass the constitutional amendment—if it is ratified by three-fourths of the States—what may happen in the next 4, 5, 6 years, we will not lose sight of what may happen in the next 4 or 5 weeks as the Congress addresses what I consider to be an urgent matter of trying to continue our spending reduction program along with a reasonable revenue increase so that we can do two things: so that the Government can reduce its deficits, and so that interest rates will fall in this country so the American people can go back to work, go back to buying automobiles, go back to buying homes, go back to buying appliances, go back to buying things they have been unable to buy for the last 3 years because of excessively high interest rates.

Mr. President, I know the American people are sensitive about higher taxes. They have a right to be sensitive about them. They also have a right to urge the Congress toward more tax reform, more tax fairness, more balance, more equity.

I believe a careful study of the proposal passed by this body about 10 days ago will indicate that we are headed in that direction.

Mr. President, I do not intend to press this amendment, but I firmly believe that the record should be made, as does the Senator from Colorado (Mr. ARMSTRONG).

I want to commend the distinguished managers of this bill, the distinguished Senator from South Carolina (Mr. THURMOND) and the distinguished Senator from Utah (Mr. HATCH), for their tireless effort on behalf of balanced budgets, not only the constitutional amendment but their voting record, which indicates that they feel strongly about trying to balance the budget with or without a constitutional amendment.

To me, that is the real test. That is the real test, when we come down to voting on the constitutional amendment, as to how we have been voting the past 6 months, the past 6 years, or

however long we may have been here, in an effort to reduce Federal spending. For those with a good record, that is the next logical step.

In any event, Mr. President, I am prepared to withdraw the amendment, after having discussed it. It is a matter that I hoped earlier might be addressed and might be accepted, but we come now to the conclusion of the debate, and there will be a final vote on Wednesday.

I did want a record to be made of what I consider an important factor. Maybe it is something that can be picked up in the House, and if there is enough support in the House for a three-fifths requirement before taxes can be increased, I believe that would clear up a possible weakness in the constitutional amendment.

Mr. President, I yield to the distinguished floor manager, and then I will withdraw the amendment.

Mr. THURMOND. Mr. President, there is considerable merit in the amendment of the able Senator from Kansas. He has made some very pertinent remarks, very logical remarks.

However, the purpose of this amendment, as we have it now, as I conceive it, is this: If it should be determined that there are some very worthwhile projects at stake and if the outlays are going to exceed the receipts, then it may be necessary to raise more receipts; and it might be easier to do with a simple majority than if we require three-fifths to do it.

In other words, 41 Senators could thwart the idea of raising more receipts to balance the budget. However, there is considerable merit in the point the able Senator has brought up.

Mr. DOLE. I thank the Senator.

Mr. THURMOND. Also, I think that the work the able Senator has done on the tax bill is appreciated by millions of people in this country, in trying to close loopholes. The night it was passed, I said that I had not seen more expertise applied to a bill before the Senate than that exhibited by the able Senator in handling that bill.

Mr. DOLE. I thank my colleague.

The Senator from Kansas understands that there will be a poll later this week by Lou Harris showing that 81 percent of the people do not support the tax bill. I simply ask the question: Once your taxes increase, I am surprised it is not 100 percent. In any event, once the American people fully understand what we really did in the U.S. Senate, then I believe we will have widespread support.

But it does point up the difficulty. Even to reform the Tax Code is difficult. As I recall, the vote was 50 to 47, with three absentees, on tax reform. Had it been a straight tax increase with no reform, then I suggest that it

would be very difficult to increase taxes.

Maybe the three-fifths is not required in this case. Maybe the majority is still difficult to achieve. It was difficult to achieve 10 days ago, and I assume that will not change over the years.

Mr. President, I withdraw the amendment, and I yield the floor.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 1996

(Purpose: To require the President to submit a balanced budget for each fiscal year to the Congress, and to include with such budget a statement with respect to the monetary and credit aggregates)

Mr. CRANSTON. Mr. President, I ask unanimous consent that amendment No. 1996 be called up.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an amendment numbered 1996.

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

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

The amendment is as follows:

On page 3, between lines 12 and 13, insert the following:

"SECTION 1. Prior to each fiscal year, the President shall transmit to the Congress a budget for the United States Government for that fiscal year in which total outlays are no greater than total receipts. The budget required by the preceding sentence shall include a specific statement of the monetary and credit aggregates and ranges of growth or diminution of the monetary and credit aggregates which would insure that the total outlays for such fiscal year do not exceed total receipts for such fiscal year."

On page 3, line 13, strike out "1" and insert "2".

On page 3, between lines 23 and 24, insert the following:

"SECTION 3. The Congress shall include in the statement required by section 2 of this article for a fiscal year a specification of the monetary and credit aggregates and ranges of growth or diminution of the monetary and credit aggregates which will insure that total outlays for such fiscal year shall not exceed total receipts for such fiscal year."

On page 3, line 24, strike out "2" and insert "4".

On page 4, line 6, strike out "3" and insert "5".

On page 4, line 9, strike out "4" and insert "6".

On page 4, line 13, strike out "5" and insert "7".

Mr. CRANSTON. Mr. President, the purpose of this amendment is to require the President and the Congress to state the monetary policy assumed to underpin the balanced budget required by section 1 of Senate Joint Resolution 58.

Monetary policy clearly influences economic performance, which in turn influences outlays and receipts.

Congress and the President cannot be expected to control or accurately predict receipts and outlays without knowing the exact monetary policy they expect the Federal Reserve Board to pursue.

If we are serious about adopting realistic and attainable balanced budgets each year, we will need to know the assumed monetary policy and to have it stated in the statement of receipts and outlays required by section 1.

Secretary of the Treasury Donald Regan, in a recent interview, conceded that a serious error was made at the launching of President Reagan's program for economic recovery when the administration failed to take into account the sharp deviation in the President's assumed monetary policy and the actual monetary policy being carried out by the Federal Reserve Board.

Jude Wanniski, who has been the Huxley-bulldog in defense of supply-side economics, writes in the Washington Post for Sunday, August 1, that David Stockman was warned of \$100 billion deficits as early as December 1980 if he attempted to balance the budget without the "correct" monetary policy. Mr. Wanniski observes:

There is always some combination of tax rates, spending programs, regulatory policies and Federal Reserve policies that will produce a balanced budget over time in an environment of economic growth.

I repeat, Mr. Wanniski stated: " * * * some combination * * * will produce a balanced budget over time in an environment of economic growth."

I will stress again his qualification, "over time." Not year to year, but over time and, additionally, "in an environment of economic growth."

He warns that the "policy mix can't be prepackaged. It has to be constantly rediscovered through the political process, because the economy is forever changing."

Mr. Wanniski's words state principles which underly basic government.

They are not doctrinaire tenets of his supply-side economics, nor of Keynesian economics. His words are strong ones of commonsense and wisdom.

They explain very well what is wrong with the proposal to require an annually balanced budget in the Constitution.

Mr. President, I ask unanimous consent that Mr. Wanniski's article, as printed in the Washington Post of August 1, be printed in the RECORD.

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

[From the Washington Post, Aug. 1, 1982]

THE BALANCED BUDGET AMENDMENT—THE IDEA IS LUDICROUS
(By Jude Wanniski)

Even before he was sworn in as director of the Office of Management and Budget, David Stockman was warned by his supply-side friends that, if he wasn't careful, he

would soon be facing deficits of more than \$100 billion a year. A number of us had observed that Stockman, as early as December 1980, had begun his drift away from the economic-growth agenda that had been central to supply-siders and the Reagan presidential campaign. In trying to balance the budget directly, he would only invite recession, shrink the tax base, explode entitlement payments and balloon the deficit.

The supply-side prescriptions involve dramatic fiscal and monetary reforms that would head off an "economic Dunkirk," which is the phrase Stockman himself used in a memo that advanced those reforms for the president-elect's consideration. Fiscal policy would be directed at restoring production incentives through lower tax rates. Monetary policy would aim at fixing the value of money instead of its quantity, having the Fed target the price of gold instead of some "M" quantity of money.

The monetary reform was critical. Lewis Lehrman, who was the supply-side candidate for Treasury Secretary and had helped formulate the Stockman "Dunkirk" memo, then asserted that such a reform would result in a 6 percent prime rate in 18 months. Lehrman further argued that only in this way could the budget be balanced in the future. Given a \$1 trillion national debt, the difference in financing at 5 percent and 15 percent is roughly \$100 billion a year. To supply-siders, at least, it seemed inconceivable then and now that the budget could ever be balanced without correct monetary policy.

This bit of recent history is worth recalling in light of the Reagan administration's commitment to a constitutional amendment requiring a balanced budget. Dave Stockman was opposed to such an amendment when he was a supply-sider because he was aware of the impact of monetary policy on the economy and, thus, the government's revenues and outlays. But since casting his lot with the Old Time Religionists in the Republican Party and inviting the recession that has produced \$100 billion deficits, Stockman has endorsed the constitutional amendment. In fact, he was key to selling White House chief of staff Jim Baker on the idea, which now has President Reagan looking foolish.

Having failed the president on economics, Stockman could only devise this political ploy to make it appear that it is Congress that lacks the discipline to balance the budget. But this Congress has given the president virtually everything he has asked of it. In his press conference last week, Reagan complained that Congress had not given him the tax cuts he originally promised, "the full supply-side program." But it was Stockman who talked him into postponing the first year of the tax cut in order to squeeze more revenues out of the higher rates. Nor is there anything on the record to support the president's claim that Congress has denied him meaningful spending cuts.

The Democrats are not making much of a stink about the constitutional amendment because they are smart enough to know that it is horrible politics to identify with a mania for balanced budgets during a recession, and that Reagan is simply carving himself a place in history alongside Herbert Hoover. They also know, because Democratic economists are generally smarter than Republican economists, that the amendment is basically a silly idea that could not withstand the scrutiny of the amendment process. Why not help them vote it out of Congress and have the Republicans spend

the next decade breaking their picks in the state legislatures? The budget is a monetary as well as a fiscal document, which introduces so many variables that the very notion of requiring balance becomes ludicrous.

When Federal Reserve chairman Paul Volcker testified July 20 before the Senate Banking Committee, Sen. Alan Cranston of California drew him into a discussion about the balanced budget amendment after Volcker asserted that the deficits were purely a fiscal problem ("We can't cure the federal budget through monetary policy," said Volcker).

"Would you see any problem," asked Cranston, "in requiring the president to state the monetary policy which is assumed to underpin the balanced budget statement just so you have some idea of what to expect and upon what the balanced budget was based in terms of monetary policy?"

Said Volcker: "I'm skeptical about enshrining that kind of thought in law. You have got a problem, a kind of threshold problem, of how you measure monetary policy. Now we struggle with that all the time."

Volcker, who refused to say whether he was for or against the balanced budget amendment, was certain nevertheless that spending must be cut and/or taxes raised in order to reduce the deficit and bring down interest rates that will invite economic recovery. But he also told the committee that recovery is on the way because "we have a large government deficit that is pumping our purchasing power."

Such statements merely add to the sense of intellectual bankruptcy among our policymakers that could not be remedied by the proposed constitutional amendment. At last November's meeting of the Fed's open-market committee, the minutes revealed the authentic "voo-doo economics": "Committee members in general believed that additional weakness in economic activity could well be accompanied by further declines in interest rates, which would be constructive in supporting economic activity."

The public seems to be telling the pollsters that it favors a balanced budget, which no doubt has helped nudge the president down this path. But the pollsters might as well ask the people if they prefer bull markets over bear markets, booms over busts, expansions over depressions, and have the sentiment enshrined in the Constitution. There is always some combination of tax rates, spending programs, regulatory policies and Federal Reserve policies that will produce a balanced budget over time in an environment of economic growth. But that policy mix can't be pre-packaged. It has to be constantly rediscovered through the political process, because the economy is forever changing.

Nor is it necessary that the budget ever be balanced. As a corporation or a nation grows more productive, its debt can grow as long as its proportion does not outpace production. And a nation has to be able to run deficits to get through bad times the same way we expect families to borrow when the breadwinner is out of work. Those who have resources to lend will do so as long as they see the family or nation having the potential and prospect of getting back to work.

In this sense, the deficits we are now running are politically and economically proper, the net result of the Stockman-Baker-Volcker strategy that created them. The Stockman-Baker-Volcker idea of reducing them through spending cuts and tax in-

creases would only drive the economy deeper into recession, as would a constitutional amendment that would require a Hooveresque response of this kind. The deficits will not disappear until we get economic growth. Economic growth will come with a supply-side monetary reform that fixes the value of money instead of its quantity, and not a moment sooner, no matter what the Constitution says.

Mr. CRANSTON. Mr. President, I raise my amendment to make the point that the committee in considering the proposed constitutional amendment altering Federal budget procedures has not considered at all one of the most significant features of the Federal budget over which we do have control—or that the Federal Reserve Board controls—that is, monetary policy.

The committee report considers monetary policy on pages 40-41. It warns of the temptations to use monetary policy to expand Government revenues. But, the report and Senate Joint Resolution 58 do not provide any safeguards for the pitfalls that did in President Reagan's programs.

There is little difference of opinion as to the substantial impact monetary policy is having on our economy today and therefore upon the Federal budget.

Should the Constitution require a statement of assumed monetary policy as part of the statement of receipts and outlays required by section 1 of the resolution?

Obviously, I do not think any of this should be in the Constitution.

But if there is to be such a balanced budget requirement in the Constitution, then it should be designed so that it does account for the major missing element in the budget picture, monetary policy.

Monetarists argue that of all the factors which can affect the Federal budget, monetary policy is the one factor solely within the power of deliberate, conscious, decisionmakers.

We can anticipate, but not control, unexpected dips or rises in the business cycle.

We can affect, but not control, international events which could greatly affect our economy and therefore the Federal budget. Some, such as an oil boycott or disruption of oil supplies due to war, we cannot control.

Wise planners will allow for natural disasters at home and abroad. But an allowance factor hardly suffices when the actual disaster hits.

So there are many factors which cannot be controlled which do impact one way or the other on the Federal budget.

But there is, as I have stated, one factor which can be controlled—monetary policy.

Yet, this is the major element with which the committee and the resolution refuse to deal.

We should in my opinion, have on the record in the budget submitted by the President and the budget adopted by Congress a statement of the assumed monetary policy.

My amendment requires that should Congress undertake to enact implementing legislation, such legislation must contain a requirement of a statement of monetary policy by the Fed.

In conclusion, Mr. President, the absence of any statement about monetary policy is a serious omission in the resolution and in the committee report. It is another powerful reason why the resolution cannot work, as promised, and why it is assuredly one leading toward Hooverism and chronic economic stagnation of the United States.

For those reasons, Mr. President, I urge adoption of the amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. THURMOND. Mr. President, I yield myself such time as may be required.

Mr. President, we have answered similar amendments prior to this as to the first part here wherein section 1 it clearly states that Congress and the President shall insure that actual outlays do not exceed the outlays set forth in such statement.

So there is a concurrent responsibility on the President as well as Congress to see that that is done.

Therefore, we do not think that the first part of the Cranston amendment is at all necessary or pertinent.

As to the second part, this proposed constitutional amendment is not the answer to all of our economic problems. We have not claimed that it is. It addresses only the matter of fiscal responsibility by Congress.

Once our fiscal house is in order then we can move to consideration of ways to better handle the monetary policy.

This proposed amendment by the distinguished Senator from California would inject monetary policy into Joint Resolution 58.

We see no valid reason to do this. It will complicate the amendment by building into the amendment a requirement that the ups and downs of the economy be a part of the Constitution.

These are details that should be handled by statute. These are details that should be handled by Congress and should not be placed in a permanent constitutional amendment.

For these reasons, Mr. President, we feel that the amendment is unnecessary and is unwise and should be defeated.

Mr. President, I am willing to yield back my time if the Senator is on his amendment.

Mr. CRANSTON. Mr. President, I wish to ask one question.

Mr. THURMOND. I shall be very pleased to answer the question.

Mr. CRANSTON. Did the Senator's remarks indicate he feels that the President and Congress have any power over the Fed in regard to monetary policy?

Mr. THURMOND. No. I said Congress and the President must insure that the actual outlays do not exceed the outlays set forth in the statement. In other words, they have a joint responsibility here to balance this budget.

Mr. CRANSTON. Does that give them the power to affect Fed policy since Fed policy has such an effect on the economic situation and therefore on revenues and on outgo?

Mr. THURMOND. Mr. President, the Fed policy is set out in the statutes. Congress can change that and if the President does not veto it, it would become law. The President names the members of the Board, of course, but the responsibility rests mainly on Congress to set out the responsibilities and make such changes if any are desired.

Mr. CRANSTON. Is the Senator suggesting that Congress would have the duty to act if it felt that monetary policy was interfering with the ability to get a balanced budget?

Mr. THURMOND. Mr. President, this is a constitutional amendment and requires a balanced budget. I do not think it has anything to do with the Fed's policies for that reason and would not interfere with any action by Congress or by the President, if they saw fit to make any changes in those policies.

Mr. CRANSTON. My contention is that Fed policies can make it impossible to balance the budget which I think they are doing now.

Mr. THURMOND. Of course, if that results Congress could abolish the Fed, if one wishes to say this, or make changes in its power to affect monetary policy.

Mr. CRANSTON. I am glad to yield back the remainder of my time.

Mr. THURMOND. Mr. President, I yield back my time.

Does the distinguished Senator wish to take up another amendment?

Mr. CRANSTON. Yes. I have another amendment.

AMENDMENT NO. 1989

(Purpose: To eliminate limitations on the power of Congress to appropriate funds or reduce or increase revenues.)

Mr. CRANSTON. Mr. President, I call upon amendment No. 1989 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an amendment numbered 1989.

On page 3, beginning with "The" in line 15, strike out through the period in line 21.

Mr. CRANSTON. Mr. President, the amendment I am offering will strike the second and third sentences of section 1 of Senate Joint Resolution 58. Those are the sentences embodying the requirement that Congress may provide for an excess of outlays over receipts by a vote of three-fifths of the whole number of both Houses.

The proponents of the resolution have argued that the three-fifths requirement is necessary in order to reverse the spending bias of recent years.

They see this provision as an appropriate check on Congress.

There are many Members of this body who think a balanced budget requirement should not be in the Constitution, but who strongly believe that severe checks on Congress are necessary to stop spending promoted by special interests. They support proposals, which are being and will be considered by the Senate, to amend our budget procedures to require supermajorities to approve deficit spending.

This view is a very understandable one.

It is one that might well be necessary and appropriate for these times, for this Congress and, perhaps, for several more Congresses to come.

Supermajority requirements can be a tool with which this Congress and the next Congresses can reverse the growth in new program spending which runs beyond our means.

In my view, however, supermajorities to reverse deficit spending are only a legislative tool, not a constitutional principle.

Legislative action requiring supermajorities, clearly would promote the direction downward of Federal spending sought by voters in recent elections.

I might not necessarily agree with imposing strict supermajority procedures upon Congress.

But that is a matter, which if voted into our budget procedures, I could work with as well as any other Senator.

My amendment is directed, however, not at the immediate need apparent to many of my colleagues for strict limitations upon Congress ability to approve deficit spending, but at the shortsightedness of placing a supermajority restriction in the Constitution.

This Congress may want to handcuff itself.

But we must be extremely concerned not to place future Congresses and future Americans in fiscal chains because of our failures.

The most serious, and damaging, deficiency in the proposal for a three-fifths majority is that if placed in the Constitution, it will permanently, for

all ages, inhibit and frustrate bold action by our future leadership.

Dynamic leadership may be lost to our Nation, as a result.

We would become as the Soviet Union now is—a government of careful, cautious consensus, increasingly declining into stagnation and cynicism.

In short, the United States would become cautious in attitude; tentative in action. That has not been the character of our Nation.

The history of our Nation consists of daring and greatness achieved by the few contrary to the expectations of the many.

The war for independence was fought at a time when only about one-third of the American people supported independence from Great Britain.

The Constitutional Convention of 1787 boldly voted to exceed its mandate limited to "the sole and express purpose of revising the Articles of Confederation."

Abraham Lincoln issued the Emancipation Proclamation against the nearly unanimous advice of his Cabinet that he not do so.

Our colleague Senator RANDOLPH, who was present at the scene, has told us vividly and most dramatically of President Franklin Roosevelt's urgency to act with boldness and without fear in the midst of the Great Depression.

Can anyone here in the Senate imagine the Founding Fathers at the Federal Convention, or any of the other greatest political leaders in our history, placing in the bedrock of our Constitution a huge advantage for the timid, the unimaginative, and the souls who will never take a risk? Can anyone imagine them placing a roadblock in the way of bold and courageous initiative?

But the U.S. Senate may very well do just that—hobble our best horses and never let them into the starting gates.

We are about to require that any action to be taken in the future by the United States of America that requires spending more money than we have at the moment must be ratified first by a three-fifths of the whole majority of both Houses.

We are making a situation in which some future great venture could fall because a Senator has the flu. Or has a date somewhere or—is absent on extremely pressing business.

What is the point of being an Olympic-class runner if you insist on running with both feet tied together?

Why are we doing this, handicapping ourselves and the future of America, so heavily?

I am not known, Mr. President, for expressing passion over issues on the floor of the Senate.

But I say to my colleagues that the three-fifths majority rule sought by

this resolution is the most unwise, extraordinarily shortsighted provision in an already unwise proposal.

I will not go into the difficulties of political impasse and paralysis in the face of crisis caused by the problem of attaining a three-fifths majority.

I am basically an optimist.

I have to agree with the answers given repeatedly by the sponsors and authors of the amendment that somehow future Congresses would rise to the occasion in spite of this handicap under which we are very likely placing them.

An imminent crisis might well do us in, but it will not necessarily be so.

Although, I personally prefer facing a crisis without one hand tied behind my back. I do not relish giving our Nation's adversaries a sporting chance.

I have faith, however, that our people will prevail notwithstanding what this Senate may do.

The difficulty Senate Joint Resolution 58 poses for responses to crisis is not the reason why this provision is very unwise—and totally myopic in outlook. It is the substantial, and tragic, inhibition it places on leadership and initiative.

I agree with the Senator from South Carolina who has explained to us that the facts of a crisis usually are readily apparent. As he puts it, "if we have a situation that demands it, there will be no trouble to get a three-fifths vote."

Yet, I have noted that when Hitler had overrun Europe, Congress was able to enact the selective service law by only the barest of majorities.

The facts of a crisis can be agreed upon.

But the response itself can be very controversial.

The three-fifths majority requirement will not completely cripple our ability to respond to crisis.

But there is more to greatness, and nationhood, than merely responding. What about initiative? What about daring?

What about leadership—that undefinable quality in a few who see opportunity where the majority sees nothing?

To require a three-fifths majority of the whole number to approve spending in excess of receipts will lead to a dampening of enthusiasm, a steady trend toward consensus built largely around those who are timorous, unimaginative, limited in ability and myopic in outlook.

That is not a prescription for greatness.

It is a prescription for life in a goose pond.

Mr. President, I urge adoption of my amendment and rejection of the language in the pending constitutional amendment.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. MATTINGLY). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. THURMOND. Mr. President, the Senator proposes to strike the language beginning on line 15 of section 1 through line 21. The part he proposes to strike reads this way:

The Congress may amend such statement provided revised outlays are no greater than revised receipts. Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipts by a vote directed solely to that subject.

Mr. President, we feel that Congress needs that flexibility. We feel it is necessary for Congress to be able to revise a statement, and this so provides, "provided the outlays are no bigger than the receipts."

Suppose Congress feels the situation has changed and it wants to change the statement? We cannot lock Congress in. This is a constitutional amendment. It is binding, permanent law, the most permanent law we have, which is the Constitution. But Congress has got to have flexibility, and this would take away the flexibility here if we were to adopt this amendment.

Whenever three-fifths of both Houses deem it necessary, Congress may provide for specific outlays over receipts, but it will take a three-fifths vote.

The distinguished Senator mentioned the three-fifths over and above a majority. But I would remind him that there are various parts of the Constitution that provide for action to be taken by more than a majority. For instance, it takes two-thirds of the Members present to convict on impeachment; it takes two-thirds to expel a Member of the Senate or the House; and if the President vetoes a bill it takes two-thirds of both bodies to override for it to become law.

It takes two-thirds to pass a treaty. It takes two-thirds to call a convention for proposing amendments to the Constitution, on the application of two-thirds of the legislatures of the States.

It takes two-thirds of both Houses to propose amendments to the Constitution. Then, of course, three-fourths of the States have to ratify it.

When the choice of a President shall devolve upon the House of Representatives, a quorum shall consist of Members from two-thirds of the States. A quorum of the Senate when choosing a Vice President shall consist of two-thirds of the whole number of Senators; and it takes two-thirds to remove the disabilities imposed by the third section of the 14th amendment.

Mr. President, this just illustrates some of the provisions of the Constitution where a majority cannot control. We are trying to provide that if you are going to spend more money than

you take in, if your outlays are going to be greater than your receipts, then it is going to take three-fifths of both bodies, the House and the Senate to do so. We think that is important.

We are not passing a statute here where, by a majority, the Congress can do anything it wants to. We are bringing forth an amendment to mandate the Congress, to say to them: "Because you have not balanced the budget here for all these years, 21 years, except one time, you haven't balanced it 25 years but twice, and therefore the people of this country want action taken to restrain the Congress."

And it is good for the Congress to be restrained. They have not shown any restraint. Therefore, we have to mandate it here and nail it down so the Congress cannot spend more than it takes in unless three-fifths of both bodies agree to do that.

Mr. President, we think that is reasonable. We do not think that three-fifths is an unreasonable requirement at all. There are many other provisions of the Constitution, as I just stated, that require not just 60 percent, or three-fifths, but require two-thirds, which would mean 67 out of the 100 Senators.

Mr. President, we feel this amendment is without merit and we hope that it will be defeated.

Is the Senator willing to yield back his time?

Mr. CRANSTON. I am prepared to yield back my time.

Mr. THURMOND. Mr. President, I am willing to yield back my time, and the able Senator from California says he is. Do we have the yeas and nays on this amendment?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. THURMOND. Mr. President, I am wondering if there is another amendment that anyone desires to bring up. Does anyone else desire to bring up an amendment? I hear no voices.

Mr. President, in view of that, it seems to me that is probably all we will be able to do today. I do not know what the majority leader's plans are. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT NO. 1169

(Subsequently numbered amendment No. 2010.)

Mr. ARMSTRONG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG), for himself and Mr. Boren, proposes an unprinted amendment numbered 1169.

On page 4, between lines 12 and 13, insert the following new section:

"Section 6. On and after the date this article takes effect, the amount of Federal public debt limit as of such date shall become permanent and there shall be no increase in such amount unless three-fifths of the whole number of both Houses of Congress shall have passed a bill approving such increase and such bill has become law.

On page 4, line 13, strike out "6" and insert in lieu thereof "7".

Mr. ARMSTRONG. Mr. President, before I discuss the amendment, which I offer on behalf of myself and the Senator from Oklahoma (Mr. BOREN), I would like to take a moment to salute and compliment and congratulate the distinguished chairman of the Judiciary Committee, the distinguished subcommittee chairman, and the distinguished ranking minority member, who have done such an enormous service to our country by bringing this legislation to the floor.

Frankly, it is the realization of a decade-long dream for me to be able to come to the floor of the Senate to argue in support of a constitutional amendment to balance the Federal budget at a time when such an amendment is actually the pending business of the Congress.

When I first arrived here in 1973 as a new Member of the other body, the very first legislation which I introduced and which I wanted to associate with my legislative career was a proposal for a constitutional amendment for a balanced budget. Each year since then I have introduced similar legislation. I have spoken perhaps more often on this subject than any other over the years. I believe that there are few reforms, if any, which will have as salutary and important effect on the long-range financial and budgetary future of this country as will a measure which will require the Congress to balance the Federal budget.

So I say to the Senator from South Carolina, I say to the Senator from Arizona, I say to the Senator from Utah, and the others who are making this dream come true, a word of personal thanks. But, more important, I want to say that 100 years from now people are going to look back upon the deliberations of the Judiciary Committee and of the Senate and of the Congress in bringing this amendment to the floor with the same kind of admiration and sense of destiny that we now look back upon the first 10 amendments and the events which surrounded the adoption of the Bill of Rights 200 years ago.

Mr. President, I do not think I need to discuss at any length the reasons why the proposed constitutional

amendment is so necessary. I have previously inserted in the RECORD a lengthy discussion of this matter and the reasons for it. So I would like to turn now briefly to discuss the amendment which I have offered along with Senator BOREN.

The amendment which we suggest merely says that, henceforth, after the ratification of this proposed constitutional amendment, no further increase in the national debt shall occur except upon a three-fifths majority vote. It will require, as it does at the present time, a statutory enactment. But in order to pass such a statute through this Chamber and the other body, it would require a three-fifths vote.

Frankly, I was reluctant to offer any amendment to this proposal because I do think the committee has done a magnificent job.

But the one criticism which I hear leveled at the proposal now pending before us, and which has come up a number of times in this Chamber and in the media, is the criticism that in some ways it is not sufficiently specific.

I do not for a minute believe that with or without this amendment the proposal now pending is too vague. I do not feel that way. It is not as specific as I wish it could be, but I do not share the idea that it is unworkable in its vagueness. I do not think that is the case at all.

I do believe, however, that we would add credibility and strength to the amendment by being a bit more specific.

And so, what Senator BOREN and I have brought to the floor is a very simple proposal that just says that henceforth it takes a three-fifths vote to increase the national debt.

At the very outset I would point out that such a requirement is indeed implied by language which is already in the resolution, but in order to respond to this notion that some have surfaced, that we are dealing with a matter that is too vague and which might be subject to unforeseen judicial interpretations, I would just point out that while the statement of receipts and outlays referred to in the pending resolution is an estimate, and while the national income which is referred to in the pending resolution is an estimate, the amount of the national debt at any given moment is a fact. It is an accounting entry. It is a matter which can be easily determined by any court.

More important, it is a matter which can be easily interpreted and understood and determined by the Congress in the course of considering whether or not to issue more debt and by the general public in considering whether or not individual Members of Congress have been faithful stewards of their obligation.

Mr. President, that is really all we are talking about here. The only possible argument that I know of which could be made against this amendment by anyone who favors the basic proposal that is before us is that it might be redundant, that it might be unnecessary. To that I can only say that it does serve to allay the concerns that some have expressed about the lack of specificity and precision in the original committee proposal. But if you are for the original committee proposal I can see no reason why anybody would oppose this amendment which Senator BOREN and I bring to you this evening.

Mr. BOREN. Will the Senator yield?

Mr. ARMSTRONG. I am very pleased to yield to my distinguished colleague from Oklahoma.

Mr. BOREN. Mr. President, I thank my colleague from Colorado. I am very proud to join with him in sponsoring this amendment. As he has said, neither one of us in offering this amendment mean to imply any criticism of the existing proposal before us or of the outstanding job done by the Judiciary Committee in crafting and developing the amendment that has been brought to the floor.

They have done an outstanding job, not only in drawing up that amendment but also in marshaling support for it. It is an amendment that has my strong and unqualified support, as I know it has the strong support of my colleague from Colorado.

This amendment that we are offering we certainly do not mean to in any way weaken the proposal before us but indeed we hope to strengthen its chances of passage.

As has been said, there are those who have contended—and I also disagree as does the Senator from Colorado with this criticism—that the proposal might be too vague. It does rely on these estimates of receipts, estimates of outlays, estimates of national income. Therefore, if we cannot put full faith and confidence in the methodology of arriving at these estimates, there might be a way of getting around a requirement to balance the budget.

As I said, this has not worked out in fact in the many States that operate under this system.

We operate a system much like the one envisioned in the amendment in my home State of Oklahoma. The Governor, the budget director, and the State board of equalization in our State come up with estimates both in terms of receipts and outlays, and a balanced budget is submitted by the Governor and enacted by the legislature, based upon these estimates.

We have periodically strengthened our statutes and strengthened the constitutional provisions which apply to the methods for obtaining these estimates. We have never, to my knowl-

edge, failed to achieve a balanced budget. In fact, we have never failed to achieve a budget that was at least to some degree in surplus.

I realize that there are those in other States and other parts of the country who have not had experience with budget balancing amendments to their own constitutions. There are those for one reason or another who, though they admit that this provision has worked very well at the State level, seem to be skeptical that we here at the Federal level can make it work as well. I fail to follow that line of logic. If Governors and State legislatures can show their loyalty and allegiance to State constitutions and abide by them and make provisions like this budget balancing amendment work at the State level, I certainly would not be one who would say that the Presidents of the United States and Congresses of the United States would be any less dedicated to the Constitution of the United States than would legislators at the State level.

But I do think it is important that we counter this criticism which has been leveled against the amendment. If there is any doubt in anyone's mind that the provision relating to estimates is workable, if there is any doubt in anyone's mind that there might be a loophole that would allow unbalanced budgets in very unusual circumstances, then I think this amendment should answer that particular question and that particular misgiving, because it provides that the debt limit simply could not be increased except by three-fifths vote of the membership of both Houses of Congress.

It plugs any possible loophole. It answers any possible argument that this amendment does not have teeth in it.

It is for that reason, the reason for tying down any possible hypothetical criticism of what I think is already a very fine proposal, that I am very, very pleased to join with the Senator from Colorado.

I do not think there is anything more important that we could do this year or perhaps in this decade than to build into our constitutional system some protection against the insatiable appetite for increased Government spending.

One of our most distinguished Members, Senator STENNIS, of Mississippi, said to me recently, "I believe that the very survival of our political and economic system depends upon us having some kind of buffer, some kind of protection, built in, to halt this trend toward runaway spending that will absolutely undermine the political and economic system of the country if it is allowed to continue."

I can only say as Governor, my own practical experience was that the constitutional provision was a very, very important buffer. When members of

the legislature and general public came to see me and asked if I endorsed additional spending programs because of the constitutional requirements, I said that our appropriations were already balanced, the funds were allocated, and if there was a new program that we wanted to start, we had to pay for it. Either we had to cut an existing program or find cuts in some other area.

I would ask, "What do you want to cut?" That usually caused them to go out and think about it. If they came back again, I said, "If you do not want to cut something to pay for it, which tax do you want to increase?"

Not many members of the legislature and not many civic leaders were anxious to be the ones who would advocate a particular tax increase to pay for a program.

So it served as an absolutely essential buffer against the pressures for more and more spending that have led us into unbalanced budgets.

We have, as the Senator from Colorado well knows, a situation on our hands that is almost beyond belief if anyone thinks that momentum is slowing in any way, even with this President and this Congress. If any President and any Congress were ever elected by a mandate to put the lid on spending, to hold it down, to try to reverse gears, it was this administration and this Congress.

Yet, what has happened? Let us look at the momentum. In the 4 years of the Johnson administration, we added \$37 billion to the national debt. In the next 4 years, the first Nixon administration, we added a little over \$60 billion to the national debt. In the 4 years of the Nixon-Ford administration, we added over \$160 billion to the national debt. In the 4 years of the Carter administration, we added \$191 billion to the national debt. If present estimates are anything close to being accurate, the CBO estimates just released, we shall be adding close to \$600 billion during the 4 years of the current administration, elected with a mandate from the people to bring the budget into balance—I think with sincere effort on the part of many people in the administration and the Congress to do so. So if anyone doubts the need for a constitutional amendment, the need for the so-called buffer that Senator STENNIS talked about to preserve our political and economic system, I invite them simply to look at the facts as they are.

I say to my colleague from Colorado that I am proud to join with him in this strengthening amendment, this amendment that makes it clear that there is no loophole we can crawl through, because if we have a requirement that we cannot increase the national debt without a three-fifths vote of both Houses, it seems to me we have tied it down as far as we can pos-

sibly tie anything down in the wording of the Constitution. I appreciate his bringing this proposal to my attention and I am very, very pleased to join with him in offering an amendment that I think will improve the chances of passage for the pending joint resolution.

Mr. ARMSTRONG. Mr. President, I thank the Senator from Oklahoma for his very important and worthwhile statement. I cannot help recalling that, long before the issue of a constitutional amendment to balance the budget became a popular, nationwide cause, the Senator from Oklahoma was a leader in the effort to make it such a cause. Practically from the first day he and I arrived in the Senate together, we have been standing shoulder to shoulder and working on this issue. I compliment him. I thank him not only for his statement today but, more important, for his efforts over the years to make this dream of a constitutional amendment come true. I am greatly complimented to have my name linked with his in the offer of this amendment.

Mr. GORTON. Will the Senator from Colorado yield?

Mr. ARMSTRONG. Mr. President, I note in the Chamber the presence of a distinguished lawyer, a man of great experience with the law, the distinguished Senator from Washington. I am very pleased to yield to him.

Mr. GORTON. I thank the Senator from Colorado and I beg his indulgence to speak in favor of this amendment from a somewhat different perspective than the perspective adopted by the Senator from Colorado and the very thoughtful and distinguished Senator from Oklahoma.

As each of them knows, I have extremely serious reservations about the constitutional amendment which is before us at the present time, reservations so serious that it is my present intention to vote against that amendment. Those reservations do not stem from any lack of concern with the facts laid out by the Senator from Oklahoma, increasingly huge and burdensome deficits and the absolute necessity to create, from the outside, a form of discipline which will encourage Congress to balance the budget and to reduce the growth rate in Federal spending far more successfully than has been the case for the last several decades.

In fact, I am quite comfortable with the proposition that a supermajority requirement is almost certainly at the center point of any successful attack on this problem. I have a certain degree of reluctance about reaching the supermajority requirement, at least in one single step, through the mechanism of amending the Constitution, because of my fear of unknown consequences and my concern that we

escape one evil to fall into one even greater.

It was just because of that concern that I introduced an amendment which I believe was supported by both of the sponsors of this amendment last week severely to restrict the right of judiciary review of the actions of Congress pursuant to Senate Joint Resolution 58 should it be passed. That amendment, of course, came from the fear that we would be shifting much, if not most, of the power to write a budget from the Congress of the United States to the courts of the United States. I must confess, however, that in struggling toward the drafting of that amendment, I was never completely satisfied with it, because it seemed to me that I was dealing with the symptom rather than the cause of the problem.

The problem embedded in this resolution, it seems to me, is the fact that it is not self-executing. It is the fact that, unlike every other supermajority requirement in the Constitution of the United States, the failure of a proposal to receive three-fifths of the votes of the Members of both Houses does not end the problem. Members would still have to go back and write a budget in a way with which, often, the majority of the Members of both Houses would not sympathize.

Because I have been troubled by that lack of self-executing status over a period of months—for as long a period of time, in fact, as I have considered this constitutional amendment—it was almost with a sense of Archimedes' discovery in the bathtub that I listened last Wednesday to the proposal of the Senator from Colorado. I literally almost jumped up and said, "Eureka," because it seems to me that his proposal, although perhaps in a slightly different form, solves that problem of non-self-executing status of Senate Joint Resolution 58 as it appears before us now.

If the pinch point, if the point at which a supermajority is required, were removed from the passage of a statement of receipts and disbursements, which in itself is an unbalance and which, as the Senator from Colorado has pointed out, is nothing but a set of estimates in any event, to the fact of the national debt, we would then have a situation in which a vote was decisive and self-executing. If an increase in the national debt fails at the present time or, under this proposal, failed to receive a 60-percent vote, no power left to Congress could, in effect, unbalance the budget because the Federal Government, the Treasury, simply could not sell securities to spend money beyond the income which was actually taken in by the Federal Government itself.

While I intend to vote for this amendment as a result, I think that its overwhelming importance at this point

lies in the real possibility, at least, that Senate Joint Resolution 58 will not pass both Houses of Congress and/or will not be ratified by the requisite number of States. If, in fact, we are still struggling with this problem next year, I would submit to the Committee on the Judiciary and to all of those concerned with this problem a serious question as to whether or not a much simpler constitutional amendment, simply requiring a supermajority in order to raise the debt limit, might not meet the great bulk of all the criticisms to which the resolution in its present form has been subjected to this point. It would seem to me that the discipline automatically attendant upon a failure to raise the debt limit would be exactly the discipline toward which the sponsors of this proposal and many others have been searching for these many years.

With one last comment, I shall leave that thought, both for any vote which may take place on an amendment to the resolution and for the future, should Senate Joint Resolution 58 not become law. That is the question which I put to the two sponsors of the amendment, whether or not, if we work on this further, we should state that the debt resolution, subject to the 60-percent majority, should not be on that subject alone rather than on a large number of other subjects, whether or not such a resolution should not automatically and in the Constitution stand solely on its own merits, so that the vote on it is clearly a vote on the debt limit, on unbalancing the budget, and nothing else.

Second, I ask the two sponsors how they would treat in this respect with a reduction in the national debt. Let us assume that this amendment were to pass and we had a national debt of a certain number of dollars. Let us assume that joyful situation in which, 1 or 2 years thereafter, the Federal Government ran a surplus of \$20 billion and, as a consequence, paid off \$20 billion of the national debt. Would this amendment allow an unbalanced budget the next year to the extent of that \$20 billion, or would it automatically reduce the debt by that \$20 billion and require a 60-percent vote even to re-add that into the equation?

If it would not have that effect, should it not have that effect at any time at which we actually begin to pay down the debt itself?

Mr. ARMSTRONG. Mr. President, it is the commonplace observation of Senators that the Senator from Washington is emerging as not only one of the finest speakers in the Senate but a man who makes an enormous contribution to the thought life of this body and of our country. The clarity and precision with which he has addressed not only the pending Armstrong-Boren amendment but also the underlying constitutional and political issues

I think are a model for the kind of reasoned debate that the Senate can be proud to entertain.

It so happens, as my friend from Washington knows, that I disagree in part with his conclusion, although I welcome very much his support of this amendment.

In response to his question as to whether or not, if we begin to pay down the debt, under the terms of the Armstrong-Boren amendment it would require a three-fifths vote to increase the amount of the debt once paid down, I would respond to my friend in this way, that the amendment which we have offered merely establishes the limit. If the limit on the date of ratification were, let us say, \$1.5 trillion, a very real possibility for the reason which the Senator from Oklahoma has already pointed out, then that would be the permanent limit that would not be increased except by a three-fifths vote.

If on some occasion—happy thoughts—we were to pay back \$100 billion of the debt, the debt would be reduced but the limit under the terms of our amendment would not be.

I think an argument would be made that it would be wise to do so, but that is a step which goes beyond what the Senator from Oklahoma and I thought that we could bear. And so, while I would not consider a change of that kind advisable, neither would I be opposed to it. It is a practical question of how much water we think we can carry at this time, and our desire was to add precision and clarity but not to add one iota of additional controversy to this measure. This is the best that we have been able to do.

Mr. BOREN. Mr. President, will the Senator yield?

Mr. ARMSTRONG. Yes, of course, I am pleased to.

Mr. BOREN. I certainly agree with the comments made by the Senator from Colorado about the remarks we just heard from the Senator from Washington. I also pay tribute to the respect with which he is held in this Chamber, a respect that he has gained and merited of his fellow Members in the very brief time that he has served in the Senate.

As the Senator from Colorado has said, I think the thoughtfulness of the remarks just made by the Senator from Washington are illustrative of the reason for the great respect which his colleagues hold for him.

I join with the Senator from Colorado in hoping that the Senator from Washington may change his mind about the entirety of the amendment and decide to join us in supporting it when the final rollcall comes. But I appreciate very much the words of support which he has offered for the amendment.

I think his emphasis on making this provision self-executing to the greatest extent possible is a well-placed emphasis. I think it is a very important contribution to our discussion. I hope that we will be successful in passing this joint resolution through both Houses this session. However, I think he also raises the very interesting idea that if for some reason we do not succeed, many of us will try and try again, and this might well be an excellent basis on which to build the next attempt. If we are able to get this amendment adopted this year, I think it will strengthen the chances for passage of the joint resolution; it will help to make it more self-executing.

Like the Senator from Colorado, I would in terms of my own personal feelings like to see the limit adjusted downward if we ever did have a situation in which we could pay off a portion of the national debt. Let us hope that if we get this constitutional amendment in place, we will begin to establish the kind of fiscal discipline necessary not only to keep us from increasing the debt but to begin to reduce the level of public debt in this country.

Surely, when we are consuming almost 40 percent of all the available credit in the country just to meet the interest payments, to service a debt this large, I do not think any of us would say that it is an acceptable level; it needs to be reduced over time. I should like to see us come forward with a provision that would reduce that level as we go along.

I agree that the language as now written merely establishes the current debt limit as the outer limit, because it says the public debt limit as of such date, so it would become the outer limit.

If we find that we could strengthen this amendment even further and put in an added provision, as the Senator from Washington has suggested, to provide for a reduced outer limit as we were able to pay off part of the public debt, I would be all for it, with the caveat that if we did so it would not hurt the chances of Senate Joint Resolution 58 passing, because we all realize from the legislative process that what may appear to be very reasonable to the Senator from Washington, the Senator from Oklahoma, and the Senator from Colorado, may cause some other Member of the Senate to feel opposition for a proposal that he otherwise might have supported.

Mr. GORTON. Will the Senator yield?

The PRESIDING OFFICER. All time for the proponents has expired. The Senator from South Carolina has 30 minutes.

Mr. GORTON. Will the Senator from South Carolina yield 1 minute?

Mr. THURMOND. How much time does the Senator wish?

Mr. GORTON. Will the Senator yield 1 minute?

Mr. THURMOND. I will be pleased to yield.

Mr. GORTON. May I briefly get the comments of the two sponsors on the other element of the question. Under the circumstances of such a supermajority, would it not be appropriate to see to it that such a debt limit bill came before the Congress clean, that is to say, was devoted to that single subject alone?

Mr. BOREN. I certainly agree with the Senator from Washington on that point. If you make that the testing point, you make that the point at which we are going to have the ultimate self-executing decision in order to prevent deficit spending, I think it would be appropriate that we make certain that that vote is on that subject alone, because it would be a vote of such paramount importance, and that it not be confused with other items added to it.

The Senator has raised a point that I confess I have not examined sufficiently to say how that might be done, but I am very much in sympathy with what the Senator from Washington has just said.

I defer to the principal sponsor of the amendment for his thoughts, but I think that that would be a wise thing to do; it is good to provide for that if we possibly can.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to get the attention of the authors of the amendment. I just want to say that no Senator wants to see this debt not increased more than I do. Ever since I have been here, for 28 years I have been fighting to try to stop this increasing debt. I am concerned, however, about this for several reasons. The first is the wording "the amount of the Federal public debt limit as of such date shall become permanent."

The debt now is over \$1 trillion. To become permanent means it is permanent; it will not be changed; it will not be increased; it will not be decreased. It is permanent. I do think we ought to freeze it. I think we ought to begin paying on that debt. I think we ought to begin to make payments on this debt and try to pay it off, if we can, in our generation; otherwise, it goes on our children and future generations.

As to the second part, the three-fifths, we have provided for that in this constitutional amendment.

This amendment would require taxes to be raised at the tail end of a fiscal year if actual receipts fell below actual outlays. It would absolutely mandate tax increases at that point.

That might be all right in some cases, but in some cases it would not.

Suppose, for example, we were faced with a recession or a depression. You may want to increase the debt somewhat. In our amendment, we leave that to the judgment of Congress. But they would have to do it by three-fifths. We do not do it by a majority.

We had a serious depression in 1932, which I went through, when I went to the Democratic convention and voted for Franklin Roosevelt. At that time, we were all Democrats in the South, and he offered hope of leading us out.

That is one thing. But we were in a terrible depression. We may not get into another depression. I hope we do not. But if we do, we may want the flexibility. I do not think you want to put that into the Constitution and box Congress in so that it cannot act.

Mr. President, we allow actual deficits if, and only if, receipts are expected to fall below the outlays in the course of the fiscal year, perhaps because of a recession. The present amendment would require taxes to be raised at that time. That may be the very time you would not want to raise taxes, if you are in the depths of a depression such as the one of 1930 to 1933 or 1934. You may not want to do that then. You may want to put it off a year or 2, until you are out of that depression.

The point is, are we going to box ourselves in with a constitutional amendment so that we cannot act during a depression or a recession if it becomes apparent that we should act? Why not leave that to Congress? Under our amendment, we do leave that to Congress.

At the same time, we require a vote of three-fifths of both bodies in order to spend more than we take in. We felt that was as far as we should go.

I am afraid that if we adopt this amendment, we are going to lose some people on both sides of the aisle whom we may need to pass the constitutional amendment.

I know how much the Senator from Colorado, the Senator from Oklahoma, and the Senator from Washington want this amendment to pass. We all want it passed. It must pass. The people are demanding that it pass. The polls show that 75 or 80 percent favor a constitutional amendment to balance the budget. But we do not want to take the chance of losing some people here.

I have been warned by the House leaders that we should pass this amendment as it is and not add things. They say, "You are going to make it very hard on us to try to get it through the House." So we had better think about this before we offer an amendment such as this.

My heart is with the Senators, but under the circumstances I do not

think it would be well to box Congress in, in the event the need ever arose to relieve serious unemployment or to relieve a serious depression or a serious recession.

I hope we can pay this debt. I hope it will not increase, and I will do everything I can; but we need that flexibility.

Mr. DECONCINI. Mr. President, will the Senator yield?

Mr. THURMOND. I yield.

Mr. DECONCINI. I thank the distinguished chairman.

Mr. President, I say to my good friends from Colorado, Oklahoma, and Washington that, as the Senator from South Carolina said, this is a good idea. Anything we can do to make it tougher for this country to go into debt is the right direction.

Nothing in legislation is in concrete. We all know that; deliberation is what deliberative bodies are for. However, a great deal of time and effort have been put into Senate Joint Resolution 58, through a coalition of Members who worked many days and weeks. I hope that the Senators will see fit to stay coupled to the amendment, because it does represent the thinking of a majority of our number as recent votes have indicated.

I know the intention of the Senator from Colorado is not only to balance the budget but also to insure that the national debt does not increase. I also support that concept but unless we can make some modifications in his amendment, I will have to oppose it.

The reference to "permanent" troubles me a great deal. I am not satisfied by the statement of the Senator from Colorado that this would mean that it could go up or down based on a surplus. I would want that spelled out more in an amendment, because good planning and good budget process may result in a surplus, as we do in States and in businesses. I think that Senate Joint Resolution 58 is more flexible, because it does not say that the debts must remain permanent. I am concerned about the reference to the permanence of the national debt.

I realize that the Senator has explained that it is his intention that the national debt could be lowered if there were a surplus. I wonder if the Senator from Colorado might find it possible to modify his amendment before pressing it for a vote.

Mr. ARMSTRONG. Mr. President, will the Senator yield?

Mr. THURMOND. I yield.

Mr. ARMSTRONG. I thank the Senator for yielding.

Mr. President, it seems to me that the Senator from South Carolina and the Senator from Arizona, who have invested much of their own intellect and energy in this amendment, have raised several questions which deserve a brief response.

First, I invite the attention of all Senators to the language of the Armstrong-Boren amendment, which I think is entirely clear on its face.

What becomes permanent is not the debt, but the limit becomes permanent unless increased by a three-fifths vote.

The Senator from Arizona mentioned that I had said that the amount of the debt could fluctuate up or down. It could fluctuate down if Congress in its wisdom, saw fit to pay back a portion of the national debt, as I hope it would. But it could fluctuate only above the limit upon the subsequent vote of three-fifths of the Members.

Second, I am a little concerned about the notion that somehow the adoption of this amendment might cause the constitutional amendment to lose votes, that there might be someone who would be otherwise motivated to vote in support of the constitutional amendment who, upon the adoption of the Armstrong-Boren amendment to it, would be otherwise motivated for some reason.

I will grant that my powers of observation and analysis are limited, especially at this moment, but I cannot conceive of anyone who supports this constitutional amendment who would be offended by my proposal or who would be thereby less likely to vote for it.

Indeed, if any Senators will rise and say that upon adoption of the Armstrong-Boren amendment they would be less likely to vote for the underlying proposal, I would be astounded, and I would be eager to hear their explanation. I cannot really think that is the case.

Let me address briefly a question which is implicit in what has been said—that this proposal has been studied carefully and great work has been done on it by the committee. I acknowledge that the Judiciary Committee has really accomplished a historic task by marshaling a consensus, and the work and scholarship and study that have gone into this, and I congratulate them for it. But the notion that, therefore, it should not be subject to further amendment, I am sure, is not what the Senator from South Carolina and the Senator from Arizona intended.

The Senate is a deliberative body, a body that loves amendments. It would be contrary to every tradition of this body to suggest that because a committee has suggested it, further amendments are not in order.

When James Madison presented his 10 amendments to our Constitution, which are known as the Bill of Rights, they were extensively amended before they were accepted and passed by the States and became the cornerstone of our system—extensively amended, I am told. In fact, the Library of Congress made the point, in response to

my inquiry on that point, that it was not casual amendment but heavy amendment. That is an important part of our process.

Finally, I respond to the notion that by adopting the Armstrong-Boren amendment, somehow we box ourselves in. It seems to me that we have a logical dilemma here. Either a three-fifths vote is required under the terms of the proposal as it comes to us from the committee for raising the national debt or it is not.

I believe it is very strongly implied that such a requirement in fact, is already included in the language of this proposal.

Mr. DECONCINI. Mr. President, will the Senator yield on that point?

Mr. ARMSTRONG. If I could just complete my thought I shall be happy to yield for the response of the Senator.

I believe that it is implied, but it either is in there or it is not. That is the question for determination at some point by someone now or later. If it is already in there, then adding language to make the implied requirement explicit neither adds nor subtracts to the proposal except in a political sense, if it helps us to muster support among those who criticize the amendment in the media as being too vague. If it is not in there, if there is not contained in this proposal a requirement for a three-fifths vote to increase the national debt, if that is not really in here in the words that already appear in the resolution, then I would say, first, could the sponsors suggest a circumstance under which the debt limit could be raised without such a vote and still comply with this amendment?

And second, could the sponsors explain to me why it would be desirable to not have such a requirement?

I think the very spirit of this amendment requires that a three-fifths vote be needed.

Mr. DECONCINI. Mr. President, will the Senator yield?

Mr. ARMSTRONG. I am pleased to yield to the Senator.

Mr. DECONCINI. Mr. President, will the Senator from South Carolina please yield to me?

Mr. THURMOND. I am pleased to yield to the Senator.

Mr. DECONCINI. Mr. President, I think the Senator from Colorado really comes to the heart of the point in his last question. It seems clear to me reading Senate Joint Resolution 58 that if Congress votes to adopt a deficit, they have to have a three-fifths vote and I do not think anyone questions that as being very clear. However, we could always run an unexpected deficit if actual revenues did not meet stated or projected revenues.

If we adopt a deficit for whatever year it may be, we are going to have to

raise the debt limit. If we did not have the amendment that the Senator from Colorado is offering, we still would have agreed to spend deficit dollars with a three-fifths vote, unless the deficit resulted from a revenue shortfall. If we anticipated such a shortfall, though, we could vote to decrease outlays.

The last part of the Senator's amendment seems redundant. It is already stated in Senate Joint Resolution 58 that we have to have a three-fifths vote to spend deficit dollars. Whether or not we would still have to have a vote to increase the debt, I would say, in my judgment, we would have to. But to get there we would have to have had a three-fifths vote to adopt a budget calling for deficit expenditures, except in the revenue shortfall situation.

Mr. ARMSTRONG. Mr. President, could we pin this down because we are getting into an interesting economic matter?

Let me ask the Senator from Arizona to focus on exactly the fact situation he has described. Let us suppose that at the time specified in the resolution by a three-fifths vote Congress agreed to a deficit budget. Is the Senator saying that under the terms of this, in his opinion, as a sponsor of the resolution and as a member of the committee and as a constitutional scholar, then subsequently when the time came to increase the public debt limit and a resolution leading to a statute were pending in the Senate and House of Representatives a three-fifths vote would be required for the passage of such a measure?

Mr. DECONCINI. Yes, I believe it would be. But I think the implementing legislation stemming from the Domenici-Chiles amendment would deal with adopting a budget that has a deficit. We cannot get to deficit spending under Senate Joint Resolution 58 without a three-fifths vote, except where there is an unexpected revenue shortfall so that actual revenues are less than outlays.

Mr. ARMSTRONG. I wish to pursue the question that the Senator has just raised, but I wish to set it aside temporarily to complete the train of thought on the question of whether or not a three-fifths majority vote would be required to increase the limit on the public debt. If the Senator's legal opinion is correct, and I treat it with great respect because he is one of the foremost authorities in this body on this matter, then it would be his opinion that the Armstrong-Boren amendment adds nothing to what we have.

Mr. DECONCINI. That is correct.

Mr. ARMSTRONG. But I think he would agree that as a matter of law at least it subtracts nothing; neither does it add nor subtract.

Mr. DECONCINI. If the Senator will yield, I agree with that, that does not

add anything of necessity that is not already in place. I must admit that it does not subtract from it except possibly creating fuzziness as to what the permanent debt limit is.

Mr. ARMSTRONG. Then the real issue under that circumstance is one of whether or not such an amendment adds something in the way of clarity that is not apparent on the face of the resolution, whether it assists us in obtaining passage in this body and the other body and the public, whether or not it helps to funnel the criticism in the press and among economists who think the resolution is too vague to be enforced and a concern I already expressed myself on. I do not feel that is true. I do not say the resolution is unenforceable or unworkable. I do say this makes it a bit more specific so I think that is the question that Senators should look at, if they believe as the Senator from Arizona says that a three-fifths requirement is already contained in this resolution.

Mr. President, I ask the Senator from Arizona if he would focus on another scenario. If I understand what is required by this resolution, it is the adoption in advance of a statement of receipts and outlays and a limitation that outlays may not exceed the estimated receipts.

Mr. DECONCINI. That is correct.

Mr. ARMSTRONG. Now let us take a hypothetical situation slightly different than the one we have just explored. We were talking a moment ago about what happens if Congress by a three-fifths vote deliberately adopts a deficit budget. Let us suppose instead of that that Congress adopts a budget which on its face is balanced, that is, a statement of receipts and outlays which reflects a balance. That has happened over and over again and in subsequent months it has become plain that in fact receipts are running below the estimate for outlays as a result of entitlement programs or others of the so-called uncontrollables which now comprise more than three-quarters of the Federal budget. Let us suppose that, notwithstanding the statement of receipts and outlays, the actual result as the year comes to a close is a deficit. What then is the enforcement mechanism? And in that circumstance does it require a three-fifths vote to increase the debt ceiling?

Mr. DECONCINI. No. My interpretation is that it would not. This is not a provision that would absolutely lock in a balanced budget. We could end up with a deficit if actual receipts are less than the projected receipts. Actual outlays may not exceed projected outlays, but we cannot control receipts and we may experience a shortfall.

Mr. ARMSTRONG. In other words, if Congress adopts a statement of receipts and outlays that reflects a balanced budget and such a balance does

not in fact occur, then a majority vote would increase the national debt?

Mr. DECONCINI. That is my understanding, but only the deficit was, as it were, an unplanned deficit.

Mr. ARMSTRONG. Mr. President, I am alarmed to hear this interpretation because Congress has regularly in recent years adopted what amounts to statements of receipts and outlays reflecting a balanced budget which has never materialized.

Mr. DECONCINI. If the Senator will yield, that is very true. I think the Senator would have to—maybe he would not—but this Senator would have to conclude that most assumptions have been quite bogus from many economic reports adopting all types of economic recovery plans and tax proposals and reductions that have not been realistic, in this Senator's opinion, even though I voted for them in the Economic Recovery Act, and I do not think that is what Congress is going to do if Senate Joint Resolution 58 were in fact a part of the Constitution.

I think we would, as the State of Arizona does, budget ourself with a surplus so that we would anticipate the chance of having shortfall in receipts. That is how business does it, and that is how my State does it, and I expect that is what States that have balanced budgets do also.

Mr. ARMSTRONG. Mr. President, I am about to yield the floor, but I wish to ask all Senators to reflect very carefully on what the Senator from Arizona has said. If his interpretation of this is correct, and I judge that it is, what we have really done is left a gaping hole in the enforcement procedure.

He has really said if the estimate turns out to be wrong for some reason there is no way to enforce it, there is no three-fifths requirement. If Congress by a majority vote enacts an entitlement program, and by a majority vote enacts appropriations and tax measures, and by a majority vote adopts a statement that says receipts and outlays will be in balance when they are not, in the amount of \$10 billion or \$20 billion or \$50 billion or \$100 billion or \$150 billion, there is no enforcement mechanism, and I am concerned about that from two perspectives:

First of all, the estimating process is notoriously inaccurate; and, second, because, how shall I say this with delicacy and tact and within the traditions of the Senate, Mr. President, there have been on some occasion some motives by some Senators in some way so that maybe the estimates we are dealing with are "cooked" a little to reflect political considerations.

I would not want to put into the Constitution an incentive for hypocrisy, but, in fact, if it were the motive of

this body to adopt a deficit budget and they could not muster the three-fifths required, all they have to do is to adopt a statement that says receipts and outlays are in balance even when they know full well that they are not. That seems to be a temptation toward hypocrisy.

Mr. DECONCINI. Mr. President, if the Senator will yield, let us assume this article were adopted and in place. There is no way that anyone can absolutely be certain what the receipts are going to be. All you can do is adopt a statement of what you think they are going to be. Good, prudent budgeting would provide for a surplus in the event something went wrong and we had a receipt shortfall.

As the Senator from South Carolina states, let us assume further that the economy went down. What are we going to do? We are faced with a deficit. You can raise taxes by a majority vote or you can live with the unplanned deficit which will in all likelihood be small. I think that is the wisdom of this particular amendment. We would not want to raise taxes in a recessionary period would we?

When the Senator from Colorado made reference to being boxed in, I think, that is the beauty of this particular amendment.

I believe that Congress will not play loose in future budgeting efforts with the principles of this constitutional amendment. Congress will not vote on the floor of both Houses and adopt budget statements that are not realistic in their projected outlays, and receipts. I agree, we may have been unrealistic in past budget projections. I think that has led us to where we are today in saying "Do not do that; adopt realistic estimates and statements." I have confidence that with the imprimatur of the Constitution, Congress will fulfill its sworn duty in a realistic manner.

Mr. ARMSTRONG. Mr. President, I am about to yield the floor, but I did have one item of business I would like to transact.

Mr. THURMOND. If I might make this statement. The proposed amendment substitutes an absolute balanced budget requirement which most of us, of course, are anxious to have. It is absolute in the sense that if revenues fall, and deficits will be incurred that will raise the public debt, then nothing short of raising taxes or allowing the entire Government to shut down will resolve the problem of reduced revenues.

The proposed amendment would require increased taxes during a recession or period of economic downturn.

The point I am making is, should you not leave to the Congress some ability to adjust to changing economic conditions, leave them some flexibility to determine if you are having a depression or if you are having a recession

that Congress can take steps to offset it, or to not increase taxes during a depression?

This is the ideal, of course, that is the ideal dream of conservatives. But I think you have got to be practical. We cannot reduce the level of the public debt by simply passing this amendment. But once fiscal responsibility and restraint is imposed by this amendment on the Congress, the public debt can be attacked. We have allowed spending by the Federal Government to fuel inflation and add to the public debt. This amendment indirectly attacks this problem.

Mr. President, I cannot believe the Senator from Colorado wants to encourage raising taxes in order not to incur a deficit, however small, just to require a constitutional three-fifths to exceed the debt.

I think you have got to realize that if you do have a recession or a depression then that is no time to raise taxes. Therefore, let us leave that to Congress.

It seems to me the Senator might consider offering this as a separate statute, but do not put it in the Constitution.

Mr. ARMSTRONG. Mr. President, I am going to retire from the floor before I say something which I may regret, but I must say I am extraordinarily concerned by the interpretation of the Senator from South Carolina and the Senator from Arizona.

What I thought I was coming to the floor to vote on Wednesday was an absolute bar to deficit spending by the Federal Government unless approved by three-fifths. If it is not that, if this amendment the Senator from Oklahoma and I are offering is more than a clarification, if it really is the only true discipline that is going to be contained in this, the only absolute discipline, then it is urgently necessary for reasons far beyond those I originally proclaimed, and I want to reflect seriously on what was said tonight, if what we are saying is that a deficit is OK if it is unplanned, and that is what I believe I have just heard.

Mr. THURMOND. We are not saying that, no.

Mr. ARMSTRONG. Let me ask the Senator from South Carolina to clarify.

Mr. THURMOND. Go ahead.

Mr. ARMSTRONG. I understand from the Senator from Arizona—and I thought from the Senator from South Carolina—that if a statement is adopted at the outset of a year or early in a year which reflects a balance between outlays and receipts, that that is sufficient to fulfill the constitutional requirement, and that if, in fact, outlays run ahead of receipts, that there is no remedy for it, there is no enforcement power. It does not require a three-fifths vote.

Mr. THURMOND. In order for the outlays to be greater than receipts, there would have to be a three-fifths vote, and we leave it flexible that way. If both bodies—here is the way it reads:

Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipts by a vote directed solely to that subject.

Mr. BOREN. Mr. President, will the Senator yield for maybe a clarifying question?

Mr. THURMOND. I would be pleased to yield.

Mr. BOREN. As with the Senator from Colorado—I have no problem with the Senator from South Carolina—I have no problem with the fact that if we have a dire situation, we have a depression and we do not want to raise taxes in the middle of a depression, if the three-fifths of both Houses say it is an emergency, we ought to suspend the balanced budget; I have no problem with putting that flexibility in. I think that flexibility should be there.

But I am worried about what the Senator from Colorado is worried about. Let us suppose in absolute good faith we have technicians, and we all know they can make mistakes, and they come forward with an estimate based upon certain economic assumptions—and all estimates must make economic assumptions—and they say, "We assume the receipts are going to be this much and, therefore, we can authorize this level of outlays."

Let us suppose they make an honest mistake, and because of that mistake, we end up with a mistake by the technicians, and not because of a three-fifths vote of Congress but because of a mistake by technicians in making an estimate, with an unbalanced budget.

Now, would we allow that under the amendment as now written, absent the Armstrong-Boren amendment? Would we allow the budget, therefore, to remain out of balance that year because of a mistake made by the technicians?

Mr. THURMOND. Senator, I think it is answered right here. Section 1:

Prior to each fiscal year, the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts.

This is the sentence following that:

The Congress may amend such statement provided revised outlays are no greater than revised receipts.

You have flexibility to amend that original statement. You are not bound by that original statement.

Mr. BOREN. But suppose we do not amend it? Suppose it is passed—

Mr. THURMOND. Congress only has to specify outlays, not receipts. In other words, the receipts are not going

to balance right exactly at the end of the period because of fluctuations in the economy. I am sure you will have a little excess or you will have a little fallback during the course of the fiscal year.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. THURMOND. Mr. President, I ask unanimous consent to continue for 10 minutes so that we can finish this discussion.

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

Mr. THURMOND. In other words, we have arranged here for Congress to amend that statement provided revised outlays are no greater than revised receipts. You still want to keep those outlays within the receipts. I do not know any other way you can do it. Nothing is perfect, no legislation we pass is going to be just perfect. But I think this is probably as near as we can get to it and not lock us into a fixed and inflexible amendment.

Mr. ARMSTRONG. Mr. President, the issue is not putting on taxes. The issue is whether or not a deficit will occur, and under the scenario described by the distinguished chairman, I did not hear him explain how outlays would be prevented from rising above the number contained in the statement of receipts and outlays.

The situation which the Senator from Oklahoma is concerned about is where a balanced budget statement is adopted but, in fact, a balance does not occur, and it would not necessarily be a modest underrun or overrun. It could be billions—\$20 billion, \$100 billion.

I think I have said my piece tonight, Mr. President. I will go back in the morning and reread what has been discussed here tonight. I am greatly concerned about the viability of the amendment without the Armstrong-Boren amendment, far more so than when I began to speak, based on the explanation I have been given tonight.

The last thing I would like to say is to simply ask for the yeas and nays, and to suggest that all Senators reflect on the issue overnight and see where we go from there.

The PRESIDING OFFICER (Mr. GORTON). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. THURMOND. Mr. President, I just want to say, in closing, that I suggest that the Senator read carefully the second sentence of the first section where the Congress can amend this statement. We leave some flexibility there to amend the statement provided their revised outlays are not greater than the revised receipts. That is about as near, I presume, as you could get at it. Then, if they want to spend more than that, they would have a vote of three-fifths of both bodies.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I think there is perhaps no other Senator willing to offer an amendment tonight. This means that we have had a good day, notwithstanding that the votes are stacked.

There are six votes stacked to begin at 11 o'clock tomorrow. For the benefit of Senators, I might read them.

The Dodd vote on the pay-as-you-go substitute, printed amendment No. 2009, will occur at 11 o'clock; Mathias-Baucus amendment No. 1931, thereafter; a Moynihan amendment on defense spending, amendment No. 1928, as modified to follow; the Cranston monetary policy, amendment 1996, next; the Cranston amendment on three-fifths voting requirement, amendment No. 1989, to be the next amendment; and now the Armstrong amendment dealing with the debt limit being unprinted amendment No. 2010, is the sixth amendment that is stacked.

Mr. DECONCINI. Mr. President, I wonder if we might pull the Armstrong-Boren amendment off that unanimous-consent request for right now.

Mr. BAKER. There was no request. The order was entered previously that all votes ordered today would be stacked tomorrow to begin at 11.

Mr. BOREN. Mr. President, would that mean that they would be in that order? Would they come up automatically on the order?

Mr. BAKER. Yes.

Mr. ARMSTRONG. We could vitiate the yeas and nays, if that is agreeable. That would leave the amendment, nonetheless, pending, and we could decide what we want to do on tomorrow.

Mr. BAKER. That is agreeable.

The PRESIDING OFFICER. The Chair would advise that if the yeas and nays were vitiated, the amendment would be before the body now.

Mr. BAKER. Mr. President, I ask unanimous consent that, one, the yeas and nays be vitiated and, two, that Armstrong amendment be temporarily laid aside for further disposition on tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BAKER. Mr. President, I have cleared the request I am about to make with the distinguished minority leader.

I ask unanimous consent that the first vote, which will be a 15-minute vote, be followed by votes back-to-back, which are 10 minutes each.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 12:31 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 6863. An act making supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes.

The message also announced that the House has agreed to the following resolutions:

H. Res. 474. A resolution disapproving the deferral numbered D82-240;

H. Res. 475. A resolution disapproving the deferral numbered D82-239;

H. Res. 476. A resolution disapproving the deferral numbered D82-238;

H. Res. 479. A resolution disapproving the deferral numbered D82-10A;

H. Res. 493. A resolution disapproving the deferral numbered D82-247; and

H. Res. 494. A resolution disapproving the deferral numbered D82-246.

ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

S. 2332. An act to amend the Energy Policy and Conservation Act to extend certain authorities relating to the international energy program, to provide for the Nation's energy emergency preparedness, and for other purposes.

The enrolled bill was subsequently signed by the Vice President.

At 2:51 p.m., a message from the House of Representatives, delivered by Mr. Gregory, announced that the House has passed the bill (S. 2248) to authorize appropriations for fiscal year 1983 for the Armed Forces for procurement, for research, development, test, and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, to authorize supplemental appropriations for fiscal year 1982, to provide additional authorizations for fiscal year 1982, and for other purposes, with amendments; it insists upon its amendments, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. PRICE, Mr. BENNETT, Mr. STRATTON, Mr. WHITE, Mr. NICHOLS, Mr. BRINKLEY, Mr. MOLLOHAN, Mr. DAN DANIEL, Mr. DICKINSON, Mr. WHITEHURST, Mr. SPENCE, Mr. BEARD, Mr. MITCHELL of New York, and Mrs. HOLT; and as additional conferees, Mr. BOLAND, Mr. MINETA, and Mr. ROBINSON, from the Permanent Select Committee on Intelligence, solely for consideration of differences regarding intelligence-related activities; and as additional conferees solely for consideration of section 1011 of the House amendments and modifications committed to conference: Mr. BROOKS, Mr. FOUNTAIN, Mr. FASCELL,

Mr. HORTON, and Mr. ERLNBORN as managers of the conference on the part of the House.

HOUSE BILL REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 6863. An act making supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes; to the Committee on Appropriations.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, August 2, 1982, he presented to the President of the United States the following enrolled bill:

S. 2332. An act to amend the Energy Policy and Conservation Act to extend certain authorities relating to the international energy program, to provide for the Nation's energy emergency preparedness, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3975. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report on a proposed rescission and a proposed deferral of certain funds; jointly, pursuant to the order of January 30, 1975, to the Committee on Appropriations, the Committee on the Budget, and the Committee on Energy and Natural Resources.

EC-3976. A communication from the Director of the Federal Emergency Management Agency transmitting, pursuant to law, a report on the acquisition of real and personal property during the quarter ending June 30, 1982; to the Committee on Armed Services.

EC-3977. A communication from the Secretary of Housing and Urban Development transmitting, pursuant to law, a report on fair market rents and exceptions thereto; to the Committee on Banking, Housing, and Urban Affairs.

EC-3978. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Improved Administration of Federal Public Disaster Assistance Can Reduce Costs and Increase Effectiveness"; to the Committee on Banking, Housing and Urban Affairs.

EC-3979. A communication from the Secretary of Commerce transmitting, pursuant to law, the annual report on the administration of title IV of the Outer Continental Shelf Lands Act; to the Committee on Commerce, Science, and Transportation.

EC-3980. A communication from the Secretary of the Interior and the Secretary of Agriculture transmitting, pursuant to law, a report on activities under the Wild Free-Roaming Horse and Burro Act; to the Committee on Energy and Natural Resources.

EC-3981. A communication from the National President of the Girl Scouts transmitting, pursuant to law, the Annual Report

for 1981, and urging cosponsorship and support of S. 2436 and H.R. 6091; to the Committee on Energy and Natural Resources.

EC-3982. A communication from the Secretary of Commerce transmitting a draft of proposed legislation to provide for State, local, or private operation of the fur seal harvest on the Pribilof Islands of Alaska; to the Committee on Environment and Public Works.

EC-3983. A communication from the Director of the Office of Emergency and Remedial Response of the Environmental Protection Agency transmitting additional material to be added to the National Contingency Plan (previously transmitting on July 13, 1982); to the Committee on Environment and Public Works.

EC-3984. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Compilation of GAO's Work on Tax Administration Activities During 1981"; to the Committee on Finance.

EC-3985. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Preliminary Findings on Patient Characteristics and State Medicaid Expenditures for Nursing Home Care"; to the Committee on Finance.

EC-3986. A communication from the Acting President of the Overseas Private Investment Corporation transmitting, pursuant to law, the report of OPIC on "additionality"; to the Committee on Foreign Relations.

EC-3987. A communication from the Director of the Federal Emergency Management Agency transmitting, pursuant to law, a report on comprehensive emergency management for 1981; to the Committee on Governmental Affairs.

EC-3988. A communication from the Chairman of the Board of Directors of the Tennessee Valley Authority transmitting, pursuant to law, a report on the condition of the TVA Retirement System; to the Committee on Governmental Affairs.

EC-3989. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report concerning the claim of Mr. Rocco A. Trecoasta for back pay; to the Committee on the Judiciary.

EC-3990. A communication from the Securities and Exchange Commission transmitting, pursuant to law, a report on fiscal year 1981 corporate reorganizations under the bankruptcy code; to the Committee on the Judiciary.

EC-3991. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Prisoners Receiving Social Security and Other Federal Retirement, Disability, and Education Benefits"; to the Committee on the Judiciary.

EC-3992. A communication from the Counsel of the National Council on Radiation Protection and Measurements, transmitting, pursuant to law, a report entitled "Financial Statements and Supplemental Schedules for the Year ended December 31, 1981"; to the Committee on the Judiciary.

EC-3993. A communication from the Secretary of Education, transmitting, pursuant to law, a report entitled "Postsecondary Education in the U.S. Territories"; to the Committee on Labor and Human Resources.

EC-3994. A communication from the Librarian of Congress, transmitting, pursuant to law, a report on the activities of the Library of Congress, including the Copyright

Office, for fiscal year 1981, copies of the supplement "Quarterly Journal of the Library of Congress, and the annual report of the Library of Congress Trust Board; to the Committee on Rules and Administration.

EC-3995. A communication from the Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report on converting the grounds function at the Public Works Center, Norfolk, Va. to contractor performance; to the Committee on Armed Services.

EC-3996. A communication from the Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report on converting the food service function at the Naval Station, Philadelphia, Pa., to contractor performance; to the Committee on Armed Services.

EC-3997. A communication from the Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report on converting the keypunch function at the Ship Parts Control Center, Mechanicsburg, Pa., to contractor performance; to the Committee on Armed Services.

EC-3998. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Review of the Federal Home Loan Mortgage Corporation's Financial Statements for the Year Ended December 31, 1981"; to the Committee on Banking, Housing, and Urban Affairs.

EC-3999. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, the budget estimate and request of the Board for the supplemental appropriation funding fiscal year 1982 pay raises; to the Committee on Commerce, Science, and Transportation.

EC-4000. A communication from the Secretary of Transportation transmitting a draft of proposed legislation to grant to the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy the authority to lease out Government owned property in exchange for services; to the Committee on Commerce, Science, and Transportation.

EC-4001. A communication from the Secretary of the Interior, transmitting pursuant to law, an updated report on the status of implementation of the Redwood National Park Expansion Act; to the Committee on Energy and Natural Resources.

EC-4002. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-4003. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-4004. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-4005. A communication from the Administrator of the Office of Federal Procurement Policy, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a proposal for a uniform Federal Procurement System; to the Committee on Governmental Affairs.

EC-4006. A communication from the Executive Director of the National Ski Patrol System, Inc., transmitting, pursuant to law, the audit report of the National Ski Patrol System, Inc. for fiscal year 1981-82; to the Committee on the Judiciary.

REPORT OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES SUBMITTED DURING THE RECESS

Under the authority of the order of the Senate of July 30, 1982, the following report of a committee was filed on July 30, 1982, during the recess of the Senate:

By Mr. McCURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 2305. A bill to insure that all energy and mineral resources originating on the public lands and on the Outer Continental Shelf are properly accounted for under the direction of the Secretary of the Interior, and for other purposes (with additional views) (Rept. No. 97-512).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCURE, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 439. Original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2305; referred to the Committee on the Budget.

By Mr. MATHIAS, from the Committee on Rules and Administration:

Special report on allocation of budget totals set forth in the first concurrent resolution on the budget, Senate concurrent resolution 92, 97th Congress (Rept. No. 97-513).

By Mr. McCURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 4347. An act to authorize the Secretary of the Interior to proceed with development of the WEB pipeline, to provide for the study of South Dakota water projects to be developed in lieu of the Oahe and Pollock-Herreid irrigation projects, and to make available Missouri basin pumping power to projects authorized by the Flood Control Act of 1944 to receive such power (Rept. No. 97-514).

By Mr. McCURE, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 440. Original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 4347; referred to the Committee on the Budget.

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 Mr. RIEGLE:

S. 2799. A bill for the relief of Jabbar Attou; to the Committee on the Judiciary.

By Mr. McCURE:

S. 2800. A bill to provide for the disposal of silver from the National Defense Stockpile through the issuance of a special series of bonds which may be redeemed for silver, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. McCURE, from the Committee on Energy and Natural Resources:

S. Res. 439. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2305; to the Committee on the Budget.

S. Res. 440. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 4347; to the Committee on the Budget.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCURE:

S. 2800. A bill to provide for the disposal of silver from the national defense stockpile through the issuance of a special series of bonds which may be redeemed for silver, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

DISPOSAL OF SILVER FROM THE NATIONAL DEFENSE STOCKPILE

● Mr. McCURE. Mr. President, I rise today to introduce another piece of legislation aimed at assuring that if any silver is sold from the national defense strategic stockpile it will be done in a manner that has the least effect on the already depressed price of silver.

The administration's interagency study on the silver stockpile may be delayed. However, I am not confident that at some point in the future this administration or another administration will ask Congress for the authorization to dispose of the silver. Let me say in no uncertain terms that I am opposed to the disposal of this silver. I am also opposed to the further disruption of the silver market. The disposal of silver from the stockpile has been brought up continually since 1973. It is unfair to force silver products, investors, and users to continually deal with every administration's ill-advised interference. If this administration still deems it necessary to dispose of silver, I will not allow it to have any adverse effects on the silver industry both at home and abroad.

Idaho is this Nation's most important silver-producing State. Recent mine closures have virtually eliminated the once booming economy in north Idaho. Plant closures in the copper districts of Arizona and New Mexico, and the molybdenum district

of Colorado have idled 50 percent of the mining employees in the West—some 50,000 workers.

This problem is one of growing magnitude and great economic significance. Mining and mineral industries rank as the major industrial employer of the Western United States. In addition to job losses within the industry, more than 100,000 employed in related or supporting trades have been laid off or otherwise adversely affected. As more silver mines close, the United States becomes more dependent on foreign sources of silver for our industrial and strategic silver needs.

The legislation we are introducing today allows the Department of Treasury to issue securities using silver from the strategic stockpile to back these securities. The merits of this proposal are numerous. Because the silver can be valued at the bond conversion price and not the current artificially depressed price, the taxpayer will realize a much better price for the stockpiled silver. Silver securities like these will undoubtedly reduce interest costs compared to the rate the Government pays on conventional Treasury bonds. This can be done while taking a great deal of pressure off of the silver market. Moreover, during the term of the bond the Department of Treasury would continue to hold the silver, thus allowing the benefits of the silver stockpile to remain within the Government.

In 1980, the Sunshine Mining Co. successfully marketed two issues of silver backed bonds. Both issues carried a coupon rate of 8½ percent while similarly issued AAA rated bonds, floated by other blue chip companies, carried coupon rates in the range of 13 to 14 percent, thus saving Sunshine a substantial amount in interest costs. These were both highly successful issues from which we can learn.

Furthermore, this legislation allows an investor to reduce the inflation uncertainty premium which some economists claim is the cause of high interest rates. Indexed bonds, like these, shift the risk of inflation from the Government—as the borrower—to the investor—as the lender. With the ever-increasing shortage, silver is becoming an excellent investment provided that the investors are given the proper investment tools.

In a statement before the Federal Gold Commission last November, noted economist Alan Greenspan attested that the issuance of gold notes would likely "reduce current budget deficits" because they could be sold at "reduced interest rates." Greenspan went further and indicated the "the success in restoring long-term fiscal confidence will show up clearly in the yield spreads between gold and flat dollar obligations of the same maturities." Greenspan also agreed that gold

notes could "set a standard in terms of prices and interest rates that could put additional political pressure on the administration and the Congress to move expeditiously toward noninflationary policies." These same arguments are valid for the issuance of silver notes. This legislation provides an excellent opportunity to experiment on a small basis to determine just how effective this type of issue can be.

This legislation provides for another method of disposal which, like S. 2598, assures that the silver market will not be disturbed. The truth of the matter is that by forcing a supply onto a market, the price is adversely affected. Merely talking about the disposal of silver from the stockpile in a manner similar to last year's weekly auction sales has sent the silver price plunging well below break-even levels. It is just bad business to sell a resource for a price several dollars below the cost of production. I would certainly hope that this administration could learn from the mistakes of previous administrations.

Mr. President, I urge my colleagues to join us in cosponsoring both of these important pieces of legislation and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2800

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Second Liberty Bond Act is amended by inserting after section 22A (31 U.S.C. 757c-2) the following new section:

"Sec. 22B. (a) The Secretary of the Treasury, with the approval of the President and subject to the limitation under section 21 of this Act, may issue United States silver bonds.

"(b) The net proceeds of any United States silver bond shall be deposited into the National Defense Stockpile Transaction Fund solely for the acquisition of strategic and critical materials under section 6(a)(1) of the Strategic and Critical Materials Stockpiling Act (50 U.S.C. 98e(1)).

"(c) Subject to the provisions of subsections (d) and (e), United States silver bonds shall—

"(1) be in such form, and

"(2) subject to such terms and conditions, including any restrictions on transfer, as the Secretary of the Treasury may from time to time prescribe.

"(d)(1) United States silver bonds—

"(A) shall be issued in denominations of silver, such denominations to be determined by the Secretary of the Treasury.

"(B) shall be issued only on an interest-bearing basis with the rate of interest to be determined by the Secretary, and,

"(C) shall be redeemable before maturity only upon such terms and conditions as the Secretary may prescribe.

"(2) Any payment of interest, or any payment at redemption, shall be paid in silver or its then current dollar equivalent, except that in the case of any payment of silver,

such payment shall be made out of the silver stockpile.

"(3) The Secretary of the Treasury, with the approval of the President, is authorized to provide by regulations that holders of United States silver bonds may, at their option, retain the bonds after maturity and continue to earn interest upon such bonds at the rate determined under subsection (d)(1)(B).

"(e)(1) Except as provided in paragraph (2), the provisions of subsections (c), (e), (g), (h), and (i) of section 22 shall, to the extent not consistent with the provisions of this section, apply with respect to United States silver bonds.

"(2) For purposes of the Internal Revenue Code of 1954, no gain shall be recognized on the excess of the redemption price over issue price except to the extent such excess represents interest described in subsection (d)(1)(B).

"(f) The provisions of section 3563 of the Revised Statutes (31 U.S.C. 371) shall not be construed to impair any obligation arising out of any United States silver bond.

"(g) United States silver bonds issued pursuant to this Act shall be secured by silver from the silver stockpile and the aggregate amount of silver which may be used to secure such bonds shall not exceed 105,000,000 troy ounces."

(b) The amendment made by this section shall take effect on the later of—

(1) October 1, 1982, or

(2) the date of the enactment of this Act. ●

ADDITIONAL COSPONSORS

S. 1018

At the request of Mr. CHAFEE, the names of the Senator from Oklahoma (Mr. BOREN), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Oklahoma (Mr. NICKLES), and the Senator from Arizona (Mr. GOLDWATER) were added as cosponsors of S. 1018, a bill to protect and conserve fish and wildlife resources, and for other purposes.

S. 2204

At the request of Mr. HATFIELD, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2204, a bill to promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and for other purposes.

S. 2308

At the request of Mr. DECONCINI, the name of the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 2308, a bill to direct the Secretary of Agriculture to convey certain property to the city of Show Low, Ariz.

S. 2526

At the request of Mr. CRANSTON, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2526, a bill to reduce interest rates, control inflation, and insure the availability of credit for productive purposes, and promote economic recovery by extending the Credit Control Act, and for other purposes.

S. 2580

At the request of Mr. MATHIAS, the name of the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 2580, a bill to establish the Christopher Columbus Quincentenary Jubilee Commission.

S. 2598

At the request of Mr. McCLURE, the name of the Senator from Nevada (Mr. CANNON) was added as cosponsor of S. 2598, a bill to provide for the disposal of silver from the national defense stockpile through the issuance of silver coins.

S. 2631

At the request of Mr. KASTEN, the names of the Senator from Oklahoma (Mr. NICKLES), and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. 2631, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

S. 2674

At the request of Mr. COHEN, the name of the Senator from Indiana (Mr. QUAYLE) was added as cosponsor of S. 2674, a bill to amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes.

S. 2784

At the request of Mr. DECONCINI, the names of the Senator from Tennessee (Mr. SASSER), and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of S. 2784, a bill to clarify the application of the anti-trust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sports leagues, and for other purposes.

SENATE JOINT RESOLUTION 178

At the request of Mr. HATCH, the name of the Senator from Alaska (Mr. STEVENS) was added as cosponsor of Senate Joint Resolution 178, a joint resolution to authorize and request the President to proclaim the second week in April as "National Medical Laboratory Week."

SENATE RESOLUTION 439—ORIGINAL RESOLUTION WAIVING CONGRESSIONAL BUDGET ACT

Mr. McCLURE, from the Committee on Energy and Natural Resources, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 439

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 2305. Such waiver is necessary because S. 2305, as reported, authorizes the enactment of new budget authority which would first become available in fiscal year 1983, and such bill was not reported on or before May 15, 1982, as required by section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

The waiver of section 402(a) is necessary to permit Congressional consideration of the initiatives authorized in S. 2305, which are expected to result in no net increase in costs to the Federal government and are expected to result in increased Federal revenues.

Such initiatives are anticipated in the fiscal year 1983 budget request by the President which reflects the program activities necessary to support implementation of S. 2305. The Appropriations Committees of the Senate and the House of Representatives have therefore had adequate notice of this authorization; enactment is not expected to interfere with or delay the appropriations process.

SENATE RESOLUTION 440— ORIGINAL RESOLUTION WAIVING CONGRESSIONAL BUDGET ACT

Mr. McCLURE, from the Committee on Energy and Natural Resources, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 440

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of H.R. 4347. Such waiver is necessary because H.R. 4347, as reported, authorizes the enactment of new budget authority which would first become available in fiscal year 1983, and such bill was not reported on or before May 15, 1982, as required by section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

The waiver of section 402(a) is necessary to permit construction of the WEB Rural Water Development project to be initiated in early fiscal year 1983 so as to take advantage of favorable weather conditions for such construction.

H.R. 4347 provides a reauthorization of the WEB project which was authorized by the Rural Development Policy Act of 1980 (94 Stat. 1171). It should be noted that \$1,900,000 was appropriated for fiscal year 1981 to provide for initial planning and construction of the project; however, obligation of the funds was deferred until conditions of section 9(b) of the Rural Development Policy Act of 1980, regarding the Oahe project (also in South Dakota), had been met; H.R. 4347, as reported, meets those conditions.

Failure to pass H.R. 4347 would preclude initial construction activities during calendar year 1982 (or early in fiscal year 1983) because the construction season for the authorized types of work is generally only from March to November. Such a delay in initial construction activities until calendar year 1983 would result in increases in construction costs.

AMENDMENTS SUBMITTED FOR PRINTING

CONSTITUTIONAL AMENDMENT ON A BALANCED BUDGET

AMENDMENT NO. 2009

(Ordered to be printed.)

Mr. DODD proposed an amendment to the joint resolution (S.J. Res. 58) proposing an amendment to the Constitution altering Federal fiscal decisionmaking procedures.

AMENDMENT NO. 2010

(Ordered to be printed.)

Mr. ARMSTRONG (for himself and Mr. BOREN) proposed an amendment to the joint resolution (S.J. Res. 58), *supra*.

NOTICES OF HEARINGS

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

Mr. LUGAR. Mr. President, as chairman of the Subcommittee on Agricultural Research and General Legislation, I wish to announce that hearings have been scheduled on S. 2348, the Meat, Poultry, and Egg Products Inspection Amendments of 1982. The bill would provide USDA with greater flexibility in its inspection procedures at food processing plants.

The hearing will be held on Wednesday, August 11, with sessions at 10 a.m. and 2 p.m., in room 324, Russell Senate Office Building.

Anyone wishing to testify should contact Denise Alexander or Martha Amburn of the Agriculture Committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Foreign Relations Committee be authorized to meet during the session of the Senate at 4 p.m. on Monday, August 2, to hold a top secret CIA briefing on Presidential certification on conditions in El Salvador.

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

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, August 3, at 10 a.m. to conduct an oversight hearing on Presidential certifications on conditions in El Salvador.

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

SUBCOMMITTEE ON WATER RESOURCES

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Water Resources of the Committee on Environment and Public Works be authorized to meet during the session of the Senate at 2

p.m. on Tuesday, August 3, to consider four pending soil conservation projects plus policy implications and appropriate action with respect to new water project construction starts recommended by the administration.

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

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Energy and Mineral Resources, of the Committee on Energy and Natural Resources, be authorized to meet during the session of the Senate on Tuesday, August 3, at 9:30 a.m., to hold a hearing on S. 2704, a bill to amend the Mineral Lands Leasing Act, and for other purposes.

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

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Reserved Water, of the Committee on Energy and Natural Resources, be authorized to meet during the session of the Senate on Wednesday, August 4, at 2 p.m., to hold a hearing to consider S. 894, a bill to exempt rural electrical cooperatives from fees under the Federal Land Policy and Management Act of 1976; and H.R. 861, a bill to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes.

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

ADDITIONAL STATEMENTS

SEVENTH ANNIVERSARY OF HELSINKI FINAL ACT

● Mr. DOLE. Mr. President, yesterday marked the seventh anniversary of the signing of the Helsinki Final Act. On August 1, 1975, the leaders of the 35 signatory states—33 European nations, the United States and Canada—agreed to enhance European security and cooperation through increased trade, cultural and scientific exchanges, and to seek the relaxing of military tensions. The Final Act also set a standard for basic human rights which all agreed to observe in the future. For the first time, human rights were elevated to the status of a fundamental principle regulating the relations between states.

The Soviet Union and the nations of Eastern Europe, seeking legitimacy for their post-World War II forged borders, looked upon the Helsinki accords in that era of détente as a road to increased security and cooperation. In signing the Final Act, the Soviet Government clearly expressed its intentions to fulfill all of the provisions, in-

cluding those pertaining to human rights. In stark contrast to their pronouncements, however, the Soviets have treated the humanitarian provisions of the Final Act as if they hardly exist, even though the agreement itself spells out the equal validity and importance of all the parts of the whole. Soviet sidestepping of any meaningful discussion of the human rights provisions was evident at the Madrid review meeting to the Conference on Security and Cooperation in Europe, where the Soviets, while expressing a desire to cooperate in other areas, called Western efforts to improve compliance in the human rights area confrontational rather than cooperative. Clearly, the Soviet Government fails to realize that cooperation in other areas is limited by lack of progress in the human rights sphere.

The tragic fact, Mr. President, is that the Soviet Union and some Eastern European countries continue to flagrantly violate the basic human rights provisions of the Helsinki Final Act. In fact, not only have the violations continued, some of the signatory nations, specifically the Soviet Union, Czechoslovakia, and Poland, have taken even harsher measures against those who urge their government to comply with these accords. Last year, for the first time, the Soviet Union ignored some of the military security provisions of the Final Act as well, in attempting to influence and intimidate the regime in Poland. Individuals in the Eastern bloc who took seriously the language in the Helsinki Final Act, which states that "institutions, organizations, and persons have a relevant and positive role to play" in fostering the aims of the accords are being harshly repressed. In the Soviet Union, over 50 of the 76 members of the Moscow, Ukrainian, Lithuanian, Georgian and Armenian Helsinki monitoring groups are either in prison, labor camps, "special" psychiatric hospitals or in internal exile as a result of their commitment "to know and act upon their rights and duties" as stated in the Helsinki Final Act.

AFFIRM SUPPORT FOR THE FINAL ACT PRINCIPLES

The lack of compliance with the Helsinki Final Act by the Kremlin, clearly visible in its continuing crackdown against Soviet citizens, its activities in Poland and the invasion of Afghanistan, raises questions regarding the efficacy of the Helsinki process. It is my belief, however, that lack of compliance by some signatory states does not discredit this process. We must continue to affirm our support for the noble principles expounded by the act. The accords have given all signatory nations the incontrovertible duty to inquire into the status of human rights among the Helsinki states. The Soviets, in signing the Final Act, can no longer legitimately say that their lack

of regard for human rights concerns no one else. Their actions, in contrast to the ideals of the Helsinki accord, show for all the world to see how wide the gap between Soviet words and Soviet deeds really is.

At the Helsinki Review Conference in Madrid, the dismal record of the Soviet Union and other Eastern bloc nations has been brought up time after time. When the Madrid meeting resumes in November, the U.S. delegation will continue to express our concern over this matter. We must never abandon the idea of treating the humanitarian provisions on an equal basis with the other provisions of the Final Act. Progress in other fields is inherently linked to progress in human rights.

As cochairman of the Commission on Security and Cooperation in Europe, I remain deeply troubled about the continued violations of the Helsinki accords. I also remain deeply committed to the Helsinki process and to its noble goals. Let us hope that the continued vigilance of the West will bring about improvements in the lives of those Eastern bloc countries whose records of compliance are very poor indeed. These improvements are vital to the goal of true security and cooperation in Europe. ●

THREE LETTERS ON ABORTION

● Mr. HELMS. Mr. President, I have three letters from medical doctors which I would commend to the consideration of my colleagues—and to all others who receive the CONGRESSIONAL RECORD. All three letters arrived on my desk the same day, and none needs any comment from me. Each speaks for itself.

The first is a copy of a letter from Dr. Pierre C. LeMaster of Fayetteville. It was addressed to Chief Justice Burger.

The other two were published in a recent edition of Medical Tribune. They were written by Dr. William P. Levonian of Santa Cruz, Calif., and Dr. Monte Harris Liebman of Hartland, Wis.

I ask that the three letters be printed in the RECORD in the order mentioned.

The letters follow:

FAYETTEVILLE, N.C.,
July 6, 1982.

Chief Justice WARREN BURGER,
Supreme Court,
Washington, D.C.

DEAR JUSTICE BURGER: During the past years we (America) have been involved in a great national debate about nuclear war, disarmament, and civil defense. The pervading theme in this debate is protection of life and property. Yet, all this effort is contradictory and hypocritical when we as a nation decided to look the other way when concern arose about protecting the most innocent of life . . . the unborn.

Until we reverse the 1973 Supreme Court decision which allowed abortion on demand,

our national debate on nuclear war is mute. Until we decide that all human life is given by God and worthy of protection, then eventually none will be worthy of protection; save that considered worthwhile by our Supreme Court.

The 1973 decision indeed opened a flood-gate and until reversed, the killing will not stop; first the unborn, then the born, but worthless (Baby Doe), then the aged and infirm and finally any of us deemed unworthy to live.

Surely the pressure is mounting upon the Court to take action. It appears that many of the same groups that push for nuclear disarmament are the same groups that want abortion on demand. Indeed their voices are loud and persistent.

I now ask you to hear mine. I am certain that I represent millions of Americans who believe that unless we absolutely protect all of human life, we will eventually absolutely protect none.

Sincerely yours for present and future life,

PIERRE C. LEMASTER, M.D.

SANTA CRUZ, CALIF.

WHEN LIFE BEGINS

It is essentially impossible to discuss scientifically the abortion issue with Dr. Brooks Mick when he has such a simplistic view of the antiabortion forces (MT, Apr. 14).

I'm astounded that he could publicly state that the only reason anyone could be against the killing of living humans would be for religious reasons. Is he implying that atheists are without morals? Being a man of such blatant pride in his own scientific prowess, would Dr. Mick care to define the implanted human fetus as other than living or other than human?

Scientifically, the life cycle has to start when the fertilized ovum implants in the uterine wall. This is incontrovertible. This is not a judicial question. This is not a theological question. This is not a philosophical question. It is purely a scientific statement of fact. Perhaps what Dr. Mick is asking is "But is it meaningful life?" This is when the courts, theologians, and philosophers enter the picture, but not necessarily to clarify the issue.

WILLIAM P. LEVONIAN, M.D.

HARTLAND, WIS.

LIFE MOST BASIC

It is encouraging that there is a growing interest in scientifically establishing when human life begins. Though there are physicians who would defer this determination to theologians, the responsibility belongs to biological scientists and physicians. As physicians, we must remove the bias which may influence our objectivity. Social, economic and political concerns must be divorced from considering the objective facts of life. Those who have been mistaken in their evaluations and work up to this point must be willing to correct their erroneous assumptions, return to objective reality and study the new directions that can grow from that platform.

Perhaps we need to review and rethink the question of when human life begins before we call for repetitive experimentation. In the 1940s, definitive study of the washings of fallopian tubes indicated that human life began in the distal third of the oviduct and was triggered by fertilization. More recent in vitro fertilization work established that the new individual implanted

in the womb is begun at fertilization and has its own process of growth.

A human life has a genetic, morphological, individual, and social context. To deny that the original nucleus or zygote is of equal importance to any other stage of development is to deny reality in its most basic sense. Without the advent of the zygote, the archetype of the morphological structure of the individual human life, no stage of development could exist. Thus if you were to inquire as to when your own life began, you would have to answer, at fertilization.

MONTE HARRIS LIEBMAN, M.D.●

A SALUTE TO MAE GELLMAN

● Mr. SARBANES. Mr. President, Mae Gellman is known throughout the State of Maryland as a leading advocate of cooperative consumerism, a concept that enables consumers to save substantially on the items they purchase.

A native of Scotland, where her parents were prominent in the cooperative movement, Ms. Gellman has worked hard to advance cooperatives in her adopted State. As executive director of Baltimore Citizens for Housing for the Disabled, she planned cooperative housing for disabled persons, and directed a major program of seminars and workshops to educate public officials and the greater community about those housing opportunities. Formerly, she served as executive director of the community food and nutrition program in Baltimore, where she organized food co-ops targeted at elderly and low-income individuals, and served over 5,000 persons living at or below the poverty level. She has also made important contributions through her courses, lectures, and seminars at Towson State University and at senior centers on the procedures and techniques of organizing food co-ops, and has shared her expertise with various food and pharmaceutical co-ops.

I recall Mae Gellman's description several years ago of the destitution she encountered as project director of a community food and nutrition program in Baltimore. "We were purchasing for residents in the inner city who were at or below the poverty level," she said. "We found elderly people on fixed incomes who had barely enough to eat for 3 weeks out of the month, and on the fourth week they would eat whatever they could get—sometimes dog or cat food. But we organized the food co-ops so they could eat nutritious meals every day." That statement, Mr. President, eloquently reveals the real impact that Ms. Gellman's efforts in the cooperative movement has had on the people she has served.

Mae Gellman's strong sense of civic responsibility and her devotion to broad community involvement are reflected in her impressive affiliations as vice president of Consumers for Nutrition Action, board member of the Na-

tional Association for the Advancement of Colored People, board member of the American Jewish Congress, member of the National Organization of Women, and member of the Maryland Conference of Social Concern. Her outstanding accomplishments have also been widely recognized. She was named Woman of the Year for her leadership in extending day care for children of working mothers. She was granted the Afro-American Award for removing the ban on black artists at Baltimore's Lyric Theatre, and received the Zeta Phi Beta Award for helping to build better human relations in Maryland.

Mr. President, Mae Gellman's many friends and admirers have organized a birthday party for her on August 3 to honor her for her many years of distinguished and dedicated service on behalf of the consumer cooperative movement in Maryland. I ask my colleagues to join me in recognizing this outstanding citizen.●

DENVER POST HAS RIGHT IDEA ON TAX POLICY

● Mr. DOLE. Mr. President, on July 28, the Denver Post published an editorial on the merits of the revenue raising, tax reform provisions of the Finance Committee reconciliation bill approved by the Senate. I would like to bring this editorial to the attention of my colleagues, because I believe it hits the nail on the head when it comes to stating what is most important in tax policy.

The issues cited by the Denver Post are the key ones: Accountability and fairness. As the Post observes, this year's revenue bill is revolutionary in that it represents an honest and open effort to reform tax laws and raise revenue to close the deficit gap. Most importantly, as the editorial observes, "this bill recognizes that in reality the biggest tax increases of the past decade were never voted by Congress. They were caused by inflation artificially increasing wages and profits in dollar terms without increasing their purchasing power."

Mr. President, last year, thanks to the dedicated efforts of the Senator from Colorado, Senator ARMSTRONG, we put an end to the deception of bracket creep. Now, when we need new revenues, we have to vote for them: And that has given us the opportunity to review the Tax Code for wasteful and unfair provisions that should have been dealt with long ago. Our tax reform bill is the result, and many of us hope it will be just the first step in an effort to reform and simplify taxes and allow for lower rates.

As was aptly noted by the Denver Post, this year's tax bill also contains another step forward in the effort to halt the distortions and unfairness caused by the interaction of inflation

and the income tax. By providing an inflation adjustment in the basis of assets for purposes of the tax on capital gains, our tax reform bill eliminates another unlegislated tax increase from the law. It extends the principle of accountability and equity to the taxation of capital gains, and this is a highly significant change.

Mr. President, I want to applaud Senator ARMSTRONG for offering his capital gains indexing amendment to this bill and for his tireless efforts to bring the problem of unlegislated tax increases to the attention of the Senate. I know my colleagues share my admiration for the Senator from Colorado, and it is good to know that the Denver Post is equally appreciative of his fine work. He has been of great assistance in the tax reform effort: He knows that by increasing the equity of the tax system, and by insuring that everyone pays a fair share of tax, we increase support for the system of voluntary compliance and pave the way for lower tax rates. I hope that every Member of Congress will take a look at the priorities in tax policy set by Senator ARMSTRONG—and by the Denver Post—because I think they explain what the present tax debate is all about.

I ask that the Denver Post editorial of July 28 be printed in the RECORD.

The editorial follows:

[From the Denver Post, July 28, 1982]

SENATE POINTS TO SOLVENCY

Defying the maxim that it is political suicide to raise taxes in an election year, the Republican-controlled U.S. Senate has passed a bold but reasoned tax-reform bill. If the Democratic-controlled House can show similar resolution, the flood of red ink and high interest rates inundating the U.S. economy may begin to ebb.

The Senate bill preserved the main thrust of President Reagan's tax reform act of last year, including the three-year, 25-percent slice in personal income taxes. But it added a total of about \$100 billion in revenue over the next three years by a number of stratagems—mostly designed to squeeze those who aren't paying their fair share of taxes now by legal or illegal means.

The bill improved reporting and enforcement procedures and established tax withholding on dividend and interest incomes. The elderly, low-income citizens and the first \$100 in interest from a single institution would be exempt from withholding.

Some of the business tax breaks dished out last year were scaled back, chiefly by levies on industries that are paying particularly low effective tax rates now. And taxes on telephone use, tobacco and air travel were increased. The infamous "safe harbor" tax-avoidance leasing schemes would be sharply curtailed and gradually phased out. In essence, the tax bill eliminates some loopholes and reapportions the burden.

Special interests are already assailing the tax bill with the canard that it is the "largest peacetime tax increase in history." That's true only if you accept two premises: that reductions in the net rate at which taxes are being cut are "increases" and that the only tax increases that count are those

which are openly voted upon by Congress instead of being silently enacted by inflation.

It's true that the Senate measure reversed some of the cuts in last year's tax-reduction act. But taxes will still be generally much lower than they would have been without the 1981 cut.

More significantly, this bill recognizes that in reality the biggest tax increases of the past decade were never voted on by Congress. They were caused by inflation artificially increasing wages and profits in dollar terms without increasing their purchasing power. That "bracket creep" hurled taxpayers into higher brackets once designed to "soak the rich."

Congress addressed that scam last year when it adopted Colorado Sen. Bill Armstrong's amendment to "index" the tax code beginning in 1985 to adjust it for inflation on personal income. But it did nothing about similar inflationary taxes on capital gains. As the law now stands, if you buy a stock for \$100 and sell it for \$150, you pay tax on a \$50 profit—even if inflation amounted to 100 percent over the period you held that stock and you thus actually lost purchasing power.

Last Friday, Armstrong convinced the Senate to extend the "indexing" principle to capital gains on taxes due in 1985. That's a crucial reform, both for spurring economic productivity and for restoring basic integrity and accountability to our tax system.

If Congress sees a legitimate need to raise taxes—as the present interest rate crisis warrants—it should do so openly. By plugging the last major route for unlegislated tax increases, Armstrong has added a long-term reform to this bill which more than offsets its short-term pain. ●

TAX ENFORCEMENT AND ASSISTANCE: SOLUTIONS FOR NONCOMPLIANCE

● Mr. COHEN. Mr. President, last week the Senate devoted several days to considering, and ultimately approving, major tax legislation. Significant portions of that bill are designed to insure that individuals and corporations pay their fair share of taxes by closing loopholes and imposing stiff penalties for noncompliance.

The Federal Government's financial well-being depends, in large measure, on whether people are willing and able to support our Nation's tax system. Although the vast majority of taxpayers pay their correct tax on time, there is a trend toward contempt and abuse of the system which could seriously undermine the concept of voluntary compliance on which it is based.

Internal Revenue Service studies show that noncompliance among taxpayers is a serious problem and is getting worse. According to IRS Commissioner Roscoe Egger, the Government failed to collect \$87 billion in taxes owed last year, and, unless corrective steps are taken, the "tax gap" will grow to \$120 billion by 1985.

Strengthening IRS enforcement activities, as provided in the tax bill, is a step in the right direction. Enforcement alone, however, is not the solution. A taxpayer cannot comply with a

law he or she does not understand. Therefore, our commitment to catch taxpayers who cheat should not outweigh our responsibility to assist those who need help in filing their tax returns.

Unfortunately, the administration is taking a step in the wrong direction by proposing a significant reduction in IRS taxpayer assistance programs next year. In fact, the Taxpayer Service Division is slated to be cut so drastically that the IRS will be able to answer taxpayers' questions only after the return has been filed—a time when such answers are not particularly useful.

In the past, the IRS offered a generous assistance program. A taxpayer could call a toll-free number, visit a local office, attend a free taxpayer information class, or take advantage of volunteer programs. Altogether, the IRS helped more than 44 million people fill out their tax forms in fiscal 1981. This year and next, however, Taxpayer Service funding will be cut by 10.2 percent, staff years by 41 percent, and, most significantly, the number of taxpayers assisted by 60 percent.

The Senate Government Affairs Subcommittee on Oversight of Government Management recently conducted an investigation and hearing to examine the impact of these reductions. The subcommittee found that eliminating selective assistance programs would be costly to taxpayers, who depend on the IRS for free assistance, and to the Government, which depends on these taxpayers to voluntarily pay their taxes. According to evidence and testimony presented, the subcommittee specifically found that reductions in taxpayer assistance would hurt voluntary compliance and, combined with increases in enforcement activity, would promote an adversarial relationship with the taxpaying public.

Of particular concern to the subcommittee was the adverse impact on elderly and low-income taxpayers. For those taxpayers who need help and can afford commercial assistance, the proposed reductions would be unfortunate but not disastrous. For elderly and low-income taxpayers—those most dependent on free IRS advice—the subcommittee found that the cutbacks would be devastating.

The IRS itself anticipated these consequences: A November 1976 IRS study concluded that "many taxpayers would not or could not comply with the law without its assistance," a followup IRS study in December 1977 found that the examination rates for Service-prepared returns were lower than third-party and taxpayer-prepared returns, and an October 1981 memorandum from Commissioner Egger to Treasury stated that "potential revenue losses would be great,

with widespread deterioration of voluntary compliance possible," if tax law assistance by telephone were eliminated. Testimony by witnesses at the subcommittee's hearing, including that by former IRS Commissioners, also concluded that compliance with our tax laws would diminish if IRS taxpayer assistance programs were cut.

Despite its own findings, the IRS closed 214 walk-in offices last year and eliminated the direct preparation and review programs for most taxpayers in those offices that remained open. If the administration's ill-conceived reductions are passed next year, moreover, telephone assistance will be provided for account and notice-related questions only, even though 60 percent of the calls it received during this year's filing period were questions about tax laws and preparation of returns.

Based on my subcommittee's review of the administration's proposed reductions in IRS Taxpayer Service, I do not feel that the shortrun savings realized would compensate for the long-term costs to the taxpayer, and, ultimately, to the Government. Accordingly, in a subcommittee report to be released next week, we recommend that the IRS taxpayer assistance program be maintained at adequate levels next year, as advocated by specialists in the field. A balanced taxpayer assistance program at fiscal 1982 levels would maximize the numbers of taxpayers to be assisted and address the special needs of low-income, elderly, and physically handicapped taxpayers.

Two former IRS Commissioners, Donald Alexander and Jerome Kurtz, best characterized these proposed cuts during the subcommittee's hearing. Mr. Alexander said that it is manifestly unfair to refuse assistance, while Mr. Kurtz described the cuts as horribly shortsighted and foolish. Congress and the administration would do well to listen to them and restore the proposed reductions in taxpayer assistance. The severe penalties for noncompliance included in the Senate bill underscore our obligation to make certain that taxpayers do not inadvertently violate complex tax laws because IRS assistance programs have been curtailed. ●

SEVENTH ANNIVERSARY OF THE HELSINKI ACCORDS

● Mr. D'AMATO. Mr. President, on August 1, 1975—7 years ago yesterday—the heads of state of the United States, Canada, the Soviet Union, and 32 countries of Europe—East and West—assembled in Helsinki, Finland, to affix their signatures to the Final Act of the Conference on Security and Cooperation in Europe (CSCE). That document, which is widely known as the Helsinki accord, was an attempt to

specify a code of behavior to govern relations among the participating states toward the end of increasing security and cooperation in Europe.

With their accession to the accord, every European nation with the exception of Albania joined with the United States and Canada in a commitment to what has come to be called "the Helsinki process." Perhaps the most significant aspect of that agreement was that, for the first time, sovereign states recognized that the manner in which they treat their own citizens is a matter of legitimate concern to the other participating states.

In addition to the provisions on human rights and humanitarian concerns—freer movement of peoples, reunification of families, binational marriage, and the free flow of information—the Helsinki Final Act deals with nearly every aspect of East-West relations—military security, trade and economic cooperation, and scientific and cultural exchanges.

A unique feature of the agreement was that it provided for a series of review meetings of the participating states to examine how they were implementing the terms of the agreement. The first such review meeting was held in Belgrade in 1977. The second meeting convened in Madrid on November 11, 1980, and will resume on November 9 of this year.

These review meetings have clearly documented a continuing pattern of hypocrisy on the part of the Soviet Union and the majority of its Warsaw Pact allies with respect to their obligations under the human rights and humanitarian provisions of the Final Act. The Soviet record of compliance with the provisions of family reunification, religious freedom, binational marriage, free flow of information, and treatment of national minorities is appalling. Sadly, the records of Romania, Czechoslovakia, the GDR, and Poland, are little better.

Particularly offensive is the fact that these countries have been harassing, arresting, imprisoning, interning in forced labor camps, confining in mental institutions, and exiling their citizens whose only crime involved monitoring the failures of their countries to comply with the humanitarian provisions of the Final Act and participating in peaceful demonstrations to protest such violations. Their right to engage in such activities is expressly sanctioned by the Helsinki accord.

Fifty of the seventy-six members of the Helsinki monitoring groups in the Soviet Union are imprisoned or in exile. Since the Madrid review meeting began in November of 1980, more than 300 human rights activists are known to have been arrested. In blatant violation of their Helsinki commitments, the Soviets undertook the brutal invasion of Afghanistan and imposed the

pressures which led to the declaration of martial law in Poland.

I have been a member of the Commission on Security and Cooperation in Europe, a body created by the Congress to monitor compliance with the principles and provisions of Helsinki, for 18 months. During the course of my service on the Commission, I have become convinced that, despite the continuing violations by the Soviets and their allies, the Helsinki Final Act provides the best available foundation for promoting lasting peace and security among the nations of Europe and North America. I believe the review meeting soon to reconvene in Madrid provides us with an opportunity to remind the Soviet Union and its allies that we intend to continue to provide a voice in defense of human rights and freedom. On this seventh anniversary, we rededicate ourselves to the truth that peace and security can flourish only in an atmosphere of respect for the rights and dignity of each individual man and woman. ●

IMMIGRATION REFORM BILL

● Mr. EAST. Mr. President, I have recently received a considerable amount of mail on the subject of immigration. One of the most persuasive letters was written by Mr. William W. Chip of Washington, D.C. I hope that my colleagues will take the time to read his letter before we proceed to consideration of S. 2222. I ask that his letter to me be printed in the RECORD.

The letter follows:

JULY 26, 1982.

Senator JOHN P. EAST,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EAST: You will shortly be asked to vote on S. 2222 (the Simpson immigration reform bill). S. 2222 will substantially change our immigration laws in three ways: (1) it will reduce illegal immigration by making it unlawful to knowingly hire illegal immigrants, (2) it will increase the level of legal immigration by raising the immigration ceiling from 270,000 to 425,000, and (3) it will offer amnesty and permanent residence in the United States to illegal residents in the United States who arrived before this year.

The original impetus for legislative action on immigration was a widespread feeling that immigration, which has such a profound effect on our labor markets and the shape of our society, had gotten out of control. In 1980 legal immigration exceeded 800,000, the highest level since immigration quotas were introduced in 1921. Another 500,000 to 750,000 aliens entered the United States illegally. These huge numbers astounded the general public, which could neither comprehend the enormous disparity between these statistics and the legal ceiling of 270,000 immigrants per year nor understand why massive disrespect for our immigration laws was being tolerated.

I am impelled to write this letter because I strongly believe that the provisions of S. 2222 that increase the immigration ceiling and grant an indiscriminate amnesty to illegal aliens run completely contrary to the

deeply felt concerns about immigration policy which this legislation was supposed to address. Hopefully, amendments will be offered from the floor to eliminate or modify these provisions. In deciding how to vote on any such amendments, I appeal to you to take into account the considerations outlined in the remainder of my letter.

ILLEGAL IMMIGRATION

Although increasing numbers of illegal immigrants are appearing on welfare rolls, the majority still come to the U.S. seeking jobs. S. 2222 eliminates the major attraction for illegal immigration by requiring employers to hire Americans rather than illegal aliens. The United States is virtually the only country in the world that does not protect its labor market for its own workers in this way. (In no country having such laws have the restrictions proved to be a burden on employers or a handicap to citizens belonging to ethnic minorities).

During the 1970's the U.S. economy was chronically unable to produce enough entry-level jobs to accommodate both the flood of illegal aliens and the employment needs of our own black and Hispanic youth. The effects of the crime level and welfare expenditures are plain enough. The employment provisions of S. 2222 are urgently needed and clearly worthy of your support.

LEGAL IMMIGRATION

The requirement that employers not hire illegal aliens is the centerpiece of the bill. Unfortunately, the benefits this will bring in reducing illegal immigration are substantially offset by the provision of the bill which establishes new, unreasonably high levels for legal immigration.

The present ceiling of 270,000 was established in 1952. 270,000 represented the average level of immigration to the United States since immigration quotas were established. Immediate family members of American citizens were left outside the ceiling because their admission had a high priority and, at that time, their numbers were relatively small. For similar reasons, refugees were also later removed from under the ceiling. By 1980, however, the "immediate family member" category accounted for 150,000 immigrants, while refugees and would-be refugees accounted for an additional 379,000, raising total legal immigration to 819,000.

S. 2222 takes the existing ceiling (270,000), adds the 1980 peak level of "immediate family" immigrants (150,000), and adds an additional 5,000 to that in order to establish a new ceiling of 425,000. Unlike under present law, if the number of "immediate-family" immigrants goes down, the ceiling for other immigrants will automatically go up. The result is to guarantee that immigration from these categories will never fall below the record 1980 level. Refugees, the fastest growing group of immigrants, are not covered by the ceiling.

It is also clear from all opinion polls that the vast majority of Americans want less, not more, immigration. They will certainly be vexed to learn that Congress is proposing to increase immigration at a time when unemployment exceeds nine percent, there is a shortage of affordable housing for the people already here, and we are increasingly dependent upon foreign suppliers for many basic natural resources. Hopefully, floor amendments will be offered to S. 2222 to restore legal immigration to levels acceptable to the majority of the population, either by setting a lower ceiling or by bringing refu-

gees under the ceiling. If they are, I appeal to you to vote for them.

AMNESTY

The worst feature of the bill is the extraordinarily generous program being offered to all illegal aliens present in the United States since January 1 of this year. Even the advocates of amnesty admit that this would affect three to six million aliens. What they do not say is that the three to six million figure was a conservative estimate based on data from 1977 and earlier years. Five years of record illegal immigration have occurred since then. The real number is probably five to eight million and could be much higher.

The only justification for amnesty is that in some cases it might be inhumane or impractical to deport an alien who has sunk "deep roots" into American society. Most Americans, who themselves must change their jobs or their residences on the average of once every five years, will be hard put to understand how an alien who has spent only six months in the United States has sunk such "deep roots" that it is inhumane to expect him to return to his own country.

Advocates of amnesty conjure up the image of the hardworking alien who after many years' residence in the U.S. has become a productive and established member of his community. There are indeed a number of aliens who correspond to this image, and, in practice, few of them are ever deported. Most illegal aliens, however, do not correspond to this image. Many are simply students and tourists who have not bothered to renew their visas. Most are young men who have come here temporarily from Mexico and would eventually return home when the employment provisions of S. 2222 made it more difficult to find work. Nobody I know can understand why permanent residence, citizenship, and the right to bring in their relatives is being offered to these groups, who make up the bulk of the illegal population.

Many illegal aliens are employed only part of the time they are here. Like young men anywhere with lots of spare time but no money, they often become problems for the communities where they reside. Illegal aliens already account for 34 percent of felony arrests in Los Angeles. Moreover, because most illegals are poor, they will qualify for food stamps, Medicaid, etc. at a time when funds for these benefits are being cut back for Americans. President Carter's rash, if humanitarian, decision to let Fidel Castro send whomever he wished to the United States was in retrospect a tragic error. The blanket amnesty contained in this bill would be the same error on a much larger scale.

Hopefully, amendments will be offered to postpone or eliminate amnesty, or at least to restrict it to the long term residents for whom it can be justified. Your vote for such amendments is critical.

CONCLUSION

The United States is already having great difficulty providing jobs and affordable housing for people already here. In particular, we have many years of hard work ahead to overcome the effects of past discrimination and fully assimilate millions of black and Hispanic Americans into the mainstream of our society and economy. The employment provisions of S. 2222 will make it easier to achieve these goals. The provisions increasing legal immigration and adding millions of aliens to the permanent population will make it much, much harder. I appeal to you to cast your vote on any

amendments to S. 2222 with these factors in mind.

Very truly yours,

WILLIAM W. CHIP.●

RESTORATION OF COLA ADJUSTMENTS TO FEDERAL AND MILITARY RETIREES

● Mr. RIEGLE. Mr. President, on Friday, July 29, I introduced amendment No. 2007 to the omnibus reconciliation bill, S. 2774. My amendment will restore full cost-of-living adjustments to Federal and military retirees. The Government Affairs Committee has placed a 4-percent cap on these adjustments, and my amendment will eliminate that cap and insure equity among all Federal retirements programs.

Federal retirees, both Civil Service and military, have unfairly been singled out in this bill. The reconciliation measure mandates budget cuts totaling \$12.3 billion. The imposition of a 4-percent cap will force 42 percent of these cuts from Federal pensions. These retirees comprise 1 percent of the population, and should not be asked to assume this great a burden, especially in light of the reductions in benefits that occurred last year.

Social security and railroad retirement both received full COLA's, as they should. The only major Federal retirement program to be limited in its protection against inflation is the civil service system. That is inequitable, and my amendment would restore the equality among these programs.

Federal annuitants are not some wealthy group living off the largess of the Federal Government. They receive an average annual pension of \$11,544, which is fully taxable. More than 20 percent of the annuity is actually returned in Federal, State, and local taxes.

The first-year cost of this amendment may be \$29 million less than that assumed in the bill. This is based on the revised CBO inflation projections of 6.3 percent in 1983. In addition, Congress will have ample opportunity to reassess this matter next year during the normal budget cycle, in light of changing economic circumstances.

The House Post Office and Civil Service Committee has approved full COLA's for Federal pensions, on the grounds that any limitations would be inequitable and unfair. The full House has, in a preliminary vote, indicated its approval of the full COLA, and a final vote is expected this week.

My amendment specifically excludes Members of Congress from receiving increases greater than 4 percent. This will further insure that the benefits of this amendment will be directed to those most dependent on fixed incomes for survival.

Mr. President, I hope that the Senate will support this amendment in

the interest of equity for employees who have spent their entire career in Government service, and I ask that the text of the amendment be printed in the RECORD.

On page 74, strike out line 17 and all that follows through page 75, line 2, and insert in lieu thereof the following:

LIMITATION ON COST-OF-LIVING ADJUSTMENT OF ANNUITIES OF FORMER MEMBERS OF CONGRESS IN FISCAL YEARS 1983, 1984, AND 1985

SEC. 601. (a) In each of fiscal years 1983, 1984, and 1985, the percent increase under section 8340(b) of title 5, United States Code, in any annuity payable under subchapter III of chapter 83 of such title to any individual who serves as a Member of Congress after the date of enactment of this Act shall not exceed 4 percent.

(b) In the case of an annuity described in subsection (a) and to which section 8340(c) of title 5, United States Code, applies in fiscal year 1983, 1984, or 1985, the term "applicable percent change computed under subsection (b) of this section", as used in such section 8340(c), means the lesser of—

(1) the applicable percent change computed under section 8340(b) of title 5, United States Code; or

(2) 4 percent.●

AVIATION INSURANCE EXTENSION

● Mr. HATCH. Mr. President, last week a controversial amendment was attached to H.R. 5930, a noncontroversial bill to extend the aviation insurance program for 5 years, during a conference committee on the measure.

Under the provisions of this amendment, airlines would be required by Federal statute to guarantee equivalent jobs or severance pay to employees affected by the merger, sale or lease of airline facilities.

Mr. President, I ask that the following editorials which appeared in the Washington Post and New York Times opposing such legislation be printed in the RECORD at the conclusion of my remarks.

I would urge my colleagues to carefully evaluate this issue on its merits if and when such an amendment is placed before this body.

The editorials follow:

[From the Washington Post, June 22, 1982]

CONGRESS ON A SHAKEDOWN FLIGHT

With all the signs of a typical Washington fast shuffle, moves are under way on Capitol Hill to saddle the airline industry with some mandatory featherbedding disguised as labor protection. House and Senate conferees are trying to slip into an otherwise noncontroversial bill a provision by which airlines would have to make costly payments to pilots and other employees affected by any mergers or possibly even sales of assets, including aircraft.

The proposal, which has undergone no hearings, would—among other things—guarantee furloughed employees 60 percent of their salaries for up to five years; and it would compensate for up to four years any employee for any wage loss suffered through transfer to a lower-paying job. This could mean that the highest-paid fur-

loughed pilots would be entitled to demand \$90,000 a year for five years—whether their airlines could afford it or not. Isn't this the sort of thing better left to collective bargaining?

Of course—unless you're a member of the Air Line Pilots Association, which would much rather put the payments into law than bargain for them. This organization's president is the labor representative on the executive committee of the Republican National Committee. There, as in the White House, ALPA is remembered with gratitude for its support of President Reagan's decision to fire striking air traffic controllers last year. ALPA is just as fondly remembered on Capitol Hill, where the group has dropped more than \$425,000 in campaign contributions on carefully selected targets—namely, more than 200 representatives and senators, including key members of the congressional conference committee considering the provision.

Officially, the administration is on record against the measure. OMB director David Stockman has so argued, labeling the proposed amendment "unacceptable" and "intrusion by the federal government into private collective bargaining negotiations." He points out that such provisions would be especially damaging for the airlines in serious financial difficulty—and could prevent them from taking "sensible steps to restructure" and compete.

Before the airlines were deregulated, the Civil Aeronautics Board could make a case for insisting that jobs be protected in mergers and swaps, since airlines were benefiting from government-protected franchises. But today there is no case whatever for legalized shakedowns of financially shaky airlines. The conferees should reject any such proposal.

[From the New York Times, July 16, 1982]
FROZEN IN THE COCKPIT?

Feudalism is an economic system long dead—except in the psyche of the airline unions. They want to attach airline workers to their planes and check-in counters, the way medieval serfs were tied to their land.

Under proposed legislation, airlines would have to guarantee equivalent Jobs (or severance payments as high as \$190,000) to any employee affected by merger, sale or lease of facilities. The airlines argue, correctly, that Government should not impose rigid labor protection rules on their now-deregulated industry. If employees are more eager to win such costly protection than, say, higher wages, let them bargain for it.

Before the industry was deregulated in 1978, the Civil Aeronautics Board insisted that jobs be protected in mergers and route swaps. Where equivalent work was not available, workers could get 60 percent of their wages for five years.

Such broad Government protection for airline labor was only fair, the board argued, because airline management was benefiting from valuable Government-protected franchises.

But now the franchises are gone, and so is the regulators' rationale for "labor protection provisions." That is why the pilots and airline machinists' unions are pressing Congress for a law to accomplish the same thing.

Such legislation would make little sense even in good times. To adjust to market conditions, airlines need the flexibility to buy, sell and merge facilities. They could, if they wished, barter that flexibility for lower wages or reduced fringe benefits. But as Wallace Hendricks, a University of Illinois

labor economist, points out, no airline union has valued protection provisions highly enough to pay the necessary price.

In any case, these are not good times. A half-dozen airlines are already in trouble; others will probably need to dump routes, merge facilities or lease out aircraft. No airline can afford to pay labor protection costs that might run as high as \$6 million for the sale of a single jumbo jet.

No hearings have been held on this labor protection provision. Neither the House nor the Senate voted to put such a provision in its version of an aviation insurance bill. Supporters will simply tack it on in conference committee next week, provided that influential conference members do not object. That, in effect, leaves it up to the senior uncommitted conferee, James Howard of New Jersey.

Representative Howard, chairman of the House Transportation Committee, is known both for his affection for organized labor and his practical commitment to airline deregulation. May his mind win out over his heart.

SENATOR SARBANES SALUTES COLONEL SMITH

● Mr. SARBANES. Mr. President, for nearly 42 years the citizens of Maryland have benefited from Col. Thomas Smith's outstanding service with the Maryland State Police.

Appointed to the force as a trooper in 1940, he soon joined the Investigation and Identification Bureau as a criminal investigator. His distinguished service gained him widespread recognition, and in 1951 he assisted the U.S. Senate Committee on Organized Crime. In 1962 he took command of a newly formed State police intelligence unit and was promoted to captain. His dedicated work led to promotion in 1965 to major in charge of the investigation and intelligence divisions, and in 1968 he was made lieutenant colonel and chief of operations, and commanded all State police field forces.

Since 1970, Colonel Smith has served as superintendent of the Maryland State Police. In that capacity, he has implemented many impressive initiatives that continue to have a beneficial impact in our State. He achieved a national first by establishing a cooperative enforcement program between State police and county police departments to reduce the number of injuries at high-accident locations. He also joined with the University of Maryland shock trauma unit for emergency helicopter evacuation of critically injured accident victims. Colonel Smith created the hostage negotiation unit and the special tactical assault team, as well as a narcotics strike force, and upgraded and expanded the State police crime lab. Most recently he initiated Maryland's most comprehensive effort ever to identify and remove drunk drivers from the State's highways, and national attention to Maryland's dropping traffic fatality figures

serves as testimony to his success in combating motor vehicle violations.

During the course of his remarkable career, Colonel Smith has been awarded many citations and commendations, including the American Trucking Association Award for highway safety, the Dictograph Security Award for public safety, the National Highway Traffic Safety Award for public service and innovative and effective traffic enforcement programs, and the President's Award for Energy Efficiency. A graduate of the FBI National Academy, he has shared his professional expertise as chairman of the Police Standards Committee and member of the Organized Crime Prevention Council on the Governor's Commission on Law Enforcement and the Administration of Justice, and has served as chairman of the Maryland State Police Retirement Board, chairman of the Post Mortem Examiners Commission, member of the Governor's Task Force on Violence and Extremism, member of the Criminal Justice Information Systems Advisory Board, and member of the Executive and Highway Traffic Safety Committees of the International Association of Chiefs of Police.

Mr. President, Col. Thomas Smith is worthy of the highest recognition for his distinguished record as he retires from public service. I ask my colleagues to join me in saluting this outstanding law enforcement professional.

CRIME REDUCTION

● Mr. EAST. Mr. President, the American people are crying out for action to reduce violent crime. The response of some elected officials has been that no one knows how to stop the increase in crime.

In fact, crime could be significantly reduced if appropriate resources were devoted to firm enforcement of our criminal laws. In the August issue of *The Atlantic Monthly* an iconoclastic jurist, Justice Richard Neely of the West Virginia Supreme Court of Appeals, argues that a citizens' pressure group will be required before elected officials act to reduce crime. This experienced judge estimates that violent and petty crime could be reduced to one-fifth of their current level. I ask that this article be printed in the RECORD.

The article follows:

[From the *Atlantic Monthly*, August 1982]

THE POLITICS OF CRIME (By Richard Neely)

Through at least the past decade, no public problem has worried Americans more persistently than crime. When people are asked in opinion surveys to list the problems that concern them most, the threat of crime typically comes at or near the top of the list. But when the same people list the issues on which they'll decide which candi-

date to vote for, crime usually comes behind half-a-dozen other subjects. The explanation they offer most frequently is that a candidate's statements about crime are unimportant—no one can do much about the problem.

What is misguided about this attitude is that it is possible to do something about crime. Although the evidence lacks scientific precision, certain facts of criminal-law enforcement are clear.

In many big cities, where the limit on crime is the presence of the police (as opposed to family members, watchful neighbors, and the like, who limit crime elsewhere), more officers on the streets or in the subways means fewer criminals who dare to act. But in courtrooms, most accused criminals go free because the system cannot afford to have it any other way. Everyone involved in the criminal courts is overtaxed, from the policemen, who must take time off the beat to testify, to the prosecutors, who need to dispose of cases as quickly as possible, to the judges, who know as they make their sentencing decisions that the prisons are already overcrowded. The result of this pressure is the plea-bargain, in which a man who faces, for example, a ten-year sentence with a three-year minimum term if convicted of armed robbery will instead plead guilty to grand larceny and end up serving one year in jail.

Many people complain that plea-bargaining returns criminals to the streets, but few have considered the statistics that lie behind this practice. There are nearly 104,000 felony arrests in New York City every year. New York City has facilities for only about 5,000 full-blown jury trials per year, so it is forced to do what nearly all city courts must: find some way to dispose of the surplus, usually through plea-bargaining or dropped charges. Many of the people thereby freed undoubtedly belong in jail, and the crime rate would undoubtedly fall if they were imprisoned. All that is required is money—for police, prosecutors, judges, and jails.

Why, then, have we not taken steps we know would have some effect? The answers are complicated, but chief among them is that for every proposal that might be made to reduce crime, there is a powerful, organized interest that opposes it. These obstructive groups often include the most influential force of all, the middle-class interests that so frequently complain about the threat of crime.

This problem is intimately connected with the general difficulties of American courts, but not the courts as they are usually conceived. When lay people speak of the courts, they often mean judges and attendant judicial staffs of clerks and secretaries. However, the term "courts" must be expanded when we talk of criminal law to encompass all of the supporting agencies that either feed criminals to the judges or receive them after conviction. When courts are understood in this way, it becomes clear that improving their operations can be costly. Doubling the number of policemen and prosecutors would spare many people the costs they now bear as victims of crime, but it would increase the costs many others would pay in taxes.

As is often the case, the people who stand to gain the most from this protection are the ones with the least say about how public money is spent. The primary victims of crime pay the lowest taxes. Most victims of crime live in ghettos or declining working-class neighborhoods, and they work at low-

wage jobs in places such as all-night diners or gas stations, which are easy to rob. But the taxpayers who would bear the cost of better protection for these victims are themselves seldom victims—they are instead large corporations with privately retained security forces, or middle-class taxpayers who live in well-protected neighborhoods and send their children to safe neighborhood schools or private schools.

Although it might not seem in the interest of the middle class to pay for increased enforcement, the cost of crime in the United States runs to hundreds of billions of dollars every year—much more than increased enforcement would cost. Shoplifting alone accounts for a loss of between 3 and 7 percent of all merchandise inventoried for sale by large chain stores, which means we all pay 3 to 7 percent more for our routine dry-goods purchases.

Moreover, criminal courts and their supporting agencies—unlike most government operations—actually generate revenue. At the simplest level, traffic courts and magistrate courts make more money from fees and fines than it costs to operate them. When state or local business regulations are enforced, the fines augment the treasury. Low crime rates also contribute to a desirable climate for industry, commerce, and residences, which in turn means higher property values and a stronger tax base. Lack of funding for the courts must be something more than just a reflection of overall budget constraints; while budget considerations do play a part, underfunding is often deliberate, purposeful, and unrelated to the budget.

One simple example should illustrate the point. Cheating on federal and state income taxes is pervasive in all classes of society; except among the compulsively honest, cheating usually occurs in direct proportion to opportunity. Why, then, do we not expand the Internal Revenue Service and its state counterparts? Every new revenue agent pays his salary and overhead at least eight times. The answer is that we do not really want Rhadamantine enforcement of the tax laws. As long as the IRS is overworked and understaffed, everyone except the scrupulously honest will enact his own personal tax-reform program. The IRS's understaffing also guarantees that all but the most flagrant evaders will escape with a payment of back taxes and possibly a civil penalty.

Overworked United States attorneys cannot spend their time arguing every questionable deduction in tax court. The IRS will challenge a businessman's deductions, only to cede most of its points at settlement conferences. The mediocre enforcement of the tax codes stems not only from the IRS's lack of staff but also from a lack of U.S. attorneys, U.S. district court judges, and court-of-appeals judges. Without an increase in the personnel of supporting agencies, there is a limit to the effectiveness of new IRS agents, but there is no question that such an increase will bring in more money than it costs.

Since more rigorous enforcement will inspire a higher level of "voluntary" compliance, it must be obvious that some people out there do not want better enforcement. I am probably one. I actually do pay every cent I owe in taxes, and since I am a public official, I get audited about every four years. Notwithstanding my annoyance with those who cheat, I do not want to be audited more than once every four years, because it is a nuisance. Quite frankly, I prefer to let

my neighbor cheat a little rather than be bothered with a yearly audit.

Most people probably feel as I do about forgiving their neighbors' tax transgressions in return for minimal personal harassment by Uncle Sam, but a similar philosophy of live and let live does not exist about violent crime. Why, then, do we not double the number of cops and courts?

The reason is both ideological and financial. Policemen, in my experience, are by nature bullies as well as heroes, and the smaller the police force, the more policemen tend to exhibit the characteristics of heroes rather than bullies. But the more policemen who are "cracking down on crime," the greater the likelihood that individual citizens will suffer abuse of their civil liberties. Work in any bureaucracy tends to expand to fill the time allocated to do it. If the police are not busy with serious crime, they may meddle in such citizen activities as private poker games, where no one wants their help. Consequently, a silent, even unconscious alliance exists between pro-civil-liberties liberals, who want small police forces for ideological reasons, and conservative taxpayers, who do not want to pay the costs of what from their point of view amounts to social services for others.

My favorite illustration of the diverse alliances that oppose improvements in the criminal-justice system is the repeated failure of a bill that is perennially introduced in the West Virginia Legislature. The bill, which is introduced at the request of the state attorney general, would give the attorney general statewide prosecutorial powers. Under the current system, each West Virginia county elects a prosecutor who has absolute discretion concerning what crimes will be prosecuted in his county. The attorney general handles criminal cases on appeal, defends the state's interests in federal habeas corpus proceedings, and represents the state's agencies in civil litigation; however, the attorney general has no power to initiate prosecutions at the trial-court level in the fifty-five counties. Why should there not be a statewide prosecutorial, particularly since many local prosecutors are reluctant to enforce the law against their political friends?

The answer is quite simple. The position of attorney general has historically been a stepping-stone to the governorship. Since 1936, four out of ten governors held the office of attorney general immediately before their election as governor. High elected office has tended to go to media stars since the demise of well-organized political machines. Only certain types of political antics, however, attract media attention; these include crusades against political corruption and white-collar crime. Everyone who is actively involved in either business or government is aware of the public-relations value of an anti-corruption crusade, yet even the consummately honest prefer not to be bothered by one. Zealous investigations demand the production of documents, testimony by employees on company time, and a costly disruption of normal business operations. None of these costs is borne by the government; all must be borne by the private sector.

The important facts are that there is less than universal support for the enforcement of most laws, from consumer fraud to drug use, and that lack of consensus about the value of some types of law enforcement is seen in the legislature's failure to establish a statewide enforcement agency.

In West Virginia's four northernmost counties, the population is composed largely of the children of Italians, Greeks, Poles, Hungarians, and other non-Anglo-Saxon peoples. The biggest illegal gambling institutions used to be the churches, which held regular, illegal bingo parties and raised significant revenues (bingo games for charitable organizations were recently legalized). Other social institutions similarly rely on slot machines and football pools; it is a way of life completely different from that of the predominantly fundamentalist southern part of the state. Local prosecutors in those counties are elected by citizens who expect a policy of conspicuous non-enforcement of the gambling laws, at least as they apply to churches and social clubs. The last thing on earth they want is a statewide strike force destroying their churches and clubs.

In 1977, when John D. Rockefeller IV became governor, his new chief of the state police attempted to enforce the gambling laws in the northern counties. Within a month, the state police were instructed to back off, because it became obvious that continued enforcement would anger every member of the legislature from those counties and that, in retaliation, those legislators would torpedo the governor's legislative program.

Every effort at improvement in the criminal justice system will seem either helpful or threatening, depending on the perspective of some political-interest group. Thus an increase in the number of policemen means more protection to some, more bullying to others. If, for example, the staffs of prosecuting attorneys are increased so that they can diligently prosecute armed robbers, murderers, and dope peddlers, they will also be available to ferret out consumer fraud, anti-trust violations, and political corruption. Since prosecuting attorneys are usually elected and, therefore, are lawyers with political ambitions, they will be tempted, as in West Virginia, to play to the press by prosecuting white-collar crime. These campaigns are middle-class morality plays that assuage the newspaper reader's sense of unrecognized merit. They are usually less attractive to the political establishment, however resolute it may be about cracking down on murder and armed robbery. Even fire-brand political reformers use questionable tactics at election time, and the prospect of an elaborate enforcement bureaucracy falling into enemy hands is horrifying to politicians.

A classic example of frivolous white-collar-crime prosecution took place recently in Pittsburgh. A county commissioner, who was also the county Democratic Party chairman, was charged with theft of services during his tenure as county coroner. At that time, in addition to being coroner, he owned a private laboratory, which did pathology and toxicology testing. It was alleged that he brought tissue specimens from his lab to the morgue, where they were processed by morgue employees on the county payroll, thereby "stealing" \$115,000 worth of county services.

The case had all the trappings of a political trial. The defendant, Cyril H. Wecht, was highly placed in county politics, so prosecuting him would bring much publicity—adverse for Wecht, angelic for the prosecutor. Wecht had political enemies even within his own party, and some of them were involved in initiating and developing the investigation. Others used the investigation and trial as a reason to force him to withdraw from the party chairmanship.

And the district attorney responsible for the prosecution, perhaps trading on the publicity it generated, was running for the state supreme court bench at the same time.

Political or not, theft of government services is not a trivial charge. But this case certainly was not one of those occasions when an expensive jury trial was warranted by any cost-benefit analysis of the "public good." Fortunately for Wecht, he was able to hire the nationally known trial lawyer Stanley Preiser to defend him. After six weeks of exhaustive testimony and with thirty-two cartons of documentary evidence, the jury deliberated for ten hours and acquitted Wecht.

The investigation and trial took nearly two years and involved ten investigators and seven lawyers from the district attorney's office at one time or another. The trial lasted six weeks, and the whole affair was estimated to have cost the county about \$1.5 million—more than ten times the value of the services said to have been stolen. The money spent on the trial could have bought almost forty prosecutors for a year at an annual salary of \$40,000, and they each could have been prosecuting fifty violent crimes and property crimes such as murder, rape, arson, armed robbery, and larceny—the ones that affect the average citizen's life.

As long as we are talking only about the criminal courts, the questions are comparatively simple. But when we add the complications created by the civil courts, all bets are off. Devoting more money to the criminal courts would return economic dividends to the public, but increased funding for the entire court system has a much more mixed effect. Indeed, for certain groups, including local governments, businesses, unions, landlords, and even tenants, a better-functioning court system would be a calamity.

Consider the case of New York City, which is notorious for its long court delays. In the abstract, most New Yorkers would like to have an efficient court system so that criminals would be sent away. To the casual observer, New York's felon problem would appear easy to solve by increasing the number of policemen and prosecutors, and by expanding the court system.

The hitch, however, is that a New York trial-court judge is empowered to hear both criminal and civil cases; if the number of judges is increased, more civil cases can be heard. Of 25,589 civil cases concluded in New York City in the first forty weeks of the 1979-1980 fiscal year, 5,523 were against New York City itself. New York City has been on the verge of bankruptcy since 1975, and the policies of the Reagan Administration threaten even greater financial strains in the next two and a half years. The potential liability for New York City from the civil suits currently awaiting trial runs to billions of dollars. New York City cannot afford an efficient court system, because it would be bankrupt beyond bail-out if all these suits came to trial in one or two years.

New York is an extraordinary example, but legal-aid and other public-interest lawyers elsewhere are bringing suits challenging the standards of operations in mental hospitals, prisons, schools, and other state and local facilities. When courts take action in these areas, it can mean that local governments must spend millions or even billions of dollars they never planned to. In New Jersey, for example, the state supreme court ordered the legislature to enact an income tax to support the public schools. This required the allocation of state money

to projects that judges wanted rather than to projects that the governor and the legislators wanted.

The moral of these stories is that the costs of creating more courts, along with all their supporting staff, are but a fraction of the total amount of money that an expansion of the courts will eventually involve. Typically, the entire judicial branch of government takes less than 2 percent of any state's budget. In New York City, the cost of doubling the number of judges, prosecutors, city attorneys, courtrooms, and supporting staff would be small compared with the cost of paying the judgments the new courts would render against the city.

In other parts of the United States, there are powerful private interests in the same position as New York City: they are not in the least interested in improving the efficiency of civil courts. If, for instance, litigation against insurance companies takes eight years to complete, the company has the use of its money for eight years, and can invest it during that period at between 10 and 18 percent. Furthermore, delay alone is a powerful force to inspire settlements for low sums. Since most federal and state courts are unified criminal and civil tribunals, in which any judge can hear either type of case, the positive economic effect for the general public of improved criminal courts is almost always offset by increased costs on the civil side for those who have the most political power. The public takes its accustomed beating.

If expanding the courts has varied effects, some of them welcomed and some of them abhorred by powerful political groups, the logical solution would be to separate the courts' various functions. We might create institutions that would work in areas where there is broad agreement—such as fighting violent crime—while avoiding other areas. Everyone wants violent criminals prosecuted and the streets made safe. During the 1960s and 1970s, there were numerous programs that attempted to get at the root causes of crime—slums, broken families, unemployment. While we have not abandoned these efforts, there is an increasing awareness that we do not have either the resources or the knowledge to reduce violent crime through preventive means, and this lack should not be used as an excuse for doing nothing.

New institutions will not be developed, however, until there is an organized citizen lobby that makes campaign contributions, sends out direct-mail newsletters about how elected officials perform in the area of court reform, and has representatives entering into the give-and-take of political bargaining in the committee rooms and the corridors of legislatures. Until there is such a lobby around which political support can coalesce, politically workable plans will not be generated. Since there is no active citizen lobby for court reform, and since, to the contrary, all of the day-to-day political rewards go to those who oppose court reform, the legislative branch is entirely indifferent to the courts. In fact, I cannot think of any other subject of major social concern that intrudes itself less upon the imagination of the average legislator than the courts. Yet court reform, albeit in simplistic terms, is the frequent subject of campaign rhetoric, which gives the illusion that politicians have some continuing interest in the subject. Sadly, the courts are usually regarded in the same light as is the Federal Reserve Board—as an institution that is to be reviled

and attacked but ultimately to be left unchanged.

The history of the environmental movement suggests the direction that a citizens' movement could take. Environmental and conservation issues used to be as low a legislative priority as court reform is today. But in the early 1960s, the whole question of pollution control and conservation of unspoiled wilderness captured the imagination of the college-educated middle class. Suddenly, defense of the environment took on the aura of a religious crusade. Groups such as the Sierra Club organized on the national level, and in every state local groups developed and kept in communication with one another.

The reform of the criminal law may be ripe for the same type of crusade that the environmentalists led fifteen years ago. Most street crime is, to be sure, perpetrated upon the poor, because they must live where the criminals are. But crime has risen to a level that intrudes itself into the lives of many middle-class citizens on a daily basis. It is the middle class that has organizational and political skills, along with a spare hundred dollars to contribute to a political-action group. It was essentially the middle class that accomplished the environmental revolution.

The beginnings of a citizen lobby for better law enforcement can already be perceived. In West Virginia last year, the relatives of persons killed by drunk drivers organized themselves to make the drunk-driving penalties more severe. In general, the enforcement of the drunk-driving laws in the United States is a disgrace. But last year, the public outcry against drunk drivers was such that the West Virginia Legislature made drunk driving a serious offense, amending the law to include a no-nonsense procedure for enforcement.

West Virginia's decision to crack down on drunk driving was not unique; several other states amended their laws last year with spectacular results. In California, for example, after a new drunk-driving law went into effect, the highway death toll during the Christmas season was reduced by 50 percent over the previous year.

Drunk driving differs from other criminal questions in that it is a comparatively easily understood problem and there is not political pressure to protect drunk drivers. Although there is no pressure to protect any criminal who strikes at random, the more a criminal activity looks like a regular business—car theft, gambling, drug sales—the more criminals organize to influence the political process. Even more important in the passage of the drunk-driving laws, perhaps, was the lack of debate about what would reduce drunk driving. Everyone agreed that strict sanctions, quickly applied, would do the trick for the occasional drunk, and that permanent revocation of their licenses would keep most of the habitual drunks off the road. Like the environmental movement, the lobby against drunk driving knew just what it wanted.

By contrast, efforts within the political system to improve the criminal justice system often stall because of the timeless debate about stricter enforcement versus elimination of the root causes of crime. The advantage of a citizen lobby seriously concerned with an improved criminal-justice system is that citizens want protection—they are content if the symptoms of the disease can be controlled and that is probably the practical approach for the foreseeable future.

It is important to differentiate between traditional law-and-order rhetoric and real criminal-law reform. Traditional law-and-order rhetoric addresses itself primarily to the decisions of the United States Supreme Court since *Miranda v. Arizona* in 1966, when the Supreme Court began the wholesale reform of the criminal law in order to further civil rights and civil liberties. A return to police brutality, official harassment of the lower socio-economic class, and kangaroo-court summary convictions by forced guilty pleas is not my idea of criminal-law reform. It is possible to have a well-functioning system of criminal-law enforcement without the violations of personal integrity inherent in the police state. But it would be expensive.

In my estimation, a good criminal-justice system that reduces violent and petty crime to roughly one fifth of their current level could be established with substantially less political activism than was required for environmental reform. Furthermore, the costs to the nation of criminal-law reform would be dramatically less than those of the environmental movement, although they would all be borne directly by the taxpayers instead of being paid for through the inflation of consumer prices, as was the case with most environmental reforms. Cleaning up the environment exacted its costs through lost jobs, higher utility bills, and more expensive automobiles. Criminal-law reform will cost higher taxes.

It is not necessary that everyone suddenly become interested in criminal-law reform. After all, the number of voters who were actively dedicated to the ecology revolution was comparatively small. Extremely effective interest groups—the National Rifle Association, for example—are comparatively small in terms of active members. It must be remembered that politicians are not concerned with influencing everyone who is eligible to vote—just the 21 to 65 percent, depending on the election, who actually come to the polls. It is the militant and not the indifferent voter who must be satisfied first. ●

INFLATION

● Mr. McClure. Mr. President, in June's issue of *Financier* magazine an editorial made some interesting insights into our 2-year battle in a war that began silently years ago—the war against inflation. As a candidate, Ronald Reagan made a solemn promise to win this war and return our economy to prosperity. The electorate demanded it, the economy required it, and President Reagan is delivering it.

There is no doubt that inflation has been eating away at the core of our economy for years. The American dream of owning a home has become a nightmare; prices have increased artificially until only the very rich can afford to buy a house. The purchasing power of retirement savings has eroded to the point that older Americans have no choice but to become dependent on their social security income, an income that was designed to be a supplement to savings. Automatic increases in wages and benefits to compensate for the ravages of inflation have so strangled our large corpo-

rations that they are forced to close factories and lay off workers.

Inflation has been this country's No. 1 economic problem for years. The fight against it is not won, but broad gains have been made. The current rate is just above 5 percent, and last March the rate was negative for the first time since 1965. There is no doubt that this course has been painful. Nobody said it would not be, and no one can say that it will not continue to be. Until inflation is controlled everyone agrees that there will not be a sustained recovery. When inflation is running at levels so high that business management can no longer predict the future and begins thinking only in the short term, it is impossible to have a productive environment.

I firmly believe that the only thing that could be more painful would be to change our course and revert to the failed policies of previous administrations. There is some dangerous talk in Congress and in the administration of the need to "reflate" the economy. Apparently, some feel that the pain we have endured has not been worthwhile and we should change course temporarily. To me this is election-year nonsense. Changing course now could inflict permanent damage on our recovery. Congress should excel in its leadership role now more than ever and give the economy something it can count on.

I wholeheartedly agree with the editorial and feel the "the President is right to stand firm; he would be terribly wrong to yield now, when his administration, for the first time in a generation is in a firm position to deliver genuine relief from the curse of inflation, and to set the U.S. economy once again on firm footing."

I submit for the *RECORD* the *Financier* editorial.

The editorial follows:

[From the *Financier*, June 1982]

HOLD THE PAINFUL GAINS

The inflation cure now being administered to the US economy is hurting badly everywhere. Degrees of suffering vary, of course; but when business profits fall as sharply as they did during the first quarter of this year, the anguish of the unemployed cannot be regarded as a function of economic class discrimination. Business and labor alike are sharing the burden.

But even as the cure imposes its painful side effects, it is appropriate to consider how awful the ravages of inflation might have become if that dread economic plague had been allowed to continue unchecked. Not too long ago, dire scenarios were being drafted—straight-line projections of rising rates, a look back at pictures of bank notes in bundles in the markets of Weimar Germany, a frightened look ahead at the destruction of retirement savings.

Indeed, the panic of senior citizens now being expressed at the prospect of administrative tinkering with their vital Social Security pales in contrast to the desperation that would have engulfed them if the inflationary rampage had run much longer.

THE PROMISE HE EMPHASIZED MOST

Putting an end to inflation was the campaign promise Ronald Reagan emphasized most of all, and the one to which the voters seemed to respond with the most enthusiasm. Now as President he is delivering upon it, and creating a whole new set of economic and political problems in the process.

That should not come as a surprise; nor should the pain that the process entails. Even when he was making the promise, Candidate Reagan, while admittedly not emphasizing the extreme severity of making good on it, did not claim that disinflating after a generation of profligacy would be easy.

So he is doing what he said had to be done; what many economists despaired of ever being done; and what the electorate told him it wanted him to do.

The question now troubling many—not just the myriads who are hurting, but the makers of corporate policy whose determinations affect productivity and employment—is whether the pain of withdrawal from the inflationary stimulus will be so severe as to do permanent damage to the body economic.

In the concern for alleviating pain, care must be taken against renewing dosages of the inflation that brought the economic dis-temper on in the first place.

Time and again throughout the history of business cycles since the end of World War II, policy has over-reacted to recession, usually towards the end of the downturn, at about the time that some remission from inflation was occurring, by initiating policies to reflate. These have had the result of starting the vicious cycle all over again, from a higher base.

To revert to that discredited policy approach at this point in this cycle, when the battle is on the verge of being won, would be to discard all the gains that have been made, and negate all the sacrifices that have made them possible, in this historic struggle.

GAINS TO BE CONSOLIDATED

For gains have indeed been made, which need to be consolidated. Wage increases are settling back; artificial run-ups in real estate prices are easing; some business investment, mostly in productivity, is resuming, and the consumer, who has been leery of buying, is now edging back into the marketplace, at least partially motivated by a renewed sense of fair value for his purchases.

Much of the inflationary excess in the economy has been squeezed out.

All that is required to set a solid recovery in motion is a start of reduction in interest rates.

And there, of course, lies the Catch-22 of the recovery. Interest rates will not come down until the financial community becomes convinced that the same old pattern of renewal of inflation is not going to start again.

The signal that everyone is waiting for would come when and if the Administration and Congress could work out a credible scheme to reduce the monstrous Budget deficit.

If not, those who can be identified as having blocked that accord would deserve the most severe political punishment.

TRUST NOT TO REFLATE

But more important than the marshalling of fiscal policy in support of monetary policy to disinflate, will be trust in Administration determination not to reflate—not to permit a new round of the stimuli that have reactivated inflation in the past.

Application of some of the palliatives that are now being proposed would revive that concern. Quick fixes would release a new spiral, and the country would break out in a fresh inflationary binge, from which the end, whenever it came, would be even more devastating than the painful cure now being administered.

But as long as those discredited palliatives are not applied, and the forces of inflation continue to ebb, the pressures on those rates to come down will continue, and the belief that this Administration does intend to stay the course will strengthen. As that process of convincing the skeptics continues, at some time—probably not too far off—interest rates will come down.

The President is right to stand firm; he would be terribly wrong to yield now, at the very time when his Administration, for the first time in a generation, is in a position to deliver genuine relief from the curse of inflation, and to set the US economy once again on firm footing.●

SEVENTH ANNIVERSARY OF THE HELSINKI ACCORD

● Mr. PELL. Mr. President, 7 years ago yesterday, the leaders of 35 nations—the United States, Canada, the Soviet Union and every European nation except Albania—met in the Finnish capital of Helsinki to affix their signatures on a document which set standards for the conduct of behavior among those nations. This historic event—the signing of the Final Act of the Conference on Security and Cooperation in Europe—CSCE—was the culmination of nearly 2 years of negotiations and marked a high point in the era of détente.

Seven years later, with détente an unfashionable word and the bilateral relationship between the two superpowers in shambles, some question the relevancy of the Helsinki Final Act and the series of meetings and consultations that have become known as the CSCE process. Yet, it is precisely during periods of tension such as these that the principles embodied in the Helsinki agreement become even more significant. For the Helsinki Final Act provides the foundation for lasting peace, genuine security, and increased cooperation among the nations of Europe and North America. That structure will not be built, however, unless and until the Soviet Union begins abiding by its commitments.

As a founding member of the U.S. Commission on Security and Cooperation in Europe, I have had the opportunity to witness first-hand the expectations of the people of Europe—East and West—that were generated by the signing of the Helsinki accord. Those expectations have not yet been fully realized and, tragically, in some cases, those hopes have been dashed completely. Yet, the Helsinki process offers the best chance for reducing the misunderstanding and stress that has marked East-West relations in recent years and for improving the lot of the people of all 35 nations.

While the Helsinki Final Act covers nearly every aspect of East-West relations—military security, trade and economic cooperation, scientific and cultural exchange—the provisions that have received the most attention in the West and, sadly, the least implementation in the East, are those dealing with human rights and humanitarian issues. The 35 signatories agreed to respect human rights, to facilitate the freer movement of people, especially for family reunification and binational marriage, to disseminate information of all kinds, and to guarantee religious freedom. Instead, the Soviet Government imprisons human rights activists, denies Jews and others the right to join their relatives abroad, forces spouses to undergo life-threatening fasts in order to be reunited with their loved ones, jams Western radio broadcasts, and severely restricts the exercise of religious rights. Many of the Warsaw Pact nations—especially Czechoslovakia, East Germany and, now, Poland—have followed the Soviet example of repression.

Continued Soviet and Eastern disregard for their Helsinki obligations can only result in a further deterioration of our relations. That message must be delivered—forcefully and continually—to the Soviet authorities at every level of our dealings with them. American actions and rhetoric must make it clear that we consider respect for human rights to be an integral element in the improvement of relations and in the establishment and maintenance of genuine security in Europe and throughout the world. The Helsinki Final Act itself recognizes that respect for human rights “is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations” among all countries. We must hold the Soviets to those words.●

ORDER FOR RECOGNITION OF SENATOR NUNN ON TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that, after the recognition of the two leaders under the standing order, the distinguished Senator from Georgia (Mr. NUNN) be recognized on a special order of not to exceed 15 minutes.

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

PROGRAM

Mr. BAKER. Mr. President, the program for tomorrow is as follows:

The Senate will convene under the order previously entered at 10 a.m. After the recognition of the two leaders under the standing order, the Senator from Georgia (Mr. NUNN) will be recognized on a special order of not to exceed 15 minutes.

Thereafter, Mr. President, there will be a time for the transaction of routine morning business in which Senators may speak for not more than 2 minutes each which shall extend to not later than the hour of 10:50 a.m.

At 10:50 a.m., the Senate will resume consideration of Senate Joint Resolution 58, at which time the Dodd amendment No. 2009 will be the pending amendment. There will be 10 minutes of debate, equally divided between the Senator from Connecticut and the distinguished manager of the bill, the chairman of the Judiciary Committee, Mr. THURMOND.

At 11 o'clock, the vote will occur on the Dodd amendment No. 2009, and votes thereafter on the Mathias-Baucus amendment No. 1931, the Moy-nihan amendment No. 1928, as modified, and two Cranston amendments, Nos. 1996 and 1989. The Dodd amendment will be a 15-minute rollcall vote and succeeding votes as just listed will be 10 minutes each.

Mr. President, it is distinctly possible that the Senate will be in session later than usual tomorrow night in order to accommodate the needs of Senators to call up their amendments and debate them before the close of the day. I

remind Senators that there is an order in place providing for a vote on final passage on this resolution at 12 noon on Wednesday.

RECESS UNTIL 10 A.M.
TOMORROW

Mr. BAKER. Mr. President if there is no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate now stand in recess until the hour of 10 o'clock a.m. tomorrow.

The motion was agreed to; and at 7:24 p.m., the Senate recessed until Tuesday, August 3, 1982, at 10 a.m.